

Weakening the Clean Water Act: What it Means for Wisconsin



The purpose of the Clean Water Act is “to restore the chemical, physical, and biological integrity of the nation’s waters.” Over the past 31 years, the Act has led to great improvements in our water quality and protection of our water resources. In spite of this, last year the Bush Administration issued guidelines that eliminate Clean Water Act protection for many of our country’s important wetlands, streams, and other waters. These waters provide tremendous benefits to people and wildlife across the nation—benefits that will be lost forever if the Administration continues on its current path.

The U.S. Environmental Protection Agency estimates that the new guidelines remove Clean Water Act protection from 20 million acres, or 20 percent of the wetlands remaining in the lower 48 states. Loss of federal safeguards leaves these wetlands and other threatened waters subject to an incomplete patchwork of state and local protection. In the many areas where no state or local safeguards exist, it leaves these waters completely exposed to unlimited destruction and pollution.

Federal Clean Water Act Changes:

The Administration claims that its new guidelines are necessary to implement a 2001 Supreme Court ruling limiting Clean Water Act protections for some “isolated” ponds and wetlands. However, the guidelines go beyond the narrow scope of the so-called



“SWANCC” decision, and needlessly put at risk millions of acres of wetlands, streams, ponds, lakes and other waters.

While the Administration had also asked for public comment on whether the rules of the Clean Water Act itself needed changing, it abandoned this effort after an enormous outpouring of opposition to this plan from Congress, 39 state agencies, conservation and environmental groups, hunters and anglers, and the public. But the guidance remains in effect and is causing unnecessary damage to many wetlands, rivers, lakes, and ponds.

Why Do We Need Federal Protection?

The removal of wetlands protections at the federal level has prompted many to look at state-level protections that could “plug the gap” left by the guidance and the 2001 Supreme Court decision. Only about one-third of the states have any independent protection programs against dredge and fill activities in these types of waters, and most are substantially weaker than the Clean Water Act. In general, state water protection programs have evolved to work in conjunction with the federal law and heavily rely on federal funding and personnel to effectively protect waters.



Another concern is the nature of water resources. Since many

states can share one common river, lake, or stream, protections in one state can be undermined by a lack of protections in a neighboring state. A lack of protection at the federal level could lead to a “race to the bottom” where states deregulate, making it cheapest to pollute locally in an attempt to attract industries from out of state. Additionally, some internationally important resources are now threatened, such as North America’s waterfowl, half of which breed in the prairie pothole wetlands of the northern Great Plains states where no state-level wetlands protections exist.

Current Protections in Wisconsin

Wisconsin was the first and thus far, the only state in the nation to respond to the 2001 *SWANCC* decision with legislation to ensure protection for all its waters. Only four months after *SWANCC*, the State enacted legislation extending its water protections to “non-federal” wetlands. This new law essentially maintains protection that existed before *SWANCC* and extends state authority to wetlands and other waters that were previously protected by the federal Clean Water Act. Unfortunately, this new program has borne a bigger share of the regulatory burden than was originally anticipated because of the broad reading of the *SWANCC* decision by the federal agencies.

What’s Happening on the Ground

NWF received documents through the *Freedom of Information Act* from the St. Paul District of the Army Corps of Engineers which is responsible for issuing federal permits concerning dredge and fill activities in waters within the state of Wisconsin. From January of 2002 to September of 2003, this District declined to regulate waters in 3,800 cases in both Wisconsin and Minnesota. Some of the cases where they chose not to regulate include lakes (some of which are hundreds of acres in size), and large wetland complexes.

They are also not regulating some wetlands, ponds, and lakes that are connected to other waters only via intermittent streams and swales. They claim that these waters have no obvious surface water connection to “navigable” water bodies, and are therefore, not subject to Clean Water Act regulations. The geology and hydrology of the region make this highly unlikely. Even where waters are arguably “isolated,” the

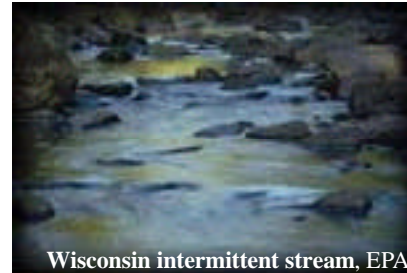


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SWANCC decision did not preclude their protection if they support recreation by out-of-state visitors, commercial fishing, or water extraction, or if they serve as habitat for endangered species.



Wisconsin intermittent stream, EPA

While Wisconsin’s program is relatively effective now, the Wisconsin Department of Natural Resources is being asked to play a much bigger role in water protection than it originally anticipated due to the Corps’ and EPA’s broad interpretation of the *SWANCC* decision. It is unclear whether the State will be able to dedicate sufficient resources to fill the substantial gap left by the federal agencies.

The need for protections at the Federal Level

The removal of wetlands protections at the federal level has prompted many to look at state-level protections that could “plug the gap” left by the guidance and the *SWANCC* decision.

While Wisconsin is unique in having a comprehensive wetlands protection program, only about a third of states have *any* protection programs of their own, and most of these are substantially weaker than the CWA. For the most part, state water protection programs have evolved to work in conjunction with the federal CWA and heavily rely on federal funding and personnel to effectively protect their waters.

Another concern with state-level protection of waters is the nature of water resources. Since many states can share one common river, lake, or stream, protections in one state can be undermined by a lack of protections in a neighboring state. Michigan and Minnesota both have state-level permitting programs for dredge and fill activities, but neither regulate all waters or activities in those waters, leaving their programs less protective than Wisconsin's. Both Iowa and Illinois completely lack state level permitting programs for dredge and fill activities. So even though Wisconsin has one of the best protection programs at the state level, it can still be undermined since neighboring states' protections are weaker.



whooping cranes, USFWS

states for resting and feeding. Only through protections at the federal level can we ensure that such dynamic natural resources are protected.



Whooping Crane
Ashton Graham, USFWS

Moreover, no protections at the federal level could lead to a "race to the bottom" where neighboring states deregulate, making it cheapest to pollute locally in an attempt to attract industries from out of state. Additionally, some internationally important resources are now threatened, such as North

America's waterfowl, 50 percent of which breed in the prairie pothole wetlands of the northern Great Plains states where no state-level protections against dredge and fill activities exist.

Wisconsin has dedicated extensive resources to the conservation of migratory bird species. This is especially true for the whooping crane. The Natural Resources Foundation of Wisconsin and the Wisconsin Dept. of Natural Resources have invested over \$142,000 in the attempt to reintroduce the birds to the Necedah National Wildlife Refuge in Juneau County, Wisconsin. On these birds' annual migration to and from Florida, they depend on healthy wetland habitats in seven

- Wisconsin has 15,000 named lakes and ponds, 5.3 million acres of wetlands and approximately 44,000 miles of streams.
- The Wisconsin Department of Natural Resources estimates that there are 1.1 million acres of wetlands in the State that could lose federal Clean Water Act protections since the SWANCC decision and the Bush Administration's guidance.
- 43% of plant and animal species in Wisconsin on the Federal endangered and threatened species list depend on wetlands
- 38 of Wisconsin's 54 amphibians and reptiles (70%) depend on wetlands for food or habitat
- Flood flows were reduced by 80% in basins with wetlands compared to basins without wetlands, according to studies in the Midwest.

Water Quality:

Small streams make up approximately 85 percent of the total drainage network in a basin and collect most of the water and dissolved nutrients from the surrounding terrestrial ecosystem. Small wetlands and streams act as a sieve for larger water bodies, capturing nutrients, debris, and pollutants as water flows toward rivers and lakes. Wisconsin's clean water supply is maintained by healthy headwaters. The upper reaches of streams and small wetlands filter pollutants, making downstream water safe for drinking and more appealing for recreation.



canoeing at sunset, E. Smith, USFWS

Recreation:

Streams, wetlands and their dependent wildlife help make Wisconsin a beautiful place and provide it with a lucrative source of income. According to the 2001 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, it was found that over 2 million people participated in recreational hunting and fishing activities in Wisconsin spending over \$1.8 billion. More than 2.4 million individuals participated in wildlife watching activities spending close to \$1.3 billion in 2001.

[W]etlands, even 'isolated wetlands or waters', are part of an overall inter-related ecosystem. All of these waters are part of a system that acts collectively with other portions of the system. Loss of these waters and their functions such as flood storage, habitat value and water quality protection can and will impact the overall chemical, physical and biological integrity of a watershed.

Wisconsin Department of Natural Resources

Flooding:

Wetlands and small streams that might be denied Clean Water Act protections are crucial to regulating water levels during heavy rains and snowmelt. Wetlands have the ability to hold amazing amounts of excess water (up to 1.5 million gallons per acre) that is then slowly distributed back into the watershed. These wetlands help to slow down runoff and reduce peak flood levels in downstream rivers and lakes, minimizing damage to downstream and lakefront communities.



Grant County, WI, FEMA

What You Can Do

Log on to <http://www.nwf.org/ourprograms> (click on [wetlands conservation](#) under National Programs) to get more information and to see if your legislators have taken steps to protect our Nation's waters.

Ask President Bush, Senators Feingold and Kohl, and your representative to:

- work for the withdrawal of the harmful guidelines
- fully enforce the Clean Water Act to ensure protections for all our valuable wetlands and streams
- support the passage of the **Clean Water Authority Restoration Act of 2003** (H.R.962 and S.473)

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