Understanding and Using the Clean Water Act

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AN UNDISTURBED RIVER IS AS PERFECT AS WE WILL EVER KNOW, EVERY REFRACTIVE SLIDE OF COLD WATER A GLIMPSE OF ETERNITY.

– Thomas McGuane, "Midstream," An Outside Chance

The survival of every person, plant, and animal depends on clean water. Unfortunately, many of our daily activities can degrade water quality. The Clean Water Act was established to strike a balance between our daily activities and the purity of our water resources.

Passed in 1970 with additional amendments in 1972, the Clean Water Act (CWA) is the primary piece of national legislation that protects water quality in the United States. It gives the U.S. Environmental Protection Agency (EPA) the authority to set and enforce water quality standards and regulate pollutants that are discharged into waterways. Although states and local governments have the authority to develop more stringent water quality regulations than those outlined by the federal government, in many cases the CWA may be the only legislation that a community or a state has to improve or protect their water quality.

The purpose of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Goals set forth in the CWA include eliminating discharge of pollutants into navigable waters by 1985 and achieving water quality that protects fish and wildlife and allows recreation in and on the water by 1983. The CWA strives to achieve these goals by prohibiting the discharge of toxic pollutants in toxic amounts and by developing and implementing programs for the control of nonpoint sources of pollution.

Since its enactment, the CWA has been directly responsible for removing more than 1 billion pounds of toxic chemicals from waterways and more than 6 billion pounds of oxygen-depleting pollution from wastewater each year. These improvements result in cleaner, safer water for public consumption and recreation, and improved aquatic habitat for fish and wildlife. However, much more needs to be done. In fact, approximately 40 percent of the waterways that have been assessed still are not safe for swimming and fishing. Fortunately, each of us can become involved in strengthening the Clean Water Act and using it to protect and improve the streams and wetlands in our neighborhoods.

WATER QUALITY STANDARDS

The CWA directs states and tribes to establish water quality standards for each waterway. These standards include designated uses, water quality criteria, and antidegradation requirements. The designated uses include current uses of the water body and future desired uses that require good water quality. Designated uses may include activities such as fishing, swimming, or boating. The water quality criteria are developed to describe the chemical, physical, and biological conditions needed to support each of the designated uses. The antidegradation policy prohibits activities that would pollute

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water to the extent that a current use is no longer supported. If a water body has exceptional ecological or recreational significance, this policy protects that water body from any activity that would degrade it.

The water quality standards established by the states are very important because all water quality protections for specific waterways are based on these standards. Each of us has an opportunity and a responsibility to make sure that the standards provide adequate protection for each watershed. Another way to become involved with water quality issues is to work on your state's triennial review of water quality standards by participating in public hearings and submitting written comments.

Also, under Section 305(b) of the CWA, the U.S. Environmental Protection Agency is required to report to Congress every two years on the status of surface water quality. Each state in turn reports to EPA on its water quality. The reports help determine priorities at the state and federal levels for pollution control and management. The reports are available to the public and provide current information on water quality.

Point Source Discharge Permits

Under the Clean Water Act, it is illegal to discharge any pollution into a water body without a permit. All point-source pollution discharges require a National Pollutant Discharge Elimination System (NPDES) permit. Point sources of pollution include any pollution discharged through a pipe, ditch, conduit, or other discrete conveyance. Examples of point sources include municipal and industrial wastewater plants, stormwater and mining runoff, concentrated animal feeding operations (such as those located on factory farms), and sewer overflows. NPDES permits set requirements for the maximum amount of pollution allowed from each point source. The CWA also encourages the use of the best available technology for pollution control. The limits on pollution required in the permits are based either on the best available technology for reducing pollution or on the quality of the receiving water, whichever type is more stringent.

For more information on permits in your watershed, contact your state's water quality agency and place your name on its mailing list for permit review. With this knowledge, you'll be able to make comments on any permit applications that are submitted for your watershed. You might also want to obtain copies of the permits already issued that affect your local water bodies. If you notice a permit violation or an illegal discharge without a permit, document the problem and report it to your state's water quality agency. A failure to comply with permit requirements is a violation of the Clean Water Act and is subject to enforcement and fines. If the state agency or the EPA does not enforce permits when they are violated, individuals or groups may sue the polluters directly. For information on what to look for when reviewing NPDES permits and how to make effective comments, visit www.cleanwateract.org.

Impaired Waters and TMDLs

The Clean Water Act requires states to identify impaired waters, which are waters that do not currently meet water quality standards, and threatened waters, which are not expected to meet those standards even after full implementation of existing per-

mits. Every two years, states review water quality data and update their lists of impaired and threatened waters, called the 303(d) list. States are then required to develop a Total Maximum Daily Load (TMDL) for every water body on the list. A TMDL is a pollution cap for the water body and includes a plan to make sure pollution levels do not exceed that cap. If the state does not develop an adequate TMDL for a water body, EPA is required to develop and implement one.

You may submit data to the state for consideration when listing impaired waters. Also, you may comment on the draft list that is circulated for public review before the list is submitted to EPA. In many states, the TMDL process has been jump-started by citizen action.

As of this update, EPA is reviewing the TMDL program. The program may move in a different direction in the near future.

NONPOINT-SOURCE POLLUTION CONTROL

Nonpoint-source pollution is defined by EPA as pollution "caused by rainfall or snowmelt moving over and through the ground and carrying natural and human-made pollutants into lakes, rivers, streams, wetlands, estuaries, other coastal waters, and ground water. Atmospheric deposition and hydrologic modification are also sources of nonpoint pollution." While the Clean Water Act has been very effective at reducing point-source pollution into waterways, nonpoint-source pollution reduction has been more difficult. As the name implies, nonpoint-source pollution comes from diffuse sources, posing a challenge to reduction efforts.

Section 319 of the CWA attempts to control nonpoint pollution by providing funding to states to implement specific watershed protection projects, including wetland restoration and streambank stabilization.

WETLAND PROTECTION

Section 404 of the Clean Water Act authorizes the U.S. Army Corps of Engineers and EPA to regulate

activities that affect wetlands. Anyone who proposes an activity that would discharge dredged material or fill material into waters of the United States is required to apply for a permit from the Corps.

Citizens can provide comments about applications for permits to alter wetlands and can report violations of wetland law. Regulatory agencies are unable to discover and address every wetland violation that occurs. Citizen complaints often trigger enforcement actions. You can ensure that you are notified of permit applications in your area by contacting the Army Corps of Engineers at www.usace.army.mil.

STATE WATER QUALITY CERTIFICATION

The Clean Water Act gives states the authority to review federally permitted activities that may result in water pollution. The state may allow the project without changes, place conditions on the project to protect water quality, veto the project, or waive its authority. Applicants for Section 404 permits are subject to the state Section 401 water quality certification process. Citizens can take action against federal permit holders that do not comply with the Section 401 water quality conditions of their permits. Citizens also can take action against a state for certifying a federal permit

despite evidence that the permit will violate water quality standards. Ask your state water quality agency for information about its procedures for public notice.

FUNDING

The Clean Water Act also provides programs for funding projects to protect water quality. In many cases, EPA distributes money to the states, which then disperse the funds to local governments and nonprofit groups to implement projects. For more information, visit the Catalog of Federal Funding Sources for Watershed Protection at www.epa.gov/OWOW/watershed/wacademy/.

OTHER OPPORTUNITIES FOR CITIZEN INVOLVEMENT

To keep current watershed conservation laws in place and to pass better regulations and laws, citizens need to contact their national, state, and local elected officials and let them know that clean water is important. When specific bills are proposed that will either improve water quality or harm water protection, contact your officials and let them know what position you would like them to take to protect clean water.

In addition to tracking legislation, you can also track and provide comments on regulatory action taken on existing laws. For example, because the U.S. Environmental Protection Agency administers and enforces the CWA, the agency develops rules that specify how it will implement the law. When EPA proposes a rule in the federal register, the public is invited to comment. EPA then incorporates comments into the final rule.

For more information on pending legislation and rules related to national watershed policy, advocacy tips, and action alerts on the most current conservation policy opportunities, please visit the League's Web page at www.iwla.org and click on "Take Action."

CLEAN WATER ACT RESOURCES

"The Clean Water Act: An Owner's Manual." A handbook on the Clean Water Act, its provisions, and opportunities for citizen involvement. Visit www.rivernetwork.org.

"Understanding the Clean Water Act." This online course by River Network provides information on the CWA based on the act itself and on problems such as agricultural runoff. It includes a quiz and links to other resources. Visit www.cleanwateract.org.