

EPA and Corps Seeking Written Comment on “Waters of the United States” Rule

March 28, 2025 Mary Mendoza, Clarissa Mills, Victor Salazar

PRACTICES Environmental

On Monday, March 24, 2025, the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) published a [Federal Register](#) notice seeking stakeholder feedback on specific topic areas for the “waters of the United States” (WOTUS) definition and announcing six listening sessions. This Federal Register notice follows the [announcement](#) by Administrator Zeldin that the EPA will work with the Corps to revise the WOTUS definition. The WOTUS definition is a jurisdictional threshold term that determines the geographical scope of multiple Clean Water Act programs, including water quality standards, oil spill programs, dredge and fill discharge permits, water quality certifications and pollutant discharge permits.

Topic areas the agencies are soliciting feedback on as they consider next steps for potential administrative action include:

- The scope of “relatively” permanent waters and to what features this phrase applies
- The scope of “continuous surface connection” and to which features this phrase applies
- The scope of jurisdictional ditches

The Federal Register notice also follows the March 12 issuance of a [joint memorandum](#) from the two Agencies providing guidance to field staff on the implementation of “continuous surface connection” for the purposes of determining Clean Water Act jurisdiction over adjacent wetlands. The memorandum gives some indication of where the agencies currently stand on the interpretation of WOTUS, explicitly rescinding prior guidance and positions that found that non-jurisdictional “discrete features” such as ditches, swales, pipes or culverts, provide a continuous surface connection between covered waters and wetlands. The memorandum is likely to result in wetlands that are distant from an otherwise covered water falling outside the geographical scope of jurisdictional waters. The memorandum provides some clarity for the regulated community but is limited in its application to wetlands and does not address coverage for tributaries, intermittent streams, ditches and swales. Further, the impact of the memorandum on previous approved jurisdictional determination is not clear, but a separate [March 12 press release](#) from the Corps suggests that applicants can apply for new jurisdictional determinations.

We recommend that entities potentially impacted by the WOTUS definition and related jurisdictional issues closely monitor the Corps’ application of the new guidance and any interpretation of the guidance by the courts during the pendency of the rulemaking process. Stakeholders and the public have until **April 23, 2025**, to submit written feedback that the agencies will use to inform their decision making. Please reach out to a member of Haynes Boone’s Environmental Practice Group or an attorney listed below if you require assistance in providing and submitting feedback, or navigating the impact of the WOTUS definition on your operations.