



OFFICERS

President
Tim Street
Bahr Bros. Mfg. Inc

Vice President
Jeff Turner
Metal Technologies Inc.

Treasurer
Dave Grimes
Gartland Foundry Co.

Past President
JB Brown
Bremen Castings Inc

DIRECTORS

Jack Bodi
NVIC

Scott Bleeks
Dalton Corporation

David Clark
Interstate Castings

James Gartland
Atlas Foundry Co. Inc.

Jack Hiler
Hiler Industries

Michael Jones
Ford Meter Box

Vicky Keramida
KERAMIDA, Inc.

Robert Kersey
Rochester Metal Products

Gill McBride
Richmond Casting Co.

Sam Schlosser
Plymouth Foundry

Godfrey Sergeant
Grede LLC - New Castle

Gary Greubel
Waupaca Foundry Inc.

February 16, 2016

Dear Editor,

House Bill 1082, the "No More Stringent Bill" has been inaccurately and unfairly characterized in recent coverage. The bill would simply establish WHO should make the decision when Indiana's environmental regulations will go beyond existing federal standards. Nothing more.

Given a desire for consistency and certainty from those already heavily regulated by environmental regulations, HB 1082 would restrict government bureaucrats from making significant regulatory decisions that go beyond federal standards until AFTER the elected leaders of the Indiana General Assembly have input on those decisions. It is the responsibility of the Legislature to set policy parameters in most areas of regulation and for the regulators to implement those policies.

HB 1082 has no impact on existing regulations and has no impact on any regulatory matters where there are no federal standards – thus allowing the current process to continue with no changes on unique state concerns. Emergency rulemaking provisions are not impacted either insuring timely responses to unforeseen matters of concern.

The Senate should pass HB 1082 just as the House has already done and assert their right to set new environmental policy instead of a state bureaucracy with limited accountability.

Sincerely,

Blake Jeffery
Executive Director

of the oldest manufacturing sectors in the state. Currently 75 foundries employ approximately 12,000 Hoosiers with good pay and benefits in 40 Indiana counties. 80% of all foundries nationally are small businesses employing fewer than 100 employees. More than 90% of all manufactured goods and capital equipment use castings as engineered components or rely on castings in their production process. Foundries reflect a baseline industry which when impacted negatively can ripple throughout the economy.

Our primary concerns are as follows:

THE PROPOSED RULE SIGNIFICANTLY INCREASES THE AMOUNT OF AREA SUBJECT TO CWA JURISDICTION

Despite the assurances from EPA and the Corps that the proposed rule would have no substantive regulatory impact and would reduce the areas that are subject to CWA jurisdiction, maps developed by EPA and the U.S. Geological

Survey identify 8.1 million miles of rivers and streams that would be subject to CWA jurisdiction under the revised definition of waters of the U.S. in the proposed rule. This represents a significant increase of more than 130 percent over the 2009 estimate of 3.5 million miles subject to CWA jurisdiction that EPA provided in a previous report to Congress. Furthermore, some states have reported an even greater increase of areas that would be subject to CWA jurisdiction under the proposed definition of waters of the U.S. This increase is a direct result of the expanded definition that includes ephemeral streams and the land areas that are adjacent to them as “waters of the U.S.” subject to CWA jurisdiction.

The proposed rule would assert jurisdictional authority over countless dry creeks, ditches, swales and low spots that are wet only occasionally because it rains. Even worse, the proposed rule attempts to claim authority over remote “wetlands” and other drainage features solely because they are near an ephemeral drainage feature or ditch that are now defined as a water of the U.S. subject to CWA jurisdiction. Such unnecessary expansion of CWA jurisdiction significantly burdens metalcasting operations without providing any meaningful human health or environmental benefits.

THE EXPANDED CLAIM OF JURISDICTIONAL AUTHORITY OVER ALL “TRIBUTARIES” WILL LEAD TO CONFUSION, INCREASED BURDEN AND POTENTIAL LIABILITY

Despite the claim of EPA and the Corps that the proposed rule clarifies an existing regulatory program, the proposed rule expands the definition of “tributary” to cover anything that is capable of contributing any amount of flow to “downstream” locations that eventually connect to larger water bodies. The expansion of the types of waters, drainage features, and other areas that will fall under the definition of “tributary” will lead to confusion as to whether or not low spots and drainage swales in areas at or near a facility are

jurisdictional under the proposed rule. Accordingly, to be safe and avoid potential liability under the CWA, metalcasters may need a federal water permit to conduct most routine maintenance or process activities that are a vital part of its operations.

In defining a tributary as a drainage feature having a bed, bank and an ordinary high water mark (OHWM), the agencies want the public to believe that the assertion of CWA authority over “tributaries” is appropriate. This assertion fails to recognize the unnecessary inclusion of numerous other land features that fall within the definition of “tributary,” such as those areas with drainage features that do not even resemble any stream, brook or creek. Instead, the agencies advance new jurisdictional authority by introducing ambiguity and vague concepts of connectivity.

THE JURISDICTIONAL EXPANSION TO INCLUDE ADJACENT WATERS WILL BRING ADDITIONAL BURDEN AND POTENTIAL LIABILITY TO METALCASTING OPERATIONS

While the proposed rule retains the definition of “adjacent waters,” it also expands it further with new definitions for “neighboring waters,” “riparian areas,” and “floodplain.” Prior to the proposed rule, “adjacent waters” were considered wetlands that actually abut navigable waters, because there is a significant nexus between the wetlands and the jurisdictional water. Under the proposed rule, non-wetlands can now be considered jurisdictional waters of the U.S. The term, “neighboring,” includes waters located in the riparian areas or floodplains of a major navigable water or tributary or water with a shallow subsurface hydrologic connection. This could include nearly all waters within the geographic area of a floodplain.

In addition, the definitions of “riparian area” and “floodplain” rely on ambiguous and undefined concepts. For example, “riparian area” is defined as “an area bordering a water where surface or subsurface hydrology directly influence the ecological processes and plant and animal community structure in that area.” While this definition is vague and broad (particularly as it relates to ecological processes, communities and structures), there is no clarification in the proposed rule on how far a riparian area extends away from the water body.

Furthermore, “floodplain” is defined as an area that has been inundated by actual waters or was formed by sediment deposition from actual water. The proposed rule does not, however, specify whether it is the 10-year, 50-year, 100-year or 200-year floodplain that is included in the definition. Using “best professional judgment” to answer this on a case-by-case basis (as is suggested in the proposed rule) provides no meaningful guidance as to what areas are to be included as a floodplain for purposes of designating waters of the U.S. subject to CWA jurisdiction.

Accordingly, “adjacent waters” in the proposed rule is a vague and overly broad concept that could include an area as vast as the 200-year floodplain of the Ohio River valley. Landowners in these areas or any area within miles of a navigable water or tributary could never be sure if routine activities on their land would trigger federal water permit requirements covered by the CWA. This is not the clarity and certainty that metalcasting operations and other landowners need.

THE PROPOSED RULE FURTHER EXPANDS JURISDICTION WITH BROAD CATEGORY OF “OTHER WATERS”

In addition to expanding the scope of CWA jurisdiction with the definitions of tributaries and adjacent waters, the proposed rule also includes “other waters” as waters of the U.S. The definition of “other waters” is similarly vague and overly broad. This further expansion of CWA jurisdiction goes beyond any authority that Congress intended to provide and leaves metalcasting operations and other landowners vulnerable to

unnecessary and inappropriate enforcement actions, because no clear guidance is provided by the proposed rule.

THE EXCLUSIONS IN THE PROPOSED RULE LACK CLARITY AND ARE FAR TOO LIMITED TO BE MEANINGFUL

The proposed rule does include certain exclusions from the definition of waters of the U.S., but these exclusions are too limited, ambiguous and are of little, or no, value to agricultural operations.

THE PROPOSED RULE WOULD IMPOSE SIGNIFICANT NEGATIVE IMPACTS ON METALCASTING OPERATIONS

Those limited areas not included in the definition of “waters of the U.S.” (such as the site of metalcasting operations) are likely to conduct routine activities that could affect the surrounding “waters of the U.S.” and therefore, be subject to CWA jurisdiction. For example, moving dirt, mowing grass, applying or using chemicals, storing metals, or most any industrial activity could result in a potential discharge of a pollutant into a “water of the U.S.” and trigger the need for a federal permit. This could include water quality standards, total maximum daily loads (TMDLs), oil and spill prevention programs, NPDES permits, stormwater discharges, and dredge and fill permits.

Because the proposed rule would make most ditches into “tributaries” subject to jurisdiction under the CWA, routine maintenance and process activities in ditches, on-site ponds, and impoundments could trigger expensive federal permits. In addition, these permitting requirements could impose addition, unnecessary environmental reviews that could add years and significant costs to finalize ordinary projects at or near the facility. Furthermore, even if a facility can secure the necessary permit approval, metalcasting operations may be required to “mitigate” potential environmental impacts with expensive restoration or prevention projects. These significant regulatory costs and burdens would be imposed on metalcasting operations with little, or no, meaningful human health and environmental benefits.

Industrial facilities such as metalcasting operations need to be aware of the potential impacts of the rule for all of their activities. Given the broad jurisdiction of the CWA in the proposed rule, metalcasting facilities will be faced with a substantial increase in regulatory requirements, numerous potential disputes over the applicability of these requirements, delays in making improvements and other changes at the facility, possible enforcement actions, and numerous legal challenges. EPA and the Corps appear to ignore the potentially debilitating regulatory burdens posed on industrial operations by the proposed regulation and continue to downplay their significance.

CONCLUSION

The proposed rule lacks clarity, is ambiguous, and would impose undue and unnecessary burdens on metalcasting operations and other landowners without providing any meaningful human health or environmental benefits. The proposal should be withdrawn so that the overly broad scope and the devastating impacts of the rule can be assessed more thoroughly, particularly with respect to small businesses. Such action is warranted because EPA and the Corps are not compelled to issue the rule by a court order or court-issued deadline. Accordingly, the agencies can take the necessary time to redraft the rule consistent with federal statutory authority, state rights, and local land use provisions. In addition, the extra time would allow the agencies to develop a rule that is protective of human health and the environment, does not impose unnecessary burdens on law-abiding landowners, and that is clear and understandable.

INCMA appreciates the opportunity to provide these comments on the proposed rule to

define "waters of the U.S." pursuant to the CWA as it applies to metalcasting operations. We urge EPA and the Corps to withdraw the proposed rule, consider the potential impacts of the permit conditions on these operations, and issue a more appropriate rule to define waters of the U.S. that should be subject to CWA jurisdiction. Please contact us if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Blake Jeffery". The signature is fluid and cursive, with a long horizontal stroke at the end.

Blake Jeffery
Executive Director