

From: Thomas Bisacquino [<mailto:president@naiop.mmsend.com>] **On Behalf Of** Thomas Bisacquino
Sent: Monday, June 01, 2015 3:35 PM
To: Rolband, Mike
Subject: Waters of the United States Ruling Update

Dear Mike,

The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers have just released their [final rule](#) for defining "Waters of the United States." The long anticipated rule outlines what waters around the country are federally protected under the Clean Water Act. Permits from the Army Corps of Engineers would be required for all for all dredge and fill activities related to construction in these areas.

While we oppose the regulation, NAIOP proactively negotiated with EPA to mitigate the potential impact of this rule and filed [official comments](#) that outline our position. As a direct result, the Agencies have codified several safeguards, or exemptions, in the rule that are positive for our industry, including:

- Ditches that do not flow year round and are not created in a wetland, drain a wetland or relocate a tributary of a navigable water.
- Settling basins used during construction activities.
- Erosional features that do not have a bed, bank and ordinary high water mark.
- Stormwater control features (constructed to convey, treat or store stormwater) that are created in dry land.
- Low impact development features, such as rain gardens.

While these exemptions go a long way to safeguard our members' interests, NAIOP is largely opposed the final rule as it largely expands the EPA's jurisdiction. EPA's own economic analysis says the rule will expand authority by nearly 3 percent – that's an increase of 1,500+ acres where permitting will now be required. After careful analysis of the rule, we believe that the impacts will be much greater.

Efforts in Congress are already at work to curtail EPA's authority under this rule. The House of Representatives passed the Regulatory Integrity Protection Act, H.R. 1732, which would force the Agencies to withdraw the final rule, and similar legislation has been introduced in the Senate. The Obama Administration is likely to veto any legislation restricting EPA's authority and has vowed to defend the rule vigorously. If Congress' efforts fail, the changes that we've been successful in negotiating will be instrumental in protecting our members' interests.

As always, I will keep our members informed of important updates as they occur.

Best regards,

Thomas J. Bisacquino
President and CEO | NAIOP
(703) 904-7100 | www.naiop.org
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