

Florida Stormwater Association
Summary of WOTUS Regulatory Development
 September 2018

November 2014	FSA submits formal comment to EPA/Corps on draft rules revising the definitions of Waters of the United States.
May 2015	Final WOTUS adopted by EPA/Corps.
October 2015	FSA and other local interests join numerous other parties filing complaints in the Sixth Judicial Circuit Court of Appeals (Ohio). Sixth Circuit issues nationwide stay stopping the WOTUS rule from being implemented – at least until the validity of the rule is otherwise determined.
November 2015	FSA and other local interests file Complaint in US District Court for Northern Florida in Tallahassee, asking the Court to invalidate rules.
April 2016	The full Sixth Circuit Court of Appeals issued an order denying requests to rehear a decision of a panel of that Court. FSA and most of the other petitioners had argued that the district courts were the proper venue for challenges to the WOTUS regulations. The decision of the Sixth Circuit is appealed to the US Supreme Court on procedural grounds.
November 2016	Briefs on the merits were filed in the Sixth Circuit Court of Appeals in Ohio. FSA's briefs were combined with other regulated interests.
January 2017	The Obama Administration filed a lengthy Brief in support of the WOTUS rules. The US Supreme Court agrees to hear an appeal from the decision of the Sixth Circuit Court in Ohio on the (procedural) issue of whether the Circuit or District court was the proper venue for review of WOTUS and similar rules.
February 2017	President Trump issued an Executive Order directing EPA and the Corps to review the WOTUS rule and begin the process to rescind or revise the rule.
June 2017	EPA and the Corps initiate the process to repeal or rescind the 2015 WOTUS regulations so that the regulatory text would revert to the definitions that existed prior to the amendments that were adopted in 2015.
July 2017	EPA and the Corps published a proposed rule repealing the revisions to the Waters of the United States regulations that were adopted in 2015.
August 2017	EPA/Corps hold ten teleconferences to hear from stakeholders on their recommendations to revise the definition of “Waters of the United States.” EPA/Corps extend the deadline for submitting comments on the proposed WOTUS repeal rule.
September 2017	FSA submits comments to EPA/Corps on the proposed rules to repeal the 2015 WOTUS regulations.

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November 2017	FSA submits additional comments in response to a request for suggestions on a yet-to-be-drafted rule to revise the definition of WOTUS, to be released in 2018.
January 2018	The US Supreme Court issues a unanimous decision finding that federal district courts are the proper jurisdictions for challenges to rules like WOTUS, negating the decisions of the Sixth Circuit Court in Ohio regarding WOTUS.
January 2018	EPA and Army Corps finalize a rule delaying the applicability date of the 2015 WOTUS rule by two years, during which time the agencies will continue the process of reviewing and updating the rule.
February 2018	At the request of FSA and with EPA/DOJ's consent, the US District Court for the Northern District of Florida enters an order staying the case brought by FSA and other parties challenging the WOTUS rule until 2020.
May 2018	EPA again states that a revised jurisdictional rule will be released and finalized before the end of 2018. The rule is expected to have a much more narrow application than the 2015 regulation, and will track the so-called Scalia test (after Supreme Court Justice Anthony Scalia) when determining what waters are or are not subject to federal jurisdiction. Among other things, the Scalia test limits jurisdiction to those waters that are "relatively permanent" and linked by a "continuous surface connection" - in contrast with waters that may have a "significant nexus" with other waters as in the 2015 rule.
June 2018	EPA/Corps issued a supplemental notice of proposed rulemaking to the July 2017 proposed action to repeal the 2015 WOTUS definition, clarifying that the agencies are proposing to permanently repeal the 2015 rule in its entirety and to recodify the pre-2015 regulations, keeping them in place while new rules are finalized.
July 2018	FSA submits additional comments on the supplemental notice of proposed rulemaking by EPA/Corps.
August 2018	A federal district court in South Carolina stayed (blocked) the Trump Administration's Applicability Rule. The Applicability rule would have delayed the effective date of the Obama Administration's WOTUS Rule until 2020, giving EPA time to replace the 2015 rule with a new set of WOTUS definitions. The Applicability rule would have blocked enforcement in 26 states. Other trial courts have stayed the enforcement of WOTUS in 24 states. All decisions (supporting or opposing enforcement) are being appealed. EPA has yet to adopt its repeal or repeal/replace rule.
September 2018	As a precautionary move, the FSA leadership votes to reactivate its WOTUS challenge in US District Court for the Northern District of Florida (Tallahassee) with its other local government partners.