



August 21, 2015

Mr. Ken Kopocis
Deputy Assistant Administrator for Water
Environmental Protection Agency (EPA)
William Jefferson Clinton Building
1200 Pennsylvania Ave NW, MC 4101M
Washington, DC 20460

Ms. Jo Ellen Darcy
Assistant Secretary of Army
Civil Works
United States Army Corps of Engineers
108 Army Pentagon, Room 3E446
Washington, DC 20310-0108

Via email to: Kopocis.Ken@EPA.gov and Joellen.Darcy@us.army.mil

Re: The Clean Water Rule Implementation

Deputy Assistant Administrator Kopocis & Assistant Secretary Darcy:

The Association of Clean Water Administrators (ACWA) is the independent, nonpartisan, national organization of state, interstate, and territorial water program managers, who on a daily basis implement the water quality programs of the Clean Water Act (CWA), as well as the very comprehensive and diverse set of state water programs that exist beyond the CWA. The Association of State Wetlands Managers (ASWM) plays a similar role nationwide working directly with state wetland managers who administer state wetland programs both in coordination with and independent of the CWA. ACWA and ASWM believe there is likely no rule more fundamental to the CWA than one that defines the scope of waters protected by it and we appreciate EPA's efforts to get a rule out on this very important issue.

First, we would like to express appreciation for sending staff to ACWA's 2015 Annual Meeting last week. Both the meeting discussions and the subsequent August 19, 2015 webinar were extremely valuable information sharing opportunities. And while we recognize communication regarding implementation of the Clean Water Rule may be somewhat tempered by ongoing litigation, unless the Agencies plan to stay the rule, it is important that the Agencies work closely with state/interstate environmental agencies to ensure we are all prepared to respond to the implementation questions that will come when this rule becomes effective on August 28, 2015.

We appreciate EPA's and USACE's plans to coordinate closely with each other and states look forward to an opportunity to engage with the appropriate points of contact on a more frequent basis. We also are very supportive of the planned implementation trainings/tools, updates to procedures,

documents, outreach materials and planned concept of developing a comprehensive database of jurisdictional determinations. ACWA and ASWM recognize there is a lot of work going on behind the scenes. However, on August 28, 2015 the public is going to expect state agencies to be able to answer their questions regarding the jurisdictional lines of both federal and state waters in order to remain in compliance with both Federal and State law.

We have shared with EPA and USACE several state implementation requests and we thought it might be helpful to prioritize one of these. Likely the most important item on the list was the need to publically share a set of diagrams that visually describe the jurisdictional status of some of the more nuanced water body types. These diagrams provided clarifying examples of the types of factors that both state and federal agencies will be considering in determining whether a waterbody is covered by the Clean Water Act (or not). While diagrams cannot include every possible example/scenario, they are a significant positive step in providing clarity that is difficult to achieve with words alone.

States will be under pressure to assist the public in understanding CWA jurisdiction and may develop their own materials to aid their efforts. Delay in distributing these diagrams creates the risk that, not only might we end up with 50 different state diagrams; different agencies within a state may also choose to develop their own diagrams as well. There is the possibility that some materials may not accurately reflect the Clean Water Rule.

We are asking today that you make the distribution of these diagrams and supporting documents your highest implementation priority and ensure these diagrams are published prior to the August 28, 2015 rule effective date. We look forward to working with you and your staff on further implementation questions that arise. Please do not hesitate to contact us should you have questions. ACWA's Executive Director & General Counsel can be reached at 202-756-0600 or janastasio@acwa-us.org and ASWM's Executive Director can be reached at 207-892-3399 or jeanne.christie@aswm.org.

Thank you for your time and consideration.

Sincerely,



Martha Clark Mettler
Deputy Assistant Commissioner
Office of Water Quality
Indiana Department of Environmental
Management
ACWA President



Collis Adams
Administrator
Water Pollution Division
New Hampshire Department of
Environmental Services
ASWM Chairman

CC: Benita Best-Wong, USEPA
John Goodin, USEPA
Jennifer Moyer, USACE
Alexandra Dunn, ECOS