



North Coast Building Industry Association

WETLANDS REGULATION AND LEGISLATION

The Clean Water Act makes it unlawful for a person to add pollutants to a "water of the United States" (WOTUS) without a permit. Since 1972, determining which water bodies are waters of the United States has been the subject of federal agency regulations, guidance and numerous cases both at the U.S. Supreme Court and at the lower federal courts. Now, roughly half of the country is subject to one set of regulations while the other half must comply with different requirements.

On Dec. 11, 2018, the Trump administration proposed a new WOTUS definition to replace the controversial 2015 rule that went so far as to regulate man-made ditches and isolated ponds on private property. EPA and the Army Corps of Engineers (Corps) are now accepting comments on the proposed rule.

NAHB will continue to work closely with our members and the agencies during the comment period to collect and provide feedback as we advocate for a rule that provides a clear definition of what constitutes waters of the United States, which does not encompass man-made systems or remote features with marginal ecologic value and is not beyond congressional intent of the Clean Water Act.

The North Coast BIA urges Congress to address the Waters of the United States definition with legislation that provides a clear and reasonable definition and appeals process. The current definition has been addressed by the agencies through the rule making process a number of times and continues to be "legislated" by the judicial process which takes extraordinary amount of time and expense and provides little clarity.

The North Coast BIA urges the Ohio legislature to update its Waters of the State of Ohio definition and to establish a minimum size of wetland and length of stream that requires compensatory mitigation. The federal rules waive the requirement for a permit for impacts less than a tenth (0.1) acre wetland and typically for less than 300 feet of stream impact. The current Ohio statute has not minimum size requirement and we often see applicants that are required to address impacts that are not much more than large puddles.

The North Coast BIA also urges the Ohio legislature to update its laws (Chapter 6111: WATER POLLUTION CONTROL) to exempt Prior Converted Cropland from the Waters of the State Definition.