



## Membership Alert - WOWRA To Oppose Budget Provisions Relating to POWTS

Governor Walker introduced his 2015-2017 executive budget to the legislature on February 3rd. In his budget proposal, the governor recommends a \$35.9 billion operating budget in fiscal year 2015-2016 and \$32.3 billion budget in fiscal year 2016-2017.

There were two items in the Governor's proposal that affect the septic trades, both of which the WOWRA Board has taken a position to oppose. The two items were:

1. Transferring funding and position authority relating to the review of POWTS program from the DSPS to the DNR and thus centralizing oversight of septage systems in one agency
2. Eliminating the POWTS grant program (Wisconsin Fund) at a cost savings of \$2.4 GPR annually

Both provisions will have a significant effect on WOWRA members and the entire installer trade throughout Wisconsin. WOWRA staff has already begun taking steps to convince targeted legislators to delete both provisions in the Governor's budget. WOWRA staff has also held coalition meetings with other affected groups such as the WI Realtors Association and WI Counties Association.

While WOWRA staff has made progress as a result of the meetings mentioned above, we need the membership to contact both their State Representative and State Senator and encourage them to oppose the two items above. Please click the following link and type in your address in the "Find My Legislators" section in the upper right corner of the website. Once you have identified your legislators, please call them or email them and encourage them to oppose both provisions above.

<http://legis.wisconsin.gov/>

If you have any questions, please contact George Klaetsch at 608/441-1436.

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## **Chairman Sends Letter to EPA, U.S. Army Corps of Engineers on Proposed 'Waters of the United States' Rule**

<http://1.usa.gov/1x9o80d>

**WASHINGTON** – Chairman Ron Johnson sent letters today to the administrator of the [Environmental Protection Agency](#) and to the [U.S. Army Corps of Engineers](#) commanding general and chief of engineers asking for details about the agencies' consultations with states, the agencies' outreach to the agricultural community, and the agencies' evaluation of their legal authority as it pertains to the proposed "Waters of the United States" rule.

The EPA and the U.S. Army Corps of Engineers have proposed to expand their jurisdiction to regulate waters under the Clean Water Act to include, potentially, streams, ditches and man-made ponds. The proposal could lead agencies to demand costly environmental assessments and federal permits from farmers before they're allowed simply to till the soil or take part in conservation practices. The Wisconsin Farm Bureau Federation and the Wisconsin Potato and Vegetable Growers Association warn that the proposal would cost jobs and become an undue burden on agriculture.

###

*Text of the letters can be found below.*

I write to express my concern about the Environmental Protection Agency's (EPA) and the U.S. Army Corps of Engineers' (Corps) proposed "Waters of the United States" rule under the Clean Water Act. If finalized, I worry that the rule will not only expand the EPA's and the Corps' regulatory powers beyond a scope that Congress ever intended, but it will also force farmers and ranchers as well as state and local governments to bear the burden of additional compliance costs.

In the Clean Water Act, Congress authorized the EPA and the Corps to regulate the "navigable waters" of the United States. Current regulations limit this term to cover all waters that are used in interstate or foreign commerce; all interstate waters; all intrastate waters in which the use, degradation or destruction of the water could affect interstate or foreign commerce; the territorial seas; all impoundments and tributaries of those waters; and all wetlands adjacent to those waters. The EPA's and the Corps' proposed rule, however, significantly expands this authority. Under its proposed rule, the EPA and the Corps could claim jurisdiction over smaller bodies of water that form a "significant nexus" with other navigable bodies of water that are already covered by the Clean Water Act. According to the EPA and the Corps, a "significant nexus" is formed when a pool of water "significantly affects the chemical, physical, or biological integrity of other covered waters [specified in the Clean Water Act]."

Many stakeholders in the agriculture industry worry that the EPA's and the Corps' ambiguous definition of what constitutes a "significant nexus" could lead to confusion and expose farmers to litigation. According to recent reports, the proposed rule would give the EPA and the Corps the authority to "expand the scope of water protected under the [Clean Water Act] to include not only rivers and lakes but ditches, stream-beds and [man-made] ponds that only carry water when it rains." As a result, farmers could end up having to "pay for costly environmental assessments and apply for federal permits allowing them to till soil, apply fertilizer or engage in some conservation practices."

The threat of the EPA's and the Corps' increased regulatory overreach has already triggered trepidation from many agriculture industry representatives, including farming advocates from Wisconsin. According to the *Green Bay Press Gazette*, Duane Maatz, executive director of the Wisconsin Potato & Vegetable Growers Association, warned that the proposed regulation would "be hazardous to agriculture [and] ... would cost jobs." In addition, in its November 2014 comments on the proposed rule, the Wisconsin Farm Bureau Federation (WFBF) explained that the rule "was written without consultation of states that will be designated with enforcement authority. It lacks clarity regarding exemptions. It creates confusion by changing the scope of the definitions and terminologies found within the Clean Water Act." Further, WFBF warned that the proposed rule disregards Congressional intent of the Clean Water Act and, if implemented, would result in an "undue burden on agriculture in Wisconsin."

Additionally, the specific benefits of the proposed rule are unclear. In March 2014, the EPA and the Corps released its economic analysis of the “Waters of the United States” rule. Based on the agency’s and the Corps’ calculations, the total estimated cost of the proposed action ranged from \$133.7 million to \$231 million. However, according to Dr. David Sunding, a professor of agricultural and resource economics at the University of California, Berkeley, the EPA’s “entire analysis is fraught with uncertainty” and is not an accurate evaluation of the actual cost of implementing the rule. Furthermore, Dr. Sunding stated that “the errors, omissions, and lack of transparency in [the] EPA’s study are so severe [that it renders it] virtually meaningless.”

Given the criticism that surrounds the EPA’s and the Corps’ proposed “Waters of the United States” action as well as the growing concern that the rule will cost jobs and harm agriculture across the country, I ask that you please provide the following information and material:

1. According to the Wisconsin Farm Bureau Federation (WFBF), the proposed “Waters of the United States” rule by the EPA and the Corps was “written without consultation of states that will be designated with enforcement authority.” Did the EPA consult with states that will be designated with enforcement authority while writing the proposed rule?
  - a. When did the EPA’s consultation with states begin? Which EPA official(s) conducted this consultation?
  - b. If the EPA did not consult with the states, why did the EPA not consult with the states before writing this rule?
  - c. Please produce all documents and communications referring or relating to the EPA’s consultation with states that will be designated with enforcement authority.
2. According to the WFBF, under the proposed rule many waters once regulated by the state of Wisconsin would fall under the jurisdiction of the EPA or the Corps.
  - a. How many other states that already regulate bodies of water would be subject to the EPA’s jurisdiction if the proposed rule is finalized?
  - b. Does the EPA believe that the proposed rule would be duplicative in those cases?
  - c. Please produce all documents and communications referring or relating to the EPA’s deliberations for expanding its regulatory authority over waters that have traditionally been under state control.
3. How is the proposed rule compatible with Congressional intent of the Federal Water Pollution Control Act of 1948 and subsequent Clean Water Act of 1972? Please produce all documents and communications referring or relating to the EPA’s evaluation of the Congressional intent of the Federal Water Pollution Control Act of 1948 and subsequent Clean Water Act of 1972.
4. Many of the broadened definitions in the EPA’s and the Corps’ proposed rule (such as “tributary” and “adjacent wetlands”) have led to confusion within agriculture communities. What steps will the EPA take to ensure that farmers, ranchers, and small businesses understand the expanded definitions proposed by the EPA and the Corps? Please explain.
5. Under the proposed rule, the EPA and the Corps would have jurisdiction to regulate ditches, farm ponds, dry stream beds, and ephemeral streams. Does the EPA believe that a farmer should face potential liability if he fails to secure a permit for a farm pond that forms on his property after a rainstorm? Please explain.
6. In *Rapanos v. United States*, a plurality of the Supreme Court held that “the only plausible interpretation” of the phrase “waters of the United States” includes “only those relatively permanent, standing or continuously flowing bodies of water ‘forming geographic features’ that are described in ordinary parlance as ‘streams, oceans, rivers, and lakes.’ The phrase does not include channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall.” Please explain the EPA’s legal justification for how the proposed rule comports with this Supreme Court guidance. Please produce all documents and communications referring or relating to the EPA’s evaluation of its legal authority to pursue this proposed rulemaking in light of *Rapanos*.

Please provide this material as soon as possible but no later than 5:00 p.m. on February 17, 2015.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency, economy, and effectiveness of all agencies and departments of the Government.” Additionally, S. Res. 253 (113th Congress) authorizes the Committee to examine “the efficiency and economy of all branches and functions of Government with particular references to the operations and management of Federal regulatory policies and programs.” For purposes of this request, please refer to the definitions and instructions in the enclosure.

If you have any questions, please contact Scott Wittmann of the Committee staff at (202) 224-4751. Thank you for your attention to this important matter.

Sincerely,

Ron Johnson

Chairman

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## President's Message: Aaron Ausen



Happy Winter Everyone! Well if you want to call it that. Nothing like it was last year right? Anyway, we have just concluded another very successful conference that saw an increase in overall attendance to a total of 96. It hasn't been that high in 4 years and we are really glad to see those numbers are starting to turn. I'm hoping next year we can break the century mark. This year we saw many great presentations from industry experts and hosted 26 vendors to keep you on the cutting edge of the industry. Speaking to other vendors it also appeared that membership is spending some money in capital equipment which is a good sign of things to come. I hope you all are seeing some bright skies ahead.

Early indications are that we should see a similar growth that we saw this last year so make sure your equipment is repaired and ready to go. Let's just hope the construction window this year is a bit larger than it was last year. A recent report I read stated home building should increase 6-7% in Wisconsin so optimistically let's say you may be 2-3% busier next year and I think that is legitimate, but I'm not psychic so don't hold me to that. At any bet, I think the

industry should be strong and healthy this next season so be ready.

Lastly, and I am sorry to bounce back to the conference but I want to mention that the silent auction raised \$853 this year. To all the folks you gave items and all those that bid on items THANK YOU THANK YOU THANK YOU!!! From the bottom of my heart thank you! The scholarship program is paramount in any non-profit organization and as a former recipient of this scholarship I can't tell you what value it brings to students and hopefully this local economy. This a great addition to the scholarship fund and keeps it healthy going into next year. So thank you again, it very much appreciated!

Again WOWRA has been seeing steady growth under KPAS reign and I think that will continue for the next years to come. We are stronger than ever. As the snow and ice melt and birds come back soon we will be digging holes and installing septic. Cannot come soon enough I know. Take care everyone!!

With all this good news it pains me that I do have bad news. Katie Boycks will no longer be our association manager effective March 1<sup>st</sup>. Katie's decision was not an easy one but she decided her family was more important much as it should be. We cannot fault Katie, we can only thank her for her tireless effort to keep WOWRA straight and organized. In my tenure, I have never seen a more meticulous person than Katie and someone who really excelled at everything. I remember recently having a conversation with Katie and how frustrated she was over a typo on an advertising piece. It was nothing she would have caught or any of us for that matter, but she literally beat herself up over it. Katie cared a ton about the organizations and her tireless effort should be applauded. It's a thankless job to do all the behind the scenes work for our organizations and she did it well and always with a smile. So from WOWRA we thank you Katie and we wish you the best.

Sincerely,

A handwritten signature in blue ink, appearing to read 'AA', located below the 'Sincerely,' text.

Aaron J Ausen

President -- WOWRA

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## Legislative Update: Executive Director George Klaetsch



### Walker Budget Proposals Cause Concerns among Septic Trades

Governor Walker introduced his 2015-2017 executive budget to the legislature on February 3rd. In his budget proposal, the governor recommends a \$35.9 billion operating budget in fiscal year 2015-2016 and \$32.3 billion budget in fiscal year 2016-2017. This includes all major funding sources (general purpose revenue – GPR, segregated revenue – SEG, federal revenue – FED, and program revenue – PR). The governor's GPR budget is \$15.8 billion and \$16.9 billion in fiscal year 2015-2016 and 2016-2017, respectively. This is a .3 percent decrease in state spending for fiscal year 2015-2016 over the 2014-2015 base, and a 6.7 percent increase in spending in fiscal year 2016-2017.

There were three items in the Governor's proposal that affect the septic trades. The three items were:

1. Transferring funding and position authority relating to the review of POWTS program from the DSPS to the DNR and thus centralizing oversight of septage systems in one agency
2. Eliminate the POWTS grant program (Wisconsin Fund) at a cost savings of \$2.4 GPR annually
3. Increasing financial support to the Environmental Fund at the DNR

There are general concerns and outright opposition to the first two items in the budget proposal. Specifically, the elimination of the Wisconsin Fund creates hardships for fixed-income families who are unable to afford a replacement or rehabilitated POWTS if their county inspectors deem it failed during inventory and maintenance inspections. From FY 2012 to FY 2015 almost 3,000 Wisconsin families have successfully worked with County and State DSPS officials to apply and receive grants to assist in affording the replacement or rehabbed POWTS. There are also 448 households who have applied for Wisconsin Fund grants for FY 2016 and if the budget passes as proposed, those families would not receive any grant relief due to its elimination. As of this writing, the WLWCA will work with the legislature to restore funding of this very worthwhile program.

There is also some good news in the budget. The Governor has proposed to increase funding for the Environmental Fund. While the Environmental Fund serves many purposes for DNR programs and services, it is one of the mechanisms that help fund DNR septage related staff. Increased funding to the Environmental Fund will assist the DNR in maintaining 1.5 FTE septage related staff to work with WLWCA members and industry professionals. As of this writing, the WLWCA will support this provision and encourage the legislature to maintain the funding levels.

As mentioned last month, the budget takes approximately 5-6 months to pass. The next step in the process will be the Legislative Fiscal Bureau taking 3-4 weeks to prepare a comprehensive analysis of the bill for the Joint Finance Committee (JFC). The JFC is a 16-member legislative committee comprised of both Representatives and Senators. Starting in mid-March, JFC will schedule committee hearings and invite selected agency heads to appear and testify before the committee on their respective agency budgets. Public hearings on the bill are then held in 3-5 locations throughout the state, starting in March and completed by mid-April.

After the agency and public hearings, JFC begins meeting several days each week through the end of May to take votes on various aspects of the bill. At the end of the JFC budget process, all JFC modifications to the governor's bill are incorporated in a substitute amendment and sent to the full legislature for floor votes in each house.

The legislature generally takes the bill up in June and sends their final product to the Governor by the end of the month. The Governor completes veto review within 30 days of receiving the bill, and then signs it into law.

A handwritten signature in blue ink, appearing to read "George A. Klaetsch".

George Klaetsch



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