

US EPA ARCHIVE DOCUMENT

# The Clean Water Rule for: DEVELOPMENT



## WHY THE CLEAN WATER RULE IS IMPORTANT

**Clean and reliable water is an economic driver**, including for manufacturing, farming, tourism, recreation, and energy production. 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 delays activities of developers.

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. Developers will benefit from the greater clarity and certainty provided by the Clean Water Rule. Permitting requirements have not changed, 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 Corps listened to the important questions raised by the development community 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 also 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 jurisdictional status of features in MS4s involves a case-by-case assessment, taking into account the specific characteristics of each system.

### 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. It **does not** apply to rills, gullies, or erosional features.

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

- Artificially irrigated areas that are otherwise dry land.
- Artificial lakes or ponds constructed in dry land for purposes like aesthetics or irrigation.
- Water-filled depressions created as a result of construction activity.
- Pits excavated in dry land for fill, sand, or gravel.
- Erosional features such as gullies, rills and non-wetland swales
- Waste treatment systems (including treatment ponds or lagoons).
  - Wastewater recycling structures created in dry land: detention and retention basins built for wastewater recycling, groundwater recharge basins, and percolation ponds built for wastewater recycling, and water distributary structures built for wastewater recycling.
  - Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.

### 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.