

Resolution No. 4

Date: June 8, 2007

City: Washington, D.C.

NAHB Resolution

Title: Wetlands
Original Sponsor: Environmental Issues Committee

WHEREAS, the Clean Water Act (CWA) grants the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (the Corps) statutory jurisdiction over “navigable waters,” which are defined as “the waters of the United States;”

WHEREAS, the CWA only requires a permit for a “discharge” from a “point source” to “navigable water,” and a “discharge” occurs only where there is an addition of pollutants;

WHEREAS, in their policies, litigation and field practices, EPA and the Corps have expanded the scope of the terms “navigable waters” and “discharge” to overstep their authority and regulate upland ditches and storm drains, land clearing and soil removal;

WHEREAS, the Corps and EPA have yet to enact regulations that define the key statutory terms “navigable waters” and “discharge” in a manner that is consistent with court opinions;

WHEREAS, the agencies’ failure to define these terms has resulted in inconsistent jurisdictional decisions among Corps districts and has expanded the scope of their CWA authority;

WHEREAS, the Corps is making jurisdictional determinations of wetlands beyond the parameters of the soils, vegetation and hydrologic conditions on which they should be based;

WHEREAS, in light of regulatory uncertainties at the federal level, state and local governments are hastily adopting ill-conceived wetland and water protection policies with a negative impact on residential construction activities;

WHEREAS, the Corps’s Section 404 permit process is difficult, lengthy and costly, and it can be open-ended, leading to unnecessary and costly delays in the development process;

WHEREAS, over the years the Corps has ignored congressional intent to create a streamlined nationwide permit (NWP) program and has arbitrarily added onerous terms and conditions to the permits that have limited their usefulness and can make them almost as costly and drawn-out as individual permits;

WHEREAS, the Corps' proposed Compensatory Mitigation Rule for losses of aquatic resources would limit mitigation options, eliminate in lieu fee programs for wetland impacts and rely too heavily on costly mitigation banks; and

WHEREAS, the Corps' implementation of Section 404 has run into coordination and consultation problems with other laws and regulations, including the National Historic Preservation Act and the Endangered Species Act,

NOW, THEREFORE, BE IT RESOLVED that the National Association of Home Builders urge the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (the Corps):

1. To adopt regulations, guidance and policies asserting that "navigability" is the guiding factor to determine the geographic reach of the Clean Water Act (CWA), consistent with congressional intent.
2. To adopt regulations, guidance and policies asserting CWA authority only over activities that "discharge" or "add" materials to jurisdictional waters.
3. In revising their regulations on the extent of CWA jurisdiction, to provide a set of clear and common-sense criteria that can be understood by the members of the regulated community and can be uniformly applied by Corps and EPA field officers in all districts.

BE IT FURTHER RESOLVED that NAHB urge EPA and the Corps to include the following in their regulatory requirements for Sec. 404 of the Clean Water Act, on a regional and national basis:

1. Revise current procedures to provide streamlined, cost-effective, timely and efficient general permits (nationwide, regional and programmatic) for residential and commercial development and construction activities.
2. Issue a completeness determination within a reasonable and uniformly applied time period (targeted to be 60 days) of the submission of all permit applications. If a permit application is found to be incomplete, the Corps will provide the permit applicant with a detailed list of the items needed to make the application complete. The Corps must issue a completeness determination within a reasonable and uniformly applied time period (targeted to be 30 days) of the applicant supplying the additional information. If a completeness determination is not issued within the described time period, it will be determined that the application is complete.
3. Approve or deny with prejudice all applications within a reasonable and uniformly applied time period (targeted to be 60 days) of the completeness determination. The expiration of the above described time period without a decision on a complete application will result in the affirmative approval of the permit.
4. Allow permit applicants to waive the above time requirements.

BE IT FURTHER RESOLVED that NAHB urge Congress:

1. To support legislative efforts maintaining that the statutory intent of the CWA is for “navigability” to be the guiding factor in jurisdictional decisions.
2. To support legislative efforts maintaining that the statutory intent of the CWA is to grant jurisdiction over only those activities that result in additions of pollutants to “the waters of the U.S.”

BE IT FURTHER RESOLVED that NAHB urge state and local governments, which may be considering whether to adopt wetlands policies that go beyond federal programs, to only create and implement wetland or other water policies that are based on legislative findings, sound science and reasonable methods, and that take into account their effect on the state’s economy and the development industry;

BE IT FURTHER RESOLVED that NAHB urge the Corps and EPA to adopt reasonable compensatory mitigation banking programs that will be applied consistently and provide other options such as in lieu fee programs as a viable compensatory mitigation option; and

BE IT FURTHER RESOLVED that NAHB urge the Corps and EPA to ensure that relevant programs triggered by Sec. 404, such as the National Historic Preservation Act and the Endangered Species Act, are streamlined and have a clear procedure for coordination and consultation with federal, state and local officials.

Board of Directors Action:

Joint Executive Board Action:

Resolutions Committee Action:

Land Development Committee Action:

Single Family Production Committee Action:

Federal Government Affairs Committee Action:

Environmental Issues Committee Action:

Approved

Recommends Approval

Recommends Approval

Recommends Approval

Recommends Approval

Recommends Approval

Recommends Approval