



COMMONWEALTH of VIRGINIA

Department of Agriculture and Consumer Services

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Sandra J. Adams
Commissioner

June 16, 2017

Administrator Scott Pruitt
USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

Department of the Army
Senior Official Douglas W. Lamont, P.E.
U.S. Army Corps of Engineers
441 G Street N.W.
Washington, DC 20314-1000

Dear Administrator Pruitt and Senior Official Lamont,

I am writing in response to your request for input from Governor McAuliffe regarding the proposal to revise the definition of waters of the United States as established in the Clean Water Rule: Definition of "Waters of the United States" (2015 Clean Water Rule). 80 Fed. Reg. 37,054 (June 29, 2015). The Virginia Department of Agriculture and Consumer Services (VDACS) appreciates the opportunity to provide input regarding an appropriate definition for "Waters of the United States" (WOTUS) and submits the following comments for your consideration.

Although the intent of the 2015 Clean Water Rule may have been to clarify jurisdictional waters under the Clean Water Act (CWA), the rule, as currently written, places a new and significant regulatory burden on Virginia farmers. The published rule's definition of WOTUS includes a number of small and seasonal bodies of water that were previously regulated at the state level. This is an extreme expansion of federal authority to regulate non-navigable bodies of water under the Clean Water Act.

VDACS submitted comments to the EPA on November 14, 2014, as part of the public comment period on the proposed rule defining WOTUS under the Clean Water Act. The

concerns expressed in that original comment remain. The 2015 Clean Water Rule creates less certainty for Virginia farmers, significantly increases costs for agricultural producers, and does not take into consideration many conservation practices that are widely utilized in typical farming and silvicultural operations.

At its core, the 2015 Clean Water Rule is a jurisdictional overreach that creates a definition of the term “navigable waters” that is inconsistent with previous legislative and legal precedent. Under the Clean Water Act, jurisdiction was intended to be limited to relatively permanent waters and wetlands with a continuous surface connection to those waters. In the opinion of agricultural stakeholders, relatively permanent waters should be limited to perennial streams alone, which are those that carry flow throughout the year except in extreme drought, and wetlands with a continuous surface connection to those waters should be limited to wetlands that directly and visibly touch a relatively permanent, jurisdictional water.

The oversight of non-navigable waters must remain the responsibility of state and local governments. Through the administration of various state laws and regulations, including the Virginia Agricultural Stewardship Act, the Commonwealth strongly supports the stewardship of Virginia’s land and water resources. Voluntary conservation programs remain the most effective means of achieving water quality goals. The Commonwealth and its localities have effective regulatory tools to protect non-navigable waters when voluntary programs are not working as intended. In summary, the Clean Water Act was not intended to provide the federal government authority over certain small and seasonal bodies of water that have historically been regulated at the state level, and the 2015 Clean Water Rule must be replaced to correct this jurisdictional overreach.

Sincerely,



Charles R. Green
Deputy Commissioner

cc: The Honorable Basil I. Gooden, Secretary of Agriculture and Forestry
Sandra J. Adams, Commissioner