



October 1, 2021

Damaris Christensen
Oceans, Wetlands and Communities
Division
Office of Water U.S. Environmental
Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Stacey Jensen
Office of the Assistant Secretary of the Army
for Civil Works
Department of the Army
108 Army Pentagon
Washington, DC 20310-010

Re: U.S. EPA and U.S. Army Corps of Engineers Revised Definition of "Waters of the United States," Docket No. EPA-HQ-OW-2021-0328

Dear Ms. Christensen and Ms. Jensen:

On behalf of the County Commissioners Association of Pennsylvania, representing all 67 counties in the commonwealth, I write to share our comments with the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) on the proposed rule on the "Intention to Revise the Definition of Waters of the United States," which aims to clarify which water bodies are federally regulated under the Clean Water Act (CWA). Specifically, the purpose of the proposed rule is to repeal the Navigable Waters Protection Rule and replace it with the pre-2015 "waters of the United States" (WOTUS) regulations.

In Pennsylvania, there are more than 86,000 miles of waterways, from major rivers to local streams and creeks, to large lakes and small ponds. This commonwealth has a long history of taking our duty to protect water quality seriously. Our state Clean Streams Law, which is older than the federal Clean Water Act, clearly protects all waters of the commonwealth from pollution or potential pollution. Over the years, we have developed a strong set of regulations and permitting programs that are specific to Pennsylvania's needs. In addition, counties and conservation districts make critical front-line decisions related to many aspects of waterway planning and management, including storm water management, flood mitigation and maintenance of dams and levees. We are familiar with the local environmental issues because we are on the ground in our counties every day, providing local response and oversight.

Pennsylvania is one of several states that apply jurisdiction to "waters of the state," which must be as inclusive as "waters of the U.S." but may be more inclusive. Pennsylvania's Clean Streams Law, enacted prior to the federal Clean Water Act, includes a definition of "waters of the commonwealth" which protects all of the state's "rivers, streams, creeks, rivulets, impoundments,

ditches, watercourses, storm sewers, lakes, dammed water, wetlands, ponds, springs and other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries” of the commonwealth. This statute also provides the foundation of delegation to the Pennsylvania Department of Environmental Protection (DEP) of the National Pollution Discharge Elimination System (NPDES) program under section 402 of the Clean Water Act.

While the Clean Streams Law is the principal governing statute regarding Pennsylvania’s water quality, other state statutes addressing water quality and control include the Dam Safety and Encroachment Act (Act 325 of 1978), the Flood Plain Management Act (Act 166 of 1978), the Sewage Facilities Act (Act 537 of 1965), the Storm Water Management Act (Act 167 of 1978), the Water Resources Planning Act (Act 220 of 2002) and the Nutrient Management Act (Act 38 of 2005, replacing Act 6 of 1993). Under these laws, Pennsylvania has developed comprehensive regulations and an extensive permitting system to assure our water quality remains at the highest levels, and we believe the agencies have developed the revised rule with a better understanding of the impacts it would have on local water regulation throughout the nation.

The history of the federal definition of Waters of the U.S. and rules for jurisdiction is complicated and rules have changed several times over the last decade. As such, we offer several considerations in reverting to the pre-2015 definition and rules.

Above all, we strongly encourage the EPA and Army Corps to continue to include counties in all decision-making processes as they develop new regulations and programs that will affect waterway infrastructure and to amend the rule only after consideration of the comments received, and with a better understanding of existing state programs. Counties have important knowledge of their communities that can be invaluable in this process, and by bringing counties to the table, they can remain fully engaged as the foundation for local conservation and environmental problem-solving efforts.

We need a clear “Waters of the U.S.” definition so that we do not further tangle the complex web of laws, regulations and policies related to waterway management, rather than facilitating more efficient delivery of environmental programs. We are very concerned that changes to the rule would modify and expand existing regulations which have been in place for over 25 years. For Pennsylvania, because of the strong tradition of state and local oversight that has been in place for decades, subjecting more waters to federal jurisdiction represents only a paper fix, increasing the paperwork, time and cost for acquiring additional federal permits without any actual improvement to water quality. If the “Waters of the U.S.” definition would expand the scope of waters under federal jurisdiction, this means new permits would be required for activities and waters that are already regulated under state law. In addition to the cost and time associated with preparing and filing these applications, many entities report that it is at least a 30-day wait for approval of a nationwide permit, as many as 60 days for approval of an isolated permit and up to 180 days or longer for an individual permit. If these permits are required for activities that are traditionally just routine maintenance, the expansion of jurisdiction creates a bureaucratic mess for what should be a simple task.

CCAP would be pleased to work with the agencies to serve as a resource to you, and to assist in assuring that the clarity sought in the proposed rule is in fact achieved and that additional burdens are not unintentionally and unnecessarily added to our efforts to protect water quality throughout the commonwealth.

We thank you for your attention to these comments. If you have any questions or would like to discuss further, please do not hesitate to contact Ashley Lenker White, CCAP Director of Government Relations, at awhite@pacounties.org or 717-736-4755.

Sincerely,

A handwritten signature in black ink that reads "Lisa Schaefer". The signature is written in a cursive, flowing style.

Lisa Schaefer
Executive Director