

News Release

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U. S. Army Corps of Engineers
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Supreme Court ruling affects wetland regulation

A recent Supreme Court decision changes slightly the way the Army Corps of Engineers administers the section of the Clean Water Act dealing with work in wetlands and other waters.

In a case involving an Illinois solid waste agency, the court ruled that the federal government may not regulate work in isolated waters if the only reason for regulating that work is because migratory birds use the water.

After reviewing the decision, legal counsel for the Environmental Protection Agency and Corps of Engineers determined that most of the Corps' jurisdictional regulations under Section 404 of the Clean Water Act are unaffected by the ruling. For instance, the Corps continues to regulate all waters, which are navigable or interstate, all of the streams that flow to these waters (tributaries), and all wetlands adjacent to those streams, lakes or tidal areas.

The Court's determined that "nonnavigable, isolated, [and] intrastate" waters whose sole reason for being regulated was their connection to migratory bird usage will not be regulated by the Corps of Engineers.

Waters which are nonnavigable, isolated, [and] intrastate, which have other interstate commerce ties will be analyzed on a case by case basis by the Corps and will likely continue to be regulated.

"We're still waiting for specific guidance from our Washington, D. C. office on how to apply the ruling," said Art Champ, chief of the Corps' Sacramento regulatory office. "In the meantime, we'll continue to regulate, to the full extent, most of the waters that we regulated before the Supreme Court ruling. Anyone considering work in waters, including wetlands, should contact the Corps of Engineers, just as in the past, to determine if a permit is required," he added. People may call the Corps' toll-free information line at 800-227-0951 and leave a message. Their message will be answered within one business day.

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