

UPDATE: SUPREME COURT TO HEAR WETLANDS CASES

We reported in our newsletter last fall that whether property owners are required to obtain a “Section 404” permit to fill wetlands depends upon whether those wetlands are adjacent to navigable waterways. But what that means has never been clear. The United States Supreme Court will address the issue this term when it entertains argument in two cases from Michigan: *Rapanos v. United States* and *Carabell v. U.S. Army Corps of Engineers*. In these two cases, developers were trying to build apartment and shopping complexes on property containing wetlands. The developers claim the wetlands are isolated, are therefore not subject to U.S. Army Corps of Engineers jurisdiction and that no permit is required to fill them. The wetlands are connected via man-made ditches to navigable lakes and streams. Thus the issue is whether this connection through man-made ditches and drains is sufficient to constitute “adjacency” to navigable waters for purposes of Section 404 regulation. In both cases, the lower courts had determined that the connection was sufficient to confer jurisdiction under the Clean Water Act.

The cases have been consolidated into one for hearing. It is hoped that the ruling on these cases will end the confusion over the issue of adjacency.

For further information, please contact Karin O’Connell at 312/899-1616 (koconnell@gouldratner.com) or Shannon Clark at 312/899-1632 (sclark@gouldratner.com).

This article appeared in the Fall 2005 issue of the GReview.