

US EPA ARCHIVE DOCUMENT



MEMORANDUM FOR DEPUTY ASSISTANT ADMINISTRATOR FOR WATER  
REGIONAL ADMINISTRATORS (REGIONS I – X)  
CHIEF OF ENGINEERS  
DIVISION AND DISTRICT ENGINEERS

SUBJECT: Implementation of the Clean Water Rule

Our final Clean Water Rule was published in the *Federal Register* on June 29, 2015, and will become effective on August 28, 2015. We thank each of you for your hard work and coordination to complete this rulemaking. As we move into the implementation phase, we must continue this joint effort and ensure that the process of identifying waters that are and are not protected under the Clean Water Act (CWA) is consistent, predictable, and effective. It is imperative that implementation of the Rule continues to reflect our goal to improve transparency, increase public participation, and promote public health and environmental protection for all of us who depend on reliable and abundant sources of clean water. This goal will be particularly important as we work with our state, tribal, and local partners to apply the Rule.

We are enthusiastic about the opportunities provided by the Rule to improve the process of identifying waters covered under the CWA, and making jurisdictional determinations and permit decisions effectively and efficiently. To meet these goals, it is essential that field staff charged with implementation of the Rule have the tools and resources they need. The next 60 days are particularly important as we work to be fully prepared to apply the Rule when it becomes effective.

There are several key areas on which we must focus immediately:

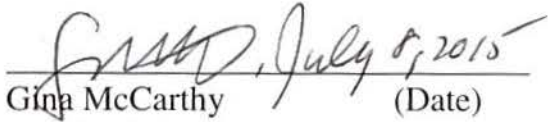
1. **Responding to Information Needs:** The Rule and its preamble provide clear and comprehensive direction regarding the process for conducting jurisdictional determinations. Because of the specificity of the Rule, the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) headquarters shall jointly prepare a comprehensive Questions and Answers document, based on discussions with field staff, negating the need for any new manual or guidance document. As with any new procedures, field staff and the

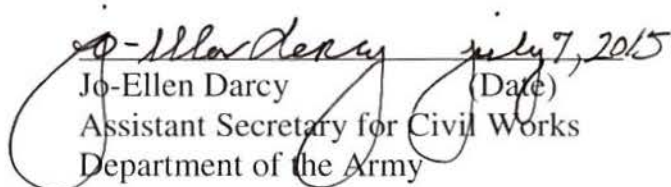
public will have ongoing questions about the Rule, and it is important for EPA and the Corps to identify issues and provide answers as the Rule takes effect. Our goal is to make this information publicly available before the Rule takes effect. We shall also establish the necessary procedures and protocols on how the public can coordinate with the field staff as new questions arise after the Rule becomes effective so that answers can be provided quickly. We must update our websites regularly to make new information on the Rule widely available.

2. **Increasing Transparency:** We shall also establish an automated tracking system for all determinations made under the Rule as soon as possible. This system will be available to the public and provide the essential transparency needed for effective implementation. We must start now to develop a publicly-available national database regarding federal CWA jurisdictional decisions on a District-wide and Regional basis. The database will provide information, for example, on individual positive and negative jurisdictional determinations associated with federal permitting programs as well as statistics on the total number, waterbody type, and watershed location. Data regarding the nature and number of pending determinations must also be made publicly available. The Corps and EPA headquarters will develop national summaries of this information on a quarterly basis, and make it publically available. The Office of the Assistant Secretary of the Army for Civil Works and the Office of the Administrator will develop a memorandum of understanding outlining key roles and responsibilities, as well as procedures, for our respective offices in coordinating implementation of the Rule, data gathering, and information sharing, including development and dissemination of publicly-available information.
3. **Improving the Permit Process:** Strengthening protection of the nation's clean water resources and identifying options for improving federal CWA permitting are mutually supportive objectives on which we must focus as we apply the Rule. Implementation of the Rule, for example, is intended to increase predictability and reduce the time required to conduct jurisdictional determinations. Implementation of the Rule provides an opportunity to consider options for improving efficiencies in federal CWA permitting that could be helpful in reducing potential costs and delays, increasing consistency and predictability, and improving protection for public health and the environment. The Corps and EPA headquarters will convene a workgroup to evaluate existing permitting tools and procedures and identify the changes needed to further reduce costs, delays, and frustration in federal permitting, while improving CWA protections. The workgroup will focus on the appropriate use of tools such as general permits (Nationwide Permits), increasing the availability of information on issued permits on which new applicants could rely in designing projects, and improved coordination with federal and state permitting partners to reduce overlap and redundancy in permit reviews. Before

the end of calendar year 2015, the workgroup shall develop a suite of options for our consideration.

As public servants, we have a profound obligation to implement the Rule in the most effective and efficient manner possible. Nothing less is acceptable. The move from old to new procedures must be as seamless and effective for the public as we can make it. We will be relying heavily on the experience and judgment of our senior leadership team as we transition to the new Rule. Your personal attention is needed if we are to succeed in this all-important phase. We look forward to working with each of you in addressing the key issues and in achieving the goals and strategic targets outlined above.

  
Gina McCarthy (Date)  
Administrator  
U.S. Environmental Protection Agency

  
Jo-Ellen Darcy (Date)  
Assistant Secretary for Civil Works  
Department of the Army