



Concerns with H.R. 5088: *America's Commitment to Clean Water Act*

H.R. 5088 is presented as an attempt to address concerns about previous legislative proposals. But the new text has many problems and results in an expansion of federal authority to virtually all waters in the United States, unnecessarily encroaching on private property and state and local authority. It will create legal and regulatory uncertainties that will undermine economic activity and jeopardize environmental progress.

- The Clean Water Act has always been grounded in the Commerce Clause, but H.R. 5088 expands the Constitutional basis to include both the Treaty and Property Clauses. The extent of federal control under this new “authority” would be almost limitless and, from a practical standpoint, anything but clear.
- H.R. 5088 does not just codify the existing regulatory definition of “waters of the United States.” It expands the current definition to include “international waters” (not just the “territorial seas”) and “adjacent waters” (not just adjacent wetlands) and removes language of limitation in the current regulatory definition.
- By removing the word “navigable” from the statute, H.R. 5088 confuses the meaning of key terms, like “tributary” and “adjacent.”
- H.R. 5088 significantly narrows the existing regulatory exclusion for waste treatment systems.
- H.R. 5088 significantly narrows the existing regulatory exclusion for prior converted cropland.
- When H.R. 5088 expands the definition of “waters of the U.S.,” it expands the breadth of ordinary activities that would require both 402 and 404 permits. The current CWA 404(f) dredge and fill permitting exemptions are not available to many ordinary activities and do not solve the problem of an overreaching definition of “waters of the U.S.” when it comes to 402 discharge permits.
- The changes made by H.R. 5088 would require the Corps and EPA to amend and expand the scope of their existing regulations to conform to and interpret the new provisions of law.

The Committees on Transportation and Infrastructure, Natural Resources, Foreign Affairs, Agriculture, Small Business, Oversight and Government Reform, and Energy and Commerce all should hold hearings to determine the breadth of this proposed new authority and its impacts.

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; Florida Sugar Cane League; 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 Milk Producers Council; 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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