



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DIVISION, GREAT LAKES AND OHIO RIVER  
CORPS OF ENGINEERS  
P.O. BOX 1159  
CINCINNATI, OHIO 45201-1159

OCT 17 2006

Programs Directorate

Mr. Mike Eaton  
650 Sundown Court  
Plainfield, Indiana 46168-1289

Dear Mr. Eaton:

Recently, the United States Supreme Court issued a decision in *Rapanos v. United States*, \_\_\_ U.S. \_\_\_, 126 S.Ct. 2208, (2006), that addressed the scope of the Corps' regulatory jurisdiction under Section 404 of the Clean Water Act (CWA). The Court considered jurisdiction over certain waters, including intermittent and ephemeral waters and wetlands. Your request for appeal (RFA) is associated with an approved jurisdictional determination (JD) that covers waters addressed by the Court decision.

Currently, the United States Environmental Protection Agency (USEPA) and the Department of the Army are developing joint guidance to clarify the government's CWA jurisdiction in light of the Court's decision. Given the complexity created by the Justice's decision in these cases the content and availability of this guidance is unknown. Accordingly, I have elected to postpone a final decision on the merits of your RFA until the USEPA and the Army have issued joint national guidance to their respective agencies.

If you have any questions or concerns regarding your RFA, you may contact Mr. Michael Montone, my Administrative Appeal Review Officer, at (513) 684-6212, by writing to the above address, or by e-mail at: michael.g.montone@usace.army.mil.

Sincerely,

Bruce A. Berwick  
Brigadier General, U.S. Army  
Division Engineer

Copy furnished:  
Louisville District (J. Townsend)