Trump Administration Orders Review of Clean Water Rule

Executive Order requires EPA and U.S. Army Corps of Engineers to withdraw and reconsider WOTUS

President Donald J. Trump issued an executive order requiring the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers to withdraw and reconsider the Clean Water Rule, also known as the Waters of the United States rule (WOTUS).

“Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule” challenges the definition of “navigable waters” under the Clean Water Act. According to this description on EPA's website, a “tributary must show physical features of flowing water” to be considered navigable.

As USA Today reported, the late Justice Antonin Scalia in a 2005 Supreme Court decision defined navigable waters as "only those relatively permanent, standing or continuously flowing bodies of water forming geographic features that are described in ordinary parlance as streams, oceans, rivers, and lakes."

The Clean Water Rule was finalized in 2015 under the Clean Water Act and gives the federal government authority over major bodies of water, rivers, streams and wetlands to control pollution. According to EPA, specifically, the rule:

- Defines and protects tributaries that impact the health of downstream rivers;
- Provides certainty in how far safeguards extend to nearby waters;
- Protects the nation’s regional waters;
- Focuses on streams, not ditches;
- Maintains the status of waters within Municipal Separate Storm Sewer Systems; and
- Reduces the use of case-specific analysis of waters.

According to CNN, critics of the rule include some in the farming community, who suggest that the rule restricts how they use their land and can negatively impact their businesses.

“The Trump administration today has taken a first step toward stopping Washington’s regulation of Tennessee farmers’ mud puddles,” said U.S. Sen. Lamar Alexander (R-Tenn.) in a release. “I’m glad the administration is working towards ending it.”

Supporters of the rule advocate for the protection of U.S. drinking water, outdoor recreation, and the sport fishing and duck hunting industries, which they say can provide employment and economic benefits.
“Gutting this rule would threaten the wetlands and streams that feed the drinking water sources for one in three people—or 117 million Americans,” said Rhea Suh, president of the Natural Resources Defense Council in a release. “It would put our rivers, lakes, marshes and bays at risk of pollution.”

However, Thaddeus Lightfoot, partner at Dorsey & Whitney who has nearly three decades of practicing environmental law, said in a release, "The WOTUS rule is a final regulation promulgated by EPA and the U.S. Corps of Engineers, and it is already under legal challenge. In fact, the rule has yet to be implemented because the U.S. Court of Appeals for the Sixth Circuit granted a nationwide stay of the WOTUS rule in October 2015. An executive order purporting to roll back the rule is nothing more than a paper tweet—it will have no immediate legal effect."