



MEMORANDUM FOR DIRECTOR OF CIVIL WORKS AND US EPA REGIONAL ADMINISTRATORS

Subject: U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) Coordination on Jurisdictional Determinations (JDs) under Clean Water Act (CWA) Section 404 in Light of the *SWANCC* and *Rapanos* Supreme Court Decisions

1. Purpose. The purposes of this memorandum are to promote and improve interagency cooperation, facilitate increased communication, and establish an efficient and effective process for determining Clean Water Act Section 404 jurisdiction in light of the Supreme Court decisions in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (*SWANCC*), and the consolidated cases *Rapanos v. United States*, and *Carabell v. United States*, 126 S. Ct. 2208 (2006) (jointly hereafter *Rapanos*). The procedures included in this memorandum replace the coordination procedures contained in the January 2003 EPA/Army guidance implementing the *SWANCC* decision (but leaves the remainder of that guidance unaffected) and articulate new coordination procedures for JDs affected by *Rapanos*. This memorandum does not nullify or supersede the 1990 Geographic Jurisdiction Memorandum of Agreement (MOA), including its special case provisions.
2. Current Practice. The Corps districts are currently posting all Approved JD Forms for public review on their respective websites. The EPA efficiently reviews these JD forms, as needed, to monitor consistency with regulation and policy.
3. Documentation Requirements. Under this memorandum, case-by-case evaluations are required to determine if there is a "significant nexus" to navigable waters for JDs involving the classes of waters listed in subparagraph 4.a.(2). Documentation for these JDs shall be made using the Approved JD Form developed by Corps headquarters (HQ) in consultation with EPA. The information on the jurisdictional form shall identify the rationale for asserting or not asserting jurisdiction.
4. Coordination Requirements.
 - a. Interagency Coordination Required. The EPA and the Corps will follow the coordination procedures in paragraph (5) for the following JDs:
 - (1) Determinations for intra-state, non-navigable, isolated waters potentially covered solely under 33 C.F.R. §328.3(a)(3), where jurisdiction is asserted or not asserted based on interstate commerce factors.

