



WATER POLLUTION PREVENTION AND CONTROL

(“CHAPTER”)

*a policy that Congress considered of the highest priority in
the interest of public health, public welfare and the water*

This report contains information that has been redacted pursuant to US Code Title 42 Chapter 55 – National Environmental Policy Act, US Code Title 33 Chapter 26 - Water Pollution Prevention and Control and US Code Title 42 – The Public Health and Welfare, Chapter 133 - Pollution Prevention and more specifically 33 U.S.C. §§ 1311(a), 1311, 1312, 1313, 1316, 1317 and 1342.

REDACTMENT OF LAW

The Chapter (aka United States Code Title 33 Chapter 26 Sections 1251 et seq., commonly referred to as the Clean Water Act of 1972) was enacted October 18, 1972 to include all amendments. The terms and definitions shall be those provided in the National Green Standards of Performance herein referenced.

The mission of the National Standards Enforcement Agency is to require and to assist the development and implementation of waste treatment management plans and practices which will achieve the goals of the Chapter.

The National Green Standards of Performance are designed to achieve optimum water quality management, consistent with the public health and water quality goals and requirements of the Chapter.

In recent decades prior to its development, which took several years, it became known that the number one source of contamination and wasting of our precious drinking water resources and pollution of our waterways and oceans (“Nations waters”) was from publicly owned treatment works, i.e. sewer collection systems receiving discharges of raw sewage from sources without any pretreatment (“public sewers”) and from the inferior methods of onsite wastewater treatment such as cesspools and septic systems (“OWTS”) which discharged many toxic pollutants, now listed on the US EPA List of Toxic Pollutants since July 1, 1977.

The Chapter refers to these two sources of pollution as “nonpoint sources of pollution” because once pollutants are discharged into public sewers or OWTS, the pollution becomes uncontrollable and becomes a threat to public health, public welfare and destroys the quality (“integrity”) of our Nations waters, i.e. all waters of all states to include ground water, underground waters, surface waters and all navigable waters to include the oceans under the water quality requirements of 33USC1313.

The United States Congress initiated the Clean Water Act to require a “nip-it-in-the-bud” approach intended to eliminate all discharges of all pollutants at each individual source of the pollutants. Eliminating all discharges of all pollutants at each source through required implementation of the best available technology (“BAT”) at each source would control these pollutants and prevent them from being discharged into OWTS or public sewers.

Objective of the Chapter

33USC1251. Congressional declaration of goals and policy

(a) Restoration and maintenance of chemical, physical and biological integrity of Nation’s waters; national goals for achievement of objective

The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.

In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter—

Congressionally Declared Goals

Congress declared two (2) National Goals in order to achieve the objective. These goals are collectively referred to as the “National Goal to eliminate the discharges of all pollutants.” The two National Goals established under 33USC1251(a) are:

(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

It is the policy of Congress that projects for wastewater treatment and management undertaken with Federal financial assistance under this Chapter by any State, municipality, or intermunicipal or interstate agency shall be projects which, in the estimation of the State, are designed to achieve optimum water quality management, consistent with the public health and water quality goals and requirements of this chapter.

The State is authorized under 33USC1370 – State authority. Under such exclusive authority and strict liability statute in compliance with the policy of Congress, the State and its political subdivisions have a nondiscretionary obligation to adopt and enforce the most strict effluent limitation, other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance in effect under this Chapter; or, such State shall be construed as impairing the waters and shall be subject to penalties provided under 33USC1319 - Enforcement.

Standards of Performance

Currently, the most strict effluent limitation, other limitation, effluent standard, prohibition, pretreatment standard and standard of performance in effect under this Chapter are:

**THE NATIONAL
“GREEN”
STANDARDS OF PERFORMANCE
-
EFFLUENT LIMITATION GUIDELINES
-
CATEGORICAL PRETREATMENT STANDARDS
&
NATIONAL STANDARDS REGULATIONS**

(CODE OF GREEN REGULATIONS “CGRs”)

The Best Management Practices and Measures to Control, to the Maximum Extent Practicable, the Level of Pollution Resulting from Categories and Subcategories of Point and Nonpoint Sources of Pollution

(US Code Title 42 Chapter 55 – National Environmental Policy Act)
(US Code Title 33 Chapter 26 - Water Pollution Prevention and Control)
(US Code Title 42 – The Public Health and Welfare, Chapter 133 - Pollution Prevention)

FIFTH GRADE EDITION
(March 2010 Revision)

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...hereinafter referred to collectively as the “GREEN Standards of Performance”. These standards that are applicable to industry-wide application are not only the strictest National Standard of Performance under 33USC1316 and are also the strictest Federal Standard of Performance established for industrial and municipal point source discharge control established under 33USC1316. Additionally, the GREEN Standards are the strictest standards of performance adopted as the Ocean Protection Policy pursuant to the Blue Carpet Treatment Program. The GREEN Standards of Performance are of a nondiscretionary requirement for all regulatory enforcement entities, federal, state, local and private, to adopt and enforce. The NSEA Department of Justice provides enforcement oversight through Private Attorneys General, Environmental Marshals and Native Americans of each local judicial jurisdiction under 33USC1365.

The timetable for establishment of the effluent limitations for point sources (other than publicly owned treatment works) with the application of effluent limitations required under section 1311 (b)(2) of the Chapter which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 1314 (b) of the Chapter to enable these National Goals (or the National Goal of eliminating the discharge of all pollutants) to be reached was to be no later than July 1, 1977. To achieve these National Goals each point source of pollutants (other than publicly owned treatment works), i.e. residential, commercial and industrial, was required to have implemented alternative control strategies; or, implement innovative pretreatment control strategies at each point source (other than publicly owned treatment works), i.e. residential, commercial and industrial, prior to discharging into the receiving waters of either underground waters, i.e. aquifer, or publicly owned treatment works.

Alternative Effluent Control Strategies

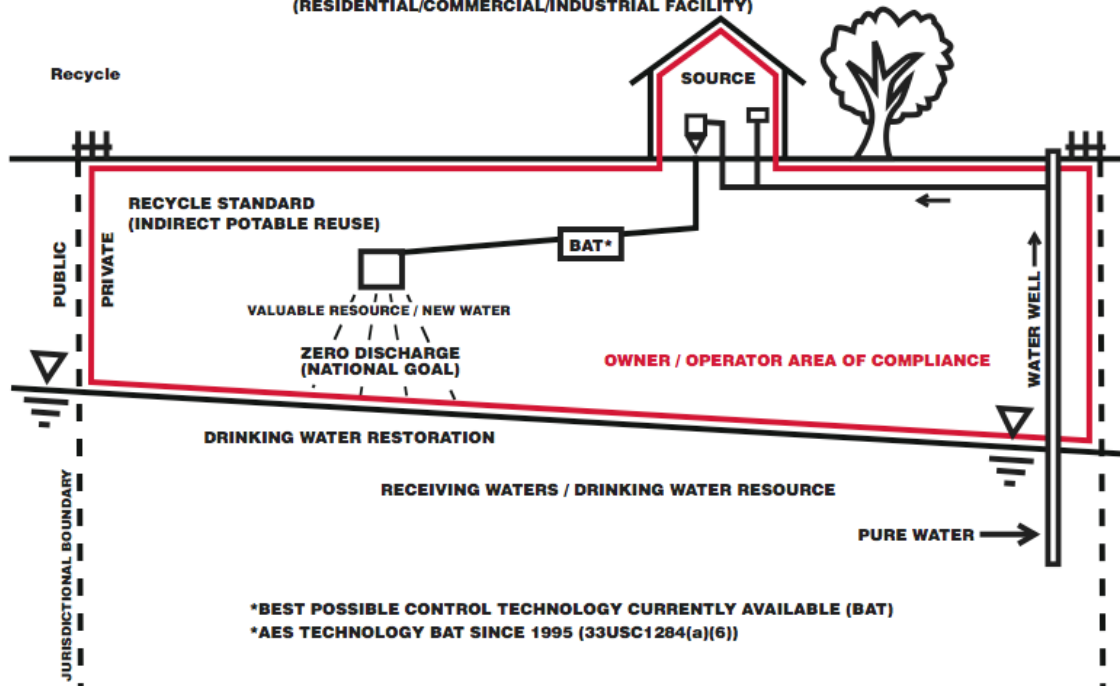
Required Effluent Limitations for Point Sources (other than publicly owned treatment works)

The “Recycle” illustration shows the lawful application of the at-source best available demonstrated control alternative required by the Chapter since July 1, 1973. This application is the most economically feasible control application and suited where the under ground water aquifer can be restored with the purified water resulting from the treatment and reclamation of the best available technology (“BAT”) to be recycled for reuse via a water well.

LAWFUL APPLICATION ALTERNATIVE TECHNOLOGY (BAT)

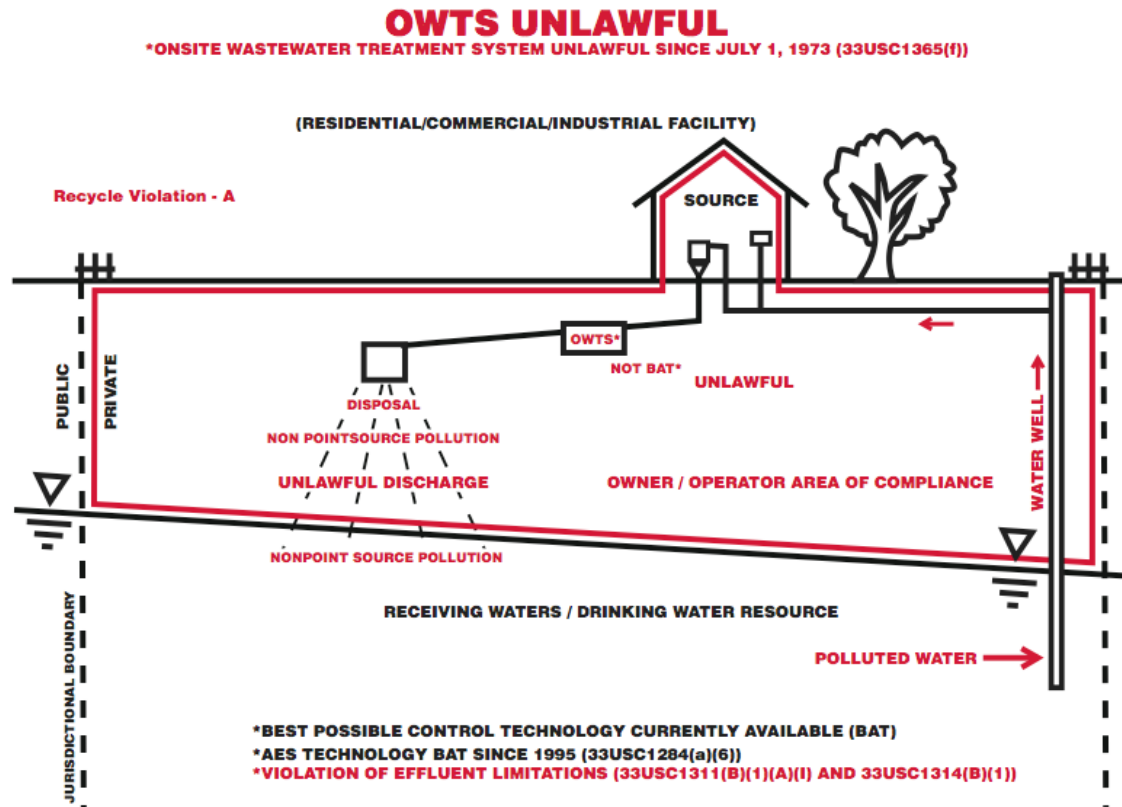
Effluent Limitations (33USC1311(b)(1)(A)(i) and 33USC1314(b))

(RESIDENTIAL/COMMERCIAL/INDUSTRIAL FACILITY)



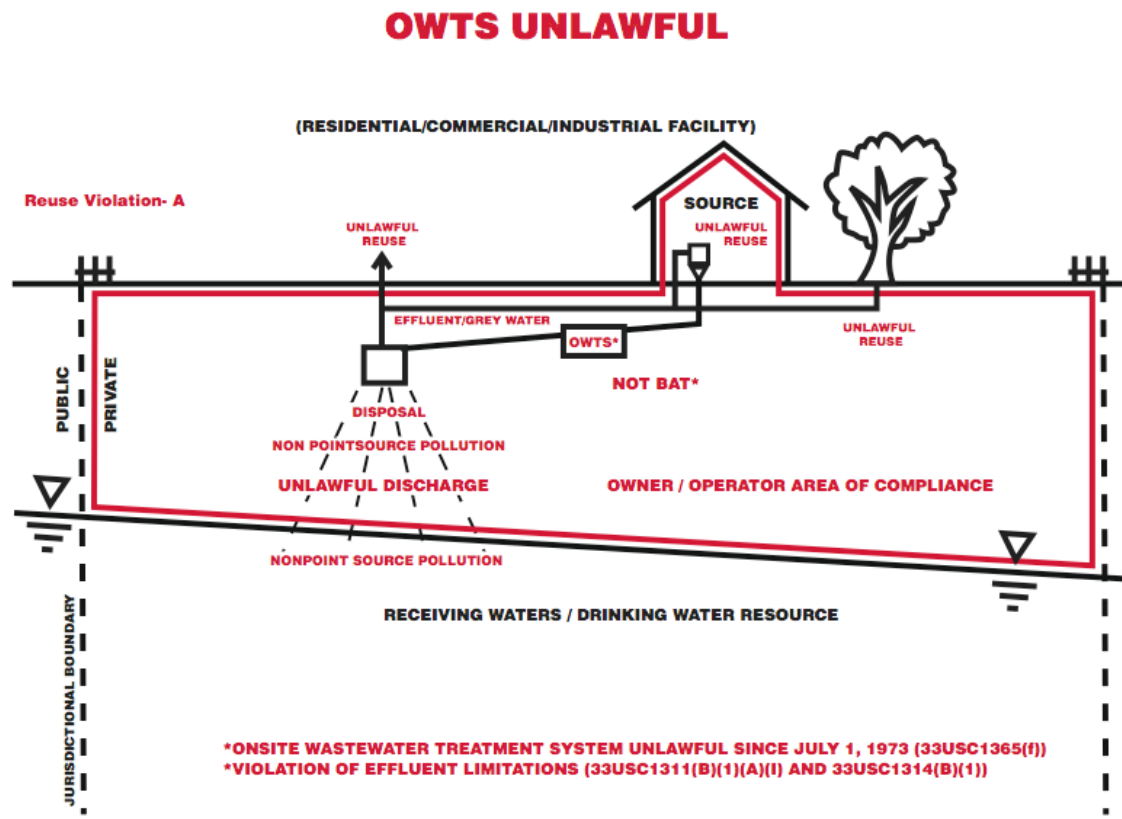
This illustration is redacted pursuant to US Code Title 42 Chapter 55 - National Environmental Policy Act, US Code Title 33 Chapter 26 - Water Pollution Prevention and Control and US Code Title 42 - The Public Health and Welfare Chapter 133 - Pollution Prevention and more specifically 33 U.S.C. §§ 1331(a), 1311, 1312, 1313, 1316, 1317, and 1342.
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The “Recycle Violation – A” illustration shows an unlawful application of an onsite wastewater treatment system (“OWTS”), such as a septic tank (which is not a technology), that discharges nitrate (nitroso compounds) pollutants thereby polluting the underground drinking water resources. Application of an OWTS has been unlawful pursuant to 33USC1311(a) and 33USC1365(f) since July 1, 1973 and is subject to penalties under 33USC1319.



This illustration is redacted pursuant to US Code Title 42 Chapter 55 - National Environmental Policy Act, US Code Title 33 Chapter 26 - Water Pollution Prevention and Control and US Code Title 42 - The Public Health and Welfare Chapter 133 - Pollution Prevention and more specifically 33 U.S.C. §§ 1331(a), 1311, 1312, 1313, 1316, 1317, and 1342. © 2009-2010 National Standards Enforcement Agency (NSEA) – Administrator (USC33§§1251(e) & 1365). All rights reserved.

The “Reuse Violation – A” illustration shows an unlawful application of an OWTS for reuse. Effluent from OWTS has been unlawful to use since July 1, 1973 as OWTS is not BAT. Graywater is considered a pollutant pursuant to the Chapter and is unlawful for reuse applications. Above ground reuse of graywater is to be construed as a discharge violation.

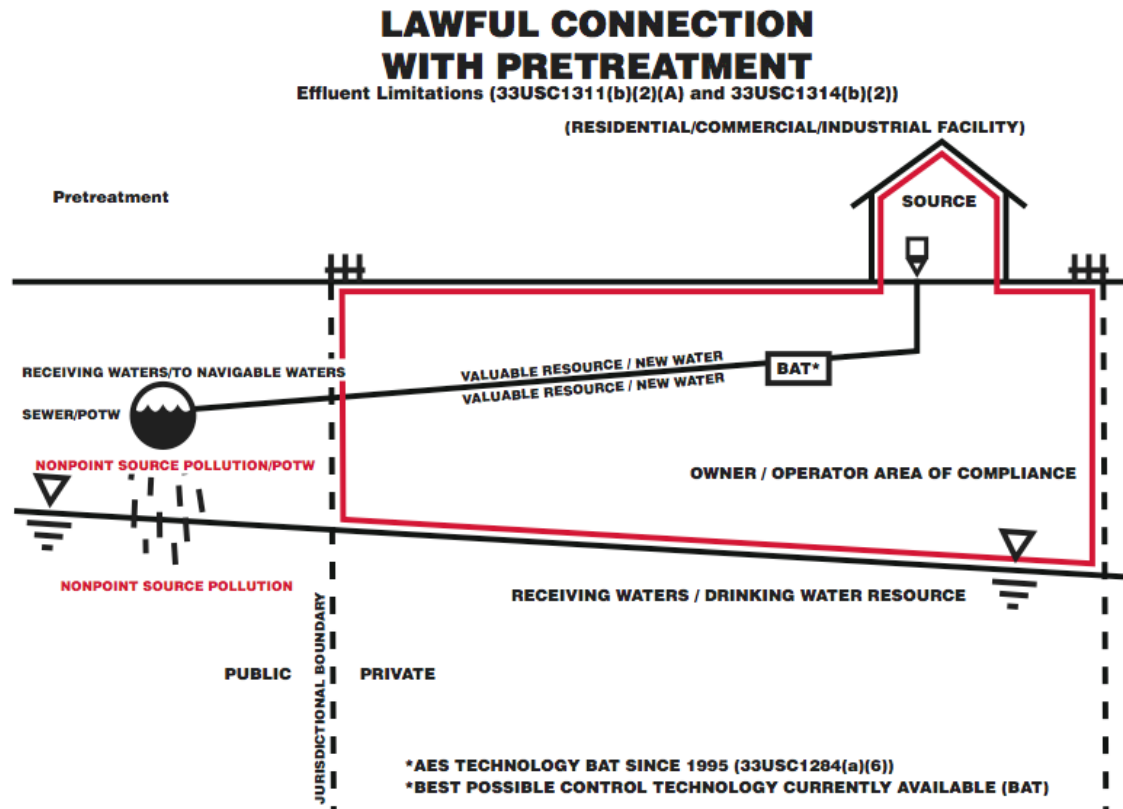


This illustration is redacted pursuant to US Code Title 42 Chapter 55 - National Environmental Policy Act, US Code Title 33 Chapter 26 - Water Pollution Prevention and Control and US Code Title 42 - The Public Health and Welfare Chapter 133 - Pollution Prevention and more specifically 33 U.S.C. §§ 1331(a), 1311, 1312, 1313, 1316, 1317, and 1342. © 2009-2010 National Standards Enforcement Agency (NSEA) - Administrator (USC33§1251(e) & 1365). All rights reserved.

Required Effluent Limitations for Point Sources in the Case of a Discharge into a Publicly Owned Treatment Works (“POTW”)

In the case of discharging into publicly owned treatment works, the owner and operator of the publicly owned treatment works is subject to compliance with all the statutory requirements under 33USC1365(f) pursuant to their authority under 33USC1370. Since July 1, 1977, discharge into a POTW without application of the best available technology, or best practicable (possible) control technology currently available, shall require compliance with any applicable pretreatment requirements and any requirements under 33USC1317, 33USC1342(a)(3), 33USC1342(b)(8) under 33USC1365(f).

The “Pretreatment” illustration shows a lawful connection to a POTW utilizing innovative pretreatment technology consisting of best practicable control technology currently available to achieve the required greatest degree of effluent reduction possible, so as to eliminate all discharge into the POTW, a nonpoint source of pollution. The new water produced by the best innovative alternative control technology is a valuable resource achieving a standard defined in the National GREEN Standards which exceed the US EPA National Drinking Water Standards in water quality. All new water is subject to purchase if taken from any original consumer. Municipalities, owners of the POTW, are subject to required purchase of the new water if they take it as there is no legal justification for any public entity to take new water from its original consumer or owner of the facilities which repurified the water without such new water being subject to purchased as such valuable commodity. Lawful application of pretreatment precludes lawful justification for collection for “sewer user fees” by any owner and operator of a POTW. For this reason, it is common for owners and operators to be operating in violation of pretreatment requirements as it is a direct conflict of their [unjustified] interests.

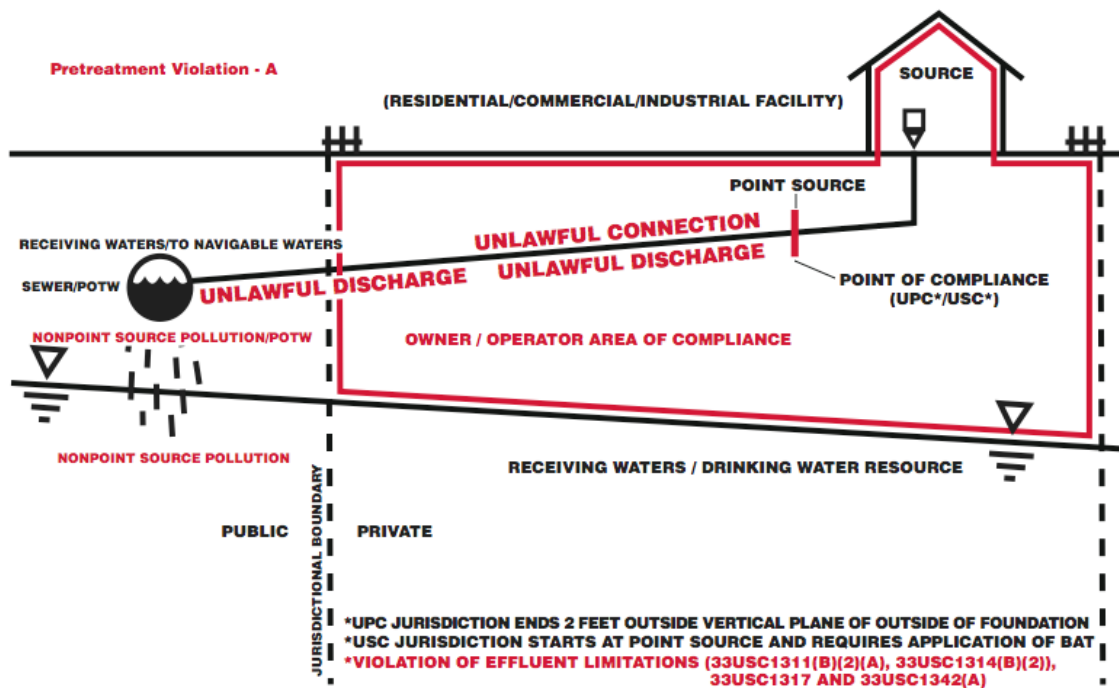


This illustration is redacted pursuant to US Code Title 42 Chapter 55 - National Environmental Policy Act, US Code Title 33 Chapter 26 - Water Pollution Prevention and Control and US Code Title 42 - The Public Health and Welfare Chapter 133 - Pollution Prevention and more specifically 33 U.S.C. §§ 1331(a), 1311, 1312, 1313, 1316, 1317, and 1342. © 2009-2010 National Standards Enforcement Agency (NSEA) - Administrator (USC33§§1251(e) & 1365). All rights reserved.

It is an unlawful act by both the owner and operator of a POTW and the source to connect directly to a nonpoint source of pollution absent at-source pretreatment and containment of the pollutants and to allow uncontrolled effluent discharge into the POTW. The point source, i.e. point of compliance, starts two feet outside of the vertical plane of the foundation of the source, the end of the jurisdiction of the Uniform Plumbing Code and the beginning of the jurisdiction of the United States Codes, i.e. this Chapter.

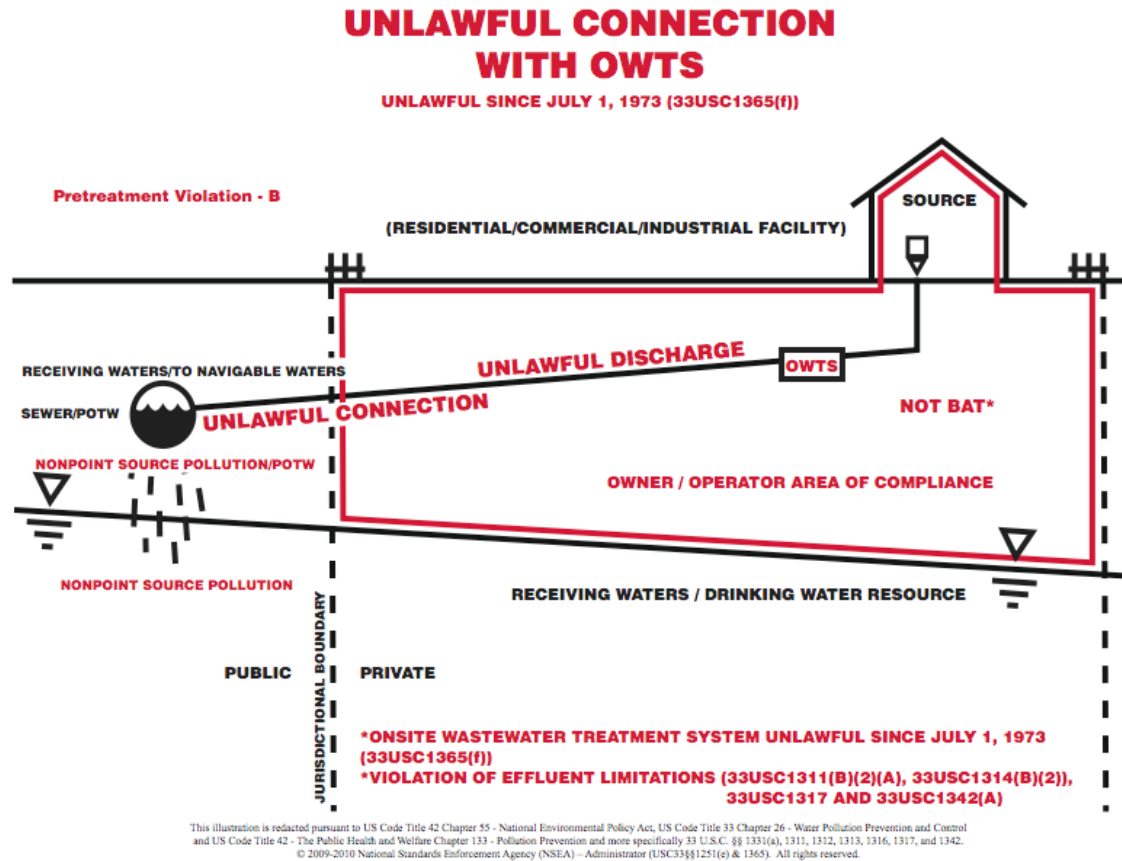
UNLAWFUL CONNECTION WITHOUT PRETREATMENT

UNLAWFUL SINCE JULY 1, 1973 (33USC1365(f))



This illustration is redacted pursuant to US Code Title 42 Chapter 55 - National Environmental Policy Act, US Code Title 33 Chapter 26 - Water Pollution Prevention and Control and US Code Title 42 - The Public Health and Welfare Chapter 133 - Pollution Prevention and more specifically 33 U.S.C. §§ 1331(a), 1311, 1312, 1313, 1316, 1317, and 1342. © 2009-2010 National Standards Enforcement Agency (NSEA) - Administrator (USC33§§1251(e) & 1365). All rights reserved.

It is also unlawful an unlawful act to utilize a OWTS or any treatment method other than the best available technology and constitutes an unlawful discharge violation.



National Policy

In order that the National Goal is achieved, the United States Congress declared five (5) National Policies under 33USC1251(a) as follows:

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

To this means, Congress provided a requirement to list toxic (poisonous) pollutants common in domestic sewage, i.e. residential, commercial, industrial and other users, which are subject to a requirement for application of absolute at-source control through implementation of the best practicable control technology currently available, regardless of the level of such poisonous contaminant pursuant to 33USC1317 so as to prevent them from migrating to any receiving waters to cause water and other environmental pollution.

A few of these most common primary pollutants [by their number] that have been proven to be harmful to human health and the human environment and know to cause death are, but not limited to:

6. Arsenic and compounds
8. Benzene
12. Carbon tetrachloride
15. Chlorinated ethanes (including 1,2-di-chloroethane, 1,1,1- trichloroethane, and hexachloroethane)
19. Chloroform
25. Dichlorobenzenes (1,2-, 1,3-, and 1,4-di-chlorobenzenes)
27. Dichloroethylenes (1,1-, and 1,2-dichloroethylene)
35. Ethylbenzene
36. Fluoranthene
37. Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis(dichloroisopropyl) ether, bis-oroethoxy) methane and polychlorinated diphenyl ethers)
38. Halomethanes (other than those listed elsewhere; includes methylene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane)
44. Lead and compounds
50. Nitrosamines
59. Tetrachloroethylene
61. Toluene
63. Trichloroethylene

#50. Nitrosamines (aka nitroso compounds, i.e. ammonia, nitrite and nitrate) are the most commonly known toxic pollutants to the public as “nitrates”, i.e. nitrate as nitrogen (“NO₃ - N”). Nitrate is the “pollutant indicator” for water supplies and water quality as nitrate, with the exception of acidic pH levels (less than 7.35), is the most difficult toxic pollutant to remove [to a level of less than 10 mg/l] from the sewage flow. It must be removed biologically. The best available technology promulgated since March 1995 as the most strict standard is the Advanced Environmental Systems, Inc. Mini I.D.E.A. Model Bestep-10, Report No. 94/01/2015/060, at-source control technology demonstrated to eliminate total nitrogen pollutant discharges to less than 5 mg/l and NO₃-N to 1.6 mg/l. The biological process technology of the Mini I.D.E.A. Model Bestep-10 additionally provides for alkalinity recovery, recovering the pH value to an average of 7.7.

In the “Illustration # Recycle 1” all other pollutants are confined by the natural physical treatment of the soil within 12-24 inches of the bottom of the leach field. In the “Illustration # Reuse 2” all other pollutants are confined by a ‘definite-barrier’ membrane technology followed by an activated carbon charcoal filter. The result is at-source ZERO Discharge and achievement of the National Goal. For any person to use or any state or political subdivision to permit the use of any lesser technology is a violation of 33USC1311(a), 33USC1365(f) and 33USC1370. (See Illustration #s Recycle, Reuse and Pretreatment for method of compliance. Illustration #s Recycle Violation - A, Reuse

Violation - A and Pretreatment Violation - A and Pretreatment Violation - B are unlawful individual applications pursuant to 33USC1311(a), 33USC1365(f) and a violation of 33USC1251(a)(3), (4), (5), (6) and (7) punishable under 33USC1319 - Enforcement)

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

This policy means the municipality and State are responsible to apply for the federal financial assistance to cover the cost of construction to implement all at-source control of innovative alternatives BAT technology and or innovative pretreatment BAT technology. Upon completion of installation, the publicly owned treatment works are then dedicated to the owner or operator of the facilities as they are located on private property (See Illustration #s Recycle, Reuse and Pretreatment). Facilities located on private property can't be owned by a public entity. Revenues generated from providing services to private property are due private enterprise, not government entities. Government entities are not enterprises, legally. They are regulatory agencies. It is unlawful for a government entity to compete for revenue due private enterprise resulting from enforcement of government regulations. Pursuant to 33USC1281(g)(5) the public/government entities are required to provide federal financial assistance to construct publicly owned treatment works for any project within the definition set forth in 33USC1292(2). Portions of such grants are to be determined pursuant to 33USC1255(j), 1281(g) and 1281(l). Then add the allowable portion provided under 33USC1282(a) and the balance up to 50% shall be provided under 33USC1300(g). The portions of grants allowed under these statutes provide for the total cost for construction of:

...that innovative and alternative wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, otherwise eliminate the discharge of pollutants, and utilize recycling techniques, land treatment, new or improved methods of waste treatment management for municipal and industrial waste (discharged into municipal systems) and the confined disposal of pollutants, so that pollutants will not migrate to cause water or other environmental pollution...and taking into account and allowing to the extent practicable the more efficient use of energy and resources. (33USC1281(g)(5)) (See Illustrations "Recycle" and "Reuse")

States and municipalities buying bonds to provide financing, placing liens on property obligating the people to pay the bonds back or stands to lose their homes, to pay for an unlawful public sewer is a criminal act under this policy and additionally an unlawful act of extortion punishable under 18USC1961-1968.

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State;

It is the policy of Congress that projects for wastewater treatment and management undertaken with Federal financial assistance under this chapter by any State,

municipality, or intermunicipal or interstate agency shall be projects which, in the estimation of the State, are designed to achieve optimum water quality management, consistent with the public health and water quality goals and requirements of this chapter.

33USC1281- Congressional Declaration of Purpose, section (a) states, “It is the purpose of this subchapter to require and to assist the development and implementation of waste treatment management plans and practices which will achieve the goals of this chapter”.

33USC1281(b) - Application of technology: confined disposal of pollutants; consideration of advanced techniques, states, “Waste treatment management plans and practices shall provide for the application of the best practicable waste treatment technology before any discharge into receiving waters, including reclaiming and recycling of water, and confined disposal of pollutants so they will not migrate to cause water or other environmental pollution and shall provide for consideration of advanced waste treatment techniques.”

The areawide waste treatment management planning process developed and implemented to assure adequate control of sources of pollutants in each State is illustrated in Illustrations “Recycle”, “Reuse” and “Pretreatment”. Violations of this congressional policy are illustrated in Illustrations “Recycle Violation – A”, Reuse Violation – A, and Pretreatment Violation – A & B.

(See Illustration #s Recycle, Reuse and Pretreatment for method of compliance. Illustration #s Recycle Violation - A, Reuse Violation - A and Pretreatment Violation - A and Pretreatment Violation - B are unlawful individual applications pursuant to 33USC1311(a), (b), 33USC1314(b), 33USC1316, 33USC1317, 33USC1342, 33USC1365(f) and a violation of 33USC1251(a)(3), (4), (5), (6) and (7) punishable under 33USC1319 - Enforcement)

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans; and

The only way to assure adequate control, in compliance with the national policy 33USC1251(a)(5), is to “eliminate the discharge of pollutants into navigable waters, waters of the contiguous zone, and the oceans” is to, in compliance with effluent limitations under 33USC1365(f), eliminate the discharges of all pollutants at-source thereby eliminating the possibility for any pollutants to “pass through publicly owned treatment works” pursuant to the requirements of this Chapter.

Application of technology in compliance with the National Standard of Performance and the Federal Standard of Performance provides for the greatest degree of effluent reduction, 100%, a standard permitting no discharge of pollutants pursuant to 33USC1316, achieving the National Goal.

(See Illustration #s Recycle, Reuse and Pretreatment for method of compliance. Illustration #s Recycle Violation - A, Reuse Violation – A and Pretreatment Violation - A and Pretreatment Violation - B are unlawful individual applications pursuant to

33USC1311(a), (b), 33USC1314(b), 33USC1316, 33USC1317, 33USC1342, 33USC1365(f) and a violation of 33USC1251(a)(3), (4), (5), (6) and (7) punishable under 33USC1319 - Enforcement)

(7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this chapter to be met through the control of both point and nonpoint sources of pollution.

In compliance with federal policy and to accomplish this objective, the Chapter requires application of advanced waste treatment methods *applicable to point and nonpoint sources*, including in-place or accumulated sources of pollutants, and methods for reclaiming and recycling water and confining pollutants so they will not migrate to cause water or other environmental pollution.

The only method by which to achieve the desired control of both point and nonpoint sources [of discharges of pollutants] was by the required application of the best available demonstrated control technology (“BADCT”) at the point between the source of the pollutants (“point source”) and the nonpoint source of pollution located within the jurisdictional boundaries of the owner or operator of the source. This method eliminates unlawful discharges from contributing to nonpoint sources of pollution, thus achieving the National Goal of “zero discharge”. (See Illustrations “Recycle”, “Reuse” and “Pretreatment”)

Science has proven nitrosamine (“nitrate”) listed as number 50 on the United States Environmental Protection Agency (“US EPA”) List of Toxic Pollutants subject to required at-source control prior to connecting directly to a public sewer. Nitrate is the primary pollutant that makes its way to ground water. Nitrate is a carcinogen. Upon nitrates affectively being biologically removed by the at-source BADCT alternative application, science has proven all other pollutants of concern will be naturally contained of within 18-24 inches of soil (See Illustrations “Recycle”, and “Reuse”). Therefore nitrate is the “pollutant indicator”. Once the nitrate pollutant is biologically removed from the effluent stream by application of technology defined in the GREEN Standards, the National Goal to eliminate all discharge of all pollutants at all sources has been accomplished, thereby achieving the National Goal of “zero discharge”.

The Clean Water Act has suffered substantial misinterpretation and abused enforcement by the US EPA and the state pollution control agencies nationally due to conflicting interests. The US EPA publicly admits to their not recognizing and not administering the at-source control requirements of the Chapter, a felony violation under 33USC1251(d). The States refuse to comply with their authority provided under 33USC1370 to adopt and enforce effluent standards and or limitations pursuant to 33USC1365(a)(2). Enforcement of the Clean Water Act is solely up to the Citizens pursuant to 33USC1251(e) and 33USC1365.

The Clean Water Act has been judicially interpreted to impose strict liability. Strict liability means if one commits the crime, they have no excuse. The Clean Water Act is a federal law that applies to each *person* individually, regardless of actions or lack of actions of state or federal regulatory agencies. Each person is liable for his or her own unlawful acts in violation of the statutory requirements of the Clean Water Act with no provision for statutory defense.

Unlawful Acts

There is basically only one statute in the Clean Water Act, in reference to domestic discharges, that defines an unlawful act of any person. That statute is:

33 U.S.C. 1311. **Effluent Limitations**

(a) Illegality of pollutant discharges except in compliance with law
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.

Pursuant to this statute, since March of 1995, upon NSF International (aka National Sanitation Foundation (considered the UL of the water / wastewater industry)) promulgated the results of the Report on Evaluation of Advanced Environmental Systems, Inc. Mini I.D.E.A. Model Bestep-10, Report No. 94/01/2015/060, at-source control technology was demonstrated to eliminate total nitrogen (including nitrate as nitrogen) discharges. Since March of 1995, issuance of any permit for any method of waste management other than a requirement, pursuant to 33USC1311(a), for application of the Mini I.D.E.A. AES Technology by any regulatory authority within the United States of America is a violation of the above statute. That regulatory agency shall be construed as giving permission [a permit] to poison the people.

As 33USC1311(a) states, “except as in compliance with this section [33USC1311] and sections 1312, 1316, 1317, 1328, 1342, and 1344...the discharge of any pollutant shall be unlawful. In other words, it is unlawful for any federal, state or political subdivision regulatory authority to issue a permit to anyone to allow a discharge unless first there is no applicable technology that will eliminate such discharge pursuant to the “primary” enforceable requirements of sections 1311, 1312, 1316, 1317, 1328, 1342, and 1344. Since March of 1995 this has not been the case. It is unlawful to issue any permit to discharge.

Sections 1311, 1312, 1316, 1317, 1328, 1342, and 1344 define unlawful acts by federal, state and local officials who are required to administer the law under 33USC1251(d) and adopt and enforce the law under 33USC1370. The minimum charge for failure to administer under their authority and duty of care under these statutes as a public official justifies a knowing violation and possibly, considering their awareness level of the dangers of toxic discharges, a knowing endangerment violation.

33USC1311. **Effluent Limitations** requires:

(b) Timetable for achievement of objectives

In order to carry out the objective of this chapter there shall be achieved—

(1)

(A) *not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works,*

(i) *which shall require the application of the **best practicable control technology currently available** as defined by the Administrator pursuant to section 1314 (b) of this title, or*

(ii) *in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 1317 of this title; and*

(B) *outdated / not applicable*

(C) *not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.*

(2)

(A) *for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which*

(i) *shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 1314 (b)(2) of this title, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 1325 of this title), that such elimination is technologically and economically achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 1314 (b)(2) of this title, or*

(ii) *in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 1317 of this title;*

(B) *Repealed. Pub. L. 97-117, § 21(b), Dec. 29, 1981, 95 Stat. 1632.*

(C) *with respect to all toxic pollutants referred to in table I of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case*

later than three years after the date such limitations are promulgated under section 1314 (b) of this title, and in no case later than March 31, 1989;

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 1317 of this title which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 1314 (b) of this title, and in no case later than March 31, 1989;

(E) as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314 (b) of this title, and in no case later than March 31, 1989, compliance with effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 1314 (a)(4) of this title shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 1314 (b)(4) of this title; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than 3 years after the date such limitations are established, and in no case later than March 31, 1989.

(3)

(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314 (b) of this title, and in no case later than March 31, 1989; and

(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 1342 (a)(1) of this title in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than March 31, 1989.

33USC1312. **Water Quality Related Effluent Limitations** requires:

(a) Establishment

Whenever, in the judgment of the Administrator or as identified under section 1314 (l) of this title, discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 1311 (b)(2) of this title, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish,

fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

33USC1316. **National Standards of Performance** defines:

(a) Definitions

For purposes of this section:

(1) The term “standard of performance” means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(2) The term “new source” means any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under this section which will be applicable to such source, if such standard is thereafter promulgated in accordance with this section.

(3) The term “source” means any building, structure, facility, or installation from which there is or may be the discharge of pollutants.

(4) The term “owner or operator” means any person who owns, leases, operates, controls, or supervises a source.

(5) The term “construction” means any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

33USC1317. **Toxic and Pretreatment Effluent Standards** declares:

(a) Toxic pollutant list; revision; hearing; promulgation of standards; effective date; consultation

(2) Each toxic pollutant listed in accordance with paragraph (1) of this subsection shall be subject to effluent limitations resulting from the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 1311 (b)(2)(A) and 1314 (b)(2) of this title.

Effluent limitations shall be established in accordance with sections 1311 (b)(2)(A) and 1314 (b)(2) of this title for every toxic pollutant referred to in table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives as soon as practicable after December 27, 1977, but no later than July 1, 1980. Such effluent limitations or effluent standards (or prohibitions) shall be established for every other toxic pollutant listed under paragraph (1) of this subsection as soon as practicable after it is so listed.

(4) Any effluent standard promulgated under this section shall be at that level which the Administrator determines provides an ample margin of safety.

(b) Pretreatment standards; hearing; promulgation; compliance period; revision; application to State and local laws

(4) Nothing in this subsection shall affect any pretreatment requirement established by any State or local law not in conflict with any pretreatment standard established under this subsection.

(c) New sources of pollutants into publicly owned treatment works

In order to insure that any source introducing pollutants into a publicly owned treatment works, which source would be a new source subject to section 1316 of this title if it were to discharge pollutants, will not cause a violation of the effluent limitations established for any such treatment works, the Administrator shall promulgate pretreatment standards for the category of such sources simultaneously with the promulgation of standards of performance under section 1316 of this title for the equivalent category of new sources. Such pretreatment standards shall prevent the discharge of any pollutant into such treatment works, which pollutant may interfere with, pass through, or otherwise be incompatible with such works.

(d) Operation in violation of standards unlawful

After the effective date of any effluent standard or prohibition or pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such effluent standard or prohibition or pretreatment standard.

(e) Compliance date extension for innovative pretreatment systems

In the case of any existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 1311 (k) of this title, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may extend the date for compliance with the applicable pretreatment standard established under this section for a period not to exceed 2 years—[from July 1, 1977]

(I) if the Administrator determines that the innovative system has the potential for industrywide application [the AES Technology is scalable to any size and has potential for industrywide application].

33USC1341. **Certification** requires:

(a) Compliance with applicable requirements; application; procedures; license suspension

(I) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with

the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title.

(5) Any Federal license or permit with respect to which a certification has been obtained under paragraph (1) of this subsection may be suspended or revoked by the Federal agency issuing such license or permit upon the entering of a judgment under this chapter that such facility or activity has been operated in violation of the applicable provisions of section 1311, 1312, 1313, 1316, or 1317 of this title.

33USC1342. **National Pollutant Discharge Elimination System** requires:

(a) Permits for discharge of pollutants

(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311 (a) of this title, upon condition that such discharge will meet either

(A) all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title

(k) Compliance with permits

Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 1311, 1316, or 1342 of this title

(b) State permit programs

At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) apply, and insure compliance with, any applicable requirements of sections 1311, 1312, 1316, 1317, and 1343 of this title;

(8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to

pretreatment standards under section 1317 (b) of this title into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of
(A) new introductions into such works of pollutants from any source which would be a new source as defined in section 1316 of this title if such source were discharging pollutants,
(B) new introductions of pollutants into such works from a source which would be subject to section 1311 of this title if it were discharging such pollutants, or
(C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works

33USC1345. **Disposal or Use of Sewage Sludge** provisions:

(a) Permit

Notwithstanding any other provision of this chapter or of any other law, in any case where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 1292 of this title (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under section 1342 of this title.

33USC1365. **Citizen Suits** defines what unlawful, effective July 1, 1973 is:

(f) Effluent standard or limitation

For purposes of this section, the term “effluent standard or limitation under this chapter” means

- (1) effective July 1, 1973, an unlawful act under subsection (a) of section 1311 of this title;*
- (2) an effluent limitation or other limitation under section 1311 or 1312 of this title;*
- (3) standard of performance under section 1316 of this title;*
- (4) prohibition, effluent standard or pretreatment standards under section 1317 of this title;*
- (5) certification under section 1341 of this title;*
- (6) a permit or condition thereof issued under section 1342 of this title, which is in effect under this chapter (including a requirement applicable by reason of section 1323 of this title); or*
- (7) a regulation under section 1345 (d) of this title.*

Private Attorneys Generals of the National Standards Enforcement Agency will be initiating indictments against violators of these statutes and consistence with the “Zero Tolerance Policy” of the National GREEN Standards, prosecuting the violators in U.S. District Court seeking the maximum penalty provided under 33USC1319 to be imposed.

Enforcement

The first step to taking enforcement action is to execute an Order to Comply under USC1319(a)(5)(A), notifying the violator (aka Discharger) of the violation and of a 30 day time period in which to arrange to bring the discharging source into compliance. The Order to Comply will provide the legal description of the property at which the violation is occurring. It will also provide specific direction as to what the discharger is required to do within that specified time frame such as:

1. Provide an executed contract with an acceptable provider of technology, within 30 days, to enable compliance; or alternatively,
2. Execute the Discharger’s Acknowledgment to provide a lien on above legally defined property within 30 days in the amount of \$25,000 to the benefit of: [typically the acceptable provider, i.e. licensee of the BAT within the area, pursuant to the GREEN Standards, and their contact information]

The Order to Comply will provide a “Discharger’s Acknowledgment; Intent to Comply” signature line for the Discharger to sign and have notarized within the statutory 30 day period, thereby acknowledging their intent to comply with the provisions of the Order to Comply; or, the Discharger may be subjected to further enforcement action and referral to the Attorney General for injunctive relief and civil and or criminal liabilities imposed.

Upon failure or refusal of a Discharger to acknowledge their intent to comply with the Order to Comply within the 30 days, the Discharger will be indicted and criminally charged accordingly as explained herein below.

[Note: Compliance with an Order to Comply shall avoid criminal charges; however, Discharger shall be subject to civil liability damages occurred prior to compliance.]

33USC1319. **Enforcement** provisions:

1. Criminal Negligence
2. Knowing Violations, or
3. Knowing Endangerment

Every person of the United States of America has a strict liability to comply with provisions under 33USC1311(a) pursuant to 33USC1365(f) since July 1, 1973.

33USC1319(c)(1)(A). **Criminal Negligence**

Any person who negligently violates section 1311, 1312, 1313, 1316, 1317, 1318, 1321(b)(3), 1328, or 1345 of the Chapter, or any condition or limitation implementing any of such sections in a permit issued under section 1342 or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of the Chapter, or negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person know or reasonably should have known could cause personal injury or property damage, such person shall be construed to be committing a criminal offense of negligence.

Violation of a strict liability statutory duty under 33 U.S.C. 1251 et seq. constitutes negligence. Violation of a statute constitutes negligence *per se* if the resulting injury (pollution of drinking water resources with toxic discharges) is of the type sought to be protected against and if the injured party is a member of the class (people of the United States of America) to be protected. *Stone's Farm Supply, Inc. v. Deacon*, 805 P.2d 1109 (Colo. 1991)

A criminal negligence violation shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or by both. Penalty doubles for repeat convictions.

33USC1319(c)(2)(A). **Knowing Violations**

Any person who knowingly violates section 1311, 1312, 1313, 1316, 1317, 1318, 1321(b)(3), 1328, or 1345 of the Chapter, or any condition or limitation implementing any of such sections in a permit issued under section 1342 or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of the Chapter, or knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person know or reasonably should have known could cause personal injury or property damage.

This would be a person who was served notice of violation and refused to comply within the given time period; or, a person who maintained a capacity of a public official, having a duty to know, and was found to be in violation.

A knowing violation shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 year, or by both. Penalty doubles for repeat convictions.

33USC1319(c)(3)(A). **Knowing Endangerment**

Any person who knowingly violates section 1311, 1312, 1313, 1316, 1317, 1318, 1321(b)(3), 1328, or 1345 of the Chapter, or any condition or limitation implementing any of such sections in a permit issued under section 1342 or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of the Chapter, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury.

This would be a person who maintained a capacity of a public official, having an awareness or actual belief that he possessed of the health hazards toxic discharges caused, such as carcinogenic nitrates (nitrosamines), or even death. Any person who is a public authority, regulatory, legislative, judicial or executive, having authority under this Chapter who's actions or inactions allow for a toxic discharge in violation of this Chapter, such as by a permit issued in violation of this Chapter, is subject to a charge no lesser than knowing endangerment.

Such person shall, upon conviction, be subject to a fine of not more than \$250,000 [\$1,000,000 if such person is an organization] or imprisonment of not more than 15 years, or both. For repeat convictions, the maximum punishment shall be doubled with respect to both fine and imprisonment.

NOTE: There are no defense statutes provided under this Chapter for any person committing any violation under this Chapter.