Last Thursday, the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) proposed delaying implementation of the rule defining the term “Waters of the U.S.” (WOTUS) for two years. This is one of many moving pieces involving the WOTUS rule at this time, and another step by the agencies under the Trump administration towards maintaining the status quo and ensuring the 2015 rule is not implemented.

The EPA and Corps intended the WOTUS rule, promulgated in 2015, to define the federal government’s jurisdiction over water bodies under the Clean Water Act. 80 Fed. Reg. 37054 (Jun. 29, 2015). Upon promulgation, the rule was challenged by environmental groups and regulated entities alike. The litigation remains pending before the Supreme Court and the Sixth Circuit. In the meantime, the WOTUS rule is subject to a nationwide stay.

According to the agencies, postponing the rule will provide regulatory certainty while the agencies finish the process of repealing and replacing the WOTUS rule, which is currently underway. See our July 27, 2017 blog post for a more detailed explanation of the repeal and replacement process. The EPA and Corps will accept comments for up to 21 days after publication in the Federal Register.

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