

2025 Handbook of Florida Water Regulation: Clean Water Act¹

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Preface

This handbook is designed to provide an accurate, current, and authoritative summary of the principal federal and state (Florida) laws that directly or indirectly relate to agriculture. This handbook provides a basic overview of the many rights and responsibilities that farmers and farmland owners have under federal and state laws and the appropriate contact information to obtain more detailed information. However, the reader should be aware that because the laws, administrative rulings, and court decisions on which this handbook is based are subject to constant revision, portions of this publication could become outdated at any time. Several details of cited laws are also left out due to space limitations. This handbook is an educational text for those interested in water use and water resource issues in Florida.

This handbook is distributed with the understanding that the authors are not engaged in rendering legal or other professional advice, and the information contained herein should not be regarded as a substitute for professional advice. This handbook is not all-inclusive in providing information to achieve compliance with the federal and state laws and regulations governing water protection. For these reasons, the use of these materials by any person constitutes an agreement to hold harmless the authors, the UF/IFAS Center for Agricultural and Natural Resource Law, and UF/IFAS Extension for any liability claims, damages, or expenses that any person may incur as a result of reference to or reliance on the information contained in this handbook. Note: UF/IFAS is the acronym for University of Florida, Institute of Food and Agricultural Sciences.

CWA Overview

The Clean Water Act (CWA) provides the framework for regulating discharges of pollutants to the waters of the United States. It is directed at restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters. The regulation of pollution is implemented through a system of water quality standards for pollutants potentially entering waterbodies, and a system of pollution control permits and wastewater standards for municipalities and industries. For

waterbodies not meeting water quality standards even after the implementation of technology-based limitations or other pollution control requirements (referred to as "impaired waters"), CWA requires that a pollution cap should be established and a plan for meeting this cap and restoring waterbodies to meet water quality standards should be developed (referred to as "Total Maximum Daily Load, TMDL").

What are the waters of the United States?

The CWA protects the "Waters of the United States" or WOTUS. The definition of WOTUS has gone through many changes over time. In 2023, the federal United States Environmental Protection Agency (EPA) and the Army Corps of Engineers (USACE) published a new rule entitled "Revised Definition of 'Waters of the United States'." This rule states that categories of the regulated waters (WOTUS) include:

1. Traditional navigable waters, the territorial seas, and interstate waters
2. Impoundments of "waters of the United States"
3. Tributaries and adjacent wetlands
4. Intrastate lakes and ponds that do not fall within the categories 1–3.

These four categories are what the 2023 rule refers to as jurisdictional water. The 2023 rule explicitly excludes the following from the definition of WOTUS and from jurisdictional waters:

1. Waste treatment systems
2. Prior converted cropland
3. Certain ditches
4. Artificially irrigated areas that would revert to dry land if irrigation ceased
5. Certain artificial lakes and ponds
6. Artificial reflecting or swimming pools or other small ornamental bodies of water
7. Certain waterfilled depressions
8. Swales and erosional features

For more on the definition of “waters of the United States,” see EPA’s website: <https://www.epa.gov/wotus> and <https://www.epa.gov/wotus/current-implementation-waters-united-states>.

What are the rules for NPDES permits?

According to CWA, any discharge of pollutants through a point source into waters of the United States is prohibited unless the source operator has a valid National Pollutant Discharge Elimination System (NPDES) permit (Section 402). A point source is any discernible, confined, and discrete conveyance from which pollutants are or may be discharged. Point source include, but are not limited to, pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or any other floating craft that releases or may release pollutants into navigable waters.

NPDES permits include limits on discharge, monitoring and reporting requirements, and other provisions. NPDES permits impose two types of limitations on point-source polluters:

1. *Technology-Based Effluent Limitations.* Limits placed on the contents of the effluent based on the best practicable treatment technology available to control pollutants
2. *Water-Quality-Based Effluent Limitations.* Limits depend on the standards established for the quality of the waterbody (including groundwater bodies) into which the discharge takes place (cases are viewed on a case-by-case basis)

To search the database of NPDES permits, see the EPA website: <https://echo.epa.gov/>.

What are the rules for dredge and fill?

CWA requires separate permits for the discharge of dredge and fill material into navigable waters or wetlands. Dredge and fill permits are issued by USACE, but EPA has veto power over USACE-issued permits.

What are the rules for oil and hazardous substances?

CWA also prohibits discharges of oil or specified hazardous substances (Section 311). It further requires that all spills be reported immediately if the amount spilled exceeds the individual “reportable quantities” that EPA has specified for each of around 300 designated “hazardous substances.” Reporting spills quickly to the Emergency Superfund Branch (see FE615, Appendix, for telephone numbers) insulates the offender from criminal prosecution, not civil

liability. The CWA also provides for the development of a National Contingency Plan to efficiently remove spills.

What are the rules for other sources of pollution?

Land runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrologic modification are not point sources, and they are not required to have NPDES permits. They are referred to as “nonpoint sources” because pollution loading from them comes from many diffuse source (see FE617, Notes and Glossary, for a definition of nonpoint sources). A nonpoint source (NPS) refers to any other source of water pollution that does not meet the definition of point source, and the CWA leaves the management and regulation of NPS to state agencies.

The CWA addresses nonpoint sources by providing funds to designated state agencies to implement approved nonpoint source management programs (Section 319). Examples of fundable projects include demonstration and evaluation of Best Management Practices (BMPs), nonpoint pollution reduction measures in priority watersheds, groundwater protection from nonpoint sources, and public education programs on nonpoint source management.

What are the rules under TMDL?

The Impaired Waters and Total Maximum Daily Load (TMDL) Program of the CWA is a two-step process to restore and protect water quality. First, states are required to establish water quality standards and develop a list of impaired waters. These waterbodies do not meet water quality standards based on collected monitoring data and, as such, are considered “impaired.” States are required to update and resubmit their impaired waters list every two years.

Second, states must establish priority rankings for waters on the impaired lists and develop TMDLs for these waters. A TMDL is a calculation of the maximum amount of a pollutant that can be present in a waterbody and still meet water quality standards. Within the TMDL the state allocates this loading capacity among the various point sources and non-point sources.

To learn more about waterbodies in the area where you live, see <https://www.epa.gov/tmdl/impaired-waters-and-tmdls-resources-tools-and-databases>.

Who enforces CWA?

CWA is generally enforced by the federal EPA (note that dredge and fill permitting is enforced by the federal USACE). States are authorized under CWA to establish their own standards for allowable levels of pollutants as long as such standards are at least as stringent as those mandated by EPA. The EPA may also delegate permitting authority to a state. Florida has been delegated

enforcement of portions of CWA, including NPDES permitting in all areas of the state except for tribal lands.

What are the penalties under CWA?

The extent of criminal liability under CWA depends primarily on whether the violator is simply negligent (with fines up to \$25,000 per day, one year of imprisonment, or both); knows of his or her violation (with fines up to \$50,000 per day, three years of imprisonment, or both); or knowingly places others in serious imminent danger (with fines up to \$250,000 total, 15 years of imprisonment, or both). All these penalties may be doubled for subsequent violations, and some may be greater for corporations. Under CWA Section 309(c), criminal liability can apply to any person who violates the act, including NPDES permit holders.

CWA also provides for civil and administrative penalties for each violation of CWA or NPDES permit. Civil penalties can be imposed for up to \$25,000 per day for each violation. Administrative penalties can be imposed for up to \$125,000. Injunctive relief (which forces violators to

cease polluting) or other court-ordered relief is also available.

Sources

33 United States Code, Sections 1251 to 1387

Federal Register Vol. 88, No. 11 (January 18, 2023, page 3143)

South Florida Water Management District v. Miccosukee Tribe of Indians, 541 US 95 (2004)

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