

# Complying with Water Quality Laws & Regulations: Arkansas Water Laws & Regulations/Jordan Wimpy (Mitchell Williams) Webinar Presentation



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Mitchell Williams Counsel Jordan Wimpy undertook a presentation at the Arkansas Water Laws & Regulations webinar titled:

*Complying with Water Quality Laws & Regulations ("Presentation")*

The Presentation addressed:

- Background refresher on Clean Water Act
- Developments at the federal level
- Waters of the United States ("WOTUS") Step II
- Maui United States Supreme Court Decision
- 401 Water Quality Certifications
- Residual Designation
- Developments at the state level
- Arkansas Pollution Control and Ecology Commission Regulation No. 6
- Triennial Review
- Antidegradation Implementation Methodology

Jordan initially noted the original objective of the Clean Water Act is set out in introductory language as to:

... restore and maintain the chemical, physical, and biological integrity of the Nation's waters.

An explanation of Clean Water Act water quality standards was provided. A water quality standard:

Defines the water quality goals of a waterbody, or portion thereof, by designating the use or uses to be made of the water and by setting criteria that protect the designated use.

Various types of designated uses were referenced along with the role of water quality criteria.

The Clean Water Act's base prohibition was addressed which only allows the addition of a pollutant through a point source to a navigable body of water (i.e., WOTUS) with a National Pollution Discharge Elimination System ("NPDES") permit.

The revised Clean Water Act definition of WOTUS was referenced. The four categories were described as:

- Territorial Seas and traditional navigable waters

- Tributaries
- Lakes and ponds, and impoundments of jurisdictional waters
- Adjacent wetlands

The scope of the terms and relevant changes were addressed.

Related concepts such as the exclusions were identified which include:

- Waters not listed as WOTUS
- Groundwater
- Ephemeral features
- Diffuse stormwater run-off
- Ditches not identified as WOTUS
- Prior converted cropland
- Artificially irrigated areas
- Artificial lakes and ponds
- Water-filled depressions incidental to mining or construction activity
- Stormwater control features
- Groundwater recharge, water reuse, and wastewater recycling structures
- Waste treatment systems

Further, Jordan noted that a number of lawsuits have been filed challenging the revised WOTUS rule.

These include:

- *State of California, et al. v. EPA*, No. 3:20-CV-2005
- *South Carolina Coastal Conservation League v. Wheeler*, No. 2:19-CV-03006
- *New Mexico Cattle Growers Ass'n. v. EPA*, No. 1:19-CV-00988
- *State of Colorado v. Wheeler*, No. 20-CV-1461

The United States Supreme Court Case *County of Maui v. Hawaii Wildlife Fund* was addressed.

As noted, the question presented in Maui was whether a point source discharge to groundwater requires an NPDES permit if the pollutant reaches navigable waters. The two takeaways include:

- A new test for Clean Water Act jurisdiction
- An unexpected line-up of Supreme Court votes

The discussion included background on the case, associated controversies and historical evolution of the various theories.

The factors enumerated for determining jurisdiction in Maui were stated to include:

1. Transit time,
2. Distance traveled,
3. Nature of the material through which the pollutant travels,
4. Extent to which the pollutant is diluted or chemically changed as it travels,
5. Amount of pollutant entering the navigable waters relative to the amount of the pollutant that leaves the point source,
6. The manner by or area in which the pollutant enters the navigable waters,
7. The degree to which the pollutant (at that point) has maintained its specific identity

Section 401 certifications were reviewed.

The definition was reviewed, along with the issue associated with state waiver of water quality certification. This included a discussion of the Executive Orders, guidance, and rulemakings from the Trump Administration related to 401.

Stormwater residual designation authority was addressed, including a discussion of petitions that have EPA has received regarding discharges from privately-owned commercial, industrial and institutional sites that contribute pollutants to waterbodies. EPA's responses to the petitions were reviewed.

Arkansas program developments were reviewed, which include:

- Arkansas Pollution Control and Ecology Commission Regulation No. 2
- Arkansas Pollution Control and Ecology Commission Regulation No. 6

A particular focus included antidegradation and the Arkansas Department of Energy and Environment – Division of Environmental Quality efforts to address the program.

A copy of the slides can be downloaded [here](#).