# Highlights
# October 2026 Edition

Highlights for October 2026 ***Federal Environmental Regulation of Real Estate***

**Eleventh Circuit held that environmental organization established standing and that action was ripe for adjudication.** In Mobile Baykeeper, Inc. v. Alabama Power Company, 175 F.4th 1316 (11th Cir., May 18, 2026), an environmental organization brought a citizen suit under the Resource Conservation and Recovery Act (RCRA). It was alleged that the utility's closure plan for coal ash impoundment violated the Environmental Protection Agency (EPA) rule regulating coal ash storage facilities. The United States District Court for the Southern District of Alabama dismissed the complaint and denied the organization's motion for reconsideration. The United States Court of Appeals for the Eleventh Circuit reversed and remanded, holding that for standing, the organization satisfied the injury-in-fact requirement, the traceability requirement, and the redressability requirement for standing. Moreover, the action was ripe for adjudication.

**Ninth Circuit held that judicially-imposed issue-exhaustion requirement did not apply to HFRA scoping process.** In Alliance for the Wild Rockies v. Higgins, 183 F.4th 671 (9th Cir. 2026), an environmental organization brought an action against the United States Forest Service (USFS) challenging the USFS's determination that the Healthy Forest Restoration Act (HFRA) categorically exempted a proposed logging project in a national forest from full review under the National Environmental Policy Act (NEPA). It was alleged that the project fell outside the wildland-urban interface as defined by the HFRA. The United States District Court for the District of Idaho denied the environmental organization's motion for summary judgment and granted the USFS's cross-motion for summary judgment. The environmental organization appealed. The United States Court of Appeals for the Ninth Circuit reversed and remanded, holding that a judicially-imposed issue-exhaustion requirement did not apply to the HFRA scoping process.

**Ninth Circuit held that plaintiffs unlikely to succeed on merits of SALECA, NEPA, NHPA, RFRA, and Free Exercise claims.** In Arizona Mining Reform Coalition v. United States Forest Service, 172 F.4th 641 (9th Cir., April 8, 2026), environmental and tribal organizations, San Carlos Apache Tribe, and other Apache plaintiffs brought actions against the United States Forest Service (USFS) and a copper mining company. They sought an injunction to block the exchange of national forest land, including an Apache ceremonial religious ground, with the company's land, pursuant to the Southeast Arizona Land Exchange and Conservation Act (SALECA) in order to allow copper mining. They alleged violations of SALECA, the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Religious Freedom Restoration Act (RFRA), and the Free Exercise Clause. After consolidation, the United States District Court for the District of Arizona denied plaintiffs' motion for preliminary injunction. The plaintiffs appealed. The United States Court of Appeals for the Ninth Circuit affirmed, and held as follows: that the plaintiffs had Article III standing; that prudential standing for the SALECA appraisal claim was satisfied; that the final environmental impact statement (EIS) issued by USFS was reviewable as final agency action; that the plaintiffs were unlikely to succeed on the merits of SALECA appraisal claim, the NEPA claims, the SALECA and NHPA claims about consultation obligations, and the Free Exercise Clause and RFRA claims.

**Eighth Circuit held that Corps' decision to revoke landowner's shoreline use permit breached settlement agreement entered into previously by parties.** In Lackie v. Noe, 182 F.4th 717 (8th Cir. 2026), a landowner brought a judicial review action against the United States Army Corps of Engineers under the Administrative Procedure Act (APA). The landowner alleged that the Corps's decision to revoke the landowner's shoreline use permit was arbitrary and capricious because it breached a settlement agreement into which parties had previously entered. The United States District Court for the Eastern District of Arkansas affirmed and the landowner appealed. The United States Court of Appeals for the Eighth Circuit reversed and remanded with directions, holding that under federal common law as guided by Arkansas law, the settlement agreement entered into by the landowner and the Corps, which settled "all known disputes" concerning "all matters on the public lands," and which did not provide for revocation of shoreline use permit, encompassed settlement of dispute as to whether or not the shoreline use permit would be revoked based on alleged tree felling. Moreover, under Arkansas law, extrinsic evidence was not

admissible to inform the court's interpretation of agreement. It was held that even if, under federal common law guided by Arkansas law, extrinsic evidence were admissible to inform interpretation of agreement, the transmittal letter accompanying the agreement, which stated that the Corps was recommending revocation of the landowner's shoreline use permit, did not preclude determination that the agreement's settlement of "all disputes" between parties, without providing for revocation of permit, encompassed settlement of the permit-revocation dispute. Finally, again assuming admissibility of extrinsic evidence, the landowner's post-agreement conduct of offering to pay an additional sum to avoid revocation of his shoreline use permit did not preclude determination that the agreement's settlement of "all disputes" between parties, without providing for revocation of permit, encompassed settlement of the permit-revocation dispute.

**Fourth Circuit denied motion for stay where environmental organizations failed to make strong showing that NCDEQ acted arbitrarily and capriciously.** In Sierra Club v. North Carolina Department of Environmental Quality, 178 F.4th 854 (4th Cir., June 11, 2026), environmental organizations filed a petition under the Clean Water Act (CWA) for review of the North Carolina Department of Environmental Quality's (NCDEQ) water quality certification for a natural gas pipeline construction project. The organizations filed a motion for a stay pending review. The United States Court of Appeals for the Fourth Circuit denied the motion, and held that the organizations failed to make a strong showing that the NCDEQ failed to rationally explain its prediction that the project would not cause violations of water quality requirements. Moreover, the organizations failed to make a strong showing that the NCDEQ acted arbitrarily and capriciously by failing to include the conditions that its hearing officer relied upon.

**Fourth Circuit held that the district court clearly erred in finding that a member of the environmental organization would suffer irreparable harm absent a preliminary injunction.** In West Virginia Rivers Coalition, Inc. v. Chemours Company FC, LLC, 178 F.4th 102 (4th Cir., June 3, 2026), an environmental organization brought a Clean Water Act (CWA) citizen suit against a chemical manufacturer. The environmental organization sought injunctive relief for alleged continuing violations of permit limits for discharge of hexafluoropropylene oxide dimer acid (HFPO-DA) into a river. The United States District Court for the Southern District of West Virginia granted a preliminary injunction and the manufacturer appealed. The United States Court of Appeals for the Fourth Circuit vacated, and held

that the environmental organization's member's decision to avoid boating in the river because of the chemical manufacturer's alleged discharge of HFPO-DA into the river constituted an injury in fact sufficient to support standing. The member's avoidance of recreating in the river was traceable to the chemical manufacturer's alleged discharge of HFPO-DA into the river. The member's injury due to the chemical manufacturer's alleged discharge of HFPO-DA into the river was redressable with a preliminary injunction. The risk described by the expert witnesses from exposure to HFPO-DA did not constitute irreparable harm, as a matter of law. The district court's finding that the member would have suffered irreparable harm in the absence of a preliminary injunction was clearly erroneous.

**D.C. Circuit denied petition for review of Nuclear Regulatory Commission's (NRC) revision of generic environmental impact statement (GEIS) used in evaluating nuclear power plant operating license renewals.** In Beyond Nuclear, Inc. v. U.S. Nuclear Regulatory Commission, 182 F.4th 977 (D.C. Cir. 2026), environmental organizations petitioned for review of the Nuclear Regulatory Commission's (NRC) revision of its generic environmental impact statement (GEIS) used in evaluating nuclear power plant operating license renewals under National Environmental Policy Act (NEPA). The United States Court of Appeals for the District of Columbia denied the petition. It was held that at least one member of each environmental organization challenging the NRC's revision of its GEIS had Article III standing. The interests asserted in the environmental organizations' challenge were germane to the organizations' purposes. The NRC sufficiently and reasonably addressed the effects of long-term aging and degradation of the nuclear reactor components in its GEIS. The NRC reasonably addressed the environmental groups' objections to its GEIS with regard to the effects of climate change. Finally, the NRC's decision not to require nuclear power plants to conduct a second severe-accident mitigation alternative (SAMA) analysis in connection with future license renewals was reasonably explained in its GEIS.

**D.C. Circuit denied petition to review EPA rule revising National Ambient Air Quality Standards (NAAQS) for fine particulate matter under Clean Air Act (CAA).** In Kentucky v. Environmental Protection Agency, 179 F.4th 963 (D.C. Cir., June 26, 2026), industry groups and states petitioned for review of Environmental Protection Agency's (EPA) rule revising the National Ambient Air Quality Standards (NAAQS) for fine particulate matter under Clean Air Act (CAA). The EPA moved to vacate the rule. The United States Court of Appeals for the

District of Columbia held that the final rule was properly considered a revision to the criteria and the NAAQS for particulate matter, rather than a reconsideration of prior final rule. The Administrator of the EPA acted within his statutory authority to revise the NAAQS when he issued a final rule reducing the NAAQS for fine particulate matter outside of the normal five-year review cycle. The Administrator did not rely upon impermissible considerations, including promoting environmental justice and countering climate change, to justify the final rule. The final rule was not invalid due to the Administrator's failure to consider matters other than public health. The Administrator adequately explained his reasons for departing from the EPA's prior determination that the NAAQS for fine particulate matter did not need to be revised. The Administrator adequately offered reasoned explanations for how he approached and weighed evidence in setting revised NAAQS. The petition was denied and the motion to vacate was denied.

**D.C. Circuit held that Federal Highway Administration (FHWA) did not fail to adequately consult with Narragansett Indian Tribe.** In Narragansett Indian Tribe by and through Narragansett Indian Tribal Historic Preservation Office v. McMaster, 176 F.4th 671 (D.C. Cir., May 22, 2026), an Indian tribe brought an action alleging that the Federal Highway Administration (FHWA) violated the National Historic Preservation Act (NHPA) by failing to adequately consult with the tribe and by failing to explain mitigation measures it required for a highway reconstruction project affecting archaeologically and culturally significant land. The United States District Court for the District of Columbia granted the FHWA's motion for summary judgment and denied the tribe's cross-motion for summary judgment. The tribe appealed. The United States Court of Appeals for the District of Columbia affirmed, holding as follows: the tribe satisfied the causation requirement for standing; the tribe satisfied the redressability requirement for standing; the tribe was not collaterally estopped from asserting standing to assert failure-to-consult claim; the NHPA's implementing regulations did not require the FHWA to make the tribe a signatory to the programmatic agreement; the FHWA satisfied its obligation to consult with the tribe; the FHWA did not act arbitrarily and capriciously when it made substantive changes between the first and second programmatic agreements; and the FHWA did not act arbitrarily and capriciously when it designated the tribe's historic preservation officer as a concurring, rather than a required, party under the second programmatic agreement.

**District Court held that balance of equities and public interest favored preliminary injunction.** In Maryland v. Mul-

lin, 831 F. Supp. 3d 325 (D. Md. 2026), the State of Maryland brought an action against Immigration and Customs Enforcement (ICE) and its Acting Director and Department of Homeland Security (DHS) and its Secretary. The State alleged that defendants' purchase and planned conversion of a warehouse into an immigration detention facility without adequate environmental review violated the Administrative Procedure Act (APA) and the National Environmental Policy Act (NEPA). The State sought injunctive relief. After the District Court granted the State's ex parte motion for a temporary restraining order (TRO), the State filed a motion for a preliminary injunction. The District Court held a hearing, and granted the motion for a preliminary injunction in part, and explained its decision in an opinion. The District Court held that the State sufficiently alleged an injury in fact, as required for Article III standing. The action was not moot. The action was ripe for judicial review. The State had a substantial likelihood of success on the merits of the claim that the defendants' purchase and planned conversion without adequate environmental review violated the Administrative Procedure Act (APA) and the NEPA. The State would likely suffer irreparable harm to environment and health of the local community in the absence of preliminary injunction. Limiting the scope of the preliminary injunctive relief to exclude actions that did not immediately relate to imminent harm alleged was warranted. The balance of equities and public interest favored preliminary injunction.

**District Court ordered injunctive relief in action by federal government against owner of coke oven battery facility (E.D. Michigan):** In United States v. EES Coke Battery, LLC, 820 F.Supp.3d 600 (E.D. Mich., February 17, 2026), the federal government brought an action against the owner of a coke oven battery facility and its parent companies. The federal government alleged that the defendants violated the Clean Air Act's (CAA) new source review program. Such alleged violation was caused by undertaking a major modification of the facility without complying with permitting requirements and by failing to comply with reporting requirements. An environmental advocacy organization and city intervened as plaintiffs. After finding the owner liable for the CAA violations at summary judgment, a bench trial was held. The District Court held that parent companies of facility owner were "operators" of facility subject to liability under the CAA. The appropriate penalty for the facility operators' violation of the CAA was $100 million. The District Court would issue an injunction requiring the facility operators to bring the facility into compliance with the CAA's new source review program. The District Court would not impose specific

sulfur dioxide emissions limitations or pollution controls in the injunction. The members of the environmental advocacy organization suffered injuries in fact from the facility's violation of the CAA. The District Court would order injunctive relief against the facility operators requiring them to form a residential air purifier program to distribute air purifiers to households near the facility and to fund $30 million worth of community air quality improvement projects.

**District Court held that property owners and renters were entitled to seek medical monitoring as remedy for claims.** In Pearson v. Port of Morrow, 834 F. Supp. 3d 1127 (D. Or. 2026), property owners and renters in Oregon's Lower Umatilla Basin brought a putative class action against port authority, food processing companies, farming entities, electric company, and dairy processing company, alleging contamination of drinking water with unhealthy nitrate levels. They asserted claims under the Resource Conservation and Recovery Act (RCRA) and state law claims of negligence per se, trespass, private nuisance, and inverse condemnation. The defendants filed motions to dismiss for failure to claim or to strike complaint. The District Court granted the defendants' motions. In so holding, the District Court found that the nonprofit had associational standing to bring the procedural due process claim. The Ex parte Young exception to Eleventh Amendment sovereign immunity did not bar the procedural due process claim against the agency's secretary and unknown officials. The Rooker-Feldman doctrine did not bar the procedural due process claim. The procedural due process claim was ripe for judicial review. The CWA claim was not ripe for judicial review. The procedural due process claim was barred by the South Dakota's three-year limitations period for constitutional claims. The nonprofit failed to state a viable CWA claim.

**District Court held that city complied with National Environmental Policy Act (NEPA) requirements in issuance of EA and FONSI.** In Sakr v. City of Portland, 821 F.Supp.3d 1237 (D. Ore., February 18, 2026), neighborhood residents filed suit seeking judicial review, under the Administrative Procedure Act (APA), of the city's issuance of an environmental assessment (EA) and finding of no significant impact (FONSI), under the National Environmental Policy Act (NEPA), for a new affordable public housing development project for low-income renters. They also sought review of the Department of Housing and Urban Development's (HUD) approval of the project and review of related actions by the public housing authority that owned project. The neighbors moved to complete or supplement the administrative record, and the parties cross-moved for sum-

mary judgment. The District Court held that the residents had Article III and prudential standing to challenge the EA and the FONSI. The residents did not overcome the presumption of completeness of the record, and supplementation of the record was not warranted. The city considered the reasonable range of alternatives required by the NEPA, and took a hard look at the project's impacts required by the NEPA. The city adequately complied with the NEPA's public participation requirement, and satisfied the NEPA's delegation and independent review requirements. The plaintiffs' motions were denied and the defendants' motions were granted.

**District Court held that an environmental nonprofit failed to state a viable CWA claim against defendants.** In Preserve French Creek, Inc. v. Herman, 829 F.Supp.3d 738 (D.S.D., March 9, 2026), an environmental nonprofit brought an action against city, state environmental agency, agency's secretary and unknown officials, and engineering firm, alleging violations of procedural due process under 42 U.S.C.A. § 1983, Clean Water Act (CWA), and state law in connection with a state-issued permit authorizing the city to discharge wastewater effluent into a creek. The plaintiff sought injunctive relief, declaratory relief, and civil penalties. All defendants moved to dismiss, and the engineering firm alternatively moved for summary judgment. The District Court granted the defendants' motions. In so holding, the District Court found that the nonprofit had associational standing to bring the procedural due process claim. The Ex parte Young exception to Eleventh Amendment sovereign immunity did not bar the procedural due process claim against the agency's secretary and unknown officials. The Rooker-Feldman doctrine did not bar the procedural due process claim. The procedural due process claim was ripe for judicial review. The CWA claim was not ripe for judicial review. The procedural due process claim was barred by the South Dakota's three-year limitations period for constitutional claims. The nonprofit failed to state a viable CWA claim.

**California Court of Appeal held that Coastal Commission had authority to issue cease and desist order.** In Sable Offshore Corp. v. California Coastal Com., 121 Cal.App.5th 152 (June 17, 2026), an oil and gas company brought an action against the Coastal Commission, challenging the Commission's enforcement authority over pipeline repair and maintenance activities. The Commission filed a cross-complaint for declaratory and injunctive relief seeking to enforce cease and desist order. The Superior Court granted the Commission's application for a preliminary injunction, and the company appealed. The Court of Appeal affirmed, holding that the Commission had the authority to issue cease and desist order, and the trial court did not deprive

the company of due process.

**California Court of Appeal upheld award of attorney's fees to environmental group.** In Raptors Are the Solution v. CropLife America, 120 Cal.App.5th 237 (April 29, 2026), an environmental group filed a petition for writ of mandate to challenge decisions of the Department of Pesticide Regulation to renew and not to reevaluate certain rodenticide. The environmental group claimed the Department had failed to comply with the California Environmental Quality Act (CEQA) and its own regulations in making those decisions. Trade associations that represented developers, manufacturers, formulators and distributors of rodenticide products intervened. Following the filing of a second petition, and after hearing arguments, the Superior Court denied the petition. The environmental group appealed, and the First District Court of Appeal reversed and remanded with directions. Following remand, the Department agreed to place the rodenticide into reevaluation. The environmental group filed a motion for fees and costs under the private attorney general doctrine. The Superior Court granted the motion and awarded the fees against the Department, trade association intervenors, and others. The trade association intervenors appealed. The Court of Appeal affirmed and held that the evidence was sufficient to support findings that the trade associations were "opposing parties" against whom fees could be assessed. The environmental group was successful such that it could recover attorney's fees. An award of $852,000 in attorney's fees was supported by the evidence and was not an abuse of discretion. The court did not abuse its discretion by failing to apportion the fees.

**Georgia Court of Appeals vacated permanent injunction prohibiting operators from conducting or allowing unpermitted handling of solid waste on their property.** In Bowen v. Cown, 931 S.E.2d 225 (June 1, 2026), the Director of Environmental Protection Division of Georgia Department of Natural Resources (EPD) filed a verified complaint seeking to enjoin septic tank disposal business operators from disposing of domestic septage on their land without permit. The Superior Court granted a permanent injunction prohibiting operators from conducting or allowing unpermitted handling of solid waste on their property, and they appealed. The Court of Appeals vacated and remanded, holding that it had jurisdiction to review the superior court's order. The operators' designation of their property as farmland did not take their septage disposal activities outside of the EPD's regulatory authority. The domestic septage constituted "solid waste" subject to regulation by the EPD. Whether there was impermissible delegation of authority to the EPD was a question

best addressed by the trial court in the first instance.

**Indiana Court of Appeals held that watercraft limitation provision precluded coverage for company for environmental contamination liability at shipyard.** In Starr Indemnity & Liability Insurance Company v. American Commercial Barge Line, LLC, 281 N.E.3d 34 (April 28, 2026), a barge transportation company brought a declaratory judgment action against excess liability insurers seeking coverage for environmental contamination liability at shipyard designated as an Environmental Protection Agency (EPA) superfund site. The Superior Court granted the company's motion for partial summary judgment on choice of law. It found that state law applied, and denied the insurers' cross-motion for summary judgment on coverage. The insurers brought an interlocutory appeal. The Court of Appeals held that it could resolve the issue of whether the company's policies covered environmental contamination without determination of whether federal admiralty law applied to the dispute. The company was a potentially responsible party, under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and thus determination of liability was subject to strict liability. The watercraft limitation provision was unambiguous with respect to coverage for environmental contamination liability at shipyard, and thus was not subject to judicial construction. The watercraft limitation provision precluded coverage for company for environmental contamination liability at shipyard.

**Louisiana Court of Appeal upheld Office of Coastal Management's (OCM) decision to grant coastal use permits for construction and operation of liquefied natural gas terminal and pipeline system in coastal zone.** In Healthy Gulf v. Secretary, Louisiana Department of Natural Resources, 431 So.3d 388 (March 4, 2026), environmental organizations brought an action against the Department of Natural Resources (DNR). They challenged the Office of Coastal Management's (OCM) decision to grant coastal use permits for construction and operation of liquefied natural gas terminal and pipeline system in coastal zone. The District Court affirmed and the environmental organizations appealed. The Court of Appeal affirmed and held that the OCM sufficiently considered compressor station and its integrated carbon capture system in approving the coastal use permit. The OCM reasonably concluded that the concrete storm surge protection wall around the compressor station for project did not constitute a "levee." The OCM's determination that the selected site for the terminal avoided certain impacts to coastal zone to the maximum extent practical, or where not feasible, the

benefits outweighed the costs, was not arbitrary and capricious. The OCM's determination that the project avoided significant adverse economic impact to commercial fishing to maximum extent practicable was not arbitrary and capricious. Finally, the OCM did not fail to give full and careful consideration to environmental, economic, and social impacts of natural gas terminal and pipeline project, as required by public trust duty under Louisiana Constitution.

**New York Appellate Division held that homeowners established prima facie entitlement to judgment as matter of law on issue of liability and for dismissal of company's affirmative defense of culpable conduct.** In Sidoruk v. Ben Oil Company, Inc., 249 A.D.3d 1210 (May 27, 2026), homeowners brought an action against a fuel oil delivery company to recover damages for injury to property. The homeowners alleged violation of Navigation Law provision imposing strict liability on any party that has discharged petroleum. The alleged violation arose from the company's mistaken delivery of oil through an abandoned fill pipe into the homeowners' basement. The company asserted, in its answer, affirmative defenses of culpable conduct, assumption of risk, and failure to mitigate damages. The Supreme Court, Suffolk County, denied the homeowners' motion for summary judgment on the issue of liability and dismissing company's affirmative defenses. The homeowners appealed. The Supreme Court, Appellate Division, held that the homeowners established their prima facie entitlement to judgment as a matter of law on the issue of liability and for dismissal of company's affirmative defense of culpable conduct. A fact issue existed as to whether the homeowners contributed to oil spill, precluding summary judgment on the issue of liability and as to company's affirmative defense of culpable conduct. The company's affirmative defense alleging assumption of risk was inapplicable to homeowner's action. The homeowners established their prima facie entitlement to judgment as a matter of law dismissing company's affirmative defense alleging failure to mitigate damages.

**Rhode Island Supreme Court held that regulations provided landowner with meaningful opportunity to challenge the basis of the denial of a variance and did not violate procedural due process.** In DiBiccari v. State, 352 A.3d 147 (March 10, 2026), following denial of his variance request, a landowner brought an action against the State, the State Treasurer, and the Director of the Department of Environmental Management for declaratory, injunctive, and monetary relief. The landowner claimed that onsite wastewater treatment system regulations, which required minimum 12-inch clearance

from surface to groundwater level, were unconstitutional as applied to him, and facially unconstitutional under state and federal Takings, Due Process, and Equal Protection Clauses. The Superior Court granted the state defendants' motion to dismiss for failure to state a claim due to the landowner's failure to exhaust administrative remedies. The landowner appealed. The Supreme Court affirmed and remanded, holding that denial of the variance application on administrative appeal was not sufficiently "certain" to invoke the futility exception to the exhaustion of administrative remedies requirement. The claim that regulations were an unconstitutional taking was not ripe. The regulations did not discriminate on the basis of a suspect class, and thus did not violate equal protection. The regulations did not interfere with any fundamental right or any interest fundamental to a society of ordered liberty, and thus did not violate substantive due process. The regulations provided the landowner with a meaningful opportunity to challenge the basis of the denial of a variance and thus did not violate procedural due process.