



November 3, 2014

Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave, NW (4101M)
Washington, DC 20460

Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
Department of the Army
108 Army Pentagon, Room 3E446
Washington, DC 20310-0108

Dear Ms. Stoner and Ms. Darcy,

We write to express our serious concerns with the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) proposed rule of the definition of “Waters of the United States” under the Clean Water Act (EPA-HQ-OW-2011-0880).

The organizations below represent a diverse cross-section of business and local government advocates that are the backbone of our local communities in New York State. We recognize that the availability of an adequate supply of clean water is vital to our nation, state and home communities. Water quality degradation can threaten human and animal health and lead to the loss of valuable wildlife habitat. While we are supportive of water quality protection, we are gravely concerned with the financial and developmental impacts the proposed

rule will have on our State and local communities. Especially when we already have strong environmental standards at the state level to protect our state waters.

While each of our organizations may have its own specific issues with the Proposed Rule that may be communicated independent of this document, we want to share several serious concerns that we all agree must be addressed.

The proposed rule increases regulatory uncertainty and imposes significant regulatory burdens on all our constituencies, including private landowners; large industry; small family and community businesses; and local and state governments. As a result, all New York taxpayers will be forced to pick up the costs for significantly more federal regulation, permitting burdens and compliance costs. It will also lead to project delays, in both public and private sectors, and would restrict the use of economically productive land that benefits every aspect of a local economy without any assurance of additional clean water protection or real water quality improvement.

The proposed rule does not take into account the full effects it will have on other regulatory programs and the financial consequences to federal, state, and local governments, as well as the business community, will be tremendous. The proposed rule does not just apply to section 404 permits, but other Clean Water Act programs, such as Section 402- National Pollution Discharge Elimination System (NPDES) Permits, Section 303- Water Quality Standards (WQS) program and other programs including stormwater, green infrastructure, and pesticide permits. These additional layers of regulation will have unintended consequences and will be disruptive to our comprehensive water quality programs now in place and will stymie development and potentially hurt already precarious infrastructure projects in our rural communities.

The proposed rule vastly expands the universe of the waters defined as “waters of the U.S.” without providing any clarity or certainty of what may be included under federal jurisdiction. The significant nexus determination is changed to allow a watershed approach to determine federal jurisdiction, introducing an amorphous parameter by which to judge “similarly situated waters” that is difficult for both the regulated community and the regulating agency to interpret with a sense of accuracy or consistency. Without a quantifiable distance and clear definition this provision continues to lead to confusion over what waters are and are not subject to permitting under the CWA. Similarly, the definition of interstate waters, which are subject to jurisdiction, is expanded to include any water that flows directly or indirectly into interstate waters regardless of distance. Interstate water jurisdiction could be claimed for traditional intrastate waters, which are governed by the State, even if indirectly situated several thousand miles away from a traditional interstate water body.

These and other definition changes made by the proposed rule are incredibly vague and present confusing criteria under which to determine federal jurisdiction. Without a process for verifying whether or not a water body does in fact meet these qualifiers and without any additional resources to back up what are the new requirements, the result will be additional permitting requirements at a tremendous cost, unnecessary administrative requirements and years of delay to ongoing, existing and new projects without any associated benefit to water quality or natural resource protection.

In contrast to the vague and overly-broad requirements in the proposed rule, EPA should be focused on addressing significant water resource problems with cost-effective solutions that make the most responsible use of taxpayer-funded programs and strained federal, state and local government resources. Such ambiguous and complicated regulations are counterproductive to achieving true water quality protection and dilutes limited federal and state dollars needed to mitigate our most serious environmental threats.

In light of these concerns and their impact on all manner of community life – from local schools and playgrounds to public infrastructure – we urge you to withdraw the proposed rule and to work with stakeholders to develop a rule that is clear, concise and that truly protects the waters of the United States as intended under the Clean Water Act.

Sincerely,



Dean E. Norton
President
New York Farm Bureau



Stephen J. Acquario
Executive Director
New York Association of Counties



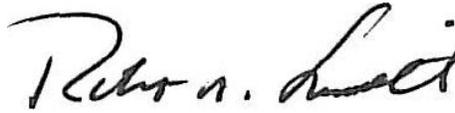
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