

THE CLEAN WATER ACT

Crash Course!

THE CLEAN WATER ACT: LESSON OBJECTIVES

Major concept...	As Applied to...
Terminology	Prior lesson on legal framework

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Permits	Wetlands Flood control systems

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Permits	Wetlands Flood control systems
Numeric & narrative water quality criteria	Point sources & non-point sources
Federalism principles & stakeholders influence	The Florida Everglades

THE LEGAL FRAMEWORK OF THE CLEAN WATER ACT

Legislative Branch:

Congress

U.S. Code

THE QUOTABLE OPENING §101(A)

- *The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.*

CWA POLICY OBJECTIVES

1. *discharge of pollutants eliminated by 1985;*
2. *interim goal of water quality to protect fish, shellfish, and wildlife and recreation by 1983;*
3. *discharge of toxic amounts be prohibited;*
4. *Federal financial assistance for waste treatment;*
5. *areawide treatment management planning processes be developed in each state;*
6. *major research and demonstration; and*
7. *control of nonpoint source pollution*

THE LEGAL FRAMEWORK OF THE CLEAN WATER ACT

Executive Branch:

U.S. Environmental Protection Agency

U.S. Code

Code of Federal Regulations

Federal Register

Guidance documents

TITLE 40--Protect

CHAPTER I--ENVIRONM

SUBCHAPTER N--EFFLUEI

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CONCENTRATED
OPERATIONS (CA



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 12 2010

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs"

FROM: James A. Hanlon, Director
Office of Wastewater Management

Denise Kechner, Director
Office of Wetlands, Oceans and Watersheds

TO: Water Management Division Directors
Regions I - 10

This memorandum updates aspects of EPA's November 22, 2002 memorandum from Robert H. Wayland, III, Director of the Office of Wetlands, Oceans and Watersheds, and James A. Hanlon, Director of the Office of Wastewater Management, on the subject of "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs" (hereafter "2002 memorandum").

Background

Section III of the 2002 memorandum "affirm[ed] the appropriateness of an iterative, adaptive management best management practices (BMP) approach" for improving stormwater management over time as permitting agencies, the regulated community, and other involved stakeholders gain more experience and knowledge. Since 2002, States and EPA have obtained considerable experience in developing TMDLs and



U.S. Environmental Protection Agency
Office of Wastewater Management, Water Permits Division
State and Regional Branch



THE LEGAL FRAMEWORK OF THE CLEAN WATER ACT

Judicial Branch:

*Federal Courts, stakeholders, and the
U.S. Department of Justice*

Caselaw

Enforcement

PENALTIES

(c) CRIMINAL PENALTIES

(1) NEGLIGENT VIOLATIONS—Any person who—

(A) negligently violates section 1311, 1312, 1316, 1317, 1318, 1321(b)(3), 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of this title or in a permit issued under section 1344 of this title by the Secretary of the Army or by a State;

shall be punished by a fine of not less than \$2,500 nor more than ~~\$25,000~~ per day of violation, or by imprisonment for not more than 1 year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than ~~\$50,000~~ per day of violation, or by imprisonment of not more than 2 years, or by both.

(d) CIVIL PENALTIES; FACTORS CONSIDERED IN DETERMINING AMOUNT—Any person who violates section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator, or by a State, , [sic] or in a permit issued under section 1344 of this title by a State, or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of this title, and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed ~~\$25,000~~ per day for each violation. In determining the amount of a civil penalty the

\$ 37,500

Knowing violations - up to \$ 150,000 per day
up to 6 years imprisonment
Knowing Endangerment - \$ 1.3 million
up to 15 years imprisonment



Department of Justice

FOR IMMEDIATE RELEASE
TUESDAY, MARCH 1, 2005
WWW.USDOJ.GOV

ENRD
(202) 514-2007
TDD (202) 514-1888

TWO CORPORATIONS AND THREE SOUTH MISSISSIPPIANS CONVICTED OF FILLING WETLANDS AND DEFRAUDING HOMEOWNERS ABOUT SUITABILITY OF LOTS FOR DEVELOPMENT

WASHINGTON, D.C. - The Department of Justice and the U.S. Attorney's Office for the Southern District of Mississippi announced today that on Friday, February 25, 2005, a petit jury in Jackson, Mississippi, returned guilty verdicts on all counts in an indictment brought against Robert Lucas, Jr., of Lucedale, Mississippi; his daughter, Robbie Lucas Wrigley of Ocean Springs, Mississippi; and M. E. Thompson, Jr., of D'Iberville, Mississippi, and two affiliated corporations; Big Hill Acres, Inc., and Consolidated Investments, Inc. The three individuals and two corporations were charged with Clean Water Act violations in connection with their development of wetlands in a 2600 acre subdivision on property in Vancleave, Mississippi, known as Big Hill Acres.

In addition, the individuals and corporations were convicted of conspiracy and mail fraud for having sold hundreds of home sites in wetlands despite numerous warnings from public health officials that they were illegally installing septic systems in saturated soil. Warnings stated that these systems were likely to fail and contaminate the property and the drinking water aquifer below it.

United States v. Lucas, 2008 U.S. App.
LEXIS 2331 (Feb. 1, 2008)

No. 11-460

IN THE SUPREME COURT OF THE UNITED STATES

2012 WL 692917 (E.P.A.)

United States Et
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IN THE MATTER OF

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C

Court of Appeals of Tennessee,
Middle Section.

ENVIRONMENTAL DEFENSE FUND,
INC., et al., Plaintiffs-Appellants,

v.

TENNESSEE WATER QUALITY
CONTROL BOARD, et al.,
Defendants-Appellees.

April 7, 1983.

Permission to Appeal Denied by Supreme
Court July 25, 1983.

Protestants petitioned for review of a decision of the Tennessee Water Quality Control Board, granting a certificate and permit allowing the Tennessee Valley Authority to complete a dam and impound the waters of a river. The Chancery Court,

FEDERALISM AND THE CLEAN WATER ACT

Cooperative role of the state

Florida's authority to set
standards and issue permits.

STATE ROLE IN IMPLEMENTATION

SEC. 402. [33 U.S.C. 1342] NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

(b) STATE PERMIT PROGRAMS—At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State

PART 123—STATE PROGRAM REQUIREMENTS

Subpart A—General

Sec.

- 123.1 Purpose and scope.
- 123.2 Definitions.
- 123.3 Coordination with other programs.

Subpart B—State Program Submissions

- 123.21 Elements of a program submission.
- 123.22 Program description.
- 123.23 Attorney General's statement.
- 123.24 Memorandum of Agreement with the Regional Administrator.
- 123.25 Requirements for permitting

- (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...

CLEAN WATER ACT

CORE TERMS & DEFINITIONS

Prohibition of the

(1) discharge of

(2) a pollutant

(3) from a point source

(4) to Navigable waters

DISCHARGE

SEC. 301. [33 U.S.C. 1311] EFFLUENT LIMITATIONS

(a) **ILLEGALITY OF POLLUTANT DISCHARGES EXCEPT IN COMPLIANCE WITH LAW**—Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

(12) The term “discharge of a pollutant” and the term “discharge of pollutants” each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

OF A POLLUTANT (DEFINITIONS MATTER!)

(6) The term “pollutant” means 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. This term does not

Pollutant: Does not mean “water, gas, or other material injected into a well to produce oil or gas, or water derived with oil or gas production and disposed of in a well (e.g., Hydraulic fracturing)

FROM A POINT SOURCE



“Point source” means “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, or vessel or other floating craft, from which pollutants are or may be discharged.”

POINT SOURCE: AG EXEMPT?

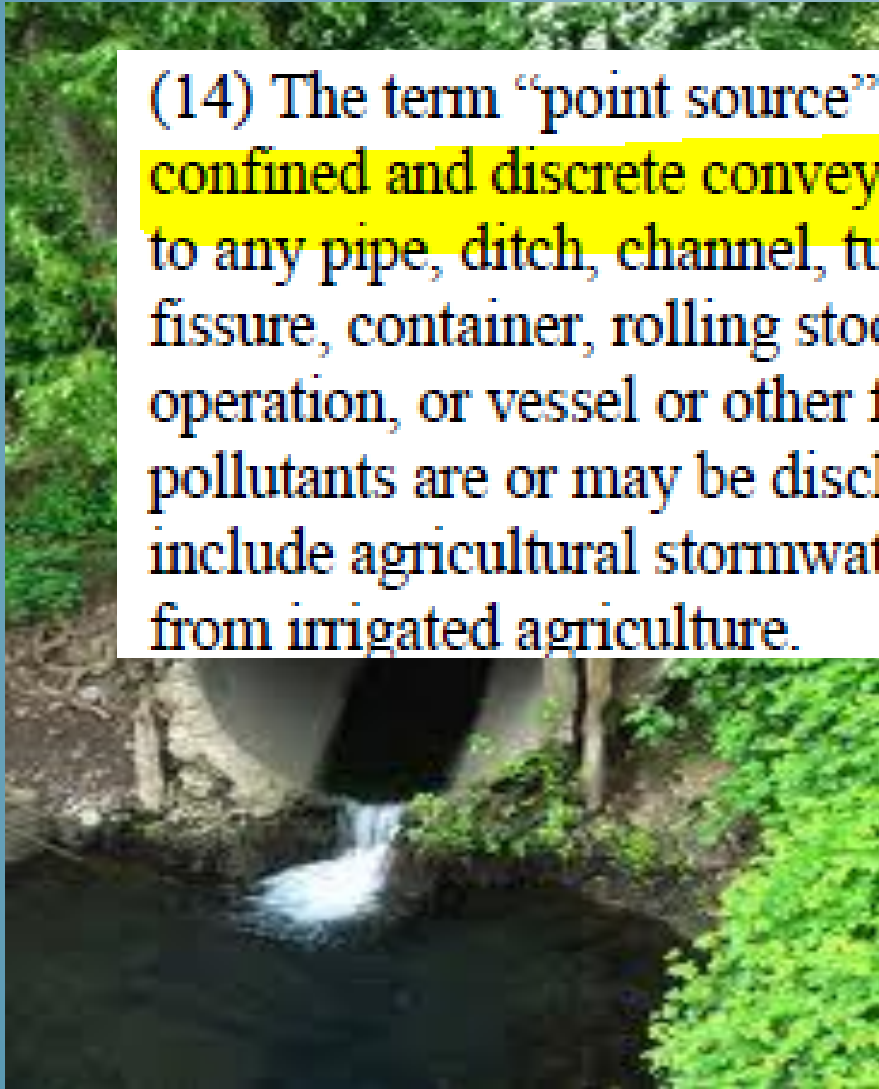
(14) The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

“Point source” means “any

to

er,

rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.



TO NAVIGABLE WATERS



“navigable waters” means the “waters of the U. S.” and includes:

- 1. All navigable waters of the U.S.*
- 2. Interstate waters;*
- 3. Intrastate lakes, rivers, and streams*



Waters of the United States/Navigable Waters

Corps 404/Wetlands

EPA 404

402/NPDES

311/Oil

311/Haz Substance

PART 328—DEFINITION OF WATERS OF THE UNITED STATES

- Sec.
328.1 Purpose.
328.2 General scope.
328.3 Definitions.
328.4 Limits of jurisdiction.
328.5 Changes in limits of waters of the United States.

AUTHORITY: 33 U.S.C. 1344.

SOURCE: 54 FR 4256, Nov. 13, 1989, unless otherwise noted.

328.3 Definitions.

For the purpose of this regulation these terms are defined as follows:

(a) The term *waters of the United States* means:

(1) 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;

(2) All interstate waters including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters;

(4) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

(5) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(6) Which are used or could be used for industrial purposes by industries in interstate commerce;

(7) All impoundments of waters otherwise defined as waters of the United States under this definition;

(8) Tributaries of waters identified in paragraphs (a) (1) through (6) of this section;

(9) The territorial seas;

(10) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1) through (9) of this section;

(11) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

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(b) which also meet the criteria of this definition) are not waters of the United States.

PART 230—SECTION 404(b)(1) GUIDELINES FOR SPECIFICATION OF DISPOSAL SITES FOR DREDGED OR FILL MATERIAL

Subpart A—General

- Sec.
230.1 Purpose and policy.
230.2 Applicability.
230.3 Definitions.
230.4 Organization.
230.5 General procedures to be followed.
230.6 Adaptability.
230.7 General permits.

(a) The term *waters of the United States* means:

(1) 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;

(2) All interstate waters including interstate wetlands;

(3) 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;

(4) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or

(5) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(6) Which are used or could be used for industrial purposes by industries in interstate commerce;

(7) All impoundments of waters otherwise defined as waters of the United States under this definition;

(8) Tributaries of waters identified in paragraphs (a) (1) through (6) of this section;

(9) The territorial seas;

(10) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) (1) through (9) 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(b) which also meet the criteria of this definition) are not waters of the United States.

Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

PART 122—EPA ADMINISTERED PERMIT PROGRAM: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart A—Definitions and General Program Requirements

- Sec.
122.1 Purpose and scope.
122.2 Definitions.
122.3 Exclusions.
122.4 Prohibitions (applicable to State NPDES Programs, see § 122.25).
122.5 Effect of a permit.
122.6 Continuation of existing permits.
122.7 Confidentiality of information.

Waters of the United States or waters of the U.S. means:

(a) 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;

(b) All interstate waters, including interstate "wetlands";

(c) 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 would affect or could affect interstate or foreign commerce including any such waters;

(4) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(5) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(6) Which are used or could be used for industrial purposes by industries in interstate commerce;

(7) All impoundments of waters otherwise defined as waters of the United States under this definition;

(8) Tributaries of waters identified in paragraphs (a) through (6) of this definition;

(9) The territorial seas; and

(10) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (9) of this definition.

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(b) which also meet the criteria of this definition) are not waters of the United States. This section applies only to man-made bodies of water which either were originally created in waters of the United States (such as disposal areas in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.] Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

PART 110—DISCHARGE OF OIL

- Sec.
110.1 Definitions.
110.2 Applicability.
110.3 Discharge of oil in such quantities as "may be harmful" pursuant to section 110(b)(3) of the Act.
110.4 Exemptions.
110.5 Discharge of oil not determined "as may be harmful" pursuant to section 110(b)(3) of the Act.
110.6 Notices.

AUTHORITY: 33 U.S.C. 1101-1103 and 1105 and 1106; E.O. 11730, 36 FR 11360, 3 CFR Part 101-101 Comp., p. 365.

SOURCE: 32 FR 3073, Apr. 2, 1967, unless otherwise noted.

Navigable waters means the waters of the United States, including the territorial seas. The term includes:

(a) All waters that are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters;

(4) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(5) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(6) That are used or could be used for industrial purposes by industries in interstate commerce;

(7) All impoundments of waters otherwise defined as navigable waters under this section;

(8) Tributaries of waters identified in paragraphs (a) through (7) of this section, including adjacent wetlands; and

(9) Wetlands adjacent to waters identified in paragraphs (a) through (8) of this section. Provided, That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

Subpart A—General Provisions

- Sec.
117.1 Definitions.
117.2 Abbreviations.
117.3 Determination of reportable quantities.

(1) Navigable waters means "waters of the United States, including the territorial seas." This term includes:

(i) 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;

(ii) Interstate waters, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams, (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation or destruction of which would affect or could affect interstate or foreign commerce including any such waters;

(4) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(5) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(6) That are used or could be used for industrial purposes by industries in interstate commerce;

(7) All impoundments of waters otherwise defined as navigable waters under this paragraph;

(8) Tributaries of waters identified in paragraphs (i) (1) through (7) of this section, including adjacent wetlands; and

(9) Wetlands adjacent to waters identified in paragraphs (i) (1) through (8) of this section. ("Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.) Provided, That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

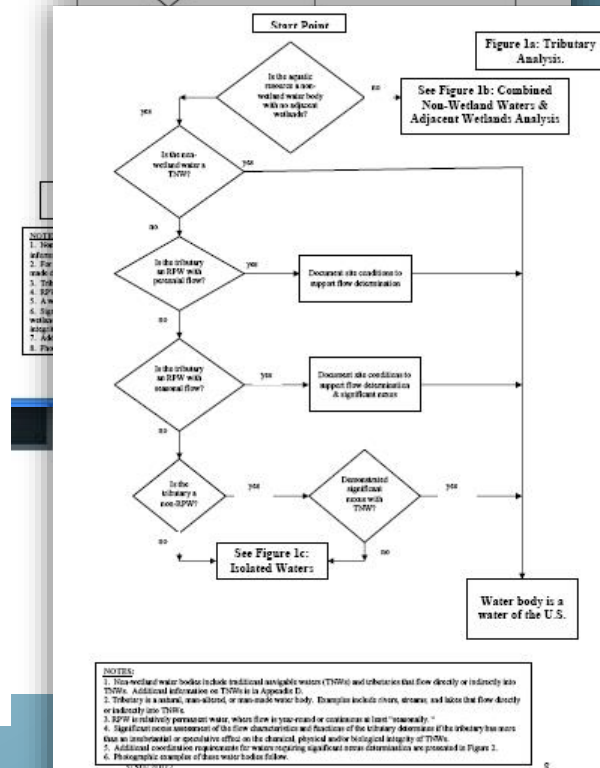
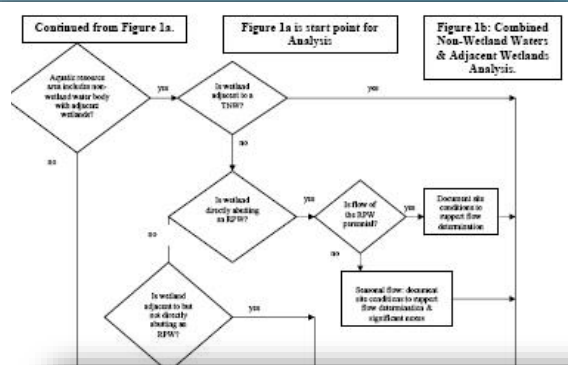
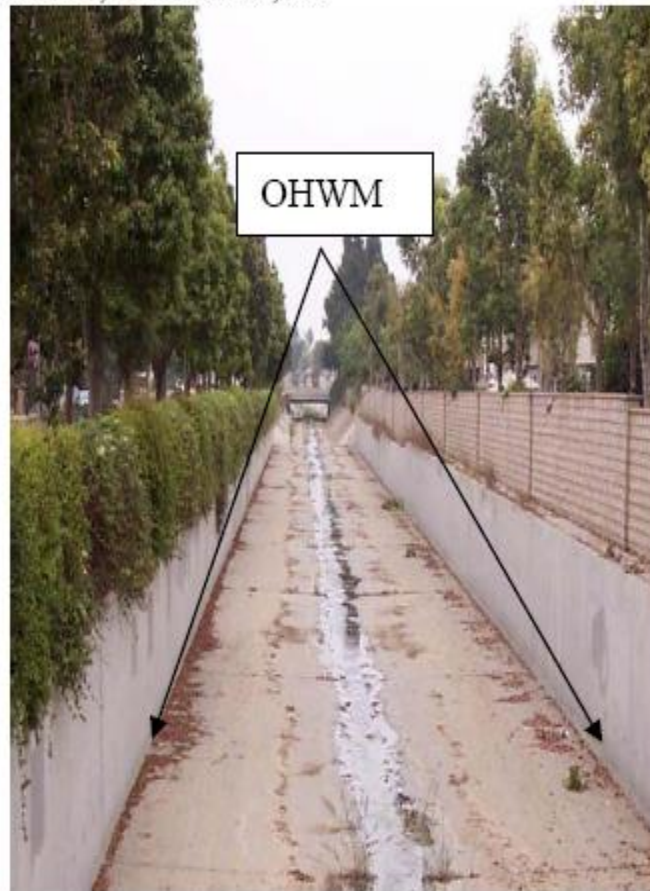
Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

EPA/CORPS: DEFINING WATERS OF THE U.S.?

Photo 21. Soft-bottom intermittent tributary a flood control levee, Ventura County, CA



Photo 29. Ephemeral tributary, a concrete flood control channel, Santa Barbara, CA.



RAPANOS V. US (2006): U.S. SUPREME COURT INTERPRETS “WATERS OF THE UNITED STATES”

Plurality (Scalia, Roberts, Thomas, Alito)

****2225** [10]  ***739** In sum, on its only plausible interpretation, the phrase “the waters of the United States” includes only those relatively permanent, standing or continuously flowing bodies of water “forming geographic features” that are described in ordinary parlance as “streams[,] ... oceans, rivers, [and] lakes.” See Webster’s Second 2882. The phrase does not include channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall. The Corps’ expansive interpretation of the “the waters of the United States” is thus not “based on a permissible construction of the statute.” [*Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843, 104 S.Ct. 2778, 81 L.Ed.2d 694 \(1984\).](#)

[11]  [12]  Therefore, *only* those wetlands with a continuous surface connection to bodies that are “waters of the United States” in their own right, so that there is no clear demarcation between “waters” and wetlands, are “adjacent to” such waters and covered by the Act. Wetlands with only an intermittent, physically remote hydrologic connection to “waters of the United States” do not implicate the boundary-drawing problem of *Riverside Bayview*, and thus lack the necessary connection to covered waters that we described as a “**significant nexus**” in [*SWANCC*, 531 U.S., at 167, 121 S.Ct. 675](#). ****2227** Thus, establishing that wetlands such as those at the Rapanos and Carabell sites are covered by the Act requires two findings: first, that the adjacent channel contains a “water of the United States,” (*i.e.*, a relatively permanent body of water connected to traditional interstate navigable waters); and second, that the wetland has a continuous surface connection with that water, making it difficult to determine where the “water” ends and the “wetland” begins.

RAPANOS V. US (2006): CONTINUED

Concurring (Kennedy)

Consistent with *SWANCC* and *Riverside Bayview* and with the need to give the term "navigable" some meaning, the Corps' jurisdiction over wetlands depends upon the existence of a **significant nexus between the wetlands in question and navigable waters in the traditional sense**. The required nexus must be assessed in terms of the statute's goals and purposes. Congress enacted the law to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," [33 U.S.C. § 1251\(a\)](#), and it pursued that objective by restricting dumping and filling in "navigable waters," [§§ 1311\(a\), 1362\(12\)](#). With respect to wetlands, the rationale for Clean Water Act regulation is, as the Corps has recognized, that wetlands can perform critical functions related to the integrity of other waters—functions such as pollutant trapping, flood control, and runoff storage. ***780 33 CFR § 320.4(b)(2)**. Accordingly, wetlands possess the requisite nexus, and thus come within the statutory phrase "navigable waters," if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as "navigable." When, in contrast, wetlands' effects on water quality are speculative or insubstantial, they fall outside the zone fairly encompassed by the statutory term "navigable waters."

CRITERIA & PERMITS

The devil in the details

WATER QUALITY STANDARDS

The challenge in the details

WATER QUALITY STANDARDS

HOW CWA GOALS ARE MET & ENFORCED

Designated Use

- Intended beneficial use of a waterbody
- ex. water supply, industrial, recreational, agricultural, fish & wildlife

WATER QUALITY STANDARDS

HOW CWA GOALS ARE MET & ENFORCED

Designated Use

- Intended beneficial use of a waterbody
- ex. water supply, industrial, recreational, agricultural, fish & wildlife

Water quality criteria

- Numerical or narrative criteria statement identifying maximum concentrations of various pollutants which would not interfere with the designated use

STATE LEADERSHIP IN STANDARD SETTING

- *CWA empowers states*
 - Set designated uses
 - Establish criteria
 - Meet minimum federal thresholds
 - Monitor waterbodies for impairment
 - Develop plans for compliance

STATE LEADERSHIP IN STANDARD SETTING

- *Narrative criteria*

(c) All waters shall be free from material related to municipal, industrial or other discharges which produce turbidity, color, odor or other objectionable conditions which interfere with legitimate water uses.

STATE LEADERSHIP IN STANDARD SETTING

— *Numeric criteria*

	(a) Freshwater	340 µg/L ¹	150 µg/L ¹
	(b) Coastal and Marine Estuarine Waters	69 µg/L ¹	36 µg/L ¹
2.	Cadmium		
	(a) Freshwater	1.0 µg/L ^{1,3}	0.15 µg/L ^{1,3}
	(b) Coastal and Marine Estuarine Waters	40 µg/L ¹	8.8 µg/L ¹
3.	Chromium III		
	(a) Freshwater	320 µg/L ^{1,3}	42 µg/L ^{1,3}
	(b) Coastal and Marine Estuarine Waters	--	--
4.	Chromium VI		
	(a) Freshwater	16 µg/L ¹	11 µg/L ¹
	(b) Coastal and Marine Estuarine Waters	1,100 µg/L ¹	50 µg/L ¹
5.	Copper		
	(a) Freshwater	7.0 µg/L ^{1,2*,3}	5.0 µg/L ^{1,2*,3}
	(b) Coastal and Marine Estuarine Waters	4.8 µg/L ^{1,2}	3.1 µg/L ^{1,2}
6.	Lead		
	(a) Freshwater	30 µg/L ^{1,3}	1.2 µg/L ^{1,2*,3}
	(b) Coastal and Marine Estuarine Waters	210 µg/L ¹	8.1 µg/L ¹
7.	Mercury		
	(a) Freshwater	1.4 µg/L	0.012 µg/L ²
	(b) Coastal and Marine Estuarine Waters	1.8 µg/L	0.025 µg/L ²
8.	Nickel		
	(a) Freshwater	260 µg/L ^{1,3}	29 µg/L ^{1,3}
	(b) Coastal and Marine Estuarine Waters	74 µg/L ¹	8.2 µg/L ¹
9.	Selenium		
	(a) Freshwater	--	5.0 µg/L
	(b) Coastal and Marine Estuarine Waters	290 µg/L ¹	71 µg/L ¹
10.	Silver	-- ⁴	-- ⁴
11.	Zinc		
	(a) Freshwater	65 µg/L ^{1,3}	65 µg/L ^{1,3}
	(b) Coastal and Marine Estuarine Waters	90 µg/L ¹	81 µg/L ¹
12.	Lindane [Hexachlorocyclohexane (γ-BHC-Gamma)]		
	(a) Freshwater	0.95 µg/L	

PERMITS

Implementing
the Clean Water Act

404 PERMIT PROGRAM

- *U.S. Army Corps of Engineers*
 - *due to historic evolution of laws*
- *Discharge of dredge & fill material*
 - *Wetlands*
 - *Ubiquitous in Fla.*

404 PERMITS

Ideal

- no discharge of dredged or fill material may be permitted if: (1) a practicable alternative exists that is less damaging to the aquatic environment or (2) the nation's waters would be significantly degraded.

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Reality

- Exception for less than 0.5 acre impacts
- 52 “nationwide permits”
 - road crossings, utility lines, stormwater management, stream restoration, coal mining, renewable energy
- Mitigation for “unavoidable impacts” to wetlands

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS

U.S. EPA administered

- *Individual permit for specific facility*
- *General permits for category of dischargers*
 - stormwater general permit*

PUBLICLY OWNED TREATMENT WORKS (POTW SEWER SYSTEMS)



*POTWs collect
wastewater and
transport it by pipe*

*Treatment plant
permitted, with
conditions, and
required to meet
criteria*

PERMIT REQUIREMENTS

WASTEWATER (Industry/sewage)	STORMWATER
Technology based (TBELs) or water quality based (WQBELs) limits	
Limits usually numeric, sometimes “narrative”	Best Management Practices; Municipal Stormwater “Maximum Extent Practicable”
Sampling, Monitoring, Inspections, and Self-Reporting	
Requirement to maintain treatment equipment, prevent bypasses.	Requirement to maintain best management practices, retention and detention, silf fences, hay bales, rock check dams.

CWA §402(K)

THE PERMIT SHIELD

- *(k) Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 309 and 505, with sections 301, 302, 306, 307, and 403, except any standard imposed under section 307 for a toxic pollutant injurious to human health.*
- *But you must comply... or else ...*

Reporting & certification:

Tool for enforcement

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) DISCHARGE MONITORING REPORT (DMR)										Form Approved: OMB No. 2040-0004	
PERMITTEE NAME/ADDRESS (Include Facility Name/Location if Different)				TN0				DMR Mailing ZIP CODE 38066			
NAME:				PERMIT NUMBER				DISCHARGE NUMBER			
ADDRESS:								MINOR (SUBR 05) CDM			
FACILITY:								External Outfall			
LOCATION								NO DISCHARGE ☐			
				MONITORING PERIOD							
				MM/DD/YYYY				MM/DD/YYYY			
FROM				08/01/2012				TO 08/31/2012			
PARAMETER		QUANTITY OR LOADING			QUANTITY OR CONCENTRATION				No Ex	Frequency of Analysis	SAMPLE TYPE
		VALUE	VALUE	UNITS	VALUE	VALUE	VALUE	UNITS			
Turbidity 00070 1 0 Effluent Gross	SAMPLE MEASUREMENT	*****	*****	*****	*****	42	43	NTU	1	Weekly	GRAB
	PERMIT REQUIREMENT	*****	*****	*****	*****	Req. Mon. MO AVG	Req. Mon. DAILY MAX	NTU		Continuous	CONTIN
Conductivity 00094 1 0 Effluent Gross	SAMPLE MEASUREMENT	*****	*****	*****	*****	88	127	umho/cm	4	Monthly	GRAB
	PERMIT REQUIREMENT	*****	*****	*****	*****	Req. Mon. MO AVG	Req. Mon. DAILY MAX	umho/cm		Monthly	GRAB

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

CITIZEN SUITS: ENFORCEMENT TOOL

SEC. 505. [33 U.S.C. 1365] CITIZEN SUITS

(a) AUTHORIZATION; JURISDICTION—Except as provided in subsection (b) of this section and section 1319(g)(6) of this title, any citizen may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

§ 254.3 Contents of notice.

(a) *Violation of permit, standard, regulation, condition, requirement, or order.* Notice regarding an alleged violation of a permit, standard, regulation, condition, requirement, or order which has become effective under this Act shall include sufficient information to permit the recipient to identify the specific permit, standard, regulation, condition, requirement, or order which has allegedly been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the date or dates of the violation, and the full name, address, and telephone number of the person giving notice.

APPLIED IN THE EVERGLADES

Flood control

Wetlands

CLEAN WATER ACT: REMEMBER TERMS

Prohibition of the
(1) discharge (addition) of
(2) a pollutant
(3) from a point source
(4) to Navigable waters



Two parts of the same waterbody?



WATER TRANSFERS

EPA RULE



- 2008 codification of policy that water transfers do not constitute an “addition” to navigable waters and are not subject to NPDES permits.

Water Transfers Rule, 73 Fed. Reg. 33,697 (June 13, 2008)

NPDES AND 404 PERMITS FOR STORMWATER TREATMENT AREAS? MEET WQS? MITIGATE?



NATURE IGNORES PERMIT REQUIREMENTS



NON-POINT SOURCE POLLUTION

- Agriculture
- Stormwater runoff

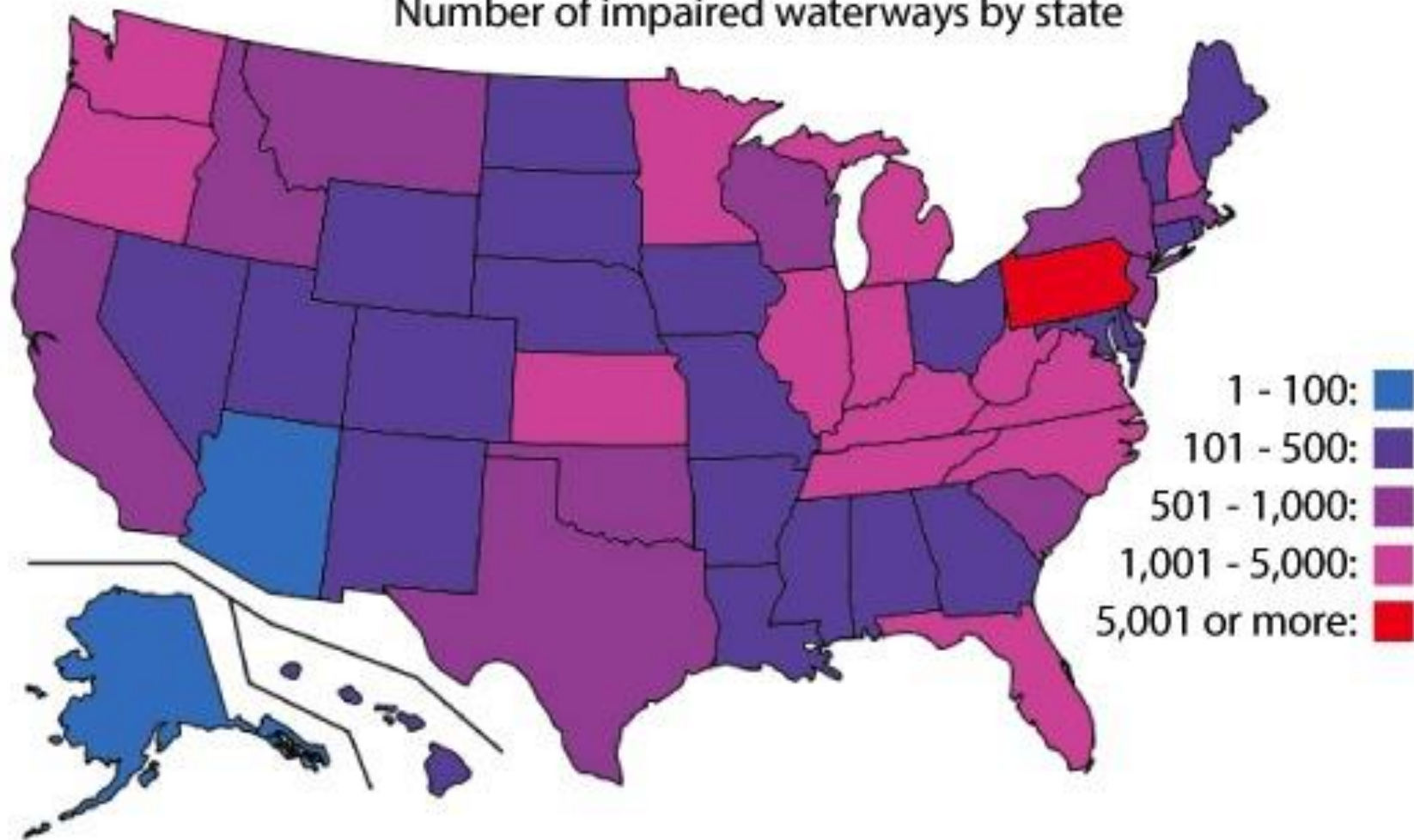


Best management
practices:
not good enough?

CLEAN WATER ACT

*Great concept,
Poor execution?*

Number of impaired waterways by state



CWA IN THE EVERGLADES: STAKEHOLDERS & CWA IMPLEMENTATION

- Miccosukee Tribe
 - *Seek to compel NPDES permits for flood control discharges*
 - *Seek to enforce permit violations by STAs*
 - *Oppose EFA as an invalid water quality standard*

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- Environmental advocates
 - *Oppose 404 permits allowing mining projects and wetland impacts*