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Adam Krantz

January 5, 2026

Ms. Stacy Jensen
Oceans, Wetlands and Communities Division
Office of Water (Mail Code 4504-T)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

Mr. Milton Boyd
Office of the Assistant Secretary of the Army for Civil Works
Department of the Army
108 Army Pentagon
Washington, DC 20310

Submitted via Federal eRulemaking Portal: <https://www.regulations.gov>

Re: NACWA Comments on the United States Environmental Protection Agency's and the United States Department of the Army's proposed rule to revise the definition of "Waters of the United States" (Docket ID: EPA-HQ-OW-2025-0322)

Dear Ms. Jensen and Mr. Boyd:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to provide written comments to the United States Environmental Protection Agency's (EPA) and the United States Army Corps of Engineers' (USACE) proposed revision to the definition of "Waters of the United States" (WOTUS) published in the Federal Register.¹

NACWA represents the interests of more than 360 public wastewater and stormwater utilities of all sizes across the country that everyday provide the essential service of managing billions of gallons of the nation's wastewater and stormwater in a manner that ensures the continued protection of public health and out environment.

As evidenced by a brief NACWA filed to the U.S. Supreme Court in *Sackett v. EPA* case,² NACWA has long been focused on ensuring that the definition of WOTUS utilized by EPA and USACE includes appropriate exemptions that support critical clean water practices. In particular, NACWA has consistently advocated for clear exemptions for waste treatment systems, stormwater control features, and water recycling structures. That focus continues with this iteration of proposed WOTUS regulations, and these

¹ 90 Fed. Reg. 52,498 (Nov. 20, 2025).

² Brief of Amicus Curiae Nat'l Ass'n of Clean Water Agencies in Support of Respondents, *Sackett v. EPA*, No. 21-454 (U.S. 2022).

comments focus on the key exclusions that must be included in any final WOTUS rule to ensure the continued efficient and innovative operation of public clean water utilities throughout the country.

The Proposed Waste Treatment System Exclusion Provides Much Needed Clarity for Clean Water Utilities

The proposed definition for waste treatment systems provides much needed clarity concerning the scope of these critical components of wastewater treatment, which EPA and USACE have long appropriately recognized are not themselves WOTUS.

In particular, the proposed definition will help ensure that *all components* of a waste treatment system can be used for their intended wastewater treatment purposes and will help shield public clean water utilities from unnecessary jurisdictional disputes. Codifying the definition under paragraph (c)(11) will likewise allow utilities to rely on the definition in the context of both permitting and enforcement actions.

The waste treatment system exclusion is essential to the work NACWA's members carry out to protect human health and the environment. By clarifying its scope and application as proposed, the rule will help support better water management practices and improve downstream water quality. EPA and USACE should adopt the proposed regulatory language and provide this long-overdue clarity to the regulated community.

The Agencies Must Include Additional Exclusions to Support Critical Water Management Practices

EPA and USACE should expressly include an exclusion for stormwater control features and wastewater reuse facilities in any final definition of WOTUS. Many NACWA members operate Municipal Separate Storm Sewer Systems (MS4s) and manage complex water reuse practices. Those members have consistently raised concerns in the context of the Agencies' regulatory WOTUS efforts about the critical need for clear and consistent language that municipal stormwater control features and water recycling structures do not qualify as WOTUS.

Stormwater Control Features Should be Clearly Excluded from the WOTUS Definition

EPA and USACE in the proposed rule take the position that stormwater features are likely non-jurisdictional because they do not meet the proposed definition of WOTUS.

However, the proposal also notes that the Agencies do not consider stormwater features to be part of excluded waste treatment systems, and states that any jurisdictional questions related to stormwater control features will be assessed and determined on a case-by-case basis. This is cause for concern for MS4s. Features that could nonetheless be considered jurisdictional include constructed stormwater wetlands that abut and share a continuous surface connection or retention basins that are built in WOTUS.

While it is true that the Agencies have historically not regulated stormwater control features as WOTUS, they have in previous rulemakings appropriately recognized the need for a clear regulatory exclusion. For example, in the 2015 Clean Water Rule, EPA and USACE excluded "stormwater control

features constructed to convey, treat, or store stormwater that are created in dry land” from WOTUS as a means to provide clarity and give municipalities the ability to operate and maintain their stormwater systems effectively.

Again in 2020, EPA and USACE excluded stormwater control features in the Navigable Waters Protection Rule (NWPR) that were “constructed or excavated in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater run-off.”

NACWA strongly urges EPA and USACE to add a specific exclusion for stormwater control features, similar to that which was in the NWPR, into the current proposal. Even though the Agencies have indicated their “intent” is to not drag these stormwater control features into jurisdictional disputes, explicitly including this exclusion is critically important for the efficient operation of public utilities overseeing stormwater and MS4s. Public utilities cannot rely on intent when making investments in stormwater infrastructure; they need regulatory certainty.

Likewise, EPA and USACE have asked for input concerning whether the policy memorandum regarding stormwater should be included in the preamble as a way to provide clarity for stormwater control features. While such an action may provide some additional clarity, preamble statements do not carry the legal enforceability of regulatory language or the corresponding certainty it provides.

Utilities across the country every day invest limited ratepayer dollars to construct stormwater control features intended to improve water quality and reduce runoff. Creating a specific exclusion for municipal stormwater control features that codifies the Agencies’ longstanding position that such features should not be regulated as WOTUS is critical and will allow municipalities to continue to advance innovative stormwater management practices to the benefit of the communities nationwide.

Water Recycling Systems Should be Clearly Excluded from the WOTUS Definition

Much like stormwater control features, water reuse and recycling systems have been used for decades throughout the country, and even more so today, as communities use these technologies to address water supply challenges. These features, which can be used to augment local water supplies, prevent land subsidence and mitigate saltwater intrusion, improve overall water sustainability in a world of growing technology demands, and support industrial expansion, are costly and require significant advanced preparation and planning.

The preservation and expanded use of water reuse and recycling play a key role in helping achieve President Trump’s economic vision for the country, especially around increasing American jobs and industrial output and advancing artificial intelligence. It is critical that EPA and USACE clarify in any final WOTUS regulation that any facilities and systems related to water reuse and recycling be excluded from the WOTUS definition to facilitate the continued use of these innovative systems.

Conclusion

NACWA thanks EPA and USACE for the opportunity to provide these comments on the proposed definition of WOTUS. We hope the comments above are helpful to the Agencies as they finalize a new regulation with clear exclusions that will allow public clean water utilities to continue operating and maintaining their vital infrastructure efficiently, responsibly, and in a cost-effective manner consistent

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with their Clean Water Act obligations. If you have any questions or comments, please contact me by phone or email at 202/533-1839 or eremmel@nacwa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily Remmel". The signature is fluid and cursive, with a large loop at the end.

Emily Remmel
Senior Director, Regulatory Affairs