



MEMORANDUM

TO: USEPA REGIONAL ADMINISTRATORS (REGIONS I – X)
USACE CHIEF OF ENGINEERS
USACE DIVISION AND DISTRICT ENGINEERS

SUBJECT: Administration of Clean Water Act Programs – Approved Jurisdictional Determinations (Interim Guidance)

On May 31, 2016, the U.S. Supreme Court in U.S. Army Corps of Engineers v. Hawkes Co. (*Hawkes*) unanimously held that a U.S. Army Corps of Engineers (Corps) approved jurisdictional determination (AJD)¹ is a final agency action subject to judicial review under the Administrative Procedure Act. We are discussing the *Hawkes* decision with our Federal partners and considering potential options for responding to the implications of the decision, and will be providing further guidance on this subject. We emphasize how important it is to continue providing timely, consistent, and accurate determinations regarding the scope of waters covered under the Clean Water Act (CWA) and the Rivers and Harbor Act of 1899 (RHA).²

In light of the Supreme Court's decision, it is essential that the documentation and administrative record developed to support both positive and negative AJDs be complete and thorough. The *Hawkes* decision may result in judicial challenges to AJDs earlier in the process, and thus the need to compile a complete administrative record supporting the decision may arise earlier. Individuals seeking an AJD continue to have access to the administrative appeals process available to them under existing regulations.

¹ An AJD is an official determination that “waters of the United States” (CWA), or “navigable water of the United States” (RHA), or both, are either present or absent on a particular site. An AJD precisely identifies the limits of those waters on the project site determined to be jurisdictional under the CWA/RHA. *See generally*, U.S. Army Corps of Engineers Regulatory Guidance Letter No. 08-02, dated June 28, 2002.

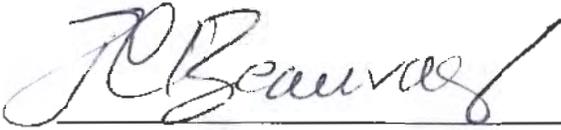
² At this time, the agencies continue to comply fully with the October 9, 2015, Sixth Circuit stay of the Clean Water Rule and are implementing nationwide the prior regulations and guidance defining the term “waters of the United States.”

It is also important to underscore that the *Hawkes* decision does not change the technical or legal basis for making AJDs under the CWA/RHA and associated regulations. To aid in the ability to accurately track the effectiveness in providing timely and consistent AJDs, regulators shall retain all pertinent information regarding the number and nature of AJDs and be prepared to provide such data to their respective headquarters upon request.

We extend our thanks to you and your staffs for your ongoing commitment and work to protect the Nation's water resources. If you have any questions regarding the *Hawkes* decision or this memorandum, please do not hesitate to contact your legal or regulatory program staff.

 6/24/16

Lowry Crook (Date)
Principal Deputy Assistant Secretary
(Civil Works)
Department of the Army

 6/24/16

Joel Beauvais (Date)
Deputy Assistant Administrator
Office of Water
Environmental Protection Agency