



Federal Case Law Update
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BAKER BOTTS 

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"**



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