



STATE OF NEW YORK

June 2, 2014

Honorable Gina McCarthy
Administrator
Environmental Protection Agency
Mailcode: 2822T
1200 Pennsylvania Ave, NW
Washington, DC 20460

Honorable John McHugh
Secretary
Department of the Army
101 Army Pentagon
Washington, D.C. 20310

Re: Docket ID No. EPA-HQ-OW-2011-0880, Definition of "Waters of the United States" Under the Clean Water Act; Docket ID No. EPA-HQ-OW-2013-0820, CWA Certain Agricultural Conservation Practices Exemption from Permitting

Dear Administrator McCarthy and Secretary McHugh:

The New York State Department of Agriculture and Markets (DAM) and the New York State Department of Environmental Conservation (DEC) jointly request extensions to the two comment periods for the docket numbers referenced above.

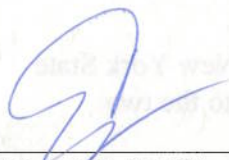
The "Interpretative Rule" Docket ID No. EPA-HQ-OW-2013-0820, is intended to define activities considered to be exempt from permitting under section 404(f)(1)(A) of the Clean Water Act (CWA). The comment period for the Interpretive Rule is 45 days and all comments must be submitted by June 5. The activities to be exempted are based on Natural Resources Conservation Service (NRCS) conservation practice standards that are designed and implemented to protect and enhance water quality. Additional time is needed for DEC and DAM to conduct a comprehensive review of the list of NRCS practices that could be instituted in order to avoid being subject to regulation under section 404(f)(1)(A). Because there is a direct relationship between whether an activity is exempt from CWA permitting requirements and the definition of "Waters of the United States" (Docket ID No. EPA-HQ-OW-2011-0880), it is important that the interpretive rule comment period remain open for longer than the currently scheduled 45 days to allow DEC and DAM sufficient time to better appreciate the relationship between the two proposed rules.

The comment period for the proposed "Waters of the United States" definition is 90 days; accordingly, all comments are currently due July 21. Although EPA's and USACE's stated intention is not to expand its definition of "Waters of the United States" beyond the nuances and details of the proposed definition, this rule still requires a greater review than can be conducted in the currently allotted 90 days. The EPA and USACE seek comment on more than 40 different aspects of the proposed definition. In order to provide thorough comments, it is critical for the comment period be extended to allow for education and communication with various New York

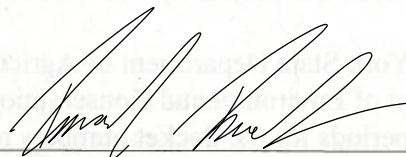
stakeholders. Providing a regulatory definition for "Waters of the United States" has the potential to reduce confusion and litigation around jurisdictional waters but this goal cannot be accomplished if the definition is hastily promulgated without ample opportunity for state agencies and other organizations to analyze relevant issues.

Moreover, DAM and DEC seek additional time to work collaboratively in our review of the proposed "Waters of the United States" rule and the Interpretative Rule and consider potential impacts on state jurisdictional waters, the state permitting program, and the impacts on regulated industry. Extending the comment period on both of these proposed rules is of paramount importance to ensure a complete understanding of how these proposed rules will work, jointly or singly, on the regulated community.

DAM and DEC jointly request the EPA and USACE extend the comment period for the proposed Interpretive Rule by 135 days and the proposed "Waters of the United States" rule for an additional 90 days, so that comments are due for both rules at the same time to permit a comprehensive review of the proposals and their impact.



Edward F. McTiernan
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Ron Rausch
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Markets