



National Association of Flood & Stormwater Management Agencies

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Public Comments for Listening Session for Stormwater, Wastewater Management, & Drinking Water Agencies" "Waters of the United States" – Recodification of Pre-Existing Rules

The National Association of Flood and Stormwater Management Agencies (NAFSMA) is an organization of public agencies whose function is the protection of lives, property and economic activity from the adverse impacts of storm and flood waters.

NAFSMA members are on the front line, protecting their communities and regions from flood hazards that can result in loss of life and property. They are responsible for flood mitigation, floodplain management, emergency activities, stormwater management and water quality protection.

NAFSMA appreciates the opportunity to provide comments on Waters of the United States issues for consideration as part of today's listening session.

NAFSMA requests special attention on how a new Waters of the U.S. definition might affect Clean Water Act §303, §401, and §402. NAFSMA requests the new rule explicitly clarify that Municipal Separate Storm Sewer Systems (MS4) are not Waters of the U.S.

In addition, depending on the definition of Waters of the U.S., jurisdiction may be inaccurately exerted on constructed stormwater management and groundwater recharge facilities.

NAFSMA requests the new rule explicitly exempt: green infrastructure; green stormwater infrastructure (GSI); low impact development (LID); constructed natural (wetlands) treatment systems; bioswales; off-channel groundwater recharge basins, percolation ponds, and spreading grounds; and stormwater capture and management facilities.

Clarification of flood control maintenance exemption

The Clean Water Act §404(f)(1)(b) and §(404)(f)(1)(c) provide exemptions for maintenance activities. However, past EPA and USACE interpretations of §404(f)(2), the so-called "recapture clause" (recapturing the exempted activity back under Clean Water Act regulations) has limited the application and utility of the maintenance exemptions. NAFSMA believes Congress intended to exempt routine maintenance activities and did not intend the §404(f)(2) clause to be so expansively interpreted.

NAFSMA requests the EPA to affirm the maintenance exemptions for flood channels, drainage ditches, and canals; and also clarify the limits of the recapture clause.

In the meantime, please feel free to contact NAFSMA Executive Director Susan Gilson with any questions at sgilson@nafsma.org or 202-289-8625.