

The Florida Handbook of Solid and Hazardous Waste Regulation: Clean Water Act (CWA)¹

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What is the Clean Water Act (CWA)?

The purpose of the Clean Water Act (CWA) is to maintain and restore the quality of the waters of the United States. The definition of waters is broad, and includes all waters subject to tidal movements, reaching between states, or used in interstate or foreign commerce. These include the following

- territorial seas and larger bodies of water, lakes, streams, rivers, ponds, and other small water bodies if they have even a remote potential to affect interstate commerce or people involved in interstate commerce
- wetlands, which are generally defined as lands that are covered periodically with enough water to support vegetation adapted to a wetlands environment

Primarily through its discharge permitting requirements, the statute limits the amounts of pollutants that may be released into these waters in an attempt to keep the water safe for swimming and other human uses, as well as for fish and aquatic life. The statute also provides for the cleanup of

oil spills through a revolving fund managed by the United States Coast Guard (USCG).

Who enforces CWA?

The Environmental Protection Agency (EPA) enforces the general provisions of CWA, but dredge-and-fill permitting is enforced by the United States Army Corps of Engineers (USACE). EPA has established national standards for the maximum amount of pollutants that may be released under its permits. States are authorized to establish their own standards for allowable levels of pollutants, as long as such standards are at least as strict as those mandated by EPA. EPA may also delegate permitting authority to the state. Currently, Florida has been delegated enforcement of portions of CWA, including National Pollutant Discharge Elimination System (NPDES) permitting in all areas of the state except for tribal lands. The Florida Department of Environmental Protection (FDEP) is the state agency charged with issuing NPDES permits, reviewing permit applications, and ensuring compliance through enforcement

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actions. See <http://www.dep.state.fl.us/water/stormwater/npdes/index.htm> for more information on Florida's NPDES program.

What is the National Pollutant Discharge Elimination System (NPDES)?

The National Pollutant Discharge Elimination System (NPDES) permit program is the main avenue for the enforcement of CWA. The NPDES permit program controls water pollution by regulating point sources that discharge pollutants into US waters.

NPDES permits specify

- the amount and concentration of pollutants the holder is authorized to discharge
- schedules directing when compliance must be achieved
- the requirements for testing and monthly or quarterly reporting to the permitting authority

The NPDES permit program applies to municipal storm sewer systems, industrial facilities that discharge to municipal storm sewer systems or to US waters, pesticide dischargers, and operators of construction activity that disturbs one or more acres of land.

What is a pollutant?

CWA defines “pollutant” broadly. Examples of pollutants that have been regulated through the NPDES process include dredged soil; solid waste; sewage; garbage; and industrial, municipal, and agricultural waste.

What is a point source?

The statute requires anyone who discharges waste by a point source to have a permit. A point source is any specific, confined, and measurable place from which a pollutant is or may be discharged. A point of source may include

- a pipe that discharges pollutants
- a ditch
- a container being rinsed of pesticides
- a vessel or other floating craft
- places where animals are confined and fed
- any other source that may release a pollutant into a specific area

Agricultural stormwater discharges and return flows from irrigated agriculture are specifically excluded from being considered point sources.

What is a nonpoint source?

Nonpoint source pollution does not have a single identifiable source; rather, it is a collection of diffuse sources such as agricultural runoffs, stormwater discharges, and return flow from agricultural irrigation systems.

How does CWA address nonpoint sources?

CWA was amended in 1987 to establish the Nonpoint Source Management Program (CWA Section 319). Section 319 created a grant program to provide funding for states to administer nonpoint source pollution education and monitoring projects.

How do NPDES permits work?

An NPDES permit acts as a license that allows a facility or permit holder to discharge a specified amount of pollutant under certain conditions. NPDES permits impose two types of limitations on point-source polluters:

1. Technology-Based Effluent Limitations – limits on effluent based on the available treatment technology
2. Water-Quality-Based Effluent Limitations – limits on effluent based on the water-quality standards established for the water body (including groundwater) receiving the discharges

There are two types of NPDES permits:

1. Individual permits – permits specifically tailored to an individual facility
2. General permits – permits that cover multiple facilities that are within the same category of point sources and are within a specified geographic area (e.g., municipal stormwater treatment facilities)

What substances may not be discharged under NPDES?

The NPDES program prohibits any discharge of oil or specified hazardous substances into navigable waters (the list is long and is not included in this handbook). You should contact EPA with questions about disposing any toxic waste into waters of the United States ([FE786](#), Contact

Agencies; <http://water.epa.gov/type/oceb/whatsallowed.cfm>).

What about dredge-and-fill?

CWA requires separate permits for the discharge of dredge-and-fill material into navigable waters or wetlands. Dredge-and-fill permits are issued by the United States Army Corps of Engineers (USACE), but EPA has a veto power over USACE-issued permits. EPA may enforce permits issued by the USACE, as well as those permits issued by a state where the permitting authority has been delegated to that state (<http://water.epa.gov/type/oceb/whatsallowed.cfm>).

Normal farming, silviculture, and ranching activities, such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, are generally exempted from dredge-and-fill permitting. However, to qualify for exemption, discharge dredge-and-fill materials must be part of an established agricultural operation, so you should check with USACE if you have any doubts.

What about accidental discharges (spills)?

The statute requires that all spills entering US waters be reported immediately if the amount spilled is greater than the individual “reportable quantities” that EPA has specified for each of some 300 designated hazardous substances. Quickly reporting spills to the National Response Center ([FE786](#), Contact Agencies) insulates you from criminal prosecution but not from civil liability.

What are the penalties under CWA?

The amount of criminal liability under the statute depends on whether the violator was

- negligent, and thus subject to fines up to \$25,000 per day and one year in prison
- knowing of his violation, and thus subject to fines up to \$50,000 per day and three years in prison
- knowing that his violation places others in serious, imminent danger, and thus subject to fines up to \$250,000 and fifteen years in prison, or up to a \$1,000,000 fine for a corporation.

All these penalties may be doubled for subsequent violations and some may be greater for corporations. Injunctive

relief (which forces violators to cease polluting by court order) or other court-ordered relief is also available.

The statute also provides for civil and administrative penalties of up to \$10,000 per day for each violation of the statute or NPDES permit.

Are there any exemptions for pesticides under CWA?

An NPDES permit will not be required when application of a particular pesticide to, over, or near waters of the United States is consistent with FIFRA (Federal Insecticide, Fungicide, and Rodenticide Act; see [FE764](#)) so long as it also falls into one of two categories:

1. The application of pesticides directly to US waters to control pests (e.g., controlling mosquito population, aquatic weeds, or other pests that are present in US waters)
2. The application of pesticides to control pests that are present over US waters, where a portion of the pesticides unavoidably will be deposited into US waters to best target the pests in the most effective manner (e.g., when insecticides are applied aerially to a forest canopy where US waters may be present below the canopy, or when pesticides are applied over or near water for control of adult mosquitoes or other pests)