
Environmental Law Alert: Words and Definitions Matter – What Constitutes “Waters of the United States”?

The U.S. Environmental Protection Agency (“USEPA”) and the Department of the Army have recently finalized the Navigable Waters Protection Rule (“NWPR”). The rule will now clearly define “waters of the United States” that are subject to federal regulation under the Clean Water Act (“CWA”). The NWPR will now be consistent with the Executive Order signed on February 28, 2017, “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.”

The NWPR provides newly defined terms with the intent to provide clarity on what type of water is regulated and what type of water is excluded from regulation. The final rule will become effective 60 days after publication in the Federal Register, which is expected to occur later this month. Significantly, the NWPR identifies four categories of jurisdictional and regulated waters, while clearly identifying those that are specifically excluded from the definition. The impact of this new federal rule will be sweeping to the regulated community, and it has yet to be determined how it might impact the regulation of the waters in the State of New York.

For assistance on how NWPR may affect water permitting at your facility or for any other questions regarding the water regulation, please contact Hancock Estabrook, LLP.

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