May 20, 2015

The Honorable James Inhofe
Chairman, Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

The Honorable Barbara Boxer
Ranking Member, Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Chairman Inhofe and Ranking Member Boxer:

The American Chemistry Council (ACC) supports S. 1140, the Federal Water Quality Protection Act, and encourages the Senate to approve the bill. We applaud the efforts of its cosponsors, Senators Barrasso and Donnelly, and are committed to working with them to secure its approval.

ACC represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people’s lives better, healthier and safer. The business of chemistry is an $812 billion enterprise and a key element of the nation's economy. It is the nation’s largest exporter, accounting for twelve percent of all U.S. exports.

As proposed, the rulemaking by the U.S. Environmental Protection Agency (“EPA”) and the U.S. Army Corps of Engineers (“Corps”) to define their jurisdiction under the Clean Water Act (“waters of the U.S.” rulemaking) would vastly expand these agencies’ authority over a number of water systems that, for a variety of geographic and structural reasons, have been considered non-jurisdictional and should remain as such. Aside from yielding little to no environmental benefit, a jurisdictional determination for these systems would trigger a host of regulatory compliance requirements that must be justified with robust environmental and scientific considerations. Unfortunately, the “waters of the U.S.” proposal fails that test.

Many of our industry’s facilities rely on the use of systems like cooling water canals, firewater ponds, stormwater retention ponds, barge canals, and manmade ditches as part of their plants’ internal infrastructure. Often, these systems lack any connection to navigable waters and should remain non-jurisdictional. Re-classifying them as “waters of the U.S.” would impose a multitude of burdensome and unnecessary compliance requirements on these facilities, including expensive...
and time-consuming re-permitting periods, potentially leading to substantial modification (in some cases complete shutdown) of efficient management practices currently in use.

The Federal Water Quality Protection Act (S. 1140) represents an important step forward in remedying many of the most serious concerns present in the “waters of the U.S.” rulemaking. The legislation provides the agencies much-needed technical guidance in determining which streams and wetlands should – or should not – be designated “waters of the U.S.”

S. 1140 helps reduce ambiguity and clarify the rulemaking by creating definitive – although non-exhaustive – lists of what should and should not be considered “waters of the U.S.” for jurisdiction purposes. The bill would ensure that the agencies’ jurisdiction is properly established by covering only those connections between waterways that can be scientifically justified; that is, those connections that are quantifiable and statistically valid for each geographic area. The bill also provides a pathway for the agencies to improve collaboration with states and local governments in order to enhance clarity and certainty in the rulemaking. With 37 states having voiced some degree of opposition during the notice-and-comment period, the collaboration requirement would give EPA an opportunity to more fully address serious concerns and make significant changes to the rule where needed.

Any clarification of CWA jurisdiction should be supported by a sound scientific basis and adequate consideration of concerns from all those affected, including states and stakeholder groups. Since the current “waters of the U.S.” rulemaking falls well short of those goals, it should be revised accordingly before EPA moves forward.

ACC strongly urges you to vote “yes” on S. 1140, the Federal Water Quality Protection Act.

Sincerely,

Cal Dooley