

CLEAN WATER ACT (CWA): EJ Hook Fact Sheet

Summary of Law

- Governs quality of surface water (rivers, streams, lakes, wetlands) in order to restore and maintain their chemical, physical, and biological integrity.
- Prohibits discharge from a point source of any pollutant into U.S. waters unless it complies with specific requirements.
- Establishes standards to improve and protect water quality based on technology, water quality standards, and control of toxic effluents and sewage.
- Creates two permitting systems:
 - EPA or states issue NPDES permits for point sources of pollution.
 - Army Corps of Engineers or states issue dredge-and-fill permits.

Environmental Justice “Hooks”

Community residents can use the CWA to protect drinking water supplies, reduce their exposure to toxins, and protect fisheries, wetlands, and wildlife habitat. They can call EPA or a state or tribal government’s attention to specific pollutants in the water, specific facilities discharging pollutants, or the quality of their water resources. Types of provisions and examples of each that can be used to address environmental justice include the following measures:

1. **Legislative Intent:** Section 101(a)(3) prohibits discharges of toxic pollutants in toxic amounts. If there is uncertainty about the effect of a discharge on an overburdened community’s health, encourage your state environmental agency to exercise its discretion to reduce or eliminate pollutant discharges.
2. **Antidegradation Provision:** This provision maintains and protects the existing levels of water quality. It is especially important for protection of high-quality waters. If a facility seeks a permit to discharge pollutants into high-quality surface waters that may cause significant degradation, it must demonstrate that reasonable alternatives do not exist, such as:
 - Pollution prevention measures (e.g., substitution of less toxic substances)
 - Reduction in the scale of the project
 - Recycling or re-use of water
 - Changes in the manufacturing process
 - Innovative water treatment technology
 - Advanced water treatment technology
 - Seasonal or controlled discharge options to avoid critical water-quality periods
 - Improved operation and maintenance of existing treatment systems
 - Alternative discharge location

The activity may be authorized if:

- Socio-economic importance is shown
- Existing uses are protected
- Controls on pollution sources are achieved

3. **Existing Uses Provision:** Water-quality standards must protect “existing uses,” defined as uses actually attained in the water on or after November 28, 1975 (40 CFR 131.12 (a)(1)). If your community uses a water body for recreational or subsistence fishing, EPA can require consideration of elements of the use (such as actual fish consumption) and protection by state water-quality standards. NPDES permits for waters where fish consumption is an existing use should protect that use appropriately.
4. **Fish Consumption Provision:** States and tribes set criteria to protect “fishable uses.” They can set fish consumption values based on:
 - a national default value
 - site-specific information, including fish consumption by subsistence fishers.
5. **Triennial Reviews:** EPA must review state water-quality standards every 3 years, and may disapprove a criterion that does not protect populations with high exposure to water pollution.
6. **Dredge-and-Fill and Section 404 Permits:** When the Corps issues a permit, it conducts a “public interest review” and evaluates the probable impacts on the public of the proposed activity. The Corps can consider aesthetics, general environmental concerns, safety, and the needs and welfare of the people (33 CFR 320(4)(a)). Community residents can present their environmental justice concerns to the Corps if they fit into one of these categories.

Environmental Justice Outcomes Under the CWA

Possible outcomes from the CWA that address environmental justice challenges and goals are:

- Permits
 - conditions to limit discharges
 - permit denial
- Surface water resource protection
 - designated use
- Standards
 - water-quality standards
 - effluent limitations
- Improved public participation
 - scheduling of hearings
 - community notice

For more details on how to use the CWA to achieve environmental justice, please see:

1. *Opportunities for the Advancement of Environmental Justice: An Analysis of EPA Statutory Authorities* (Environmental Law Institute, 2001).
2. *A Citizen’s Guide to Using Federal Environmental Laws to Secure Environmental Justice*. (Environmental Law Institute, 2002).