



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333-0017

JOHN ELIAS BALDACCI
GOVERNOR

DAWN R. GALLAGHER
COMMISSIONER

April 16, 2003

Water Docket Staff
Water Docket Mail Code 4101T
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Docket ID No. OW-2002-0050
COMMENT ON ADVANCED NOTICE OF PROPOSED RULEMAKING
ON DEFINITION OF "WATERS OF THE UNITED STATES"

Dear U.S. Environmental Protection Agency:

On behalf of the Maine Department of Environmental Protection, Bureau of Land and Water Quality, the state agency responsible for administering the Clean Water Act in Maine, I write to comment on the January 10, 2003, "Advance Notice of Proposed Rulemaking On Definition Of 'Waters Of The United States' " (ANPRM). I would like to start by expressing my full support for the comments submitted by the New England Interstate Water Pollution Control Commission (NEIWPC) of which Maine is a member and of which I am currently the Executive Committee Chair.

In Maine we recognize the value of the smaller wetlands and streams that may be put at risk by the proposed rulemaking. In many cases our state laws give protection to these resources, but our state protections are only part of a coordinated system of state and federal programs, such as the Section 404 wetlands permitting program administered by the US Army Corps of Engineers. We are very concerned about the potential impact of the proposed rulemaking on this system of controls, and the valuable working relationships among state and federal agencies that we have developed under these programs. Adopting a narrow definition of "Waters of the United States" may cripple our federal partners in their ability to protect even the larger resources which would still retain protection under a narrower definition. In these perilous economic times our state agencies do not have the economic or staff resources to shoulder additional responsibility in this area. In fact, as specifically noted in the NEIWPC comments, our state staff available to deal with wetlands issues is shrinking.

To achieve the Objective of the CWA: "...to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," it is essential to protect headwater streams and associated wetlands along with the larger navigable waters. The isolated wetlands and headwater streams that may be put at greater risk under a narrow definition of "Waters of the United States" in many cases have great ecological value in and of themselves, and their protection provides valuable water quality benefits to larger, navigable resources downstream. Much of the progress we have made through water quality protection efforts such as the NPDES permitting program and the Section 319 Non-point Source Grant Program could be put at risk should federal protection of these resources be reduced. Furthermore, the competitive disadvantage this may impose on Maine with respect to other states might lead to pressures to roll-back our own protections.

It is also important to note that we here in Maine are concerned about the impacts to all of our surface waters from deposition of airborne pollutants which result from interstate commerce activities. We are particularly concerned about mercury deposition, which impacts surface waters throughout Maine. The more we understand these issues the more we realize that even small isolated resources can be impacted by interstate pressures, and we think it is critically important that the federal agencies retain broad jurisdiction to respond to these and other future issues that may arise.

We urge you to abandon the proposed rulemaking and avoid any further narrowing of the definition of Waters of the United States beyond the very specific facts of the SWANCC decision. The result could be a serious erosion of thirty years of progress under the Clean Water Act (CWA) in protecting some of our most vital resources. Should the rulemaking go forward we would look forward to providing more specific comments as the proposal is further defined.

Should you have any questions, please contact Mark Margerum in my office, at mark.t.margerum@maine.gov or (207) 287-7842.

Sincerely,

David Van Wie, Director
Bureau of Land and Water Quality