(1985), and to slow the flow of surface runoff into lakes, rivers, and streams and thus prevent flooding and erosion, see §§ 320.4(b)(2)(iv) and (v)." 474 U.S., at 134, 106 S.Ct. 455. Where wetlands perform these filtering and runoff-control functions, filling them may increase downstream pollution, much as a discharge of toxic pollutants would. Not only will dirty water no longer be stored and filtered but also the act of filling and draining itself may cause the release of nutrients, toxins, and pathogens that were trapped, neutralized, and perhaps amenable to filtering or detoxification in the wetlands. See U.S. Congress, Office of Technology Assessment, Wetlands: Their Use and Regulation, OTA-O-206, pp. 43, 48-52 (Mar.1984), http:// govinfo. library. unt. edu/ ota/ OTA_ 4/ DATA/1984/8433.pdf (hereinafter OTA). In many cases, moreover, filling in wetlands separated from another water by a berm can mean that floodwater, impurities, or runoff that would have been stored or contained in the wetlands will instead flow out to major waterways. With these concerns in mind, the Corps' definition of adjacency is a reasonable one, for it may be the absence of an interchange of waters ****2246** prior to the dredge and fill activity that makes protection of the wetlands critical to the statutory scheme.

***776** In sum the plurality's opinion is inconsistent with the Act's text, structure, and purpose. As a fallback the plurality suggests that avoidance canons would compel its reading even if the text were unclear. *Ante,* at 2224. In *SWANCC*, as one reason for rejecting the Corps' assertion of jurisdiction over the isolated ponds at issue there, the Court observed that this "application of [the Corps'] regulations" would raise significant questions of Commerce Clause authority and encroach on traditional state land-use regulation. 531 U.S., at 174, 121 S.Ct. 675. As *SWANCC* observed, *ibid.,* and as the plurality points out here, *ante,* at 2223, the Act states that "[i]t is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, [and] to plan the development and use ... of land and water resources," 33 U.S.C. § 1251(b). The Court in *SWANCC* cited this provision as evidence that a clear statement supporting jurisdiction in applications raising constitutional and federalism difficulties was lacking. 531 U.S., at 174, 121 S.Ct. 675.

The concerns addressed in *SWANCC* do not support the plurality's interpretation of the Act. In *SWANCC*, by interpreting the Act to require a significant nexus with navigable waters, the Court avoided applications-those involving waters without a significant nexus-that appeared likely, as a category, to raise constitutional difficulties and federalism concerns. Here, in contrast, the plurality's interpretation does not fit the avoidance concerns it raises. On the one hand, when a surface-water connection is lacking, the plurality forecloses jurisdiction over wetlands that abut navigable-in-fact waters-even though such navigable waters were traditionally subject to federal authority. On the other hand, by saying the Act covers wetlands (however remote) possessing a surface-water connection with a continuously flowing stream (however small), the plurality's reading would permit applications of the statute as far from traditional federal authority as are the waters it deems beyond ***777** the statute's reach. Even assuming, then, that federal regulation of remote wetlands and nonnavigable waterways would raise a difficult Comerce Clause issue notwithstanding those waters' aggregate effects on national water quality, but cf. *Wickard v. Filburn,* 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942); see also *infra,* at 2249-2250, the plurality's reading is not responsive to this concern. As for States' "responsibilities and rights," § 1251(b), it is noteworthy that 33 States plus the District of Columbia have filed an *amici* brief in this litigation asserting that the Clean Water Act is important to their own water policies. See Brief for State of New York et al. 1-3. These *amici* note, among other things, that the Act protects downstream States from out-of-state pollution that they cannot themselves regulate. *Ibid.*

It bears mention also that the plurality's overall tone and approach-from the characterization of acres of wetlands destruction as "backfilling ... wet fields," *ante,* at 2215, to the rejection of Corps authority over "man-made drainage ditches" and "dry arroyos" without regard to how much water they periodically carry, *ante,* at 2222, to the suggestion, seemingly contrary to Congress' judgment, that discharge of fill material is inconsequential for adjacent waterways, *ante,* at 2228, and n. 11-seems unduly dismissive of the interests asserted by the United States in these cases. Important public interests are served by the Clean Water Act in general and by the protection of wetlands in particular. To give just one example, ****2247** *amici* here have noted that nutrient-rich runoff from the Mississippi River has created a hypoxic, or oxygen-depleted, "dead zone" in the Gulf of Mex-

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ico that at times approaches the size of Massachusetts and New Jersey. Brief for Association of State Wetland Managers et al. 21-23; Brief for Environmental Law Institute 23. Scientific evidence indicates that wetlands play a critical role in controlling and filtering runoff. See, *e.g.,* OTA 43, 48-52; R. Tiner, In Search of Swampland: A Wetland Sourcebook and Field Guide 93-95 (2d ed.2005); Whitmire & Hamilton, Rapid Removal***778** of Nitrate and Sulfate in Freshwater Wetland Sediments, 34 J. Env. Quality 2062 (2005). It is true, as the plurality indicates, that environmental concerns provide no reason to disregard limits in the statutory text, *ante,* at 2228, but in my view the plurality's opinion is not a correct reading of the text. The limits the plurality would impose, moreover, give insufficient deference to Congress' purposes in enacting the Clean Water Act and to the authority of the Executive to implement that statutory mandate.

Finally, it should go without saying that because the plurality presents its interpretation of the Act as the only permissible reading of the plain text, *ante,* at 2225, 2226-2227, the Corps would lack discretion, under the plurality's theory, to adopt contrary regulations. THE CHIEF JUSTICE suggests that if the Corps and EPA had issued new regulations after *SWANCC* they would have "enjoyed plenty of room to operate in developing *some* notion of an outer bound to the reach of their authority" and thus could have avoided litigation of the issues we address today. *Ante,* at 2236 (concurring opinion). That would not necessarily be true under the opinion THE CHIEF JUSTICE has joined. New rulemaking could have averted the disagreement here only if the Corps had anticipated the unprecedented reading of the Act that the plurality advances.

B

While the plurality reads nonexistent requirements into the Act, the dissent reads a central requirement out-namely, the requirement that the word "navigable" in "navigable waters" be given some importance. Although the Court has held that the statute's language invokes Congress' traditional authority over waters navigable in fact or susceptible of being made so, *SWANCC,* 531 U.S., at 172, 121 S.Ct. 675 (citing *Appalachian Power,* 311 U.S., at 407-408, 61 S.Ct. 291), the dissent would permit federal regulation whenever wetlands lie alongside a ditch or drain, however remote and insubstantial, that eventually may flow into traditional navigable waters. The deferenceowed ***779** to the Corps' interpretation of the statute does not extend so far.

Congress' choice of words creates difficulties, for the Act contemplates regulation of certain "navigable waters" that are not in fact navigable. *Supra,* at 2241. Nevertheless, the word "navigable" in the Act must be given some effect. See *SWANCC, supra,* at 172, 121 S.Ct. 675. Thus, in *SWANCC* the Court rejected the Corps' assertion of jurisdiction over isolated ponds and mudflats bearing no evident connection to navigable-in-fact waters. And in *Riverside Bayview,* while the Court indicated that "the term 'navigable' as used in the Act is of limited import," 474 U.S., at 133, 106 S.Ct. 455, it relied, in upholding jurisdiction, on the Corps' judgment that "wetlands adjacent to lakes, rivers, streams, and other bodies of water may function as integral parts of the aquatic environment even when the moisture creating the wetlands does not find its source in the adjacent bodies of water," *id.,* at 135, 106 S.Ct. 455. The implication, ****2248** of course, was that wetlands' status as "integral parts of the aquatic environment"-that is, their significant nexus with navigable waters-was what established the Corps' jurisdiction over them as waters of the United States.

Consistent with *SWANCC* and *Riverside Bayview* and with the need to give the term "navigable" some meaning, the Corps' jurisdiction over wetlands depends upon the existence of a significant nexus between the wetlands in question and navigable waters in the traditional sense. The required nexus must be assessed in terms of the statute's goals and purposes. Congress enacted the law to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," 33 U.S.C. § 1251(a), and it pursued that objective by restricting dumping and filling in "navigable waters," §§ 1311(a), 1362(12). With respect to wetlands, the rationale for Clean Water Act regulation is, as the Corps has recognized, that wetlands can perform critical functions related to the integrity of other waters-functions such as pollutant trapping, flood control, and runoff storage. ***780**33 CFR § 320.4(b)(2). Accordingly, wetlands possess the requisite nexus, and thus come within the statutory phrase "navigable waters," if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physi-

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cal, and biological integrity of other covered waters more readily understood as "navigable." When, in contrast, wetlands' effects on water quality are speculative or insubstantial, they fall outside the zone fairly encompassed by the statutory term "navigable waters."

Although the dissent acknowledges that wetlands' ecological functions vis-á-vis other covered waters are the basis for the Corps' regulation of them, *post,* at 2256-2257, it concludes that the ambiguity in the phrase "navigable waters" allows the Corps to construe the statute as reaching all "non-isolated wetlands," just as it construed the Act to reach the wetlands adjacent to navigable-in-fact waters in *Riverside Bayview,* see *post,* at 2257. This, though, seems incorrect. The Corps' theory of jurisdiction in these consolidated cases-adjacency to tributaries, however remote and insubstantial-raises concerns that go beyond the holding of *Riverside Bayview;* and so the Corps' assertion of jurisdiction cannot rest on that case.

As applied to wetlands adjacent to navigable-in-fact waters, the Corps' conclusive standard for jurisdiction rests upon a reasonable inference of ecologic interconnection, and the assertion of jurisdiction for those wetlands is sustainable under the Act by showing adjacency alone. That is the holding of *Riverside Bayview*. Furthermore, although the *Riverside Bayview* Court reserved the question of the Corps' authority over "wetlands that are not adjacent to bodies of open water," 474 U.S., at 131-132, n. 8, 106 S.Ct. 455, and in any event addressed no factual situation other than wetlands adjacent to navigable-in-fact waters, it may well be the case that *Riverside Bayview's* reasoning-supporting jurisdiction without any inquiry beyond adjacency-could apply equally to wetlands adjacent to certain major tributaries. Through regulations***781** or adjudication, the Corps may choose to identify categories of tributaries that, due to their volume of flow (either annually or on average), their proximity to navigable waters, or other relevant considerations, are significant enough that wetlands adjacent to them are likely, in the majority of cases, to perform important functions for an aquatic system incorporating navigable waters.

The Corps' existing standard for tributaries, however, provides no such assurance. As noted earlier, the Corps deems a ****2249** water a tributary if it feeds into a traditional navigable water (or a tributary thereof) and possesses an ordinary high-water mark, defined as a "line on the shore established by the fluctuations of water and indicated by [certain] physical characteristics," § 328.3(e). See *supra,* at 2237. This standard presumably provides a rough measure of the volume and regularity of flow. Assuming it is subject to reasonably consistent application, but see U.S. General Accounting Office, Report to the Chairman, Subcommittee on Energy Policy, Natural Resources and Regulating Affairs, Committee on Reform, House of Representatives, Waters and Wetlands: Corps of Engineers Needs to Evaluate Its District Office Practices in Determining Jurisdiction, GAO-04-297, pp. 3-4 (Feb.2004), http:// www. gao. gov/ new. items/ d 04297. pdf (noting variation in results among Corps district offices), it may well provide a reasonable measure of whether specific minor tributaries bear a sufficient nexus with other regulated waters to constitute "navigable waters" under the Act. Yet the breadth of this standard-which seems to leave wide room for regulation of drains, ditches, and streams remote from any navigable-in-fact water and carrying only minor water volumes toward it-precludes its adoption as the determinative measure of whether adjacent wetlands are likely to play an important role in the integrity of an aquatic system comprising navigable waters as traditionally understood. Indeed, in many cases wetlands adjacent to tributaries covered by this standard might appear ***782** little more related to navigable-in-fact waters than were the isolated ponds held to fall beyond the Act's scope in *SWANCC*. Cf. Leibowitz & Nadeau, Isolated Wetlands: State-of-the-Science and Future Directions, 23 Wetlands 663, 669 (2003) (noting that " 'isolated' is generally a matter of degree").

When the Corps seeks to regulate wetlands adjacent to navigable-in-fact waters, it may rely on adjacency to establish its jurisdiction. Absent more specific regulations, however, the Corps must establish a significant nexus on a case-by-case basis when it seeks to regulate wetlands based on adjacency to nonnavigable tributaries. Given the potential overbreadth of the Corps' regulations, this showing is necessary to avoid unreasonable applications of the statute. Where an adequate nexus is established for a particular wetland, it may be permissible, as a matter of administrative convenience or necessity, to presume covered status for other comparable wetlands in the region. That issue, however, is neither raised by these facts nor addressed by any agency regulation that accom-

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modates the nexus requirement outlined here.

This interpretation of the Act does not raise federalism or Commerce Clause concerns sufficient to support a presumption against its adoption. To be sure, the significant-nexus requirement may not align perfectly with the traditional extent of federal authority. Yet in most cases regulation of wetlands that are adjacent to tributaries and possess a significant nexus with navigable waters will raise no serious constitutional or federalism difficulty. Cf. *Pierce County v. Guillen,* 537 U.S. 129, 147, 123 S.Ct. 720, 154 L.Ed.2d 610 (2003) (upholding federal legislation "aimed at improving safety in the channels of commerce"); *Oklahoma ex rel. Phillips v. Guy F. Atkinson Co.,* 313 U.S. 508, 525-526, 61 S.Ct. 1050, 85 L.Ed. 1487 (1941) ("[J]ust as control over the nonnavigable parts of a river may be essential or desirable in the interests of the navigable portions, so may the key to flood control on a navigable stream be found in whole or in ***783** part in flood control on its tributaries .... [T]he exercise of the granted power of Congress to regulate interstate commerce may be ****2250** aided by appropriate and needful control of activities and agencies which, though intrastate, affect that commerce"). As explained earlier, moreover, and as exemplified by *SWANCC*, the significant-nexus test itself prevents problematic applications of the statute. See *supra,* at 2246; 531 U.S., at 174, 121 S.Ct. 675. The possibility of legitimate Commerce Clause and federalism concerns in some circumstances does not require the adoption of an interpretation that departs in all cases from the Act's text and structure. See *Gonzales v. Raich,* 545 U.S. 1, 17, 125 S.Ct. 2195, 2206, 162 L.Ed.2d 1 (2005) ("[W]hen a general regulatory statute bears a substantial relation to commerce, the *de minimis* character of individual instances arising under that statute is of no consequence" (internal quotation marks omitted)).

III

In both the consolidated cases before the Court the record contains evidence suggesting the possible existence of a significant nexus according to the principles outlined above. Thus the end result in these cases and many others to be considered by the Corps may be the same as that suggested by the dissent, namely, that the Corps' assertion of jurisdiction is valid. Given, however, that neither the agency nor the reviewing courts properly considered the issue, a remand is appropriate, in my view, for application of the controlling legal standard.

Rapanos

As the dissent points out, in *Rapanos,* No. 04-1034, an expert whom the District Court found "eminently qualified" and "highly credible," App. to Pet. for Cert. B7, testified that the wetlands were providing "habitat, sediment trapping, nutrient recycling, and flood peak diminution, reduction flow water augmentation." 4 Tr. 96 (Apr. 5, 1999). Although the expert had "not studied the upstream drainage of these ***784** sites" and thus could not assert that the wetlands were performing important pollutant-trapping functions, *ibid.,* he did observe:

> "we have a situation in which the flood water attenuation in that water is held on the site in the wetland ... such that it does not add to flood peak. By the same token it would have some additional water flowing into the rivers during the drier periods, thus, increasing the low water flow.... By the same token on all of the sites to the extent that they slow the flow of water off of the site they will also accumulate sediment and thus trap sediment and hold nutrients for use in those wetlands systems later in the season as well," *id.,* at 95-96.

In addition, in assessing the hydrology prong of the three-part wetlands test, see *supra,* at 2237-2238, the District Court made extensive findings regarding water tables and drainage on the parcels at issue. In applying the Corps' jurisdictional regulations, the District Court found that each of the wetlands bore surface-water connections to tributaries of navigable-in-fact waters.

Much the same evidence should permit the establishment of a significant nexus with navigable-in-fact waters, particularly if supplemented by further evidence about the significance of the tributaries to which the wetlands are connected. The Court of Appeals, however, though recognizing that under *SWANCC* such a nexus was required for jurisdiction, held that a significant nexus "can be satisfied by the presence of a hydrologic connection." 376 F.3d, at 639. Absent some measure of the significance of the connection for downstream water quality, this standard was too uncertain. Under the analysis described earlier, *supra,* at 2247-2248, 2249, ****2251** mere hy-

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drologic connection should not suffice in all cases; the connection may be too insubstantial for the hydrologic linkage to establish the required nexus with navigable waters***785** as traditionally understood. In my view this case should be remanded so that the District Court may reconsider the evidence in light of the appropriate standard. See, *e.g., Pullman-Standard v. Swint,* 456 U.S. 273, 291, 102 S.Ct. 1781, 72 L.Ed.2d 66 (1982) ("When an appellate court discerns that a district court has failed to make a finding because of an erroneous view of the law, the usual rule is that there should be a remand for further proceedings to permit the trial court to make the missing findings").

Carabell

In *Carabell,* No. 04-1384, the record also contains evidence bearing on the jurisdictional inquiry. The Corps noted in deciding the administrative appeal that "[b]esides the effects on wildlife habitat and water quality, the [district office] also noted that the project would have a major, long-term detrimental effect on wetlands, flood retention, recreation and conservation and overall ecology," App. 218a. Similarly, in the district office's permit evaluation, Corps officers observed:

> "The proposed work would destroy/adversely impact an area that retains rainfall and forest nutrients and would replace it with a new source area for runoff pollutants. Pollutants from this area may include lawn fertilizers, herbicides, pesticides, road salt, oil, and grease. These pollutants would then runoff directly into the waterway.... Overall, the operation and use of the proposed activity would have a major, long term, negative impact on water quality. The cumulative impacts of numerous such projects would be major and negative as the few remaining wetlands in the area are developed." *Id.,* at 97a-98a.

The Corps' evaluation further noted that by "eliminat[ing] the potential ability of the wetland to act as a sediment catch basin," the proposed project "would contribute to increased ***786** runoff and ... accretion along the drain and further downstream in Auvase Creek." *Id.,* at 98a. And it observed that increased runoff from the site would likely cause downstream areas to "see an increase in possible flooding magnitude and frequency." *Id.,* at 99a.

The conditional language in these assessments-"potential ability," "possible flooding"-could suggest an undue degree of speculation, and a reviewing court must identify substantial evidence supporting the Corps' claims, see 5 U.S.C. § 706(2)(E). Nevertheless, the record does show that factors relevant to the jurisdictional inquiry have already been noted and considered. As in *Rapanos,* though, the record gives little indication of the quantity and regularity of flow in the adjacent tributaries-a consideration that may be important in assessing the nexus. Also, as in *Rapanos,* the legal standard applied to the facts was imprecise.

The Court of Appeals, considering the *Carabell* case after its *Rapanos* decision, framed the inquiry in terms of whether hydrologic connection is required to establish a significant nexus. The court held that it is not, and that much of its holding is correct. Given the role wetlands play in pollutant filtering, flood control, and runoff storage, it may well be the absence of hydrologic connection (in the sense of interchange of waters) that shows the wetlands' significance for the aquatic system. In the administrative decision under review, however, the Corps based its jurisdiction solely on the wetlands' adjacency to the ditch opposite the berm on the property's****2252** edge. As explained earlier, mere adjacency to a tributary of this sort is insufficient; a similar ditch could just as well be located many miles from any navigable-in-fact water and carry only insubstantial flow toward it. A more specific inquiry, based on the significant nexus standard, is therefore necessary. Thus, a remand is again required to permit application of the appropriate legal standard. See, *e.g., INS v. Orlando Ventura,* 537 U.S. 12, 16, 123 S.Ct. 353, 154 L.Ed.2d 272 (2002) *(per curiam)* ("Generally speaking, a court of appeals should remand***787** a case to an agency for decision of a matter that statutes place primarily in agency hands").

* * *

In these consolidated cases I would vacate the judgments of the Court of Appeals and remand for consideration whether the specific wetlands at issue possess a significant nexus with navigable waters.

Justice STEVENS, with whom Justice SOUTER, Justice GINSBURG, and Justice BREYER join, dis-

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senting.
In 1972, Congress decided to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" by passing what we now call the Clean Water Act, 86 Stat. 816, as amended, 33 U.S.C. § 1251 *et seq*. The costs of achieving the Herculean goal of ending water pollution by 1985, see § 1251(a), persuaded President Nixon to veto its enactment, but both Houses of Congress voted to override that veto by overwhelming margins. To achieve its goal, Congress prohibited "the discharge of any pollutant"-defined to include "any addition of any pollutant to navigable waters from any point source"-without a permit issued by the Army Corps of Engineers (Army Corps or Corps) or the Environmental Protection Agency (EPA). §§ 1311(a), 1362(12)(A). Congress further defined "navigable waters" to mean "the waters of the United States." § 1362(7).

The narrow question presented in No. 04-1034 is whether wetlands adjacent to tributaries of traditionally navigable waters are "waters of the United States" subject to the jurisdiction of the Army Corps; the question in No. 04-1384 is whether a manmade berm separating a wetland from the adjacent tributary makes a difference. The broader question is whether regulations that have protected the quality of our waters for decades, that were implicitly approved by Congress, and that have been repeatedly enforced in case after case, must now be revised in light of the creative criticisms ***788** voiced by the plurality and Justice KENNEDY today. Rejecting more than 30 years of practice by the Army Corps, the plurality disregards the nature of the congressional delegation to the agency and the technical and complex character of the issues at stake. Justice KENNEDY similarly fails to defer sufficiently to the Corps, though his approach is far more faithful to our precedents and to principles of statutory interpretation than is the plurality's.

In my view, the proper analysis is straightforward. The Army Corps has determined that wetlands adjacent to tributaries of traditionally navigable waters preserve the quality of our Nation's waters by, among other things, providing habitat for aquatic animals, keeping excessive sediment and toxic pollutants out of adjacent waters, and reducing downstream flooding by absorbing water at times of high flow. The Corps' resulting decision to treat these wetlands as encompassed within the term "waters of the United States" is a quintessential example of the Executive's reasonable interpretation of a statutory provision. See ****2253***Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842-845, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984).

Our unanimous decision in *United States v. Riverside Bayview Homes, Inc.,* 474 U.S. 121, 106 S.Ct. 455, 88 L.Ed.2d 419 (1985), was faithful to our duty to respect the work product of the Legislative and Executive Branches of our Government. Today's judicial amendment of the Clean Water Act is not.

I

At each of the three sites at issue in No. 04-1034, the petitioners filled large areas of wetlands without permits, despite being on full notice of the Corps' regulatory requirements. Because the plurality gives short shrift to the facts of this case-as well as to those of No. 04-1384-I shall discuss them at some length.

The facts related to the 230-acre Salzburg site are illustrative. In 1988, John Rapanos asked the Michigan Department***789** of Natural Resources (MDNR) to inspect the site "in order to discuss with him the feasibility of building a shopping center there." App. to Pet. for Cert. in No. 04-1034, p. B15. An MDNR inspector informed Rapanos that the land probably included wetlands that were "waters of the United States" and sent him an application for a permit under § 404 of the Act.[FN1] Rapanos then hired a wetland consultant, Dr. Frederick Goff. After Dr. Goff concluded that the land did in fact contain many acres of wetlands, "Rapanos threatened to 'destroy' Dr. Goff if he did not destroy the wetland report, and refused to pay Dr. Goff unless and until he complied." *Ibid.* In the meantime, without applying for a permit, Rapanos hired construction companies to do $350,000 worth of work clearing the land, filling in low spots, and draining subsurface water. After Rapanos prevented MDNR inspectors from visiting the site, ignored an MDNR cease-and-desist letter, and refused to obey an administrative compliance order issued by the EPA, the matter was referred to the Department of Justice. In the civil case now before us, the District Court found that Rapanos unlawfully filled 22 acres of wetlands.

FN1. Pursuant to 33 U.S.C. §§ 1344(g)-(h), Michigan operates its own § 404 permitting

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program, subject to supervision from the Army Corps.

Rapanos and his wife engaged in similar behavior at the Hines Road and Pine River sites. Without applying for § 404 permits, they hired construction companies to perform extensive clearing and filling activities. They continued these activities even after receiving EPA administrative compliance orders directing them to cease the work immediately. They ultimately spent $158,000 at the 275-acre Hines Road site, filling 17 of its existing 64 acres of wetlands. At the 200-acre Pine River site, they spent $463,000 and filled 15 of its 49 acres of wetlands.

Prior to their destruction, the wetlands at all three sites had surface connections to tributaries of traditionally navigable waters. The Salzburg wetlands connected to a drain ***790** that flows into a creek that flows into the navigable Kawkawlin River. The Hines Road wetlands connected to a drain that flows into the navigable Tittabawassee River. And the Pine River wetlands connected with the Pine River, which flows into Lake Huron.

At trial, the Government put on a wetland expert, Dr. Daniel Willard, whom the trial court found "eminently qualified" and "highly credible." *Id.,* at B7. Dr. Willard testified that the wetlands at these three sites provided ecological functions in terms of "habitat, sediment trapping, nutrient recycling,****2254** and flood peak diminution." 4 Tr. 96 (Apr. 5, 1999). [FN2] He explained:

FN2. Dr. Willard did not "stud[y] the upstream drainage of these sites ... well enough to make a statement" about whether they also performed pollutant-trapping functions. 4 Tr. 96.

"[G]enerally for all of the ... sites we have a situation in which the flood water attenuation in that water is held on the site in the wetland ... such that it does not add to flood peak. By the same token it would have some additional water flowing into the rivers during the drier periods, thus, increasing low water flow.

. . . . .

"By the same token on all of the sites to the extent that they slow the flow of water of the site they will also accumulate sediment and thus trap sediment and hold nutrients for use in those wetland systems later in the season as well." *Id.,* at 95-96.

The District Court found that the wetlands at all three sites were covered by the Clean Water Act and that the Rapanoses had violated the Act by destroying them without permits. The Sixth Circuit unanimously affirmed. 376 F.3d 629 (2004).

The facts of No. 04-1384 are less dramatic. The petitioners in that case own a 20-acre tract of land, of which 16 acres are wetlands, located in Macomb County a mile from Lake ***791** St. Clair. These wetlands border a ditch that flows into a drain that flows into a creek that flows into Lake St. Clair. A 4-foot-wide manmade berm separates the wetlands from the ditch; thus water rarely if ever passes from wetlands to ditch or vice versa.

Petitioners applied for a permit to fill most of these wetlands with 57,500 cubic yards of material. They intended to build a 112-unit condominium development on the site. After inspecting the site and considering comments from, among others, the Water Quality Unit of the Macomb County Prosecutor's Office (which urged the Corps to deny the permit because "[t]he loss of this high quality wetland area would have an unacceptable adverse effect on wildlife, water quality, and conservation of wetlands resources," App. in No. 04-1384, p. 79a), the Corps denied the permit. *Id.,* at 84a-126a. As summarized in a letter sent to petitioners, reasons for denial included:

"Your parcel is primarily a forested wetland that provides valuable seasonal habitat for aquatic organisms and year round habitat for terrestrial organisms. Additionally, the site provides water storage functions that, if destroyed, could result in an increased risk of erosion and degradation of water quality in the Sutherland-Oemig Drain, Auvase Creek, and Lake St. Clair. The minimization of impacts to these wetlands is important for conservation and the overall ecology of the region. Because the project development area is a forested wetland, the proposed project would destroy the resources in such a manner that they would not soon recover from impacts of the discharges. The extent of impacts in the project area when considered both in-

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dividually and cumulatively would be unacceptable and contrary to the public interest." *Id.,* at 127a-128a.

As in No. 04-1034, the unanimous judgment of the District and Circuit Judges was that the Corps has jurisdiction over ***792** this wetland because it is adjacent to a tributary of traditionally navigable waters. 391 F.3d 704 (C.A.6 2004). The Solicitor General defends both judgments.

****2255** II

Our unanimous opinion in *Riverside Bayview* squarely controls these cases. There, we evaluated the validity of the very same regulations at issue today. These regulations interpret "waters of the United States" to cover all traditionally navigable waters; tributaries of these waters; and wetlands adjacent to traditionally navigable waters or their tributaries. 33 CFR §§ 328.3(a)(1), (5), and (7) (2005); §§ 323.2(a)(1), (5), and (7) (1985). Although the particular wetland at issue in *Riverside Bayview* abutted a navigable creek, we framed the question presented as whether the Clean Water Act "authorizes the Corps to require landowners to obtain permits from the Corps before discharging fill material into wetlands adjacent to navigable bodies of water *and their tributaries*." 474 U.S., at 123, 106 S.Ct. 455 (emphasis added).[FN3]

FN3. By contrast, we "d[id] not express any opinion" on the Corps' additional assertion of jurisdiction over "wetlands that are not adjacent to bodies of open water, see 33 CFR §§ 323.2(a)(2) and (3) (1985)." 474 U.S., at 131-132, n. 8, 106 S.Ct. 455; see also *id.,* at 124, n. 2, 106 S.Ct. 455 (making the same reservation). Contrary to Justice KENNEDY's reading, *ante,* at 2248 (opinion concurring in judgment), we were not reserving the issue of the Corps' jurisdiction over wetlands adjacent to tributaries, but only reserving the issue of the Corps' jurisdiction over truly isolated waters. A glance at the cited regulation makes this clear. Section 323.2(a)(2) refers to "[a]ll interstate waters including interstate wetlands" and § 323.2(a)(3) covers "[a]ll other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters." See also *Solid Waste Agency of Northern Cook Cty. v. Army Corps of Engineers,* 531 U.S. 159, 163-164, 121 S.Ct. 675, 148 L.Ed.2d 576 (2001) (considering the validity of an application of § 328.3(a)(3) (1999), which is substantively identical to § 323.2(a)(3) (1985) and to § 323.2(a)(5) (1978)). Wetlands adjacent to tributaries of traditionally navigable waters were covered in the 1985 regulation by other provisions of the regulation, namely, a combination of §§ 323.2(a)(1) (covering traditionally navigable waters), (4) (covering tributaries of subsection (a)(1) waters), and (7) (covering wetlands adjacent to subsection (a)(4) waters).

***793** We held that, pursuant to our decision in *Chevron,*

> "our review is limited to the question whether it is reasonable, in light of the language, policies, and legislative history of the Act for the Corps to exercise jurisdiction over wetlands adjacent to but not regularly flooded by rivers, streams, and other hydrographic features more conventionally identifiable as 'waters.' " 474 U.S., at 131, 106 S.Ct. 455.

Applying this standard, we held that the Corps' decision to interpret "waters of the United States" as encompassing such wetlands was permissible. We recognized the practical difficulties in drawing clean lines between land and water, *id.,* at 132, 106 S.Ct. 455, and deferred to the Corps' judgment that treating adjacent wetlands as "waters" would advance the "congressional concern for protection of water quality and aquatic ecosystems," *id.,* at 133, 106 S.Ct. 455.

Contrary to the plurality's revisionist reading today, *ante,* at 2225-2227, 2229, *Riverside Bayview* nowhere implied that our approval of "adjacent" wetlands was contingent upon an understanding that "adjacent" means having a "continuous surface connection" between the wetland and its neighboring creek, *ante,* at 2226. Instead, we acknowledged that the Corps defined "adjacent" as including wetlands " 'that form the border of or are in reasonable proximi-

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