

## Today's Speakers

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Overview of the CWA and NPDES Program-2

## Clean Water Program Development – Selected Legislation and Events

- 1899 Rivers and Harbors Act
- 1948 Federal Water Pollution Control Act
- 1965 Water Quality Act
- 1970 Executive Order - EPA established
- 1970 Refuse Act Permit Program
- 1972 FWPCA Amendments
- 1977 Clean Water Act
- 1987 Water Quality Act



Overview of the CWA and NPDES Program-3

## Early Legislation

- 1899 **Rivers and Harbors Act**
  - navigation
- 1948 **Federal Water Pollution Control Act (FWPCA)**
  - navigation
  - human health concerns
- 1965 **Water Quality Act**
  - required standards for interstate waters



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## EPA and RAPP – 1970



- EPA established by Executive Order in 1970
- Refuse Act Permit Program (RAPP) established in 1970
  - used authority in section 13 of the Rivers and Harbors Act of 1899 (known as the Refuse Act)
  - EPA and Corps of Engineers began preparing program requirements
    - program based on both effluent quality and receiving water quality standards
    - EPA would prepare effluent guidelines for 22 different categories
- RAPP struck down in a federal court and Congress began to fashion a program of its own



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## Federal Water Pollution Control Act Amendments – 1972

### Section 101(a)

- **Objective:** restore and maintain the chemical, physical, and biological integrity of the Nation's waters
- **National Goals and Policies include:**
  - eliminate the discharge of pollutants to navigable waters by 1985
  - achieve by July 1, 1983, as an interim goal, wherever attainable, a level of water quality that provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water
  - prohibit the discharge of toxic pollutants in toxic amounts



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## Pollutant Source Control Programs Established by FWPCA Amendments

- **Section 311** – Oil and Hazardous Substance Liability
- **Section 312** – Marine Sanitation Devices
- **Section 404** – Permits for Dredged or Fill Material
- **Section 402** – National Pollutant Discharge Elimination System



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## Specific Provisions in the FWPCA Amendments

- Established NPDES, pretreatment, and construction grants programs [section 402]
- Established maximum permit term of 5 years
- Established both technology-based and water quality-based requirements
- Established compliance deadlines
- Provided for authorization of state NPDES permitting programs
- Indicated that permit compliance is a shield
- Established significant penalties for permit violations



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## Natural Resources Defense Council Consent Decree – 1976

- Included a list of toxic priority pollutants
  - 65 categories, 129 pollutants
- Included a list of primary industries for technology-based controls
  - 21 industries
- Required technology-based effluent standards for these substances and industrial categories



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## Clean Water Act – 1977

- Section 307(a) adopted provisions of NRDC Consent Decree
- Clarified that federal facilities are subject to state programs
- Pretreatment program delegation
  - authorized EPA to approve local pretreatment program
  - required NPDES states to modify programs to include pretreatment oversight



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## Water Quality Act – 1987

- Specified stormwater permitting requirements [section 402(p)]
- Provided that Indian tribes may be considered as “states”
- Created federal sludge management program
- Increased penalties for noncompliance
- Renewed emphasis of surface water toxics control



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## NPDES Framework

- All *point sources*
- Discharging *pollutants*
- Into *waters of the U.S.*



Must obtain an NPDES *permit* from EPA or an authorized state, territory, or tribe



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## What is a Permit?

- A permit is a license . . .
  - issued by the government
  - granting permission to do something that would be illegal in the absence of the permit (e.g., driver's license)
- There is no right to a permit and it is revocable for cause (e.g., reckless driving)
- An **NPDES permit** is **license to discharge** and can be **revoked for cause**



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## Point Source – 40 CFR 122.2

- Any discernible, confined, and discrete conveyance, including but not limited to:
  - any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged
  - **does not include return flows from irrigated agriculture or agricultural storm water runoff**



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## Pollutant – 40 CFR 122.2

- Dredged spoil, solid waste, incinerator residue, filter backwash, 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
  - *does not include sewage from vessels or injected wastes*



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## CWA Classes of Pollutants

- Conventional pollutants
  - BOD, TSS, pH, fecal coliform, and oil and grease
- Toxic pollutants – 126 *priority pollutants*
  - heavy metals (e.g., Cu, Pb, Hg)
  - organic compounds (e.g., PCBs, dioxin)
- Non-conventional pollutants
  - everything else...
  - e.g., chlorine, ammonia, nitrogen, phosphorus



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## Waters of the United States – 40 CFR 122.2

- All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters subject to the ebb and flow of the tide
- All interstate waters
- All other waters that could affect interstate or foreign commerce
- All impoundments of waters of the United States
- Tributaries of the above four categories
- The territorial sea
- Wetlands adjacent to waters identified above



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## Waters of the United States (continued)

- Regulatory definition identifies other types of surface waters including:
  - rivers and streams
  - lakes and ponds
  - wetlands
  - sloughs
  - prairie potholes
  - intermittent streams
  - territorial seas
  - etc.
- Supreme Court rulings have affected decisions regarding “waters of the US”



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## Waters of the United States – What is a Permit Writer to Do?

- When in doubt, talk to your attorney to better understand the effect of these cases on your situation
- More information:
  - [www.epa.gov/wetlands/guidance/CWAwaters.html](http://www.epa.gov/wetlands/guidance/CWAwaters.html)
- Recognize that state, territory, or tribal law may have more inclusive definition of **waters of the state/territory/tribe**



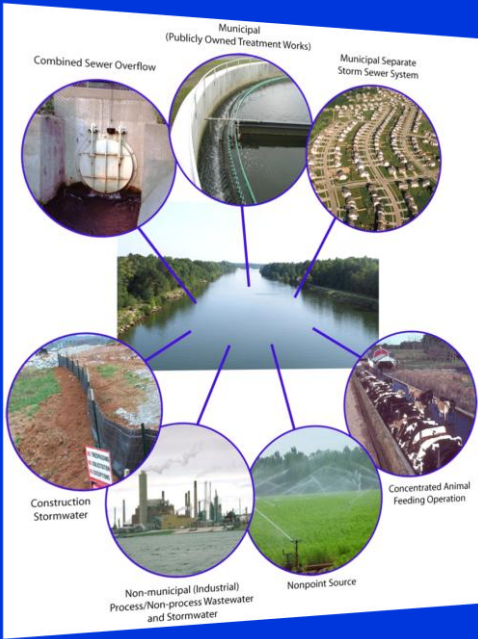
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## Waters of the U.S. – What is a Permit Writer to Do? (continued)

- What about ground water?
  - Generally not itself considered “waters of the United States”
  - Discharges to ground water could be regulated as NPDES discharges where connection to surface water is shown (not common)
  - Ground water is likely to be waters of the state/territory/tribe
  - If in doubt, check with State or EPA experts



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The diagram illustrates various sources of pollutants that contribute to water quality issues. At the center is a photograph of a river. Surrounding this central image are eight circular inset photos, each connected to the central river by a purple line. The sources are: Combined Sewer Overflow (top left), Municipal (Publicly Owned Treatment Works) (top center), Municipal Separate Storm Sewer System (top right), Construction Stormwater (middle left), Non-municipal (Industrial) Process/Non-process Wastewater and Stormwater (bottom left), Nonpoint Source (bottom center), Concentrated Animal Feeding Operation (bottom right), and an unlabeled source (middle right) showing a large pile of manure. The entire diagram is set against a white background within a blue-bordered box.

**Common Sources of Pollutants to Waters of the U.S.**

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## Feedback and Other Presentations

Questions or comments?

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