

In the Rapanos case, building on its previous ruling in SWANCC, the Supreme Court cut back on federal jurisdiction over water bodies. The issue before it was the government's power to control filling of isolated wetlands, and it seems clear that the Court was solely focused on what it considered an inappropriate expansion of federal authority over land use. But the same jurisdictional language in the statute applies to pollution. As a result, the NY Times [reports](#) today, the EPA has had increasing difficulty in controlling water pollution:

About 117 million Americans get their drinking water from sources fed by waters that are vulnerable to exclusion from the Clean Water Act, according to E.P.A. reports....

[M]idlevel E.P.A. officials said that internal studies indicated that as many as 45 percent of major polluters might be either outside regulatory reach or in areas where proving jurisdiction is overwhelmingly difficult.

And even in situations in which regulators believe they still have jurisdiction, companies have delayed cases for years by arguing that the ambiguity precludes prosecution. In some instances, regulators have simply dropped enforcement actions.

According to the *Times*, efforts to restore the previous coverage of the Clean Water Act have been blocked by conservatives and farm interests. The Clean Water Act was in effect for many years before the Supreme Court's conservative majority applied the pruning shears. Yet the sky didn't fall, and federal bureaucrats didn't prosecute farmers for filling in mud puddles. It's time for Congress to undo the mischief of the Court's ruling.