

## **Small Entity Outreach – WOTUS 2 Rulemaking: A New Definition of WOTUS**

Summary: The U.S. Environmental Protection Agency, in coordination with the U.S. Department of Army, are seeking pre-proposal input from small entities on the forthcoming proposal to revise the definition of “waters of the U.S.” Small entities, among others, have expressed significant interest in the agencies’ proposed revisions. The agencies propose holding a webinar for small entities on Tuesday, September 19, 2017 from 1:00pm to 3:00pm Eastern Time, and an in-person meeting on Monday, October 23, 2017 from 9:00am to 11:00am Eastern Time. The meetings will be part of a longer series of pre-proposal stakeholder outreach the agencies will conduct in Fall 2017.

Invitation language:

The U.S. Environmental Protection Agency, in coordination with the U.S. Department of Army, is seeking pre-proposal input from small entities on the forthcoming proposal to revise the definition of “waters of the U.S.”

On February 28, 2017, the President issued an Executive Order (E.O.) entitled “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule”. This E.O. states that it is in the national interest to ensure that the Nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the States under the Constitution. The E.O. directs the agencies to review the Clean Water Rule for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law. Further, the E.O. directs that the agencies shall consider interpreting the term “navigable waters,” as defined in 33 U.S.C. 1362(7), in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*, 547 U.S. 715 (2006).

The agencies are implementing the E.O. in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule. First, the agencies proposed on July 27, 2017, a rule to re-codify the regulation that was in place prior to issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule. The comment period for this first proposed rule is open until September 27, 2017.

Second, the agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that is consistent with the approach outlined in the E.O. The meetings with small entities described below will provide for pre-proposal feedback on this rule to revise the definition of “waters of the U.S.” The meetings will be part of a longer series of pre-proposal stakeholder outreach the agencies will conduct in Fall 2017.

These meetings with small entities will enable participants to provide recommendations and suggestions on changes to the definition. In addition, the EPA is seeking to understand the

possible effects of changes to the scope of the Clean Water Act on small entities as the definition is revised. Some of the questions we invite stakeholder input on include the following:

- Following *SWANCC* or *Rapanos*, did you experience reduced costs as a result of reduced assertion of jurisdiction? Can you provide documentation regarding any such changes?
- Many small entities have requested better clarity regarding where the Clean Water Act applies. What would clarity look like to you?
- Do you have feedback about how the agencies should interpret key terms in Justice Scalia's opinion, such as "relatively permanent," and "continuous surface connection"?
- Would you derive greater or fewer costs/benefits from a change in the definition of "waters of the U.S." as suggested by the E.O.? Is there any information about costs and benefits to your sector the agencies should consider in their economic analysis?

The webinar will be held on **Tuesday, September 19, 2017, from 1:00pm to 3:00pm Eastern Time**. Those who wish to participate must contact Joan B. Rogers (202-564-6568 or [rogers.joanb@epa.gov](mailto:rogers.joanb@epa.gov)), no later than **Tuesday, September 12, 2017**. RSVPs will be accepted until September 12, or until webinar capacity has been reached (150 max), whichever occurs first.

The agencies are also planning an in-person meeting with small entities, which will be held on **Monday, October 23, 2017, from 9:00am to 11:00am Eastern Time** at the U.S. EPA's Headquarters located at 1200 Pennsylvania Avenue NW, Washington, DC 20003. To facilitate the building security process, and to request reasonable accommodation, those who wish to attend must contact Joan B. Rogers (202-564-6568 or [rogers.joanb@epa.gov](mailto:rogers.joanb@epa.gov)), no later than **Friday, October 13, 2017**. RSVPs will be accepted until October 13, or until room capacity has been reached (100 max), whichever occurs first.

**If you would like to provide a three minute "oral presentation" at either the webinar or the in-person meeting, please let Joan Rogers know by the registration dates listed above for each meeting so she can schedule your slot. Participants will only receive one speaking slot even if they intend to attend both meetings. We request that participants be as specific as possible, and include any supporting data or other information. This information will also be entered into a docket supporting this pre-proposal outreach.**

For those who may not be able to attend in person or online, a docket has been opened to receive your recommendations. You can provide your input and/or read others' recommendations (Docket # - EPA-HQ-OW-2017-0480). The docket closes November 28, 2017.

Thank you in advance for your interest. We look forward to your participation in this important effort.