

EPA, Army Corps Issue Joint Guidance to Sustain Wetlands Protection under Supreme Court Decision

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(Washington, DC –June 5, 2007) Today, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers issued joint guidance for their field offices to ensure America’s wetlands and other water bodies are protected under the Clean Water Act (CWA). This action reinforces the Bush Administration’s commitment to protect and enhance the quality of our nation’s wetlands and water bodies.

“The Bush Administration is committed to protecting wetlands and streams under the Clean Water Act and Supreme Court decisions,” said Benjamin H. Grumbles, EPA’s assistant administrator for water. “Today’s action sends a clear signal we’ll use our regulatory tools to meet the President’s ambitious wetlands goals.”

“We are committed to protecting America’s aquatic resources under the Clean Water Act and in accordance with the recent Supreme Court decision,” John Paul Woodley Jr., Assistant Secretary of the Army (Civil Works), said. “This interagency guidance will enable the agencies to make clear, consistent, and predictable jurisdictional determinations. The results, once posted on agency websites, will document how the scope of the Clean Water Act jurisdiction is being determined.”

EPA and Corps staff will also use the guidance when taking enforcement actions under the CWA. The guidance clarifies those circumstances where a person may need to obtain a CWA Section 404 permit before conducting activities in wetlands, tributaries, and other waters. Individual tribal, state and local laws, regulations, or policies may further protect aquatic water resources.

The guidance is consistent with the Supreme Court’s decision in the consolidated cases *Rapanos v. United States* and *Carabell v. United States* regarding the scope of the agencies’ jurisdiction under the CWA. Specifically, this guidance discusses the agencies’ protection of three classes of waters through the following actions:

- 1) Continuing to regulate “traditionally navigable waters,” including all rivers and other waters that are large enough to be used by boats that transport commerce and any wetlands adjacent to such waters;
- 2) Continuing to regulate “non-navigable tributaries that are relatively permanent and wetlands that are physically connected to these tributaries”; and
- 3) Continuing to regulate based on case-by-case determinations for other tributaries and adjacent wetlands that have certain characteristics that significantly affect traditionally navigable waters.

The guidance supports a strong regulatory program that ensures no net loss of wetlands, which is one of three key elements to the Bush Administration wetlands policy. The other two elements include an active management program that will result in the restoration, enhancement and protection of three million acres of wetlands by 2009 and a commitment to conserve isolated wetlands such as prairie potholes.

During the first six months implementing the guidance, the agencies are inviting public comments on case studies and experiences applying the guidance. Upon publication of the notice of availability in the Federal Register, comments can be submitted to docket EPA-HQ-OW-2007-0282 through www.regulations.gov. The agencies will more broadly consider jurisdictional issues, including additional clarification and definition of key terminology, through rulemaking or other appropriate policy practice.

Additional information: [URL]

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