

The Basics of the Clean Water Act





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Administrators

What we will cover:

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- Basic elements of the Clean Water Act

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- Federal and state roles in implementing the Clean Water Act and protecting water quality

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- Basic elements of the Clean Water Act
- Federal and state roles in implementing the Clean Water Act and protecting water quality
- Recent developments and current areas of controversy

What we *won't* cover (or won't cover much):

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- Laws protecting groundwater quality
 - (with limited exceptions involving *County of Maui v. Hawaii Wildlife Fund*)
- The Safe Drinking Water Act

Basics of the CWA

ELI Summer School: Clean Water

Act June 25, 2025



**SOUTHERN
ENVIRONMENTAL
LAW
CENTER**

Carroll Courtenay
Staff Attorney

Overview

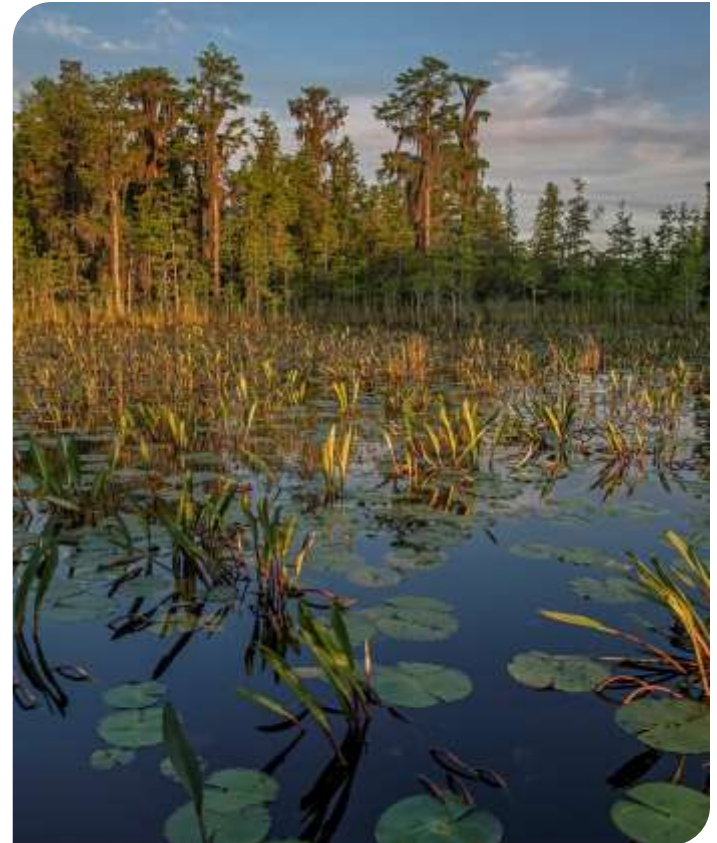
- Background & purpose of CWA
- Key Definitions
- Permitting sections (§§ 402, 404)
- Water quality standards (§ 303)
- Enforcement (§§ 309, 505)



What's at stake?

Wetlands Matter

- Filter pollutants
- Absorb floodwaters
- Protect against erosion
- Prevent sedimentation
- Provide critical habitat
- Recharge groundwater
- Store carbon



Rivers & Streams Matter

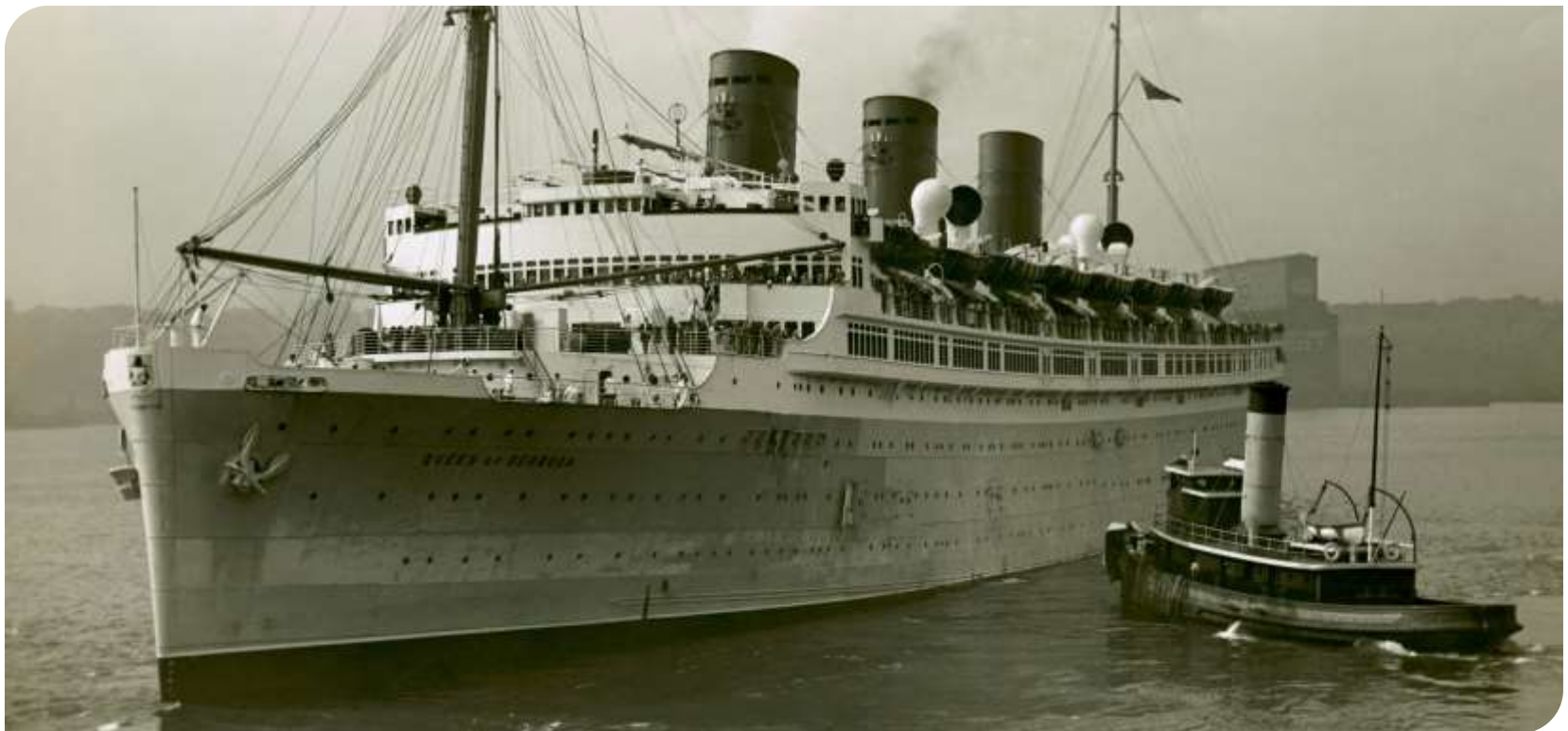
- Provide clean drinking water
- Protect against floods and erosion
- Filter pollutants
- Provide wildlife habitat
- Transportation to downstream waters



A Brief Clean Water Act History

Pre-Clean Water Act

- Rivers and Harbors Act (1899)
- Federal Water Pollution Control Act (1948)
- Some other laws



Results of pre-1970s water quality laws:

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- Development of some regulatory programs and treatment systems;
- Some improvements in water quality:

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“[I]n the late 1960s, appalling conditions afflicted countless streams and lakes across the country. For more and more Americans, water pollution was becoming intolerable.”

William L. Andreen, *The Evolution of Water Pollution Control in the United States - State, Local, and Federal Efforts, 1789-1972: Part I*, 22 Stan. Envtl. L.J. 145, 198 (2003).

Cuyahoga River Fire



© Cleveland Public Library Digital Gallery

Federal Water Pollution Control Act Amendments (1972)

aka the Clean Water Act (33 USC §§1251-1388)

Section 101:

“[R]estore and maintain the chemical, physical, and biological integrity of the Nation’s waters”

National goal:

Discharge of pollutants eliminated by 1985

Interim goal:

Water quality that provides for the protection and propagation of fish, shellfish, and wildlife and for recreation by July 1, 1983

(33 USC §251; 40 CFR §31.2)

Key Provisions & Definitions

Section 301:

Unless authorized by specific provisions of the CWA, the **discharge of a pollutant is unlawful.**

(33 USC §1311)



What is a "pollutant"?



What is a "pollutant"?



What is a “pollutant”?

“[D]redged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”

(33 USC §1362)

“Discharge of a pollutant”

Any addition of any pollutant to navigable waters or the ocean from any point source

Navigable waters are waters of the United States, including territorial seas

Point sources are any discernible, confined, and discrete conveyance, ... from which pollutants are or may be discharged

(33 USC §1362)

Point sources



Nonpoint Sources:

- agricultural stormwater runoff
- return flows from irrigated agriculture.
- sources not involving a discrete conveyance.



Point source permitting -§ 402

National Pollutant Discharge Elimination System (NPDES)

Authority: EPA & states, tribes, or territorial governments

Types: Individual  General 

Key = Disclosure of pollutants



Permit conditions:

Monitoring, reporting, testing methods

Technology-based effluent limits

Water quality-based effluent limits

(33 USC§1342)

PART A - EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

I. A. For Outfall 001, Latitude 40° 05' 7.5", Longitude 75° 19' 20.5", River Mile Index 21.6, Stream Code 00833

Discharging to Schuylkill River via Matsunk Creek

which receives wastewater from Pharmaceutical manufacturing wastewater and utility blowdown from industrial wastewater treatment plant

1. The permittee is authorized to discharge during the period from April 1, 2014 through March 31, 2016.
2. Based on the anticipated wastewater characteristics and flows described in the permit application and its supporting documents and/or amendments, the following effluent limitations and monitoring requirements apply (see also Additional Requirements, Footnotes and Supplemental Information).

Parameter	Effluent Limitations						Monitoring Requirements	
	Mass Units (lbs/day) ⁽¹⁾		Concentrations (mg/L)				Minimum ⁽²⁾ Measurement Frequency	Required Sample Type
	Average Monthly	Daily Maximum	Instant. Minimum	Average Monthly	Daily Maximum	Instant. Maximum		
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX	Continuous	Metered
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0	1/day	Grab
Color (Pt-Co Units)	XXX	XXX	XXX	100	XXX	XXX	1/week	Grab
Temperature (°F)*	XXX	XXX	XXX	XXX	XXX	110	1/week	I-S
BOD5	467	934	XXX	700	1,400	1,750	1/week	24-Hr Composite
Influent BOD5**	Report	Report	XXX	Report	Report	XXX	1/week	24-Hr Composite
BOD5 % Removal**	90 Average	XXX	XXX	85	XXX	XXX	See Permit**	Calculation
Chemical Oxygen Demand	571	1,118	XXX	856	1,675	2,140	1/week	24-Hr Composite
Influent COD**	Report	Report	XXX	Report	Report	XXX	1/week	24-Hr Composite
COD % Removal**	74 Average	XXX	XXX	XXX	XXX	XXX	See Permit**	Calculation
Total Suspended Solids	20	30 Weekly Avg.	XXX	30	45 Weekly Avg.	75	1/week	24-Hr Composite

Monitoring Period Begin Date	Monitoring Period End Date	DMR Received Date	Outfall *	Monitoring Location	Parameter Name	DMR Value ***	Permit Limit	Units	Statistical Base Code
01APR2014	30APR2014	28MAY2014	001A	Final Effluent	Temperature (°F)	77	110	°F	Instantaneous Maximum
01APR2014	30APR2014	28MAY2014	001A	Final Effluent	Color (Pt-Co Units)	12.5	100	Pt-Co Units	Average Monthly
01APR2014	30APR2014	28MAY2014	001A	Final Effluent	BOD5	0.62	467	lbs/day	Average Monthly
01APR2014	30APR2014	28MAY2014	001A	Final Effluent	BOD5	2.00	700	mg/L	Average Monthly
01APR2014	30APR2014	28MAY2014	001A	Final Effluent	BOD5	0.66	934	lbs/day	Daily Maximum
01APR2014	30APR2014	28MAY2014	001A	Final Effluent	BOD5	2.00	1400	mg/L	Daily Maximum
01APR2014	30APR2014	28MAY2014	001A	Influent	BOD5	54.94	Report	lbs/day	Average Monthly
01APR2014	30APR2014	28MAY2014	001A	Influent	BOD5	284.59	Report	mg/L	Average Monthly
01APR2014	30APR2014	28MAY2014	001A	Influent	BOD5	72.80	Report	lbs/day	Daily Maximum
01APR2014	30APR2014	28MAY2014	001A	Influent	BOD5	625.67	Report	mg/L	Daily Maximum
01APR2014	30APR2014	28MAY2014	001A	Final Effluent	Chemical Oxygen Demand	22.76	571	lbs/day	Average Monthly
01APR2014	30APR2014	28MAY2014	001A	Final Effluent	Chemical Oxygen Demand	74.50	856	mg/L	Average Monthly
01APR2014	30APR2014	28MAY2014	001A	Final Effluent	Chemical Oxygen Demand	27.98	1118	lbs/day	Daily Maximum
01APR2014	30APR2014	28MAY2014	001A	Final Effluent	Chemical Oxygen Demand			mg/L	Daily Maximum
01APR2014	30APR2014	28MAY2014	001A	Influent	Chemical Oxygen Demand	85.70	Report	lbs/day	Average Monthly
01APR2014	30APR2014	28MAY2014	001A	Influent	Chemical Oxygen Demand	427.47	Report	mg/L	Average Monthly
01APR2014	30APR2014	28MAY2014	001A	Influent	Chemical Oxygen	109.81	Report	lbs/day	Daily

Pretreatment requirements - § 307

Publicly-owned treatment works (POTWs) have NPDES permits; their industrial users don't

Pretreatment programs to prevent

- Pass through
- Interference

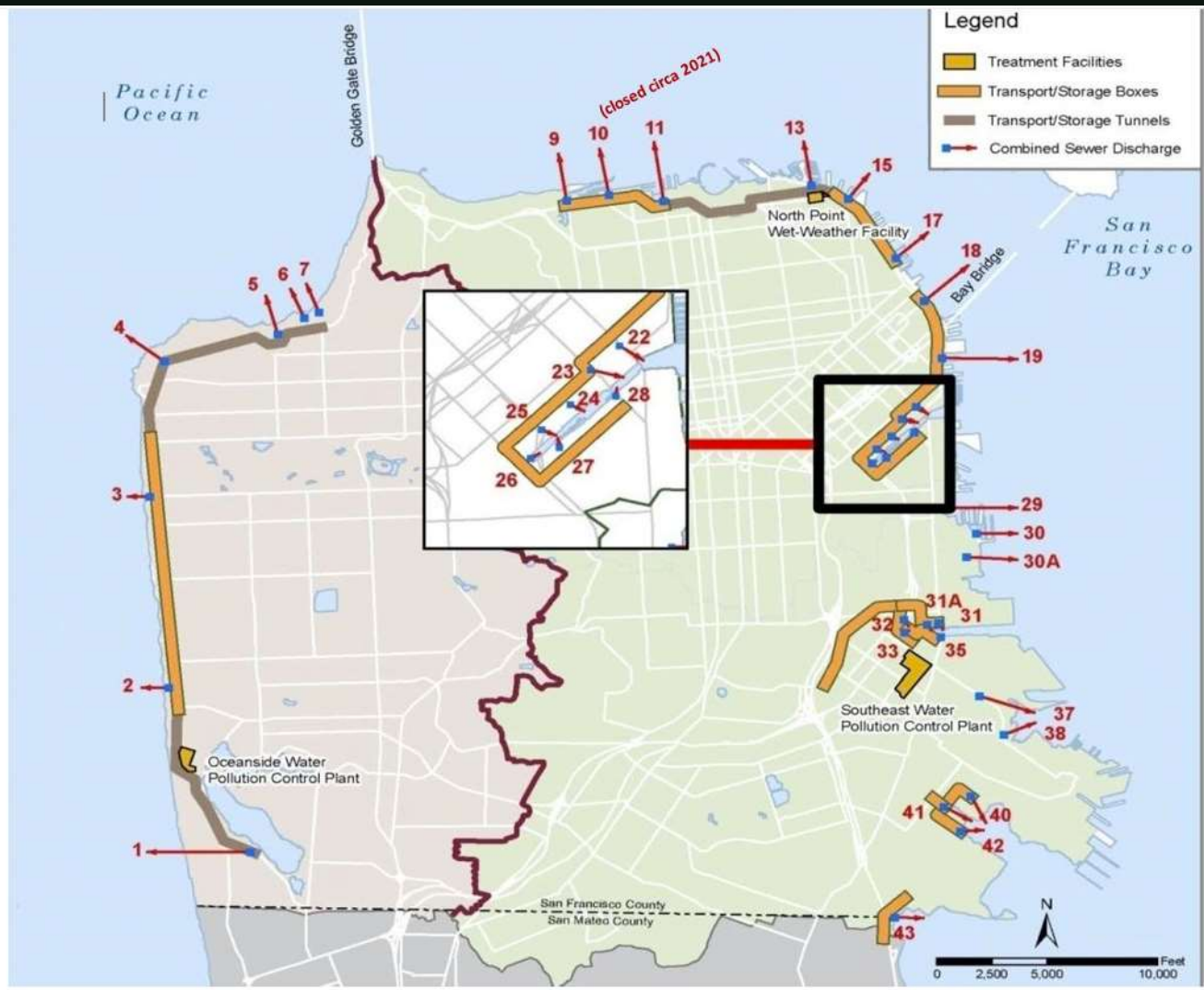
through pretreatment standards, monitoring requirements, and best management practices

(33 USC§1317)

NPDES Permitting and Stormwater



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Legal Response 1: Industrial Stormwater Permitting

Industrial General Permit Order

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT FOR
STORM WATER DISCHARGES
ASSOCIATED WITH INDUSTRIAL ACTIVITIES

ORDER
NPDES NO. CAS000001

This Order was adopted by the State Water Resources Control Board on:	April 1, 2014
This Order shall become effective on:	July 1, 2015
This Order shall expire on:	June 30, 2020

IT IS HEREBY ORDERED that as of July 1, 2015 this Order supersedes Order 97-03-DWQ except for Order 97-03-DWQ's requirement to submit annual reports by July 1, 2015 and except for enforcement purposes. As of July 1, 2015, a Discharger shall comply with the requirements in this Order to meet the provisions contained in Division 7 of the California Water Code (commencing with section 13000) and regulations adopted thereunder, and the provisions of the federal Clean Water Act and regulations and guidelines adopted thereunder.

CERTIFICATION

I, Jeanine Townsend, Clerk to the Board, do hereby certify that this Order, including its fact sheet, attachments, and appendices is a full, true, and correct copy of an Order adopted by the State Water Resources Control Board, on April 1, 2014.

AYE: Chair Felicia Marcus
Vice Chair Frances Spivy-Weber
Board Member Tam M. Doduc
Board Member Steven Moore

NAY: None

ABSENT: Board Member Dorene D'Adamo

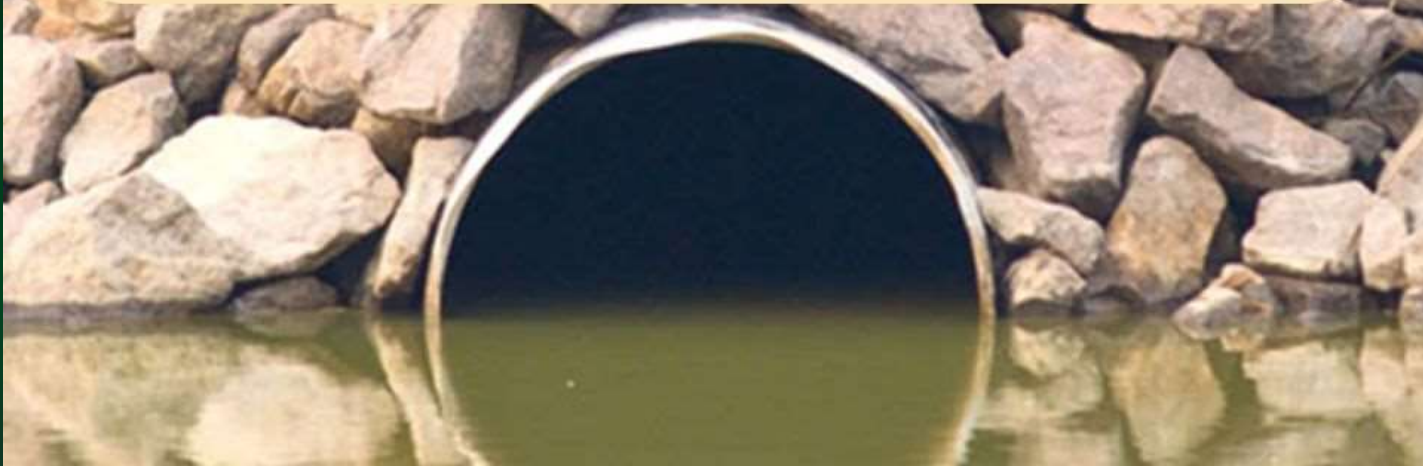
Legal Response 2:

Municipal Separate Storm Sewer
System Permits (MS4s)

What is an MS4?

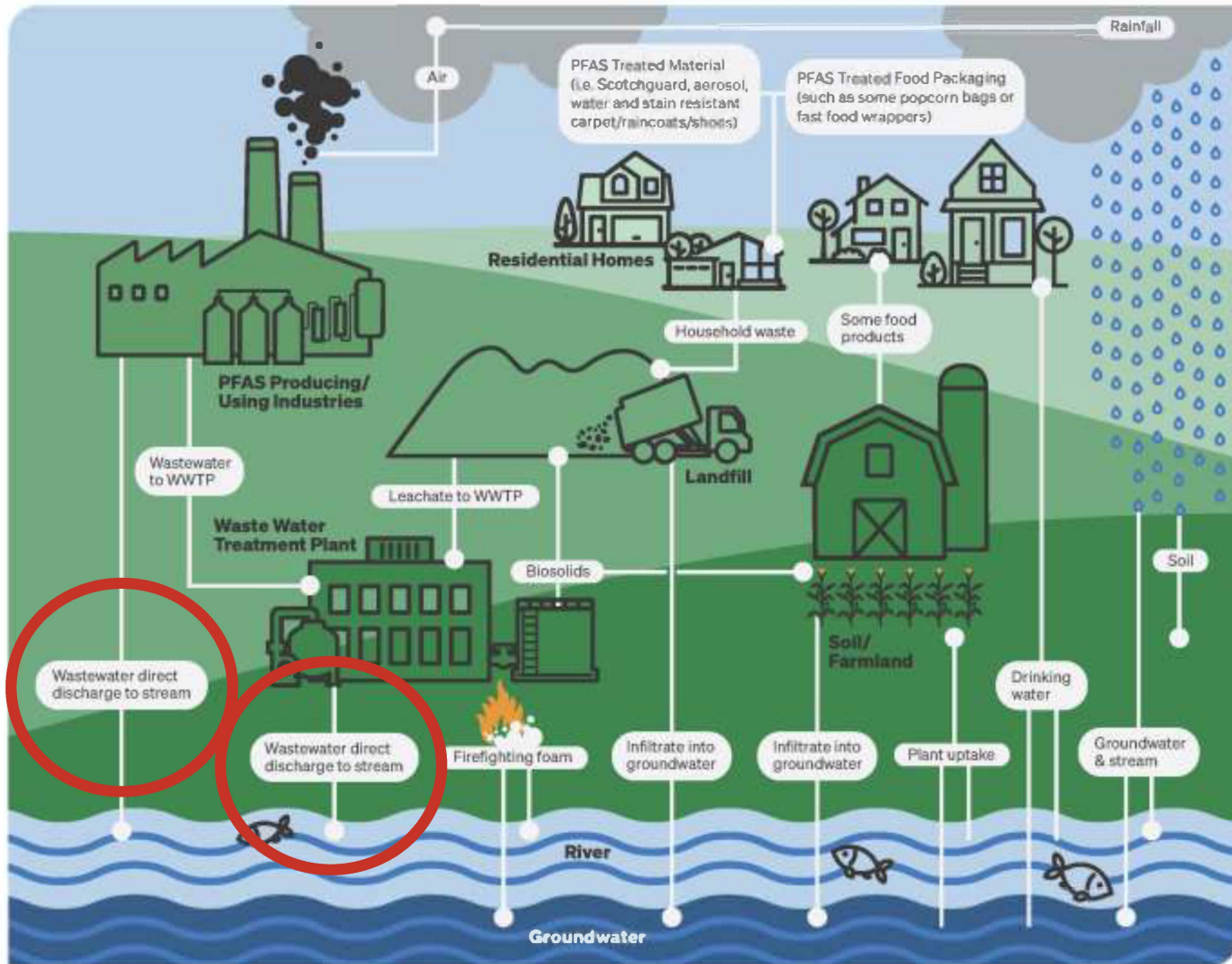
An MS4 is a publicly-owned or operated stormwater drainage system

- Designed to collect or convey stormwater
- Includes storm drains, pipes, ditches, gutters, etc.





PFAS Cycle

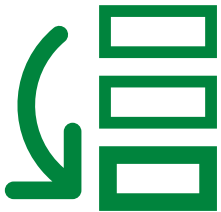


Dredge or fill permitting -§ 404

Authority: Army Corps of Engineers & states or tribes

Types: Individual  General 

Section 404(b)(1) Guidelines:



Least Environmentally Damaging
Practicable Alternative (LEDPA)



Public Interest

(33 USC § 1344)

Types of Section 404 Permitting

Compliance Method	Where It Applies	Average Cost and Time
Individual permit	Higher-impact projects (based on thresholds set by regulation)	<p>“[F]or a proposed activity impacting up to 3 acres of wetland... from \$17,646 to \$35,293”; 264 days from receipt of complete application.</p> <p>Numbers could be much higher for larger projects.</p>
General permit	Low-impact projects (based on thresholds set by regulation)	From \$4,412 to \$14,705; 45 days from receipt of complete application
No permit needed	No filling of waters of the United States.	N/A

Cost and time numbers from Reissuance and Modification of Nationwide Permits, 86 Fed. Reg. 73522, 73569 (Dec. 27, 2021) (providing costs in 2019 dollars). Numbers do not include the time of preparing a permit application.

Why else (besides water quality protection) does Clean Water Act section 404 matter?

Section 404 permitting is often the discretionary federal action that leads to National Environmental Policy Act review.

Section 404 permitting is often the discretionary federal action that leads to review under section 7 of the Endangered Species Act.

What usually happens with section 404 permitting?

About 97% of projects receive general permits.

Nicole T. Carter, Cong. Rsch. Serv., 97-223, *The Army Corps of Engineers' Nationwide Permits Program: Issues and Regulatory Developments 2* (2017).

Permit denials are very rare.

See Nicola Ulibarri & Jiarui Tao, *Evaluating Environmental Permitting Process Duration: The Case of Clean Water Act Section 404 Permits*, 62 J. ENV'T PLANNING & MGMT. 2124, 2140 (2019).

Compensatory Mitigation



Rassawek



Water Quality Standards and their Implications

The Clean Water Act's Two Basic Regulatory Approaches

Technology-based standards

1. Identify regulated pollutants.
2. Identify regulated activities or industrial sectors.
3. Set effluent standards at technologically feasible levels.
4. Implement and enforce standards.
5. Revise standards as technology evolves.

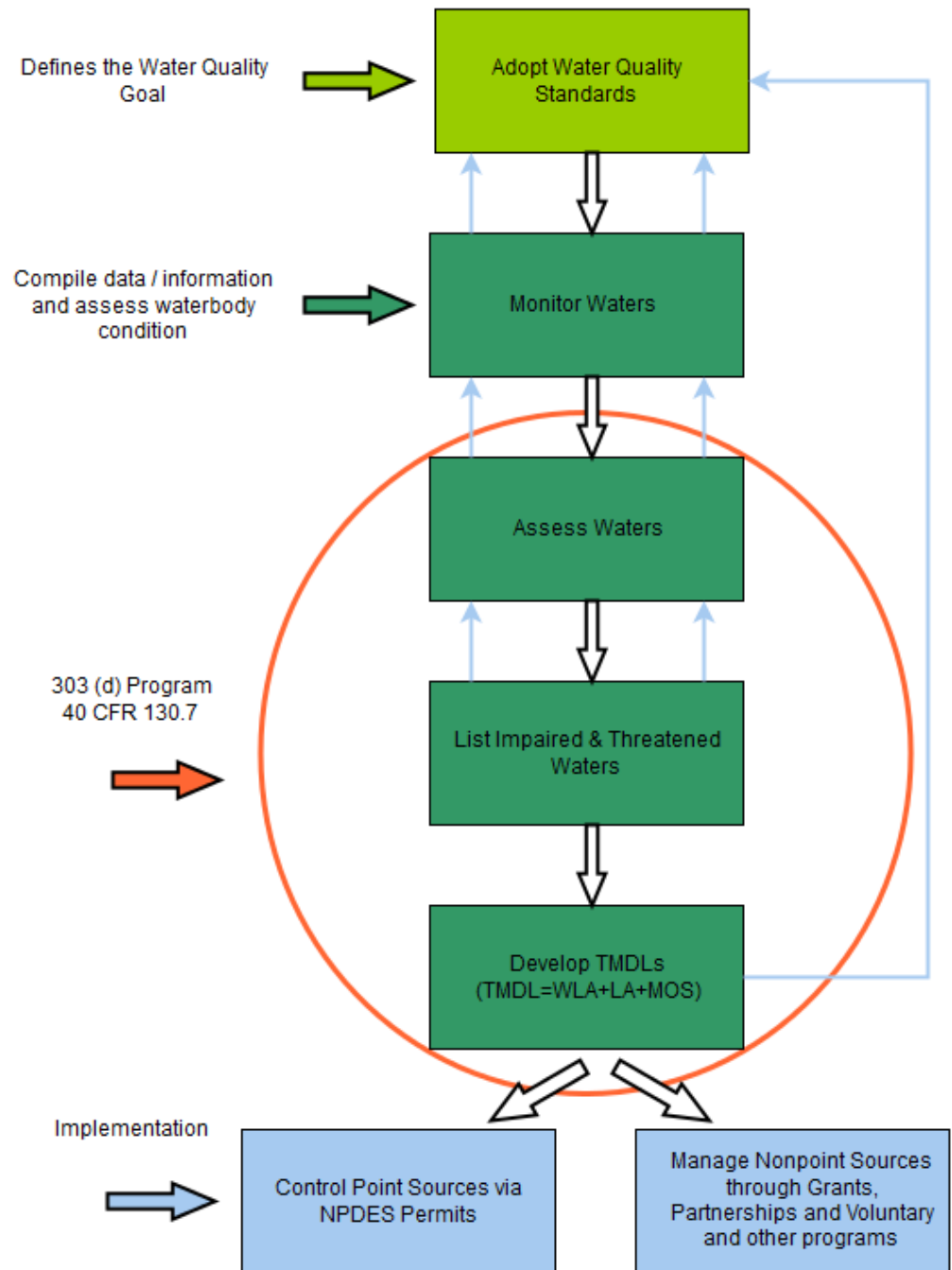
Water-quality based regulation

1. Identify desired environmental conditions for waterways.
2. Develop water quality standards protective of those desired conditions.
3. Develop pollution control approaches that will (or are supposed to) attain compliance with those water quality standards.

Water quality standards §303

(33 USC § 1313)

Image: <https://www.epa.gov/tmdl/overview-identifying-and-restoring-impaired-waters-under-section-303d-cwa>



What are water quality standards?

Designated uses

Criteria

Non-degradation policy

Designated uses: an example

2.1.3 COLD FRESHWATER HABITAT (COLD)

Uses of water that support cold water ecosystems, including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates. Cold freshwater habitats generally support trout and may support anadromous salmon and steelhead fisheries as well. Cold water habitats are commonly well-oxygenated. Life within these waters is relatively intolerant to environmental stresses. Often, soft waters feed cold water habitats. These waters render fish more susceptible to toxic metals, such as copper, because of their lower buffering capacity.

Water quality criteria: an example

Table 3-2: U.S. EPA Bacteriological Criteria for Water Contact Recreation^{1,2}
(in colonies per 100 ML)

	Fresh Water		Salt Water
	Enterococci	E. Coli	Enterococci
Steady State (all areas)	33	126	35
Maximum at:			
- designated beach	61	235	104
- moderately used area	89	298	124
- lightly used area	108	406	276
- infrequently used area	151	576	500

NOTES:

1. The criteria were published in the Federal Register, Vol. 51, No. 45 / Friday, March 7, 1986 / 8012-8016. The Criteria are based on:
(a) Cabelli, V.J. 1983. Health Effects Criteria for Marine Recreational Waters. U.S. EPA, EPA 600/1-80-031, Cincinnati, Ohio, and
(b) Dufour, A.P. 1984. Health Effects Criteria for Fresh Recreational Waters. U.S. EPA, EPA 600/1-84-004, Cincinnati Ohio.
2. The U.S. EPA criteria apply to water contact recreation only. The criteria provide for a level of production based on the frequency of usage of a given water contact recreation area. The criteria may be employed in special studies within this region to differentiate between pollution sources or to supplement the current coliform objectives for water contact recreation.

Three primary implications of water quality standards

- 401 certifications
- 303(d) lists, TMDLs, and continuing planning processes
- NPDES permitting
- (plus anything else the state chooses, if it chooses to do anything else)

Water Quality Standards and 401 Certifications



Water Quality Standards and TMDLs



What are TMDLs?

- A TMDL is a written report.
- The report describes causes of water quality impairment for a specific water body and specifies a daily budget for pollutant loading.
- The load is generally broken into a wasteload allocation (for point sources) and a load allocation (for nonpoint sources).

What don't TMDLs do?

- TMDLs are not enforceable regulatory documents, at least for nonpoint sources, unless states choose to make them so.
- States must have continuing planning processes for addressing water quality impairment but are not required to implement their plans.

Water Quality Standards and NPDES Permits

Writing NPDES Permits: The Roles of Technology-Based and Water-Quality Based Limitations

Step 1: Determine the appropriate technology-based standard

Step 2: Add additional or more stringent controls (water quality based effluent limits, or WQBELs) as necessary to protect water quality

WQBEL Questions and Challenges

How do we develop site-specific controls out of general water-quality standards? What if the standards are qualitative?

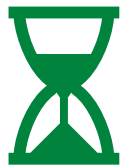
How fast does compliance need to occur?

What kind of mixing zone can be used?

What if the waterway already fails to meet water quality standards? Can new dischargers be added?

Enforcement - §309

Whenever EPA finds someone in violation of a point source (§ 402) or dredge and fill (§ 404) permit, they shall notify the violator and the state



If no state action
after 30 days



EPA shall order compliance
or bring civil penalties on
violator



EPA may also bring administrative actions



State and/or EPA can also bring criminal actions

(33 USC §1319)

Citizen suits-§ 505

Grounds:

Violation of an effluent standard or limitation (permit violation) or order issued by the EPA or state with respect to the standard or limitation.

EPA's failure to perform any non-discretionary duty

Other considerations:

60-day notice required

Diligent prosecution bar

Continuing violation

Questions?

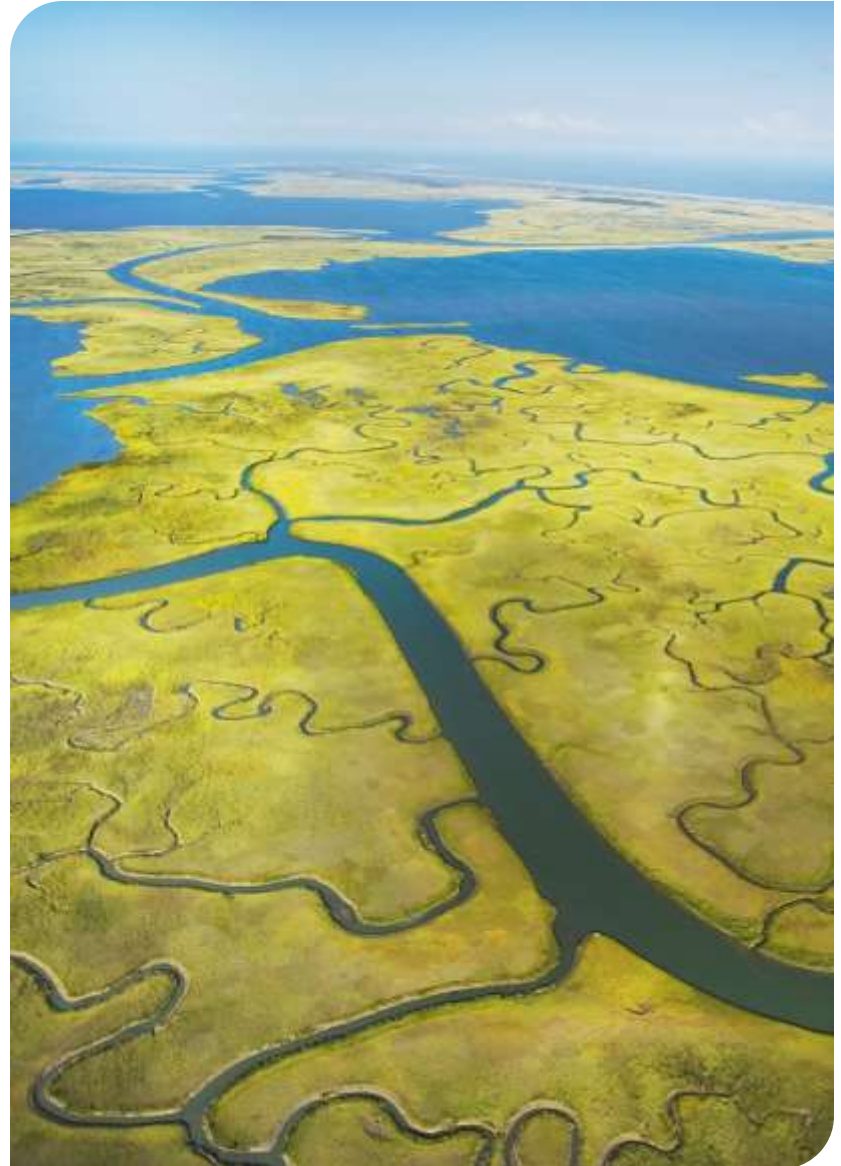
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COOPERATIVE FEDERALISM

ELI Summer School

Clean Water Act Basics

June 25, 2024

- ▶ Model of intergovernmental relations that recognizes the overlapping functions of national and state governments
- ▶ Governmental power is not concentrated at any governmental level or in any agency. Instead, the national and state governments share power
- ▶ Constitutional Foundations
 - ▶ Supremacy Clause (Article VI)
 - ▶ Necessary and Proper Clause (Article 1, Section 8)
 - ▶ a narrow interpretation of the Tenth Amendment

COOPERATIVE FEDERALISM





Presidential Documents

Title 3—

Executive Order 13132 of August 4, 1999

The President

Federalism

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to guarantee the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act, it is hereby ordered as follows:

Section 1. Definition. For purposes of this order:

(a) "Policies that have federalism implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

(b) "State" or "States" refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(i), other than those considered to be independent

sources of pollution.

(b) It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this Act. It is the policy of Congress that the States manage the construction grant program under this Act and implement the permit programs under sections 402 and 404 of

COOPERATIVE FEDERALISM



- ▶ Waters of the United States
- ▶ Groundwater & Jurisdiction
- ▶ Section 401 Water Quality Certification

COOPERATIVE FEDERALISM IN ACTION



- ▶ Threshold term in the CWA that establishes the **geographic scope of the federal jurisdiction** under the Act.
 - ▶ Water Quality Standards
 - ▶ TMDLS
 - ▶ NPDES Permits
 - ▶ Sec 404 Permits

CWA programs address “navigable waters”, defined in the statute as “the waters of the United States, includes the territorial seas.”

WATERS OF THE UNITED STATES

A Long & Winding Road



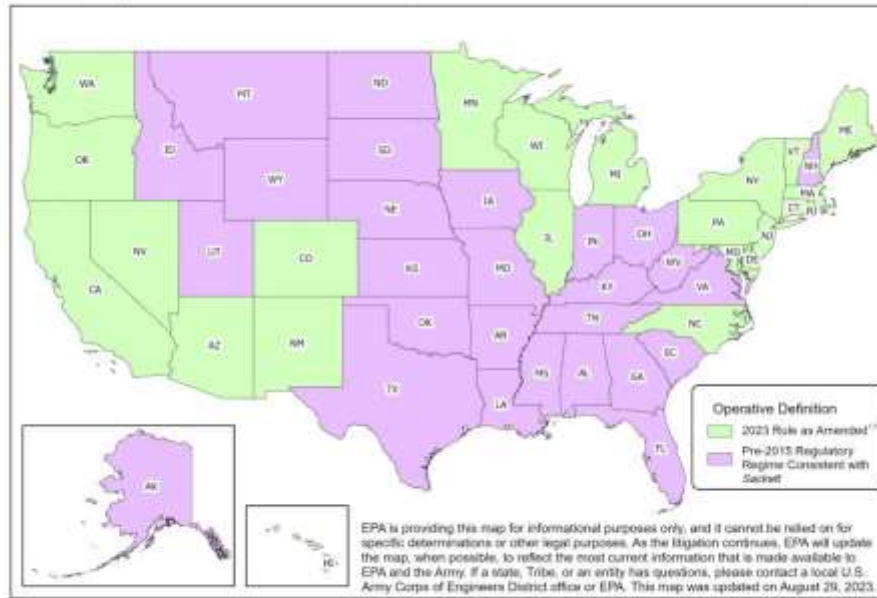
- ▶ *United States v. Riverside Bayview*, 474 US 121 (1985)
- ▶ *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001)
- ▶ *Rapanos v. United States* :: 547 U.S. 715 (2006)
- ▶ *Sackett v. EPA* (05/25/2023)

WATERS OF THE UNITED STATES

EPA REGULATORY HISTORY

- ▶ In 1986 EPA/ Corps issued regulations defining WOTUS
- ▶ In 2015 agencies amended 1986 regulations & issued Clean Water Rule
- ▶ In 2019 agencies repealed the CWR & returned to the pre-existing definition of WOTUS
- ▶ In 2020 agencies issued Navigable Waters Protection Rule
- ▶ In 2023 agencies issue conforming rule in light of *Sackett*

Operative Definition of "Waters of the United States"



¹Also operative in the U.S. territories and the District of Columbia.

²The pre-2015 regulatory regime implemented consistent with Sacchetti is operative for the Commonwealth of Kentucky and Plaintiff-Appellees in Kentucky Chapter of Commerce, et al. v. EPA (No. 20-548) and their members (Kentucky Chapter of Commerce, U.S. Chapter of Commerce, Associated General Contractors of Kentucky, Home Builders Association of Kentucky, Portland Cement Association, and Georgia Chamber of Commerce).

- ▶ Denied a property owner's bid to quickly block the policy's implementation, saying it "faithfully conforms" to the Supreme Court's landmark Sackett decision on the key issue of defining "adjacent" wetlands



WHITE V. EPA (US DISTRICT CT, NO. 2:24-CV-00013-BO)

ROLE OF STATES & GROUNDWATER

- ▶ Implementing state water laws
 - ▶ Waters of the State definitions
 - ▶ Specific state water quality laws
- ▶ Implementing federal Clean Water Act
- ▶ Implementing other environmental statutes
 - ▶ SDWA, RCRA, CERCLA



- The prohibition against unpermitted discharges in section 301 of the Clean Water Act (CWA) applies not only to direct discharges from point sources into navigable waters, but also to “functional equivalents” of such direct discharges that may pass through a non-point source.
- The Court created a non-exclusive, seven-factor test for identifying a “functional equivalent,” including time, distance, material through which the pollutant passes, dilution, amount entering a navigable water, manner by which it enters a navigable water, and degree to which the pollutant maintains its specific identity.



*COUNTY OF MAUI, HAWAII V. HAWAII WILDLIFE
FUND,
140 S. CT. 1462 (2020)*

- ▶ In 2014, District Court granted partial summary judgment finding that the addition of a pollutant to navigable waters from a point source constituted a prohibited discharge under the CWA.
- ▶ In 2018, 9th Circuit affirmed and held that liability was proper where pollutants are “fairly traceable from the point source... such that the discharge is the functional equivalent of a discharge into the navigable water” and “the pollutant levels reaching navigable water are more than *de minimis*.”
- ▶ *In 2020 SCOTUS vacated and remanded*

COUNTY OF MAUI, HAWAII V. HAWAII
WILDLIFE FUND,
140 S. CT. 1462 (2020)

REGULATORY ACTIONS

- ▶ In 2021 EPA issued guidance interpreting SCOTUS functional equivalent test
- ▶ In 2023 EPA issued a new Maui guidance for public comment
 - ▶ Describes the functional equivalent analysis and explains the types of information that should be used to determine which discharges through groundwater may require a NPDES permit
- ▶ In 2024 expectation EPA will finalize guidance

STONE V. HIGH
MOUNTAIN
MINING
COMPANY, LLC,
NO. 19-CV-1246,
2022 WL 4129398
(D. COLO. SEPT.
12, 2022),

- ▶ The court found that two ponds did not have clay liners, the clay liners on the two other settling ponds did not effectively seal the ponds, and the settling ponds were designed to leak. The court also found that the settling ponds were located about 100 feet from the Middle Fork, and water migrated from the settling ponds to the Middle Fork—likely within a matter of days.
- ▶ The court noted that, based on the position and distance of the ponds, it made “physical and logical sense that a discharge to groundwater so close to the river is the functional equivalent of a direct discharge into the river.” The court analyzed each of the Maui factors to determine functional equivalence.

Sec. 401 Water Quality Certification



SECTION 401 CLEAN WATER ACT

No federal permit/license can be issued that may result in a discharge to waters of the U.S.

- Unless

That state or authorized tribe certifies that the discharge is consistent with standards and other water quality goals or waives certification

No certification or denial means no federal permit or license

S. D. WARREN CO. V. MAINE BOARD OF ENVIRONMENTAL
PROTECTION
(126 S.CT. 1843 (2006))

“State certifications under § 401 are **essential** in the scheme to **preserve state authority** to address the **broad range** of pollution:

These are the very reasons that Congress provided the States with power to enforce ‘**any other appropriate requirement of State law,**’ 33 U.S.C. § 1341 (d), by imposing conditions on federal licenses for activities that may result in a discharge,”

§401(d) thus allows the State to impose 'other limitations' on the project in general to assure compliance with various provisions of the Clean Water Act and with 'any other appropriate requirement of State law'...

And §401(d) is most reasonably read as authorizing additional conditions and limitations on the activity as a whole once the threshold condition, the existence of a discharge, is satisfied.

PUD NO. 1 OF
JEFFERSON
COUNTY V.
WASHINGTON
DEPARTMENT OF
ECOLOGY (511 U.S.
700 (1994))

RECENT REGULATORY DEVELOPMENTS

- ▶ In 1971, EPA promulgated regulations for implementing 401
- ▶ In 2020, EPA issued Clean Water Act Water Quality Certification Rule
- ▶ In 2023 CWA Section 401 Water Quality Certification Improvement Rule



- ▶ Challenge by a coalition of states and regulated entities that prefer the narrower regulatory approach of the 2020 Rule and allege that the 2023 Rule impermissibly expands the Certifying Agencies' authority in a manner the CWA did not anticipate or intend.
- ▶ Seeking Summary Judgment (May 2024)

LOUISIANA V. EPA, 2:23-CV-01714

