

Clean Water Act Exclusions and Exemptions Continue for Agriculture

U.S. EPA and the U.S. Army Corps of Engineers have proposed a rule to clarify the types of waters that are and are not covered by the Clean Water Act to bring certainty and predictability, including to agriculture. For the past three years, EPA and the Army Corps have listened to important input from the agriculture community. Using the input from those discussions, the agencies then worked with the U.S. Department of Agriculture to ensure that concerns raised by farmers and the agricultural industry were addressed in the proposed rule.

The proposed rule focuses on reducing the confusion and complexity about where the Clean Water Act applies following Supreme Court decisions in 2001 and 2006. The rule is consistent with the more narrow readings of Clean Water Act protection by the Supreme Court. Any normal farming activity that does not result in a point source discharge of pollutants into waters of the U.S. still does not require a permit.

The proposed rule preserves existing Clean Water Act exemptions and exclusions for agricultural activities. In addition, in coordination with USDA's Natural Resource Conservation Service, EPA and the Corps will now exempt over 50 conservation practices from Clean Water Act Section 404 dredged or fill permitting requirements if they occur in waters covered by the Clean Water Act.

The proposed rule will:

- Preserve current agricultural exemptions for Clean Water Act permitting, including:
 - Normal farming, silviculture, and ranching practices. Those activities include plowing, seeding, cultivating, minor drainage, and harvesting for production of food, fiber, and forest products.
 - Upland soil and water conservation practices.
 - Agricultural stormwater discharges.
 - Return flows from irrigated agriculture.
 - Construction and maintenance of farm or stock ponds or irrigation ditches on dry land.
 - Maintenance of drainage ditches.
 - Construction or maintenance of farm, forest, and temporary mining roads.
- Provide greater clarity and certainty to farmers.
- Avoid economic burden on agriculture.
- Encourage the use of voluntary conservation practices.
- Be consistent with and support existing USDA programs.

The proposed rule will NOT:

- Regulate groundwater
- Increase regulation over ditches
- Protect any new types of waters
- Affect areas previously excluded from jurisdiction, including:
 - Artificially irrigated areas that would revert to upland if irrigation stops.
 - Artificial lakes or ponds used for purposes such as rice production, stock watering or irrigation.
 - Areas artificially flooded for rice growing.
 - Artificial ornamental waters created for primarily aesthetic reasons.
 - Water-filled depressions created as a result of construction activity.
 - Pits excavated in upland for fill, sand, or gravel.
 - Prior converted cropland.
 - Waste treatment systems (including treatment ponds or lagoons).