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THE CLEAN WATER ACT AT 30- TIME TO RENEW A COMMITMENT TO NATIONAL STEWARDSHIP

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On October 18, 2002, the nation celebrated the 30th anniversary of the enactment of the Clean Water Act. The congressional declaration of goals and policies in the Act's first section is a statement of national commitment to the stewardship of the nation's waters. The overall objective is " ... to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." ¹ Many of us remember the conditions that prompted Congress to pass the Clean Water Act. Some incidents were dramatic. In the summer of 1969, the volatile toxic stew of pollutants in Ohio's Cuyahoga River burst into flame. A river afire because of human neglect caught the attention of the entire nation. Lake Erie, one of the nation's Great Lakes and one of the world's premier bodies of freshwater, was declared moribund, choked by algae blooms from sewage, runoff, and other pollutants. There were also commonplace sights around the nation of rivers streaked bright orange with chemical plumes discharged from industrial pipes, of lakes pea green and choked with vegetation from a toxic pollutant load of human sewage, and of waterways running black with noxious compounds from pulp mills and other sources.

With these conditions in mind, Congress listed ambitious goals in the Clean Water Act, most importantly the attainment by 1983 of sufficient surface water quality throughout the nation to support and provide for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water. In general, this goal was to be achieved by ending the discharge of toxic pollutants in toxic amounts, by providing federal assistance to construct public sewage systems, and by developing programs to control both point sources and nonpoint sources of pollution. The goals and objectives of the Clean Water Act reflect numerous principles of community action and concern. The use of water is not prohibited but it should be returned to the nation's streams, rivers, lakes, and coasts in a condition that supports life and allows others to use the water for activities that require high water-quality standards. The statement of federal policy to provide assistance for wastewater treatment demonstrates a view that all communities should be provided with the tools needed to clean up the waters they use. What happens to the water of one community affects others and we are bound together by a common need to protect the waters.

The US has not yet achieved the goals of the Clean Water Act, but it has made significant progress. Between 1972 and 1992 the Clean Water Act helped local governments serving almost 34 million residents upgrade sewage treatment plants and stem the discharge of raw sewage. The Act also required industrial facilities to obtain permits limiting the amount of pollutants they could legally discharge. In 1972, 60 percent to 70 percent of the nation's surface water was too impaired to support fishing and swimming. By 1998 that percentage had been cut in half. For many waterways, the improvements were dramatic. The Hudson River had become an open sewer before the Clean Water Act. Today, the river is clean enough to support spawning stocks of all its historical migratory species. This abundance of Hudson River fish supports Atlantic coast recreational and commercial fisheries worth hundreds of millions of dollars. Wetland losses still occur, but Section 404 of the Clean Water Act, which regulates dredging and filling activity, has helped slow the rate of wetland loss. Federal and state agencies have brought enforcement actions against polluters. The Clean Water Act also provides for citizen suits to enforce the Act. Litigation is an important tool that local organizations have used to protect the water resources upon which their communities depend. National and regional environmental organizations have also used citizen suits to help shape and strengthen the legal contours of the Clean Water Act, including the geographic scope of the waters and wetlands protected by the Act. The Act has also provided funds through the states to local communities and organizations to monitor the quality of their local waters and to implement local efforts to clean up and protect the water.ⁱⁱ

Unfortunately, progress in cleaning up the nation's surface waters has recently stalled. The U.S. Environmental Protection Agency released the Water Quality Inventory Report for 2000 a few weeks before the Clean Water Act anniversary.ⁱⁱⁱ The report shows that from 1998 to 2000 the percentage of impaired streams and rivers rose from 35 percent to 39 percent of those surveyed. The rate of pollution in estuaries, the nation's fish nurseries and important recreational waters, increased from 44 percent to 51 percent. Other reports show that beach closures rose 19 percent from 2000 to 2001 due to overflowing sewage plants and polluted runoff. The nation is still dealing with a legacy of persistent pollutants that bioaccumulate in plants and animals. Many states have issued health advisories warning people to limit consumption of fish caught in state waters because of accumulation of methyl mercury, polychlorinated biphenyls, and other toxins in the fish tissue. Agricultural runoff laden with sediments, nutrients, pesticides, and other pollutants remains a significant source of water pollution. The EPA has estimated that unless a widening funding gap for clean water activity is closed by 2016, water pollution levels in the United States could reach those observed in the mid-1970s. Much of the nation's sewage infrastructure has been upgraded, but many systems still combine stormwater and sewage in conduits that overflow frequently. Even cities with separate systems have overflow problems because sewer lines are in poor condition and stormwater infiltrates them, overloading the treatment plants.

There is growing evidence that the current tools of the Clean Water Act are not adequate to deal with surface water contamination. For example, a recent study indicates that more than half of the water and nutrients that enter the Chesapeake Bay travel through groundwater.^{iv} The atmosphere can also be a significant source of surface water pollutants in some watersheds. These sources of water pollution have yet to be adequately addressed. In addition, many contaminants in the nation's water do not have established drinking-water guidelines, drinking-water health advisories, or water quality standards based on aquatic life criteria. In 2002, the U.S. Geological Survey released the first nationwide reconnaissance report on pharmaceuticals, hormones, and other emerging organic wastewater contaminants found in samples from

139 streams around the nation.^v The report focused on waters downstream of intense urbanization and livestock production. The detection of multiple contaminants was common, with a median of seven and as many as 38 contaminants found in the water samples. Fourteen antibiotics were detected, including eight approved for use in both humans and food animals and one, Tylosin, approved for food animal use but not human use. The most common contaminants also included hormones and pesticides. The authors of the study pointed to a number of concerns, including the need to investigate contaminants absorbed by sediments, the failure to screen all metabolites of the contaminants, and the lack of knowledge about the toxicological and environmental effects of the many individual contaminants and mixtures of contaminants detected. Many of the contaminants are associated with the industrialization of livestock production in which large numbers of animals are concentrated in confinement and hormones, antibiotics, and other pharmaceuticals are routinely added to the water and animal feed.

Protecting and improving the nation's waters is not a short-term activity but a process that requires an ongoing national commitment to environmental stewardship. The nation's population, residential development, agricultural production, and industrial output have all increased since the Act was passed in 1972. But just when the nation needs to recommit to meeting the objectives and goals of the Clean Water Act in this new century, the Bush administration is turning away from a national commitment to protect the nation's waters.

The single most consequential administrative action is the recent announcement of a proposal to change the definition of waters protected by the Clean Water Act.^{vi} The Bush administration is contemplating the removal of isolated wetlands, intermittent streams, and other waters from the protection of the Act. Under this proposal, between 35 percent and 60 percent of the nation's waters would be exempted and could be polluted or filled in without federal intervention. The effects in some states would be even more drastic. About 90 percent of North Dakota's rivers are intermittent. Even in the wetter eastern region of the country, Illinois could see 63 percent of its waters exempted and New York could lose federal protection for 10 percent of its waters.^{vii} The administration has made this announcement without providing an adequate analysis of the effects of its proposal on the quality of the nation's water, the health of its people, or the well-being of its wildlife and other natural resources. This proposal strikes at the core of the Clean Water Act and turns the clock back on 30 years of progress in improving the nation's waters.

In another rollback, the Bush administration issued a rule in May of 2002 that eliminated a 25-year-old Clean Water Act regulation prohibiting the Army Corps of Engineers from allowing the destruction of the nation's water and wetlands by the dumping of industrial wastes.^{viii} The new Bush administration regulation authorizes the Corps to issue permits allowing polluters to dump solid wastes, including hardrock mining waste, construction and demolition debris, and other industrial solid waste, in a manner that can bury wetlands, rivers, streams, and other waterways. This new regulation will provide permits for the rampant destruction of the nation's aquatic ecosystems and for increased pollutant loads in downstream waters.

In December 2002, the Bush administration approved a revised Clean Water Act regulation for addressing pollution from Concentrated Animal Feeding Operations.^{ix} The Clean Water Act requires that these industrialized facilities obtain point source permits. The revised federal regulation, however, is extremely weak. The administration squandered the opportunity to protect rural people and their communities from the public health and environmental degradation arising from large-scale animal waste lagoons, waste effluent

sprayfields, and other flawed technologies. The confined livestock sector is one of the most economically concentrated in agriculture, with a few large packing and processing firms dictating contract terms to livestock and poultry growers. In many states, these powerful firms have convinced the state to strip local communities of legal authority to protect the environment and public health, while also fighting against adequate regulations at the state level. The adoption of a weak federal regulation makes it much harder for states and local communities to create or maintain adequate regulations in the face of concentrated corporate economic power.

There is also growing concern that the Bush administration plans to weaken the Clean Water Act's Total Maximum Daily Load program, which requires states to identify impaired waters where controls on point sources of pollution are not sufficient to restore the water quality. The states then must set pollution limits, identify both point and nonpoint pollution sources, and allocate pollution reductions among point and nonpoint pollution sources. The development of a Total Maximum Daily Load plan can provide an opportunity for local communities to become involved with measures for protecting the local watersheds.

The administration's budget proposals also display a lack of commitment to water quality. The EPA predicts a gap of \$534 billion over the next 20 years on federal and state spending needed for equipment, operations, and maintenance to treat wastewater, stormwater, and drinking water. The administration, however, has requested almost \$100 million less for the EPA Office of Water in fiscal year 2004 than it did in the budget request for fiscal year 2003. The biggest cut in the fiscal year 2004 request reduces the Clean Water State Revolving Loan Fund by about \$350 million. This fund provides low-cost loans to communities to clean up impaired bodies of water and protect waters from degradation.

The administration has also targeted the water quality monitoring programs of the U.S. Geological Survey. The USGS National Water Quality Assessment Program is the nation's comprehensive, long-term water quality monitoring program. After two years of trying to slash funding for the program, the administration has proposed that funding in fiscal year 2004 remain at the level of funding authorized for the program in 2002. The administration is also trying to completely eliminate the USGS Toxic Substances Hydrology Program, which tracks the movement of toxic substances and identifies emerging clean water concerns. In the fiscal year 2004 budget request, the administration seeks to decrease the program's funding to \$11 million from the 2002 level of \$14 million. The administration also proposes to phase out the Water Resources Research Institute, which collaborates on research with 200 universities nationwide and provides training, research, and grants to help states conduct water quality assessments.

During the congressional debate over the enactment of the Clean Water Act in 1972, Senator Edmund Muskie of Maine made the following statement, still relevant today.

"Can we afford clean water? Can we afford rivers and lakes and streams and oceans which continue to make possible life on this planet? Can we afford life itself? Those questions were never asked as we destroyed the waters of our nation, and they deserve no answers as we finally move to restore and renew them. These questions answer themselves."^x

The principles of the Catholic rural ethic provide clear guidance on the answers to these questions. Clean, unpolluted water is necessary to the integrity of creation. All life depends on water. Our waters are also a common good. Their protection requires action and resources at all levels. The positive actions of one farm or business or community to protect the waters can be negated by the adverse actions of others. Respect at the national level for the integrity of our waters reflects the principle of solidarity by recognizing that we owe each other the benefits of clean water. This national respect also concerns subsidiarity — the efforts of local communities to protect their waters should not be undermined by alliances between economically powerful interests and higher levels of government. And national concern and respect for clean water addresses the issue of options for the poor; Clean Water Act funding can be provided to poor communities for adequate sewage facilities as well as the protection of water resources and aquatic habitats that provide both bodily and spiritual subsistence for many of the poor in our nation.

In the words of Brother David G. Andrews, Executive Director of the National Catholic Rural Life Conference:

“In the care of community, we are reminded that we live both upstream and downstream from other people. Just as we expect clean water to flow to us, we must ensure that clean water flows to others. We do this not only for next year, but the years and generations to come.”^{xi}

As we review 30 years of progress in protecting and restoring the nation's waters under the Clean Water Act, it is time to remind our national leaders that we need to strengthen, not weaken, the Clean Water Act. We need to apply its funding in a clear and effective manner that will achieve improvements in water quality. And we need to retain all the tools provided by the Act as we recommit to meeting its objectives and goals in the years to come.



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Endnotes

ⁱ 33 United State Code § 1251.

ⁱⁱ A comprehensive review of the role of the Clean Water Act in improving the quality of the nation's waters is provided in the report. NANCY STONER, CLEAN WATER AT RISK: A 30TH ANNIVERSARY ASSESSMENT OF THE BUSH ADMINISTRATION'S ROLLBACK OF CLEAN WATER PROTECTIONS (National Resources Defense Council & Clean Water Network 2002), posted on the web at <http://www.nrdc.org/water/pollution/cwa30/contents.asp>.

ⁱⁱⁱ U.S. Environmental Protection Agency, National Water Quality Inventory Report, 2000 (posted on the web at www.epa.gov/305b/2000report/). The Clean Water Act requires that the EPA prepare this report every two years. The report summarizes water quality reports submitted in 2000 by the 50 states, the District of Columbia, five Indian tribes, five federal territories, and four interstate commissions.

^{iv} L.J. Bachman, B.D. Lindsey, J. Brakebill, and D.S. Powers, *Ground-Water Discharge and Base Flow Nitrate Loads on Nontidal Streams and Their Relations to a Hydrogeomorphic Classification of the Chesapeake Bay Watershed, Middle Atlantic Coast*. U.S. Geological Survey Water Resources Investigation Report 98-4059 (1998).

^v Dana W. Kolpin, Edward T. Furlong, Michael T. Meyer, E. Michael Thurman, Steven D. Zaugg, Larry B. Barber, & Herbert T. Buxton, *Pharmaceuticals, Hormones, and Other Organic Wastewater Contaminants in U.S. Streams, 1999-2000: A National Reconnaissance*, 36 Environmental Science & Technology pp 1202 - 1211 (March 15, 2002).

^{vi} Federal Register, vol. 68 at p. 1991 (Jan. 15, 2003).

^{vii} *EPA to Cut Protection of Seasonal Waterways*, Pittsburgh Post-Gazette at p. A-6 (Jan. 7, 2003).

^{viii} Federal Register, vol. 67 at p. 31129 (May 9, 2002).

^{ix} Federal Register, vol. 68 at p. 7175 (Feb. 12, 2003)(official publication).

^x U.S. Government Printing Office, 2 A Legislative History of the Water Pollution Control Act Amendments of 1972 at p. 164 (1973).

^{xi} Statement in support of the American Rivers initiative for River Budgets, posted on the web at <http://www.americanrivers.org/riverbudget/quotes.htm>.