

Clean Water Act Permitting: Overview and Policy Issues

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The Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), is the principal federal law in the United States governing water pollution. To help achieve its goals, the statute prohibits the discharge of pollutants from any point source (e.g., a discrete conveyance such as a pipe) to waters of the United States (WOTUS) without a permit. The CWA also establishes two permitting programs that may be used to authorize certain discharges. These include the Section 402 National Pollutant Discharge Elimination System (NPDES) permitting program and the Section 404 permitting program for dredged or fill material.

NPDES permits are issued by states and the U.S. Environmental Protection Agency (EPA) for discharges of pollutants from point sources, such as municipal and industrial sources. These sources include wastewater treatment facilities, municipal stormwater collection systems, and a wide variety of industrial dischargers. Section 404 permits are issued primarily by the U.S. Army Corps of Engineers (USACE) and two states (Michigan and New Jersey) for discharges of dredged or fill material. Activities that may require a Section 404 permit include pipeline projects, water resource projects, mining projects, transmission line projects, or other development projects. Separate from, but related to permitting, CWA Section 401 requires a type of approval, called a *water quality certification*, for any federal permit or license that may result in a discharge to WOTUS. Although Section 401 water quality certifications are not permits, they are a type of approval required for some projects to move forward and have implications for issuance of some federal permits and licenses. Examples of activities that may require a CWA Section 401 water quality certification include activities requiring a USACE-issued CWA Section 404 permit, projects requiring USACE Rivers and Harbors Act permits, hydropower projects licensed by the Federal Energy Regulatory Commission (FERC), and certificates of public convenience and necessity issued by FERC.

The second Trump Administration has issued proposed regulations that, if finalized, would affect some aspects of CWA permitting and 401 certifications. EPA and USACE have issued a proposed rule and a proposed supplemental rule to update the definition of WOTUS. If finalized, the rule would likely narrow the scope of waters and wetlands considered WOTUS, and therefore subject to the CWA's permitting programs and water quality certification requirements. EPA has also issued a proposed rule to update the Section 401 implementing regulations, which, if finalized, would likely narrow the scope of what states may consider in issuing water quality certifications, among other changes. These changes could have implications for the issuance of certain federal licenses and permits, including Section 404 permits.

Many Members have shown interest in policy issues pertaining to CWA permitting—especially permitting reform—in recent Congresses. Congressional committees have held hearings that have included discussions of CWA permitting, and some Members have introduced legislation that either focuses specifically on CWA permitting or would amend CWA permitting within broader permitting reform bills. Of the over 50 bills introduced during the 119th Congress that propose to address some aspect of CWA permitting, more than half include changes to NPDES permitting, more than half include changes to Section 404 permitting, and over a quarter would make changes to Section 401 certification. A few of these bills propose changes to the scope of WOTUS.

Congress's interest in CWA permitting, as demonstrated through hearings and legislative efforts, can be grouped under a few broader policy areas: the balance of federal versus state authority for permitting-related programs and decisions; regulatory certainty; and timelines for permit issuance, particularly for certain energy, mineral, and other projects identified as being of national importance. Congress may consider proposing or supporting legislation that addresses these issues, may consider overseeing the Administration's ongoing regulatory efforts; may consider oversight of existing permitting processes generally, or specific to certain industries or project types; or may opt not to act and leave implementation of these issues to EPA, USACE, and states.

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Introduction

The Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), is the principal federal law in the United States governing water pollution.¹ Congress passed major amendments to the statute in 1972, which significantly reorganized and expanded it to establish a new framework for controlling water pollution.² Among the many revisions, the amendments set ambitious goals for water quality and established the basic structure for regulating pollutant discharges into the nation's surface waters.

The CWA's objective, as stated in the 1972 amendments, is “to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.”³ The CWA also established two goals: to eliminate the discharge of pollutants into navigable waters by 1985; and as an interim goal, wherever attainable, to achieve water quality that is “fishable” and “swimmable” by July 1, 1983.⁴ Although much progress has been made, those goals have not been met fully in many places. While those dates have long passed, the goals remain, and efforts to attain them continue.

To help achieve the CWA's objective and goals, the statute prohibits the discharge of pollutants from any point source (e.g., a discrete conveyance such as a pipe) to waters of the United States (WOTUS) without a permit.⁵ The CWA also establishes two permitting programs that may be used to authorize certain discharges. These are the Section 402 National Pollutant Discharge Elimination System (NPDES) permitting program and the Section 404 permitting program for dredged or fill material.⁶ NPDES permits are issued by 47 states and the U.S. Environmental Protection Agency (EPA) for discharges of pollutants from point sources, such as municipal and industrial sources. These sources include wastewater treatment facilities, municipal stormwater collection systems, and a wide variety of industrial dischargers. Section 404 permits are issued primarily by the U.S. Army Corps of Engineers (USACE) and two states (Michigan and New Jersey) for discharges of dredged or fill material. Activities that may require a Section 404 permit include pipeline projects, water resource projects, mining projects, transmission line projects, or other development projects.

In recent Congresses, some Members have shown interest in a wide range of policy issues pertaining to CWA permitting and reform. One issue of interest has been the definition of *waters of the United States* (WOTUS), which determines the scope of waters subject to the CWA's permitting provisions. Some Members have also sought to find ways to streamline the CWA permitting process to help expedite the approval of certain projects—including linear infrastructure and other projects that they assert are critical to national interests. Other policy topics related to CWA permitting that some Members have sought to address include permit term lengths; permit requirements for emerging contaminants such as per- and polyfluoroalkyl substances (PFAS); permit requirements for aerial discharges including pesticides and fire

¹ 33 U.S.C. §§1251 et seq.

² P.L. 92-500.

³ Clean Water Act (CWA) §101(a) [33 U.S.C. §1251(a)].

⁴ CWA §101(a) [33 U.S.C. §1251(a)]. *Fishable* and *swimmable* are the terms commonly used to reflect the goal that waters provide for the protection and propagation of fish, shellfish, and wildlife, as well as for recreation in and on the water.

⁵ CWA §301(a) [33 U.S.C. §1311(a)]. The CWA defines *point source* as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.” CWA §502(14) [33 U.S.C. §1362(14)].

⁶ 33 U.S.C. §§1342 and 1344.

suppressants; EPA’s authority to “veto” Section 404 permits approved by USACE; and state authority under CWA Section 401 to issue water quality certifications, which has implications for the issuance of some CWA permits.⁷ The Senate Environment and Public Works Committee and the House Transportation and Infrastructure Committee, Water Resources and Environment Subcommittee, each held hearings at the start of the 119th Congress that focused on permitting, including CWA permitting.⁸

This report provides an overview of CWA permitting, including the scope of CWA permitting and a summary of each of the CWA permitting programs. The report also summarizes congressional interest in CWA permitting, including a summary of the hearings and legislation in recent Congresses on this topic, and discusses policy options in this area.

Scope of CWA Permitting

Several CWA provisions and definitions establish the scope of discharges that require a permit under the statute. Broadly, CWA Section 301 specifies that the *discharge* of any *pollutant* by any person is unlawful without a permit.⁹ CWA Section 502, the statute’s definitions provision, defines several terms pertinent to the scope of this prohibition:

- *Discharge of a pollutant* means “any addition of any pollutant to navigable waters from any point source,” or “any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.”¹⁰
- *Pollutant* broadly includes “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”¹¹

⁷ Separate from, but related to permitting, CWA Section 401 requires a type of approval, called a *water quality certification*, for any federal permit or license that may result in a discharge to WOTUS. A water quality certification, issued by the state (or other certifying authority) in which the discharge originates, attests that the discharge will comply with applicable provisions of certain enumerated sections of the CWA (301, 302, 303, 306, 307) and may include consideration of other water quality requirements.

⁸ U.S. Congress, House Transportation and Infrastructure Committee, Water Resources and Environment Subcommittee, *America Builds: Clean Water Act Permitting and Project Delivery*, 119th Cong., 1st sess., February 11, 2025, H.Hrg. 119-6. U.S. Congress, Senate Environment and Public Works Committee, *Improving the Federal Environmental Review and Permitting Process*, 119th Cong., 1st sess., February 19, 2025, S.Hrg. 119-36.

⁹ 33 U.S.C. §1311.

¹⁰ 33 U.S.C. §1362(12). EPA published a proposed rule on September 4, 2026, to revise the regulatory definition of *discharge of a pollutant* in its NPDES regulations. EPA states that this action, when finalized, will align the regulations with the statutory text. The proposal would specify that a vessel or other floating craft that is not secured to the seabed does not require an NPDES permit to discharge pollutants to the contiguous zone or the ocean. Any vessel or other floating craft that is secured to the seabed would require an NPDES permit to discharge pollutants in those areas. EPA, “Updates to the National Pollutant Discharge Elimination System Definitions and Exclusions,” 91 *Federal Register* 56819, September 4, 2026.

¹¹ 33 U.S.C. §1362(6). The definition of *pollutant* also specifically exempts “(A) ‘sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces’ within the meaning of section 312 of this Act; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.”

- *Point source* means “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”¹² The CWA explicitly excludes agricultural stormwater discharges and return flows from irrigated agriculture from the definition of *point source*.¹³
- *Navigable waters* means “the waters of the United States, including the territorial seas.”¹⁴ The CWA does not further define the term *waters of the United States* (WOTUS). As discussed below, Congress’s intent as to the meaning of WOTUS has been debated and litigated for more than four decades.
- *Territorial seas*, for the purposes of the CWA, include the belt of seas extending three miles seaward of the ordinary low water mark.¹⁵
- *Contiguous zone*, for the purposes of the CWA, means the zone extending 9 miles seaward beyond the 3-mile territorial sea boundary.¹⁶
- *Ocean* broadly means “any portion of the high seas beyond the contiguous zone.”¹⁷

Taken together, the scope of the prohibition on discharges without a permit pertains to discharges of pollutants (defined broadly) from point sources (i.e., discrete conveyances) to WOTUS. The prohibition extends to the contiguous zone and the ocean for point sources other than vessels or other floating craft. Examples of such point sources include wastewater facilities with deep ocean outfalls, certain aquaculture operations, and certain offshore oil- and gas-development-related facilities.

As introduced above, the CWA establishes two permitting programs that may be used to authorize discharges. These are the Section 402 NPDES permitting program and the Section 404 permitting program for dredged or fill material. Each of these programs has their own specific scope of applicability.

- The CWA authorizes both EPA and states to issue NPDES permits.¹⁸ However, the CWA provision authorizing state NPDES permits applies only to WOTUS.¹⁹ The CWA authorizes EPA to issue NPDES permits in WOTUS as well as the contiguous zone and ocean.²⁰
- The Section 404 permitting program specifically authorizes USACE or states to issue permits for the discharge of dredged or fill material in WOTUS.²¹ The scope of the Section 404 permitting program does not extend to the contiguous zone or ocean.

¹² 33 U.S.C. §1362(14).

¹³ 33 U.S.C. §1362(14).

¹⁴ 33 U.S.C. §1262(7).

¹⁵ 33 U.S.C. §1362(8).

¹⁶ 33 U.S.C. §1362(9).

¹⁷ 33 U.S.C. §1362(10).

¹⁸ 33 U.S.C. §1342.

¹⁹ 33 U.S.C. §1342(b).

²⁰ 33 U.S.C. §§1342(a)(1), 1343.

²¹ 33 U.S.C. §1344.

The scope of waters included in the definition of WOTUS has been, and continues to be, a matter of debate. Because the CWA does not define WOTUS, USACE and EPA—the two agencies that administer the statute—have defined the term in regulations. For much of the past several decades, regulations promulgated by USACE and EPA in the 1980s have been in effect. However, Supreme Court rulings, stakeholder interest, and congressional interest prompted the last three presidential Administrations (the Obama Administration, the first Trump Administration, and the Biden Administration) to promulgate revised definitions of WOTUS. Each of these regulatory efforts prompted reactions from a variety of stakeholders with numerous groups filing lawsuits to challenge the rules. In addition, in 2023, the Supreme Court issued a decision construing WOTUS more narrowly than previous regulatory interpretations.²² EPA and USACE have since attempted to align the regulatory definition of WOTUS with the Court’s ruling.

In March 2025, the Trump Administration announced its intent to revise the definition of WOTUS again through new rulemaking.²³ On November 20, 2025, EPA and USACE published a proposed rule to revise the definition of WOTUS for public comment.²⁴ On September 9, 2026, EPA and USACE issued a supplemental proposed rule, which supplements the initial proposed rule with additional regulatory options on certain aspects of the proposed rule.²⁵ If finalized, the updated regulations would likely result in a narrower scope for WOTUS compared to the existing regulations, meaning that fewer waters and wetlands would be subject to CWA permitting requirements.²⁶

Given that the scope of WOTUS determines which waters are subject to CWA permitting requirements, the definition continues to be a key policy issue in the CWA permitting space. For more information on this issue, see CRS Report R47408, *Waters of the United States (WOTUS): Frequently Asked Questions About the Scope of the Clean Water Act*, by Kate R. Bowers and Laura Gatz.

National Pollutant Discharge Elimination System (NPDES) Permits

One of the two permitting programs authorized by the CWA is the NPDES permitting program. Under the CWA, one of the primary mechanisms to protect or improve surface water quality is to limit or prohibit discharges of pollutants in NPDES permits.²⁷ The following sections detail who needs an NPDES permit, who administers NPDES permits, how pollutant limitations in the permits are established, the types of NPDES permits and term lengths, permitting time frames, and information on monitoring and enforcement.

²² Sackett v. EPA, 598 U.S. 651 (2023).

²³ U.S. Environmental Protection Agency (EPA), “Administrator Zeldin Announces EPA Will Revise Waters of the United States Rule,” press release, March 12, 2025, <https://www.epa.gov/newsreleases/administrator-zeldin-announces-epa-will-revise-waters-united-states-rule>.

²⁴ EPA and U.S. Army Corps of Engineers (USACE), “Updated Definition of ‘Waters of the United States,’” 90 *Federal Register* 52498, November 20, 2025. The comment period for the rule closed on January 5, 2026.

²⁵ EPA and USACE, “Updated Definition of ‘Waters of the United States,’” 91 *Federal Register* 57284, September 9, 2026. The supplemental proposed rule has a 30-day comment period.

²⁶ EPA and USACE, “Updated Definition of ‘Waters of the United States,’” 90 *Federal Register* 52542, November 20, 2025. EPA and USACE, “Updated Definition of ‘Waters of the United States,’” 91 *Federal Register* 57297-57298, September 9, 2026.

²⁷ CWA §402 [33 U.S.C. §1342].

Who Needs an NPDES Permit?

Any person who discharges a pollutant from a point source to WOTUS needs an NPDES permit unless the activity is specifically exempt under Section 402.²⁸ This includes a wide range of potential dischargers—typically the owners or operators of a facility or activity subject to regulation under the NPDES program.²⁹ These facilities/activities include publicly owned treatment works (i.e., municipal wastewater treatment facilities), municipal separate storm sewer collection systems (MS4s), a wide range of industrial facilities that discharge wastewater and/or stormwater, construction activities that discharge stormwater, certain pesticide applications, and certain fire-retardant applications.³⁰ Any owner or operator of a point source other than a vessel or floating craft that discharges a pollutant into the contiguous zone or the ocean also needs an NPDES permit. The CWA identifies specific activities that do not require NPDES permits in Section 402(l).³¹

Who Administers NPDES Permits?

The CWA authorizes both EPA and delegated states to administer NPDES permits.³² States, territories, and tribes may administer their own NPDES permits if they seek and receive approval from EPA to assume the program.³³ Most states (47 states) and one territory (the U.S. Virgin Islands) are authorized to administer their own NPDES permits.³⁴ EPA administers NPDES permits in Massachusetts, New Hampshire, New Mexico, the District of Columbia, the remaining territories, on Indian lands, and on *Lands of Exclusive Federal Jurisdiction*.³⁵ EPA may also issue some NPDES permits in states that are authorized to administer NPDES permits, but do not have authorization for all NPDES program components. For example, some states do not have authorization to regulate federal facilities (e.g., military bases, national parks, federal lands) or do

²⁸ CWA §402(l) [33 U.S.C. §1342(l)] specifies that the following activities do not require an NPDES permit: agricultural return flows; stormwater runoff from oil, gas, and mining operations; and runoff from certain silviculture activities conducted in accordance with standard industry practice. Also, while the CWA does not require NPDES permits for nonpoint source discharges, the Supreme Court held in *County of Maui v. Hawaii Wildlife Fund* that an NPDES permit is required for a discharge to groundwater that was the “functional equivalent” of a direct discharge of pollutants from a point source into WOTUS. 590 U.S. 165 (2020). EPA issued guidance on applying the Court’s decision in January 2021, rescinded that guidance in September 2021, and published new draft guidance in 2023. EPA, “Implementing the Supreme Court’s Maui Decision in the Clean Water Act Section 402 National Pollutant Discharge Elimination System Permit Program,” 88 *Federal Register* 82891, November 27, 2023. The 2023 guidance was never finalized, and in September 2026, EPA issued a memo stating that it was rescinding the draft guidance. EPA, Assistant Administrator for Water, “Initial Review of EPA Office of Water Guidance Documents,” August 11, 2026.

²⁹ 40 C.F.R. Part 122.

³⁰ See EPA, “All NPDES Program Areas,” <https://www.epa.gov/npdes/all-npdes-program-areas>. Treatment works treating domestic sewage may also need an NPDES permit for biosolids use or disposal if they generate sewage sludge regulated under 40 C.F.R. Part 503.

³¹ 33 U.S.C. §1342(l).

³² CWA §402; 33 U.S.C. §1342.

³³ CWA §402(b) [33 U.S.C. §1342(b)] and 40 C.F.R. Part 123 establish the process for state assumption. Per CWA §502(3) [33 U.S.C. §1362(3)], *state* is defined to include a state, the District of Columbia, or any of the U.S. territories. Per CWA §518 (33 U.S.C. §1377), EPA is authorized to treat an Indian tribe as a state for certain sections of the CWA, including the sections pertaining to CWA permitting. To date, no tribe has assumed administration of an NPDES permitting program.

³⁴ EPA, “NPDES State Program Authority,” <https://www.epa.gov/npdes/npdes-state-program-authority>.

³⁵ *Lands of Exclusive Federal Jurisdiction* are lands in the U.S. where the federal government retains exclusive jurisdiction in relevant respects. Not all federal lands are *Lands of Exclusive Federal Jurisdiction*. Rather, exclusive federal jurisdiction is established only under limited circumstances pursuant to the Enclave Clause of the U.S. Constitution Article 1, Section 8, clause 17. Examples include some military installations and some national park lands.

not have an authorized biosolids (e.g., sewage sludge) program.³⁶ In such cases, EPA retains NPDES permitting authority for those program components.

As discussed above, delegated states issue NPDES permits for discharges to WOTUS in their states (including the territorial seas for coastal states). EPA may issue NPDES permits for discharges to WOTUS, as well as for certain discharges to the contiguous zone and the ocean.

Once a state assumes administration of its NPDES permitting program, the state is responsible for issuing permits as well as for monitoring and enforcement, although EPA also retains an oversight and enforcement role.³⁷ These aspects are discussed in more detail below.

How Are Permit Limitations Established?

When a state or EPA establishes effluent (i.e., discharge) limitations in a permit, it must consider limitations based on both the technology available to control the pollutants (i.e., technology-based effluent limitations) and what is needed to attain or maintain the water quality standards of the receiving waterbody (i.e., water-quality-based effluent limitations). The permitting authority must also consider antibacksliding requirements that aim to prohibit the renewal, reissuance, or modification of an existing NPDES permit that contains effluent limitations, permit conditions, or standards less stringent than those established in the previous permit.³⁸

Technology-Based Effluent Limitations (TBELs)

TBELs are specific numerical limits (i.e., maximum allowable levels of specific pollutants), or in some cases, best management practices, that represent the minimum level of control that must be established in a permit.³⁹ The CWA requires EPA to establish TBELs for various categories of point sources/dischargers.⁴⁰ Technology-based requirements consider the performance of specific technologies as well as economic achievability. These limits do not specify what technologies must be employed; rather, they establish the levels of specific pollutants that are allowable in the discharge based on the performance of technologies identified as representing specified levels of control (e.g., best available technology economically achievable, best conventional pollutant control technology). The CWA prescribes levels of control for various dischargers, as described below.

³⁶ EPA, “NPDES State Program Authority,” <https://www.epa.gov/npdes/npdes-state-program-authority>; EPA, “NPDES State Program Authorization Information,” <https://www.epa.gov/npdes/npdes-state-program-authorization-information>.

³⁷ For example, CWA §402(d) [33 U.S.C. §1342(d)] requires states to notify EPA regarding permit applications and establishes a process by which EPA may object to a state’s issuance of a permit, in which case the permit may not be issued.

³⁸ There are exceptions to the antibacksliding prohibition, so where appropriate, the permitting authority conducts an antibacksliding analysis to determine the applicability based upon the circumstances for the permit. CWA §402(o) [33 U.S.C. §1342(o)]; 40 C.F.R. §122.44(l).

³⁹ CWA §301(b) [33 U.S.C. §1311(b)]. 40 C.F.R. §125.3.

⁴⁰ CWA §§301(b), 304(b), 306, 307 [33 U.S.C. §§1311(b), 1314(b), 1316, 1317].

EPA broadly classifies NPDES permittees as either (1) publicly owned treatment works (POTWs)⁴¹ or (2) non-POTWs, which include all other point sources and are also often called *nonmunicipal facilities* or *industrial facilities*.⁴²

The CWA requires POTWs to meet secondary treatment standards as determined by EPA.⁴³ Secondary treatment standards are based on performance data for POTWs that use physical and biological treatment to remove or control conventional pollutants.⁴⁴

As shown in **Figure 1**, the CWA requires industrial dischargers to achieve specified levels of control based on (1) whether a discharger directly or indirectly discharges into WOTUS (an indirect discharger discharges to a POTW for treatment prior to discharge into WOTUS), (2) whether the discharger is a new or existing source, and (3) the category of pollutant (conventional, toxic,⁴⁵ or nonconventional⁴⁶).⁴⁷

⁴¹ Per 40 C.F.R. §403.3(q), a *publicly owned treatment works* (POTW) is a treatment works as defined by CWA §212 [33 U.S.C. §1292], which is owned by a state or municipality, as defined by CWA §502(4) [33 U.S.C. §1362(4)]. The definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW. The term also means the municipality that has jurisdiction over the indirect discharges to and the discharges from the treatment works.

⁴² Non-POTWs include other point sources, such as industrial and commercial facilities, industrial stormwater, concentrated animal feeding operations, and vessel discharges. Federal facilities fall under the non-POTW source category. U.S. EPA, *NPDES Permit Writers' Manual*, EPA-833-K-10-001, 2010, https://www.epa.gov/sites/production/files/2015-09/documents/pwm_2010.pdf.

⁴³ CWA §301(b)(1)(B) [33 U.S.C. §1311(b)(1)(B)]. As directed by CWA §304(d)(1) [33 U.S.C. §1314(d)(1)], EPA promulgated secondary treatment standards for biochemical oxygen demand, [total] suspended solids, and pH. See 40 C.F.R. §133 for secondary treatment standards. The CWA and federal regulations allow adjustments to secondary treatment requirements for biochemical oxygen demand and total suspended solids for equivalent to secondary facilities, per 40 C.F.R. §133.105.

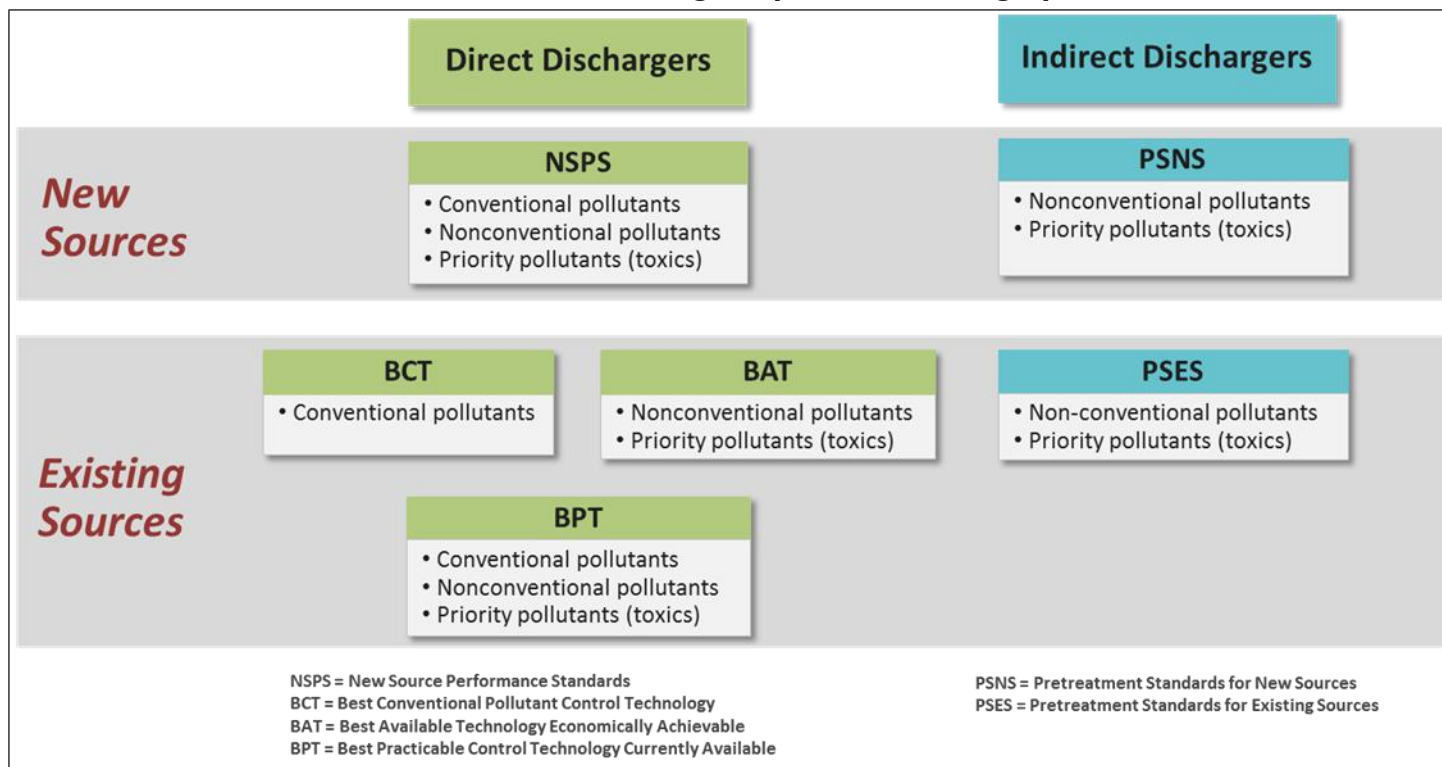
⁴⁴ CWA §304(a)(4) [33 U.S.C. §1314(a)(4)] designates biological oxygen demand, [total] suspended solids, fecal coliform, and pH as conventional pollutants. It also authorizes EPA to revise the list of conventional pollutants from time to time. EPA designated oil and grease as an additional conventional pollutant in 1979 (EPA, "Identification of Conventional Pollutants," 44 *Federal Register* 44501, 1979). The list of conventional pollutants is codified at 40 C.F.R. §401.16.

⁴⁵ Toxic pollutants include the 65 pollutants and classes of pollutants on EPA's Toxic Pollutant List. Section 307(a)(1) [33 U.S.C. §1317(a)(1)] directed EPA to adopt an initial list of toxic pollutants presented in Committee Print 95-30 of the House Committee on Public Works and Transportation. (U.S. Congress, House Committee on Public Works and Transportation, *Data Relating to H.R. 3199 (Clean Water Act of 1977)*, committee print, 95th Cong., November 1977, H.Prt. 95-30, pp. 3-4. This list included both individual chemicals and categories of chemical compounds. As presented in the legislative history, this initial list was negotiated between EPA and the Natural Resources Defense Council in *Natural Resources Defense Council v Train*. (U.S. Congress, House Committee on Public Works and Transportation, Subcommittee on Investigations and Review, *Water Contamination by Toxic Pollutants: An Assessment of Regulation*, committee print, 95th Cong., September 1977, 95-26, p. 6.) The Toxic Pollutant List is codified at 40 C.F.R. §401.15. In 1977, EPA developed the Priority Pollutant List to make Toxic Pollutant List implementation more practical for water testing and regulatory purposes. The Priority Pollutant List includes individual chemicals, rather than groups of pollutants, for which EPA has published analytical test methods. Originally, the list included 129 pollutants. In 1981, when three pollutants were removed from the Toxic Pollutant List, they were also removed from the Priority Pollutant List. Accordingly, the Priority Pollutant List, codified at 40 C.F.R. §423, Appendix A, currently contains 126 pollutants.

⁴⁶ *Nonconventional pollutants* include any pollutants other than those identified as conventional or toxic pollutants.

⁴⁷ CWA §§301(b), 304(b), 306, 307 [33 U.S.C. §§1311(b), 1314(b), 1316, 1317].

Figure 1. Clean Water Act Technology Levels of Control Required for Industrial Dischargers by Pollutant Category



Source: CRS, based on CWA §§301, 304, 306, and 307.

Notes: EPA regulations define a *new source* as “any building, structure, facility, or installation from which there is or may be a ‘discharge of pollutants,’ the construction of which commenced: (a) after promulgation of standards of performance under CWA section 306 which are applicable to such source, or (b) after proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal” (40 C.F.R. §122.2).

An *existing source* is any source that is not a new source or a new discharger (40 C.F.R. §122.29 (a)(3)).

The CWA requires EPA to publish national regulations for industrial dischargers—called Effluent Limitation Guidelines and Standards (ELGs)—which set minimum standards for specific pollutants in industrial wastewater discharges based on the specified levels of control.⁴⁸ Since 1972, EPA has developed ELGs for 59 industrial categories.⁴⁹ For direct dischargers, states or EPA incorporate the limits established in ELGs into the NPDES permits they issue. For indirect dischargers, pretreatment standards established in ELGs to prevent pass through and interference at the POTW apply.⁵⁰

⁴⁸ CWA §§304(b), 306(b), 307(b)-(c) [33 U.S.C. §§1314(b), 1316(b), 1317(b)-(c)].

⁴⁹ 40 C.F.R. Chapter 1, Subchapter N, “Effluent Guidelines and Standards.” See also EPA, “Effluent Guidelines,” <https://www.epa.gov/eg>.

⁵⁰ The national pretreatment program is a component of the NPDES program, which involves federal, state, and local regulatory agencies. Local municipalities are mostly responsible for implementing and enforcing pretreatment requirements. EPA and states authorized to act as the approval authority for POTWs in their states may approve a POTW’s pretreatment program. If approved, the POTW is the control authority responsible for ensuring compliance with pretreatment standards. If a POTW does not have an approved pretreatment program, the control authority is the approved state authorized to act as the approval authority, or in unapproved states, the EPA. See 40 C.F.R. §403, “General Pretreatment Regulations for Existing and New Sources of Pollution.”

Water-Quality-Based Effluent Limitations

In cases where technology-based effluent limitations are not adequate to meet applicable water quality standards, permits also incorporate water-quality-based effluent limitations.⁵¹ Water-quality-based effluent limitations are specific limits established in a permit (numeric or narrative) that, if not exceeded in the discharge, allow for attainment of water quality standards in the receiving water.⁵² Water quality standards—established by states, territories, tribes, and EPA—define the desired condition or level of protection of a water body and what is needed to achieve or protect that condition.⁵³

A 2025 Supreme Court decision—*City and County of San Francisco, California v. EPA*—ruled that the CWA does not authorize EPA (or states) to impose what the Court called “end-result” provisions in NPDES permits.⁵⁴ Such “end-result” requirements condition a permittee’s compliance on the quality of the receiving water rather than on adherence to specific effluent limitations. Examples include certain narrative conditions added to permits to prohibit the permittee from creating nuisance conditions or causing or contributing to a violation of water quality standards in the receiving water body. Prior to the Supreme Court ruling, such provisions were commonly used by permit writers.⁵⁵ As a result of the ruling, permit writers will need to specify specific, measurable discharge limits, or will need to include specific actions a permittee must take to comply with its permit.

Types of NPDES Permits and Term Lengths

There are two main types of NPDES permits: individual permits and general permits. While both types include the same minimum components, these permits are used under different circumstances.⁵⁶ The CWA identifies some of the elements that must be included in NPDES permits and directed EPA to promulgate regulations establishing the minimum procedural requirements and elements of state NPDES programs.⁵⁷ EPA’s regulations outlining the NPDES permitting processes are codified at 40 C.F.R. Part 122. State-issued laws and regulations also identify the process and requirements for NPDES permits issued by each state.

⁵¹ CWA §302 (33 U.S.C. §1312); 40 C.F.R. §122.44(d).

⁵² 40 C.F.R. §122.44(d). Water-quality-based effluent limitations apply at the point of discharge, such as the end of the outfall pipe discharging into a water body.

⁵³ 40 C.F.R. §131.3(i)-(j). Water quality standards apply throughout the water body and reflect the maximum levels of specific pollutants that can be present in a water body and still allow that water body to meet its designated use. While CWA §303 (33 U.S.C. §1313) and EPA’s implementing regulations at 33 C.F.R. Part 131 establish a federal floor for water quality standards, as authorized by CWA §510 (33 U.S.C. §1370), states may develop more stringent water quality standards.

⁵⁴ 604 U.S. 704 (2025). For questions on this case, congressional clients may contact Kate R. Bowers, CRS Supervisory Attorney.

⁵⁵ “A Divided SCOTUS Invalidates Common Provisions of Clean Water Act Permits,” *National Law Review*, March 7, 2025, <https://natlawreview.com/article/divided-scotus-invalidates-common-provisions-clean-water-act-permits>.

⁵⁶ EPA, *NPDES Permit Writers’ Manual*, EPA-833-K-10-001, September 2010, p. 3-1, https://www.epa.gov/sites/default/files/2015-09/documents/pwm_2010.pdf (hereinafter EPA, *NPDES Permit Writers’ Manual*). The five minimum components include the cover page (permittee name, location, and discharge locations), effluent limitations, monitoring and reporting requirements, special conditions, and standard conditions.

⁵⁷ CWA §§402(b), 304(i)(2) [33 U.S.C. §§1342(b), 1314(i)(2)].

The processes for developing and issuing individual permits and general permits are similar, but there are some differences, as shown in **Figure 2**. The CWA limits NPDES permit terms for both individual and general permits to five years.⁵⁸

Individual Permits

EPA or states issue individual permits for a single discharger (or in rare cases to multiple co-permittees) to reflect site-specific conditions based on the discharger's operations and unique information provided in the permit application.⁵⁹ These individual permits are specifically tailored to an individual facility.⁶⁰

General Permits

EPA or states issue general permits for one or more categories or subcategories of dischargers with similar operations and types of discharges that can provide coverage to multiple dischargers.⁶¹ According to EPA, “when a large number of similar facilities require permits, a general permit allows the permitting authority to allocate resources in a more efficient manner and to provide more timely permit coverage than issuing an individual permit to each facility. In addition, using a general permit ensures consistent permit conditions for comparable facilities.”⁶² Once a general permit is issued, a discharger typically submits a Notice of Intent (NOI) to request coverage under the permit.⁶³ Some general permits, however, automatically cover some discharges without submission of a NOI.

⁵⁸ CWA §402(a)(3) and (b)(1)(B) [33 U.S.C. §1342(a)(3) and (b)(1)(B)]. Permits may be modified or revoked prior to the end of a permit term if certain criteria are met (40 C.F.R. §122.62).

⁵⁹ CWA §402(a)(3) and (b)(1)(B) [33 U.S.C. §1342(a)(3) and (b)(1)(B)]; 40 C.F.R. §122.46(a).

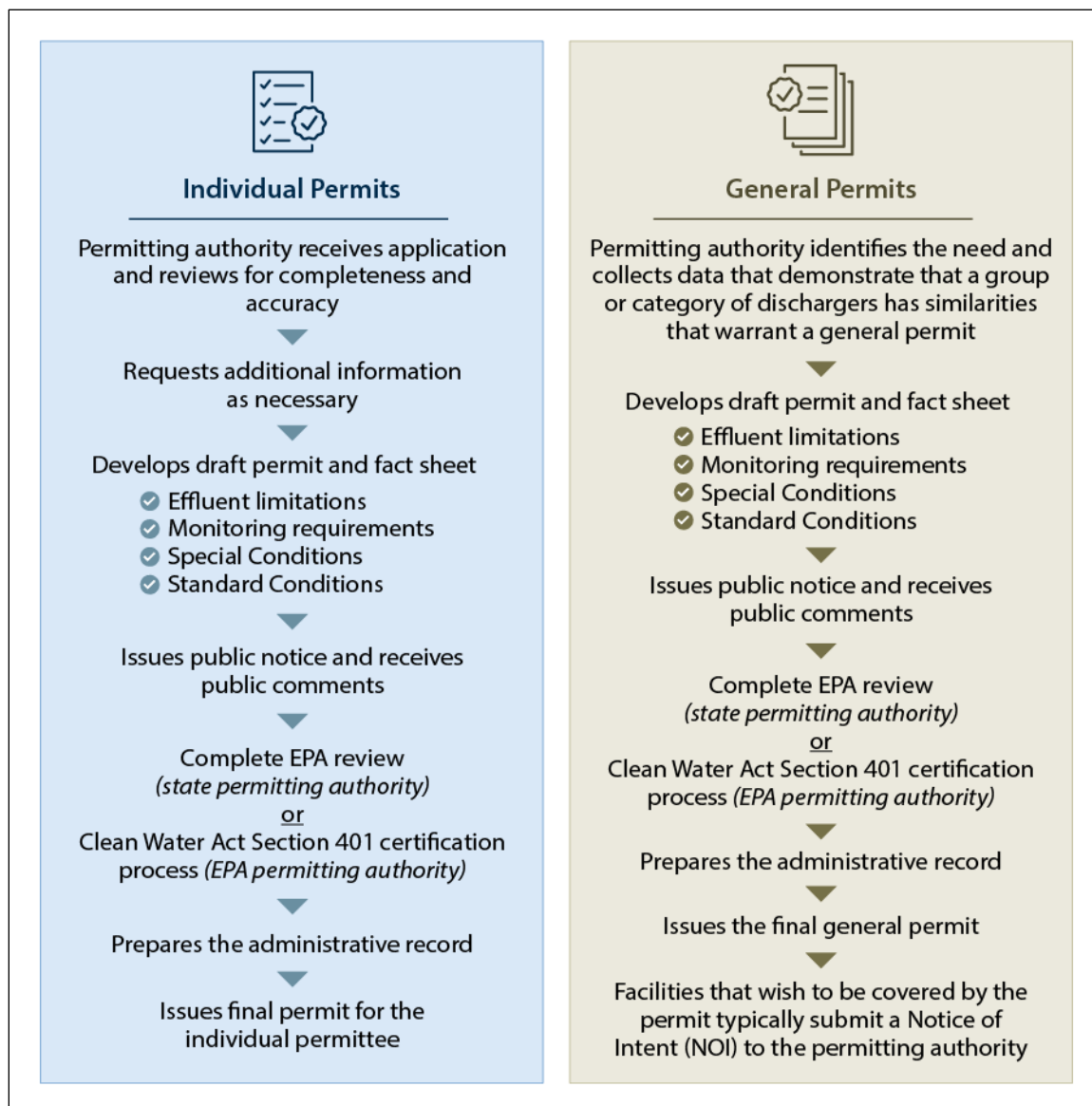
⁶⁰ EPA, “NPDES Permit Basics,” <https://www.epa.gov/npdes/npdes-permit-basics>.

⁶¹ EPA regulations at 40 C.F.R. §122.28 specify that a general permit may be used for stormwater point sources. A general permit may also be used for other categories of point sources when the sources “(A) involve the same or substantially similar operations; (B) discharge the same types of wastes or engage in the same types of sewage sludge use or disposal practices; (C) require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal; (D) require the same or similar monitoring; and (E) [the permitting authority determines the discharges] are more appropriately controlled under a general permit than under individual permits.”

⁶² EPA, *NPDES Permit Writers' Manual*, p. 3-2.

⁶³ EPA, *NPDES Permit Basics*, <https://www.epa.gov/npdes/npdes-permit-basics>.

Figure 2. Key Steps in Developing and Issuing Clean Water Act (CWA) National Pollutant Discharge Elimination System Individual and General Permits



Source: CRS, based on EPA, *NPDES Permit Writers' Manual*, EPA-833-K-10-001, September 2010, pp. 3-3 through 3-6, https://www.epa.gov/sites/default/files/2015-09/documents/pwm_2010.pdf.

Notes: If there is significant public interest during the public comment period, the permitting authority can hold a public hearing.

For more information on the state certification process under CWA Section 401, see CRS Report R46615, *Clean Water Act Section 401: Overview and Recent Developments*, by Laura Gatz and Kate R. Bowers.

While general permits typically require a discharger to submit a NOI to request coverage under the permit, some general permits do not require a NOI to obtain coverage.

Permitting Time Frames and the NPDES Permit Backlog

EPA recognizes the importance of timely issuance and reissuance of NPDES permits, noting that timeliness provides greater regulatory certainty to the business community and ensures that permits improve environmental protection by reflecting the most recent scientific information.⁶⁴ However, EPA and some states have permitting “backlogs” for both individual and general permits. EPA notes that it “continuously works to increase efficiencies in permitting processes to decrease the NPDES permit backlog and encourages authorized NPDES permit programs to do the same.”⁶⁵

EPA regulations require any person proposing a new discharge to apply for a permit at least 180 days before the discharge is to commence.⁶⁶ EPA considers applications for new EPA-issued permits that are not issued or denied within 365 days of receipt of the application to be backlogged.⁶⁷

Permittees that want to renew their permit must submit a complete application for permit renewal at least 180 days prior to their permit expiration date.⁶⁸ If the permitting authority receives the complete application but fails to reissue the permit prior to the expiration date, the permit is “administratively continued” and operates under the same terms and conditions until the new permit is issued.⁶⁹ EPA considers permits that are administratively continued for 180 days or more to be backlogged.⁷⁰

EPA tracks the NPDES permit backlog for both EPA-issued and state-issued permits, including individual and general permits.⁷¹ **Table 1** provides a summary of the NPDES permit backlog for individual existing permits as of October 1, 2025.⁷² EPA data also indicate that as of the same date, EPA had a backlog for new individual permits—10 for permits on Tribal land and 14 for other EPA-issued permits.⁷³ EPA’s NPDES backlog data do not provide information on the backlog for new state-issued individual permits. **Table 2** provides a summary of the NPDES permit backlog for general permits as of October 1, 2025, including data on the estimated number of facilities covered by the backlogged permits.

⁶⁴ EPA, “NPDES Program Management and Oversight,” <https://www.epa.gov/npdes/npdes-program-management-and-oversight#backlog>.

⁶⁵ EPA, “NPDES Program Management and Oversight,” <https://www.epa.gov/npdes/npdes-program-management-and-oversight#backlog>.

⁶⁶ 40 C.F.R. §122.21(c). Per the regulations, the permitting authority may allow a later submission date. The regulations require only 90 days prior to when construction commences for certain construction-related discharges.

⁶⁷ EPA, “NPDES Permit Basics: What is the NPDES Permit Backlog?” <https://www.epa.gov/npdes/npdes-permit-basics>.

⁶⁸ 40 C.F.R. §122.21(d).

⁶⁹ 40 C.F.R. §122.6.

⁷⁰ EPA, “NPDES Permit Basics: What is the NPDES Permit Backlog?” <https://www.epa.gov/npdes/npdes-permit-basics>.

⁷¹ EPA, “NPDES Permit Status Reports,” <https://www.epa.gov/npdes/npdes-permit-status-reports>.

⁷² According to EPA’s Permit Status Reports website, the agency updates the NPDES Permit Backlog reports annually.

⁷³ EPA, “NPDES Permit Status Reports,” <https://www.epa.gov/npdes/npdes-permit-status-reports>.

Table 1. National Pollutant Discharge Elimination System (NPDES) Individual Permit Backlog for Existing Permits

As of October 1, 2025

Permitting Authority	Universe of Permits ^a	Backlogged Permits ^b	Percent of Permits Considered Backlogged
EPA (on Tribal Land)	227	80	35.2%
EPA (Other)	772	311	40.3%
State	41,330	8,724	21.1%

Source: EPA, “NPDES Permit Status Reports,” <https://www.epa.gov/npdes/npdes-permit-status-reports>.

- a. Universe of permits includes all existing permits.
- b. EPA considers permits that are administratively continued for 180 days or more to be backlogged. Permits are administratively continued when a permittee submits a complete application for permit renewal at least 180 days prior to the permit expiration date, but the permitting authority fails to reissue the permit prior to the expiration date. EPA caveats its state backlog data to recognize that state permitting authorities may have their own definitions of *backlog*.

Table 2. National Pollutant Discharge Elimination System (NPDES) Existing General Permit Backlog

As of October 1, 2025

Permitting Authority	Universe of Permits ^a	Backlogged Permits ^b	Percent of Permits Considered Backlogged	Total Estimated Number of Facilities Covered Under General Permits	Estimated Number of Backlogged Facilities	Percent of Facilities Considered Backlogged
EPA	99	24	24.2%	17,357	557	3.2%
State	501	161	32.1%	176,730	44,785	25.3%

Source: EPA, “NPDES Permit Status Reports,” <https://www.epa.gov/npdes/npdes-permit-status-reports>.**Notes:** EPA caveats its state backlog data to recognize that state permitting authorities may have their own definitions of *backlog*.

- a. According to EPA, these numbers represent only a portion of the total EPA-issued and state-issued NPDES General Permit Covered Facility Universe. “For purposes of EPA’s backlog metrics for facilities covered by NPDES general permits, permits for which the exact universe of covered facilities is unknown or for which the universe is continually in flux are not included. These numbers are based on a combination of the ECHO dashboard located at https://edap.epa.gov/public/extensions/eRule_Phase2/eRule_Phase2.html, ICIS-NPDES data, data available online, and input from EPA regions and states.” (ICIS-NPDES is the Integrated Compliance Information System for NPDES.)
- b. EPA considers existing general permits to be backlogged if the permit is in need of reissuance but the permitting authority does not reissue the permit by or before 180 days after the expiration date. EPA caveats its state backlog data to recognize that state permitting authorities may have their own definitions of *backlog*.

Monitoring, Reporting, Inspections, and Enforcement

States, permitted entities, and EPA have roles in ensuring NPDES permit compliance. Monitoring to ensure compliance with NPDES permits includes both monitoring performed by the permittee as well as monitoring performed by the permitting authority (either the state or EPA) during

inspections. Authorized states and EPA also cooperatively enforce NPDES permitting requirements.

Permittee Monitoring and Reporting

NPDES permits specify the monitoring requirements the permittee must conduct to demonstrate compliance with permit limitations.⁷⁴ EPA's regulations require that NPDES permits specify the required monitoring including the type, intervals, and frequency sufficient to yield data representative of the monitored activity, and may include continuous monitoring when appropriate.⁷⁵ EPA regulations also require NPDES permits to specify reporting requirements, which are established on a case-by-case basis with a frequency dependent upon the nature and effect of the discharge. In most cases, permittees must report their monitoring results at least annually.⁷⁶ NPDES permits also include standard conditions that require the permittee to notify the permitting authority regarding any instances of noncompliance.⁷⁷ In 2015, EPA promulgated a regulation to require electronic reporting and sharing of NPDES information.⁷⁸ Since that time, EPA has worked with states to phase-in electronic reporting.⁷⁹

Inspections

The CWA also authorizes EPA or states to enter premises with permitted effluents, access records, inspect monitoring equipment, and sample effluents subject to CWA monitoring requirements.⁸⁰ EPA inspects NPDES-permitted facilities in states where the agency is the permitting authority as well as on Tribal lands.⁸¹ In states that administer their own NPDES permitting programs, the states take the lead on inspections. EPA retains inspection authority in states with NPDES program authorization and sometimes conducts inspections at the request of states (to support the state's own inspection efforts) and to respond to tips or complaints.⁸²

⁷⁴ The CWA (at CWA §308; 33 U.S.C. §1318) directs EPA to require owners and operators of point sources to monitor effluents, report monitoring results, establish and maintain records, and provide other information that the Administrator may reasonably require.

⁷⁵ 40 C.F.R. §§122.44(i), 123.25, and 122.48.

⁷⁶ Certain stormwater discharge permits may have less frequent reporting requirements but would still include requirements for an annual inspection of the facility and would require permittees to report all instances of noncompliance. See 40 C.F.R. §122.44(i)(4)-(5).

⁷⁷ Permittees must report any noncompliance that may endanger health or the environment in a short time frame (orally within 24 hours of the permittee becoming aware of the noncompliance, followed by a report within five days). Other noncompliance reporting is required when permittees submit monitoring reports. 40 C.F.R. §122.41(l)(6)-(7).

⁷⁸ EPA, "National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule," 80 *Federal Register* 64064, October 22, 2015. EPA split implementation of the NPDES eRule into two phases. In 2020, EPA published another rule, which extended the compliance deadline for implementation of Phase 2 of the eRule from December 2020 to December 2025. See EPA, "NPDES Electronic Reporting Rule - Phase 2 Extension," 85 *Federal Register* 69189, November 2, 2020.

⁷⁹ For more information on EPA's efforts to transition to electronic reporting, and the status of these efforts, see EPA, "NPDES eReporting," <https://www.epa.gov/compliance/npdes-e-reporting>.

⁸⁰ CWA §§308, 402(b)(2) [33 U.S.C. §§1318, 1342(b)(2)].

⁸¹ EPA, *NPDES Compliance Inspection Manual*, EPA Publication Number 305-K-17-001, January 2017, p. 3, <https://www.epa.gov/sites/default/files/2017-01/documents/npdesinspect.pdf>.

⁸² EPA, *NPDES Compliance Inspection Manual*, EPA Publication Number 305-K-17-001, January 2017, p. 3, <https://www.epa.gov/sites/default/files/2017-01/documents/npdesinspect.pdf>.

Enforcement⁸³

The CWA authorizes EPA and delegated states to use a range of enforcement tools—administrative, civil judicial, and criminal actions—to address noncompliance with NPDES requirements.⁸⁴ EPA retains enforcement authority in delegated states, although such states generally take the lead on enforcement.⁸⁵ EPA and states will sometimes undertake joint enforcement proceedings where violations of both federal and state law are alleged. EPA and states may seek voluntary compliance with violations or may use a range of tools authorized under CWA Sections 309 and 402. The CWA authorizes EPA and states to issue administrative compliance orders (e.g., to correct violations, comply with permit conditions or limitations) and assess administrative penalties.⁸⁶ The statute also provides judicial enforcement tools. EPA and states may seek civil judicial enforcement actions and penalties, as well as criminal judicial enforcement actions (e.g., fines, imprisonment, or both) for knowing or negligent violations.⁸⁷

Section 404 Dredge and Fill Permits

The other permitting program authorized under the CWA is the CWA Section 404 permitting program for the discharge of dredged or fill material into WOTUS.⁸⁸ Dredged material includes material dredged or excavated from waterbodies, such as coastal waters, lakes, rivers, and stream beds.⁸⁹ These materials can contain pollutants that may affect water quality when discharged into receiving waters or wetlands. Regardless of the presence of pollutants in the dredged material, when it is used to fill wetlands or other receiving waters for purposes of development, the discharge can negatively affect aquatic ecosystems and the functionality of wetlands, among other outcomes. Fill material—including rock, sand, soil, construction debris—may have similar consequences when used to fill wetlands or other receiving waters.⁹⁰

The following sections detail who needs a Section 404 permit, who administers Section 404 permits, the types of Section 404 permits and term lengths, the 404 permitting process, permitting time frames, and monitoring and enforcement.

Who Needs a Section 404 Permit?

Any person who discharges dredged or fill material into WOTUS needs a Section 404 permit, unless the activity is specifically exempt under Section 404(f).⁹¹ Examples of activities that may

⁸³ This section provides a brief overview of enforcement tools available to address noncompliance with NPDES permitting programs. For further information on enforcement, see CRS Report R48926, *Enforcement of Federal Pollution Control Laws*, by Cassandra J. Barnum, Kate R. Bowers, and Andrew S. Coghlan.

⁸⁴ CWA §§309, 402(b)(2) [33 U.S.C. §§1319, 1342(b)(2)].

⁸⁵ CWA §309 (33 U.S.C. §1319). EPA, *Principles and Best Practices for Oversight of State Implementation and Enforcement of Federal Environmental Laws*, February 17, 2023, <https://www.epa.gov/system/files/documents/2023-03/principles-and-best-practices-oversight-federal-environmental-programs-2023.pdf>.

⁸⁶ CWA §309(a) and (g) [33 U.S.C. §1319(a) and (g)].

⁸⁷ CWA §309(b)-(d) [33 U.S.C. §1319(b)-(d)].

⁸⁸ 33 U.S.C. §1344.

⁸⁹ 40 C.F.R. §232.2.

⁹⁰ 40 C.F.R. §232.2.

⁹¹ 33 U.S.C. §1344(f) specifies that discharges of dredged or fill material from certain activities are exempt from Section 404 permit requirements, including established (ongoing) farming, ranching, and silviculture activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or (continued...)

require a Section 404 permit include infrastructure development (e.g., highways, pipelines, utility lines), water resource projects (e.g., dams and levees), mining projects, or residential or commercial development.

Who Administers Section 404 Permits?

The CWA authorizes both the U.S. Army Corps of Engineers (USACE) and states to administer Section 404 permits.⁹² States, territories, and tribes may administer their own Section 404 permits if they seek and receive approval from EPA to assume the program.⁹³ In states that assume administration of their Section 404 permits, USACE retains authority over certain waters—generally those that are currently used, or capable of being used, for interstate or foreign commerce, as well as those subject to tidal ebb and flow and their adjacent wetlands.⁹⁴ Currently, two states—Michigan and New Jersey—are authorized to administer their own Section 404 permits.⁹⁵ Florida also previously had authority to administer its own program, which EPA approved in 2020.⁹⁶ However, a U.S. District Court vacated the approval in February 2024 on Endangered Species Act grounds.⁹⁷ A U.S. Court of Appeals upheld the vacatur in March 2026.⁹⁸ USACE administers Section 404 permits in the remaining states and territories and on Indian lands, as well as for activities in retained waters in Michigan and New Jersey.⁹⁹

The CWA also establishes distinct responsibilities for EPA in implementing Section 404. EPA is responsible for developing and interpreting policy, guidance, and environmental criteria to be used in evaluating permit applications.¹⁰⁰ Section 404(b) requires USACE to evaluate permit applications using guidelines developed by EPA, in conjunction with the USACE—commonly referred to as *404(b)(1) guidelines*.¹⁰¹ EPA also reviews and comments on individual permits and can elevate specific cases (i.e., request a higher level of review) using authority under Section 404(q) when the agencies do not agree.¹⁰² In addition, EPA has authority under Section 404(c) to

upland soil and water conservation practices; maintenance (but not construction) of drainage ditches; construction and maintenance of irrigation ditches; construction and maintenance of farm or stock ponds; construction and maintenance of farm and forest roads, in accordance with best management practices; and maintenance of structures such as dams, dikes, and levees. However, if one of these activities represents a new use of the water and the activity would result in a reduction in reach or impairment of flow or circulation of WOTUS, the activity is not exempt.

⁹² CWA §404(a), (g) [33 U.S.C. §1344(a), (g)].

⁹³ CWA §§404(g), 518(e) [33 U.S.C. §§1344(g), 1377(e)].

⁹⁴ CWA §404(g) [33 U.S.C. §1344(g)]. 40 C.F.R. §§233.2, 233.11(i).

⁹⁵ EPA, “Tribal and State 404 Assumption Efforts,” <https://www.epa.gov/cwa404g/tribal-and-state-section-404-assumption-efforts>.

⁹⁶ EPA, “EPA’s Approval of Florida’s Clean Water Act Section 404 Assumption Request,” 85 *Federal Register* 83553, December 20, 2020.

⁹⁷ *Ctr. for Biological Diversity v. Regan*, 734 F. Supp. 3d 1 (D.D.C. 2024). For questions on this case, congressional clients may contact CRS Legislative Attorney Cassandra Barnum.

⁹⁸ *Ctr. for Biological Diversity v. Zeldin*, 171 F.4th 356 (D.C. Cir. 2026). For further information, see CRS Legal Sidebar LSB11470, *ESA Section 7 Consultation and Cooperative Federalism*, by Cassandra J. Barnum.

⁹⁹ State assumption of the Section 404 program is limited to certain waters, as provided in CWA §404(g)(1) [33 U.S.C. §1344(g)(1)]. USACE retains authority over “those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto.”

¹⁰⁰ EPA, “Permit Program Under CWA Section 404,” <https://www.epa.gov/cwa-404/permit-program-under-cwa-section-404>.

¹⁰¹ The 404(b)(1) guidelines are codified at 40 C.F.R. Part 230.

¹⁰² CWA §404(q) [33 U.S.C. §1344(q)].

prohibit, deny, restrict, or withdraw the use of a specified area as a disposal site for dredged or fill material whenever the Administrator determines that the discharge will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.¹⁰³ This authority is commonly referred to as EPA “veto” authority. To date, EPA has issued final determinations under its 404(c) authority 14 times.¹⁰⁴

Types of Section 404 Permits, Term Lengths, and Permit Processes

Similar to NPDES permits, there are two main types of Section 404 permits: individual permits and general permits. However, in contrast to NPDES permits, there are multiple types of individual and general permits under Section 404, which have different permit terms. Section 404 establishes requirements for some aspects of the permits, and USACE and EPA have promulgated regulations to implement these requirements.¹⁰⁵ States with delegated authority also have their own state laws and regulations that apply to the permits they issue.¹⁰⁶

Individual Permits

USACE or states issue individual permits for individual projects or applicants, typically when the project’s discharge may cause more than minimal individual or cumulative impacts.¹⁰⁷ There are two types of individual permits: *standard individual permits* and *letters of permission* (LOPs). The term lengths for individual permits issued by USACE vary based on the project. If the discharge is of a more permanent nature, the permit may include timelines for completing the work or activity or may specify a date by which the work must be started.¹⁰⁸ If the discharge is of a temporary nature, the permit would include an expiration date.¹⁰⁹ The CWA limits permit terms for state-issued individual permits to five years.¹¹⁰

Standard Individual Permits

Standard individual permits authorize discharges following a comprehensive case-specific review, including a public notice period, public interest review, an option for a public hearing, activity-specific environmental documentation, and a 404(b)(1) guidelines analysis.¹¹¹ See **Figure 3** for a general overview of the procedure USACE uses to evaluate a standard individual permit application.

¹⁰³ CWA §404(c) [33 U.S.C. §1344(c)].

¹⁰⁴ EPA, “Clean Water Act Section 404(c) ‘Veto Authority,’” <https://www.epa.gov/sites/default/files/2016-03/documents/404c.pdf>.

¹⁰⁵ 33 U.S.C. §1344; EPA regulations are codified at 40 C.F.R. Parts 230-233. USACE regulations that pertain to Section 404 permits are codified at 33 C.F.R. Parts 320, 323, 325-328, and 330-332.

¹⁰⁶ EPA, “Tribal and State Section 404 Assumption Efforts,” <https://www.epa.gov/cwa404g/tribal-and-state-section-404-assumption-efforts>.

¹⁰⁷ 33 C.F.R. §323.2. See also USACE, “Regulatory Request System: Permitting,” <https://rrs.usace.army.mil/rrs/home/permitting>.

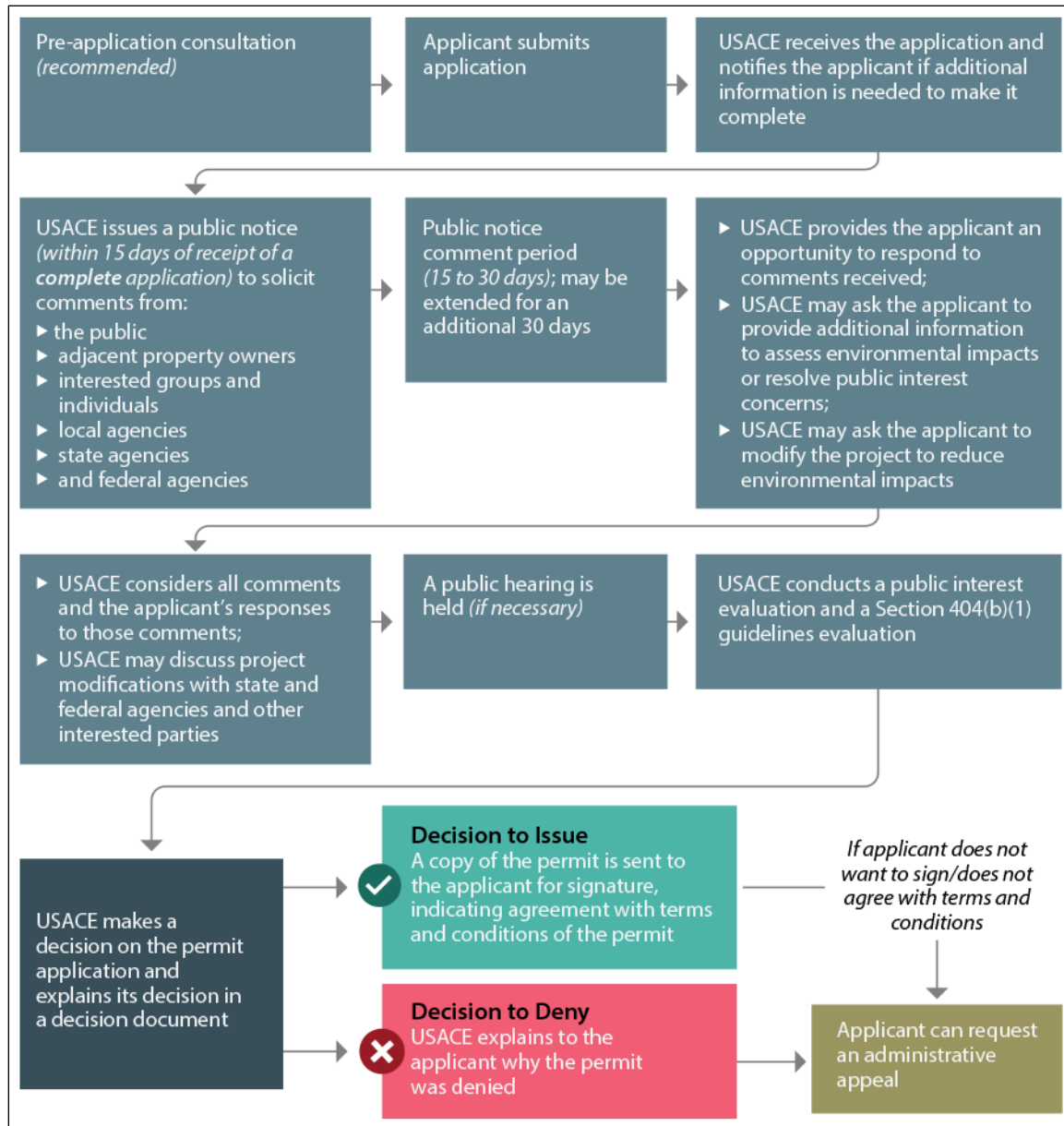
¹⁰⁸ 33 C.F.R. §325.6.

¹⁰⁹ 33 C.F.R. §325.6.

¹¹⁰ CWA §404(h) [33 U.S.C. §1344(h)].

¹¹¹ 33 C.F.R. §325.

Figure 3. Overview of the U.S. Army Corps of Engineers (USACE) Section 404 Permitting Process for Standard Individual Permits



Source: CRS analysis of USACE permitting process information at <https://rrs.usace.army.mil/rrs/home/permitting> and 33 C.F.R. Part 325.

If USACE is the permitting authority, the district engineer must comply with environmental procedures and documentation required under the National Environmental Policy Act (NEPA).¹¹² A decision on the permit application requires either an environmental assessment or an

¹¹² 33 C.F.R. §325(4); 42 U.S.C. §4332(C). A state-issued permit would not require compliance with NEPA. NEPA requires agencies to identify and evaluate the impacts of certain “major Federal actions significantly affecting the quality of the human environment.”

environmental impact statement unless the permitted activity is included within a categorical exclusion.¹¹³

Public interest reviews evaluate the probable impacts of the proposed activity to determine whether the activity is in the public interest. The review includes a careful weighing of a wide range of factors relevant to a particular permit application. These potential factors include conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and the needs and welfare of people.¹¹⁴

USACE and states also conduct *404(b)(1) guidelines evaluations* when considering whether to issue a standard individual permit. The fundamental principle of the criteria within the guidelines is that dredged or fill material should not be discharged into WOTUS unless it can be demonstrated that the discharge will not have unacceptable adverse impacts on those waters. The 404(b)(1) guidelines require the following determinations for permit issuance: (1) the project is the least environmentally damaging practicable alternative; (2) the project will not cause or contribute to the violation of applicable state or federal laws, such as water quality standards or the Endangered Species Act; (3) the project will not cause or contribute to significant degradation of WOTUS; and (4) any appropriate and practicable steps have been taken to minimize the adverse impacts of the project on wetlands and other waters.¹¹⁵

The 404(b)(1) guidelines aim to ensure that all appropriate and practicable steps are taken to avoid and minimize impacts to aquatic resources. For unavoidable impacts, the guidelines require *compensatory mitigation* to replace the loss of wetland, stream, and/or other aquatic resource functions.¹¹⁶ USACE (or the approved state authority) is responsible for determining the appropriate form and amount of required compensatory mitigation. Mitigation may include aquatic resource restoration, enhancement, establishment, and in certain circumstances, preservation.¹¹⁷ The 404(b)(1) guidelines specify what the USACE district engineer (or state authority) should consider when determining the required compensatory mitigation as well as the general requirements for compensatory mitigation.¹¹⁸

Letters of Permission

LOPs are a type of individual permit issued by USACE under a more expedited process when a USACE district determines that the proposed work is minor, would not have significant individual or cumulative impacts on the environment, and is unlikely to face substantial opposition.¹¹⁹ Applications that qualify for authorization under a letter of permission do not

¹¹³ 33 C.F.R. §325.2(a)(4).

¹¹⁴ 33 C.F.R. §320(a).

¹¹⁵ 40 C.F.R. §230.10.

¹¹⁶ 40 C.F.R. Subpart J.

¹¹⁷ 40 C.F.R. §230.93(a)(2).

¹¹⁸ 40 C.F.R. §230.93.

¹¹⁹ 33 C.F.R. §325.2(e)(1). See also USACE, “Regulatory Request System: Permitting,” <https://rrs.usace.army.mil/rrs/home/permitting>. USACE may use letters of permission (LOPs) under Section 404 after (1) the USACE district engineer, through consultation with federal and state fish and wildlife agencies, the EPA regional administrator, the state water quality certifying agency, and if applicable, the state Coastal Zone Management Agency, develops a list of categories of activities proposed for authorization under LOP procedures; (2) the district engineer issues a public notice (continued...)

require USACE to publish an individual public notice and are categorically excluded from NEPA (so do not require an environmental assessment or environmental impact statement).¹²⁰ However, USACE still must conduct a public interest evaluation and comply with other laws. USACE issues LOPs in the form of a letter, which includes details such as the permittee's information, project location, authorized work, time limits, general conditions, and any specific limitations or conditions applicable to the project.¹²¹

General Permits

USACE (and authorized states) may issue general permits for proposed activities that are similar in nature and will result in only minimal individual and cumulative adverse environmental effects.¹²² These permits, authorized under CWA Section 404(e), are issued on a nationwide, regional, or state basis for particular categories of activities.¹²³ The CWA limits general permit terms to no more than five years.¹²⁴

General permits are a key means by which USACE streamlines the requirements of its permitting process: they essentially preauthorize categories of activities USACE has identified as being similar in nature and causing only minimal environmental impacts. The issuance process for a general permit closely parallels the issuance process for individual permits, with a public notice, opportunity for a public hearing, and detailed decision documentation.¹²⁵ Once a general permit is issued, activities that qualify for the general permit may proceed, provided the terms and conditions of the general permit are met, without the project proponent having to obtain an individual, site-specific permit.

Many general permits require a NOI to seek coverage under the general permit (sometimes called a *preconstruction notification*, or PCN), USACE review of the proposed work, and USACE's written verification of compliance with the general permit before the project can commence.¹²⁶ However, in some cases, activities that qualify for a general permit can proceed without USACE's written confirmation if the permit applicants adhere to the terms and conditions of the permit.¹²⁷

Nationwide Permits

Nationwide permits (NWP) are general permits that authorize categories of similar activities on a nationwide basis.¹²⁸ USACE issues NWPs (along with general conditions and definitions for the

that includes the proposed list and LOP procedures, requests comments, and offers a public hearing; and (3) state approval requirements under CWA Section 401 and the Coastal Zone Management Act have been met.

¹²⁰ 33 C.F.R. §333.14(g)(1)(v).

¹²¹ USACE, "Regulatory Request System: Permitting," <https://rrs.usace.army.mil/rrs/home/permitting>.

¹²² CWA §404(e) and (g) [33 U.S.C. §1344(e) and (g)].

¹²³ 33 C.F.R. §325.5(c). USACE, "Regulatory Request System: Permitting," <https://rrs.usace.army.mil/rrs/home/permitting>.

¹²⁴ CWA §404(e)(2) [33 U.S.C. §1344(e)(2)].

¹²⁵ USACE Walla Walla District Regulatory Division, *Reference Guide for U.S. Army Corps of Engineers (Corps) Clean Water Act Section 404 & Rivers and Harbors Act Section 10 Permits*, 2024.

¹²⁶ USACE, "Regulatory Request System: Permitting," <https://rrs.usace.army.mil/rrs/home/permitting>.

¹²⁷ USACE, "Regulatory Request System: Permitting," <https://rrs.usace.army.mil/rrs/home/permitting>.

¹²⁸ 33 C.F.R. Part 330. USACE, "Regulatory Request System: Permitting," <https://rrs.usace.army.mil/rrs/home/permitting>. USACE division engineers can modify, suspend, or revoke NWPs in a particular region, or for a specific category of activities or waters [33 C.F.R. §330.5(c)]. USACE district engineers can modify, suspend, or revoke activity-specific NWP authorizations in their districts [33 C.F.R. §330.5(d)].

NWPs) through rulemaking, typically every five years. In January 2026, USACE reissued 56 existing NWPs (with some modifications) and issued one new NWP.¹²⁹ These NWPs went into effect on March 15, 2026. Examples of activities covered under NWPs, if they meet terms and conditions of the permit, are oil and natural gas pipeline activities, linear transportation projects, utility line activities, residential developments, commercial and institutional developments, agricultural activities, mining activities, and wetland and stream restoration activities.¹³⁰

To qualify for a NWP, a proposed activity must satisfy its terms and conditions.¹³¹ These aim to ensure the activity will not result in greater than minimal individual or cumulative adverse impacts. Some NWPs limit the acreage of WOTUS that may be impacted (e.g., no greater than ½ acre of impacts) or may limit discharges to only certain types of wetlands (e.g., allowing discharges only to nontidal wetlands).¹³² USACE has established 32 general conditions that apply to the NWPs. These conditions address a wide range of issues, including endangered species, water supply intakes, historic properties, tribal rights, coastal zone management, and navigation.¹³³

Regional General Permits

USACE district offices may issue regional general permits (RGPs) for their geographic area of regulatory jurisdiction. RGPs authorize specific activities within WOTUS that are typically common for that geographic area, are more minor in scope, and result in no more than minimal individual and cumulative impacts to WOTUS.¹³⁴

Programmatic General Permits

USACE may issue programmatic general permits (PGPs) to avoid duplication between existing state, local, or other federal agency programs that provide comparable aquatic resource protection.¹³⁵ State programmatic general permits (SPGPs) are a type of PGP that USACE districts may issue to a state for activities that are similar in nature and cause no more than minimal individual or cumulative impact and reduce regulatory duplication. While USACE remains the permitting authority, an SPGP allows the state to verify that an applicant qualifies for the federally issued permit.¹³⁶

¹²⁹ USACE, “Reissuance and Modification of Nationwide Permits,” 91 *Federal Register* 768, January 8, 2026.

¹³⁰ USACE, *2026 Nationwide Permits Final Action Summary Chart*, <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll9/id/3211>.

¹³¹ 33 C.F.R. §330.1(c).

¹³² USACE, *2026 Nationwide Permits Final Action Summary Chart*, <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll9/id/3211>.

¹³³ USACE, “Reissuance and Modification of Nationwide Permits,” 91 *Federal Register* 768, January 8, 2026.

¹³⁴ USACE, “Regulatory Request System: Permitting,” <https://rrs.usace.army.mil/rrs/home/permitting>.

¹³⁵ 33 C.F.R. §325.5(c)(3). USACE, “Regulatory Request System: Permitting,” <https://rrs.usace.army.mil/rrs/home/permitting>.

¹³⁶ Association of State Wetland Managers, “Assumption and State Programmatic General Permits: An Overview,” February 26, 2021, https://www.nawm.aswm.org/pdf_lib/assumption_webinar/assumption_and_spgp_overview_022621_downing.pdf.

Permitting Time Frames

According to USACE data, in FY2024, the agency issued 42,269 written authorizations (i.e., individual permits and general permit verifications).¹³⁷ Of these, 98% were authorized by more expedited forms of permits—either letters of permission or general permits (see **Table 3**).¹³⁸ USACE data for written authorizations do not account for all activities authorized by general permits; some authorized activities do not require notification to USACE prior to conducting the activity.¹³⁹

Table 3. U.S. Army Corps of Engineers Written Authorizations by Permit Type (FY2024)

Permit Type	Number of Written Authorizations Issued	Percentage of Total Written Authorizations Issued
Standard Individual Permit	981	2%
Letter of Permission	1,436	3%
Nationwide Permit	24,112	57%
Regional General Permit	12,059	29%
Programmatic General Permit	3,681	9%
Total	42,269	100%

Source: CRS and USACE, *Regulatory Impact Analysis for the Proposed 2026 Nationwide Permits, 2025*, <https://downloads.regulations.gov/COE-2025-0002-0056/content.pdf>. USACE indicates the source of its data as an Operations and Management Business Information Link Regulatory Module, Version 2 report run on November 25, 2024.

USACE data also indicate how long, on average, it takes the agency to evaluate the various permit types and issue a decision. **Table 4** summarizes USACE data showing the mean evaluation days and the mean total application days for each permit type. The mean evaluation days reflects the mean number of days it takes USACE to reach a permit decision after it receives a *complete* individual permit application, a complete NWP PCN, or a complete general permit verification request. The mean total application days reflects the mean number of days it takes USACE to reach a permit decision from the date the agency receives a permit application, NWP PCN, or general permit verification request (which may not be complete).

Table 4. U.S. Army Corps of Engineers Evaluation Times by Permit Type (FY2024)

Permit Type	Mean Evaluation Days ^a	Mean Total Application Days ^b
Standard Individual Permit	253	354
Letter of Permission	136	195
Nationwide Permit	55	112
Regional General Permit	44	74

¹³⁷ USACE, *Regulatory Impact Analysis for the Proposed 2026 Nationwide Permits, 2025*, <https://downloads.regulations.gov/COE-2025-0002-0056/content.pdf> (hereinafter “USACE, 2025 RIA”).

¹³⁸ USACE, 2025 RIA, p. 10.

¹³⁹ Appendix A of USACE’s 2025 RIA provides estimates of the numbers of nonreporting NWP activities where project proponents did not request written verifications that their proposed activities qualified for NWP authorization.

Permit Type	Mean Evaluation Days ^a	Mean Total Application Days ^b
Programmatic General Permit	35	47

Source: USACE, *Regulatory Impact Analysis for the Proposed 2026 Nationwide Permits*, 2025, <https://downloads.regulations.gov/COE-2025-0002-0056/content.pdf>. USACE indicates the source of its data as an Operations and Management Business Information Link Regulatory Module, Version 2 report run on November 25, 2024.

- a. Mean evaluation days reflects the mean number of days it takes USACE to reach a permit decision after it receives a complete individual permit application, a complete NWP PCN, or a complete general permit verification request.
- b. Mean total application days reflects the mean number of days it takes USACE to reach a permit decision from the date the agency receives a permit application, NWP PCN, or general permit verification request (which may not be complete).

Monitoring, Reporting, and Inspections

CWA Section 404 permits may include special conditions when necessary to satisfy legal requirements or ensure compliance with permit terms and conditions.¹⁴⁰ Such conditions may include monitoring, reporting, and inspection requirements. The specific monitoring that may be required depends upon the site-specific activity, but may include, for example, monitoring of wetlands, streams, or other aquatic resources to assess impacts from the discharge, monitoring to ensure that any compensatory mitigation measures are meeting performance standards, or water quality monitoring to assess effects on receiving waters.¹⁴¹ The permit may also require the permittee to submit periodic reports to USACE, which may detail the project's progress, compliance status, or any monitoring results.¹⁴² USACE permits also require that the permittee must allow USACE representatives to inspect the authorized activity at any time to ensure it is in compliance with the permit terms and conditions.¹⁴³

Enforcement¹⁴⁴

When USACE is the permitting authority, EPA and USACE share enforcement authority for Section 404.¹⁴⁵ The two broad categories of Section 404 violations are (1) failure to comply with a Section 404 permit's terms and conditions and (2) discharging dredged or fill material into WOTUS without a permit. EPA and USACE entered into a memorandum of agreement (MOA) regarding Section 404 enforcement roles in 1989.¹⁴⁶ Per this MOA, USACE has the lead on

¹⁴⁰ 33 C.F.R. §325.4.

¹⁴¹ 33 C.F.R. §325.4. 40 C.F.R. Part 230.

¹⁴² For example, LOPs include requirements for a report of completed work [33 C.F.R. §325.5(b)(2)]. Permitted activities requiring compensatory mitigation may require submission of monitoring reports to assess the progress in meeting performance standards (40 C.F.R. §230.96).

¹⁴³ Appendix A to Part 325, Title 33.

¹⁴⁴ This section provides a brief overview of CWA enforcement authorities for the Section 404 permitting program. For more detailed enforcement information, see CRS Report R48926, *Enforcement of Federal Pollution Control Laws*, by Cassandra J. Barnum, Kate R. Bowers, and Andrew S. Coghlan.

¹⁴⁵ EPA, "Enforcement Under CWA Section 404," <https://www.epa.gov/cwa-404/enforcement-under-cwa-section-404>. When a state is the permitting authority, the state is responsible for enforcement, but EPA may also take enforcement action in some cases.

¹⁴⁶ Department of the Army and EPA, *Memorandum between the Department of the Army and EPA: Federal Enforcement for the Section 404 Program of the Clean Water Act*, January 1989, <https://www.epa.gov/cwa-404/federal-enforcement-section-404-program-clean-water-act>.

USACE-issued permit violation cases. For unpermitted discharges, EPA and USACE determine the appropriate lead based on criteria in the MOA.

EPA and USACE may seek voluntary compliance with violations or may use a range of enforcement tools authorized under CWA Sections 309 and 404.¹⁴⁷ The CWA authorizes EPA and USACE to issue administrative compliance orders (e.g., to stop ongoing illegal discharges, remove illegal discharges, comply with permit conditions or limitations, and/or restore the site) and assess administrative civil penalties.¹⁴⁸ The statute also provides judicial enforcement tools. EPA and USACE may seek civil judicial enforcement actions and penalties, as well as criminal judicial enforcement actions (e.g., fines, imprisonment, or both) for knowing or negligent violations.¹⁴⁹

Clean Water Act Section 401

Separate from, but related to permitting, CWA Section 401 requires a type of approval, called a *water quality certification*, for any federal permit or license that may result in a discharge to WOTUS.¹⁵⁰ A water quality certification, issued by the state (or other certifying authority)¹⁵¹ in which the discharge originates, attests that the discharge will comply with applicable provisions of certain enumerated sections of the CWA (301, 302, 303, 306, 307) and may include consideration of other water quality requirements.¹⁵² Examples of activities that may require a CWA Section 401 water quality certification include activities requiring a USACE-issued CWA Section 404 permit, projects requiring USACE Rivers and Harbors Act permits, hydropower projects licensed by the Federal Energy Regulatory Commission (FERC), and certificates of public convenience and necessity issued by FERC.

A certifying authority may grant, grant with conditions, deny, or waive certification of proposed federal licenses or permits.¹⁵³ If a certifying authority grants a certification with conditions, those conditions must be included in the final license or permit.¹⁵⁴ If a certifying authority denies certification, the federal license or permit may not be granted.¹⁵⁵ If a certifying authority does not act on a certification request in a reasonable period of time (which per the statute is not to exceed one year), the certification is waived.¹⁵⁶

Although CWA Section 401 water quality certifications are not permits, their role in and effect on issuance of federal permits and licenses has attracted attention in permitting reform debates. Key areas of policy interest include time frames for issuing certifications, the scope of states'

¹⁴⁷ EPA, "Enforcement Under CWA Section 404," <https://www.epa.gov/cwa-404/enforcement-under-cwa-section-404>. CWA §§309 and 404 (33 U.S.C. §§1319 and 1344).

¹⁴⁸ CWA §§309(a) and (g); 404(s) [33 U.S.C. §§1319(a) and (g); 1344(s)].

¹⁴⁹ CWA §§309(b)-(d); 404(s) [33 U.S.C. §1319(b)-(d); 1344(s)].

¹⁵⁰ 33 U.S.C. §1341.

¹⁵¹ Per CWA §518 (33 U.S.C. §1377), EPA is authorized to treat an Indian tribe as a state for certain sections of the CWA including CWA §401 if the tribe meets certain statutory eligibility criteria. EPA acts as the certifying authority on tribal lands where the tribe has not been granted treatment as a state, as well as on federal lands with exclusive federal jurisdiction.

¹⁵² CWA §401 (33 U.S.C. §1341); 40 C.F.R. §§121.1(j) and 121.3.

¹⁵³ CWA §401 (33 U.S.C. §1341); 40 C.F.R. §121.7.

¹⁵⁴ CWA §401(d) [33 U.S.C. §1341(d)].

¹⁵⁵ CWA §401(a) [33 U.S.C. §1341(a)].

¹⁵⁶ CWA §401(a) [33 U.S.C. §1341(a)]. Per EPA implementing regulations for Section 401 (40 C.F.R. §121.6), the federal permitting or licensing agency and the certifying authority may jointly agree in writing to the reasonable period of time. If they do not agree, the default reasonable period of time is six months.

certification reviews, the scope of conditions states can impose when granting a certification, and enforcement roles for those conditions.

On January 15, 2026, EPA published a proposed rule to update the Section 401 implementing regulations.¹⁵⁷ If finalized, the rule would narrow the scope of what states may consider in their reviews and the scope of conditions they may attach to their certifications, among other changes.

For more information on CWA Section 401 and related policy issues, see CRS Report R46615, *Clean Water Act Section 401: Overview and Recent Developments*, by Laura Gatz and Kate R. Bowers

Congressional Interest—Hearings and Legislation in the 119th Congress

Many Members have shown interest in policy issues pertaining to CWA permitting—especially permitting reform—in recent Congresses. Congress has held hearings that have included discussion of CWA permitting, and some Members have introduced legislation that either focuses specifically on CWA permitting or would amend CWA permitting within broader permitting reform bills.

Hearings

In the beginning of the 119th Congress, the House Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, held a legislative hearing on CWA permitting—specifically to examine how Congress can ensure that the CWA “balances the goals of protecting water quality and ensuring project completion, reducing supply chain challenges, and promoting commerce.”¹⁵⁸ The Senate Environment and Public Works Committee also held a hearing early in the 119th Congress focused on examining ways to improve federal environmental review and permitting processes. While broader in scope, it included discussion of CWA permitting and proposed reforms.¹⁵⁹ Other hearings that included discussion of CWA permitting and proposed reforms were held by the House Committee on Energy and Commerce, Subcommittee on Energy, and the House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources.¹⁶⁰

Legislation

Some Members of Congress have also introduced legislation that proposes changes to different aspects of CWA permitting. As of October 14, 2026, Members introduced approximately 55 bills (including amendments) in the 119th Congress that would amend some aspect of CWA permitting

¹⁵⁷ EPA, “Updating the Water Quality Certification Regulations,” 91 *Federal Register* 2008, January 15, 2026. The public comment period closed on February 17, 2026.

¹⁵⁸ U.S. Congress, House Transportation and Infrastructure Committee, Water Resources and Environment Subcommittee, *America Builds: Clean Water Act Permitting and Project Delivery*, 119th Cong., 1st sess., February 7, 2025, H.Hrg. 119-6.

¹⁵⁹ U.S. Congress, Senate Environment and Public Works Committee, *Improving the Federal Environment Review and Permitting Process*, 119th Cong., 1st sess., February 19, 2025, S.Hrg. 119-36.

¹⁶⁰ U.S. Congress, House Energy and Commerce Committee, Energy Subcommittee, *Assuring Abundant, Reliable American Energy to Power Innovation*, 119th Cong., 1st sess., April 3, 2025, H.Hrg. 119-18. U.S. Congress, House Natural Resources Committee, Energy and Mineral Resources Subcommittee, *Restoring Energy Dominance: The Path to Unleashing American Offshore Energy*, 119th Cong., 1st sess., February 11, 2025, H.Hrg. 119-5.

(see **Table 5**). Some of these bills focus on one particular issue, such as permit terms or exemptions for specific activities from CWA permitting requirements. Other bills address multiple aspects of CWA permitting and/or propose broad-ranging reforms to federal permitting and reviews, with provisions targeting CWA permitting or reviews. **Table 5** summarizes CRS analysis of the CWA permitting-related legislation introduced in the 119th Congress. It lists each bill and identifies whether the bill includes provisions that would amend the term WOTUS (and therefore the scope of CWA permitting), Section 401 water quality certification, Section 402 NPDES permitting, and/or Section 404 permitting.

Although Section 401 water quality certifications are not permits, they are a type of approval required for some projects to move forward and have implications for issuance of some federal permits and licenses. Some Members of Congress and other stakeholders have discussed and targeted Section 401 water quality certifications in permitting reform debates—both CWA-specific debates and in the context of broader federal permitting reform. Accordingly, CRS analysis of CWA-related permitting reform bills includes discussion of Section 401.

Table 5. Analysis of Legislation Introduced in the 119th Congress to Amend Aspects of Clean Water Act (CWA) Permitting (Through October 14, 2026)

Bills and amendments (by date of introduction) identified by whether they include provisions to address the term *waters of the United States* (scope of permitting programs), Section 401 Water Quality Certifications, Section 402 National Pollutant Discharge Elimination System Permitting, and/or Section 404 Permitting for Discharges of Dredged or Fill Material

Bill or Amendment Number	Bill Name	Date of Introduction	Waters of the United States	CWA Section 401	CWA Section 402	CWA Section 404
H.R. 331 ^a	To amend the Aquifer Recharge Flexibility Act to clarify a provision relating to conveyances for aquifer recharge purposes	January 13, 2025		X	X	X
H.R. 1311	Stop the Delta Tunnel Act	February 13, 2025				X
S. 795	Farmers Freedom Act of 2025	February 27, 2025	X			
H.R. 1938	Department of Defense PFAS Discharge Prevention Act	March 6, 2025			X	
H.R. 2030	Maintaining Cooperative Permitting Act of 2025	March 11, 2025				X
S. 1014	Maintaining Cooperative Permitting Act of 2025	March 13, 2025				X
H.R. 2093	To amend the Federal Water Pollution Control Act with respect to permitting terms, and for other purposes	March 14, 2025			X	
S. 1254	A bill to amend the Aquifer Recharge Flexibility Act to clarify a provision relating to conveyances for aquifer recharge purposes	April 2, 2025		X	X	X
S. 1355	Revising and Enhancing Project Authorizations Impacted by Review (REPAIR) Act of 2025	April 8, 2025		X	X	X
H.R. 2783	Infrastructure Project Acceleration Act	April 9, 2025				X
H.R. 3041	Regulatory Integrity for Gulf Energy Development (RIGED) Act of 2025	April 28, 2025			X	
H.R. 3300	Forest Protection and Wildland Firefighter Safety Act of 2025	May 8, 2025			X	
S. 1672	Forest Protection and Wildland Firefighter Safety Act of 2025	May 8, 2025			X	

Bill or Amendment Number	Bill Name	Date of Introduction	Waters of the United States	CWA Section 401	CWA Section 402	CWA Section 404
H.R. 3479	Safeguarding Essential Cables through Undersea Risk Elimination (SECURE) American Telecommunications Act	May 19, 2025		X	X	X
H.R. 3668 ^a	Improving Interagency Coordination for Pipeline Reviews Act	June 2, 2025		X		
H.R. 3824	Reducing Regulatory Burdens Act of 2025	June 6, 2025			X	
H.R. 3901	Jurisdictional Determination Backlog Reduction Act	June 11, 2025				X
H.R. 3898 ^a	Promoting Efficient Review for Modern Infrastructure Today (PERMIT) Act	June 11, 2025	X	X	X	X
H.R. 3897	Confidence in Clean Water Permits Act	June 11, 2025			X	
H.R. 3928	Improving Water Quality Certifications and American Energy Infrastructure Act	June 11, 2025		X		
H.R. 3899	Clarifying Federal General Permits Act	June 11, 2025			X	
H.R. 3927	Nationwide Permitting Improvement Act	June 11, 2025				X
H.R. 3934	Water Quality Standards Attainability Act	June 11, 2025			X	
H.R. 3902	Restoring Federalism in Clean Water Permitting Act	June 11, 2025				X
H.R. 3935	Reducing Permitting Uncertainty Act	June 11, 2025				X
H.R. 3905	Judicial Review Timeline Clarity Act	June 11, 2025				X
H.R. 4135	To encourage States to participate with the Federal Permitting Improvement Steering Council's online dashboard for certain covered projects	June 25, 2025		X	X	X
S. 2226	Necessary Environmental Exemptions for Defense Act	July 9, 2025		X	X	X
H.R. 4705	Appalachian Communities Health Equity (ACHE) Act of 2025	July 23, 2025			X	X
S. 2472	Department of Defense PFAS Discharge Prevention Act	July 28, 2025			X	
H.R. 4879	Emergency Rural Water Response Act of 2025	August 5, 2025			X	
H.R. 6090	Focused Reduction of Effluence and Stormwater runoff through Hydrofracking Environmental Regulation (FRESHER) Act of 2025	November 18, 2025			X	

Bill or Amendment Number	Bill Name	Date of Introduction	Waters of the United States	CWA Section 401	CWA Section 402	CWA Section 404
S. 3316	Water Authority and Timely Environmental Review (WATER) Act of 2025	December 3, 2025				X
H.R. 6693	Streamlining Authorizations for Listed At-risk Marine and Aquatic Natural Disaster Emergency Resources (SALAMANDER) Act	December 12, 2025				X
H.R. 7329	Fighting for Reliable Energy and Ending Doubt for Open Markets (FREEDOM) Act	February 3, 2026				X
H.R. 7543	Plastic Pellet Free Waters Act	February 12, 2026			X	
H.R. 7567	Farm, Food, and National Security Act of 2026	February 13, 2026			X	
H.R. 8037	Protect American AI Act of 2026	March 24, 2026			X	X
S. 4181	Plastic Pellet Free Waters Act	March 24, 2026			X	
H.R. 8308	Create Expedited Reviews to Transform American Infrastructure Now (CERTAIN) Act	April 15, 2026				X
S. 4300	Jurisdictional Oversight and Adjudication for Natural Gas (JOAN) Act	April 15, 2026		X		
S. 4475	Unlock American Energy and Jobs Act of 2026	April 30, 2026		X		X
H.R. 9017	Restore Florida Water Independence Act of 2026	May 22, 2026				X
H.R. 9171	Department of the Interior, Environment, and Related Agencies Appropriations Act, 2027	June 5, 2026				X
S. 4755	Dredging to Ensure the Empowerment of Ports (DEEP) Act	June 11, 2026		X		X
S. 4795	Fighting for Reliable Energy and Ending Doubt for Open Markets (FREEDOM) Act	June 16, 2026				X

Bill or Amendment Number	Bill Name	Date of Introduction	Waters of the United States	CWA Section 401	CWA Section 402	CWA Section 404
S.Amdt. 5945 to S. 4784	S.Amdt. 5945 to S.4784, An original bill to authorize appropriations for fiscal year 2027 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes	June 23, 2026		X	X	X
S. 4944	American Energy and Mineral Infrastructure Act of 2026	June 24, 2026		X	X	X
S. 4956	Farmers and Ranchers Relief Act of 2026	July 13, 2026				X
H.R. 9838	National Security Interstate Pipeline Act	July 22, 2026		X	X	X
H.R. 9855	Certainty and Uniform Reviews for Reliable Energy and Transmission (CURRENT) Act	July 22, 2026		X		
S. 5262	Defense of Environment and Property Act of 2026	August 5, 2026	X			
S.Amdt. 6812 to S.4668	S.Amdt. 6812 to S.4668, the Protect College Sports Act of 2026	September 22, 2026		X	X	X
S. 5588	Ecological Restoration Project Permitting Act of 2026	September 29, 2026				X
S. 5653	Bipartisan American Affordability and Jobs Act (BAAJA) of 2026	September 30, 2026	X	X	X	X
55 Bills			4	18	29	34

Source: CRS analysis of legislation introduced in the 119th Congress, from Congress.gov.

Notes: CRS searched for legislation in the 119th including the terms *Federal Water Pollution Control Act* and *permit*, as well as *Federal Water Pollution Control Act* and *waters of the United States*. CRS read and analyzed bills to determine relevance.

a. Denotes bills passed in the House.

WOTUS-Related Legislation

Three of the bills introduced during the 119th Congress (S. 795, H.R. 3898, and S. 5262) would amend the statutory definition of *navigable waters* to provide a new definition of the term or specify and/or clarify certain exclusions from the scope of WOTUS. One bill (S. 5653) would specify the judicial review provision applicable to regulations defining the scope of WOTUS.

Section 401-Related Legislation

Over a quarter of the bills introduced during the 119th Congress that propose to address some aspect of CWA permitting would make changes to some aspect of CWA Section 401 and/or the CWA Section 401 water quality certification process.

Some of these bills would amend Section 401 directly to address policy issues such as the scope of what states may consider in making certification determinations; the scope of what conditions they may include when granting certifications with conditions; the enforcement roles of federal agencies versus states; the timelines associated with certifications; and/or judicial review for 401 certifications (e.g., H.R. 3928, H.R. 3898, S. 4475, S. 4755, S. 4944, H.R. 9855, S. 5653).

Some bills (e.g., H.R. 3668, S. 4300, S. 4944, S.Amdt. 5945) would exempt certain projects (i.e., certain pipeline projects requiring authorizations under the Natural Gas Act) from 401 certification requirements. These bills would instead designate the state that would have been the 401-certifying authority as a participating agency in any FERC-led National Environmental Policy Act review process.

Section 402-Related Legislation

More than half of the bills introduced during the 119th Congress that propose to address some aspect of CWA permitting would make changes to CWA Section 402 NPDES permitting. Some of these bills would extend permit term limits from 5 years to 10 years (e.g., H.R. 2093, H.R. 3898, S. 4944, S.Amdt. 5945, S. 5653). Some would formally authorize the use of general permits under CWA Section 402 (which EPA and states already use in practice) and/or would specify requirements for instances when either a general permit expires before a new one is issued or if EPA decides not to issue a new one (e.g., H.R. 3041, H.R. 3898, H.R. 3899, S. 4944, S.Amdt. 5945).

Several bills would exempt certain activities from Section 402 permitting requirements. Examples include exemptions for certain pesticide discharges (e.g., H.R. 3824, H.R. 3898); aerial discharges of products used for fire control and suppression (e.g., H.R. 3300, H.R. 3898, S. 1672, H.R. 7567); and discharges from portable water treatment and filtration facilities following certain disaster or emergency declarations (H.R. 4879). One bill would remove an existing Section 402 permitting exemption for certain discharges of stormwater runoff from oil, gas, and mining operations (H.R. 6090).¹⁶¹

Two bills (H.R. 3897 and H.R. 3898) would specify what it means to be in compliance with a Section 402 permit with respect to a discharge for which an effluent limitation is not included in the permit. These proposed changes may help clarify whether a permittee is in compliance with a permit when emerging contaminants, such as per- and polyfluoroalkyl substances (PFAS), might be present in the discharge, but no effluent limits are specified in the permit. Both bills would also require that if permitting authorities include water-quality-based effluent limitations in permits,

¹⁶¹ The existing permitting exemption is codified at CWA §402(l)(2) [33 U.S.C. §1342(l)(2)].

they must specify the pollutant subject to the limitation and clearly describe how the limitation may be achieved.

A few bills would make changes to how state water quality standards (H.R. 3934, H.R. 3898) water quality criteria (H.R. 3898, S. 5653), and/or technology-based effluent limits (H.R. 3898) are established, which all have implications for limitations that may be included in NPDES permits. Two other bills (H.R. 7543 and S. 4181) would require EPA to establish ELGs for certain industrial categories associated with plastic manufacturing, prohibit the discharge of plastic pellets or other preproduction plastic materials, and require that NPDES permits reflect the prohibition.

A few bills would address aspects of judicial review with relation to NPDES permitting (e.g., H.R. 8037, S. 1355, S. 2226).

Section 404-Related Legislation

More than half of the bills introduced during the 119th Congress that propose to address some aspect of CWA permitting would make changes to CWA Section 404 permitting. Several of these bills would address aspects of judicial review with relation to CWA Section 404 permitting (e.g., H.R. 2783, H.R. 3898, H.R. 3902, H.R. 3905, H.R. 7329, H.R. 8037, S. 1355, S. 2226, S. 4475, S. 4944, S.Amdt. 5945, S. 5653).

Several bills would make a variety of changes to USACE's NWP. For example, some bills would amend the CWA to require that USACE maintain certain NWPs; maintain certain definitions and conditions related to those NWPs; and/or specify what acreage of impacts to WOTUS is considered a minimal adverse impact (H.R. 3898, H.R. 3927, S. 4475, S. 4944, S.Amdt. 5945, S. 5653). Other bills require USACE to establish new NWPs for certain activities (e.g., H.R. 3479, S. 4755).

Several bills would amend CWA Section 404(c) to narrow the time frame during which EPA may use its 404(c) "veto" authority (e.g., H.R. 3898, H.R. 3935, S. 4475, S. 4944, S.Amdt. 5945, S. 5653) or remove EPA's "veto" authority for certain permits (e.g., S. 4755).

Several bills would address aspects of the state assumption process for CWA Section 404 permitting programs. Some would require the Administrator to review EPA regulations applicable to the approval of state permit programs under Section 404 to identify opportunities to streamline the process and reduce administrative burdens and/or add a new timeline for the assumption process (e.g., H.R. 3898, H.R. 3902). Some would ratify and approve the two existing Section 404 state permitting programs for Michigan and New Jersey as well as the Florida program (which was vacated); require an act of Congress to withdraw them; and require the EPA Administrator to approve "comparable" state programs (e.g., H.R. 2030, H.R. 3898, S. 1014). Other bills would more narrowly make changes to approve Florida's program (H.R. 9017, H.R. 9171).

Several bills would extend permit term limits from 5 years to 10 years for general permits issued under Section 404 (e.g., H.R. 3898, H.R. 3927, S. 4475, S. 4944, S.Amdt. 5945, S. 5653). S. 4755 would extend the permit term limit to 10 years for a new NWP the bill requires for certain dredging projects.

Some bills would establish certain permitting deadlines for Section 404 permits (e.g., H.R. 7329, H.R. 8308, S. 4795) or require USACE to expedite procedures and reallocate or augment personnel and resources needed to eliminate backlogs of 404 permit applications and

jurisdictional determination requests (e.g., H.R. 3898).¹⁶² Other bills would exempt certain activities from Section 404 permitting requirements (e.g., H.R. 2783, S. 1254, S. 2226) or authorize the President to waive compliance with CWA permitting requirements, including Section 404, for certain pipeline projects (H.R. 9838).

Policy Issues and Options for Congress

Congress's interest in CWA permitting, as demonstrated through hearing discussions and legislative efforts, can be grouped under a few broader policy areas: the balance of federal versus state authority for permitting-related programs and decisions; regulatory certainty; and timelines for permit issuance, particularly for certain energy, mineral, and other projects identified as being of national importance.

Federal Versus State Authority

Cooperative federalism—a model in which federal and state governments collaborate and share responsibilities in governing—is a core principle of the CWA. Section 101(b) states that “it is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter.”¹⁶³ The statute aims to balance the goals of preserving states' sovereignty over their waters with the need for national consistency in regulations. Section 510 provides that the CWA's requirements generally set a floor above which individual states may impose more stringent requirements.¹⁶⁴ Stakeholders, as well as some Members of Congress, have often debated the appropriate balance between federal and state authority on certain elements of the CWA. Two such elements include the scope of waters subject to federal jurisdiction under the CWA (i.e., which waters are considered WOTUS) and the scope of states' water quality certification authority under Section 401.

With respect to WOTUS, some Members of Congress and stakeholders (including industry groups, agricultural stakeholders, and some states) argue for a narrower definition of WOTUS, under which a narrower scope of waters would be subject to the CWA's federal regulations and permitting programs. Some of these stakeholders point to the CWA Section 101(b) goal and its aim to ensure that states have primary responsibilities and rights to manage their water resources.¹⁶⁵ Some of these stakeholders also reason that states are able to regulate nonjurisdictional waters through their own state laws, noting that some states have already done so.¹⁶⁶ Other stakeholders (including environmental groups and some states) and Members of

¹⁶² *Jurisdictional determinations* are USACE determinations that a wetland or waterbody is a WOTUS and subject to regulatory jurisdiction under CWA Section 404.

¹⁶³ CWA §101(b) [33 U.S.C. §1251(b)].

¹⁶⁴ 33 U.S.C. §1370.

¹⁶⁵ See, for example, Comment letter from states of West Virginia, North Dakota, Georgia, Iowa, Alabama, Arkansas, Florida, Indiana, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Ohio, Oklahoma, South Carolina, Virginia, and the Arizona Legislature on *WOTUS Notice: The Final Response to SCOTUS; Establishment of a Public Docket; Request for Recommendations*, April 23, 2025, EPA-HQ-OW-2025-0093. See also EPA, “What They Are Saying: Leaders Throughout the Country Applaud EPA's Proposal to Clearly Define Definition of Waters of the United States,” press release, November 19, 2025, <https://www.epa.gov/newsreleases/what-they-are-saying-leaders-throughout-country-applaud-epas-proposal-clearly-define>.

¹⁶⁶ See EPA and USACE, *Regulatory Impact Analysis for the Proposed Updated Definition of Waters of the United States Rule*, November 2025, pp. 33-34, https://www.epa.gov/system/files/documents/2025-11/11132.1-01-ow_wotus_nprm_ria_20251110_508.pdf.

Congress argue for a broader definition of WOTUS, under which a broader scope of waters would be subject to the CWA's federal regulations and permitting programs. Some of these stakeholders contend that a more inclusive definition of WOTUS would ensure more consistent federal protections and argue that the interconnected nature of water necessitates a minimum federal standard for most waters.¹⁶⁷ Some stakeholders also argue the broader scope is needed because some states have laws restricting their ability to be more stringent than federal regulations and/or may not have the resources needed to effectuate a program to regulate nonjurisdictional waters.¹⁶⁸

Regarding Section 401, stakeholders and some Members of Congress continue to debate the appropriate balance of cooperative federalism in the state water quality certification process. Some stakeholders (including industry groups and some states) and some Members of Congress argue for a narrower scope of what states can consider in their certification reviews and a narrower scope of what conditions may be included in a grant of certification. Stakeholders arguing for a narrower scope often contend that states are sometimes considering impacts beyond the intent of the CWA and are leading to delays in projects, some of which they contend are nationally important projects.¹⁶⁹ As discussed above, some stakeholders and Members of Congress have additionally proposed eliminating the CWA Section 401 water quality certification requirements for certain authorizations under the Natural Gas Act and further narrowing the state role in reviewing the water quality impacts of such projects to a participating agency in a federally led process.¹⁷⁰ The proposal under the Bipartisan American Affordability and Jobs Act (BAAJA; S. 5653) would narrow the scope of what states can consider in their certification reviews and what conditions may be included in a grant of certification generally, and would further narrow the scope of certification reviews and conditions for certain project types—interstate transmission line projects and interstate infrastructure projects that require a certificate of public convenience and necessity under Section 7 of the Natural Gas Act.

Other stakeholders (including environmental groups and some states) and Members of Congress argue for maintaining the current scope of what states can consider in their certification reviews and the scope of what conditions a state may add to a grant of certification. Stakeholders arguing for maintaining the current scope point to the cooperative federalism framework of the CWA and the need to ensure that states can safeguard their water resources from any potential water quality impacts from federally licensed or permitted projects.¹⁷¹ Some stakeholders also argue that current CWA regulations for Section 401 require the scope of certification reviews and conditions to pertain to water quality requirements.¹⁷² A survey conducted by the Association of Clean Water

¹⁶⁷ See, for example, EPA and USACE, *Summary Report of Pre-Proposal Listening Sessions for WOTUS Notice: The Final Response to SCOTUS*, November 2025, https://www.epa.gov/system/files/documents/2025-11/pre-proposal_listening_sessions_summary_report_final.pdf.

¹⁶⁸ EPA and USACE, "Updated Definition of 'Waters of the United States,'" 91 *Federal Register* 57296, September 9, 2026.

¹⁶⁹ See, for example, Letter from the Interstate Natural Gas Association of America to the House Committee on Transportation and Infrastructure, June 24, 2025, https://transportation.house.gov/uploadedfiles/ingaa_los.pdf. See also Letter from the National Hydropower Association, Inc. to the House Committee on Transportation and Infrastructure, June 20, 2025, https://transportation.house.gov/uploadedfiles/nha_letter_of_support_-_cwa_reforms.pdf.

¹⁷⁰ See, for example, H.R. 3668, S. 4300, S. 4944, and S.Amdt. 5945.

¹⁷¹ See, for example, Opposition Letter for H.R. 3898, signed by approximately 150 environmental groups, July 17, 2025, https://fmr.org/files/inline-files/hr_3898_the_permit_act_community_opposition_letter_and_summary_july_2025.pdf (hereinafter "Opposition Letter for H.R. 3898"). See also Letter from the Environmental Council of the States to the EPA Administrator, February 17, 2026, <https://www.ecos.org/wp-content/uploads/2026/02/ECOS-Comments-to-EPA-on-CWA-401-Updating-Water-Quality-Certification-Regulations-2.17.26.pdf>.

¹⁷² 40 C.F.R. §§121.1(j) and 121.3.

Administrators (ACWA)—a national, nonpartisan professional organization with membership comprising the state, interstate, and territorial officials who are responsible for the implementation of surface water protection programs—found that their survey data do not support that states are misusing their 401 authority. ACWA stated that their findings suggest targeted administrative improvements may better address documented causes of delay rather than statutory restrictions on state Section 401 authority.¹⁷³

Congress may consider legislation related to WOTUS or Section 401. Congress may consider whether to clarify the definition of WOTUS or provide more specific instruction to the agencies as to their interpretation of the CWA. Congress may also consider amending Section 401 to clarify congressional intent regarding policy issues, such as the scope of certification reviews and conditions and certification timelines. As has been considered in recent sessions of Congress, including the 119th, this legislation could be freestanding or it could be included as part of broader permitting reform legislation. Alternatively, Congress may consider overseeing the Administration’s regulatory efforts on both topics and/or implementation of existing regulations or any new final regulations.¹⁷⁴ Congress may also opt not to act and to leave implementation of these issues to EPA, USACE, and states. In selecting policy options, Congress may consider the interaction between these two issues and how any legislative or regulatory reforms would affect their intended aims regarding cooperative federalism.

Regulatory Certainty

Another policy issue central to CWA-permitting reform discussions is regulatory certainty (i.e., the aim to establish a more stable and predictable legal and regulatory environment). Some Members have introduced legislation intended to improve regulatory certainty. Examples include bills related to permit terms, bills to clarify what it means to be in compliance with a permit, and bills to establish limits for the time period during which EPA may “veto” a Section 404 permit.

Permit Term Length

Several bills introduced in the 119th Congress include changes to permit term limits. Most permit terms under the CWA currently have 5-year term limits, as established in statute. Some Members have introduced bills that would extend some permit term limits to 10-year terms. Some bills focus on NPDES permit term limits, some focus on certain Section 404 permit term limits, and some would extend both. Both the House-passed PERMIT Act (H.R. 3898) and BAAJA (S. 5653) would extend permit term limits for both NPDES and Section 404 permits.

NPDES Permit Terms

Some stakeholders (including some states and industry groups) point to administrative backlogs in issuing and renewing NPDES permits as a reason to lengthen terms to reduce administrative burdens for EPA and states.¹⁷⁵ Some also contend that 10-year terms allow for more regulatory

¹⁷³ The Association of Clean Water Administrators (ACWA), “What the Data Show About Section 401 Certification,” <https://www.acwa-us.org/wp-content/uploads/2026/07/401-2026-ACWA-One-Pager-Final.pdf>.

¹⁷⁴ As discussed above, EPA and USACE issued a proposed rule on November 20, 2025, and a supplemental proposed rule on September 9, 2026, to redefine WOTUS. EPA issued a proposed rule on January 15, 2026, to amend the CWA Section 401 implementing regulations.

¹⁷⁵ See, for example, the Environmental Council of the States, *Increasing the Length of NPDES Permit to a Maximum of Ten Years*, Resolution 24-2, September 6, 2024, <https://www.ecos.org/wp-content/uploads/2024/09/24-2-NPDES-Permits.pdf>. See also Letter from the American Exploration & Mining Association to the House Committee on (continued...)

certainty for regulated entities undertaking longer-term infrastructure projects (such as wastewater treatment plant upgrades, stormwater collection and treatment system upgrades, industrial development, and energy-related infrastructure projects) and avoid the need for application renewals or reviews mid-construction.¹⁷⁶ Along these lines, some reason that longer permit terms would provide states and regulated entities more time to implement new technologies and integrated watershed-based management approaches.¹⁷⁷

A survey conducted by ACWA in 2024 found that “a significant majority” of the 41 ACWA member states that responded to the survey generally supported updating the CWA to allow for up to 10-year NPDES permit terms.¹⁷⁸ Two states strongly opposed any permit term change, and at least three states would support a 10-year term if the flexibility applied only to a subset of NPDES permit holders, such as minor sources with good compliance histories.¹⁷⁹ ACWA emphasized that all states responding to the survey indicated opposition to *requiring* 10-year permits.¹⁸⁰ Some suggested criteria would help specify when a 10-year permit would be appropriate.

Stakeholders that oppose extending NPDES permit term limits (including some states and environmental groups) contend that longer terms could reduce regulatory oversight over time, would provide fewer opportunities to update permits to reflect the best available science and technology and any updated standards, and would reduce opportunities to engage with tribes, the public, and neighboring states.¹⁸¹ Some stakeholders also note that longer permit terms could reduce state revenues from permit fees, which help fund NPDES permitting programs in some states.¹⁸² Some stakeholders contend that improving federal funding for state programs would resolve the concerns driving the interest in extending permit terms.¹⁸³

Section 404 Permit Terms

Some stakeholders also support extending permit term limits for general permits under Section 404—including NWP. Supporters of extending permit terms under Section 404 assert that the extension could help streamline permitting, provide certainty for developers, and help minimize disruptions in project planning and implementation.¹⁸⁴ However, other stakeholders oppose the

Transportation and Infrastructure, June 25, 2025, https://transportation.house.gov/uploadedfiles/aema_final_cwa_markup_support_06-20-25.pdf.

¹⁷⁶ See, for example, “States Renew Calls for 10-Year NPDES Permit Terms But Weigh Challenges,” *InsideEPA*, September 10, 2024.

¹⁷⁷ See, for example, Western States Water Council, “Position #527—Regarding the Extension of NPDES Permit Terms,” <https://westernstateswater.org/resolutions/2025/position-no-527-regarding-the-extension-of-npdes-permit-terms/>.

¹⁷⁸ ACWA, *Final 10 Year Permits Survey Summary*, August 27, 2024, <https://www.acwa-us.org/wp-content/uploads/2024/09/Final-ACWA-10-Year-Permits-8-27-2024.pdf> (hereinafter “ACWA, *Final 10 Year Permits Survey Summary*”).

¹⁷⁹ ACWA, *Final 10 Year Permits Survey Summary*.

¹⁸⁰ ACWA, *Final 10 Year Permits Survey Summary*.

¹⁸¹ See, for example, Opposition Letter for H.R. 3898. See also ACWA, *Final 10 Year Permits Survey Summary*.

¹⁸² ACWA, *Final 10 Year Permits Survey Summary*.

¹⁸³ See, for example, Opposition Letter for H.R. 3898. See also ACWA, *Final 10 Year Permits Survey Summary*.

¹⁸⁴ See, for example, National Association of Home Builders, “House Passes NAHB-Supported PERMIT Act,” December 11, 2025, <https://www.nahb.org/blog/2025/12/house-passes-permit-act>. See also Letter from the Ohio Department of Transportation to USACE in Response to the Notice of Solicitation of Input on Potential Future Changes to Nationwide Permits (Docket Number COE-2026-001), May 15, 2026. See also Bipartisan Policy Center, “Examining Potential Reforms to the Clean Water Act,” November 7, 2025, <https://bipartisanpolicy.org/issue-brief/> (continued...)

extension, arguing that a 10-year timeline would reduce opportunities to incorporate new data or science into NWP. ¹⁸⁵ Participants in a roundtable conducted by the Bipartisan Policy Center, which asked about views on extending certain Section 404 permit terms, “generally supported extending the timeframe but recognized the trade-off between improving permitting efficiency and ensuring permits remain responsive to the changing environment.” ¹⁸⁶ Additionally, the Bipartisan Policy Center noted that “there was consensus among participants that [NWPs] generally work well and should be preserved, with the bigger problems lying in individual permits.” ¹⁸⁷

Congress may consider legislation to extend permit term limits or may opt to keep the existing permit term limits. If Congress opts to extend permit term limits, it may consider whether to provide flexibility to EPA, USACE, and states in setting permit terms and whether to identify criteria regarding when longer permit terms are appropriate or instances in which shorter terms might be needed. Alternatively, if Congress opts to extend permit term limits, it may consider specifying circumstances under which a permit may be modified during the term of the permit. For example, BAAJA (S. 5653) would extend the permit term limit for both NPDES and Section 404 permits from 5 years to 10 years and specify that the Secretary of the Army may modify a general permit under Section 404 either during the term of the general permit or during renewal. As another option, Congress may opt to maintain existing permit term limits and consider oversight of efforts to reduce NPDES backlogs or may examine whether federal resources provided to states to implement their permitting programs are sufficient to help support efforts to reduce any backlogs.

Permit Compliance Clarification

Some Members have also introduced bills aimed at clarifying what it means to be in compliance with a CWA permit. In recent years, there has been some uncertainty about what it means to be in compliance with a permit if a permittee is discharging pollutants for which effluent limitations are not specifically included in the permit. This uncertainty has specifically arisen in the context of contaminants of emerging concern, such as PFAS. ¹⁸⁸ Members have introduced two bills aimed at clarifying permit compliance with respect to discharges of pollutants for which effluent limitations are not specifically included in the permit. These bills would amend the CWA’s “permit shield,” to include discharges of pollutants not expressly listed in a permit or permit application, as long as the permit holder identifies the relevant waste streams during the permitting process. These bills could also affect the scope of liability for discharges under other federal laws. ¹⁸⁹ Some stakeholders (including some industry groups and public entities that provide wastewater and stormwater services) support these efforts and assert that they would “ensure good-faith permit holders are not held to be unlawfully discharging pollutants that were not addressed by their permit writer, such as emerging contaminants not yet subject to water

examining-potential-reforms-to-the-clean-water-act/ (hereinafter “Bipartisan Policy Center, ‘Examining Potential Reforms to the Clean Water Act’”).

¹⁸⁵ See, for example, Bipartisan Policy Center, “Examining Potential Reforms to the Clean Water Act.” See also Opposition Letter for H.R. 3898.

¹⁸⁶ Bipartisan Policy Center, “Examining Potential Reforms to the Clean Water Act.”

¹⁸⁷ Bipartisan Policy Center, “Examining Potential Reforms to the Clean Water Act.”

¹⁸⁸ Although there is no federal statutory or regulatory definition of *contaminants of emerging concern*, the term generally refers to unregulated substances detected in the environment that may present a risk to human health, aquatic life, or the environment, and for which scientific understanding of potential risks is evolving.

¹⁸⁹ For example, the bills could limit liability under the Comprehensive Environmental Response, Compensation, and Liability Act for “federally permitted releases.” 42 U.S.C. §§9607(j), 9601(10).

quality standards.”¹⁹⁰ Other entities (including environmental groups) oppose these efforts, noting that these bills would allow industries to discharge PFAS and other emerging contaminants without accountability.¹⁹¹

In addition, as discussed previously, there has been some uncertainty about compliance when permit writers have included narrative water-quality-based effluent limits in permits that require an “end-result” for the receiving water body rather than a specific discharge limit or condition. The two bills noted above would also specify the form that such limitations must take, with the aim of clarifying for a permittee what steps they must take to be in compliance with their permit. Some observers note that these bills codify the Supreme Court’s 2025 decision in *City and County of San Francisco, California v. EPA*.¹⁹²

Congress may consider legislation to clarify what it means to be in compliance with a permit. Alternatively, Congress may oversee EPA’s efforts to clarify these issues through regulations or guidance. Congress also may opt not to act and leave EPA and states to implement their permitting programs and address any uncertainty through best professional judgement.

Timing of EPA’s 404(c) “Veto” Authority

As discussed above, EPA has authority, under Section 404(c) to prohibit, deny, restrict, or withdraw the use of a specified area as a disposal site for dredged or fill material *whenever the Administrator determines* that the discharge will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas. This authority is commonly referred to as EPA “veto” authority. To date, EPA has issued final determinations under its Section 404(c) authority 14 times.

Two of EPA’s most recent uses of Section 404(c) authority drew attention from stakeholders for the timing of the decisions. In one instance, EPA first initiated the Section 404(c) process for the Pebble Deposit area in Alaska prior to the permittee submitting a Section 404 permit application.¹⁹³ In the other instance, EPA issued its 404(c) “veto” years after USACE issued a Section 404 permit for the Spruce No. 1 Mine Project in West Virginia.¹⁹⁴ These EPA actions

¹⁹⁰ National Association of Clean Water Agencies (NACWA), “House Committee Approves Clean Water Act Reform Legislation,” June 26, 2025, <https://www.nacwa.org/news-publications/news-detail/2025/06/26/house-t-i-committee-approves-clean-water-act-reform-legislation>.

¹⁹¹ Opposition Letter for H.R. 3898.

¹⁹² For example, see NACWA, “House Committee Approves Clean Water Act Reform Legislation,” June 26, 2025, <https://www.nacwa.org/news-publications/news-detail/2025/06/26/house-t-i-committee-approves-clean-water-act-reform-legislation>.

¹⁹³ EPA published a proposed 404(c) determination in July 2014. EPA evaluated a 0.25-billion-ton mine proposal, which was a smaller footprint than proposals for a 2.0- or 6.5 billion-ton mine submitted to the Securities and Exchange Commission in 2011. EPA argued that “mining of the Pebble deposit at any of these sizes, even the smallest, could result in significant and unacceptable adverse effects on ecologically important streams, wetlands, lakes, and ponds and the fishery areas they support.” EPA, “Proposed Determination to Restrict the Use of an Area as a Disposal Site; Pebble Deposit Area, Southwest Alaska,” 79 *Federal Register* 42314, July 21, 2014. EPA ultimately withdrew this proposed determination in July 2019. Following submission of a Section 404 permit application by the project proponent, EPA initiated the 404(c) process again, ultimately issuing a final 404(c) determination in 2023. For a full timeline of actions, see EPA, “Bristol Bay 404(c) Timeline,” <https://www.epa.gov/bristolbay/bristol-bay-404c-timeline>.

¹⁹⁴ USACE issued the Section 404 permit for the Spruce No. 1 Mine in January 2007. EPA initiated the 404(c) process in October 2009 and issued its final 404(c) determination on January 19, 2011. EPA cited “significant new scientific information confirming and strengthening EPA’s concerns regarding the environmental effects of mountaintop mining operations, and in particular those operations on the scope and scale of the Spruce No. 1 Mine,” in initiating the 404(c) process. EPA, “Final Determination of the Assistant Administrator for Water Pursuant to Section 404(c) of the Clean Water Act Concerning the Spruce No. 1 Mine, Logan County, WV,” 76 *Federal Register* 3126, January 19, 2011. The (continued...)

prompted discussion about the timing of EPA's 404(c) determinations. Some stakeholders, including those in the regulated community, have expressed concern that EPA's 404(c) authority, without any limitation in the timing of its use, creates uncertainty for permittees.¹⁹⁵ Other stakeholders argue that the 404(c) authority is rarely used, is used for projects with significant impacts, and that limiting the time in which EPA may exercise its authority would limit the agency's ability to protect valuable water resources.¹⁹⁶

Congress may consider legislation to specify any timing parameters within which EPA may exercise its 404(c) authority. Several bills in the 119th would amend CWA Section 404(c) to narrow the time frame during which EPA may use its 404(c) authority, including the House-passed PERMIT Act and BAAJA (S. 5653). One additional bill would remove EPA's "veto" authority for certain permits (e.g., S. 4755). Congress may also opt to maintain the current statutory authority, given the infrequency with which EPA has used the authority.

Permit Issuance Timelines

Congress also continues to be interested in CWA permit issuance timelines, particularly for certain energy, mineral, and other projects identified as being of national importance. Some Members of Congress and stakeholders continue to debate the balance between streamlining permitting processes and timelines to facilitate projects of national importance and protecting water quality and aquatic resources.

Several bills introduced in the 119th Congress aim to shorten permitting timelines or streamline permit issuance. For example, some bills, including the House-passed PERMIT Act and BAAJA (S. 5653), would make it easier for certain projects to be eligible for NWPs by, for example, increasing the threshold for allowable impacts to wetlands or other waters. Other bills would add permitting exemptions, and still others would add permitting deadlines for certain project types.

Some stakeholders and Members of Congress support efforts to expedite or streamline permitting processes and assert these changes would help improve efficiency and predictability.¹⁹⁷ They argue that some projects that are critical to national security or economic competitiveness need to be expedited. Some also argue that long permitting times can lead to delays in project implementation or decisions to cancel projects.¹⁹⁸

U.S. Court of Appeals for the D.C. Circuit upheld EPA's post-permit withdrawal authority, and later upheld EPA's exercise of that authority with respect to the Spruce Mine. *Mingo Logan Coal Co. v. EPA*, 714 F.3d 608 (D.C. Cir. 2013); *Mingo Logan Coal Co. v. EPA*, 829 F.3d 719 (D.C. Cir. 2016).

¹⁹⁵ For example, see "Coalition Warns EPA Veto Power Threatens Pipeline, LNG Projects," *Pipeline & Gas Journal*, May 18, 2026, <https://pgjonline.com/news/2026/may/coalition-warns-epa-veto-power-threatens-pipeline-lng-projects>.

¹⁹⁶ For example, see Opposition Letter for H.R. 3898.

¹⁹⁷ House Committee on Transportation and Infrastructure, "What They Are Saying: Industry Leaders Express Support for PERMIT Act's Permitting Reforms," press release, June 24, 2025, <https://transportation.house.gov/news/documentsingle.aspx?DocumentID=408833>.

¹⁹⁸ House Committee on Transportation and Infrastructure, "Clean Water Act Permitting Reforms Needed So That America Can Build Infrastructure," press release, February 11, 2025, <https://transportation.house.gov/news/documentsingle.aspx?DocumentID=408240>.

Some other stakeholders and Members of Congress oppose some of these proposed changes, asserting that shorter or more limited reviews may weaken water quality protections and may reduce public input or transparency.¹⁹⁹ They argue that some of the proposed reforms prioritize expedited permit issuance over water quality protections the permits are intended to provide.

Some observers point to existing data on permitting time frames and argue for targeted, rather than broader, changes. For example, specific to Section 404, USACE authorization data, discussed under “Permitting Time Frames,” show that approximately 98% of USACE’s written authorizations in FY2024 were authorized by expedited forms of permits. The data also show that the majority of these approvals were issued within four months of receipt of an application and within two months of receipt of a complete application. Some argue that rather than adopting sweeping changes to the CWA’s Section 404 permitting program, efforts targeted to specific projects requiring individual permits may more appropriately address timeliness.²⁰⁰ Some observe that the projects requiring longer time frames often involve multiple approvals at the federal, state, and local levels, and involve a wide range of potential resource impacts that warrant longer evaluation times.

Congress may consider legislation to address CWA permit issuance timelines. Congress may consider making broad changes to the CWA’s permitting programs, targeted changes to certain industries or permit types, or both. BAAJA (S. 5653), for example, utilizes both approaches. BAAJA (S. 5653) proposes to make broad changes to both the NWP program and the CWA Section 401 certification process that aim to shorten timelines, and would make additional changes specific to certain project types, including certain interstate linear infrastructure projects. Alternatively, Congress may consider oversight of EPA, USACE, and state efforts to implement the CWA permitting programs with a focus on issues of timeliness and may examine whether agency staffing and resources are sufficient to support the desired timelines. Congress may also opt not to act and leave decisions about implementing the programs and efforts to address any permitting backlogs or delays to the agencies and states.

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¹⁹⁹ Letter from 31 Members of Congress, “Minority Views—H.R. 3898,” July 7, 2025, [https://docs.house.gov/billsthisweek/20250707/2025-06-27%20HR%203898%20Minority%20views%20\(CWA%20package\)%20FINAL%20signed_.pdf](https://docs.house.gov/billsthisweek/20250707/2025-06-27%20HR%203898%20Minority%20views%20(CWA%20package)%20FINAL%20signed_.pdf). See also Opposition Letter for H.R. 3898.

²⁰⁰ Bipartisan Policy Center, “Examining Potential Reforms to the Clean Water Act.”

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