

Getting your Feet Wet: Clean Water Act Overview



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DISCLAIMER:

THIS PRESENTATION IS AN INFORMAL OVERVIEW OF THE CLEAN WATER ACT. THESE SLIDES ARE NOT INTENDED AS A FORMAL STATEMENT OF THE POSITION OF THE EPA OR THE UNITED STATES.



Clean Water Act

“The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

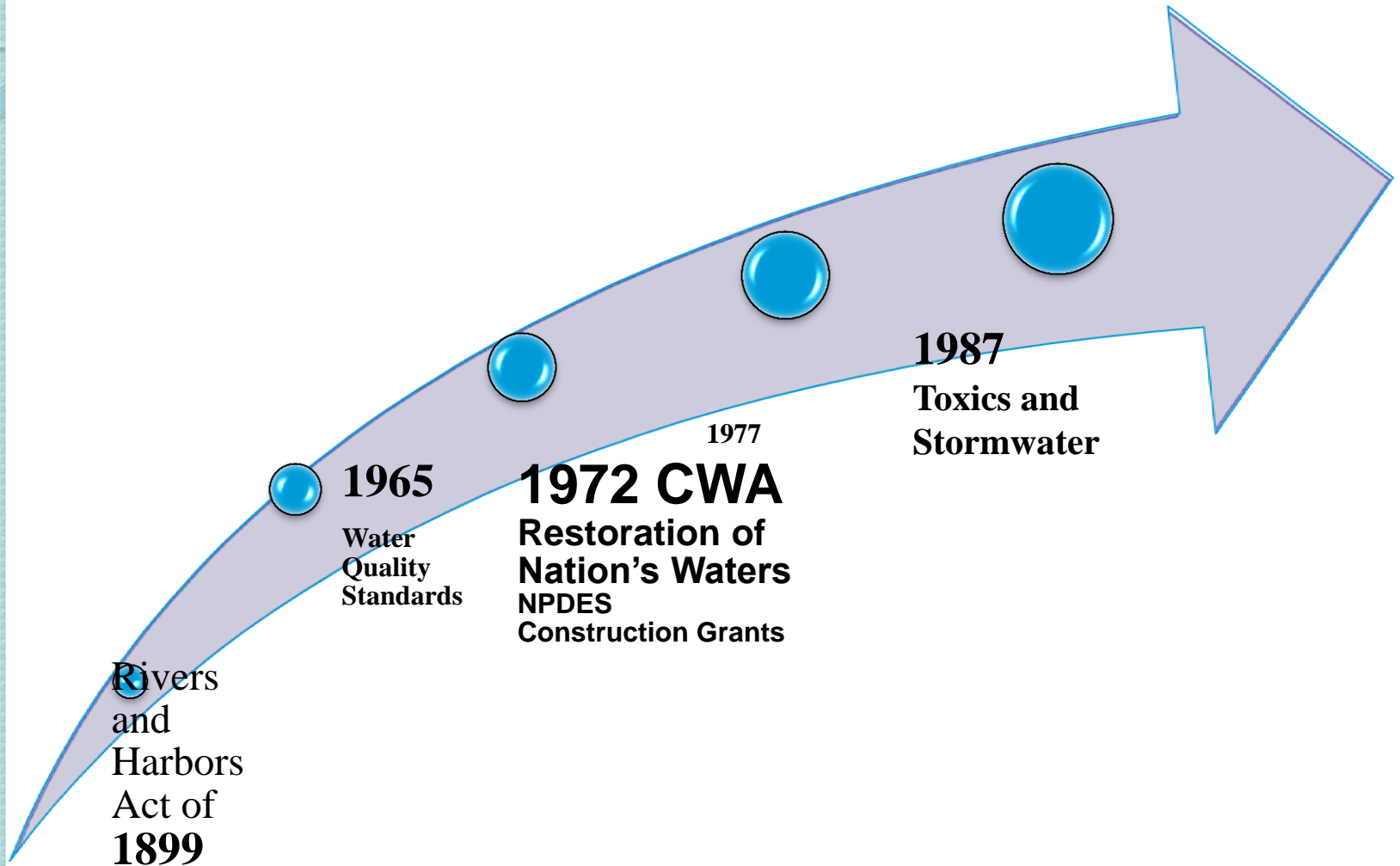
CWA § 101(a), 33 USC 1251(a)



CWA Structure

- Subchapter I – Policy; Research and Related Programs; program grants;
- Subchapter II Construction Grants for POTWs
- Subch III – Standards and Enforcement
- Sub IV – Permits and Licenses
- Sub V – General – definitions; citizens suits
- Sub VI - SRF

Evolution of Water Protection



Controversy on “What is a “Water”?”



Topic to be covered by other Presenters

CWA § 303 (c) – WQS



- Water Quality Standard
 - Designated uses - beneficial uses: “fishable/swimmable”
 - Water quality criteria and Antidegradation policy
- States have primary responsibility to develop WQS
- EPA develops national WQ Criteria and has oversight authority over State WQS

303(d) – Impaired Water List and TMDLs

- Primary requirements for Section 303(d)
 - Identify WQS Problem: Impaired waters/303(d) List



- TMDL – total maximum daily load
 - Plan to attain WQS for impaired waters:

TMDLs and WQS

- The TMDL is the calculation of the maximum amount of a particular pollutant that can be added to a waterbody and still meet WQS.
- **WLA + LA + MOS = TMDL** 40 CFR 130.7
- **WLA: point sources** (40 CFR 130.2).
- **LA: nonpoint sources and natural background** (40 CFR 130.2).
- **MOS: margin of safety**



Clean Water Act

“Except in compliance with this section and Sections ... 1342 and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.”

CWA § 301(a), 33 USC 1311(a)

The background of the slide features several concentric, light blue circular ripples that resemble water droplets hitting a surface, scattered across the lower half of the page.

The CWA sets up three independent Permit/Certification systems:

- 1) **§401** – State Water Quality Certification
- 2) **§402** authorizes EPA (or authorized states) to issue National Pollutant Discharge Elimination system (NPDES) permits to control the discharge of wastewater into navigable waters.
- 3) **§404** authorizes the COE to issue permits for the discharge of dredged or fill material into navigable waters.

Section 401 of CWA : State WQ Certification

- “Any applicant for a Federal license or permit... which may result in any discharge into navigable waters” shall obtain a certification from the State ...“that any such discharges will comply with [the CWA]”



NPDES Permit Program –Section 402

- EPA Oversight – State Program Administration – MOU
 - All States except New Hampshire, Vermont and D.C. are authorized to implement NPDES program
- Finality of permit terms and limits; Appeals



Section 402(p) of CWA: Stormwater

- NPDES Stormwater Program regulates stormwater discharges from three sources:
 - municipal separate storm sewer systems (MS4s)
 - construction activities, and
 - industrial activities.



Chesapeake Bay TMDL and Permits



Section 404 Program –Wetlands/Fill

1. Section 404 of CWA permit authorizes discharge of dredged or fill material into waters of the U.S issued primarily by U.S. Army Corps of Engineers.
2. EPA has certain authority to review, comment and/or veto permits.





Mining – CWA and SMCRA

- CWA Permit requirements: NPDES and 404
- Federal SMCRA does not supersede, amend, modify or repeal requirements of CWA (30 USC 1292(a)(3))



CWA Liability

Civil (CWA Section 309(b);(d);(g)) strict

Criminal (CWA Section 309(c))

- a. Negligent
- b. Knowing



EPA Tools for Enforcement

- Inspection and Information Request and Authorities: Section 308
- State referral
- Permit/Database Review



Enforcement – Section 309



- Criminal enforcement (Section 309(c))
- Civil enforcement (309(b))
- Citizen suit authority – Section 505

Section 311 – Oil and Hazardous Substances Supplemental Approach to 301/402



CWA Citizen Suits: Section 505

“Against any person” : discharger lawsuits

- Section 505(a)(1)
- Standing
- Diligent Prosecution as Bar

Against EPA: Mandatory duty lawsuits

- Section 505(a)(2)
- TMDL, WQS lawsuits

CWA Penalties

Type of Case	Original Statutory	Inflation Adjustment	CWA Penalty Cap
Judicial 402/404	\$25,000 “per day for each violation”	\$44,539	None
Admin Class I	\$10,000 “per violation”	\$17,816	\$44,539 total
Admin Class II	\$10,000 “per day for each day the violation continues”	\$17,816	\$222,695
Section 311 (Spill)	\$1,000 per barrel of oil or \$25,000 per day	\$1,792 per barrel of oil or \$44,539 per day	

Emergency Authority – CWA 504

- “Administrator [has discretionary authority to take certain action]...upon receipt of evidence that a” **pollution** source(s),,,presenting an **imminent and substantial endangerment...to the health [or to the welfare] of persons”**



Questions

