



Construction Industry Round Table

Judicial News

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6/01/2016 – Supreme Court Takes First Action Regarding Controversial “Waters of the U.S.” Rule

Yesterday, May 31st, the United States Supreme Court issued an 8-0 opinion in *U.S. Army Corps of Engineers v. Hawkes Company*. The U.S. Army Corps of Engineers, and Pacific Legal Foundation, representing Hawkes Company, squared-off regarding the Corps' decision that Hawkes Company could not use its property for peat farming without first spending hundreds of thousands of dollars in pursuit of a federal wetlands permit under the Environmental Protection Agency's new highly controversial and contested "Waters of the United States" (WOTUS) rule. The Court found that the Corps' decision, (called a Jurisdictional Determination), is judicially reviewable under the Administrative Procedure Act, a blow to the agency's position and a potential “stop” or constraint on *unfettered* government actions.

In 2015, the Corps and EPA adopted a new rule modifying the definition of the scope of waters covered by the Clean Water Act interpreting what they contended was scientific research and Supreme Court rulings on the Act. [See, Clean Water Rule: Definition of “Waters of the United States,” 80 Fed. Reg.37054, 37055–37056]. CIRT, and others in the design/construction community, vigorously opposed the rulemaking as proposed. Since then, the new rule has been “stayed” nationwide pending resolution of claims that the rule is arbitrary, capricious, and contrary to law. [See, *In re EPA*, 803 F. 3d 804, 807–809 (CA6 2015)]. *For details see, CIRT story dated (05/27/2015) including link to CIRT's (10/20/2014) comment letter.*