

New Guidance on Clean Water Act Jurisdiction: Longer Federal Reach, Less Certainty

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On May 2, the Environmental Protection Agency and the Army Corps of Engineers jointly published [new guidance](#) on how the agencies will determine which waters and wetlands are subject to jurisdiction under the Clean Water Act.

The new guidance is the third attempt by the agencies to bring clarification from the muddled 2006 U.S. Supreme Court decision in *United States v. Rapanos*. In that case, the Court gave three different approaches to jurisdiction, causing considerable uncertainty among courts, agencies, and developers.

The guidance indicates that the sweep of federal jurisdiction will grow substantially. Having received a number of unfriendly comments even before the guidance was formally published, including a letter signed by 170 members of Congress, the agencies have indicated in the guidance that a formal rulemaking will follow. Comments on the new guidance will be accepted until July 1, 2011.

For more information, please see our article "[New Post-Rapanos Guidance—Longer Federal Reach, Less Certainty](#)" to be published in the May 15 issue of The Water Report.

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