

Info Alert

National Conference of State Legislatures Office of State-Federal Relations

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EPA Unveils Final “Clean Water Rule: Definition of Waters of the U.S.”

On May 27, the U.S. Environmental Protection Agency (EPA) along with the U.S. Army Corps of Engineers [released](#) a final rule clarifying the waterways in the United States that are subject to the Clean Water Act permitting requirements for protection from pollutants. [The Clean Water Rule: Definition of Waters of the U.S.](#) was originally written in 2011 as a draft EPA guidance document, but was crafted into a [proposed rule](#) in March 2014. The impetus for the 2011 clarification on how to define “waters of the U.S.” came after two U.S. Supreme Court decisions, in 2001 and 2006, created confusion regarding which of the nation’s waterways were under federal protection from pollution.

According to EPA, the final rule applies to waters with a “direct and significant” connection to larger downstream bodies of water that are already protected. Ditches and other unique water bodies would also be covered under the final rule if they meet the definition of a tributary, which is defined under the rule as water that contributes flow, either directly or through another water, to a recognized protected water. In releasing the final rule, EPA Administrator Gina McCarthy stated that decisions on which ditches will be covered will have to be made on a case-by-case basis. The rule includes measurable limits on how “adjacent” waters are defined.

Additionally, the regulation does not create new permitting requirements for agriculture and adds new exemptions for artificial lakes and ponds. Water treatment operations in Municipal Separate Storm Sewer Systems are not changed under the final rule. The rule will go into effect 60 days after it is published in the federal register.

The rule, which garnered over 1 million public comments during the proposal phase, was met with both support and opposition. The U.S. House of Representatives passed [legislation](#), 261-155, on May 12 that would order EPA to withdraw the rule and craft a new one. The U.S. Senate is expected to discuss similar [legislation](#) this summer.

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).