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Navigable Waters Rule Bound for Court Challenges

Concluding their administrative efforts to narrow federal jurisdiction under the Clean Water Act, the U.S. Environmental Protection Agency and Army Corps of Engineers on Jan. 23 released their final regulations interpreting the term "waters of the United States."

It is no accident that the agencies used the title "The Navigable Waters Protection Rule" — a clear reference to the other half of the Clean Water Act's circular definition of regulated waters and its origins in the Rivers and Harbors Act of 1899. Congress unequivocally decided to regulate more than navigable-in-fact waters under the modern Clean Water Act, but did so only by defining "navigable waters" as "waters of the United States."

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