



Clean Water Act Regulation: Waters of the United States and the Evolving Approach to Discharges to Groundwater

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Brief Overview of the CWA

The Federal Water Pollution Control Act first passed in 1948.

In 1972, the Act was reorganized and expanded.

"Clean Water Act" became the Act's common name at that time.

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Setting the Stage

The Clean Water Act (“CWA”) is codified at 33 U.S. Code § 1251 *et seq.*

(a) 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.
- (2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983.
- (3) ... (7)

Setting the Stage

§1362 (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.

§1362 (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

Setting the Stage

CWA § 1311 is a general prohibition that makes it unlawful to discharge any pollutant from a point source into **navigable waters** without a **permit**.

CWA § 1362(7) The term “**navigable waters**” means the **waters of the United States**, including the territorial seas.

CWA § 1342 (referred to as Section 402) establishes the National Pollutant Discharge Elimination System (NPDES) permit program, which authorizes discharges from point sources.

Setting the Stage

In 1998, Texas was delegated the NPDES program.

As TCEQ's explains it:

“The state of Texas assumed the authority to administer the National Pollutant Discharge Elimination System (NPDES) program in Texas on Sept. 14, 1998. NPDES is a federal regulatory program to control discharges of pollutants to **surface waters** of the United States. The Texas Commission on Environmental Quality (TCEQ) Texas Pollutant Discharge Elimination System (TPDES) program now has federal regulatory authority over discharges of pollutants to Texas **surface water**, with the exception of discharges associated with oil, gas, and geothermal exploration and development activities, which are regulated by the **Railroad Commission of Texas**.” [Emphasis added]

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