WAIVERS, LOOPHOLES, AND ROLLBACKS:
THE REPUBLICAN CONTRACT ON CLEAN WATER

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EXECUTIVE SUMMARY:

October 18th marked the 34th anniversary of the modern Clean Water Act. This landmark environmental statute established a national commitment to restore and maintain the chemical, physical, and biological integrity of the nation's waters.

It is the main reason the nation's waterways have shown dramatic improvement in water quality, even as the population has increased by close to 50 percent. The Clean Water Act has been instrumental in improving the health of rivers, lakes, and coastal waters. It has stopped billions of pounds of pollution from fouling the water and significantly increased the number of waters that are safe for swimming and fishing, and as a drinking water source.

The successes and failures of the Clean Water Act can be succinctly stated. In 1972, only one-third of the nation's waters met water quality goals. Today, two-thirds of those waters meet water quality goals.

As a result of Congressional action, the nation has doubled the waters that meet water quality goals, but there is still much work to be done: over one-third of our nation's waters still fail to meet the water quality goals established under the Clean Water Act over three decades ago.

While the progress made thus far is laudable, there are disturbing recent trends that these efforts have reached a plateau, and that so-called "improvements" to water quality merely maintain, but do not increase, the percentage of waters and wetlands meeting fishable and swimmable standards. Unfortunately, there is also anecdotal evidence of declining water quality conditions throughout the nation, reversing progress toward meeting the goals of the Clean Water Act.

To finish the task, the Federal government must renew its commitment to have all waters in the United States meet the fishable and swimmable standard.

Unfortunately, the Republican-controlled House of Representatives, in partnership with the Bush administration, has done all it can to slow the progress in cleaning up the nation's waters, and has taken aggressive steps to undermine the successes already achieved – to virtually eliminate any Federal "safety-net" in protecting the nation's water-related environment.

The House Republican majority has presided over the slow, but steady, dismantling of the Clean Water Act. Whether through direct legislative proposals to repeal many of the safeguards in the Act, through efforts to restrict or eliminate funding for Federal agencies charged with the responsibility of implementing or enforcing the nation's environmental laws, or by sitting on the sidelines while the Bush administration actively undermines Federal protections over the nation's waters, the Republican majority has lead the charge to undermine one of the nation's premiere environmental statutes believing that the Clean Water Act it is too bureaucratic, too expensive, and bad for American business.

If left to their own devices, the Republican leadership would choose to repeal many of the nation's environmental laws, including the Clean Water Act, as demonstrated by their anti-environmental accomplishments of the past decade.

For example, under Republican management:

- The Republican-led House of Representatives approved the "Dirty Water Act," a fundamental revision to the Clean Water Act that was written in collaboration with polluters, that would have eviscerated Federal environmental protections, and would have made it easier for polluters to pollute;

- The Republican-led House of Representatives voted to stop enforcing Clean Water Act provisions that prevent the discharge of raw or partially treated sewage into the nation's waters;

- The Republican-led House of Representatives have presided over the steady decline of Federal protections over the nation's waters, as well as, the reversal of the decades-old "no net loss" policy of the first Bush administration;

- The Republican-led House of Representatives pushed to impose new regulatory requirements on the Federal agencies that would block efforts to implement or enforce a myriad of environmental, public health and safety laws;

- The Republican-led House of Representatives undercut serious efforts to address the more than 20,000 rivers, lakes, and streams that remain polluted to the point of endangering public health, and instead, proposed ways to avoid improving water quality;

- The Republican-led House of Representatives repeatedly attempted to enact legislation that would shift the constitutional balance over the protection of private property rights from landowners to developers, and would explode the frequency of Federal-litigation over local land use decisions;

- The Republican-led House of Representatives consistently under-funded the Environmental Protection Agency's enforcement division – the Federal employees charged with investigating and prosecuting individuals who violate the nation's environmental protections; and

- The Republican-led House of Representatives ignored or undermined efforts to modernize programs to address nonpoint source pollution – the greatest continuing source of impairment to the nation's waters.

Equally disturbing is the opposition of the House Republican leadership to bipartisan Congressional efforts to increase Federal investment in the nation's wastewater and drinking water infrastructure.

As the population grows, Federal, State, and local governments must substantially increase our wastewater and drinking water infrastructure funding to maintain and improve the quality of our water. Failure to make these necessary infrastructure investments will lead to a serious deterioration in water quality, as well as a massive decline in productivity and economic prosperity for the nation.

Almost nine out of ten Americans believe that Federal investment to guarantee clean and safe water is a critical component of our nation's environmental well-being, and over two-thirds of Americans would prefer spending to guarantee clean and safe water over tax cuts. However, for more than a decade, the House Republican leadership has blocked the bi-partisan efforts of the House Committee on Transportation and Infrastructure to reauthorize and expand Federal funding for water-related infrastructure.

Congress made a commitment more than 30 years ago to restore and protect the nation's water quality, and we should stand ready to uphold this commitment. Taken as a whole, the modern Clean Water Act has been a tremendous success. Yet, the past 34 years have also provided us with significant insight on where the Clean Water Act has failed – most notably in controlling various nonpoint sources of pollution.

Even with the knowledge of how far the nation has come, and how close it is to finally achieving the fishable and swimmable goals of the Act, the United States stands on the threshold of throwing all of these successes away and reverting to the days of rivers that burn, lakes that are dead, and waterways that serve as sewers.

The actions of the House Republican leadership clearly demonstrate how easy it is to turn the clock back on protecting our nation's waters. In just over a decade, House Republicans have shown that the decisions, priorities, and policy choices made by Congress can mean the difference between concerted efforts to restore and protect our most vital natural resource from pollution, and efforts to undermine and reverse these protections.

During the last few years, we have witnessed a dramatic reversal in water quality trends, with States reporting greater numbers of rivers, lakes, and coastal areas that fail to meet water quality standards.

We see evidence from the Environmental Protection Agency that a failure to make significant, immediate investments in water infrastructure will lead to waters more polluted than existed prior to the enactment of the Clean Water Act.

We have learned of the continuing loss of natural wetland areas, in spite of their importance in protecting human health and the environment, and the detrimental effects of inaction by the Executive and Legislative branches of government in enforcing Federal protective statutes.

We see the reemergence of massive "dead-zones" in the Great Lakes and the Gulf of Mexico, indicating that local water quality conditions are on the "tipping point" of ecological collapse, and we see the potential threat to the nation's food supply from the improper disposal of human and animal wastes.

Clearly, the nation has a choice – the final chapters on the Clean Water Act have yet to be written. The questions remain – which paths will be followed? Should we be satisfied with the progress that has been made, and resign ourselves to the fact that we have already witnessed the peak in water quality even as conditions worsen? Or should we demand that next steps be taken to clean America's waterways?

The answer depends as much on our own commitment to finishing the job that began with passage of the Clean Water Act 34 years ago, as on ensuring that our elected officials share our views. Now, more than ever, we must reaffirm our commitment to restoring and protecting our nation's greatest natural resources – our rivers, lakes, streams, coastal areas, and wetlands.

We owe future generations no less.

INTRODUCTION

October 18th marked the 34th anniversary of the modern Clean Water Act. This landmark environmental statute established a national commitment to restore and maintain the chemical, physical, and biological integrity of the nation's waters. It is the main reason the nation's waterways have shown dramatic improvement in water quality, even as the population has increased by close to 50 percent. The Clean Water Act has been instrumental in improving the health of rivers, lakes, and coastal waters. It has stopped billions of pounds of pollution from fouling the water and dramatically increased the number of waterways that are safe for swimming and fishing, and as a drinking water source.

The successes and failures of the Clean Water Act can be succinctly stated. In 1972, only one-third of the nation's waters met water quality goals. Today, two-thirds of those waters meet water quality goals. The nation has doubled the waters that meet water quality goals, but there is still much work to be done: one-third of our nation's waters still fail to meet water quality goals first established more than 30 years ago.

Despite the successes, the nation still faces significant challenges.

An overwhelming majority of Americans – 218 million – live within 10 miles of a polluted lake, river, stream, or coastal area.[1] States have identified almost 300,000 miles of rivers and streams and more than seven million acres of lakes that do not meet State water quality goals – many of these waters are unsafe for swimming and unable to support healthy fish or other aquatic life.[2] Last summer, coastal areas reported more than 24,000 days where water quality and health concerns closed beaches to swimmers and other recreational users.[3]

To achieve the goals of fishable and swimmable waters, we must renew the commitment made more than 30 years ago to restore and protect all waters in the United States; otherwise, we face the very real possibility that progress will be lost. It is simply a question of priorities and commitment, and one shared by a majority of American citizens who strongly support the protection of our nation's waters, rivers, and streams.[4]

Unfortunately for this and future generations, the House Republican majority does not share this commitment to achieve the goals of the Clean Water Act. Over the past 12 years of Republican leadership in the House of Representatives, the Republican majority has presided over the slow but steady dismantling of Federal protections over the nation's waters, and has restricted the ability of the Environmental Protection Agency (EPA) to carry out its environmental mission, in spite of clear warning signs that our progress in cleaning up the nation's waters is slipping.[5]

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[1] U.S. EPA. "Liquid Assets 2000: America's Water Resources at a Turning Point." May 2000.
[2] U.S. EPA. "National Water Quality Inventory: 2002 Report." September 2002.
[3] Natural Resources Defense Council. "Testing the Waters 2006: A Guide to Water Quality at Vacation Beaches." August 2006.
[4] Gallup Poll. March 13-16, 2006.
[5] U.S. EPA. "National Water Quality Inventory: 2002 Report." September 2002. *See also* U.S. EPA. "The Clean Water and Drinking Water Infrastructure Gap Analysis." September 2002.

The actions of the House Republican majority are steadily undermining the successes of the Clean Water Act, allowing greater numbers of polluters to discharge pollutants at levels in excess of those necessary to protect the quality of the nation's waters. In addition, the House Republican leadership stands idly by while the leading sources of pollutants to the nation's waters – those from nonpoint sources, such as agricultural runoff, and municipal stormwater – remain unchecked, and while the nation's water and wastewater infrastructure is beginning to crumble.

The House Republican leadership also supports the efforts of the Bush administration to expand efforts to fill, drain, or otherwise conduct activities that could destroy the remaining wetlands of the United States. In the absence of achieving this goal, the House Republican majority is complacent while the administration directs Federal agencies responsible for overseeing water resources to look the other way as developers exploit the nation's remaining waters and wetlands.

Finally, the EPA itself has reported that, without additional efforts to upgrade pollution fighting efforts, within the next 20 years, U.S. waters could return to the polluted state that spurred the enactment of the original Clean Water Act in 1972 – back to the days when Lake Erie had been declared dead by *Life* magazine and the Cuyahoga River in Ohio caught fire. Yet, all the while, the House Republican leadership has blocked efforts by the House Committee on Transportation and Infrastructure to move legislation that would authorize the necessary Federal investment to prevent this fallback, and has, in fact, allowed the main source of Federal assistance to water and wastewater infrastructure to be cut in one-half over the past four years.

HISTORY OF THE MODERN CLEAN WATER ACT

Since the latter half of the 20th century, national policy for water pollution control has been legislated primarily through the Federal Water Pollution Control Act ("FWPCA"). First passed in 1948, the FWPCA has been amended numerous times to gradually expand the involvement of the Federal government in regulating pollutant discharges from point sources to surface waters. Yet, until the FWCPA was completely rewritten through enactment of the 1972 Amendments, more commonly known as the Clean Water Act, the primary responsibility for water pollution control was vested with the States.

Unfortunately for the health of the nation's waters, there was great diversity among the States in the terms of ability and willingness to pay the costs of building and upgrading publicly owned treatment works and to enforce water pollution control laws. A lack of consistent water quality standards, monitoring data, and penalties for violators exacerbated the problem. Prior to the enactment of the Clean Water Act, national progress in improving water quality was hindered, in part, because unless a State formally requested intervention by the Federal government, Federal authority for regulating discharges was restricted to interstate and coastal waters.

All the while, little was being done to slow down the flow of pollution into the nation's waters and things continued to get worse. For example:

- In July 1970, the Department of Health, Education and Welfare's Bureau of Water Hygiene reported that 30 percent of drinking water samples had chemicals exceeding the recommended Public Health Service limits.

- The Food and Drug Administration reported in February 1971 that 87 percent of swordfish samples had mercury at levels that were unfit for human consumption.

- A national pesticide survey conducted in 1967-1968 by the U.S. Bureau of Sport Fisheries measured DDT in 584 of 590 samples, with levels up to nine times the FDA limit.

- In 1969, the Hudson River contained bacteria levels 170 times the safe limit.

- Record numbers of fish kills were reported in 1969 – over 41 million fish – more than in 1966 through 1968 combined, including the largest recorded fish kill ever – 26 million killed in Lake Thonotosassa, Florida, due to discharges from four food processing plants.

- A 1968 survey found that pollution in the Chesapeake Bay caused $3 million annually in losses to the fishing industry.[6]

[6] Robert Adler, Jessica Landman, and Diane Cameron, "The Clean Water Act: 20 Years Later." (Island Press 1993).

Dramatically, on a Sunday morning in June 1969, the residents of Cleveland, Ohio witnessed a sight that had become all too common in their community – a fire on the Cuyahoga River. Similar to the previous fires of 1936 and the 1950s, a floating oil slick on the Cuyahoga river, just southeast of Cleveland, burst into flames, causing significant fire damage to two key railroad trestles. While the exact cause of the fire was never determined, investigations in the days following the blaze pointed to a "discharge of highly volatile petroleum derivatives with a sufficiently low flash point to be ignited by a chance occurrence" – such as a spark from a passing train.[7]

Soon afterward, national attention focused on the water pollution problems that existed throughout the nation – from the article in *Life* that Lake Erie was "dead," to the statements of President Lyndon Johnson that the Potomac River in Washington, D.C. was a "national disgrace," to numerous rivers so clogged with pollution that you could almost walk across them.

In hindsight, although the Cuyahoga River fire lasted a mere 20 minutes, it helped ignite a different type of fire throughout the nation – one that would eventually lead to the passage of the Federal Water Pollution Control Act Amendments of 1972, the modern Clean Water Act.

As noted in 1972 by the then-Chairman of the Committee on Public Works,[8] John Blatnik, during consideration of the Conference Report, "[the] legislation before the House today, to which every member of the Public Works Committee has made an outstanding contribution, is not a victory for the position taken in conference by the House or that of the Senate. It is a victory for the people of this nation and for the future of this nation, whose very survival depends on the survival of our waters."[9]

[7] Van Tassel. "The Encyclopedia of Cleveland History." (Indiana U. P., 1987).
[8] The predecessor to the current House Committee on Transportation and Infrastructure.
[9] 1 Legislative History of the Water Pollution Control Act Amendments of 1972 (Committee Print compiled for the Senate Committee on Public Works by the Library of Congress), Ser. No. 93-1, p. 241 (1971).

WHERE WE WERE – AND HOW FAR WE HAVE COME

The 1972 Clean Water Act ("the Act") is commonly viewed as one of the most successful environmental laws in America. In many ways, the Act truly did turn the tide on water pollution. Measures of the nation's progress since its enactment include the following:

In 1972, most estimates were that only 30 to 40 percent of the assessed waters in the United States met water quality goals such as being safe for fishing, swimming, or as a drinking water source. Today, States report that between 60 to 70 percent of assessed waters meet State water quality goals – an increase of 100 percent.[10]

In 1968, sewage treatment facilities served approximately 140 million people in this country, many at a primary treatment level.[11] Today, after Federal investments of more than $82 billion in wastewater assistance since the passage of the Clean Water Act, 207.8 million people, representing more than 71 percent of the total population, are serviced by more than 16,000 publicly owned treatment works providing secondary or more advanced treatment.[12]

In 1968, about 39 percent (54.2 million) of the 140 million people served by publicly owned treatment works received less than secondary treatment (raw and primary). By 2000, the last year data are available, this percentage was reduced to just over two percent (6.4 million) of the 207.8 million people served by publicly owned treatment works.[13] In addition, the U.S. population served by publicly owned treatment works with secondary or greater treatment more than doubled between 1968 and 1996.[14]

In 1972, the country was losing wetlands at the rate of 450,000 acres a year. During the latter 1990s, annual wetland losses were estimated to be less than one-fourth that rate,[15]

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[10] U.S. EPA. "National Water Quality Inventory: 2002 Report." September 2002.

[11] U.S. EPA. "Progress in Water Quality: An Evaluation of the National Investment in Municipal Wastewater Treatment." June 2000. Primary treatment is the first stage of wastewater treatment. It removes floating solids only. It generally removes 40 percent of the suspended solids and 30 to 40 percent of the BOD (biological or biochemical oxygen demand) in the wastewater.

[12] U.S. EPA. "Clean Watersheds Needs Survey 2000: Report to Congress." August 2003. Secondary treatment is the second stage of wastewater treatment. It converts dissolved and suspended pollutants into a form that can be removed, producing a relatively highly treated effluent. Secondary treatment normally utilizes biological treatment processes (activated sludge, trickling filters, etc.), followed by settling tanks. It removes approximately 85 percent of the BOD and total suspended solids in wastewater. Secondary treatment is the minimum level of treatment required under the Clean Water Act for municipal wastewater. *See* U.S. EPA. "Progress in Water Quality: An Evaluation of the National Investment in Municipal Wastewater Treatment." June 2000.

[13] Should all of the projects called for in the 2000 Needs Survey be constructed, the number of facilities that provide less-than secondary treatment is projected to decline from 47 facilities serving 6.4 million to 27 facilities serving 3.9 million, nearly all of whom (99.99 percent) will be served by facilities with special waivers allowing the discharge of less than secondary treated effluent to deep, well-mixed ocean waters. *See* U.S. EPA. "Clean Watersheds Needs Survey 2000: Report to Congress." August 2003, and U.S. EPA. "Progress in Water Quality: An Evaluation of the National Investment in Municipal Wastewater Treatment." June 2000.

[14] U.S. EPA. "Progress in Water Quality: An Evaluation of the National Investment in Municipal Wastewater Treatment." June 2000.

[15] U.S. EPA and USDA. "Clean Water Action Plan." February 1998.

and, recently, are purported to show a slight gain,[16] although the potential loss of Federally-protected wetlands increased dramatically following recent decisions of the United States Supreme Court – the *SWANCC*[17] and *Rapanos*[18] cases.

WHERE WE ARE TODAY – AND WHERE WE SHOULD BE

Despite some important successes, there is still a long way to go in order to achieve the goals of the Clean Water Act.

The State of the Nation's Waters:

Today, approximately 40 percent of assessed rivers, lakes, and coastal waters still do not meet state water quality standards (*See Appendix I).* States, territories, Tribes, and other jurisdictions report that poor water quality continues to affect aquatic life, fish consumption, swimming, and sources of drinking water in all types of waterbodies.

In the most recent Report on the National Water Quality Inventory, States, Tribes, territories, and interstate commissions report that they monitor only 33 percent of the nation's waters. Of those, about 40 percent of streams, 45 percent of lakes, and 50 percent of estuaries were not clean enough to support their designated uses (e.g., fishing and swimming).[19]

While these numbers highlight the remaining need to improve the quality of the nation's waters, they also demonstrate how this country's record on improving water quality is slipping – demonstrating a slight, but significant reversal of efforts to clean up the nation's waters over the past 30 years.[20]

For example, in the 1996 National Water Quality Inventory report, States reported that of the 3.6 million miles of rivers and streams that were assessed, 64 percent were either fully supporting all designated uses or were threatened for one or more of those uses.[21] In the 1998 report, this number improved to 65 percent of assessed rivers and streams.[22]

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[16] Dahl, T.E., "Status and trends of wetlands in the conterminous United States 1998 to 2004." U.S. Department of the Interior, Fish and Wildlife Service, 2006. According to the 2006 report, agricultural conservation programs and other mitigation projects, such as stormwater retention ponds, recreational waterbodies, and ponds for aesthetics or water management, were responsible for most of the gross wetland restoration gains. However, according to the report, if these wetlands restoration and creation projects were excluded, human induced wetlands losses would have exceeded wetland gains, continuing the downward trend in wetland losses throughout the United States.

[17] *Solid Waste Agency of Northern Cook County* v. *Army Corps of* Engineers, 531 U.S. 159 (2001).

[18] *Rapanos et ux., et al. v. United States*, 126 S. Ct. 2208 (2006).

[19] U.S. EPA. "Water Quality Conditions in the United States: A Profile from the 2000 National Water Quality Inventory." September 2002.

[20] While the EPA's National Water Quality Inventory report highlights only those waters of the United States that have been assessed, it the best information available on the health of the Nation's waters, representing the most timely and accurate information on the waters of the United States, as compiled by the States.

[21] A threatened waterbody is a waterbody for which current water quality data supports its meeting a certain designated use, however recent data trends show a diminishing level of water quality such that it is likely that in the next listing cycle the waterbody will no longer be meeting its designated use. U.S. EPA. "National Water Quality Inventory: 1996 Report to Congress." April 1998.

[22] U.S. EPA. "National Water Quality Inventory: 1998 Report to Congress." June 2000.

However, in the 2000 National Water Quality Inventory report, this number slipped to only 61 percent of assessed rivers and streams either meeting water quality standards or being threatened for one or more the waterbody's designated uses – a significant reversal in the trend toward meeting the goals of the Clean Water Act.[23]

This disturbing fact was reiterated in EPA's 2006 Wadeable Streams Assessment, which revealed that only 28 percent of the nation's stream miles are in "good condition," compared with 42 percent that EPA classifies as in "poor condition."[24]

Similar reversals have been reported for the condition of the waters along the coastline, and in the nation's estuaries.[25] In addition, efforts to address the contamination and declining water quality in the country's 40 million acres of lakes has stagnated, effectively stopping the dramatic improvement in lake water quality achieved in the latter half of the 1990s.[26]

In fact, the only category that has demonstrated any "improvement" has been the Great Lakes – improving from 97 percent of assessed Great Lakes' shoreline waters being impaired in 1996, to 96 percent in 1998, to 78 percent in 2000.[27] However, even in the Great Lakes, where the *overall* percentage of impaired waters has declined, there has been a significant reversal in water quality. Currently, no waters along the Great Lakes' shoreline are completely safe for fishing and swimming. In 1996 and 1998, States along the Great Lakes reported that two percent of assessed waters along the shoreline fully met all designated uses; however, in 2000, these same States reported that no shoreline waters fully met water quality standards – *absolutely none*.[28]

While it is true that EPA's National Water Quality Inventory reports do not provide information on the health of 100 percent of U.S. waters, they represent the best, if not the only, available means of assessing trends in nationwide efforts to improve the waters of the United States. Given the fact that the true condition of all the nation's waters could, in fact, only be worse than the reports reveal – any reversal of improvement in water quality is troublesome, especially in light of the Republican-controlled House of Representatives' opposition to achieving the goals of the Clean Water Act.

Needed Wastewater Infrastructure Improvements:

To a great extent, the successes of the 1972 Clean Water Act resulted from a significant Federal investment in wastewater infrastructure improvements throughout the country. Since 1972, the Federal government has provided more than $82 billion for

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[23] U.S. EPA. "National Water Quality Inventory: 2000 Report." September 2002.
[24] U.S. EPA. "Draft Wadeable Streams Assessment: A Collaborative Survey of the Nation's Streams." May 2006. The Wadeable Streams Assessment is a new report issued by EPA which the agency describes as the "first-ever, statistically-valid survey of the biological condition of streams throughout the U.S."
[25] *Compare* U.S. EPA. "National Water Quality Inventory: 1996 Report to Congress." April 1998, *and* U.S. EPA. "National Water Quality Inventory: 1998 Report to Congress." June 2000, *and* U.S. EPA. "National Water Quality Inventory: 2000 Report." September 2002.
[26] *See id.*
[27] *See id.*
[28] *See id.*

wastewater infrastructure and other assistance, which has dramatically increased the number of Americans enjoying better water quality and improved the health of the environment.

Treating, and in many cases eliminating, the flow of direct discharges of untreated sewage into U.S. rivers, lakes, and streams has been one of the best investments the American people have ever made. First through the Federal construction grants program, and now the Clean Water State Revolving Loan Fund ("Clean Water SRF") program, the Federal investment in water infrastructure has been integral to improving the quality of the nation's waters. The gains in water quality realized through Federal, State, and local investment in wastewater infrastructure have been significant, helping to achieve the 100 percent increase in the number of fishable and swimmable waters throughout the nation. In addition, as a result of dramatic improvements in wastewater infrastructure, effluent discharges have decreased by one-half since 1970, despite the fact that waste loads grew by more than one-third due to population growth and an expanded economy.

However, these environmental achievements are now at risk.

According to a 2000 EPA report, entitled *Progress in Water Quality*, "without continued improvements in wastewater treatment infrastructure, future population growth will erode away many of the Clean Water Act achievements in effluent loading reduction." [29] For example, EPA projects that, given the expansion of the U.S. population forecast over the next 20 years,[30] even with expected increases in wastewater treatment efficiencies, by 2016, wastewater treatment plants will be forced to discharge partially-treated effluent into U.S. waters at levels similar to those that existed in the mid-1970s – only a few years after the enactment of the Clean Water Act.[31] Even more troublesome, if these population forecasts are projected further to the year 2025, without significant investment in additional treatment capacity, the level of partially-treated effluent being discharged into the nation's waters would reach rates not seen since 1968 – four years before the enactment of the Act – when they reached the maximum level ever recorded.[32]

Without increased investment in wastewater infrastructure, in less than a generation, the U.S. could lose much of the gains it made thus far in improving water quality and experience dirtier water than existed prior to the enactment of the 1972 Clean Water Act.

Of additional concern is the growing awareness that much of the wastewater infrastructure in this country is rapidly approaching or has already exceeded its projected useful life. Many cities and communities throughout the United States are currently facing a

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[29] U.S. EPA. "Progress in Water Quality: An Evaluation of the National Investment in Municipal Wastewater Treatment." June 2000.

[30] *See id.* The Census Bureau has projected that in the next 20 years, the proportion of the U.S. population served by publicly owned treatment works will increase to an estimated 275 million people.

[31] *See id.* EPA has estimated that, by the year 2016, the expansion in population will likely result in a 45 percent increase in influent biochemical oxygen demand (BOD) loading to treatment works (68,030 metric tons per day) and a 20 percent increase in BOD discharges to surface waters (19,606 metric tons per day). BOD is a measure of the oxygen-consuming organic matter and ammonia-nitrogen in wastewater. The higher the BOD loading, the greater the depletion of oxygen in the waterway.

[32] *See id.* By the year 2025, EPA estimates that the amount of BOD loadings to the nation's waters would reach 21,280 metric tons per day.

critical juncture in the age and reliability of their water infrastructure. For example, pipes installed at the beginning of the 20th century that had an expected useful life of 100 years are deteriorating next to pipes installed in the 1940s and 1960s, that, unfortunately have an expected life of approximately 60 years and 40 years, respectively. In addition, many of the wastewater treatment facilities constructed soon after enactment of the Act are now reaching the end of their expected useful life and are in need of repair or replacement.[33]

Another looming need centers on upgrading aging infrastructure to control and eliminate combined sewer overflows. Combined sewer systems were among the earliest sewers built in the United States and continued to be built into the middle of the 20th century. These systems were designed to carry both domestic and industrial sewage, along with stormwater, to treatment facilities before being discharged downstream. However, during precipitation events, such as heavy rainfall or snowmelt, the volume of stormwater and sewage entering the combined sewer system often exceeds its conveying capacity. To prevent damage to the infrastructure, combined sewer systems were designed to overflow directly to surface waters when their capacity is exceeded – discharging large volumes of untreated or partially treated sewage wastes – an estimated 850 billion gallons annually[34] – directly into local waters.[35] Because combined sewer overflows contain raw sewage and contribute pathogens, solids, debris, and toxic pollutants to receiving waters, they create serious public health and water quality concerns. In addition, combined sewer overflows are often the direct cause of (or significantly contribute to) beach closures, shellfish bed closures, contamination of drinking water supplies, and other environmental and public health problems.[36]

Combined sewers are found in 33 States across the U.S. and the District of Columbia.[37] The majority of combined sewers are located in communities in the Northeast or Great Lakes regions – where much of the oldest water infrastructure in the nation is found. However, combined sewer overflows have also occurred in the West, such as in the States of Washington and California. To eliminate combined sewer overflows, communities must redesign their sewer systems to separate sewage flows from stormwater flows or provide significant additional capacity to eliminate the possibility that combined flows will exceed the limits of the infrastructure. Either way, this will be a massive undertaking – estimated by EPA to cost more than $50 billion.[38]

In the next few years, many communities will need to replace large portions of their wastewater infrastructure or face the likelihood of increased failures in their wastewater treatment capacity – posing a significant threat to the country's quality of life, economic prosperity, and the health and safety of both human populations and the environment.

The Clean Water Act requires EPA to report to Congress every two years with a detailed estimate of the costs of needed water infrastructure in each State. This report,

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[33] U.S. EPA. "The Clean Water and Drinking Water Infrastructure Gap Analysis." September 2002.
[34] U.S. EPA "Report to Congress: Impacts and Control of CSOs and SSOs." August 2004.
[35] U.S. EPA "Report to Congress: Implementation and Enforcement of the Combined Sewer Overflow Control Policy." January 2002.
[36] *See id.*
[37] U.S. EPA. "Clean Watersheds Needs Survey 2000: Report to Congress." August 2003.
[38] *See id.*

which is compiled through a survey of the States, includes estimates of needed projects for improvement of U.S. waters, including publicly owned municipal wastewater collection and treatment facilities, facilities for the control of combined sewer overflows, activities to control stormwater runoff and nonpoint source pollution, and programs designed to protect the nation's estuaries.

EPA's most recent assessments of wastewater infrastructure needs – the Clean Watersheds Needs Survey 2000: Report to Congress and the Clean Water and Drinking Water Infrastructure Gap Analysis – estimate that today's total *documented* needs for the nation are $181.2 billion, and between $300 billion and $400 billion in capital investment is needed for restoration and replacement of the nation's aging wastewater infrastructure over the next 20 years.[39] *(See Appendix I for information on individual State needs.)* Considering that the average annual investment by EPA over the past few years has declined from approximately $1.35 billion to $700 million this year, the level of investment to address needs requires a renewed and expanded Federal commitment.

More needs to be done – future generations deserve no less. Congress made a commitment more than 30 years ago to restore and protect the nation's water quality, and should stand ready to uphold this commitment. The size of the expected costs for Clean Water infrastructure cannot be an excuse for turning back the clock on water quality.

Loss of the Nation's Wetlands:

Wetlands are those areas where the flow of water, the cycling of nutrients, and the energy of the sun produce specially adapted communities of plants and animals. Wetlands contribute to the environment in ways that parallel rain forests in more tropical climates and perform many functions that are important to the nation's economy and quality of life.

As waters flow across watersheds through wetlands, chemicals that otherwise would contaminate surface waterways are removed through natural processes that assimilate pollution. When heavy rains fall and deep snowpacks melt, wetlands store and slow down the release of floodwaters, thereby reducing potential damage to downstream farms and communities. Wetlands can also recharge groundwater aquifers and sustain the yield of water for human use, as well as provide dry-season flows to rivers and streams.

Many plants and animals depend upon wetlands, which are essential for maintaining biodiversity. Wetland species are the base of commercial and recreational enterprises that provide jobs and income important to thousands of communities around the country. Three-quarters of the country's commercial fish and shellfish, which provide approximately $2 billion of revenue annually, are dependent upon coastal bays and their wetlands for some portion of their life-cycle.[40] Trees that grow in southeast forested swamps are harvested for

[39] U.S. EPA. "Clean Watersheds Needs Survey 2000: Report to Congress." August 2003, *and* U.S. EPA. "The Clean Water and Drinking Water Infrastructure Gap Analysis." September 2002.
[40] U.S. EPA and USDA. "Clean Water Action Plan." February 1998.

timber, and ducks, geese, and other migratory birds in all flyways use wetlands for feeding, nesting, and resting during migration.[41]

Yet, because the importance of wetlands was poorly understood in the past, more than one-half of the wetlands that were in existence throughout the conterminous States at the time of European settlement no longer exist.[42] The distribution of wetland losses throughout the states is not uniform,[43] in some States and many watersheds, less than 10 percent of the original acreage of wetlands still exists.[44]

In recognition of this enormous loss, as well as the importance of wetlands in achieving the goals of the Clean Water Act, in 1990, the U.S. Army Corps of Engineers ("Corps") signed a Memorandum of Agreement with the EPA outlining the position of the first Bush administration to "achieve a goal of no overall net loss of [wetland] values and functions." From that time until recently, both Republican and Democratic administrations have enthusiastically defended the goal of "no net loss" as an effective tool in implementing the broader goals of the Clean Water Act.

Unfortunately, the all too common practice of draining, filling, and eliminating wetlands continues today. Although the rate of loss has been dramatically reduced in recent years, the United States continues to lose thousands of acres of natural wetlands every year – in spite of the current administration's pledge to move beyond the "no net loss" policy.[45]

Presumably, for the current Bush administration and the House Republican leadership, to move beyond the "no net loss" policy means to let the policy fade into history, and to do nothing while the status of Federal wetland protections in this country are in turmoil.

Uncontrolled Nonpoint Source Pollution:

Over the past 30 years, the modern Clean Water Act has made great advances in improving the quality of U.S. waters and controlling various sources of pollution, with one large exception – nonpoint sources – the unfinished agenda of the Clean Water Act.

Nonpoint source pollution refers to the polluting of water by diffuse sources rather than single identifiable "point" sources. These diffuse sources are usually associated with land use activities as opposed to end-of-pipe discharges. Examples of common nonpoint source pollution include: sediments, pesticides, and nutrients running off of farms and

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[41] Stewart, Robert E. "United States Geological Survey Water Supply Paper 2425, Technical Aspects of Wetlands, Wetlands as Bird Habitat." U.S. Geological Survey.
[42] Dahl, T.E. "Wetlands Losses in the United States 1780s to 1980's." U.S. Department of the Interior, Fish and Wildlife Service. 1990.
[43] *See id.* Ten States have lost 70 percent or more of their wetland acreage, and 22 States have lost more than 50 percent. Only three States – Alaska, New Hampshire, and Hawaii – have lost less than 20 percent of their original wetlands.
[44] U.S. EPA and USDA. "Clean Water Action Plan." February 1998.
[45] Dahl, T.E., "Status and trends of wetlands in the conterminous United States 1998 to 2004." U.S. Department of the Interior, Fish and Wildlife Service, 2006. *See also* U.S. EPA. "National Water Quality Inventory: 2000 Report." September 2002.

urban lawns; oil, grease, heavy metals, and other toxic materials carried on streets, highways, rooftops, and parking lots; farm animal wastes from barnyards and pet wastes from urban areas; and soil washed away from logging and construction areas.[46]

Today, after more than 30 years of Federal and State efforts under the Clean Water Act, the number one cause of pollution to the waters of the United States is nonpoint sources. For example, in 2000, States identified more than 128,000 assessed river miles currently impaired from agricultural sources.[47] An additional 28,000 assessed river miles are impaired from forestry sources and 34,000 more miles are impaired through urban and stormwater sources.[48] In addition, more than 3.1 million lake acres are impaired from agricultural sources and an additional 1.3 million lake acres are impaired from urban runoff or stormwater sources.[49] Finally, of the 58,618 miles of ocean shoreline assessed in the United States, the majority (more than 55 percent) can trace the source of their impairment back to stormwater runoff and an additional 32 percent are contaminated by other nonpoint sources of pollution.[50]

The Clean Water Act has been unable to replicate its successes in controlling point sources of pollution in addressing the problem of nonpoint sources. To a great extent, the reason for this is simple. The Clean Water Act has direct regulatory authority over the discharge of pollutants from point sources; there is no such authority to control or regulate nonpoint sources of pollution.

The lack of an effective national program to address nonpoint source pollution is a serious impediment to restoring and maintaining the health of U.S. waters.[51] Section 319 of the Clean Water Act required States to prepare nonpoint source pollution programs, but did not require that such programs be implemented. In addition, unlike the mandatory technology-based controls imposed on point source discharges, the Act does not require the implementation or enforcement of any nonpoint source management plans, such as buffer strips or nutrient management plans, to fight polluted runoff. Finally, although nonpoint sources of pollution now cause more than 60 percent of water quality impairments, only three percent of Clean Water Act funds have been devoted to this problem.

One approach that would have significantly improved the nation's efforts to control nonpoint source pollution was H.R. 550, the Nonpoint Source Water Pollution Prevention Act of 1997, introduced in the 105th Congress. This legislation would have significantly increased Federal funding for the implementation of nonpoint source control programs. It would also have required States to create and implement plans to control nonpoint sources of pollution within their borders, but would have allowed for the EPA to step in to implement these programs where the States failed to act. In addition, H.R. 550 would have

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[46] Coast Alliance, "Mission Possible: State Progress Controlling Runoff Under the Coastal Nonpoint Pollution Control Program."
[47] U.S. EPA. "National Water Quality Inventory: 2000 Report." September 2002.
[48] *See* id..
[49] *See* id.
[50] *See id. See also,* U.S. Commission on Ocean Policy. "Developing a National Ocean Policy, Mid-Term Report of the U.S. Ocean Commission on Ocean Policy." September 2002.
[51] Association of Metropolitan Sewerage Agencies: "Water…We've Got the Point. Now Let's Get to the Nonpoint…"

renewed the emphasis of controlling nonpoint sources of pollution on a watershed basis, directing that States target those watersheds most greatly impaired by nonpoint sources first to achieve the greatest overall improvement in water quality. Unfortunately, the Republican leadership of the House refused to consider this legislation and has failed to take any other action since to control the flow of nonpoint source pollution.

If this country ever expects to achieve the goals of fishable and swimmable waters, Congress must significantly increase efforts, through both financial incentives and enforceable mechanisms, to control the largest remaining source of impairment to U.S. waters. The controls and regulatory mechanisms necessary to reduce nonpoint source pollution are known – they have not changed significantly for decades. The problem is a lack of political will from the Republicans in Congress to implement the necessary actions to reduce the largest continuing source of pollution to this country's waters.

Polluters Routinely Break the Law:

The primary objective of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. To that end, the Act established, as a goal, that the discharge of pollutants into navigable waters be eliminated by 1985, and makes it unlawful to discharge any pollutant into the nation's waters without a permit.

Unfortunately, 1985 has come and gone, yet modern life necessitates that we continue the practice of granting permits for the discharge of pollutants, provided that these discharges have undergone significant review by EPA or the States on their potential threat to human health and the environment.

Even with provisions in the Act allowing for limited permitted discharges, polluters routinely break the law. For example, a 2006 report found that over 60 percent of major sewage treatment and industrial plants (3,782 facilities) in the United States, Puerto Rico, and U.S. Virgin Islands were violating the law during a 15-month period.[52] This represents an increase of more than 100 percent from a similar report issued just four years earlier.[53]

The 2006 report highlights facilities in non-compliance with the law, including:

- The 3,700 major facilities exceeding the pollution limits in their permits during the reporting period accumulated 29,000 individual exceedances of their Clean Water Act limits;

- 436 major facilities exceeded their permitting requirements for at least one-half of the monthly reporting periods;

[52] U.S. PIRG. "Troubled Waters: An Analysis of Clean Water Act Compliance, July 2003-December 2004." March 2006.
[53] U.S. PIRG. "Permit to Pollute: How the Government's Lax Enforcement of the Clean Water Act is Poisoning Our Waters." August 2002.

- Thirty-five major facilities exceeded their permitting requirements every month between July 2003 and December 2004; and

- Approximately 2,500 individual permit violations between July 2003 and December 2004 exceeded their permit limits by over 500 percent.

Other studies, including one performed by EPA's Office of Enforcement and Compliance Assurance (OECA), reaffirmed this finding, adding that one-half of the serious offenders exceeded pollution limits for toxic substances by more than 100 percent. In fact, the OECA report noted that five percent of the exceedances were *1,000 percent over legal limits*.[54]

Yet, even when large industrial water polluters are caught, they are rarely fined. For example, in its report, OECA demonstrated that about one-quarter of the nation's largest industrial plants and water treatment facilities are in serious violation of pollution standards at any one time, yet only a fraction face formal enforcement actions.[55] Information provided by the States and EPA regional offices show that only a low percentage (9 to 13 percent) of enforcement actions are taken in a timely and appropriate manner, and less than 40 percent of this number ever result in penalties for significant non-compliance with the Clean Water Act.[56]

Worse still, in those few cases when fines are imposed on polluters, the penalties are often too low – often less than $5,000 per action – to act as a deterrent to future pollution.[57] In fact, EPA enforcement staff concluded that there was a demonstrable connection between States and regions with the lowest (and laxest) enforcement activity and those with the highest level of noncompliance with the law.[58] According to one environmental watchdog group, "[f]or many big polluters, breaking clean water laws has become standard business practice."[59]

These unfortunate facts were echoed by EPA's Office of the Inspector General, which noted that although States generally took enforcement actions on significant violators, these actions were often delayed for a year or more after the violation occurred.[60] Further, the penalties imposed were often insufficient to prevent further violations, and were not always collected. According to the Office of the Inspector General, these practices may be a contributing cause to the large number of recurring violations – with more than one-third of

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[54] U.S. EPA. "A Pilot for Performance Analysis of Selected Components of the National Enforcement and Compliance Assurance Program." February 2003.
[55] *See id. See also* Guy Gugliotta and Eric Pianin, "EPA: Few Fined for Polluting Water," The Washington Post, June 6, 2003, at A-1.
[56] *See* U.S. EPA. "A Pilot for Performance Analysis of Selected Components of the National Enforcement and Compliance Assurance Program." February 2003.
[57] *See id.*
[58] *See id.*
[59] Environmental Working Group. "Pollution Pays: An Analysis of the Failure to Enforce Clean Water Laws in Three States." January 2000.
[60] U.S. EPA Office of the Inspector General. "Water Enforcement: State Enforcement of Clean Water Act Dischargers Can Be More Effective." August 2001.

the States reporting that over one-half of their major facilities with significant violations in 1999 also had recurring significant violations in 2000.[61]

Failure to take consistent and prompt enforcement action not only encourages polluters to continue to pollute, it actually increases the level of pollution entering the nation's waters as violations go unchecked. EPA and the States must take swift action not only to bring violators into compliance quickly, but also to establish a credible enforcement program to deter future polluters, including ensuring that Federal and State enforcement departments have the tools and financing necessary to carry out their responsibilities.

For example, when polluters are caught, penalties must be imposed at sufficient levels to ensure that they do not realize any economic benefit from noncompliance. Otherwise, companies may decide that it makes greater economic sense to limit their costs on pollution controls with the expectation that any penalties they may incur would be less than the expected increases in profit. For penalties to provide adequate deterrence against future non-compliance, they must be sufficient to eliminate the potential for economic gain, and they must be collected – otherwise, the country's worst polluters are awarded a huge financial windfall.[62]

Without these actions, companies will consider Clean Water Act penalties as just another "cost of doing business," and will continue to pollute the country's rivers, lakes, and streams.

Beach Water Quality:

As a nation, we are fortunate to have nearly 23,000 miles of ocean shoreline along the continental United States, more than 5,500 miles of Great Lakes shoreline, and 3.6 million miles of rivers and streams.[63] Beaches are an important part of the complex and dynamic coastal watershed, providing numerous recreational opportunities for millions of people including boating, fishing, swimming, beachcombing, bird-watching, and sunbathing.

Lake, river, and ocean beaches are among America's favorite vacation destinations. At least one-third of all Americans visit coastal and Great Lakes counties and their beaches each year, generating tens of billions of dollars in goods and services, and supporting tens of millions of jobs.[64] However, as the national population is rapidly increasing, just recently reaching 300 million people, more people are moving to coastal areas, increasing human demands and impacts on coastal and ocean resources.[65] These changes have serious and deleterious effects on the health of estuaries, coastal waters, and oceans.

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[61] *See id.*

[62] U.S. PIRG. "U.S. EPA Allows Polluters to Pay Less for Violations of Environmental Laws, Giving Violators at least a $55 Million Windfall Over the Last Two Years." January 2003.

[63] U.S. EPA. "National Water Quality Inventory, 2000 Report." September 2002.

[64] U.S. EPA. "Coastal Watersheds: The Beach and Your Coastal Watershed." April 1998. *See also*, U.S. Commission on Ocean Policy. "Developing a National Ocean Policy, Mid-Term Report of the U.S. Ocean Commission on Ocean Policy." September 2002.

[65] U.S. Commission on Ocean Policy. "Developing a National Ocean Policy, Mid-Term Report of the U.S. Ocean Commission on Ocean Policy." September 2002.

The good news is that America's waters are generally cleaner than they were 30 years ago, when rivers were burning and lakes were declared dead. The bad news is that far too many beaches are still unsafe for swimming due to pollution.

During 2005, at U.S. ocean, bay, freshwater, and Great Lakes beaches, there were 20,397 days of closings and advisories, 77 extended closings and advisories (seven to 13 weeks), and 49 permanent closings and advisories (more than 13 weeks) – the highest level for beach closings and advisories ever collected. [66] *(See Appendix I for additional information on beach advisories of individual States.)* Seventy-five percent of the major closings and advisories were based on bacteria levels that exceeded health standards for swimming – down slightly from the previous year.[67]

Most beach closings and advisories are based on monitoring that detects elevated levels of bacteria and indicates the presence of disease-causing organisms from human and animal wastes. These wastes typically enter coastal waters from polluted runoff and stormwater – combined sewer overflows, discharges of untreated or partially treated wastes from sewage-treatment plants and sanitary sewers, septic system failures, and stormwater runoff from urban, suburban, and rural areas.[68] According to state monitoring reports, 78 percent of identifiable sources of beach closings and advisories, and as much as *92 percent* of all closings and advisories are directly related to polluted runoff and stormwater discharges.[69]

To a great degree, beach closings tend to follow rainstorms, largely as a result of improperly designed or maintained sewer systems and drainage areas. For example, in many cities along the coast, when it rains – even as little as one-quarter of an inch – the volume in local combined sewers becomes too great for the treatment plants to handle. In these situations, the flow is diverted to nearby outfall points that discharge pollutants – including raw sewage, garbage, toxic industrial wastes, and contaminated stormwater – into the nearest stream, bay, or coastal recreational area. These untreated discharges can often be as potent as direct sewer emissions.[70]

Contact with polluted water causes sickness. Waters that are polluted with untreated sewage or stormwater runoff may contain several different disease-causing organisms, commonly called pathogens. Waterborne pathogens can carry or cause a number of infectious diseases, including gastroenteritis, typhoid fever, bacterial dysentery, and cholera, and can be passed along to unsuspecting swimmers through accidental ingestion or contact with fecal-contaminated water. Waterborne viruses are also believed to be the major cause of swimming-associated illnesses, including hepatitis, respiratory illness, diarrhea, and ear, nose, and throat problems, including swimmers-ear.

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[66] Natural Resources Defense Council. "Testing the Waters 2006: A Guide to Water Quality at Vacation Beaches." August 2006.
[67] *See id.*
[68] *See id.*
[69] *See id* at xi.
[70] *See id.*

Much can be done to protect individuals and their families from these swimming-associated diseases, as well as keep the nation's coastal areas from becoming little more than open sewers. States and communities are undertaking regular beach-water monitoring and public-notification programs in greater numbers to provide adequate protection to beachgoers. In 2005, roughly 66 percent of beaches conducted regular monitoring of water quality, including 19 States that monitor all or most of their coastal beaches at least once a week.[71]

While monitoring is critical, even more important are efforts to control sources of coastal water pollution from entering the nation's coastal recreational areas. This again highlights the importance of improving the wastewater infrastructure and nonpoint source controls throughout the nation, especially to prevent sewage overflows from combined and sanitary systems, polluted runoff, and urban stormwater discharges.

Fish Advisories on the Rise and Migratory Bird Populations on the Decline:

One of the best indicators on the health of the environment, including the nation's waters and wetlands, is the health of the fish and wildlife that depend on these waters for their survival. Unfortunately for many species, as well as for humans, recent trends are headed in the wrong direction.

In September 2005, EPA released its annual listing of fish advisories (the *2004 National Listing of Fish Advisories*), a compilation of consumption advisories and safe-eating guidelines for fish caught in U.S. waters. Fish consumption advisories warn people about the risk of eating contaminated fish. The object of the advisory is to provide information about the chemical contaminants in fish (such as PCBs, dioxin, mercury, and DDT) to educate consumers about which waterbodies and fish species are of concern and to inform individuals about ways that they can reduce their exposure.

The *National Listing* reported that, as of 2003, there were 3,221 active fish advisories in the United States, a four percent increase from the previous year.[72] *(See Appendix I for additional information.)* The waters represented in these fish advisories cover 35 percent of the nation's total lake acreage and 24 percent of the total river miles, and continues the alarming trend of annual increases in the number of fish advisories in effect throughout the United States. In fact, during the past 12 years of Republican majorities in the House of Representatives, the number and percentage of lake acreage and river miles requiring fish advisories have increased dramatically, doubling the percentages of river miles and quadrupling the percentage of lake acres under advisories.[73]

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[71] *See id.* The nineteen states are Alabama, California, Connecticut, Delaware, Florida, Illinois, Indiana, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Virginia, and Wisconsin. The States of North Carolina and South Carolina, which in 2003, monitored at least one-half of their reported beaches once a week or more, now monitor these beaches less frequently than once a week, along with the States of Georgia, Maryland, and Michigan.

[72] *Cf.* U.S. EPA, "2004 National Listing of Fish Advisories," September 2005, and U.S. EPA. "National Listing of Fish Advisories," August 2004.

[73] U.S. EPA, "Percentage of River Miles and Lake Acres Under Advisory, 1993-2004," <http://epa.gov/waterscience/fish/advisories/2004slides.ppt> (last visited October 5, 2006). The percentage of river miles and lake acres under advisory in 1995 were 17 percent and 6 percent, respectively.

Currently, there are U.S. fish advisories for 40 chemical contaminants, although most advisories involve five primary contaminants: mercury, PCBs, chlordane, dioxins, and DDT.[74] These chemical contaminants accumulate in the tissue of aquatic organisms at concentrations many times higher than concentrations in the water. As the contaminants move up the food chain, the concentrations increase. As a result, the fish at top of the food chain, including many species popular for human consumption, have concentrations of toxic chemicals in their tissue a million times higher than the concentrations in the water. It is this heavy concentration of toxic chemicals that poses a threat to human health through the consumption of contaminated fish.

For example, if you eat fish once a week and live within 20 miles of one of the Great Lakes, you are likely to have 440 parts per billion PCBs in your body. That is more than 20 times higher than people living elsewhere in America and not exposed to Great Lakes fish. Yet, even today, 100 percent of the near-shore waters of the Great Lakes and their connecting tributaries are under fish consumption advisories for toxic substances such as PCBs, dioxin, and mercury – with no signs of improvement.

This is a national tragedy.

Equally concerning is the recent decline in duck populations throughout the continental United States. In 2004, the U.S. Fish and Wildlife Service, in partnership with the Canadian Wildlife Service, released a report, entitled *Waterfowl Population Status, 2004*, which documents recent trends in the population of migratory birds throughout the North American continent. What was alarming was that this report documented an 11 percent decline in migratory duck populations between 2002 and 2003, and a three percent decline in the number of ducks over the 1955-2003 long-term average.[75] Chief among the reasons for the dwindling populations was a decrease in the availability of suitable breeding and nesting habitat, such as wetlands, as well as diminished water quality along the migratory bird flyways. According to the report, both of these factors were caused, in part, by "years of drought in parts of the U.S. and Canadian prairies, combined with intensive agricultural practices."[76]

As agricultural practices and development pressures expand, there is a correlating decrease in the availability of suitable habitat for fish and wildlife, including migratory birds. In the continental U.S., nowhere is this more apparent than along the Mississippi River flyway – the area that runs from approximately the Great Lakes to the Gulf of Mexico, and serves as a major migration route for millions of birds each year. Along this route, which roughly follows the path of the Mississippi River, development and agricultural conversions have taken a huge toll on the amount of land suitable for habitat – accounting for roughly one-third of all the wetlands lost to the nation.[77] Now, as suitable habitat becomes more

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[74] U.S. EPA, "National Listing of Fish Advisories," August 2004.
[75] U.S. Fish and Wildlife Service, "Waterfowl Population Status, 2004," July 24, 2004.
[76] *See id.* at 6.
[77] Dahl, T.E. "Wetlands Losses in the United States 1780s to 1980's," U.S. Department of the Interior, Fish and Wildlife Service, 1990, at 10. Between the 1780s and the 1980s, approximately 36 million acres of wetlands have been developed along the Upper Mississippi and Missouri Rivers.

scarce, smaller fluctuations in rainfall and development practices are likely to have greater impacts on fish and wildlife populations. As a result, it has become increasingly important to protect the habitat that remains, otherwise we may see more frequent and more dramatic declines in waterfowl populations in the years to come.

THE HOUSE REPUBLICANS' EFFORTS TO DISMANTLE THE CLEAN WATER ACT:

In the early 1990s, Republican House members Newt Gingrich and Tom Delay and others, began working on plans to seize control over the U.S. House of Representatives. Many of their conservative philosophies were enumerated in the infamous "Contract with America," a Republican manifesto on how a Republican-majority would "transform the way Congress works."

One concept that was conspicuously absent from the "Contract" was the desire of the new-Republican majority to rewrite the bulk of the nation's environmental laws – shifting the focus from protection of human health and the environment to protection of favored industries and big business' bottom line.

In the words of Newt Gingrich, the successes of environmental statutes, such as the Clean Water Act, the Clean Air Act, and the Superfund law "have been absurdly expensive, created far more resistance than was necessary and misallocated resources on emotional and public relations grounds without regard to either scientific, engineering or economic rationality."[78]

"And that," he continued, "requires very profound rethinking of what we want to do collectively as a species in order to save the environment."[79]

Immediately following the 1994 election, the Republican majority quickly set its sights on rewriting the nation's environmental laws which the new majority vilified as too bureaucratic, too expensive, and bad for American business. Starting with a moratorium on any new environmental regulations, compensation for landowners when regulations affected their property values, and a requirement that new regulations be subject to new cost and risk analyses, and legal and bureaucratic challenges, the Republican majority began its assault on the nation's comprehensive environmental safety net that, since enactment, has resulted in cleaner water, cleaner air, and protection from toxic substances.

However, no single endeavor encapsulated Republican efforts to reshape the nation's environmental laws better than the attempt to rewrite the Clean Water Act – the Republican "Dirty Water Act."

The "Dirty Water Act":

The Clean Water Act is one of the most highly regarded environmental statutes on the books today. It has achieved great benefits for the health of our citizens, for the liveability of our riverfront, lakefront, and coastal areas, and for the availability of the clean water so necessary for economic growth.

H.R. 961, aptly renamed the "Dirty Water Act" by the *New York Times*,[80] would have single-handedly overturned over two decades of success, and would have rolled back the

[78] John H. Cushman. "Congressional Republicans Take Aim at an Extensive List of Environmental Statutes," N. Y. Times, Feb. 22, 1995.
[79] *See id.*

requirements of existing law, created new loopholes for special interests, created new opportunities for legal challenges to any effort to limit pollution of the nation's waters, and would have made enforcement of the few standards that remained very difficult.

There was little that polluters and special interests asked for that they did not get in the Republican-majority's "Dirty Water Act." This was their dream come true – brought together behind closed doors – a true polluter's bill of rights.[81]

However, in four key areas – point source dischargers, nonpoint sources, stormwater controls, and wetlands – the Republican's "Dirty Water Act" would have stopped a quarter-century of progress in its tracks.

Encouraging Polluters to Pollute:

On point sources, the "Dirty Water Act" would have eliminated the underpinnings of the National Pollutant Discharge Elimination System (NPDES), arguably the most successful component of the Clean Water Act. Through the creation of dozens of waivers and exemptions, the "Dirty Water Act" would have eroded fundamental provisions of the NPDES program that establish uniform baselines that have resulted in the significant gains in water quality achieved by the Act.

H.R. 961 would have introduced numerous vague, unworkable, and inconsistent new standards for the permitting requirements of the Act, which the U.S. Department of Justice noted "would create exemptions and loopholes for polluters, making enforcement much more difficult."[82] In addition, the bill contained a myriad of industry-specific waivers which both expanded currently available waivers and created new loopholes in the Act's point source standards. For example, H.R. 961 contained one or more specific waivers available to each of the following industries: mining, pulp and paper, iron and steel, photo processing, food processing, electric power, cattle, oil and gas and others.[83] In addition, a select group of municipalities would have become eligible for new or expanded waivers from existing treatment standards for sewage treatment plants, resulting in far greater numbers of cities being authorized, by law, to continue discharging raw or partially treated sewage into local receiving waters, regardless of potential threat to human health or the environment.[84]

Finally, the bill would have all-but-eliminated the "anti-backsliding" provisions of current law, which require that any new permits issued must be at least as strict as existing permits to prevent water quality from getting worse. Under the "Dirty Water Act," regulated industries could have obtained new, weaker water discharge permits if they would promise to achieve some unquantified reduction in air pollution, or if they could reduce either the number or overall discharge volume, but not necessarily its toxicity.[85] Clearly, the Republican-majority believes that "dilution is the solution to pollution."

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[80] "Bud Shuster's Dirty Water Act", N.Y. Times, April 2, 1995, at A14.
[81] H.R. Rep. No. 104-112, at 384 (1995).
[82] *See id.* at 391.
[83] *See id.*
[84] *See id.*
[85] *See id,* at 399-400. Under this second example, a discharger could commit either to increase the concentration of a pollutant in the discharge while decreasing the discharge flow, or to increase the discharge

Status quo on controlling non-point sources of pollution:

Back in 1995, and continuing to today, the major remaining source of water pollution comes from diffuse sources, known as nonpoint sources. These include land use activities such as construction, agriculture, logging, and mining, as well as atmospheric deposition and contaminated sediments.

Unfortunately, H.R. 961 did not include a program that would have resulted in the type of reductions in nonpoint source pollution which water quality needs require – but instead proposed a "new" nonpoint program that focused on additional exemptions for specific industries, such as agriculture and animal feeding operations, even where they are the leading sources of pollutants to the nation's waters.[86]

In addition, the "Dirty Water Act" sought to repeal the coastal water quality protection program of the Coastal Zone Amendments and Reauthorization Act (CZARA), a program with a demonstrated track record of success, and to substitute a program that, at the time, had been "marked by its ineffectiveness."[87] Rather than fold an effective coastal program into an ineffective national program, the bill should have explored ways to upgrade the ineffective national program to more closely resemble the stronger coastal program.

Backsliding on stormwater controls:

Urban runoff from storm sewers is the second leading cause of water quality impairment in estuaries, and the third leading cause in rivers and lakes. Despite this evidence, the Republican-backed "Dirty Water Act" would have diminished the controls already in place that reduce pollutant loadings from stormwater, and would have made it more difficult to ever achieve water quality goals.

Rather than revise the stormwater program to meet the legitimate concerns of cities and municipalities, H.R. 961 would have eliminated all aspects of the current stormwater program by eliminating stormwater discharges from the definition of point source, regardless of the size or nature of the discharge, and would have mandated that States create new stormwater programs, regardless of whether State programs were effective in addressing stormwater runoff.

Exempting stormwater discharges from the permitting requirements would have eliminated the valuable aspects associated with a permit process, thereby eliminating information which is necessary to make valid judgments about future actions; and, it would have virtually eliminated controls on stormwater associated with industrial activity that,

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from one outfall at a facility with an accompanying decrease at another outfall. Either way, both proposals would have a devastating impact on local water quality – increasing the likelihood of toxic hot spots immediately downstream of the outfall point.

[86] *See id,* at 422-23.

[87] *See id,* at 420.

unlike municipalities, has control over the area and pollutants likely to be included in stormwater.[88]

This redefinition and relaxation of stormwater pollution controls was a blatant reduction in water quality protection, because it clearly contemplated reduced levels of protection. Under the Republican-proposal, even existing and ongoing stormwater controls, which had already been demonstrated to be economical and achievable, would no longer have required treatment – regardless of the pollutants present, or the potential areas affected.

Accelerating the Destruction of Wetlands:

Without doubt, the most controversial issue of the "Dirty Water Act" was how the bill proposed to rewrite laws aimed at wetlands protection.

In the simplest terms, there are two ideologies concerning wetlands protection. The first ideology focuses on the protection of wetlands, with a recognition that modern society necessitates some level of development, with corresponding efficiency and responsiveness to landowners. The second ideology focuses on deregulation of most of the wetlands in the country and accelerating wetland losses. Unfortunately, the Republican-backed legislation was designed to accomplish the latter.

Rather than address stakeholder concerns in a thoughtful, scientific manner, H.R. 961 would have created a new, scientifically unsupportable basis for identifying wetlands that would have removed between 60 to 80 percent of all wetlands from protection.[89]

Rather than requiring the relative value of each wetland to be judged when and if someone wants to develop it, H.R. 961 would have inexplicably required the classification of all wetlands in the United States, whether anyone wanted to develop them or not. This provision alone was expected to cost more than $1 billion and would have taken approximately ten years to complete. Its sole purpose was to further reduce the amount of wetlands afforded Federal protection.

And rather than continue the current, workable practice of determining whether regulatory requirements on a parcel of land amount to a constitutional taking, H.R. 961 would have established a new system where anyone who could have claimed that Federal wetlands protection resulted in a 20 percent loss in value of their property (as compared to what it would be if they could develop it without restriction), would have been entitled to be compensated for the diminished value from U.S. taxpayers. Why the taxpayers should be punished for the perceived problems of the wetlands program was never explained, but the punishment would have been severe: cost estimates for this provision ranged into the tens of billions of dollars.[90]

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[88] *See id,* at 424-25.
[89] *See id,* at 386-87.
[90] *See id,* at 387.

Aftermath of the "Dirty Water Act":

Fortunately, despite the fact that the "Dirty Water Act" was approved by the House of Representatives, this legislation was never considered by the Senate, and never became law.

Unfortunately, however, many of the philosophies that drove this legislation have, from time to time, reappeared in other legislative proposals or have taken a new form as policy riders in annual Congressional appropriations acts. Whatever the vehicle, the fundamental disdain that the House Republican majority has for the nation's system of environmental laws remains – it is simply a question of when, and in what form, these proposals will again come before the Congress for consideration.

Environmental "Riders": Reshaping Environmental Policy through the Appropriations Process:

While the House Republican majority was successful in moving the "Dirty Water Act" through the House of Representatives, the American public saw through the rhetoric, and rejected any notion that Congressional Republicans were interested in protecting the nation's environment. Instead, the "Dirty Water Act" demonstrated where the interests of the House Republican majority truly centered – protecting big businesses' bottom line by shifting the costs of pollution to the American taxpayer.

However, the "Dirty Water Act" exercise did accomplish one significant change. It demonstrated to the House Republican majority the potential for negative publicity from undertaking a large-scale attack on the nation's environmental laws. Consequently, the House Republican leadership chose to avoid future, large-scale legislative changes to the nation's environmental laws – but did not give up on its efforts to roll back environmental protections.

Not a change of heart, but a change of tactics.

In the alternative, the House Republican leadership attempted to change the course of environmental regulations through the Federal budgetary process – through legislative riders on must-pass appropriations acts.

Beginning with their very first opportunity to fund the Environmental Protection Agency, the House Republican majority put forward a legislative proposal that would have revoked or substantially restricted nearly 20 environmental laws that Republicans claimed were "anathema to big business."[91]

Within the scope of the Clean Water Act, alone, the House Republican leadership attempted to accomplish much of what it was unable to do in the "Dirty Water Act."

For example, the House Republican leadership's bill would have:

[91] Jerry Gray, "In House, Spending Bills Open Way to Make Policy." N.Y. Times., July 19, 1995.

- Prohibited any Federal funds from being used to address uncontrolled releases of stormwater – the second leading cause of water quality impairment in estuaries, and the third leading cause in rivers and lakes;

- Prohibit any Federal funds from being used to address ongoing combined sewer overflows or sanitary sewer overflows – situations where raw or partially treated sewage overflows into local streets, homes, businesses, storm drains, or local creeks and streams;

- Prohibit any Federal funds from being used to enforce existing wetland protection programs – removing *all* protections against unregulated draining, filling, or destroying the remaining wetlands within the United States;

- Prohibiting any Federal funds from being used to carry out the day-to-day mechanics of the Clean Water Act permitting program, including efforts to address potential new point source discharges – setting up a potential for either limitless discharges into the nation's waters, or bringing to a stand-still EPA's ability to operate the core protections of the Clean Water Act;

- Prohibited any Federal funds from being used to implement the Great Lakes Initiative – a proposal that calls for uniform water quality standards for Great Lakes states to improve the overall environmental health of the basin; and

- Held hostage an additional $1 billion for water and wastewater infrastructure that could not be spent until Congress enacted the "Dirty Water Act."[92]

However, in addition to the potential impact that these policy changes would have accomplished, these so-called "environmental riders" represented a fundamental shift in the way that potential changes to legislative policy would be considered by the Congress under the leadership of House Republicans. As *The New York Times* noted:

> Usually the House [of Representatives] declines to make a policy change in annual spending bills, leaving it to [authorizing committees, such as the Committee on Transportation and Infrastructure] that every five years or so revise broad laws like the Clean Air Act and the Clean Water Act. Those laws are changed only after extensive hearings and long debate, while budget bills get much less consideration and are drafted by lawmakers with relatively little expertise in the policies involved.[93]

The House Republican leadership considers "environmental riders" an effective tool to change the nation's environmental laws with little debate by attaching these provisions to the annual appropriations acts that fund all of the agencies, departments, and programs of the Federal government. Although many of the Clean Water Act riders were later removed

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[92] H.R. 2099, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996, 104th Cong. (1995).
[93] John H. Cushman, Jr., "House Coalition sets G.O.P. Back on Environment," New York Times, July 29, 1995, at A1.

from the fiscal year 1996 EPA funding bill, the House Republican leadership has consistently returned to the practice of utilizing "environmental riders" to effectuate changes to the nation's environmental laws.

Over the past 12 years, the House Republican leadership has advocated several "environmental riders" aimed at the programs and policies of the Clean Water Act. In addition to the initial salvo in the 1996 EPA funding bill, which House Democrats were successful in having stricken from the bill, only to have them return through a Republican leadership parliamentary maneuver,[94] the Republican majority has also worked to:

- Federalize local land use determinations by designating any decisions of a U.S. Army Corps of Engineers wetlands appeals board as "final agency actions" for the purposes of Federal jurisdiction under the Clean Water Act[95];

- Block efforts of the administration to replace the failed Corps' nationwide permit 26, which allowed developers to fill in up to three acres of wetlands without public notice or environmental reviews, with a substitute, activities-based program that would have better protected wetlands and avoided the automatic approval of proposals to develop the nation's floodplain[96];

- Block efforts of the administration to implement its Clean Water Act total maximum daily load (TMDL) program, that focused efforts to identify specific polluted waters, define the specific measures needed to restore them to health, and implement these measures[97]; and

- Block efforts of the Environmental Protection Agency to strengthen drinking water standards for radon and arsenic to limit the potential threat to human health and public safety.[98]

As these repeated efforts clearly demonstrate, the Republican majority will use whatever means necessary, either direct assaults or surreptitious procedural maneuvers, to undermine Federal protections for human health and the environment.

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[94] During House floor consideration on H.R. 2099, the VA-HUD Appropriations bill for fiscal year 1996, an amendment to strike the anti-environmental riders was approved by a vote of 221-206 (July 28, 1995, Roll Call Vote 599). However, as debate on this legislation concluded, the House Republican Leadership employed a parliamentary procedural move to demand a re-vote on this amendment. When a second vote was taken on this amendment, it was defeated by a vote of 210-210 (July 31, 1995, Roll Call 605), returning the anti-environmental riders to the legislation.

[95] H.R. 2605, the Energy and Water Appropriations Act, 2000, 106th Cong. (1999).

[96] *See id.*

[97] H.R. 4425, the Military Construction Appropriations Act, 2001, 106th Cong. (2000).

[98] H.R. 2099, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996, 104th Cong. (1995).

"Project Evergreen" and the Card Memo: Hitting the Brakes on Protection of the Environment:

In the waning days of the Clinton administration, members of the House Republican leadership, again, switched tactics in their efforts to rewrite or repeal much of the nation's environmental protection statutes.

One notorious effort undertaken by a member of the House Republican leadership, sought the assistance of conservative think tanks, industry leaders, and others to identify environmental rules, regulations, and executive orders that a Republican president could implement immediately upon taking office to go on the offensive against the "extreme environmentalists."[99] This effort, dubbed "Project Evergreen" solicited untold suggestions from regulated industry, and laid the groundwork for the Bush administration to undo many of the pro-environmental policies of the Clinton administration.

In a February 29, 2000 letter, a member of the House Republican leadership solicited assistance from like-minded individuals to identify potential changes that a new Republican president could implement quickly to "not merely reverse the damage done … by the extremism of the so-called environmental movement … but to enable the executive branch to work its will to counter the entire movement and undercut their sources of power."[100]

The letter continued, "We must force [environmentalists] to spend money and resources, weakening their influence. Further, we should promote our own visions of proper stewardship of God's green earth."[101]

The *Washington Post* story that uncovered "Project Evergreen" offered a few tongue-in-cheek suggestions for rules and regulations that a new Republican president could overturn, including efforts to protect the nation's wetlands from draining and filling and a proposed rule to stop manure runoff from concentrated animal feeding operations (CAFOs).[102]

Ironically, on January 20, 2001, the first day of the current Bush administration, the President's then-Chief of Staff, Andrew Card, issued a memo to all Federal agencies directing the agencies to withhold, withdraw, and suspend any Federal regulation, not yet in force, which included many of the rules and regulations identified by the *Washington Post*.[103]

What is unclear is the level of influence that "Project Evergreen" played not only in identifying Clinton-era proposals that were later revoked, but also the level of influence those invited to participate in "Project Evergreen" played in the Bush administration, or continue to play under House Republican leadership.

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[99] Al Kamen, "Friends of the Dearth," Wash. Post, Mar. 8, 2000, at A29.
[100] Letter dated February 29, 2000 from Representative John T. Doolittle (R-CA) to the Heritage Foundation (on file).
[101] *See id.*
[102] Al Kamen, "Friends of the Dearth," Wash. Post, Mar. 8, 2000, at A29.
[103] Memorandum dated January 20, 2001 from Andrew H. Card, Jr. to the Heads and Acting Heads of Executive Departments and Agencies, <http://www.whitehouse.gov/omb/inforeg/regreview_plan.pdf>.

Suspension of the Total Maximum Daily Load Rule:

In the years immediately following the passage of the Clean Water Act, pollution problems were so prevalent that any reduction in pollutants immediately improved the health of waters.

After more than 30 years of effort, most of the obvious water pollution problems have been addressed. However, States continue to identify more than 20,000 rivers, lakes, streams, and other waterbody segments that remain polluted to the point of endangering public health. *(See Appendix I for additional information on impaired waters of individual States.)* To restore the health of these waters, existing programs need a more focused effort to identify specific polluted waters, definition of particular measures needed to restore them to health, and implementation of these measures.

The authors of the 1972 Clean Water Act envisioned a time when this more focused approach to restoring the remaining polluted waters would be needed and they created the Total Maximum Daily Load ("TMDL") program to meet this challenge. The TMDL program calls for States to identify those waters or segments of waters that are not meeting the State's water quality standards even after the implementation of the technology-based controls required under the Act, to identify the pollutants that are causing the impairment, and to develop individualized plans to reduce the pollutants of concern so that water quality standards can be met. The Act also requires that both the list of polluted waters and the specific TMDLs must be sent to EPA for approval; if EPA disapproves a State list or TMDL, the Clean Water Act requires EPA to establish the list or the TMDL for the State.

The TMDL program can be thought of as the Clean Water Act having come full circle. Before 1972, water quality programs were ambient water quality based, which was time consuming and ineffective, because all pollution control standards were to be individually developed. The 1972 Act changed the entire focus of water pollution programs from ambient water quality to technology-based standards. For industrial discharges, the basic standard is best available technology (BAT) that is economically achievable. For municipal discharges, the basic standard is secondary treatment. These technology standards are minimums that must be met by all dischargers, regardless of the quality of the receiving waters. Following implementation of technology-based controls, if a water body is still impaired, the TMDL program is applicable and ambient water quality based controls are applied. In effect, the TMDL program returns to the emphasis on water quality that existed before 1972, but in a more effective manner, focusing only on waters known to be impaired, and with technology-based controls as a backstop.

However, despite the existence of the TMDL program, until the early 1990s, EPA and the States gave top priority to implementing general State clean water programs, and gave a lower priority to the more focused restoration authorities of the TMDL program. As a result, relatively few TMDLs were developed and many State lists were limited to a few impaired waters.

Then, several years ago, citizen organizations began bringing legal actions against EPA seeking to enforce the requirements of the Act on the listing of impaired waters and the development of TMDLs. To date, 22 cases have been resolved with agreement for State

actions to identify impaired waters and establish TMDLs.[104] Where a State fails to act, EPA is required to step in to identify the polluted waters and to establish TMDLs for those waters.

In 1996, EPA determined that there was a need for a comprehensive evaluation of the TMDL program, and, along with stakeholder assistance from a Federal advisory committee, developed recommendations for improving program implementation, including updating the TMDL program.

On July 11, 2000, the Clinton Administration signed final regulations (the "TMDL rule") to revise and significantly strengthen the TMDL program based on the recommendations of the Federal advisory committee, numerous stakeholders from a variety of interests, including agriculture, and the general public. Although the TMDL rule was built on the foundations of the existing TMDL regulations, the proposal was intended to be a great improvement in the program.

In essence, the TMDL rule retained the essential core of the program envisioned in 1972, namely: (1) States identify those waters where the State's water quality standards are not being met; (2) States identify the pollutants that are causing the water quality impairment; (3) States identify the sources of those pollutants; and (4) States assign responsibility for reducing those pollutants so that the waters can meet the uses that the States have established. In addition, the EPA backstop was retained to ensure final accountability for the development and implementation of the program.

To further strengthen the program, the TMDL rule also required specific plans and schedules for implementation of TMDL actions to restore the health of polluted waterbodies, more diverse sharing of pollution control responsibilities among point and nonpoint sources, and expanded and strengthened public involvement in the development of TMDLs. In addition, EPA revised earlier drafts of the TMDL rule to clarify provisions to respond to concerns of the agricultural community, and withdrew in its entirety provisions related to forestry activities.[105]

Unfortunately, as has been the case with many attempts to strengthen laws and regulations to protect the environment over the past decade, the Republican leadership in Congress politicized the TMDL rule as too costly, too burdensome, and an overreach of Federal regulatory authority. During consideration of an unrelated appropriations bill, the Republican leadership of the House and Senate included language to block Federal funds from being used by EPA to implement any new rule on the TMDL program during fiscal years 2000 and 2001.[106] The legislation was signed into law on July 13, 2000 – two days after

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[104] EPA Website on TMDL Litigation Status. (last modified October 21, 2003) <http://www.epa.gov/owow/tmdl/lawsuit1.html>.

[105] EPA Website on Background Information Regarding Rules Proposed in August 1999. <http://www.epa.gov/owow/tmdl/smithforestry.html> and <http://www.epa.gov/owow/tmdl/pdf/tmdl45.pdf>.

[106] Conference Report to Accompany H.R. 4425, Making Appropriations for Military Construction, Family Housing, and Base Realignment and Closure for the Department of Defense for the Fiscal Year Ending September 30, 2001 (House Report 106-710).

the TMDL rule was made final – and effectively blocked any potential revision to or implementation of the TMDL rule, until October 1, 2001.

Then, on January 20, 2001 – the day of his inauguration – President Bush indefinitely blocked all regulations proposed by the Clinton Administration that had not been finalized and published in the Federal Register, including the TMDL rule.

Picking up on the Republican majority's mantra of "too costly, too complex, and an overreach of Federal authority," President Bush observed the anniversary of the Clean Water Act by suspending[107] and later revoking[108] the TMDL rule to "consider whether and how to revise" the existing TMDL program.

In the five years that have followed, the Bush administration has continued to work on proposals that would further weaken efforts toward addressing the remaining impaired waters, including changes that could undermine efforts now underway in States to develop TMDL programs, delay water quality improvements for years, and eliminate any EPA backstop for protection of the nation's waters, if not completely derail the existing TMDL program for good.

One particularly damaging proposal rumored to be under consideration would allow States to forego developing TMDLs for impaired waters within their borders on the promise that a voluntary program might result in the waterbody meeting applicable water quality standards.[109] If this proposal were adopted, it would allow States to avoid their statutory responsibility to identify and address ongoing sources of pollution to State waterbodies – a duty which States have been unable or unwilling to achieve since enactment of the Clean Water Act. This proposal would be in direct violation of the Clean Water Act's provision that States identify impaired waters within their borders and develop an enforceable plan for addressing these impairments.[110]

Watering-down those remaining beneficial aspects of the TMDL program will lead to further confusion about the future of the TMDL program and will contribute to further delays in developing clean-up plans for our most polluted waters. After more than 30 years of delay in implementing the TMDL requirements of the Act, many States are just beginning to tackle cleanups that will result in cleaner, safer water for swimming, aquatic life, and other important uses of U.S. waters. The continued stalling of the Bush administration on this importation issue only delays progress in cleaning up those remaining impaired waters because of uncertainty.

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[107] Effective Date of Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulations; and Revision of the Date for Submission of the 2002 List of Impaired Waters; Final Rule, 66 Fed. Reg. 53,044 (October 18, 2001).

[108] Withdrawal of Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulation; Notice of Proposed Rulemaking, 67 Fed. Reg. 79.020 (December 27, 2002).

[109] *See* "EPA Officials Debating Voluntary Alternatives to TMDL Requirements", *Inside EPA Weekly Report*, July 23, 2004, at 1.

[110] 33 U.S.C. 1313 (d) – (e).

The TMDL process is the most fair and efficient way to finish the task laid out over 30 years ago. The TMDL rule developed by the Clinton administration was not perfect, with many criticizing the proposal, including some in the environmental community.

However, the 2001 TMDL rule proposed an effective program that would have provided States with the tools needed to achieve water quality standards. Yet, when presented with an opportunity to finally address the thousands of polluted waterbodies that remain in this country, the Republican leadership's response was, "Stay the course."

Clearly, the Republican leadership in Congress and the Bush administration opposed the TMDL rule, but in the five years that have passed since its withdrawal, neither the Bush administration nor the Republican leadership in Congress have developed their own proposals on how to address the nearly 20,000 individual waterbodies that remain impaired through the county. If the House Republican leadership or the Bush administration have a better proposal to achieve the goals of the Clean Water Act, neither has revealed these proposals to the American public..

American citizens have waited over 30 years for the fishable and swimmable waters promised back in 1972 – apparently the Republican leadership and the Bush administration's response is, "What is one or two decades more?"

The Republican Record on Wetlands:

Our nation has a checkered history both in recognition of the important role wetlands provide to the overall health of the environment, as well as their protection. Over the past 400 years, "wetlands have been drained and filled for farmland and urban development, mosquito control, and many other activities."[111]

However, as the nation began to more fully understand the value that wetlands provide for improved water quality, flood control, habitat, aquifer recharge, and maintaining surface water flows during drought, individuals also began to recognize that these areas needed protection.

The enactment of the Clean Water Act represented a milestone in national protection of the values and functions of wetlands. In addition to their inherent value for flood protection and habitat, "[w]etlands are included as waters of the United States for the purposes of the Clean Water Act because it is recognized that some wetlands may improve water quality through nutrient cycling and sediment trapping and retention."[112] The goals of the Clean Water Act to restore and maintain the chemical, physical, and biological integrity of the nation's waters *"cannot be achieved if wetlands are not protected.*"[113] This salient fact was recognized in the nation's "no net loss of wetlands" policy by the first Bush administration, and carried forward through subsequent administrations. However, the advances made

[111] National Research Council, Compensating for Wetland Losses under the Clean Water Act, National Academy Press (2001), at 12.
[112] *See id.* at 11.
[113] *See id.* (emphasis added).

under the "no net loss" policy have never been at greater risk than under the second Bush administration and the Republican Congress, who have presided over the undoing of more than 30 years successes in protecting the nation's wetlands.

The SWANCC Decision and Republican Efforts to Narrow the Scope of the Clean Water Act:

In January 2001, the United States Supreme Court issued a 5-to-4 opinion, in the case of *Solid Waste Agency of Northern Cook County* v. *Army Corps of Engineers*[114] *("SWANCC")*, that denies Federal protection for thousands of waters and wetlands that serve as habitat for migratory birds.

Until *SWANCC*, Section 404 of the Clean Water Act served as the primary Federal protection for wetlands that serve important habitat, flood control, water supply, and water quality improvement functions. In the absence of section 404 protection, many isolated waters and wetlands throughout the United States are being filled, drained, or polluted, without review, without objections, and without limit, regardless of the impact on the environment or human needs. Unfortunately, the Supreme Court adopted a myopic reading of Congressional intent and determined that protection of small water bodies is beyond the reach of the Act. As stated in the dissenting opinion of Justice Stevens, "the Court takes an unfortunate step that needlessly weakens our principal safeguard against toxic water."[115]

In the discussion of the Court's opinion, Justice Rehnquist opined that when Congress used the term "navigable waters" in the Clean Water Act, Congress must have intended there to be some nexus to actual navigation. However, in fact, the legislative history and language of the Act make it abundantly clear that Congress intended the broadest possible constitutional interpretation for the provisions of this precedent-setting law. Congress was very deliberate and careful to define "navigable waters" as, "the waters of the United States, including the territorial seas."

In the aftermath of the *SWANCC* decision, the Section 404 regulatory program has been in turmoil, with the regulated community and concerned citizens watching as the situation has grown increasingly more confusing and chaotic. At the same time, many developers – including individuals who would otherwise prefer to see all Federal protections over U.S. waters and wetlands eliminated – championed the broadest possible reading of *SWANCC*, advocating a legal bright-line test that would prohibit Federal protections over any non-traditionally-navigable water in the United States.

Seizing upon this regulatory confusion, the Bush administration, with the acquiescence of the Republican Congress, initiated a two-prong process to further abandon the decades-old interpretation on the scope of the Act, and radically reduce the scope of waters that remain under Federal protection.

On January 15, 2003, the Corps and EPA began soliciting public comment on dramatically changing the scope of the Act's jurisdiction over the waters of the United

[114] *Solid Waste Agency of Northern Cook County* v. *Army Corps of Engineers*, 531 U.S. 159 (2001).
[115] *See id.* at 174.

States.[116] Simultaneously, the Bush administration issued two documents: an Advanced Notice of Proposed Rulemaking ("ANPRM") initiating a formal process to curtail Federal protections over certain waters, including wetlands, throughout the United States, and a new guidance directive ordering Federal regulators to immediately being withholding protections over certain streams, wetlands, lakes, and other waters.

These documents were troubling for many reasons.

First, both the ANPRM and the guidance document abandon, outright, an estimated one-fifth of the nation's waters that were subject to Federal protections prior to the *SWANCC* decision – waters and wetlands that provide vital flood protection, habitat, water supply, and pollution control for the entire country. Depending upon how the *SWANCC* decision is interpreted, somewhere between 30 to 60 percent of the nation's waters, including wetlands, are no longer eligible for Federal protection under the Clean Water Act, and in the absence of any serious effort by the State to protect these waters, many will have no protection from pollution or destruction, whatsoever. Yet both the ANPRM and the guidance materials started from the false premise that the *SWANCC* decision must have been correct policy, and that the waters and wetlands abandoned in this case are forever outside the scope of Federal protection – a position contrary to that taken by the previous administration in the days immediately following the *SWANCC* decision. [117]

Second, these documents provide keen insight into how the Bush administration and the Republican majority[118] believe the Clean Water Act should be interpreted by attempting to further limit the scope of Federal protections over U.S. waters to minimum levels. According to the ANPRM and agency testimony on this subject,[119] the Bush administration explored the possibility of removing Federal protections over any water or wetland that does

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[116] Advance Notice of Proposed Rulemaking on the Clean Water Act Regulatory Definition of "Waters of the United States (ANPRM)," 68 Fed. Reg. 1,991 (2003).

[117] Cf. Memorandum from Gary Guzy, General Counsel, Environmental Protection Agency and Robert Andersen, Chief Counsel, U.S. Army Corps of Engineers, "Supreme Court Ruling Concerning CWA Jurisdiction over Isolated Waters," dated Jan. 19, 2001. This guidance memo, prepared under the Clinton administration immediately following the *SWANCC* decision, concluded that the *SWANCC* decision should be interpreted narrowly, applying only to jurisdictional questions on nonnavigable, isolated, intrastate waters based solely on the use of such waters by migratory birds. Accordingly, this guidance memo directed both EPA and Corps district personnel to "no longer rely on the use of waters or wetlands as habitat by regulatory birds as the sole basis for assertion of regulatory jurisdiction under the CWA," but with "respect to any waters that fall outside of that category, field staff should continue to exercise CWA jurisdiction to the full extent of their authority under the statute and regulations and consistent with court opinions."

[118] On two occasions, Members of the House of Representatives have taken public positions on the ANPRM and the wetlands guidance memorandum. First, on November 24, 2003, 218 Members of Congress wrote to the President urging the administration to abandon efforts to rewrite the scope of the Act and to withdraw the ANPRM, with the overwhelming majority being Democratic Members, and only 21 Republican Members agreeing to sign onto the letter. See http://www.house.gov/dingell/documents/press_releases/108th_Congress/11-25-03.htm>. Second, on May 18, 2006, the House approved an amendment to the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2007, that would prohibit funds from being used to implement or enforce the wetlands guidance memorandum, with 184 Democrats, 37 Republicans, and one Independent voting in support of the amendment, but 187 Republicans and 11 Democrats voting against.

[119] Testimony of Dominic Izzo, Principal Deputy Assistant Secretary of the Army for Civil Works, and Robert Fabricant, General Counsel, EPA before the Government Reform Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs. September 19, 2002.

not fall within the traditional definition of navigable waters – those waters that are subject to the ebb and flow of the tide, or waters that are presently used, or have been used in the past, or may be susceptible for use, to transport interstate or foreign commerce. Such a narrow view would have eliminated Federal protection of non-navigable tributaries of traditional navigable waters, many wetlands adjacent to traditional navigable waters, and any other isolated, intrastate water – making it almost impossible to maintain existing improvements to water quality, and abandoning any hope of further improvement.

Worse still, because the definition of "waters of the United States" is integral to both Federal authority over activities in U.S. waters, such as dredging and filling wetlands, as well as the discharge of pollutants, such as releases of chemicals or untreated sewage into U.S. waters, the President's proposal could bring about a new open season for toxic discharges into the nation's waters.

If the Clean Water Act were limited to the traditionally navigable waters, as contemplated in the ANPRM, the Environmental Protection Agency estimates that between 53 to 59 percent of the streams in the United States would no longer be afforded Clean Water Act protections. According to EPA, if these streams are exempted from Federal protections, approximately 14,800 currently regulated discharges would no longer be subject to Clean Water Act controls.[120] These pollution sources include more than 4,000 municipal dischargers, and over 10,500 industrial categories.

In addition, excluding the non-traditionally navigable waters also impacts drinking water supplies. More than 90 percent of the surface drinking water source areas currently protected include waters that are not navigable-in-fact. These water systems are estimated to provide drinking water to more than 110 million people. If the scope of the Clean Water Act were restricted to only the traditionally navigable waters, there would be no Federal limitation on what could be discharged into surface drinking water source areas, placing millions at risk from contaminated drinking water supplies, and leaving the Federal government helpless to protect human health and the environment.

If the Bush administration's thoughts on limiting the scope of the Clean Water Act were adopted, our citizens would likely see a return to the days when industries and municipalities relied upon the nation's waterways as open sewers – back to the days when the toxic accumulations that polluted our waters would kill virtually every living organism that came into contact with them, and the days when the waters themselves could catch fire.

Not surprisingly, the reaction to the administration's proposal changing the scope of the Act was overwhelmingly negative. EPA and the Corps received approximately 135,000 public comments, of which approximately 99 percent opposed limiting the scope of the

[120] According to Environmental Protection Agency estimates, of the 43,000 National Pollutant Discharge Elimination System ("NPDES") permits currently in place, EPA could identify the discharge waters in about 37,000 cases. Of these 37,000, over 40 percent discharge into streams what would not be considered traditionally navigable waters. Therefore, at least 14,800 currently regulated discharges would no longer be subject to the Clean Water Act permit requirements, and, in the absence of additional state efforts, could discharge whatever chemicals, nutrients, and toxics were available, without limit.

Act.[121] In addition, on November 24, 2003, more than 190 Democratic Members of Congress, and a handful of moderate Republicans, urged the President to abandon his efforts to rewrite the scope of the Act and to withdraw the ANPRM.[122] In light of this immense public outcry, in December 2003, the Bush administration announced that they "would not issue a new rule on federal regulatory jurisdiction over isolated wetlands."[123]

However, the Administration chose to leave in place its regulatory guidance materials that were issued along with the ANPRM.[124] This memorandum was released to provide "clarifying guidance" regarding the *SWANCC* decision.[125] Yet, this guidance material only succeeded in adding additional uncertainty into an already chaotic regulatory process, leaving local Corps district offices to decide for themselves the meaning of the *SWANCC* decision.[126] As a result, members of both the Association of State Wetland Managers and the Association of State Floodplain Managers – those responsible for State regulation of wetlands – have reported widely varying interpretations by field offices regarding the scope of Federal authority over U.S. waters.

In the absence of any clear leadership from the Bush administration or the Republican majority in Congress, jurisdictional determinations have become largely *ad hoc* and unpredictable.[127]

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[121] Earthjustice et.al., "Reckless Abandon: How the Bush Administration is Exposing America's Waters to Harm," August 2004.

[122] *See* http://www.house.gov/dingell/documents/press_releases/108th_Congress/11-25-03.htm>

[123] U.S. Army Corps of Engineers and U.S. EPA, "EPA and Army Corps Issue Wetlands Decision," December 12, 2003.

[124] *See* ANPRM at 1995.

[125] Interestingly, this guidance material superceded an earlier legal memorandum of the Corps' and EPA's General Counsel offices which directed the Corps and EPA to interpret the *SWANCC* decision narrowly, suggesting that the *only* waters which might be excluded from the definition of "waters of the United States" are those "covered solely by subsection (a)(3) that could affect interstate commerce solely by virtue of their use as habitat by migratory birds." *See* Memorandum from Gary Guzy, General Counsel, Environmental Protection Agency and Robert Andersen, Chief Counsel, U.S. Army Corps of Engineers, "Supreme Court Ruling Concerning CWA Jurisdiction over Isolated Waters," dated Jan. 19, 2001.

[126] Specifically, the guidance material directs district officials to come to their own conclusion on the status of the Clean Water Act, making "jurisdictional and permitting decisions on a case-by-case basis considering this guidance, applicable regulations, and any additional relevant court decisions. See ANPRM at 1998. In practice, this has resulted in Corps district staff making numerous, undocumented determinations of no Federal jurisdiction, in spite of clear hydrologic connections to navigable waters, with little or oversight from EPA, and contrary to case law throughout the country. August 2004. In this report, the authors have identified 15 examples of rivers, lakes, and wetlands throughout the U.S. which the Corps determined were non-jurisdictional despite providing critical environmental value to the region, such as sources of drinking water or habitat, or often having direct hydrological connections to adjacent navigable (jurisdictional) waters.

[127] Association of State Wetland Managers and the Association of State Flood Plain Managers. "Position Paper on Clean Water Act Jurisdiction Determinations Pursuant to the Supreme Court's January 9. 2001 Decision, *Solid Waste of Northern Cook County* v. *United States Army Corps of Engineers* (SWANCC) Presented to Administrator Whitman, United States Environmental Protection Agency." December 2001. *See also*, Earthjustice, et.al., "Reckless Abandon: How the Bush Administration is Exposing America's Waters to Harm,"

The Rapanos Decision: More Confusion in an Already Confused World:

On Monday, June 19, 2006, the Supreme Court issued a second decision that has only worsened the confusion regarding wetlands, and has the potential to further limit the geographic jurisdiction of the Clean Water Act.

In this decision, *Rapanos et ux., et al. v. United States*,[128] ("*Rapanos*"), the Court reached a potentially far-reaching, yet entirely confusing, reading on the status of Federal protections over waters of the United States. While it was a 5-to-4 decision to vacate the lower court decisions and remand the cases for further proceedings, only four justices supported the opinion of Justice Scalia which would fundamentally limit the efforts of the Federal government to protect water quality. Justice Kennedy provided a fifth vote for remand, but was sharply critical of Justice Scalia's plurality opinion. In the end, the only issue that a majority of the Court could agree on was that the Sixth Circuit Court of Appeals did not exercise a sufficiently rigorous test to determine whether the waters in question were, in fact, subject to the Clean Water Act.[129]

The *Rapanos* decision compounded the mistakes of the *SWANCC* decision, and its mistaken interpretation that Congress must have intended a nexus between Federal jurisdiction and actual navigation through the use of the term "navigable waters". Justice Scalia's plurality opinion took the *SWANCC* reasoning one step further to limit the geographic scope of the Clean Water Act to only those waters that are relatively permanent, standing, or continuously flowing and that form geographic features.[130] Intermittent or ephemeral waters would not be covered.[131] Under the Scalia rationale, for any wetlands to be covered under the Act, they would have to be physically connected to these "permanent" waters.

Justice Scalia's opinion appears to have reached the conclusion that regulating the discharge of dredged or fill material under section 404 of the Act constitutes an unauthorized intrusion into traditional state authority over land use regulation. He does not respect the Executive Branch interpretation that "waters of the United States" can include areas that are not permanently inundated or directly connected to such permanent waters. Having reached that conclusion, he is highly critical of what he characterizes as "the immense expansion of federal regulation of land use that has occurred under the Clean Water Act – without any change in the governing statute – during the past five Presidential administrations."[132] He goes as far as to characterize the Corps as exercising "the discretion of an enlightened despot."[133]

Justice Scalia ignores the water quality benefits of regulating the pollution and destruction of lesser and intermittent water bodies. He fails to recognize that local interests

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[128] 126 S. Ct. 2208 (2006).
[129] Jon Kusler and Pat Parenteau, "Discussion Paper: Rapanos v. United States, 'Significant Nexus' and Waters Subject to the Clean Water Act Jurisdiction", Association of State Wetland Managers (2006) <http://www.aswm.org/fwp/aswm_paper.pdf>.
[130] *See* 126 S. Ct. 2208, 2221-22 (2006).
[131] *See id* at 2222.
[132] *See id.* at 2215.
[133] *See id* at 2214.

may have primary responsibility for land use, but not to the exclusion of the Federal interest in water quality. These two government roles can coexist. For example, local government has control over local zoning and construction, but the Federal Aviation Administration can have an impact whether buildings should be constructed at the end of a runway.

Justice Scalia dismisses concerns that severely restricting the scope of waters covered under section 404 would have an adverse impact on the regulation of pollutant discharges under section 402. This view simply ignores the fact that there is only one definition for what waters are covered under the statute. If the definition of what waters are covered is reduced for activities affecting wetlands, it will be affected for toxics, chemicals, and nutrients. His arguments are inconsistent with the plain reading of the Clean Water Act.

Unfortunately, Justice Scalia's plurality decision in *Rapanos*, again, needlessly weakens the nation's efforts for water quality protection. As Justice Kennedy states in his opinion, "The limits the plurality would impose, moreover, give insufficient deference to Congress' purposes in enacting the Clean Water Act and to the authority of the Executive to implement that statutory mandate."[134]

In contrast, Justice Kennedy's opinion rejected the plurality's reasoning as "inconsistent with the [Clean Water] Act's text, structure, and purpose,"[135] and advocated for a "significant nexus" test, wholly separate from the physical, continuous connection to permanent waters test of the plurality decision. Recognizing the existence of the *SWANCC* jurisprudence on providing some meaning to the term "navigable", Justice Kennedy wrote:

> [The] Corps' jurisdiction over wetlands depends upon the existence of a significant nexus between the wetlands in question and navigable waters in the traditional sense. The required nexus must be assessed in terms of the statute's goals and purposes. Congress enacted the law to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." . . . Accordingly, wetlands possess the requisite nexus, and thus come within the statutory phrase "navigable waters," if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as "navigable."[136]

Unfortunately, the only thing that a majority of Justices agreed upon was to remand the cases for further review – with no common denominator between the conflicting jurisdictional approaches advocated by Justice Kennedy's concurrence and Justice Scalia's plurality opinion.[137] Yet, because the Justice Scalia's plurality opinion has only four supporters, there is no clear statement as to the standards to be used, which has only served to worsen an already confused state of the law. Not surprisingly, some in the regulated

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[134] *See id* at 2247.
[135] *See id.* at 2246.
[136] *See id* at 2248.
[137] In the dissenting opinion, Justice Stevens suggests the following: "I assume that Justice Kennedy's approach will be controlling in most cases because it treats more of the Nation's waters as within the Corps' jurisdiction, but in the unlikely event that the plurality's test is met but Justice Kennedy's is not, courts should uphold the Corps' jurisdiction. In sum, in these and future cases the United States may elect to prove jurisdiction under either test." See id. at 2265.

community have called for swift adoption of the Scalia test for determining the scope of the Clean Water Act – limiting the scope to only the traditionally navigable waters.[138] However, the fact remains that five of the nine Supreme Court Justices rejected Justice Scalia's arguments, and agreed that Congress intended the scope of the Clean Water Act to be broader than simply the traditionally navigable waters.

In the time that has passed since the *Rapanos* decision, jurisdictional determinations over non-traditionally navigable waters, including the majority of all waters and wetlands throughout the United States, are legally uncertain[139] – meaning that either the Bush administration or the Congress must clarify the current status of Federal jurisdiction over waters of the United States. In the absence of clarification, jurisdictional determinations can only be made by the courts on a continued *ad hoc* basis, and only after litigation.

Unfortunately, neither the Bush administration nor the Republican leadership in Congress have been able, or willing to clarify the status of the law. One possible conclusion is that both the Bush administration and the Republican Congress are content with the confusion and with keeping the jurisdictional scope of the Act limited to only the traditionally navigable waters. It appears that the administration and the Congress are waiting for activist conservative justices to do their bidding in restricting the Clean Water Act. As one law professor stated, "[it] is much easier, politically, for members of Congress who share Scalia's ideology to simply acquiesce in the judicial gutting of a federal environmental statute than for them to take the responsibility for repealing that statute on their own."[140]

However, by either actively or passively limiting the scope of the Clean Water Act to "traditionally navigable" waters, both the Republican Congress and the Bush administration remove Federal protections on more than one-half of the nation's waters and wetlands in the hopes that State programs might take additional steps to protect these natural resources. This approach has set back efforts to protect water quality to the decades preceding the 1972 Act – a return to the disastrous scenario where 50 different States might have 50 differing approaches to protecting (or failing to protect) water quality. There is no quicker way for the Republican majority to undermine the successes of the past 30 years on water quality.

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[138] *See* letter dated Sept. 25, 2006 from M. Reed Hopper, Pacific Legal Foundation to EPA and Corps suggesting that the Federal agencies immediately adopt the Scalia test, and limit the scope of the Clean Water Act to only traditionally navigable waters. <http://rapanos.typepad.com/ProposedRules.pdf>.

[139] In testimony before the Senate Environment and Public Works Subcommittee on Fisheries, Wildlife, and Water, EPA Assistant Administrator for the Office of Water, Ben Grumbles, testified that EPA and the Corps have directed field staff to "temporarily delay making jurisdictional calls beyond the limits of the traditional section 10 navigable waters." <http://epw.senate.gov/109th/Grumbles_Woodley_Testimony.pdf>

[140] Andrew Koppelman and David Dada, "Clean Water is the Symbol of the Power of the People: Founding Fathers Could not Foresee Today's Problems." *San Francisco Chronicle*, July 23, 2006. Reprinted at <http://www.law.northwestern.edu/news/article_full.cfm?eventid=2767>.

The Clean Water Authority Restoration Act:

A legislative solution to this confusion over the scope of the Clean Water Act, and one actively supported by more than one-third of the House of Representatives, would be to enact the Clean Water Authority Restoration Act.[141]

This proposed legislation would eliminate the use of the term "navigable waters" throughout the Clean Water Act and replace it with "waters of the United States" – restoring the intent of Congress to give the Act the broadest possible constitutional interpretation.

As noted earlier, a bedrock objective of the Clean Water Act was to restore the chemical, physical, and biological integrity of the nation's waters, and to address the failures of previous, narrowly-drafted attempts in improving water quality. The legislative history and the statutory language of the Act make it abundantly clear that Congress intended to give the EPA and the Corps broad authority to address sources of impairment to the nation's waters. Congress was very deliberate and careful to define "navigable waters" as "the waters of the United States, including the territorial seas."[142] Likewise, the legislative history and court decisions prior to *SWANCC* and *Rapanos* have given the term "navigable waters" the broadest possible interpretation.[143]

The Clean Water Authority Restoration Act would immediately end the confusion over the scope of the Act by restoring the original intent of Congress regarding the scope of Federal authority and protections under the Act by substituting the term "navigable waters" with the term "waters of the United States" and eliminating any judicial misapprehension of a jurisdictional nexus to actual navigation or commerce. A definition of the term would be added that is a combination of decades-old interpretations of jurisdiction by the Environmental Protection Agency and the Corps.

The Clean Water Authority Restoration Act restores Clean Water Act authority – it does not expand that authority. Unfortunately, the House Republican leadership has blocked all consideration of the Clean Water Authority Restoration Act, ending any possibility that Congress meet its constitutional responsibilities and provide much needed clarity on what was intended over thirty years ago.

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[141] H.R. 1356, 109th Cong. (2005).

[142] *See* 1 Legislative History of the Water Pollution Control Act Amendments of 1972 (Committee Print compiled for the Senate Committee on Public Works by the Library of Congress), Ser. No. 93-1, p. 250 (1971). In a floor statement on the conference report, Representative Dingell discussed the history behind the definition of the term "navigable waters" to mean "all 'the waters of the United States' in a geographical sense. It does not mean 'navigable waters of the United States' in the technical sense as we sometimes see in other laws." Representative Dingell continued that "this new definition clearly encompasses all water bodies, including main stems and their tributaries, for water quality purposes. No longer are the old, narrow definitions of navigability, as determined by the Corps of Engineers, going to govern matters covered by this bill."

[143] *See id.* at 250-51. "The conference report states on page 144: 'the conferees fully intend that the term navigable waters be given the broadest possible constitutional interpretation unencumbered by agency determinations which have been made or may be made for administrative purposes.'"

Failure to Fund Necessary Water Infrastructure:

As noted earlier, the county's water and wastewater infrastructure is getting old, and falling into disrepair. Many of the wastewater treatment facilities constructed soon after enactment of the 1972 Act are now reaching the end of their expected useful life, and are in significant need of replacement or rehabilitation. Without renewing our attention to and investment in water infrastructure, this nation risks losing many of the gains made over the past 30 years in improving water quality.

Neither the House Republican leadership nor the Bush administration seems to recognize the need for increased Federal investment in water infrastructure. In the 12 years of Republican leadership in the House, annual appropriations for the primary Federal program responsible for funding wastewater infrastructure – the Clean Water State Revolving Fund ("Clean Water SRF") – have dropped from $2.1 billion to $887 million, and is likely to be less than $700 million for the upcoming year.

Likewise, since the 2001 election, President Bush has continuously proposed to slash funding for the Clean Water SRF – proposing annual cuts of 40 percent or greater to the program[144] -- recommending the lowest Presidential request ever for the program in his fiscal year 2007 budget proposal. *(See Appendix II for a breakdown of the impact to individual State Clean Water SRF programs from the President's Budget Request.)* Even when faced with a growing need for wastewater infrastructure repairs and replacements throughout the nation, the Bush administration testified on its opposition to any increase in Federal investment to improve, repair, and replace necessary water infrastructure.[145]

Yet, during this entire time, EPA publicly acknowledges the significant funding gap of between $4 to $9 billion *per year* for wastewater infrastructure over the next 20 years. Numerous sources, including EPA, have estimated significant needs for water infrastructure investment over the next 20 years (ranging from $300 billion to $400 billion). What remains unclear is how the Republican majority or the President expect to close the funding gap while both cutting the Federal investment to State revolving loan funds and opposing potential increases in Federal investment toward water infrastructure.

Neither the House Republican leadership nor the Bush administration is willing to take the steps necessary to avert the potential failure of the nation's wastewater infrastructure systems – and the economic consequences and ecological and public health disasters that would follow.

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[144] In fiscal year 2002, President Bush proposed to cut the Clean Water SRF program from an appropriation of $1.35 billion in fiscal year 2001 to $850 billion in fiscal year 2002. In fiscal year 2003, the President proposed to cut the program from an appropriation of $1.35 billion in fiscal year 2002 to $1.212 billion in fiscal year 2003. In fiscal year 2004, the President proposed only $850 million for the program, down from an appropriation of $1.34 billion in fiscal year 2003. In fiscal year 2005, the President proposed to cut the program from an appropriation of $1.34 billion in fiscal year 2004 to $850 million in fiscal year 2005. In fiscal year 2006, the President proposed to cut the program from an appropriation of $1.091 in fiscal year 2005 to $730 million in fiscal year 2006. In the current fiscal year, the President proposed to cut the program from a fiscal year 2006 appropriation of $886 million to $687.5 million for fiscal year 2007.

[145] Testimony of Benjamin Grumbles, Deputy Assistant Administrator for EPA's Office of Water before the Subcommittee on Water Resources and Environment, March 13, 2002.

Even the Republican leadership of the House Committee on Transportation and Infrastructure, which over the past decade had worked in a bipartisan manner to pass legislation to substantially increase the authorized level of funding for water infrastructure,[146] has turned away from this task. Presumably in response to the House Republican leadership's opposition to prevailing wage protections for America's working families, the Republican leadership of the Committee refused to continue working in a bipartisan manner to support investment in our nation's wastewater infrastructure, but instead chose to work alone, without the participation of the Democrats, to draft a competing proposal for wastewater infrastructure[147] that turned back the clock on bipartisan agreements related to the Clean Water SRF. Not surprisingly, these efforts failed – and no further efforts to increase investment in the nation's wastewater infrastructure have been advanced.

Clearly, the current level of Federal spending is grossly inadequate to maintain and improve the quality of the nation's waters and the health of the environment. What remains is the choice to make necessary investments in water infrastructure today, or to risk the achievements in public and environmental health to date, and pass along the job to future generations.

If past is prologue, the House Republican leadership and the Bush administration will likely continue to watch as the nation's system of wastewater infrastructure fails, placing the successes of the past 30 years at risk, and potentially placing the likelihood of fishable and swimmable waters out of reach, forever.

Devolution of Enforcement to the States:

As stated earlier, one of the key provisions of the Clean Water Act is the prohibition of pollutant discharges into the nation's waters in the absence of a permit. Without adequate enforcement of the criminal and civil penalties provided in the Act, these provisions provide little deterrent for polluters not to contaminate or destroy the waters of the United States.

Even with provisions in the Act allowing for limited permitted discharges into U.S. waters, polluters routinely break the law. Reports have documented increasing numbers of illegal discharges by major facilities over the past year, with State enforcement authorities taking little action to prevent these occurrences. In addition, EPA's Office of Enforcement and Compliance Assurance and Office of the Inspector General both recently reported that State enforcement authorities have been lax in investigating and prosecuting illegal discharges – often delaying any action against polluters for a year or more. When State enforcement is finally taken, penalties imposed on polluters were often insufficient to prevent further violations, or infrequently collected.

In spite of these facts, over the past 12 years, the House Republican leadership has undercut Federal enforcement at EPA, and has gone along with efforts of the Bush

[146] H.R. 3930, the Water Quality Financing Act of 2002, 107th Cong. (2002) and H.R. 1560, the Water Quality Financing Act of 2003, 108th Cong. (2003).
[147] H.R. 4560, 109th Cong. (2005).

administration efforts to transfer this responsibility to the States. These are exactly the wrong decisions at the wrong time.

As noted earlier, in the discussions on the "Dirty Water Act" and the "environmental riders," the House Republican leadership has consistently tried to undercut the ability of EPA to enforce the nation's environmental laws, including the Clean Water Act. Throughout their years in Congress, House Republicans have attempted to legislatively restrict the ability of EPA's enforcement offices to carry out their constitutional responsibilities in upholding the law. The enforcement efforts of EPA are essential in assuring that the agency can adequately protect the safety of our nation's air and water.

In recent years, the Republican leadership has carried forward proposals of the Bush administration to make significant cuts to the Federal enforcement offices of EPA. For example, in the fiscal year 2002 budget, the President unsuccessfully attempted to cut $25 million from EPA's enforcement budget, specifically targeting compliance, monitoring, civil and criminal enforcement, and Superfund enforcement. This effort would have resulted in the elimination of 270 positions from the Office of Enforcement and Compliance. It would have resulted in 2,000 fewer inspections, an 11 percent reduction in criminal actions, and a 20 percent reduction in civil actions.

The fiscal year 2002 budget also proposed to transfer $25 million to the States for enforcement. While States could use additional help in ensuring compliance with environmental laws, that help should not come at the expense of Federal enforcement programs. Fortunately, this effort failed as well.

Undaunted by these failures, the House Republican leadership and the President again proposed to cut Federal enforcement programs in the fiscal year 2003 budget – this time by more than $10 million. The proposal would have resulted in the elimination of 210 positions from the Office of Enforcement and Compliance Assurance (below FY2001 levels), and again, would significantly undermine the ability of the Federal government to ensure compliance with environmental laws, including the Clean Water Act. Again, fortunately, this provision failed to be enacted.

If any of these requests were enacted, there would be fewer inspections of regulated facilities, fewer prosecutions of individuals and companies who discharge unregulated pollutants into the waters of the United States, and weaker attempts to impose civil and criminal penalties against those convicted of violating the law.

Federal and State resources combined are not enough to fully enforce our Federal environmental laws as it is. Undermining and transferring scarce Federal resources to State programs when both are under-funded would exacerbate pollution control efforts. The fact is, the air and water quality in one State impact the air and water quality in another State. There are no borders when the goal is a clean environment.

States do provide an important part of enforcing environmental laws and undoubtedly need additional resources, but as most recognize, EPA still manages many Federal programs directly and has enforcement responsibility for transboundary pollutants,

large national corporations, and cases that are too complex or too politically charged for some States to handle. States cannot replace the unique role of EPA in this area.

A clean environment is a national priority.

Concentrated Animal Feeding Operations (CAFOs):

In the most recent water quality report to Congress, the States identified agriculture as the leading contributor to water quality impairment in rivers and streams by a wide margin.[148] Agriculture is also the leading source of impairment of lakes, ponds, and reservoirs.[149] Even in estuarine areas, which are often highly urbanized, agriculture is a significant contributor to water quality impairment.[150]

Most activities associated with agriculture are not regulated or otherwise subject to requirements under Federal or State clean water programs. Yet, agriculture remains one of the most significant sources of pollutants causing water quality impairment.

Traditionally, the water quality issues associated with agriculture have focused on runoff from fields that contain insecticides and herbicides. While these issues remain a problem, increasing attention is being paid to nutrient pollution from animal feeding operations.

Today, consolidation of animal feeding practices have resulted in massive operations that generate a tremendous amount of waste material. This condition results in larger facilities and in facilities becoming more concentrated geographically.[151] For example, the Economic Research Service of the Department of Agriculture reports that the number of farms with confined animals in the 1982 to 1997 period declined by more than 50 percent – a drop from 435,000 to 213,000.[152] At the same time, the number of animal units (AU) in production grew by more than 50 percent.[153]

For example, in the Chesapeake Bay watershed, there are 185 million livestock animals present in the watershed – more than 11 times the human population. These animal operations produce 44 million tons of manure each year containing nearly 600 million pounds of nitrogen and 165 million pounds of phosphorous.[154]

In the State of North Carolina, the population of farm-raised hogs has grown faster than any State in the nation, swelling from 2.6 million to 10 million hogs since 1987. These

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[148] U.S. EPA. "National Water Quality Inventory: 2000 Report."
[149] *See id.*
[150] *See id.*
[151] U.S. GAO, "Animal Agriculture: Information on Waste Management and Water Quality Issues." June 1995.
[152] USDA, Economic Research Service, "Confined Animal Production and Manure Nutrients." June 2001.
[153] *See id.*
[154] Chesapeake Bay Foundation, "Manure's Impact on Rivers, Streams and the Chesapeake Bay: Keeping Manure Out of the Water," July 2004..

animals produce approximately 19 million tons of feces and urine a year, or more than 50,000 tons every single day, yet are concentrated only in the eastern coastal plain.[155]

The concentration of animals causes large amounts of nutrients to be imported into areas through feed, but the same nutrients are not returned to their source. Instead, the more common and traditional method of disposing of nutrients in animal waste has been through land application of manure nearby the animal operation. The practice results in an imbalance between what nutrients are placed on the land and what the crops can successfully use, with excessive nutrients finding their way into adjacent rivers, streams, and lakes.

These excessive nutrients carry a heavy price for the environment and for public health. Pollutants in animal manure have resulted in the sudden death of thousands of fish; eutrophication and algal blooms; contamination of shellfish and subsequent toxin and pathogen transmission in the food chain; increased turbidity and negative impacts to benthic organisms; and, reduced biodiversity when rivers and streams become uninhabitable by resident species.[156] Pollutants in animal manure present a range of risks to human health when they contaminate drinking water or shellfish, when they are present in recreational waters, or when the pollutants escape from the manure into the atmosphere, such as ammonia gas or hydrogen sulfide, contributing to serious health impacts and reduced quality of life for nearby residents.

Cryptosporidium, E. coli, and Giardia are all associated with animal manure and all have serious health consequences including death. Recent examples include the Washington County Fair in New York State in 1999 (2 deaths, 71 hospitalized), Milwaukee, Wisconsin, in 1993 (104 deaths, 403,000 illnesses), and Walkerton, Ontario, Canada, in 2000 (7 deaths, 1,000 illnesses).[157] In addition, the strain of E.coli that was discovered on spinach crops earlier this year, and resulted in 2 deaths and 204 cases of illness, has been genetically matched with cattle feces located on California ranches, and their adjacent growing fields.[158]

When nutrient-laden runoff from agricultural and other nonpoint sources contaminate drinking water reserves, utilities are forced to add additional chlorine to kill any harmful microorganisms that may be present in the water. This combination of nutrient laden water and chlorine has been found to create "chlorine byproducts," which have been linked to increased risks of cancer, and are further suspected to be a potential cause for increased risk of miscarriages and birth defects.[159]

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[155] "Hog Watch" http://www.environmentaldefense.org/system/templates/page/subissue.cfm?subissue=10>
[156] U.S. EPA, "Proposed Regulations to Address Water Pollution from Concentrated Animal Feeding Operations." December 2000.
[157] U.S. EPA, "Proposed Rule: National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations." December 2001
[158] U.S. Food and Drug Administration, Center for Food Safety and Applied Nutrition, "Nationwide E. Coli O157:H7 Outbreak: Questions & Answers", (last modified Oct. 20, 2006) <http://www.cfsan.fda.gov/~dms/spinacqa.html>.
[159] Environmental Working Group and U.S. PIRG, "Consider the Source: Farm Runoff, Chlorination Byproducts, and Human Health." October 2001.

In response to concerns that EPA's regulatory program needed to be brought up to date with current feeding practices, on January 12, 2001, the Clinton administration proposed to revise the regulations governing concentrated animal feeding operations ("CAFOs"). The proposed rule on CAFOs would have modernized the CAFO program to reflect real world animal feeding practices, including lowering the threshold where an animal feeding operation would come under the permitting requirements of the Clean Water Act.[160] In addition, this proposal would have more closely followed the land application and disposal of animal wastes to ensure that excessive nutrients were less likely to appear in U.S. waters as nonpoint source pollution. Finally, the proposed CAFO rule would have required animal processors that exercise substantial control over contract growers to be more greatly involved in these operations, ensuring that large operations do not avoid the pollution controls by dividing their operations to avoid permitting thresholds.[161]

Unfortunately, as noted in the earlier discussion on the TMDL rule, on the day of his inauguration, President Bush blocked all pending regulations, including the CAFO proposed rule. When the CAFO rule finally reemerged from the administration almost 18-months later, it was sufficiently weakened to the point where it is unlikely to significantly protect against the continued impairment of the nation's waters from animal wastes.

The final rule leaves untouched the existing thresholds for implementing additional manure management controls, allowing far greater numbers of animal feeding operations to continue polluting the nation's waters. The final rule eliminates any leveling of the playing field between corporate headquarters of animal operations and contract growers, placing the entire burden of handling these millions of tons of waste on the small growers, and allowing the corporate headquarters to reap all of the profits with zero responsibility for protecting the environment. Finally, the Bush administration rule eliminated the potential authority to ensure the proper disposal of animal wastes in an efficient and environmentally beneficial manner – one of the largest on going sources of impairment to the nation's waters – relying instead on the hope that people will do the right thing.

The Bush administration's weakening of the CAFO regulations maintains the status quo on the release of animal wastes to the waters of the United States. When it comes to animal feeding operations, improved water quality and the elimination of human health risks must remain the goal.

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[160] CAFOs are defined as point sources under the Clean Water Act, and as such, are subject to permit requirements and the implementation of effluent limitations to reduce or eliminate pollutant loadings into the waters of the United States.

[161] U.S. EPA, "Proposed Regulations to Address Water Pollution from Concentrated Animal Feeding Operations." December 2000.

CONCLUSION:

For the most part, the 34-year history of the modern Clean Water Act has been a tremendous success. In this period, the nation's waterways have shown dramatic improvement while there have been significant increases in population and growth in the overall economy. In just over a generation, the number of assessed waters currently meeting water quality standards has doubled. However, the Clean Water Act has not achieved success. There is still much work to be done.

These years have provided us with significant insight on where the Clean Water Act has failed – most notably in controlling nonpoint sources of pollution from a variety of urban and rural sources. Now, even when armed with the knowledge of how far the nation has come, and how close it is to finally achieving the fishable and swimmable goals of the Act, the United States stands on the threshold of throwing all these successes away, and reverting to the days of dying lakes, rivers that burn, and waterways that are sewers.

The actions of the House Republican leadership demonstrate how easy it is to turn the clock back on protecting our nation's waters, and to virtually eliminate any Federal "safety-net" in protecting the nation's water-related environment. In just over a decade, the Republican majority has shown that the decisions, priorities, and policy choices made by Congress can mean the difference between restoring and protecting our most vital natural resource from pollution, and bringing these protections to a stand-still.

During the last few years, we have seen evidence of declining water quality conditions throughout the nation – confirmation of 12 years of environmental neglect by the Republican majority.

Clearly, the nation has a choice – the final chapters on the Clean Water Act have yet to be written. The questions remain – which paths will be followed? Should we be satisfied with the progress that has been made, and resign ourselves to the fact that we have already witnessed the peak in water quality even as conditions worsen? Or should we demand that next steps be taken to clean America's waterways?

The answer depends as much on our own commitment to finishing the job that began with passage of the Clean Water Act 34 years ago, as on ensuring that our elected officials share our views. Now, more than ever, we must reaffirm our commitment to restoring and protecting our nation's greatest natural resources – our rivers, lakes, coastal areas, streams, and wetlands.

We owe future generations no less.

APPENDIX I

Sources of State-by-State Information on the Status of the Nation's Waters

ALABAMA – *179 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Alabama:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=AL
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Alabama:**
  http://www.nrdc.org/water/oceans/ttw/sumala.pdf

ALASKA – *35 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Alaska:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=AK
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

AMERICAN SAMOA – *1 Waterbody on State Impaired Waters List*

- **List of Impaired Waters in American Samoa:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=AS
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

ARIZONA – *66 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Arizona:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=AZ
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

ARKANSAS – *103 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Arkansas:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=AR
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

CALIFORNIA – *686 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in California:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=CA
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in California:**
  http://www.nrdc.org/water/oceans/ttw/sumcal.pdf

COLORADO – *79 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Colorado:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=CO
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

CONNECTICUT – *267 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Connecticut:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=CT
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Connecticut:**
  http://www.nrdc.org/water/oceans/ttw/sumcon.pdf

DELAWARE – *379 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Delaware:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=DE
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Delaware:**
  http://www.nrdc.org/water/oceans/ttw/sumdel.pdf

DISTRICT OF COLUMBIA – *17 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in the District of Columbia:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=DC
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

FLORIDA – *827 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Florida:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=FL
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Florida:**
  http://www.nrdc.org/water/oceans/ttw/sumflo.pdf

GEORGIA – *447 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Georgia:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=GA
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Georgia:**
  http://www.nrdc.org/water/oceans/ttw/sumgeo.pdf

GUAM – *3 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Guam:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=GU
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Guam:**
  http://www.nrdc.org/water/oceans/ttw/sumgua.pdf

HAWAII – *241 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Hawaii:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=HI
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Hawaii:**
  http://www.nrdc.org/water/oceans/ttw/sumhaw.pdf

IDAHO – *1392 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Idaho:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=ID
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

ILLINOIS – *952 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Illinois:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=IL
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Illinois:**
  http://www.nrdc.org/water/oceans/ttw/sumill.pdf

INDIANA – *1320 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Indiana:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=IN
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Indiana:**
  http://www.nrdc.org/water/oceans/ttw/sumind.pdf

IOWA – *184 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Iowa:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=IA
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

KANSAS – *1367 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Kansas:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=KS
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

KENTUCKY – *736 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Kentucky:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=KY
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

LOUISIANA – *233 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Louisiana:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=LA
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Louisiana:**
  http://www.nrdc.org/water/oceans/ttw/sumlou.pdf

MAINE – *165 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Maine:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=ME
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Maine:**
  http://www.nrdc.org/water/oceans/ttw/summai.pdf

MARYLAND – *473 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Maryland:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=MD
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Maryland:**
  http://www.nrdc.org/water/oceans/ttw/summar.pdf

MASSACHUSETTS – *775 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Massachusetts:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=MA
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Massachusetts:**
  http://www.nrdc.org/water/oceans/ttw/summas.pdf

MICHIGAN – *379 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Michigan:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=MI
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Michigan:**
  http://www.nrdc.org/water/oceans/ttw/summic.pdf

MINNESOTA – *1500 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Minnesota:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=MN
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Minnesota:**
  http://www.nrdc.org/water/oceans/ttw/summin.pdf

MISSISSIPPI – *490 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Mississippi:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=MS
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Mississippi:**
  http://www.nrdc.org/water/oceans/ttw/summis.pdf

MISSOURI – *197 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Missouri:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=MO
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

MONTANA – *527 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Montana:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=MT
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

N. MARIANA ISLANDS – *2 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in N. Mariana Islands:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=CN
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in N. Mariana Islands:**
  http://www.nrdc.org/water/oceans/ttw/sumnmi.pdf

NEBRASKA – *149 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Nebraska:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=NE
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

NEVADA – *99 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Nevada:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=NV
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

NEW HAMPSHIRE – *5192 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in New Hampshire:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=NH
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in New Hampshire:**
  http://www.nrdc.org/water/oceans/ttw/sumnewh.pdf

NEW JERSEY – *957 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in New Jersey:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=NJ
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in New Jersey:**
  http://www.nrdc.org/water/oceans/ttw/sumnewj.pdf

NEW MEXICO – *175 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in New Mexico:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=NM
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

NEW YORK – *792 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in New York:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=NY
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in New York:**
  http://www.nrdc.org/water/oceans/ttw/sumnewy.pdf

NORTH CAROLINA – *630 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in North Carolina:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=NC
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in North Carolina:**
  http://www.nrdc.org/water/oceans/ttw/sumnor.pdf

NORTH DAKOTA – *211 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in North Dakota:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=ND
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

OHIO – *427 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Ohio:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=OH
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Ohio:**
  http://www.nrdc.org/water/oceans/ttw/sumohi.pdf

OKLAHOMA – *436 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Oklahoma:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=OK
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

OREGON – *1169 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Oregon:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=OR
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Oregon:**
  http://www.nrdc.org/water/oceans/ttw/sumore.pdf

PENNSYLVANIA – *6957 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Pennsylvania:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=PA
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Pennsylvania:**
  http://www.nrdc.org/water/oceans/ttw/sumpen.pdf

PUERTO RICO – *86 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Puerto Rico:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=PR
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality Puerto Rico:**
  http://www.nrdc.org/water/oceans/ttw/sumpue.pdf

RHODE ISLAND – *148 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Rhode Island:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=RI
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality Rhode Island:**
  http://www.nrdc.org/water/oceans/ttw/sumrho.pdf

SOUTH CAROLINA – *713 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in South Carolina:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=SC
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in South Carolina:**
  http://www.nrdc.org/water/oceans/ttw/sumsou.pdf

SOUTH DAKOTA – *165 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in South Dakota:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=SD
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

TENNESSEE – *974 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Tennessee:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=TN
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

TEXAS – *522 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Texas:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=TX
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Texas:**
  http://www.nrdc.org/water/oceans/ttw/sumtex.pdf

UTAH – *166 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Utah:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=UT
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

VERMONT – *173 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Vermont:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=VT
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

VIRGINIA – *1353 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Virginia:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=VA
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Virginia:**
  http://www.nrdc.org/water/oceans/ttw/sumvir.pdf

VIRGIN ISLANDS – *51 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in the Virgin Islands:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=VI
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in the Virgin Islands:**
  http://www.nrdc.org/water/oceans/ttw/sumvi.pdf

WASHINGTON – *1714 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Washington:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=WA
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Washington:**
  http://www.nrdc.org/water/oceans/ttw/sumwas.pdf

WEST VIRGINIA – *889 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in West Virginia:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=WV
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

WISCONSIN – *613 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Wisconsin:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=WI
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm
- **Beach Water Quality in Wisconsin:**
  http://www.nrdc.org/water/oceans/ttw/sumwis.pdf

WYOMING – *129 Waterbodies on State Impaired Waters List*

- **List of Impaired Waters in Wyoming:**
  http://oaspub.epa.gov/waters/state_rept.control?p_state=WY
- **2004 National Listing of Fish Advisories:**
  http://epa.gov/waterscience/fish/advisories/fs2004.pdf
- **Clean Watersheds Needs Survey 2000 - Report to Congress:**
  http://www.epa.gov/owm/mtb/cwns/2000rtc/toc.htm

APPENDIX II

State-by-State Cuts to the Clean Water State Revolving Loan Fund
Fiscal Year 2004 Levels through Fiscal Year 2007 Presidential Budget Request

State	FY 2004 Enacted	FY 2006 Enacted	FY 2007 Proposed	FY 2006-07 Cut	FY 2004-07 Total Cut
Alabama	$14,819,554	$9,792,122	$7,592,394	-$2,199,728	-$7,227,160
Alaska	$7,931,942	$5,241,085	$4,063,714	-$1,177,371	-$3,868,228
Arizona	$8,951,408	$5,914,705	$4,586,010	-$1,328,695	-$4,365,399
Arkansas	$8,670,041	$5,728,789	$4,441,859	-$1,286,930	-$4,228,182
California	$94,784,160	$62,629,284	$48,560,077	-$14,069,207	-$46,224,083
Colorado	$10,600,352	$7,004,255	$5,430,801	-$1,573,454	-$5,169,551
Connecticut	$16,235,551	$10,727,752	$8,317,842	-$2,409,910	-$7,917,710
Delaware	$6,506,784	$4,299,402	$3,333,573	-$965,829	-$3,173,211
Dist. of Col.	$6,506,784	$4,299,402	$3,333,573	-$965,829	-$3,173,211
Florida	$44,734,794	$29,558,822	$22,918,651	-$6,640,172	-$21,816,143
Georgia	$22,407,312	$14,805,785	$11,479,775	-$3,326,011	-$10,927,537
Hawaii	$10,264,020	$6,782,022	$5,258,490	-$1,523,531	-$5,005,529
Idaho	$6,506,784	$4,299,402	$3,333,573	-$965,829	-$3,173,211
Illinois	$59,937,793	$39,604,308	$30,707,492	-$8,896,816	-$29,230,301
Indiana	$31,939,777	$21,104,427	$16,363,473	-$4,740,954	-$15,576,304
Iowa	$17,936,843	$11,851,892	$9,189,452	-$2,662,440	-$8,747,391
Kansas	$11,962,694	$7,904,432	$6,128,759	-$1,775,672	-$5,833,934
Kentucky	$16,867,647	$11,145,413	$8,641,678	-$2,503,735	-$8,225,968
Louisiana	$14,568,286	$9,626,095	$7,463,664	-$2,162,431	-$7,104,622
Maine	$10,258,785	$6,778,563	$5,255,809	-$1,522,754	-$5,002,977
Maryland	$32,052,324	$21,178,793	$16,421,133	-$4,757,660	-$15,631,190
Massachusetts	$44,996,531	$29,731,767	$23,052,745	-$6,679,022	-$21,943,787
Michigan	$56,984,090	$37,652,628	$29,194,243	-$8,458,386	-$27,789,847
Minnesota	$24,358,562	$16,095,087	$12,479,444	-$3,615,643	-$11,879,118
Mississippi	$11,940,446	$7,889,732	$6,117,362	-$1,772,370	-$5,823,084
Missouri	$36,738,726	$24,275,365	$18,822,083	-$5,453,282	-$17,916,643
Montana	$6,506,784	$4,299,402	$3,333,573	-$965,829	-$3,173,211
Nebraska	$6,778,991	$4,479,265	$3,473,031	-$1,006,234	-$3,305,960
Nevada	$6,506,784	$4,299,402	$3,333,573	-$965,829	-$3,173,211
New Hampshire	$13,243,897	$8,750,996	$6,785,149	-$1,965,847	-$6,458,748
New Jersey	$54,157,329	$35,784,827	$27,746,029	-$8,038,798	-$26,411,300
New Mexico	$6,506,784	$4,299,402	$3,333,573	-$965,829	-$3,173,211
New York	$146,280,931	$96,656,130	$74,943,042	-$21,713,087	-$71,337,889
North Carolina	$23,918,844	$15,804,540	$12,254,167	-$3,550,373	-$11,664,677
North Dakota	$6,506,784	$4,299,402	$3,333,573	-$965,829	-$3,173,211
Ohio	$74,608,156	$49,297,852	$38,223,452	-$11,074,399	-$36,384,704
Oklahoma	$10,707,664	$7,075,163	$5,485,779	-$1,589,383	-$5,221,885
Oregon	$14,971,361	$9,892,430	$7,670,168	-$2,222,261	-$7,301,193
Pennsylvania	$52,496,607	$34,687,494	$26,895,204	-$7,792,290	-$25,601,404
Rhode Island	$8,899,061	$5,880,116	$4,559,191	-$1,320,925	-$4,339,870
South Carolina	$13,576,303	$8,970,635	$6,955,448	-$2,015,187	-$6,620,855

State	FY 2004 Enacted	FY 2006 Enacted	FY 2007 Proposed	FY 2006-07 Cut	FY 2004-07 Total Cut
South Dakota	$6,506,784	$4,299,402	$3,333,573	-$965,829	-$3,173,211
Tennessee	$19,252,071	$12,720,938	$9,863,273	-$2,857,665	-$9,388,798
Texas	$60,573,814	$40,024,563	$31,033,340	-$8,991,223	-$29,540,474
Utah	$6,983,145	$4,614,161	$3,577,624	-$1,036,537	-$3,405,521
Vermont	$6,506,784	$4,299,402	$3,333,573	-$965,829	-$3,173,211
Virginia	$27,122,506	$17,921,382	$13,895,475	-$4,025,906	-$13,227,030
Washington	$23,047,259	$15,228,635	$11,807,634	-$3,421,001	-$11,239,625
West Virginia	$20,660,217	$13,651,380	$10,584,698	-$3,066,682	-$10,075,519
Wisconsin	$35,827,881	$23,673,518	$18,355,437	-$5,318,081	-$17,472,444
Wyoming	$6,506,784	$4,299,402	$3,333,573	-$965,829	-$3,173,211
American Samoa	$1,189,595	$786,033	$609,457	-$176,577	-$580,139
Guam	$861,115	$568,988	$441,169	-$127,819	-$419,946
North. Marianas	$552,265	$364,913	$282,938	-$81,975	-$269,327
Puerto Rico	$17,285,117	$11,421,260	$8,855,558	-$2,565,702	-$8,429,559
Virgin Islands	$690,986	$456,574	$354,008	-$102,566	-$336,978
Subtotal	$1,308,685,430	$864,722,883	$670,469,258	-$194,253,625	-$638,216,172
Indian Tribes	$19,929,220	$13,168,369	$10,210,192	-$2,958,177	-$9,719,028
Total	**$1,342,035,000**	**$886,758,840**	**$687,555,000**	**-$199,203,840**	**-$654,480,000**