

# Environmental Laws and Alternative Dispute Resolution: Tools for Environmental Justice

## Federal Water Pollution Control Act: "Clean Water Act"

### Introduction

The Federal Water Pollution Control Act, also popularly known as the Clean Water Act (CWA), provides legal and regulatory tools for use by the federal government, the states and tribes to act to minimize the amount of pollution in the waters of the United States.

### Purpose

The purpose of the Clean Water Act (CWA) is to control and then eliminate all pollutant discharges into U.S. waters. The statute authorizes the U.S. Environmental Protection Agency (EPA) to set national standards to meet these goals. States and tribes are also involved in setting standards to help reach the goal of eliminating water pollution. States and tribes can be delegated the authority to administer the CWA program within their boundaries, and to issue discharge and dredge-and-fill permits.

### Types of Issues Addressed

The Clean Water Act establishes the National Pollutant Discharge Elimination System (NPDES), which requires persons discharging pollutants from a specific location (point source) to receive a permit that limits the level of pollutants allowed in the discharge. In issuing the NPDES permit, the state, tribe, or EPA uses various methods to apply technology-based and water quality standards to the specific discharger applying for a permit.

The CWA also regulates activities in wetlands. No one can discharge "dredge or fill material" into a water body or a wetland without a permit issued by the U.S. Army Corps of Engineers.

## Framework

The Clean Water Act addresses the following:

### Public Notice and Participation

- Public review and comment for annual revisions of guidelines for incorporating technology-based standards into facility-specific effluent limitations (CWA §304(m), 33 U.S.C. §1314(m)).
- Public notice and comment for triennial review of toxic pollutant effluent limitations (CWA §307(a)(2), (a)(3), 33 U.S.C. §1317(a)(2),(a)(3)).
- Public notice and comment before issuing dredge and fill activity permit (CWA §404, 33 U.S.C. §1344(a)).
- Public hearing for triennial review of state's designation of in-stream uses to be protected via water-quality-based standards (CWA §303(c)(1), 33 U.S.C. §1313(c)(1)).
- Opportunity for public hearing before issuance of NPDES permit for discharge of pollutants into navigable waters (CWA §402(a)(1), 33 U.S.C. §1342(a)(1)).
- State may request a public hearing when EPA proposes to veto issuance of a dredge-and-fill activity permit (CWA §404(j), 33 U.S.C. §1344(j)).
- Opportunity for public hearing when a state requests delegation authority to administer a CWA-driven program (CWA §402(b), 33 U.S.C. §1342(b)).

### Available Information

States are required to report to EPA every two years on water quality within the state and progress toward meeting water quality goals (CWA §305 (b), 33 U.S.C. §1315(b)).

### Legal Rules and Operations

Standard-setting:

- Technology-based standards for point source discharges (CWA §301(b), 33 U.S.C. §1311(b)).
- Best available technology requirements for certain non-conventional pollutants may be modified if still protective of human health and the environment (CWA §301(g), 33 U.S.C. §1311(g)).
- Secondary treatment requirements for publicly owned treatment works that discharge into marine waters may be modified if still protective (CWA §301(h), 33 U.S.C. §1311(h) (CWA §301(h), 33 U.S.C. §1311(h)).
- Guidelines for incorporating technology-based standards into facility-specific effluent limitations (CWA §304(b), 33 U.S.C. §1314(b)).
- Water-quality-based standards for point source discharges to protect all uses of receiving water body (CWA §303(c), 33 U.S.C. §1313(c)).
- Standards governing disposal of sewage sludge resulting from municipal waste treatment (CWA §405, 33 U.S.C. §1345)

Rulemaking:

- Discharge of toxic pollutants to meet best available technology level of control (CWA §301, 33 U.S.C. §1317).
- Individual control strategies for toxic pollutant "hotspots" (CWA §304(l), 33 U.S.C. §1317(l)).
- Development of total maximum daily loads (TMDLs) to allocate pollutant loads to ensure water-quality standards are met (CWA §303(d), 33 U.S.C. §1313(d)).

Permitting and other approvals :

- EPA discretion to set effluent limitations to meet water-quality standards (CWA §302(a), 33 U.S.C. §1312(a)).
- NPDES permits for point source discharges to navigable waters (CWA §402(a)(1), 33 U.S.C. §1342(a)(1)).
- EPA authority to review and object to state-issued NPDES permits (CWA §402(d), 33 U.S.C §1342(d)).
- NPDES permit to be denied for new source or new discharger if cannot demonstrate that water quality standards will be met (40 C.F.R. §122.4(i)).
- Authority to modify existing NPDES permit based on new information showing that water quality standards cannot be met (40 C.F.R. §122.62(a)(2)).
- Dredge-and-fill activity permit requirement (administered by the U.S. Army Corps of Engineers) (CWA §404(a), 33 U.S.C. §1344(a)).
- EPA retains veto power over dredge-and-fill activity permits (CWA §404(c), 33 U.S.C. §1344(c)).
- EPA authority to review state-issued dredge-and-fill activity permits (CWA §404(j), 33 U.S.C §1344(j)).

Siting:

- Dredge-and-fill activity permits to consider siting issues (CWA §404(a), 33 U.S.C. §1344(a)).
- Dredge-and-fill activity permitting guidelines (CWA §404(b)(1), 33 U.S.C. §1344(b)(1)).

Enforcement and Compliance Assurance:

- EPA enforcement authorities for violations (CWA §309, 33 U.S.C. §1319).
- Army Corps of Engineers and EPA have enforcement authority for dredge-and-fill violations (CWA §§404(s), 404(n), 33 U.S.C. §§1344(s), 1344(n)).
- "Imminent and substantial endangerment" enforcement authority (CWA §504, 33 U.S.C. §1364).

**Using the Clean Water Act to Achieve Environmental Justice**

The Clean Water Act provides numerous opportunities for community residents to participate in decision-making about discharges to waters. These opportunities include public notice and comment for the following:

- Annual revisions of guidelines for incorporating technology-based standards into facility-specific effluent limitations;
- Triennial review of toxic pollutant effluent limitations; and
- Issuing dredge-and-fill activity permit.

The Clean Water Act also provides opportunities for public hearings for the following:

- Triennial review of state's designation of in-stream uses to be protected via water-quality-based standards.
- Issuance of NPDES permit for discharge of pollutants into navigable waters.
- When EPA proposes to veto issuance of a dredge-and-fill activity permit.
- When a state requests delegation authority to administer a CWA program.

Once community residents become aware of opportunities to participate in decisions affecting the discharge of pollutants into waters, they can then learn how to participate in the decision-making process. An important first step is to gather information. The Clean Water Act provides information through clearinghouses and databases. For example, EPA has a FAQ website regarding NPDES permit program at: [www.epa.gov/npdes](http://www.epa.gov/npdes).

Clean Water Act and the Community:

It is important for community residents to know that public participation regulations require that all relevant comments offered by the public must be taken into consideration before final decisions are made.