



Chemical Producers & Distributors Association

Issue Brief

Clean Water Restoration Act

Background

In 1972 Congress enacted the Clean Water Act (CWA). Regulating “navigable waters,” the CWA further defined the term in the statute to mean “the waters of the United States.”

After two Supreme Court rulings upheld the CWA distinction that federal regulation under the Act only extends to navigable waters and those waters that are significantly connected to navigable waters, environmental groups and some in Congress are working on the largest expansion of the regulatory reach under the CWA since it was enacted.

S. 787 and its yet-to-be introduced House counterpart, the Clean Water Restoration Act, would delete the term “navigable” from the statute and replace it with a new legislative definition of “waters of the United States” that includes all “intrastate waters” and all “activities affecting these waters.” In effect, the CWRA seeks to expand the jurisdictional sweep of the CWA by granting the federal government authority over all U.S. waterways. Jurisdiction of all “intrastate waters” includes: ground water, ditches, pipes, streets, municipal storm drains, and gutters; as well as, all “activities affecting these waters.”

Position

Congress has generally acknowledged that some waters are federal waters and others are state waters. Legislation to remove “navigable” from the CWA would be a significant departure from that well-established framework.

CPDA opposes S. 787, and any House counterpart, because it would expand federal CWA jurisdiction to virtually all wet areas in the United States, without taking into consideration the agricultural community. Further, CPDA is concerned EPA will exercise unlimited regulatory authority over all intrastate waters, including, waters now considered entirely under state jurisdiction; resulting in delays for securing permits and a floodgate of federal regulation of all waters.