

Reading the 40 CFR

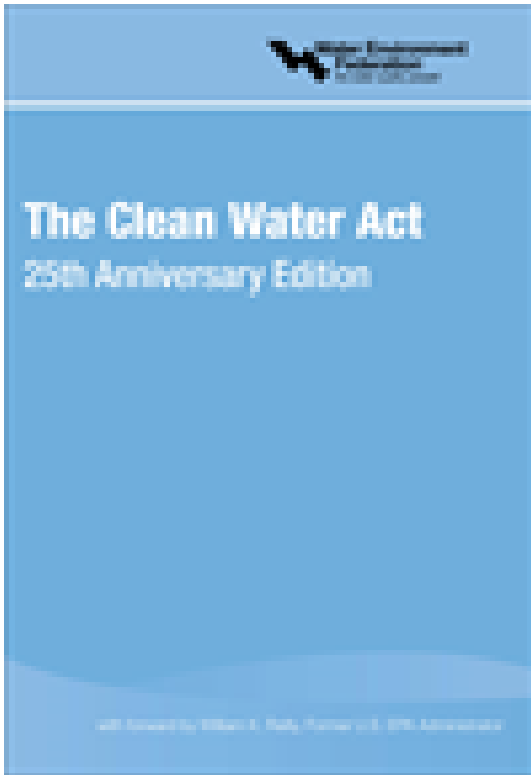
AND UNDERSTANDING WHERE THEY CAME FROM



I'm Just a Bill (School House Rock)



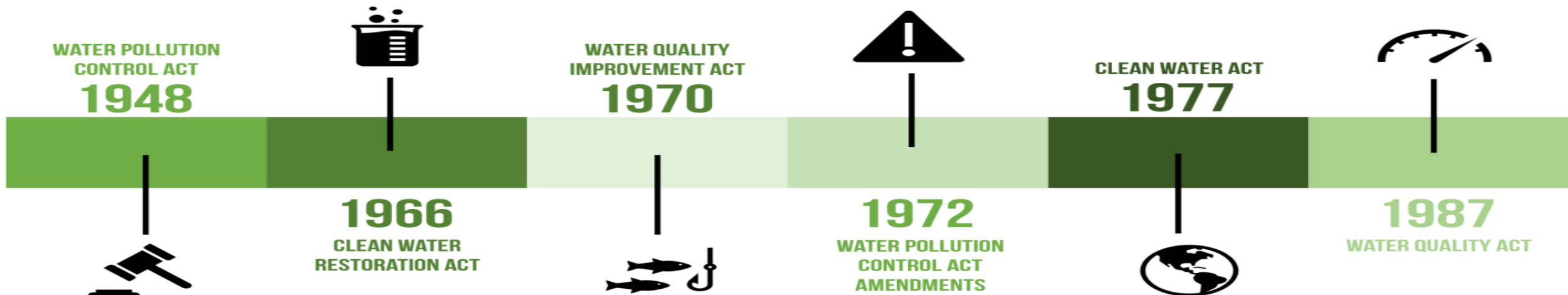
The Clean Water Act (33 U.S.C. §1251 et seq. (1972))



- Title 33- Navigation and Navigable Waters
- Section (§) 1251
- Et seq. means: “and the following”
- 1972: the year the Clean Water Act was promulgated
- Sec. 1317. [FWPCA §307](a) and (b)
- FWPCA- Federal Water Pollution Control Act
- Section 307- Toxic and Pretreatment Effluent Standards

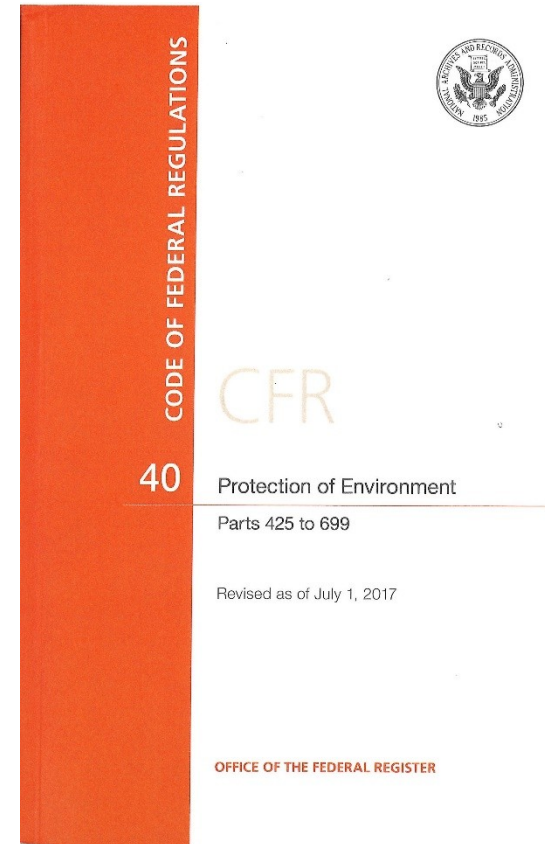
The Clean Water Act (33 U.S.C. §1251 et seq. (1972))

- Section 307(a): Toxic pollutant list; revision; hearing; promulgation of standards; effective date; consultation.
- Section 307(b): Pretreatment standards; hearing; promulgation; compliance period; revision; application to State and local laws.



Code of Federal Regulations

- 54 titles
- Covers broad subjects
 - National Defense
 - Title 32
 - Public Health
 - Title 42
 - Transportation
 - Title 49
 - Labor
 - Title 29
 - **Protection of Environment**
 - **Title 40**
 - **Part 401 –Part 471**
 - **Effluent Guidelines and Standards**



Title 40 Protection of Environment

- What does it cover?
 - Air Programs/Pollution Controls (**CAA**)
 - Pesticide Programs (**FIFRA**)
 - Radiation Protection Programs (**NRC**)
 - Solid Waste (**SWDA**)
 - Water Programs (**SDWA**)
 - Hazardous Waste (**RCRA**)
 - Superfund (**CERCLA & SARA**)
 - Toxic Substance Control Act (**TSCA**)
 - Effluent Guidelines (**CWA**)



Citing the CFRs

- Numbering System
 - The numbering system is uniform throughout all 50 volumes
 - Consisting of 200 individual books



- Title = The numeric value to the left of “CFR”
 - 40 CFR
- Part = The numeric value to right of the “CFR”
 - 40 CFR 403
- Section = The numeric value to the right of the (“.”)
 - 40 CFR 403.9
- Paragraph = A letter of the alphabet (a-z)
 - 40 CFR 403.9(a)

Paragraph Levels

Paragraph	Designations	Cite Paragraph as
Level 1	(a), (b), (c), etc.	§ 403.6(a)
Level 2	(1), (2), (3), etc.	§ 403.6(a)(1)
Level 3	(i), (ii), (iii), etc.	§ 403.6(a)(1)(i)
Level 4	(A), (B), (C), etc.	§ 403.6(a)(1)(i)(A)
Level 5	(1), (2), (3), etc.	§ 403.6(a)(1)(i)(A)(1)
Level 6	(i), (ii), (iii), etc.	§ 403.6(a)(1)(i)(A)(1)(i)

Book Example

criteria to evaluate contractor safety performance and criteria to enhance contractor safety performance).

10. "Recommended Guidelines for Contractor Safety and Health," Texas Chemical Council; Texas Chemical Council, 1402 Nueces Street, Austin, TX 78701-1534.

11. "Loss Prevention in the Process Industries," Volumes I and II; Frank P. Lees, Butterworth; London 1983.

12. "Safety and Health Program Management Guidelines," 1989; U.S. Department of Labor, Occupational Safety and Health Administration.

13. "Safety and Health Guide for the Chemical Industry," 1986, (OSHA 3091); U.S. Department of Labor, Occupational Safety and Health Administration; 200 Constitution Avenue, N.W., Washington, D.C. 20210.

14. "Review of Emergency Systems," June 1988; U.S. Environmental Protection Agency (EPA), Office of Solid Waste and Emergency Response, Washington, DC 20460.

15. "Technical Guidance for Hazards Analysis, Emergency Planning for Extremely Hazardous Substances," December 1987; U.S. Environmental Protection Agency (EPA), Federal Emergency Management Administration (FEMA) and U.S. Department of Transportation (DOT), Washington, DC 20460.

16. "Accident Investigation * * * A New Approach," 1983, National Safety Council; 444 North Michigan Avenue, Chicago, IL 60611-3991.

17. "Fire & Explosion Index Hazard Classification Guide," 6th Edition, May 1987, Dow Chemical Company; Midland, Michigan 48674.

18. "Chemical Exposure Index," May 1988, Dow Chemical Company; Midland, Michigan 48674.

[57 FR 6403, Feb. 24, 1992; 57 FR 7847, Mar. 4, 1992, as amended at 61 FR 9238, Mar. 7, 1996]

§ 1910.120 Hazardous waste operations and emergency response.

(a) Scope, application, and definitions—

(1) *Scope.* This section covers the following operations, unless the employer can demonstrate that the operation does not involve employee exposure or the reasonable possibility for employee exposure to safety or health hazards:

(i) Clean-up operations required by a governmental body, whether Federal, state, local or other involving hazardous substances that are conducted at uncontrolled hazardous waste sites (including, but not limited to, the EPA's National Priority Site List (NPL), state priority site lists, sites recommended for the EPA NPL, and initial investigations of government identified sites which are conducted before the presence or absence of haz-

ardous substances has been ascertained);

(ii) Corrective actions involving clean-up operations at sites covered by the Resource Conservation and Recovery Act of 1976 (RCRA) as amended (42 U.S.C. 6901 *et seq.*);

(iii) Voluntary clean-up operations at sites recognized by Federal, state, local or other governmental bodies as uncontrolled hazardous waste sites;

(iv) Operations involving hazardous wastes that are conducted at treatment, storage, and disposal (TSD) facilities regulated by 40 CFR parts 264 and 265 pursuant to RCRA; or by agencies under agreement with U.S.E.P.A. to implement RCRA regulations; and

(v) Emergency response operations for releases of, or substantial threats of releases of, hazardous substances without regard to the location of the hazard.

(2) *Application.* (i) All requirements of part 1910 and part 1926 of title 29 of the Code of Federal Regulations apply pursuant to their terms to hazardous waste and emergency response operations whether covered by this section or not. If there is a conflict or overlap, the provision more protective of employee safety and health shall apply without regard to 29 CFR 1910.5(c)(1).

(ii) Hazardous substance clean-up operations within the scope of paragraphs (a)(1)(i) through (a)(1)(iii) of this section must comply with all paragraphs of this section except paragraphs (p) and (q).

(iii) Operations within the scope of paragraph (a)(1)(iv) of this section must comply only with the requirements of paragraph (p) of this section.

Notes and Exceptions: (A) All provisions of paragraph (p) of this section cover any treatment, storage or disposal (TSD) operation regulated by 40 CFR parts 264 and 265 or by state law authorized under RCRA, and required to have a permit or interim status from EPA pursuant to 40 CFR 270.1 or from a state agency pursuant to RCRA.

(B) Employers who are not required to have a permit or interim status because they are conditionally exempt small quantity generators under 40 CFR 261.5 or are generators who qualify under 40 CFR 262.34 for exemptions from regulation under 40 CFR parts 264, 265 and 270 ("excepted employers") are not covered by paragraphs (p)(i) through (p)(7) of this section. Excepted employers who are required by the EPA or state agency

If you find a group of numerical values and letters together in parenthesis, it is to designate another citable paragraph level.

Online Example

[46 FR 9439, Jan. 28, 1981, as amended at 49 FR 31224, Aug. 3, 1984; 61 FR 20429, 20430, June 4, 1986; 51 FR 23759, July 1, 1986; 53 FR 40612, Oct. 17, 1988; 55 FR 30129, July 24, 1990; 58 FR 18017, Apr. 7, 1993; 60 FR 33932, June 29, 1995; 62 FR 38414, July 17, 1997; 70 FR 59889, Oct. 13, 2005; 70 FR 60193, Oct. 14, 2005]

§ 403.9 POTW pretreatment programs and/or authorization to revise pretreatment standards: Submission for approval.

- (a) *Who approves Program.* A POTW requesting approval of a POTW Pretreatment Program shall develop a program description which includes the information set forth in paragraphs (b)(1) through (4) of this section. This description shall be submitted to the Approval Authority which will make a determination on the request for program approval in accordance with the procedures described in § 403.11.
- (b) *Contents of POTW program submission.* The program description must contain the following information:
- (1) A statement from the City Solicitor or a city official acting in a comparable capacity (or the attorney for those POTWs which have independent legal counsel) that the POTW has authority adequate to carry out the programs described in § 403.8. This statement shall:
 - (i) Identify the provision of the legal authority under § 403.8(f)(1) which provides the basis for each procedure under § 403.8(f)(2);
 - (ii) Identify the manner in which the POTW will implement the program requirements set forth in § 403.8, including the means by which Pretreatment Standards will be applied to individual Industrial Users (e.g., by order, permit, ordinance, etc.); and,
 - (iii) Identify how the POTW intends to ensure compliance with Pretreatment Standards and Requirements, and to enforce them in the event of noncompliance by Industrial Users;
 - (2) A copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the Program. This Submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW Pretreatment Program if approved;
 - (3) A brief description (including organization charts) of the POTW organization which will administer the Pretreatment Program. If more than one agency is responsible for administration of the Program the responsible agencies should be identified, their respective responsibilities delineated, and their procedures for coordination set forth; and
 - (4) A description of the funding levels and full- and part-time manpower available to implement the Program;
- (c) *Conditional POTW program approval.* The POTW may request conditional approval of the Pretreatment Program pending the acquisition of funding and personnel for certain elements of the Program. The request for conditional approval must meet the requirements set forth in paragraph (b) of this section except that the requirements of paragraph (b) of this section, may be relaxed if the Submission demonstrates that:
- (1) A limited aspect of the Program does not need to be implemented immediately;
 - (2) The POTW had adequate legal authority and procedures to carry out those aspects of the Program which will not be implemented immediately; and
 - (3) Funding and personnel for the Program aspects to be implemented at a later date will be available when needed. The POTW will describe in the Submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the Approval Authority will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the POTW Pretreatment Program and any removal allowances granted to the POTW, may be modified or withdrawn.
- (d) *Content of removal allowance submission.* The request for authority to revise categorical Pretreatment Standards must contain the information required in § 403.7(d).
- (e) *Approval authority action.* Any POTW requesting POTW Pretreatment Program approval shall submit to the Approval Authority three copies of the Submission described in paragraph (b), and if appropriate, (d) of this section. Within 60 days after receiving the Submission, the Approval Authority shall make a preliminary determination of whether the Submission meets the requirements of paragraph (b) and, if appropriate, (d) of this section. If the Approval Authority makes the preliminary determination that the Submission meets these requirements, the Approval Authority shall:
- (1) Notify the POTW that the Submission has been received and is under review; and
 - (2) Commence the public notice and evaluation activities set forth in § 403.11.
- (f) *Notification where submission is defective.* If, after review of the Submission as provided for in paragraph (e) of this section, the Approval Authority determines that the Submission does not comply with the requirements of

Approval Authority Engagement

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Approval Authority Engagement

- The Approval Authority has to review and approve your initial ordinance and any changes made to your utilities ordinance, prior to having your governing body adopt them.
- The Approval Authority will provide direction for Public Noticing the changes once the ordinance or changes have been approved.
- If you forgo this step in the process then...



Local Law-Making (Pretreatment Rules)

1. Proposed ordinances/rules must be presented to the council, board, or commission in writing. A proposed ordinance can only be about one subject and that subject must be clear in the title of the proposed ordinance.
2. Ten (10) days prior to a vote on a proposed ordinance, a notice must be posted in a local newspaper or website that states the date, time, and place of the meeting at which the proposed ordinance will be voted on, the title of the proposed ordinance, and a place where the citizens can view the full text of the proposed ordinance.
 - ❑ This notice must also let citizens know that any interested or concerned citizens will have an opportunity to be heard during the meeting.
3. During the meeting, only a majority of the governing body are required to be present. This majority represents a **quorum**. In order for an ordinance to be passed, a majority of the quorum must vote in favor of it.
 - ❑ **Quorum**: the smallest number of people who must be present at a meeting in order for decisions to be made.

Local Law-Making (Pretreatment Rules)

4. Votes on the proposed ordinance are retained as an official record.
5. Any ordinance becomes effective as outlined in the proposal after the vote.
 - ❑ The ordinance can go into effect immediately, days after the vote, or at a date specified by the governing body.



Public Meetings Laws

- Slightly different for every state.
 - Utah and Colorado law mandates that public notice of meetings must be “not less than 24 hours.”
 - Wyoming law requires at least eight (8) hours prior to the meeting.
 - Montana law requires notice of a meeting “must be given sufficiently in advance of the meeting to permit the public to attend.”
 - North Dakota requires that the public be notified of the open meeting at the same time the members of the governing body are notified.
 - South Dakota requires at least 72 hours prior notice of a meeting.
- **REMEMBER!**
 - Public meetings are recorded for perpetuity!
 - So don’t say anything that you don’t want on the record.
 - You must follow the proper steps in order to be able to perform any “Takings”.
 - Takings: refers to the government’s seizure of private property for public use. i.e. money, land, etc.

Enacting Laws

- Send a letter out informing your industries of any ordinance updates.
 - Preferably before the public hearing, to allow them a chance to attend, but definitely afterwards.
- Field any questions that come in from your industries.
- Inform your municipality of the change too!



Enforcement

- You as the Pretreatment Coordinator will be the individual tasked with directing enforcement.
- Upper management may be in attendance but you, as the Coordinator, should lead the proceedings.
 - The Approval Authority will not be the one testifying in court.
- So make sure your program is as bulletproof as possible.
 - Ensure your legal authority followed the proper steps.
 - Make sure your permit follows the legal authority.
 - Follow your adopted Enforcement Response Plan (ERP).
 - Treat everyone the same way.

Enforcement



Enforcement

- You can only enforce your ordinance or regulation.
 - Don't try and enforce another departments regulations!
 - Get other departments involved if necessary.
- Know your ordinance and know your permits.
 - Lawyers will try to circumvent your regulations or your permit.
 - Don't get offended or take this personally.
 - This is what they are paid to do!

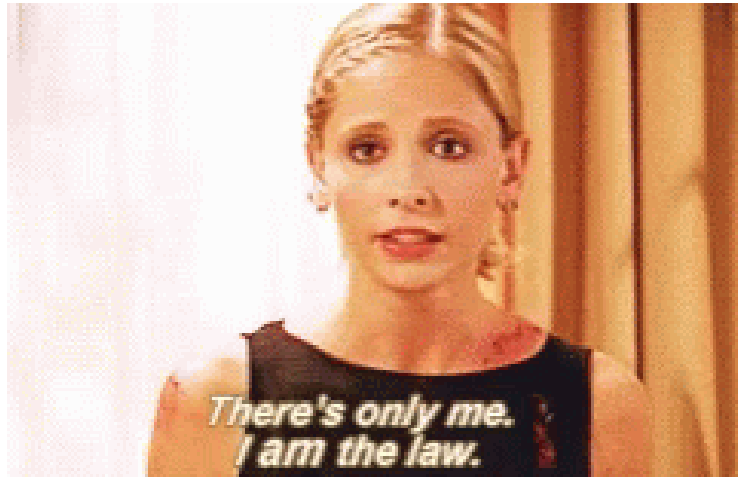


2009 pH Enforcement

- Our pH limit, at the time, was 5.0-9.0 S.U.
- We had an industry that exceeded the upper limit 83 times over a period of 7 months, along with other issues discovered.
- We issued an Administrative Show Cause Order and attempted to fine the industry \$1.4 Million.
- The industry hired some environmental lawyers out of New York to defend their interest.
 - The lawyers argued that the pH violations fell under 40 C.F.R. 401.17(a)(1) **pH Effluent limitations under continuous monitoring**, which allows for a total allowable exceedance of pH violations not to exceed 7 hours and 26 minutes monthly.
- However, the industries permit clearly stated that pH was monitored continuously and the violation was based on instantaneous readings.
- We enforce our ordinance, not the federal ordinance!
- We... eventually, came to a resolution.

“Chevron deference”

- 1984 Supreme Court Decision: Chevron v. Natural Resources Defense Council
 - The decision basically stated that if federal legislation is ambiguous or leaves an administrative gap, the courts must defer to the regulatory agency's interpretation if the interpretation is reasonable.
 - This allowed regulatory agencies to interpret how the regulations should be enforced rather than the courts.
- 2024 Supreme Court Decision: Loper Bright Enterprises v. Raimondo
 - Abolishes Chevron Deference!
 - Allows the courts (Judges) to interpret the laws and decide what is meant.
 - So depending on what Judge you end up in front of the chances of winning an enforcement case could go up or down drastically.



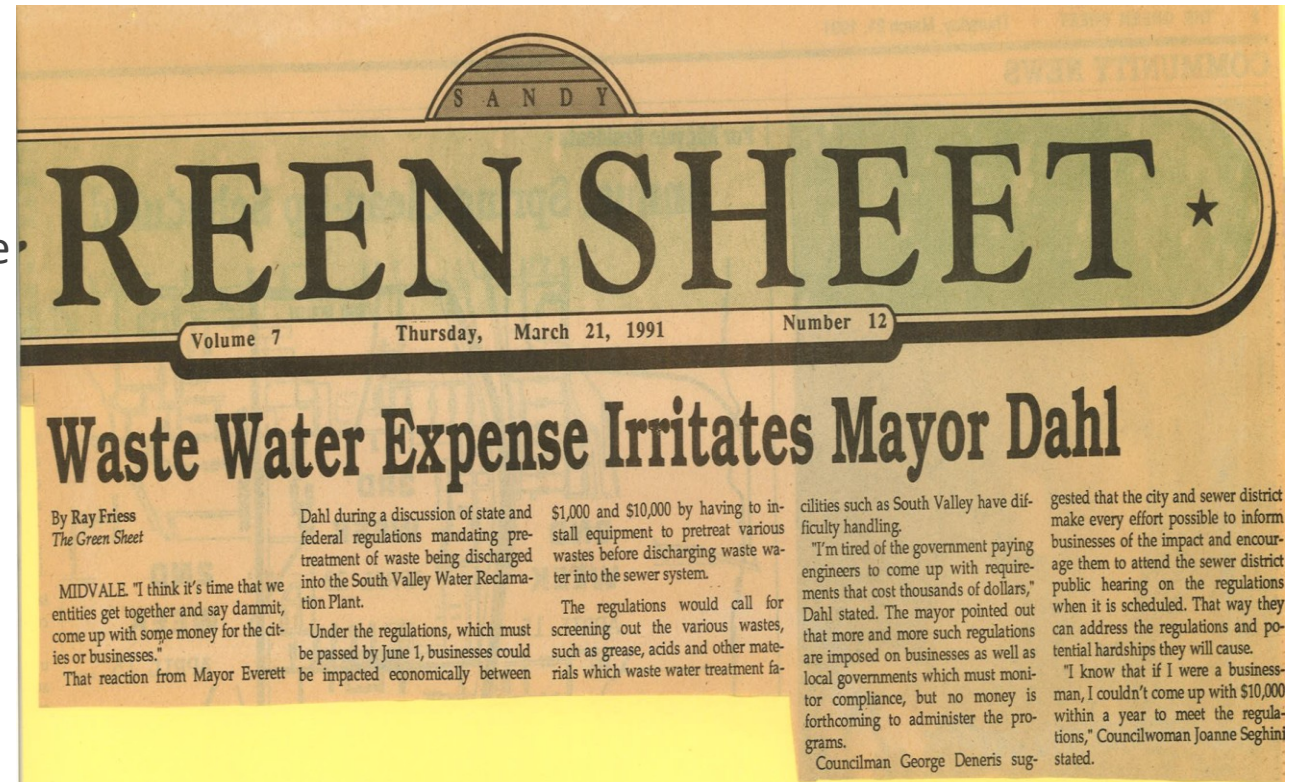
What does this mean for you?

- It could mean some push back from your industries.
 - Meaning, they may contest some of the things you have in your permits.
 - So be prepared for that.
- Don't hesitate to reach out to your Approval Authority or to your peers.



Conclusions

- Know the steps of law making
- You have the authority to enforce compliance,
 - Per your local authority
- Cite your authority properly
- If in doubt, reach out!





Thank you!



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