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Waters of the U.S. (WOTUS)

EPA's Proposed Rule – Back to the Pre-2015 Program

In June 2021, premised on the agencies' determination that the Trump Administration's Navigable Waters Protection Rule (finalized April 21, 2020) significantly reduced clean water protections, the EPA and the Department of the Army announced their intent to revise the definition of Waters of the United States (WOTUS).

Acting on that promised goal, on November 18, 2021, the agencies published a proposed rule to re-establish the pre-2015 definition of WOTUS. The proposed rule will update the definition in recognition of recent Supreme Court decisions.

Since September 2021, and in light of the U.S. District Courts for both Arizona and New Mexico having vacated the Trump Administration's Navigable Waters Protection Rule, the agencies have been using the pre-2015 regulatory regime nationwide.

The history of the pre-2015 rule and the Navigable Waters Protection Rule can be found here.

The agencies are taking comments for 60 days beginning on the date it is published in the Federal Register.

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