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Jurisdictional Review of Agency Clean Water Act Jurisdiction Determinations?: U.S. Supreme Court Holds That A Jurisdictional Determination is a Final Action Reviewable by the Courts

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The United States Supreme Court issued an opinion today affirming the decision of the Eighth Circuit Court of Appeals which had held that a federal district court could review a United States Army Corps of Engineers ("Corps") Clean Water Act jurisdictional determination. See *United States Army Corps of Engineers v. Hawkes Co., Inc., et al.*, Nov. 15-290.

The U.S. Supreme Court held that a Corps' approved jurisdictional determination is a final agency action jurisdictionally reviewable under the Administrative Procedures Act.

The issue addressed in the Eighth Circuit *Hawkes* decision was whether a party may seek federal court review of a court determination that a particular parcel is subject to the Clean Water Act. The Eighth Circuit concluded that Corps jurisdictional determination constituted "final agency action." The Fifth Circuit Court of Appeals had previously reached the opposite conclusion in *Belle Co. LLC v. U.S. Army Corps of Engineers*.

In 2012, the U.S. Supreme Court had held in the *Sackett* decision that property owners may appeal directly to federal courts from a federal Clean Water Act wetlands "compliance order" issued by the federal government.

In *Hawkes*, the Corps designated property owned by the Hawkes Co., Inc., Pierce Investment Company, and LPF Properties, in Minnesota as jurisdictional Clean Water Act wetlands. The property owners argued that they had a right to bring a federal district court challenge to the Corps regulatory findings.

The United States argued that the property owners in such litigation (involving Clean Water Act jurisdictional determinations) do not have a right to jurisdiction review until they first obtained a permit.

The U.S. Supreme Court granted a *Petition for a Writ of Certiorari* and a number of groups filed amicus briefs addressing the appeal.

The U.S. Supreme Court held in *Hawkes* that the Corps jurisdictional determination is jurisdictionally reviewable under the Administrative Procedures Act because two conditions had been satisfied for the agency actions to be “final” under that statute. The Court held that:

- the action marked the consummation of the agency’s decision making process
- the action is one by which rights or obligations have been determined, or from which legal consequences will flow

The United States Supreme Court stated that an approved jurisdictional determination clearly marks the consummation of the Corps’ decision making on the question of whether a particular property does or does not contain “waters of the United States.” It also noted that the definitive nature of approved jurisdictional determinations give rise to “direct and appreciable legal consequences.”

[Click here to download a copy of the opinion.](#)