



The Waters Advocacy Coalition (“WAC”) is a broad coalition of associations representing the nation’s construction, manufacturing, housing, real estate, mining, agricultural, and energy sectors. Our members are the economic engine in the United States: we are the job creators. We are writing to express our strong support for S. 2245, “Preserve the Waters of the U.S. Act.”

S. 2245 is very straight forward. It would prevent the Environmental Protection Agency (EPA) and the Corps of Engineers (Corps) from issuing their “Final Guidance on Identifying Waters Protected by the Clean Water Act” (Final Guidance) or using it as a substantial basis for any rule.

We urge your immediate support for S. 2245. The Final Guidance in effect eliminates the term “navigable” from the Clean Water Act (CWA) and improperly increases the scope of federal jurisdiction under the Act. The Guidance also ignores the fundamental premise in the CWA that there are waters subject to the exclusive regulatory jurisdiction of the states. The Final Guidance is overly broad and expands federal jurisdiction well beyond the intent of Congress and the limitations recognized in recent Supreme Court decisions.

Additionally, while we would not support this policy if it were proposed through a rule-making, we firmly believe that it is especially inappropriate for the EPA and the Corps to implement such a significant change to the CWA under the auspices of a guidance document. The process undertaken by EPA and the Corps has allowed for none of the safeguards built into the Administrative Procedures Act, as it fails to:

- Consider the full costs of implementing the Guidance. EPA’s economic analysis was limited to costs associated with section 404 of the CWA. The Final Guidance, however, applies to all CWA programs, including sections 303, 311, 401, 402, and 404. By only looking at the implementation costs in the context of section 404, therefore, EPA significantly underestimated the actual total cost of the Guidance.
- Undertake mandatory steps to ensure that the agencies adopt the least burdensome alternative for small business under requirements of the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA).

We ask that you support S. 2245. EPA and the Corps should not be allowed to use guidance to implement the largest expansion of CWA authority since the CWA was enacted. Only Congress has the authority to make such a sweeping change to the CWA.

Sincerely,

American Farm Bureau Federation®
American Forest & Paper Association

American Petroleum Institute
American Road and Transportation Builders Association
Associated General Contractors of America
CropLife America
Edison Electric Institute
Florida Sugar Cane League
Foundation for Environmental and Economic Progress
Industrial Minerals Association – North America
International Council of Shopping Centers
Irrigation Association
National Association of Home Builders
National Association of Manufacturers
National Association of State Departments of Agriculture
National Association of REALTORS®
National Cattlemen's Beef Association
National Council of Farmer Cooperatives
National Milk Producers Federation
National Mining Association
National Multi Housing Council
National Pork Producers Council
National Stone, Sand and Gravel Association
Public Lands Council
Responsible Industry for a Sound Environment
Southern Crop Production Association
The Fertilizer Institute
United Egg Producers
Western Business Roundtable