

US EPA ARCHIVE DOCUMENT

CLEAN WATER ACT OVERVIEW

SPOTLIGHT ON STORMWATER (CWA Section 402)

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EPA Clean Water Act Tribal Workshop
August 14, 2008



Clean Water Act Objective

“The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter

- (1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985. . . .
- (3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited. ”

101(a) of the CWA, [33 U.S.C. § 1251\(a\)](#)

“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.”

33 U.S.C. section 1362(6).

Point Sources

To accomplish its objective, the CWA prohibits the discharge of pollutants by any person except in compliance with certain sections of the CWA, including Section 402 of the CWA, 33 U.S.C. § 1342.

Section 301(a) of the CWA, 33 U.S.C. § 1311(a),

Point Source Permit Program

Section 402 of the CWA established a National Pollutant Discharge Elimination System (“NPDES”) permit program.

Section 402(p) of the Act specifies that a NPDES permit is required for any “storm water discharge associated with industrial activity.”

Point Sources

NPDES rests on the definition of *point source*:

- "discharge of a pollutant" means, in part, "any addition of any pollutant to navigable waters from any point source"
- "Point source" means "any discernible, confined, and discrete conveyance" of pollutants to a water body."
- "discrete conveyance" means: "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."

Point Source Permit Program – Industrial Stormwater

NPDES program includes an industrial stormwater permitting component.

- 11 categories of stormwater discharges associated with industrial activity.
- If facility discharges or has the potential to discharge stormwater to a municipal separate storm sewer system (MS4) or directly to waters of the United States, then that facility requires authorization under a NPDES industrial stormwater permit.

Point Source Permit Program Construction Stormwater

The CWA regulations implementing Section 402(p) of the Act, define “storm water discharge associated with industrial activity” to include discharges associated with **construction activity**, including clearing, grading, and excavation resulting in land disturbance of **1 acre or more**.

40 C.F.R. § 122.26(b)(14)(x) and (15)

Point Source Permit Program

In 1998, EPA issued the NPDES General Permit for Storm Water Discharges From Construction Activities.

Reissued on July 1, 2003 (“2003 CGP”).

Reissued on July 14, 2008 (“2008 CGP”).

http://www.epa.gov/npdes/regulations/cgp2008_finalfrnotice.pdf

Point Source Permit Program

- On December 1, 2005, EPA proposed an NPDES Stormwater Multi-Sector General Permit for Industrial Activities (MSGP).

<http://cfpub2.epa.gov/npdes/stormwater/msgp.cfm>

- Will replace the MSGP-2000 that expired on October 30, 2005.

Point Source Permit Program

Municipal Separate Storm Sewer Systems

- **MS4s** have authorization to discharge pollutants under an NPDES permit.
- Medium and large MS4 operators are required to submit comprehensive permit applications and are issued individual permits.
- Small MS4 operators have the option of coverage by:
 - individual permit.
 - general permit.

Point Source Permit Program

- EPA is the NPDES permitting authority in a few states, territories, and on most land in Indian Country.
- EPA published its final rule on treating tribes like states for the NPDES permit program in 1993.

[58 Fed. Reg. 67966](#) (Dec. 22, 1993).

(codified in 40 C.F.R. pts. 122-124, and 501).

Point Source Permit Program

- All point sources need a permit to discharge to waters of the U.S.
- Point sources: discrete conveyances (e.g. pipe, ditch, or CAFOs).
- Exempted:
 - agricultural storm water discharges.
 - irrigation return flows.

Permit Limits

- Under the CWA, states, or Tribes treated as States, must develop water quality standards (WQS) for all waters of U.S. CWA § 303.
- NPDES permits contain different kinds of effluent limits for point sources to meet WQS:
 - Technology-based limits.
 - Based on the technology available to treat a pollutant.
 - water quality-based effluent limits.
 - To protect the designated and existing uses of the receiving water body.
 - Apply when technology-based limits are insufficient to meet WQS.

CWA 401 Certification

- If any federal permit/license authorizes a discharge to surface waters, the Tribe where a discharge is made has opportunity to certify whether that the discharge would result in a violation of the Tribe's Water Quality Standards.
- CWA section 518 authorizes EPA to treat Tribes as states for 401 cert.
- If the Tribe has been approved for TAS for WQS, the tribe is the certifying agency; otherwise, it is EPA.
- If Tribe determines that a violation will occur, it can veto the permit, or impose conditions designed to ensure that a violation of WQS will not occur.

CWA section 404

Section 404 Dredge and Fill Permits.

- CWA section 404 authorizes the U.S. Army Corps of Engineers to issue permits for the discharge of dredged or fill material into surface waters, including wetlands.
- CWA section 518 includes this permit program as one of the purposes for which a tribe may be treated as a state.
- EPA published its final rule on treating tribes like states for the Section 404 permit program in 1993.
- No tribe has taken over this program as yet, so the permitting authority within Indian reservations is the Corps.

Enforcement

EPA is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of the CWA, including NPDES permits.

Section 309 (b) of the Act, 33 U.S.C., § 1319(b).

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Nonpoint Source Program (§319)

- Applies to non-regulated diffuse sources of pollution
- States, tribes administer NPS management programs
- EPA provides grants to states and tribes to:
 - Identify waters impaired or threatened by NPS.
 - Implement programs to promote Best Management Practices—
e.g., streambank fencing, buffer strips.
 - Monitor and evaluate - update program every 5 years.