

US EPA ARCHIVE DOCUMENT

Clean Water Act Exclusions and Exemptions Continue for Agriculture

U.S. EPA and the U.S. Army Corps of Engineers have proposed a joint 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 several 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 proposed 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 Army Corps will now exempt 56 established NRCS conservation practices implemented in accordance with published standards 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:

- Cover groundwater
- Cover tiles drains
- Increase regulation of ditches
- Protect any new types of waters
- Affect areas generally previously excluded from jurisdiction, including:
 - Artificially irrigated areas that would revert to upland if irrigation stops.
 - Artificial lakes or ponds created by excavating and/or diking dry land and used for purposes such purposes as rice growing, stock watering or irrigation.
 - 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).

Improving Opportunities for Conservation Programs

EPA and the Army Corps have worked with USDA to improve opportunities for farmers, ranchers, and foresters to participate in USDA's voluntary conservation programs that help to protect water quality and improve the environment.

During the coordination with USDA, the agencies ensured that 56 specific agriculture conservation practices that help protect or improve water quality will not be subject to Clean Water Act dredged or fill permitting requirements, including habitat restoration and establishing riparian forest buffers. This is being done through an interpretive rule that was published at the same time as the proposed rule and will go into effect immediately.

To qualify for this exemption, the activities must be part of an established farming, forestry, or ranching operation, consistent with the statute and regulations and be implemented in conformance with Natural Resource Conservation Service technical standards.

Farmers and producers will not need a determination of whether the activities are in "waters of the United States" to qualify for this exemption nor will they need site-specific pre-approval from either the Corps or the EPA before implementing these specified agricultural conservation practices to qualify for the exemption.

Through a memorandum of understanding, EPA, the Army Corps, and USDA have set up a process for working together to implement these new exemptions and for periodically identifying, reviewing, and updating NRCS conservation practice standards and activities that would qualify under the exemption.

More Information: www.epa.gov/uswaters