



December 12, 2017

*Submitted electronically via regulations.gov*

Ms. Stacy Jensen  
Regulatory Community of Practice  
U.S. Army Corps of Engineers  
441 G Street NW  
Washington, DC 20314-1000

Ms. Donna Downing  
Office of Water  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Re: Definition of “Waters of the United States” – Addition of an Applicability Date to 2015 Clean Water Rule  
U.S. Army Corps of Engineers  
U.S. Environmental Protection Agency

Dear Mses. Jensen and Downing:

The American Exploration & Production Council (“AXPC”) is pleased to submit the following comments supporting the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency (collectively, “the agencies”) proposal, *Definition of “Waters of the United States” – Addition of an Applicability Date to 2015 Clean Water Rule* (“Proposal”) published in the federal register on November 22, 2017 (Volume 82, Number 224). AXPC asserts that the agencies’ proposal is desirable and agrees that an applicability date – a time period that is a minimum of two years from the date of final action on this Proposal – is appropriate and vital to ensuring continuity and regulatory certainty while the agencies continue to reconsider and pursue a substantive rulemaking concerning the definition of “waters of the United States” (“WOTUS”).

As previously documented in its September 22, 2017, public comment filing concerning the agencies’ proposal, *Definition of “Waters of the United States” – Recodification of Pre-Existing Rules*, AXPC supports the agencies’ efforts to codify the status quo – regulatory text that existed in the Code of Federal Regulations prior to the promulgation of the 2015 Clean Water Rule (“2015 Rule”)<sup>1</sup> along with applicable agency guidance documents<sup>2</sup> – as it will not change the current WOTUS definition. AXPC is supportive of any agency effort that contributes to regulatory certainty, in this interim period, and believes this Proposal is quite appropriate to ensure jurisdictional certainty both for the agencies and the regulated community.

---

<sup>1</sup> Recodification of regulatory text at 33 CFR §328; 40 CFR §110; 112; 116; 117; 122; 230; 232; 300; 302; and 401

<sup>2</sup> Governing guidance documents include 2003 Solid Waste Agency of Northern Cook County and 2008 Rapanos

The ongoing litigation concerning the 2015 Rule currently before the Supreme Court of the United States (“SCOTUS”), is another reason for establishing regulatory certainty. The agencies have clearly signaled<sup>3</sup> their intention to fully rescind and replace the 2015 Rule; however, and without the agencies’ Proposal to add an applicability date, a future SCOTUS decision resulting in an expiration of the Sixth Circuit Court’s nationwide stay would cause the 2015 Rule to become effective in a majority of states. Consequently, the very rule that the agencies are working to rescind and replace would be effective while the agencies are engaged in their reconsideration efforts. The Proposal would thus prevent unnecessary confusion and burdensome requirements on the regulated community from becoming effective.

There will be no new threat or harm posed to the environment from finalizing the agencies’ proposed action as the governing guidance documents, which preceded the 2015 Rule, have always remained in effect and will continue to remain in effect with the finalization of this Proposal. As further evidence that codification of the status quo will not result in any irreparable harm, in its issuance of the nationwide stay, the Sixth Circuit stated. “But neither is there any indication that the integrity of the nation’s waters will suffer imminent injury if the new scheme [2015 Rule] is not immediately implemented and enforced.”<sup>4</sup> Therefore, allowing the status quo to be the controlling laws for a time period of a minimum of two years from the date of final action on this Proposal will be sufficiently protective of the environment while allowing the agencies to continue its WOTUS definition reconsideration efforts.

While AXPC is supportive of the agencies’ efforts to rescind the 2015 Rule, it also recognizes the need and importance of regulatory certainty, for both the agencies and the regulated community, during the interim period between final rescission and promulgation of a replacement WOTUS definition. Therefore, AXPC asserts that the agencies’ Proposal is desirable and encourages the agencies to consider adding an applicability date for a minimum of two years from the date of final action on this Proposal. AXPC appreciates the agencies’ consideration of the statements presented herein and appreciates the opportunity to participate in this public process.

---

AXPC is a national trade association representing 34 of America’s premier independent natural gas and oil exploration and production companies. AXPC’s members are leaders in developing and applying the innovative and advanced technologies necessary to explore for and produce crude oil and natural gas, and that allow our nation to add reasonably priced domestic energy reserves in environmentally responsible ways.

---

<sup>3</sup> Evidenced by USEPA and USACE proposal, *Definition of “Waters of the United States” – Recodification of Pre-Existing Rules*, and the agencies’ stakeholder engagement process regarding recommendations on revising the “waters of the United States” definition.

<sup>4</sup> *State of Ohio, et al v. U.S. Army Corps of Eng’rs, et al.* Nos. 15-3799/3822/3853/3887 Order of Stay

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "V. Bruce Thompson". The signature is written in a cursive, flowing style.

V. Bruce Thompson  
President  
American Exploration & Production Council  
1001 Pennsylvania Avenue, NW Seventh Floor  
Washington, DC 20004