



Construction Industry Round Table

Regulatory News

A force for positive change in the design / construction industry

12/01/2017 -- EPA Proposes to Amend 2015 “Waters of the U.S.” Effective Date [UPDATE]

EPA and the Army Corps of Engineers jointly published a proposed rule that would add to its 2015 rule defining “Waters of the U.S.” (WOTUS rule) an applicability date two years in the future [see, [82 FR 55542, November 22, 2017](#)]. The agencies are proposing this approach with respect to an applicability date to address the uncertainty arising from a pending U.S. Supreme Court determination as to whether or not the 6th Circuit had jurisdiction to stay the 2015 WOTUS rule. The courts stepped-in to stop implementation of the highly controversial Obama Administration rulemaking, which critics viewed as deeply flawed both Constitutionally and with respect to states’ rights under federalism. CIRT filed comprehensive comments opposing the rulemaking at the time.

In 2015, the agencies published the “Clean Water Rule: Definition of `Waters of the United States”” ([80 FR 37054](#), June 29, 2015), and on October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the 2015 Rule nationwide pending further action of the court. The Code of Federal Regulations text does not currently include an applicability date; therefore, the agencies are proposing to amend the text of the Code of Federal Regulations to add a new applicability date. Until this new applicability date is reached, the agencies would continue to implement the prior regulatory definitions, informed by applicable agency guidance documents and consistent with Supreme Court decisions and longstanding agency practice, as the agencies have been operating pursuant to the Sixth Circuit’s October 9, 2015, order; which CIRT supports.