



VIA ELECTRONIC SUBMISSION

September 27, 2017

Scott Pruitt  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Douglas W. Lamont  
Deputy Assistant Secretary (Project Planning and Review)  
Department of the Army  
108 Army Pentagon  
Washington, DC 20310

**Re: Docket ID EPA-HQ-OW-2017-0203, Definition of “Waters of the United States”—  
Recodification of Pre-existing Rules**

Dear Administrator Pruitt and Deputy Assistant Secretary Lamont:

Associated Builders and Contractors Inc. (ABC) hereby submits the following comments to the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) in response to the above-referenced proposed rule, published in the *Federal Register* on July 27, 2017, at 82 Fed. Reg. 34899.

**About Associated Builders and Contractors Inc.**

ABC is a national construction industry trade association established in 1950 that represents more than 21,000 members. ABC and its 70 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work. ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industrial and commercial sectors. Moreover, the vast majority of our contractor members are classified as small businesses. Our diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

ABC is a member of the Waters Advocacy Coalition, which is filing a more detailed set of comments on EPA and the Corps' proposed rulemaking. ABC supports the Coalition's comments filed to this docket and hereby incorporates them by reference.

## **Background**

On June 29, 2015, EPA and the Corps issued the final Clean Water Rule: Definition of “Waters of the United States,” also known as the “Waters of the United States” (WOTUS) final rule, which dramatically expanded the scope of federal authority over water and land uses across the country.<sup>1</sup> During the rulemaking process, ABC urged EPA and the Corps to withdraw the 2014 proposed rule.<sup>2</sup>

On Oct. 9, 2015, the final rule was blocked by a nationwide stay issued by the U.S. Court of Appeals for the Sixth Circuit.<sup>3</sup> On Feb. 28, 2017, President Trump issued the executive order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule, which requires EPA and the Corps to review the controversial final rule and rescind or revise it through public comment.<sup>4</sup> Following the executive order, EPA and the Corps issued a proposed rule on July 27 that would rescind the 2015 WOTUS rule and recodify the regulatory text that existed prior to the 2015 rule.<sup>5</sup>

## **ABC’s Comments in Response to the Agencies Proposed Rule**

ABC writes in support of EPA and the Corps’ proposal to rescind the 2015 final Clean Water Rule: Definition of “Waters of the United States,” also known as the WOTUS final rule, and recodify the regulations that existed prior to the 2015 rule. In addition, we support EPA and the Corps proposing a new rule for notice and comment. Issues remain with the regulatory definition that existed prior to the 2015 rule that must be addressed and reconsidered through a new rulemaking. It is important that as the agencies substantially reevaluate the definition of “waters of the United States,” they ensure clarity and regulatory certainty so that ABC members have the information they need to comply with the law.

We appreciate the importance of protecting and restoring America’s wetlands and waters. However, ABC remains deeply concerned about the impact that the final 2015 rule will have on the construction industry. The 2015 rule caused uncertainty surrounding what would actually be considered “waters of the United States.” The regulatory uncertainty that results from the 2015 rule’s lack of clarity on key terms and definitions creates confusion over what waterways will be subject to federal jurisdiction and could chill construction near waterways that could conceivably be covered by the rule. Furthermore, this lack of clarity will lead to additional—and sometimes unnecessary—permitting requests and project delays.

Beyond creating uncertainty over the permitting process, the 2015 rule will increase regulatory compliance costs and lead to a more drawn-out approval process that will harm the construction industry both directly and indirectly, as the industry’s growth relies largely on the growth of the economy as a whole. Issues like these, as well as the increased potential for litigation, easily translate to lost businesses and jobs and stalled economic activity, all of which is detrimental to the construction industry.

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<sup>1</sup> 80 Fed. Reg. 37054.

<sup>2</sup> [http://www.abc.org/Portals/1/Documents/ABC\\_EPA\\_WOTUS\\_NPRM\\_11.14.14.pdf](http://www.abc.org/Portals/1/Documents/ABC_EPA_WOTUS_NPRM_11.14.14.pdf).

<sup>3</sup> <http://www.opn.ca6.uscourts.gov/opinions.pdf/15a0246p-06.pdf>.

<sup>4</sup> <https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>.

<sup>5</sup> 82 Fed. Reg. 34899.

## Conclusion

For the reasons outlined above, ABC strongly urges EPA and the Corps to move forward with their proposal to rescind the 2015 rule and recodify the regulations that were in place prior to the 2015 rule. Additionally, we support the agencies' decision to issue a second rulemaking for notice and comment that substantially reevaluates the definition of "waters of the United States" and is consistent with Supreme Court decisions and congressional intent.

Thank you for the opportunity to submit comments on this matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ben Brubeck". The signature is written in a cursive, flowing style.

Ben Brubeck  
Vice President of Regulatory, Labor and State Affairs