

Department of Defense
Department of the Army
Corps of Engineers
Washington, D.C.

U.S. Environmental Protection Agency
Washington, D.C.

October 9, 2026

Re: Docket ID No. EPA-HQ-OW-2025-0322
Updated Definition of “Waters of the U.S.”

Dear EPA and Army Officials:

The Carolina Wetlands Association appreciates the opportunity to provide comments on the September 4, 2026, proposed rulemaking, “Updated Definition of Waters of the United States,” by the Department of the Army Corps of Engineers and the U.S. Environmental Protection Agency. Our Association’s mission is to promote the restoration and enjoyment of North and South Carolina’s wetlands and associated ecosystems through science-based programs, education and advocacy.

The bedrock of the regulations should be the goal of the Federal Water Pollution Control Act (Clean Water Act) to restore and maintain the chemical, physical and biological integrity of waters of the United States. If finalized, this proposal would severely undermine this goal.

The proposal relies upon the number of days water is present in a typical year to determine jurisdiction. This approach is flawed because it correlates poorly with the potential for a waterway to carry pollutants downstream, including to those major streams, rivers, wetlands, lakes, impoundments and estuaries that would remain regulated. Massive amounts of unregulated pollution could be discharged into streams that are dry for as few as 30 days a year. Polluters would be incentivized to discharge into those streams instead of waters that remain protected.

Drinking water supplies would be at risk. Approximately 56% of North Carolina’s total stream miles that feed public drinking water systems are intermittent, ephemeral, or headwater streams. In South Carolina that figure is 51%. These systems provide drinking water for 6.6 million people (National Hydrography Dataset, Federal Safe Drinking Water Information System, 2006). The public would bear the increased health risks and treatment costs that would result.

Also contributing to water quality problems would be the massive reduction in wetland areas that are regulated by this proposal. Wetlands sequester and transform pollutants, including nutrients that cause algal blooms, dead zones and fish kills in downstream waters. The loss of the water purification function of wetlands would also increase pollution in drinking water from underground aquifers, which is often consumed without any treatment.

The proposal is based upon a contorted interpretation of the Supreme Court's language describing jurisdictional waters as "relatively permanent, standing or continuously flowing bodies of water forming geographic[al] features that are described in ordinary parlance as streams, oceans, rivers, and lakes." The conjunctive "or" in this statement means that each of these three terms stands independently. As one factor, "relatively permanent" relates to the term "geographical features," for example, streams having defined beds and banks are jurisdictional. The modifier "continuously" governs the word "flowing," and has nothing to do with the term "relatively permanent;" therefore, the rationale for this proposal is fundamentally flawed.

Given that many of the streams affected do not have hydrological data available to reliably determine the number of days lacking the presence of surface water during the year, this proposal would be administratively difficult to implement. It would also confound landowners' capability to determine whether or not the Clean Water Act applies to the waters on their properties.

Lastly, it would be irresponsible to finalize this proposal without first analyzing and reporting the increase in pollutant loadings that would result from discharges into waters no longer jurisdictional that flow to receiving waters, especially those that supply water to communities. The agencies must also project degradation in the uses of both non-regulated waters and those downstream, including streams and impoundments that would remain jurisdictional.

Many of our comments submitted on the January 26, 2026 proposal remain relevant and we reiterate them in the context of this even more environmentally-damaging proposal.

Respectfully Submitted,

Rick Savage, Executive Director