



# Supreme Court Holds that Jurisdictional Determinations are Subject to Review under the Administrative Procedure Act

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In *U.S. Army Corps of Engineers v. Hawkes*, the Supreme Court held that a Jurisdictional Determination (JD) issued by the U.S. Army Corps of Engineers that specifies whether a particular parcel of property includes waters subject to regulation under the Clean Water Act (CWA), and, if so, to what extent, constitutes final agency action reviewable under the Administrative Procedure Act (APA). The decision allows landowners to challenge JDs that they perceive to be unlawful and also clarifies that a negative JD (that is, a decision that no jurisdictional waters are present) operates as a five-year safe harbor protecting the property owner from an enforcement proceeding by the Corps or EPA for violation of the CWA associated with discharges to features covered by the negative JD.

The case before the Court involved a challenge brought by three companies in Minnesota to a JD issued by the Corps stating that their property contained waters of the United States (that is, waters subject to jurisdiction under the CWA). The companies challenged the JD in federal district court under the APA, which authorizes challenges to final agency action for which there is no other adequate remedy in a court. The district court dismissed the case on the grounds that a JD is not a final agency action. The United States Court of Appeals for the Eighth Circuit reversed. The Supreme Court sided with the Eighth Circuit, holding that a JD is final agency action for the purpose of the APA.

In its decision, the Court noted that the federal government conceded during the litigation that a JD is final in that it marks the consummation of the Corps' decision-making process. But the federal government contested that a JD is an action by which rights or obligations have been determined or from which legal consequences will flow. The Court rejected the federal government's position, opining that the definitive nature of JDs gives rise to direct and appreciable legal consequences. In so holding, the Court emphasized

it was taking a pragmatic approach to determining finality. The Court also noted that the APA includes a presumption of reviewability of all final agency actions.

Because it has the potential to affect land use decisions on both public and private lands across so much of the United States, the reach of the CWA is a subject of ongoing national debate. This is reflected in the current complex litigation with respect to the definition and scope of waters of the United States, now running its course in multiple lower courts. It is also emphasized in the concurring opinion of Justice Kennedy, who noted that the CWA continues to raise troubling questions regarding the Government's power to cast doubt on the full use and enjoyment of private property throughout the Nation.