

US EPA ARCHIVE DOCUMENT



The Clean Water Rule only protects the types of waters that historically have been covered under the Clean Water Act. The rule does not create any new permitting requirements for agriculture and maintains all previous exemptions and exclusions. It does not regulate most ditches and does not regulate groundwater, shallow subsurface flows, or tile drains. It does not make changes to current policies on irrigation or water transfers or apply to erosion in a field. The Clean Water Rule protects waters from pollution and destruction – it does not regulate land use or affect private property rights. These statements are supported by the text of the rule and its preamble.

A Clean Water Act permit is only needed if a protected water is going to be polluted or destroyed.

FACT: THE CLEAN WATER RULE DOES NOT REGULATE MOST DITCHES

Rule Text § 230.3(s)(2)(iii): “The following are not ‘waters of the United States... the following ditches: (A) Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary. (B) Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands. (C) Ditches that do not flow, either directly or through another water, into [a traditional navigable water, interstate water, or the territorial seas.]”

Preamble page 169: “Moreover, since the agencies have focused in the final rule on the physical characteristics of excluded ditches, the exclusions will address all ditches that the agencies have concluded should not be subject to jurisdiction, including certain ditches on agricultural lands and ditches associated with modes of transportation, such as roadways, airports, and rail lines.”

FACT: THE CLEAN WATER RULE DOES NOT CHANGE EXEMPTIONS FOR AGRICULTURE

Preamble page 8: “Congress has exempted certain discharges, and the rule does not affect any of the exemptions from CWA section 404 permitting requirements provided by CWA section 404(f), including those for normal farming, ranching, and silviculture activities. CWA section 404(f); 40 CFR 232.3; 33 CFR 323.4. This rule not only maintains current statutory exemptions, it expands regulatory exclusions from the definition of “waters of the United States” to make it clear that this rule does not add any additional permitting requirements on agriculture.”

FACT: THE CLEAN WATER RULE DOES NOT REGULATE EROSIONAL FEATURES

Rule Text § 230.3(s)(2)(iv)(F): “The following are not ‘waters of the United States’ . . . erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary”

Preamble page 175: “While the proposed rule specifically identified gullies and rills, the agencies intended that all erosional features would be excluded. The final rule makes this clear.”

FACT: THE CLEAN WATER RULE DOES NOT REGULATE GROUNDWATER

Rule Text § 230.3(s)(2)(v): “The following are not ‘waters of the United States... groundwater, including groundwater drained through subsurface drainage systems.”

Preamble page 176: “The agencies include an exclusion for groundwater, including groundwater drained through subsurface drainage systems.”

FACT: THE CLEAN WATER RULE DOES NOT REGULATE FARM PONDS

Rule Text § 230.3(s)(2)(iv)(B): “The following are not ‘waters of the United States... Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds”

Preamble page 173: “In the exclusion for artificial lakes or ponds, the agencies have removed language regarding ‘use’ of the ponds, including the term ‘exclusively.’ . . . [T]he agencies recognize that artificial lakes and ponds are often used for more than one purpose and can have other beneficial purposes”

FACT: THE CLEAN WATER RULE DOES NOT REGULATE LAND USE

Preamble page 8: “The rule also does not regulate ... land use.”

FACT: THE CLEAN WATER RULE DOES NOT CHANGE POLICY ON IRRIGATION

Rule text § 230.3(s)(2)(iv)(A): “The following are not ‘waters of the United States... artificially irrigated areas that would revert to dry land should application of water to that area cease”

Rule text § 230.3(s)(2)(iv)(B): “The following are not ‘waters of the United States . . . Artificial constructed lakes and ponds created in dry land such as . . . irrigation ponds”

Preamble page 8: “The rule also does not . . . affect either the existing statutory or regulatory exemptions from NPDES permitting requirements, such as for agricultural stormwater discharges and return flows from irrigated agriculture”

FACT: THE CLEAN WATER RULE DOES NOT REGULATE PUDDLES

Rule Text § 230.3(s)(2)(iv)(G): “The following are not ‘waters of the United States... puddles.”

Preamble page 176: “The final rule adds an exclusion for puddles Numerous commenters asked that the agencies expressly exclude them in a rule. The final rule does so.”

FACT: THE CLEAN WATER RULE DOES NOT CHANGE POLICY ON STORMWATER

Rule text § 230.3(s)(2)(vi): “The following are not ‘waters of the United States... stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.”

Preamble page 177: “This exclusion responds to numerous commenters who raised concerns that the proposed rule would adversely affect municipalities’ ability to operate and maintain their stormwater systems The agencies’ longstanding practice is to view stormwater control features that are not built in ‘waters of the United States’ as non-jurisdictional.”

FACT: THE CLEAN WATER RULE DOES NOT REGULATE WATER IN TILE DRAINS

Rule Text § 230.3(s)(2)(v): “The following are not ‘waters of the United States... groundwater, including groundwater drained through subsurface drainage systems.”

FACT: THE CLEAN WATER RULE DOES NOT CHANGE POLICY ON WATER TRANSFERS

Preamble page 8: “The rule also does not ... affect either the existing statutory or regulatory exemptions from NPDES permitting requirements, such as for... water transfers.”

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