



September 25, 2017

Ms. Donna Downing
Office of Water (4504-T)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Ms. Stacey Jensen
Regulatory Community of Practice (CECW-CO-R)
U.S. Army Corps of Engineers
441 G Street, N.W.
Washington, D.C. 20314

Re: Comments on the U.S. Environmental Protection Agency's and U.S. Army Corps of Engineers' Proposed Rule regarding Definition of the "Waters of the United States" – Recodification of Preexisting Rules

Docket ID No. EPA-HW-OW-2017-0203

A. Identity of Commenter

Distinguished associations comprising the U.S. golf industry including the Golf Course Superintendents Association of America, Club Managers Association of America, National Club Association, American Society of Golf Course Architects, Golf Course Builders Association of America, and National Golf Course Owners Association submit these comments in response to the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) proposed rule regarding "Waters of the United States" (WOTUS) – Recodification of Preexisting Rules.

Golf is a major industry -- largely comprised of small businesses -- with a profound positive impact on America's economic, environmental and social agendas. Golf's economic engine *contributes \$69 billion annually* to the economy. Nearly 2 million American jobs are tied to the golf industry. The sport offers the opportunity for Americans to improve their fitness and the game generates \$3.9 billion annually for charity. More than 75 percent of golf courses are public facilities in the United States.

Golf courses are among the few sport facilities that are fully integrated into the natural environment. The design, construction and maintenance of each golf course is based on



respecting the inherent characteristics of its environment and the management of every course is based on the stewardship of that environment.

B. Golf Industry Comments

The golf industry appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) and the U.S. Army Corps of Engineers' (Corps) (together, "the Agencies") Proposed Definition of "Waters of the United States"—Recodification of Pre-existing Rules. 82 Fed. Reg. No. 143 (July 27, 2017) ("Proposed Rule"). Several of the above golf associations are also part of the Waters Advocacy Coalition, and support and incorporate by reference the technical comments filed by the Coalition.

The definition of "waters of the United States" is important to the golf industry. It is the foundational definition of the Clean Water Act which provides for protection of surface waters in the United States. At the heart of the Clean Water Act is cooperative federalism, a partnership between the federal and state governments to protect our most precious natural resources.

In particular, the 2015 Clean Water Rule which significantly redefined WOTUS would have brought nearly every river, stream, creek, wetland, pond, ditch and ephemeral in the U.S. under the federal jurisdiction of the Clean Water Act. Under the rule, all tributaries and adjacent waters, including adjacent wetlands, would have been categorically subject to federal oversight, with no additional analysis required. Additionally, the 2015 Clean Water Rule adopted a sweeping "other waters" category that could include almost everything else. Golf courses with waters on them or near them would likely be required to obtain costly, federal permits for any land management activities or land use decisions made. Water is vital for the health, beauty, and economic viability of golf courses. Subjecting golf courses to an expensive and unpredictable permitting process will threaten all of this. The Clean Water Rule upset the balance of cooperative federalism.

The golf industry supports the Agencies' proposal to rescind the Clean Water Rule: Definition of "Waters of the United States," 80 Fed. Reg. 37,054 (June 29, 2015) ("2015 Rule"), and codify the status quo that is now being implemented under the Sixth Circuit stay of the 2015 Rule. The Agencies should rescind the 2015 Clean Water Rule because the 2015 Rule's provisions are, in various respects:

- beyond the Agencies' statutory authority;
- inconsistent with Supreme Court precedent; and
- contrary to the goals of the CWA, including the Act's goal to "recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution." 33 U.S.C. § 1251(b).

The Agencies failure to seek input from state and local entities during the development of the 2015 Rule contributed to the rule's legal flaws and lack of clarity.



CLUB
MANAGERS
ASSOCIATION
OF AMERICA



NATIONAL
CLUB
ASSOCIATION
Advocacy | Insight | Governance



Of particular importance to the golf industry, whose members are subject to regulation under the CWA, is the regulatory uncertainty that flows from the 2015 Rule's lack of clarity on key terms and definitions, such as "adjacent," "floodplain," "ordinary high water mark," and "significant nexus." Moreover, by allowing for jurisdiction over remote, isolated features and ephemeral washes, the 2015 Rule improperly reads the word "navigable" out of the statute, and implicates significant constitutional concerns about the appropriate scope of federal authority. Furthermore, nothing in the record created during the 2015 rulemaking process dictated the adoption of such a sweeping definition of "waters of the United States."

Specifically, Section 402 establishes the National Pollutant Discharge Elimination System (NPDES) permitting program, in which EPA or states (with EPA oversight) can issue permits for discharges of pollutants into WOTUS. If almost all water bodies on a golf course are deemed WOTUS, as with the 2015 Clean Water Rule, many routine golf course management activities (such as pesticide applications) would be deemed to result in a "discharge" to those so-called WOTUS. Activities that result in a "discharge" cannot legally go forward without a required Section 402 permit. Most important, there is no legal right to a permit to "discharge" into WOTUS—or any deadline on an agency's process to issue a permit. Permitting may take months or even years, or permits may simply be unavailable.

Further, Section 404 allows the Corps to issue permits for discharges of "dredge and fill" material into WOTUS. This includes discharges that would result from moving soil, such as planting trees, installing drainage, dredging ponds/wetlands, and fixing stream alignments or banks below the ordinary high water mark including rip rap for erosion protection. With the 2015 Clean Water Rule, proposed golf course construction or renovation projects within jurisdictional area could require an individual, regional or nationwide Section 404 permit. The rule would give much greater authority for the federal government rather than the state to approve or deny these projects.

To address these concerns, the Agencies should rescind the 2015 Rule and recodify the regulations in place immediately prior so that the Code of Federal Regulations accurately reflects the applicable regulations. Since the Sixth Circuit's October 2015 issuance of a nationwide stay, the Agencies have been currently implementing the regulations defining WOTUS that were in effect immediately before the 2015 Rule. The proposed action would simply continue that practice and recodify the status quo that has been in place for decades.

Finally, the golf industry supports the Agencies' efforts to undertake a substantive rulemaking to reconsider the definition of "waters of the United States." Although codifying the status quo is important to ensure clarity and regulatory certainty in the near term, there are many issues with the current regulations and guidance documents that should be addressed through a new rulemaking. The golf industry will have a seat at the table and continue to support a rulemaking to clearly articulate the extent of federal CWA authority.



The golf industry looks forward to working with the Agencies to pursue what we believe are common goals. Please forward any questions or comments to Chava McKeel, GCSAA Director of Government Affairs, by phone at 800.472.7878, ext. 3619, or by e-mail at cmckeel@gcsaa.org, or direct mail at GCSAA, 1421 Research Park Drive, Lawrence, KS, 66049.

Thank you for considering these comments and recommendations.

Sincerely,

Rhett Evans, Chief Executive Officer, Golf Course Superintendents Association of America

Jeffrey Morgan, FASAE, CAE, Chief Executive Officer, Club Managers Association of America

Jay Karen, Chief Executive Officer, National Golf Course Owners Association

Henry Wallmeyer, Chief Executive Officer, National Club Association

Chad Ritterbusch, Executive Director, American Society of Golf Course Architects

Justin Apel, Executive Director, Golf Course Builders Association of America