

50 Years of the Clean Water Act







CLEAN WATER ACT50

2022 marks the 50th Anniversary of the Clean Water Act — one of the most effective U.S. laws ever enacted and a model for clean water laws across the globe. By establishing citizens' right to enforce it, the Clean Water Act served as a powerful tool to end the culture of dumping raw sewage and industrial waste into our rivers without consideration of public health, public use, or environmental repercussions. The Clean Water Act sought to ensure every American had access to safe, clean water, but that promise is not yet fulfilled.

Overwhelmingly, Americans support clean water, healthy waterways, and safe drinking water for ourselves and our children, yet the Clean Water Act's legacy is incomplete and important provisions are constantly under attack. Florida's waters are continually plagued by harmful algae blooms. 2021 set a new record for manatee deaths due to starvation caused by poor water quality. Florida ranks first in the U.S. for total acres of lakes classified as impaired for swimming and aquatic life and second for total square miles of impaired estuaries.

Across the United States, the Clean Water Act lies at the heart of the Waterkeeper movement. We have a shared set of goals – drinkable, swimmable, fishable water. In this report we will highlight some of the ways that Waterkeepers across the state of Florida have used the Clean Water Act to protect the waterways that our communities rely on.

Algae choking Goodby's Creek - a tributary to the St. Johns River | September 2005



Waterkeepers Florida is a regional entity composed of all 15 Waterkeeper organizations working in the State of Florida to protect and restore our water resources across over 45,000 square miles of watershed which is home to over 15 million Floridians. Waterkeeper organizations have been working in their individual capacities for over 20 years in the state of Florida to protect and restore Florida's water resources. In 2018, all of the Waterkeeper organizations working in the state of Florida came together as a Waterkeeper Regional Entity to facilitate collaboration and collective action on statewide issues that will have an effect on the collective water resources of the state.

Waterkeepers Florida works to protect and restore Florida's water resources including water quality and quantity, the flora and fauna that depend on our water, and aesthetic, recreational, and economic values of water resources through methods including, but not limited to, education, advocacy, and community engagement. Waterkeepers combine firsthand knowledge of their waterways with an unwavering commitment to the rights of their communities and to the rule of law. Waterkeepers speak for the waters they defend – with the backing of our local communities and the collective strength of the global Waterkeeper Alliance network.

For more information, visit: <u>www.WaterkeepersFlorida.org.</u>





Sick of Sewage

One of the leading causes of nutrient and fecal bacteria pollution in Florida is failing wastewater treatment facilities. Aging infrastructure and old equipment can be exacerbated by user-error and heavy rainfall events leading to raw or partially treated sewage being spilled into local waterways.

Section 402 of the Clean Water Act requires that all "point source discharges" of pollution have a permit. Point sources include pipes, ditches, tunnels, vessels and other specific conveyances from which pollutants may be discharged. This point source permitting program is called the National Pollutant Discharge Elimination System or "NPDES." NPDES permits regulate discharges from wastewater treatment facilities, requiring effluent to be treated to a specified standard before being discharged into nearby waterways.

When a wastewater treatment facility repeatedly spills raw or partially treated sewage, they are violating the Clean Water Act by either discharging a pollutant without a permit or violating the terms of the permit under which they operate. Waterkeepers have used this provision of the Clean Water Act to force repeat offenders to repair and update infrastructure, enact programs to prevent sewage spills, conduct water quality monitoring, and inform members of the public when a spill occurs.

CONDOM CREEK

Jacksonville Electric Authority (JEA) is an electric, water, and sewer utility located in Jacksonville, Florida with a history of environmental compliance issues. In March of 2004, St. Johns Riverkeeper members discovered a broken JEA pipeline spewing effluent into a section of the St. Johns River that the media dubbed "Condom Creek" due to the prevalence of prophylactics being discharged from a leaky sewage pipe.

St. Johns Riverkeeper sued under the Clean Water Act and JEA settled the case by repairing the pipe and paying hundreds of thousands of dollars for supplemental environmental projects such as environmental studies and vessel pump-out stations for the Super Bowl in 2005.

JACKSONVILLE ELECTRIC AUTHORITY

Even after the Condom Creek incident, JEA continued to violate the terms of their permits under the Clean Water Act. When these issues were reported to the Florida Department of Environmental Protection, the Department allowed facilities to operate with a "significantly out of compliance" designation for more than a year before assessing fines. The fines were not significant enough to stop the continued violations. Between 2001 and 2007, two JEA facilities illegally discharged raw sewage on 207 occasions, resulting in 8.3 million gallons of waste flowing into local waterways. In August of 2007, St. Johns Riverkeeper filed suit against JEA under the Clean Water Act alleging more than 200 instances of unauthorized discharges of untreated wastewater. This case was settled in 2010 forcing JEA to create a plan to reduce sewer overflows and pay up to \$100,000 for consultants - picked jointly by the utility and petitioners - to critique the plan. JEA was also required to pay for the legal costs incurred by St. Johns Riverkeeper and co-petitioners.



VIRGINIA KEY SEWAGE LEAK

In August 2017, Miami-Dade County received a citizen report of a potential sewage leak from the Virginia Key open ocean outfall. The outfall was supposed to discharge partially treated waste at least three miles offshore and 100 feet underwater. However, this leak was less than a mile offshore of Fisher Island and near Virginia Key, where many people swim and boat.

Miami Waterkeeper investigated this incident and learned that a citizen had reported this leak to the county a year prior, but no one had fixed the leak. Miami Waterkeeper then sent a diver to check the location, who confirmed that the leak was still ongoing by recording video of partially treated sewage spewing from a buried pipe. From a records request, Miami Waterkeeper also determined that the outfall pipe had not been inspected in over a decade.

In light of this evidence, Miami Waterkeeper filed a notice of intent to sue Miami-Dade County for violations of the Clean Water Act related to the county's aging and neglected sewage infrastructure. In their 60-day notice letter, Miami Waterkeeper claimed that the county failed to take corrective action when placed on notice of an unauthorized release of partially treated sewage discharged into waters of the United States. It was estimated that the leak had spewed 10 million gallons of partially treated sewage into the ocean and Biscayne Bay. Within three days of filing the notice, the County fixed this leak.

CITY OF VALDOSTA CONSENT ORDER

The Withlacoochee River flows south from Georgia into Florida's Suwannee River and eventually into the Gulf of Mexico. Unfortunately for many years, sewage that was often spilled by the City of Valdosta followed the same path. The City of Valdosta held two NPDES permits for the operation of the Withlacoochee and Mud Creek Water Pollution Control Plants. Between 2016 and 2019, millions of gallons of sewage was spilled from these facilities due to heavy rain events, equipment failure, and user error. This chronic issue degraded the water quality, compromised local drinking water supplies, and caused devastating fish kills. Using a robust network of volunteers, Suwannee Riverkeeper catalogued the effects of the recurring sewage spills and brought attention to the issue. In May of 2020, the Georgia Environmental Protection Division issued a consent order against the city of Valdosta. The consent order levied a hefty fine against the city, required it to update its wastewater treatment procedures, and mandated that the city provide weekly stream monitoring reports and notify the public of spills more promptly.

MONITORING THE ST. MARYS

Horsepen Creek flows into the St. Marys River which serves as the border between Florida and Georgia. In 2017, the U.S. Environmental Protection Agency designated this portion of the St. Marys River as "impaired" qualifying it for a Clean Water Act Section 319(h) grant targeted at reducing nonpoint source pollution. The St. Marys Riverkeeper partnered with Camden County to regularly monitor bacterial levels at multiple sites along the tributary and helped educate the community about the necessity of septic system upgrades. As a result, over 50 septic systems were replaced along the water's edge and water quality is now back at a healthy level.

CITY OF ST. PETERSBURG

During storm events in 2015 and 2016, the city of St. Petersburg released an estimated 200 million gallons of sewage. In December of 2016, Suncoast Waterkeeper and partners sued the city under the Clean Water Act. The case was settled in 2018. The settlement requirements included upgrades to the sewage collection system, including a \$7.5 million pump that relocates sewage during major weather events, a \$200,000 payment to the Tampa Bay Estuary Program for supplemental environmental projects that protect and restore the bay, inspections of all gravity sewer lines and force mains, more water quality testing, and prompt disclosure of water quality problems to the public.

CITY OF GULFPORT

Gulfport is a small city in Pinellas County that had big sewage infrastructure problems. Between 2011 and 2016, millions of gallons of raw and partially treated sewage repeatedly overflowed or spilled from Gulfport sewer lines, manholes, and pump stations. Despite the system's age and recurring issues, Gulfport had not committed to a timeline for inspecting and repairing the system. In January of 2017, Suncoast Waterkeeper and partners filed suit for violations of the Clean Water Act. Like St. Petersburg, Gulfport negotiated a consent order requiring the city to make updates to its wastewater system to reduce the risk of future sewage spills, pay fines for spills, and complete a living shoreline restoration project.

SARASOTA COUNTY

While fecal bacteria may be the most obvious pollutant from failing wastewater infrastructure, nutrients like nitrogen are often also found in high levels in sewage and even treated wastewater and can have devastating effects on local waterways. While engaged in litigation against the cities of St. Petersburg and Gulfport, Suncoast Waterkeeper began investigating additional sewage spills in Sarasota County. Their investigation revealed that the county regularly, knowingly released nitrogen-rich reclaimed water from wastewater treatment facilities into adjacent waterways.

Spills from the Bee Ridge pond totaled over a billion gallons of reclaimed water from 2013 through 2018, adding over 65 tons of nitrogen into local waterways (photo to the right). In early 2019, Suncoast Waterkeeper and partners sent the county notice of intent to file a federal lawsuit under the Clean Water Act as well as a summary of the critical problems their investigation exposed. This lawsuit resulted in a settlement which required the county to stop the spills to Phillippi Creek from the Bee Ridge storage pond, rehabilitate the aging sewage collection system throughout the county, upgrade the Bee Ridge plant to advanced wastewater treatment, and adopt plans and processes to ensure adequate capacity, management, operations, and maintenance of sewage infrastructure moving forward.

CITY OF LARGO

The City of Largo's wastewater treatment plant is the largest point source discharger for total nitrogen into Old Tampa Bay. An investigation by local Waterkeepers found that the plant regularly discharged more total nitrogen than allowed under its NPDES permit. Old Tampa Bay suffers from a chronic harmful algal bloom and regularly fails to meet its water quality standards for chlorophyll-a. A 2020 seagrass study showed an alarming drop in seagrass in Old Tampa Bay generally, as well as at Feather Sound.

In May of 2020, Tampa Bay Waterkeeper and Suncoast Waterkeeper filed a notice of intent to sue the city of Largo for violating the Clean Water Act. The case was resolved via a stipulated order in April 2021, under which the city agreed to make the necessary changes to come into compliance with its NPDES permit, improve the city's sanitary sewer system infrastructure to reduce the risk of overflows, and provide public notification of sewage spills. In lieu of penalties for past pollution violations, Largo was also required to pay \$100,000 to the Tampa Bay Estuary Program to support water quality monitoring and supplemental environmental projects in Old Tampa Bay.

CITY OF BRADENTON

The city of Bradenton had a long-standing history of repeatedly sending raw and partially treated sewage into Manatee River, storm drains, the streams, neighborhoods, and other local waters including Wares Creek, Palma Sola Creek, and Palma Sola Bay which flow into Lower Tampa Bay, Sarasota Bay, and the Gulf of Mexico. According to Bradenton's own reports, between 2016 and 2021 over 160 million gallons of raw and partially treated sewage was dumped into the Manatee River, bypassing the city's treatment plant. Suncoast Waterkeeper & Tampa Bay Waterkeeper asserted that the city of Bradenton's persistent exceedances of its allocation for total nitrogen and its sanitary sewer overflows of raw and partially treated sewage and reclaimed water have contributed to seagrass losses and to increased harmful algal blooms in the Tampa Bay and Sarasota Bay estuaries. In November of 2021, these Waterkeepers filed a notice of intent to sue the city for violations of the Clean Water Act. This lawsuit is ongoing.



Cyanotoxin Petition for Rulemaking

In recent years, Florida has experienced a dramatic increase in harmful algae blooms. The magnitude, duration, and frequency of harmful algae blooms is exacerbated by pollution, coupled with rising temperatures and changes in precipitation due to climate change. Furthermore, harmful algae blooms can contain toxins such as microcystins and cylindrospermopsin that have been making people sick, killing and injuring wildlife, and damaging local economies throughout the state. Despite the continuing harm that these algae blooms are inflicting on our fragile ecosystems, our local communities, and the state's economy, Florida has no quantitative water quality criteria for cyanotoxins in surface waters.

Section 303 of the Clean Water Act directs states, subject to EPA approval, to develop and enforce comprehensive water quality standards establishing water quality goals for all intrastate waters. These standards must protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act.

On May 22, 2019, EPA issued its final recommended Human Health Recreational Ambient Water Quality Criteria for Microcystins and Cylindrospermopsin. In 2019, Calusa Waterkeeper joined with partners at Center for Biological Diversity and Sanibel-Captiva Conservation Foundation to petition the Florida Department of Environmental Protection to establish water quality criteria for cyanotoxins in Florida's surface waters.

By adopting water quality criteria for cyanotoxins, the Department would establish clear numeric baselines for Florida's waters, which are used as sources of drinking water, places to recreate, areas to propagate and harvest shellfish, and habitat for the state's abundant and diverse wildlife. These numeric criteria would form the basis of water quality monitoring and help identify which waters are impaired by cyanotoxins. Monitoring would also provide state environmental and health officials with critical information to notify the public of the health and safety risks of recreating in waters with high cyanotoxin levels and may also help trigger quicker response times and management actions to mitigate the impacts of harmful algae blooms. As of the publication of this report, this effort is ongoing. Trademark Metals recycling facility

Industrial Stormwater

Metal recycling facilities - especially those with outdoor stockpiling, processing, and segregation of materials - can be a major source of stormwater contamination. Scrap metal in different stages of corrosion and decay may release a variety of harmful substances including heavy metals, fuel, oil, lubricants, polychlorinated biphenyls, grease, lead acid, lead oxides, chlorinated solvents, asbestos, ethylene glycol, paint, and other chemical residues. Florida is far behind other states in regulating industrial stormwater and has an almost non-existent record of enforcement of the regulations that govern these polluting sites. Because of this, enforcement actions brought by Waterkeepers are critical to the effectiveness of these laws.

Section 402(p) of the Clean Water Act establishes a framework for regulating municipal and industrial stormwater discharges under the NPDES program. Florida regulates industrial stormwater discharges through individual permits issued to dischargers or through a general permit that covers a category of dischargers called a Multi-Sector Generic Permit ("MSGP"). These general permits are based on the expectation that best management practices ("BMPs") will be implemented in order to keep pollutants out of waterways. BMPs can take a wide variety of forms from frequent sweeping, to making structural modifications such as roofing, or installing stormwater filtration and treatment, as necessary. The permit also requires dischargers to develop and implement a storm water pollution prevention plan ("SWPPP") and to implement a monitoring and reporting program to determine whether they have adequately reduced the level of pollutants in stormwater runoff.

TRADEMARK RECYCLING

Trademark Metals Recycling is a major recycler and exporter of scrap metal with locations across the state of Florida including six metal recycling yards in the Tampa Bay and Sarasota Bay area. Tampa Bay Waterkeeper, Suncoast Waterkeeper, and partners discovered that Trademark had failed to develop and implement sufficient BMPs to limit pollution in their industrial stormwater and that they had failed to adopt an adequate SWPPP at each of their facilities. Sampling by Waterkeeper groups around Trademark locations confirmed high levels of aluminum, copper, iron, lead, and other pollutants.

In May of 2020, Tampa Bay Waterkeeper, Suncoast Waterkeeper, and partners filed suit under the Clean Water Act for violations of Trademark's NPDES permit. This case was settled with a commitment by Trademark to improve their stormwater collection and treatment system, improve their BMPs, and increase their monitoring and reporting. In lieu of penalties, Trademark agreed to pay for supplemental environmental projects to improve water quality.

SUNCOAST METALS

As with Trademark Metals Recycling, Suncoast Waterkeeper found similar violations of Suncoast Metal's MSGP. In June of 2021, Suncoast Waterkeeper filed suit under the Clean Water Act for violations of their permit. Pursuant to this lawsuit, the case was settled with a commitment by Suncoast Metals to improve their stormwater collection and treatment system, improve their BMPs, and increase their monitoring and reporting. In lieu of penalties, they agreed to pay for supplemental environmental projects to improve water quality.

ATLANTIC TNG

Concrete manufacturing facilities can be a major source of stormwater contamination, releasing a variety of harmful substances including but not limited to cement, concrete, shale, clay, limestone, slate, slag, pumice, fly ash, and other pollutants. Atlantic TNG is a concrete manufacturer located in Sarasota, Florida. Pursuant to the Clean Water Act, Atlantic TNG was required to operate under the MSGP for industrial stormwater discharges. However, Suncoast Waterkeeper found that they were inadvertently releasing harmful chemicals into nearby waterways, that they did not have an effective SWPP in place, and that they had failed to develop and implement an adequate monitoring and reporting program at their facility. In light of these violations, Suncoast Waterkeeper filed suit against Atlantic TNG in June of 2021. This case is currently ongoing.

JACKSONVILLE METAL RECYCLING, INC.

Jacksonville Metal Recycling, Inc. operates a scrap metal processing and recycling facility that discharges stormwater into an unnamed ditch, which in turn discharges into the St. Johns River. Starting in 2012, Jacksonville Metal Recycling operated under Florida's Multi-Sector Generic Permit for industrial stormwater discharge until their permit coverage expired in 2017. While covered under the MSGP, water quality testing showed frequent exceedances of discharge limits for pollutants including aluminum, iron, and lead. Since 2017, the facility has been operating without permit coverage. In November of 2021, St. Johns Riverkeeper filed suit against Jacksonville Metal Recycling, Inc. for violating the Clean Water Act by failing to establish coverage under and comply with Florida's MSGP for industrial stormwater discharge. This lawsuit is ongoing.

SUPPLEMENTAL ENVIRONMENTAL PROJECTS

- Supplemental Environmental Projects ("SEPs") are projects included as part of an enforcement settlement that provide an environmental or public health benefit.
- SEPs are projects that could not be required or compelled by EPA, and are not otherwise legally required and thus provide environmental benefits that go beyond compliance obligations.
- Generally, the project must involve the same pollutant or same health effects as were involved in the violations being resolved, addressing the same adverse impacts or risks to which the violations contributed, or preventing future similar violations.



As a result of the lawsuit by Suncoast Waterkeeper, the City of St. Petersburg was required to pay \$200,000 in supplemental environmental projects to the Tampa Bay Estuary Program for projects including installation of a living shoreline and restoration of coastal upland habitat at Maximo Park to address erosion and improve water quality in Tampa Bay.



PROTECTING THE PANHANDLE

TAYLOR ENERGY

In September 2004, a mudslide triggered by Hurricane Ivan destroyed several oil wells owned by Taylor Energy Company. The force of the winds and storm surge caused the wells to become detached from Taylor's Mississippi Canyon 20A Platform in the Gulf of Mexico, and both the wells and the platform sank to the bottom of the sea. Oil has been leaking from the site ever since. In February of 2012, with the assistance of the Tulane Environmental Law Clinic, Apalachicola Riverkeeper, Waterkeeper Alliance, and other partners filed a lawsuit alleging violations of both the Clean Water Act and the Resource Conservation and Recovery Act. A settlement was reached in 2015 which required Taylor Energy to provide information about the spill since it started in 2004 and to provide continued open public access to information on an ongoing basis. Taylor Energy was also required to pay \$400,000 to supplemental environmental projects that will help study and mitigate the impacts of oil pollution on the Gulf of Mexico.

GULF POWER- SCHOLZ POWER PLANT

The Scholz power plant in Sneads, Florida owned by Gulf Power had operated near the Apalachicola River since the 1950s. Coal-fired power plants generate a type of waste called coal ash which often contains toxic heavy metals like arsenic and lead. The Scholz power plant had 40 acres of unlined coal ash ponds containing hundreds of thousands of tons of coal ash in holding lagoons overlooking the Apalachicola River. An investigation by Apalachicola Riverkeeper and Waterkeeper Alliance found that coal ash from the unlined storage ponds was leaching into the ground water and impacting the Apalachicola River. In June of 2014, Apalachicola Riverkeeper, Waterkeeper Alliance, and partners filed a lawsuit claiming that by not using impermeable liners, the utility had allowed excessive levels of heavy metals and toxins to leak from the ash ponds at the Scholz plant in violation of the Clean Water Act. The suit was settled in 2015 and the power plant was closed down in anticipation of stronger EPA regulations. Under the settlement agreement the company was forced to dry out and remove coal ash from the unlined ponds and transfer it to a new landfill located out of the river's flood zone.



Gulf Power Company's Scholz Generating Plant overlooking the Apalachicola River near Sneads, Florida



STANDING UP FOR THE ST. JOHNS

NUMERIC NUTRIENT CRITERIA

Nutrients (namely nitrogen and phosphorus) are among the leading types of pollution in Florida waters. An overabundance of nutrients in a waterway can lead to harmful algal blooms and hypoxic conditions which can cause human health issues and wildlife mortality. From mid-July to mid-October 2005, major portions of the St. Johns River suffered a toxic blue-green algae bloom which was dubbed "The Green Monster" for the fluorescent green slime created on the surface of the water. Water quality testing by St. Johns Riverkeeper revealed toxin levels at 50 – 140 times above the World Health Organization's suggested recreational limits and many people reported respiratory problems, raw throats, and irritated eyes.

Section 303(c) of the Clean Water Act requires states to adopt water quality standards for waters within their applicable jurisdictions and specifies that the standards must be based on sound scientific rationale and must be sufficient to protect the designated use of each waterway. For years, Florida used a narrative description to describe acceptable levels of nutrients in waterways rather than a clear numeric threshold. This method led to uncertainty and implementation that was not protective of many waterways.

In 2008, St. Johns Riverkeeper and partners issued a notice of intent to sue the Environmental Protection Agency ("EPA") for its failure to promulgate protective nutrient standards. On January 14, 2009, EPA determined that new or revised water quality standards in the form of numeric water quality criteria for nitrogen and phosphorus pollution were necessary to meet the requirements of the Clean Water Act in the state of Florida. Later that year, EPA entered into a consent decree with St. Johns Riverkeeper and partners, which established a schedule for EPA to propose and promulgate numeric nutrient criteria for Florida's lakes, springs, flowing waters, estuaries, and coastal waters. Having clear, numeric thresholds for nutrient levels has enhanced the effectiveness of permitting decisions and total maximum daily load development. As a result of this lawsuit, 85 percent of the state's waters – 100,000 miles – are now subject to numeric federal pollution limits.

ST. JOHNS TOTAL MAXIMUM DAILY LOAD

Section 303(d) of the Clean Water Act requires each state to list those waters that fail to meet state water quality standards. When a waterbody in Florida fails to meet its applicable water quality standards it is called "impaired." States are required to develop Total Maximum Daily Loads (TMDLs) for impaired waters. A TMDL is a scientific calculation of the maximum amount of a pollutant that a waterbody can receive and still meet applicable water quality standards. A TMDL serves as the starting point or planning tool for restoring water quality, but often the process for developing a TMDL is slow and drawn out, allowing pollution issues to get worse before a remediation plan is put in place.

In 1998, a lawsuit brought by Earthjustice succeeded in forcing Florida to establish a nutrient TMDL for the lower St. Johns River by September 2003. According to water quality models, nitrogen would need to be reduced by 60 percent to achieve healthy nutrient levels in the river. But as soon as the state attempted to implement this reduction, polluters threatened to sue. The state caved in to the pressure and weakened the TMDL. In 2004, St. Johns Riverkeeper filed a lawsuit against the Environmental Protection Agency ("EPA") under the Administrative Procedure Act alleging that EPA's approval of the TMDL was arbitrary, capricious, and contrary to the Clean Water Act. During the lawsuit, in 2005, a toxic blue green algal bloom — dubbed the Green Monster — covered over 100 miles of the St. Johns River, bringing more public attention to the lawsuit. In October 2005, EPA reversed its approval of the weakened nutrient TMDL and later established a nutrient TMDL that required a 60 percent reduction in nitrogen loading.



PINEY POINT

The phosphate industry is one of the largest polluters in Florida. Phosphate is mined as an ingredient for fertilizer – one of the main sources of nutrient pollution statewide. But the process of mining the phosphorus also creates a dangerous byproduct called "process water" which contains a diluted mixture of toxic chemicals and radioactive waste. This is stored in mountainous holding areas known as "gyp stacks" which tower over the landscape in the "Bone Valley" region of central Florida. The history of phosphate mining in Florida shows how precarious this practice is, with frequent spills from these gyp stacks releasing toxic, radioactive waste into surface waters and groundwaters. The most recent example of this catastrophe was in March of 2021 when the gyp stack at Piney Point breached, dumping hundreds of millions of gallons of tainted water into Tampa Bay.

Piney Point was a phosphate fertilizer plant owned and operated by multiple corporations from 1966 until it closed down in 1999. In 2007, the Florida Department of Environmental Protection ("FDEP") entered into an agreement to allow spoil material from a dredging project to be stored within Piney Point's impoundments, adding additional stress to an already compromised structure, and likely contributing to the breach.

In May of 2021, Tampa Bay Waterkeeper along with a coalition of environmental groups filed a notice of intent to sue the Florida Department of Environmental Protection under both the Clean Water Act and the Resource Conservation and Recovery Act ("RCRA"). This lawsuit is ongoing.

WETLANDS DREDGE & FILL PERMITS

Wetlands are important and often overlooked ecosystems providing a variety of functions including water quality enhancement, flood water retention, and wildlife habitat. Unfortunately, Florida has lost almost half of its historic wetlands and along with them, the ecosystem services that those wetlands provided.

Section 404 of the Clean Water Act established a federal program that issues permits when developers and others want to dredge and fill certain waters of the United States, including sensitive marshes, cypress forests, ponds, and other wetlands. This program is generally administered by the EPA. There is a process by which a state can assume authority over this program from EPA, but due to the administrative burden, very few states have opted to do this. For years, developers have tried to get the §404 program delegated from EPA to the state of Florida in order to speed up the permitting process. Waterkeepers argued that Florida would not be able to administer the program in a protective manner due to lack of resources, that the transfer would eliminate the protections of federal laws that apply to permits granted by the federal government, and that the anticipated revision of the definition of "Waters of the United States" would cause confusion over which waters would be impacted by this delegation. Over vehement objections from environmental advocates including Waterkeepers across the state, in December of 2020, EPA decided to hand over the §404 program to the state of Florida.

Following the delegation, many issues predicted by environmental advocates came to fruition. FDEP admitted that they received more §404 applications than they had anticipated, and requested funding for additional staff to help administer this program. EPA also issued a series of letters objecting to FDEP's issuance of Clean Water Act §404 permits for multiple projects, asserting that FDEP was relying on an outdated definition of Waters of the United States. Several groups represented by EarthJustice including Miami Waterkeeper and St. Johns Riverkeeper sued EPA, alleging that the transfer was improper and should be reversed. This case is currently ongoing.