



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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Water Docket Staff
Mailcode 4101T
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attention: Docket ID No. OW-2002-0050

Dear Staff:

Thank you for the opportunity to comment on the Advanced Notice of Proposed Rulemaking on the regulatory definition of "Waters of the United States." Because of the U.S. Supreme Court's decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, (2001) 531 U.S. 159 (SWANCC), the Advanced Notice of Proposed Rulemaking solicits comments on whether commerce purposes should continue as a basis for Clean Water Act jurisdiction and whether the federal regulations should define the term "isolated waters." The South Dakota Department of Environment and Natural Resources has reviewed the notice and offers the following comments.

The Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) provided comments to the U.S. Environmental Protection Agency on the Advanced Notice of Proposed Rulemaking. We agree and support ASIWPCA's comments. In its comment letter, ASIWPCA makes the point that the Supreme Court did not invalidate any aspect of the federal regulations. The Court simply concluded that the "Migratory Bird Rule" is not fairly supported by the Clean Water Act. We agree with ASIWPCA's conclusion that the federal agencies have no basis to surmise that the SWANCC decision compels them to do something the Court intentionally did not do itself. We also agree the SWANCC decision does not warrant an apparent rollback of federal protection to wetlands.

We would urge the federal agencies to abandon the Advanced Notice of Proposed Rulemaking and leave the existing regulations and definition of "Waters of the United States" as currently written. The SWANCC decision does not compel a rewrite of the regulations.

Thank you for the opportunity to comment.

Sincerely,

Steven M. Pirner
Secretary

cc: Robbi Savage, Executive Director, ASIWPCA