November 4, 2026

The Honorable David Fotouhi
Deputy Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

The Honorable Jessica Kramer
Assistant Administrator
Office of Water
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Proposed National Pollutant Discharge Elimination System Exclusions and Definitions Rule and Adding an Exclusion on Naturally Occurring or Ambient Level Constituents.

Dear Deputy Administrator Fotouhi and Assistant Administrator Kramer:

As representatives of a diverse coalition of businesses, including construction, manufacturers, and other leading economic sectors, the undersigned organizations write to request that the Environmental Protection Agency ("EPA" or "the Agency") promptly consider changes to the National Pollutant Discharge Elimination System ("NPDES") Exclusions and Definitions that permits for stormwater only apply to constituents in stormwater caused by industrial activity based on substantial, site-specific evidence linking those constituents to industrial activity at a site. Without clarification, state agencies are continuing to expand NPDES jurisdiction beyond Congressional intent and EPA policy, imposing costly and unjustified obligations on industry and the public, as well as federal, state, and local agencies and related entities responsible for property subject to an NPDES permit.

Some state agencies are already imposing stormwater obligations in ways that lack legal support, reach beyond their statutory authority, and harming businesses across many sectors. These regulators are issuing numeric effluent limits for constituents. such as metals, and other contaminants where credible evidence shows these constituents are either naturally present in soils or within ambient levels. For example, in 2023 a California Agency imposed enforceable effluent limits on aluminum despite extensive sampling and expert findings that aluminum at the site is naturally occurring.

EPA's definition of "stormwater discharge associated with industrial activity" targets stormwater that can contact industrial pollutant sources and conveyances directly related to manufacturing, processing, or raw materials storage. For former industrial sites, EPA limited NPDES coverage to circumstances where "significant materials" remain as a result of industrial

activity such that they are exposed to stormwater. "Significant materials" were framed as industrial inputs or wastes resulting from human activity at a site—not naturally occurring background or ambient constituents that are unrelated to industrial activity but are nevertheless present. EPA only intended to regulate stormwater with the potential to contact industrial inputs or waste products.

EPA's rules require a demonstrable link between industrial activities and pollutants in stormwater. State permits that impose limits absent such a link depart from EPA's regulatory framework and statutory authority. General assertions rather than site-specific evidence tying the constituents to industrial activities can result in a permit that effectively requires treatment and/or remediation of naturally occurring and/or ambient levels of constituents not caused by the property owner/operator. Placing effluent limits in NPDES permits for naturally occurring and/or ambient levels of constituents would likely result in a permittee needing to undertake unnecessary and potentially expensive stormwater treatment or remediation work to avoid significant liability every time it rains. The statutory framework includes consideration of costs and economic achievability.

While the California agency permit is but one example, similar overbroad applications of NPDES permitting are a concern for businesses, industries, and property owners, as well as federal, state, and local agencies and other entities across the country subject to NPDES permits where naturally occurring constituents are present at ambient levels, as those constituents could be regulated as though they were industrial pollutants.

Requiring regulation of naturally occurring stormwater constituents is inconsistent with the Clean Water Act, breaks with EPA's historical precedent, and creates needless economic burdens. It deters brownfield redevelopment, misdirects regulatory resources from true pollution sources, and weighs down entities with responsibility for background conditions they neither caused nor control.

We ask EPA to restore clarity and uniformity in NPDES permit programs. Preferably, EPA would amend 40 C.F.R. § 122.26(b)(12) and (b)(14) to (a) define "significant materials" and "storm water discharge associated with industrial activity" as industrial inputs or wastes resulting from human activity (not just mere "use"), (b) require substantial site-specific evidence linking pollutants in stormwater to industrial sources before imposing numeric effluent limits, and (c) confirm that only conveyances directly related to industrial operations qualify as industrial stormwater.

In summary, we are not asking EPA to exempt stormwater contaminated by industrial activity from regulation. We are asking EPA to ensure NPDES permits focus on contamination ***caused by*** industrial operations. Clarification will protect regulated entities, including federal, state and local agencies and related entities, from disproportionate and unjustified liability, target Agency enforcement to true industrial pollution, and uphold the Clean Water Act's purpose.

We urge EPA to act quickly and include this important clarification in an upcoming rulemaking process. We welcome the opportunity to meet with the Agency and share more information, including technical data, to assist EPA in crafting a national response.

Thank you for your consideration.

Sincerely,

Aerospace Industries Association
American Exploration & Mining Association
American Fuel & Petrochemical Manufacturers
American Petroleum Institute
Associated Builders and Contractors
Associated General Contractors of America
Liquid Energy Pipeline Association
National Asphalt Pavement Association
National Association of Manufacturers
National Mining Association
National Stone, Sand & Gravel Association
Treated Wood Council
U.S. Chamber of Commerce