

Federal Case Law Update
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Clean Water Act

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

aka
WOTUS Rule Challenge

WOTUS Rule: Why Does it Matter?

- **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

- **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)		
Plaintiff	Date Filed	Originating Circuit Court (Now Transferred to Sixth Circuit by MDL Panel)
National Wildlife Federation (15-1234) (docketed in Sixth Circuit as 15-3817)	07/22/2015	D.C. Circuit
American Exploration & Mining Association (15-1411) (docketed in Sixth Circuit as 15-4365)	11/09/2015	D.C. Circuit
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
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 (15-60407) (docketed in Sixth Circuit as 15-5855)	07/10/2015	Fifth Circuit
Paper Stone/Esper Alliance and Sierra Club (15-7227) (docketed in Sixth Circuit as 15-839)	07/23/2015	Ninth Circuit
Energy Storage (15-794)	07/17/2015	Tenth Circuit

Table 2. WOTUS RULE TRACKING CHART: District Court Challenges (Updated 03/17/16)		
Plaintiff	Date Filed	District Court
Arizona Mining Association, Arizona Farm Bureau, Association of Commerce and Industry, New Mexico Mining Association, Arizona Chamber of Commerce & Industry, Arizona Rock Producers Association, and New Mexico Farm & Livestock Bureau (15-1742)	09/01/2015	District of Arizona
Natural Resources Defense Council, Inc., National Wildlife Federation, and South Carolina Council Conservation League (15-1324)	08/14/2015	District of Columbia
American Exploration & Mining Association (15-1411)	06/14/2015	District of Columbia
Wilmington Cattlemen's Association, California Cattlemen's Association, New Mexico Cattle Growers Association, New Mexico Wool Growers, Inc., New Mexico Federal Lands Council, Dairy Farmers, Inc., Prairie Investment Company, LFP Properties, L.L.C., Harkins Company, Inc. (15-3688)	07/15/2015	District of Minnesota
North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, and Wyoming, and the New Mexico Environmental Department and	06/29/2015	District of North Dakota
Southwestern Legal Foundation, Inc., Georgia Appellate Courts, Inc., and Citizens Against Appropriations	04/14/2015	Northern District of Georgia
State of Virginia, Tennessee (15-247)	08/20/2015	Southern District of New York
State of Idaho (15-1042)	11/19/2015	Western District of Tennessee
Association of American Railroads, Fort Worth Stock Exchange Association (15-286)	05/15/2015	Western District of Texas

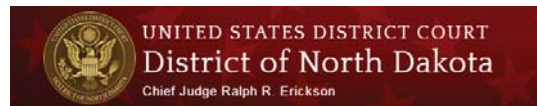
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Procedural Status

- **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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