



*The Wyoming Department of Agriculture is dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources and quality of life.*

June 5, 2014

**Delivered via email and internet**

Ms. Damaris Christensen  
Office of Water (4502-T)  
Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington D.C. 20460

Re: Docket ID No. EPA-HQ-OW-2013-0820: Notice of Availability Regarding the Exemption from Permitting Under Section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices

Dear Ms. Christensen:

The Wyoming Department of Agriculture (WDA) is submitting these comments on the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) interpretive rule (IR) to address the exemptions from permitting provided under section 404(f)(1)(A) of the Clean Water Act (CWA). The exemptions in the IR for discharges of dredged or fill material associated with certain agriculture practices are based on the Natural Resource Conservation Services (NRCS) conservation practices standards that are designed and implemented to protect and enhance water quality. These exemptions in the IR are not subject to Section 404 permitting requirements under the proposed CWA rules.

Our comments are specific to our mission: dedication to the promotion and enhancement of Wyoming's agriculture, natural resources, and quality of life. As this IR and list of exemption affects our agriculture industry, our natural resources, and the welfare of our citizens, it's important you continue to inform us of proposed actions and decisions and continue to provide us the opportunity to express pertinent issues and concerns.

Currently, the U.S. Department of Agriculture (USDA) through the NRCS lists 159 standard conservation practices used in farming and ranching operations. The Memorandum of Understanding (MOU) between the USDA, EPA and the USACE (dated March 25, 2014) only identifies 56 approved conservation practices as exempt from Section 404(f)(1)(A) of the CWA to discharge of dredged or fill materials associated with certain agricultural operations. The WDA believes including only the 56 standard conservation practices unduly limits numerous standard conservation practices accepted and utilized in Wyoming. We encourage the EPA and the USACE consider incorporating additional NRCS approved standard conservation practices as exempt from 404 permitting. Some commonly used NRCS standard conservation practices to be considered and approved are: Irrigation Systems, Watering Facilities, Upland Practices, Cover Crops, Pond, Grade Stabilization Structures, Terrace, and Water and Sediment Control Basin; to name a few. These practices are approved NRCS standard conservation practices being utilized in Wyoming and should be given the same status of exempt from 404 permitting.

Limiting the exempt activities will limit what a landowner can do on their lands. The IR defines ongoing normal farming, ranching or silviculture operations as exempt from 404 permitting. However, by only exempting 56 of the

*Equal Opportunity in Employment and Services*

**BOARD MEMBERS**

Jana Ginter, *District 1* • Jim Hodder, *District 2* • Shaun Sims, *District 3* • John Moore, *District 4* • Alison Lass, *District 5*  
Bryan Brost, *District 6* • Jim Price, Jr., *District 7*

**YOUTH BOARD MEMBERS**

Patrick Zimmerer, *Southeast* • Richard Schlenker, *Northwest* • John Hansen, *Southwest* • Cameron Smith, *Northeast*

159 standard conservation practices limits existing ongoing normal farming, ranching or silviculture operations that occur daily. These limitations reduce landowner's ability to implement best management practices and assist in enhancing and improving water quality.

We encourage the EPA and USACE make the IR and list of exemptions flexible and allow the document to be a "living document." Flexibility is important and the EPA must consider each project at a site specific/local level. We support local level management by those most familiar with the area and the types of conservation practices utilized. In addition, an EPA interdisciplinary team should review the IR and exemption list annually to incorporate new and applicable conservation standards for approval and exempt from 404 permitting. NRCS conservation practice standards are continually reviewed and revised through its existing science based review process and public review process. We are concerned the proposed rule creates a narrowly based static document with only the 56 approved practices creating limitations and uncertainty for landowners.

It is crucial EPA provides more clarity and reconsiders the IR and list of approved exemptions. As the IR is written, landowners faced more uncertainty and increased regulatory risk. The WDA encourages the EPA and the USACE consider our concerns and incorporate a broader list of conservation practices as exempt.

Sincerely,



Jason Fearneyhough  
Director

JF/cw

CC: Governor's Policy Office  
Wyoming Board of Agriculture  
Wyoming Stock Growers Association  
Wyoming Wool Growers Association  
Wyoming Farm Bureau Federation  
Wyoming State Grazing Board  
Wyoming Association of Conservation Districts  
Wyoming Game and Fish Department