

INSIGHTS

EPA Repeals Obama Rule Defining Waters of the U.S.

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On Thursday, September 12, EPA General Counsel Matt Leopold announced EPA's final rule repealing the 2015 Waters of the United States ("WOTUS") Rule. Significantly, General Counsel Leopold did *not* announce the final replacement WOTUS Rule, which was ***proposed*** in February of this year; the replacement rule remains at the final rule stage as EPA revises the rule in light of public comment. A recent interview with Administrator Wheeler indicates that it will be a few months before the replacement rule is finalized.

The 2015 WOTUS Rule, also called the ***Clean Water Rule***, significantly extended the Clean Water Act's jurisdiction over streams and wetlands on the basis of significant hydrological or ecological connections to traditional navigable waters, interstate waters, and territorial seas. The 2015 Rule was successfully challenged by a number of states in federal district courts on the grounds that the 2015 Rule departed from both the statutory text of the Clean Water Act and major Supreme Court decisions guiding how "waters of the United States" is to be interpreted. As a result, the 2015 Rule was effective only in 22 states, creating a patchwork of applicability that frustrated government officials and the regulated community alike.

The repeal of the rule will be effective 60 days from the official notice in the Federal Register. When the repeal rule goes into effect, the entire country will be governed by the pre-2015 status quo. The 1986 WOTUS Rule will be the basis for determining which waterbodies are WOTUS until the replacement rule is effective, and the SWANCC and *Rapanos* guidance documents remain in effect as well.