

Greens press court to dump Trump WOTUS rule

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Environmental groups pressed a court yesterday to deny the Biden administration's request to remand the Trump EPA's rule defining what waterways qualify for federal protection, arguing it should be thrown out entirely.

EPA and the Army Corps of Engineers pledged last month they would write a new definition of "waters of the U.S.," or WOTUS.

Presumably, the new rule will cover more waterways than the Trump-era Navigable Waters Protection Rule, which shrank significantly the scope of the Obama-era Clean Water Rule. Consequently, the Biden administration last month asked courts to voluntarily remand the Trump rule as it undertakes writing a new regulation.

But South Carolina's Coastal Conservation League and other environmental groups said that doesn't go far enough.

In a motion in the the U.S District Court for the District of South Carolina, they opposed remanding the rule and urged the court to throw out the Trump rule.

They acknowledged that the motion from the Biden administration "came as welcome news" and argued it's an acknowledgment that the Trump rule "failed to comply" with the Clean Water Act.

But they argue the Trump rule should not be allowed to remain in effect while the new rule is being drafted.

"[T]he Agencies' anticipated revision of the Rule — a process of undefined duration and uncertain outcome," they [wrote](#), "does nothing to prevent the Rule's harmful effects on the nation's waters during what is likely to be a lengthy rulemaking period."

A remand, they added, would be "inappropriate unless the Court also vacates the Rule."

EPA has criticized the Trump rule. In a statement last month, Administrator Michael Regan signaled that the new rulemaking would seek to restore the pre-2015 WOTUS definition.

"After reviewing the Navigable Waters Protection Rule as directed by President Biden," he said, "the EPA and Department of the Army have determined that this rule is leading to significant environmental degradation" ([E&E News PM](#), June 9).

Biden directed EPA to review the rule on the first day of his administration.

Defining the Clean Water Act's scope is one of the most daunting tasks facing Biden's EPA. The issue has been tied up in courts for decades, producing muddled Supreme Court precedents, including the split 2006 *Rapanos* decision.

There are currently multiple ongoing cases on the issue across the country, including the South Carolina litigation and others in Massachusetts.