Preface

As I write this, my third introduction to the *Clean Water Act Handbook*, I cannot help but marvel both at how much has changed and how little has changed since I first became the editor of this book in 2003. The Clean Water Act (CWA) continues to be one of the cornerstones of our modern environmental practice, and Congress has not amended it since 1990. In 2003, 46 states were authorized to run the NPDES program and two states were authorized under section 404. Today, 47 states are authorized (with Idaho in the wings) and still only two states are authorized to run the wetlands program. Given no significant legislative changes in the act and no major changes in the state authorizations, one would think that all of the big issues with the CWA had been settled by now. Nevertheless, as in 2003, the CWA is still heavily litigated. I reviewed 79 federal court decisions addressing the CWA in 2016 for my CWA blog, and 98 in 2017. The amount of litigation underscores the central role the act plays in our lives. If it didn’t matter so much, people wouldn’t spend so much time in court arguing over it.

The courts and the revolving administrations in Washington, DC, have been the drivers of change. When the Supreme Court effectively rewrote the water of the United States (WOTUS) definition with *Solid Waste Agency of Northern Cook County v. Corps of Engineers* in 2001, and then further confused matters in 2008 with its hopelessly split *United States v. Rapanos* decision, the Bush administration EPA reacted with a 2008 guidance document, which is still in effect. The Obama administration’s 2015 attempt to issue a new definition of WOTUS was immediately challenged in the courts, and the Trump administration is attempting, as I write this in January 2018, to repeal and replace the Obama-era WOTUS rule. That effort will certainly be litigated in the court for years. As a result, the jurisdictional boundaries of the CWA are still up in the air 16 years after the Supreme Court dramatically changed the law in SWANCC. We held up the last edition of this book for more than a year, thinking that Congress was on the cusp of amending the act to deal with WOTUS. That was 2011. It never happened.

The take-away from this brief history lesson is this. The CWA is a continuously evolving beast. Anyone who works with it must stay current on the case law and regulatory developments. We have witnessed dramatic changes in the law over the years from reinterpretations by the courts and changing political philosophies in Washington. These changes make the timing of this fourth edition all the more important.