



Construction Industry Round Table

Regulatory News - Update

A force for positive change in the design / construction industry

08/02/2017 – EPA Proposes to Rescind and Revise Controversial “Waters of the U.S.” Rulemaking

EPA and the Army Corps of Engineers officially published in the Federal Register a proposed rule to rescind the highly controversial and court challenged definition of "waters of the U.S." (WOTUS) established in a June 2015 rulemaking. This extraordinary reversal was prompted by President Trump’s Executive Order signed on February 28, 2017 *“Restoring the Rule of Law, Federalism, and Economic Growth”* by reviewing the “waters” rulemaking under the Obama Administration. The new proposal would re-codify the regulatory text that existed prior to the 2015 WOTUS rule to "reflect the current legal regime under which the agencies are operating" following a nationwide stay of the rule by the U.S. Court of Appeals for the Sixth Circuit. CIRT joined the design and construction community in strong opposition to the overly broad power grab by the federal government through the use of a loosely defined “waters” definition that abridged both individual property rights and State rights under federalism.

The new proposal contemplates two steps: (1) re-codifying the regulations that existed before the 2015 Clean Water Rulemaking so as to provide continuity and certainty for regulated entities; the States; agency staff; and the public; and in step (2) the agencies (EPA & Corps) will pursue a notice-and-comment rulemaking process whereby they will conduct a substantive re-evaluation of the definition of “waters of the United States.” [See, proposal at 82 FR 34899-34909 (August 2, 2017) or at: <https://www.federalregister.gov/documents/2017/07/27/2017-13997/definition-of-waters-of-the-united-states-recodification-of-pre-existing-rules>]

The second step is on a short time line, requiring all comments to be submitted within 26-days, or **by August 28, 2017**. If your firm is interested in submitting a comment, it must be identified by: Docket ID No. EPA-HQ-OW-2017-0203, at <http://www.regulations.gov>