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Waters of the United States/ Construction General NPDES Stormwater Permit: Federal District Court Addresses Request to Dismiss Citizen-Suit Action for Lack of Subject Matter Jurisdiction

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A United States District Court (D. Massachusetts) (“Court”) addressed in a February 25th Memorandum and Order (“Memorandum”) an issue arising pursuant to a Clean Water Act citizen-suit action. See *Blackstone Headwaters Coalition, Inc. v. Gallo Builders, Inc.*, 2025 WL 563279.

The issue addressed was whether the citizen-suit action could be dismissed based on the argument that the court lacks subject matter jurisdiction because of an alleged absence of a discharge of stormwater to Waters of the United States (“WOTUS”).

Blackstone Headwaters Coalition, Inc. (“Blackstone”) filed a Clean Water Act citizen-suit action against Gallo Builders, Inc, RH Gallo Builders, Inc., Arboretum Village, LLC. Steven A. Gallo, and Robert H. Gallo, collectively “Defendants” alleging a failure to comply with the National Pollutant Discharge Elimination System (“NPDES”) General Permit for Discharges from Construction Activities (“CGP”). The complaint alleged that the Defendants were regularly discharging sediment-laden stormwater to tributaries of the Blackstone River.

The Defendants filed a motion to dismiss contending the Court lacked subject matter jurisdiction because they were not discharging stormwater to WOTUS within the meaning of the Clean Water Act. They based this argument on the frame work adopted in *Sacket v EPA* 598 U.S. 651(2023).

The United States Supreme Court opinion in *Sacket* addressed the scope of the Clean Water Act definition of WOTUS. The Majority opinion significantly narrowed the scope of what constitutes WOTUS for the Clean Water Act.

The Court in addressing the defendants’ motion, noted in part:

- If the party fails to demonstrate a basis for its jurisdiction, the Court must grant the motion to dismiss.
- The Court must credit the plaintiffs’ well-pled factual allegations in trail all reasonable inferences in the Plaintiffs’ favor.

- A plaintiff cannot assert proper jurisdictional basis merely on unsupported conclusions or interpretations of law or subjective characterizations or conclusory descriptions of general scenario which can be dominated by unpleaded facts.

The Defendants argued in support of their motion that their discharges were limited to an isolated wetland lacking the requisite continuous surface connection to a WOTUS. Blackstone opposed such characterization and stated that the Court should treat the motion as one for summary judgment because the determination of facts relevant to jurisdiction implicate elements of their cause of action.

The Court held that the *Sacket* Test for Clean Water Act WOTUS jurisdiction does not impact its jurisdiction. It stated that when:

....determining the inquiry in question- whether the Honeysuckle Road Outfall discharges to the Blackstone River – does not impact the Court’s subject matter jurisdiction over Plaintiff’s cause of action.

Congress was noted to have not expressly identified a subject-matter-jurisdiction-based limitation within the Clean Water Act. The definition of navigable waters was described as not speaking in jurisdictional terms or refer in any way to the jurisdiction of the district courts.

The Clean Water Act citizen-suit provision was deemed to grant district courts broad jurisdiction without regard to the amount in controversy or the citizenship of the parties. For purposes of enforcing an effluent standard or limitation.

The Court further distinguished *Sacket* in this instance because its discussion of jurisdiction was described as only concerning the Jurisdiction of government agencies to enforce the Clean Water Act. It cited the United States Court of Appeals for the First Circuit as treating such Supreme Court Decisions as establishing the substantive standards for proving a Clean Water Act violation rather than jurisdictional prerequisites.

The defendants motion to dismiss was denied.

A copy of the Memorandum can be found [here](#).