



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

JUN 04 2010

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

Dear Chairman Oberstar:

This is in response to your letter of May 12, 2010, seeking a technical evaluation of "America's Commitment to Clean Water Act" (ACCWA), H.R. 5088, introduced on April 21, 2010, which would amend the Federal Water Pollution Control Act by reaffirming the jurisdiction of the United States over waters of the United States. The Clean Water Act is one of our Nation's most important and proven effective environmental laws. Without the landmark passage of the Clean Water Act in 1972, there would not have been the dramatic improvement in the conditions of our Nation's rivers, lakes, streams, wetlands and coastal areas.

The intent of the original Clean Water Act jurisdiction has, in my judgment, become increasingly obfuscated, primarily as the result of two significant U.S. Supreme Court decisions.¹ These decisions have unquestionably narrowed the scope of the Clean Water Act and have created a regulatory environment which is becoming more unpredictable and less efficient. I thank you for your leadership in introducing legislation clearly intended to reaffirm the historic scope of the Clean Water Act's jurisdiction thereby assuring that our Nation's waters are clean and safe, and delivering the environmental, recreational and economics benefits that our Nation's citizenry clearly deserve.

I appreciate this opportunity to respond to the fundamental question raised in your letter – *would the legislation as proposed effectively address the impacts of the two Supreme Court cases consistent with the stated intent of restoring, but not expanding, the scope of the Clean Water Act?* The answer to this fundamental question from the Army's perspective is yes. The Army holds the view that H.R. 5088, as drafted, would generally restore the historic scope of the Clean Water Act jurisdiction as it existed prior to SWANCC and Rapanos/Carabell². We reach this conclusion after almost 30 years of

¹ The two U.S. Supreme Court cases are Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers ("SWANCC"), 531 U.S. 159 (2001), and Rapanos v. United States and Carabell v. United States ("Rapanos/Carabell"), 547 U.S. 715 (2006).

² It is recognized and generally understood that H.R. 5088 would grandfather waste treatment systems already considered exempt from the definition of waters of the United States, but would prohibit application of the waste treatment system exemption for some systems in the future. Thus, as a technical matter and to this limited extent, it is arguable that the Clean Water Act jurisdiction is altered under H.R. 5088.

experience in implementing a regulatory definition of "navigable waters" prior to the 2001 and 2006 Supreme Court decisions.

Thank you for your letter and your resolve to protect our Nation's waters.

Very truly yours,

A handwritten signature in black ink that reads "Jo Ellen Darcy". The signature is written in a cursive style with a large, looping initial "J".

Jo Ellen Darcy
Assistant Secretary of the Army
(Civil Works)