

## ***Federal Court of Appeals Reverses Sentence For Environmental Crime***

The United States Court of Appeals for the Sixth Circuit has reversed a district court's sentence in a criminal wetland case because that sentence did not conform to the federal Sentencing Guidelines. John A. Rapanos was convicted of discharging pollutants into wetlands in violation of the federal Clean Water Act and sentenced by the district court to three years' probation and fined \$185,000.

The sentence imposed by the district court reflected several downward adjustments from the sentence recommended in the federal Sentencing Guidelines. First, the district court decreased Rapanos 's sentence because he had only discharged soil and sand into wetland that he moved from another portion of his property. The district court judge reasoned that the Sentencing Guidelines "are geared toward the discharge of harmful pollutants that result in actual contamination" and, in Rapanos's case, there "was not any toxic discharge, there were no pesticides, no nuclear material, no sewage, no paint, lead or other harmful things, just sand and soil that was already on this private property."

Second, the district court judge indicated that he did not impose any jail time because he fundamentally disagreed with the Sentencing Guidelines' treatment of environmental crimes. The prosecutor had requested that Rapanos receive a sixty-three month jail sentence under the Sentencing Guidelines. The judge noted, however, that the recommended sentence for the last person to come before him, an illegal alien with a prior criminal record convicted of "selling dope on the streets of the United States," was only ten months. "Now, if that isn't our system gone crazy, I don't know what is. And I'm not going to do it," the judge stated.

Third, the district court judge reduced Rapanos's sentence because the judge found that Rapanos had accepted responsibility for his actions. The judge justified this decrease by stating that Rapanos did not deny the "factual element of his guilt, i.e., altering the land, but rather, he challenged whether the land qualifies as wetlands, i.e., the applicability of the statute to his conduct."

The United States appealed the downward adjustments to Rapanos's sentence and the Appeals Court agreed that the district court had abused its discretion under the Sentencing Guidelines. The Appeals Court first noted that "a sentencing court should impose a sentence prescribed in the guidelines 'unless the court finds that there are aggravating or mitigating circumstances of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines.'" The Appeals Court further noted that a sentencing court should not take into account factors already considered in the Sentencing Guidelines. The Appeals Court then held that the Sentencing Guidelines adequately addressed the district court's concerns about the nature of the pollution and the risk involved with Rapanos's activities. Moreover, the Appeals Court held that the district court's "fundamental disagreement with the law and an inappropriate comparison to a wholly unrelated case are not permissible factors to consider" under the Sentencing Guidelines. Finally, the Appeals Court found that Rapanos's pre-trial activities did not demonstrate that he had accepted responsibility for his actions. The court noted that Rapanos had fired his wetland consultant, ignored cease and desist orders, never applied for a wetland permit, and refused to cooperate in the preparation of a pre-sentencing report.

The Appeals Court, therefore, remanded the case back to the district court for resentencing. The Appeals Court also summarily affirmed Rapanos's conviction and the district court's denial of his motion for a new trial.

*United States v. Rapanos*, Nos. 98-2424, 99-1074, 99-1578, 235 F.3d 256 (6th Cir., Dec. 15, 2000).

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