

Staying Current With Stormwater Regulations

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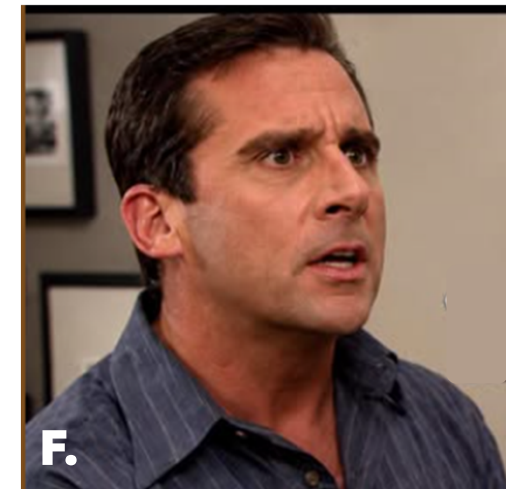
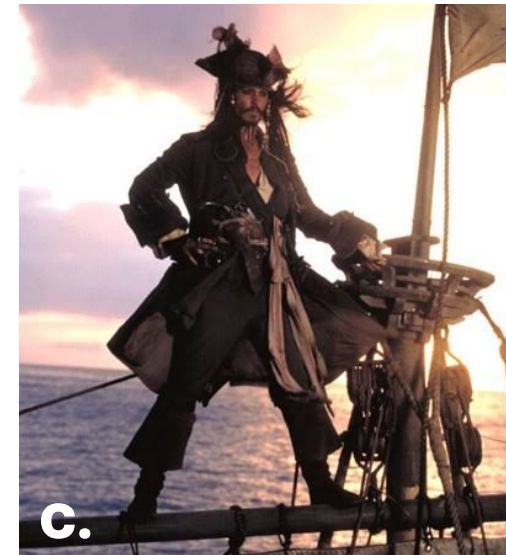
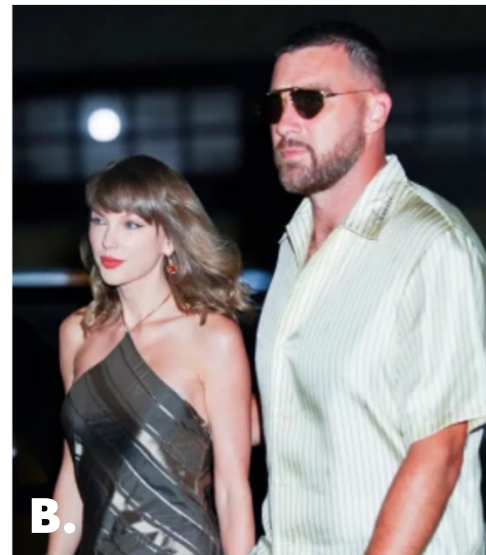
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Overview

- Ohio EPA draft MS4 Permit
- WOTUS Update
- Ohio EPA nutrient rules
- Ditch law update
- Sovereign Immunity
- Miscellaneous case law and policy updates



Ohio EPA MS4 Draft Permit

- Comments closed on August 4, 2026
- Comments under review by Ohio EPA
- Expected final permit in November

Ohio EPA MS4 Draft Permit

- Updates
 - Small wording changes
 - “stormwater”
 - “urbanized areas” to urban areas
 - Expansion of Appendix A incorporating TMDL requirements
 - Proper management of salt within the MS4 area is expressly part of Control Measure 1 for Public Education and Outreach

Ohio EPA MS4 Draft Permit

- Comments submitted and under review
 - Focus on Fecal Coliform versus e. Coli
 - Some communities commented to correct references in Appendix A
 - Comment in relation to other Ohio statutory regimes

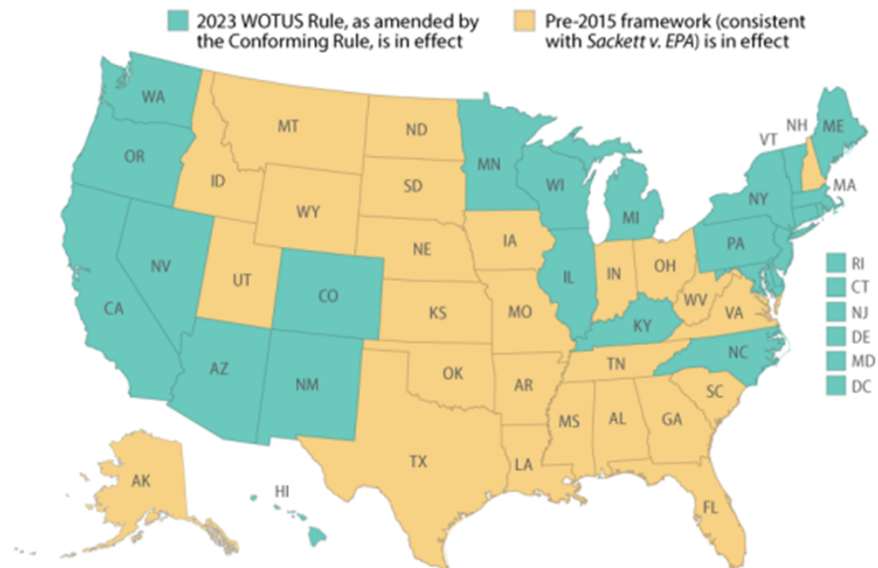
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WOTUS UPDATE

US Supreme Court WOTUS decisions

- *US v Riverside Bayview*, 474 US 121 (1985)
 - Wetlands adjacent to navigable waters are jurisdictional
- *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001)
 - Reaffirms “navigable” is operative part of WOTUS jurisdiction
- *Rapanos v. United States*, 547 U.S. 715 (2006)
 - 4-1-4 split with “relatively permanent” v. “significant nexus”
- *Sackett v. Environmental Protection Agency*, 598 U.S. ____ (2023)
 - Relatively permanent, standing, or flowing bodies of water connected to traditional navigable waters.
 - Wetlands that have a **continuous surface connection** making them indistinguishable from those waters.

WOTUS Status



WOTUS Update

- WOTUS = Waters of the United States
- 2025 Proposed Rulemaking
 - Deleted “interstate waters” category
 - Added definitions for “continuous surface connection,” “ditch,” “relatively permanent” and other terms
 - Revised exclusions for:
 - Waste treatment
 - Prior converted cropland
 - Ditches
 - Ephemeral Waters
 - Over 220,000 comments received
- Supplemental comment period open until October 9, 2026
 - Focus on specific revised proposed definitions

WOTUS Update

- “Continuous Surface Connection”
- Focus on the *Sackett* decision recognition of SWANCC reference to “navigable waters”
 - “Although we have acknowledged that the CWA extends to more than traditional navigable waters, we have refused to read ‘navigable’ out of the statute”
 - “...preserve[s] the States’ ‘primary’ authority over land and water use ...”



WOTUS Updates

- “Relatively permanent”
 - Agencies solicited comment on alternative approaches for defining this critical term necessary to conform to U.S. Supreme Court ruling, including:
 - Standing or continuously flowing year-round, or during the wet season
 - Minimum flow threshold
 - Minimum flow duration (30, 90, 270 days)
 - Other bright lines
- Agencies now proposing for “relatively permanent”:
 - “perennial bodies of water”
 - A body of water does not lose its relatively permanent status if it dries up for no more than 30 consecutive days in any given year as a result of non-anomalous events such as low-tide or a regularly occurring dry spell

WOTUS: Peace in Our Time?



WOTUS: Is It All Over?





OHIO NUTRIENT REGULATION

Ohio Nutrient Regulation

- Ohio Stream Nutrient Assessment Procedure (SNAP)
 - The Stream Nutrient Assessment Procedure (SNAP) is performed to determine whether and to what degree a stream segment has been impacted by nutrients.
- Ohio Stream Nutrient Assessment Procedure Implementation (SNIP)
 - The rulemaking formalizes an implementation structure for the Stream Nutrient Assessment Protocol (SNAP). Ohio EPA will use decide appropriate National Pollutant Discharge Elimination System (NPDES) permit conditions for dischargers in watersheds that are nutrient impacted or at risk.

Rules were refiled with JCARR in September 2026

Ohio Nutrient Regulation



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DITCH LAW

Ditch Law

- *Colt's Neck Homeowners Association v. Franklin Cty, Ohio, Bd of C'mmrs*, Slip Opinion No. 2026-Ohio-2751
 - Ohio Supreme Court clarifies right to appeal after first hearing under R.C. Chapters 6131 and 6133.
- Recommendation: Auditing petition ditches
- Recommending: Clarity in mapping ditches and MS4

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SOVEREIGN IMMUNITY

Sovereign Immunity-- Reminder



“It’s good to be King.”
-- Mel Brooks *History of the World, Part I*

Ohio's Political Subdivision Tort Liability Act

R.C. 2744.02(A)(1):

“

“Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.”

Ohio's Political Subdivision Tort Liability Act

A political
subdivision is not
liable in damages:

In a civil action for injury,
death, or loss to person or
property

Allegedly caused by an act
or omission of the political
subdivision or an employee
of the political subdivision

In connection with a
governmental or proprietary
function

Except as provided in
division (B) of this section:
**Negligent performance of
acts by employees with
respect to proprietary
functions**

Proprietary Functions Listed

R.C.
2744.01(G)(2):

- The establishment, maintenance, and operation of a utility, including a municipal corporation water supply system
- Maintenance, destruction, operation and upkeep of a sewer system

“Act of God Defense”

Event “so overwhelming and destructive to produce the injury.”

- *Piqua v. Morris*, 98 Ohio St. 42 (1918)
- *Caputo v. Toledo*, No. 641-1058 (6th Dist. 2011)
- *State ex rel. Huttman v. Parma*, Cuyahoga Co. 12-781740, 2016-Ohio-5624 (8th Dist.)

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CASE LAW

Case Law Update

- *Vill. of Dalton v. Hubbard*, 2026-Ohio-1101 (9th Appellate Dist., March 30, 2026)
 - *Where plaintiff's negligence claim challenges village's 1970s-80s stormwater design decisions and 2003 stream modifications requiring engineering judgment and resource allocation, rather than alleging failure of routine maintenance or system disrepair, the challenged conduct constitutes immune government functions under Ohio R.C. 2744.01(C).*

Case Law Update

- *Riveredge Dentistry P'ship v. City of Cleveland*, 2026-Ohio-2713 (8th Appellate District, July 16, 2026)
 - City of Cleveland's construction of bioretention basins within ten feet of appellees' building foundation, which diverted parking lot stormwater into the ground and caused over 80 basement flooding events between 2019 and 2024, constituted a compensable taking because the flooding was foreseeable of city's intentional design.
 - Appellee met statute of limitations and demonstration of property diminution of value.

Case Law Update

- *Village of Granville, et al, v. Logue, et al*, Case No. ERAC 25-7216
 - ERAC finds that appellants must be affected and have standing to confer jurisdiction on appeal of action of the Ohio EPA Director
 - Currently on appeal to Ohio 10th District Court of Appeals

Case Law Update

- *Bartick v. Lorain Cnty. Bd. Of Comm'rs*, 2025-Ohio-1881 (9th appellate Dist. May 27, 2025)
 - Court of appeals upholds trial court's *de novo* review under R.C. 6131.30(A)
 - Court of Appeals upholds trial court's exclusion of additional evidence under abuse of discretion standard.
 - Court reversed denial of jury trial for compensation

Case Law Update

- *In re Oak Run Solar Project, LLC*, 2026-Ohio-1849 (S.Ct. Ohio, May 26, 2026)
- *In re South Branch Solar LLC*, 180 Ohio St. 3d 614 (December 24, 2025)

Ohio Supreme Court affirms appeals of decisions by Power Siting Board where allegations included environmental issues related, among many things, to stormwater impacts

Taylor Swift and Travis Kelce face setback over privacy fence at Ohio mansion

The couple have reportedly installed a voice warning system around their Lake Erie property

Pop Culture & Art | September 18, 2026



Miscellaneous

- Ohio considering sanitary sewer satellite community general permit
- Ohio working on UAA for combined sewer overflow communities
- Army Corps districts consolidated in Huntington office
- Others

Did you get it right?

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C	D	A	F	E	B

Thank You!

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