



January 5, 2026

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Mr. Milton Boyd
Office of the Assistant Secretary of the Army for Civil Works
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Washington, D.C. 20310-0104
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Re: Comments from the Water and Wastewater Equipment Manufacturers Association (WWEMA) on Updated Definition of "Waters of the United States," Docket ID No. EPA-HQ-OW-2025-0322

Dear Ms. Jensen and Mr. Boyd:

The Water and Wastewater Equipment Manufacturers Association submits the following comments regarding the proposed rule, Updated Definition of "Waters of the United States" (the WOTUS Proposal or the Proposal) issued by the U.S. Environmental Protection Agency (EPA) and the Department of the Army, Corps of Engineers (the Corps) (collectively, the Agencies) on November 20, 2025 – 90 Fed. Reg. 52498. Comments are due by January 5, 2026.

The Water and Wastewater Equipment Manufacturers Association (WWEMA) is a Washington DC-based non-profit trade association representing water and wastewater technology and service providers since 1908. We advocate, inform, and connect our members with key policy and decision-makers and help our members increase their competitiveness and profitability in the U.S. and abroad. Our members supply the most sophisticated leading-edge technologies and services, offering solutions to every water-related environmental problem and need facing today's society. WWEMA is made up of many of the most prominent and influential companies in the industry who are working together to shape the future of water and wastewater technology in the U.S. and around the world.

EXCLUSIONS

WWEMA generally supports the exclusions and exemptions in the various versions of the WOTUS rule, because they provided clarity regarding the scope and types of non-jurisdictional waters and reduced many of the unnecessary regulatory burdens associated with some of the previous versions of the WOTUS rules and guidance. Expressly clarifying the waters and features that are not subject to federal jurisdiction is critical to the regulated community, and WWEMA requests that the Agencies maintain exclusions for those waters and features that have not historically been subject to federal jurisdiction.

In the WOTUS Proposal, the Agencies ask for comment on the question of whether some of the exclusions and exemptions that have been included in previous WOTUS rules are still necessary. It is true that some waters and features that were covered under the exclusions and exemptions will now not be deemed to be a WOTUS, due to the revised definition of WOTUS. However, WWEMA urges the Agencies to retain *all* of the previously included exclusions and exemptions, even if there are some situations (such as the exclusion for ephemeral waters) where they may prove not to be needed. It is very helpful for the regulated community – and other stakeholders such as equipment manufacturers – to know that certain situations are simply not covered in the WOTUS definition, regardless of how they are classified using the “relatively permanent” and “continuous surface connection” tests. For stability, certainty and durability, the exemptions and inclusions are important and should be retained.

As to some specific exemptions and exclusions in the WOTUS Proposal affecting manufacturers, WWEMA generally supports the Proposal. However, there are several issues as to which the proposed provisions should be modified or clarified. Also, there are several other exemptions that we believe should be added to the rules, in the interest of ensuring that the WOTUS definition stays focused on situations where application of those requirements is needed and effective. Our thoughts as to some of the exemptions and exclusions are provided below. Other exemptions are specifically covered in comments from other stakeholders such as the Federal Water Quality Coalition (FWQC or the Coalition) which we include here by reference.

1. Waste Treatment Systems

The current WOTUS rule provides that “[w]aste treatment systems, including treatment ponds or lagoons, designed to meet the requirements of the Clean Water Act” are not WOTUS. In the WOTUS Proposal, the Agencies continue the exclusion, but add a new definition of “waste treatment system” and remove redundant language. The proposed definition of “waste treatment system” includes “all components of a waste treatment system designed to meet the requirements of the Clean Water Act, including lagoons and treatment ponds, designed to either convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge).” 90 *Fed. Reg.* at 52534. This definition properly addresses several concerns that WWEMA had related to previous versions of the WOTUS rule: it clarifies that such systems can include both natural and engineered features, and it makes clear that equalizing and storing activities associated with pollutant removal are encompassed within the concept of “waste treatment systems.” This is a critical exclusion that many WWEMA members benefit from, and it is very important that it be included in the final WOTUS rule.

There are several aspects of the “waste treatment system” exclusion that the Agencies should clarify. The first relates to statements made in the preamble to the WOTUS Proposal, where the Agencies refer to waste treatment systems being excluded “if they are in compliance with applicable Clean Water Act requirements.” 90 *Fed. Reg.* at 52535. That statement could be taken to mean that

if a system, with a Clean Water Act discharge permit, experiences a violation of the limits or conditions in its permit, it could lose the “waste treatment systems” exclusion from WOTUS. We do not believe that it was what the Agencies meant, and they should clarify, when adopting the final WOTUS rule, that they merely meant to refer to the requirement that the system is “designed to meet the requirements of the Clean Water Act.” That clarification would eliminate any unintentional confusion regarding the scope of this exclusion.

The second clarification needed in the “waste treatment system” exclusion concerns the phrase “designed to meet the requirements of the Clean Water Act.” This phrase continues to cause confusion, and the Agencies should simply eliminate that language in the exclusion.¹

Third, the Agencies should clarify that the “waste treatment systems” exclusion includes ditches that are constructed for the express purpose of conveying treated wastewater (including stormwater) to a WOTUS. These ditches are essential components of waste treatment systems, and they should be treated as such in any new WOTUS rule².

Finally, the Agencies should confirm that the “waste treatment system” exclusion continues to apply when features are closed, reclaimed or repurposed pursuant to applicable Federal and State requirements. Waste treatment systems that are closed, reclaimed or reused for other waste management purposes should remain excluded, even if their use is different than originally designed (for example, shifted from wastewater settling/storage to stormwater management).

2. Groundwater

In the WOTUS Proposal, the Agencies have included a specific exclusion for “groundwater, including groundwater drained through subsurface drainage systems.” This exclusion is consistent with longstanding agency practice and with caselaw. WWEMA supports this exclusion, but recommends two clarifications. First, the exclusion should apply to “groundwater drained through surface or subsurface drainage systems.” Second, the Agencies should expressly exclude “diffuse or shallow subsurface flow” as groundwater. This would respect the CWA’s legislative intent to exclude such groundwater from federal regulation under the CWA and reflects current, prevailing law holding that the CWA does not cover “diffuse or shallow subsurface flow.”

3. Stormwater Control Features

In the preamble to the WOTUS Proposal, the Agencies note that there has been confusion regarding whether stormwater control features are covered under the waste treatment systems exemption. The preamble indicates that these situations should be considered on a case-specific

¹ Another source of confusion in the exclusion is the phrase “*designed to convey or retain, concentrate, settle, reduce, or remove pollutants...*” (emphasis added). Rather than focusing solely on the design of the system, that phrase should be revised to include consideration of how a system is used, so that it would refer to “*designed or used to convey or retain, concentrate, settle, reduce, or remove pollutants...*”

² Another source of confusion in the exclusion is the phrase “*designed to convey or retain, concentrate, settle, reduce, or remove pollutants...*” (emphasis added). Rather than focusing solely on the design of the system, that phrase should be revised to include consideration of how a system is used, so that it would refer to “*designed or used to convey or retain, concentrate, settle, reduce, or remove pollutants...*”

basis. WWEMA recommends that instead, the Agencies should include in the WOTUS rules a specific exemption for stormwater control features used to convey, treat, infiltrate or store stormwater runoff. (Such an exemption was included in the 2020 rules.) The CWA already regulates discharges from stormwater control features through its point source permitting programs.

4. Conclusion

WWEMA looks forward to continuing to engage with the Agencies as they work to develop a workable, effective and legally appropriate program to implement the definition of WOTUS. Please feel free to call or e-mail if you have any questions, or if you would like any additional information concerning the issues raised in this letter. I can be reached at cternieden@wwema.org or at (703) 444-1777 or (703) 501-7871



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