



the water quality people<sup>®</sup>

# History of the Clean Water Act

Iowa Water Environment Association  
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# First, the Prelude...

- Key Federal Statutes Prior
  - 1899 Rivers and Harbors Appropriations Act\*
  - 1938 R & H Appropriations Act
  - 1948 Water Pollution Control Act\*
  - 1956 Fed. Water Poll. Control Act
  - 1961 Fed Water Poll. Control Act
  - 1965 Water Quality Act\*
  - 1966 Clean Water Restoration Act
  - 1970 Water Quality Improvement Act

# Cuyahoga River Fire of 1969



# Creating USEPA

- Response to building public pressure
- 1970 - President (Nixon) proposed creation of USEPA (Reorganization Plan Number 3)
- Plan took effect Oct. and EPA created Dec. 2<sup>nd</sup>
- EPA elects to abandon river basin regions in favor of OMB's proposed (1969) "Standard Federal Regions" (in order to facilitate operations w/ local gov'ts, states and fed agencies)

# Creating The Clean Water Act

- Court decisions pointed to the need/requirement for permitting approach to dischargers
- Congressional hearings held on new Federal legislation (including permitting)
- Senate/House floor debates 1971-1972.
- Oct 4 conference report was approved. President vetoes (“laudable intent outweighed by unconscionable \$24B price tag.”)
- Oct 18 Congressional override created the Federal Water Pollution Control Amendments of 1972  
(PL 92-500)

# The Basics of PL92-500

- 101 - Overarching objectives
- 402- NPDES
- 207 - Funding assistance
- 301- Minimum treatment reqts
- 307 - Stds for toxics
- 303 - TMDLs

# Early Problems/Issues

- EPA slow to publish effluent stds for toxics -> EDF and NRDC suit -> '76 toxics CD (129 priority pollutants)
- By 1977 (deadline for secondary treatment and BPT) 30% were in compliance with sec. and 85% compliant with BPT
- Poor municipal compliance attributed to non access to grants.

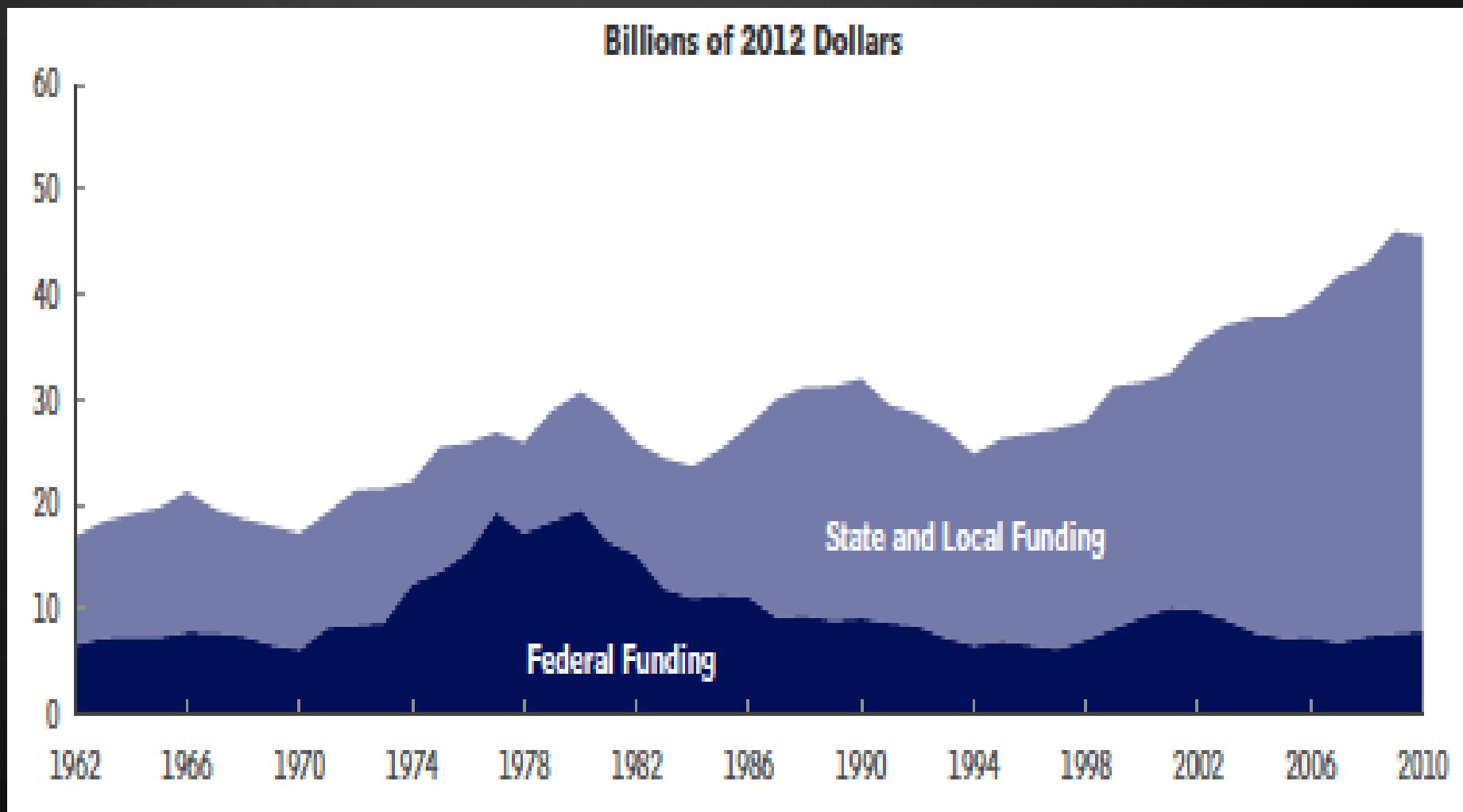
# The “Clean Water Act” of 1977

- Municipalities not able to access grants given until July 1, 1983.
- Marine discharge waivers (no adverse affect)
- Industrial deadline extended to January 1, 1979
- EPA directed to develop lists of effluent requirements for conventional, non-conventional and toxics
  - BCT for conventionals, BAT for non-conventionals (apply to other than POTWs) and per “Toxics decree” 129 priority pollutants

# Then, in 1981, the “Municipal Wastewater Treatment Construction Grants Amendments”

- Attempt to reduce time in processing grants
- Project eligibility narrowed (but some processes - e.g. lagoons - declared functionally equivalent to secondary)
- Federal share reduced (some projects grandfathered)

# Water Infrastructure Spending by Source



# Water Quality Act of 1987

- Original Bill sent to President (Reagan) vetoed (pocket veto)
- New Congress sent Bill to President - again vetoed (premise was \$18 B reauthorization overextension of Federal involvement for projects he deemed a state responsibility)
- Congress overrides and Act becomes law

# ‘87 Act Key Provisions

- Phase out of construction grants and created State Revolving Loan Fund (SRF)
- Est. anti-backsliding in NPDES Program
- Increased emphasis to addressing non-Point Source Pollution
- Instituted permitting for storm water discharges
- Created national estuary program
- Enhanced enforcement authority (penalties)
- Construction grants program authorized through FY1990

# Legislative add-ons

- 1990 - Great Lakes Critical Programs Act
  - Implements parts agreement U.S. - Canada + est. toxics criteria for 29 substances
- 2000 - Beaches Env. Assessment and Control Act; Estuaries and Clean Waters Act
  - Est. goal to restore 1 million acres of estuary habitat by 2010 + reauthorizes suite of programs (e.g. Ches. Bay, Long Isl. Sound)

# Policies and Regulations

- Storm Water Regs. - Phase I Nov 16, 1990
- CSO Control Policy - April 19, 1994
- Storm Water Regs. - Phase II Dec 8, 1999

# Other Actions

- Executive Order 12803 - Infrastructure Privatization (April 30, 1992)
- “Rapanos v. U.S.” (June 19, 2006)
- American Recovery and Reinvestment Act (\$6.4 billion for water and wastewater projects) (Feb 13, 2009)
- EPA release of WQStds for Florida (numeric nutrient criteria) (Dec 6, 2010)
- EPA issues TMDL for Chesapeake Bay
- EPA Release of Integrated Planning Framework (June 5, 2012)

# Vicory's Thematic Recollections

- The era of WWTPs
- The era of toxics
- The era of watersheds
- The era of TMDLs

# Today is the Era of:

- Efficiency (Integrated Planning)
- Affordability
- Partnerships (e.g. trading, Ag programs)
- Technology
- Green
- Services
- Macro-Integration (food-water-energy, one water)



percent of waterways in **1972** that  
were not swimmable or fishable  
(60%) vs. the percent of waterways  
not swimmable or fishable in **2013**  
(40%)



# of people using drinking  
water from waterways,  
streams and wetlands  
protected under the CWA

## Examples of 30-year Shifts in Leading Environmental Problems

**1960s**

**YEAR 2000**

**INDUSTRIAL AND MUNICIPAL  
WATER POLLUTION**



**POLLUTED RUNOFF**

**MAJOR LAND DEVELOPMENTS  
(HIGHWAYS, AIRPORTS, NEW TOWNS)**



**WIDESPREAD SUBURBAN SPRAWL**

**TOXIC WASTE FROM FACTORIES**

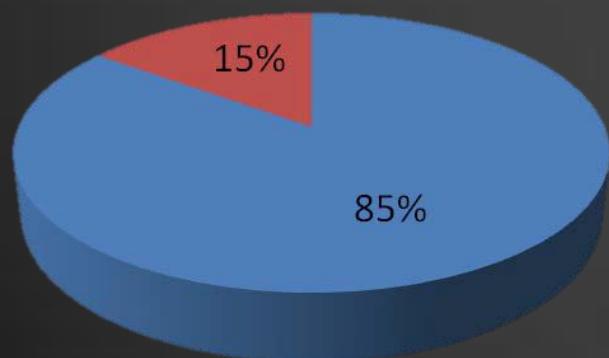


**DOMESTIC & AGRICULTURAL CHEMICALS**

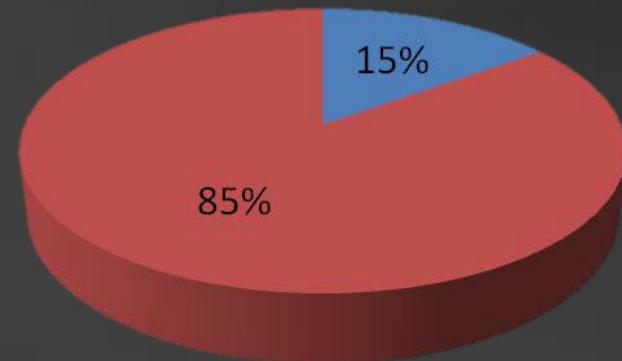
©The COMET Program

# Sources of Water Quality Impairment

1970



2010



## Point Source vs. Nonpoint Source

William Ruckelshaus, *A New Shade of Green*, The Wall Street Journal, April 17, 2010.

# Clean Water Rule

Final Rule was released on May 27, 2015

- Effective 60 days after published in Fed. Register.
- EPA received over 1 million public comments.
- EPA assured WEF that water/wastewater and stormwater will not be impacted.

*Why a Rule: Intended to clarify two US Supreme Court rulings that has lead to confusion over the reach of the CWA.*

# SWANCC (Solid Waste Agency of Northern Cook County v. USACE, 2001)

USACE does not have authority over wetlands that are not surface tributaries to other wetland or waters of the U.S., based solely on the “Migratory Bird Rule” - unless a clear connection to Interstate Commerce can be demonstrated

*Meaning: Isolated waters not usually regulated*

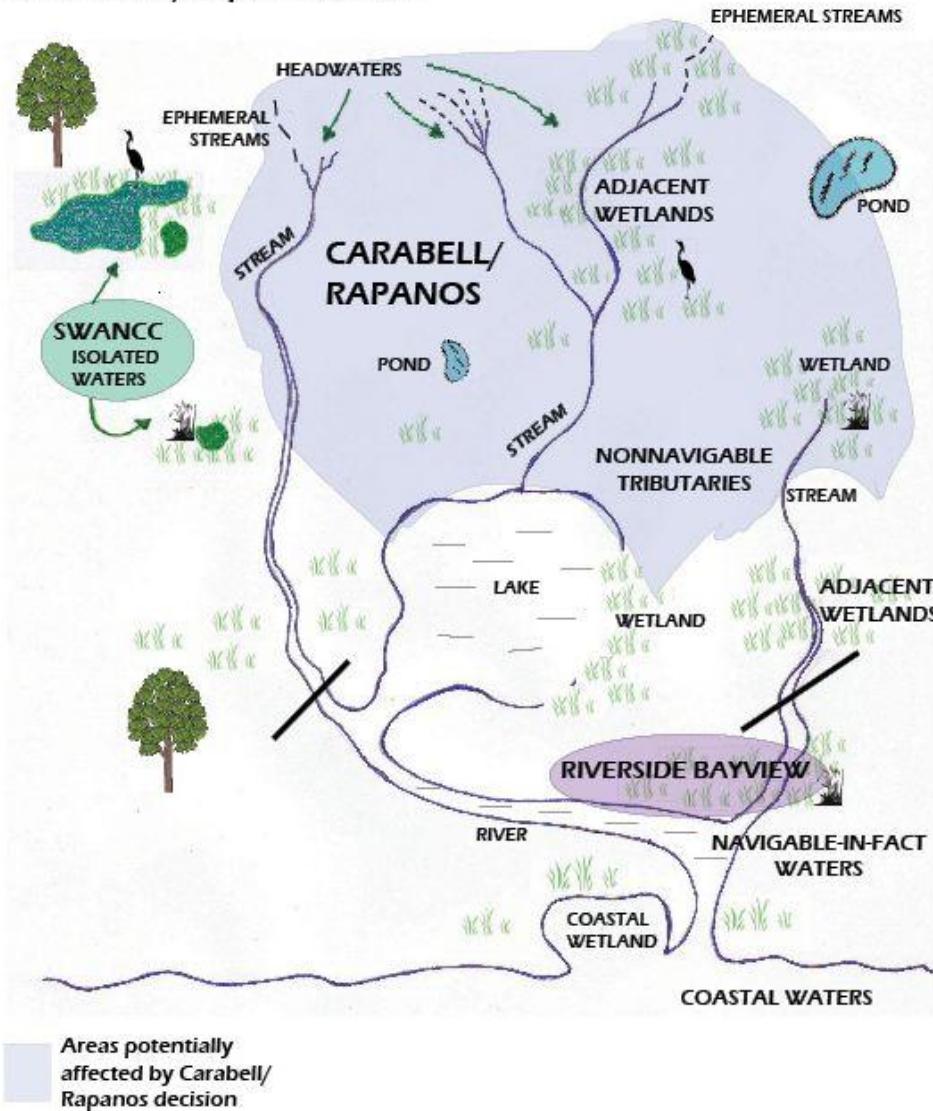
# Rapanos v. United States, 2006

Limits USACE jurisdiction to:

- Traditional Navigable Waters (TNWs) and their associated wetlands
- Relatively permanently flowing waters (RPWs) to TNWs and the adjacent wetlands
- Non RPWs tributaries to TNWs and their associated wetlands which posses a **significant nexus** to the TNW into which it eventually flows

*Meaning: ephemeral ditches not usually regulated*

## CWA Jurisdictional Areas Subject to Carabell/Rapanos, et. al.



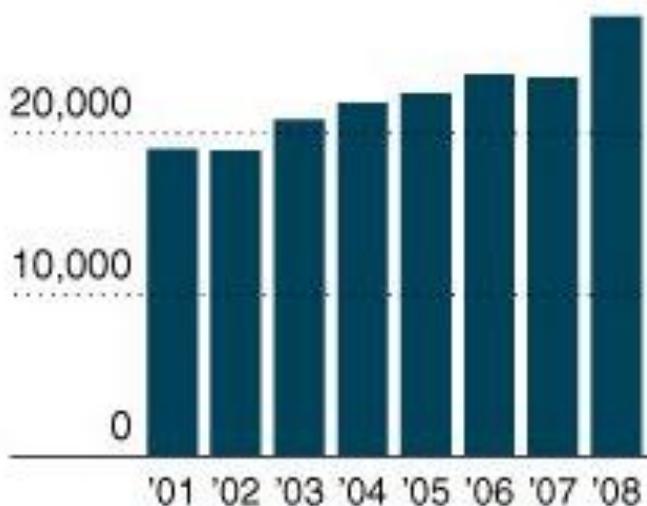
Watershed graphic prepared by Assoc. of State Wetland Managers

## Polluters Beyond the Law

Since recent Supreme Court decisions that have limited the reach of the federal Clean Water Act, the Environmental Protection Agency has logged more violations by major permit holders but has taken enforcement action against fewer of these polluters.

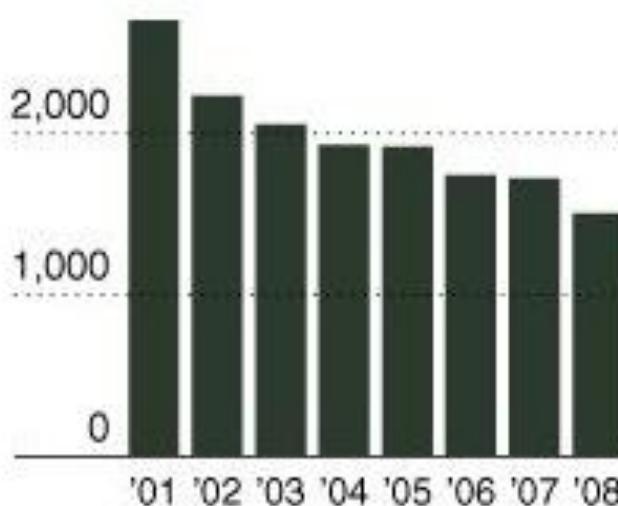
### CLEAN WATER ACT VIOLATIONS ARE RISING ...

30,000 violations



### ... BUT E.P.A. ENFORCEMENT IS DOWN

3,000 facilities



Source: New York Times analysis of  
Environmental Protection Agency data

THE NEW YORK TIMES

# Clean Water Rule

## What it covers:

- Defines and protects tributaries that impact the health of downstream waters.
- Provides certainty in how far safeguards extend to nearby waters.
- Focuses on streams, not ditches.
- Maintains the status of waters within Municipal Separate Storm Sewer Systems.
- Reduces the use of case-specific analysis of waters.

# Clean Water Rule

## What it does not do:

- Protect any types of waters that have not historically been covered by the Clean Water Act.
- Add any new requirements for agriculture.
- Interfere with or change private property rights.
- Regulate most ditches.
- Change policy on irrigation or water transfers.
- Address land use.
- Cover erosional features such as gullies, rills and non-wetland swales.
- Include groundwater, shallow subsurface flow and tile drains.

# Clean Water Rule

## Next steps:

- Congress will likely try to reverse the rule or defund implementation/enforcement.
  - Several bills pending and one has passed the House already.
- Opposition stakeholders (industry, developers, ag) will likely file cases in federal courts.

*Prediction: Don't expect the rule to be implemented anytime soon.*

# The Act We Have - The Act We Need

“ The Clean Water Act must be updated to incorporate the tools and policies to assure that necessary water quality improvements will occur in all US waters.”

- WEF Position on Clean Water Act Modernization (Adopted February 5, 2010)

# Special Thanks

Questions?

Alan Vicory