

## Federal Case Law Update

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## Clean Water Act

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***In re: Murray Energy Corporation v. EPA, et al,***  
No. 15-3751 (6th Cir.)

***aka***  
***WOTUS Rule Challenge***

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# WOTUS Rule: Why Does it Matter?

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- **CWA 404 Permitting (Corps dredge and fill permits)**
  - Any foot print expansion, ever?
  - Any new, replaced, or significant maintenance of infrastructure?
  - Do you have any schedules for the above?
- **NPDES (state or federal discharge permits)**
  - Point source discharges
  - 316(b) applicability for cooling water intakes
- **Spill Prevention, Control, and Countermeasure Plans**
- **Spill Reporting**

## Big Picture

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- **Categorically Jurisdictional**
  - Actually navigable, interstate, or territorial seas
  - **Tributaries**
  - Impoundments of above
  - Adjacent waters: Bordering, Contiguous, or **Neighboring**
- **Categorically Excluded**
  - Qualifying Ditches
  - Specific Features on Dry Land
  - Groundwater
  - Wastewater treatment systems
  - Prior converted cropland
- **Case by Case for "Other Waters"**



# Litigation Everywhere

Table 1. WOTUS RULE TRACKING CHART: Circuit Court Challenges (Updated 04/11/16)		Table 2. WOTUS RULE TRACKING CHART: District Court Challenges (Updated 03/17/16)	
Plaintiff	Date Filed	Originating Circuit Court (Now Transferred to Sixth Circuit by MDL Panel)	District Court
National Wildlife Federation (15-1234) (docketed in Sixth Circuit as 15-3817)	07/22/2015	D.C. Circuit (Motion to dismiss on jurisdictional grounds denied 02/22; petition for rehearing on brief filed 02/28, 05/04, 09/11, 9/22, 9/23; response in opposition to petition for rehearing on brief filed 4/1/16)	District of Arizona <b>Set aside</b> (Court granted unexpected motion to continue stay 03/14)
American Exploration & Mining Association (15-1411) (docketed in Sixth Circuit as 15-4365)	11/09/2015	D.C. Circuit (Motion to intervene by environmental groups granted 12/11 and 01/29) (Motion to dismiss on jurisdictional grounds denied 02/22) (Petition for rehearing on brief filed 9/22, 9/23; response in opposition to petition for rehearing on brief filed 4/1)	District of Columbia <b>Set aside</b> (Court issued order on 03/09 continuing stay pending Sixth Circuit's resolution of an issue pertinent to, or if on brief review is granted, pending Sixth Circuit's resolution of the jurisdictional question)
North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, and Wyoming, and the New Mexico Environmental Department and New Mexico State Engineers (15-2552) (docketed in Sixth Circuit as 15-5831)	07/17/2015	Eighth Circuit (Motion to dismiss on jurisdictional grounds denied 02/22; petition for rehearing on brief filed 02/28, 05/04, and 09/11)	District of North Dakota <b>Set aside</b> granted preliminary injunction staying the implementation of the rule as to the extent of the rule's application to the business days of such a development and setting deadline for rule to take effect of stay by 03/23/2016
Texas, Railroad Commission of Texas, Texas Commission on Environmental Quality, Texas Department of Agriculture, Texas Department of Transportation, Texas General Land Office, Texas Water Development Board, Louisiana, Mississippi (15-6040) (docketed in Sixth Circuit as 15-5855)	07/10/2015	Fifth Circuit (Motion to dismiss on jurisdictional grounds denied 02/22; petition for rehearing on brief filed 02/28, 05/04, and 09/11)	Northern District of Georgia Southern District of New York <b>Set aside</b> (Motion to dismiss on jurisdictional grounds filed by government on 03/04; response filed 03/17)
Paper Steelworker Alliance and Sienis Club (15-7227) (docketed in Sixth Circuit as 15-839)	07/23/2015	Ninth Circuit (Motion to dismiss on jurisdictional grounds denied 02/22; petition for rehearing on brief filed 02/28, 05/04, and 09/11)	District of Minnesota <b>Set aside</b> (Petition filed prior to issuance on continuation of stay on 03/01 requesting the court to continue the stay pending the Sixth Circuit's final resolution on the stay petition)
Energy Storage (15-1792)	07/17/2015	Sixth Circuit	District of Oregon <b>Set aside</b> (Motion to dismiss on jurisdictional grounds denied 02/22; petition for rehearing on brief filed 02/28, 05/04, and 09/11)

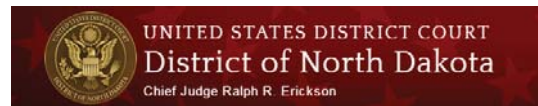
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# Procedural Status

- **District Court or Court of Appeals?**
  - CWA 509
    - (b)(1)(E) - actions "approving or promulgating any effluent limitation or other limitation"
    - (b)(1)(F) - actions "issuing or denying any permit"



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