

Army Corps and EPA's Proposed Rule to Recodify Pre-Existing Rules on "Waters of the United States"

On July 27, 2017, the U.S. Army Corps of Engineers (the Corps) and the U.S. Environmental Protection Agency (EPA) published a proposed rule titled: *Definition of "Waters of the United States"—Recodification of Pre-Existing Rules*. The proposed rule would rescind the 2015 final rule that defines "waters of the United States" thereby restoring the definition to the regulations as they existed before 2015. The Corps and EPA's proposed rule attempts to provide continuity and certainty to stakeholders.

On September 27, 2017, the Office of Advocacy (Advocacy) filed a comment letter applauding the Corps and EPA's efforts to clarify the current definition of "waters of the United States" and urged the Agencies to consider the impact to small entities. The letter to the Corps and EPA may be accessed at: <http://sba.gov/advocacy>. Some of the points Advocacy made were:

- If the 2015 final rule were to have been implemented, CWA 404 permit costs would increase between \$19.8 million and \$52.0 million dollars annually, and section 404 mitigation costs would rise between \$59.7 million and \$113.5 million annually.
- The 2015 final rule is too broad, and costly for small business.
- Advocacy applauded the Corps and EPA's proposal to rescind the 2015 final rule.
- Advocacy urged the Corps and EPA to conduct a thorough regulatory flexibility analysis in order to consider the impacts to small business of a future rule that attempts to revise the definition of "waters of the United States."
- For more information visit Advocacy's web page at www.sba.gov/advocacy, or contact Prianka Sharma at (202) 205-6938.