

■ Clean Water Act

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Author: Senator Edmund Muskie; Representative John Blatnik

Genre: legislation

Summary Overview

The Clean Water Act (CWA) was enacted in 1972 and is one of the most important pieces of environmental legislation in the United States. It was signed into law during the Nixon administration and aims to restore and maintain the integrity of the country's waters by preventing pollution, protecting water quality, and achieving fishable and swimmable waters.

Prior to the 1970s, the federal government's role in water policy generally focused on the supply and distribution of water, flood protection, and river navigation. The Water Quality Act of 1948 aimed at providing standards for water quality, but left it to the states to set these standards. The Clean Water Act aimed at more efficient management of the surface waters of the nation, with standards set by the federal government. The legislation set broad goals for protecting the purity of water, for using the best available technology to eliminate or mitigate pollution, and set an ultimate goal of eliminating all discharge of pollutants. Federal grants were made available to local governments for building new sewer systems and water treatment plants, leading to thousands of new facilities being constructed over the next decade. While the Clean Water Act produced some marked improvements in the quality of the nation's water supply, it has been faulted as being too narrow, and later legislation has aimed at addressing some of these shortcomings.

Overall, the Clean Water Act represents a major effort to improve and preserve the nation's water resources, reflecting a commitment to environmental protection through government action.

Defining Moment

Consciousness about air and water pollution and other environmental issues grew steadily in the United States throughout the 1960s. Many scholars cite the publication of Rachel Carson's anti-pollution book *Silent Spring* in 1962 as the beginning of the modern environmental movement. The "back to nature" phase of the youth counter-culture in the sixties also contributed to the upsurge of concern for the natural environment. In 1969, Congress passed the National Environmental Policy Act, which announced the intention of Congress to pursue policies aimed at conditions under which "man and nature can exist in productive harmony." The first Earth Day, a day aimed at educating the public about environmental causes, was held on April 22, 1970. Further growth of this awakened environmental consciousness can be seen in the creation of the Environmental Protection Agency (EPA) in late 1970. President Richard M.

Nixon created the EPA by executive order, but Congress quickly endorsed the new agency. Although Nixon had created the EPA, he vetoed the Clean Water Act when it was passed in 1972, but the fact that both houses of Congress quickly overrode his veto demonstrates the strength of public sentiment on environmental issues at that time.

In the case of water pollution, Congress had first addressed the issue with the Water Quality Act of 1948, but there were many problems with this legislation. It called for each state to set standards for clean water, which led to a variety of state laws rather than a uniform national standard. By the 1960s, many bodies of water were severely polluted and were no longer safe for use as drinking water or for recreational activities like swimming or fishing. The Great Lakes and Chesapeake Bay were no longer productive fisheries. Some rivers were described as "open sewers", including the Androscoggin and Kennebunk Rivers in

Maine, the home state of Senator Edmund Muskie, the sponsor of the Clean Water Act in the Senate. The Cuyahoga River, which flows through Cleveland before emptying into Lake Erie, was so filled with oil, chemicals, and other pollutants that it caught fire several times in the 1960s. The most dramatic fire was on June 22, 1969. The blaze lasted only about twenty minutes, but flames reached heights of twenty feet and destroyed two railroad bridges. The Cuyahoga River fires became a dramatic symbol of the severity of the water pollution problem in the nation, and helped demonstrate the need for federal pollution controls such as those provided in this legislation.

Author Biography

The major sponsors of this bill were Senator Edmund Muskie (1914-1996), Democrat from Maine, and

Representative John Blatnik (1911-1991), Democrat from Minnesota. Muskie served as governor of Maine from 1955 to 1959, and was elected to the U.S. Senate in 1958. He was a candidate for the Democratic presidential nomination in the early stages of the 1972 campaign, but dropped out early in the campaign. He resigned from the Senate in 1980 to serve as Secretary of State in President Jimmy Carter's cabinet. John Blatnik served 27 years in the U.S. House of Representatives, being re-elected thirteen times and sometimes running against no Republican opposition. He championed many public works projects, such as the Saint Lawrence Seaway, that benefitted his district in northeastern Minnesota, and was chairman of the House Committee on Public Works from 1970 to 1974. He used this chairmanship to push for House passage of the Clean Water Act.



Historical Document

Clean Water Act

Public Law 91-604

SEC. 101.(a) The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act—

(1) it is the national goal that the discharge of pollutants into navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides recreation in and on the water be achieved by July 1, 1983;

(3) it is national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

(5) it is the national policy that area-wide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollution in each State; and

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans.

SEC. 404. (a) The Secretary of the Army, acting through the Chief of Engineers, may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites.

(b) Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary of the Army (1) through the application of guidelines developed by the Administrator, in conjunction with the Secretary of the Army... and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.

(c) The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds, and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

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Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers et al. (2001)

The Case

Petitioner, a consortium of suburban Chicago municipalities, selected as a solid waste disposal site an abandoned sand and gravel pit with excavation trenches that had evolved into permanent and seasonal ponds. Because the operation called for filling in some of the ponds, petitioner contacted federal respondents, including the Army Corps of Engineers (Corps), to determine if a landfill permit was required under §404(a) of the Clean Water Act (CWA), which authorizes the Corps to issue permits allowing the discharge of dredged or fill material into “navigable waters.” The CWA defines “navigable waters” as “the waters of the United States,” and the Corps’ regulations define such waters to include intrastate waters, “the use, degradation or destruction of which could affect interstate or foreign commerce.” In 1986, the Corps attempted to clarify its jurisdiction, stating, in what has been dubbed the “Migratory Bird Rule,” that §404(a) extends to intrastate waters that, inter alia, provide habitat for migratory birds. Asserting jurisdiction over the instant site pursuant to that Rule, the Corps refused to issue a §404(a) permit...

...The Seventh Circuit held that Congress has authority under the Commerce Clause to regulate intrastate waters and that the Migratory Bird Rule is a reasonable interpretation of the CWA.

The Majority Opinion, Delivered by Justice William Rehnquist

Congress passed the CWA for the stated purpose of “restor[ing] and maintain[ing] the chemical, physical, and biological integrity of the Nation’s waters.” 33 U. S. C. §1251(a). In so doing, Congress chose to “recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter.” §1251(b). Relevant here, §404(a) authorizes

respondents to regulate the discharge of fill material into “navigable waters,” 33 U. S. C. §1344(a), which the statute defines as “the waters of the United States, including the territorial seas,” §1362(7). Respondents have interpreted these words to cover the abandoned gravel pit at issue here because it is used as habitat for migratory birds. We conclude that the “Migratory Bird Rule” is not fairly supported by the CWA.

This is not the first time we have been called upon to evaluate the meaning of §404(a). In *United States v. Riverside Bayview Homes, Inc.*, 474 U. S. 121 (1985), we held that the Corps had §404(a) jurisdiction over wetlands that actually abutted on a navigable waterway. In so doing, we noted that the term “navigable” is of “limited import” and that Congress evidenced its intent to “regulate at least some waters that would not be deemed ‘navigable’ under the classical understanding of that term.”

We conclude that respondents have failed to make the necessary showing that the failure of the 1977 House bill demonstrates Congress’ acquiescence to the Corps’ regulations or the “Migratory Bird Rule,” which, of course, did not first appear until 1986. Although respondents cite some legislative history showing Congress’ recognition of the Corps’ assertion of jurisdiction over “isolated waters,” as we explained in *Riverside Bayview Homes*, “[i]n both Chambers, debate on the proposals to narrow the definition of navigable waters centered largely on the issue of wetlands preservation.” 474 U.S. at 136. Beyond Congress’ desire to regulate wetlands adjacent to “navigable waters,” respondents point us to no persuasive evidence that the House bill was proposed in response to the Corps’ claim of jurisdiction over non-navigable, isolated, intrastate waters or that its failure indicated congressional acquiescence to such jurisdiction.

We thus decline respondents’ invitation to take what they see as the next ineluctable step after *Riverside Bayview Homes*: holding that isolated ponds, some only seasonal, wholly located within two Illinois counties, fall under §404(a)’s definition of “navigable waters,” because they serve as habitat for migratory birds.

Permitting respondents to claim federal jurisdiction over ponds and mudflats falling within the “Migratory Bird Rule” would result in a significant impingement of the States’ traditional and primary power over land and water use. Rather than expressing a desire to readjust the federal-state balance in this manner, Congress chose to “recognize, preserve, and protect the primary responsibilities and rights of States...to plan the development and use...of land and water resources...” We thus read the statute as written to avoid the significant constitutional and federalism questions raised by respondents’ interpretation, and therefore reject the request for administrative deference.



Document Analysis

This legislation represented the first time the federal government had directly implemented water quality standards for the surface waters of the United States. Rather than a detailed agenda of exactly what would be done to improve water quality, the bill set a number of ambitious goals, including the elimination of all discharge of pollutants into surface waters by 1985. Technically, this act was a set of amendments to the Federal Water Pollution Control Act of 1948, and when passed by Congress was initially titled The Federal Water Pollution Control Act Amendments of 1972. Over time, it has come to be referred to simply as the Clean Water Act of 1972.

The passage of this legislation reflected the widespread growth of environmental consciousness in the U.S. in the 1960s and early 1970s. Congress passed the final versions of the bill in October 1972. President Richard Nixon vetoed the bill, fearing excessive costs and a potential for federal regulatory overreach, but Congress quickly overrode his veto.

The bill called for setting standards for the quality of the surface waters in the U.S., and directed the maximum use of all available technology to control and ultimately eliminate pollution. While it set ambitious goals, there was also recognition that these goals would not be met immediately. Therefore, a permit system allowed industries to discharge specific limits of certain pollutants if they had received EPA approval. A program of federal grants to help finance the construction of new sewer systems and water treatment plans in municipalities around the nation was also included.

While significant improvements in water quality have resulted from the passage of this and subsequent anti-pollution legislation, the ambitious goals set forth have still not been completely met. Additionally, federal courts have tended to interpret the law narrowly, particularly in regard to exactly what constitutes the “surface waters” of the United States. In *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers et al* (2001), the Supreme Court examined the Army Corps of Engineer’s refusal to grant a permit to a waste disposal company that wanted to create a landfill that would involve filling ponds that had been created by water runoff into

abandoned sand and gravel pits. The Corps of Engineers argued that such waters were covered by this legislation, but the Supreme Court ruled that Congress had not authorized Corps of Engineers control over such “non-navigable, isolated, intrastate waters.” This case, as well as later federal court decisions, limited the applicability of the Clean Water Act to such incidental bodies of water. Congress has tried to clarify its intent to protect wetlands and wildlife habitat through subsequent legislation.

Essential Themes

A major theme that is evident in the Clean Water Act is the desire for national standardization in water quality regulations. Earlier laws left the standards up to each state, and also failed to take into account the fact that water is a moving resource, and thus pollution at one point can create problems in other places. Allowing the states to set the standards had led to a confusing patchwork of varying laws, and state governments did not always have the resources to vigorously enforce their standards and hold polluters accountable. This bill established national standards but allowed the states to make agreements with the EPA as to how these standards would be implemented. States were free to create stricter, but not more lenient, standards than those set by the federal government.

A firm faith in technological mastery is also evident in this legislation. The federal government would help local governments build state-of-the-art sewer systems and water treatment facilities, and the bill called for the government to make a “major research and demonstration effort” to further develop the technology that would ultimately eliminate pollution.

There is also a mixture of idealistic goal setting along with a dose of realistic pragmatism in some of the directives in this law. A national goal was set to eliminate discharge of pollution into all navigable waters in the U.S. by 1985. An interim goal called for reaching, “wherever attainable,” a degree of water quality that would protect fish, shellfish, and wildlife, by the deadline of July 1, 1983. Recognizing that not all pollutants were likely to be eliminated in the short term, the bill created a permit system, under which commercial and industrial firms could be permitted to discharge

acceptable limits of pollutants if they had the proper permits from the EPA. While significant progress was made, neither of these goals was fully achieved. By the early 1990s, it was estimated that about 30 percent of the nation's surface waters still did not meet the standards outlined in the Clean Water Act.

—Mark S. Joy, PhD

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