

**ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

	)		
<b>In Re:</b>	)		
	)		
<b>Four Corners Power Plant</b>	)	<b>NPDES Appeal No. 19-06</b>	
<b>NPDES Renewal Permit: NN0000019</b>	)		
<b>Arizona Public Service Company (Permittee)</b>	)		
	)		
	)		

**ARIZONA PUBLIC SERVICE COMPANY'S  
SURREPLY TO PETITIONERS' CONSOLIDATED REPLY**

**ATTACHMENT 5**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 15 1980

MEMORANDUM

OFFICE OF ENFORCEMENT

**SUBJECT:** Suspension of portion of definition of "Waters of the United States" in Consolidated Permit Regulations—  
ACTION MEMORANDUM

**FROM:** Jeffrey G. Miller, Acting Assistant Administrator  
for Enforcement (EN-329)

**TO:** The Administrator

Attached is a Federal Register notice suspending the effect of the last sentence in the definition of "Waters of the United States" which appears in the May 19, 1980 Consolidated Permit Regulations. The sentence provides that a waste treatment system, ordinarily excluded from the definition of "Waters of the United States," is not excluded if it is constructed in wetlands or by impounding waters of the United States. The suspension results from requests by the Utility Water Act Group (UWAG) and the American Petroleum Institute (API). We agree with them that language of the final regulation is overly broad and should be suspended while we consider amendments. If read literally, it could require many power plants and oil refineries (among other industries) to apply for NPDES permits for discharges into their ash ponds and treatment lagoons. We did not intend this result.

The API has filed a motion in the Western District of Louisiana for a Temporary Restraining Order and Preliminary Injunction against EPA implementation of this regulation, among others. The motion will be heard on Thursday, July 17, 1980. notice is signed immediately, we are confident that we can persuade the Court that the portion of the motion dealing with the definition of "Waters of the United States" is moot.

**RECOMMENDATION:** I recommend that you sign the attached notice suspending this provision of the Consolidated Permit Regulation

Attachment