

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 left-hand 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

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a brave new format

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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

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

who wants more credit? CLE credit, that is

Return your sign-in sheet (provided with reminder yesterday) and you will receive a CLE certificate.

how do I learn more?

The screenshot shows the Dorsey & Whitney website page for Food & Agribusiness. The header includes the Dorsey & Whitney logo with the tagline "always ahead" and navigation links for CAREERS, ABOUT US, COMMUNITY, LOCATIONS, PEOPLE, INDUSTRIES & PRACTICES, NEWS & RESOURCES, and CLIENT ACHIEVEMENTS. The main content area is titled "INDUSTRIES & PRACTICES market ready Food & Agribusiness". A sidebar on the left contains a menu with options: Overview, Experience, Accolades, Contacts, Industries & Practices (selected), People, News & Resources, and View All Industries & Practices. The main text states: "OUR APPROACH IS ALIGNED WITH YOUR GOALS - SOLVING PROBLEMS, CAPITALIZING ON OPPORTUNITIES AND FINDING NEW WAYS TO GROW." Below this is an "Overview" section with the text: "To find a Food and Agribusiness lawyer that can assist you with your legal matter, please click on the Food and Agriculture Industry Group Experience List." A "newsletter signup" button is visible. A list of services is provided: Audit/tax compliance, Labor and employment, Benefits and compensation, Lending and finance, Construction, Licensing, Contract disputes, agreements, Cooperative law, Litigation, Environmental law, Mergers and acquisitions, Food safety, Precision agriculture, General corporate, Real estate, Immigration, Regulatory, Intellectual property, and Securities. A photo of a fork with a salad of lettuce and tomatoes is at the bottom right.

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<https://www.dorsey.com/services/food-and-agribusiness>

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Food & Agribusiness

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Overview

To find a Food and Agribusiness lawyer that can assist you with your legal matter, please click on the [Food and Agriculture Industry Group Experience List](#).

Dorsey lawyers are ready to serve. Whether we are resolving disputes, completing transactions, or taking on the operational challenges of daily business, we know you look to be ahead of schedule, trends and the competition.

Always ahead means we're prepared to help you achieve the goals most important to making your business a success.

- Audit/tax compliance
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- Benefits and compensation
- Lending and finance
- Construction
- Licensing
- Contract disputes
- agreements
- Cooperative law
- Litigation
- Environmental law
- Mergers and acquisitions
- Food safety
- Precision agriculture
- General corporate
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- Immigration
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Overview

Cooperatives face complex legal issues and they need a legal team that understands their industry and organizational structure to help find creative and cutting-edge solutions. Our Cooperative Law group is a recognized national leader in the field of cooperative law. Our lawyers are committed to working as a team with clients in order to achieve the strategic objectives of each unique business.

We have more than 25 years of experience working with local and regional agricultural cooperatives, rural electric cooperatives, purchasing cooperatives, consumer cooperatives, worker cooperatives and start-up organizations across the nation. We serve industries such as agriculture, energy and utilities, purchasing, consumer, housing, professional services and healthcare. We also represent other agriculture-related organizations such as commodity promotion groups, cooperative banks and cooperative trade associations.

Our experience spans project development and finance, mergers and acquisitions, real estate, labor, employment and employee benefits, environmental, land use and permits, securities, international and trade regulations,

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how did we do?

You will receive a survey form shortly. Please take a moment to fill it out and let us know how we did. If you have topic suggestions for future webcasts, this is your chance to let us know.