

WATER LAW UPDATE

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OVERVIEW

I. Federal Regulatory Updates

II. Federal Case Law Updates

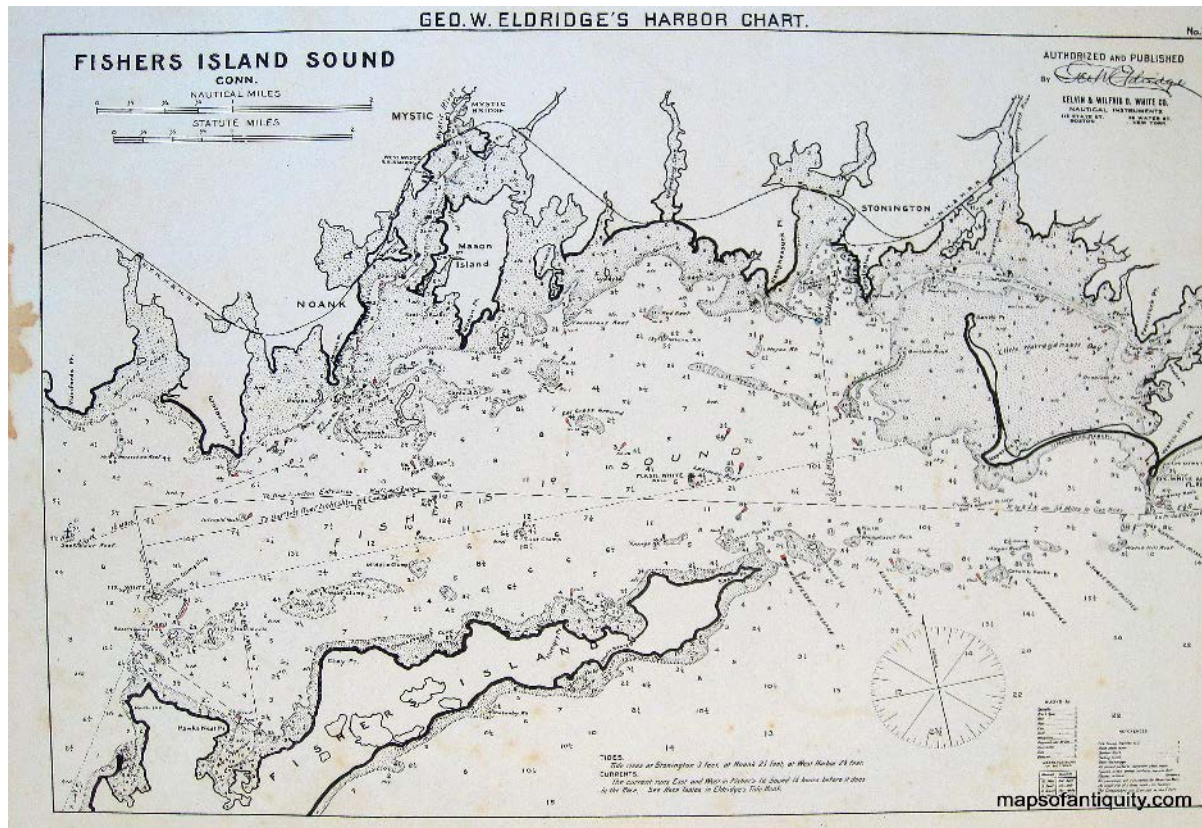
III. Minnesota Case Law Updates

IV. Minnesota Legislative and Regulatory Updates

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I. FEDERAL REGULATORY UPDATES

“Navigable” Waters



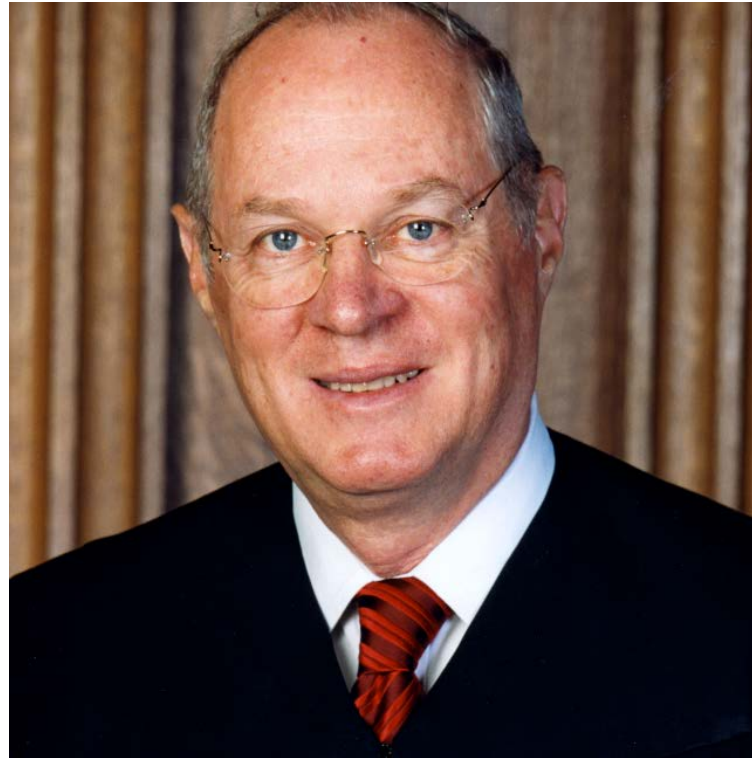
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The term “navigable waters” means the waters of the United States, including the territorial seas.

33 U.S.C. § 1362(7)

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Rapanos v. U.S. (2006)



Justice Kennedy: “Significant nexus”

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Final Rule

EPA, U.S. Corps

Definition of “Waters of the United States” Under
the Clean Water Act

80 Fed. Reg. 37054 (June 29, 2015)

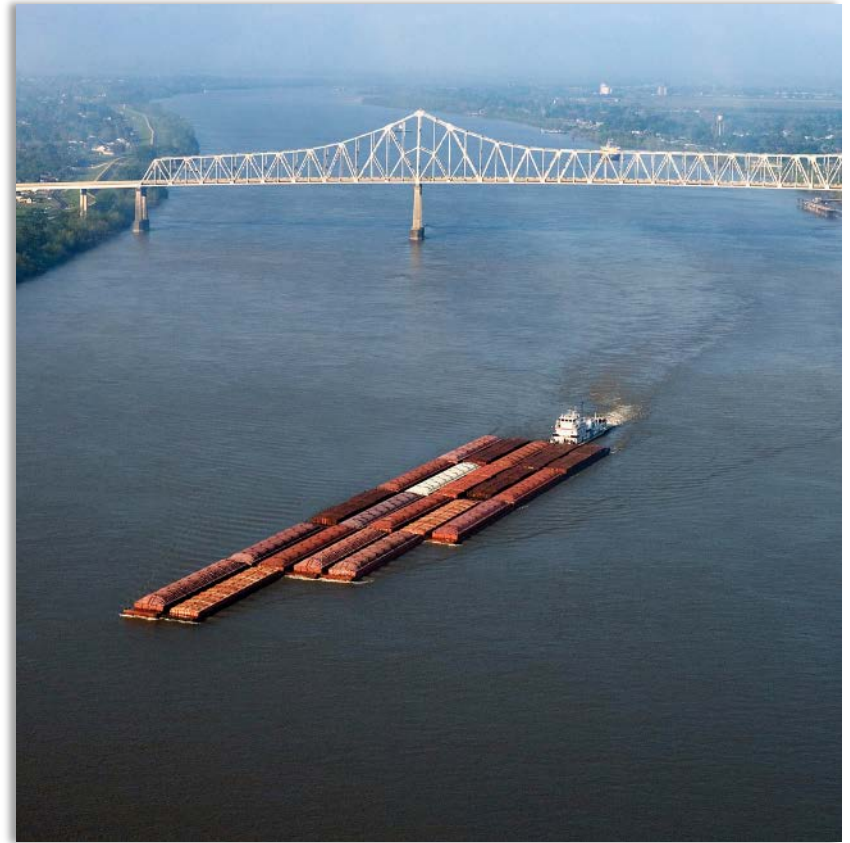
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Bright-Line Jurisdictional Categories

Waters Used in Interstate
Commerce



Interstate Waters



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Bright-Line Jurisdictional Categories

Territorial Seas



Impoundments



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Bright-Line Jurisdictional Categories

Tributaries



New Definition

- Bed and banks
- Ordinary high water mark
- Contributes flow, directly or indirectly to a traditionally navigable water (TNW)

Bright-Line Jurisdictional Categories

Adjacent Waters



bordering, contiguous, or neighboring

“Neighboring” (Adjacent)

➤ *Waters located within:*

- 100 feet of the ordinary high water mark (OHWM) of a TNW, impoundment or tributary
- 100-year floodplain of—and not more than 1,500 feet from the OHWM of—a TNW, impoundment or tributary
- 1,500 feet of the high tide line of a TNW
- 1,500 feet of the ordinary high water mark of the Great Lakes

“Significant Nexus” Waters



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“Significant Nexus”

Waters that alone or in combination with other similarly situated waters in the region significantly affect the chemical, physical, or biological integrity of a TNW

Categorical Exclusions from Jurisdiction



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New Stormwater/Wastewater Exclusions

- **Stormwater control features** constructed to convey, treat, or store stormwater that are created in dry land.
- **Wastewater recycling structures** constructed in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

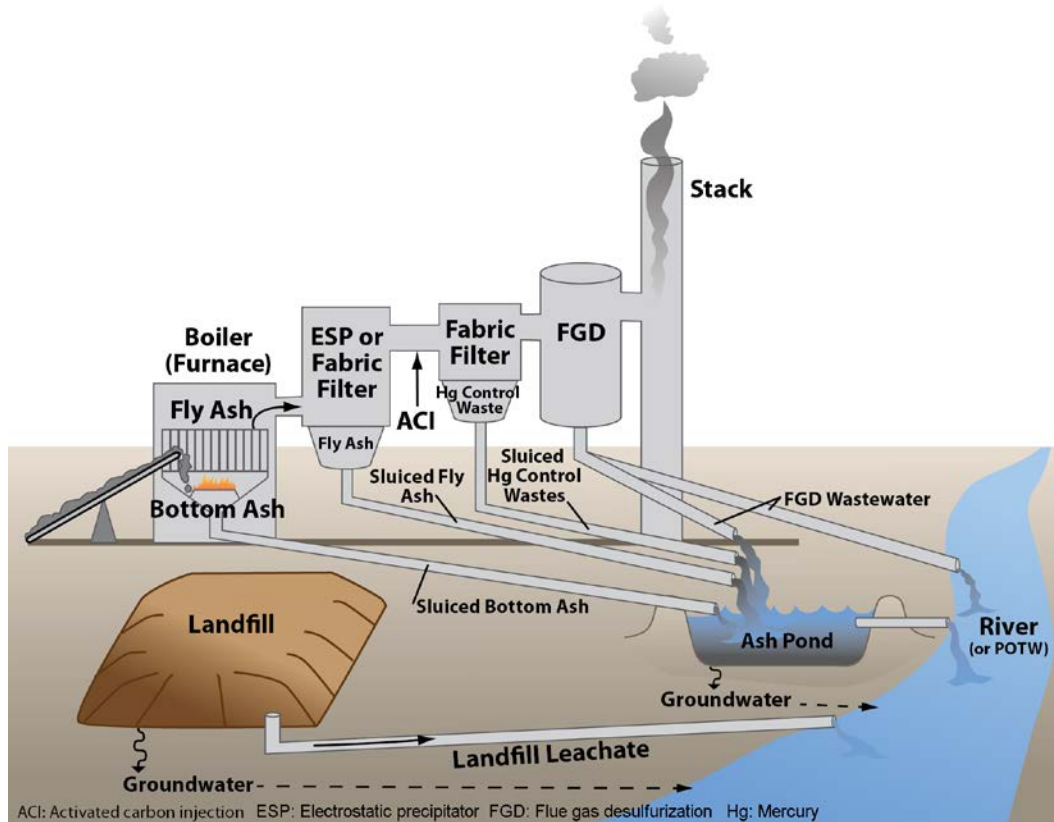
EPA, Final Rule Updating National Water Quality Standards, 40 CFR part 131



Warm Lake, Boise National Forest (www.fs.usda.gov)

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EPA, Steam Electric Plant Effluent limitations Guidelines and Standards, 40 CFR Part 423



(www.epa.gov)

II. FEDERAL CASE LAW UPDATES

Sierra Club v. ICG Hazard, LLC, 781 F.3d 281
(6th Cir. 2015)

“Permit Shield”

“Compliance with a permit issued pursuant to this section **shall be deemed compliance**” with CWA provisions addressing effluent limitations and their enforcement.

--33 U.S.C. § 1342(k).

Sierra Club v. ICG Hazard, LLC, 781 F.3d 281
(6th Cir. 2015)

Two-Part Test

1. **Compliance** with all permit terms
2. Pollutants discharged were within “**reasonable contemplation**” of permitting authority

Hawkes Co., Inc. v. U.S. Army Corps of Engineers, 782 F.3d 994 (8th Cir. 2015)



Peat Harvesters ([www.http://news.Minnesota.publicradio.org](http://news.Minnesota.publicradio.org))

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**Hawkes Co., Inc. v. U.S. Army Corps of Engineers,
782 F.3d 994 (8th Cir. 2015)**

“Final Agency Action”

Consumation of the agency’s decision making process

Determines rights or obligations

III. MINNESOTA CASE LAW UPDATES

**In re Reichmann Land & Cattle, LLP, 867 N.W.2d 502
(Minn. July 29, 2015)**

“Animal Feeding Operation”

At least 1,000 cattle on the lot for more than 45 days in a 12–month period

“Crops, vegetation, forage growth, or post-harvest residues **are not sustained in the normal growing season** over any portion of the lot”

--40 C.F.R. § 122.23(b)(1)

IIV. MINNESOTA LEGISLATIVE AND REGULATORY UPDATES

Minnesota Legislature: Senate File No. 5

Buffers

Wild Rice Standard

Section 404 Permit Program

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MPCA 2015 Multi-Sector Stormwater General Permit for Industrial Activity

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Great Lakes Restoration Initiative



Georgian Bay, Lake Huron

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For more environmental law updates:

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