

# Clarifying the Murky Depths of the Clean Water Act



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On Jan. 9, 2001, the U.S. Supreme Court issued a ruling intended to clarify the ever-murky slough of federal wetlands regulation. Instead, their decision further clouded the federal government's role and has kept our constituents—from the swamps of the southeast to the prairies and deserts of the west to the lakes of the Midwest—mired in a bog of oppressive government bureaucracy.

In *Solid Waste Association of Northern Cook County v. U.S. Army Corps of Engineers*, the court ruled that “isolated waters” are not subject to the Clean Water Act. Though clear in its intent, this decision has resulted in massive confusion. Since then, neither Congress nor the Executive Branch has stated clearly the areas of wetlands and waters of the United States that are subject to the Section 404 permitting program of the Clean Water Act.

In my own congressional district in Louisiana, a business owner sought to add space to his warehouse facility. Sensitive to wetlands regulations, he contacted the corps to make a site determination. He knew that isolated wetlands existed on the property, but he

also knew that the courts denied the corps authority over such waters. Still, the corps declared jurisdiction. How? The isolated wetlands were shaped like two fingers. Cutting across the fingers were tire ruts—manmade tire ruts—that extended from the wetland area to a ditch—a manmade ditch—to a creek, then to a diversion canal—a manmade diversion canal—then eventually to a stream 14 miles away that is commonly regarded as a water of the United States.

Is this what Congress intended when we drafted the Clean Water Act? Is this the kind of regulatory reach that we seek from our federal government? I believe not, which is why I've joined with my Democratic colleague Rep. Marion Berry of Arkansas.

Our bill, the Federal Wetlands Jurisdiction Act of 2005 will, once and for all, define clearly those areas that are and are not subject to jurisdiction under the Section 404 permitting program of the Clean Water Act. We believe that a very basic responsibility of any government is to state clearly for its citizens the areas and activities that are subject to regulation by that government. The legislation we are proposing does just that.

The Federal Wetlands Jurisdiction Act of 2005 clarifies that navigable waters, those areas connected to navigable waters by “continuous, naturally occurring surface connections,” and the wetlands adjacent thereto, are subject to the jurisdiction of the Section 404 program. Not subject to Section 404 jurisdiction are those areas that are connected to navigable waters by manmade conveyances, underground water, sheet flow and other such devices that seem to have been invented to overcome the Supreme Court decision.

This legislation applies only to the Section 404 program of the Clean Water Act and does not affect the jurisdiction of any other program of the act. The legislation does not change the definition of a “wetland” or “water of the United States,” but rather only clarifies the “connectors” to navigable waters that support federal jurisdiction.

Please let your congressmen know how you feel about wetlands reform, and ask them to consider the Baker-Berry bill. You can get more information by calling my office at (202) 225-3901 or by visiting my web site at [www.baker.house.gov](http://www.baker.house.gov). ■