

# Federal Clean Water Act Basics

(33 U.S.C. §§ 1251-1388)

**Purpose and Goals:** Maintain chemical, physical, and biological integrity of the Nation's waters through the elimination of discharges of pollutants to surface waters. (33 U.S.C. § 1251(a))

**Fishable/Swimmable:** The Clean Water Act (CWA) also has the goal of attaining water quality that (1) achieves protection and propagation of fish, shellfish, and wildlife, and (2) allows for recreation in and on the water where attainable.

**Statutory Policies:** The purpose and goals of the CWA are accomplished through five statutory policies: 1) No discharges of toxics in toxic amounts; 2) Financial assistance for construction of publicly owned treatment works (POTWs); 3) Areawide treatment management planning; 4) Treatment technology Research & Development; and 5) Nonpoint source pollution control programs.

**Jurisdiction:** CWA applies to navigable waters in the United States. State programs may go further and apply CWA principles to all waters within a state's jurisdiction. (33 U.S.C. § 1362)

**Groundwater:** Groundwater is specifically excluded from CWA jurisdiction, but may be covered by state programs and other federal statutes like the Safe Drinking Water Act.

**Prohibits:** Any discharge of pollutants to surface waters, except as authorized by a permit issued in accordance with the CWA. (33 U.S.C. § 1311(a))

**Water Quality Standards:** States must develop water quality standards (WQS) applicable to all waters in the state. WQS must achieve the purpose and goals of the CWA, must be reviewed every 3 years, and must be approved by EPA. (33 U.S.C. § 1313)

**Total Maximum Daily Loads:** States must develop a list of impaired and threatened waters that do not meet established WQS. For these "listed" waters, states must develop total maximum daily loads (TMDLs) that include a calculation of the maximum amount of a pollutant that can be present in a waterbody and still meet WQS. (33 U.S.C. § 1313(d))

**Section 402 Permits:** National Pollutant Discharge Elimination System (NPDES) permits regulate direct discharges from "point sources" to surface waters, including discharges from wastewater treatment plants and stormwater run-off from a variety of sources. (33 U.S.C. § 1342)

**Individual and General Permits:** NPDES permits may be tailored to an individual discharger or cover a general category of discharges.

**Technology Based Effluent Limitations:** NPDES permits include limits that establish minimum treatment requirements for industrial and municipal point sources based on currently available treatment technologies. (33 U.S.C. § 1314(B))

**Water Quality Based Effluent Limitations:** For discharges that have the "reasonable potential" to cause or contribute to exceedances of WQS, NPDES permits must include more stringent, numeric limits for pollutants. For waters listed as impaired or threatened, the limits will be based on the TMDL established by the state. (33 U.S.C. § 1312)

**Maximum Extent Practicable:** Municipal stormwater dischargers must control the discharge of pollutants to the “maximum extent practicable” (“MEP”) by implementing best management practices that control runoff. (33 U.S.C. § 1342(p)(3)(B))

**Section 404 Permits:** Required for the discharge of dredged or fill materials into navigable waters and its tributaries, including wetlands. This permit program is managed under a memorandum of agreement between Army Corps of Engineers and EPA. (33 U.S.C. § 1344)

**National and Individual Permits:** Depending on the type of project and level of impact, section 404 permits may be national permits designed to cover a general category of discharges, or individual permits with project specific requirements. (33 U.S.C. § 1344)

**Cooperative Federalism:** EPA is authorized to delegate authority to the states for administration of the 402 (33 U.S.C. § 1342(b)) and 404 permit (33 U.S.C. § 1344(g)) programs in cooperation with EPA:

- 46 states have delegated authority to administer the 402 program (States without delegated authority - Idaho, Massachusetts, New Mexico, and New Hampshire).
- 2 states have delegated authority to administer the 404 program (Michigan and New Jersey.)

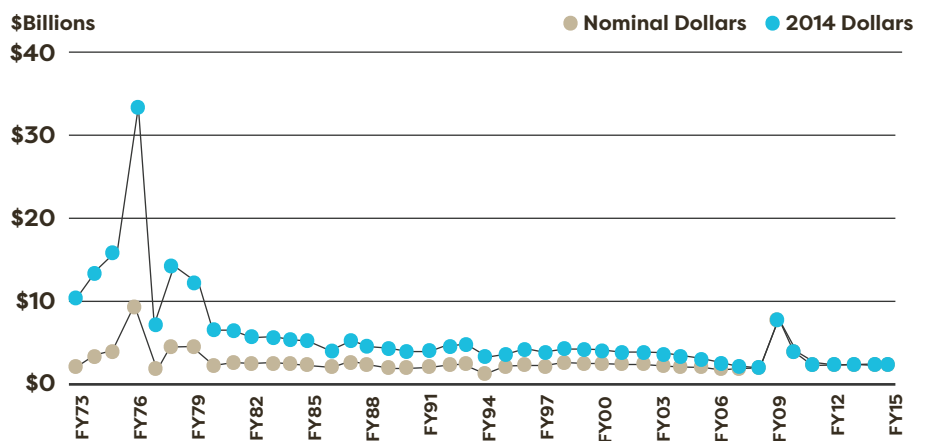
**Enforcement:** As provided in 33 U.S.C. § 1319, anyone who discharges pollutants to navigable waters without a permit or in violation of a permit may be subject to civil and/or criminal penalties:

- Civil penalties may be assessed up to **\$52,414** per day/per violation.
- Criminal penalties for **negligent** violations include imprisonment of up to **1 year** and/or **\$2,500 - 25,000** per day; **knowing** violations include imprisonment of up to **3 years** and/or **\$5,000 - 50,000** per day; penalties for subsequent convictions may be more severe.

**Funding for POTWs:** Originally, the CWA established a grant program for POTWs, which in the 1987 amendments was replaced with the Clean Water State Revolving Fund (CWSRF). Under the CWSRF, states receive federal grants that are matched with 20% state funds. The states then provide low-cost loans (and grants in limited circumstances) to help POTWs finance infrastructure projects (33 U.S.C. §§ 1381-1388). According to EPA’s 2012 Clean Water Needs Survey, there is nearly \$300 billion worth of projects in need of CWSRF financing.

Total EPA Water Infrastructure Appropriations in Nominal and Constant (2014) Dollars

FY1973-FY2015



Source: Compiled by CRS. Constant dollars calculated from Bureau of Economic Analysis, National Income and Product Account Tables 5.9.4A and 5.9.4B, line 37 (Price Index for State and Local Government Investment in Sewer Systems). Constant dollar figure for FY2015 is estimated.