



Scott Taylor
California Stormwater
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Member Organizations

Arizona Stormwater Outreach for
Regional Municipalities

California Stormwater
Quality Association

Central Massachusetts Regional
Stormwater Coalition

Indiana Association for Floodplain
and Stormwater Management

Iowa Stormwater
Education Partnership

Louisiana Urban
Stormwater Coalition

Minnesota Cities
Stormwater Coalition

Nebraska Floodplain & Stormwater
Managers Association

Ohio Stormwater Association

Tennessee Stormwater Association

Virginia Municipal
Stormwater Association

Water Environment Federation

June 19, 2017

US Environmental Protection Agency
Attn: Andrew Hanson
Intergovernmental Liaison
USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1306A
Washington, DC 20460

Via email: Hanson.Andrew@epa.gov

Subject: Executive Order 13132, Waters of the U.S.

Mr. Hanson:

We appreciate this opportunity to comment on the pending potential changes under consideration for the definition of “Waters of the U.S.” The National Municipal Stormwater Alliance (NMSA) is a 501(c)3 organization dedicated to the improvement of water quality through implementation of CWA 402(p) regulation. The member organizations of NMSA are state-level coalitions of MS4 permittees. The rule potentially has a significant impact on our member organizations since it defines when water quality standards apply to stormwater discharges and control features. Our comments for your consideration follow.

Exclusion for Stormwater Control Features

The original WOTUS Rule included a provision excluding stormwater control features from consideration as Waters of the United States:

(2) The following are not “waters of the United States” even where they otherwise meet the terms of paragraphs (1)(iv) through (viii) of this section.

(vi) Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.



We urge EPA to preserve this exclusion in any new Rule defining Waters of the United States.

Public and private entities throughout the United States currently own and operate millions of stormwater control features and are building more every day. It is essential that these constructed features be explicitly excluded from being considered as WOTUS, and therefore not expected to meet water quality standards. The efficient and effective management of complex urban stormwater management systems depends on this.

The original Rule language achieves this result in a concise and common-sense manner. The definition of “stormwater control features” is appropriately broad. The phrase “created in dry land” protects natural ponds, lakes, wetlands, and streams.

A more detailed explanation of the necessity of preserving this Rule language can be found in Comments #1 - #11 and #15 - #16 of a submittal on the original Rule dated November 14, 2014 from the Minnesota Cities Stormwater Coalition:

<https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OW-2011-0880-16929&attachmentNumber=2&contentType=pdf>

Other Comments

1. - The definitions should take into account regional geographic differences as “perennial” systems are currently too narrowly defined. The 3-month flow duration has worked well in states such as California and is already discussed in the Corps’ instructional guidebook. The new Rule should avoid a requirement for flow metering.
2. - State regulations would be influenced by changes to WOTUS. The EPA should provide guidance to the states as to the scope of regulation that may be considered and remain consistent with the new Rule to aid in implementation.

We appreciate this opportunity to comment. Please feel free to contact me at STAYLOR@mbakerintl.com , if you would like to discuss any of these items further.

Sincerely,

A handwritten signature in black ink that reads "Scott Taylor".

Scott Taylor

Chair

National Municipal Stormwater Alliance