

## **Is The CWA Only Valid for Navigable Waters?**

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The following statement appeared in the legal documents of a lawsuit (1997) before the federal Court of Appeal in Denver: “First always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.”

The interim goal of the Clean Water Act (CWA) was swimmable and fishable waters by 1983 and the final goal was the elimination of all water pollution by 1985. The above paragraph was used in a lawsuit against the EPA for refusing to address the pollution caused by nitrogenous (urine and protein waste) in its definition of ‘secondary treatment’, which due to an incorrect water pollution test application, EPA had excluded from treatment, while this waste besides exerting an oxygen demand (just like fecal waste) also is a fertilizer for algae and thus is causing eutrophication often resulting in dead zones.

May be not for those working in our judicial system, but the intent of the CWA was unambiguously clear, as explained by Senator Muskie of the Senate floor by stating: “This Act simply means that we can not use our open waters to treat our sewage any longer”.

One would think that open waters used as urinals are not swimmable and that discharging wastewater containing toxic compounds, carcinogens, oils, pesticides, herbicides, industrial waste (just to name a few) would be considered to fall into the category “water pollution”, but again now the Supreme Court is claiming that the CWA only is valid for navigable waters and not for streams one can not navigate a boat in.

One has to wonder why the people that wrote this CWA even used this wording, since it obviously is violating the intent of the CWA legislation and that obvious those non navigable streams eventually will discharge into navigable waters. The legal fight now probably will erupt in the question of the discharge was meant to be directly or indirectly discharging into navigable waters and will keep the courts busy for decades, while the water quality in our open waters keep deteriorating and the real intent of the CWA is again ignored by our legal system.