

**Congress of the United States**  
**Washington, DC 20515**

December 16, 2008

President-elect Barack Obama  
451 6th Street, NW  
Washington, DC 20001

Dear Mr. President-elect:

We are writing to provide you with the results of an extensive joint investigation by our Committee staffs that finds that the federal government's Clean Water Act enforcement program has been decimated over the past two years, imperiling the health and safety of the nation's waters. We are forwarding a memorandum that summarizes the investigation and provides the results of a review of more than 20,000 pages of documents produced to the Committees by the Environmental Protection Agency and the U.S. Army Corps of Engineers.

In June 2006, the Supreme Court ruled in the case of *Rapanos v. United States* that federal agencies could assert jurisdiction under the Clean Water Act for many waters only after going through a time-consuming and resource-intensive process of demonstrating a "significant nexus" to "traditional navigable waters." The next year, the Administration released guidance to implement the Supreme Court's decision.

Administration officials have downplayed the effects of these developments. Appearing before the Transportation Committee in April of this year, EPA's Assistant Administrator for Water testified that there had been only a "slight" decrease in coverage under the Clean Water Act, but that it was "not significant."

The documents produced to the Committees tell a completely different story. They show that hundreds of cases have been adversely affected, that the entire program faces critical deficiencies that threaten its primary mission, and that EPA field staff across the country have repeatedly warned about the lack of enforcement. For example:

- The Dallas regional office warned that "[o]ur oil pollution enforcement program has been significantly impacted," dozens of oil spill cases are "on hold," and "no follow-up for penalties or corrective action has been sought."
- The Denver regional office warned that "[w]e have literally hundreds of OPA [Oil Pollution Act] cases in our 'no further action' file" and forwarded a lengthy list of "violations which we failed to take cases on."
- The San Francisco regional office warned that these problems "are real and must be addressed," noting in one case that "[i]t is time to pull the plug on keeping this case on life support."

President-elect Barack Obama

December 16, 2008

Page 2

- The Atlanta regional office warned of a “resource drain” that “may be preventing us from doing as many enforcement actions”; it informed EPA headquarters of a “downward trend” that was having “significant impacts on enforcement”; and it concluded that “we will not be able to pursue the bulk of our water cases.”
- The Seattle regional office warned of an “almost entirely new workload” and that “[b]udgets allow for little to no site investigation.”
- The Kansas City regional office warned that morale “has plummeted,” that employees “have lost hope,” and that “our stress level has been overwhelming [and] has reached critical levels.”

The actual problems may be even worse than described in the documents. EPA has withheld hundreds of documents from the Committees. When documents were provided, the EPA redacted the identity of every corporation or individual accused of polluting waterways, as well as the specific waters affected.

Finally, the documents indicate that in one particular case involving the application of the *Rapanos* case and the Administration’s guidance, the Assistant Secretary of the Army for Civil Works disregarded a scientific determination by career staff that portions of the Santa Cruz River in Arizona are “traditional navigable waters” for purposes of determining Clean Water Act jurisdiction. Working in conjunction with corporate lobbyists and developers, this political appointee apparently launched a campaign to overturn this scientific determination. The documents provided to the Committees indicate that career officials were “very concerned about this politicization of the regulatory process” and warned against creating “a record that doesn’t contain a rationale based on science.”

Facing what they described as “a fast moving train,” career officials expressed concern that the Assistant Secretary “was in left field ... because his own staff appears to agree with District.” They made several attempts to “see if we can reason with him,” explaining that reversing the scientific determination poses “unbelievable consequences to water quality” and “destroys the credibility of field commanders.” Ultimately, it took direct intervention by the Assistant Administrator of the EPA to halt these efforts and preserve the scientific determination.

President-elect Barack Obama  
December 16, 2008  
Page 3

As you assemble your new environmental team and develop your agenda for next year, we would like to work with you in a cooperative manner to restore the effectiveness and integrity of a program that is vital to the health and environment of the American people.

Sincerely,



Henry A. Waxman  
Chairman  
Committee on Oversight  
and Government Reform



James L. Oberstar  
Chairman  
Committee on Transportation  
and Infrastructure

cc: Darrell E. Issa  
Ranking Minority Member  
Committee on Oversight and Government Reform

John L. Mica  
Ranking Minority Member  
Committee on Transportation and Infrastructure