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EPW Republicans to EPA: Suspend Stormwater Rule-Making Until Clean Water Act Guidelines Are Met

During rushed rulemaking, EPA leaves out small businesses, disregards Clean Water Act guidelines

May 20, 2013

Today, the eight Republicans on the Environment and Public Works Committee sent a letter to the U.S. Environmental Protection Agency (EPA), requesting a suspension of rulemaking for its forthcoming National Stormwater Rule. The rule could force individuals and small businesses into costly mandates on managing stormwater on their properties without being able to provide input.

"Having neglected to work with Congress and the small business community, EPA runs the risk of promulgating a rule practical only in the minds of agency personnel," the Senators wrote. "EPA should not develop rules and regulations in haste, and the deliberative processes required under the Clean Water Act and [the Small Business Regulatory Enforcement Fairness Act] bind the agency to this principle...Accordingly, we ask that the agency suspend rulemaking for the National Stormwater Rule until EPA has satisfied these requirements."

Previously, EPW Committee Republicans have raised similar issues with EPA's development of CWA rulemaking. In July 2010, Senators Inhofe and Crapo wrote to then-EPA Administrator Lisa Jackson about similar concerns about EPA rule-making that "exceed EPA's authority under the Clean Water Act." [Click here to read more](#). In today's letter, the Senators reiterate their concerns about neglecting the CWA, and also highlight the EPA's failure to abide by the Small Business Regulatory Enforcement Fairness Act (SBREFA), which requires the EPA to include small businesses in the rulemaking process.

Text of today's letter is below. [Click here for the PDF version](#).

May 20, 2013

The Honorable Nancy K. Stoner
Acting Assistant Administrator
U.S. Environmental Protection Agency
Office of Water
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

Dear Acting Assistant Administrator Stoner:

It is our understanding that the Environmental Protection Agency (EPA) is drafting a rule that would require individuals and small businesses to comply with costly new regulations limiting stormwater flow from developed or redeveloped property. We are concerned that EPA is developing this National Stormwater Rule in a manner that is clearly inconsistent with the Clean Water Act. In addition, EPA has failed to provide small businesses a meaningful opportunity to participate in the rulemaking, in conflict with the agency's stated obligations under the Small Business Regulatory Enforcement Fairness Act (SBREFA).

These errors strongly suggest that EPA has engaged in a rushed and uninformed rulemaking, in contrast to the deliberative process Congress intended. Having neglected to work with Congress and the small business community, EPA runs the risk of promulgating a rule practical only in the minds of agency personnel. We therefore request that EPA suspend its rulemaking for the National Stormwater Rule until the agency complies with its obligations under the Clean Water Act and SBREFA.

As you have previously acknowledged, EPA's authority for promulgating new stormwater discharge regulations derives from Section 402(p)(6) of the Clean Water Act. Section 402(p)(6) requires that such regulations be "based on the results of . . . studies conducted under" Section 402(p)(5). In turn, Section 402(p)(5) mandates EPA to prepare stormwater discharge studies "in consultation with the States" and to report on the results of the studies to Congress. The report must inform Congress of potential "procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality." After completing a stormwater discharge study and providing a corresponding report to Congress, EPA may then proceed to conduct a rulemaking for new stormwater discharge regulations.

To date, however, EPA has not provided Congress with a report on the necessity of new stormwater discharge regulations, nor has it indicated how the agency is consulting with the States in preparing a Section 402(p)(5) study. Although you informed Senator Inhofe in 2011 that EPA "plans to submit [a] report to Congress before proposing to regulate any additional stormwater discharges under Clean Water Act Section 402(p)(6)," EPA has yet to fulfill this promise. The agency's failure to report on the necessity of new stormwater discharge regulations is especially troubling given the agency's stated intention to propose its National Stormwater Rule no later than June 10, 2013.

At the same time, EPA has disregarded SBREFA's purpose to "encourage the effective participation of small businesses in the regulatory process." Notably, EPA's guidance on SBREFA recognizes that "Congress intended agencies to provide small entities with a meaningful opportunity to participate in the rules that may significantly affect them," and that "sufficient information" should be distributed to small business representatives so that they can provide appropriate input during a rulemaking. Yet we understand that little information was provided to small business representatives during the SBREFA review for the National Stormwater Rule, thereby preventing businesses from offering meaningful input on the potential impact of the Rule.

EPA should not develop rules and regulations in haste, and the deliberative processes required under the Clean Water Act and SBREFA bind the agency to this principle. Prior to issuing its National Stormwater Rule, EPA must report to Congress on the necessity of new stormwater discharge regulations and seek meaningful input from the small business community. Accordingly, we ask that the agency suspend rulemaking for the National Stormwater Rule until EPA has satisfied these requirements.

If you have questions regarding this request, please feel free to have your staff contact the Senate Committee on Environment and Public Works at (202) 224-6176.

Sincerely,

David Vitter
Ranking Member

James Inhofe
U.S. Senator

John Barrasso
U.S. Senator

Jeff Sessions
U.S. Senator

Mike Crapo
U.S. Senator

Roger Wicker
U.S. Senator

John Boozman
U.S. Senator

Deb Fischer
U.S. Senator

cc: The Honorable Bob Perciasepe
Acting Administrator
U.S. Environmental Protection Agency

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