

March 12, 2024

TRANSMITTED VIA ELECTRONIC MAIL

FOIA Request Service Center
U.S. Army Corps of Engineers
Humphreys Engineer Center (CEHEC-OC)
7701 Telegraph Road
Alexandria, VA 22315-3860

foia@usace.army.mil

Re: Freedom of Information Act (FOIA) Request –
Records Related to Implementation of the Revised Definition of “Waters of the United States”

Dear FOIA Specialist:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, and the Department of Defense FOIA Regulations found at 32 C.F.R. Part 286, the Waters Advocacy Coalition (“WAC”), is requesting copies of documents related to the U.S. Army Corps of Engineers (“Corps”) and the Environmental Protection Agency’s (EPA) implementation of the revised rules concerning the definition of “Waters of the United States”.

On September 8, 2023, the Corps and the EPA (collectively, the “Agencies”) published a final rule revising the regulatory definition of “waters of the United States” (“WOTUS”) under the Clean Water Act¹ to conform the definition to the U.S. Supreme Court’s decision in *Sackett v. EPA*.² In the preamble to the final rule, the Agencies stated that while the final rule was “immediately effective,” the agencies may provide additional administrative guidance documents, memoranda, and training materials for either the public or Corps district staff on how they intend to implement the conforming regulatory definition of WOTUS.³

Requested Records

We are requesting copies of the following records concerning the implementation of the aforementioned September 8, 2023 final rule.

- Any guidance statements of policy and interpretation which have been adopted by the agency and are not publicly distributed (Federal Register or agencies website) and transmitted from the Corps’ headquarters to individual Corps District Offices issued between September 1, 2023, and October 31, 2023;

¹ Revised Definition of “Waters of the United States”; Conforming, 88 Fed. Reg. 61964 (Sept. 8, 2023).

² 598 U.S. ___, 143 S.Ct. 1322 (2023).

³ 88 Fed. Reg. at 61966.

- Any email communication from Tom Walker, Chief, Regulatory Branch, dated on or about September 28, 2023 describing Corps policies and interpretations on jurisdictional determination (“JD”);

Request for Fee Waiver

WAC is requesting a waiver of all fees associated with this request. The information WAC is seeking is non-commercial in nature and should have already been publicly released by the Corps (5 U.S.C. 552 (a)(1)(D)). It is of broad public interests and advances our members’ understanding of the Corps operation and its expectation of how the Corps expects district offices to make determinations regarding compliance with the CWA and implementation of the WOTUS rule.

These records are not being requested for commercial use, but rather their disclosure is in the public interest, especially for landowners and others in communities across America who will be significantly affected by changes in how the Corps is implementing its WOTUS regulations in light of the Sackett decision. WAC and its members intend to use this information to work with our extensive media partners to educate our members and the communities they reside in on the operation of the Corps and its implementation of this significant federal program.

Finally, we believe that nearly all the records requested will likely be found in electronic form and can be transmitted electronically with minimal resources required for a search or printing.

Conclusion

WAC requests the Corps’ assistance in expeditiously responding to this FOIA request within the 20 business days and is willing to receive records on a rolling basis.

If you have any questions, or need additional information, please don’t hesitate to contact WAC Chair, Courtney Briggs at CourtneyB@fb.org or by telephone at 202-577-7294.

Sincerely,

American Farm Bureau Federation
American Road & Transportation Builders of America
American Society of Golf Course Architects
Club Management Association of America
Essential Minerals Association
Independent Petroleum Association of America
Southeastern Lumber Manufacturers Association
National Association of Home Builders
National Mining Association
National Stone, Sand & Gravel Association

