



# Weakening the Clean Water Act: What it Means for Ohio

## Waters at Risk due to *SWANCC* and *Rapanos* Supreme Court Decisions and Agency Guidance

- Ohio has lost 90% of its wetlands since the 1780s – the second highest percent loss in the nation.
- Wetlands destruction continues in Ohio despite the many benefits these wetlands provide. Wetlands improve water quality and provide wildlife habitat, flood control, groundwater recharge, and recreational opportunities.
- Wetlands and streams store water, acting as sponges during flood periods, and flow reserves during drought. The Upper Mississippi River basin has suffered two 500-year floods in 15 years (1993 and 2008). A study has shown that wetlands lost in the Upper Mississippi River basin had the capacity to store the flood waters of the devastating 1993 Midwest flooding.
- Ohio has measured over 110,000 miles of streams. Sixty percent of Ohio's streams are headwater streams and 45% do not flow year round. These smaller streams are now at risk of losing Clean Water Act protections.
- Nearly all Ohio waters drain either north to Lake Erie or south to the Ohio River. Both of these waterways depend on a large network of thousands of wetlands and small streams to maintain their water quality and biological integrity.
- Over 5.2 million people in Ohio receive some of their drinking water from areas containing these smaller streams.



Service Biologist Cleans Little Cuyahoga River, USFWS

## Wildlife, Hunting, and Fishing Impacts

- In 2006, 4.25 million people spent over \$3.1 billion in Ohio on fishing, hunting, and wildlife-associated activities, many of which depend on clean and healthy aquatic habitat. DNR estimates that 10 million Ohioans engage in some sort of wildlife-oriented recreational activity annually.
- Trapping of wetlands furbearers adds millions to Ohio's annual economy. Bird watchers visiting Lake Erie's coastal marshes generate approximately \$5.6 million annually for the Ohio economy.
- Ninety percent of fish caught by American recreational anglers need wetlands for shelter, food supply, spawning, and nursery areas. Of the 200 species of fish in the Great Lakes, about 90% are dependent on wetlands for some part of their life cycle and all are indirectly dependent on wetlands for healthy aquatic habitat.
- Ohio's kettle lakes, ponds, and marshes are heavily used by a variety of waterfowl and other birds.
- Two-thirds of Ohio's threatened and endangered species require wetlands during some point in their life cycle.

## No Jurisdiction, Less Enforcement

- From July 2006 until early 2008, the *Rapanos* decision and guidance negatively affected about 500 Clean Water Act enforcement cases nationally. About 40 of these compromised enforcement actions occurred in EPA Region 5 covering Ohio and other Great Lakes states. One EPA Region 5 official emailed: "Rapanos is now requiring extensive upfront work in all our cases before we even inspect."
- Over 1,200 industrial and municipal facilities are located on at-risk Ohio streams and have their pollution limited by Clean Water Act permits that now may not be necessary.



Canada Geese at an Ohio Wetland Areas, USFWS



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## No Jurisdiction, Less Enforcement, contd.

- Among the waters that have recently lost Clean Water Act protection are ephemeral streams flowing to the Greater Miami River and the Cuyahoga River.
- Polluters are using *SWANCC*, *Rapanos*, and agency guidance to avoid liability for polluting and destroying Ohio wetlands and streams.

## Restoring Protections will Streamline the Clean Water Act Permitting Process

The *SWANCC* and *Rapanos* decisions and guidance have added uncertainty and burdensome fact-finding and paper work requirements to the Clean Water Act permitting process. The Corps of Engineers acknowledged in its 2011 budget justification that the complexity of these decisions “continues to increase the time it takes to provide landowners with decisions.”

## State Protections in Ohio

Ohio’s regulatory program to protect its waters is closely tied to the Clean Water Act. Ohio’s wetlands regulatory program has historically been based on its CWA § 401 water quality certification program. State law encompasses all waters of the state, including all types of wetlands. In the wake of *SWANCC*, the regulated community challenged Ohio EPA’s authority to protect “isolated” wetlands, and the state legislature passed an “isolated” wetlands law which weakened existing protection for “isolated” wetlands. Ohio’s “isolated” wetland law requires significantly weaker permit review and permit criteria for many wetlands based on ecological category and size. Ohio’s wetlands and waters programs are also inadequately funded. OEPA acknowledged in its 2006 report that “staffing levels, budget constraints and statutory review time requirements make it difficult for the program to follow up on the majority of these [114 illegal fill] complaints in a timely manner.”



FWS

**Ohio joined over 30 states in asking the Supreme Court in *Rapanos* to uphold broad legal protections for small tributaries and their adjacent wetlands.**



Richard Seeley

## The Administration Must Restore Clean Water Protections for the Nation’s Waters

For almost a decade, Congress has failed to enact legislation restoring the historic scope of the Clean Water Act. **To protect the Nation’s waters, EPA and the Corps of Engineers should revise their definition of “Waters of the United States” to restore and clarify Clean Water Act protections, including for so-called “isolated wetlands,” in a manner consistent with both law and science.** A successful rulemaking will restore and clarify protections for millions of wetland acres and stream miles, and will place these restored protections on a much more secure legal and scientific foundation.

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