

[Blogs](#)

April 04, 2018

Clean Water Act Requires Permit for Pollution Discharges from Oyster Hatchery's Pipes

The Clean Water Act requires a permit to discharge pollutants through pipes, ditches, and channels from an oyster hatchery, even though the facility would not be subject to the Act's permitting requirements as a "concentrated aquatic animal production facility," the U.S. Court of Appeals for the Ninth Circuit held in [Olympic Forest Coalition v. Coast Seafoods Co.](#), 884 F.3d 901 (9th Cir. 2018). Coast Seafoods owns and operates an oyster hatchery adjacent to Quilcene Bay in Washington. As part of its operation, the hatchery discharges pollutants into the bay through pipes, ditches, and channels. The plaintiff filed a citizen suit alleging that Coast's discharges violated the Clean Water Act because it did not have a National Pollutant Discharge Elimination System (NPDES) permit. The Clean Water Act requires a NPDES permit to discharge pollutants from a point source, which is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, . . . [or] concentrated animal feeding operation [CAFO] . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). Under EPA regulations, a CAFO includes a "concentrated aquatic animal production facility" (CAAPF). EPA regulations further provide that an aquatic animal production facility is a CAAPF if it meets certain criteria based on the type and size of the operation and the frequency or quantity of pollution discharges. *See* 40 C.F.R. § 122.24. The Washington Department of Ecology (which administers the NPDES program in the state) determined that Coast did not need a permit because the hatchery was not a CAAPF. The issue for the court was whether Coast was nevertheless subject to NPDES permitting requirements because its pipes, ditches, and channels were point sources. The court held that it was. The court's analysis focused on the text and context of the statutory definition of "point source." The court explained that the term "any" (which appears twice in the statute's definition of "point source") should be interpreted "as being broad and all-encompassing." The court also noted that other parts of the Clean Water Act include exemptions to definitions, but Congress did not write any exemptions for point source conveyances that discharge pollutants from aquatic animal production facilities. Taking a broad view of the scope of the "point source" definition, the court concluded that pipes, ditches, and channels that discharge pollutants are point sources, even if the facility is not a CAAPF. The court also explained that its interpretation of the statute made practical sense and was consistent with the purposes of the Clean Water Act: "If the facility is not a CAAPF, it cannot be required to obtain an NPDES permit as a CAAPF. But the fact that an aquatic animal production facility is not a CAAPF does not mean that the facility does not discharge pollutants through pipes, ditches, and channels. To the degree that such a facility discharges pollutants through pipes, ditches, and channels, those pipes, ditches, and channels are point sources. If they were not point sources, a non-concentrated aquatic animal production facility would be free to pollute at will, exempt from any regulation under the CWA and the NPDES system." The court's decision means that animal feeding operations and aquatic animal production facilities need to obtain a NPDES permit if they discharge pollutants through pipes, ditches, channels, or other conveyances, even if they do not meet the regulatory definition of a CAFO or a CAAPF.