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October 9, 2026

EPA Docket Center
WJC West Building, Room 3334
1301 Constitution Avenue NW
Washington, DC 20004

Re: Re: Supplemental Comments of the National Association of Manufacturers; Updated Definition of "Waters of the United States"; Docket No. EPA-HQ-OW-2025-0322

Dear Assistant Administrator Kramer and Assistant Secretary Telle:

The National Association of Manufacturers ("NAM") respectfully submits these additional comments on the U.S. Environmental Protection Agency's ("EPA") and U.S. Army Corps of Engineers' ("USACE") (together, "the Agencies") supplemental notice of proposed rulemaking ("SNPRM"), Updated Definition of "Waters of the United States."

The NAM is the largest manufacturing association in the United States, representing manufacturers in every industrial sector and in all 50 states. Manufacturing contributes $3.2 trillion to the U.S. economy annually. The NAM works on behalf of the more than 13 million people who make things in America by advocating for policies that strengthen manufacturing competitiveness, innovation, and economic growth.

On January 5, 2026, the NAM submitted comments on the Agencies' November 2025 proposed rule, supporting efforts to provide greater certainty and predictability regarding the scope of federal jurisdiction under the Clean Water Act ("CWA") consistent with the Supreme Court's decision in *Sackett v. EPA* ("*Sackett*"). In those comments, the NAM encouraged the Agencies to establish clear, workable definitions of "relatively permanent" and "continuous surface connection" and raised concerns regarding reliance on the concept of a "wet season."

The NAM appreciates the Agencies' consideration of stakeholder feedback and the opportunity to comment on the clarified definitions proposed in this SNPRM. The SNPRM addresses several issues raised in the NAM's January comments, particularly through the Agencies' consideration of a perennial-based standard in place of the previously proposed "wet season" approach. The NAM supports efforts to establish objective bright-line tests that provide greater certainty to regulated entities while adhering closely to the precedent established in *Sackett*.

I. Definition of "Relatively Permanent"

In the January comments, the NAM supported the Agencies' efforts to clarify the meaning of "relatively permanent," including confirmation that waters flowing or standing only in direct response to discrete precipitation events are not jurisdictional under the CWA.[1] At the same time, the NAM encouraged the Agencies to remove the concept of "wet season," which could introduce uncertainty given the significant variation in hydrology and climate across the country.

[1] NAM January 2026 comment letter responding to November 2025 proposed rule *Updated Definition of "Waters of the United States",* Comment ID #EPA-HQ-OW-2025-0322-0502, *available at* https://www.regulations.gov/comment/EPA-HQ-OW-2025-0322-0502.

The NAM therefore supports the Agencies' consideration of defining "relatively permanent" based on perennial waters rather than the previously proposed "wet season" approach. A standard grounded in observable, objective hydrologic conditions provides a clearer basis for jurisdictional determinations and is more straightforward for regulators to implement.

The NAM also supports the Agencies' recognition that otherwise perennial waters should not necessarily lose their status because of temporary interruptions caused by anomalous events or a limited non-anomalous interruption. The proposed allowance for a single interruption of up to 30 consecutive days provides a defined standard while recognizing that naturally occurring conditions can temporarily affect otherwise perennial waters.

Implementation of this standard, however, should not depend upon regulated parties possessing continuous daily monitoring data. Requiring such monitoring would undermine the predictability and administrability this approach is intended to provide. The NAM therefore encourages the Agencies to clarify that regulated parties may demonstrate whether the relevant conditions exist through a weight-of-evidence approach using available and reliable information, including aerial imagery, gauge data, precipitation records, field observations and appropriate hydrologic analyses. Avoiding an overly prescriptive requirement for continuous daily monitoring will provide regulated parties and regulators with clear methods for demonstrating whether a water satisfies the relatively permanent standard.

II. Definition and Implementation of "Perennial"

The NAM supports the proposed definition for "perennial" to mean "having standing or continuously flowing water every day of the year during ordinary conditions." The definition is more straightforward to implement than the "wet season" concept.

In January comments, the NAM expressed concern that a "wet season" standard could be difficult to apply consistently across the wide range of hydrological circumstances found throughout the United States. Manufacturing operations in the arid West, for example, may encounter hydrology driven by snowpack accumulation and subsequent snowmelt, while other regions experience substantially different precipitation patterns. A perennial standard provides a clearer and more objective starting point for jurisdictional determinations.

Additionally, the NAM supports the use of a definition for "perennial" which accounts for circumstances in which extraordinary events temporarily alter otherwise typical hydrological conditions. While the 2020 Navigable Waters Protection Rule appropriately defined "perennial" as having "surface water flowing continuously year-round," this definition does not adequately cover extraordinary circumstances. The NAM supports the Agencies' use of "ordinary conditions" to account for these circumstances alter otherwise typical hydrological conditions. While the NAM supports the overall approach, additional guidance regarding the meaning and application of "ordinary conditions," "anomalous event" and "dry spell," would improve predictability for both regulators and the regulated community. Specifically, the Agencies should clarify how they will evaluate the beginning, duration, and conclusion of any 30-day interruption and what evidence may be used to make those determinations. As noted above, regulated parties should be able to rely on a reasonable weight-of-evidence rather than continuous daily monitoring.

These tools and methodologies used for evaluation should also account for the diverse hydrological conditions across the country. The NAM continues to encourage appropriate interagency coordination and the use of multiple reliable data sources to ensure that these definitions can be applied consistently across regions.

III. Definition of "Continuous Surface Connection"

The NAM supports the direction of the Agencies' supplemental option for defining "continuous surface connection." In January comments, the NAM emphasized that *Sackett* requires more than simple geographic proximity or contact between a wetland and a jurisdictional water. The NAM recommended that the Agencies' definition reflect the requirement that the wetland be "indistinguishable from the jurisdictional water."

Under the Agencies' proposed approach, "continuous surface connection" would require perennial surface water in a wetland to be continuously connected with surface water in a jurisdictional water such that it is difficult to determine where the jurisdictional water ends and the wetland begins. This approach demonstrates the bright-line test detailed in Sackett and addresses the concern raised in the NAM's January comments that indistinguishability must remain central to determining jurisdiction. Geographic abutment should not be sufficient to establish federal jurisdiction where demarcation remains between a wetland and a jurisdictional water.

Relatedly, the NAM also supports applying the perennial concept consistently within the continuous surface connection analysis, including recognition that temporary interruptions caused by anomalous or limited non-anomalous events do not necessarily remove a qualifying connection. As with the definitions of "relatively permanent" and "perennial," implementation should not require continuous daily monitoring. The Agencies should permit the use of appropriate remote and field-based evidence, as well as other reliable information to demonstrate whether the required conditions exist.

A clear, observable standard for continuous surface connection will help those subject to regulation make assessments with greater confidence and reduce case-by-case uncertainty.

IV. Regulatory Clarity and Implementation

As noted in the January submission, the NAM has called for a durable definition of WOTUS for nearly two decades. It is essential that this definition provides the certainty and predictability manufacturers need to plan and invest in projects over significant periods of time. Frequent changes to the scope of CWA jurisdiction have complicated decisions involving new and expanded manufacturing facilities, infrastructure, energy projects, and other investments across the country, and this will continue to be an issue for manufacturers unless a workable definition is in place.

The supplemental options presented by the Agencies provide an opportunity to establish clearer jurisdictional boundaries based on observable physical conditions and objective standards. The NAM supports the Agencies' consideration of a perennial standard in place of the uncertain "wet season" concept and a continuous surface connection definition that preserves Sackett's requirement that jurisdictional wetlands be indistinguishable from jurisdictional waters.

As the Agencies move toward a final rule, the NAM encourages them to provide sufficient implementation guidance to ensure these standards can be applied consistently and predictably. In particular, the final framework should allow regulated parties to rely on a reasonable weight-of-evidence rather than continuous monitoring; provide clear guidance regarding "ordinary conditions," "anomalous events," "dry spells," and application of the 30-day interruption period; and preserve indistinguishability as a central component of the continuous surface connection analysis.

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The NAM appreciates the Agencies' consideration of these supplemental comments and their continued engagement with manufacturers throughout this rulemaking. Manufacturers support a durable and predictable WOTUS framework that provides clear notice of the limits of federal

jurisdiction, facilitates efficient permitting, and reflects the appropriate balance between federal and state authority contemplated by the Clean Water Act and reaffirmed by the Supreme Court.

Sincerely,



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