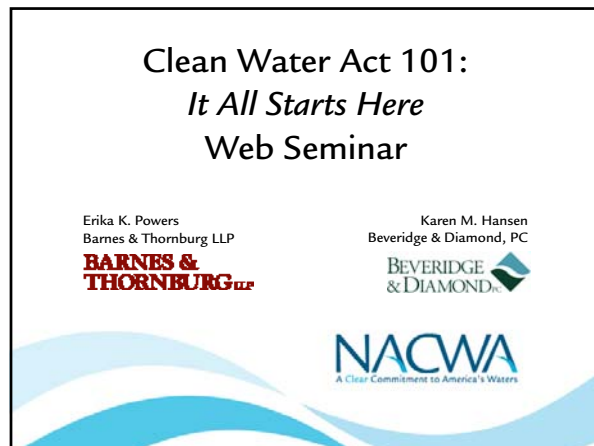


# NACWA's Clean Water Act 101: *It All Starts Here*

March 8, 2012



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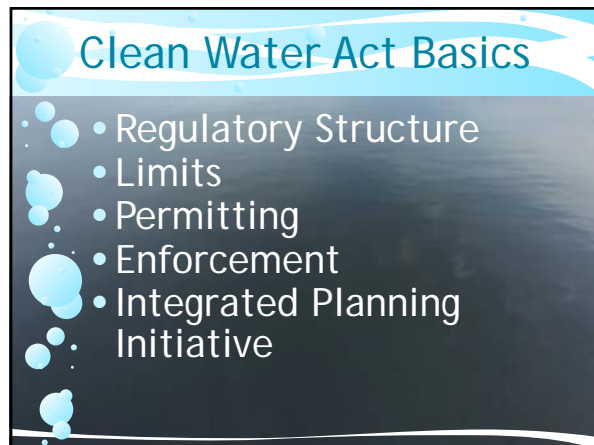
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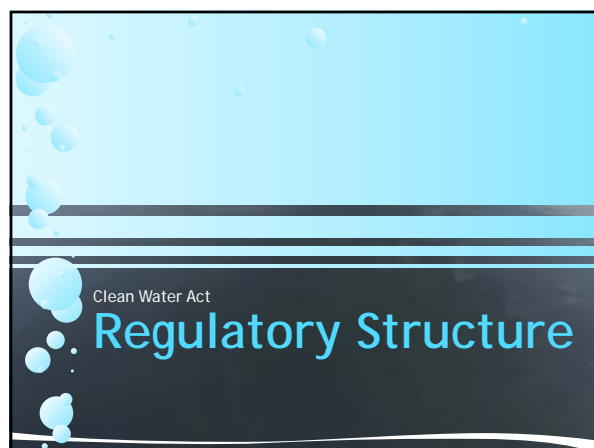
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### Regulatory Structure

- Purpose: Maintain chemical, physical, and biological integrity of the Nation's waters
- Goals:
  - Eliminate discharge of pollutants to surface waters
  - "Fishable / Swimmable" where attainable
    - Protection and propagation of fish, shellfish, and wildlife
    - Recreation in and on the water

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### Regulatory Structure

- Policies to implement fishable/swimmable goals:
  1. Prohibit discharge of toxic pollutants in toxic amounts
  2. Provide federal financial assistance for POTW construction
  3. Implement areawide waste treatment management planning
  4. Support research to develop technology to eliminate discharge of pollutants
  5. Develop and implement nonpoint source pollution control programs

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### Major Structural Elements

- Jurisdiction
- Discharges to surface waters prohibited except in accordance with CWA requirements
- Permits authorize certain discharges
- Limits control authorized discharges
- Federal and/or state implementation
- Spill response, reporting, and prevention
- Permits for dredged and fill materials
- Enforcement

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### Regulatory Structure - POTW Issues

- Sections 201-219 contain details of POTW construction grants program
- Section 212 defines "treatment works"
- Section 405 governs disposal or use of sewage sludge

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### Clean Water Act Limits

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### Limits

- Title III of the CWA
- Discharges (to surface waters) prohibited, except in compliance with permits containing:
  - Technology Based Limits (TBELs)
  - Water Quality Based Limits (WQBELs)

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Limits - TBELs

- Effluent Limitation Guidelines (ELGs): BPT/BCT/BAT/PSES/NSPS requirements for industry categories and classes
- Secondary treatment standard
  - pH 6-9
  - BOD<sub>5</sub> and SS 45 mg/l and 30 mg/L
  - 85% removal of BOD<sub>5</sub> and SS
  - More? Nutrient petition
- Best Professional Judgment (BPJ)
- Backsliding prohibited

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Limits - WQBELs

- Applicable when technology based limits not sufficient to maintain...
- Water Quality Standards
  - Designated uses
  - Water quality criteria (numeric and narrative)
  - Antidegradation policy

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Limits - WQBELs

- TMDL Program
  - Evaluating and listing impaired waters
  - Developing and implementing TMDLs in permits
  - Does daily mean daily?

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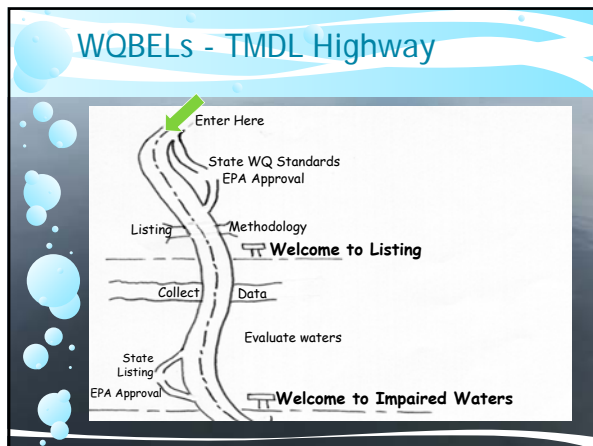
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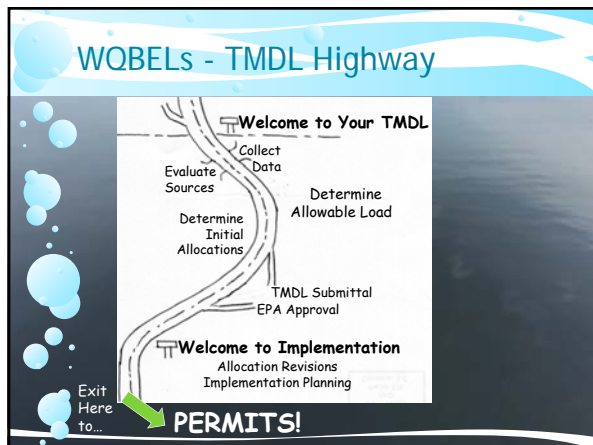
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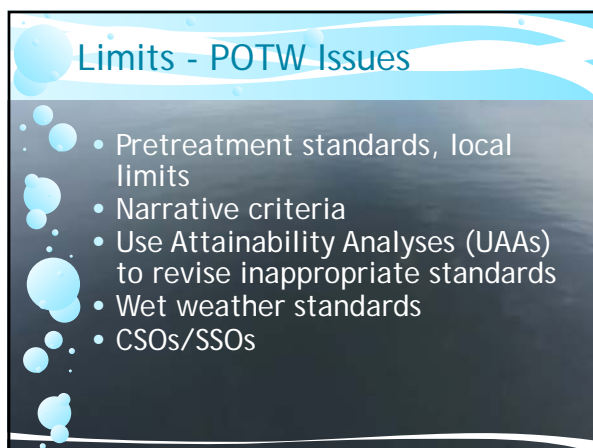
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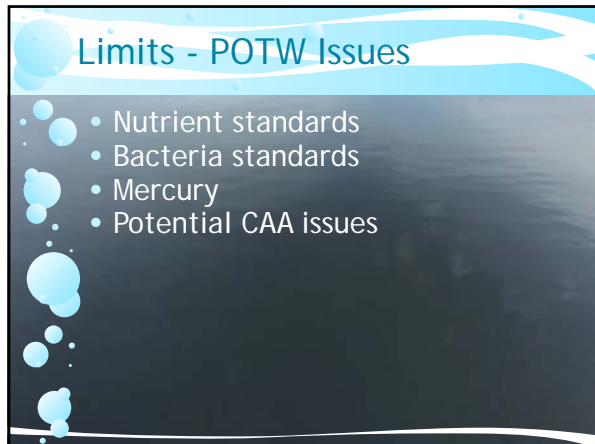
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### Limits - POTW Issues

- Nutrient standards
- Bacteria standards
- Mercury
- Potential CAA issues

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### Clean Water Act Permits

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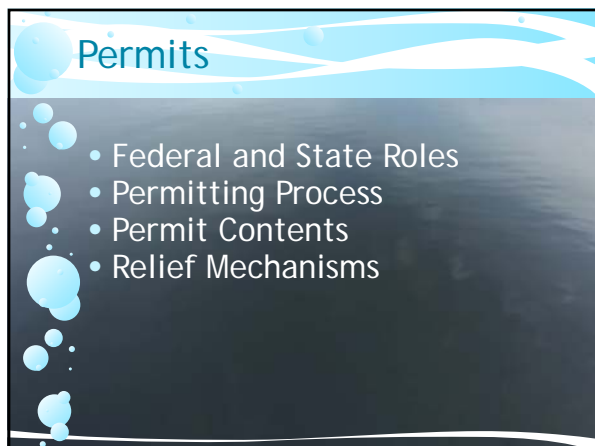
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### Permits

- Federal and State Roles
- Permitting Process
- Permit Contents
- Relief Mechanisms

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### Federal and State Roles

- EPA regulations establish minimum requirements for NPDES permits
- EPA's rules also specify criteria States must meet to obtain delegated CWA permitting authority
- Most States have delegated NPDES permit programs and play primary role in issuing NPDES permits
- However, EPA never completely cedes authority over NPDES permits under MOAs with States and can also object (more below)
- EPA gets involved if there is an issue it sees as important national precedent
  - E.g., WET tests, nutrient reduction, primary vs. secondary treatment

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### Permitting Process

- Submit application to state (or EPA in non-delegated state)
  - Important for permit shield
- Negotiation period
  - Ask for pre-public notice draft
  - Meet with agency to discuss conditions
- Public notice draft from state

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### Permitting Process

- Public comment period, possible public hearing
- EPA opportunity for review and approval (or objection)
- Final permit from state
- Appeal period
- Modifications

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Permit Contents

- Facility description
- Effluent limitations and monitoring requirements
- Standard conditions
- Special conditions
- Pretreatment program

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Permits - Limits and Monitoring

- WQBELs if reasonable potential to exceed (RPE) water quality standards
  - Based on waste load allocation (WLA)
  - Monthly average and daily maximum limits
  - Parameters can include CBOD<sub>5</sub>, TSS, Ammonia-nitrogen, pH, DO, TRC, Fecal coliform or *E. coli*, metals, nutrients

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Permits - Limits and Monitoring

- WQBELs if required by TMDL
  - Based on WLA or load allocation (LA)
  - Numeric vs BMPs
  - Daily?
- TBELs
  - Secondary treatment
  - More?

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### Permits - Limits and Monitoring

- Monitoring includes influent and effluent
- May specify test methods, limits of detection and quantification (LODs and LOQs)
- CSO / SSO limitations and conditions

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### Permits - Limits and Monitoring

- Narrative limitations
- Monthly reporting requirements
- Reopening clauses
  - Revised WLAs
  - Revised standards
  - Monitoring results

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### Permits - Standard Conditions

- General conditions:
  - Comply with the permit
  - Mitigate damage from noncompliance
  - Provide information to agency
  - Reapply for renewal permit before expiration
  - Penalties for violation
  - Operator certification
  - Inspections

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### Permits - Standard Conditions

- Management requirements:
  - Good facility operation, maintenance, and quality control
  - Collection system requirements
  - Bypass prohibitions, conditions
    - Blending, no feasible alternatives
  - Upset conditions
  - Power failures
- Important to understand for affirmative defenses

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### Permits - Standard Conditions

- Reporting requirements:
  - Facility changes
  - 24-hour reporting requirements
    - Unanticipated bypass
    - Significant danger to human health or environment
  - Upset that exceeds technology requirements
  - SSOs
  - Dry weather CSOs
  - Toxics violations

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### Permits - Standard Conditions

- More reporting requirements:
  - Identify significant indirect dischargers subject to pretreatment standards
  - Notify agency of changes in or new indirect dischargers

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### Permits - Special Conditions

- Spill reporting and prevention
- Slug discharge prevention
- Pollutant minimization requirements
- Biomonitoring for whole effluent toxicity
- Biosolids
- CSOs / SSOs

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### Permits - Pretreatment Program

- Sewer use ordinance
- Local limits
- Permit/control indirect dischargers
- Slug control plans
- Industrial user compliance monitoring
- Enforcement

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### Permits - Relief Mechanisms

- Compliance schedules
- Variances
  - Individual
  - Statewide or multiple-discharger
- Site-specific criteria
  - Bioavailability
  - Unique receiving water characteristics
- UAAs

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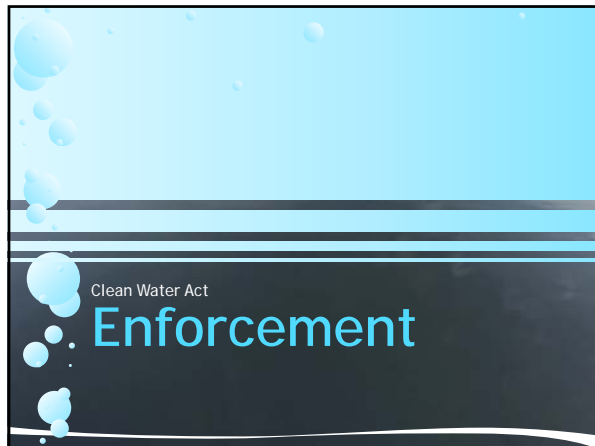
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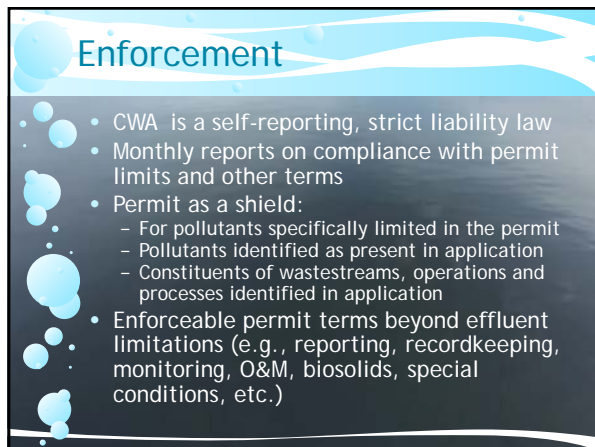
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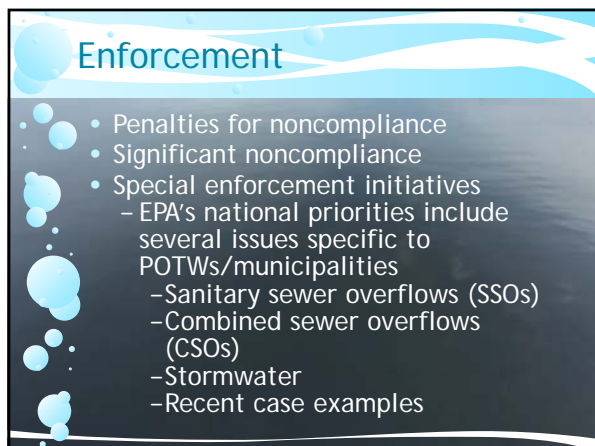
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### Enforcement

- EPA has administrative and civil authority
  - Role of Regional and headquarters EPA
  - Role of DOJ and case escalation
- State and EPA enforcement - who is on first? (overfiling)
- Citizen suits
- Criminal enforcement - negligence and knowing violations

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### Enforcement

- Consent decrees (civil enforcement) and administrative enforcement orders
- Key elements: injunctive relief (remedy the CWA issues) and civil penalty
  - Negotiating
  - Renegotiating
  - Reopeners
  - Integrated planning
  - Relationship to permit, TMDL

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### Integrated Planning Initiative

- October 7, 2011 Memorandum
  - Consider all CWA obligations
  - Achieve greatest environmental benefit first
  - Use existing flexibilities in CWA and regs
- EPA Draft Framework
- EPA Listening Sessions
- Public Comments
  - NACWA
  - Municipal Integrated Planning Alliance
- Revised Framework

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### Integrated Planning Initiative

- Any community can develop an Integrated Plan
- Include any or all water-related obligations
  - Community can choose extent of integration
- Prioritize environmental activities within limited economic resources
  - Evaluate environmental costs and benefits
  - Consider all water-related costs
- Greater use of existing relief mechanisms
  - Long term compliance schedules
  - Variances
  - UAAs
  - Site-specific criteria

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### Integrated Planning Initiative

- Possible consideration of drinking water costs
- Community self determination
  - Cost-benefit evaluation
  - Selection and prioritization of projects
  - Engineering
- EPA Headquarters involvement
- Implementation mechanisms
  - Permits preferred
  - Administrative orders
  - Judicial orders/decrees

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### Integrated Planning Initiative

- Define water-related obligations
- Evaluate costs
  - Economic
  - Multi-media impacts
- Evaluate benefits of various alternatives
  - Water quality
  - Human health
- Define available economic resources
- Prioritize alternatives based on costs and benefits
- Determine relief mechanisms needed
- Determine implementation mechanism

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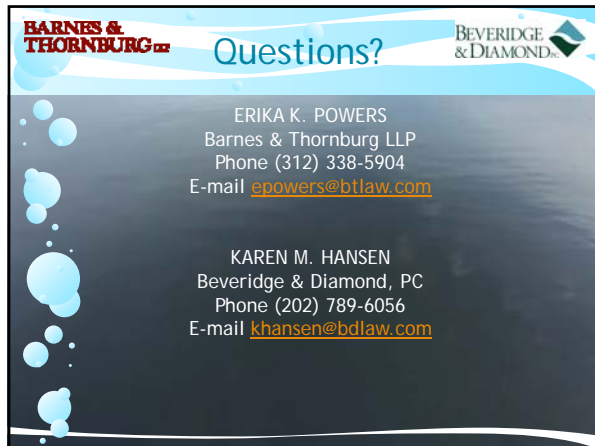
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March 8, 2012



**BARNES & THORNBURG** **Questions?** **BEVERIDGE & DIAMOND**

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