



June 14, 2017

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U.S. Environmental Protection Agency  
EPA Docket Center  
Mailcode 2822IT  
Attention: Docket ID No. EPA-HQ-OA-2017-0190  
12000 Pennsylvania Avenue, NW  
Washington, DC 20460

**Re: Definition of “Waters of the United States” under the Clean Water Act**

**Dear Donna Downing:**

The GPA Midstream Association (GPA Midstream) appreciates this opportunity to submit comments on the Executive Order 13777 “Enforcing the Regulatory Reform Agenda” 82 Fed. Reg. 12,285 (March 1, 2017). GPA Midstream has served the U.S. energy industry since 1921 as an incorporated non-profit trade association. GPA Midstream is composed of close to 100 corporate members of all sizes that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as “midstream activities.” Such processing includes the removal of impurities from the raw gas stream produced at the wellhead, as well as the extraction for sale of natural gas liquid products (“NGLs”) such as ethane, propane, butane and natural gasoline. GPA Midstream members account for more than 90 percent of the NGLs produced in the United States from natural gas processing. Our members also operate hundreds of thousands of miles of domestic gas gathering lines and are involved with storing, transporting, and marketing natural gas and NGLs.

GPA Midstream commends EPA for setting up this comment session. Our members are directly impacted by the definition of “Waters of the United States” under the Clean Water Act and we have a long history of collaborating with EPA on rulemaking through public comments and meetings. Below are our responses to the question included in the PowerPoint presentation on April 19, 2017.

- 1. How would you like to see the concepts of “relatively permanent” and “continuous surface connection” defined and implemented? How would you like to see the agencies interpret “consistent with” Scalia? Are there particular features or implications of any such approaches that the agencies should be mindful of in developing the step 2 proposed rule?**

Justices Scalia's opinion interpretation of the phrase "waters of the United States" is to only include "relatively permanent, standing or continuously flowing bodies of waters" traditionally recognized as "streams, oceans, rivers and lakes" and "does not include channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall." The concept "relatively permanent" should be defined as a stream that flows year-round. The concept "continuous surface connection" should be defined as features that directly abutting a jurisdictional water and requires water exchange during minimal rain events.

The Agencies should not include intermittent or ephemeral channels that connect regardless of surface connections into perennial streams or channels that periodically provide drainage for rainfall as waters of the United States as described in Justice Scalia's opinion.

**2. What opportunities and challenges exist for your state or locality with taking a Scalia approach?**

Defining the "waters of the United States" consistent with Justice Scalia's opinion could clarify the limits and requirements of the Federal regulations.

**3. Do you anticipate any changes to the scope of your state or local programs (e.g., regulations, statutes or emergency response scope) regarding CWA jurisdiction? In addition, how would a Scalia approach potentially affect the implementation of state programs under the CWA (e.g., 303, 311, 401, 402 and 404)? If so, what types of actions do you anticipate would be needed?**

The change in definition could also change the view of state regulations and requirement.

**4. The agencies' economic analysis for step 2 intends to review programs under CWA 303, 311, 401, 402 and 404. Are there any other programs specific to your region, state or locality that could be affected but would not be captured in such an economic analysis?**

No comments.

Thank you for your consideration of our comments. Please feel free to contact me if you have any further questions.

Sincerely,

Matthew Hite  
Vice President of Government Affairs  
GPA Midstream Association