

US EPA ARCHIVE DOCUMENT

The Clean Water Rule for: UTILITIES



WHY THE CLEAN WATER RULE IS IMPORTANT

Clean and reliable water is an economic driver, including for energy production, manufacturing, farming, tourism, and recreation. Protection for about 60 percent of the nation's streams and millions of acres of wetlands has been confusing and complex since Supreme Court decisions in 2001 and 2006. This led to time-consuming determinations of protected waters, which often led to delays in planning, siting, and permitting for energy and utility projects.

EPA and the U.S. Army are ensuring that waters protected under the Clean Water Act are more precisely defined and more predictably determined, making it easier and quicker for businesses and industry to understand and operate. The energy and utility sector will benefit from the greater clarity and certainty provided by the Clean Water Rule. Permitting requirements have not changed, including the availability of nationwide permits for linear utility projects, but the permit process will be more timely and predictable as covered and exempt waters are more clearly defined.

The Clean Water Act protects the nation's waters. A Clean Water Act permit is only needed if these waters are going to be polluted or destroyed.

INPUT SHAPED THE RULE

After releasing the proposed rule last year, the agencies held more than 400 meetings with stakeholders across the country to provide information, hear concerns, and answer questions. The EPA and Army listened to the important questions raised by the energy and utility sectors about what it means for waters to be "covered" or "jurisdictional" under the Clean Water Act. The agencies reviewed over one million public comments, and carefully considered perspectives from all sides. All of this public input helped to shape the final Clean Water Rule.

WHAT THE RULE DOES

The Clean Water Rule protects streams and wetlands that are scientifically shown to impact downstream water quality and form the foundation of our nation's water resources. The rule provides more certainty and timeliness through the use of clear definitions and a reduced need for case-specific determinations. Specifically, the Clean Water Rule:

- **Clearly defines and protects tributaries that impact the health of downstream waters.** The Clean Water Act protects navigable waterways and their tributaries. The rule says that a tributary must show physical features of flowing water – a bed, bank, and ordinary high water mark – to warrant protection. The rule provides protection for headwaters that have these features and science shows can have a significant connection to downstream waters.
- **Provides certainty in how far safeguards extend to nearby waters.** The rule protects waters that are next to rivers and lakes and their tributaries because science shows that they impact downstream waters. The rule sets boundaries on covering nearby waters for the first time that are physical and measurable.
- **Protects the nation's regional water treasures.** Science shows that specific water features can function like a system and impact the health of downstream waters. The rule protects prairie

potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands when they impact downstream waters.

- **Focuses on streams, not ditches.** The rule limits protection to ditches that are constructed out of streams or function like streams and can carry pollution downstream. So ditches that are not constructed in streams and that flow only when it rains are not covered.
- **Maintains the status of waters within Municipal Separate Storm Sewer Systems.** The rule does not change how those waters are treated and encourages the use of green infrastructure.
- **Reduces the use of case-specific analysis of waters.** Previously, almost any water could be put through a lengthy case-specific analysis, even if it would not be subject to the Clean Water Act. The rule significantly limits the use of case-specific analysis by creating clarity and certainty on protected waters and limiting the number of similarly situated water features.

The Clean Water Rule preserves exemptions from dredged or fill permitting for maintenance of drainage ditches and engineered components of stormwater management systems constructed in uplands and requiring periodic maintenance. This rule is designed to avoid disincentives to use of environmentally beneficial green infrastructure stormwater management practices. The rule ensures that cooling ponds and their supporting structures are excluded from the Clean Water Act. It also does not regulate most ditches and preserves the ability for linear projects such as power utilities and pipelines.

The agencies adopted streamlined ways to simplify and expedite compliance through the use general permits developed at the national, regional, or state level. The rule does not affect the use of general permits that the Army or states implement for expeditious review and efficiency in processing Clean Water Act Section 404 permit applications. Nationwide permits for activities such as maintenance, utility line activities, hydropower projects, and renewable energy generation have been and continue to be available for use where proposed discharges meet general permit terms and conditions.

WHAT THE RULE DOES NOT DO

The Clean Water Act requires a permit to pollute or destroy a covered waterbody, but activities like construction of stormwater facilities in uplands and use of green infrastructure practices have been excluded from permitting, and that won't change under the Clean Water Rule. The rule protects only waters that have historically been covered by the Clean Water Act. It **does not** interfere with or change private property rights or address land use. It **does not** regulate most ditches or regulate groundwater or shallow subsurface flows.

THE RULE DOES NOT affect areas previously excluded from jurisdiction, including:

- Artificially irrigated areas that are otherwise dry land.
- Artificial lakes or ponds or reflecting pools created in dry land
- Artificial ornamental waters created in dry land for primarily aesthetic reasons.
- Water-filled depressions created as a result of construction activity.
- Pits excavated in upland for fill, sand, or gravel.
- Erosional features such as gullies, rills and non-wetland swales

FOUNDATION IN SCIENCE

Science shows us the most important waters to protect. In developing the Clean Water Rule, the Agencies utilized the latest science, including a report summarizing more than 1,200 peer-reviewed, published scientific studies which showed that small streams and wetlands play an important role in the health of larger downstream waterways like rivers and lakes.