



(Original Signature of Member)

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R.** \_\_\_\_\_

To amend the Federal Water Pollution Control Act to reaffirm the jurisdiction of the United States over waters of the United States.

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IN THE HOUSE OF REPRESENTATIVES

Mr. OBERSTAR (for himself, Mr. DINGELL, and Mr. EHLERS) introduced the following bill; which was referred to the Committee on

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**A BILL**

To amend the Federal Water Pollution Control Act to reaffirm the jurisdiction of the United States over waters of the United States.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "America's Commit-  
5 ment to Clean Water Act".

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are as follows:

1           (1) To reaffirm the original objective of Con-  
2           gress in enacting the Federal Water Pollution Con-  
3           trol Act Amendments of 1972 (86 Stat. 816) to re-  
4           store and maintain the chemical, physical, and bio-  
5           logical integrity of the Nation's waters.

6           (2) To reaffirm the definition of the waters of  
7           the United States that are subject to the Federal  
8           Water Pollution Control Act (33 U.S.C. 1251 et  
9           seq.) consistent with the interpretation of such Act  
10          prior to the decisions of the United States Supreme  
11          Court in *Solid Waste Agency of Northern Cook Coun-*  
12          *ty v. United States Army Corps of Engineers*, 531  
13          U.S. 159 (2001), and the consolidated cases of  
14          *Rapanos v. United States* and *Carabell v. United*  
15          *States Army Corps of Engineers*, 547 U.S. 715  
16          (2006), by legislatively overturning the effect of  
17          those decisions.

18          (3) To define the term "waters of the United  
19          States" and to protect such waters as authorized by  
20          the powers granted under section 8 of article I, sec-  
21          tion 2 of article II, and section 3 of article IV of the  
22          Constitution of the United States and in a manner  
23          consistent with the Federal Water Pollution Control  
24          Act and subsequent amendments thereto.

1 **SEC. 3. FINDINGS.**

2 Congress finds the following:

3 (1) The decisions of the United States Supreme  
4 Court in *Solid Waste Agency of Northern Cook Coun-*  
5 *ty v. United States Army Corps of Engineers* and the  
6 consolidated cases of *Rapanos v. United States* and  
7 *Carabell v. United States Army Corps of Engineers*  
8 unduly restricted the scope of the Federal Water  
9 Pollution Control Act and impair the statutory pro-  
10 tections for waters of the United States contrary to  
11 the intent of Congress.

12 (2) Water is a unique and precious resource  
13 that is necessary to sustain human life and the life  
14 of animals and plants.

15 (3) Water is important for agriculture, trans-  
16 portation, energy production, recreation, fishing and  
17 shellfishing; and municipal and commercial uses.

18 (4) Water moves through interconnected hydro-  
19 logic cycles, and the pollution, degradation, or de-  
20 struction of a part of an aquatic system, including  
21 geographically isolated or intrastate waters, can af-  
22 fect the chemical, physical, and biological integrity  
23 of other parts of the aquatic system.

24 (5) Small and intermittent streams, including  
25 seasonal streams, and their headwaters comprise the  
26 majority of all stream and river miles in the

1 conterminous United States. These waters affect the  
2 introduction of pollutants to larger rivers and  
3 streams, the life cycles of aquatic organisms and  
4 other wildlife, and the flow of higher order streams  
5 during floods.

6 (6) The pollution, degradation, and destruction  
7 of waters of the United States, individually and in  
8 the aggregate, have a substantial relation to and ef-  
9 fect on interstate commerce. Discharges of pollut-  
10 ants into waters of the United States are the result  
11 of, relate to, and are a necessary part of commercial  
12 or economic activity.

13 (7) Millions of people in the United States de-  
14 pend on the waters of the United States, including  
15 wetlands, to improve water quality, recharge surface  
16 and subsurface drinking water supplies, protect  
17 human health, and create commercial or economic  
18 opportunity. Source water protection areas con-  
19 taining one or more small or intermittent streams  
20 provide water to public drinking water supplies that  
21 serve more than 117,000,000 people in the United  
22 States.

23 (8) Millions of people in the United States  
24 enjoy recreational activities that depend on the  
25 waters of the United States, including wetlands, and

1 those activities and associated travel generate bil-  
2 lions of dollars of income each year for the travel,  
3 tourism, recreation, and sporting sectors of the econ-  
4 omy of the United States.

5 (9) Protecting the waters of the United States  
6 from discharges of pollutants, degradation, and de-  
7 struction is a necessary and proper means of imple-  
8 menting treaties to which the United States is a  
9 party, including treaties protecting fish, birds, and  
10 wildlife.

11 (10) Protecting the waters of the United States  
12 from discharges of pollutants, degradation, and de-  
13 struction is a necessary and proper means of pro-  
14 tecting the territory or other property belonging to  
15 the United States, including parkland, refuge land,  
16 and other land under Federal ownership and the  
17 waters encompassed by that land.

18 (11) Administrative and judicial interpretations  
19 of the Federal Water Pollution Control Act have  
20 treated ground water separately from “waters of the  
21 United States” as that term is used in such Act, and  
22 ground water has not been considered to be “waters  
23 of the United States” under such Act. This Act and  
24 the amendments made by this Act do not affect  
25 those administrative and judicial interpretations.

1           (12) This Act and the amendments made by  
2           this Act do not affect the authority of the Secretary  
3           of the Army or the Administrator of the Environ-  
4           mental Protection Agency under the provisions of  
5           the Federal Water Pollution Control Act as inter-  
6           preted or applied by the Secretary or Administrator  
7           as of January 8, 2001.

8 **SEC. 4. DEFINITIONS.**

9           Section 502 of the Federal Water Pollution Control  
10          Act (33 U.S.C. 1362) is amended—

11           (1) by repealing paragraph (7); and

12           (2) by adding at the end the following:

13           “(26) WATERS OF THE UNITED STATES.—

14           “(A) IN GENERAL.—The term ‘waters of  
15           the United States’ includes—

16           “(i) all waters that are currently used,  
17           were used in the past, or may be suscep-  
18           tible to use in interstate or foreign com-  
19           merce, including all waters that are subject  
20           to the ebb and flow of the tide;

21           “(ii) all interstate and international  
22           waters, including interstate and inter-  
23           national wetlands;

24           “(iii) all other waters, including intra-  
25           state lakes, rivers, streams (including

1 intermittent streams), mudflats, sandflats,  
2 wetlands, sloughs, prairie potholes, wet  
3 meadows, playa lakes, or natural ponds,  
4 the use, degradation, or destruction of  
5 which does or would affect interstate or  
6 foreign commerce, the obligations of the  
7 United States under a treaty, or the terri-  
8 tory or other property belonging to the  
9 United States;

10 “(iv) all impoundments of waters oth-  
11 erwise defined as waters of the United  
12 States under this paragraph;

13 “(v) tributaries of waters identified in  
14 clauses (i) through (iv);

15 “(vi) the territorial seas; and

16 “(vii) waters, including wetlands, ad-  
17 jacent to waters identified in clauses (i)  
18 through (vi).

19 “(B) EXCLUSIONS.—The term ‘waters of  
20 the United States’ does not include—

21 “(i) waters that are all or part of a  
22 waste treatment system, including treat-  
23 ment ponds or lagoons designed to meet  
24 the requirements of this Act; or

1           “(ii) prior converted cropland, except  
2           that, notwithstanding the determination of  
3           an area’s status as prior converted crop-  
4           land by the Secretary of Agriculture, for  
5           the purposes of this Act, the final author-  
6           ity regarding jurisdiction under this Act  
7           remains with the Administrator.

8           “(27) WASTE TREATMENT SYSTEM.—

9           “(A) IN GENERAL.—The term ‘waste  
10          treatment system’ means a confined and dis-  
11          crete system or structure that is specifically de-  
12          signed and engineered to meet the requirements  
13          of this Act and that is determined by the Ad-  
14          ministrator to be documented by the applicable  
15          permitting authority under section 402 or 404.

16          “(B) SPECIAL RULE.—A system or struc-  
17          ture may not be documented as a waste treat-  
18          ment system and the Administrator may not  
19          make a determination under subparagraph (A)  
20          if, after the date of enactment of this para-  
21          graph, such system or structure is created in  
22          waters of the United States or results from the  
23          impoundment of waters of the United States.

24          “(C) GRANDFATHER.—Notwithstanding  
25          subparagraph (B), a waste treatment system in



1 existence and documented before the date of en-  
2 actment of this paragraph may include a waste  
3 treatment system that was either originally cre-  
4 ated in or resultant from the impoundment of  
5 waters of the United States if the discharge  
6 from such system meets applicable standards  
7 and limitations at the point of discharge in a  
8 manner similar to other discharges under this  
9 Act.

10 “(D) APPLICABILITY.—The definition con-  
11 tained in this paragraph shall apply only for the  
12 purposes of paragraph (26).

13 “(28) PRIOR CONVERTED CROPLAND.—The  
14 term ‘prior converted cropland’ means a wetland as  
15 determined by the Secretary of Agriculture—

16 “(A) that has been converted by draining,  
17 dredging, filling, leveling, or other manipulation  
18 (including the removal of woody vegetation or  
19 any activity that results in impairing or reduc-  
20 ing the flow and circulation of water) for the  
21 purpose of or to have the effect of making pos-  
22 sible the production of an agricultural com-  
23 modity without further application of the ma-  
24 nipulations described herein if—

1           “(i) such production would not have  
2           been possible but for the conversion; and

3           “(ii) before the conversion such land  
4           was wetland, farmed wetland, or farmed-  
5           wetland pasture;

6           “(B) on which such conversion occurred  
7           prior to December 23, 1985;

8           “(C) on which an agricultural commodity  
9           had been produced at least once before Decem-  
10          ber 23, 1985;

11          “(D) that, as of December 23, 1985, did  
12          not support woody vegetation and met the fol-  
13          lowing hydrologic criteria:

14                 “(i) inundation was fewer than 15  
15                 consecutive days during the growing season  
16                 or 10 percent of the growing season,  
17                 whichever is less, in most years (50 per-  
18                 cent chance or more); and

19                 “(ii) if a pothole, playa, or pocosin,  
20                 ponding was fewer than 7 consecutive days  
21                 during the growing season in most years  
22                 (50 percent chance or more) and satura-  
23                 tion was fewer than 14 consecutive days  
24                 during the growing season most years (50  
25                 percent chance or more); and

1                   “(E) that is devoted to an agricultural  
2                   use.”.

3 **SEC. 5. CONFORMING AMENDMENTS.**

4       The Federal Water Pollution Control Act (33 U.S.C.  
5 1251 et seq.) is amended—

6           (1) by striking “navigable waters of the United  
7       States” each place it appears and inserting “waters  
8       of the United States”;

9           (2) in section 304(l)(1) by striking “NAVIGABLE  
10       WATERS” in the paragraph heading and inserting  
11       “WATERS OF THE UNITED STATES”; and

12           (3) by striking “navigable waters” each place it  
13       appears and inserting “waters of the United  
14       States”.