



March 19, 2015

Via Email

Mr. Ken Kopocis
Acting Deputy Administrator
USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Mail Code: 4101M
Washington, DC 20460
kopocis.ken@epa.gov

Re: Request for EPA to Reopen Comment Period for Proposed "Water Quality Standards Regulatory Clarification," Docket ID No. EPA-HQ-OW-2010-0606

Dear Mr. Kopocis:

We, the Waters Advocacy Coalition (WAC or Coalition),¹ write to request that the U.S. Environmental Protection Agency (EPA) re-open the comment period for its proposed "Water Quality Standards Regulatory Clarifications," 78 Fed. Reg. 54,518 (Sept. 4, 2013) (Proposed WQS Rule), to allow WAC and others an opportunity to comment on the Proposed WQS Rule in light of EPA's and the U.S. Army Corps of Engineers' (Corps) "Proposed Rule to Define 'Waters of the United States' Under the Clean Water Act," 79 Fed. Reg. 22,188 (Apr. 21, 2014) (Proposed WOTUS Rule). The proposed rule to re-define "waters of the United States," to which water quality standards apply, was issued over three months after the comment period for the Proposed WQS Rule closed, raises new issues in the context of the Proposed WQS Rule, and warrants reopening of the Proposed WQS Rule comment period.

WAC echoes the concerns expressed by the Utility Water Act Group (UWAG) in its February 25, 2015 request to re-open the comment period for the Proposed WQS Rule. As WAC explained in its comments on the Proposed WOTUS Rule,² under the new definition, features such as ephemeral drainages, ditches, and industrial ponds, which were not previously considered jurisdictional, will now be jurisdictional "waters of the United States." For the first time, States will be required to set water quality standards for such features, which will place a heavy burden on states and the regulated community.

¹ WAC is a coalition representing the nation's construction, real estate, mining, agriculture, transportation, forestry, manufacturing, and energy sectors, as well as wildlife conservation and recreation interests. *See* Attached List of WAC Members.

² *See* Waters Advocacy Coalition, "Comments on the Environmental Protection Agency's and U.S. Army Corps of Engineers' Proposed Rule to Define 'Waters of the United States' Under the Clean Water Act," Docket No. EPA-HQ-OW-2011-0881-14568, at 68-71 (Nov. 14, 2014).

Mr. Ken Kopocis

March 19, 2015

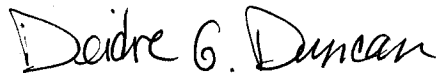
Page 2

In particular, as WAC noted in its comments on the Proposed WOTUS Rule, the Proposed WQS Rule's creation of a rebuttable presumption that the highest uses specified in CWA section 101(a)(2) (i.e., fishable, swimmable) are attainable uses for any "waters of the United States" will require States to either designate incongruent fishable/swimmable uses for features such as ditches and ephemeral drainages, or rebut the presumption by performing a burdensome use attainability analysis for water features it does not believe can meet the fishable/swimmable goal. The Proposed WOTUS Rule's increase in the number and types of water features that are subject to water quality standards and accompanying requirements, in concert with the Proposed WQS Rule's rebuttable presumption provision, will dramatically increase water quality standard and total maximum daily load program costs for States and tribes.

The Proposed WOTUS Rule raises important issues with the Proposed WQS Rule that the public has not had the opportunity to address. Accordingly, EPA should withdraw the Proposed WQS Rule and re-publish the proposal for comment on issues raised by the Proposed WOTUS Rule.

We appreciate your attention to this important matter. If you wish to discuss this request, please contact Deidre G. Duncan (Hunton & Williams LLP), counsel for the Coalition, at (202) 955-1919.

Sincerely,



Deidre D. Duncan

Attachment

cc: Stan Meiburg, Acting Deputy Administrator, EPA
Gregory Peck, Chief of Staff, EPA Office of Water



Member Organizations

Agricultural Retailers Association
American Exploration & Mining Association
American Farm Bureau Federation
American Forest & Paper Association
American Gas Association
American Iron and Steel Institute
American Petroleum Institute
American Public Power Association
American Road & Transportation Builders Association
American Society of Golf Course Architects
Associated Builders and Contractors, Inc.
Associated General Contractors of America
Association of American Railroads
Association of Equipment Manufacturers
Association of Oil Pipe Lines
Club Managers Association of America
Corn Refiners Association
CropLife America
Edison Electric Institute
Fertilizer Institute
Florida Sugar Cane League
Foundation for Environmental and Economic Progress
Golf Course Superintendents Association of America
Independent Petroleum Association of America
Industrial Minerals Association – North America
International Council of Shopping Centers
International Liquid Terminals Association
Interstate Natural Gas Association of America
Irrigation Association
Leading Builders of America
NAIOP, the Commercial Real Estate Development Association
National Association of Home Builders
National Association of Manufacturers
National Cattlemen's Beef Association
National Club Association
National Corn Growers Association
National Cotton Council
National Council of Farmer Cooperatives
National Industrial Sand Association
National Mining Association
National Multifamily Housing Council
National Oilseed Processors Association
National Pork Producers Council
National Rural Electric Cooperative Association
National Stone, Sand, and Gravel Association
Portland Cement Association
Professional Golfers Association of America
Public Lands Council
RISE – Responsible Industry for a Sound Environment
Southeastern Lumber Manufacturers Association
Southern Crop Production Association
Treated Wood Council, Inc.
United Egg Producers
U.S. Chamber of Commerce