

Environmental Justice in Clean Water Act Section 404

Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.

This Fact Sheet describes how decisions about wetlands and other waters are made through the Clean Water Act (CWA) section 404 process and how members of the public can influence those decisions.

CWA section 404 establishes a program to regulate the discharge of dredged or fill material into “waters of the United States.” Permits issued under CWA section 404 can authorize the filling, relocation or modification of rivers, streams, wetlands, lakes and other water bodies that meet the definition of “waters of the United States.” Permits may also require compensation for impacts in the form of restoration, expansion or improvement of the impacted or a nearby water body. The agencies issuing these permits want to understand how your community uses local water bodies and any concerns you have about the water bodies in and around your area to inform their review of permit applications.

What Actions Require a Permit Under CWA Section 404?

Discharges into “[waters of the United States](#)” may occur in many contexts, including in connection with construction of roads, bridges, railways, airports, dams, reservoirs, mining projects and residential or commercial construction. CWA section 404 requires a permit before [dredged](#) or [fill](#) material may be discharged into “waters of the United States,” unless the activity is [exempt](#) from [Section 404 regulation](#) (e.g., certain farming and forestry activities). There are [two categories of permits](#). “General permits” are used to authorize activities resulting in discharges to “waters of the United States” that have been determined to result in no more than minimal adverse environmental effects both individually and cumulatively. General permits are placed on public notice when established, modified or renewed - typically once every five years. “Individual permits” are used for projects that have the potential to cause more than minimal environmental effects and most request public comments through a public notice.

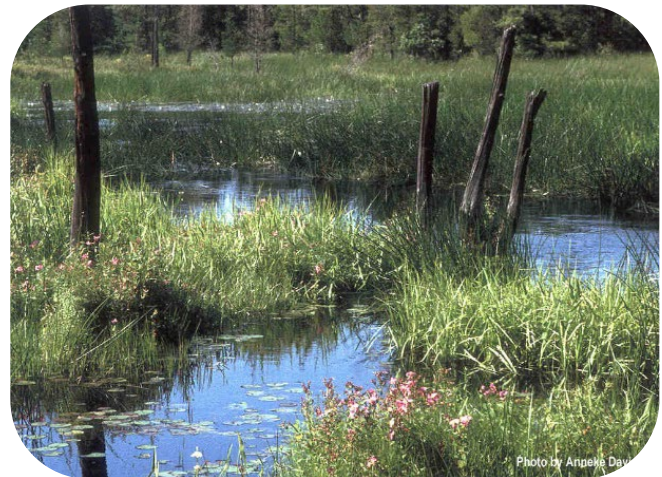


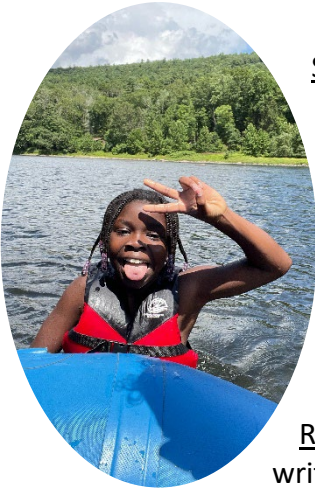
Photo by Andeke Dav



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How Can I Get Involved?

Your input is vital to ensure environmental decisions consider the uses of water bodies in and near your area and your community's needs, especially if your community has been historically underserved, marginalized and adversely affected by persistent poverty and inequality.



Submit a written comment. When the permitting authority – typically the [U.S. Army Corps of Engineers](#), but in some cases the [State](#) – receives an application for a permit with impacts anticipated to be more than minimal, individually and cumulatively, they must provide the public with notice and an opportunity to comment. Each Corps district and state permitting agency maintains a list of public notices on its website and/or may also publish a notice in a local newspaper. The Corps usually gives the public 15-30 days to provide any comments. Find your [local Corps district Regulatory office](#).

Request and Attend a Public Hearing. Anyone may request a public hearing in writing during the public notice comment period. Not every request for a public hearing is granted; for the Corps, a public hearing is generally held when the District Engineer determines that a public hearing is necessary to obtain relevant information that cannot be obtained in other venues. Another notice is issued to announce the time and date of the public hearing.

Participate in the public interest review. In addition to the above review, the Corps also conducts a [public interest review](#) in which it considers the broader needs and welfare of the people. A permit cannot be granted if the proposed project is found to be contrary to the public interest.

What Kinds of Information Should I Provide?

You are in the best position to know and understand the issues and concerns in your community. Let the permitting authority know about:

- How the water bodies are used by the community:
 - Do people rely on fishing to eat?
 - Do people swim, fish or boat for recreation?
 - Do people get their drinking water from the water body or a well?
 - Do people have cultural uses of the water body?
- Other possible locations for the proposed project that might have fewer impacts to water bodies.
- Any projects, developments or other potential pollution sources in the area that are already impacting or may impact the water or the community.
- Any information you might have about fish, amphibians, shellfish and other aquatic life in the waters.
- Any other local water quality concerns.





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What Do the Permitting Agencies Consider When Evaluating a CWA Section 404 Application?

The agencies' primary focus is the impact of the discharge to "waters of the United States" and to the important functions that those waters provide. These functions include supporting healthy aquatic life, such as fish, crayfish and other plants and animals that live in water; providing recreation (swimming, boating); fishing; and supplying drinking water. Some types of waters, such as wetlands, perform important functions such as controlling flood waters and filtering pollution.

No permit for the discharge of dredged or fill material may be issued if: (1) there exists a practicable alternative that is less damaging to the aquatic environment or (2) the nation's waters would be significantly degraded ([see 40 CFR 230 – 404\(b\)\(1\) Guidelines](#)). To obtain a permit, an applicant must show that they have, to the extent practicable:

- Taken steps to avoid impacts to "waters of the United States;"
- Minimized impacts to "waters of the United States;" and
- Provided [compensation](#) for unavoidable impacts to "waters of the United States."



The permitting agency considers all the information available but may not have access to specific information about the local neighborhoods surrounding a project, such as: other properties that could fit the project and would have less environmental impacts; how the proposed project will be beneficial or detrimental to the community in terms of each of the Corps' [public interest review factors](#); and waters that are most important to the community to protect or restore. This local knowledge will inform the permitting agency's review of the proposed impacts and what may be required to compensate for the impacts of the proposal to water resources.

What Federal Agencies Are Involved in CWA Section 404 Permitting?



US Army Corps of Engineers

The [Corps](#) reviews permit applications and issues CWA section 404 permits, except where a State has an [approved CWA section 404 program](#) (for example, Michigan and New Jersey).



The [EPA](#) co-administers CWA section 404, and its responsibilities include working with the Corps to make sure that permit applications demonstrate that appropriate steps have been taken to avoid, minimize and compensate for impacts to "waters of the United States". In some instances, the EPA has authority to withdraw, prohibit, deny or restrict the specification of any defined area as a disposal site for discharges of dredged or fill material under [CWA section 404\(c\)](#). EPA also is responsible for [approval and oversight of Tribal and state CWA section 404 programs](#).



NOAA FISHERIES

The [U.S. Fish and Wildlife Service](#) and/or the [National Marine Fisheries Service](#) may become involved when endangered species, critical habitat or essential fish habitat are present. In rare cases, the [Advisory Council on Historic Preservation](#) may also become involved.





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Is the CWA Section 404 Permit My Only Opportunity to Get Involved?

Projects often require authorization or review (e.g., municipal, state or Tribal permits or consistency determinations) from more than one government agency and may also fit within local zoning regulations or regional planning processes.

Municipal and State/Tribal Permits and Reviews. Before the Corps can issue a CWA section 404 permit, [CWA section 401](#) certifying authorities—states, authorized Tribes or, in some areas, the EPA—must certify or waive certification that the discharge will not cause a violation of water quality standards and other appropriate requirements. For actions in the coastal zone, Corps permits also seeks a consistency determination from the [coastal zone management programs](#). Similarly, the Corps coordinates proposed actions with the appropriate state and or Tribal historic preservation offices. In addition, many projects must obtain permits (e.g., construction, air quality) from the local municipality and the state or Tribe before or concurrent with applications for 404 permits. Your state, Tribe or locality may also provide opportunities to become involved in their permitting processes and you should avail yourself of those opportunities.

More Information on CWA Section 404

- [EPA CWA Section 404](#)
- [EPA Regional Offices](#)
- [EPA Watershed Academy Trainings](#)
- [Corps of Engineers Regulatory Program](#)
- [State, Tribal, Local and Regional Roles in Wetlands Protection](#)
- [State and Tribal Assumption of CWA Permitting](#)

EPA Library of Wetland Factsheets, including:

- [Wetlands Overview](#)
- [Functions and Values of Wetlands](#)
- [Economic Benefits of Wetlands](#)
- [Sustainable Communities](#)
- [Wetland Regulatory Authority](#)

Zoning. Another way to ensure your community needs have been considered can be to familiarize yourself with and comment when the local municipality (e.g., borough, city, township or county) updates zoning maps. When permitting authorities evaluate potential CWA section 404 project alternatives, zoning may be considered in the identification of available alternatives. For example, a municipality may, through zoning, specifically prohibit or designate for construction of a particular type of facility in a particular area unless individually approved for a variance. It is helpful to take every opportunity to engage with local municipalities by phone, in writing or during public meetings.

More Information on Environmental Justice

- [Environmental Justice at EPA](#)
- [EPA Legal Tools to Advance Environmental Justice](#)
- [EPA Environmental Justice Grants, Funding and Technical Assistance](#)