

Highlights April 2026 Edition

Highlights for April, 2026 *Federal Environmental Regulation of Real Estate*

Second Circuit held that Clean Water Act's pre-suit notice requirement for citizen suits is not jurisdictional. In *Mid-New York Environmental and Sustainability Promotion Committee, Inc. v. Dragon Springs Buddhist, Inc.*, 152 F.4th 413 (2d Cir., September 16, 2025), an environmental group and property owner members filed a citizen suit, under the Clean Water Act (CWA). They claimed that a nonprofit organization violated the CWA by allegedly discharging polluted wastewater and stormwater containing fecal coliform from its property into nearby waterways exceeding permitted levels. The United States District Court for the Southern District of New York granted the organization's motion to dismiss for failure to state a claim. The environmental group and the property owners appealed. The United States Court of Appeals for the Second Circuit reversed and remanded, holding that in this matter first impression, the CWA's pre-suit notice requirement for citizen suits is not jurisdictional. In this case, the pre-suit notice adequately identified the offending activity and standards violated and adequately identified the location of the offending discharge.

Third Circuit held that confirmation order's finding that former corporate sibling had no responsibility for debtor's environmental liabilities was not third-party release that violated Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). In *In re Congoleum Corporation*, 149 F.4th 318 (3d Cir., August 22, 2025), a former corporate sibling of a Chapter 11 debtor, a manufacturer of flooring and other products that contained asbestos, brought a motion to reopen the debtor's bankruptcy case, which had been closed for more than a decade. The former corporate sibling also moved for a declaration that, under the order confirming the debtor's reorganization plan, it was not liable for certain environmental claims of the debtor's creditor stemming from the operation of the debtor's manufacturing facility. The United States Bankruptcy Court for the District of New Jersey reopened the case and ruled that the former corporate sibling was not liable for those claims. The creditor appealed. The District Court reversed, and the former corporate sibling appealed. The United

States Court of Appeals for the Third Circuit affirmed. The former corporate sibling's petition for panel rehearing was granted. Among other things, it was held that the Bankruptcy Court had subject matter jurisdiction to reopen the debtor's case to interpret the finding, included in the plan confirmation order, that the debtor's former corporate sibling had no responsibility for the environmental claims arising from the debtor's flooring business. Moreover, the confirmation order's finding that the former corporate sibling had no responsibility for the debtor's environmental liabilities was not a third-party release that violated the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

Ninth Circuit held that exemption for discharges composed entirely of return flows from irrigated agriculture applied so long as return flow did not contain additional point source discharges from activities unrelated to crop production. In *Pacific Coast Federation of Fishermen's Associations, Inc. v. Nickels*, 150 F.4th 1260 (9th Cir., September 5, 2025), citizen groups of commercial fishermen, recreationists, biologists, and conservationists filed a citizen's suit. They claimed that the United States Bureau of Reclamation and local water districts violated the Clean Water Act (CWA) by failing to obtain a National Pollutant Discharge Elimination System (NPDES) permit for their drainage project that collected water used to irrigate agricultural land and discharged pollutants into surrounding waters. The United States District Court for the Eastern District of California denied the parties' motions for judgment on pleadings, denied the plaintiffs' motion for summary judgment, and granted in part and denied in part the defendants' motion for summary judgment, and denied the plaintiffs' motion for reconsideration. The plaintiffs appealed. The United States Court of Appeals for the Ninth Circuit reversed and remanded. On remand, the United States District Court for the Eastern District of California granted in part the water districts' motion for summary judgment. The groups appealed. The Ninth Circuit affirmed, holding that exemption for "discharges composed entirely of return flows from irrigated agriculture" applied so long as the return flow did not contain additional point source discharges from activities unrelated to crop production. Moreover, groundwater seepage into the San Luis Drain from adjacent non-irrigated and unfarmed lands was not point source discharge. Additionally, groundwater seepage and runoff from highways, residences, and other non-irrigated lands in the Grassland Drainage Area did not constitute point source discharges. Furthermore, accumulated and remobilized sediment in San Luis Drain was not additional point source discharge from activities unrelated to crop

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production. Finally, runoff and groundwater from land occupied by an array of solar panels that occupied 178.3 acres of formerly irrigated land did not constitute point source discharges.

Ninth Circuit held in favor of United States Bureau of Land Management in action for violations of Wild Free-Roaming Horses and Burros Act and the National Environmental Policy Act (NEPA). In *Friends of Animals v. Burgum*, 164 F.4th 738 (9th Cir., January 14, 2026), an animal advocacy organization brought an action alleging violations of the Wild Free-Roaming Horses and Burros Act and the National Environmental Policy Act (NEPA). It was asserted that the violations were based on the United States Bureau of Land Management's (BLM) decision to approve a contract for a new off-range corral (ORC) on private land to hold and feed wild horses and burros removed from public lands pending adoption, sale, or transport to off-range pastures (ORP). The United States District Court for the District of Nevada entered summary judgment in BLM's favor, and the organization appealed. The United States Court of Appeals for the Ninth Circuit affirmed, holding that the organization had representational standing to bring the action. The BLM did not act arbitrarily and capriciously when it relied on the advice of veterinarians and animal welfare experts in setting standards for building and managing the ORCs, and the standards were sufficiently site-specific to the project. The BLM did not use a concentrated animal feeding operation (CAFO) permit to impermissibly limit the scope of its environmental assessment (EA). Indeed, the BLM took a sufficiently hard look at the project's impact on the groundwater and took a sufficiently hard look at the project's impact on the soil. Furthermore, the BLM adequately analyzed and addressed the humane treatment of animals in the EA and properly tailored the purpose and need statement in the EA. Finally, the finding of no significant impact (FONSI) issued by the BLM provided a convincing statement that the project's impacts would be insignificant.

District Court held that California Department of Parks and Recreation violated Endangered Species Act. In *Center for Biological Diversity v. Quintero*, 810 F. Supp. 3d 1135 (C.D. Cal. 2025), an environmental advocacy organization brought an action against the California Department of Parks and Recreation under the citizen-suit provision of the Endangered Species Act (ESA). The organization sought declaratory and injunctive relief to prevent motorized vehicle activities that allegedly resulted in the unpermitted incidental take of western snowy plover, a shorebird designated as a threatened species, within portions of a recreation area operated by Department designated

as a critical habitat for the snowy plover. The organization filed a motion for summary judgment. The United States District Court for the Central District of California granted the motion, holding that the organization's members suffered concrete and imminent injuries in fact. The members' aesthetic and recreational values in the recreation area were lessened by the Department's authorization of off-highway vehicle (OHV) use in the critical habitat for the snowy plover. Also, the members' aesthetic, recreational, and scientific injuries were traceable to the Department's authorization of (OHV) use in the critical habitat. The members' injuries would likely be redressed if the Department was enjoined from authorizing OHVs in the critical habitat. Finally, the Department's authorization of OHV use in the critical habitat resulted in take of the snowy plover for which the Department had no permit, in violation of the ESA.

District Court held Clean Water Act did not impose a nondiscretionary duty on the Environmental Protection Agency to identify and regulate additional pollutants. In *Farmer v. United States Environmental Protection Agency*, 805 F. Supp. 3d 253, 2025 WL 2761225 (D.D.C., September 29, 2025), farmers, county, and environmental organizations brought an action under the Clean Water Act (CWA) and the Administrative Procedure Act (APA) against the Environmental Protection Agency (EPA). They sought to compel agency action regarding regulation of sewage sludge containing per- and polyfluoroalkyl substances (PFAS). The EPA moved to dismiss for lack of subject-matter jurisdiction and failure to state a claim. The United States District Court for the District of Columbia granted the motion, holding that the CWA did not impose a nondiscretionary duty on the EPA to identify and regulate additional pollutants. The EPA's biennial report of its review of regulations of pollutants found in sewage sludge did not determine any rights or obligations nor create any legal consequences sufficient to establish that EPA's action was "final." The EPA's failure to list certain substances in its biennial report did not have the same impact on the rights of parties as an express denial of relief. Thus, it did not constitute a "final agency action."

Injunction granted in part and denied in part by District Court. In *Friends of the Everglades, Inc. v. Noem*, 796 F. Supp. 3d 1234 (S.D. Fla., August 21, 2025), environmental organizations brought an action against federal and state government agencies and officials, seeking declaratory and injunctive relief to halt construction and operation of an immigration detention facility in the Florida Everglades until the project complied with the National Environmental Policy Act (NEPA) and other federal,

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state, and local laws. A Native American Tribe intervened as plaintiff. The organizations and the Tribe moved for a preliminary injunction, and the defendants challenged venue. The United States District Court for the Southern District of Florida held that the Immigration and Nationality Act (INA) provisions stripping courts of jurisdiction to review decisions relating to detention and removal of noncitizens did not preclude judicial review of action. The relief requested did not fall within the INA's bar on federal courts granting class-wide injunctive relief against the provisions of the INA related to inspection, apprehension, examination, and removal of aliens. Venue was proper in the Southern District of Florida. There was a final agency action reviewable under the Administrative Procedure Act (APA). The construction and operation of the detention facility constituted a "major federal action" subject to NEPA requirements. The organizations and the Tribe demonstrated that they would suffer irreparable injury in the absence of a preliminary injunction. Finally, the balance of equities and public interest favored granting the preliminary injunction while the action was pending. The injunction was granted in part and denied in part.

District Court held that action by Fish and Wildlife Service was arbitrary and capricious. In *Center for Biological Diversity v. Burgum*, 807 F. Supp. 3d 1234 (D. Or. 2025), an environmental organizations brought an action against the Secretary of the Interior, the Fish and Wildlife Service (FWS), and the FWS's Director. The organizations challenged under the Administrative Procedure Act (APA) and the Endangered Species Act (ESA) the FWS's decision to list the streaked horned lark as a threatened rather than endangered species and the revised rule which expanded an exception from take prohibitions for certain agricultural activities across the lark's range. The plaintiffs moved for summary judgment, and the defendants cross-moved for summary judgment. The United States District Court for the District of Oregon held that the FWS's failure to consider impact of small-population effects on lark was arbitrary and capricious, under the APA, in the final rule that the lark was threatened and not endangered species under the ESA. The use of breeding pairs metric from draft recovery plan to assess resiliency of individual sites was arbitrary and capricious, under the APA, in the rule that the lark was threatened and not endangered species under the ESA. The failure to address the genetic effects currently impacting the lark in one area was arbitrary and capricious, under the APA, in the analysis of whether the area faced threats different in kind and degree from other populations, in rule that the lark was threatened and not endangered species, under the ESA. The expansion of exception in rule for take prohibition for

agricultural activities to all of lark's range was arbitrary and capricious, under the APA, following classification of lark as threatened species under ESA. The one year remand period was appropriate for the FWS to issue a new listing determination for the lark. The plaintiffs' motion was granted and the defendants' motion was denied.

District Court granted preliminary injunction in citizen suit under the Clean Water Act. In *West Virginia Rivers Coalition, Inc. v. Chemours Company FC, LLC*, 793 F. Supp. 3d 790 (S.D.W.Va., August 7, 2025), an environmental advocacy organization filed a citizen suit, under the Clean Water Act (CWA). The organization sought injunctive relief and civil penalties and claimed that a chemical company violated the CWA by discharging pollutants from its plant into the Ohio River in excess of permit limits, specifically, per- and polyfluoroalkyl (PFAS), including hexafluoropropylene oxide dimer acid (HFPO-DA), which were forever chemicals due to their persistence in environment. The organization moved for a preliminary injunction ordering the company to comply with the permit. The United States District Court for the District of West Virginia held that the organization's members would be irreparably harmed absent a preliminary injunction. The public would be irreparably harmed absent a preliminary injunction. The organization was likely to succeed on the merits of the CWA claim for unpermitted discharges of HFPO-DA at two outlets. The balance of equities weighed in favor of a preliminary injunction. The public interest supported grant of a preliminary injunction. The organization was only required to post a nominal bond. The motion for a preliminary injunction was granted.

Alabama Court of Civil Appeals held that board of commissioners properly approved expansion of landfill. In *Del Vecchio v. Board of Commissioners of City of Dothan*, — So. 3d —, 2025 WL 2487029 (Ala., August 29, 2025), landowners who objected to the expansion of a nearby city landfill brought an action against the city and its board of commissioners. They sought a common-law writ of certiorari to review the board's decision to expand the landfill. They also sought a declaratory judgment that the decision violated their procedural due-process rights. The Circuit Court entered judgment denying the motion by the landowners for summary judgment and granting the motion by the city and board for summary judgment. The landowners appealed. The Court of Civil Appeals affirmed, holding that the then-existing statute establishing procedures for local governing bodies to follow when approving the modification of an existing solid-waste-management site, rather than statute establishing

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procedures for local governing bodies to follow when approving the siting of a new solid-waste-management facility, applied to the process by which city and its board of commissioners were evaluating whether to approve expansion of landfill. The administrative record supported the finding that the board properly approved the landfill's expansion. Finally, as a matter of procedural due process, the city and the board provided the landowners with sufficient notice of the proceeding on the proposed expansion of the landfill.

Alaska Supreme Court denied request for injunctive relief against State. In *Forrer v. Department of Fish & Game, Board of Fisheries*, 579 P.3d 63 (Alaska, October 10, 2025), a longtime Alaska resident brought an action for declaratory and injunctive relief against the State. The resident alleged that the State failed to manage the chinook and chum salmon populations in the Yukon and Kuskokwim Rivers according to the sustained yield principle as required by the Alaska Constitution. When the case reached the Alaska Supreme Court, it was held that the request for injunctive relief presented a nonjusticiable political question, and that the request for declaratory relief did not present a justiciable actual controversy.

California Court of Appeal held that discretionary decision not subject to judicial review. In *Bareilles v. State Water Resources Control Board*, 117 Cal.App.5th 60 (Cal., November 17, 2025), a landowner petitioned for a writ of mandate challenging the regional water quality control board's order imposing administrative civil liability on him relating to his waste discharge and reporting violations. He also challenged the State Water Resources Control Board's decision declining to review the regional board's order. When the case reached the California Court of Appeal, it was held that the State Board's refusal to review the regional board's order was a discretionary decision not subject to judicial review. Also, the State Board's refusal of review was not an exercise of quasi-judicial power in violation of separation of powers doctrine.

Massachusetts Appeals Court denied declaratory and other relief to plaintiffs in action under state environmental statute. In *Currence v. A.D. Makepeace Company*, 106 Mass. App. Ct. 71 (Mass., September 19, 2025), ten residents and an environmental advocacy organization brought an action against an earth removal company, its subsidiary, and town earth removal committee. The plaintiffs sought declaratory and injunctive relief under the state environmental statute to stop alleged commercial mining operations at six sites that were allegedly damaging the environment in violation of town earth removal

bylaw. The Superior Court granted the defendants' motion to dismiss, ruling the environmental statute did not apply because the major purpose of the bylaw was not to prevent environmental damage, and dismissing plaintiffs' other claims including for mandamus and enforcement of the bylaw. The plaintiffs appealed and the Massachusetts Appeals Court held that the plaintiffs' allegations that earth removal company was engaged in unlawfully removing earth from three sites described "environmental damage." The major purpose of town's earth removal bylaw was to prevent or minimize damage to the environment. The statute allowing for injunctive remedies against those damaging the environment did not apply to town's earth removal committee. The plaintiffs' action was not untimely. The plaintiffs were not entitled to a writ of mandamus compelling town earth removal committee to enforce earth removal bylaw. The plaintiffs did not have a private cause of action under statute authorizing towns to make ordinances and bylaws and to affix penalties for breaches thereof. The plaintiffs were not entitled to a declaratory judgment. Affirmed in part and vacated in part.

Minnesota Court of Appeals affirmed judgment for plaintiff property owner in Minnesota Environmental Response and Liability Act action. In *Hogendorf v. Green*, 26 N.W.3d 895 (Minn., September 15, 2025), a neighboring property owner brought an action against a commercial landscaping business and its owner. The property owner alleged that the business discharged contaminating substances from its workshop onto neighboring property. The neighboring property owner asserted claims under the Minnesota Environmental Response and Liability Act (MERLA) as well as various common law claims. After denying the business and business owner's motion for summary judgment on the MERLA claims, and following a bench trial, the District Court determined that the business and its owner were responsible for the release of hazardous substances from their facility onto the neighboring property. The neighboring property owner was awarded declaratory relief, monetary damages for economic loss, and reasonable attorney fees. The common law claims were not decided because MERLA did not permit double recovery. The business and its owner appealed. The Minnesota Court of Appeals affirmed and held that the involvement by the State in the investigation and cleanup did not preclude the property owner's MERLA claim. The discharge of pesticide rinsate did not fall within agricultural exception to definition of release of a hazardous substance under MERLA. The business owner could be held liable as a "responsible person" under MERLA. The District Court's finding that work of property owner's environmental consultant was a reasonable and necessary removal cost was not

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clearly erroneous. The “actual economic loss” to a property owner under MERLA means the monetary damages that may be recovered from the real and substantial destruction or diminution of value of property. The Court of Appeals would defer to District Court’s determination of the weight and credibility of expert witnesses and their opinions, and therefore District Court did not err in relying on expert and appraisal put forth by property owner. The award of both diminution-of-value damages and contamination removal damages to property owner did not constitute impermissible double recovery.

New Mexico Court of Appeals held that organizations had standing under Water Quality Act. In *Concerned Citizens for Nuclear Safety v. New Mexico Water Quality Control Commission*, 2026-NMCA-021, 584 P.3d 1115 (N.M. Ct. App. 2025), organizations concerned for nuclear safety filed a petition for review challenging the New Mexico Environmental Department’s (NMED) issuance of ground water discharge permit for radioactive liquid waste treatment facility. The Water Quality Control Commission (WQCC) dismissed the petition for lack of standing. The organizations appealed. The New Mexico Court of Appeals reversed and remanded, holding that the organizations were adversely affected by the issuance of the permit, and thus, the organizations had standing under the Water Quality Act (WQA).

New York Court of Appeals held that impacted property owner had standing to raised challenge under State Environmental Quality Review Act. In *Seneca Meadows, Inc. v. Town of Seneca Falls*, — N.E.3d —, 2025 WL 3635447 (December 16, 2025), the owner of a solid waste management facility that was located within the town brought a hybrid article 78 proceeding and declaratory judgment action challenging the town’s compliance with the State Environmental Quality Review Act (SEQRA) when the town passed local law prohibiting solid waste disposal facilities from operating within the town. After a citizens’ group intervened as defendant, the Supreme Court, Seneca County, granted the owner’s motion for partial summary judgment and declared the law invalid. The group appealed. The Supreme Court, Appellate Division, reversed and the owner appealed. The New York Court of Appeals held that the owner had standing as an impacted property owner to raise a SEQRA challenge.

Oregon Court of Appeals held that Oregon Department of Environmental Quality has authority to designate “responsible persons.” In *Horsefly Irrigation District v. Department of Environmental Quality*, 344 Or. App. 23 (Ore., October 8, 2025), irrigation districts brought an action challenging the Oregon

Department of Environmental Quality's (ODEQ) designation of them as "responsible persons" under the Clean Water Act (CWA) for developing implementation plans for total maximum daily load (TMDL) for nutrients and for temperature discharged to waterbodies in subbasins. When the case reached the Oregon Court of Appeals, it was held that the ODEQ had authority to designate "responsible persons" for developing source-specific implementation plans. It was further held that the ODEQ had authority to designate irrigation districts as "responsible persons."

Oregon Court of Appeals held that California water quality standards were not "relevant water quality standards" the Oregon Department of Environmental Quality ODEQ could consider. In *PacifiCorp v. Oregon Department of Environmental Quality*, 344 Or. App. 11 (October 8, 2025), the operator of hydroelectric projects on a river and its tributaries brought an action challenging the Oregon Department of Environmental Quality's (ODEQ) designation of the temperature total maximum daily load (TMDL) for the river basin. On cross-motions for summary judgment, the Circuit Court entered judgment for the operator and remanded the ODEQ order. The ODEQ appealed. The Oregon Court of Appeals held that the "relevant water quality standards" which the ODEQ could consider did not include California water quality standards.

South Carolina Supreme Court held that environmental justice considerations not required for state water quality certification. In *Blue Ridge Environmental Defense League v. South Carolina Department of Environmental Services*, 447 S.C. 311, 926 S.E.2d 243 (2026), an environmental organization appealed the decision of the Administrative Law Court granting a state water quality certification necessary for natural gas pipeline operator to obtain a federal permit under Clean Water Act (CWA) to construct pipeline near river. The South Carolina Supreme Court held that substantial evidence supported the following findings: that there was a need for the project; that feasible alternatives were considered; that water quality impacts from the project would be temporary; that federally threatened or endangered species would not be affected by project; and that the project would impact only one state navigable water. Additionally, it was held that environmental justice considerations were not required for a state water quality certification.

Vermont Supreme Court addressed questions concerning medical monitoring. In *Neddo as Next Friend to Z.N. v. Monsanto Company*, 2025 VT 64, 350 A.3d 446 (Vt. 2025), a mother, on behalf of her minor children, brought a putative class

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action in federal court against a chemical manufacturer. The action sought relief establishing procedures for reimbursements of the cost of medical monitoring directed at identifying and diagnosing cancers and other illnesses in individuals allegedly exposed to polychlorinated biphenyls (PCBs) in Vermont public school buildings. The manufacturer filed a motion to dismiss, and the United States District Court certified two questions to the Vermont Supreme Court: whether the PCBs were “released” within the meaning of Vermont’s medical-monitoring statute, and whether the statute provided a remedy when the exposure to or sale of a toxic substance occurred before the statute was enacted. The Vermont Supreme Court held that the manufacturer’s sale of polychlorinated biphenyls (PCBs) from out-of-state facilities to third-parties was a “release” of a toxic substance under the medical-monitoring statute. The medical-monitoring statute applies only to exposures that occurred after the date of its enactment. However, the medical-monitoring statute may be applied to a defendant who sold a toxic substance to a third party before the statute was enacted.

Vermont Supreme Court held that Environmental Division did not have jurisdiction to hear individual’s appeal. In *In re Lake Bomoseen Association*, 2025 VT 59, 2025 WL 3119815 (Vt. 2025), an individual who used lake sought review of Agency of Natural Resources’ (ANR) denial of lake preservation organizations’ application for aquatic nuisance control permit. The Superior Court, Environmental Division dismissed for lack of standing and denied the applicant’s motion to intervene and be represented by non-attorney. The individual appealed. The Vermont Supreme Court held that the Environmental Division did not have jurisdiction to hear the individual’s appeal. The individual did not have a particularized interest sufficient to confer standing to challenge the permit denial. The individual failed to demonstrate that either the Environmental Division or the Supreme Court could have redressed the injury to his interests in the lake. The individual did not have standing to represent lake protection organization on appeal of Environmental Division’s dismissal.