



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

CECW-CO

JAN 28 2008

**MEMORANDUM FOR COMMANDER, MAJOR SUBORDINATE COMMANDS AND
DISTRICT COMMANDS**

SUBJECT: Process for Coordinating Jurisdictional Determinations Conducted Pursuant to Section 404 of the Clean Water Act in Light of the *Rapanos* and *SWANCC* Supreme Court Decisions

1. Effective immediately, unless and until paragraph 5(b) of the June 5, 2007, *Rapanos* guidance coordination memorandum is modified by a joint memorandum from Army and EPA, we will follow these procedures:

a. For jurisdictional determinations involving significant nexus determinations, Corps districts will send copies of draft jurisdictional determinations via e-mail to appropriate EPA regional offices. The EPA regional office will have 15 calendar days to decide whether to take the draft jurisdictional determination as a special case under the January 19, 1989, "Memorandum of Agreement Between the Department of the Army and the USEPA Concerning the Determination of the Section 404 Program and the Application of the Exceptions under Section 404(f) of the Clean Water Act." If the EPA regional office does not respond to the district within 15 days, the district will finalize the jurisdictional determination.

b. For jurisdictional determinations involving isolated waters determinations, the agencies will continue to follow the procedure in paragraph 5(b) of the June 5, 2007, coordination memorandum, until a new coordination memorandum is signed by Army and EPA. (In accordance with paragraph 6 of the June 5, 2007, coordination memorandum, this is the 21-day timeline that can only be changed through a joint memorandum between the agencies).

2. Approved jurisdictional determinations are not required for non-reporting NWP, unless the project proponent specifically requests an approved jurisdictional determination. For proposed activities that may qualify for authorization under an SPGP or RGP, an approved jurisdictional determination is not required unless requested by the project proponent.


3. We will continue to work with EPA to resolve the jurisdictional determinations involving significant nexus and isolated waters determinations that are currently in the elevation process.

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4. Districts are to continue posting completed Approved Jurisdictional Determination Forms on their web pages.

FOR THE COMMANDER:



DON T. RILEY
Major General, USA
Director of Civil Works