

**Business Roundtable Comments on
“Definition of ‘Waters of the United States’ – Recodification of Pre-Existing Rules”
Proposed Rule
Environmental Protection Agency Docket ID No. EPA-HQ-OW-2017-0203**

Business Roundtable supports the Proposed Rule published by the Environmental Protection Agency (the Agency) and the U.S. Army Corps of Engineers on July 27, 2017¹ to rescind the 2015 Clean Water Rule (the 2015 Rule) and restore the regulatory text defining the term “waters of the United States” as it existed prior to the 2015 Rule. This action is a prudent first step in the process by which the Agency and the U.S. Army Corps of Engineers will reconsider the “waters of the United States” definition.

Business Roundtable conducted a survey of its members to identify regulations that are of most concern across all our business sectors. The majority of these regulations directly and negatively impact economic growth. In February, Business Roundtable delivered a letter to the White House underscoring the “Top Regulations of Concern” identified by CEOs along with recommendations for minimizing their economic impact. Business Roundtable advised then that the 2015 Rule vastly expanded federal jurisdiction over state waters, with serious implications for local economic development, and recommended revision of the rule by the Agency.

Rather than clarify the jurisdiction over “waters of the United States,” the 2015 Rule has had precisely the opposite effect, potentially bringing within its reach tributaries, irrigation ditches, cooling water retention ponds, impoundments, and intrastate waters that are not in any way associated with navigable waters. Numerous comments regarding the serious economic consequences of the overly broad definition of “waters of the United States” filed in the rulemaking that led to the issuance of the 2015 Rule confirm the need for revisions. For example:

- The National Association of Manufacturers (NAM) advised that the 2015 Rule would create extreme regulatory uncertainty, resulting in “unnecessarily high compliance costs and potentially severe economic impacts.”² As NAM observed, “No regulated party—even if armed with an army of hydrologists—could conclusively determine in advance the full scope of the regulatory authority asserted by the agencies under the proposed rule.”³ NAM warned that the cost increases their members could face from the proposed rule would “make American businesses less competitive in the global marketplace and will drive those businesses to expand their operations overseas.”⁴

¹ 82 *Fed. Reg.* 34899 (2017). The deadline for comments on the proposed rule was extended to September 27, 2017, see 82 *Fed. Reg.* 39712 (Aug. 22, 2017)

² National Association of Manufacturers Comments in Docket ID No. EPA-HQ-OW-2011-0880, submitted November 14, 2014, p. 1.

³ NAM Comments, p. 12.

⁴ NAM Comments, p. 28.

- The American Forest & Paper Association explained the breadth of the proposed rule’s expansion of the Federal government’s jurisdiction under the Clean Water Act, and expressed concern that the broad regulatory language would subject water bodies on commercial properties to regulation, interfering with the operation of the facilities, and imposing excessive costs and regulatory delays while doing little to further the goals of the Clean Water Act.⁵
- The American Chemistry Council provided examples of how the ambiguous language of the proposed Clean Water Rule could impose costly requirements on operators of on-site water management features, with no environmental benefit.⁶
- The American Petroleum Institute warned that the proposed rule “threatens to further constrain access to state and private lands essential for growth not only in domestic energy production but also in construction, manufacturing, and agricultural activities. It could also have unintended environmental consequences by impacting access to the abundant, domestic natural gas that has contributed to carbon dioxide reductions in recent years or creating permitting difficulties that apply to energy project with larger footprints (i.e., wind and solar) and related transmission infrastructure.”⁷

Business Roundtable urges the Agency to bear these concerns regarding the economic impacts of revising the definition of “waters of the United States” in mind as the proposal for a new definition is developed.

⁵ American Forest & Paper Association Comments in Docket ID No. EPA-HQ-OW-2011-0880, submitted November 14, 2014, pp. 5-6.

⁶ American Chemistry Council Comments in Docket ID No. EPA-HQ-OW-2011-0880, submitted November 14, 2014, pp. 2-5.

⁷ American Petroleum Institute Comments in Docket ID No. EPA-HQ-OW-2011-0880, submitted November 14, 2014, Transmittal Letter, p.1.