



Mr. Michael McDavit  
Oceans, Wetlands and Community Division  
Office of Water (4504-T)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Ms. Jennifer A. Moyer  
Regulatory Community of Practice (CECW-CO-  
R)  
U.S. Army Corps of Engineers  
441 G Street NW  
Washington, DC 20314

Re: NSBA Comments on the Proposed Rule for Defining the Scope of Waters Federally Regulated under the Clean Water Act (CWA) (Docket ID No. EPA-HQ-OW-2018-0149).

Dear Mr. McDavit and Ms. Moyer:

On behalf of the National Small Business Association (NSBA)—the nation’s oldest nonpartisan small-business advocacy organization—representing more than 65,000 small businesses nationwide, I write to applaud the new proposed rule intended to replace the flawed 2015 Waters of the United States (WOTUS) regulation. This 2015 rule which expanded the definition of Waters of the United States under the Clean Water Act (CWA), granted the federal government sweeping authority to regulate virtually all waters and wet areas throughout the country.

NSBA is pleased the new proposed rule will clearly define the jurisdiction of the CWA in a straightforward, easy-to-understand manner, alleviating the burdens farmers, landowners and business-owners faced under the Obama-era rule requiring them to spend tens of thousands of unnecessary time and money to determine if they need to obtain a federal permit to make improvements to their land. This overreach put unfair restrictions on how individuals and job creators could use their own property. NSBA is glad the new commonsense proposal addresses these issues.

NSBA had significant concerns with the 2015 WOTUS rule, as did thirty-two states, and two courts, who all agreed that the 2015 rule was deeply flawed and overly burdensome. The 2015 rule provided none of the clarity and certainty it promised. Instead, it created confusion and risk by giving the agencies almost unlimited authority to regulate, at their discretion, any low spot where rainwater collects, including common farm ditches, ephemeral drainages, agricultural ponds and isolated wetlands found in and near farms and lands across the nation, no matter how small or seemingly unconnected they may be to true “navigable waters.” NSBA members considered it expanded federal jurisdiction far beyond what was authorized by Congress, resulting in the imposition of burdensome requirements, widespread uncertainty and legal risk for all forms of businesses.

Therefore, NSBA believes the new proposed rule will provide a clear and reasonable definition of “waters of the U.S.” within the limits set by Congress. NSBA supports the proposed revisions that

provide a clear outline of six categories of waters that would be considered WOTUS, including: traditional navigable waters, impoundments, tributaries, certain ditches, certain lakes and ponds and adjacent wetlands. Additionally, the proposed rule would also exclude specific waters from the definition including: waters not otherwise expressly included in the above categories of jurisdictional waters; groundwater; ephemeral surface features and diffuse storm-water run-off; ditches that do not fall into the category of jurisdictional ditches; prior converted cropland; artificially irrigated areas; artificial lakes and ponds constructed in upland that are not otherwise covered by the category of jurisdictional lakes and ponds; water-filled depressions constructed in upland for construction or mining; storm-water control features; wastewater recycling features constructed in upland; and waste treatment systems.

The new WOTUS rule makes appropriate changes by helping farmers, ranchers, homebuilders, landowners and energy producers across the U.S. focus on their business—not red tape—and NSBA supports the EPA and Army Corps of Engineers for moving in the right direction. This new rule will empower those individuals to comply with the law, protect our water resources and productively work their land without having to hire a team of lawyers and consultants to wade through confusing and unclear policies.

NSBA is certainly encouraged by the actions taken by the EPA and Army Corps of Engineers to increase clarity and transparency around the Waters of the U.S. regulation. Thus, NSBA welcomes the new Clean Water Rule as it protects water resources, respects the law and provides greater simplicity so the agencies, farmers and the public can identify regulated federal waterways.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd McCracken", with a long horizontal line extending to the right.

Todd McCracken  
President & CEO