



The Ground Water Protection Council
13308 N. MacArthur Blvd.
Oklahoma City, OK 73142

Tel: (405) 516-4972
Fax: (405) 516-4973
www.gwpc.org

Dedicated to protecting our nation's ground water

To: USEPA

Re: Comments on USEPA's Draft Guidance on Identifying Waters Protected by the Clean Water Act

Date: Tuesday, June 28, 2011

Ground Water Protection Council (GWPC) thanks the US Environmental Protection Agency (USEPA) and the US Corps of Engineers for the opportunity to provide comments on the scope of jurisdiction as outlined in the *Draft Guidance on Identifying Waters Protected by the Clean Water Act*, published in the *Federal Register* on May 2, 2011. We have also signed onto a joint letter from agencies and organizations that collectively support water resource protection and management interests of the states.

About GWPC – Chartered by the states in 1983, GWPC is a nonprofit (501(c)(6)) organization whose members consist of state ground water and underground injection control (UIC) regulatory agencies that come together to mutually work toward the protection of the nation's ground water supplies. GWPC's purpose is to promote and ensure the use of best practices and fair but effective laws regarding comprehensive ground water protection. GWPC is the only national association whose members regulate underground injection wells. Our members include state environmental protection, UIC, source water, ground water, and oil and gas regulatory agencies. The GWPC Board of Directors is made up of 20 senior state program directors elected by their peers from each of the 10 USEPA regions. Members of the Board of Directors include the highest ranking non-elected / non-appointed senior program managers over ground water, source water, and/or UIC programs.

These following comments are specific to the concerns of the GWPC membership.

1. Providing an interpretation of waters of the United States through draft guidance is a good interim measure to clarify the scope of jurisdiction under the Clean Water Act. The GWPC encourages the USEPA to go through the rulemaking process to allow for full implementation of the guidance. However, we feel that rulemaking should not be based only on the comments received on the draft guidance, but also on the experiences of the states. We would like to emphasize that many states administer their own programs to protect the quality of water within their boundaries, including the protection of groundwater. State experiences with regional conditions and protection of their water resources should be consulted as the draft guidance is turned into rules and final guidance.
2. Because of the importance of groundwater - surface water interaction in basin flow regimes, the GWPC would like to see further clarification and guidance provided to agency staff on the language found in the third full paragraph on page 3 which states:

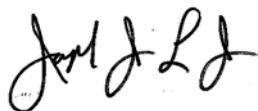
"However, while there is only one CWA definition of "waters in the United States," there may be other statutory factors that define the reach of a particular CWA program or provision."

We would like to make sure that the guidance and/or rules include an expanded acknowledgement that state groundwater-related projects are eligible for funding under §319 Nonpoint Source Management Programs, §106 Grants for Pollution Control Program, and §305 Water Quality Inventory grants to states. Specific language in the guidance to USEPA staff should acknowledge that the general CWA definition for water of the United States does not preclude the funding of groundwater-related activities under these sections.

3. The GWPC would like to be sure that the clarified guidance and rules on the definition of waters of the United States does not interfere with the protection of groundwater resources under the upcoming revised stormwater regulations. This program needs to be protective of surface water quality, but it also needs to be protective of groundwater quality. There should be a common purpose for protecting drinking water sources under both the Clean Water Act and the Safe Drinking Water Act. If stormwater is redirected to groundwater for either disposal or shallow recharge, we need to ensure that the two acts are not implemented at cross purposes and ensure that the discharge of stormwater runoff to groundwater is protective of groundwater quality.
4. The GWPC recommends that the term "shallow sub-surface hydrologic connections" be clarified in the guidance and rulemaking process. On page 16 under the list of criteria that must be met to be considered "adjacent" water, the term "shallow sub-surface hydrologic connections" is used. We suggest that region-specific guidance be developed to address this concept, such as some guidance given on groundwater time of travel, or some other recognition of the groundwater/surface water nexus. This concept is especially important in some hydrologic settings where total maximum daily load (TMDL) programs are being implemented.

The GWPC, through our unique position of working with the states' groundwater protection programs and underground injection control programs, stands ready to work with USEPA on addressing groundwater issues as the draft guidance is finalized and the rules to implement the clarified definition of Water of the United States are developed. Should you have questions or need further information, please feel free to contact Mike Paque, Executive Director of the GWPC at mpaque@gwpc.org or 405-516-4972.

Sincerely,



Joseph J. Lee, Jr., P.G.
Geologist Manager, Pennsylvania Department of Environmental Protection
President, Ground Water Protection Council