

Mahta Mahdavi

Director

Energy and Resources Policy

June 21, 2011

Ms. Donna Downing
Office of Water (4502-T)
Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

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

Attn: Docket ID No. EPA-HQ-OW-2011-0409

Docket ID No. EPA-HQ-OW-2011-0409

**Re: Request for Extension of Comment Period on EPA and Army Corps of Engineers
Guidance Regarding Identification of Waters Protected by the Clean Water Act**

Dear Ms. Downing and Mr. Olson:

The National Association of Manufacturers (NAM) requests an extension of the public comment period, for an additional 90 days, on the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers' (Corps) Proposed Guidance Regarding Identification of Waters Protected by the Clean Water Act.

The NAM is the largest manufacturing association in the United States, representing some 13,000 small, medium and large manufacturers in all 50 states. We are the leading voice in Washington, D.C. for the manufacturing economy, which provides millions of high-wage jobs in the U.S. and generates more than \$1.6 trillion in GDP. In addition, two-thirds of our members are small businesses, which serve as the engine for job growth.

Our mission is to enhance the competitiveness of manufacturers and improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth. We believe that additional time for comment is warranted for several important reasons as follows.

The proposed guidance, as indicated by the EPA and the Corps (agencies), is to interpret the term "waters of the United States" in the context of all programs authorized under the Clean Water Act (CWA), including Section 303 water quality standards and total maximum daily load programs, Section 401 state water quality certification process, Section 402 National Pollutant Discharge Elimination System (NPDES) permit program, and Section 404 discharges of dredged or fill material. This is a different approach that previous guidance have not taken. As such, nearly all parts of the manufacturing process that rely on a Section 303, Section 401, Section 402 or a Section 404 permit will be regulated by this guidance. This will have a significant, negative impact on manufacturers by complicating and possibly delaying the

permitting process. This change alone warrants an extension of the comment period by 90 days.

Further, the EPA and the Corps have indicated that once the guidance is finalized, they intend to follow this by rulemaking. However, because the guidance will likely be finalized and applied in the field before the agencies undertake rulemaking, it is imperative that stakeholders have sufficient time to address those issues of concern.

An extended comment period is necessary as the guidance raises a number of legal, scientific and economic considerations. An example of this is the appendices that include legal and scientific arguments in support of the guidance as well as an analysis of the indirect economic impacts of the guidance. Particularly, manufacturers need to examine EPA's own estimate of the annual cost which ranges from \$87 million to \$171 million for implementation. These figures do not take into consideration permitting costs, increased delays associated with expanded federal jurisdiction and the costs of new land use restrictions. Manufacturers, therefore, will need additional time to thoughtfully review and comment on this proposed guidance including the appendices.

In conclusion, the proposed guidance is intended to and will have a material impact on CWA permitting and enforcement nation-wide, and multiple industries and stakeholders will be subject to the new criteria set forth by the agencies. In light of the many important issues addressed by the proposal and the economic interests at stake, it is imperative that EPA and the Corps allow all interested parties to have sufficient time to provide meaningful and fully developed comments. NAM therefore requests that the comment period be extended by 90 days until Sept. 30, 2011.

Sincerely,

A handwritten signature in black ink, appearing to read "Mahta Mahdavi". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mahta Mahdavi
Director
Energy and Resources Policy
National Association of Manufacturers