



NPDES Water Transfers Final Rule Fact Sheet



EPA is publishing a final rule that clarifies that water transfers are excluded from regulation under the Clean Water Act's (CWA) National Pollutant Discharge Elimination System (NPDES) permitting program. The rule defines a water transfer as an activity that conveys or connects waters of the United States without subjecting the transferred water to intervening industrial, municipal, or commercial use. This exclusion does not apply to pollutants introduced by the water transfer activity itself to the water being transferred.

Background

Water transfers occur routinely and for a variety of water resource needs across the United States. Examples include providing public water supply, irrigation, power generation, flood control, and environmental restoration. Numerous States, localities, and residents are dependent upon water transfers, and these transfers are an integral component of U.S. infrastructure. The question of whether or not an NPDES permit is required for water transfers has arisen due to various court cases across the country. In particular, the Supreme Court recently addressed this issue in *South Florida Water Management District v. Miccosukee Tribe of Indians*, 541 U.S. 95 (2004). The Court declined to rule directly on the issue and remanded it back to the District Court for further deliberations.

On June 7, 2006, EPA published a proposed rule that would amend the CWA regulations to expressly exclude water transfers from regulation under the NPDES permitting program. The proposed rule incorporated the substance of an Interpretive Statement that was published by EPA on August 5, 2005, entitled "Agency Interpretation on Applicability of Section 402 of the Clean Water Act to Water Transfers." The memorandum confirmed EPA's interpretation that Congress generally intended for water transfers to be subject to oversight by water resource management agencies and State non-NPDES authorities, rather than the NPDES permitting program. The interpretive memorandum stated that the Agency would also initiate a rulemaking to this effect.

About this Regulation

The final rule is very similar to the proposed rule. This rule excludes water transfers, as they are defined in the regulation, from the NPDES permitting program. It is the Agency's intent to provide clarity, given the court cases on the matter, that NPDES permits are not needed for water transfers.

This action is based on a legal interpretation of the CWA which concludes that Congress generally did not intend to subject water transfers to the NPDES program and that there is no "addition" of a pollutant which would trigger the requirement to obtain an NPDES permit for water transfers because the pollutants are already in the waters being transferred and are not being added from the outside world. In addition, Congress intended to leave primary oversight of water transfers to state authorities in cooperation with Federal authorities.

How to Get Additional Information

For additional information, including a copy of the final rule, visit the NPDES website at <http://www.epa.gov/npdes/agriculture> or contact Virginia Garelick, Water Permits Division, Office of Wastewater Management at (202) 564-2316 or garelick.virginia@epa.gov.

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