

# O'NEILL & BORGES

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CLIENT BRIEFING  
June 15, 2006

## Federal Regulatory Developments

**RE:** *Proposed Exclusion of Certain Water Transfers from the National Pollutant Discharge Elimination System ("NPDES")*

On June 7, 2006, the U.S. Environmental Protection Agency ("EPA") issued a proposed rule that would exclude water transfers from complying with certain regulatory requirements under the NPDES program. The question of whether or not an NPDES permit is required for water transfers has arisen because activities that result in the movement of regulated waters (*i.e.*, waters of the U.S.), such as transfers of waters to serve municipal, agricultural, and commercial needs, can also move pollutants from one water body (donor water) to another (receiving water).

Water transfers occur routinely and in many different contexts. Typically, water transfer activities route water through tunnels, channels, and/or natural stream water features, and either pump or passively direct it for uses such as providing public water supply, irrigation, power generation, flood control, and environmental restoration. Water transfers can be relatively simple, moving a small quantity of water a short distance on the same stream, or very complex.

EPA's proposed rule would define water transfers as an "activity that conveys waters of the United States to another water of the United States without subjecting the water to intervening industrial, municipal, or commercial use." Further, the proposed rule declares that the water transfer activities would be excluded from the NPDES permitting requirements, provided that they do not add pollutants to the water being transferred.

EPA will receive comments regarding the above-referenced proposed rule until July 24, 2006.

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If you need additional information on this regulatory development or would like for us to prepare and file comments on your behalf, please contact any of the attorneys in the O'Neill & Borges Environmental Law Practice Group.

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