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# All the Legal Crap You Have to Deal With

# Statutory and Regulatory Framework

- Federal Statutes and Regulations
- State Statutes and Regulations
- County Statutes
- An attempt to apply that to what we are here talking about

# Federal Law

- Clean Water Act
  - Enacted in 1972
  - Main issue –Pollution coming from pipes into surface water
  - Drafted to deal with that issue



# Section 301

(33 U.S.C. § 1311)

“Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342 and 1344 of this title, the **discharge of any pollutant** by any person shall be unlawful.”

- Applicable definitions, Section 502 (33 U.S.C. § 1362):
  - Discharge of a pollutant: “Any addition of any pollutant to **navigable waters** from any **point source**”
  - Navigable water: “The waters of the United States”
  - 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.”

Ummm . . . English, please?

Clean Water Act says you can't spew  
crap out of a pipe or ditch or  
something similar into a surface  
water unless you comply with the Act

# Compliance with the Act

“Except as in compliance with this section and **sections 1312, 1316, 1317, 1328, 1342 and 1344** of this title, the discharge of any pollutant by any person shall be unlawful.”

- Section 302 (33 U.S.C. § 1312) – Water quality based limitations (sufficient limitations to not violate water quality standards)
- Section 306 (§ 1316) – Technology based limitations (as much as is “achievable” through the “best available demonstrated control technology”)
- Section 307 (§ 1317) – Toxic and pretreatment standards (limitations on introduction of pollutants into a POTW that cannot be treated by the POTW)
- Section 318 (§ 1328) – Aquaculture (not relevant)
- Section 402 (§ 1342) – Permits for point source discharges
- Section 404 (§ 1344) – Permits for dredge and fill (not relevant)

## Yeah . . . You lost me again

If you have a pipe or something similar that discharges pretty much anything into a surface water, you need to get a permit that will have a bunch of limitations on what can be in that discharge.



# Provisions Specific to POTW

- What is a “treatment works”?
- Section 1292 (aka, § 212): “any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature” including “including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements,”

# Provisions Specific to POTW

- Discharges into and from Sanitary Sewer Systems, Section 301
  - Section 301(b)(1)(A): For discharges **into** a POTW “any applicable pretreatment requirements and any requirements under section 1317” (aka § 307)
    - Section 307 – sets forth pretreatment standards
      - For toxics, generally the limitation based on “best available technology economically achievable” for that type of pollutant (§ 307(a)(2))
  - Section 301(b)(1)(B): For discharges **from** a POTW “secondary treatment as defined” under section 1314(d)(1) (aka § 304)
    - Section 304 – The administrator should come up with secondary treatment standards, “alternative” and “innovative” waste treatment management techniques.

# Provisions Specific to POTW

- Permits for Point Sources, Section 402
  - Section 402(p) – Municipal separate stormwater sewer systems (aka MS4)
  - Section 402(p)(3)(B)
    - Permits for separate stormwater sewers can be issued “system-wide” or “jurisdiction-wide”
    - Shall “effectively prohibit non-stormwater discharges into the storm sewers”
    - Shall “require controls to reduce” pollutants “to the maximum extent practicable” including:
      - Management practices
      - Control techniques
      - System design
      - Engineering methods
      - Anything else EPA or the State deems appropriate

# Provisions Specific to POTW

- Section 402(q) – Combined Sewer Systems (Yonkers)
  - Stormwater and sewage goes through the same pipes . . .  
On purpose
  - Section 402(q)(1) – Every permit (or order or decree) must comply with the CSO Control Policy. Which means:
    - Must comply with “nine minimum controls”
    - If not going to be able to comply with water quality standards, must develop and implement a “Long Term Control Plan” that will eventually comply

# Federal Regulations

- MS4
  - 40 CFR 122.26
- Separate Sanitary Sewers
  - Secondary treatment standards (40 CFR 133)
  - Preparing “Peak Flow” regulations – none formalized yet
- CSOs
  - Not in specific regulations
  - Must comply with CSO Control Policy – which is written as guidance, but is now incorporated into the Clean Water Act

# State Law

- New York Environmental Conservation Law (“ECL”)
  - Plenary Authority for NYS Department of Environmental Conservation
  - Unlike CWA, waters of the state include groundwater (ECL § 17-105(2))
- CWA permitting program delegated to the state
  - State Pollution Discharge Elimination System (“SPDES”)
  - EPA still must approve permits and permit modifications
  - For our purposes, still limited to point sources (called “outlets” or point sources) (ECL §§ 17-701(1), 801, 803)

# State Law

- SPDES Permits basically co-extensive with CWA (ECL § 17-803):

“it shall be unlawful to discharge pollutants to the waters of the state from any outlet or point source without a SPDES permit issued pursuant hereto or in a manner other than as prescribed by such permit.”

- For Separate Storm Sewers (MS4), consistent with the CWA (ECL §17-808(3)):
  - May be issued on a system or jurisdiction-wide basis;
  - Shall include a requirement which regulates non-stormwater discharges; and
  - Shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system design and engineering methods, and such other provisions as the commissioner determines appropriate for the control of such pollutants.

# State Law

- POTW operators must get a SPDES permit for any outfalls
  - Permit for WWTP generally covers all CSO outfalls as well
- Must comply with Sewage Pollution Right to Know Act (ECL § 17-826)
  - Operators of POTW must report any discharge of untreated or partially treated sewage within 2 hours to Health Dept, and within 4 hours to local elected officials and the public
- On site treatment (septic) generally covered by Department of Health code
  - Some additional requirements for locations in NYC watershed.



# State Regulations

- Operator of POTW must get a SPDES permit
  - POTW includes “sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment”
- Permittee (generally the County), shall (6 NYCRR § 750-2.9(a)(4)):

“ . . . enact, maintain and enforce or cause to be enacted, maintained and enforced up-to-date and effective Sewer Use Law in all parts of the POTW service area. Such enactment and enforcement shall include intermunicipal agreements and/or other enforceable legal instruments that allow the permittee to control discharges, either directly or through jurisdictions contributing flows to the POTW, flow and loads to the POTW as well as discharges to the POTW.”
- Regulations also require permittee to:
  - Develop/implement pretreatment standards (750-2.9(b))
  - Report/manage flow and, when required, develop flow management plan (750-2.9(c))

# County Law

- Westchester County Sewer Act (responsibilities on municipalities)
  - Prohibits “excessive inflow and infiltration into the county trunk sewer system,” and sets forth several standards, monitoring obligations, and penalties. (Westchester County Administrative Code § 824.72)
  - Defines “Excessive infiltration and inflow” as more than 150 gallons per capita per day for the population served by the system § 824.72 (2).
  - Continuing obligation to “maintain and repair the tributary sewer systems within their borders” § 824.72 (7).
- Enforceable by Commissioner of Environmental Facilities for County of Westchester (daily fines of \$25,000 to \$200,000 depending on number of violations)

# So, what does it all mean, man?

## Federal and State Law

- Applies almost exclusively to outfalls (controlled by owner/operator of POTW), not directly applicable to maintenance of entire system
- Obligation on operator of POTW to get and comply with permit
- Obligation on operator to comply with regulations and guidance regarding SSOs and CSOs
- Obligation on operator to comply with SPRTK
- Enforceable by citizen suit, by EPA and by DEC

## County Law

- Applies to municipalities
- Requires control of inflow and infiltration
- Requires maintenance of system
- Enforceable only by the County

# So, what can we do about it?

- Include Municipalities as part of POTW
  - Through litigation (definition of POTW under federal and state law includes all the major underground infrastructure)
  - By regulator (region 1 EPA has required Municipalities to be co-permittees under CWA permit)
  - All stick, no carrot
- Contractual solutions
  - Agree by contract to give county authority and ability to inspect/repair/maintain entire system?
- Legislative Solution
  - Give actual ownership of entire system to County?