

U.S. House of Representatives
Committee on Transportation and Infrastructure
Committee on Oversight and Government Reform

NEWS RELEASE

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***Oberstar, Waxman Question EPA on
Clean Water Act Enforcement
Internal EPA Document Shows Enforcement is
Suffering***

WASHINGTON — Two powerful House Committee Chairmen are questioning the Environmental Protection Agency's enforcement efforts under the Clean Water Act. Chairman James L. Oberstar of the Committee on Transportation and Infrastructure, and Chairman Henry A. Waxman of the Committee on Oversight and Government Reform, sent a joint letter to the agency today asking for more information about the EPA's enforcement protocols following the Supreme Court's *Rapanos* decision (*Rapanos et ux., et al. v. United States*) in 2006. The *Rapanos* case split the court 4-1-4 over the question of Federal protections for waters of the United States, including wetlands, under the Clean Water Act.

In the letter, addressed to EPA Administrator Stephen L. Johnson, the Chairmen explained that information has come to them indicating that enforcement of key clean water programs is faltering.

"We have obtained an internal document from the Environmental Protection Agency that indicates that the Supreme Court's decision in *Rapanos v. United States*, combined with guidance to implement the decision issued jointly by EPA and the Army Corps of Engineers, has resulted in significant adverse impacts to the clean water enforcement program," the letter reads.

The Chairmen also released an internal memo from EPA Assistant Administrator for Enforcement and Compliance Assurance Granta Y. Nakayama citing enforcement problems created by the *Rapanos* case and the subsequent guidance.

"In the memorandum, Mr. Nakayama states: 'Data collected from the regions shows that a significant portion of the CWA enforcement docket has been adversely affected.' He also states: 'The *Rapanos* decision and the resulting Guidance have created

uncertainty about EPA's ability to maintain an effective enforcement program with respect to other [Clean Water Act] obligations," the letter cites.

The letter goes on to quote the Nakayama memo as reporting that some 500 clean water enforcement cases were negatively affected in just nine months as a result of the *Rapanos* decision and agencies' guidance, and that EPA dropped enforcement action in 300 more cases between July 2006 and December 2007.

"The Committee on Transportation and Infrastructure has held three oversight hearings on the effects of the Supreme Court's rulings in *Rapanos* and *SWANCC (Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, 2001)*," Oberstar said. "The Bush Administration has twice testified how it was responding to the uncertainty created by these decisions, but it never once revealed the full extent to which Federal attempts to protect clean water have been undermined. It took the release of an internal EPA document to bring that fact to light."

"We need vigorous enforcement to protect our nation's waters," said Rep. Waxman. "But instead, hundreds of potential violations are being ignored."

The letter requests that the Administrator provide complete and unredacted copies of all communications relating to the charges presented in the Nakayama memo. The letter further requests answers to a number of questions about EPA's enforcement processes. It sets a July 21 deadline for the agency's response.

Both Committees have oversight jurisdiction over EPA and enforcement of the Clean Water Act, and both plan further oversight on this issue.

The letter to Administrator Johnson and the memo are available online at www.oversight.house.gov or can be e-mailed upon request.