111TH CONGRESS
2D SESSION

H. R. 5088

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

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

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) To reaffirm the original objective of Congress in enacting the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816) to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.

(2) To reaffirm the definition of the waters of the United States that are subject to the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) consistent with the interpretation of such Act prior to the decisions of the United States Supreme Court in Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, 531 U.S. 159 (2001), and the consolidated cases of Rapanos v. United States and Carabell v. United States Army Corps of Engineers, 547 U.S. 715 (2006), by legislatively overturning the effect of those decisions.

(3) To define the term “waters of the United States” and to protect such waters as authorized by the powers granted under section 8 of article I, section 2 of article II, and section 3 of article IV of the Constitution of the United States and in a manner consistent with the Federal Water Pollution Control Act and subsequent amendments thereto.
SEC. 3. FINDINGS.

Congress finds the following:

(1) The decisions of the United States Supreme Court in *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers* and the consolidated cases of *Rapanos v. United States* and *Carabell v. United States Army Corps of Engineers* unduly restricted the scope of the Federal Water Pollution Control Act and impair the statutory protections for waters of the United States contrary to the intent of Congress.

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

(3) Water is important for agriculture, transportation, energy production, recreation, fishing and shellfishing, and municipal and commercial uses.

(4) Water moves through interconnected hydrologic cycles, and the pollution, degradation, or destruction of a part of an aquatic system, including geographically isolated or intrastate waters, can affect the chemical, physical, and biological integrity of other parts of the aquatic system.

(5) Small and intermittent streams, including seasonal streams, and their headwaters comprise the majority of all stream and river miles in the
conterminous United States. These waters affect the
introduction of pollutants to larger rivers and
streams, the life cycles of aquatic organisms and
other wildlife, and the flow of higher order streams
during floods.

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

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

(8) Millions of people in the United States
enjoy recreational activities that depend on the
waters of the United States, including wetlands, and
those activities and associated travel generate billions of dollars of income each year for the travel, tourism, recreation, and sporting sectors of the economy of the United States.

(9) Protecting the waters of the United States from discharges of pollutants, degradation, and destruction is a necessary and proper means of implementing treaties to which the United States is a party, including treaties protecting fish, birds, and wildlife.

(10) Protecting the waters of the United States from discharges of pollutants, degradation, and destruction is a necessary and proper means of protecting the territory or other property belonging to the United States, including parkland, refuge land, and other land under Federal ownership and the waters encompassed by that land.

(11) Administrative and judicial interpretations of the Federal Water Pollution Control Act have treated ground water separately from “waters of the United States” as that term is used in such Act, and ground water has not been considered to be “waters of the United States” under such Act. This Act and the amendments made by this Act do not affect those administrative and judicial interpretations.
(12) This Act and the amendments made by this Act do not affect the authority of the Secretary of the Army or the Administrator of the Environmental Protection Agency under the provisions of the Federal Water Pollution Control Act as interpreted or applied by the Secretary or Administrator as of January 8, 2001.

SEC. 4. DEFINITIONS.

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

(1) by repealing paragraph (7); and

(2) by adding at the end the following:

"(26) WATERS OF THE UNITED STATES.—

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

"(i) all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

"(ii) all interstate and international waters, including interstate and international wetlands;

"(iii) all other waters, including intra-state lakes, rivers, streams (including
intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which does or would affect interstate or foreign commerce, the obligations of the United States under a treaty, or the territory or other property belonging to the United States;

"(iv) all impoundments of waters otherwise defined as waters of the United States under this paragraph;

"(v) tributaries of waters identified in clauses (i) through (iv);

"(vi) the territorial seas; and

"(vii) waters, including wetlands, adjacent to waters identified in clauses (i) through (vi).

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

"(i) waters that are all or part of a waste treatment system, including treatment ponds or lagoons designed to meet the requirements of this Act; or
“(ii) prior converted cropland, except that, notwithstanding the determination of an area’s status as prior converted cropland by the Secretary of Agriculture, for the purposes of this Act, the final authority regarding jurisdiction under this Act remains with the Administrator.

“(27) WASTE TREATMENT SYSTEM.—

“(A) IN GENERAL.—The term ‘waste treatment system’ means a confined and discrete system or structure that is specifically designed and engineered to meet the requirements of this Act and that is determined by the Administrator to be documented by the applicable permitting authority under section 402 or 404.

“(B) SPECIAL RULE.—A system or structure may not be documented as a waste treatment system and the Administrator may not make a determination under subparagraph (A) if, after the date of enactment of this paragraph, such system or structure is created in waters of the United States or results from the impoundment of waters of the United States.

“(C) GRANDFATHER.—Notwithstanding subparagraph (B), a waste treatment system in
existence and documented before the date of enactment of this paragraph may include a waste treatment system that was either originally created in or resultant from the impoundment of waters of the United States if the discharge from such system meets applicable standards and limitations at the point of discharge in a manner similar to other discharges under this Act.

“(D) APPLICABILITY.—The definition contained in this paragraph shall apply only for the purposes of paragraph (26).

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

“(A) that has been converted by draining, dredging, filling, leveling, or other manipulation (including the removal of woody vegetation or any activity that results in impairing or reducing the flow and circulation of water) for the purpose of or to have the effect of making possible the production of an agricultural commodity without further application of the manipulations described herein if—
“(i) such production would not have
been possible but for the conversion; and
“(ii) before the conversion such land
was wetland, farmed wetland, or farmed-
wetland pasture;
“(B) on which such conversion occurred
prior to December 23, 1985;
“(C) on which an agricultural commodity
had been produced at least once before Decem-
ber 23, 1985;
“(D) that, as of December 23, 1985, did
not support woody vegetation and met the fol-
lowing hydrologic criteria:
“(i) inundation was fewer than 15
consecutive days during the growing season
or 10 percent of the growing season,
whichever is less, in most years (50 per-
cent chance or more); and
“(ii) if a pothole, playa, or pocosin,
ponding was fewer than 7 consecutive days
during the growing season in most years
(50 percent chance or more) and satura-
tion was fewer than 14 consecutive days
during the growing season most years (50
percent chance or more); and
“(E) that is devoted to an agricultural use.”

SEC. 5. CONFORMING AMENDMENTS.

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

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

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

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