



**AMERICAN FOREST & PAPER ASSOCIATION
STATEMENT SUBMITTED FOR THE RECORD**

**U.S. HOUSE OF REPRESENTATIVES TRANSPORTATION AND
INFRASTRUCTURE COMMITTEE
HEARING ON
THE CLEAN WATER RESTORATION ACT OF 2007 (H.R. 2421)**

APRIL 16, 2008

The American Forest & Paper Association (AF&PA) appreciates the opportunity to provide our views on the Clean Water Restoration Act of 2007 (H.R. 2421). AF&PA is the national trade association of the forest, paper, and wood products industry. AF&PA represents approximately 175 companies and related associations that engage in or represent the manufacture of pulp, paper, paperboard, and wood products. The industry accounts for approximately 6 percent of the total U.S. manufacturing output, employs more than a million people, and ranks among the top 10 manufacturing employers in 42 states with an estimated payroll exceeding \$50 billion.

AF&PA believes that H.R. 2421 would result in a dramatic expansion of Clean Water Act (CWA or Act) jurisdiction and would have a significant adverse effect on the forest products industry.

We have three primary concerns. First, the use of the term “navigable waters” in the original Act was deliberate and reflected Congressional intent to ground CWA jurisdiction in the Commerce Clause, a clause frequently relied upon by Congress over the years as the basis for its authority to enact wide-ranging legislation. Proponents of the Clean Water Restoration Act have argued that limiting CWA jurisdiction to truly “navigable” waters prevents CWA jurisdiction of very important categories of waters that need protection. However, since at least 1985, the Supreme Court has not limited jurisdiction to truly navigable waters, and neither has guidance issued by this or previous Administrations. Nonetheless, the bill would remove those words and insert the language “to the fullest extent that these waters, or activities affecting these waters, are subject to the legislative power of Congress under the Constitution.” This is a significant, but ambiguous, expansion of the original jurisdiction of the Act, and will result in many legal challenges to determine the boundaries of agency authority. For manufacturers of paper and wood products, the legislation creates uncertainty and could require costly and unnecessary permits for ditches, culverts, and log ponds, again imposing severe burdens on the facilities

The second concern pertains to the savings clause in the bill. Because the language of the bill is so broad, encompassing “all interstate and intrastate waters,” it is critical that existing legislative and regulatory exemptions from jurisdiction are clearly preserved.

We do not believe the wording of the savings clause in Section 6 of the bill adequately protects existing legislative and regulatory exemptions, including those that are important to forest management activities. Specifically, we are concerned that future courts could interpret the bill's silence on regulatory exemptions as nullifying the existing regulatory exclusion for waste water treatment ponds.

The wastewater treatment pond exemption is very important to the manufacturing segment of our industry. Approximately 75 percent of the larger AF&PA member manufacturing facilities are direct dischargers that treat their effluent before discharge (as compared to indirect dischargers that use publicly owned treatment works (POTWs) for treatment). Many of those facilities have wastewater treatment ponds and would be adversely affected by the loss of the exemption. Without the exemption, water entering waste treatment ponds would have to meet water quality standards, since these ponds would be classified as "waters of the United States." These ponds are critical to the water quality treatment process itself, and mills would have to find other extremely expensive, if not impossible, ways to treat their discharges.

Finally, the bill seems to extend CWA jurisdiction to "activities affecting these waters," a jurisdictional phrase that does not appear in the existing CWA or regulations. It could easily be argued that this language, if enacted into law, reflects Congressional intent to expand the activities that are subject to CWA jurisdiction. This is another example of language that could be interpreted to apply CWA permitting requirements on activities critical to sustainable management of our forest resources. For example, where forest landowners currently use best management practices to protect water quality, the legislation could require those landowners to obtain permits, with the accompanying expense and delay. Current state best management practices have resulted in significant improvements to water quality. A new layer of regulation is not needed and may, in fact, impede water quality.

The United States forest products industry is dedicated to environmental protection and has made great strides in improving the quality of the water it discharges, and has also adopted and implemented numerous sustainable forestry practices meeting and exceeding environmental protection requirements. We are committed to protecting and restoring America's wetland and water resources and we support constructive measures to achieve these goals. Because the bill would dramatically expand CWA jurisdiction and would regulate treatment ponds, ditches, and culverts, we do not believe it is helpful in this regard and we respectfully oppose the legislation.

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