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Water Ways

Is it time the feds cleaned up their act?

By **TIM VANDERPOOL** ✉

When it was passed in 1972, the Clean Water Act prompted huge hopes. The law, wildly popular and championed by a Republican president, aimed to halt the wholesale dumping of chemicals into our streams, rivers and lakes by 1985.

Some 35 years later, another Republican president is doing his best to gut the law--and turn back progress already achieved.

According to a new report from the Phoenix-based Environment Arizona Research and Policy Center, records obtained under the Freedom of Information Act for 2005 (the latest year available) paint a dismal picture.

Nearly half of America's lakes and 51 percent of our estuaries remain polluted beyond safe levels for swimming or fishing. An estimated 20,000 bodies of water are so polluted that they don't meet basic water-quality standards. And decades after the law was passed, some 850 billion gallons of raw sewage are dumped into our rivers, lakes and streams every year.

Over that same period, 3,600 large facilities across the nation exceeded their permitted emissions. In fact, they did so more than 24,000 times. And Arizona was among 10 states with the highest average permit exceedances.

Among Southern Arizona's permit-busters were the Nogales International Wastewater Treatment Plant and Pima County's Ina Road Water Pollution Control Facility.

Taken together, these numbers do not present a rosy future for America's waters, says Erik Magnuson of Environment Arizona. He places blame directly on the executive branch. "Basically, the Bush administration has decided that there are a lot of things in the Clean Water Act that they don't agree with, and so they've been rolling back a lot of these efforts. Many funding mechanisms to keep these programs operational have been cut back as well."

For example, deteriorating sewer systems have meant more spillages and more pollution. At the same time, runoff from agriculture and logging operations continues unabated.

Meanwhile, administration officials argue that they've made improvements. They point to their support for reductions in airborne mercury emissions--a large contributor to Great Lakes pollution--and to cooperative efforts with the U.S. Department of Agriculture to reduce the runoff of farm fertilizers and pesticides.

But with this White House, there's always a catch. What officials fail to mention is how they've green-lighted the massive dumping of waste from mountaintop mining into streambeds, or the failure to sufficiently fund programs for upgrading those old wastewater facilities.



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The Ina Road facility has proven its name can occasionally become an oxymoron with its latest permit-breaking emissions.

At the same time, the administration has aggressively tried to leverage an opaque court decision into severely weakened wetlands protection under the Clean Water Act.

This effort got its first legs in 2001, when the Supreme Court narrowly ruled that certain small, isolated wetlands were exempted from federal oversight under the act. Subsequently, officials from both the Environmental Protection Agency and the Army Corps of Engineers have begun probing the possibilities, arguing that the court ruling also clouds CWA protections for other small streams and tributaries.

In response, many members of Congress are supporting the Clean Water Restoration Act. The bipartisan measure would ensure protection of all the nation's waterways under the Clean Water Act by tightening a wiggly word vigorously exploited by the Bush Administration. Specifically, the bill would replace the CWA's current protection of "navigable waters" with "waters of the United States."

That new verbiage would include "all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds and all impoundments of the foregoing, to the fullest extent that these waters, or activities affecting these waters."

Not much left to tinker with there. Apparently, that's how precise the language must be these days to preclude federal abuse. The bill is currently creeping along; to date, Congressman Raúl Grijalva is the sole Arizona representative among the measure's 172 sponsors.

For its part, the Environment Arizona report urges that the Bush administration reverse its policies regarding wetlands; raise funding for the EPA; stabilize funding for the federal Clean Water State Revolving Fund, which helps fund upgrades for community wastewater-treatment systems; and reverse the exemption of specific industries from Clean Water Act guidelines.

Ultimately, Environment Arizona cites this steady erosion of the Clean Water Act as contributing to historic declines in the entire water infrastructure--and lax enforcement of polluters.

But Ken Greenberg doesn't quite see it that way. Greenberg is manager of Clean Water Act compliance for EPA's Region 9, which includes Arizona. "I've not done an analysis comparing the numbers from one particular year to another," he says from his San Francisco office. "But I know that our policies and enforcement strategies are unchanged, as least (regarding) what we're told we should be enforcing against."

Still, the list of polluters uncovered by Environment Arizona is disturbing. For example, Pima County's Ina Road facility exceeded permitted levels for chlorine residue no less than five times in 2005. And each time, those levels were 300 percent or more above permitted levels--and occasionally much, much more than that.

County officials dispute the accuracy of the numbers and the risk they portray. Jackson Jenkins is deputy director of the Pima County Regional Wastewater Reclamation Department. Since permitted chlorine exceedances are so low--nearly zero, in fact--he contends that up to 1,300 percent exceedances do not represent a huge amount of the chemical. He also says that emissions at his plant are rigorously enforced by the Arizona Department of Environmental Quality.

Under the Clean Water Act, facilities such as the Ina Road operation are regulated through the National Pollutant Discharge Elimination System, or NPDES. Like many other states, Arizona is granted authority by the EPA to conduct NPDES enforcement.

According to Jenkins, Arizona takes that task seriously. "We have to submit monthly reports and report any time there's an exceedance," he says. "We do that diligently, and they keep our feet to the fire."

The Ina facility is indeed closely monitored, says Tom Marcinko, a spokesman for the ADEQ. "It's under a strict enforcement schedule. They're also required to undergo hundreds of millions of dollars in improvements. That's how seriously we take it."

But to Magnuson and researchers at Environment Arizona, the fact that the Ina Road plant can have such egregious violations shows just how badly enforcement of clean water laws has flagged.

And in the desert, Magnuson says, that neglect is tantamount to suicide. "The connection between water quantity and water quality isn't really as established as it should be. But the more water we render undrinkable and polluted, the less water we have available to meet all the needs that we have."

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