

DAA Alert...to Local and State Governments



A Publication of **Draper Aden Associates**

July 2006

Comment Period Extended

Proposed Water Transfers Rule

On Wednesday, June 7, 2006, EPA published a proposed rule entitled "NPDES Water Transfers Proposed Rule". As initially published in the Federal Register on June 7, 2006 written comments on the proposed rulemaking were to be submitted to EPA on or before July 24, 2006 (a 45-day public comment period). Since publication, EPA has received several requests for additional time to submit comments. **The comment period has been extended for 14 days and will now close on August 7, 2006.**

EPA proposes to exclude water transfers from regulation under the NPDES permitting program. The proposed rule would define a water transfer 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. This exclusion does not apply, though, to pollutants that the water transfer itself may introduce to the water being transferred.

In 2004, the question of whether NPDES permits were necessary for water transfers was presented before the Supreme Court in *South Florida Water Management District v. Miccosukee Tribe of Indians*. The Court declined to rule directly on the issue and remanded it back to the District Court for further deliberation. On August 5, 2005, EPA issued a legal memorandum entitled "Agency Interpretation on Applicability of Section 402 of the Clean Water Act to Water Transfers." This memo confirmed EPA's interpretation that Congress 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.

You can find in depth information about this topic at the following web page, <http://cfpub.epa.gov/npdes/index.cfm>. Once there you will have links to the proposed rule, agency interpretation and questions and answers on water transfer.

If you would like to have your name removed from our fax list, please send your request to chanks@daa.com.



Draper Aden Associates

Engineering ♦ Surveying ♦ Environmental Services

Corporate Offices: 2206 South Main Street Blacksburg, VA (540) 552-0444
Blacksburg, VA 24060 Charlottesville, VA (434) 295-0700
(540) 552-0444 Hampton Roads, VA (757) 599-9800
Fax: (540) 552-0291 Richmond, VA (804) 264-2228
www.daa.com daa@daa.com