

How Does The New Clean Water Rule Impact Your Business?

On June 29th, the Environmental Protection Agency and the U.S. Army Corps of Engineers (collectively, the “Agencies”) made waves when they published a new rule—the Clean Water Rule—clarifying and arguably expanding the types of waters the government can regulate under the Clean Water Act (“CWA”). Prior to the rule, the scope of the Agencies’ jurisdictional reach was unclear, and subject to vague judicial interpretation.

The Clean Water Rule defines “waters of the United States” to minimize the need for a case-by-case analysis of whether a water body is subject to the Agencies’ regulatory authority under the CWA. Included in the new definition and therefore regulated under the CWA are, for example, tributaries and “adjacent waters” (such as waters adjacent to rivers and lakes); not included and therefore not regulated are, for example, groundwater and shallow subsurface flows. The Rule goes into effect on August 28. What could this new Rule mean for you? If, for example, you have any reason to discharge a pollutant into waters that are now included as “waters of the United States,” or if you want to dredge and fill a wetland, you will need to obtain a permit from the federal government.

Though confusion may be at bay, many industries and state governments have expressed their anger and concern over the Rule’s purportedly-expanded jurisdiction and the Agencies’ overreach. Eighteen states have already filed suits, alleging everything from constitutional Commerce Clause and 10th Amendment violations to violations of the Administrative Procedure Act and the National Environmental Protection Act. Needless to say, the new Clean Water Rule could be in troubled waters.

For more information on how the Clean Water Rule may impact your business or industry, or your specific CWA permits or permitting plans, please feel free to give us a call!

[Link to Clean Water Rule](#)

Date Created
July 20, 2015