



STATE OF INDIANA  
OFFICE OF THE GOVERNOR  
State House, Second Floor  
Indianapolis, Indiana 46204

Michael R. Pence  
Governor

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November 14, 2014

The Honorable Gina McCarthy  
Administrator  
United States Environmental Protection Agency  
1200 Pennsylvania Ave NW  
Washington, DC 20460

The Honorable John McHugh  
Secretary of the Army  
101 Army Pentagon  
Washington, DC 20310

Via email to: [ow-docket@epa.gov](mailto:ow-docket@epa.gov)

Re: Definition of “Waters of the United States” Under the Clean Water Act Proposed Rule:  
Docket ID No. EPA-HQ-OW-2011-0880

Dear Administrator McCarthy and Secretary McHugh:

We write to share our deep concerns about the proposed rule defining the scope of “waters of the United States” protected under the Clean Water Act (CWA) that was released on March 25, 2014, by the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) (collectively, the “Agencies”). We urge the Agencies to withdraw the proposed rule and re-engage stakeholders to craft a set of rules that creates clarity, not confusion.

In the wake of recent U.S. Supreme Court cases, regulated industries and state regulators needed clarification about which waters are subject to the federal CWA and which remain under state jurisdiction. Clarification would bring greater certainty and predictability, and, to the extent that the Agencies seek to provide clarity, it is a goal worthy of pursuit.

However, the proposed rule does not advance this goal. Instead, the proposed rule has created confusion among stakeholders. Many stakeholders in Indiana, most notably our agriculture and energy industries, believe that the proposed rule expands the scope of federal regulation. Our agriculture industry is particularly concerned that the proposed rule expands federal jurisdiction over wet features, rendering normal farming practices like fence construction and drainage maintenance subject to federal permitting requirements. We cannot stand idly by and allow this result.

Indiana’s agriculture industry is working hard to help feed the world with 83 percent of land devoted to farms and forests and ranking 8<sup>th</sup> nationally in agriculture exports. Yet, agriculture finds its efforts thwarted by increasing federal regulation. Recent examples include changes to child labor laws and dust mitigation.

Similarly, Indiana's energy industry finds itself under siege from a barrage of federal regulations. Indiana is the top manufacturing state in the country by percentage of state gross domestic product, and we need a strong energy industry to provide affordable, reliable power for our economy. Their work is made more difficult by ever expanding, new and proposed federal regulations, including regulations on mercury and air toxin emissions, coal ash disposal, cooling water intake, and limitations on carbon dioxide emissions at new and existing power plants. Agriculture and energy are not alone in their concern. Builders, developers, manufacturers, and other stakeholders all fear that the proposed rules represent an expansion of federal jurisdiction. Given the federal government's recent proclivity for new regulations that increase the size and scope of the federal government, we share their fears.

We firmly believe that solutions to the challenges we face will most effectively emanate from our state capitals, not Washington, D.C. In Indiana, we are growing our economy, creating jobs, and feeding the world by eliminating bureaucratic red tape and reducing the size of government. We believe that Indiana knows best how to protect its waters, and we believe that the proposed rules inhibit Indiana's ability to manage its own affairs.

We respectfully urge the Agencies to withdraw the proposed rules, re-engage stakeholders, and prepare a set of proposed regulations that provide the clarity needed while establishing an appropriate balance between state authority and federal jurisdiction. We also draw the Agencies' attention to the comment letter filed by our Indiana Department of Environmental Management and Indiana State Department of Agriculture for further delineation of Indiana's concerns with the proposed rules.

Sincerely,



Michael R. Pence  
Governor of Indiana



Sue J. Ellspermann  
Lt. Governor and Secretary of Agriculture