



## WATER LAW UPDATE – 1 CLE CREDIT

Presenter: Prof. David Strifling, Director, Marquette Water Law & Policy Initiative  
Thursday, March 2, 2023  
12:00 p.m. – 1:00 p.m.  
Via videoconference from Eckstein Hall  
Milwaukee, Wisconsin

### I. United States Supreme Court Developments

- a. *Sackett v. EPA* and the “waters of the United States” jurisdictional rulemaking
  - i. Key question: meaning and reach of the term “navigable waters” in the Clean Water Act
  - ii. Long history of uncertainty
    1. Supreme Court decisions
    2. Agency rulemakings (latest about to take effect)
      - a. Latest version will return to pre-2015 definition
      - b. Covered waters
      - c. Exempt waters
      - d. Legal challenges
  - iii. Real world consequences
  - iv. Wisconsin law related to wetland fill
    1. Permit generally required
    2. Exemptions in some cases
  - v. Awaiting the *Sackett* opinion
- b. *West Virginia v. EPA* and the “major questions” doctrine
  - i. Need to evaluate whether Congress really meant to confer the power an agency is claiming
  - ii. Extraordinary grants of authority rarely conveyed in modest words or vague terms
  - iii. Agency must provide evidence of “clear congressional authorization”
  - iv. Potential effects on agency authority, agency interpretation of statutory terms
  - v. Environmental and water law impacts

### II. Wisconsin groundwater update

- a. [\*Wisconsin Lawyer\* article](#) (Strifling, June 2022)

- b. Groundwater science
- c. Early cases
- d. Key statute: Wis. Stat. § 281.34
- e. High capacity wells
- f. Issues related to groundwater quality and groundwater quantity (or both)
- g. Discharges of pollutants to groundwater - *County of Maui*

### **III. PFAS regulation and litigation**

- a. Examples of emerging contaminants
- b. PFAS (perfluorinated chemicals) – human made organic compounds used in nonstick coatings, waterproof fabrics, firefighting foams, food packaging
- c. Called “forever chemicals” because they are highly resistant to degradation in the environment and in the body, and are ubiquitous
- d. Recent national focus due to potential to cause cancer, reproductive and developmental problems, hormone disruption, and other health risks
- e. Wisconsin regulatory efforts: update on DNR rulemakings for surface water (NR 105), groundwater (NR 140), drinking water (NR 809)
- f. Litigation update: on *WMC and Leather Rich v. WDNR*, 21CV342 (Waukesha County)
- g. Remediation update
- h. Budget update
- i. Federal role uncertain
  - i. Broader look at state actions
  - ii. EPA’s proposed drinking water standard expected soon

### **IV. Water Quality in the Wisconsin Legislature**

- a. Three important pending bills
  - i. Help to replace nitrate-contaminated wells
  - ii. Help for farmer-led watershed groups
  - iii. Deicer certification and shield from slip-and-fall liability
- b. State budget

### **V. Marquette Water Law and Policy Initiative, current research**