

Congress of the United States
House of Representatives
Washington, DC 20515-1601
April 29, 2011

AGRICULTURE COMMITTEE
SUBCOMMITTEE ON
GENERAL FARM COMMODITIES AND
RISK MANAGEMENT
SUBCOMMITTEE ON
CONSERVATION, ENERGY, AND FORESTRY
SUBCOMMITTEE ON
LIVESTOCK, DAIRY, AND POULTRY
BUDGET COMMITTEE
VETERANS' AFFAIRS COMMITTEE
SUBCOMMITTEE ON
ECONOMIC OPPORTUNITIES

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

I am writing to express my extreme displeasure with the Clean Water Act (CWA) guidance document issued by your office on April 27, 2011. This document was intended to clarify how the Environmental Protection Agency (EPA) and the Army Corps of Engineers identify waters that fall under the jurisdiction of CWA, especially in light of Supreme Court rulings on this matter in the last ten years.

I believe this guidance runs counter to the underlying purpose of the CWA, and is an effort on the part of the EPA to supersede the intent of Congress, and therefore, the will of the American people. Furthermore, it severely curtails the ability of Kansas farmers and ranchers to fulfill their mission of providing a reliable, safe, affordable food supply.

Rulings by the U.S. Supreme Court in both the *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* and *United States v. Rapanos* within the last decade have reaffirmed the definition of "navigable waters" such that CWA does not extend to all waters that can be regulated under federal powers over interstate commerce. Legislation to overturn those decisions has failed to reach a vote on the floor of either the House or Senate because of strong bipartisan support for the structure, goals and original intent of CWA.

Furthermore, guidance was issued in 2003 and again in 2008 that take these rulings into consideration when implementing and enforcing CWA. There has been no ruling since then that would justify or warrant a new guidance document, save the agency's desire to dramatically expand their reach and authority.

This document does precisely that. By reinterpreting the rulings in both *SWANCC* and *Rapanos*, the guidance explicitly expands the reach of the EPA to regulate waters under any part of CWA, including Sections 303, 311, 401, and 402 ("Guidance," p.3). This expansion is unwanted by Kansas, the U.S. Congress, and the American people. Such action negates the existing

partnership between the federal government and the states—a partnership that is producing dramatic gains in water quality in Kansas and across the nation.

I believe that, based on the guidelines proposed in this document, Kansas agricultural producers will face permitting requirements for applications over or near any farm pond, puddle or ditch—virtually any place that water could collect or run. This action is clearly an over reach by EPA and the Corps, and goes far beyond a simple clarification of the scope of waters of the United States subject to CWA jurisdiction.

If the intent is to seek statutory changes to CWA, the Administration should submit those suggestions as part of the legislative process for debate and consideration by the Congress. Doing so through a guidance document implies a desire for secrecy, and reflects a lack of interest in transparency on these matters.

I strongly urge you to rescind this guidance document, and instead follow the standard rule-making procedure, including economic impact analysis and periods of public comment, to determine what waters fall under the jurisdiction of the Clean Water Act.

Sincerely,



Tim Huelskamp
Member of Congress