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December 11, 2015

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Dear Administrator McCarthy:

The Local Government Advisory Committee (LGAC) extends our thanks to you for the opportunity to offer insights and provide feedback on the Clean Water Act (CWA) implementation. The LGAC is aware of the judicial challenge of the Clean Water Rule and that the United States Court of Appeals for the Sixth Circuit Court issued an October 9th opinion which effectively stayed the final Clean Water Rule (CWR) addressing the scope of waters protected under that statute nationwide<sup>1</sup>.

The LGAC wishes to commend you for your efforts that the EPA led in the process to identify waters that are and are not protected under the Clean Water Act. As representatives of state, local and tribal governments, we are very appreciative of the opportunity we have had as your local advisors to meet with local, state and tribal officials across the country who expressed their views on the CWR. We have been partners with the EPA throughout development of the CWR and we are very much invested and look forward to an outcome that will give all of our communities the benefits of consistency, predictability and effectiveness in the implementation of the CWA.

The LGAC believes it is imperative to continue the efforts underway to improve the CWA permitting process regardless of the status of the CWR. The Memorandum of Understanding between the EPA and the Army Corps of Engineers, dated July 8, 2015 provides framework for improving the process, while a subsequent joint Memorandum, dated November 16, 2015, states that the process improvements will move ahead while the CWR status is adjudicated.

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<sup>1</sup> *State of Ohio, et al v. United States Army Corps of Engineers, et al*, No. 15-3799/3822/3853/3887

The LGAC strongly supports the EPA and Army coordination efforts to jointly ensure the process of identifying and implementing the CWA and to continue to improve transparency, increase public participation and promote public health and environmental protection for all of our communities who depend on clean and safe water for our well-being and economy.

*Background:* The LGAC's Protecting America's Waters Workgroup was charged in May 2014 to assist the LGAC in providing recommendations to you on how to improve water infrastructure and ensure that local communities have access to clean and safe drinking water. The LGAC final report of November 5, 2014, entitled, "*Initial Findings and Recommendations Pertaining to EPA's Clean Water Act Waters of the U.S. Proposal Rule,*" contained over 100 findings and recommendations on how to improve the then proposed Clean Water Rule.<sup>2</sup> Specifically, we also identified that improving communication, coordination and permitting process are essential to successful implementation of protecting our nation's waters.

*Findings:* The LGAC believes the Memorandum of Understanding between the EPA and the Army Corps of Engineers regarding the Clean Water Rule is a step forward in implementing the LGAC's recommendations on CWA implementation. The Corps has expressed a commitment to improving the permit process, promoting efficiency, and working toward transparency in practices. We recognize that the EPA has considered the input of the LGAC in entering this agreement set forth in the MOU, and we are appreciative of your commitment to help improve the process implementation of the Clean Water Rule.

*Recommendation:* The LGAC recommends that the EPA and the Corps continue their efforts underway to jointly maintain the comprehensive "*Questions and Answers*" regarding the status of the CWR. This is even more essential to identify issues and provide answers on the status of jurisdictional determinations.

*Finding:* The LGAC is very pleased to see that the Corps and the EPA have developed an automated tracking system database that will be made available to the public on a website that contains all jurisdictional determinations. The LGAC particularly endorses the outcome of statistics on the total number of permits and what those determinations yielded.

*Recommendation:* The LGAC recommends that the tracking system of CWA permits contain a user-friendly mapping function and that it also contains the length of time for the permitting process for each permit applied under CWA Section 404.

*Finding:* The LGAC believes strongly that the CWA permitting process continues to be of utmost concern to us in state, local and tribal governments. Furthermore, the LGAC believes that any improvements to the permitting process will have positive outcomes for all.

*Recommendation:* The LGAC strongly believes that the workgroup as articulated in the MOU should go forward to help identify pathways forward for CWA permitting. Furthermore, the LGAC could be of assistance to the workgroup through our prior and continuing advisory role.

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<sup>2</sup>EPA, "INITIAL FINDINGS AND RECOMMENDATIONS PERTAINING TO EPA'S CLEAN WATER ACT WATERS OF THE U.S. PROPOSED RULE" [http://www2.epa.gov/sites/production/files/2015-10/documents/11.5.14\\_w.o.t.u.s.\\_report.pdf](http://www2.epa.gov/sites/production/files/2015-10/documents/11.5.14_w.o.t.u.s._report.pdf)

**Recommendation:** The LGAC also further recommends that the EPA consider further the LGAC recommendation to provide a user-friendly phone application for providing a predictable tool for jurisdictional determinations. The outcomes can be as simple as a response, “yes”, and “no” and “maybe” with a geospatial link to all reviewers, applicants and local governments in real time. The LGAC also notes that this may be more problematic given the complexity of the status of the CWR; however, the tool will be useful and helpful to improve government transparency and help communicate outcomes to permittees trying to obtain a permit.

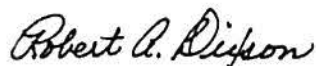
**In Summary,** the LGAC wishes to thank you Administrator McCarthy for soliciting and considering our findings and recommendations in regard to the Clean Water Rule. Water is the most essential element of life, and the well-being of our communities. The Clean Water Act is one of the most important public laws in our country. Therefore it is critical to continue this dialogue so that we all have a common understanding of its importance.

The LGAC believes the EPA has taken the steps to engage the public, and we commend you and the Office of Water staff for all of the efforts that you have taken to seek this input, and believe that there was support by the EPA for the many things we heard and more time for the public to understand what is articulated in the CWR as “Waters of the U.S.”

Regardless of the outcome of the judicial challenge to the Rule, the LGAC strongly endorses cooperation between the EPA and the US Army Corps of Engineers to work together to establish a transparent, predictable and efficient permitting process. This was one of the most significant issues raised in our outreach effort and should be a focus of continuous improvement.

And the LGAC stands ready to help and we look forward to working with you on helping you with continued engagement of local governments, states and tribes in CWA implementation. Clean and safe water is vitally important for all of us, and we look forward to working with you, Administrator, to ensure this for future generations.

Sincerely,



Mayor Bob Dixon  
Chairman



Ms. Susan Hann  
Chairwoman, Protecting America’s Waters  
Workgroup



Commissioner Robert Cope  
Chairman, Small Community Advisory  
Subcommittee (SCAS)

