



PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

September 22, 2017

Ms. Donna Downing
Office of Water (4504-T)
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460;

Ms. Stacey Jensen
Regulatory Community of Practice (CECW-CO-R)
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314

Attention: Docket ID No. EPA-HQ-OW-2017-0203: Definition of “Waters of the United States” – Recodification of Pre-Existing Rules

Dear Ms. Downing and Ms. Jensen:

The Pennsylvania State Association of Township Supervisors is thankful for the opportunity to submit comments to the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers on the proposed rule which would recodify pre-existing rules governing which “waters of the United States” fall under the jurisdiction of the federal Clean Water Act and proposes to replace the stayed 2015 rule. At the same time, the proposal would recodify the preexisting text, which is the framework currently followed by the agencies per the Sixth Circuit’s October 9, 2015 order.

PSATS is a nonprofit, nonpartisan statewide association in Pennsylvania that represents 1,454 townships of the second class. These townships comprise 95 percent of the Commonwealth’s land area and are home to more than 5.5 million Pennsylvanians. These townships are very diverse, ranging from rural communities with fewer than 200 residents to communities with populations of more than 60,000 residents. We believe the scope of jurisdiction is critical to our communities and our country.

We support the proposed comprehensive, two-step process for reviewing and revising the definition of “waters of the United States.” We believe this initial step to revert to the prior definition of “waters of the United States” is consistent with court decisions and longstanding, current practice.

Pennsylvania is home to approximately 86,000 miles of rivers and streams and about 404,000 acres of freshwater wetlands. We contend that the final 2015 rule has created uncertainty, allows for overly broad interpretations of what is considered “waters of the United States,” and permits case-by-case determinations by the agency. As such, we believe that the proposed definition is consistent with Supreme Court decisions and will provide continuity for both the regulated community and the regulators.

We believe that the proposed rule would reduce federal overreach, as well as excessive regulation of the nation’s waters and land by reverting to the prior definition. In addition, the proposal would remove certain bodies of water from coverage, such as temporary bodies of water created by heavy rains and flooding. PSATS supports this repeal as a commonsense change that will reduce the potential for excessive regulatory burdens on local governments.

PSATS has significant concerns that the final 2015 rule is overly broad and lacks clear limitations for which waters are considered jurisdictional “waters of the United States” and which are not. It expanded jurisdiction of the CWA to *any* small stream, ditch, or other body of water that *could*, at some point, flow into a traditionally “navigable water,” which the CWA was written to protect. As such, we believe that the proposed rule change reverting to the prior definition is appropriate and in line with the language and intent of the CWA.

PSATS agrees that the proposed rule change meets the meaning and purpose of the Clean Water Act as well as the agencies’ goal of protecting our nation’s water resources, while providing clarity and certainty for the regulated community. PSATS believes that any approach to protecting water quality must be accomplished through true partnerships at the local, state, and federal levels. This proposed change would provide needed clarity in defining which waters are truly “waters of the United States” and restore commonsense to the regulatory process.

Sincerely,



David M. Sanko
Executive Director