

**EPA Draft Clean Water Protection Guidance**  
**3/1/2011**

**Recommended Resolutions:**

1. Do not move forward with the draft Guidance.
2. If EPA desires to pursue action on the matter, guidance is an inappropriate format. If EPA chooses to pursue rulemaking, it will be imperative to ensure that it is adequate and appropriately considers all pertinent benefits and costs/impacts as inadequate rulemaking would be equally problematic.

**Issues:**

1. The Guidance is inappropriate as there are no legal or other pressing deadlines driving the development of this Guidance, and the costs and negative impacts will be significant without providing commensurate benefits.
2. The impacts of the Guidance will be “economically significant” due to the major expansion of Clean Water Act Jurisdiction contemplated by the Guidance.

**Potential Legal Consequences of Moving Forward with the Guidance:**

1. The limits of jurisdiction under the Clean Water Act is a complicated and contentious issue that has been subject to decades of litigation—unilateral agency guidance is not the correct approach to expanding the agencies’ authority and will lead to even further litigation and confusion.
2. The draft guidance is a major expansion of the Clean Water Act’s jurisdictional reach over purely intrastate waters, and it fails to meet Supreme Court requirements.