

February 8, 2023

The Honorable David Rouzer  
Chairman  
Committee on Transportation &  
Infrastructure  
Subcommittee on Water Resources and  
Environment  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Grace Napolitano  
Ranking Member  
Committee on Transportation &  
Infrastructure  
Subcommittee on Water Resources and  
Environment  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Rouzer and Ranking Member Napolitano:

We thank you for holding today's hearing, "*Stakeholder Perspectives on the Impacts of the Biden Administration's Water of the United States (WOTUS) Rule*," and for your focus on examining the role of WOTUS and impacts on the regulated community. The National Association of Manufacturers is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 13 million Americans, contributes \$2.81 trillion to the U.S. economy annually, pays workers over 18% more than the average for all businesses and has one of the largest sectoral multipliers in the economy. Taken alone, manufacturing in the United States would be the eighth-largest economy in the world.

The Clean Water Act jurisdictions that fall under WOTUS are key for manufacturers and communities alike regarding the standards and scope of various permits protecting clean water. A durable and pragmatic WOTUS rule with clear definitions, that are easily understandable and applicable across the country, ensures the public has access to clean water and regulated entities understand their water permits.

Manufacturers prioritize environmental stewardship and protecting our national waterways, but the EPA's current WOTUS rule leaves stakeholders confused and relying on unclear terminology that is difficult to apply universally. Multiple Supreme Court decisions have touched on the definition of "navigable waters" over the years, but neither the SCOTUS nor the Agencies have provided sufficient clarity. Compounding this confusion, controversial legal arguments, including application of "significant nexus" underpins the current the proposal, which broadly expands federal jurisdiction beyond traditional navigable waters. The rule creates a new sprawling category of various waters – know as (a)(5) waters – a jurisdictional assertion that has not been seen since 2003. Because of these expansions and ambiguous terms, the careful balance between local and state regulators is unpredictable and can leave permit seekers with little guidance, aside from the need for more time and money to achieve their permitting requests.

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Despite a pending ruling from the Supreme Court on *Sackett v EPA*, which could definitively change Clean Water Act jurisdiction and WOTUS application, the EPA recently released its new WOTUS rule. The NAM has repeatedly argued that the EPA wait to release any WOTUS rule until this consequential verdict is released – which many expect by spring – yet these calls have been ignored, as the EPA has produced a rule that may no longer be relevant and need to be redrafted before the end of the year.

The Clean Water Act is a key permitting avenue for any manufacturer, and as it stands now, WOTUS is ripe with ambiguity and inconsistent terminology, and we need Congressional intervention in order to facilitate manufacturing expansion while achieving environmental stewardship. Today's hearing is a necessary step towards educating the public and policy stakeholders regarding the immense permitting regulatory efforts necessary under local and state jurisdictions, and the need for a complimentary WOTUS rule that advances permitting protections at the federal level while providing certainty for the regulated community.

The NAM stands ready to work with your T&I colleagues, along with the EPA and Corps, regarding sensible, predictable and clear WOTUS regulations. Thank you again for your focus on permit certainty and in turn, enhancing manufacturers' ability to deliver their goods, expand their operations and grow their workforce.

Respectfully,

Nile Elam  
Senior Director,  
Energy & Resources Policy  
National Association of Manufacturers