

SURVEYOR'S OFFICE  
**Hamilton County**

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To: CWAwotus@epa.gov

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IN RE: Waters of the United States Rulemaking

In Indiana County Surveyors in conjunction with the County Drainage Board are responsible for storm water drainage, flood control and water quality within their county. As it was originally written, I saw the inability to carry out my statutory duties under the proposed 2015 rewrite of the Clean Water Rule.

I am thankful to the EPA and USACOE for the opportunity to provide comments, and support clarification and predictability in the definition of Waters of the U.S. I do not believe any expansion of the definition from the previous guidance is necessary. When a new definition or clarification advances through the rule making process, it should only attempt to clarify any ambiguity in the current rule, if not reduce the over reach of the Federal Government.


I believe that Justice Scalia's opinion in *Rapanos vs. United States* (2006), should be the standard for defining Waters of the U. S. The definition of navigable waters should be interpreted in the Clean Water Act as "relatively permanent waters" and "wetlands with a continuous surface connection" to "relatively permanent waters". Waters without a hydrological or ecological connection to other navigable waters do not fall within the jurisdiction of the Clean Water Act. These waters must be limited to surface waters, discounting any subsurface connectivity.

I believe the definitions of "relatively permanent" and "continuous surface connection" should be limited to perennial streams that carry flow throughout the year, except during extreme drought or freezing temperatures. Diffused surface water flowing vagrantly over the surface of the ground and intermittent flows should not be considered public water or under the jurisdiction of the Clean Water Act. This definition should minimize any expansion of the current rule and limit ambiguity in waters covered under the Clean Water Act.

In Indiana, County Surveyors and County Drainage Boards, in consultation with other officials, can determine if isolated wetlands, or waters that do not meet the definition suggested above, should be included in the Clean Water Act. Local officials are best equipped to determine the connectivity through locally monitored metrics for the frequency and flow of non-permanent waters.

Again, thank you for this opportunity to provide comments. I look forward to providing additional feedback as you proceed through the rule making process.

Sincerely,



Kenton C. Ward, CFM  
Hamilton County Surveyor