

June 18, 2014

The Honorable Glenn Thompson, Chairman
House Committee on Agriculture
Subcommittee on Conservation, Energy and Forestry
1301 Longworth House Office Building
Washington, DC 20515

The Honorable Timothy J. Walz, Ranking Member
House Committee on Agriculture
Subcommittee on Conservation, Energy and Forestry
1301 Longworth House Office Building
Washington, DC 20515

Dear Chairman Thompson and Ranking Member Walz:

The undersigned organizations commend you for holding a hearing on the recently issued Interpretive Rule governing the treatment of farming, ranching and silvicultural exemptions from Section 404 (dredge and fill) permitting under the Clean Water Act. We would also like to offer these observations as you prepare for this hearing. After a careful evaluation of the legal and practical challenges posed by this rule, we have reached the conclusion that all interests would be best served if the rule is withdrawn. Moreover, when withdrawing the rule, it is critical that the Administration make it unequivocally clear that a producer does not need to conform to a USDA Natural Resources Conservation Service (NRCS) conservation practice standard to qualify for the normal farming, ranching or silvicultural exemptions. This step would assure that the system that has been in place for nearly forty years will remain in effect.

We have reached this conclusion for a number of reasons:

1. An "Interpretive Rule" is supposed to be guidance and not have the force of law. Yet the scope and effect of this rule are so broad and substantial that they constitute policy making that should only have been carried out through formal notice and comment rulemaking;
2. The rule encompasses activities that are an ordinary part of a normal, ongoing farming, ranching or silvicultural operation; these activities should be absolutely lawful for producers to use without a CWA Section 404 permit even when used for reasons not related to conservation and water quality goals;
3. The rule exposes farmers and ranchers to Clean Water Act citizen suits challenging whether any of the rule's covered activities conform with the applicable NRCS conservation practice standard;
4. NRCS conservation practice standards are highly detailed and contain extensive mandatory language that cross references other standards. Not only are these impractical for this regulatory use, they also create immense possibilities for violations that lead directly to legal liabilities that could cost \$37,500 per violation per day.

5. The rule will force producers, to protect themselves against liability for considerable Clean Water Act penalties, to conduct these practices under some form of NRCS supervision or accountability and with a complete and accurate documentary record that could withstand a serious legal challenge;
6. The rule creates the logical policy presumption that any other normal, exempt activity must be conducted in conformance with an NRCS practice standard; and
7. The rule will cause considerable friction between farmers and NRCS field personnel, given the new and unwelcome mandatory regulatory role that NRCS would have in overseeing these regulatory requirements.

As a result of all these concerns we urge that the rule be withdrawn and that it be made absolutely clear that as normal farming, ranching and silvicultural activities these actions qualify for the Section 404 exemption even when not carried out in conformance with an NRCS practice standard.

Sincerely,

Agri-Mark, Inc.	National Milk Producers Federation
Agricultural Retailers Association	National Pork Producers Council
American Farm Bureau Federation	National Turkey Federation
American Horse Council	Northeast Dairy Farmers Cooperatives
American Meat Institute	Public Lands Council
American Sugarbeet Growers Association	South East Dairy Farmers Association
American Sugar Cane League	Southeastern Lumber Manufacturers Association
Crop Life America	St. Albans Cooperative Creamery
Dairy Producers of New Mexico	The Fertilizer Institute
Delaware/Maryland Agribusiness Association	United Egg Producers
Idaho Dairymen's Association	Upstate Niagara Cooperative, Inc.
Mid-America Croplife Association	U.S. Beet Sugar Association
Missouri Agribusiness Association	U .S. Cattlemen's Association
National Association of Forest Owners	U .S. Poultry and Egg Association
Missouri Dairy Association	Virginia Agribusiness Council
National Cattlemen's Beef Association	Virginia Poultry Federation
National Chicken Council	Western United Dairyman
National Corn Growers Association	Wyoming Ag-Business Association
National Cotton Council	Wyoming Crop Improvement Association
National Council of Farmer Cooperatives	Wyoming Wheat Growers Association