

SECTION IX
IMPLEMENTATION
OF
CLEAN AIR ACT
AND
FEDERAL WATER
POLLUTION
CONTROL ACT



What the section says.....

- The contractor certifies that.....
- “That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.”
- So, What does this mean for me???????

Both are important

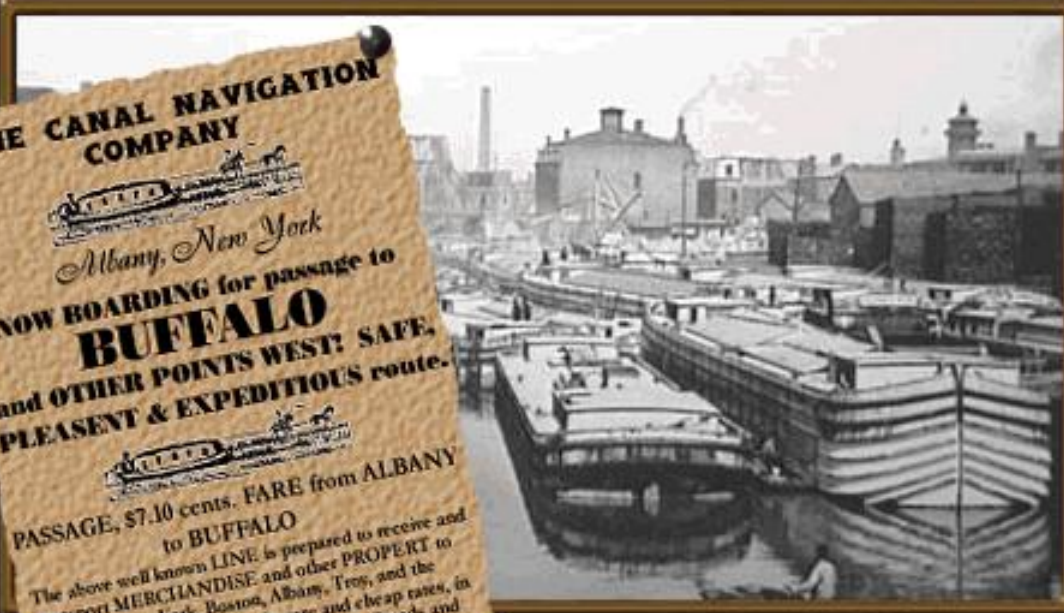
- And they could get you big fines
 - The Money!
 - I want my Money to stay “My Money!”
-
- Let’s talk about why they are important and...
 - Where they may be going



History of the CWA

- Rivers and Harbors Act (1899)
- Water Pollution Control Act (1948)
- Federal Water Pollution Control Act (1956)
- Water Quality Act (1965)
- **Federal Water Pollution Control Act Amendments (1972)**
 - **Clean Water Act (1977)**
 - **Water Quality Act (1987)**

The Industrial Revolution



**ERIE CANAL NAVIGATION
COMPANY**

Albany, New York

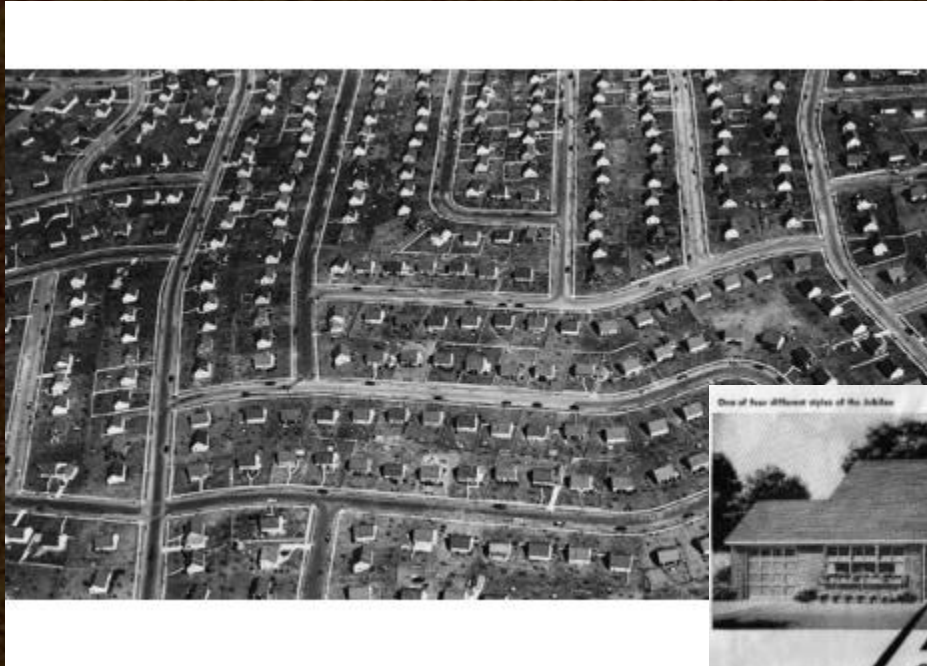
NOW BOARDING for passage to
BUFFALO
and OTHER POINTS WEST! SAFE,
PLEASANT & EXPEDITIOUS route.

PASSAGE, \$7.10 cents. FARE from ALBANY
to BUFFALO

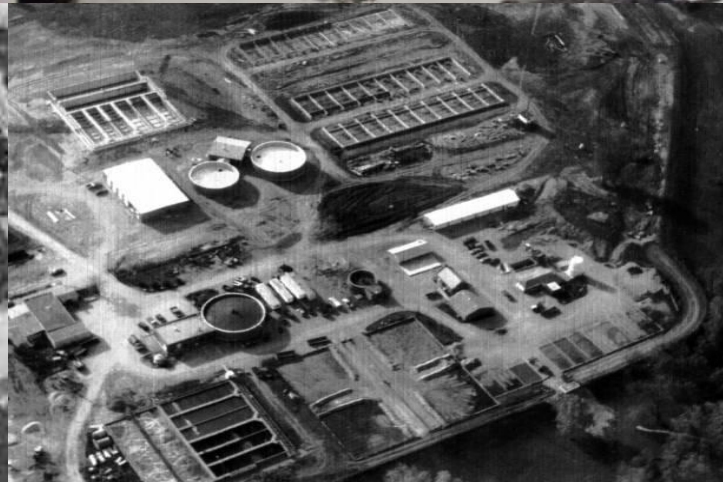
The above well known LINE is prepared to receive and
transport MERCHANDISE and other PROPERTY to
and from New York, Boston, Albany, Troy, and the
Western States, with dispatch, care and cheap rates, in
connection with Steamers, Propellers, Railroads and
Vessels on the several routes.

John M. Griffith, PROPRIETOR

Post War Population Boom



The Needs Grew...



We Had Issues.....





CWA: An Act By Committee

Goals

Construction
grants (\$)

518

WQS

NPDES

Ambient/effluent monitoring

404

314

319



Clean Water Act Citation

- Federal Water Pollution Control Act, As Amended by the Water Quality Act of 1987 (33 U.S.C. 466 et seq.)
- Public Law 100-4
- Regulations at 40 CFR



GOALS OF THE CWA

- §101(a) ...Maintain and restore the physical, chemical, biological integrity of the Nation's waters...
- ..."Fishable, Swimmable..."
- ..."Zero Discharge...by 1985..."



Clean Water Act Policies

- Research & demonstration to develop technology to eliminate discharges
- Programs for controlling Nonpoint sources be developed & implemented
- Areawide waste treatment management plan process to control sources of pollutants



POLLUTANT

Means dredged spoil, solid waste, incinerator residue, filter back-wash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, (some) radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water (40 CFR 122.2).



WATERS OF THE UNITED STATES?





Waters of the United States

- All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; including all waters which are subject to the ebb and flow of the tide;
- All interstate waters, including interstate wetlands;
- All impoundments of waters otherwise defined as waters of the U.S. under this definition;
- Tributaries of waters;
- The territorial sea;
- Wetlands adjacent to waters (other than waters that are themselves wetlands); and,



Waters of the U.S. (Continued)

- All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use or degradation of which would affect or could affect interstate or foreign commerce, including any such waters:
 - Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or,
 - Which are or could be used for industrial purposes by industries in interstate commerce.



CWA: Part I

- Focus on point source (PS) discharges to surface waters, through NPDES permitting
- Limits apply regardless of condition of receiving water, or relative contribution from the source
- Pollutant levels in discharges determined by technical/economic feasibility
- Same limits placed on all PS within each industrial grouping (50 categories/plus subcategories)

EROSION AND SEDIMENT CONTROL DURING CONSTRUCTION

- Sediment/erosion from construction sites is more than 10 x greater than ag land
 - Ag land erosion = 8 tons per acre on the average
 - Construction sites = 20-150 tons per acre

HAY MATTING





FACT
or Fiction

**Construction projects
disturbing five acres or
more are required to
obtain an NPDES permit**

Fact

Enforcement Response

- States are required to have an Enforcement Response Policy...
A cook book for responding fairly and consistently to violators. Ensures response is not arbitrary.
- Sets forth level of response, penalty assessment, and procedures to follow.

Levels of Response

- Informal – Warning Notice.
- Notice of Violation.
- Show Cause Meeting/Notice.
- Formal Enforcement Action-
Administrative Order or Civil Referral
with penalties and injunctive relief.
- Criminal Prosecution.

Resolution

- Formal Actions Conclude with
 - Consent Agreement – with remedy and penalties, or
 - Administrative Hearing, or
 - Federal or State Trial
- Criminal Actions Conclude with
 - Plea Agreement, or
 - Indictment Followed by Trial

Supplemental Environmental Projects

- EPA does these more than States.
- Respondent can propose an environmental project in exchange for a reduction in penalty.
- Should be connected to original violation (nexus).
- Cannot be something they are otherwise required to do by law.

Current Events in EPA Enforcement Actions

- STORM WATER
- STORM WATER
- STORM WATER
- STORM WATER
- STORM WATER
- STORM WATER

What Is Nonpoint Source Pollution?

Any source of water pollution that does not meet the legal definition of “point source” in section 502(14) of the CWA.



What Causes Nonpoint Source Pollution?

Rainfall or snowmelt moving over and through the ground, picking up and carrying pollutants as they go.

Examples of NPS Pollution

- Sediment
 - Agricultural cropland
 - Construction sites
 - Streambank erosion
- Nutrients
 - Animal waste
 - Excess fertilizers



Photo Courtesy of USDA-NRCS



Role of Citizen Suits

CWA Section 505: Citizens' Suit Provision

A **"Citizen"** is defined as, "A person or persons having an interest which is or may be adversely affected."

**POWER
TO
THE
PEOPLE!**

Evolution of Perspective

- *Friends of the Earth v. Carey (1976)* - Congress made it clear that citizen groups are not to be treated as nuisances or troublemakers; but, as welcomed participants in the vindication of environmental interests.
- *Student Public Interest...v. Georgia Pacific (1985)* – Citizen Suits are required most where agency encourages a polluter to believe its unlawful behavior will go unpunished.

Evolution of Perspective (Cont.)

- *Gwaltney of Smithfield v. Chesapeake Bay Foundation (1987)* – The CAA and CWA citizens' suits provisions, “share a common central purpose of permitting citizens to abate pollution when the government cannot or will not command compliance.
- *Coastal Fishermen's Association v. NYC Dept. of Sanitation (1991)* – Citizen suits may proceed where federal and state entities are not fulfilling their enforcement duties.

Scope & Force

- EPA has right of Intervention to protect interests, advance policy, and/or resolve allegation.
- 60 Day Notice Requirement:
“No action may be commenced...prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator...”

Regional Effects Of Citizens' Suits

Petition to Withdraw Full or Partial Delegation of State Program

Site Specific:

- City of Atlanta
- Jefferson County, AL

Where to get training?

- Alabama DOT
- Operator Certification Program
 - CWA for Contractors

Name It

- October 1948 – Donora, PA – 20 people died and 6,000 of the 14,000 residents got sick.
- 1952 London – 3000 people died
- Prompted the original CAA of 1963
- Then 1970, 1977, 1990

Now some Good News!

- Clean Air Act does not apply – 5 year rule
- State requirements
 - SWAT Teams
 - Citizen complaints
- Easier fixes
- Some already done for you
- Examples

Air Quality – Catalytic Converters

“Air quality in and around Boston's \$14-billion Central Artery/Tunnel project has now improved so much that officials may qualify the job for state air quality credits.”



Air Quality – Catalytic Converters

Results:

- 36.2 tons CO
- 12.1 tons hydrocarbons
- 3 tons particulates

Air Quality – Diesel Equipment

Three Non-Technological Steps:

Inactive Engine Shut Down

“Hidden” Staging Zones

Strategic Locations



I Told You Air Quality was Easy

- The Key to a “Good” Presentation?

Questions?

Carl Mikyska, FHWA

Thank you!