

January 5, 2026

The Honorable Lee Zeldin  
Administrator, U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code 1101A  
Washington, D.C. 20460

**RE: Updated Definition of “Waters of the United States,” Docket ID No. EPA-HQ-OW-2025-0322**

Dear Administrator Zeldin:

The Agricultural Retailers Association (ARA) appreciates the opportunity to comment on the U.S. Environmental Protection Agency’s (EPA) and the Army Corps of Engineers’ proposed update to the definition of ‘Waters of the United States’ (WOTUS) under the Clean Water Act (CWA). ARA represents agricultural retailers and distributors nationwide who provide essential products and services to America’s farmers and ranchers. Our members are committed to environmental stewardship and regulatory compliance and rely on clear, durable, and practical rules to operate effectively.

**Comments**

ARA strongly supports the proposed WOTUS rule as a practical, legally sound response to the Supreme Court’s *Sackett v. EPA* decision. The proposal moves federal jurisdiction toward plain-English, objective criteria that landowners and regulators can apply without guesswork—exactly the kind of predictability and consistency the agricultural community has sought for years.

- **Clear, workable definitions rooted in ‘ordinary parlance’**—The proposal’s emphasis on ‘relatively permanent waters’ and a ‘continuous surface connection’ for wetlands reflects *Sackett* and avoids sweeping seasonal or intermittent features into federal control.
- **Practical exclusions for agricultural features**—ARA supports the proposal’s reaffirmed exclusions for ditches constructed in dry land and prior converted cropland, along with explicit exclusions for groundwater and waste treatment systems.
- **Predictability that reduces legal risk and compliance burden**—The proposal enables landowners and agricultural professionals to make preliminary jurisdictional determinations without hiring attorneys or consultants, limiting costs and uncertainty.

- **Respect for federal–state balance**—By clarifying the narrow scope of federal jurisdiction and preserving states’ primary authority over land and water management, the proposal supports cooperative federalism and a stable regulatory framework.

**ARA supports EPA taking the following steps –**

- Finalize objective, plain-English criteria that reflect Sackett and ‘ordinary parlance,’ limiting jurisdiction to conventional waterbodies with continuous or year-round flow.
- Retain and clearly explain exclusions for ditches in dry land, prior converted cropland, groundwater, and waste treatment systems.
- Define ‘continuous surface connection’ to require an unbroken aquatic connection; wetlands separated from covered waters by natural or artificial barriers should be categorically excluded.
- Keep the rule durable—avoid case-by-case tests that can shift with guidance or litigation; prioritize bright-line definitions that landowners and regulators can apply consistently.

**Need for Regulatory Clarity and Consistency for the National Pollution Discharge Elimination System (NPDES) Stormwater Discharge Exemption and Pesticide General Permits for Agricultural Retail-Distribution Facilities and Commercial Applicators**

The regulatory status of agricultural retail facilities under NPDES stormwater is clear and long-standing. EPA has consistently recognized that agricultural retailers—SIC code 5191 (Farm Supplies Merchant Wholesalers)—are not subject to NPDES stormwater permitting when engaged in wholesale distribution and incidental or small-scale mixing/blending of fertilizers and crop protection products. This is documented in EPA’s October 3, 1991, clarification letter, which states that such facilities ‘would not be required to submit NPDES storm water discharge permit applications.’ The current codes for the industry, which is now the North American Industry Classification (NAICS) are 444240 (Farm Supply Retailers) and 424910 (Farm Supplies Merchant Wholesalers).

ARA respectfully requests that EPA update its regulations and guidance to clearly reaffirm and codify the long-standing exemption for agricultural retailers and distributors. While this exemption has been consistently recognized in policy and past correspondence, formal regulatory clarification would provide durable certainty for regulated entities and state programs. Specifically, EPA should ensure that its rules explicitly state that agricultural retail facilities classified under SIC code 5191, engaged in wholesale distribution and incidental or small-scale mixing and blending of fertilizers and crop protection products, remain exempt from NPDES stormwater permitting requirements. This clarification will help prevent misinterpretation at the

state level and avoid unnecessary compliance burdens, while maintaining environmental protections already in place through containment and best management practices.

ARA has also previously expressed concerns that the NPDES Pesticide General Permit (PGP) is duplicative of FIFRA oversight, adds paperwork without environmental benefit, and creates legal uncertainty for applicators operating under FIFRA-approved labels. EPA's own PGP materials reinforce critical exemptions and boundaries: Agricultural return flows and agricultural stormwater runoff do not require NPDES permits; the PGP does not apply to stormwater discharges not currently requiring an NPDES permit under CWA §402(p) or to diffuse nonpoint runoff. Compliance with FIFRA labels satisfies technology-based effluent limitations under NPDES.

ARA further requests that EPA update its regulations to eliminate the duplicative and unnecessary requirement for NPDES Pesticide General Permits (PGP) for pesticide applications approved under FIFRA. The current PGP requirement provides no additional environmental protection beyond what is already achieved through pesticide labeling and FIFRA oversight, yet imposes significant regulatory burdens on agricultural retailers, custom applicators, and public health programs.

ARA supports the intent of bipartisan legislation sponsored by Rep. David Rouzer (H.R. 3824), which would amend FIFRA and the Clean Water Act to prohibit EPA or states from requiring an NPDES permit for point source pesticide discharges into navigable waters when those discharges are approved under FIFRA. This approach reflects broad congressional support and recognizes that FIFRA's science-based regulatory framework is sufficient to protect water quality and public health.

We urge EPA to align its regulations with this legislative intent, providing regulatory clarity and relief for agricultural retailers and applicators, while maintaining robust environmental protections through FIFRA and state pesticide programs.

## **Conclusion**

ARA commends EPA and the Army Corps for proposing a common-sense, Sackett-consistent WOTUS rule that delivers clarity and reduces unnecessary burdens on agriculture while safeguarding navigable waters. The rule's clear definitions, practical exclusions, and alignment with Supreme Court guidance will help ensure that federal jurisdiction is limited to conventional waterbodies, while protecting routine agricultural activities from unnecessary regulation.

By maintaining established exemptions for agricultural stormwater and pesticide applications, and respecting the balance between federal and state authority, EPA can deliver the common-sense approach that the agricultural community has long advocated. Clear bright-line definitions reduce administrative burdens on EPA staff and state partners by minimizing discretionary

determinations, lowering the volume of jurisdictional disputes, and reducing the likelihood of litigation-driven reinterpretations.

ARA urges EPA and the Corps to finalize this rule as proposed and incorporate the necessary NPDES clarifications identified in our comments. Doing so will establish the durable, legally sound framework necessary to protect navigable waters while allowing agriculture to operate with confidence and consistency.

Sincerely

A handwritten signature in blue ink that reads "Richard D. Gupton". The signature is written in a cursive, flowing style.

Richard D. Gupton  
Senior Vice President, Public Policy & Counsel