

Introduction to the 2025 Edition

This edition of *The Law of Wetlands Regulation* describes guidance documents recently issued by the Corps and EPA: *the Corps on its decision-making for the establishment of mitigation banks* and credit releases and *EPA on the use of its enforcement authority* that includes information on case selection, enforcement goals and tools (6:44.1 & 12:1)

Other highlights of this Release include:

- A district court ruled *the Corps employed too broad a project purpose in its alternative analysis* and inappropriately gave deference to EPA rather than the Corps. (6:18)
- A district court ruled that Clean Water Act jurisdiction *does not require the area be practically indistinguishable from waters*. (4:18)
- One district court *rejected wetlands jurisdiction for a creek* because it was ordinarily a dry channel and another *rejected jurisdiction because the area was adjacent to a ditch*, not a river, stream or lake. (4:18)
- The Corps and EPA entered into a *Memorandum of Agreement on when ditches are subject to Clean Water Act jurisdiction*. (5:5)
- A district court ruled *moot a wetlands case where the project had been completed* and there was no on-going injury. (9:8)
- Several courts *reversed the Corps' issuance of Rivers and Harbors Act permits* for not meeting the public interest test. (6:11)
- A district court *rejected the Corps' refusal to consider in its environmental impact statement the catastrophic spill of wastes* from a gold mine tailings pond as amounting to a worst-case analysis of a low probability event. (6:73)
- *District courts ruled on standing to sue the Corps*, one finding standing where the plaintiff could observe alleged Clean Water Act violations and another rejecting standing as too generalized and not supported by specific facts. (9:3)