



A Brief Overview of:

The Clean Water Act

33 U.S.C. §§1251-1387

How does the Clean Water Act protect the Nation's waters?

According to Section 301(a) of the Clean Water Act:

“Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.”

To make sense of this, Step #1 is figuring out what the words “discharge of any pollutant by any person” means:

DISCHARGE OF ANY POLLUTANT = “any addition of any pollutant to navigable waters from any point source”

Okay, that doesn't really clear anything up, so Step #1A is figuring out what that means:

POLLUTANT = “dredged 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”

POINT SOURCE = a specific & defined “conveyance” from which pollutants can be discharged, such as a pipe or ditch, container or vessel; point sources do not include agricultural runoff of stormwater or irrigation water

NAVIGABLE WATERS = most surface waters, whether or not boats can or do use them for navigation; because of a confusing recent Supreme Court decision, some wetlands are considered navigable waters and some are not

PERSON = an actual person, or a corporation, association, or government agency

In most cases, therefore, it is a violation of the Clean Water Act for a person or institution to dump substances into surface waters without specific authorization – in most cases, that means obtaining and complying with the terms of a Clean Water Act discharge permit.

Step #2 is figuring out what it really means to be “in compliance” with the Clean Water Act when discharging pollutants:

The Clean Water Act allows someone to discharge a pollutant if they first obtain a permit under the National Pollutant Discharge Elimination System (NPDES). Permits set *effluent limitations*, which are limits on how much and what types of pollutants can be added to a particular receiving water.

Who can issue a permit? The U.S. EPA, as well as states with EPA-approved permitting programs. Most states are authorized to issue NPDES permits, but not Idaho, Massachusetts, New Hampshire, New Mexico, Washington DC, Puerto Rico.

What do permit applications require? Contact information, a description of the business and its relevant activities, a description of the proposed discharge, a list of other environmental permits, and a topographical map.

How does the permit review process work? The permitting authority reviews applications for completeness. If the permitting authority plans to issue a permit for the proposed discharge, it must first create a draft permit and a fact sheet explaining its provisions. Additionally, if the state is the permitting authority, the state must alert the EPA, which has veto-power.

The permitting authority must provide public notice of the draft permit, allow at least 30 days for the public to comment, and grant hearings if requested by interested parties (such as residents who use the affected waterbody).

Other things to keep in mind about permits and the scope of the Clean Water Act:

- The Act contains other permitting systems besides the one explained above, including: permits for industries to discharge waste to publicly owned treatment works (such as sewage treatment plants), also known as indirect discharges; and permitting for dredge and fill operations in wetlands.
- General permits (as opposed to the individual permits described above) can also be issued. General permits are a “one size fits all” approach to certain categories of similar discharges (such as stormwater discharges or aquatic pesticide applications); rather than apply for an individual permit, a discharger files a “notice of intent” to be covered by an already existing general permit.
- NPDES permit terms cannot exceed five years, and then a new permit application must be submitted.
- Before a permit’s conditions can be amended, public notice and an opportunity to comment are required. In most cases, the terms of NPDES permits cannot be made less stringent in subsequent permits.
- Though rare, EPA can terminate a permit if the permitted body violates the permit or does not fully disclose relevant information, if the activity endangers human health or the environment, or changes in conditions surrounding the permit
- The Clean Water Act also applies to actions which no permit system covers, such as spills of oil & hazardous substances.

How are the limits in permits set?

The Clean Water Act provides for two main ways of setting limits:

1) Technology-based standards

EPA sets these national standards by determining, for each industry, what are the best, existing technologies to control pollution. New facilities and old facilities undergoing extensive repairs must use these best, existing technologies to reduce pollutants.

2) Water-quality-based standards

Sometimes, technology-based standards are not enough to keep a particular body of water clean. States create water-quality standards after reviewing scientific information about pollutant levels in relation to the use of the water (e.g. – industrial or recreation) and the protection of wildlife. When waters don’t meet these standards, states must create Total Daily Maximum Loads (TMDLs) that govern the total amount of additional pollutants a water body can handle. Tighter “water quality-based” effluent limits for point source dischargers and other pollution reduction policies must be implemented to meet these goals.

* If in place, and enforced, water quality standards may provide a basis for regulating some nonpoint source pollution (nonpoint source pollution occurs when pollutants enter water bodies from large or open spaces, such as runoff from fields or highways).

How is the Clean Water Act enforced?

Regulatory agency's option #1: Civil Administrative Enforcement

- Regulatory agency revokes a permit or does not renew a permit
- Regulatory agency issues an order requiring compliance with CWA
- Regulatory agency assigns penalties for violations of CWA and EPA or state orders, after a hearing
- Possible Results: Compliance order and administrative penalties up to \$10,000 per day for each violation

Regulatory agency's option #2: Civil Judicial Enforcement

- Regulatory agency (either EPA or state agency) sues the polluter in court for violations of permits and the CWA
- Possible Results: Injunction and civil penalties up to \$37,500 per day for each violation

Regulatory agency's option # 3: Criminal Enforcement

- State Attorney General or US attorney brings a criminal prosecution against the polluter; usually reserved for only the most serious situations or intentional violations, such as falsification of information or knowingly endangering another person
- Possible Results: Fines and jail time, depending on the specific violation

Your option: Citizen Enforcement Suit (in case state and federal regulators fail to do their job)

- While EPA or your state should enforce the Clean Water Act against polluters, the Act gives citizens the ability to sue the polluter directly, as long as the citizen:
 - Is affected in some way by the violation, and
 - Gives 60 days prior written notice to the polluter, the state, and EPA
- Citizen enforcement suits are civil actions filed in federal court against a polluter who is in violation of permit standards or an agency order or is discharging without a permit
- To prove a CWA violation, a citizen can rely on monthly discharge monitoring reports submitted by every discharger to state regulators and EPA (data from these reports can be found on EPA's website at <http://www.epa-echo.gov/echo/>); citizens can also document potential violations (such as illegal dumping, fish kills, sediment plumes, oily sheens, or unpermitted discharge pipes) with written accounts, pictures, or test samples
- Citizens may also sue EPA for a failure to perform a mandatory duty (in other words, a duty the Act says EPA must perform by a certain date, such as issuing effluent guidelines for a particular industry or pollutant)
- Possible Results: injunction and civil penalties up to \$37,500 per day for each violation *paid to US Treasury*; a successful citizen plaintiff can also recoup attorney's fees

Useful Links:

EPA's NPDES Permit Program Basics: http://cfpub.epa.gov/npdes/home.cfm?program_id=45

VT Agency of Natural Resource's Water Quality Permits: <http://www.anr.state.vt.us/dec/waterq/permits.htm>

Ohio Environmental Council's Watershed Watchdog Guide to Clean Water Act Citizen Suits.
http://www.theoec.org/PDFs/water/cwater_pollaw_suit.pdf

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