

Protecting and
Restoring Our Waters:
The *Clean Water
Act* Through an
Environmental Justice
Lens – *A Practitioner's
Guide to Improved
CWA Implementation*



Resource Navigation



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Text

Click on text that is bolded, green and underlined to navigate to an EPA page.

Text

Click on text that is bolded, green, underlined and italicized to navigate to an external page.

Disclaimer

This resource does not impose legally binding requirements on the EPA, state or the regulated community, nor does it confer legal rights or impose legal obligations upon any member of the public. The CWA provisions and EPA regulations described in this resource contain legally binding requirements. This resource does not constitute a regulation or legal guidance, nor does it change or substitute for an CWA provision, EPA regulations or EPA guidance document.

Overview

Welcome to the *Clean Water Act Through an Environmental Justice Lens – A Practitioner's Guide to Improved CWA Implementation*.

This is an accompanying resource that should be used in conjunction with the public CWA EJ module and is geared towards water practitioners at the local, state, territorial, authorized Tribal and national level implementing the CWA. This guide consists of a brief introductory section followed by key questions for program-specific consideration, as well as practitioner opportunities and approaches for integrating environmental justice into each of the cornerstone programs that drive surface water quality protection in the United States.

The EPA encourages cross program coordination within and across agencies and organizations to help leverage resources, share information and increase overall effectiveness of water resource management to advance environmental justice. Learn more about this and other topics on the [EPA's Watershed Academy website](#).

Defining Environmental Justice

Environmental justice means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation or disability, in agency decision making and other federal activities that affect human health and the environment so that people:

- Are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens and the legacy of racism or other structural or systemic barriers
- Have equitable access to a healthy, sustainable and resilient environment in which to live, play, work, learn, grow, worship and engage in cultural and subsistence practices

Source: [*Executive Order on Revitalizing Our Nation's Commitment to Environmental Justice for All*](#)

Tribes and Environmental Justice Considerations

A core understanding of environmental justice is that **communities and** speak for themselves and they determine what they think is or is not an environmental justice issue.

Tribes have different approaches to environmental justice; some embrace it to advance environmental justice and related public health concerns, while others prefer to frame their priorities differently under treaty, other rights or Federal Trust responsibility.

Recognizing the importance of working with both federally recognized Tribes and all other indigenous peoples to effectively provide for environmental and public health protection in Indian country and in areas of interest to Tribes and other indigenous peoples, the EPA issued its [Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples](#) in 2014.



The EPA's Work with Federally Recognized Tribes

To assist Tribes in protecting water quality on Tribal lands, the EPA provides resources and technical assistance to Tribes for environmental program capacity building in developing core environmental programs.

Several federal environmental laws, including the CWA, authorize the EPA to treat eligible federally recognized Indian Tribes in a similar manner as a state, or TAS, for implementing and managing certain environmental programs. A Tribe is free to choose whether to apply for TAS and for which programs. Tribes can reach out to their [EPA Regional office\(s\)](#) for more information on applying for TAS.

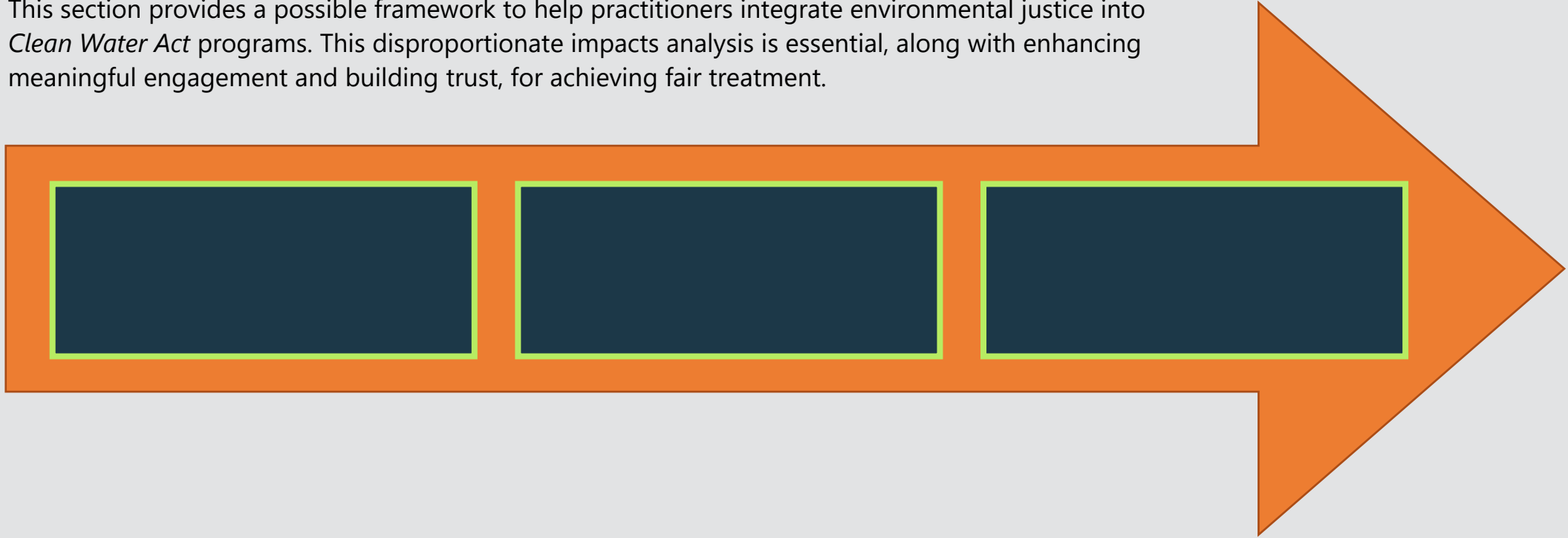
In the absence of a federally approved Tribal program, the EPA generally retains program implementation authority for and is responsible for implementing federal environmental statutes in Indian country.

The EPA's policy is to consult on a government-to-government basis with federally recognized Tribal governments when the EPA's actions and decisions may affect Tribal interests.

The [EPA Policy on Consultation with Indian Tribes](#) describes the EPA's commitment to consulting on a government-to-government basis with federally recognized Tribal governments when the EPA's actions and decisions may affect Tribal interests.

A Step-by-Step Process for Integrating Environmental Justice in CWA Programs

This section provides a possible framework to help practitioners integrate environmental justice into *Clean Water Act* programs. This disproportionate impacts analysis is essential, along with enhancing meaningful engagement and building trust, for achieving fair treatment.



Key concepts from: *Confronting Disproportionate Impacts and Systemic Racism in Environmental Policy* by Charles Lee.

Learn More

In 2023, EPA announced the release of the final [Achieving Health and Environmental Protection Through EPA's Meaningful Engagement Policy](#). The new policy outlines updates on how the agency intends to engage with the public and provide meaningful public participation opportunities in all of its programs and regions. This policy is grounded in the acknowledgment that EPA's actions to protect public health and the environment are stronger when they are informed by and reflect the lived experiences of the communities and individuals the agency serves. Other resources covering topics related to meaningful engagement and public involvement are included below.

- [EPA's Public Participation Guide](#)
- [National Environmental Justice Advisory Council's Model Plan for Public Participation](#)
- [Enhancing Community Involvement in the Regulatory Process \(State Environmental Justice Training Webinar\)](#)
- [EPA Legal Tools to Advance Environmental Justice](#)
- [Better Decisions through Consultation and Collaboration](#)
- [The CARE Roadmap](#)
- [Collaborative Problem-Solving Manual](#)
- Groundwork USA's [Best Practices for Meaningful Community Engagement Tip Sheet](#)



The *Clean Water Act* Programs



Scope of the *Clean Water Act*

Waters of the United States

“Waters of the United States” is a threshold term that establishes the geographic scope of federal jurisdiction under the CWA. The CWA programs address “navigable waters,” defined in the statute as the waters of the United States, including the territorial seas.”

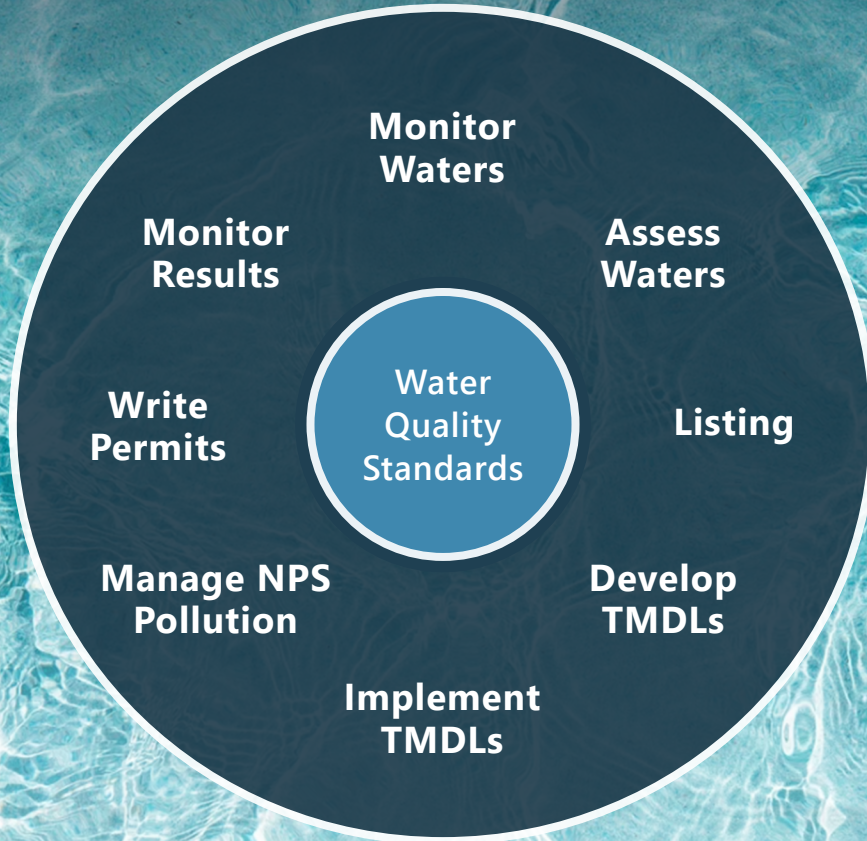
The CWA does not define “waters of the United States.” Since the 1970s, the EPA and the Department of the Army have defined “waters of the United States” by regulation. Four Supreme Court decisions have addressed the definition of “waters of the United States.”

For the latest definition and supporting resources, visit the EPA’s [About Waters of the United States](#) page.

The Clean Water Act

CWA Objective: “restore and maintain the chemical, physical and biological integrity of the Nation’s waters” (CWA 101(a))

CWA Interim Goal: “water quality which provides for the protection and propagation of fish, shellfish and wildlife and provides for recreation in and on the water” wherever attainable (CWA 101(a)(2))



Click on each element in the diagram to learn more about the CWA!

[Click here for more resources.](#)

The *Clean Water Act* Programs

Water Quality
Monitoring

Water Quality
Standards

303(d) Listing and
TMDL

Section 319 NPS
Management

Section 401
Certification

Section 402 NPDES

Section 404
Permitting

Urban Waters Federal
Partnership

National Estuary
Program

Clean Water State
Revolving Fund

Water Quality Monitoring



Water Quality Monitoring

Opportunities for Practitioners

Why is water quality monitoring important?

Who is involved in planning and conducting water quality monitoring and who is not?

and is that focus equitable?

When are monitoring priorities and allocation of resources decided and are there adequate opportunities for groups with environmental justice concerns to provide feedback?

What are the monitoring priorities of communities with environmental justice concerns?

How can practitioners work together to bring water quality monitoring data and information to communities with environmental justice concerns?

Water Quality Monitoring

Case Studies

Water Quality Standards



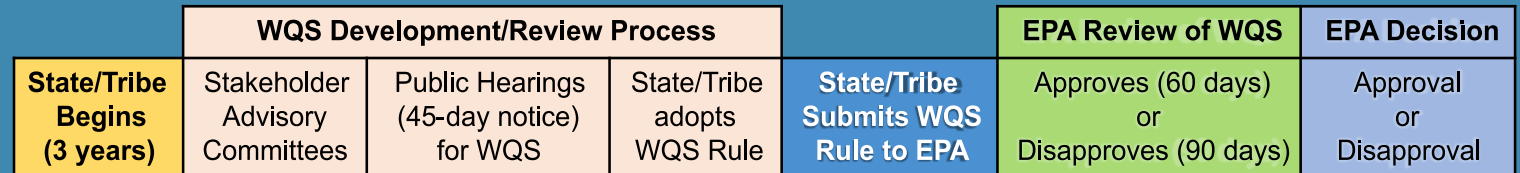
Water Quality Standards

Overview of the WQS Development and Review Process

States and the CWA-authorized Tribes have the primary authority to adopt, review, and revise WQS and implementation procedures.

While states and authorized Tribes may review and revise their WQS at any time, Section 303(c)(1) of the CWA and the EPA's implementing regulations at 40 CFR 131.20 require that states and authorized Tribes, from time to time, but at least once every three years, hold public hearings to review applicable WQS and, as appropriate, modify and adopt WQS.

When reviewing or adopting new or revised WQS, states and WQS-authorized Tribes are required to hold public hearings and seek public input in accordance with 40 CFR 25.5 and any other applicable state or WQS-authorized Tribal public hearing requirements (the CWA Sections 303(c)(1), 101(e) and 40 CFR 131.20(b)).



Volunteer monitoring and data collection

- State and Tribes:
- Engage early and often
 - Promote transparency and equal access
 - Keep the community well informed of ongoing and planned activities
- Public:
- Submits comments
 - Submits data

Definitions:

"State" refers to a state, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.

"Authorized Tribe" refers to those federally recognized Indian Tribes with authority to administer a CWA WQS program.

Water Quality Standards

Why are WQS important?

Why is public engagement and participation so important for communities with potential environmental justice concerns?

Where is public engagement occurring as part of the WQS development and review process?

When in the review process is your program engaging communities with environmental justice concerns?

How can a state or authorized Tribe promote greater engagement and participation with communities with environmental justice concerns, or those with current/historic disproportionate human health and environmental impacts?

303(d) Listing
and Total
Maximum Daily
Load (TMDL)



303(d) Listing

Opportunities for Practitioners

Does your program know which waters are of importance to communities with environmental justice concerns and **why**?

Who is impacted by 303(d)/Integrated Report assessment determinations?

What requirements and methodologies are used to determine if waterbody uses are impaired?

When during the assessment and development of the Integrated Report is your program engaging with communities with environmental justice concerns?

Where is water quality assessment occurring and where is it not?

303(d) Listing

Case Studies

TMDL

Opportunities for Practitioners

Who is being impacted by TMDL allocations?

Where are TMDLs prioritized for development? Where is TMDL development occurring and where is it not?

When and how rare communities with environmental justice concerns involved in the TMDL proces?

What pollutants are TMDLs being written for?

How are TMDLs being developed and implemented to support water restoration and protection in communities with environmental justice concerns?

TMDL

Case Studies

**Section 319
Nonpoint
Source
Management**



Section 319 Nonpoint Source Management

Opportunities for Practitioners

Who currently benefits from Section 319 grant funded projects?

What are the barriers preventing communities with environmental justice concerns from realizing the benefits of the program?

How have historical water quality issues impacted communities with environmental justice concerns?

Where might there be communities affected by a disproportionate NPS pollution burden?

Are there technical or capacity building barriers that prevent communities with environmental justice concerns from accessing program benefits?

Section 319 Nonpoint Source Management

Case Study

Section 401 Certification



Section 401 Certification

Opportunities for Practitioners

Why is there a public notice period?

Who has been most engaged in the public notice process historically and who has not?

When are communities with environmental justice concerns engaged in the Section 401 certification process?

Where should public notices be shared to reach interested stakeholders and those most impacted by decisions?

What are the potential impacts of a certifying authority's decision on a request for certification?

How can practitioners increase fair treatment and meaningful engagement in the public notice period?

**Section 402
NPDES**



Section 402 NPDES

Opportunities for Practitioners

Where can the community look to see how a NPDES permit addresses environmental justice concerns?

When during the 5-year NPDES permit cycle can communities with environmental justice concerns be engaged?

What can NPDES permit writers do to ensure that they understand environmental justice concerns of the affected community?

How can disproportionately high and adverse effects associated with a permit action be minimized and mitigated?

Section 402 NPDES

Case Studies

Section 404 Permitting



Section 404 Permitting

Opportunities for Practitioners

Who are the communities impacted by the project who may have environmental justice concerns?

Where are project impacts and compensatory mitigation located in relation to the communities with environmental justice concerns?

What role do community environmental justice concerns have in the public interest review?

When do practitioners explore and document the environmental justice concerns of communities?

How can practitioners ensure there are opportunities for communities with environmental justice concerns to meaningfully engage in the project?

Urban Waters Federal Partnership Program



Urban Waters Federal Partnership Program

Opportunities for Practitioners

Why is it important to actively focus on addressing disproportionate impacts that communities with environmental justice concerns face?

Who is at the table in the partnerships and who is missing?

When are major partnership decisions made and do they allow for multiple groups to have time to provide feedback?

Where is the partnership focusing its efforts and projects and is that focus equitable?

What are the priorities of the partnership reflected in the workplan and are those priorities focused on equitable outcomes and including all community voices?

How should community voices and projects focused on disproportionate impacts and communities with environmental justice concerns be incorporated into partnership planning?

Urban Waters Federal Partnership Program

Case Studies

National Estuary Program



National Estuary Program

Opportunities for Practitioners

Why is it important for NEPs to adapt their roles and responsibilities to improve outcomes for the most impacted communities?

When Comprehensive Conservation and Management Plans are updated, are projects that benefit communities with environmental justice concerns incorporated?

Where is the partnership focusing its efforts and projects and who is represented in these areas?

What can NEPs do to ensure communities with environmental justice concerns and those that are most impacted by pollution and/or lack environmental benefits are integrated into their program's work?

How can NEPs ensure that communities with environmental justice concerns are part of programmatic planning?

National Estuary Program

Case Studies

Clean Water
State Revolving
Fund



Clean Water State Revolving Fund

Opportunities for Practitioners

Why are projects prioritized the way they are?

Who has historically struggled to take advantage of available CWSRF assistance?

When is outreach conducted? Are fair and meaningful engagement opportunities provided for communities with environmental justice concerns?

Where are there communities with environmental justice concerns that can benefit from CWSRF that have not yet received assistance?

What are potential barriers to receiving CWSRF assistance?

How can the program connect with new partners and organizations to help get assistance to communities that have historically struggled to receive SRF assistance?

Clean Water State Revolving Fund

Case Studies

Congratulations!

This concludes the Protecting and Restoring Our Waters: The *Clean Water Act* Through an Environmental Justice Lens – *A Practitioner's Guide to Improved CWA Implementation*. For more information about this resource, including the public version of the module, visit [EPA's Watershed Academy website](#).