

interactive dialogue

The "Muddy Legal Waters?" webinar will begin at 12:00 noon CT

To listen to the audio portion of the webinar, please dial 1-800-536-9136, access code: 3438272#.

- A sign-in sheet was enclosed in the program reminder email sent Monday, April 18.
- Materials will be sent to those who return the sign-in sheet after the webinar concludes.
- To submit a question before or during the webinar, please use the chat pane on the lefthand side of your screen.
- A replay of this webinar will be available on dorsey.com.



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Muddy Legal Waters?

Thad Lightfoot Mike Droke To listen to the audio portion of the webinar, please dial 1-800-536-9136, access code: 3438272#.

a brave new format

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Thad Lightfoot Regulatory Affairs <u>lightfoot.thad@dorsey.com</u> (612) 492-6532

Mike Droke Agriculture/Cooperatives <u>droke.michael@Dorsey.com</u> (206) 903-8709



why pick this topic?

- Most controversial issue under the Clean Water Act
- Subject of numerous Supreme Court cases
- Subject of new rule promulgated by EPA but now stayed and under challenge



what are "wetlands" and why protect them?

- Areas with standing water or saturated soils, at least part of the year
- Why protect?
 - Water quality
 - Flood control
 - Habitat
 - Recreation
 - Commercial Benefits



what is the Clean Water Act?

- Passed in 1972, designed to make all waters of the United States "fishable" and "swimmable" by 1983
- Permit needed for discharge of "pollutants" from a "point source" into the "waters of the United States"
- Permit needed for "dredge or fill material" into the "waters of the United States"



what is a "Water of the United States"?

- Defined in a circular fashion in the Clean Water Act
- Army Corps of Engineers expanded jurisdiction steadily from 1975 to 1991
- Supreme Court begins to reign in jurisdiction in 2001
- Fractured Supreme Court decision in 2006
- Litigation, rulemaking, and more litigation follow



are there any exemptions for farming?

- CWA and regulations exempt "normal farming, silviculture, and ranching activities"
- CWA and regulations exempt construction or maintenance of farm or stock ponds or irrigation ditches, or drainage ditch maintenance
- WOTUS rule states no additional permitting on agriculture
- But confusion abounds



what are the penalties?

- Civil penalties of up to \$37,500 per day per violation
- Criminal penalties of up to \$50,000 per day per violation and up to 3 years in prison for first convictions or up to \$100,000 per day per violation and up to 6 years in prison for subsequent convictions
- Violation continues until fill is removed



what traps exist for the unwary farmer?

- Acting without first considering possible consequences
- Relying on the National Wetlands Inventory map
- Assuming any farm activity is exempt as "normal farming"
- Ignoring state and local laws



what top 5 things should I do to prevent risk?

- Seek professional technical and legal assistance
- Carefully compare proposed activities to statutory exemptions
- Consider a wetlands audit
- Consider requesting a jurisdictional determination from the United States Army Corps of Engineers
- Don't forget state and local regulations



Links

 <u>https://www.dorsey.com/newsresources/publications</u> /client-alerts/2015/06/epa-and-corps-final-cleanwater-rules-potential-___

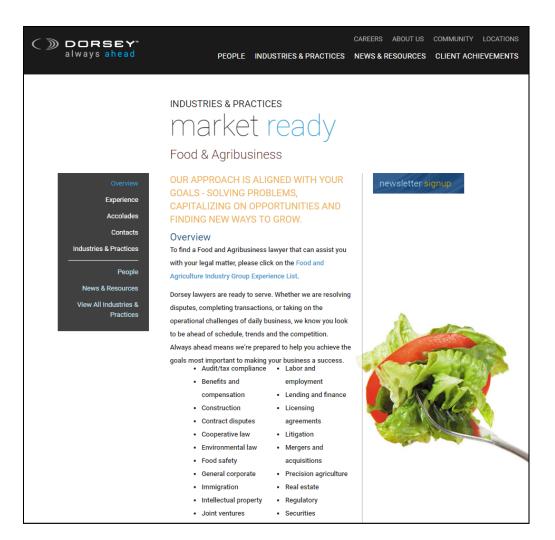


who wants more credit? CLE credit, that is

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