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**From:** Jones, Enesta [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=65B8E6C6E5CA4A7A9AE85D98A4C8EEDB-EJONES02]  
**Sent:** 12/8/2017 8:28:08 PM  
**To:** isaacwindes [Ex. 6]  
**CC:** Press [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b293283291dc44e0b5d1c36be9281d8a-Press]  
**Subject:** Re: (Time-Sensitive) Press Inquiry

Hi Isaac, for attribution to an EPA spokesperson:

Questions about where the Clean Water Act applies are a key priority of the Administration and we are approaching it from several fronts.

In order to provide as much certainty to the regulated community as quickly as possible during the development of a new definition of “waters of the U.S.,” the agencies are pursuing a two-step process:

1. Publication of a proposed rule to recodify prior regulation. On July 27, the agencies proposed to recodify the regulation in place prior to issuance of the 2015 CWR and currently being implemented under the U.S. Court of Appeals for the 6<sup>th</sup> Circuit’s stay of the 2015 CWR. The public comment period closed September 27, 2017.
2. Development of a New Definition. The agencies plan to propose a new definition to replace the approach in the 2015 Rule with one that considers the principles that Justice Scalia outlined in the *Rapanos* plurality opinion. The agencies held a formal pre-proposal consultation process with states, local governments and tribes this past spring. In addition, the agencies hosted a series of 11 listening sessions from September through November 2017, giving other stakeholders an opportunity to provide pre-proposal recommendations.

Until a new rule is finalized, the agencies will continue to implement the regulatory definition in place prior to the 2015 Rule, consistent with the 2003 and 2008 guidance, in light of the *SWANCC* and *Rapanos* decisions, pursuant to the 6<sup>th</sup> Circuit stay of the 2015 Rule.

Most recently, the U.S. Environmental Protection Agency (EPA) and U.S. Department of the Army (the agencies) have proposed to amend the effective date of the 2015 rule defining “waters of the United States.” The agencies are proposing that the 2015 rule would not go into effect until two years after today’s action is finalized and published in the Federal Register. This amendment would give the agencies the time needed to reconsider the definition of “waters of the United States.”

More information on these rulemaking efforts and associated actions is available at <https://www.epa.gov/wotus-rule/>.

The key term is that the Clean Water Act addresses “navigable waters,” which is then further defined in the Act as “waters of the United States” (or WOTUS). The Clean Water Act did not define WOTUS; Congress left further clarification to agencies. EPA and the Department of the Army (Army) have defined WOTUS by regulation since the 1970s. More information on the 2015 definition and the 1986/88 definition, which is being implemented today, can be found at <https://www.epa.gov/cwa-404/definition-waters-united-states-under-clean-water-act/>. (The 2015 definition in the CFR is a link at the bottom of the page).

In 2006, the Supreme Court justices provided the agencies with two possible tests for determining whether waters were sufficiently connected to “navigable waters”. The plurality opinion of Justice Scalia offered one approach, and the concurring opinion written by Justice Kennedy offered another approach. In 2007 and 2008 the agencies wrote guidance

to the field indicating how the *Rapanos* case should be considered. Given the stay of the 2015 rule, that guidance is still in effect, and more details can be found <https://www.epa.gov/cwa-404/definition-waters-united-states-under-clean-water-act> under "Guidance documents."

**From:** Isaac Windes [Ex. 6]  
**Sent:** Wednesday, November 29, 2017 5:21 PM  
**To:** Lynn, Tricia <[lynn.tricia@epa.gov](mailto:lynn.tricia@epa.gov)>  
**Subject:** Re: (Time-Sensitive) Press Inquiry

What is the status of the review of the WOTUS rule as directed by Trump's February Executive Order- When can it be expected?

What does the EPA currently use as a definition for "navigable water source"?

How does the significant nexus test play into the current regulations by the EPA?

Thanks for getting back to me.

On Wed, Nov 29, 2017 at 4:43 PM, Lynn, Tricia <[lynn.tricia@epa.gov](mailto:lynn.tricia@epa.gov)> wrote:

Isaac—

I'm happy to look into a call, but please be aware that they're not always available, and definitely wouldn't be available at this point in the day.

At this point in the day it will likely be difficult to get you responses by your deadline. If you'd still like a response, can you please send a list of your specific questions and your hard deadline?

Thanks so much,

Tricia

**From:** Isaac Windes [Ex. 6]  
**Sent:** Wednesday, November 29, 2017 2:47 PM  
**To:** Press <[Press@epa.gov](mailto:Press@epa.gov)>  
**Subject:** (Time-Sensitive) Press Inquiry

Hello,

My name is Isaac Windes and I am a reporter with Cronkite News in Washington.

I am working on a story about the Waters of the U.S (WOTUS) Rule and I was wondering if I could talk to someone about what the current status of that program is.

I was wondering where the required review under the February Executive Order by the Trump administration is.

I also had a few questions to clarify what exactly the WOTUS rules are, and what jurisdictions they have.

I am on a deadline for later today so if you can get back to me as soon as possible here or at

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Thanks, I look forward to speaking with you.

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Isaac Windes

Walter Cronkite School of Journalism and Mass Communication

Reporter - Cronkite News/Arizona PBS Washington D.C Bureau

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