

STATEMENT OF  
THE HONORABLE JAMES L. OBERSTAR, CHAIRMAN  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
HEARING ON THE CLEAN WATER RESTORATION ACT  
APRIL 16, 2008

I call this hearing of the Committee on Transportation and Infrastructure to order.

Today, we continue the debate on the future of the Federal Water Pollution Control Act, more commonly known as the Clean Water Act of 1972.

This landmark environmental statute has, over the past three decades, been responsible for doubling the number of waters safe for swimming, fishing, and drinking throughout the nation.

The Clean Water Act has singlehandedly taken us from the days where the Cuyahoga River caught fire, and Lake Eire was pronounced “dead” to the days where two-thirds of assessed rivers and streams meet “fishable and swimmable” standards.

In fact, for over thirty years, the Clean Water Act was uniformly praised by industry and environmentalists, urban and rural areas, Republicans and Democrats, as one of the most important environmental statutes ever enacted.

Yet, as is evident from hearings this Committee has had over the past two years, the ability of the Clean Water Act to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters” has been undermined by two misguided decisions of the Supreme Court.

These two decisions, the *SWANCC* decision in 2001 and the *Rapanos* decision in 2006, have, in the words of Justice Stevens, “needlessly weakened our principal safeguard against toxic water.”

What these two decisions have left behind is regulatory chaos – with no benefit to our efforts to protect clean water.

On this point, I believe that there consensus – that the current regulatory structure of the Clean Water Act is broken, and needs to be fixed.

Across the board, individual states, country governments, regulated industry, conservation organizations, hunting and fishing interests, and public citizens, have all expressed concern with the regulatory mess left behind by the Supreme Court, and the uncertainty, confusion, and delay that has resulted.

Congress did not create the regulatory mess we are experiencing today, but it is our duty and obligation to clean it up.

We need to look back at the original reasons why the Clean Water Act was enacted – to work in partnership with the States to restore and maintain the nation’s waters.

We also need to look back at the experiences of the past and learn from our mistakes, otherwise we are bound to repeat them. We need to remember how a disconnected, patchwork of strong and weak state programs failed to protect our nation’s waters, and why Congress chose to specifically reject this system, and institute a strong Federal standard to be carried out in partnership with individual states.

For the last seven years, I have put forward a proposal to address the regulatory uncertainty and chaos created by these misguided Supreme Court decisions.

I am pleased that after six years of waiting, we have finally started discussing these issues, and I encourage the debate on exactly how we should fix this mess created by the Supreme Court.

My proposal would restore the Clean Water Act protections that were in place before the two Supreme Court decisions.

This approach, which defined the universe of the Clean Water Act broadly to allow the Environmental Protection Agency, the Corps of Engineers, and States to address water quality concerns where they found them, worked relatively well for over thirty years.

This approach is also clearly backed by science, which views the natural water environment as interconnected, and stresses the essential nature of protecting “geographically isolated,” intermittent, ephemeral, and headwater streams to protecting water quality.

This approach is also backed by common sense, which dictates that it far more cost efficient and effective to prevent pollutants from ever entering a waterbody than it is to remove them downstream.

Many organizations have supported my efforts, some have not, and others have questions.

However, I hope we can all agree that our task is about restoring our “principal safeguard” against contaminated waters, and not about refighting old battles on Clean Water Act that occurred over 35 years ago.

Again, I believe that there is a consensus that, despite the best intentions of the Environmental Protection Agency and the Corps of Engineers, the *SWANCC* and *Rapanos* decisions and the implementation guidance have been a failure.

I also strongly believe that the regulatory nightmare created by the Supreme Court cannot be fixed by any subsequent administrative actions. The lack of a clear, definitive standard in the *Rapanos* decisions would mean that any subsequent agency action would further build on this judicial “house of cards.”

Today’s hearing is about listening to a wide variety of constituents on how we should proceed with the Clean Water Act.

If you support the approach taken in the Clean Water Restoration Act, I appreciate your support.

If you have concerns, please let the Committee know what your specific concerns are, and help us understand the best way to address your concerns.

If you are opposed, be prepared to offer up some alternative that helps us continue the dialogue on how best to meet the goals of the Clean Water Act.

Today's hearing will be long, and likely controversial, but in the end, I hope we can all agree that our efforts in 1972 to restore and maintain the chemical, physical, and biological integrity of the Nation's waters remain a national priority.

We simply have to find the way to accomplish that task.