

June 5, 2014

Ms. Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

Docket No. EPA-HQ-OW-2013-0820

Subject: Comments on the Interpretive Rule Regarding Applicability of the Exemption from Permitting under section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices.

Administrator McCarthy:

The National Association of State Conservation Agencies (NASCA) represents the State Agency in each state that is responsible for soil and water conservation programs and administrative overview of the State's conservation districts. Along with NRCS, conservation districts, landowners, and agricultural producers, our member agencies are directly responsible for implementing the overwhelming majority of soil and water conservation best management practices on our nation's working lands.

We are grateful for the opportunity to comment on this Interpretive Rule, even though it became effective April 3, 2014, in large part because we understand that this comment period is not mandated by the Administrative Procedures Act. This demonstrates EPA's genuine desire to gather as much stakeholder input as possible in moving forward with the implementation of this rule. We also applaud the joint effort of the three federal agencies (EPA, USACE, and NRCS) that worked on the language of this rule. Conservation practitioners at the local level have often been frustrated by a lack of coordination among federal agencies. It is refreshing to see these three agencies work so closely together in this effort.

NASCA believes we can best protect our nation's natural resources through voluntary, incentive-based conservation programs and practices made available to owners and operators of our working lands. Nonetheless, there are times when laws, rules, and regulations must apply as well. In those cases, clear, concise, comprehensive language is critical so that no uncertainties exist in the minds of practitioners. We are appreciative of EPA's attempt to more clearly define the "Waters of the U.S." and the conservation practice exemptions identified in this Interpretive Rule. Our comments that follow are intended to help your agency do that more clearly.



The Interpretive Rule exempts "upland soil and water conservation practices". However, it does not clearly identify where uplands end and waters of the U.S. begin. Is this demarcation literally at the edge of the surface water conveyance? The rule should be clear on this point.

The rule also identifies a specific list of NRCS conservation practices that are exempted in waters of the U.S. While NASCA is appreciative of the multi-agency effort that went into the identification of these practices, we are also concerned that this list is far too limiting. There are a number of conservation practices used at the State, local, or on-farm level that are every bit as effective at yielding positive water quality benefits as the practices identified in the rule, yet the current language offers no exemption for these practices. In many instances conservation innovation begins on the farm, and we will ultimately penalize the integrity of our natural resources if landowners and agricultural producers have to wait for federal agency endorsement to implement these innovative conservation practices. NASCA believes that any conservation practice that can demonstrate an actual or potential improvement in water quality should be exempt from permitting requirements under Section 404(f)(1)(A). Failure to do so will hamper conservation efforts in many parts of our country and ultimately thwart water quality improvement on a broad scale.

The Interpretive Rule makes reference in several places to exemptions in "established" farming, silvicultural, or ranching operations. Certainly there are many instances where a land use change to farming, silvicultural, or ranching is an improvement from an environmental perspective. Land conversions of this type should be eligible for the same permitting exemptions as "established" operations.

While the Interpretive Rule provides a listing of some exempt practices, it implies exemptions for others. Clearer language pertaining to existing and potential permit exemptions would be advantageous for landowners, agricultural operators, conservation professionals, and regulators.

Thank you for this opportunity to provide comment on the Interpretive Rule Regarding Applicability of the Exemption from Permitting under section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices. It is NASCA's hope that these comments will help the EPA further develop language that will benefit all parties who have an interest in implementing conservation practices and the cleaner surface waters these practices provide.

Sincerely,



Mike Thralls
NASCA President

