

Draft HRPDC Comments on “Waters of the US” Proposed Rule

- Purpose built stormwater management facilities should be exempt from this Rule including ponds, green infrastructure intended to treat stormwater, and other structures built to treat stormwater. If stormwater infrastructure is not exempt, then these conveyance and treatment systems may be subject to additional water quality standards (including TMDLs) if they do not meet water quality standards. These practices are intended to protect downstream waters and should not be subject to water quality standards themselves. Even if the agencies do not intend to initially regulate these facilities, they will be forced to do so through CWA citizen suits.
- Streets, gutters, and hand-made ditches should be excluded from the definition of “waters of the US.”
- If final authority regarding CWA jurisdiction for prior converted (PC) cropland remains with the EPA, then how will jurisdictional determinations on PC cropland ditches be handled? Will localities have to get a determination from EPA before approving land conversion activity on these lands?
- It is not appropriate to categorize wetlands, lakes, ponds or impoundments as tributaries; however, it is appropriate to evaluate linear wetland features that contribute flow to a traditional navigable water as “other waters.”
- The current rule is contradictory on which ditches are exempt. One section states that upland ditches are exempt, but another states that all ditches that receive perennial flow are jurisdictional.
- The terms “upland” and “contributing flow” should be defined.
- The definition of floodplain should be rewritten to be consistent with FEMA terms.
- The rule relies too on best professional judgment. Jurisdiction determination will largely depend on what type of Corps regulator is assigned to a project and will likely result in resource demanding case-specific analyses.