

water,” and found that the Corps had reasonably drawn that line by protecting “wetlands adjacent to lakes, rivers, streams, and other bodies of water”—i.e., wetlands adjacent to “waters of the United States.”¹¹

- In *Int’l Paper Co. v. Ouellette* (1987), the Supreme Court held that the Clean Water Act has long been recognized as “an all-encompassing program of water pollution regulation” that “applies to all point sources and virtually all bodies of water” and “virtually all surface water in the country.”¹² The Court noted that “Congress intended to dominate the field of pollution regulation” and that the goal of the Act is the “elimination of water pollution.”¹³
- In *PUD No. 1 of Jefferson Cnty. v. Wash. Dep’t of Ecology* (1994), the Supreme Court described the Clean Water Act as a “complex statutory and regulatory scheme that governs our Nation’s waters” and recognized its application to “all intrastate waters.”¹⁴

Three more recent cases addressed Clean Water Act jurisdiction over two types of features where the distinctions between land and jurisdictional waters is less obvious—a non-adjacent abandoned sand and gravel pit and wetlands adjacent to non-navigable tributaries.

- In *Solid Waste Agency of N. Cook Cnty. v. Army Corps of Eng’rs* (2001) (“SWANCC”), the Court held that “33 CFR § 328.3(a)(3) (1999), as clarified and applied to petitioner’s balefill site pursuant to the ‘Migratory Bird Rule,’ 51 Fed.Reg. 41217 (1986), exceeds the authority granted to respondents under § 404(a) of the CWA.”¹⁵ Thus, the SWANCC decision was particularly fact-specific as to the respondents’ abandoned sand and gravel pit, which was not adjacent to open water, and it addressed the Corps’ asserted basis for jurisdiction under Clean Water Act Section 404, the Migratory Bird Rule. The Court expressly declined to address the jurisdictional reach of the Clean Water Act under the Commerce Clause.¹⁶
- In *Rapanos v. United States*, 547 U.S. 715 (2006) (“*Rapanos*”), the Court issued no majority opinion and instead issued three different opinions setting forth differing tests for determining whether wetlands adjacent to non-navigable tributaries (there, ditches and drains) of traditional navigable waters may be protected under the CWA: the Relatively Permanent Test, the Significant Nexus Test, and application of the Pre-2015 Regulatory

¹¹ *Riverside Bayview*, 474 U.S. at 131-35.

¹² *Int’l Paper Co. v. Ouellette*, 479 U.S. 481, 486, 492 (1987) (internal quotations omitted).

¹³ *Id.* at 492, 494 (emphasis added).

¹⁴ *PUD No. 1 of Jefferson Cnty.*, 511 U.S. at 704, 717.

¹⁵ *Solid Waste Agency of N. Cook Cnty. v. Army Corps of Eng’rs*, 531 U.S. 159, 174 (2001) (“SWANCC”).

¹⁶ *Id.* at 174.