

DITCH THE RULE

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DOES EPA HAVE THE RIGHT TO DO WHAT IT IS PROPOSING?

EPA clearly thinks it does, but the Supreme Court has said in two separate decisions that there are limits to EPA's authority under the Clean Water Act. If the agency can regulate every water body from the largest to the smallest, and even those areas that aren't wet most of the time, as it is proposing in this rule, then there are effectively no limits to the agency's regulatory reach.

SO, FARMERS HAVE TO GET PERMITS. WHAT'S SO BAD ABOUT THAT?

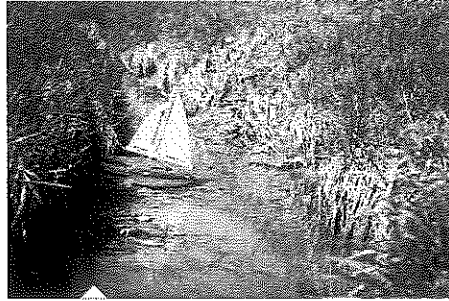
There is absolutely no legal right to a permit to "discharge" into "navigable" waters—or any deadline on an agency's process to issue a permit. Permitting may take months or even years, or permits may simply be unavailable.

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IT SOUNDS LIKE EPA NEEDS TO GO BACK TO THE DRAWING BOARD. HOW DO WE GET THEM TO DO THAT?

The public comment period on the proposed rule has ended, and now it is time for Congress to step in and help us Ditch the Rule!

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WHAT IS DIFFERENT UNDER THE FINAL RULE?

EPA claims in its promotional materials that it is not broadening coverage of the Clean Water Act. However, the details of the rule itself say otherwise.

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EPA SAYS IT WILL EXEMPT FARMERS FROM THE RULE, SO WHY ARE THEY CONCERNED?

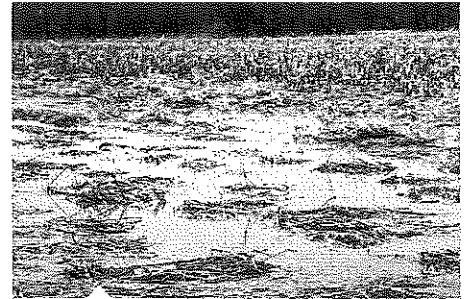
First, the exemptions are extremely narrow. They only apply to one part of the CWA, the section 404 "dredge and fill" permit program. The rule provides no protection from enforcement over other activities, such as weed control, fertilizer applications and any number of other common farm activities that may trigger CWA liability and permit requirements.

In addition, a farmer has to have been farming continuously at the same location since 1977 to benefit from the exemptions.

I'VE HEARD THAT THE RULE WOULD RESTORE PROTECTIONS THAT EXISTED BEFORE THE SUPREME COURT RULINGS. IS THAT CORRECT?

Advocates for the proposed rule claim that it would restore protections that existed before the Supreme Court's decisions in 2001 and 2006; however, that is a gross misinterpretation. The court upheld the limits that already existed in the Clean Water Act. EPA might have behaved as if it had the authority to regulate every puddle and ditch in the country, but that doesn't mean it was right.

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HOW WILL THOSE WATERS BE PROTECTED IF EPA DOESN'T REGULATE THEM?

EPA's implication that only the federal government is capable of protecting small bodies of water is not supported by science or facts, and EPA certainly has not provided any evidence to support that assertion.

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WILL THIS AFFECT OTHER PEOPLE BESIDES FARMERS?

EPA has said the proposed rule will benefit businesses by making it easier to determine if a body of water is covered by the Clean Water Act. Indeed, it is easier if everything is covered. But that certainly doesn't save anyone from the costs and burdens of increased regulation.

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