

# Clean Water Enforcement Cases Against Polluters Dropped As Agency Confusion Grows

## *Congress Must Reaffirm the Clean Water Act Now by Passing the Clean Water Restoration Act (S. 787)*

Without effective enforcement, our nation's most important laws for protecting public health, community welfare, and our natural resources will not achieve their goals, and bad actors are not held accountable when they break the laws that other businesses follow.

A March 2008 memorandum from the U.S. EPA's Office of Enforcement and Compliance Assurance (OECA) has now revealed that the nation's waters are being left without full protections under the federal Clean Water Act – and that alleged polluters are being let off the hook. The OECA memo was released in July 2008 by House Transportation and Infrastructure Committee Chairman Oberstar and Representative Waxman, who was then Chairman of the House Oversight and Government Reform Committee.



**Hundreds** of Clean Water Act (CWA) enforcement cases have either been dropped completely or made lower priorities because of recent Supreme Court decisions questioning whether certain rivers, streams, wetlands and other waters remain protected from pollution by the Clean Water Act. This legal uncertainty has been made worse by recent EPA and Army Corps "guidance" that has further undermined clear enforcement of the law.



According to the agency memo: "a significant portion of the CWA enforcement docket has been adversely affected." Between July 2006 and December 2007, the agency made a conscious decision not to pursue enforcement of more than **300** Clean Water Act violations because of the jurisdictional uncertainty created by one Supreme Court decision and the guidance. In **147** cases, the priority of an enforcement action was lowered due to uncertainty about whether the waters remained within the scope of the Clean Water Act. Polluters in enforcement actions raised the lack of Clean Water Act jurisdiction as an affirmative defense in **61** other cases. In sum, as many as **500** enforcement cases were affected during

this time period.

In a letter to EPA Administrator Stephen Johnson, Chairmen Oberstar and Waxman said that *"This represents a sizable proportion of EPA's approximately 1,000 civil administrative and judicial enforcement cases under sections 311, 402, and 404 of the Clean Water Act undertaken in FY 2007."*

The Clean Water Act enforcement cases dropped, de-prioritized, or jeopardized because of jurisdictional uncertainties included instances of violations of the oil spill prevention and clean up program, the program that limits water pollution from factories and sewage treatment plants, and the provisions of the law aimed at limiting the destruction of rivers, streams, and wetlands from "dredge and fill" pollution.

**The "adverse affect" on the ability of EPA to enforce the Clean Water Act is further evidence of the urgent need for Congress to pass the Clean Water Restoration Act (S. 787) which would restore the Clean Water Act to the traditional scope of protection intended by Congress.**

Without this legislation, an incalculable number of the nation's streams, rivers, lakes, wetlands, and other waters may be left unprotected from oil spills, sewage overflows, toxic wastes, and destructive fill activities – making it impossible to achieve the goal of restoring and maintaining the chemical, physical and biological integrity of the nation's waters.

Until Congress restores the Clean Water Act, the waters of this country are going to suffer irretrievable harm. The stakes are enormous – inaction jeopardizes safe and sufficient water. We cannot afford to let the current rollbacks and legal confusion erase three decades of progress and return us to the days of widespread dirty water.



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