

June 5, 2014

The Honorable Gina McCarthy
Administrator U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Major General John Peabody
Deputy Commanding General
Civil and Emergency Operations U.S. Army Corps of Engineers
Attn: CECW-CO-R 441 G Street, NW
Washington, DC 20314-1000

Re: Definition of Waters of the United States Under the Clean Water Act

The Office of Advocacy of the U.S. Small Business Administration respectfully requests that the U.S. Army Corps of Engineers and the Environmental Protection Agency (together the “Agencies”) extend the comment period for the proposed rule Definition of Waters of the United States Under the Clean Water Act.¹

The Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), gives small entities a voice in the Federal rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, Federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy. The agency must include, in any

¹ *Definition of Waters of the United States Under the Clean Water Act*, 79 Fed. Reg. 22188 (April 21, 2014).

explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.

Request for an Extension of the Comment Period

Advocacy has heard from several small businesses concerned with the potential effects of this rule. This is a significant proposal which will affect almost every U.S. industry and potentially every program under the Clean Water Act. Advocacy also notes that the agencies have not yet finalized the report upon which this rule is substantially based.² Pursuant to the principles of Executive Order 13563,³ small businesses should have the opportunity to comment on the proposed rule; the final version of the report; and the final report and recommendations of the Scientific Advisory Board simultaneously.⁴

Given these issues and the significant public interest in the outcome of this proceeding Advocacy respectfully requests that the agencies extend the public comment period for another ninety days.

For additional information or assistance please contact me or Kia Dennis at (202) 205-6936 or Kia.Dennis@sba.gov.

Sincerely,
/s/Winslow Sargeant, Ph.D.
Chief Counsel

/s/Kia Dennis
Assistant Chief Counsel

² See *Connectivity of Streams and Wetlands to Downstream Water*, <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=238345> (last accessed June 4, 2014).

³ Exec. Order No. 13,563, 76 Fed. Reg. 3821 (January 21, 2011).

⁴ The Scientific Advisory Board will be issuing a report on its findings and recommendations with regards to the Connectivity Report.