

The Clean Water Rule

AUGUST 27, 2015

Webinar Logistics

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All information – Can be found at www.epa.gov/cleanwaterrule or <http://www.army.mil/asacw>

Overview of Presentation

- Summary of Clean Water Rule (CWR)
- Implementation of the CWR
- Implication of the CWR
- Questions & Answers



SUMMARY: The Clean Water Rule...

Provides greater certainty and clarity regarding the waters protected under the Clean Water Act

Makes jurisdictional determination process more straight forward for businesses and industry

Does not create any new permitting requirements for agriculture and maintains all previous **exemptions and exclusions**

SUMMARY: What the Rule Does

Clearly defines and protects tributaries and other waters that impact the health of downstream waters.

Provides certainty in how far safeguards extend to nearby waters.

Reduces the frequency of case-specific analysis of waters.

Protects regional water features.

Focuses on streams, not ditches.

SUMMARY: Clean Water Rule

Water Categories:

- Traditional Navigable Waters
- Interstate Waters
- Territorial Seas
- Impoundments
- Tributaries
- Adjacent Waters
- Similarly Situated Regional Waters
- Case-Specific Significant Nexus Waters

SUMMARY: Excluded Waters Under the Rule

Retains exclusions in old regulation:

- Prior converted cropland
- Waste Treatment Systems

Adds exclusions in new regulations:

- Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
- Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary or drain wetlands.
- Ditches that do not flow, either directly or through another water, into a traditional navigable water, interstate water or territorial sea.
- Previous features covered in the preamble to the 1986 & 88 regulations.
- Groundwater, stormwater control features constructed in dryland, and wastewater recycling structures constructed in dryland.

IMPLEMENTATION: Army-EPA Memo

EPA and Corps will:

- Respond to information needs
 - Produce and post questions and answers
 - Conduct “focused” based training webinars on an as needed basis
 - Encourage local-level workshops among agencies and public

IMPLEMENTATION: Army-EPA Memo

EPA and Corps will:

- Increase transparency
 - Develop a web-based, user-friendly interface application for viewing approved jurisdictional determinations

DRAFT - DELIBERATIVE

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IMPLEMENTATION: Army-EPA Memo

EPA and Corps will:

- Improve the permit process
 - Identify process and procedures for making improved permit decisions, while improving protection for public health and the environment
 - Evaluate the flexibility and use of nationwide permits.

DRAFT - DELIBERATIVE

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IMPLEMENTATION: Corps-EPA Program Training and Coordination Memo

Coordination Memo:

- Outlines enhanced coordination and training procedures for new rule elements
- Develops HQ workgroup to discuss, coordinate, and resolve potential policy issues
- Describes elevation process for unresolved issues

- DELIBERATIVE

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IMPLICATIONS: Section 404

- The rule will be effective August 28. Any requests for jurisdictional determinations made after the effective date will be considered under the new regulatory definition.
- No effect on NWP thresholds

Subcommittee on section 404 permitting

EPA has initiated a subcommittee to our National Advisory Council for Environmental Policy and Technology, NACEPT. This subcommittee will specifically examine how to facilitate more states and tribes assuming section 404 permitting pursuant to the CWA section 404(g)(1).

IMPLICATIONS: Section 402

- Change in implementation of section 402 program should be minimal.
- We will address any continued questions about stormwater.

IMPLICATIONS: Sections 303 and 305

- State water quality standards must be consistent with the CWA.
- What could change is whether or not those standards apply to a specific water.
- Needs for WQS for specific types of waters would exist with or without this rule.

QUESTIONS & ANSWERS

QUESTIONS

Q: Are preliminary jurisdictional determinations affected by the new rule?

Q: For how long are Approved Jurisdictional Determinations valid and under what circumstances would they be revised prior to expiration?

Q: If a stand-alone Approved JD is finalized after the effective date of the new rule, is it issued under the former rule or the Clean Water Rule?

QUESTIONS

Q: What analyses are required to find a water jurisdictional under (a)(8)?

Q: What is “dry land?”

Q: To be considered “normal farming,” does the farming activity have to have started prior to 1977?

Q: Can a ditch be considered adjacent?

Q: Can parts of a Municipal Separate Storm Sewer System (MS4) be a water of the US, and other parts be excluded?



QUESTIONS & ANSWERS OPEN SESSION

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