



Resetting the Course of EPA

Protecting the Nation's Waters Under the Clean Water Act



This paper is part of the [Resetting the Course of EPA](#) project by the [Environmental Protection Network \(EPN\)](#), a bipartisan network of more than 500 former EPA career employees and political appointees across the country who served under multiple Democratic and Republican administrations.

Resetting the Course of EPA outlines specific and actionable steps that EPA leadership can take to reset the course of the agency to address the most significant and pervasive threats to public health and our environment. As there is no single roadmap, EPN looks forward to collaborating with others to advance the dialogue around the future of EPA and set ideas into motion that will better protect the health and wellbeing of everyone.

Additional Resetting the Course of EPA documents are available here:

<https://www.environmentalprotectionnetwork.org/reset>

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Summary

Over its 50-year history, the Clean Water Act (CWA) has been extremely successful in protecting the nation’s waters from many discharges of pollution and improving water quality from direct, or point source, discharges. However, discharges from uncontrolled sources, including nonpoint source runoff from agriculture and resource extraction, continue to pollute the nation’s waters, contributing to large-scale water quality crises, such as toxic algal blooms, that contaminate drinking water supplies and disrupt biological, recreational, and commercial use of waterways. Lack of comprehensive, accurate, and timely data on water quality status further complicates the challenge of identifying and prioritizing strategies for effective program management. In addition, recent regulatory changes threaten to slow or reverse progress in achieving CWA goals.

EPA should develop more realistic enforcement practices and reconsider recent regulatory changes, while working with its state and local partners to create a more effective nonpoint source program and strengthening the collection, analysis, and dissemination of water quality data. At the same time, EPA should collaborate with other federal agencies that have program commitments to improving water quality under a federal government-wide process to ensure consistent and continuous implementation of activities to meet the nationwide objective of restoring the chemical, physical, and biological integrity of the Nation’s waters.

Recommendations

1. **Strengthen CWA programs to reduce pollution from uncontrolled nonpoint sources**, scaling up best practices and solutions targeted at the watershed level, with particular attention to public health where environmental justice communities are disproportionately impacted. [\[Read More\]](#)
2. **Create an accessible nationwide system of science-based water quality monitoring.** [\[Read More\]](#)
3. **Expand enforcement activities**, including cooperative efforts with state, tribal, and local authorities, to assist in the reduction of uncontrolled sources. [\[Read More\]](#)
4. **Collaborate with other federal agencies**, such as the U.S. Department of Agriculture (USDA) and the Department of Interior (DOI), to integrate measurable improvement to water quality into their programs. [\[Read More\]](#)
5. **Take the appropriate steps to suspend the 2020 Navigable Waters Protection Rule that narrowed the definition of Waters of the United States (WOTUS)**, and reconsider other actions that have reduced protection of water quality to ensure they are scientifically and legally justified. [\[Read More\]](#)

We also recognize that there is a continuing need to increase investment in infrastructure in order to replace and/or upgrade aging treatment and collection systems, address new contaminants, and provide resilience for climate change and other security threats. Since this issue is being addressed by groups outside of EPN, we have not provided specific recommendations here.

Recommendation #1: Strengthen CWA programs to reduce pollution from uncontrolled nonpoint sources.

The CWA does not address water pollution from uncontrolled nonpoint sources, as it does not require permits or national pollutant standards for these kinds of discharges. Impacts from runoff from developed land, whether agricultural, industrial, or residential, are therefore not included directly in CWA regulatory programs. They are managed instead through federal, state, and local cooperation, with federal grant money for planning and some watershed-specific programs, and use of other tools to incentivize management and control to protect water bodies. EPA, states, and local governments have had some success in reducing pollution by uncontrolled sources, but not at the scale required for notable water quality improvement at the national level.

- ❖ In order to be effective, the best practices and solutions currently in place must be scaled up and targeted at the watershed level, in particular where there are impacts to environmental justice communities. Water quality degradation affecting rural and environmental justice communities from confined animal feeding operations (CAFOs), coal-fired power plants holding pond overflows, and seepage from abandoned mines are some examples of nonpoint sources that require effective management.
- ❖ The various tools available to EPA (funding, education, and cooperative agreements) should be a major focus of CWA administration to address the pollution contribution from these sources.
- ❖ Comprehensive attention to pollution from uncontrolled sources will also generate benefits to public health and the environment beyond CWA objectives, including increased climate change resilience.
- ❖ Sources of uncontrolled pollution are frequently managed by practices such as construction setbacks from water bodies, vegetated buffers, and modifications to building codes or agricultural practices. Green practices are also common tools of climate change adaptation and may reduce greenhouse gas levels by incorporating carbon sequestration functions.

IMMEDIATE ACTIONS

- ❖ Announce a policy to reduce pollution from uncontrolled sources.

EARLY ACTIONS, INCLUDING THE FIRST 100 DAYS

- ❖ Meet with interested parties using collaborative tools.
- ❖ Support targeted watershed efforts to improve water quality, with particular attention to public health in environmental justice communities.
- ❖ Highlight successful water quality planning and Total Maximum Daily Load (TMDL) efforts.
- ❖ Emphasize existing EPA grant, planning, and technical assistance resources.

FIRST YEAR AND SUSTAINED ACTIONS

- ❖ Provide information about public health risks and make them high priorities to build public support.
- ❖ Develop an adaptive process that addresses health risk-related pollution with the flexibility to direct existing resources to early steps in investigations.
- ❖ Acquire adequate funding to implement the plan.

Recommendation #2: Create an accessible nationwide system of science-based water quality monitoring.

A critical area for improvement is the collection of timely and accurate water quality monitoring data, especially where data gaps exist. Data and information should be available to the public and used to make evidence-based decisions to identify and prioritize actions to address public health and watershed restoration efforts. Such a complete, accessible, and reliable database will support all CWA programs.

EPA has supported the development of up-to-date monitoring methods and tools since the agency was founded and is internationally recognized for its research and development activities. Research laboratories located throughout the nation have published water quality methods that are used by environmental programs and laboratories around the world. In addition, laboratories within the ten regional offices support scientific work, usually associated with ongoing water quality monitoring efforts focusing on an area’s specific pollution issues. Research and regional laboratories regularly work with state and local scientists, academics, and science- and engineering-based consulting firms to investigate existing and emerging water quality contamination issues.

IMMEDIATE ACTIONS

- ❖ Re-affirm EPA’s commitment to fund and use water quality research and monitoring data to make environmental decisions.

EARLY ACTIONS, INCLUDING THE FIRST 100 DAYS

- ❖ Announce administration priority to enhance and update water quality research and monitoring.
- ❖ Request the reconstitution and reconvening of the Advisory Committee on Water Information by the U.S. Geological Survey (DOI).
- ❖ Identify high-risk contaminants and chemicals and add them to federally funded water monitoring programs.
- ❖ Encourage research and regional scientist attendance and participation at relevant conferences and meetings.

FIRST YEAR AND SUSTAINED ACTIONS

- ❖ Use advanced technology such as satellite and in-situ sensors to expand monitoring capability.
- ❖ Expand aquatic resource surveys to provide state, tribal, and local agencies with consistent, long-term data collection ability.
- ❖ Support community and citizen science with tools and training to improve usability of the data.
- ❖ Convene EPA-led scientific information exchange activities.

Recommendation #3: Expand enforcement activities.

EPA has a well-established enforcement and compliance point source permit program. Enforcement is assisted and somewhat streamlined by the reporting and inspection requirements applicable to permitted sources. In contrast, enforcement against uncontrolled dischargers is attained through state, tribal, and local action. At the federal level, compliance uses common law remedies (e.g., nuisance, trespass, or contract) requiring development of trial evidence. This is more complicated, time-consuming, and costly. It has been successfully but rarely used.

- ❖ Cooperative efforts with state and local authorities would result in more nonpoint source enforcement, particularly where there are state or local requirements in place. This may require the convening of a task force to identify a federal/state circumstance where the state/locals have specific standards that can be enforced.
- ❖ The objective of any enforcement action is to measurably improve water quality. This should be emphasized whenever an enforcement action is initiated. Success toward meeting the objective should be measured at all stages of the enforcement process, and particular emphasis should be placed on ensuring environmental compliance for disadvantaged communities.
- ❖ Wetland impacts, governed by [Section 404 of CWA](#), are subject to enforcement by both EPA and the U.S. Army Corps of Engineers under a Memorandum of Agreement (MOA). The agencies should revisit the MOA to assess how best to achieve common enforcement objectives.

IMMEDIATE ACTIONS

- ❖ Announce administration priority to enhance enforcement in collaboration with federal/state/tribal/local agencies.

EARLY ACTIONS, INCLUDING THE FIRST 100 DAYS

- ❖ Create a task force composed of EPA/federal/state/tribal/local participants to review enforcement processes to clarify jurisdictions and improve enforcement success rates that clearly relate to better water quality.
- ❖ Ensure environmental justice communities have a voice in enforcement remedies and priority actions to mitigate former violations.

FIRST YEAR AND SUSTAINED ACTIONS

- ❖ Implement an enhanced enforcement program.

Recommendation #4: Collaborate with other federal agencies.

In addition to EPA, other federal agencies have programs that can guide users to attain CWA water quality objectives. In particular, those agencies that work with agriculture, infrastructure, resource extraction, and financial assistance should be encouraged to collaborate with EPA to articulate the impacts of program practices and adopt programs that improve water quality at the watershed level. Water quality should be a critical component of efforts to improve climate mitigation and resilience. Elevating the goal of clean water in these programs would emphasize a consistent national water quality improvement policy.

IMMEDIATE ACTIONS

- ❖ Work with the White House to convene a high-level task force to make water quality improvement a government-wide goal for all federal agencies and to promote a national policy that envisions water quality as an essential element in improving climate mitigation and resilience.
- ❖ Set a deadline for initial recommendations from the high-level task force.

EARLY ACTIONS, INCLUDING THE FIRST 100 DAYS

- ❖ Develop the mission, goals, and objectives of the task force, and set an agenda and schedule for meetings.
- ❖ Integrate climate change mitigation and resilience with water quality protection efforts in grant conditions targeted to state and local agencies.
- ❖ Collaborate with USDA to enhance pollution control from agriculture by focusing on targeted watersheds and developing metrics to measure outcomes across programs.
- ❖ Work with the U.S. Bureau of Land Management, Minerals Management Service, Fish and Wildlife Service, Forest Service, Bureau of Reclamation, and National Park Service to control pollution from uncontrolled sources at targeted watersheds in both federal lands and federal leasing programs.
- ❖ Include other federal agencies with funding/guarantee programs (e.g., Transportation, Small Business Administration, Commerce) that influence the land-use practices that can generate sources of uncontrolled pollution.

FIRST YEAR AND SUSTAINED ACTIONS

- ❖ Identify priority steps and funding sources, and evaluate each agency’s stewardship programs, as well as funding/policies that may adversely affect water quality.
- ❖ Develop cooperative pilot programs to enhance education/outreach by federal agencies to communities regarding impacts to water to encourage local/state innovative approaches to agricultural and stormwater source controls.
- ❖ Identify and implement targeted watershed collaborative planning programs in high-risk areas due to climate change and boost federal funding from multiple agencies to priority watersheds.
- ❖ Request that federal lending/grant agencies require controls, such as “best practices/land management,” as environmental conditions to obtaining federal resources.

Recommendation #5: Take the appropriate steps to suspend the 2020 Navigable Waters Protection Rule that narrowed the definition of Waters of the United States (WOTUS).

Frequent changes to a regulatory program can create confusion, disrupt planning and implementation, and generally impede progress toward achieving goals. This problem is most vividly illustrated by the jurisdiction of CWA, as determined by the definition of WOTUS. Without CWA jurisdiction, none of the programs and requirements apply. The regulations defining WOTUS have been subject to interpretation, regulatory changes, and litigation for many years. Neither the water quality nor the regulated public benefit from these ongoing revisions and changes. However, since the issues of WOTUS jurisdiction and definitions are being addressed by others outside of EPN, we have not provided detailed recommendations here, but we look forward to collaborating and advising on WOTUS and related matters as requested.

Other CWA regulations have been modified in recent years, changing the federal-state relationship and otherwise altering the programs. These frequent rule changes create uncertainty, undermining public respect for the law. Water quality must be protected while providing predictability and stability to the regulated public.

IMMEDIATE ACTIONS

- ❖ WOTUS redefinition: Take the appropriate steps to repeal the January 2020 regulation nationwide. The courts will determine which interim definition to use.

FIRST YEAR AND SUSTAINED ACTIONS

- ❖ Develop a sustainable, consistently applied definition that protects the nation’s waterways.
- ❖ Review and modify other regulations to improve water quality protection based on current science and legal validity.

Participants in the EPN Workgroup

Protecting the Nation's Waters Under the Clean Water Act

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