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*United States Army Corps of Engineers v. Hawkes Co., Inc.*, No. 15-290

The Administrative Procedure Act permits judicial review of a “final agency action for which there is no other adequate remedy in a court.” Landowners may ask the Army Corps of Engineers to issue an “approved jurisdictional determination” whether the Corps has regulatory jurisdiction over a particular wetland or body of water. If the Corps determines that it has jurisdiction, the landowner must obtain a permit from the Corps pursuant to Section 404 of the Clean Water Act or risk civil and criminal penalties for discharging materials into the water without a permit. The Corps found that it had jurisdiction over wetland that Hawkes wishes to mine for peat. Hawkes sought judicial review of that decision under the APA. The district court found that it lacked jurisdiction to review the Corps’s determination because it was not a “final agency action.” But the Eighth Circuit disagreed with the district court and with a prior decision of the Fifth Circuit. It held that an approved jurisdictional determination was analogous to the compliance order that the Supreme Court held was final in *Sacket v. EPA*, finding that Hawkes’s options of a futile application for a Section 404 permit or mining without a permit were plainly inadequate remedies. The Supreme Court granted certiorari to resolve the disagreement between the circuits and determine whether the Corps’s approved jurisdictional determination is a final agency action subject to immediate judicial review under the APA.