



C H E S A P E A K E
L E G A L A L L I A N C E

Clean Water Act Enforcement

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Roadmap for Today

- Clean Water Act overview
- Opportunities for public participation
- Citizen suit enforcement
- What makes a good case?
- Questions/Discussion



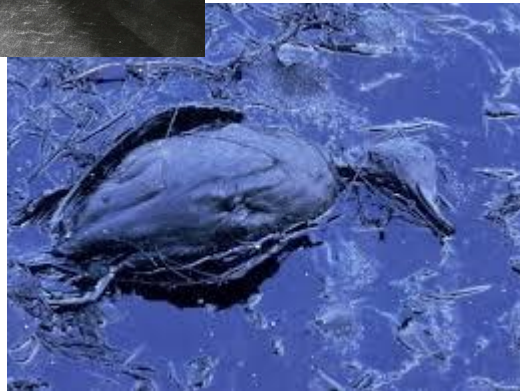
Photo courtesy of the Chesapeake Bay Program



Clean Water Act History



1969 Oil Spill Santa Barbara, CA



“Can we afford clean water? Can we afford rivers and lakes and streams and oceans which continue to make life possible on this planet? Can we afford life itself?” - Senator Muskie



Cuyahoga River in Cleveland, OH

Clean Water Act Goals



- Restoration of the “chemical, physical, and biological integrity of the Nation’s Waters.”



- Fishable swimmable water quality **by 1983.**

- Eliminate the discharge of pollutants into the navigable waters **by 1985.**



Clean Water Act Permitting Framework



- Premise: discharging pollutants into waters of the U.S. is prohibited
- Establishes permitting scheme
- Civil and criminal penalties
- Public participation
- Public enforcement



Alphabet Soup



- NPDES = National Pollution Discharge Elimination System (Permit)
- WOTUS = Waters of the United States
 - *Maui v. Hawaii Wildlife Fund*
 - WOTUS Rule
- TMDL = Total Daily Maximum Load
- DMR = Discharge Monitoring Report
- ECHO = EPA's "enforcement and compliance history online" database
<https://echo.epa.gov/>
- FOIA = Freedom of Information Act

Delegated Authority



United States Congress Passed Federal Statute the Clean Water Act



U.S Environmental Protection Agency promulgates regulations to administer the statute and approves water quality standards



States set water quality standards; TMDLs; Issue and enforce permits





NPDES Permits

Prohibits the discharge of pollutants **by a point source** into **waters of the United States** without a NPDES Permit.

Point Source

- “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.”
CWA § 502 (14)
- Does NOT include agricultural stormwater discharges and return flows from irrigated agriculture.

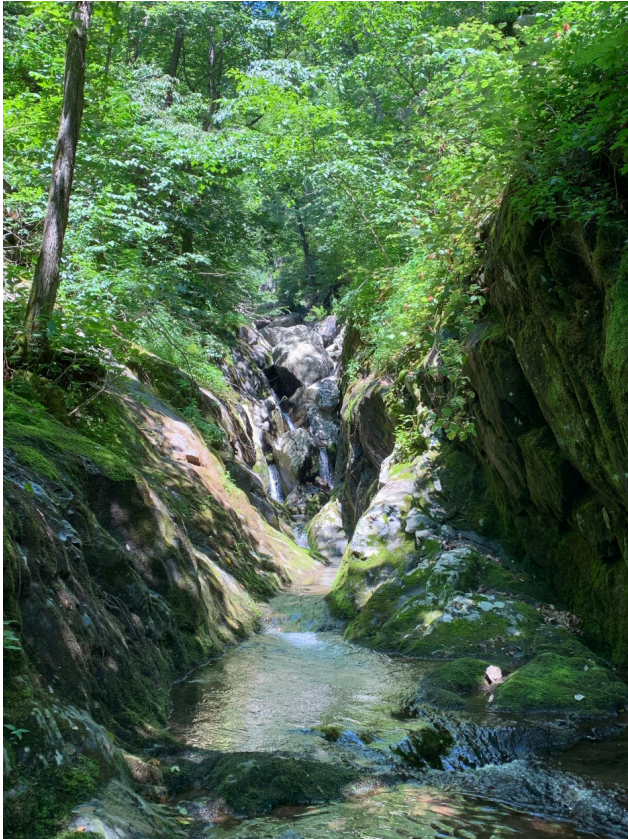
Permit Areas

- Animal Feeding Operations (AFOs)
- Industrial Wastewater
- Municipal Wastewater (sewage)
- Construction Stormwater
- MS4



Photo courtesy of the Chesapeake Bay Program

NPDES Permit Types



General Permit

- Most facilities fall under this category
- Permit sets standard requirements for particular types of facilities
- Harder to enforce

Individual Permit

- Specific facility based on location and pollutant
- Usually site and/or the pollutants involved are too complicated to be covered under the general permit



Public Participation

“Public participation in the **development, revision, and enforcement of any regulation**, standard, effluent limitation, plan or program established by the [EPA] Administrator or any State under this Act **shall be provided for, encouraged, and assisted** by the Administrator and the States.”

CWA § 101 (e)



Photo courtesy of the Chesapeake Bay Program

Example of Permitting Process



1. Application Received; Public Notified

- *Get on Notified parties list; COVID delays*

2. Permit Drafted; Informational Meeting Held Upon Request

- *Public Meeting limitations w/COVID*

3. Draft Permit Released; Public Comment Accepted; Public Hearing Held Upon Request

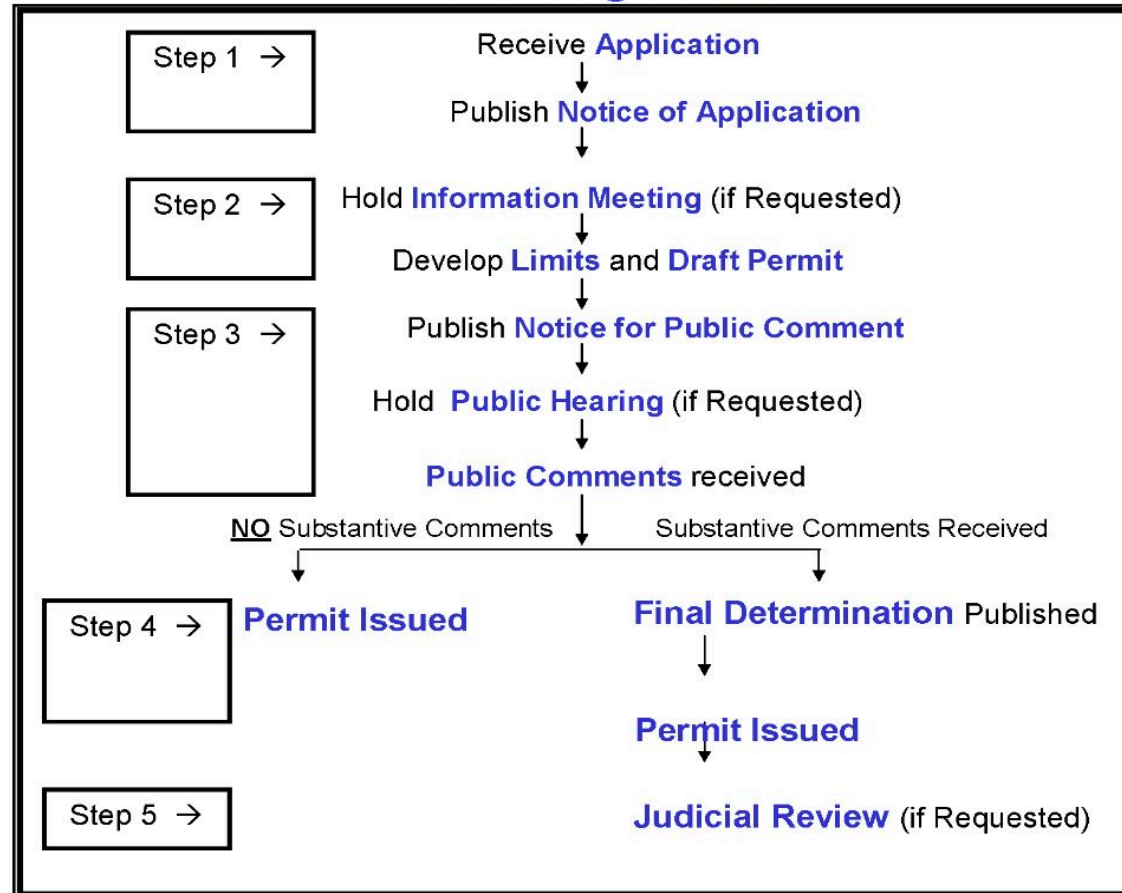
- *Written Comments build Admin Record; public hearing changes w/COVID*

4. Public Comments Considered; Final Determination and Permit Issued

5. Challenges to Final Permits



Permitting Process





Citizen Suit Enforcement

“Citizen Suit” provision

[A]ny citizen may commence a civil action on his own behalf--
(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator. 33 USC § 1365(g)



Words Matter!

Here “citizen” is defined as: a person or persons having an interest which is or may be adversely affected.” 33 USC § 1365(g)

Types of Cases



- Challenges to the NPDES Permit (renewed every 5 years)
- Ensuring facilities are complying with permit requirements
- Ensuring facilities have a permit



Information Gathering Basics

- Essential to both Public Participation and Public Enforcement
- right to access/review public permitting, compliance, and enforcement records

Public Participation information gathering supports:

- public comment drafting
- public engagement and grassroots effort
- ensuring public comments cover all bases for permit challenge

Public Enforcement information gathering supports:

- evidence to corroborate factual and legal claims
- evaluating strength of legal claims, citizen suits, and enforcement actions

Federal Resources

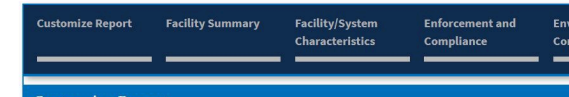


- ECHO <https://echo.epa.gov/>
 - Great starting point for specific facility research and information gathering
 - DFR and Links to Related Reports
 - States have varying levels of available info
 - different types of permit have different levels of information, biggest discrepancy is with individual v. general permits
- EPA EJSCREEN <https://www.epa.gov/ejscreen>
 - combination of demographic and environmental information that provides a score for a given location
- CDC Social Vulnerability Index
 - <https://svi.cdc.gov/>



You are here Home » Detailed Facility Report

Detailed Facility Report



Environmental Topics

Laws & Regulations

About EPA

EJSCREEN: Environmental Justice Screening and Mapping Tool

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State Resources

Maryland

- [Wastewater Permits Interactive Search Portal](#)
- [Notices for Stormwater Associated with Construction Activity](#)
- [Permit Application Database Search](#)

Virginia

- [VPDES Permits Webpage](#)
- [Consent Orders](#)
- [Water Public Notices, Public Notice Master List](#)

Pennsylvania

- [eDMR](#)
- [Reports](#) and [Wastewater Reports](#)

Delaware

- [Department of Natural Resources and Environmental Control - Public Notices](#)

Washington DC

- [Department of Energy and Environment - Public Notices](#)

Other States: [Links to State CWA permitting agencies](#)



FOIA and State Equivalents

Federal - [FOIA Online](#)

Maryland - [Public Information Act & Online Request Form](#)

Virginia - [Freedom of Information Act & Online Request Form](#)

Pennsylvania - [Right to Know Law and Department of Environmental Protection](#) & [Online Request Form](#)

Delaware - [Freedom of Information Act & Online Request Form](#)

Washington DC - [Freedom of Information Act & Online Request Form](#)



Spring Peeper, Photo courtesy of the Chesapeake Bay Program



What Makes a Good Case?

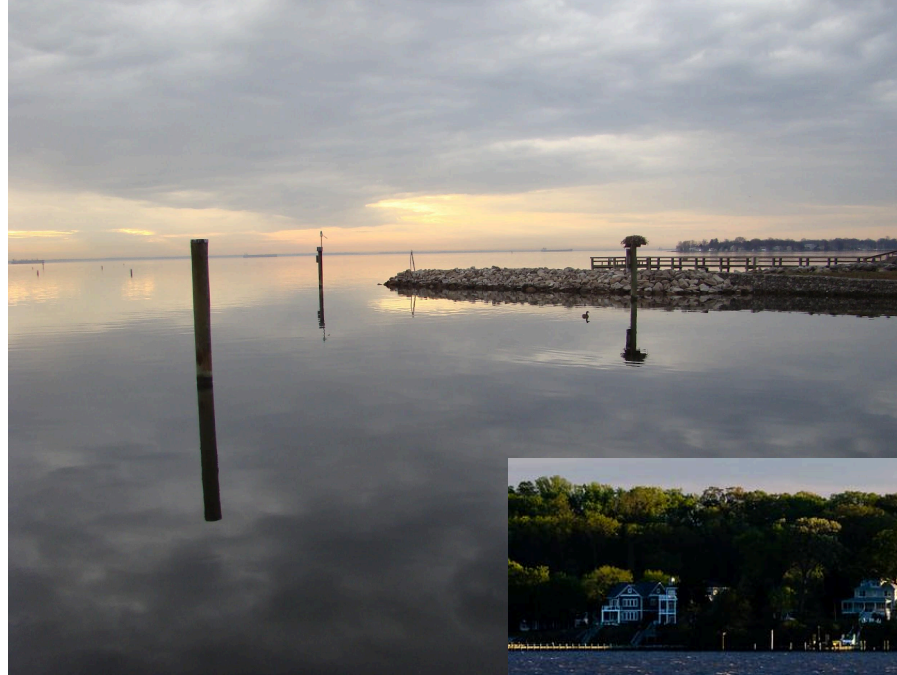
- **No catch all formula or solution** - be flexible and creative
- **Three categories** of records typically necessary:
 - DMRs, Compliance, Permitting
- **Diligent prosecution**
 - If state/federal govt are actively enforcing the same violations; opportunity may be precluded
 - Broad standard
 - Nuances re what type of Gov't action precludes citizen suit
- **Ongoing and continuous violation**
 - Cannot bring a suit for “wholly past violations”
 - Must allege ongoing and continuous or substantial likelihood of ongoing and continuous in your complaint



Photo courtesy of the Chesapeake Bay Program

- **Standing**
 - Must show Harm, Causation, Redressability
- **Individual permits v. general permits**
 - Enforcement problems with general permits

Questions?



How can we help you?
www.chesapeakelegal.org/help/