

New U.S. Waters Definition May Rock the Boat

On Dec. 30, 2022, the U.S. Environmental Protection Agency and the U.S. Department of the Army jointly announced the latest final rule attempting to define "waters of the United States," or WOTUS. The rule was published in the Federal Register on Jan. 18, and it will take effect 60 days after publication.

Among other things, the WOTUS definition determines the scope of the Clean Water Act's two major permitting programs: Section 402 of the CWA, which governs National Pollutant Discharge Elimination System permits, and Section 404(a) of the CWA, which regulates the discharge of dredged or fill material into navigable waters.

The agencies assert that the rule is intended to restore the pre-2015 definition of waters of the U.S., accounting for various subsequent court decisions.

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