

**Appendix P**  
**Federal Regulations Relating to Non-Point Source Pollution**

## **Major Federal Regulations Effecting Nonpoint Source Pollution**

### Clean Water Act

The Clean Water Act (CWA) (for more information see <http://www.epa.gov/region5/defs/html/caa.htm>) was passed in 1972 and signaled the creation of federal legislation to protect and restore the biological, chemical, and physical properties of the nation's water. This protection was to be achieved through legislation requiring a permit for the discharge of pollutants, the encouragement of best management practices to control pollution, and funding for the construction of sewage and wastewater treatment plants and facilities. The act was amended five years later and placed more stringent controls on the discharge of toxic materials and allowed states to assume responsibility over federal clean water programs.

The primary focus of the CWA and the 1977 amendments was the prevention of pollution discharges from point sources. In 1987 the act was again amended, this time to focus on nonpoint sources of pollution (NPS). The Section 319 Nonpoint Source Management Program was enacted to aid states, territories and tribal lands in reducing NPS. This is accomplished through technical and financial assistance, training, education, and the monitoring of projects aimed at curbing NPS. In addition, the EPA has requested that funding provided under section 106 of the act for water quality program assistance grants be used by states, territories, and tribal lands for the inclusion and development of programs that reduce NPS. In 1996, Section 319 funding was used in place of Clean Lakes Program (Section 314 Federal Water Pollution Control Act) funding to provide technical and financial assistance for restoring public lakes.

### *Stormwater and Erosion Control*

Phase I of the USEPA's Storm Water Program (for more information see <http://www.epa.gov/owm/sw/index.htm>) was promulgated in 1990 under the CWA. Phase I relies on National Pollution Discharge Elimination System (NPDES) (for more information see <http://www.epa.gov/owm/sw/index.htm#program>) permit coverage to address storm water runoff from: (1) "medium" and "large" municipal separate storm water systems (MS4s) generally serving populations of 100,000 or greater, (2) construction activity disturbing 5 acres of land or greater, and (3) ten categories of industrial activity. In NYS NPDES permitting is under the purview of the NYSDEC, which issues a State Pollution Discharge Elimination System (SPDES) permit (for more information see Appendix I - Stormwater Management Regulations).

The Storm Water Phase II Final Rule (for more information see <http://www.epa.gov/owm/sw/phase2/>) was published on December 8, 1999. The permitting authority of the Storm Water Phase II Rule will be phased in over a 5-year period. The Phase II program expands the Phase I program by requiring additional operators of MS4s in urbanized areas and operators of small construction sites, through the use of NPDES permits, to implement programs and practices to control polluted storm water runoff.

Phase II is intended to further reduce adverse impacts to water quality and aquatic habitat by instituting the use of controls on the unregulated sources of stormwater discharges that have the greatest likelihood of causing continued environmental degradation, the environmental problems associated with discharges from MS4s in urbanized areas and discharges resulting from construction activity including lowering the construction activity threshold for a permit from 5 acres to 1 acre or more.

Additional Stormwater and Erosion Control Information (for more information see Appendix I - Stormwater Management Regulations)

### *Section 404 Wetlands*

Section 404 of the CWA (for more information see <http://www.epa.gov/owow/wetlands/facts/fact10.html>) establishes a program to regulate the discharge of dredged and fill material into waters of the United States, including wetlands. EPA and the Army Corps of Engineers (Corps) jointly administer the program. In addition, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and State resource agencies have important advisory roles. Activities in waters of the United States that are regulated under this program include fills for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports), and conversion of wetlands to uplands for farming and forestry.

The basic premise of the program is that no discharge of dredged or fill material can be permitted if a practicable alternative exists that is less damaging to the aquatic environment or if the nation's waters would be significantly degraded. In other words, when you apply for a permit, you must show that you have a) taken steps to avoid wetland impacts where practicable; b) minimized potential impacts to wetlands; and c) provided compensation for any remaining, unavoidable impacts through activities to restore or create wetlands.

Regulated activities are controlled by a permit review process. An individual permit is usually required for potentially significant impacts. However, for most discharges that will have only minimal adverse effects, the Army Corps of Engineers often grants up-front general permits. These may be issued on a nationwide, regional, or state basis for particular categories of activities (for example, minor road crossings, utility line backfill, and bedding) as a means to expedite the permitting process.

Section 404(f) exempts some activities from regulation under Section 404. These activities include many ongoing farming, ranching, and silviculture practices. Farmers who own or manage wetlands are directly affected by two important Federal programs: (1) Section 404 of the CWA, which requires individuals to obtain a permit before discharging dredged or fill material into waters of the United States, including most wetlands, and (2) the Swampbuster provisions of the Food Security Act, which withholds certain Federal farm program benefits from farmers who convert or modify wetlands.

Together, these two programs have helped to reduce the rate at which wetlands are converted to agriculture and other uses.

#### *Total Maximum Daily Loads (TMDL)*

Section 303(d)(1)(C) of the Clean Water Act and EPA's implementing regulations (40CFR Part 130) require states to identify those waterbodies that do not meet water quality standards after application of the technology-based effluent limitations required by the Act. The states are then required to develop a Total Maximum Daily Load (TMDL) (for more information see <http://www.epa.gov/owow/tmdl/>) analysis for the pollutants that are not meeting water quality standards in those waterbodies.

By definition, a TMDL specifies the allowable pollutant loading from all contributing sources (e.g., point sources, nonpoint sources, and natural background) at a level necessary to attain the applicable water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between the sources of the pollutant and water quality.

Additional TMDL Information (for more information see <http://www.dec.state.ny.us/website/dow/tmdl.html>)

#### Clean Water Action Plan (CWAP)

In 1997, twenty-five years after the passage of the CWA, the Clean Water Action Plan (CWAP) was launched. As part of President Clinton's Clean Water Initiative, the CWAP provides funding for programs developed by the EPA and USDA in conjunction with other federal agencies and state and local governments focusing on restoring and sustaining the quality and health of water resources. The CWAP is based upon four primary elements:

1. Watershed Approach – more effective means of planning and managing water resources compared to approaches based on political boundaries.
2. Stricter Standards – tighter controls and enforcement of NPS regulations as they relate to water quality at the federal and state levels.
3. Stewardship – greater public and private involvement in the planning and management of natural resources and their protection from NPS at the state and local levels.
4. Informed Citizens and Officials – increase the monitoring and reporting of water quality and the effects of NPS with greater involvement of state and local officials and agencies.

#### Safe Water Drinking Act

The Safe Drinking Water Act (for more information see <http://www.epa.gov/region5/defs/html/sdwa.htm>) was passed in 1974 to protect drinking water supplies from harmful contaminants. The legislation attempts to provide safe drinking water through primary drinking water regulations, underground injection control

regulations, and protection of sole source aquifers. In 1986 the act was revised to speed up implementation and included additional provisions for regulating contaminants, filtration systems, distributions systems, and wellhead protection systems.

The Safe Water Drinking Act establishes both health-related (primary) and nuisance-related (secondary) standards for public drinking water. Under the original legislation, the EPA set primary standards for 25 contaminants. The 1986 amendments required the EPA to include an additional 48 contaminants, raising the total number of chemicals regulated in drinking water to 83.

In August 1996, the Safe Water Drinking Act was amended to include a program that requires states to monitor and evaluate the quality of sources of drinking water supplies through the Source Water Assessment Program (SWAP) (for more information see <http://www.epa.gov/safewater/sdwa/summ.html#1A>). In addition, more stringent standards for drinking water and reporting of contaminant levels by water providers to their customers were also included. Other amendments passed in 1996 included financial assistance to communities attempting to upgrade or replace existing water treatment facilities and train and certify water treatment plant operators. The 1996 amendments also granted states the authority to require public water suppliers with over 10,000 customers to annually disclose the levels of contaminants in public water.

The Safe Drinking Water Act is important in that it not only protects the water humans consume directly, but also water used for agriculture and the production of livestock. The identification and control of NPS is a major consideration in attaining the standards set by the EPA to ensure the quality of water used for drinking and agricultural purposes.

Additional Information on Safe Water Drinking Act - 25 Years of the Safe Drinking Water Act: History and Trends (see <http://www.epa.gov/safewater/sdwa/trends.html>)

### Coastal Zone Act

In 1990 under the Authority of Section 6217(g) of the Coastal Zone Act Reauthorization Amendments (CZARA) (for more information see <http://www.epa.gov/owow/nps/czmact.html>), the EPA issued Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters (for more information see <http://www.epa.gov/owow/nps/MMGI/>). This document is intended to serve as a compilation of technical measures that states should include in their coastal NPS control programs.

The management measures outlined therein are not designed to replace existing programs, but rather to compliment existing programs through updated technical documentation and the introduction of newly developed management measures. Management measures are defined in the CZARA as:

economically achievable measures for the control of ... nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices,

technologies, processes, siting criteria, operating methods, or other alternatives.  
(Section 6217(g)(5))

The guidance provided is an attempt to focus on nonpoint sources that are regarded as large contributors to reduced water quality in coastal areas. The management measures apply to five main sources of NPS that threaten water quality throughout the nation. The five main sources are:

- Agricultural runoff
- Urban runoff
- Forestry (silviculture) runoff
- Marinas and recreational boating
- Hydromodification (channelization and channel modifications, dams, and streambank and shoreline erosion)

Management measures are also included for wetlands, vegetated treatment systems, and riparian areas as applicable to NPS. The EPA has recognized that the most effective means of controlling NPS include measures aimed at controlling point source pollution as well. The overlap between point and nonpoint sources is substantial in many instances.

#### Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

Also passed in 1972, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (for more information see <http://www.epa.gov/region5/defs/html/fifra.htm>) provides for the control of the distribution, sale, and use of pesticides. Enforcement is accomplished through the regulations requiring users of pesticides to register at the time of purchase. Amendments to the law now require that persons applying pesticides be certified to reduce accidents and misuses that may result in increased NPS.