



Construction Industry Round Table

Regulatory News

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02/06/2018 – “Waters of the U.S.” Definition Still Unsettled

EPA and the Army Corps of Engineers jointly published a final rule adding to their 2015Rule (Obama era revision) defining “Waters of the U.S.” (WOTUS) by changing or amending an applicability date in 2020. The agencies set an applicability date to address uncertainty following the Supreme Court's [determination](#) that review of the 2015 WOTUS rule belongs in federal district courts, rather than appeals courts. CIRT opposed the 2015Rule revisions of the Obama Administration, welcoming the agencies reconsideration of the broad over-reach of federal authority that the 2015 revisions put in place. (See, CIRT stories and comments on the matter over the past three years).

Due to the extremely controversial nature of the 2015Rule, on August 27, 2015, the U.S. District Court for the District of North Dakota enjoined the applicability of the 2015Rule in the 13 States challenging the rulemaking in that court. On October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the 2015Rule nationwide pending further action of the court. On January 22, 2018, the Supreme Court held that the courts of appeals do not have original jurisdiction to review challenges to the 2015Rule. With the final rule announced, the agencies intend to maintain the *status quo* by adding an applicability date to the 2015Rule, thus providing continuity and regulatory certainty for regulated entities, the States and Tribes, and the public while the agencies continue to consider possible revisions to the 2015Rule.