



September 8, 2014

The Honorable Steve Southerland
United States House of Representatives
1229 Longworth House Office Building
Washington, DC 20515

Dear Representative Southerland:

The National Federation of Independent Business (NFIB), the nation's leading small business advocacy organization, writes in support of H.R. 5078, the Waters of the United States Regulatory Overreach Protection Act of 2014. This legislation will provide important regulatory relief from an unprecedented effort by the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers (the Agencies) to expand federal authority over private property.

In a notice of proposed rulemaking published in the *Federal Register* on April 21, 2014, the Agencies aim to change the definition of waters of the United States in such a way that will vastly expand the federal government's authority over private landowners, including small businesses. Under this proposal, land formations that only fill and hold water during heavy rain would be regulated if the Agencies determine that these formations affect the quality of downstream navigable waters.

When Congress granted the Agencies the authority to define waters of the United States in the 1970s, it was clear that the intent was for the Agencies to protect navigable waters, not necessarily every drop of water that might eventually end up in a navigable water. As a result of this proposal, the Agencies would bring seasonal streams, ponds, ditches, depressions in fields, and large puddles into federal jurisdiction. The financial impacts of this rule would disproportionately impact small businesses; Clean Water Act permits can cost tens of thousands of dollars and lead to lengthy project delays.

Unfortunately, despite claims by the Agencies, the proposed rule will only increase uncertainty. The proposed rule still requires the Agencies to determine on a case-by-case basis whether many common land formations fall under federal jurisdiction. Often, this determination does not occur until after substantial investments and planning by a small business have taken place – thus chilling investment and expansion. Small businesses cannot be speculative with their resources and capital.

In addition, the Agencies failed to adequately analyze the proposed rule under the Regulatory Flexibility Act. This law requires EPA to conduct a Small Business Advocacy Review panel when a rule will have a significant economic impact on a substantial number of small entities. In this case, the EPA incorrectly certified that the rule will not have a small business impact.

H.R. 5078 would stop this egregious regulatory overreach by preventing the Agencies from moving forward with the proposed rule. Small businesses want to see Congress hold the Agencies to the original intent of the Clean Water Act and allow for a proper review panel to analyze the full impact of the rule.

Thank you for introducing this commonsense legislation that will ensure that the property rights of small business owners are upheld. We look forward to working with you to ensure H.R. 5078 is enacted.

Sincerely,

A handwritten signature in black ink that reads "Amanda Austin". The signature is written in a cursive style with a large initial 'A'.

Amanda Austin
Vice President, Public Policy
NFIB