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California Land Use & Development Law Report

D.C. Circuit Upholds Broad EPA Veto Power Over Wetlands Permits

Section 404 of the Clean Water Act grants the EPA "veto" power over fill permits issued by the Army Corps of Engineers. On April 23, the U.S. Court of Appeals for the D.C. Circuit upheld the EPA's authority to annul a Corps permit even after it has been issued to the project applicant. The court relied on the language of Section 404, which states that the EPA may "withdraw" a Corps permit "whenever" it determines there is an unacceptable adverse effect on certain aquatic resources. According to the court, this language evidences Congress' intention to allow the EPA to exercise its veto powers "at any time" (court's emphasis). [Mingo Logan Coal Company v. United States Environmental Protection Agency](#), __F.3d__ (D.C. Cir. Case No. 12-5150, Apr. 23, 2013). This issue has been gaining in importance, as the EPA has increasingly used its veto power in recent years. This was the first time, though likely not the last, that the EPA vetoed a permit that the Corps already had issued. See our recent [update](#) for more information about the D.C. Circuit's decision.

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