

# “Waters of the United States” Update

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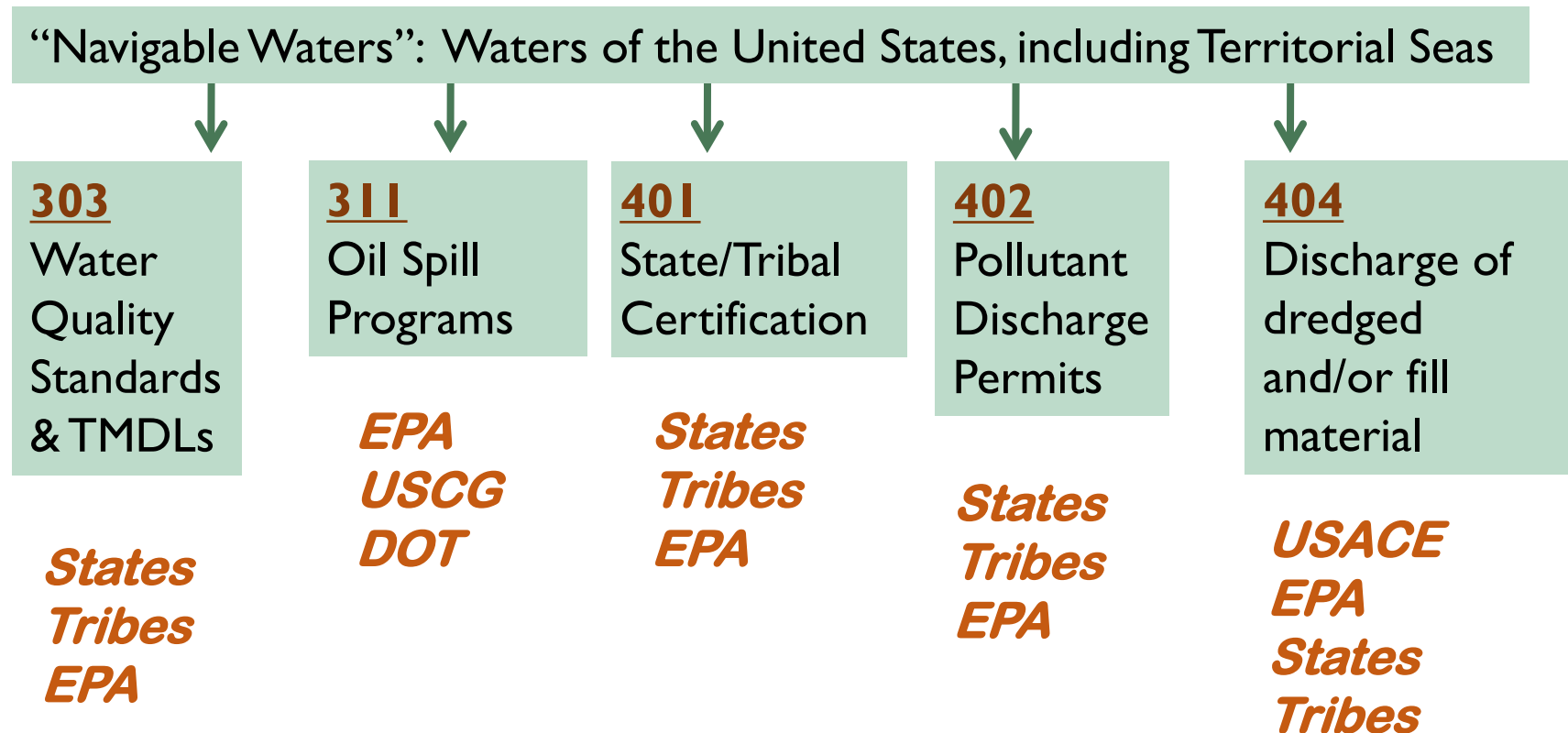
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# Background: “Waters of the United States” and the Clean Water Act

- “Waters of the United States” is a threshold term in the Clean Water Act that establishes the geographic scope of federal jurisdiction under the Act.



# Background

January 2023	2023 Rule published – “Revised Definition of ‘Waters of the United States’”
March 2023	2023 Rule effective
May 2023	<i>Sackett</i> Supreme Court decision
June 2023	EPA and Army announce plans to issue a final rule
Mid-July 2023	EPA and Army submit final rule to OMB
August 2023	Final rule issuance (NLT September 1, 2023)

# Background: 2023 Rule Litigation

- ***Texas v. EPA*, No. 3:23-cv-00017 (S.D. Tex.) and *American Farm Bureau Federation v. EPA*, No. 3:23-cv-00020 (S.D. Tex.)**
  - On March 19, 2023, a district court judge preliminarily enjoined the 2023 Rule in Idaho and Texas.
- ***West Virginia v. EPA*, No. 3:23-cv-00032 (D.N.D.)**
  - On April 12, 2023, a district court judge preliminarily enjoined the 2023 rule in 24 states.
- ***Kentucky v. EPA*, No. 3:23-cv-00007 (E.D. Ky.) and *Kentucky Chamber of Commerce v. EPA*, No. 3:23-cv-00008 (E.D. Ky.)**
  - On May 10, 2023, the U.S. Court of Appeals for the Sixth Circuit issued an order granting the motion of Kentucky and plaintiff-appellants for an injunction pending appeal of the district court's decision.

# Rule Status and Litigation Update

- The final "Revised Definition of 'Waters of the United States'" rule was published in the Federal Register on January 18, 2023 and the rule took effect on March 20, 2023.
- However, the final rule is not currently operative in certain states and for certain parties due to litigation.
- Additionally, the agencies are in receipt of the U.S. Supreme Court's May 25, 2023 decision in the case of *Sackett v. Environmental Protection Agency*. In light of this decision, the agencies are interpreting the phrase "waters of the United States" consistent with the Supreme Court's decision in *Sackett*.
- The agencies are developing a rule to amend the 2023 Rule, consistent with the U.S. Supreme Court's May 25, 2023 decision in the case of *Sackett v. Environmental Protection Agency*. The agencies intend to issue a final rule by September 1, 2023.

<https://www.epa.gov/wotus/definition-waters-united-states-rule-status-and-litigation-update>