

Info Alert

National Conference of State Legislatures Office of State-Federal Relations

Oct. 13, 2015

Federal Appeals Court Orders Nationwide Stay of “Waters of the U.S. (WOTUS)” Rule

On Oct. 9, the 6th U.S. District Court of Appeals ordered a [nationwide stay](#) of the Environmental Protection Agency’s (EPA) recently finalized [Waters of the U.S.](#) rule. A stay means the rule will not go into effect until further judicial action is taken by the court, and no state will have to comply with the rule at this time. The newly completed rule updates which waterways in the U.S. are subject to the Clean Water Act permitting requirements for protection from pollutants.

The court ruled that the petitioners—a consolidation of 18 states that brought similar challenges in various district courts—had demonstrated a “substantial possibility of success on the merits of their claims” and issuing a stay would allow the court more time to decide if the court has the jurisdiction to review the regulation and whether the rule is legal.

The decision follows a ruling made in the U.S. District Court for the District of North Dakota on Aug. 27 that granted a preliminary stay for the 13 states that were suing EPA in that court. The decision in North Dakota created uncertainty for other states that had asked for, but had not been granted, a stay in different U.S. district courts under the same grounds.

Because of the stay, the Clean Water Act will now be enforced nationally as it was before issuance of the new rule, until the 6th Circuit makes a full ruling on the regulation.

For more information on WOTUS, please see [NCSL’s Info Alert](#) from May 27.

If you have any questions or concerns regarding the announcement please do not hesitate to contact NCSL staff [Ben Husch](#) (202-624-7779) or [Melanie Condon](#) (202-624-3597).