



National Association of Wetland Managers

presents

An Overview of the Clean Water Act

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DATE: JANUARY 2024

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Trainer Introduction



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Introduction to Today's Presentation



Goals of the CWA

- Primary goal: restore and maintain the chemical, physical, and biological integrity of the nation's waters.
 - Secondary goals emphasize importance of improvement, and of respecting states' primary authority to protect environmental resources.
- Goals are useful in interpreting CWA programs and Congressional intent.



How the CWA Achieves These Goals

- CWA relies on “cooperative federalism,” where program implementation involves coordinated actions by federal and state agencies.
 - State and tribal water resource monitoring and assessment programs inform implementation.
- Tribes can seek “treatment in a manner similar to a state,” and administer CWA programs.



Water Quality Standards

- Water quality standards are a specific expression of CWA water quality goals.
 - Describes designated use of a water, water quality target consistent with that use, and an anti-degradation policy.
- CWA lays out specific responsibilities for states (and tribes with TAS) and for EPA.



Structure of the CWA

- Regulatory provisions.
- Planning provisions.
- Funding provisions.
- Miscellaneous provisions, including enforcement.



CWA Regulatory Provisions



When are the CWA Regulatory Provisions Triggered?

- Need four characteristics to be regulated under the CWA:
 - **Discharge**
 - Of a **pollutant**
 - From a **point source**
 - Into a **Water of the United States.**
- If any one of the four is missing, the activity is not regulated under the CWA.



“Discharge”

- CWA §502 defines as “any addition of any pollutant to navigable waters from any point source.”
 - Courts indicate “addition” means introducing a pollutant into water from the outside world.
- Challenging issues:
 - Must a discharge be directly into a WOTUS?
 - How can dredged material be introduced from the outside world, when it’s of the water?



Of a “Pollutant”

- CWA §502 defines broadly, as “dredged spoil, solid waste ... sewage, garbage, chemical wastes, biological materials, ... industrial, municipal and agricultural wastes discharged into water.”
- Pollutants sorted into three categories, affecting extent to which must be treated:
 - Conventional pollutants
 - Toxic pollutants
 - “Gray area” pollutants



From a “Point Source”

- CWA §502 defines as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel ... concentrated animal feeding operation, or vessel ... from which pollutants are or may be discharged.”
 - Look for a discrete conveyance such as a pipe or channel, and
 - Vessels and machinery such as bulldozers.
 - Watch out for agriculture exclusions.



Into “Waters of the United States”

- CWA uses the term “navigable waters,” defined in §502 as “waters of the United States including the territorial seas.”
 - EPA and Army Corps regulations further define, reflecting key Supreme Court concepts.
- Very controversial and rapidly changing concept.



Current WOTUS Definition

WOTUS includes:

- Traditional navigable waters (TNWs);
- Interstate waters;
- Impoundments of jurisdictional waters;
- Relatively permanent tributaries to jurisdictional waters;
- Adjacent wetlands that have a continuous surface connection to a jurisdictional water; and
- Relatively permanent intrastate lakes and ponds with a continuous surface connection to a jurisdictional water.

WOTUS has several exclusions, such as:

- Waste treatment systems; and
- Prior converted cropland (PCC).



If Regulated, What Is Required?

- Treat your effluent prior to discharging.
 - National minimum level of treatment set by “effluent guidelines,” based on technology.
 - If standards not met, develop a site-specific water quality-based effluent limit.
 - Specific requirements will be laid out in a permit.
- Section 303(d) TMDL process identifies streams where effluent guidelines are insufficient to meet standards and develops a plan to come into compliance.



Clean Water Act Permits

- Requirements generally are made binding on point sources through permits:
 - §402 NPDES permits
 - §404 dredged/fill material permits.
- Permits:
 - are a license issued by the government granting permission to do something that otherwise would be illegal.
 - Are not a right and are revocable.
 - May be individual or general permits.



Section 402 NPDES Permits

- Authorizes discharge of liquid pollutants from specific pipes or other point sources.
 - Specifies treatment, monitoring, and other requirements.
- NPDES program is very highly delegated to the states.
 - 47 states, no tribes yet.
 - Need to meet program requirements listed in statute, and protect at least as much as the federal program.



Section 404 Permits

- Authorizes discharges of dredged or fill material into WOTUS from a point source.
 - Section 404 program not widely operated by states or tribes: 3 states, no tribes.
- Evaluating a 404 permit application includes considering:
 - Environmental impacts.
 - Public interest concerns.
- Always determine if a 404(f) exemption might apply.



Section 401

Water Quality Certification

- No federal agency may issue a license or permit that may result in a discharge to WOTUS, unless either:
 - The state or authorized tribe certifies the discharge would be consistent with water quality requirements, or waives.
 - No certification or waiver means no license or permit.
- If a certification is conditioned, each condition must become a term of the license or permit.



CWA Planning Provisions



Section 208 Areawide Planning

- Under section 208, states must prepare areawide waste treatment management plans designed to control/treat all point and nonpoint sources.
- Section 208 requires governors to:
 - identify areas with water quality problems; and
 - designate an entity to develop management plans to address those problems.



Section 319

Nonpoint Source Program

- Section 319: addresses nonpoint sources specifically, requiring states to identify waters impaired by nonpoint sources and develop BMPs and measures to control nonpoint.
- Section 319 authorizes a grant and technical assistance program.
 - 319 grants support a wide variety of activities, such as regulatory and non-regulatory programs, education, and monitoring.



CWA Funding Provisions



CWA Funding Provisions

- State Revolving Loan Fund (SRF): Capitalization grants to states, who make low-interest loans for eligible projects.
 - In 1987 , the SRF replaced the Construction Grant Program.
- WPDGs: Grants to develop and refine comprehensive state, tribal, and local programs to protect, manage, and restore wetlands.
- Section 319: grants to support state/tribal programs to assess and manage nonpoint.



Section 106 Water Quality Grants

- Section 106: Authorizes grants to help states, interstate, and tribal water pollution control programs.
 - Section 106 grants can be used for both program development and implementation, funding a wide range of activities such as:
 - Monitoring and assessment;
 - Section 402 NPDES permit program; and
 - Source water protection.



CWA “Miscellaneous” Provisions



Enforcement Provisions

- CWA enforcement tools include:
 - Administrative orders
 - Notices of Violation (NOVs), administrative compliance orders, civil penalties.
 - Civil judicial actions
 - Get court order mandating compliance, restoration.
 - Criminal judicial actions
 - Can be for negligent violations, knowing violations, and knowing endangerment.
 - Penalties increase as severity of violations increase.
 - Citizen suits.



In Conclusion...

The CWA has four types of provisions:

- Regulatory,
- Planning,
- Funding, and
- Miscellaneous provisions, including enforcement.

Knowing what applies in a particular situation helps clarify potential outcomes.



Have CWA Provisions Helped Improve Water Quality?



Bubbly Creek



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