

## Key Points for *Rapanos* and *Carabell* Decision

1. As a result of the Supreme Court decision on *Rapanos* (June 2006), the agencies will be conducting a more thorough and robust analysis when we are determining whether a particular water body is subject to Clean Water Act (CWA) section 404 jurisdiction (i.e., whether the water body is a jurisdictional “water of the United States”).
2. The Supreme Court decision requires that, in certain circumstances, a “significant nexus” evaluation be conducted to support jurisdictional and non-jurisdictional determinations.
3. The Army-EPA *Rapanos* guidance implements the Supreme Court’s decision.
  - The guidance directs the agencies to more thoroughly document jurisdiction using a standardized form, and to post results on the Corps districts’ websites.
  - The guidance identifies, as generally non-jurisdictional under the CWA, erosional features, swales, small washes (characterized by low volume, infrequent, and short duration flow), and many ditches excavated wholly in and draining only uplands.
4. In addition, the Army and EPA will:
  - Modify the “phone home” provision associated with the Supreme Court decision in the *Solid Waste Agency of Northern Cook County (SWANCC)* guidance:
    - Originally, headquarters (HQ) required the districts to obtain concurrence for only those actions asserting CWA jurisdiction over any non-navigable, intra-state, isolated water body;
    - The guidance now requires that jurisdictional determinations for any isolated water body be elevated for an agency HQ review prior to the district’s making a final decision on jurisdiction;
  - Require that all actions undergoing a “significant nexus” evaluation be available for review by EPA; and
  - Allow EPA an opportunity to request a higher level review if there is a dispute.
5. To increase agency accountability, the Army-EPA *Rapanos* guidance calls for more transparency and public accessibility. All relevant materials associated with the guidance will be published on the internet for public access. Information may be found at <http://www.usace.army.mil/cw/cecwo/reg/> or <http://www.epa.gov/owow/wetlands/>.
6. During the first six months implementing the guidance, the agencies will invite public comments on case studies and experiences applying the guidance. The agencies, within nine months from the date of issuance, will reissue, revise, or suspend the guidance after carefully considering the public comments received and field experiences with implementing the guidance.
7. The agencies intend to more broadly consider jurisdictional issues, including clarification and definition of key terminology, through rulemaking or other appropriate policy practice.
8. 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.