

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—111th Cong., 1st Sess.

S. 787

To amend the Federal Water Pollution Control Act to clarify the jurisdiction of the United States over waters of the United States.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Clean Water Restora-
5 tion Act”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to reaffirm the original intent of Congress
9 in enacting the Federal Water Pollution Control Act

1 Amendments of 1972 (Public Law 92–500; 86 Stat.
2 816) to restore and maintain the chemical, physical,
3 and biological integrity of the waters of the United
4 States; and

5 (2) to clearly define the waters of the United
6 States that are subject to the Federal Water Pollu-
7 tion Control Act (33 U.S.C. 1251 et seq.) as those
8 features that were treated as such on January 8,
9 2001, pursuant to the final rule (including the pre-
10 amble to that final rule) published at 51 Fed. Reg.
11 41206 (November 13, 1986), as in effect on Janu-
12 ary 8, 2001.

13 **SEC. 3. FINDING.**

14 Section 101 of the Federal Water Pollution Control
15 Act (33 U.S.C. 1251) is amended by adding at the end
16 the following:

17 “(h) FINDINGS.—Congress finds that—

18 “(1) the ruling of the United States Supreme
19 Court in *Solid Waste Agency of Northern Cook*
20 *County v. United States Army Corps of Engineers*,
21 531 U.S. 159 (January 9, 2001) and *Rapanos v.*
22 *United States*, 547 U.S. 715 (June 19, 2006),
23 adopted an overly constrained interpretation of the
24 intent of Congress with respect to the scope of juris-
25 diction of this Act; and

1 “(2) the intent of Congress is more closely re-
2 flected by the regulatory definition of the term
3 ‘waters of the United States’ under the final rule
4 (including the preamble to that final rule) published
5 at 51 Fed. Reg. 41206 (November 13, 1986), as in
6 effect on January 8, 2001.”.

7 **SEC. 4. DEFINITION OF WATERS OF THE UNITED STATES.**

8 Section 502 of the Federal Water Pollution Control
9 Act (33 U.S.C. 1362) is amended—

10 (1) by striking paragraph (7);

11 (2) by redesignating paragraphs (8) through
12 (25) as paragraphs (7) through (24), respectively;
13 and

14 (3) by adding at the end the following:

15 “(25) WATERS OF THE UNITED STATES.—

16 “(A) IN GENERAL.—The term ‘waters of
17 the United States’ means—

18 “(i) all waters which are currently
19 used, were used in the past, or may be sus-
20 ceptible to use in interstate or foreign com-
21 merce, including all waters which are sub-
22 ject to the ebb and flow of the tide;

23 “(ii) all interstate waters including
24 interstate wetlands;

1 “(iii) all other waters, such as intra-
2 state lakes, rivers, streams (including
3 intermittent streams), mudflats, sandflats,
4 wetlands, sloughs, prairie potholes, wet
5 meadows, playa lakes, or natural ponds,
6 the use, degradation, or destruction of
7 which would or could affect interstate or
8 foreign commerce, including any such
9 waters—

10 “(I) which are or could be used
11 by interstate or foreign travelers for
12 recreational or other purposes;

13 “(II) from which fish or shellfish
14 are or could be taken and sold in
15 interstate or foreign commerce; or

16 “(III) which are used or could be
17 used for industrial purposes by indus-
18 tries in interstate commerce;

19 “(iv) all impoundments of waters oth-
20 erwise defined as waters of the United
21 States under this definition;

22 “(v) tributaries of waters identified in
23 clauses (i) through (iv) of this definition;

24 “(vi) the territorial sea; and

1 “(vii) wetlands adjacent to waters
2 (other than waters that are themselves
3 wetlands) identified in clauses (i) through
4 (vi) of this definition.

5 “(B) WASTE TREATMENT SYSTEMS.—
6 Waste treatment systems, including treatment
7 ponds or lagoons designed to meet the require-
8 ments of this Act (other than cooling ponds as
9 defined in section 123.11(m) of title 40, Code
10 of Federal Regulations, which also meet the cri-
11 teria of this definition) are not waters of the
12 United States. This exclusion applies only to
13 manmade bodies of water which neither were
14 originally created in waters of the United States
15 (such as disposal area in wetlands) nor resulted
16 from the impoundment of waters of the United
17 States.

18 “(C) PRIOR CONVERTED CROPLAND.—
19 Waters of the United States do not include
20 prior converted cropland. Notwithstanding the
21 determination of an area’s status as prior con-
22 verted cropland by any other federal agency, for
23 the purposes of this Act, the final authority re-
24 garding jurisdiction under this Act remains
25 with the Environmental Protection Agency.”.

1 **SEC. 5. CONFORMING AMENDMENTS.**

2 The Federal Water Pollution Control Act (33 U.S.C.
3 1251 et seq.) is amended—

4 (1) by striking “navigable waters of the United
5 States” each place it appears and inserting “waters
6 of the United States”;

7 (2) in section 304(l)(1) by striking “NAVIGABLE
8 WATERS” in the heading and inserting “WATERS OF
9 THE UNITED STATES”; and

10 (3) by striking “navigable waters” each place it
11 appears and inserting “waters of the United
12 States”.

13 **SEC. 6. SAVINGS CLAUSE.**

14 Nothing in this Act (or an amendment made by this
15 Act) affects the applicability of the following provisions of
16 the Federal Water Pollution Control Act:

17 (1) Section 402(l)(1) (33 U.S.C. 1342(l)(1)).

18 (2) Section 402(l)(2) (33 U.S.C. 1342(l)(2)).

19 (3) Section 404(f)(1)(A) (33 U.S.C.
20 1344(f)(1)(A)).

21 (4) Section 404(f)(1)(B) (33 U.S.C.
22 1344(f)(1)(B)).

23 (5) Section 404(f)(1)(C) (33 U.S.C.
24 1344(f)(1)(C)).

25 (6) Section 404(f)(1)(D) (33 U.S.C.
26 1344(f)(1)(D)).

1 (7) Section 404(f)(1)(E) (33 U.S.C.
2 1344(f)(1)(E)).

3 (8) Section 404(f)(1)(F) (33 U.S.C.
4 1344(f)(1)(F)).

5 **SEC. 7. REGULATIONS.**

6 Not later than 90 days after the date of enactment
7 of this Act, the Administrator of the Environmental Pro-
8 tection Agency and the Secretary of the Army shall pro-
9 mulgate such regulations as are necessary to implement
10 this Act and the amendments made by this Act.