



November 3, 2014

Water Docket
Environmental Protection Agency
Mail Code 2822T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Attention: Docket ID No. EPA-HQ-OW-2011-0880

Re: Proposed Rule – Definition “Waters of the United States” under the Clean Water Act

The Maryland Association of Counties (MACo) offers the following comments on the proposed rule by the United States Environment Protection Agency (EPA) and the United States Army Corps of Engineers to expand the definition of “waters of the United States” (waters of the US) under the federal Clean Water Act (CWA). MACo is a nonpartisan organization representing all 23 of Maryland’s counties and Baltimore City.

MACo and our member counties support the goal of clean water. With their proximity to the Chesapeake Bay, nearly 3,200 miles of shoreline, and profitable fishing and crabbing industries, Maryland’s counties recognize the importance of preserving the Bay and connected local waterways. MACo also appreciates the need for clarifying the “waters of the US” definition in light of United States Supreme Court holdings that have introduced a level of uncertainty in the definition’s scope. However, MACo is joining the National Association of Counties and several of our member counties in expressing concern over the scope and potential local ramifications of the proposed definition change.

Expansion of CWA Authority Over County Road and Drainage Ditches

In Maryland, counties are responsible for 21,323 road miles or 68% of the state’s total road miles. This includes the maintenance of roadside ditches and stormwater drainage channels, many of which have seasonal or ephemeral flow. MACo is concerned that the proposed “waters of the US” definition may expand jurisdiction of the CWA to county-maintained road and drainage ditches by including such ditches in the definition of a “tributary” while failing to clarify an already inconsistently applied drainage ditch exemption found in Section 404 of the CWA.

If these ditches and channels, which counties are legally responsible for maintaining, were to fall under the CWA, counties could be forced to go through the onerous and time-consuming Section 404 permit process, as well as other programmatic requirements of the CWA. This could

also increase county liability exposure and limit a county's ability to respond to a valid public safety concern.

Generates Uncertainty for Other County Clean Water Efforts

Besides the problem of road and drainage ditches, the proposed definition would also generate additional uncertainty about the application of other aspects of the CWA. Maryland's counties are at the forefront of meeting water quality goals under the Chesapeake Bay and local Total Maximum Daily Loads (TMDLs), and will be spending billions of dollars for TMDL compliance. In order to implement and budget for such ambitious efforts, counties need up-front certainty about both their responsibilities and costs.

The proposed definition could expand the scope of Section 402 municipal separate storm sewer system (MS4) permits and Section 303 Water Quality Standards programs. Expansion of these programs will place additional stress and uncertainty on county TMDL and clean water efforts, particularly for stormwater and environmental site design (ESD) structures.

Maryland counties subject to Phase I MS4 permits are facing aggressive litigation from environmental groups challenging the scope and sufficiency of their permits, even though the permits have been approved by both the Maryland Department of the Environment and the EPA. MACo foresees further litigation questioning both the scope of the MS4 permit and its traditional "maximum extent practicable" implementation standard if the proposed definition is adopted. This legal uncertainty can be mitigated by clarifying that stormwater and ESD structures are not part of the definition change.

Requested Changes

As previously noted, MACo recognizes both the need for clean water and the need for clarity in the "waters of the US" definition. However, based on the concerns enumerated in these comments, MACo requests that local government road and drainage ditches not already subject to CWA requirements, including stormwater and ESD structures, be explicitly excluded from the proposed "waters of the US" definition.

Thank you for your consideration of these comments. I can be contacted at 410.269.0043 or lknapp@mdcounties.org if you need further information.

Sincerely,



Leslie Knapp Jr.
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Maryland Association of Counties

CC: Julie Ufner, National Association of Counties