EDITORIAL

Clearer Rules, Cleaner Waters

The 1972 Clean Water Act was designed to protect all the waters and wetlands of the United States: large and small, navigable and seasonal. That clear mission has since been muddied by the Supreme Court, exposing thousands of miles of streams and millions of acres of wetlands to pollution and damaging development.

That is why Congress needs to move quickly to approve the Clean Water Restoration Act — a bill that would reaffirm the broad federal protections that it intended more than 30 years ago. There is not a lot of time left in the legislative calendar, but both chambers have held hearings, and a lot is at stake.

The risks to the nation’s waters grow by the day. A devastating internal document, obtained by Representatives James Oberstar and Henry Waxman, revealed that the Environmental Protection Agency has dropped or delayed more than 400 cases involving suspected violations of the law — illegal industrial discharges and the like. That is nearly half the agency’s entire docket. The reason cited in almost every instance was that regulators did not know whether the streams and wetlands in question were still covered under the act.

This jurisdictional confusion stems largely from a bizarre 2006 Supreme Court ruling in which the justices split three ways on which waters were protected under the act. A conservative foursome said that only permanent waters deserved protection. A liberal foursome said that all waters, including seasonal, intermittent streams, deserved protection. Seeking to split the difference, Justice Anthony Kennedy ruled that such streams as well as remote wetlands deserved protection if regulators could show a “significant nexus” to a navigable body of water somewhere downstream.

This tortured middle way has effectively become the law of the land, and for various reasons — including the need to conduct laborious, case-by-case investigations into hydrological linkages among water bodies — it has led to regulatory paralysis.

The Clean Water Restoration Act, championed by Mr. Oberstar, would cut through this mess by establishing, once and for all, that federal protections apply to all waters. That makes good hydrological sense, since few water bodies are truly isolated and nearly all are part of a larger watershed. The bill would also restore order to a regulatory system in disarray. Congress should make its passage an early order of business.