

Clean Water Rule: All Washed Up for Now

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On Friday, October 9, 2015, the United States Court of Appeals for the Sixth Circuit issued an Order halting the application of the new Clean Water Rule nationwide. The decision was issued in the action in which the North Carolina Department of Environment and Natural Resources, now the Department of Environmental Quality, joined other states seeking an injunction against enforcement of the Rule.

Back in August, a United States District Court in North Dakota enjoined the EPA and US Army Corps of Engineers from implementing the Clean Water Rule in the 13 states that were parties to that lawsuit. The Sixth Circuit opinion ends some of the uncertainty as to how the new Clean Water Rule will be applied across the remainder of the country during the pendency of the litigation.

Other lawsuits have been filed in district and appellate courts across the country. Proper venue will need to be determined before the Clean Water Rule can be examined further by the courts in order to determine its legality. In the meantime, the EPA and Corps will need to return to the pre-Clean Water Rule guidance utilized in identifying waters protected by federal jurisdiction prior to August 28.

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