

WATERS OF THE U.S.



OUR POSITION:

ICSC opposes the draft rule, and urges EPA to reexamine appropriate methods to clarify the scope of Clean Water Act jurisdiction, and develop rules that will truly enhance water quality through scientifically sound, cost-effective methods.

The U.S. Environmental Protection Agency (EPA) and the Corps of Engineers (Corps) have jointly submitted for interagency review a draft proposed rule to revise the definition of “Waters of the United States” (WOTUS) for all Clean Water Act (CWA) programs.

The definitional changes contained in the draft rule would have the effect of changing the scope of federal CWA jurisdiction at the expense of state jurisdiction and significantly expand federal control of land and water resources on commercial properties.

If the rule is enacted in its current form, developers can expect major project permitting delays, costly resource outlays for new permit applications, and an unprecedented level of regulatory uncertainty and inconsistency in the administration of Corps permitting programs. This proposal will lead to uncertainty and added costs for developers by generating possible conflicts and consultations between project applicants, state and federal permitting authorities.

The rule would subject more activities to CWA permitting requirements, National Environmental Policy Act (NEPA) analyses, mitigation requirements, and citizen suits challenging local actions based on the applicability and interpretation of new-found authorities. Even specific activities that are exempt from CWA programs—such as land irrigation, pesticide application, or repairs to retention ponds—could be pulled into federal oversight and permits if any of the water associated with these activities becomes designated as water of the United States.

As EPA’s draft proposal is written to potentially treat virtually any water as a WOTUS, Corps regions will be more likely to determine that a project proponent must use an Individual Permit, instead relying on a Nationwide Permit. The costs of obtaining Corps permits are significant: averaging 788 days and \$271,596 for an individual permit; 313 days and \$28,915 for a nationwide permit—not counting costs of mitigation or design changes. Under the current regulatory regime, more than \$1.7 billion is spent each year by the private and public sectors obtaining wetlands permits. If the draft rule becomes law, this number will increase significantly.

The greatest burden will fall on small landowners and small businesses least able to absorb the costs, but will also serve as a drag on economic activity and job creation in many sectors of the economy.

The proposed rule effectively gives the EPA regulatory control over all natural and man-made bodies of water in the U.S.

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