



Sackett v. EPA

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The Clean Water Act

- **Federal Water Pollution Control Act of 1948**
- **Major changes in 1972, resulted in what is commonly called the Clean Water Act of 1972**
 - **Pollution control authority to EPA**
 - ***No unpermitted discharge of point source pollutants***
 - **Maintained water quality standards for surface waters**
 - **Regulate pollutant discharges**
 - **... and much more**



WOTUS

“[T]he outer boundaries of the Act’s geographical reach have been uncertain from the start. The Act applies to ‘the waters of the United States,’ but what does that phrase mean?”

“For more than a half century, the agencies responsible for enforcing the Act have wrestled with the problem and adopted varying interpretations. On three prior occasions, this Court has tried to clarify the meaning of ‘the waters of the United States.’ But the problem persists. When we last addressed the question 17 years ago, we were unable to agree on an opinion of the Court. Today, we return to the problem and attempt to identify with greater clarity what the Act means by ‘the waters of the United States.’”



Facts

- **Property owner seeking to backfill property for development**
- **Needed a permit from the Corps to discharge dredged or fill material into waters of the U.S.**
- **EPA defined “the waters of the United States” to include “[a]ll ... waters” that “could affect interstate or foreign commerce,” as well as “[w]etlands adjacent” to those waters. 40 C.F.R. §§ 230.3(s)(3), (7) (2008)**
- **Agency guidance instructed officials to assert jurisdiction over wetlands “adjacent” to non-navigable tributaries when those wetlands had “a significant nexus to a traditional navigable water.”**



A Matter of Statutory Interpretation

EPA and Corps initially had different interpretations of the WOTUS language promulgated in their respective regulations, with the Corps' view being more limited in scope.

“[The Corps] soon promulgated new, much broader definitions *designed to reach the outer limits of Congress's commerce power.*”



The New Standard

“In sum, we hold that the CWA extends to only those wetlands that are ‘as a practical matter indistinguishable from waters of the United States.’”

“In sum, we hold that the CWA extends to only those ‘wetlands with a continuous surface connection to bodies that are ‘waters of the United States’ in their own right,’ so that they are ‘indistinguishable’ from those waters.”



Potential Implications

***Sackett* is “not just about wetlands, wildlife habitat and open space. This is about, Are we going to have enough clean water to drink?”**

Kyla Bennett, former wetlands permit reviewer at EPA.

The ruling could open the door for states to relax pollutant limits on discharges to bodies of water no longer covered by the Clean Water Act.

Betsy Southerland, a former director of science and technology in EPA’s water office.

Greenwire Article, Miranda Wilson January 19, 2024.



Potential Implications

Oregon and Colorado, for example, do not anticipate significant impacts to discharge permits under NPDES due to the court ruling. That's because both states have laws on the books requiring permits for pollution into most state bodies of water, regardless of the definition of "waters of the U.S."

Arizona, one of the most arid states in the nation, has a surface water protection program that covers certain waters beyond the definition of WOTUS, said Alma Suarez, a spokesperson for the Arizona Department of Environmental Quality.

Greenwire Article, Miranda Wilson January 19, 2024.



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