



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 30 2010

THE ADMINISTRATOR

The Honorable James L. Oberstar
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Oberstar:

Thank you for your letter of April 22, 2010, seeking my comments on legislation you recently introduced, "America's Commitment to Clean Water Act" (ACCWA), developed to restore the historic scope of Clean Water Act (CWA) jurisdiction. The CWA is one of the Nation's most effective environmental laws, and reflects your leadership and efforts in Congress for many years. Since enactment of the CWA in 1972, the condition of rivers, lakes, streams, wetlands, and coastal waters across the country has dramatically improved.

Unfortunately, Supreme Court decisions have weakened the ability of EPA to protect the Nation's waters by narrowing the scope of water bodies to which the CWA applies and creating hurdles to exercising the Agency's jurisdiction under the Act. I applaud your leadership in introducing legislation that would restore the jurisdiction of the Act to its historic scope. Restored Clean Water Act jurisdiction would better enable EPA to assure the vital public health, environmental, recreational and economic benefits of clean and safe water.

I appreciate the opportunity to respond to the important question raised in your letter: would the proposed legislation effectively address the two Supreme Court decisions in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)* and *Rapanos v. United States (Rapanos)* consistent with your intent to restore, but not expand, the geographic scope of the CWA?

The simple answer is "yes." After reviewing the legislation, it is EPA's view that ACCWA would restore the historic scope of CWA jurisdiction as it existed prior to the Supreme Court decisions without expanding it. Consistent with EPA's regulations, the legislation proposes to exclude from CWA jurisdiction existing waste treatment systems constructed in waters of the U.S. The legislation, however, would not exempt from jurisdiction new treatment systems built in waters covered by the Act.

The substantive provisions of the legislation rely on the EPA and Army Corps of Engineers regulations defining the term "waters of the United States," promulgated by the agencies to interpret the geographic scope of the CWA term "navigable waters." The agencies' have nearly 30 years of experience implementing this definition in determining the extent of the Nation's waters covered by the CWA. Consistent with the agencies' extensive experience in interpreting and implementing our regulatory definition, I believe that your legislation would reaffirm, without expansion, the geographic scope of the CWA as it existed prior to the Supreme Court decisions in *SWANCC* and *Rapanos*. If this legislation is enacted, EPA would interpret and implement the CWA as we did prior to the Supreme Court decisions.

Thank you again for your letter and for your remarkable record in support of protecting America's lakes, streams, wetlands and other waters. I look forward to working closely with you to restore CWA protections for these vital resources.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa P. Jackson", with a long horizontal flourish extending to the right.

Lisa P. Jackson
Administrator

cc: Nancy Sutley
Chair, Council on Environmental Quality