



*Working together for Ohio farmers to advance  
agriculture and strengthen our communities.*

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Re: Docket ID No. EPA-HQ-OW-2021-0328 Definition of “Waters of the United States”;  
Request for Pre-Proposal Recommendations

The Ohio Farm Bureau Federation (OFBF) is the largest general farm organization in the state of Ohio with members in all of Ohio’s 88 counties. Our policies are developed via a locally driven grassroots process and support the development of programs, policies and regulations that are scientifically sound, based on credible data, practical, realistic, and economically feasible. As a result, OFBF appreciates the opportunity to submit these comments to the U.S. Environmental Protection Agency (USEPA) and U.S. Army Corps of Engineers (Corps) (collectively, the Agencies) in response to the August 4, 2021 Notice soliciting pre-proposal feedback on the definition of “waters of the United States” (WOTUS).

The definition of WOTUS is critically important to Ohio farmers. Growing crops and raising animals are water-dependent enterprises. For this reason, farming in Ohio tends to occur on lands where there is either plentiful rainfall or an adequate water supply available for crop irrigation and animal watering. Across the Ohio agricultural landscape, there are many features that are wet only when it rains and that may be located many miles from the nearest “navigable” water. Ohio farmers regard these features as low spots on farm fields.

The regulation of low spots on farmlands and pastures as jurisdictional “waters” means that any activity on those lands that moves soil or applies any product to that land could be subject to regulation. Everyday farming activities such as plowing, planting, or fence building in or near ephemeral drainages, ditches, or low spots could trigger the CWA’s civil or criminal penalties unless a permit is obtained. The tens of thousands of dollars in additional costs for federal permitting for ordinary farming activities is beyond the financial means of many Ohio family or small business farm owners. In addition, those farmers who can afford it should not be forced to wait months, or even years, for a federal permit to plow, plant, fertilize, or carry out any of the other ordinary farming activities on their lands. For all of these reasons, Ohio farmers as well as all farmers and ranchers across the country have a keen interest in how the Agencies define “waters of the United States.”

OFBF was disappointed by the Agencies' recent announcement of their intent to revise the definition by first repealing the Navigable Waters Protection Rule ("NWPR") and second refining the pre-2015 definition of WOTUS. OFBF feels the NWPR is working and is clearly protecting Ohio's lakes, rivers and streams. It provides Ohio farmers clarity and predictability by establishing clear bright line definitions, clarifies the level of government, federal or state, responsible for overseeing water features and dry land that is occasionally wet, excludes ditches and areas where water collects after rain events as well as defines and excludes prior converted cropland as jurisdictional wetlands.

State and local officials have a long history of working with landowners to improve water quality. Working under the CWA's cooperative federalism structure, state programs have been, and can continue to be, very effective in protecting water resources. Since 2015, the Ohio EPA has had rules in place to protect isolated wetlands and in 2020 issued a final, combined general permit for ephemeral streams and certain isolated wetlands to help ensure the continued oversight of these resources following removal from federal jurisdiction under the NWPR. To justify repealing the NWPR due to the creation of undue environmental harm in the State of Ohio is a fallacy. The State of Ohio proactively filled the jurisdictional gaps to protect all waters of the state.

Ohio farmers are taking proactive, voluntary steps to conserve resources and protect our water resources by working with their local soil and water conservation districts and NRCS to install conservation practices. Clean water regulations must continue to protect farmers' ability to implement environmentally beneficial projects and conduct routine maintenance on their farms such as installing grass waterways and riparian buffers without the requirement to obtain a permit.

Clarity and predictability are paramount. Farmers need a rule that draws clear lines of jurisdiction that they can understand without hiring consultants and lawyers. To ensure that law-abiding farmers and other landowners can understand and comply with the CWA, any definition of "waters of the United States" must provide clarity and certainty. The Agencies should avoid including vague terminology that landowners and regulators will be unable to apply without having to undertake burdensome scientific determinations, incurring large financial cost and delaying ordinary farming activities.

OFBF appreciates the opportunity to provide these comments to the Agencies. Should you have any questions concerning any of our recommendations, please do not hesitate to contact me. Thank you for your time and consideration.

Respectively,

A handwritten signature in black ink that reads "Larry M. Antosch". The signature is written in a cursive, slightly slanted style.

Larry M. Antosch, Ph.D.  
Senior Director, Policy Development and Environmental Policy