

# Clean Water Act

## brief chronology

- Federal Water Pollution Control Act - 1972
- 1977 Amendments
- Implementing Regulations
- 3 Supreme Court Cases
- Proposed legislative reform

# Statutes

## ● 1972 Clean Water Act

- Purpose
- Jurisdiction: Navigable Waters: Waters of the U.S.

## ● 1977 Amendments

- Exemptions for routine activities
- Failed attempt to narrow definition of Waters of the U.S.

# Implementing Regulations

- Broad interpretation

- 1977 Regulations

- In addition to traditionally regulated waters (including adjacent wetlands):  
*“[all] other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate commerce…”*

# Further defining of scope in 1980s

## ● U.S. v Riverside Bayview Homes

- 1985

- Upheld Corps authority to regulate adjacent wetlands

- Left open issue of “isolated waters”

## ● 1986 Migratory Bird Rule

- Isolated water includes water for interstate migratory birds .

# SWANCC Case

- Solid Waste Agency of Northern Cook County v. US Army COE
  - 2001
  - 5-4 Court rejected authority over isolated waters.

# Rapanos v. U.S. (2006)

- 4-1-1 plurality opinion.
- Clarified “waters of the U.S”:  
*“include only those relatively permanent, standing or continuously flowing bodies of water forming geographic features that are described in ordinary parlance as streams, oceans, rivers, and lakes.”*

# Rapanos Footnote 5

By describing waters as relatively permanent, we do not necessarily exclude streams, rivers, or lakes that might dry up in extraordinary circumstances, such as drought. We also do not necessarily exclude *seasonal* rivers, which contain continuous flow during some months of the year but no flow during dry months.... Common sense and common usage distinguish between a wash and seasonal river....

# Rapanos Footnote 5 –cont.

We have no occasion in this litigation to decide exactly when the drying-up of a stream bed is continuous and frequent enough to disqualify the channel as a wate[r] of the United States. It suffices for present purposes that channels containing permanent flow are plainly within the definition, and that the dissent's intermittent and ephemeral streams, that is, streams whose flow is [c]oming and going at intervals . . . [b]roken, fitful,. Webster.s Second 1296, or existing only, or no longer than, a day; diurnal . . . short-lived,. *id.*, at 857 are not.

# Proposed legislation

- 2007 Clean Water Restoration Act

- S. 787 – 2009

- H.R. 5088 – 2010: America's Commitment to Clean Water Act