

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

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.¹ Section 402(p)(6) requires that such regulations be "based on the results of . . . studies conducted under" Section 402(p)(5).² 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.³ The report must inform Congress of potential "procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality."⁴ 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.⁵

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

¹ Letter from Nancy K. Stoner, Acting Assistant Administrator, Environmental Protection Agency Office of Water, to Senator James M. Inhofe (Sept. 30, 2011) ("Stoner Letter") (attached).

² 33 U.S.C. § 1342(p)(6).

³ *Id.* § 1342(p)(5).

⁴ *Id.* § 1342(p)(5)(c).

⁵ *Id.* § 1342(p)(6).

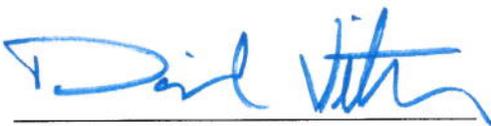
States in preparing a Section 402(p)(5) study. Although you informed Senator Inhofe in 2011 that EPA “plans to submit [a] report to Congress before proposing to regulate any additional stormwater discharges under Clean Water Act Section 402(p)(6),” EPA has yet to fulfill this promise.⁶ The agency’s failure 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, 2013.⁷

At the same time, EPA has disregarded SBREFA’s purpose to “encourage the effective participation of small businesses in the regulatory process.”⁸ 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.⁹ 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 Brandon Middleton with the Senate Committee on Environment and Public Works at (202) 224-6176.

Sincerely,



David Vitter
U.S. Senator



James Inhofe
U.S. Senator

⁶ See Stoner Letter.

⁷ See Environmental Protection Agency, *Proposed National Rulemaking to Strengthen the Stormwater Program*, <http://cfpub.epa.gov/npdes/stormwater/rulemaking.cfm> (last visited May 17, 2013).

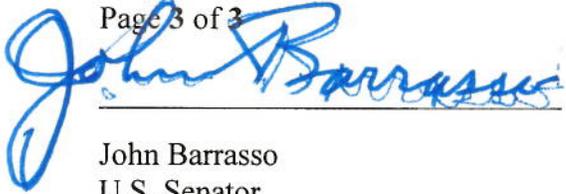
⁸ Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, 110 Stat. 847.

⁹ Environmental Protection Agency, *Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act* at 49 (Nov. 2006), <http://www.epa.gov/rfa/documents/Guidance-RegFlexAct.pdf>.

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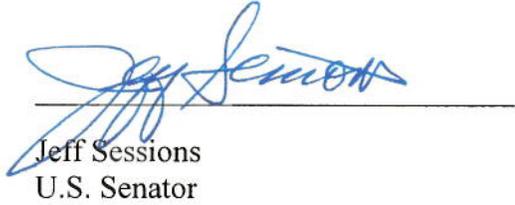
John Barrasso
U.S. Senator



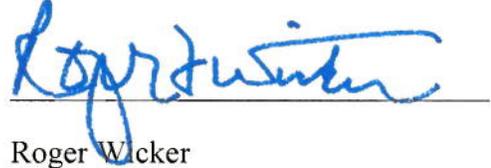
Mike Crapo
U.S. Senator



John Boozman
U.S. Senator



Jeff Sessions
U.S. Senator



Roger Wicker
U.S. Senator



Deb Fischer
U.S. Senator

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