

Insights



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A Hit and a Miss (Regardless of Which Side You Are On)

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In the last few days, both the regulated community and environmental groups each chalked up one win and one loss. The U.S. Environmental Protection Agency (EPA) as a result has more work to do on both challenged regulations.

WOTUS

(State of Georgia, et al. v. Andrew R. Wheeler et al. No. 2:15-ev-00075)

On August 21, 2019, the District Court for the Southern District of Georgia, Brunswick Division, held that the Waters of the United States (WOTUS) Rule promulgated by the EPA and the U.S. Army Corps of Engineers in 2015 “extends the Agencies’ delegated authority beyond the limits of the CWA [Clean Water Act].” The court determined that the rule was not a permissible construction of the phrase “waters of the United States” within the statute and that the agencies’ promulgation of the WOTUS Rule violates the procedural requirements of the Administrative Procedures Act.

The order granted the plaintiffs’ (originally a group of states) motions for summary judgment, denied the intervenor defendants’ (since the agencies declined to defend the rule, two environmental groups defended the substantive challenges) motion, denied the intervenor plaintiffs’ motion (at this time), remanded the WOTUS Rule back to the agencies for further proceedings consistent with this order (in lieu of vacatur, since efforts to repeal and replace are already underway), and left in place the court’s 2018 preliminary injunction enjoining enforcement of the rule in the states that were parties to the case pending the outcome of the ongoing administrative proceedings regarding the rule.

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