

EPA, Army Corps Sustain Wetlands Protection under Supreme Court Decision

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(Washington, DC – March 15, 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 waterbodies are protected. This action reinforces the Bush Administration’s commitment to protect and enhance the quality of our nation’s wetlands and waterbodies.

“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 as required by 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 and 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 Clean Water Act. The guidance clarifies those circumstances where a person may need to obtain a Clean Water Act Section 404 permit before conducting activities in wetlands, tributaries, and other waters. Individual tribal, state and local laws, regulations, or policies which 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 Clean Water Act. Specifically, this guidance discusses the agencies’ protection of three classes of waters through the following contemplated 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 the first class of waters (traditionally navigable waters).