

Clean Water Act

CHMM Overview Workshop

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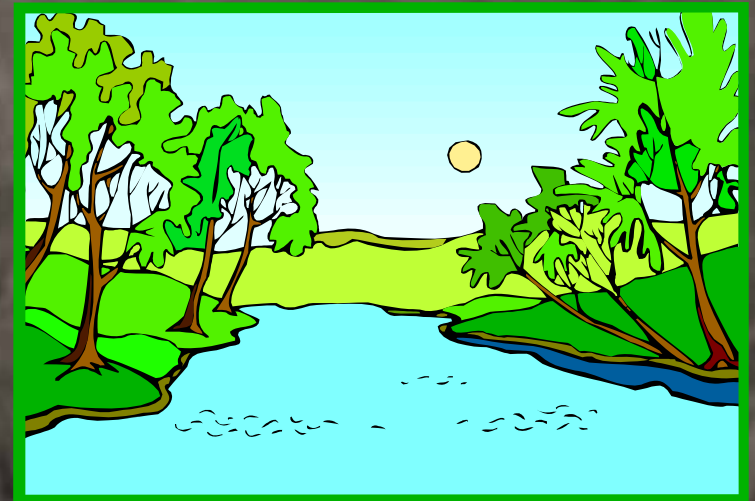
Topics

- **Background on CWA**
- **Application of the CWA**
- **Hot Topics**
 - » **Discharging to City Sewer**
 - » **Hazardous Substance Spill Prevention**
 - » **Waters of the US Definition**

OVERVIEW

CWA Objective:

“restore and maintain the chemical, physical, and biological integrity of the nation’s waters”



OVERVIEW

CWA National Policy:

“discharge of toxic pollutants in toxic amounts will be prohibited”

“discharge of pollutants into navigable waters will be eliminated by 1985”



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OVERVIEW

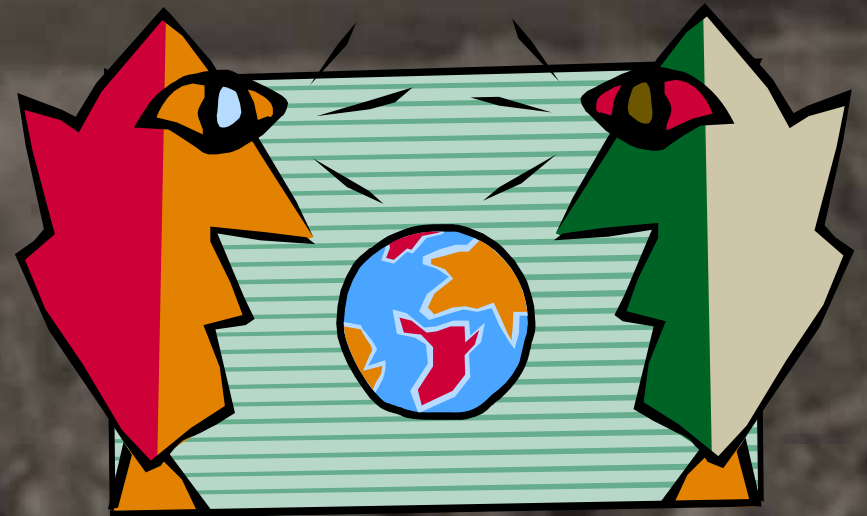
Mechanisms to Achieve Goals

- **Technology-based effluent limits**
- **Program to impose more stringent effluent limits**
- **Permit system**
- **Compliance deadlines**
- **Provisions for toxic or special discharges**
- **Loan program to help fund POTW compliance**

OVERVIEW

CWA Administration

- **Environmental Protection Agency**
 - **Delegated State Agencies**
 - **Delegated POTWs**



HISTORY OF STATUTE

1899 Refuse Act

1948 Water Pollution Control Act (first)

1965 Water Quality Act

1972 Federal Water Pollution Act Amendments

1977 “Clean Water Act”

HISTORY OF STATUTE

1972 Federal Water Pollution Control Act

- Oct 18, 1972 congress overrode a presidential veto and enacted the zero discharge goal
- EPA stated the vision that waters are to be fishable and swimmable
- EPA set national goals to eliminate pollution



HISTORY OF STATUTE

- 1987 Water Quality Act (Clean Water Act Amendments)
- 1990 Oil Pollution Act
- 1995 Great Lakes Initiative



RELATIONSHIP TO RULES

Some Important EPA Rules

- 40 CFR Part 112 - Oil Pollution Prevention
- 40 CFR Part 116 - Designation of Hazardous Substances
- 40 CFR Part 122 - NPDES Permit Regulations
- 40 CFR Part 129 - Toxic Pollutant Effluent Standards
- 40 CFR Part 136 - Chemical Analysis Methods
- 40 CFR Parts 400 to 503 - Categorical Effluent Standards

Key Applications of the CWA

- Standards
- NPDES Permits
- Oil pollution control/prevention

STANDARDS

- **Application to wastewater discharges**
 - » **Effluent limitations**
- **Application to “waters of the nation”**
 - » **Water quality criteria (standards)**

§301 & 306 - EFFLUENT LIMITS

EPA is required to:

- Publish a list of “source categories”
- Develop technology-based performance standards for all “source categories” based on Best Pollution Control Technology (BPCT)
 - » Direct discharges
 - » Indirect discharges (discharges to POTW)
 - » New discharges and existing discharges
- Effluent limitations for POTWs based on secondary treatment standards

§301 - EFFLUENT LIMITS

- **Concentration-based limits**
 - » e.g., “less than 10µg/L total zinc”
- **Process-based limits**
 - » e.g., “10 lbs of BOD per 1,000 lbs of [xxx] processed”

§303 & 307 - WQ STANDARDS

States:

- **Must establish water quality standards**
 - » Use classifications for each water body
 - » Water quality criteria designed to maintain the use classification
- **Assess waters and report any not meeting WQ standards (i.e., “impaired waters)**
- **Must establish an Anti-degradation Policy**

EPA:

- **EPA sets Ambient Water Quality Criteria for list of toxic pollutants**

§402 - NPDES PERMITS

- Permits are required for any discharge of water to “waters of the US” or “waters of the State”
 - » Navigable waters (waters of the US)
 - » Other rivers and lakes
 - » Wetlands
 - » Groundwater
- No “de minimis” discharges
- US EPA can delegate administration of permit program to states





NPDES PERMITS

- Point source discharge permits generally include:
 - » Monitoring requirements
 - » Reporting requirements
 - » Effluent limitations
 - » Pollution control equipment/practices
- Permits can be
 - » Individual
 - » General

NPDES PERMITS

Written to assure compliance with

- **Categorical Effluent Limits**
- **State Water Quality Standards**
- **Prohibited Discharges**

NPDES PERMITS

- **Pretreatment permits**
 - » Set limits for specific discharges to Publicly Owned Treatment Works (POTWs)
- **Issued by**
 - » USEPA
 - » Delegated States, or
 - » Delegated POTWs

§311 - OIL AND HAZARDOUS SUBSTANCE LIABILITY

National policy prohibits discharge of oil or hazardous substances to surface waters

“Oil” means oil of any kind and includes waste or used oil

“Hazardous Substance” means a list of almost 300 substances found at 40 CFR 116

40 CFR 112 - Oil Pollution Prevention

Spill Prevention, Control & Countermeasure Requirements

SPCC plan required for oil storage (40 CFR 112)

- Applies to facilities with capacity to store greater than 1,320 gallons of oil (55-gal containers and greater)
- Requires written plan
- Special training, inspection and “preparedness” requirements
- SPCC requirements have been in flux since 2002; latest changes in 2012, which added farms operations and deleted “milk” as a regulated oil













Hot Topics

- Discharging to City Sewer
- Hazardous Substance Spill Prevention
- Waters of the US Definition

Pretreatment Permits

Is a permit required?

Who needs a permit?

Where do you get permit?



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Who Needs A Pretreatment Permit?

- Industrial discharge covered under Effluent Guidelines
- Significant Industrial User
- Required under POTW rules

What Is A SUI?

- In Minnesota, a Significant Industrial User is:
- any industrial user that discharges an average of 25,000 gal/day or more of processed wastewater to POTW;
- process wastewater which makes up at least 5% of the POTW BOD loading; or
- has the potential, in the opinion of the POTW or MPCA, to adversely impact the POTW or the quality of the effluent

Who Issues Pretreatment Permit?

Categorical Dischargers and SUI

- POTW, if delegated permitting authority
- State, if POTW is not delegated
- EPA Region, if State is not delegated

Other Dischargers

- POTW, if permit is required under POTW rules

POTW Authority

- **POTW is delegated authority from State and USEPA**
 - Violation of POTW rules can be enforced by State and EPA
- **POTW limits the type of discharge it can accept when issued its NPDES permit**
 - Example, if POTW indicates it does not accept industrial discharge, it can not accept industrial discharge, even if discharge meets POTW rules

Spill Prevention And Control For Hazardous Substances

- CWA required EPA to prepare rules for prevention and control of accidental discharge to Waters of US of:
 - Oil
 - Hazardous Substances
- SPCC Rule rolled out program of oil
- To date, no program has been developed for hazardous substances

Recent EPA Actions

- 2015 lawsuit filed against EPA for unreasonable delay/failure to establish regulations for hazardous substances under the Clean Water Act section 311(j)(1)(C).
- Settlement agreement reached in 2016 required EPA to issue proposed regulation on spill prevention of hazardous substances no later than June 2018.
- In 2016, the USEPA issued a letter of intent to initiate rulemaking,
- On September 21, 2017, EPA published a request for public comment on a proposed information collection request (ICR) The proposed ICR, "Survey on Clean Water Act (CWA) Hazardous Substance and Spill Impacts," is a voluntary survey to be sent to states, tribes, and territories

Current Status – Keep Watching



Waters of the United States

- CWA regulates discharges to “Waters of the United States”
- States have their own definition of “Waters of the State”, which can be more expansive

40 CFR 230.3(s) WOTUS means:

- All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- All interstate waters including interstate wetlands;
- All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
 - Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - Which are used or could be used for industrial purposes by industries in interstate commerce;
- All impoundments of waters otherwise defined as waters of the United States under this definition;
- Tributaries of waters identified in paragraphs (s)(1) through (4) of this section;
- The territorial sea;
- Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (s)(1) through (6) of this section; waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

WOTUS Legal Battles

- Definition of "waters of the United States" currently in effect is the definition promulgated in 1986/1988, implemented consistent with subsequent Supreme Court decisions and guidance documents.
- The 2015 revised regulatory definition of "waters of the United States" has been stayed by the U.S. Court of Appeals
 - In response to this stay, EPA, Department of Army, and Army Corps of Engineers resumed use of prior regulations defining the term "waters of the United States."
- In 2017, the President issued an Executive Order directing EPA and Department of the Army to review and rescind or revise the 2015 Rule.

WOTUS Legal Battles

- In January 2018, the Supreme Court ruled that challenges to the WOTUS definition must be held in District Courts, not the Court of Appeals, and lifted the stay on the 2015 definition
- Forces any future litigation to occur throughout the United States wherever there is a challenge to the WOTUS definition
- In March 2018, EPA and Army revise applicability of 2015 definition to February 6, 2020

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