

# ENVIRONMENTAL

# NEWSFLASH

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## COMMENT PERIOD RUNNING FOR GUIDANCE REGARDING CLEAN WATER ACT JURISDICTION AFTER *RAPANOS*

The time period for submitting comments on the guidance recently issued by the EPA and the Army Corps of Engineers regarding the Clean Water Act Jurisdiction of those agencies after the Supreme Court decision in *Rapanos v. United States* expires on December 5, 2007.

The guidance, issued on June 5, 2007, provides that the agencies will assert Clean Water Act jurisdiction over (1) traditional navigable waters; (2) wetlands adjacent to traditional navigable waters; (3) non-navigable tributaries of traditional navigable waters that are relatively permanent, where the tributaries typically flow year-round or have continuous flow at least seasonally (generally three months); and (4) wetlands that directly abut such tributaries. The agencies will generally not assert jurisdiction over (1) swales or erosional features; and (2) ditches excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water. The agencies will decide jurisdiction over the following based on a fact specific analysis to determine whether there is a significant nexus with a traditional navigable water: (1) non-navigable tributaries that are not relatively permanent; (2) wetlands adjacent to non-navigable tributaries that are not relatively permanent; and (3) wetlands adjacent to but that do not directly abut a relatively permanent, non-navigable tributary. The significant nexus analysis will focus on whether the water in question significantly affects the chemical, physical and biological integrity of the downstream traditional navigable water.

FOR MORE INFORMATION, PLEASE CONTACT:

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