

Stormwater Permit MANUAL

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EPA and Army Corps Finalize New Regulations for Wetlands Mitigation

New regulations governing how wetlands mitigation projects must be conducted were finalized March 31, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers announced. The two agencies emphasized in a *Federal Register* notice that compensatory mitigation projects are **April 10** when adverse impacts to wetlands and streams are **unavoidable**. The compensatory mitigation pertains to projects authorized under the **Start** Water Act (CWA) Section 404 permit program and **sentence with** Rivers and Harbors Act. EPA said that the new **Compensatory** performance standards, set schedules for decision **age** property owners to use a watershed approach in their mitigation projects. *Page 5*

^ The regulations take effect June 9.

California Issues a Second Draft Permit for Construction Activity

The California State Water Resources Control Board **is revising** a draft general permit for construction activities. The draft contains several changes to the old permit, reflecting decisions made during public comments, stakeholder meetings and a report filed by a panel of stormwater experts. The new draft permit contains numeric attainment levels for both pH and turbidity, specifies more minimum best management practices, and would require sites to develop and implement their own "rain event action plan," designed to protect all exposed portions of the site within 48 hours prior to any likely precipitation event. A formal hearing on the draft will be held later this year, along with a public comment period. *Page 6*

Navigable Waters Bill Discussed by Experts at Senate Committee Hearing **Bill**

Members of the U.S. Senate Committee on Environment and Public Works met with industry leaders and state officials April 9 to discuss a bill that would replace the term "navigable waters" in CWA with "waters of the United States." Those opposing the bill believed that the change would lead to unintended consequences, more **^ said (would be better than believed)** confusion and less state and local authority. Supporters stated that the bill will not increase federal authority under CWA. Rather, the bill would clarify the legal language that was made less clear by **previous** Supreme Court decisions, and allow federal authorities to go back to their original jurisdictions. The bill is expected to undergo further review **^ This statement needs attribution, otherwise it sounds like TPG supports the bill and "original jurisdictions" is really wonky.**

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In the Update here? Coming soon? the NL note has run quite a bit lately I think.

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Enforcement Watch

Sediment and sedimentation are generally the same thing. I like the shorter one.

DeCESARE CORP. FINED FOR SEDIMENT RUNOFF, LACK OF CONTROLS

The Pennsylvania Department of Environmental Protection (DEP) recently fined DeCesare Corp. \$25,000 for not having done work at a development site that polluted Steels Run. This resulted in a violation of the site's National Pollution Discharge Elimination System (NPDES) permit, DEP officials stated. date?

violations that occurred at a residential subdivision in Bally Borough, Berks County. In addition to the fine, the company must correct the violations and submit stream restoration and monitoring plans for the affected area, DEP said April ??

The company began earth disturbance activities in 2004, at its San Ria Court development site, which led to stormwater runoff entering Steels Run. The NPDES permit given to the company outlines sediment control and erosion controls to prevent this kind of runoff.

Inspections that took place between July and December 2007 by the Berks County Conservation District revealed these violations. Inspectors determined that the company failed to implement and maintain erosion and sediment control best management practices at their Park Place development. Inspectors stated that the company's work created a potential for sediment pollution to an unnamed tributary to the West Branch of the Perkiomen Creek. I.c. west branch? actual name?

Inspections made by the Westmoreland Conservation District in 2004, 2006 and 2007 found that the company failed to implement these required controls, and failed to prevent stormwater runoff from carrying sediment from the site into the tributary.

The company also constructed a parcel of 0.22 acres of delineated wetlands and removed approximately 600 feet of stream bed without obtaining the necessary water obstruction and encroachment permits.

check this >

"Development cannot come at the expense of Pennsylvania's water resources," said Kenneth Bowman, regional DEP director, in a press release. "Working with our partners in the county conservation districts, DEP is committed to enforcing the regulations and laws that protect the commonwealth's streams and rivers."

The company was fined \$12,847 for violating the state's Clean Streams Law, \$3,500 for violating the Dam Safety and Encroachment Act, and \$2,500 for violating the Pennsylvania Fish and Boat Commission's Fish and Boat Code.

< also must

In addition to the fine, Quaker Homes must also submit a detailed stream restoration and monitoring plan for the affected area, create 0.47 acres of wetlands, and submit a revised erosion and sediment control plan. All restoration work must be completed by Oct. control

QUAKER HOMES FINED FOR RUNOFF, REMOVING WETLANDS

Quaker Homes Inc. must pay \$18,900 in fines as part of settlement agreement with the Pennsylvania Department of Environmental Protection (DEP) for a series of

MALDEN, MASS. FINED FOR FAILURE TO SUBMIT DISCHARGE REPORTS

The city of Malden, Mass. has been fined \$10,000 violating the federal Clean Water Act (CWA), according to EPA. The fines were issued because of alleged stormwater discharges that flowed into several tributaries of the Pines and Mystic Rivers, both of which flow into Atlantic Ocean. I.c. rivers

Are these MS4 permit violations? unclear.

Stormwater Permit Manual

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The city discharged stormwater without submitting an annual report. According to EPA, annual reports are required for stormwater dischargers to monitor compliance with CWA. The city also failed to respond to an EPA information request, requiring a submit overdue 2006 report within 30 days of the request. seeking Malden's

The city was fined \$10,000 and was given an administrative order to submit reports for 2006 and 2007. The city has since submitted the reports.

According to EPA, a number of New England municipalities have paid penalties for similar violations.

NAHB Lawsuit Over Corps Wetlands Permits For Ditches Will Proceed, Federal Court Rules

The National Association of Home Builders (NAHB) has adequate standing to pursue its lawsuit challenging a nationwide wetlands permit for upland ditches that was issued by the U.S. Army Corps of Engineers, a federal court ruled March 26 (*Natl. Ass'n of Home Builders v. U.S. Army Corps of Engr's*, 2008 WL 789100 (D.D.C.)).

In May 2007, NAHB sued the Corps alleging that one of the Corps's nationwide general permits (NWP) improperly asserted Clean Water Act (CWA) jurisdiction over non-tidal, upland ditches. The permit, referred to as NWP 46, was issued by the Corps in March 2007 along with several other general permits that regulate the discharge of fill material into wetlands.

Although residential construction projects frequently need stormwater permits for land disturbing activity of one acre or more, permits from the Corps issued under CWA Section 404 often are needed if any amount of wetlands will be impacted. When a Section 404 permit is required and which "waters of the United States" are regulated has been disputed in the nation's courts for several years. Guidance and regulation from the Corps or the U.S. Environmental Protection Agency has been met with criticism from industry groups, environmental organizations and state regulators. The issue of "navigable waters" and U.S. waters also has been debated by Congress (see related story, p. 7)

The recent federal court ruling is a preliminary ruling in a case that is likely at least a year from conclusion. Judge Ricardo M. Urbina of the U.S. District Court for the District of Columbia denied the Corps's motion to dismiss NAHB's lawsuit.

Along with contending that ditches should not be subject to Section 404 permits, NAHB also faulted the permit process of NWP 46. To obtain coverage under NWP 46, a prospective permittee must give the Corps a pre-construction notification (PCN) for their project. Work cannot begin until the Corps confirms that the project has permit coverage. Construction or other work may proceed after 45 days, if the Corps does not provide notice otherwise.

After reviewing a PCN the Corps has three general options under NWP 46: authorize permit coverage; require an individual permit application; or conclude that the ditch is not a jurisdictional water of the United States and no permit is needed for construction.

In its arguments to the court, the Corps states that PCNs do not need to be submitted if the ditches fall outside of the Corps's jurisdiction. The murkiness of where such jurisdiction begins and ends is the crux of this case and several others, including the June 2006 Supreme Court decision in *Rapanos v. United States*.

The Corps sought to dismiss the case saying NAHB had no standing to sue. NAHB **^ this** t, as an association, it may sue in its own right or on behalf of its constituents and that it had met both types of standing.

"[NAHB] argues that NWP 46 burdens its members by requiring the submission of PCNs, even though they may not ultimately need approval for their projects," the court said. "Although it has not yet done so, [NAHB] may go on to ... demonstrate that it has expended money to inform its members of and to lobby against NWP 46."

NAHB alleges that the Corps has no authority to require the extensive and burdensome PCN process of NWP 46.

"Each PCN must specify: (1) the location of the project; (2) a brief description of the project; (3) the project's purpose; (4) the direct and indirect adverse environmental impacts the project would cause; and (5) a list of any other NWP's regional or general permit(s) or individual permit(s) that the applicant intends to use," the court explained.

"To this list, [NAHB] adds that PCNs must include: (6) a delineation of special aquatic sites and other waters of the United States on the project site; (7) if the proposed activity will result in the loss of greater than 0.10 acre of wetlands, a statement describing how the mitigation requirement will be satisfied; (8) if any listed, endangered, or threatened species or designated critical habitat may be affected by the project and the names of any species that may be affected; and (9) identification of any historic property that may be affected by the project," the court said.

See *NAHB Lawsuit*, p. 4

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Wyoming Issues New General Permit for Small Construction Activity, No NOIs Are Required

A new general permit for small construction sites took effect March 1 in Wyoming. Wyoming is one of only a few states that issues separate general permits for small and large construction sites.

The permit for sites of one to five acres was issued in early February and will expire March 15, 2011. The reissued permit will expire in three years, rather than five years, on the same date the state's large permit is due to expire.


Small construction sites in Wyoming are not required to submit an application or other form of a notice of intent (NOI) to the state Department of Environmental Quality (DEQ) for permit coverage. Existing permittees must ensure that their stormwater pollution prevention plans (SWP3s) conform to and comply with the new permit's requirements. For projects begun before March 1, operators may continue to use the 2003 permit, which expired Feb. 29, for an additional 90 days. After 90 days, by May 29, existing permittees and continuing construction projects must have updated their SWP3s to meet the new permit. Few changes are likely to be needed.

Construction projects that began after March 1 must immediately comply with the new 2008 permit. Permit coverage takes effect when the operator develops and implements an SWP3, conducts and documents site inspections, and fulfills other permit conditions. SWP3

requirements and other provisions for the small construction permit are nearly identical to those in the state's large construction permit. Some types of construction dewatering discharges are covered by the general permits.

Some operators may need to obtain stormwater discharge authorization through a local program or agency. DEQ-approved qualifying local programs (QLPs) operate in lieu of the general permit. QLPs require many of the same provisions as the general permit. The programs must require the use of erosion and sediment control best management practices and require the development and implementation of an SWP3.

Small sites in low precipitation areas also may qualify for a permit waiver if the site has a rainfall erosivity "R factor" of less than five. A waiver application must be submitted to DEQ at least 30 days before starting land-disturbing activities. Previously such a waiver needed to be submitted five days before beginning construction. A detailed site map also must be included in the waiver application.

The general permit does not cover areas of Wyoming that are within the Wind River Indian Reservation. For a full description of Wyoming's stormwater permitting program, see this month's update to the *Manual* at ¶890.51. 

NAHB Lawsuit (continued from page 3)

"[NAHB] alleges that 'the elaborate PCN process is burdensome, costly, and time intensive,' and that if the Corps determines that no permission was necessary, 'the time and money spent by the applicant to submit the PCN will have been for naught.' To [NAHB], this process requires its members to 'subject themselves to federal regulatory and permitting authority well before the Corps has determined whether any particular ditch meets its elusive jurisdictional criteria,'" the court said.

The Corps argues that NWP 46 expressly defers "any determination of jurisdictional status of ditches to a case-by-case determination."

"The Corps insists that NWP 46 ... only applies to ditches that have been determined to be a 'water of the United States' under the [Corps's] jurisdiction, and NWP 46 does not, therefore, change the jurisdictional status of any ditches," the court said. "In addition, [NAHB's] members need not submit PCNs unless their activities affect a ditch that is a 'water of the United States.'

"The [Corps's] argument would be more persuasive were it not for the broad language of NWP 46 which states that 'we are requiring pre-construction notification for all activities,'" the court said.

"Despite the [Corps's] argument that [NAHB's] members need not submit PCNs unless their activities affect a ditch that is a 'water of the United States,' the broad language of NWP 46 states that 'we are requiring pre-construction notification for all activities,'" the court said. "And, as [NAHB] points out, 'the PCN process, in and of itself, requires a prospective permittee to subject its project to the Corps's regulatory authority, regardless of whether it might ultimately be necessary.'"

The court also ruled that NAHB could be granted standing on a representational basis. If the permit exceeds CWA authority given to the Corps, **the suit is for its members. (to push a line of text)** its members' unhindered lawful use of their lands.

New Regulations for Wetlands Mitigation

New **Corps** **^** rning how wetlands mitigation projects must be conducted were finalized March 31, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers announced. The two agencies emphasized that compensatory mitigation projects are only to be used when adverse impacts to wetlands and streams are "unavoidable" (73 Fed. Reg. 19594, April 10, 2008).

The federal government considers the mitigation program "a critical tool" in meeting its longstanding goal of no net loss of wetlands. The compensatory mitigation pertains to projects authorized under the Corps's Clean Water Act Section 404 permit program and permits under the Rivers and Harbors Act. Currently, mitigation programs are governed by national guidance documents issued in the past 17 years by EPA and the Corps. The new regulations build upon that guidance.

"This rule greatly improves implementation, monitoring and performance, and will help us ensure that unavoidable losses of aquatic resources and functions are replaced for the benefit of this nation," said John Paul Woodley Jr., assistant secretary of the Army for Civil Works.

"The new standards will accelerate our wetlands conservation efforts under the Clean Water Act by establishing more effective, more consistent and more innovative mitigation practices," said EPA Assistant Administrator for the Office of Water, Benjamin H. Grumbles.

The environmental group, Earthjustice, said the new regulations were misleading and could not be fulfilled.

"If [EPA and the Corps] can create streams and wetlands, essentially performing the functions of God and nature, we eagerly await some proof," said Joan Mulhern, senior legislative counsel at Earthjustice. "Until then, it makes no sense to proceed with a plan that relies so heavily on stream and wetland creations that have yet to actually be achieved."

Mitigation may be one of four types: restoration of an existing wetland or aquatic site; enhancement of an existing wetland or aquatic site; creation of a new wetland or aquatic site; or preservation of an existing wetland or aquatic site. Mitigation may be performed by paying fees (in-lieu fee programs), using mitigation banks or by the permittee carrying out their own mitigation project. Where possible, these three mitigation programs will have equivalent requirements and standards under the new rule, EPA said.

The new regulations establish performance standards, set schedules for decision making, and encourage property owners to use a watershed approach in their mitigation projects, EPA said. The rules also establish "a preference for the use of mitigation bank credits, which reduces some of the risks and uncertainties associated with compensatory mitigation," EPA said.

The rule will take effect June 9. For more information, see <http://www.epa.gov/wetlandsmitigation>. **^**

^ delete comma

EPA Proposes **MS4** Permits for Five Idaho Entities Affecting Spokane River, Lake Coeur d'Alene

U.S. Environmental Protection Agency (EPA) Region 10 is proposing to issue National Pollutant Discharge Elimination System permits, authorizing stormwater discharges from municipal separate storm sewer systems (MS4s) owned and operated by five Idaho entities. The permits are **being proposed** for the cities Coeur d'Alene and Post Falls, the lakes highway district, the post falls highway district and Idaho Transportation Department District 1. **^ CAPs**

The **per on these names?** authorize stormwater discharges to Lake Coeur d'Alene and the Spokane River from MS4 outfalls **^** based on applications submitted by each entity.

EPA regulations prohibit permits being issued "when the imposition of conditions with the applicable water quality standards is **< this ¶ isn't connected to the rest of the story.** necessary to protect the public health, safety, and welfare of the community." (40 CFR 122.26(a)(2)(i)). The Washington Department of Ecology's Water Quality Assessment Report (WQAR) for the Spokane River basin as

not meeting water quality standards for dissolved oxygen, metals, phosphorus, polychlorinated biphenyls and temperature.

CWA regulations require that operators of **ertain** **^ Federal** organized areas develop and implement a comprehensive Stormwater Management Program **< l.c.** (SWMP) to control polluted discharges from publicly owned ditches, pipes, and other conveyances. **publicly-owned** Accordingly, the five **^ delete comma** entities are required to develop and implement SWMPs and other management practices to control stormwater discharges for each of the five **entities.**

The draft permits also require each entity to outline best management practices to be used to control pollutants in stormwater discharges. Annual reporting would be required to provide information of the status of each entity's SWMP implementation. **^ on (not "of")**

For more information on Idaho's stormwater programs, see ¶890.13 of the *Manual* and <http://yosemite.epa.gov/r10/water.nsf/NPDES+Permits/DraftPermitsID>.

California Issues Draft of New NPDES General Stormwater Permit for Construction Activity

I.c. board thru-out. Usu. called SWRCB, but board reads easier.

The California State Water Resources Control Board is revising a draft general permit for construction activity (SWRCB) recently issued a second draft June 4.

California's existing construction general permit expired Aug. 19, 2004, but remains in effect until a new general permit is adopted, SWRCB said.

The Board received a report in June 2006 from a panel of stormwater experts that reviewed the content in the state's current general construction permit. In the report, the panel made a series of recommendations to the Board to consider for the new draft permit.

The panel determined that site-to-site variability in runoff turbidity from undeveloped sites can be quite large in many areas of the state. In addition, the panel stated that to date, most construction permits have focused on limiting the release of total suspended solids and turbidity, but have not addressed other potentially significant pollutants, such as phosphorus and chemicals commonly used on construction sites.

The panel also observed that previous permits did not include any required training or certification program for contractors, for those who prepare soil erosion and sediment control stormwater pollution prevention plans (SWP3s) or for field inspectors.

The panel suggested that the board consider numeric limits to be placed on other relevant pollutants found on construction sites, particularly pH. According to the panel, pH "is of particular concern where fresh concrete or wash water from cement mixers/equipment is exposed to stormwater."

In March 2007, after reviewing the report filed by the panel, SWRCB issued a preliminary draft construction permit, and made the draft available for public comment. The Board then held a series of focused stakeholder meetings to further revise the draft. The new draft, posted March 18 2008, contains revisions based on these public comment meetings.

The new draft construction permit is very different in some areas from the old permit. Upon recommendation, the new permit contains revisions to both pH and turbidity.

The stuff in this should really be the lede. This is important. If Calif. does this, the rest of the country will be doing it in 10 years or sooner.

numeric effluent limitations (NELs) for pH during any construction phase where there is a high risk of pH discharge, and one for turbidity during any discharge.

Is "old permit" the one from 1999? or does this refer to the previous prelim draft permit?

The draft also establishes a four-level stormwater permit, and covers only the lower three levels that are considered to be risk level four. Dischargers must submit a report of waste discharge to the appropriate regional water board to seek coverage under an individual or other applicable permit.

The new permit specifies more minimum stormwater management practices that were previously only required as elements of the SWP3 or were suggested by guidance.

The new permit would require sites to develop and implement their own "rain event action plan," designed to protect all exposed portions of the site within 48 hours prior to any likely precipitation event. In addition, the photographs of all construction projects would need to be submitted at least once quarterly if there are rain events that caused a discharge during that quarter. According to the Board, the purpose of this requirement is to help staff prioritize their compliance evaluation measures and to make compliance-related information more available to the public.

The draft permit also specifies runoff reduction requirements for all sites not covered by a Phase I or Phase II permit "to avoid, minimize and/or mitigate post-construction stormwater runoff impacts," according to the Board.

I.c. phase, but what does it refer to?

According to the draft, a discharger would have to obtain coverage under the new permit prior to the commencement of construction activities. Dischargers would then need to file a notice of termination with the regional water board when construction is complete, or when ownership of the site is transferred. For construction to be considered complete, the discharger would have to install post-construction stormwater management measures and establish a long-term maintenance plan for the site.

SWRCB is accepting comments on the proposed draft permit. A formal hearing on the draft construction permit will be held June 4, 2008, in Sacramento, Calif. Written comments are due by June 4.

The proposed draft is available to view at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml

two typos in URL: ca.gov/water_issues/programs

Senate Invites Panel of Industry Leaders and Officials to Discuss Clear Water Restoration Act

Members of the U.S. Senate Committee on Environment and Public Works met with industry leaders and state officials April 9 to discuss a bill that would replace the term “navigable waters” in the Clean Water Act (CWA). The Clean Water Restoration Act, introduced by Sen. Russ Feingold, D-Wisc., would replace the term “navigable waters” with the term “waters of the United States” to define

Senate Bill 1882, and some would say alter, which water bodies are regulated. waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes; rivers; streams in intermittent streams; mudflats; sandflats; wetlands; playa lakes; and the foregoing, to activities affecting these waters, are subject to the legislative power of Congress under the Constitution.”

Feingold said in a statement “will allow those waters always to continue to receive basic protection of potential problems that would not be changed. “If we do not [CWA] to be rolled back,” he said, “it has created uncertainty, confusion and delays resulting from the court decisions and subsequent agency guidelines. It would pose a very real threat to [CWA] protections for public water supplies, industrial and agriculture uses, fish and wildlife, and recreation for more than 35 years.”

Those opposing the bill believed that the change would lead to unintended consequences, more judicial confusion and less state and local authority. According to David Brand, sanitary engineer from Madison County, Ohio, the proposed bill is “essentially a one-size fits all approach, changing every area within [CWA]. Removing the word ‘navigable’ from the definition of the act will have expensive, far-reaching and unintended consequences.”

According to Brand, the proposed bill would create new administrative requirements on state and local governments. Specifically, states would be required to expand their current water quality standards to include all waters within a state, including waters currently considered high priority. The bill would also require and attainment standards and maximum daily loads and allocations where necessary.

Further, Brand stated that the classification of intrastate waters as “waters of the U.S.” will eliminate the

current separation between the state and federal government, bringing the federal government into local land use decisions, and some would say alter, which water bodies are regulated. “By taking state and local laws, you reduce the ability of state and local government to do their job effectively,” he said.

In addition to negatively affecting state and local government, Sen. James Inhofe, R-Okla., warned of a loss of federal government authority that he believes the bill would allow. According to Inhofe, the bill will expand federal jurisdiction “in a way that pushes the outer limits of Congress’s Constitutional role.” Inhofe believes that under the new bill, “waters – regardless of size or significance, and any activities affecting these waters – could be regulated by the federal government until courts determined that this federal jurisdiction is unconstitutional. Sen. Larry Craig, R-Idaho, agreed, saying that clarification will “not come from the administrator of [the U.S. Environmental Protection Agency (EPA)], it will come from a judge.”

Sen. John Barrasso, R-Wyo., opposed the bill on similar grounds. “The concern I hear [in Wyoming],” he said, “is that this legislation will grant to the EPA, to the U.S. Army Corps of Engineers, virtually unlimited regulatory control over all wet areas within a state.”

Those opposing the bill also believed that the proposed new definitions will lead to more legal confusion. “If Congress is to amend [CWA], any changes must provide clarity and reduce lawsuits,” Inhofe said. “This bill does neither. It will not curtail litigation, but rather increase it, as stakeholders seek legal clarity on what exactly are the outer limits of congressional authority.”

Inhofe also stated that the bill will not likely improve overall water quality. He believed that the new bill would increase federal bureaucracy and require property owners to go through a lengthy permitting process for waters previously thought to have negligible environmental impacts.

Supporters of the bill stated that the bill will not increase federal authority under CWA. Rather, the bill would clarify the legal language that was made less clear by Supreme Court opinions and allow federal

agencies to have clear jurisdiction over federal waters, supporters say.

Congress’s original intent. “The waters that

See Sen

former EPA Administrator, need some mention that Browner worked for Clinton

Senate Panel (continued from page 7)

cally been protected would continue to be protected,” she said. She also stated that the exemptions embodied in CWA would continue to be maintained under the bill, giving Congress no increased authority.

Sen. Sheldon Whitehouse, D-R.I., agreed, saying that the purpose of the bill is “to go back to the status quo ... and reinstate CWA as it had been enforced for 34 years.” According to Whitehouse, using the term “waters of the United States” would restore the original intent of Congress and allow agencies to continue to act as they have since CWA was first signed into law.

Supporters of the bill also argued that the legislation was a necessary fix for previous Supreme Court decisions that misinterpreted the term “navigable waters,” specifically the decision made in *Rapanos v. United States*, 547 U.S. 715 (2006) (See *Newsletter*, August 2006, p. 4).

^ I.c. see

According to Brower, the guidance documents produced by EPA and the Army Corps of Engineers after the decision “fail to clarify [CWA] protections for a large portion of the nation’s wetlands and streams, and it takes a very narrow and unnecessary interpretation of the *Rapanos* decision.”

Sen. Barbara Boxer, D-Calif., committee chairman, agreed, stating that in the *Rapanos* decision, the Supreme Court failed to provide clear guidance for when CWA applied, and published conflicting opinions with

no majority ruling. According to Boxer, the case has created “massive confusion” among judges, the regulated community, EPA and the Army Corps of Engineers. “The bottom line,” Boxer said, “is that America’s waterways and wetlands are threatened because of these Supreme Court decisions and the Bush Administration’s interpretations of them.”

I.c. admin?

Joan Card, water quality division director for the Arizona Department of Environmental Quality, expressed specific state concerns regarding the *Rapanos* decision. According to Card, the decision “could minimize, if not devastate, surface water quality protections that have been implemented in Arizona.”

Specifically, Card believed that the *Rapanos* decision could potentially eliminate CWA protections for ephemeral, intermittent, or nonperennial waters. “The *Rapanos* decision, and principally the guidance, have presented the opportunity for ... large Publicly Owned Treatment Works and other dischargers in Arizona to argue that their discharges do not require [CWA] pollution permits.” Card warns that the impacts of the *Rapanos* decision may be widespread, impacting surface water quality standards for nearly all surface streams in Arizona and other states.

I.c. potw

Currently, the bill is still being discussed by the Senate committee. To receive more information on the bill and other committee activities, go to <http://epw.senate.gov/public>. 🏠

Yeah, this is pretty nice white space. Hope the ad turns out okay! :-)