

EPA and Army Seek Additional Public Comment on Proposed Repeal of “Waters of the U.S.” Definition

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The U.S. EPA and the Army Corps of Engineers recently issued a [supplemental proposal](#) to the July 2017 proposed action to repeal the 2015 definition of “Waters of the United States” (WOTUS), also known as the Step One Repeal. Specifically, this supplemental proposal requests public comment on the legal basis of the 2015 WOTUS Rule, as the agencies believe the legal foundation of the Rule has been a source of confusion.

Though the EPA and Army Corps held a public comment period last summer following the proposal of the Step One Repeal, this supplemental notice of proposed rulemaking clarifies that the agencies intend to *completely and permanently* repeal the 2015 WOTUS Rule as they continue working toward promulgating Step Two—a new WOTUS definition. The notice also restates that the agencies plan to restore the pre-2015 regulatory definitions of WOTUS to ensure they are implemented while the new WOTUS definition is finalized. The agencies contend that repealing the 2015 Rule in its entirety and restoring the pre-2015 regulations is consistent with Supreme Court decisions and longstanding practice, and thus will increase regulatory certainty and predictability.

The supplemental notice invites further public comment. The agencies request that all interested persons not only comment on whether the 2015 Rule should be repealed in its entirety, but also weigh in on additional considerations underlying the proposed repeal, some of which were not fully discussed in the initial proposal. The agencies will be accepting public comments until August 13, 2018.

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