Catherine Janasie
June 2018
NSGLC-18-06-02d

Sea Grant Law Center

The Management of Nonpoint Source Pollution under the Clean Water Act

This fact sheet was prepared by the National Sea Grant Law Center as part of the Agricultural and Food Law Consortium.

AGRICULTURAL & FOOD LAW CONSORTIUM

NATIONAL AGRICULTURAL LAW CENTER

The Agricultural & Food Law Consortium, led by the National Agricultural Law Center, is a national, multi-institutional collaboration designed to enhance and expand the development and delivery of authoritative, timely, and objective agricultural and food law research and information.

USDA United States Department of Agriculture
National Agricultural Library

This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.

Photo courtesy of the Wisconsin Department of Natural Resources.

Congress passed the modern Clean Water Act (CWA) in 1972. The terms of the CWA contain many ambitious objectives, including its main goal to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

However, with these broad goals, Congress decided to draw a very significant jurisdictional line. While certain discharges from point sources require a permit under the National Pollutant Discharge Elimination System (NPDES) program, permits are not required for nonpoint source discharges. Thus, nonpoint source pollution does not require a NPDES permit and it regulation has mostly been left to the states.

Under the CWA, a point source is "any discernible, confined and discrete conveyance… from which pollutants are or may be discharged," such as pipes, ditches, and tunnels. The statute does not define nonpoint source; therefore, a nonpoint source is simply anything that does not fit within the definition of point source.

Thus, if runoff from an agricultural field does not enter a waterbody directly, such as being directly discharged from a discrete conveyance like a pipe, but rather reaches the waterbody in a diffuse manner, it does not require a point source permit under the NPDES program.

So how is nonpoint source pollution regulated under the CWA? The rest of this fact sheet details some of the major nonpoint source provisions of the federal statute.

More information on the U.S. EPA's nonpoint source program can be found at: https://www.epa.gov/nps

Nonpoint Source Pollution Management

What is the Clean Water Act Section 319 Program?

Section 319 of the CWA aims to control pollution by nonpoint sources (NPS). Section 319 required states to develop reports that identified waters impaired by NPS pollution and the categories of NPS contributing to this problem. States also had to adopt a NPS management program, which details the state's strategy for addressing NPS pollution. Once EPA approves a state's NPS program, the state becomes eligible for Section 319's grant program.

The EPA has released guidance on the key components of a state NPS management program. Some of these components include:

- A mix of regulatory, nonregulatory, financial, and technical assistance measures, including BMPs;
- Both long-term and short-term goals, including milestones to track these goals;
- Watershed scale projects, as well as statewide programs;
- Plans to restore impaired waters and protect high quality and threatened waters;
- Work with federal, tribal, regional, interstate, and local entities; and
- Coordinate with existing programs, such as U.S. Department of Agriculture conservation programs.

More information can be found at: https://www.epa.gov/nps/319-grant-program-states-and-territories

What is the "303d" List?

The CWA requires states to establish water quality standards (WQSs). To establish WQSs, a state designates a specific use for the water and then sets water quality criteria to attain that goal use. Waterbodies that do not meet WQSs are considered "impaired" and identified on a list usually referred to as the "303(d) list."

For these impaired waterbodies, the state must take steps to improve the water's quality, including addressing NPS pollution. The state does this by establishing a Total Maximum Daily Load (TMDL).

What is a TMDL?

A TMDL is essentially the amount of a pollutant that can enter a water body and allow it to meet its WQSs under the CWA. A TMDL splits up the allowable amount of the pollutant among point sources, known as a wasteload allocations (WLAs), and NPSs, known as load allocations (LAs). The TMDL will also account for a margin of error and natural background levels of the pollutant.

While the amount of WLAs under the TMDL can be enforced through NPDES permits, LAs are not enforceable against NPS polluters. This fact heightens the importance of a state's Section 319 program.

Case Study: The Chesapeake Bay TMDL

For years, the Chesapeake Bay has suffered from nutrient pollution. Excess amounts of nitrogen, phosphorus, and sediment from enumerable sources, including agricultural, urban, and suburban runoff, have polluted and negatively affected the Bay's waters and ecosystems. As a result, the states in the region have been working for years with EPA to develop a TMDL that addresses the nutrient pollution problem in Chesapeake Bay.

The resulting Chesapeake Bay TMDL is a regional TMDL- it covers discharges of nitrogen, phosphorus, and sediment from six states and the District of Columbia in a 64,000-square-mile watershed. The TMDL specifically targets reducing NPS pollution by including Best Management Practices and other land-use requirements, such as reducing the amount of impervious surfaces in the region.

More information on the TMDL can be found at: https://www.epa.gov/chesapeake-bay-tmdl

National Sea Grant Law Center
256 Kinard Hall, Wing E
University, MS 38677
http://nsglc.olemiss.edu
622-915-7775