



The Prior Converted Cropland Exclusion and S.787

The Amendment to S. 787. The amendment does not reflect the entire 1993 regulation adopted by the Clinton administration and does not make clear that Prior Converted Cropland (PCC) can be used for either agricultural or nonagricultural uses. This bill, if it is not clarified, could further tie the hands of farmers and ranchers and directly impact the use and value of over 55 million acres of agricultural land.

Does the language restore the PCC exemption to pre-SWANCC? No. The EPA and Corps issued regulations in 1993 that formally codified the long-standing policy of not treating PCC as a “water of the United States” and specifically recognized that PCC areas could be used for either agricultural or non-agricultural uses. The Amendment does not incorporate the understanding of PCC that informed the agencies’ decision to exclude PCC from the definition of “waters of the United States.” By definition -

“PC cropland has been significantly modified so that it no longer exhibits its natural hydrology or vegetation. Due to this manipulation, PC cropland no longer performs the functions or has values that the area did in its natural condition. PC cropland has therefore been significantly degraded through human activity and, for this reason... [and] in light of the degraded nature of these areas, *we do not believe that they should be treated as wetlands for the purposes of the CWA.*” (emphasis added) 1993 Regulation and Preamble.

Further, the rule adopted by the Clinton Administration in 1993 formalized the exclusion of PCC and adopted a “recapture” provision under which PCC cropland could return to CWA jurisdiction if (1) the land is not farmed for five consecutive years, and (2) wetlands conditions return.

The preamble to the 1993 regulation specifically recognized that PCC areas **could be used for non-agricultural uses**. The agencies stated in the 1993 regulation and preamble the following:

“In response to commentators who opposed the use of PC croplands for *non-agricultural uses*, the agencies note that today’s rule centers only on whether an area is subject to the geographic scope of CWA jurisdiction. This determination of CWA jurisdiction is made *regardless of the types or impacts of the activities* that may occur in those areas.” (emphasis added)

Thus, under the agencies’ current regulations, PCC retains its non-jurisdictional status “*regardless*” of the type of activity occurring on the property and regardless of whether the property is being used for agricultural or non-agricultural uses. In other words, once land qualifies as PCC, it is always PCC unless the land is not farmed for five consecutive years **and** the wetland hydrology and plants return. 58 Fed. Reg. 45008,45033-34 (August 25, 1993).

Why Does this Matter?

1. Approximately 55 million acres of land are Prior Converted Croplands.
2. Excluding PCC from the definition of “water of the United States” does not hurt the environment because, under the 1993 regulation, PCC is limited to land that was converted for agricultural use before December 23, 1985 and is not inundated for more than 14 days. PCC no longer retains the characteristics or performs the functions of a wetland.

3. Converting PCC to “waters of the United States” would substantially diminish the value of PCC land, disrupting longstanding reasonable expectations of farmers. It could have devastating effects on the economies of farm communities, because farmers often raise capital to buy seeds and farm equipment via loans on the land. The diminished value of the PCC land would have to be reflected on the balance sheets of farm lenders, reducing the amount of capital available for all farmers borrowing money.
4. It is important not to minimize or denigrate farmland as an asset. Land is generally the largest and most valuable asset that a farmer has. It serves as the critical source of collateral by which farmers are able to secure loans and other debt financing vital to operating their farm businesses. It also serves as the major source for farm families to learn about successful farm management practices and plan for their retirement. The value of land is directly based on how it can be used. Land whose potential for future use is severely restricted through regulation becomes valueless, striking at the very core of economic needs that farm families must sustain to keep their farms viable.
5. The final Corps and EPA regulation promulgated in 1993 notified agricultural producers of the regulatory requirements and clarified which areas would not be regulated as “waters of the United States,” period. In addition to farmers and ranchers, it clarified for the entire economy, and financial institutions specifically, that the market value of the land – on which financial decisions were based – would not change due to restrictions in land use from federal regulation. With approximately 55 million acres of PCC, there are significant financial risks to thousands of farmers and hundreds of banks nationwide if Congress rolls back this Clinton era regulation. Such an abrupt policy shift would immediately generate significant financial uncertainty at a time when banking and credit risk are already problematic and causing problems throughout our entire economy.

In conclusion, changing this important regulatory exemption will devastate and devalue the assets of hundreds of thousands of landowners currently making plans to use their property, sell development rights or give conservation easements. It also contradicts the stated intentions of the sponsors of the Clean Water Restoration Act by re-regulating lands that were unaffected by *SWANCC* or *Rapanos* and overturning a regulation that has been in effect since 1993.

About the Waters Advocacy Coalition: *Statement of Policy:* The members of WAC are committed to the protection and restoration of America's wetlands resources. WAC does not believe, however, that it is in the nation's interest to have federal agencies regulate ditches, culverts and pipes, desert washes, sheet flow, erosional features, and farmland and treatment systems as “waters of the United States,” subjecting such waters to all of the federal regulatory requirements of the CWA. *Members include:* American Farm Bureau Federation®; American Forest & Paper Association; American Iron and Steel Institute; American Road and Transportation Builders Association; Associated General Contractors of America; CropLife America; Edison Electric Institute; The Fertilizer Institute; Foundation for Environmental and Economic Progress; Industrial Minerals Association-North America; International Council of Shopping Centers; Irrigation Association; National Association of Home Builders; NAIOP, the Commercial Real Estate Development Association; National Association of Manufacturers; National Association of REALTORS®; National Association of State Departments of Agriculture; National Cattlemen's Beef Association; National Corn Growers Association; National Council of Farmer Cooperatives; National Mining Association; National Multi Housing Council; National Pork Producers Council; National Stone, Sand and Gravel Association; Public Lands Council; Responsible Industry for a Sound Environment; Southern Crop Production; United Egg Producers; and Western Business Roundtable.

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