



Information Alert

State-Federal Relations Division

‘Waters of the United States’ in Effect for 26 States

On Aug. 16, the U.S. District Court for the District of South Carolina ruled that the Environmental Protection Agency (EPA) violated requirements of the Administrative Procedures Act (APA), this past February, when it issued a two-year delay of the applicability date of its 2015 [Clean Water Rule](#). The Clean Water Rule, more commonly known as Waters of the United States (WOTUS), aims to determine the scope of federal authority to regulate “water of the United States,” and when states, local governments and others must seek federal permits to develop land because it contains WOTUS.

In January, a U.S. Supreme Court decision [found](#) that challenges to WOTUS belonged in federal district courts, not circuit level federal courts, prompting the sixth circuit to lift its [October 2015 stay](#) of the rule. As EPA was in the process of formally repealing the 2015 rule, the agency, in an effort to ensure that the rule did not take effect in any part of the nation following the sixth circuit’s lift of its stay, issued the two-year extension of the rule’s applicability date to 2020.

The South Carolina District Court found that in violating the APA, during the promulgation of the rule’s delay, EPA failed to “tak[e] action with inadequate public notice and comment,” and “to consider the substantive implications of suspending the WOTUS rule.” The court’s finding means that the rule, which sought to define which waters fall under federal jurisdiction, will now go into effect for 26 states—California, Connecticut, Delaware, Florida, Hawaii, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia and Washington. Two separate injunctions of the rule in district courts in North Dakota and Georgia mean the rule will remain stayed in 24 states. It is possible the rule may be stayed in more states as the U.S. District Court for the Southern District of Texas has been [asked](#) by Louisiana, Mississippi and Texas to halt the rule nationwide.

For additional information on the rule, please read NCSL’s Info Alerts [here](#), relevant fact sheets [here](#) and agency-published FAQs [here](#). If you have any questions, please don’t hesitate to contact NCSL staff members [Kristen Hildreth](#) or [Ben Husch](#).