Waters of the United States (WOTUS) Rule

SITUATION

The federal Clean Water Act (CWA) is the primary statute protecting the nation’s surface waters. Historically, its reach was limited to navigable waters, their tributaries and adjacent water bodies that are hydrologically connected to, or that otherwise affect, navigable waters. The law’s jurisdiction is split between the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers.

The Clean Water Act regulation issued in 2015 by the EPA — known as the Waters of the United States rule (WOTUS) — expanded the agencies’ jurisdiction over U.S. waters to include, among other water bodies, upstream waters and intermittent and ephemeral streams, such as the kind farmers use for drainage and irrigation. It also expanded into farm fields, applying to any discernable feature that possesses (or previously possessed) a bed, bank or high-water mark.

FAST FACTS

• Under the CWA, there is an absolute prohibition on discharging any pollutant, whether manure, chemical pesticide or fertilizer or even a seed of corn, into a WOTUS-covered feature without a federal permit.

• Violations of the prohibition are subject to significant criminal penalties as well as civil fines of up to $37,500 per day per discharge, with the power to enforce the penalties also open to private citizens and activist groups.

• If the current WOTUS rule were to go into effect, it would subject farmers and business owners to citizen enforcement suits, which could carry heavy civil, and potentially criminal, penalties if successful.

• The day before the WOTUS rule was to go into effect, a federal judge in North Dakota issued an injunction on its implementation in the 13 states that brought suit against it.

• On Feb. 28, 2017, the president signed an Executive Order directing EPA to review the rule and either withdraw or rewrite it.

NPPC POSITION

• NPPC opposes the Waters of the United States (WOTUS) rule because it is over broad and has significant technical problems and because the process the U.S. Environmental Protection Agency used to develop the rule violated basic due process and long-standing procedural protections.

• On Feb. 8, 2018, NPPC and a diverse coalition of agricultural and business groups filed a request in federal court in the case American Farm Bureau Federation, et. al. vs. the U.S. Environmental Protection Agency for a nationwide preliminary injunction against enforcement of the Obama administration’s Waters of the United States (WOTUS) rule.

• NPPC is urging the EPA under the Trump administration to rescind or rewrite the regulation.

NPPC CONTACTS

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