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| **Perkins Coie Update**  |

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| http://t.datasrvr.com/58889130013168999447/tl/space.gif | **Draft Regulations Would Dramatically Expand Clean Water Act Jurisdiction** **Highlights**  The Environmental Protection Agency and the Army Corps of Engineers have presented a draft of joint regulations under the Clean Water Act to the Office of Management and Budget for an internal governmental review. While the draft rules have not yet been formally proposed for public review and comment, a leaked copy of the new regulations is raising concerns that the EPA and the Corps are seeking a dramatic expansion of federal permitting jurisdiction under the CWA. The new rules would revise the definition of “waters of the United States” to:

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| http://t.datasrvr.com/58889130013168999447/tl/space.gif | http://t.datasrvr.com/58889130013168999447/148656326139132703270/misc2204/bullet.jpg | Establish federal jurisdiction over ephemeral and intermittent streams, regardless of their size or how frequently they flow.  |
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| http://t.datasrvr.com/58889130013168999447/tl/space.gif | http://t.datasrvr.com/58889130013168999447/148656326139132703270/misc2204/bullet.jpg | Establish federal jurisdiction over all waters that are “adjacent” to navigable or interstate water bodies. “Adjacent” would be broadly defined to include all areas within the floodplain or riparian area of the navigable or interstate water body. |
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| http://t.datasrvr.com/58889130013168999447/tl/space.gif | http://t.datasrvr.com/58889130013168999447/148656326139132703270/misc2204/bullet.jpg | Allow for the assertion of federal jurisdiction, on a case-by-case basis, over water bodies that are not located within a floodplain or riparian area and that lack any hydrological connection to a navigable or interstate water body. |
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Given the jurisdictional limitations under the Clean Water Act as laid out by the Supreme Court in the SWANCC and Rapanos cases, the ultimate effect and validity of the new regulations—if adopted in their current form—will be for the courts to decide. [**READ FULL UPDATE**](http://cr.perkinscoie.com/collect/click.aspx?u=/G1GTPto3VVZGvmAvFmcKpE7+vHZl1Fn7z685dOXKfEeGLaqW3t48gg8CNevnAgA84y80sKKK/2LTypbgwg9VNYv0llshADFgIOxzKSffkGROaIlZukd0Q==&rh=ff0014405e342216d3c03a00cd49bb7337bfa61f) | http://t.datasrvr.com/58889130013168999447/tl/space.gif |

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