

THE NEXT FIFTY YEARS OF THE CLEAN WATER ACT: EXAMINING THE LAW AND INFRASTRUC- TURE PROJECT COMPLETION

(118-17)

HEARING BEFORE THE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT OF THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

MAY 16, 2023

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Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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MAY 12, 2023

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Subcommittee Hearing on “*The Next Fifty Years of the Clean Water Act: Examining the Law and Infrastructure Project Completion*”

I. PURPOSE

The Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure, will meet on Tuesday, May 16, 2023, at 10:00 a.m. ET in 2167 of the Rayburn House Office Building to receive testimony on “*The Next Fifty Years of the Clean Water Act: Examining the Law and Infrastructure Project Completion*.” At the hearing Members will receive testimony from witnesses representing the National Association of Clean Water Agencies (NACWA), the National Association of Manufacturers (NAM), the state of North Dakota, and the state of Maryland. The hearing will examine the Clean Water Act (CWA), and how to modernize the CWA to protect water quality, while ensuring the completion of projects, reducing supply chain challenges, and promoting commerce.

II. BACKGROUND

CWA JURISDICTION

The Subcommittee on Water Resources and Environment (Subcommittee) maintains jurisdiction over several agencies, including the Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (Corps). Specifically, the Subcommittee in its capacity overseeing laws governing water quality and wastewater infrastructure, holds jurisdiction over EPA and the Corps as they regulate activities related to water quality. Additionally, the Subcommittee maintains sole jurisdiction of the CWA, the Federal Government’s primary statutory tool for protecting the water quality of the Nation’s navigable waters.¹

The CWA provides a major Federal-state program as the principal law governing water quality of the Nation’s surface waters.² Congress enacted the 1972 amendments to the Federal Water Pollution Control Act, commonly referred to as the CWA, with the objective to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”³ To achieve this objective, two goals were established: (1) to eliminate pollutant discharge into navigable waters by 1985, and

¹ H. COMM. ON TRANSP. & INFRASTRUCTURE, JURISDICTION AND ACTIVITIES OF THE SUBCOMM. ON WATER RESOURCES AND ENVIRONMENT, 118TH CONG., (2023) (on file with Comm.) [hereinafter JURISDICTION AND ACTIVITIES REPORT].

² *Id.*

³ CWA, Pub. L. 92–500, 86 Stat. 816 [hereinafter CWA].

(2) where possible, to ensure water quality that is “fishable” and “swimmable” by 1983.⁴

The CWA consists of two major parts: (1) the authorization of financial assistance for construction of municipal wastewater treatment plants, and (2) the regulatory requirements that apply to those who discharge into navigable waters, including industrial and municipal actors.⁵ Planning, financial, and technical assistance for various regions and issues are also addressed.⁶ This SSM focuses primarily on key sections of the CWA that have produced substantial interest for legislative action related to expediting the completion of infrastructure projects.

CWA REGULATORY AUTHORITY BACKGROUND

Title III of the CWA establishes the authority for the technological and water quality-based effluent limitation guidelines that must be abided by point source dischargers.⁷ Whereas Title III of the CWA largely focuses on the creation of water quality guidelines and limitations, Title IV primarily deals with application of the regulatory program, informed by the guidelines created pursuant to Title III, through which dischargers must receive permits or certifications.⁸

In order to achieve its objectives, the CWA is predicated on the principle that discharges into waters of the United States are only lawful if authorized by a permit.⁹ Therefore, the application of various CWA components require a regulatory program. While certain regulatory programs under the law may only be carried out by the Federal Government, through either EPA or the Corps, certain responsibilities can be assumed by states approved by EPA.¹⁰

CWA ACTION IN THE 118TH CONGRESS

The Committee on Transportation and Infrastructure (Committee) has already acted on a number of CWA-related issues this Congress. For example, the Committee took actions in response to the Biden Administration’s definition of waters of the United States (WOTUS), which governs the application of CWA programs.¹¹ Following the release of EPA and the Corps’ final “Revised Definition of the ‘Waters of the United States’” rule on December 30, 2022, the Subcommittee held a hearing and received testimony from interested stakeholders on February 8, 2023.¹² In response to the Biden Administration’s revised WOTUS definition, Chairman Sam Graves and Water Resources and Environment Subcommittee Chairman David Rouzer introduced H.J. Res. 27, *Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of the Army, Corps of Engineers, Department of Defense and the Environmental Protection Agency relating to “Revised Definition of ‘Waters of the United States’”*.¹³ The Committee favorably reported H.J. Res. 27 to the House on February 28, 2023.¹⁴ The resolution then passed the House on March 9, 2023, and the Senate on March 29, 2023. H.J. Res. 27 was then vetoed by President Biden, after which the House voted and failed to override the veto.¹⁵

Additionally, on February 28, 2023, the Committee favorably reported H.R. 1152, the Water Quality Certification and Energy Project Improvement Act to the House.¹⁶ The goal of this legislation is to promote the development of the Nation’s infrastructure by amending the permitting process under Section 401 of the CWA

⁴ LAURA GATZ, CONG. RSCH. SERV. (RL30030), CLEAN WATER ACT: A SUMMARY OF THE LAW, (Updated Oct. 18, 2016), available at <https://www.crs.gov/Reports/RL30030> [hereinafter CRS REPORT RL30030].

⁵ *Id.*

⁶ *Id.*

⁷ See CRS REPORT RL30030, *supra* note 4; see also CWA, *supra* note 3, §301–320.

⁸ See CRS REPORT RL30030, *supra* note 4; see also CWA, *supra* note 3, §401, 402, 404.

⁹ See CRS REPORT RL30030, *supra* note 4.

¹⁰ See e.g. CWA, *supra* note 3, §§ 401, 402, 404.

¹¹ See generally LAURA GATZ & KATE R. BOWERS, CONG. RSCH. SERV. (R46927), REDEFINING WATERS OF THE UNITED STATES (WOTUS): RECENT DEVELOPMENTS, (Updated July 8, 2022), available at <https://www.crs.gov/reports/pdf/R46927/R46927.pdf> [hereinafter CRS REPORT R46927].

¹² See Revised definition of “waters of the United States” Final Rule, 88 Fed Reg. 3004 (Jan. 18, 2023); See also *Stakeholder Perspectives on the Impacts of the Biden Administration’s Waters of the United States (WOTUS) Rule: Hearing Before the Subcomm. on Water Resources and Environment of the H. Comm. on Transp. and Infrastructure*, 118th Cong. (2023).

¹³ H.J. Res. 27, 118th Cong. (2023).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Water Quality Certification and Energy Project Improvement Act, H.R. 1152, 118th Cong. (2023).

and focusing Section 401 on CWA water quality.¹⁷ Section 401 of the CWA requires applicants seeking a Federal permit or license for an activity that may result in discharge into navigable waters to obtain a water quality certification from the state or tribe with the jurisdiction of the area of possible discharge.¹⁸ These activities include projects under Sections 402 and 404 of the CWA, the Rivers and Harbors Act, as well as from the Federal Energy Regulatory Commission (FERC).¹⁹ H.R. 1152 was included in H.R. 1, the Lower Energy Costs Act, which passed the House on March 30, 2023.²⁰

Although both issues and pieces of legislation are relevant to CWA implementation, this Subcommittee hearing will primarily focus on other key sections of the CWA. The regulatory processes of the CWA are of particular interest to the Subcommittee at a time when the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117–58) has provided large investments into the United States’ infrastructure, including water infrastructure spending under the Clean Water State Revolving Fund (Clean Water SRF), and other infrastructure modes, such as roads, bridges, dams, and energy.²¹ Specifically, industry stakeholders are urging lawmakers to accelerate the project permitting process across infrastructure sectors and to deliver projects, on-time and on-budget, so that communities can realize project benefits as quickly as possible and to keep up with global competitors, such as China.²²

III. SECTION 402: NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

Section 402 of the CWA authorizes the NPDES program for regulation of discharges of pollutants from point sources into navigable waters.²³ Point sources are defined as “any discernible, confined and discrete conveyance, such as a pipe, ditch, channel, conduit, discrete fissure, or container,” and also include “vessels or other floating craft” from which pollutants may be discharged.²⁴

Since all point source dischargers are subject to the NPDES program, a total of more than 65,000 industrial and municipal conventional dischargers are required to obtain permits pursuant to Section 402.²⁵ In addition, NPDES permits are required for stormwater discharges from industrial and municipal sources, including over 150,000 individual sources.²⁶ NPDES permits require the point source to attain technology-based effluent limits, while specifying the numerical effluent limitations that sources must meet in order to guarantee water quality where possible, and date of compliance.²⁷ EPA is responsible for defining the level of treatment required for municipalities and various types of industries, as well as for developing minimum water quality criteria specifying the maximum concentrations of pollutants permitted for different designated uses of waters.²⁸

NPDES permits are issued for up to five years and must be renewed thereafter if discharge is to continue.²⁹ However, if the permittee provides a complete application, but is not reissued a permit prior the date of expiration, the permit may be “administratively continued.”³⁰ Permit applications are considered backlogged for new applications if they are not issued or denied within 365 days of receipt, and

¹⁷ *Id.*

¹⁸ CWA, *supra* note 3, §401.

¹⁹ *Id.*; see also LAURA GATZ & KATE R. BOWERS, CONG. RSCH. SERV. (R46615) CLEAN WATER ACT SECTION 401: OVERVIEW AND RECENT DEVELOPMENTS, (Updated Aug. 24, 2022), available at <https://crsreports.congress.gov/product/pdf/R/R46615>.

²⁰ The Lower Energy Costs Act, H.R. 1, 118th Cong. (2023).

²¹ Infrastructure Investment and Jobs Act, Pub. L. 117–58, 135 Stat 429.

²² See James McBride & Anshu Siripurapu, *The State of U.S. Infrastructure*, COUNCIL ON FOREIGN RELATIONS (Nov. 8, 2021), available at <https://www.cfr.org/background/state-us-infrastructure>; AM. SOC. OF CIVIL ENGINEERS, A COMPREHENSIVE ASSESSMENT OF AMERICA’S INFRASTRUCTURE: 2021 REP. CARD FOR AMERICA’S INFRASTRUCTURE, available at https://infrastructurereportcard.org/wp-content/uploads/2020/12/National_IRC_2021-report.pdf.

²³ CWA, *supra* note 3, §402; see also CRS REPORT R46927 *supra* note 11; see generally also EPA, *NPDES Permit Basics*, available at <https://www.epa.gov/npdes/npdes-permit-basics> [Hereinafter NPDES Permit Basics].

²⁴ NPDES Permit Basics, *supra* note 23.

²⁵ CRS REPORT RL30030, *supra* note 4.

²⁶ *Id.*

²⁷ *Id.*

²⁸ JURISDICTION AND ACTIVITIES REPORT, *supra* note 1.

²⁹ See NPDES Permit Basics, *supra* note 23 (stating applicants for NPDES permit renewals must complete an application for renewal at least 180 days prior to original expiration).

³⁰ *Id.*

for extensions if they are administratively continued for 180 days or more.³¹ As of September 2021, there were 284 permits under the responsibility of EPA (e.g., in the States and territories under EPA-authority) awaiting reissuance in backlog and 22 new permit applications in backlog.³² While EPA has not formally documented the number of administratively continued permits issued by states with approved NPDES permit programs since fiscal year 2017, at that time, approximately 14,000 facilities were in possession of permits requiring reissuance.³³

While EPA runs its own NPDES permitting program, the CWA authorizes EPA to approve individual states and tribes to manage their own NPDES permitting programs, in keeping with the CWA's intent of Federal-state partnership.³⁴ In order to be approved to manage a NPDES permit program, a state must meet specific requirements, including developing water quality standards. States may use either EPA's water quality standards, or different standards approved by EPA, if the state demonstrates to EPA that the differences are warranted and not inconsistent with the CWA antidegradation policy.³⁵ Nearly all states have assumed administration of their own NPDES permitting programs, with only three exceptions: Massachusetts, New Hampshire, and New Mexico.³⁶

Point sources may in some instances apply for a NPDES general permit as opposed to a NPDES individual permit. A NPDES individual permit is written for site-specific discharges that are unique to a specific location or discharge.³⁷ On the other hand, NPDES general permits cover "multiple dischargers with similar operations and types of discharges," such as pesticide use or stormwater discharge.³⁸ Obtaining coverage under a general permit is often quicker than an individual permit, with point sources submitting a Notice of Intent (NOI) to be covered under a general permit after it is issued by a permitting authority.³⁹

IV. SECTION 404: DREDGED AND FILL MATERIAL

Section 404 of the CWA authorizes a separate type of permit required to discharge dredged or fill materials into navigable waters. Activities covered under the Section 404 program include those associated with pipeline projects; water resources projects such as levees and dams; mining projects such as those for critical minerals; infrastructure development such as highways and airports; and other development.⁴⁰ Some activities are exempt from Section 404 permitting requirements, such as certain farming and forestry activities.⁴¹ Section 404 permits are typically issued for a term of five years.⁴²

EPA and the Corps play complementary roles in implementing the Section 404 program, with the Corps in charge of issuing permits for discharge of dredged or fill material, using a set of environmental guidelines promulgated by EPA in conjunction with the Corps to evaluate permit applications.⁴³ The Corps likewise administers the day-to-day program, including jurisdictional determinations (JD) which certify the presence or absence of waters subject to the CWA.⁴⁴

Similar to the NPDES permitting process, EPA may also allow states and tribes to assume authority to grant or deny dredge and fill permits under Section 404, under the condition that states or tribes develop a wetlands permit program consistent with the CWA.⁴⁵ Currently three states have assumed authority over their Section 404 program: Florida, Michigan, and New Jersey.⁴⁶

³¹*Id.* (explaining these deadlines are only for EPA-issued permits. See next paragraph below for more information on state assumption of NPDES permitting programs).

³²EPA, *NPDES Permit Status Reports*, available at <https://www.epa.gov/npdes/npdes-permit-status-reports#current>.

³³See EPA, PERMIT STATUS REPORT FOR NON-TRIBAL MAJOR INDIVIDUAL, MINOR INDIVIDUAL, AND NON-STORMWATER GENERAL PERMIT COVERED FACILITIES—END-OF-YEAR FY2017, available at https://www.epa.gov/sites/default/files/2017-12/documents/final_fy17_eoy_non-tribal_backlog_report_card-sum.pdf.

³⁴CRS REPORT RL30030, *supra* note 4.

³⁵CRS REPORT R46927, *supra* note 11; CWA, *supra* note 3, §510.

³⁶*Id.*

³⁷See NPDES Permit Basics, *supra* note 23.

³⁸*Id.*

³⁹*Id.*

⁴⁰EPA, *Permit Program under CWA Section 404*, available at <https://www.epa.gov/cwa-404/permit-program-under-cwa-section-404> [hereinafter Permit Program under CWA Section 404].

⁴¹*Id.*

⁴²*Id.*

⁴³CWA, *supra* note 3, §404(b); see also CRS REPORT RL30030, *supra* note 4.

⁴⁴Permit Program under CWA Section 404, *supra* note 40.

⁴⁵EPA, *State or Tribal Assumption of the CWA Section 404 Permit Program*, available at <https://www.epa.gov/cwa-404/state-or-tribal-assumption-cwa-section-404-permit-program>.

⁴⁶See CRS REPORT R46927, *supra* note 11.

Pursuant to Section 404, the Corps issues two types of permits: general and individual. The CWA authorizes the issuance of general permits for discharges that are “similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment” and are issued on a nationwide, regional, or state basis for particular categories of activities.⁴⁷ Nationwide Permits (NWP) and Regional General Permits are issued by the Corps on a National basis and are designed to “enhance regulatory efficiency and provide clarity for the regulated public without decreasing environmental protections.”⁴⁸ The most recent reissuance of NWPs went into effect in February 2022, covering 59 distinct activity categories, including mooring buoys, residential developments, utility lines, road crossings, and mining activities.⁴⁹

Section 404 also authorizes EPA to restrict, prohibit, deny, or withdraw the specification by the Corps of a site for the discharge of dredged or fill material, if the agency determines that the discharge will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.⁵⁰ Section 404(c) is commonly referred to as EPA’s “veto authority.” Since the CWA’s enactment, EPA has issued fourteen 404(c) determinations, most recently for the Pebble Deposit Area in Alaska.⁵¹

V. WITNESSES

- Dr. Andrea Travnicek, Director, Department of Water Resources, State of North Dakota
- The Honorable Serena Coleman McIlwain, Secretary of the Environment, State of Maryland
- Mr. Mickey Conway, CEO, Metro Water Recovery, Denver, Colorado, on behalf of the National Association of Clean Water Agencies
- Mr. Brandon Farris, Vice President, Energy and Resources Policy, National Association of Manufacturers

⁴⁷ CWA, *supra* note 3, §404(e); *see also* Permit Program under CWA Section 404, *supra* note 40.

⁴⁸ Press Release, CORPS., *Army Corps of Engineers announces publication of 2021 Nationwide Permits* (Jan. 13, 2021), *available at* <https://www.usace.army.mil/Media/News-Releases/News-Release-Article-View/Article/2470506/army-corps-of-engineers-announces-publication-of-2021-nationwide-permits>.

⁴⁹ *See* CORPS., *2021 Nationwide Permit Information*, *available at* <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits>.

⁵⁰ CWA, *supra* note 3, §404(c); *See also* EPA, *Clean Water Act Section 404(c) “Veto Authority”*, *available at* <https://www.epa.gov/sites/default/files/2016-03/documents/404c.pdf>.

⁵¹ EPA, *Chronology of CWA Section 404(c) Actions*, *available at* <https://www.epa.gov/cwa-404/chronology-cwa-section-404c-actions>.

THE NEXT FIFTY YEARS OF THE CLEAN WATER ACT: EXAMINING THE LAW AND IN- FRASTRUCTURE PROJECT COMPLETION

TUESDAY, MAY 16, 2023

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER RESOURCES AND
ENVIRONMENT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:01 a.m., in room 2167 Rayburn House Office Building, Hon. David Rouzer (Chairman of the subcommittee) presiding.

Mr. ROUZER. The Subcommittee on Water Resources and Environment will come to order.

I ask unanimous consent that the chairman be authorized to declare a recess at any time during today's hearing.

Without objection, so ordered.

I also ask unanimous consent that Members not on the subcommittee be permitted to sit with the subcommittee at today's hearing and ask questions.

Without objection, so ordered.

As a reminder, if Members wish to insert a document into the record, please also email that document to—listen up—DocumentsTI@mail.house.gov. Again, DocumentsTI@mail.house.gov.

I now recognize myself for the purposes of an opening statement for 5 minutes.

OPENING STATEMENT OF HON. DAVID ROUZER OF NORTH CAROLINA, CHAIRMAN, SUBCOMMITTEE ON WATER RE- SOURCEs AND ENVIRONMENT

Mr. ROUZER. For just over half a century, the Clean Water Act has functioned to improve the quality of rivers, lakes, and streams throughout the country. Congress recognized that we had a major issue with the quality of our Nation's waters and understood the many benefits that are derived from access to clean, navigable waters.

North Carolina's Seventh Congressional District, which I am honored to represent, is known for its beautiful waterways and beaches that provide significant recreational and economic benefits. We also have many important bodies of water that we rely on for commerce and drinking water.

The Clean Water Act has had great success in its 50 years protecting waters in North Carolina and all around the country. We should be proud of the progress we have made to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.

And it is important that we not ignore innovation and other major changes that have occurred since Congress passed the Clean Water Act back in 1972. Now, more than 50 years following its enactment, it is not only appropriate but necessary to reflect on how the Clean Water Act works and what parts of it might need an update. There is no better place to start that review than right here in this subcommittee.

Now, as we all know, the United States frequently scores poorly on infrastructure reports. We are being outmaneuvered by our competitors worldwide, China in particular. Now, we certainly all agree that there should be rules of the road, but as I like to say, we don't need a stop light every 10 feet like we have, literally, here in Washington, DC, on some streets in particular.

Regulations should be simple to understand and easy to follow, which, coincidentally, makes them so much easier to enforce. Our worldwide competitors care little to nothing about any regulatory structure or permitting. When they want to do something, they just go do it. Now, we are better than that, of course, and we should be. But it doesn't mean we should be forced to accept a timeline of years to build a manufacturing plant or to build a wastewater treatment plant or energy project. All this does is give our international competitors a distinct and significant advantage.

Regulations should carry out the intent of the law transparently and not leave regulated communities, whether it be miners, utility companies, State and local governments, manufacturers, or any other hard-working American, subject to bureaucratic uncertainty or line the pockets of trial lawyers. American innovation, greatness, and competitiveness cannot be achieved when the country is stuck in a bureaucratic quagmire.

Today, the subcommittee will hear perspectives on how the Clean Water Act can be modernized so that its rules and regulations fit the current times, while still accomplishing the goal of making waters of the United States fishable and swimmable. Ensuring the completion of important infrastructure and energy development projects—for things like wastewater management, the mining of critical minerals, and water resources development—is vital to reducing supply chain challenges and promoting commerce. In doing so, we can reassert American strength and compete worldwide while protecting the quality of our water all at the same time.

This hearing is the latest action we are taking to examine and modernize the Clean Water Act. This morning, we have a knowledgeable panel of witnesses representing a diverse array of interests who are all affected by the Clean Water Act, including wastewater agencies, manufacturers, and State governments.

This panel of stakeholders is well-versed on the details of Clean Water Act regulations. Our focus today is on two of the main regulatory provisions of the CWA: section 402, the National Pollutant Discharge Elimination System program; and section 404, the dredged and fill material discharge program.

I am eager to hear from our witnesses about their experiences with the CWA regulations and their ideas on how to improve and update it for the benefit of everyone. In particular, I look forward to hearing their comments on the NPDES program, including the creation of guidelines on effluent limitations; section 404 issues, such as nationwide permits; and any other insights into the CWA programs they may have, especially as it relates to responsibly advancing energy and infrastructure project completion.

[Mr. Rouzer's prepared statement follows:]

Prepared Statement of Hon. David Rouzer, a Representative in Congress from the State of North Carolina, and Chairman, Subcommittee on Water Resources and Environment

For just over half a century, the Clean Water Act (CWA) has functioned to improve the quality of rivers, lakes, and streams throughout the country. Congress recognized that we had a major issue with the quality of our Nation's waters and understood the many benefits that are derived from access to clean, navigable waters.

North Carolina's Seventh Congressional District, which I'm honored to represent, is known for its beautiful waterways and beaches that provide significant recreational and economic benefits. We also have many important bodies of water that we rely on for commerce and drinking water.

The Clean Water Act has had great success in its 50 years protecting waters in North Carolina and all around the country. We should be proud of the progress we have made to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.

It would be irresponsible to ignore innovation and other major changes that have occurred since Congress passed the Clean Water Act back in 1972. Now, more than 50 years following its enactment, it is not only appropriate but necessary to reflect on how the CWA works and what parts of it might need an update.

As the United States frequently scores poorly on infrastructure reports, we see ourselves being outdone by our competitors worldwide, China in particular. We all agree that there should be rules of the road. But as I like to say, we don't need a stop light every 10 feet like we have here in Washington, D.C.

Regulations should be simple to understand and easy to follow, which coincidentally, makes them so much easier to enforce. Our worldwide competitors care little to nothing about any regulatory structure or permitting. When they want to do something, they just do it. We are much better than that, of course, as we should be. But it doesn't mean we should be forced to accept a timeline of years to build a manufacturing plant, new infrastructure or energy project. All this does is give our international competitors a distinct and significant advantage.

Regulations should carry out the intent of the law transparently, and not leave regulated communities, whether it be miners, utility companies, state and local governments, manufacturers, or any other hardworking American, subject to bureaucratic uncertainty, or line the pockets of trial lawyers. American innovation and greatness cannot be achieved when the country is stuck in a bureaucratic quagmire.

Today, the Subcommittee will hear perspectives on how the Clean Water Act can be modernized, so that its rules and regulations fit the current times, while still accomplishing the goal of making waters of the United States "fishable and swimmable." Ensuring the completion of important infrastructure and energy development projects—for things like wastewater management, the mining of critical minerals, and water resources development—is vital to reducing supply chain challenges and promoting commerce. In doing so, we can reassert American strength and compete worldwide while protecting the quality of our water all at the same time.

This hearing is the latest action we are taking to examine and modernize the Clean Water Act. This morning, we have a knowledgeable panel of witnesses here today, representing a diverse array of interests who are all affected by the Clean Water Act, including wastewater agencies, manufacturers, and state governments. I am eager to hear from our witnesses about their experiences with Clean Water Act regulations, and their ideas on how to improve and update it for the benefit of everyone.

This panel of stakeholders is well-versed on the details of Clean Water Act regulations. Our focus today is on two of the main regulatory provisions of the CWA: Sec-

tion 402, the National Pollutant Discharge Elimination System (NPDES) program, and Section 404, the dredged and fill material discharge program. NPDES seeks to mitigate the discharge of pollutants into our water systems.

I look forward to hearing from you, our panelists, on the NPDES program, including on the creation of effluent limitations guidelines, Section 404 issues such as Nationwide Permits, and any other insights into CWA programs you may have, especially as it relates to responsibly advancing energy and infrastructure project completion.

Mr. ROUZER. I ask unanimous consent to enter into the record a statement for the record for today's hearing by the National Mining Association, dated May 16, 2023.

Without objection, so ordered.

I also ask unanimous consent to enter into the record two letters, one from the American Petroleum Institute, dated May 15, 2023, sent to Ranking Member Napolitano and myself; and one from the National Stone, Sand, and Gravel Association, dated May 15, 2023, also sent to Ranking Member Napolitano and myself.

Without objection, so ordered.

[The information follows:]

**Statement of the National Mining Association, Submitted for the Record by
Hon. David Rouzer**

The National Mining Association (NMA) appreciates the opportunity to provide input to the Committee on Transportation and Infrastructure regarding the future of permitting and the Clean Water Act (CWA). The NMA's members support and conduct mining operations throughout the United States. In an era of intense global competition, U.S. mining operators, including small businesses, need regulatory clarity and certainty to make confident decisions that will create jobs, strengthen local economies, and create high quality, American-made goods and services. This includes metallurgical coal for steelmaking and critical infrastructure, thermal coal for heating and energy both at home and to our allies abroad, and hardrock minerals such as copper that support renewable energy technologies, healthcare, and more.

The NMA is the only national trade organization that serves as the voice of the U.S. mining industry and the hundreds of thousands of American workers it employs before Congress. We work to ensure America has secure and reliable supply chains, abundant and affordable energy, and the American-sourced materials necessary for U.S. manufacturing, national security and economic security, all delivered under world-leading environmental, safety and labor standards. The NMA has a membership of more than 275 companies and organizations involved in every aspect of mining, from producers and equipment manufacturers to service providers.

BACKGROUND

Coal is a reliable and abundant energy resource—making up nearly 90 percent of U.S. fossil energy reserves on a Btu basis. The demand for coal, especially coal exports, has remained steady and even increased. Russia's invasion of Ukraine has severely shaken global coal markets and last year triggered a spike in U.S. thermal coal exports to help alleviate Europe's tight energy supply and low natural gas reserves.

Key infrastructure, including roads, railways, buildings, stadiums, bridges, airports and other structures are all supported by steel—a material dependent on metallurgical coal. Seventy percent of the world's steel requires coal for its production. The U.S. is one of the largest metallurgical coal exporters in the world and demand is expected to increase 20 percent by 2030 to keep up with the pace of aging infrastructure.

Hardrock mined materials, including copper, nickel and lithium are widely recognized as commodities for which the demand will exponentially increase over the next several decades—in some cases between 500 and 1,000 percent. Key western mining states, such as Nevada, Arizona and Utah are all expected to play a pivotal

role in securing our domestic supply chains for these and other minerals that are needed for renewable energy technologies, defense purposes and electric vehicles.

American coal and hardrock producers are reliant on efficient, predictable and durable CWA regulations and guidance that maintains federal and state cooperation. Unfortunately, CWA requirements have become more complex, especially as litigation has increased. Over the last several decades, the result has been more costly and lengthy permitting processes bound by uncertainty of timeline and approval outcomes for CWA permit holders.

RECOMMENDATIONS

The NMA urges Congress to use its authority to ensure congressional intent is maintained and to prevent regulatory overreach that ultimately hinders U.S. energy and mineral supply chains. It is essential that domestic miners can continue to responsibly produce domestic coal that utilities rely on to power our communities and heat and cool our homes. We must be able to provide metallurgical coal to the industries that repair roads, bridges and buildings to keep our infrastructure safe and reliable. We must ensure that our hardrock mineral production can ramp up to meet market demand for nearly every U.S. industry and for the innovative technologies that will help power our future.

Several components of the CWA underpin the activities mentioned above. In addition to legislative actions already taken by the committee to ensure predictability and effectiveness of permitting processes, including efforts to clarify section 401 and “waters of the United States” (WOTUS), the NMA recommends Congress prioritize the following additional proposed CWA reforms:

- *Set clear limits on preemptive and retroactive 404(c) veto authority:* The Environmental Protection Agency has in the past used its veto authority preemptively to restrict development of proposed energy and mineral projects before any applications for a 404 permit have ever been filed with the agency, and retroactively after permitted projects had already been operating for years. Ultimately, this undermines the private sector investment climate in the U.S. for mining and other capital-intensive projects and the good-paying jobs they would create.
- *Maintain five-year validity of U.S. Army Corps of Engineers Approved Jurisdictional Determinations (AJDs):* An AJD should remain valid for permitting purposes for five years in accordance with RGL No. 05–02 and the Supreme Court’s holding in *U.S. Army Corps of Engineers v. Hawkes*, regardless of whether the definition of WOTUS changes during that time. Without this certainty, the increased cost of permitting and associated cost of delays will further disincentivize future investment opportunities for small businesses throughout the U.S.
- *Streamline compensatory mitigation process:* The high cost and lack of available compensatory mitigation credits can prevent a proposed project from moving forward. Streamlining the compensatory mitigation review and approval process to make more credits available at an affordable rate in the marketplace would help ensure important projects can be completed.
- *Develop guardrails to increase clarity for aquatic resource of national importance (ARNI) designations:* An ARNI is a resource-based threshold used to determine whether a dispute between EPA and the Corps regarding individual permit cases are eligible for elevation under a 1992 404(q) memorandum of understanding. While ARNI is not a designation found under the CWA, the EPA uses its authority to determine this on a case-by-case basis. The lack of definition and broad authority given to EPA under this MOU can increase delays in permitting and raise costs by requiring higher than necessary mitigation ratios.
- *Ensure any EPA guidance on CWA section 402 NPDES permitting requirements for groundwater is released for public notice and comment:* In 2020, the Supreme Court in *County of Maui v. Hawaii Wildlife Fund* created a test to determine whether a discharge from a point source to a WOTUS via groundwater is the “functional equivalent” of a direct discharge and therefore requires permittees to obtain a CWA section 402 National Pollutant Discharge Elimination System (NPDES) permit. We understand EPA is nearing completion of draft guidance that would advise permittees when it may be necessary to obtain a section 402 NPDES permit. We urge Congress to ensure that EPA allows the regulated community and other stakeholders the opportunity to provide comment on the guidance.
- *Clarify the scope of CWA section 402(k), the NPDES “permit shield”:* Under CWA Sec. 402(k), known as the “permit shield” provision, if a permittee dis-

charges in compliance with its NPDES permit, it is shielded from CWA liability. Unfortunately, litigation involving this critical protection has increased in multiple states by parties attempting to limit the scope of the permit shield defense. We encourage Congress to clarify that permittees are shielded from liability under lawfully issued NPDES permits. This clarification will help ensure legal and regulatory certainty.

- *Ensure the development of CWA section 304(a) water quality criteria and implementation materials are transparent and subject to notice and comment rule-making and judicial review:* EPA develops water quality criteria, which are then generally adopted into state standards and put into all NPDES permits. Because water quality criteria trigger permitting requirements, their development should be transparent and informed by the regulated community and other stakeholders through public notice and comment.
- *Ensure CWA section 402 NPDES permits have clear terms:* NPDES permit writers often use ambiguous terms, which can then be used improperly in litigation. We encourage Congress to clarify that any effluent limitation in a permit clearly identifies the specific pollutant to which it applies, and either the numeric values or waterbody conditions that permit holders must meet. This clarity will ensure permit holders know what is expected of them for compliance purposes and would provide regulatory certainty.

The NMA appreciates the committee's attention to the issue of effective permitting and ensuring the preservation of our water resources. We look forward to engaging and supporting the committee in its effort to address these and other related CWA issues.

Letter of May 15, 2023, to Hon. David Rouzer, Chairman, and Hon. Grace F. Napolitano, Ranking Member, Subcommittee on Water Resources and Environment, from Amanda E. Eversole, Executive Vice President and Chief Advocacy Officer, American Petroleum Institute, Submitted for the Record by Hon. David Rouzer

MAY 15, 2023.

The Honorable DAVID ROUZER,
Chair,
Subcommittee on Water Resources and Environment, 2165 Rayburn House Office Building, Washington, DC 20515.

The Honorable GRACE NAPOLITANO,
Ranking Member,
Subcommittee on Water Resources and Environment, 2165 Rayburn House Office Building, Washington, DC 20515.

DEAR CHAIRMAN ROUZER AND RANKING MEMBER NAPOLITANO:

The American Petroleum Institute (API) writes regarding the upcoming Water Resources and Environment Subcommittee Hearing: *"The Next Fifty Years of the Clean Water Act: Examining the Law and Infrastructure Project Completion"* on Tuesday, May 16, 2023.

API is committed to meeting the challenge of providing affordable and reliable energy while continuing to reduce emissions. As the leading trade association representing the entire value chain of the U.S. oil and natural gas industry, API supports policies that strengthen our nation's energy security and economy and protect our environment. We commend the Committee for holding a hearing on May 16, which will consider an important topic related to these objectives.

Investments to modernize infrastructure, including expanding current capacity and building new capacity, can help ensure that energy remains affordable for American consumers, create good-paying jobs, give U.S. manufacturers a competitive advantage through lower energy and raw material costs, and provide revenue to local, state and federal governments. Yet, decades-long challenges with the existing permitting process have hampered the development of critical infrastructure projects and jeopardized American energy security.

Many of those permits are issued at the state or federal level under the Clean Water Act (CWA) when a project may impact navigable waters. The permitting process can take years, and those delays can lead to skyrocketing project costs or even cancellation. API urges Congress to pass meaningful permitting reform legislation that includes changes to the CWA that will create a more conducive environment

for moving critical projects forward, while still maintaining important environmental reviews and stakeholder engagement.

With respect to the CWA, we recommend that water quality certifications reviewed and issued by states, tribes or EPA under Section 401 should be limited to direct water quality impacts from point source discharges to navigable waters and should not be used by certifying agencies to veto critical energy projects. API commends the House for previously addressing the permitting process and clarifying the focus on water quality under Section 401 through the passage of H.R. 1. Additionally, the Nationwide Permit (NWP) Program under Section 404 should be reformed to address the ongoing viability of the program, extend the reissuance period and address authority of the Army Corps of Engineers and the Environmental Protection Agency (EPA).

To that end, we make the following recommendations for CWA permitting reform:

Section 401:

- *Clarify that it applies only to federal activity*—Need for certification arises only when a federally licensed or permitted activity has the potential to result in a discharge from a point source into a “water of the United States.”
- *Scope of reviews*—Certification review is limited to water quality impacts from the discharge only that would result from the federally permitted or licensed activity itself—not from other sources or from the “activity as a whole.”
- *Start of the clock*—Certification review period commences upon the date of the certifying authority’s receipt of a request for certification, and this review period cannot exceed one year.
- *Prohibit withdrawal/resubmit*—Certifying authorities should not be allowed to recommend withdrawal and resubmission of applications to restart the one-year time review requirement.
- *Clear application requirements*—Require states to publish requirements for certification requests and require states to notify applicants within 30 days of receipt of application whether the states have all the materials needed to process a certification request.
- *Determinations*—Final decisions on whether to grant, grant with conditions or deny a request for certification must be in writing and based only on local water quality reasons, and certifying authorities must provide rationale for decision.
- *Conditions*—Each certification condition should be supported by an explanation for why the condition is necessary to certify compliance with water quality requirements and supported with a citation to applicable legal requirements that protect water quality.

Section 404:

- *NWP renewals*—Extend the reissuance cycle for NWPs from five to ten years, which would help provide increased regulatory certainty for project developers and avoid potential disruption to critical infrastructure projects.
- *Confined EPA Authority*—Ensure that EPA does not pre-emptively bar potential activities requiring a CWA Section 404 permit before there is an applicant or a project; for EPA to make a veto determination under 404(c), an entity must apply for an actual Section 404 permit with the Corps.
- *One NWP*—To help ensure predictability for project developers, clarify that one linear project can be authorized under one NWP, even if there are multiple owners or developers and even if there are multiple crossings of the same water body in different places or multiple water bodies in the same location.
- *Consultation*—Because the Corps’ issuance and reissuance of NWP 12 is limited to only those activities that have “no effect” on listed species or designated critical habitat, clarify that consultation under the Endangered Species Act is not required.
- *Use for oil/pipelines*—Ensure that the Administration maintains NWP 12 for activities associated with oil and natural gas pipelines that do not result in the loss of greater than ½ acre of Waters of the United States for each single and complete project.
- *Judicial review*—Include a provision to ensure that an action seeking judicial review of an individual or general permit under section 404 must be filed no later than 60 days from the date the permit is issued. In addition, ensure that if a federal court remands or vacates a permit under section 404, the issuer of the permit must act on the remand or vacatur no later than 180 days from the

date the permit is remanded or vacated. In addition, ensure that those permits already approved as of the date of enactment are not subject to challenge.

Applying these reforms to Section 401 and 404 of the CWA will help create a more conducive environment for moving critical projects forward by providing a more transparent, timely and consistent process.

API looks forward to working with Congress to advance meaningful bipartisan permitting reform this year. If you have any questions, please contact Emily Wong on our Federal Relations staff.

Sincerely,

AMANDA E. EVERSOLE,
Executive Vice President and Chief Advocacy Officer,
American Petroleum Institute.

cc: The Honorable Sam Graves, Chair, House Committee on Transportation and Infrastructure
The Honorable Rick Larsen, Ranking Member, House Committee on Transportation and Infrastructure

Letter of May 15, 2023, to Hon. David Rouzer, Chairman, Subcommittee on Water Resources and Environment, from Michael W. Johnson, President and Chief Executive Officer, National Stone, Sand & Gravel Association, Submitted for the Record by Hon. David Rouzer

MAY 15, 2023.

The Honorable DAVID ROUZER,
Chairman,
Subcommittee on Water Resources and Environment.

DEAR CHAIRMAN ROUZER AND MEMBERS OF THE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT,

On behalf of the 400 members of the National Stone, Sand & Gravel Association (NSSGA), I am writing to you in light of the upcoming hearing, “The Next Fifty Years of the Clean Water Act: Examining the Law and Infrastructure Project Completion,” scheduled for Tuesday, May 16, 2023.

NSSGA proudly represents the nation’s aggregates industry, which conducts over 9,000 operations and employs over 100,000 citizens annually that create 2.5 billion tons of aggregates each year. These raw materials are essential to rebuild and repair our country’s aging infrastructure and assist our nation’s goals in lowering the overall energy cost for families.

Our members, who represent the largest volume of natural materials producers in the United States, are integral to the construction and maintenance of the nation’s infrastructure. Aggregate materials, including sand, gravel, crushed stone, and others, are indispensable to public works projects involving water treatment systems, flood control, and stream restoration. These materials also play a crucial role in purifying our drinking water, underlining their importance to both public health and environmental sustainability.

However, our members’ capacity to contribute to these critical projects is currently threatened by the latest WOTUS rule, which is an unclear, overly expansive, and arbitrary interpretations of the Clean Water Act (CWA). While the CWA is an essential instrument for protecting our water resources, the ambiguous interpretation, particularly regarding the definition of ‘waters of the United States,’ has created a climate of uncertainty for aggregate producers. This is especially problematic given the regulatory patchwork where 3 courts have put the rule on hold due to its overreach and lack of clarity. This makes it even harder given the purportedly “durable” rule is anything but, and regulators and the public are even more confused about what features are jurisdictional. NSSGA has members who have been trying to permit projects for years under multiple rules.

This situation could potentially delay or halt essential projects that are central to public health, the economy, and the environment. Unclear guidance impedes the effective use of aggregate materials, undermining our collective goal of sustainable development and environmental protection.

As the Subcommittee convenes to deliberate on the future of the Clean Water Act, we implore you to consider an interpretation that balances the Act’s environmental objectives with the practical needs of infrastructure projects. Clear and actionable guidance is needed for industries that depend on aggregate materials, ensuring their operations’ certainty and continuity.

We believe that the upcoming hearing offers an opportunity to strike a balance between environmental protection and infrastructure development. We trust that the esteemed witnesses—Dr. Travnicek, Secretary McIlwain, Mr. Conway, and Mr. Farris—will bring invaluable insights to this discussion.

We thank you for your consideration and remain confident that your actions will serve the best interests of our nation, contributing to a sustainable future for our communities and a prosperous aggregate industry.

Sincerely,

MICHAEL W. JOHNSON,

President and CEO, National Stone, Sand & Gravel Association.

Mr. ROUZER. I now recognize my good friend and colleague from California, Ranking Member Napolitano, for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. GRACE F. NAPOLITANO OF CALIFORNIA, RANKING MEMBER, SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

Mrs. NAPOLITANO. Thank you, Mr. Chairman. You have continued the subcommittee's long history of success in addressing the bipartisan water resources needs of our Nation, as clean water is essential to our livelihoods, our health, our environment, and our businesses.

The strength of the American economy is reliant on a clean water supply as it is a key ingredient for manufacturing, farming, food processing, small business development, tourism, and recreational businesses. If we do not protect our Nation's water, this will have a negative impact on business as they will not have the high-quality water they need for production and growth. The decline of water quality will require consumers, businesses, and residents to pay more in water utility bills to treat the water before it comes to the tap.

And I agree with you. We should not be competing with China, because we will have to lower our standards, and I don't want that. This is true whether you live on a coast or in the middle of the country, whether you live in a big city, a small town, or whether you live in an affluent community or a community struggling to make ends meet.

Over the past 50 years, the Clean Water Act has made considerable progress in addressing our Nation's water quality concerns. Through a substantial investment of resources, spurred by Federal dollars from the Clean Water Act, this Nation was able to fundamentally address the discharge of raw or partially treated sewage into our rivers, streams, and lakes.

However, challenges remain.

Over the last decade, communities and States have called for additional Federal dollars and resources to address lingering water quality concerns. In response, last Congress, House Democrats delivered with enactment of the largest investment in wastewater infrastructure in generations through the Bipartisan Infrastructure Law, known as BIL. Over the 5 years covered in the BIL, this critical legislation will provide approximately \$13.8 billion in Federal clean water resources to address the many local water quality challenges.

Further, in recognition that not all communities are on equal financial footing, the BIL ensured that roughly half of the funding

would be provided in the form of grants or other flexible financing to address the needs of economically disadvantaged communities, including rural and Tribal communities, many of which had borne the burden of environmental contamination for far too long.

Yet, as important as wastewater infrastructure financing might be, there are limits to what can be done relying solely on wastewater infrastructure investment. Over the past few years, more and more communities have experienced recurrent outbreaks of harmful algal blooms that can produce toxins; kill fish, mammals, and birds; contaminate drinking water sources; and cause human illness or even death in extreme cases. And then we have a new contaminant coming up, which is PFAS. We have got to look out for that.

As shown on the maps on the screen, if you look at the screen, harmful algal blooms have become a national concern because they affect not only the health of people and marine ecosystems, but also the health of our economy, especially coastal communities dependent on the income of jobs generated through fishing and tourism.

We all know that a major cause of these blooms is excessive nutrients, such as nitrogen and phosphorus, in U.S. waters. Unfortunately, according to State data, excessive nutrients continue to be one of the Nation's leading water quality issues. Today, approximately 58 percent of rivers and streams, 40 percent of lakes, and 21 percent of coastal waters are impaired due to high levels of nutrients. You see the location of many of these contaminated waters on the second map on the screen.

Mr. Chair, I ask unanimous consent both maps be made part of today's hearing record.

Mr. ROUZER. So ordered.

[The maps immediately follow Mrs. Napolitano's prepared statement.]

Mrs. NAPOLITANO. What is worse than that, according to the EPA, the percentage of nutrient-impaired waterways is increasing, even with substantial investment in our Nation's wastewater infrastructure, and we need to do more. Very clearly, we need to do more.

Unfortunately, in my opinion, every water bill advanced by this committee in Congress would needlessly weaken Federal and State efforts to protect our waters from pollution, such as excessive nutrients. In my opinion, every water bill advanced in this Congress would result in more water bodies being impaired by contamination, such as harmful algal blooms, not less.

Now is not the time to pull back on Federal investments on wastewater infrastructure. Now is not the time to weaken Federal and State efforts to protect our Nation's waters. Now is not the time to weaken our clean water future. We cannot regress.

I welcome our panelists here today and look forward to their valued input.

[Mrs. Napolitano's prepared statement follows:]



Prepared Statement of Hon. Grace F. Napolitano, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Water Resources and Environment

Thank you, Mr. Chairman.

This Subcommittee has a long history of success in addressing the bipartisan water resources needs of our nation as clean water is essential to our livelihoods, to our environment, and to our businesses.

The strength of the American economy is reliant on a clean water supply as it is a key ingredient for manufacturing, farming, food processing, small business development, and tourism and recreational businesses. If we do not protect our nation's waters, this will have a negative impact on business as they will not have the high quality water they need for production and growth. The decline of water quality will require consumers, businesses, and residents to pay more in water utility bills to treat water before it comes to the tap.

This is true whether you live along the coast or in the middle of the country, whether you live in a big city or small town, or whether you live in an affluent community or a community struggling to make ends meet.

Over the past 50 years, the Clean Water Act has made considerable progress in addressing our nation's water quality concerns.

Through a substantial investment of resources—spurred by federal dollars from the Clean Water Act—this nation was able to fundamentally address the discharge of raw or partially treated sewage into our rivers, streams, and lakes.

However, challenges remain.

Over the last decade, communities and states have called for additional federal resources to address lingering water quality concerns.

In response, last Congress, House Democrats delivered with enactment of the largest investment in wastewater infrastructure in generations through the Bipartisan Infrastructure Law (BIL).

Over the five years covered in the BIL, this critical legislation will provide approximately \$13.8 billion in federal clean water resources to address local water quality challenges.

Further, in recognition that not all communities are on equal financial footings, the BIL ensured that roughly half of the funding would be provided in the form of grants or other flexible financing to address the needs of economically disadvantaged communities, including rural and tribal communities—many of which have borne the burden of environmental contamination for too long.

Yet, as important as robust water infrastructure financing might be, there are limits to what can be done relying solely on wastewater infrastructure investment.

Over the past few years, more and more communities have experienced recurring outbreaks of harmful algal blooms that can produce toxins, kill fish, mammals, and birds, contaminate drinking water sources, and cause human illness or even death in extreme cases.

As shown on the map on the screens, harmful algal blooms have become a national concern because they affect not only the health of people and marine ecosystems, but also the “health” of our economy—especially coastal communities dependent on the income of jobs generated through fishing and tourism.

We all know that a major cause these blooms is excessive nutrients—such as nitrogen and phosphorous—in U.S. waters. Unfortunately, according to state data, excessive nutrients continue to be one of our nation's leading water quality issues.

Today, approximately 58 percent of rivers and streams, 40 percent of lakes, and 21 percent of coastal waters are impaired due to high levels of nutrients.

You can see the location of many of these contaminated waters on this second map on the screen—and, Mr. Chairman, I ask unanimous consent that both maps be made part of today's hearing record.

What is worse is that, according to EPA data, the percentage of nutrient impaired waterways is increasing, even with substantial investment in our nation's wastewater infrastructure.

Clearly, more needs to be done.

Unfortunately, in my opinion, every water bill advanced by this Committee in this Congress would needlessly weaken federal and state efforts to protect our waters from pollution, such as excessive nutrients.

In my opinion, every water bill advanced in this Congress would result in more waterbodies being impaired by contamination, such as harmful algal blooms, not less.

Now is not the time to pull back on federal investments in our wastewater infrastructure.

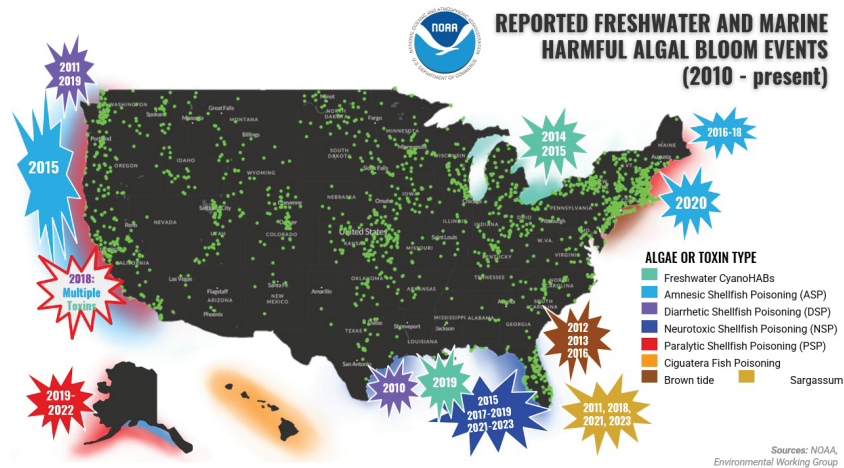
Now is not the time to weaken federal and state efforts to protect our nation's waters.

Now is not the time to weaken our clean water future.

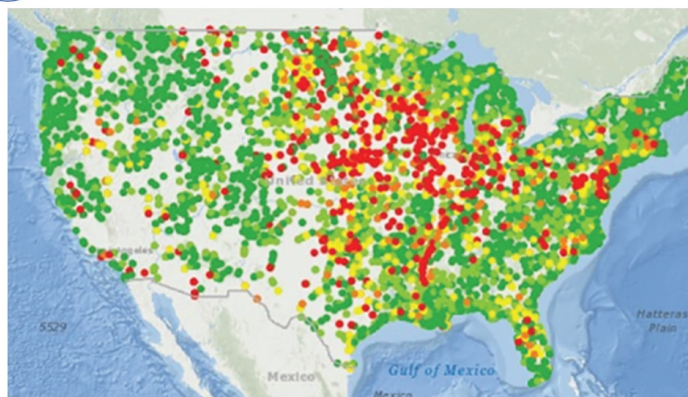
I welcome our panelists here today and look forward to their valued input.

I yield back the balance of my time.

Maps, Submitted for the Record by Hon. Grace F. Napolitano



U.S. RIVERS AND STREAMS IMPAIRED BY EXCESS NUTRIENTS



Mrs. NAPOLITANO. And I would like to have unanimous consent that a letter from the National Wildlife Federation, dated May 16, 2023, be included today as part of the hearing record.

Mr. ROUZER. Without objection.

[The information follows:]

Letter of May 16, 2023, to Hon. David Rouzer, Chairman, and Hon. Grace F. Napolitano, Ranking Member, Subcommittee on Water Resources and Environment, from Jim Murphy, Director, Legal Advocacy, National Wildlife Federation, Submitted for the Record by Hon. Grace F. Napolitano

MAY 16, 2023.

The Honorable DAVID ROUZER,
Chair,
House Transportation and Infrastructure Committee, Subcommittee on Water Resources and Environment, 2165 Rayburn House Office Building, Washington, DC 20515.

The Honorable GRACE F. NAPOLITANO,
Ranking Member,
House Transportation and Infrastructure Committee, Subcommittee on Water Resources and Environment, 2164 Rayburn House Office Building, Washington, DC 20515.

DEAR CHAIRMAN ROUZER AND RANKING MEMBER NAPOLITANO,

On behalf of the National Wildlife Federation and our nearly seven million members and supporters, we urge you to reject attempts to undermine critical Clean Water Act tools that protect our nation's waters and wildlife habitat as well as ensure continued access to cultural resources, traditions, and outdoor recreation.

The National Wildlife Federation is the nation's largest conservation education and advocacy organization with a long history of interest and involvement in the management and protection of the nation's rich array of water resources. We have championed clean and healthy rivers and streams since our founding in 1936. Conserving our nation's wetlands, streams, and rivers for fish, wildlife, and communities is at the core of our mission. We worked closely with Senator Muskie to pass the Clean Water Act in 1972 and have worked hard to fulfill its promise of clean water for all Americans ever since.

CLEAN WATER ACT OVERVIEW

The bipartisan Clean Water Act was signed into law to address the dire water quality crisis facing our country. The Clean Water Act aims to prevent, reduce, and eliminate pollution and destruction of our waters in order to "restore and maintain the chemical, physical and biological integrity of the Nation's waters," with a goal to make all waters in the United States "swimmable and fishable" by 1983. While this goal has yet to be achieved, the law has improved the health of many waters nationwide and prevented deterioration in many more.¹ As a result, the number of waters that meet clean water goals has doubled since the passage of the Clean Water Act.

STRONG MEASURES TO PROTECT CLEAN WATER ARE STILL NEEDED AND ENJOY BROAD SUPPORT

Today however, the majority of our waterways are considered "impaired" and still don't meet standards safe enough for activities like fishing and swimming.² Poll after poll shows that the public overwhelmingly wants the clean, fishable, and swimmable waters promised by the Clean Water Act. A recent survey found that the vast majority of Americans strongly support Clean Water Act protections, with 75% of Americans in favor of protecting more waters and wetlands nationwide.³ At a time when aging water infrastructure and changing precipitation patterns as a result of climate change threatens to worsen water quality challenges, Congress should heed the public and protect Clean Water Act regulatory safeguards, not weaken them.

Similarly, Congress should invest in important programs authorized by the Clean Water Act to help communities address water quality challenges, by upgrading wastewater and stormwater infrastructure and constructing water quality improvement projects. When outdated sewer systems dump raw sewage and polluted runoff into local waters or human and industrial waste bubbles back up directly into

¹National Wildlife Federation. Five Decades of Clean Water. <https://www.nwf.org/Educational-Resources/Reports/2022/Five-Decades-of-Clean-Water>

²Environmental Integrity Project. <https://environmentalintegrity.org/wp-content/uploads/2022/03/Revised-CWA-report-3.29.22.pdf>

³Morning Consult survey on behalf of the Walton Family Foundation. <https://www.waltonfamilyfoundation.org/learning/access-and-availability-to-clean-water-is-a-concern-nationwide>

homes and streets, it is often communities of color and low-income communities that are disproportionately impacted by health and environmental burdens. Communities that depend on fishing for sustenance and for cultural practices, are particularly at risk from impaired water quality. While the Infrastructure Investment and Jobs Act of 2021 provided historic funding to help communities address wastewater and stormwater infrastructure challenges, prevent raw sewage from spilling into local waters, and improve water quality, Congress must build on these investments and ensure the Clean Water Act continues to protect water quality across the country.

HEALTHY WATERS PROTECT COMMUNITIES, WILDLIFE, AND ECONOMIES

For many states, the health of the economy and state residents is directly linked to the health of the state's natural resources. To protect the health and welfare of state residents, economic productivity must be fostered while also protecting water supplies and waterways crucial to the health and welfare of all citizens, as well as to businesses that depend on clean water. Agriculture, commercial fisheries, outdoor recreation, and tourism, and manufacturing—all depend upon abundant clean water. Small streams and wetlands that have long been protected under the Clean Water Act provide clean water for farmers, keep the economy afloat, protect communities from floods, and serve as natural features to promote drought resilience. Wetlands help absorb floodwaters; one single acre of wetland can store 1 to 1.5 million gallons of floodwaters.⁴ Nationwide, the craft brewing industry, notably dependent on clean water supplies, contributed \$76.3 billion to the U.S. economy in 2021, more than 490,000 jobs.⁵ The fish and wildlife that sustain our outdoor passions and support the nation's \$867 billion outdoor recreation economy rely on these small streams and wetlands as well.⁶ In some rural, mountain communities, river recreation and related activities generate the largest share of the local economy. Ephemeral and tributary streams serve as important spawning grounds as well as nursery habitat for juvenile fish, such as salmon and trout. Roughly half of North American waterfowl hatch in the Prairie Pothole Region and more than a third of North American bird species rely on wetlands for food, shelter, breeding, nesting, and rearing their young.

Events in recent years demonstrate how increased pollution in and degradation of these streams, rivers, and wetlands can have devastating impacts on public health, drinking water supplies, local economies, and fish and wildlife habitat across the country. In 2014, a harmful algal bloom in Lake Erie resulted in a three-day shutdown of Toledo, Ohio's drinking water supply. In South Florida, recurring toxic algae and red tide outbreaks have decimated local economies and aquatic wildlife; an estimated 4.4 million pounds of dead marine life were removed from Lee County beaches between June–September 2018. Floods along the Mississippi and Missouri River watersheds, and in communities such as Houston, Texas which was hit by Hurricane Harvey in 2017, demonstrate how the destruction of critical floodplain wetlands can exacerbate the severity and duration of flood events and increase the financial impacts to local communities, homeowners, farmers, economies, and businesses.

THE CLEAN WATER ACT'S FRAMEWORK OF COOPERATIVE FEDERALISM SHOULD REMAIN STRONG

The Clean Water Act established vital tools for ensuring continued progress towards the fundamental objective of fishable, swimmable waters. The law's regulatory framework is founded on strong federal-state partnerships (cooperative federalism) and safeguards that apply to protect waters. This framework allows states to avoid having to impose costly, disproportionate, and economically harmful limits on instate pollution sources to waters within their borders, in order to offset upstream discharges that would otherwise go unregulated if the upstream waters are deemed to fall outside the Act's coverage and are not adequately controlled by upstream states.

Central to the Act's structure is the Section 301 prohibition of discharges of pollutants, including dredged or fill material, from point sources into waters of the United States without a federal permit under either Section 402 or 404 of the Act. *Section 404 of the Clean Water Act* establishes a permit program to regulate the discharge of dredged or fill material into waters of the United States, including wet-

⁴ Environmental Protection Agency, Functions and Values of Wetlands, EPA 843-F-01-002c (2001) (factsheet)

⁵ Brewers Association. <https://www.brewersassociation.org/statistics-and-data/economic-impact-data/>

⁶ Outdoor Industry Association. <https://outdoorindustry.org/advocacy>

lands, unless the activity is exempt, like certain farming and forestry activities. These safeguards minimize the harm from some 80,000 activities each year, that include large scale mining operations, development projects, water resource projects (such as dams and levees), and transportation projects (such as highways and airports).⁷ Section 404 is largely administered by the U.S. Army Corps of Engineers, but implementation can be delegated to the states or Tribes. Currently, three states—Michigan, New Jersey, and Florida—administer the Section 404 program.

Section 404(c) ensures effective oversight of the Clean Water Act 404 program and serves as an action of last resort to stop the most unacceptably damaging activities. The US Army Corps of Engineers approves more than 99% of the 80,000 permit applications it processes under the 404 program each year, approving millions of permitted activities. Section 404(c), grants the EPA the authority to restrict, prohibit, deny, or withdraw the use of an area as a disposal site for dredged or fill material if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas. During the entire 50-year history of the Clean Water Act, EPA has only used Section 404(c) as a last resort for 14 projects, with the vast majority issued by Republican administrations. EPA's use of its veto authority remains extremely limited and wholly within the bounds of the statutory language that has been in place since the Clean Water Act was enacted with overwhelming bipartisan support. EPA has used its veto authority in the below 14 instances to protect aquatic resources, wildlife, and communities:

- *Pebble Deposit Area, AK*. In 2023, the Biden Administration used Section 404(c) to protect 2,108 acres of wetlands and 99.7 miles of streams in the Bristol Bay watershed in Alaska that provide unparalleled, globally significant, ecological and cultural values. The Bristol Bay watershed provides intact, connected habitats—from headwaters to ocean—that support abundant, genetically diverse wild Pacific salmon populations, which in turn help to maintain the productivity of the entire ecosystem, including numerous other fish and wildlife species.
- *Spruce No. 1 Surface Mine, WV*. In 2011, the Obama Administration used Section 404(c) to protect 6.6 miles of some of the last remaining high quality headwater stream and riparian habitat in Appalachia. These streams provide critical hydrologic and biological functions and important habitat for many wildlife species (the project would also disturb 2,278 acres of vital habitat).
- *Yazoo Backwater Area Pumps Project, MS*. In 2008, the Bush Administration used Section 404(c) to protect more than 67,000 acres of some of the richest wetlands in the country. Located in the heart of the Mississippi River flyway, these hemispherically significant wetlands are used by 29 million migrating birds each year. This action also saved federal taxpayers well over \$220 million.
- *Two Forks Reservoir, VA*. In 1990, the first Bush Administration used Section 404(c) to protect 300 acres of wetlands and 30 miles of the South Platte River, including 14 miles designated by the State of Colorado as a “gold medal” trout stream, 281 acres of riffle and pool complexes, and the Cheesman Canyon wilderness area.
- *Big River Reservoir, RI*. In 1990, the first Bush Administration used Section 404(c) to protect 575 acres of exceptional and diverse natural wetlands with habitat for an assemblage of wildlife species.
- *Ware Creek Reservoir, VA*. In 1989, the first Bush Administration used Section 404(c) to protect a 425 acres mosaic of high quality aquatic resources in the Chesapeake Bay watershed, including critical fish nurseries.
- *Lake Alma, GA*. In 1988, the Reagan Administration used Section 404(c) to protect 1,155 acres of bottomland hardwood wetlands providing important habitat for an assemblage of species.
- *Henry Rem Estates, FL*. In 1988, the Reagan Administration used Section 404(c) to protect 432 acres of Everglades wetlands providing significant fish and wildlife habitat including potential Florida panther habitat.
- *Russo Development Corp., NJ*. In 1988, the Reagan Administration used Section 404(c) to protect 58 acres of wetlands within the Atlantic Flyway used by a multitude of State threatened and endangered species.
- *Attleboro Mall (Sweedens Swamp), MA*. In 1986, the Reagan Administration used Section 404(c) to protect 45 acres of New England red maple forested swamp, including high-quality habitat for a variety of wildlife.

⁷ Army Corps of Engineers. <https://www.iwr.usace.army.mil/Missions/Value-to-the-Nation/Regulatory/Regulatory-Permits/>

- *Bayou aux Carpes, LA*. In 1985, the Reagan Administration used Section 404(c) to protect 3,000 acres of essential wetlands including habitat for osprey and American alligator.
- *Maybank Site, Jehossee Island, SC*. In 1985, the Reagan Administration used Section 404(c) to protect 900 acres of coastal intertidal marsh including valuable spawning and nursery grounds for blue crab and shrimp.
- *M.A. Norden Co., Inc., AL*. In 1984, the Reagan Administration used Section 404(c) to protect 25 acres of forested and emergent wetland—one of the last remaining wetlands in the Mobile area.
- *North Miami Landfill, FL*. In 1981, the Carter Administration used Section 404(c) to protect 103 acres of wetlands and other aquatic resources including essential nursery grounds for marine fish and invertebrates.

Clean Water Act Section 402 established the National Pollutant Discharge Elimination System (NPDES) Program, which requires a permit for discharges of point source pollution into our waters. Permits contain discharge limits, monitoring and reporting requirements, and other provisions to ensure that discharges aren't polluting the water in question in a way that impacts its ability to provide drinking water, or serve purposes like fishing and recreating. Importantly, NPDES permits issued to state and municipal dischargers have permit limits of five years, which allows the implementation of needed infrastructure upgrades while also providing a way to ensure that pollution controls remain effective as conditions change. When NPDES permits are issued or renewed, it allows the public to weigh in on the conditions and limitations applying to pollution dischargers. This five year permit term limit ensures that discharge limits are adjusted regularly to account for updated water quality and pollution control standards that are reflective of the best science and technology available. Currently, 47 states implement their own EPA-approved point source discharge permit programs, demonstrating the Clean Water Act's cooperative federalism framework.

Clean Water Act Section 401 is a cornerstone of the federal structure envisioned by the Clean Water Act, providing a regulatory framework for states and tribes to work cooperatively with the federal government to ensure that their aquatic resources are protected from potential impacts related to federally issued permits and licenses. This allows states and Tribes to protect the water quality of waterbodies that communities and wildlife rely on for drinking water, recreation, cultural practices, and habitat. This program has been instrumental in ensuring that federally licensed and permitted projects, such as dams, pipelines, and transportation projects, proceed in a manner that protects important waters uses that communities and wildlife rely on such as safe drinking water, adequate flow, fish passage, and recreational access. The vast majority of certifications are processed quickly and often allow projects to move forward with protective conditions. It is critical that states and tribes retain broad authority to review and impose protective conditions on projects that may impact their water quality—not just the point-source discharge itself but the project “activity as a whole,” pursuant to Section 401 of the Clean Water Act.

The Army Corps of Engineers plays an important role in Clean Water Act enforcement and implementation as well. As stated above, the Corps of Engineers reports that it typically issues about 80,000 permit decisions and 50,000 jurisdictional determinations each year.⁸ “More than 97% of the Corps’ regulatory workload is processed in the form of general permits.”⁹ While recent data on the number of permits denied is not readily available, in 2010 the Corps denied just 0.4 percent of permits requested (275 were denied out of a total of 68,000 permit decisions). Permit reviews could be expedited by increasing appropriations to the Corps’ regulatory program. Over the past 20 years, the Corps’ regulatory program budget has been declining in real dollars when adjusted for inflation, despite the Corps’ significant regulatory work load.

The National Wildlife Federation urges Congress to reject any attempts to undermine critical Clean Water Act tools that protect our nation’s waters, communities, and wildlife habitat as well as ensure continued access to cultural resources, traditions, and outdoor recreation. We must build on the clean water successes over the

⁸ Army Corps of Engineers. <https://www.iwr.usace.army.mil/Missions/Value-to-the-Nation/Regulatory/Regulatory-Permits/>

⁹ Congressional Research Service. <https://www.everycrsreport.com/reports/97-223.html>

past 50 years and ensure that all communities, including Tribal nations, benefit from the protections of the Clean Water Act.

Sincerely,

JIM MURPHY,
Director, Legal Advocacy, National Wildlife Federation.

Mrs. NAPOLITANO. I yield back the balance of my time.

Mr. ROUZER. The gentlelady yields.

I now recognize the ranking member of the full committee, Mr. Larsen, for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. RICK LARSEN OF WASHINGTON, RANKING MEMBER, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. LARSEN OF WASHINGTON. Thank you, Mr. Chair.

So, my State is defined by its clean water, from the Puget Sound to the hundreds of lakes and thousands of miles of rivers and streams throughout Washington. Washingtonians know that protecting these rivers, streams, and wetlands takes work and attention, and that the health of one body of water is intrinsically connected to the health of another.

Our waters and water-related economy depend upon the protections of the Clean Water Act and its pollution prevention programs. It is more effective and less costly to prevent pollution than to clean up pollution. That is true in my State. It is true in every State and Territory.

The Puget Sound has several programs and authorities dedicated to its recovery, but even with these investments, progress remains slow. Improved water quality is a foundation of recovery and is essential to other goals like habitat restoration, increasing species population, and improving the resiliency of the Sound.

So, when this committee passed the Clean Water Act over 50 years ago, Members recognized the effectiveness and importance of comprehensive pollution prevention measures rather than simply investing in pollution cleanups. In passing the CWA, Congress specifically noted that the State-by-State, go-it-alone approach was, quote, "inadequate in every vital aspect," end quote, and left waters severely polluted and expensive to restore.

So, for decades, Republicans and Democrats shared these bipartisan principles to achieve clean water: Maintain a strong Federal-State partnership to protect our waters, stop pollution from entering the system in the first place, and support a robust Federal floor of protections while allowing States to do more but not less.

Last Congress, we passed the Bipartisan Infrastructure Law, affirming our commitment to improving our infrastructure. The BIL included significant investment in our water infrastructure, providing \$13.8 billion in Federal dollars for upgrading our wastewater systems, preventing pollution discharges, and supporting restoration programs in places like the Puget Sound, but many other places as well.

These investments are critical, providing a lifeline to communities across the country struggling to maintain water quality. Members who voted for the BIL voted for clean water.

Such a large Federal investment requires careful oversight to ensure that congressional intent is met. On that, we have agreement.

Communities are best served if agencies get the programs set up and get those funds out the door quickly. On that, we also have agreement.

Where we diverge, however, is using these investments sometimes as an excuse to weaken the Clean Water Act under the guise of expediting projects. We will hear testimony today about how project delivery reforms that may sound good can have an adverse impact on water quality.

Clean Water Act investments have led to significant progress in restoring the chemical, physical, and biological integrity of our waters. Still, a lot of work remains to be done. EPA data indicates that the percentage of impaired waters is back on the rise.

Impaired waters are those that do not meet water quality standards, and today, a leading cause of impairment is excess nutrients. I think almost everyone on this committee has water bodies in their district that are threatened by harmful algal blooms and other algal growth fueled by excessive nutrients.

As we saw on the map from NOAA, there are harmful algal bloom outbreaks across the country: Florida, the Chesapeake Bay, the Great Lakes, and, of course, in the Pacific Northwest. We all have significant outbreaks. Virtually no region is untouched.

So, I can't support weakening clean water protections and increasing the chance of excess nutrients and pollution entering water systems. So, I urge my colleagues representing affected regions on this map to think through what weaker protections means for constituents.

This is just one example of a growing water quality problem. Removing or weakening protections now will cost more in the future, even without other factors making the situation worse.

Yet we know that climate change threatens our water supply, water quality, and water ecosystems—so, other factors will come into play.

Now is not the time to retreat on the goals and intent of the Clean Water Act. I encourage ideas to get the Bipartisan Infrastructure Law funding to our communities faster, but ideas that put polluters over people and saddle the public with the cost of cleanup are not sustainable.

I thank the witnesses for joining us today, and I look forward to your testimony.

With that, I yield back.

[Mr. Larsen of Washington's prepared statement follows:]

Prepared Statement of Hon. Rick Larsen, a Representative in Congress from the State of Washington, and Ranking Member, Committee on Transportation and Infrastructure

My state is defined by its clean water, from the Puget Sound to the hundreds of lakes and thousands of miles of rivers and streams throughout Washington.

Washingtonians know that protecting these rivers, streams and wetlands takes work and attention, and that the health of one body of water is intrinsically connected to the health of another.

Our waters and our water-related economy depend on the protections of the Clean Water Act and its pollution-prevention programs.

It is more effective and less costly to prevent pollution than to clean up pollution. This is true in my state and across the nation.

The Puget Sound has several programs and authorities dedicated to its recovery, but even with these investments, progress remains slow.

Improved water quality is the foundation of recovery, and is essential to other goals like habitat restoration, increasing species population and improving the resilience of the Sound.

When this Committee passed the Clean Water Act over 50 years ago, Members recognized the effectiveness and importance of comprehensive pollution prevention measures rather than simply investing in pollution cleanups.

In passing the CWA, Congress specifically noted that the state-by-state, go-it-alone approach was “inadequate in every vital aspect” and left waters severely polluted and expensive to restore.

For decades, Republicans and Democrats shared these bipartisan principles to achieve clean water: maintain a strong federal-state partnership to protect our waters; stop pollution from entering the system in the first place; and support a robust federal floor of protections while allowing states to do more, but not less.

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Such a large federal investment requires careful oversight to ensure that Congressional intent is met. On that, we have agreement.

Communities are best served if agencies get programs set up and get these funds out the door quickly. On that, we also have agreement.

Where we diverge, however, is using these investments as an excuse to weaken the Clean Water Act, under the guise of expediting projects. We will hear in testimony today about project delivery reforms that may sound good but can have an adverse impact on water quality.

Clean Water Act investments have led to significant progress in “restoring the chemical, physical and biological integrity” of our waters. Still, a lot of work remains to be done. EPA data indicates that the percentage of impaired waters is back on the rise.

Impaired waters are those that do not meet water quality standards and, today, a leading cause of impairment is excess nutrients. I think almost everyone on this committee has waterbodies in their districts that are threatened by harmful algal blooms or other algal growth fueled by excessive nutrients.

As we saw on the map from NOAA, there are harmful algal bloom outbreaks across the country. Florida, the Chesapeake Bay, the Great Lakes and the Pacific Northwest all have significant outbreaks—and virtually no region is untouched.

I cannot support weakening clean water protections and increasing the chance of excess nutrients and pollution entering our systems. I urge my colleagues representing affected regions on this map to think through what weaker protections means for your constituents.

This is just one example of a growing water quality problem. Removing or weakening protections now will cost more in the future, even without other factors making the situation worse.

Yet we know that climate change threatens our water supply, water quality and water ecosystems—so other factors will come into play.

Now is not the time to retreat on the goals and intent of the Clean Water Act. I encourage ideas to get Bipartisan Infrastructure Law funding to communities faster, but ideas that put polluters over people and saddle the public with the costs of cleanup are not sustainable solutions.

I thank the witnesses for joining us today and I look forward to your testimony.

Mr. ROUZER. The gentleman yields back.

I would now like to introduce our witnesses and thank them for being here today.

First is Dr. Andrea Travnicek, director of the Department of Water Resources, State of South Dakota—North Dakota, pardon me, pardon me. I had Dusty Johnson on my mind, my apologies. The Honorable Serena Coleman McIlwain, secretary, Department of the Environment, State of Maryland; Mr. Mickey Conway, chief

executive officer of Metro Water Recovery in Denver, Colorado, and he is here on behalf of the National Association of Clean Water Agencies; and Mr. Brandon Farris, vice president for energy and resources policy, National Association of Manufacturers.

Now, briefly, and you all know this, but I want to take a moment to explain the lighting system to the witnesses. There are three lights in front of you. Green, obviously, is go; yellow means your time is running short; and then, of course, red means that it is time to wrap it up just as quickly as you can.

I ask unanimous consent that the witnesses' full statements be included in the record.

Without objection, so ordered.

As your written testimony has been made part of the record, the subcommittee asks that you limit your oral remarks to 5 minutes.

With that, Dr. Travnicek, you are recognized for your 5 minutes.

TESTIMONY OF ANDREA J. TRAVNICEK, Ph.D., DIRECTOR, NORTH DAKOTA DEPARTMENT OF WATER RESOURCES; HON. SERENA COLEMAN McILWAIN, SECRETARY, MARYLAND DEPARTMENT OF THE ENVIRONMENT; MICKEY CONWAY, CHIEF EXECUTIVE OFFICER, METRO WATER RECOVERY, DENVER, COLORADO, ON BEHALF OF THE NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES; AND BRANDON FARRIS, VICE PRESIDENT, ENERGY AND RESOURCES POLICY, NATIONAL ASSOCIATION OF MANUFACTURERS

TESTIMONY OF ANDREA J. TRAVNICEK, Ph.D., DIRECTOR, NORTH DAKOTA DEPARTMENT OF WATER RESOURCES

Ms. TRAVNICEK. Good morning, Chairman Rouzer, Ranking Member Napolitano, and members of the subcommittee. Thank you for the invitation to testify today on the impact of the Clean Water Act on infrastructure project completion.

My name is Andrea Travnicek, and I am the director of the North Dakota Department of Water Resources. The Department is charged with managing the use of the State's waters.

In managing North Dakota's waters, the Department works closely with other State agencies. We understand North Dakota's unique hydrological landscape. North Dakota has over 1 million wetlands covering approximately 6 percent of the entire State. Many of these wetlands are in North Dakota's prairie pothole region and may be isolated and temporary. North Dakota diligently protects these wetlands and all its waters, both surface and sub-surface, while at the same time encouraging appropriate economic development for beneficial use by agriculture, oil and gas, and other industries. We take these management responsibilities very seriously, and strongly believe that North Dakota's waters are better protected and more effectively managed by North Dakota agencies than by Federal agencies headquartered in Washington, DC.

Over the past decade, North Dakota has vigorously resisted Federal intrusion into the management of its State's waters, including the EPA's and Corps latest rule defining "waters of the United States," or WOTUS, for purposes of the Clean Water Act. Currently, North Dakota and 23 other States are challenging the rule in a lawsuit brought in North Dakota Federal District Court. Rec-

ognizing the rule's harmful impacts, Judge Hovland issued a preliminary injunction order that prohibits application of the rule in the plaintiff States. As a result, the pre-2015 regulatory regime remains in place in North Dakota.

If the new WOTUS rule went into effect in North Dakota, the Department would be directly impacted because it manages numerous large water infrastructure projects and assists with flood control and water supply projects throughout the State. With these projects, the Department is often in the position of applying for dredge and fill permits from the Corps under section 404 of the Clean Water Act. Under the rule, the Department would be forced to undertake an expensive jurisdictional analysis for these projects to determine if they impact WOTUS under the expanded definition and are thus subject to section 404 permitting requirements.

For example, the Northwest Area Water Supply, or NAWS, which is owned by the State of North Dakota, intends to bring water to 81,000 North Dakota citizens in the north central prairie pothole region of our State with a greatly improved water supply, both in terms of quality and quantity. Many cities and rural areas in the NAWS project area have domestic water supplies that do not meet minimum drinking water standards. The benefits of NAWS include not only a clean and abundant supply of water for the residents in North Dakota, but more opportunities for potential industries and a stronger economy. To date, Federal, State, and local partners have already invested over \$350 million into NAWS projects, with an additional \$85 million in water investments planned. The risk of NAWS infrastructure being potentially adversely impacted by this rule is unthinkable and could have tremendous human health and economic impacts to the State.

Intrusive Federal regulation may have unintended consequences that are harmful to the environment. The new WOTUS rule would also result in additional costly evaluations to determine section 404 permitting requirements for other underground pipelines being built in the State as well. Pipelines may need to be rerouted with excessive reengineering costs, permitting delays, or perhaps canceled altogether. This could impact pipelines needed to transport natural gas to reduce flaring and meet the State's target of reaching 98 to 100 percent gas capture and zero percent routine flaring by 2030. To meet this target of eliminating flaring, the gas gathering and processing industry needs to construct thousands of miles of natural gas pipelines per year for the next 10 to 15 years. The rule would also impact the ability to construct the thousands of miles of pipelines needed to transport carbon dioxide to meet national carbon capture and storage goals.

Even without the new rule, section 404 permitting requirements cause harmful delays that could lead to cost increases, especially in North Dakota's prairie pothole region, where it is often subjective as to whether WOTUS will be impacted. Section 404 permitting delays are also especially harmful in North Dakota, due to our short construction season. A loss of one construction season carries through the entire infrastructure program, resulting in cumulative increased trucking and the associated environmental impacts to air quality, as well as increases in costs.

In addition to rescinding the new WOTUS rule, one solution to ease overly stringent Federal permitting requirements would be to adopt State-specific regional conditions for the Corps' Nationwide Permit 12, which applies to oil and gas pipelines; and Nationwide Permit 58, which applies to any linear utility line. State regional conditions should be adopted into these nationwide permits to address Federal and State environmental concerns as we proposed to the Corps as recently as October 2020. Another area for improvement would be to have more consistent application of section 404 permitting requirements by Corps staff and to address staffing issues at the agency that exacerbate permitting delays.

North Dakota has a significant interest both in the proper management and protection of its State waters and in improving its infrastructure to support public health, safety, and the economy. We appreciate the partnership of the Federal agencies in achieving these goals, but our Federal partners must respect States' rights. The EPA and the Corps should work with States to reduce uncertainties and inconsistencies in section 404 permitting and other Clean Water Act programs to improve the ability of States to timely complete important infrastructure projects.

[Ms. Travnick's prepared statement follows:]

**Prepared Statement of Andrea J. Travnick, Ph.D., Director, North Dakota
Department of Water Resources**

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For example, the Northwest Area Water Supply, or NAWS, which is owned by the State of North Dakota, intends to bring water to 81,000 North Dakota citizens in the north central prairie pothole region of our state with a greatly improved water supply—both in terms of quality and quantity. Many cities and rural areas in the

NAWS project area have domestic water supplies that do not meet minimum drinking water standards. The benefits of NAWS include not only a clean and abundant supply of water for the residents of North Dakota, but more opportunities for potential industries and a stronger economy. To date, federal, state, and local partners have already invested over \$350 million into NAWS project works, with an additional \$85 million in future investments planned. The risk of NAWS infrastructure being potentially adversely impacted by this rule is unthinkable, and could have tremendous human health and economic impacts in our state.

Intrusive federal regulation may have unintended consequences that are harmful to the environment. The new WOTUS rule would also result in additional costly evaluations to determine Section 404 permitting requirements for underground pipelines being built in the state. Pipelines may need to be rerouted with excessive reengineering costs, permitting delays, or perhaps canceled altogether. This could impact pipelines needed to transport natural gas to reduce flaring and meet the state's target of reaching 98–100% gas capture and 0% routine flaring by 2030. To meet this target of eliminating flaring, the gas gathering and processing industry needs to construct thousands of miles of natural gas pipelines per year for the next ten to fifteen years. The rule would also impact the ability to construct the thousands of miles of pipelines needed to transport carbon dioxide to meet national carbon capture and storage goals.

Even without the new rule, Section 404 permitting requirements cause harmful delays that lead to costs increases, especially in North Dakota's prairie pothole region where it is often subjective as to whether WOTUS will be impacted. Section 404 permitting delays are especially harmful in North Dakota, due to our short construction season. A loss of one construction season carries through the entire infrastructure program resulting in cumulative increased trucking and the associated environmental impacts to air quality.

In addition to rescinding the new WOTUS rule, one solution to ease overly stringent federal permitting requirements would be to adopt state specific regional conditions for the Corps' Nationwide Permit 12, which applies to oil and gas pipelines, and Nationwide Permit 58, which applies to any linear utility line. State regional conditions should be adopted into these Nationwide Permits to address federal and state environmental concerns as we proposed to the Corps as recently as October 2020. Another area for improvement would be to have more consistent application of Section 404 permitting requirements by Corps staff and to address staffing issues at the agency that exacerbate permitting delays.

North Dakota has a significant interest both in the proper management and protection of its state waters and in improving its infrastructure to support public health, safety, and the economy. We appreciate the partnership of the federal agencies in achieving these goals, but our federal partners must respect states' rights. EPA and the Corps should work with states to reduce uncertainties and inconsistencies in Section 404 permitting and other Clean Water Act programs to improve the ability of states to timely complete important infrastructure projects.

Mr. ROUZER. I thank the gentlelady.

Secretary McIlwain, you have 5 minutes.

TESTIMONY OF HON. SERENA COLEMAN McILWAIN, SECRETARY, MARYLAND DEPARTMENT OF THE ENVIRONMENT

Ms. McILWAIN. Thank you. Can you hear me?

Good morning, Chairman Rouzer, Ranking Member Napolitano, Chairman Graves, Ranking Member Larsen, and the members of the subcommittee. Thank you for inviting me here today to testify on the importance of the Federal Clean Water Act—

Mr. ROUZER [interrupting]. If you can bring that microphone just a little closer to you.

Ms. McILWAIN. How about now? Is this better? All right.

[Continuing] To the Nation's health, economy, and overall quality of life.

Just over 50 years ago, Congress passed the Clean Water Act, and I want to start by reflecting on the history that led to the passage. In the late 1960s, rivers were literally catching on fire from oil and industrial pollution discharges. A 1969 Time magazine arti-

cle published dramatic photos of fires on the Cuyahoga River in Ohio and described a river that “oozes rather than flows.” And I am attaching one of those photos for the record, and you can see that here.

At the same time, Rachel Carson’s famous book, “Silent Spring,” revealed the hazards of pesticides and a historic oil well blowout off the coast of Santa Barbara, California, which galvanized the public and Congress to take action to protect our waters. As a result, President Nixon created the Federal Environmental Protection Agency in 1970, and Congress passed the Clean Water Act in 1972.

One of the central goals of the Clean Water Act is to ensure that the Nation’s waters are fishable and swimmable, and that means that our waters are safe for our children to swim in and that we can safely consume fish and seafood from our waters without fear of getting cancer or being exposed to toxic substances. The Clean Water Act also helps to protect drinking water sources from contamination.

The Clean Water Act does this by establishing designated uses, for example, as a public water supply, for the Nation’s regulated waters, setting science-based criteria and standards that will meet those uses, and by ensuring that waters meeting their uses are not degraded by pollution. The act also allows for standards to be set using either water quality or best available technology standards.

And while we have made progress over the years—our waters are no longer catching on fire—there is still so much work to do to ensure all the Nation’s waters are fishable and swimmable. At the same time, we have emerging contaminants to deal with, like PFAS, and they are contaminating our drinking water and fisheries.

In fact, according to EPA’s own data, only 30 percent of our rivers and streams are healthy, 40 percent of our Nation’s lakes have excess nutrients that help fuel algae blooms, only 71 percent of our estuaries and 31 percent of our Great Lakes and near-shore environments have healthy aquatic communities, and only 48 percent of our national wetlands have healthy biology.

If we were giving ourselves a report card, four out of five of those statistics represents we are failing. I come from Maryland. The amazing Chesapeake Bay and its watershed run through the heart of our State. And the Chesapeake Bay and its tributaries do not just belong to Marylanders. These waters are a part of our national identity and heritage.

The overall health of the Chesapeake Bay and its tributaries has dramatically improved as a result of mandates under the Clean Water Act; from leadership by Maryland’s government over the past 50 years; significant Federal, State, and local investments; and the commitments and actions by local governments. A healthy bay is vital to protect vulnerable people from climate change, strengthen our shorelines to buffer against waves and storm surges, and support healthy ecosystems and fisheries, such as our rockfish, oyster, and crab population.

Since 1985, Maryland has reduced its nitrogen pollution by about 40 percent, or about 35 million pounds per year. Data collected confirms that water quality in Maryland is trending in the right direc-

tion. One of our largest reductions in pollution comes from wastewater treatment plants, which are regulated under State and Federal Clean Water Act permits. A total of 67 of the largest, and many of the smaller, facilities that treat sewage in Maryland are now operating using cutting-edge technology. The water is cleaner and able to be reused. These environmental successes put Maryland in a national and international leadership position. That all began with the Clean Water Act.

Additionally, more than 90 percent of urban runoff in Maryland falls under the protection of the Clean Water Act. This means by better managing stormwater runoff, we are making our communities more spongy, soaking in rain, and so, more resilient to storm events, and reducing pollution and flooding.

In the next 5 years, new permits will add another 11,000 acres to the 35,000 impervious acres restored under prior permits. The restoration is larger than the area of Washington, DC, and results from bipartisan environmental leadership spanning multiple administrations. These permits drive climate resiliency, green infrastructure, and advance innovations such as pay-for-success contracting, public-private partnerships, and new technologies.

[Ms. McIlwain's prepared statement follows:]

**Prepared Statement of Hon. Serena Coleman McIlwain, Secretary,
Maryland Department of the Environment**

Good morning Chairman Rouzer, Ranking Member Napolitano, Chairman Graves, Ranking Member Larsen, and members of the Subcommittee, thank you for inviting me here today to testify on the importance of the federal Clean Water Act to the nation's health, economy, and overall quality of life.

Just over 50 years ago, Congress passed the Clean Water Act, and I want to start by reflecting on the history that led to its passage. In the late 1960s, rivers were literally catching on fire from oil and industrial pollution discharges. A 1969 Time magazine article published dramatic photos of fires on the Cuyahoga River in Ohio and described a river that "oozes rather than flows." (I am attaching one of those photos for the record. See Attachment 1.)

At the same time, Rachel Carson's famous book "Silent Spring" revealed the hazards of pesticides, and a historic oil-well blowout off the Coast of Santa Barbara, California, galvanized the public and Congress to take action to protect our waters. As a result, President Nixon created the Federal Environmental Protection Agency in 1970, and Congress passed the Clean Water Act in 1972.

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And while we have made progress over the years—our waters are no longer catching on fire—there is still much work to do to ensure all the nation's waters are fishable and swimmable. At the same time, we have emerging contaminants to deal with, like PFAS, that are contaminating our drinking water and fisheries.

In fact, according to EPA's own data, only 30% of our rivers and streams are healthy, 40% of our nation's lakes have excess nutrients that help fuel harmful algae blooms, only 71% of our estuaries and 31% of our great lakes and nearshore environments have healthy aquatic communities, and only 48% of our national wetlands have healthy biology.

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shed run through the heart of our State. And the Chesapeake Bay and its tributaries do not just belong to Marylanders, these waters are part of our national identity and heritage.

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Since 1985, Maryland has reduced its nitrogen pollution by about 40% or about 35 million pounds per year. Data collected confirms that water quality in Maryland is trending in the right direction. One of our largest reductions in pollution comes from wastewater treatment plants regulated under state and federal Clean Water Act permits. A total of 67 of the largest, and many of the smaller, facilities that treat sewage in Maryland are now operating using cutting edge technology and have been renamed "water reclamation facilities." The water is cleaner and able to be re-used. These environmental successes put Maryland in a national and international leadership position. That all began with the Clean Water Act.

Additionally, more than 90% of urban runoff in Maryland falls under the protection of the Clean Water Act. This means by better managing stormwater runoff, we are making our communities more spongy, soaking in rain, and so more resilient to storm events, and reducing pollution and flooding. In the next five years, new permits will add another 11,000 acres to the 35,000 impervious acres restored under prior permits. This restoration is larger than the area of Washington, D.C., and results from bipartisan environmental leadership spanning multiple administrations. These permits drive climate resiliency, green infrastructure, and advance innovations such as pay-for-success contracting, public-private partnerships, and new technologies.

The Water Quality State Revolving Fund, a fund resulting from the Clean Water Act, which is capitalized by the U.S. Environmental Protection Agency, annually provides about \$3.3 billion in funding for clean water improvements in Maryland since its inception. The Bipartisan Infrastructure Law is providing even more funding to the state revolving funds, enabling Maryland to fund additional projects as we approach the 2025 Bay Total Maximum Daily Load deadline. In particular, the Infrastructure Law is enabling Maryland to provide historic levels of loan forgiveness to disadvantaged communities.

Yet with all the progress and investment, we are still striving to fully achieve our fishable and swimmable goals. In fact, we are currently taking public comments on a settlement agreement resulting from Maryland, other Bay jurisdictions, and NGOs working to enforce proper oversight and accountability in restoring the Bay.

When I think of the next 50 years for the Clean Water Act, it is clear we in fact need to work harder to ensure greater accountability, be more resolute with compliance and enforcement, and recommit to oversight for healthy communities, ecosystems, and to realize the full economic prosperity that comes with clean and safe water.

Clean water is good for our health and good for the economy. This is not a binary choice, where we either have clean water or economic growth. Rather, we can only have economic growth if we have clean water. An EPA study indicated that clean water can increase the property value of nearby homes by up to 25 percent. Other studies indicate a \$1 investment in water and sewer infrastructure yields \$6.35 in gross domestic product output.

The Chesapeake Bay alone supports almost 34,000 jobs in local economies. This includes watermen, commercial trade, tourism, and recreation. Each year, the commercial seafood industry in Maryland contributes nearly \$600 million to our economy. And the dockside value of the blue crab harvest in Maryland was \$33 million in 2020.

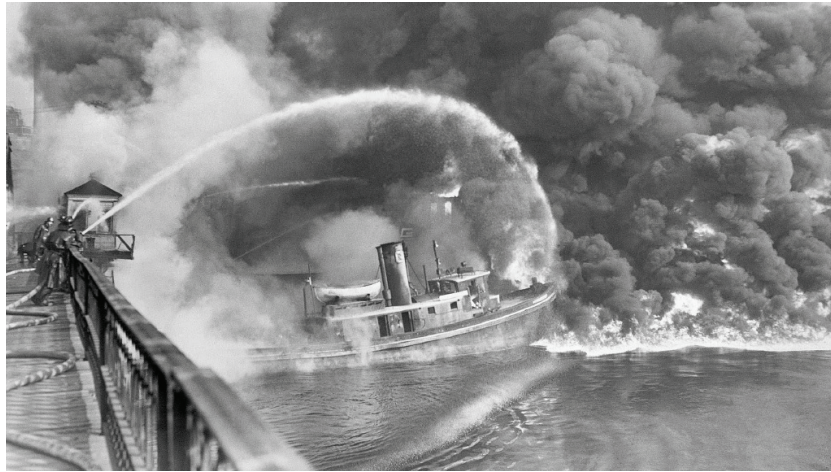
All the jurisdictions represented on this subcommittee are downstream from another jurisdiction, and when upstream jurisdictions are not protecting clean water, it not only affects our health but also property values downstream. Imagine how much more prosperous we would be if Chesapeake Bay and the nation were meeting their clean water goals? Government has a key role in this. The private sector does, too, to keep water clean and not pass on the costs of pollution to downstream communities.

I want to close by thanking members of this Subcommittee for supporting the Bipartisan Infrastructure Law and the historic investments in clean water that this law provides. These investments represent a down payment on a prosperous clean water future, and we still need to do more. All of our citizens not only deserve, but

require, clean and abundant water for their communities to survive. Now is not the time to let up when we are still falling so short of our goals.

Thank you again for this opportunity, and I look forward to the discussion.

ATTACHMENT 1



Firemen stand on a bridge over the Cuyahoga River to spray water on the tug *Arizona*, after an oil slick on the river caught fire in 1952.

Mr. ROUZER. I thank the gentlelady for her testimony.
Mr. Conway.

TESTIMONY OF MICKEY CONWAY, CHIEF EXECUTIVE OFFICER, METRO WATER RECOVERY, DENVER, COLORADO, ON BEHALF OF THE NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES

Mr. CONWAY. Good morning. Thank you, Chairman Graves and Rouzer, Ranking Members Larsen and Napolitano, and all the members of the subcommittee, for the opportunity to testify today. I am here on behalf of the National Association of Clean Water Agencies, or NACWA, to talk about potential improvements to the Clean Water Act.

My name is Mickey Conway. I am the CEO of Metro Water Recovery. We are a clean water treatment and resource recovery facility in Denver, Colorado, serving 2.2 million people. It is about 40 percent of Colorado's population. And I am also privileged to serve on NACWA's board of directors, and honored to represent its over 350 public clean water utility members that, like Metro, are anchor institutions in protecting public health and the environment. This is what we do every day, and we are proud to be here to talk about that.

Clean water utilities today face unprecedented challenges, including aging infrastructure, climate resiliency issues, managing nutrients and emerging contaminants such as PFAS, and those are things that our folks dive into with vigor every day.

But additionally and just as important to managing those issues is managing them in a way that keeps our ratepayers in a place that they can pay their bills. Many of the folks in our service areas

are having trouble paying their rent, they are having trouble paying their grocery bills, and much less their utility bills. And all of our investments have to make sense for them and actually improve water quality. And that really especially pertains to those in small rural and economically disadvantaged communities.

So, with all that in mind, there are three key Clean Water Act improvements I would like to discuss briefly that will, I think, provide, one, regulatory certainty and, two, making sure dollars are going towards clean water and not towards litigation or changing course and really affecting our ratepayers disproportionately.

These all involve our NPDES permit. So, members like NACWA members operate pursuant to permits issued by the National Pollution Discharge Elimination System, or NPDES. And these permits basically tell us what we can put into the waters. They also guide us in our infrastructure projects to make sure we can meet the permits.

And these projects, as you can imagine, are incredibly complex. They are very long in term. And changing the rules in the middle of the project is like turning the *Titanic* around. You just can't do it. And so, for us, in order to be able to deliver clean water at a reasonable price, we have got to be able to rely on permit terms and rely on the permit system throughout the term of the permit.

I guarantee that any public servant in front of you will tell you that you better have a plan before you dig up city streets and spend billions of dollars in infrastructure, and that permit is our plan.

So, Clean Water Act section 402 has a permit shield provision, which is expressed in EPA policy at this point. And the permit shield is essentially laid out like this: If the permittee provides all the necessary information to the permit writer, the permit writer incorporates that information and includes the necessary limits in the permit. And then at that point, the permittee can rely on that permit. Whether or not pollutants are expressly laid out in the permit or not, whatever is discharged is considered lawful.

The United States Supreme Court expressed that that was all—the entire permit policy is really to express finality of the permit, and that is what utilities can rely on. That finality is being challenged now in a number of litigations, and the methodology of challenging the scope of the permit shield is that we are going after pollutants that are not expressly laid out in a NPDES permit.

The problem with that—an example is PFAS—is PFAS is not in wastewater permits at this point and will not be for many years. If people can sue utilities over discharging PFAS, which we as wastewater utilities passively receive, the money that our folks who are having a hard time paying bills for is going to go to litigation and it is not going to go to cleaning up the water. We are working very hard to manage PFAS, but we can't also fend off lawsuits for something we can't control or we are not permitted for.

The second scope of 402(k) that we are looking to get improvements on is language in the permits themselves that is ambiguous and invites litigation. There are boilerplate languages added to certain permits that say dischargers shall not “cause or contribute to the violation of water quality standards.” I have been in this business for over a quarter century. I have no idea what that means.

I need to have limits that I can hit with constituents that I can hit and not language that invites litigation and, again, transfers money from my ratepayers into lawyers' pockets. And I am a former practicing lawyer, so, I will say that I think there are plenty of opportunities for attorneys to make money elsewhere.

Finally, I think we would like to just note that the objectives of the Clean Water Act would be better served if water quality standards are done in a more transparent way. We would ask that EPA undergo notice and comment rulemaking when developing standards and provide for limited judicial review. That allows communities to reflect and participate in the process and talk about what meaningful standards will be, especially since the burden of cost falls on those communities to take care of that.

So, I think these three potential improvements would help with regulatory certainty and, again, putting the money where it needs to go in the Clean Water Act towards clean water projects.

Thank you for your time.

[Mr. Conway's prepared statement follows:]

Prepared Statement of Mickey Conway, Chief Executive Officer, Metro Water Recovery, Denver, Colorado, on behalf of the National Association of Clean Water Agencies

Good morning and thank you Chairmen Graves and Rouzer, Ranking Members Larsen and Napolitano, and all members of the Subcommittee for the invitation to testify before you today on behalf of the National Association of Clean Water Agencies, or NACWA, on the need for critical reforms as we look to the next fifty years of the Clean Water Act.

My name is Mickey Conway, and I am the Chief Executive Officer of Metro Water Recovery. Metro is the largest resource recovery and clean water provider in the Rocky Mountain West, serving more than 2.2 million people throughout the Denver-Metro region. We work with 61 local governments, including cities, counties, and water and sanitation districts across our 805-square mile service area to provide clean water services, generate renewable energy, and promote sustainable agriculture.

I also serve on NACWA's Board of Directors and NACWA's Executive Committee, and I am honored to be here today to represent NACWA and its over 350 public clean water utility members that, like Metro, are anchor institutions protecting public health and the environment in the communities they serve nationwide.

Clean water utilities today face an unprecedented number of challenges. Replacing aging infrastructure, increasing system resiliency in the face of climate change, addressing emerging contaminants including per- and polyfluoroalkyl substances, or PFAS, developing and maintaining a strong workforce, and protecting against increasing threats to cyber-security are just a few of the critical issues utilities must manage every day.

And while tackling these challenges is of vital importance to the long-term health and vitality of the communities we serve, it is every bit as pressing that we do so in a way that keeps rates affordable for everyone. NACWA members are stewards not only of the environment, but also of public funds; we must plan for the future while not overburdening our ratepayers today, particularly those in small, rural, and disadvantaged communities.

It is for these reasons that I am testifying before the Committee this morning. There are three key Clean Water Act reforms in particular I will discuss that could help alleviate some of the burdens utilities face by providing the regulatory certainty necessary for long-term strategic planning while also stemming the unnecessary flow of increasingly scarce public dollars to costly and unwarranted litigation.

Public clean water agencies are proud of the water quality advancements they have made in the first 50 years of the Clean Water Act's implementation. If adopted, these reforms would give utilities the ability to do even more by helping to ensure that, over the next 50 years, the Clean Water Act continues to protect those we are tasked to protect—our local community residents.

Metro—like all NACWA members—operates pursuant to Clean Water Act National Pollutant Discharge Elimination System, or NPDES, permits. These permits outline the requirements the discharges from our facilities must meet to ensure the protection of water quality. They are not only a critical tool in protecting the environment, but they allow utilities to plan and make the infrastructure investments necessary to meet the permit terms and, thereby, provide the greatest benefit to local communities.

Due to the volume of wastewater and stormwater public clean water agencies manage and treat, infrastructure improvements needed to meet increasingly stringent Clean Water Act requirements often entail long-term financial and technical planning, as well as large-scale—and frequently disruptive—construction projects. It is therefore critical that requirements in utility NPDES permits be developed transparently, that a utility's Clean Water Act obligations be clearly outlined in those permits, and that a utility be able to rely on those permits for the entire length of their term. I guarantee you that any public servant in front of the Committee would say the same thing—you better have a solid plan in place *before* you start digging up city streets.

Clean Water Act Section 402(k)—the NPDES “permit shield” provision—provides key protections to clean water utilities in this regard. Under that provision, Congress deemed compliance with an NPDES permit to be compliance with the Clean Water Act itself.

Pursuant to EPA's longstanding “permit shield” policy interpreting Section 402(k), if a permittee provides all the information it is supposed to during the permit application process, it is the NPDES permit writer's job to include all the limits necessary to meet the requirements of the Clean Water Act in the permit. If a permit holder complies with those limits, all of the pollutants discharged from the facility that were within the reasonable contemplation of the permit writer—regardless of whether or not they are expressly identified or limited in the permit—are considered lawfully permitted discharges for purposes of Clean Water Act compliance.

Importantly, before an NPDES permit is finalized, EPA can object to it if it does not include any necessary limits. Likewise, environmental organizations and citizens can bring lawsuits against permits they do not think are stringent enough within a specified statutory timeframe. But once a permit is “final,” under the Section 402(k) “permit shield,” a permit holder can rely on it as the touchstone for Clean Water Act compliance during its term.

The U.S. Supreme Court has held that the purpose of the “permit shield” is to “insulate permit holders from changes in various regulations during the period of a permit and to relieve permit holders of having to litigate the question of whether their permits are sufficiently strict. In short, Section 402(k) serves the purpose of giving permits finality.”

But this finality, which is especially important in the context of restoring and maintaining the nation's critical wastewater and stormwater infrastructure, is being threatened in two fundamental ways.

Firstly, outside parties are increasingly challenging the scope of the “permit shield” as applied to pollutants not expressly listed in an NPDES permit. This is particularly problematic in the context of emerging contaminants that EPA has not yet developed permitting requirements for, such as PFAS. Codification of EPA's “permit shield” policy would help protect communities across the country from being forced to spend precious public dollars defending against such lawsuits, distracting the utility from meeting the requirements already contained in the permit as well as from finding solutions to actually begin the process to address, in this example, PFAS contamination. It is important to underscore that utility leaders and workers are public servants and dedicated environmental stewards, and they need certainty to ensure these goals can be met.

By way of example, one public utility in Georgia is being sued for allegedly “unlawfully discharging” PFAS it passively receives from upstream carpet manufacturing processes because its NPDES permit does not include PFAS limits and its treatment facility was (unsurprisingly) not designed to remove these indestructible manmade chemicals.

Clean water utilities have already begun to work with EPA and state partners to develop the requirements and treatment processes necessary to protect our nation's waterbodies from PFAS pollution. The notion that, in the meantime, thousands of utilities all over the country could be held to be categorically out of compliance with the Clean Water Act because such requirements and treatment processes do not yet exist and have therefore not been written into NPDES permits is unacceptable.

EPA and state regulators must be permitted to address PFAS through the Clean Water Act's well-established, science-based effluent limitations development proc-

esses. And utilities, in turn, must not be faced with the imposition of ad hoc, activist-driven permitting requirements through litigation.

The second threat to the scope of Section 402(k) is related to the first. A growing number of suits are being brought over the boilerplate language often included in NPDES permits stating that discharges shall not “cause or contribute to the violation of water quality standards.” A statutory requirement that permit writers use only clear permitting terms, not vague and unclear boilerplate language that invites uncertainty and litigation, could save communities across the country from being placed in untenable positions.

As I mentioned earlier, under EPA’s own regulations and guidance, it is a permit writer’s job to include all necessary limits in a permit to ensure that authorized discharges are protective of water quality standards. But both outside parties and EPA itself are increasingly trying to enforce this boilerplate language well into a permit’s term as if it were a separate, all-encompassing “effluent limitation.”

This position eviscerates the “permit finality” the Supreme Court has held an NPDES permit is supposed to provide, as it effectively allows permit writers to establish post-hoc requirements they failed to include when they issued the permit at any time under the guise of “enforcing” this generic fiat. It likewise provides outside parties with an avenue to second-guess permitting decisions and read new limits into a permit well after the statutory timeframe provided for permit objections.

The U.S. Supreme Court has stated that due process demands that “regulated parties should know what is required of them.” Public clean water agencies are regulated parties that have and continue to spend billions of dollars to maintain and upgrade our nation’s critical wastewater and stormwater infrastructure. It is especially important for these utilities to have clear Clean Water Act requirements that they can strategically plan to meet in the manner that best protects the health and environment of the communities they operate in. The City of San Francisco—a NACWA member—is in fact currently engaged in litigation aimed at forcing EPA to remove this boilerplate language from one of its NPDES permits considering the unacceptable amounts of risk and uncertainty it poses. Congress can provide such relief to utilities nationwide through these reforms, and I strongly encourage it to do so.

And finally, even if NPDES permits clearly identify a permittee’s obligations and provide permit holders with sufficient regulatory certainty, the objectives of the Clean Water Act will not be met if the water quality standards upon which the limits in those permits are based were not developed in a transparent, science-based process.

Requiring EPA to undergo notice and comment rulemaking when developing recommended water quality criteria and subjecting the final criteria to a limited judicial review process under Clean Water Act Section 509(b) would help ensure that the onus placed on public agencies are necessary and do not unduly burden communities while providing little corresponding environmental benefit.

EPA develops recommended water quality criteria which states must consider adopting under Clean Water Act Section 304(a). While states can adopt different criteria if approved by EPA most states simply do not have the resources to do so. The criteria developed by EPA under Section 304(a) are therefore typically adopted into state water quality standards and translated into all NPDES permits through enforceable permit limits.

While it is true that EPA typically takes comment on its proposed criteria and subjects them to limited review from its Science Advisory Board, because the Agency takes the position that the criteria are just “guidance,” it does not fully follow the regulatory requirements of the Administrative Procedure Act or the Office of Management and Budget, including those related to fully considering and responding to public comments. Nor can impacted parties legally challenge any final criteria, as EPA does not treat the criteria as “final agency action,” even though, for the majority of NPDES permit holders nationwide, they will ultimately dictate permitting obligations.

As utilities face complex and costly infrastructure challenges over the next 50 years, it is critical that the limits imposed in NPDES permits be based on the best available science and a complete record, not political whim or expedience. The reforms under consideration could help ensure this happens.

This concludes my testimony. Thank you for giving me the opportunity to speak here today. NACWA appreciates the ongoing engagement by the Committee with the public clean water sector on these critical issues, and I would be happy to answer any questions the Committee may have.

Mr. ROUZER. I thank the gentleman.

Mr. Farris, you have 5 minutes.

TESTIMONY OF BRANDON FARRIS, VICE PRESIDENT, ENERGY AND RESOURCES POLICY, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. FARRIS. Good morning. Good morning, Chairman Rouzer, Ranking Member Napolitano, members of the committee. Thank you for the chance to speak with you on behalf of the 13 million men and women who make things in America to convey the urgency of permitting reform.

Streamlining and modernizing our Nation's permitting laws and procedures will help us advance many of our Nation's shared priorities, improving the quality of life for all communities, modernizing our infrastructure, achieving energy security, ramping up critical mineral protection, enhancing manufacturing competitiveness, and creating manufacturing jobs in the U.S. These are goals that all Americans can support.

At a time of economic uncertainty, when every investment in a new powerplant, a new road, a new manufacturing facility makes us more globally competitive, why should we settle for a permitting process that can take 10 or 15 years to approve essential projects?

One of manufacturers' biggest concerns is that the permitting process often drags far longer than necessary. For example, here is something we have heard from one of our manufacturers of critical raw materials for semiconductors, clean hydrogen, and lithium-ion batteries. In many cases, these products cannot be made without their chemicals, but because of the regulatory uncertainty in obtaining a Clean Water Act section 402 permit in a timely manner, that company recently announced that they are going to build a facility in the EU that manufactures material necessary to produce clean hydrogen.

A White House CEQ report also found that environmental impact statements mandated under NEPA take, on average, 4½ years. That means more time is spent projecting potential environmental impacts than it takes to actually construct and operate a hydrogen power generation facility.

The impact of leaving our existing permitting processes untouched is clear. The U.S. will fall behind international competitors that are taking every step possible to incentivize manufacturing development. Quality of life, environmental progress, and economic competitiveness in the U.S. will suffer as a result.

Permitting reform can be achieved without compromising our Nation's or our industry's high standards for environmental protection and sustainability. It is possible to preserve and uphold these standards with fewer delays and fewer needless lawsuits.

So, as detailed in my written testimony, manufacturers have a few priorities. First, we want to see consolidated processes with enforceable deadlines for the siting of new energy projects, including hydrogen, natural gas, nuclear, and other emerging technologies and their infrastructure.

Second, we want to see faster approvals for transportation infrastructure projects on which we all rely. For instance, it takes around 7 years to build a new road from our employees' house to

their facility. That is delaying investment. You don't build new facilities if you don't have roads to be able to access them.

Third, we want to see a commitment to developing our resources to strengthen our supply chains for critical minerals that DoD calls vital to our national defense.

Fourth, we believe that EPA and the other agencies should refrain from issuing new and shifting regulations before current standards are implemented.

Finally, Congress should ensure the administration follows congressional intent on recent and future statutory streamlining efforts, such as the One Federal Decision.

All of this should be done in a technology-neutral way. Let consumers, end users, and market conditions determine what works best. And when there must be judicial review, it should be meaningful and timely. Manufacturers believe in protecting our communities—we live there—our neighbors and our environment.

Permitting reform will help us achieve more: more manufacturing, more domestic energy production, more inputs and raw materials, and, most importantly, more jobs. And our country and the world will be better off if we and our allies do not depend on authoritarian rivals for energy and other natural resources.

The manufacturing industry will continue doing what it always does: innovating, creating jobs, and improving the quality of life for everyone. But we can do so much more with a permitting system fit for the 21st century.

Thank you.

[Mr. Farris' prepared statement follows:]

Prepared Statement of Brandon Farris, Vice President, Energy and Resources Policy, National Association of Manufacturers

Good morning, Chairman Rouzer, Ranking Member Napolitano and distinguished members of the committee. Thank you for the opportunity to appear before you and for holding this important hearing today on how permitting reform can build a stronger economy.

A. INTRODUCTION

My name is Brandon Farris. I come from a manufacturing family. My grandparents worked their entire careers at the GE communications products department in Lynchburg, Virginia. In Lynchburg, GE made two-way FM radio and car-telephone systems for vehicles, portable two-way radios, industrial paging systems, and data transmission systems. My father worked in a printing press. Lynchburg is a manufacturing town, and I have seen firsthand, through my own experience, how manufacturing raises the quality of life for families and communities. Today, I serve as the vice president of energy and resources policy at the National Association of Manufacturers. The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector. At the NAM, we advocate policies that grow manufacturing in the United States and improve the lives of everyone, including the families of the 13 million men and women who make things in America.

For our industry to continue growing our economy, creating jobs and developing the best products in the world, the United States must update its permitting laws and procedures. Permitting delays and associated costs are making it much harder for manufacturers to compete and win in the global economy. Although these problems have persisted for decades, the pandemic and recent supply chain disruptions have exacerbated the situation and made it more apparent. Bipartisan cooperation has led to major policy achievements in recent years, notably with the CHIPS and Science Act, which provides important incentives to spur domestic manufacturing of vital inputs used industrywide, particularly semiconductors. The Infrastructure In-

vestment and Jobs Act represented a historic commitment to revitalizing our country's crumbling infrastructure, modernizing it to improve the quality of life for all Americans and to further bolster our global competitiveness. Permitting reform should go hand-in-hand with these achievements, as it will help us more efficiently realize the promise of our national investments in domestic manufacturing and infrastructure.

The NAM supports this committee's work to modernize outdated and inefficient permitting processes. The manufacturing industry accounts for approximately 11% of our national gross domestic product, and it can grow even more if this red tape no longer stands in the way.

I would like to point out several areas where the current permitting processes are most disruptive—and how reform in these areas will bolster manufacturing in the U.S.

TRANSPORTATION INFRASTRUCTURE

Transportation infrastructure of all kinds is essential to manufacturers in the U.S. Obtaining permit approvals for these projects often takes years, and that timeline can be magnified if the review process is not streamlined, as is often the case. Many companies are unable to proceed with new domestic manufacturing projects because the permitting process has tied them up and slowed the project to a crawl.

I would like to share some examples. Our members have reported that National Historic Preservation Act Section 106 consultation processes have taken five years each for separate key rail infrastructure projects. One electric heavy-duty truck manufacturer reported that some customers have refused deliveries of battery-electric trucks due to the uncertainty surrounding the necessary utility infrastructure upgrades to power the chargers. And the Federal Highway Administration averages more than seven years and four months to get approvals for a road that connects manufacturing facilities with their customers or employees with their workplaces.

It is clear how these permitting delays are standing in the way of our industry's ability to create jobs, grow and make more products in the U.S.—as well as in the way of other national priorities. The Department of Energy's draft National Transmission Needs Study, released Feb. 24, points out that the national electric transmission system would need to grow 57% by 2035 to meet the infrastructure needed to reach the administration's clean energy goals as it relates to the growing light-, medium- and heavy-duty vehicle industries.¹ Removing inefficiencies and streamlining permitting for charging infrastructure projects is a high priority for manufacturers, especially those facing state medium-and-heavy-duty zero-emission-vehicle sales mandates like those in California, Washington and Massachusetts. And the passage of the bipartisan IIJA in 2021, which the NAM strongly supported, could revitalize our nationwide infrastructure systems, with upgrades, updates and new projects—if we clear permitting backlogs and ease processing timelines.

ENERGY INFRASTRUCTURE AND ENVIRONMENTAL REVIEWS

Permitting challenges are also slowing the development of many energy projects, including renewables. Manufacturers depend on access to reliable and affordable energy to expand, which is why we support reforms that would foster transparent, streamlined and timely federal regulatory processes for the siting, permitting and licensing of energy delivery infrastructure of all types. As NAM President and CEO Jay Timmons recently said in testimony before the Senate Committee on Environment and Public Works, manufacturers do not believe that expanded domestic energy production, strong environmental protections and a thriving economy are mutually exclusive goals. Permitting reform can help achieve these goals in tandem.

For example, the siting of and infrastructure for zero-emissions sources such as hydrogen power generation and transportation and for advanced, small modular and micro-nuclear reactors have progressed far too slowly. The Inflation Reduction Act included nearly \$400 billion for clean energy priorities, which might take years to be spent under our current permitting system. And the White House Council on Environmental Quality recently issued a report stating that, on average, environmental impact statements, which are mandated under the National Environmental Policy Act of 1969 to outline the potential impact of a proposed project on its surrounding environment, now take on average four and a half years.² More time is spent studying potential environmental impacts than it takes to construct and oper-

¹ <https://www.energy.gov/gdo/national-transmission-needs-study>

² https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2020-6-12.pdf

ate a clean hydrogen power generation facility. The Congressional Research Service also states that NEPA is the most frequently litigated federal environmental statute.³ Furthermore, a 2014 Government Accountability Office study on NEPA analysis found that “little information exists on the costs and benefits of completing NEPA analyses” and that “agencies do not routinely track the costs of completing NEPA analyses.”⁴ NEPA can clearly be amended to reduce the time its processes take and the associated compliance costs, with no real impact on its environmental protections.

We have a member that makes critical raw materials for semiconductors, clean hydrogen and lithium-ion batteries. In many cases, these products cannot be made without their chemicals, but because of the regulatory uncertainty in obtaining a National Pollutant Discharge Elimination System permit in a timely manner, that member recently announced that they will build a facility in the EU that manufactures materials necessary to produce clean hydrogen.

Another NAM member reported that they needed to obtain a construction permit, but before the permit could be granted, the company needed survey permission to review the landscape and natural resources in the area. It took more than six months to simply obtain permission to conduct the survey. The delay in obtaining survey permission cascaded into a more than 12-month delay in the permitting process itself. It is important to note that this was listed as a “priority project” in the “FAST-41” Federal Infrastructure Dashboard, which is supposed to increase permitting efficiency.

But delays in starting projects are not just caused by NEPA or the Clean Water Act. One NAM member company reported lengthy delays of up to an entire year for the issuance of permits by the U.S. Army Corps of Engineers due to the failure of the U.S. Fish and Wildlife Service to complete the informal consultation required for confirming no adverse project impacts under the Endangered Species Act. For an entire year, potential workers sat on the sidelines and a community lost out on economic opportunity waiting on informal paperwork that should not have taken longer than 90 days to complete.

Staffing shortages at agencies are also becoming a significant obstacle in the permitting process. In one case, a member company reported that a permit renewal was delayed by more than six months simply due to lack of staff. Another member reported that a Section 7 Endangered Species Act consultation was stalled for more than two years as the National Marine Fisheries Service waited on a biologist to be assigned to the project. Individually, each regulation is restrictive enough, but when added together, they place a significant economic and operational impact on manufacturers.

RESOURCE DEVELOPMENT

Our industry depends on access to our nation’s plentiful natural resources, and we believe that all processes involving them should be done in an environmentally sound and responsible manner. However, some restrictions on the development of these resources are hindering our ability to strengthen domestic supply chains and making our industry more reliant on raw material imports. The inconsistent administration of critical mineral policies, for example, has limited our ability to use a wide range of resources that exist on and beneath federal lands—resources that are critical to producing everything from cars to medical devices.

Various permitting agencies are required to weigh in on every mining project in the U.S. For example, mining operations in the U.S. typically require two Clean Water Act permits.⁵ Section 404 requires mining operators to work with the Army Corps of Engineers to ensure that the discharge of material is done in an environmentally sound way that does not disrupt navigation to waters of the United States. Section 402 permits authorized discharges from discrete conveyances—called point sources into waters subject to federal jurisdiction. These permits are just part of the mosaic of reviews that contribute to delays in mining projects across the U.S. The National Mining Association reports that Australia and Canada, two countries with environmental protections that are arguably equivalent to or even more stringent than those in the U.S., have mine permitting processes that last two to three years on average, whereas in the U.S. the permitting process averages seven to 10 years.⁶ Modernizing and streamlining resource permitting and leasing policies will help sta-

³ <https://crsreports.congress.gov/product/pdf/IF/IF11932>

⁴ <https://www.gao.gov/assets/gao-14-369.pdf>

⁵ <https://nma.org/category/water/>

⁶ <https://nma.org/wp-content/uploads/2016/09/Fact-Sheet-Permitting-Delays-1.pdf>

bilize manufacturing supply chains, control costs for consumers, reduce our reliance on foreign countries and create jobs in the U.S.

Leaders in both parties have demonstrated a shared commitment to increasing semiconductor production in the United States so that our manufacturers—virtually all of which rely on chips for their products or processes—have strong, domestic supply chains for these critical inputs. With 88% of chips produced outside of the U.S.⁷ right now, this is a crucial goal for not only our economic security but also our national security. Yet, the raw materials for those chips, such as lithium and cobalt, are still mined largely outside of the U.S. as well.⁸ Our nation has reserves of both lithium and cobalt.⁹ To access them, though, as Congress clearly envisions we will, also requires congressional action to speed up permissions for developing those resources in a responsible way.

NEW ENVIRONMENTAL STANDARDS

Manufacturing in the U.S. is cleaner than our global competitors,¹⁰ owing largely to manufacturers' commitment to modernizing and improving processes constantly, so as to leave the planet better than we found it. Our industry also carefully upholds federal standards for environmental protection. Unfortunately, when federal agencies continually revise standards before current standards are met and before states have implemented prior mandates, those revised standards create unpredictability. As a result, the U.S. has ceded new projects and facilities to other countries.

The Environmental Protection Agency is taking an aggressive approach toward tightening regulations in several environmental statutes. Unfortunately, these proposed regulatory changes are not based on the best available science, often setting standards at or below limits of detection, making compliance technically infeasible. One such regulation is the EPA's proposed air quality regulations for particulate matter (PM_{2.5}). The regulation as proposed would mean that nearly 40% of the U.S. population lives in an area that is out of "attainment," which would make it extraordinarily difficult to create manufacturing jobs, protect existing manufacturing jobs and could prevent much needed infrastructure improvements in these areas. For instance, one manufacturer that is already in a current nonattainment area was forced to choose between spending \$400 million more to meet stringent emissions standards in a locality not in attainment or move their facility entirely. The company chose to move, and that added \$100 million to the project and caused a six-month delay. These are the kinds of costs and decisions that we would witness on a much greater scale if the new rule goes into effect.

Overly burdensome, shifting regulatory policies inherently affect permitting, licensing and siting applications because they move the goalposts of compliance with federal regulations. If instead we make the process more predictable and consolidate the many complex layers of review, the U.S. can continue to build on its strong record of environmental stewardship by boosting domestic manufacturing, which is environmentally cleaner than our international competitors.

CONGRESSIONAL INTENT

The success of any legislative permitting reforms depends on proper implementation. Ensuring the administration follows congressional intent on recent and future statutory streamlining efforts such as One Federal Decision is key. Establishing strict permit review timelines and eliminating duplicative efforts across various federal agencies help in reducing unnecessary delays. Moreover, key permitting authorities are rife with ambiguity and inconsistent terminology and warrant congressional intervention.

* * *

Permitting affects every aspect of our lives—from our economic security to our national security. If we fail to modernize existing processes, the U.S. is at risk of falling behind international competitors that are taking every possible step to incentivize manufacturing development. For instance, the EU released a new plan known as the Net-Zero Industry Act, which looks to regain manufacturing from lower-cost manufacturing centers in Asia and elsewhere. If the United States does

⁷ www.semiconductors.org/wp-content/uploads/2021/09/2021-SIA-State-of-the-Industry-Report.pdf

⁸ https://www.gao.gov/products/gao-22-104824#summary_recommend

⁹ <https://pubs.er.usgs.gov/publication/pp1802>

¹⁰ https://documents.nam.org/COMM/NAM_Air_Quality_Standards_Analysis_Web_Version.pdf

not act quickly, we could lose much needed manufacturing investment to the EU and elsewhere in the world. On the other hand, if we seize this opportunity to lead, there is no limit to what manufacturers in the United States can accomplish—for the good of our people and the good of the world.

As the NAM has emphasized consistently, permitting reform is not about cutting corners. It is about keeping up with the world around us. It is about ensuring that this country—a democracy rooted in free enterprise—is not outpaced or outflanked or overtaken by nations that do not share our values, that do not respect the environment or that do not recognize the dignity of human rights.

Thank you for inviting me to testify today. I look forward to continued engagement with members of this committee.

Mr. ROUZER. I thank the gentleman for his testimony, as well as all the other witnesses.

So, we will now turn to questions from Members. I recognize myself for 5 minutes for questions.

I had the opportunity—I took the opportunity, I might say, to read every word of each of the testimonies provided by our panelists here today.

Mr. Farris, I was particularly struck by one of the final paragraphs of your written testimony, and I want to highlight this. It says: “[P]ermitting reform is not about cutting corners. It is about keeping up with the world around us. It is about ensuring that this country—a democracy rooted in free enterprise—is not outpaced or outflanked or overtaken by nations that do not share our values, that do not respect the environment or that do not recognize the dignity of human rights.”

A little further above there, you say: “If the United States does not act quickly, we could lose much needed manufacturing investment to the EU and elsewhere in the world.”

Can you expound on that a little bit? What do we need in this country? Certainty? What are other attributes of a permitting system that will enable us to compete worldwide?

Mr. FARRIS. Thank you, Mr. Chairman. And just one example. So, for mining, for critical minerals, for semiconductors, for electric vehicles, for what our Defense Department calls vital and critical to our national defense.

In the U.S., a mine takes 7 to 10 years, on average, to permit. When you look at Australia, when you look at Canada, who has very similar permitting systems to us, very similar environmental protections, permits there take 2 to 3 years. There is certainty, and they move efficiently.

There is no direct number to years that it takes to permit a mine, but we know we need to do it faster and we need to get these products working to be able to increase our jobs and increase our security.

Mr. ROUZER. Dr. Travnicsek, I was intrigued with your thoughts that you conveyed with your testimony. Can you talk a little more about the Nationwide Permit 12?

You say: “[O]ne solution to ease overly stringent federal permitting requirements would be to adopt state-specific regional conditions for the Corps’ Nationwide Permit 12, which applies to oil and gas pipelines, and Nationwide Permit 58, which applies to any linear utility line.”

Can you expound on that a little more?

Ms. TRAVNICEK. Yes. Thank you, Mr. Chairman. Thank you for the question.

Yes. In regards to looking at those nationwide permits and how they could be utilized, that is where we have had our agencies working with the Corps, trying to discuss what it would look like from a State-specific regional condition, knowing that there are those different regional conditions across the country and how can we continue to utilize those nationwide permits but knowing that, for instance, in North Dakota, we have got that unique wetland, hydrological areas out there, and we are the best known with our expertise that we have at the State on what those impacts could be, and also how we are identifying what they are.

So, by having those types of tools in place, that will help us continue to streamline our efficiencies associated with building the infrastructure projects.

Mr. ROUZER. Yes. I know in North Dakota, the weather can be a little challenging from season to season, particularly the winter season.

You mentioned that “[s]ection 404 permitting delays are especially harmful in North Dakota, due to our short construction season.”

Can you talk about that cumulative effect a little bit?

Ms. TRAVNICEK. Yes. Thank you, Mr. Chairman. Yes, in North Dakota, right now would be our time to be starting to get out in the field, but usually that can wrap up anywhere in that October timeframe as well. So, if we are delayed by any sort of decisions related to permits, we could lose a construction season or two immediately, which, of course, leads to increases in costs and uncertainties of when we can complete those projects.

So, making sure, in regards to some of the discussion already on timeliness of getting those permits, that is what we would be looking for. And right now, there are uncertainties with that.

Mr. ROUZER. Thank you much.

Mr. Conway, obviously, there are a lot of folks back home in my district that are concerned about rate increases. We are dealing with PFAS. New technology has been implemented there: A carbon filtration system at Cape Fear Public Utility Authority; I believe at CalStar Utilities, \$60 million.

You have major upgrades that need to be made at wastewater treatment facilities all around the country. These structures/facilities weren’t designed to last 50-, 100-plus years, and it seems like everything is coming due all across the board.

Can you talk about the delicate balance of how do you protect ratepayers, how do you deal with the rules and regulations, and what we can do to streamline this so that we are protecting water quality in every way, but also allowing for a good playing field for you all to operate?

And I only have about 10 seconds, so, if you can keep it brief. Sorry.

Mr. CONWAY. We have invested billions over the years. We intend to invest billions into the future. The key is to invest it in the right place and make sure the money is going to actual water quality improvement and protecting our communities. And really, regulatory certainty is a key to that.

Mr. ROUZER. I thank the gentleman. I thank the panel for entertaining my questions.

I now turn to Mr. Larsen.

Mr. LARSEN OF WASHINGTON. I am prepared with questions. I just didn't expect to cut in line in front of my colleague.

Mr. ROUZER. Well, I respect the ranking member of the full committee.

Mr. LARSEN OF WASHINGTON. OK. Thank you. I hope to continue to earn that respect. Thank you, Mr. Chair.

So, I want to start with a question for Secretary McIlwain. Can you discuss some of the positive impacts of the Clean Water State Revolving Fund that Maryland will be able to take advantage of over the next 5 years because we passed the Bipartisan Infrastructure Law?

Ms. MCILWAIN. Yes. Thank you. We have been able to do a lot in Maryland with the funds that have been available. We have been able to upgrade more wastewater treatment plants. The funding has contributed to restoration of the Chesapeake Bay. We have been able to really help the disadvantaged communities who otherwise didn't have the funding available to help upgrade the water systems that are degraded.

And so, the historic funding that has been available has really put us in a leading position and in a position to help the citizens of Maryland.

Mr. LARSEN OF WASHINGTON. In some of those disadvantaged communities or underserved communities, how would you characterize the infrastructure compared to, say, a more developed area in your State or maybe a higher economic—

Ms. MCILWAIN [interrupting]. They just don't have the funding to upgrade as quickly as other counties and States and local governments who have more funding. It is all about the amount of taxes that you are collecting and rates that you are charging.

When you are in a disadvantaged community, you can't charge a lot in those communities. And so, they are behind. They don't have the infrastructure nor the funding.

Mr. LARSEN OF WASHINGTON. So, looking at that from an opposite way, the debt limit plan that this House voted on, it would have resulted in a 23-percent across-the-board cut to discretionary spending, including clean water investment.

What would that mean for a State like Maryland?

Ms. MCILWAIN. It would mean—it would put us back. And it would mean all the funding that we have been able to, again, give to those communities, we wouldn't be able to do that at the rate in which we have been.

There are a lot of investments that we have made that we have been able to forgive those loans as well because of the Bipartisan Infrastructure Law. We wouldn't be able to forgive those loans. And, again, so, the economics in those communities—we wouldn't be able to help as much as we have been.

Restoring the Chesapeake Bay, all the funding that we have put toward the Chesapeake Bay as well, that impacts disadvantaged communities as well.

Mr. LARSEN OF WASHINGTON. Now, I recognize nothing is perfect and that there is a friendly competition about which State has the

greatest estuary in America: Washington State and the Puget Sound or Chesapeake Bay in Maryland. I understand that. And maybe California. You are taking my time, John [to Mr. Garamendi]. Maybe California.

That said, what work is yet to be done? And could you include in your answer some of these issues on permitting reform? What work can be done on restoration of clean water, and what work can be done on permitting reform?

Ms. MCILWAIN. So, we have to meet our total maximum daily load goals by 2025 for the Chesapeake Bay. And so, we work with a lot of local governments, committees, the Chesapeake Bay Foundation, the Chesapeake Bay Program. We work together to find ways to continue to improve the Chesapeake Bay.

If we are not able to continue to fund those programs as well as—again, we are using money to upgrade the wastewater treatment plants, all that is pollution getting into the bay. So, just going backwards. Everything that we are doing is trying to move us forward, and we can't afford to have any delays in funding and contribution to eliminating pollution.

Mr. LARSEN OF WASHINGTON. Have you looked at permitting reform in your State, or do you have some thoughts about what Congress has looked at?

Ms. MCILWAIN. In terms of permitting reform, in terms of our State, I know from my agency, we are looking at making sure that we are reforming permits.

It is in a Federal-wide initiative, though. We realize that with the bipartisan—"we" meaning the Federal Government, too. We realize that with the bipartisan infrastructure loan money, the funding, it is a lot. And you can't have projects, they are not going to get done if the permits aren't accelerated and the unnecessary steps are taken out.

I have been a part of those efforts on a Federal level for years. And I am bringing that same expertise to Maryland so that we can try and streamline the permitting process as much as we can. We are working on that now.

Mr. LARSEN OF WASHINGTON. That is all fair. That is great. Thank you very much for helping us out today. I appreciate it.

I yield back.

Mr. ROUZER. The gentleman yields back.

I now recognize Mrs. González-Colón.

Mrs. GONZÁLEZ-COLÓN. Thank you, Mr. Chairman.

One of the biggest issues that—I want to say, first of all, thank you to the panel of witnesses for joining us today.

And I think the Clean Water Act is one of the critical pieces of legislation over the past century. And to have a productive workforce and a competitive industry, we need to ensure that the resources they depend on are protected, but that doesn't mean we cannot do anything. And coming from an island that is undergoing a full recovery from hurricanes, I know how difficult it is to process the permitting between the Federal agencies and the local agencies, actually to get something done.

So, I am glad some of the witnesses today just touched a little bit about those permitting processes.

Mr. Conway, in your testimony, you bring up the Clean Water Act National Pollutant Discharge Elimination System, and you state that these protections are threatened by opponents of a project bringing up suits against the wastewater processors based on things that were not contained in the permits.

You state, to paraphrase, that utilities must not be faced with the imposition of ad hoc permitting requirements through litigation and call attention to permits that use vague language.

My question will be, do you believe that this is a strategy to indirectly force the States or municipalities or regulators to take action against third parties, that is, for example, to make a regulator force an industry to shut down an activity because otherwise the public treatment plants that cannot handle that discharge will be noncompliant and lose funding?

Mr. CONWAY. Thank you, Congresswoman. The permit system is designed to provide an opportunity for all interested stakeholders to get involved during the permitting process, including those who are going to have concerns about particular discharges or pollutants or impacts to water quality.

That is a very robust process that is delegated down—that moves down into the States. EPA has various interactions, depending on the delegation status of the State. But it is at that point where we really have the opportunity to protect our waters. I feel like that is the first point.

Once the permit is set, the discharger has to meet those permit limits, and if it does not, it is in violation. And there are a number of compliance tools that both the State and the EPA and even non-governmental organizations can take in a noncompliant situation.

When you have a discharge that wasn't contemplated in the permit and, therefore, there isn't a design of the system to manage that, there is an opportunity to rectify that in an updated permit. And that process is frequently undertaken by EPA and/or the States, depending on the regime.

So, we have lots of places to check in to protect our water bodies. The big picture that we are trying to promote here is that, once a permit term is set, those who have constructed, designed, and operated the systems really can't just turn them off and on to change because a new constituent is introduced.

So, we are really trying to work on a big ship moving down the harbor here that cleans up as much as we possibly can with the certainty we have under our permits.

Mrs. GONZÁLEZ-COLÓN. You mentioned, as a critique to the existing system for water standards criteria, that EPA typically takes comments and subjects them to review. But because the Agency takes the position that it is just guidance and not rules, they do not have to follow the full procedural requirements for approving regulation, including periods for comments and responses.

So, my question will be, I mean, are you proposing, then, that the law be amended to specify explicitly that EPA will approve a standard regulation through the normal administrative procedure, or do you propose that the Congress incorporate into the legislation specifics about what should be in those regulations?

Mr. CONWAY. Thank you for the question, ma'am. Actually, the former would be preferable, to incorporate explicitly into the Clean

Water Act an opportunity for comment and participation in that process.

EPA's position has been, because it is not a formal rulemaking, that States can adopt these rules if they want to adopt them is correct. However, the States almost always do adopt those rules. They don't have the resources to come up with their own water quality research and individual assessments.

So, that is what we would like to see happen. I think that would be great for our communities. And, frankly, for the EPA, it would be assistance for them to have our input into that process.

Mrs. GONZÁLEZ-COLÓN. Thank you. My time expired. I yield back.

Mr. ROUZER. I now recognize the gentlelady and my partner from California, Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you very much, Mr. Chair.

Secretary McIlwain, last week, the Scientific and Technical Advisory Committee for the Chesapeake Bay Program released a report that stressed the need for additional measures to address nutrient pollution to the bay if cleanup goals are to be achieved. The committee report highlighted the progress made in reducing nutrient pollution from the wastewater treatment plants, even as populations in the bay watershed have increased. However, the report also warned that progress in addressing nonpoint sources of nutrient pollution has lagged and has been insufficient to meet the overall water quality goals of the bay.

What additional steps do you recommend for addressing ongoing nonpoint sources of nutrient pollution to the bay?

Ms. MCILWAIN. Well, first, nonpoint sources of pollution are the largest issue for us, for the country, because you can't detect them as quickly as you can the point sources.

I think that what we need to do is prioritize the projects that have multiple benefits. And that includes carbon sequestration, ones that also have flood resiliency, as well as cleaner water.

So, we need to look at those projects and try to get more out of the projects that we have so that we can start addressing the nonpoint source issues.

Mrs. NAPOLITANO. For those who might suggest that additional investments in the bay are too costly or have little economic benefit to Marylanders, how would you respond to justify the investment, to all of you?

Ms. MCILWAIN. I am sorry, repeat the last piece.

Mrs. NAPOLITANO. How would you respond to justify the investment when they say that it would be too costly to do it for the bay?

Ms. MCILWAIN. We don't have enough funding now, so, it is never too costly. We need more money for investment in the Chesapeake Bay. We need to keep moving forward. We don't have room to go backwards.

The funding that we have—as I spoke about earlier, the funding that we were able to get from the funding has allowed us to upgrade the wastewater treatment plants, improve and restore the Chesapeake Bay, and help disadvantaged communities. We have more work to do, and I have that in my testimony. There is a lot more that we need to do and that we will do.

Mrs. NAPOLITANO. Can you highlight the economic benefits the bay has received?

Ms. MCILWAIN. I am sorry?

Mrs. NAPOLITANO. The economic benefits the bay has received.

Ms. MCILWAIN. The economic benefits, we have created—the Chesapeake Bay, just from the funding, I think it is 35,000 jobs have been created from the funding that we have received.

So, there are a lot of economic benefits that we are getting. More companies are getting more money, more loans and, again, more loan forgiveness. There has been a lot of economic benefits to the communities.

Mrs. NAPOLITANO. The jobs and the water quality.

Ms. MCILWAIN. And the water quality has improved.

Mrs. NAPOLITANO. Anybody else?

Mr. CONWAY. Yes, Ranking Member Napolitano, I would say that I don't believe that anyone thinks that clean water is too costly in the broad sense, but it is important to prioritize what we have to do, because it all can't be done at once.

And infrastructure issues across the country, just literally delivering and taking clean water are key, absolutely key. When we start adding things—nutrients are also key. And almost all of our clean water treatment plants are set up to manage nutrients. It is a heavy lift to get them to lower and lower levels, but everyone is committed to that.

Once we get to emerging contaminants like PFAS, the cost associated with that and the uncertainty and the technology right now, on top of infrastructure and nutrients, is going to put an incredible strain on our folks. And so, I think prioritizing all these things and these investments is going to be very important for us.

Mrs. NAPOLITANO. What should the role of the Federal Government be, or what would you expect it to be?

Mr. CONWAY. I am sorry, what?

Mrs. NAPOLITANO. The role of the Federal Government.

Mr. CONWAY. I think I would love to see the Federal Government set a priorities list on pollutants. I think that would be difficult to do, but it would be something akin to setting water rights issues in the Colorado River. You could tell us what you want us to do first. We will put every bit of energy we have into that.

One of the things I would suggest is that solutions to clean water often implicate, for instance, air issues. You pollute to create clean water. You use chemicals to create clean water. And so, the cleaner the water gets, the dirtier the air gets. And so, we would like to see a prioritization system that helps us guide our investments.

Mrs. NAPOLITANO. But then the Federal Government doesn't know the situation in every State, so, you would have to go differently.

Mr. CONWAY. I recognize that. That would be——

Mrs. NAPOLITANO [interrupting]. I yield back, Mr. Chair. Thank you.

Mr. ROUZER. I thank the gentlelady.

Next up on our side is Mr. Van Orden for 5 minutes.

Mr. VAN ORDEN. Thank you very much, Mr. Chairman.

I find it fascinating that many of my colleagues wrap themselves in the Richard Nixon flag when it comes to the Clean Water Act,

which I don't think they would normally do. When we speak about congressional intent and following congressional intent, I cannot think of a greater example of that other than a bipartisan, bicameral resolution that was passed in the House and the Senate that went to President Joe Biden's desk asking to repeal the waters of the United States rules changes that was vetoed by President Biden.

So, to be clear, the intent of Congress was to not have these rule changes go through on the waters of the United States, and that was vetoed by the President of the United States. So, clearly, the congressional intent is not being followed by the executive branch, and that is a blatant political act, and I think it is inappropriate.

Secretary—it is McWain?

Ms. MCILWAIN. McIlwain.

Mr. VAN ORDEN. McIlwain. Sorry, ma'am. What percentage of Maryland is dedicated to agriculture?

Ms. MCILWAIN. What percentage of Maryland is dedicated to agriculture?

Mr. VAN ORDEN. Land-use agriculture?

Ms. MCILWAIN. It represents a large portion of Maryland. I don't have the exact percentage, but it is huge.

Mr. VAN ORDEN. OK. Dr. Travnick, what percentage of North Dakota is—

Ms. MCILWAIN [interrupting]. About half.

Mr. VAN ORDEN. About half?

Ms. MCILWAIN. Yes.

Mr. VAN ORDEN. Dr. Travnick, what percentage of North Dakota is dedicated to agriculture production?

Ms. TRAVNICEK. Representative, so, for North Dakota, yes, it is a very large percentage as well. It is our number one industry in the State of North Dakota.

Mr. VAN ORDEN. OK. And, Secretary McIlwain, what percentage of Maryland would be subject to no notice, no consent inspection by the Federal Government if the waters of the United States rules changes are enacted?

Ms. MCILWAIN. I would say a large percentage would be impacted. You said by the waters of the United States, by the new rule, is that what you are asking me?

Mr. VAN ORDEN. Do you have any idea, like an actual percentage?

Ms. MCILWAIN. I don't.

Mr. VAN ORDEN. OK. Dr. Travnick, what percentage of North Dakota would be subject to no notice, no consent inspection by the Federal Government if the rules changes or the waters of the United States were enacted?

Ms. TRAVNICEK. So, Representative, as we are looking at those rule changes, I mean, pretty much every industry in North Dakota would be impacted by those changes as we are looking at knowing that wetlands are now included within that new rule. We are fortunate, right, that we have got the stay right now that is not impacting our State where we are at, that 2015 decision related to the Clean Water Act, but if that were to go away and if something did happen, yes. So, you have got our energy industry, our agriculture

industry. This agency trying to get water to people, we would be impacted.

Mr. VAN ORDEN. Madam Secretary, if you were considering Maryland in relationship to North Dakota, would you say that Maryland is more heavily regulated than North Dakota?

Ms. MCILWAIN. I am sorry. Can you repeat the last piece?

Mr. VAN ORDEN. If you were to juxtapose Maryland with the State of North Dakota, would you say that Maryland is more heavily regulated than the State of North Dakota? I know what Dr. Travnicek is going to say.

Ms. MCILWAIN. I am not sure.

Mr. VAN ORDEN. Dr. Travnicek, in relationship to Maryland, would you say that Maryland is more heavily regulated than North Dakota?

Ms. TRAVNICEK. Representative, so, I do not know all the regulations that are within Maryland, but as we are looking at regulation in North Dakota, we always try to do the innovation over regulation. That is what we are always looking for. We are looking to try to streamline our permitting processes, making sure that we can get infrastructure to the different economies that we are striving for within the State.

Mr. VAN ORDEN. Thank you.

Madam Secretary, do you think that the regulations that apply to the State of Maryland should apply to the State of North Dakota?

Ms. MCILWAIN. I mean, I look at it—well, yes. Well, because we are trying to protect upstream States from polluting downstream. So—

Mr. VAN ORDEN [interrupting]. Madam Secretary, is North Dakota upstream from Maryland?

Ms. MCILWAIN. Well, my point was we—

Mr. VAN ORDEN [interrupting]. I understand your point, ma'am. Here is my point. We are part of a Republic. So, Dr. Travnicek, when she is speaking about the regulations that apply to people in North Dakota, I don't think that she should be able to tell you what to do, and I don't think you should be able to tell her what to do, because you live in very unique States. I appreciate everything that you are saying. I appreciate what you are saying, but there is a very specific reason that our Constitution was written the way it was, and I do not think the Federal Government has a place in dictating how you should live your life, nor Dr. Travnicek's in relationship to the waters of the United States.

And the answer to Wisconsin is 85 percent of the Third Congressional District of the State of Wisconsin would be subject to no notice, no consent inspection by the Federal Government if these rules changes took place. Thank you very much.

I yield back my time that has already expired, Mr. Chairman.

Mr. ROUZER. The gentleman yields.

Mr. GARAMENDI.

Mr. GARAMENDI. No, I am not going to do it. I am not going to engage in the debate about the role of the Federal Government versus the State governments and the like. I will just let that go for a few moments.

So, we were talking about reform here of the various permitting processes. I actually do have a reform I would like to have all of you comment upon it.

Presently, the NPDES permit is for 5 years. And so, Mr. Conway, your agencies and others seek a permit to discharge, and it is 5 years.

About the time you get underway on the construction of whatever it is you want to do, it is now time for another 5-year permit. And so, you are constantly permitting.

The reform that we have is in H.R. 1181, which would, instead of a 5-year, give a 10-year permit for the discharge for the public agencies. We think it is a pretty good idea. We want to get these projects underway. If there is an upgrade necessary, then get about doing it without having to, once again within that 5-year period, start all over. So, we are looking at a 10-year permit.

And, Mr. Conway, if you could comment on this. Previously, your organization endorsed it. It is a new Congress. We are going to give it another try.

Chairman Rouzer, we would love to have your support on this. Mr. Conway.

Mr. CONWAY. Thank you, Congressman. I know NACWA has been in support of that idea, that any increase in certainty and any increase in lead times to plan, execute, and operate projects would be, in our world, helpful. Frankly, the reality, to your point, is that if you are going to add, for instance, tertiary treatment to a large wastewater treatment plant, that is a 10-year process in and of itself to get to those low, low, low limits. So, that longer lead time and run time would be very helpful for utilities.

Mr. GARAMENDI. Thank you.

The other witnesses, if you care to comment about this issue of moving from a 5-year NPDES deadline or permit to a 10-year, please do.

Dr. Travnicsek.

Ms. TRAVNICEK. Representative, so, as you are looking at that 5-year to 10-year permit, of course, you get more of that certainty of being able to stay within the bounds of a longer one, but that would be my comment at this point.

Mr. GARAMENDI. Thank you.

Secretary McIlwain, why did you leave California to come to Maryland? You were doing such a good job in California, but here you are. So, your comments.

Ms. MCILWAIN. I will just comment on that.

Mr. GARAMENDI. Let that go.

Ms. MCILWAIN. I came to Maryland because Maryland is home for me. I love California, but I had to return home and make sure that I am protecting the environment in Maryland.

Mr. GARAMENDI. Well, carry on then. What about this 10-year permit versus the 5-year permit?

Ms. MCILWAIN. I don't really have a comment on that. I have thoughts, but I'd rather keep my comments to myself.

Mr. GARAMENDI. Well, I will send you all of the information, you can then comment in writing later on.

Ms. MCILWAIN. OK.

Mr. GARAMENDI. Mr. Farris.

Mr. FARRIS. Congressman, one thing that manufacturers constantly ask for is regulatory certainty. This would give them certainty. Yes, sir. Absolutely.

Mr. GARAMENDI. At least within the 10-year period of time—

Mr. FARRIS [interposing]. Yes, sir.

Mr. GARAMENDI [continuing]. Where the projects can actually get underway, the construction can begin, completed hopefully within that period of time. And there will be another opportunity, any changes that have occurred in the standards, the emission standards, could be dealt with subsequently.

Mr. Rouzer, I would love to have your support on this as part of our reform. It would be great to include this in it. With that, I yield back.

Mr. ROUZER. The gentleman yields.

Mr. Babin.

Dr. BABIN. Thank you, Mr. Chairman. I really appreciate it. Thank all of you witnesses for being here as well. We appreciate your testimony.

Mr. Farris, given your role with the National Association of Manufacturers, I would like to hear your perspective on a few challenges that are being faced by our manufacturers today in our country.

Members of the committee have heard people from many different economic sectors detail their frustrations with our permitting processes. And from your perspective, what are the main challenges faced by manufacturers in the United States due to this permitting process?

Mr. FARRIS. Thank you, Congressman. And how much time do you have, sir?

Dr. BABIN. I have got several more questions, so, just maybe hit the high points.

Mr. FARRIS. I can say the biggest thing is the delays. We have had one member who had to delay being issued a U.S. Army Corps of Engineers permit merely because the U.S. Fish and Wildlife Service wouldn't give them informal paperwork saying that there is no environmental impact. So, for a year, potential workers sat on the sidelines, a community lost out on economic opportunity for informal paperwork that should have taken 90 days.

Dr. BABIN. Yes. Absolutely.

Critical minerals are something more and more Americans are becoming aware of now that we are seeing some really new stuff on this. Our reliance on Chinese companies and the critical mineral supply chain is dangerous and potentially disastrous as China continues to aggressively come after the American economy.

Generally speaking, how is the reliance on Chinese critical minerals impacting our manufacturing capabilities, and how is the inconsistent administration of critical mineral policies impacting the industry?

Mr. FARRIS. Significantly. Significantly. If we learned anything over the past 3 years, it is about supply chain, and it is about manufacturing more things in America. As a country, we have agreed we need to manufacture semiconductors. We need to manufacture batteries. We cannot do those without the critical minerals. And as I mentioned earlier, right now in the U.S., it takes 7 to 10 years

to get a mine permitted. In Canada, 2 to 3. In Australia, 2 to 3. That is how we lose on an international scale.

Dr. BABIN. Absolutely. Last question, if you could leave myself and my fellow members on the committee here with one key takeaway today, what steps do you recommend that would help our manufacturers? What steps should we take to help our manufacturers?

Mr. FARRIS. I would say the two guiding principles are deadlines. Deadlines, because that creates certainty. And then judicial review. There needs to be judicial review. It needs to be meaningful and timely. And those are our two guiding principles for permit reform, sir.

Dr. BABIN. OK. Anything else you would like to add, because I still have got a little time?

Mr. FARRIS. I just wanted to say thank you to the committee and thank you for your leadership on these issues. This is something that I believe is a bipartisan issue and that we all need to know that we need to figure out how to fix.

Dr. BABIN. Absolutely should be bipartisan, and our economy and the American national security are dependent upon that.

Thank you, Mr. Chairman. I yield back.

Mr. ROUZER. The gentleman yields.

Mrs. Sykes.

Mrs. SYKES. Thank you, Mr. Chair, and thank you for the panel for coming to testify today. This has been a riveting conversation as many of us here, we are deeply concerned about the Bipartisan Infrastructure Law in ensuring that we are able to complete these projects. It is especially important in communities like mine in Ohio who continue to struggle with water quality. And I know the Clean Water Act is especially important for us.

Not my city, but we have heard about the "mistake on the lake," when a lake catches on fire, or algal blooms in the northwestern part of the district or the State, where we are constantly trying to keep mineral deposits and overgrowths that negatively impact our water supply. So, I appreciate all of you being here to discuss this very important role of the infrastructure act.

And specifically, I am going to go off script just a little bit because, Mr. Farris, you had a very interesting point to the question about permitting, and I know we are trying to get to the root cause of why the permitting is taking so long and why we can't get these projects done, even though we have the resources for it. And you specifically mentioned delays. And I want to ask you a question about the debt bill that was recently passed out from this Congress. Because what we understand is there will about 22-percent cuts across the board. And I heard you mention the Army Corps of Engineers, which would mean eliminating employment and employment opportunities for people to move those permitting requests through.

You talked about the judicial process. You talked about some other Federal agencies, but with the 22-percent cut across the board, which would ultimately mean decimating the workforce, it would seem like the delays would only increase. Is that correct? Yes or no, Mr. Farris?

Mr. FARRIS. Ma'am, what we are seeing across the board is—

Mrs. SYKES [interrupting]. Yes or no, Mr. Farris?

Mr. FARRIS. Yes.

Mrs. SYKES. Mr. Farris? Yes.

Mr. FARRIS. Yes, yes.

Mrs. SYKES. Yes. OK. So, it seems like the bill that we got from the majority would only exacerbate the permitting process in making it longer. Yes or no?

Mr. FARRIS. I cannot comment on that. What I can say is that on the debt ceiling, the NAM supports—the full faith and credit of the United States cannot be questioned. We also support permitting reform, and we would love Congress to figure out how to be able to do both.

Mrs. SYKES. Thank you, Mr. Farris. I appreciate you saying that, because I do hope that the Speaker is willing to do the work to make sure that we get that done and that we do maintain the full faith and credit of the United States.

I will answer the question for you since you would not. It would, in fact, make your permitting process much longer and exacerbate the process and make it much more difficult for you to do the manufacturing that you want.

Semiconductors in Ohio are incredibly important. Bridge and road building is incredibly important in Ohio with so many highway and byways and centerline miles. It is going to be very detrimental. So, I do hope that we have the full picture as we are talking about that question.

But, Mr. Conway and Madam Secretary, perhaps this next question is for you, because water affordability continues to be a problem for folks all across the country, whether you are in urban areas where I represent, suburban areas where I also represent, as well as rural areas where I represent.

And so, I just want to talk to you and ask you the question of: What happens if we fail to pay the bills as a country and we don't have the resources to continue to fund these projects? How are people going to afford water, clean water, in their communities?

And, Mr. Conway, I will start with you and, Madam Secretary, if you wouldn't mind finishing.

Mr. CONWAY. Thank you, Congresswoman. Obviously, our funding structure is primarily our ratepayers. We do have some assistance from the State. Many in our State use Federal funds as well through the SRF. It is very important for those utilities to be able to use those funds, the infrastructure act funds flowing through there.

As those funds decrease, then again, we have to get to really high-priority projects only. You do see that there have been failing water systems around the country that were not able to continually invest in their systems, and then you reach a point where, frankly, there is an emergency in delivering the services. The burden on ratepayers can only go so far. Folks will not pay their bills at a certain point, and we do see that in emergency times and difficult economic times. And so, ultimately, there becomes a spot where you can only invest the funds you have and you are holding on and putting Band-Aids on things. So, funding is critical to make all this work.

Mrs. SYKES. Thank you, Mr. Conway.
Madam Secretary?

Ms. MCILWAIN. Yes. The bipartisan infrastructure loans help make the projects affordable in the disadvantaged communities. And so, without the funding—again, I said it earlier, but to even think about raising the rates in some of these communities would be an economic disaster for those families.

Mrs. SYKES. Thank you, Madam Secretary.

And again, just want to highlight how important it is for us to figure out the debt ceiling and not move forward with what we passed here in the House. And my community specifically relies upon low-interest and no-interest loans to keep our ratepayers from not having to pay more so that they can actually afford not only their water, but their housing, their gas, their groceries, and all those important things.

Thank you, Mr. Chair. I yield back.

Mr. ROUZER. Mr. Westerman.

Mr. WESTERMAN. Thank you, Mr. Chairman. And thank you to the witnesses today.

Mr. Conway, last month, the Arkansas Water and Wastewater Association visited my office and mentioned its members have concerns about EPA PFAS regulation under CERCLA and how that would affect their operations.

As processors in the water system, can you talk more about how water utilities are going to have to navigate this potential situation?

Mr. CONWAY. Thank you, Mr. Congressman. The potential CERCLA issue for water and wastewater providers is a really serious issue for us. We are passive receivers of PFAS. It comes from uses in products and some cases industrial. In my particular jurisdiction, it is almost all domestic use that is sending PFAS into the system. Then the PFAS, because we do not have technology to take it out of wastewater, it passes into the biosolids and it passes into the liquid stream in some part. We are probably many years away from a large wastewater plant, such as mine, being able to manage PFAS, and we are working as hard as we can to get there.

But to the extent that CERCLA liability attaches to anything that comes out of our publicly owned plant, costs our ratepayers a tremendous amount. Effectively, they would be paying to be poisoned. And without a CERCLA exemption for wastewater and water treatment folks, the public is just going to pay for the clean-up of a product that was manufactured by other people.

Mr. WESTERMAN. So, you think there are exemptions from CERCLA for wastewater treatment plants that should be considered by Congress?

Mr. CONWAY. I believe that Congress could consider an exemption for publicly owned wastewater and water treatment plants, yes. I think that would be appropriate.

Mr. WESTERMAN. And talking about wastewater treatment, I am going to transition to Mr. Farris here, but I remember a few years back, we had a hearing, and I think it was somebody from the city of Spokane testified about regulations that were being put out by the State of Washington. And I believe it was dioxin they were regulating, which we all know dioxin is bad, but the regulations actually required levels below an amount that you could test for. Like,

it was impossible to even test for the levels that were being stipulated in this regulation.

And you very well described what the permitting process is like in the real world. That is where I came from doing engineering work. I worked on air discharge permits, water discharge permits, waded through the mountains of paperwork, waited on agencies to reply back, having to correct their mistakes and help them through. You talked about how permitting is hurting transportation, how it is hurting energy, how it is hurting resource development. And then you talked about the importance of judicial review and having it done timely. I agree with all of that.

I want you to go into a little bit more detail. There is a section in your testimony where you talked about PM_{2.5}. And just explain what this is like in what I call the real world. Because I saw this in my engineering career go from best available technology to maximum available control technology. And you get to a point where you are spending extraordinary amounts of money for small amounts of gain in the reduction of particulates.

Can you tell—when PM_{2.5}—what size are those particles?

Mr. FARRIS. So, think of a strand of hair, and that is four times as large as—much, much larger than anything on the PM_{2.5}. And thank you for the question.

So, we have recently commissioned a study with Oxford Economics on the PM_{2.5} and the regulations. And what we see there is at the level of 12 right now where it is at and where EPA wants to go, it will take more than 40 percent of our entire population into areas of nonattainment.

Mr. WESTERMAN. And that means—just so people understand, nonattainment means you cannot emit any more particulates in an area that is a nonattainment zone. So, when business looks at, they say, we can't build here, we will go somewhere else. What does that do to economic growth?

Mr. FARRIS. We have a story with a member. They were forced to spend \$400 million. They wanted to build a new facility in an area that was currently in nonattainment. This is before the new rule came out. And they would have had to have spent \$400 million just to be able to get the air within attainment. What they ended up doing was they moved it at a cost of \$100 million and caused a 6-month delay in the project.

Mr. WESTERMAN. And when you throw this out and say attainment, nonattainment, people might think, well, they should just spend all that because it is for the good of society, but I don't think people realize the minuscule benefit that you get for investing all of that capital, and it never stops. The goalpost always moves, and there is always some new technology out there.

And I know I am out of time, but I was just going to ask, how far ahead of the rest of the world are we on reducing particulate emissions where we are already at?

Mr. FARRIS. Thank you. And quickly on the study, it showed that we are amongst the best and the cleanest in the world in manufacturing.

Mr. WESTERMAN. Thank you.

Mr. ROUZER. Ms. Scholten, you are recognized for 5 minutes.

Ms. SCHOLTEN. Thank you, Mr. Chair, and thank you so much to our witnesses for helping us understand the critical role of the Clean Water Act.

Water is a way of life in Michigan. The district that I represent is part of the Great Lakes watershed and supplies freshwater and related natural resources, not only for Michiganders and west Michiganders, but truly for the entire country. We know that the value of our water in Michigan's Third Congressional District is at a premium. Unfortunately, PFAS contamination is also a prevalent concern. Just yesterday, the Michigan PFAS Action Response Team identified three more areas of concern in west Michigan. The safety of our drinking water and the health of our communities is at stake.

My first question is for you, Mr. Conway. In your testimony, you talk about the financial impact of cleaning up PFAS in cities and towns. Can you talk a little bit more about those costs? What are the costs that these cities and towns are incurring, and how can municipalities, localities, go about accessing dollars from the Bipartisan Infrastructure Law to cover them?

Mr. CONWAY. Thank you, Ms. Congresswoman. Currently, the drinking water folks are experiencing a little bit different process than the wastewater folks. In wastewater, we are in a sampling and testing phase. We are finding out what is in the influent and effluent. And the challenges in testing are significant. Testing methodologies are still being approved. Very few labs actually go through this testing process. So, there is a premium on getting the right labs and the cost of doing that. And many of the smaller systems are being really heavily burdened by just the costs involved with just finding out how much PFAS is in their system.

So, to the extent that infrastructure or other Federal funds can be designated not just for capital projects associated with PFAS, but for finding out what is in the stream and what we are going to do with it before we start building things, that would be really helpful for large and small utilities.

I think one of the big challenges in the long term here is going to be that this is not just a capital construction cost issue. It is going to be an operational cost issue. The current technology is filtration, which for drinking water systems is possible because they have pretty clean water sources. Wastewater, much more difficult for large systems, and managing the operating costs of constantly changing filters.

And then, frankly, what are we going to do with this stuff? That has not determined by EPA or anybody else. That could be a significant cost, especially if CERCLA liability attaches to PFAS. Landfills may not take it. I don't know what we will do with it. So, the cost centers are really around those areas right now in the wastewater community.

Ms. SCHOLTEN. Thank you.

My second question is for Secretary McIlwain, and it pertains to new infrastructure improving water quality. As of 2021, Michigan is estimated to have close to half a million lead pipes currently carrying water. In Michigan, we saw up close the devastating impacts of lead on children during the Flint water crisis.

While I am proud of the progress that the State is making in cleaning up our water supply, I represent a district, a ZIP Code, the 49507 region of Grand Rapids, that is ranked the second worst in the State for the number of children aged 5 or younger that have elevated lead levels in their blood. While efforts have begun to replace these pipes that lead to homes in this ZIP Code, it remains one of the most underserved and gentrified ZIP Codes in my city, which is part of why contamination levels got so bad in the first place. It is here where I see the social and environmental determinants of health negatively impacting families across the city.

So, my question for you is: How are you ensuring that water quality improvement efforts are being equitably implemented?

Ms. McILWAIN. Well, we have the same issues with lead, but we have a robust program as well in terms of lead protection for children. We have an EJ environmental screening tool that we use for a variety of things. We use it for grants and for funding. We can also see where we are starting to add health indicators into those environmental screens, so, we do use that to identify. But we do have a system in place where we are looking at where can those funds be most utilized. And it is in those areas where we can see children are suffering the most.

Ms. SCHOLTEN. Thank you. My time is about up, so, I yield back.

Mr. ROUZER. The gentlelady yields back.

Mr. Ezell, you are recognized for 5 minutes.

Mr. EZELL. Thank you, Mr. Chairman.

I appreciate the committee continuing to highlight how the permitting process is creating harmful delays of critical infrastructure projects across the country. Since I have been on this committee, it seems like that is what we talk about every time, is permitting. Costs are getting higher and timelines are getting longer, both because of the uncertainty placed on the industry by the Biden administration.

Mr. Farris, the aggregates industry plays an important role in building our Nation's infrastructure. How does the current interpretation of the Clean Water Act potentially affect the procurement and use of building materials, such as aggregates which are vital to public works projects, that benefits south Mississippi like water treatment systems and flood control?

Mr. FARRIS. Sorry. One more time, sir.

Mr. EZELL. How does the current interpretation of the Clean Water Act potentially affect the procurement and use of building materials, such as aggregates which are vital to public works projects, that benefits south Mississippi like water treatment systems and flood control?

Mr. FARRIS. Thank you, sir. What we see are delays up and down the board, whether you are getting equipment, whether you are preparing your permits, whether you are building a road to your facility. The current process creates delays. Whether it is 4 years, 4½, 7 years, that builds uncertainty into this process, and that means that the jobs aren't happening in those areas.

Mr. EZELL. Thank you. Considering the potential impact of the Clean Water Act's current interpretation on infrastructure projects that depend on aggregate materials, what recommendations would

you make for a more balanced interpretation that still protects our water resources?

Mr. FARRIS. What we have seen is we have seen that deadlines can work. We have seen in other countries that have environmental protections that are similar to us, they can get things done in 2 to 3 years when we get them done in 7 to 10. So, deadlines that we have to meet along with the One Federal Decision. Make one agency in charge of this. Everyone answers to them. What we have seen up and down the board is other agencies not getting in informal paperwork, other agencies not coordinating. So, we need One Federal Decision, and we need some hard deadlines for them to be able to meet, sir.

Mr. EZELL. Thank you.

Dr. Travnicek, given that aggregate materials are a key component of many public infrastructure projects, can you discuss the potential consequences of an overly expansive and unclear interpretation of the Clean Water Act?

Ms. TRAVNICEK. So, as we are looking at the expansiveness with the Clean Water Act and you are looking at infrastructure, so, yes, it comes down to those permits, those timelines, try to make sure that that is a consistent process for us to go through. Because right now, that leads to issues with supply chains that might happen, also getting contractors on site. So, if there are some issues that come up with not being able to have the permit in place, that leads to the delays. So, that is where just having some of that consistency.

Mr. EZELL. Thank you very much. Mr. Chairman, I yield back.

Mr. ROUZER. The gentleman yields back.

Mr. Burlison, you are recognized for 5 minutes.

Mr. BURLISON. Thank you, Mr. Chairman. I wasn't ready, but I do have questions.

So, this is also for Dr. Travnicek. Travnicek?

Ms. TRAVNICEK. Travnicek, yes.

Mr. BURLISON. OK. I came from the State legislature. I am a 10th Amendment guy. Do you believe that States play an important role when it comes to protecting their own waters? And how do States like your State of North Dakota care for your waters?

Ms. TRAVNICEK. So, absolutely. I mean, we do have the State agencies in place that do have regulatory responsibilities, from the Department of Environmental Quality to the Department of Water Resources, we have the expertise. We are looking to also make sure that we have got good quality water, good water quantity. So, we look at those expertise. So, yes. So, we want to make sure—that is why we are always stressing the States' rights, making sure that you are utilizing our expertise. We are the ones that are boots on the ground, so, working with us.

Mr. BURLISON. They are the ones that actually live there and know the area, and I think all politics is local.

OK. Next question is for Mr. Farris. What challenges are the manufacturers in the United States facing due to the current permitting process?

Mr. FARRIS. We are facing delays. What we have decided in this country, we need to build more semiconductors. We need to build more batteries. And that process right now is 4½ years to create

an environmental impact statement. We need to build these yesterday. So, we are seeing massive delays throughout the permitting process. And we are seeing agencies that don't talk to each other. We are seeing informal paperwork being delayed that should take no more than 90 days, sir.

Mr. BURLISON. And so, this is a no-brainer, but that affects your association's ability to create jobs?

Mr. FARRIS. That affects every one of our members' abilities to create jobs and improve the local communities in which they operate.

Mr. BURLISON. What about energy projects, including renewable energy sources? What are the potential consequences of delays there, or what is happening with those?

Mr. FARRIS. To be able to get many of these renewable energy sources on board, we need transmission lines. We need to be able to take that power where it is produced and take it to where we need it. Transmission lines can take 15 years to permit. So, if we bring on a new solar facility or a new hydrogen facility, you still need the transmission lines. And even within itself, a hydrogen facility takes 4½ years for the environmental impact statement, takes a year to build and operate. Four and a half years for that, plus another 15 for transmission lines, and that shows you the type of problem we have here.

Mr. BURLISON. And with transmission lines, you have to acquire the land, which takes time.

Mr. FARRIS. It does. It does.

Mr. BURLISON. And so, at a time when we have more critical needs than ever and we need to be mining and harvesting everything that we can here in the United States, how can we improve the regulations within the Clean Water Act?

Mr. FARRIS. What we need is enforceable deadlines. If there is judicial review, it needs to be meaningful and timely. Deadlines will go a long way, as well as One Federal Decision. Make sure that one agency is in charge, everyone answers to that one agency, and so, they coordinate with everyone else involved. They get the informal paperwork from the other agencies. So, those two aspects will take us a lot of the way there.

Mr. BURLISON. Thank you, Mr. Farris.

Thank you, Mr. Chairman. I yield back.

Mr. ROUZER. The gentleman yields back.

Mr. James, you are recognized for 5 minutes.

Mr. JAMES. Thank you, Mr. Chairman.

First of all, I want to thank all the witnesses who are here with us today and graciously devoting your time to be here and in your everyday life to improve water quality for all Americans in your neck of the woods. Your expertise is not only valuable, but it also informs us about the real world implications of the Clean Water Act.

In Michigan's 10th Congressional District, I represent a district that is not only diverse in its people, but one that is blessed with the rich, natural resources from Lake St. Clair to the Great Lakes. Michigan's natural beauty is second to none, which is why I lead off by asking the question. We have to be able to take care of every-

one. Clean water is something that is important for all humankind, especially when communities are struggling financially.

We talk about these communities being impacted by the Clean Water Act over the years. I would appreciate getting feedback from the panel on the unique challenges that we are still using to manage combined sewer overflows, the storm sewer separation. Some of the best practices that you have either deployed or seen, and also with the storm sewer separation with what we are putting back into our rivers and to our lakes to improve that. Also, some of the technologies that you have seen across the country and across the world that puts water back into our estuaries, aquifers, rivers, lakes, cleaner than we found it.

Ladies first, please.

Ms. TRAVNICEK. Yes, Representative. So, the agency that I am working with, we don't get into the storm sewer as much as some of the other ones might. But as you are looking at equitable infrastructure and trying to make sure that you are capturing the water quality aspect, whether it is trying to make sure that, yes, we are protecting some of those waters, but also at the same time looking at water reuse. So, how do we put that into other uses as well.

But my biggest thing as you are looking at the infrastructure is tying back to the permits, so, the costs that go with it would be the biggest thing on my end, looking for those inconsistencies, making sure that we are streamlining, because that is going into your costs as you are looking at that infrastructure that you are looking for, because that is also adding to it. So, that is what I would add.

Thank you.

Mr. JAMES. Thank you.

Yes, please.

Ms. MCILWAIN. OK. I am sorry. Can you repeat the last piece of your question?

Mr. JAMES. So, two-part. One, if you have any experience with storm sewer separation, those combined sewer overflows which are contributing in many cases to the algal blooms that you mentioned in your opening statement, and also linked by other bacterial growth, that storm sewer separation, if you have seen instances in your experiences of where that has been done better.

You mentioned the Chesapeake Bay. If you have some experience in some of that separation, and also in the region. Just as a hint, North Carolina, I understand, did some—I understand Maryland is completely separate—but just on the Atlantic Coast, North Carolina experienced some success with using technology to clean the Cape Fear water to clean out things like PFAS.

Can you speak on that, Madam Secretary, anything of those modern technologies that can help us put water back cleaner?

Ms. MCILWAIN. Yes. Well, for one, we need to continue to increase hydraulic capacity in infrastructure. The Back River that we deal with a lot is the wastewater treatment. It has a headworks program that captures a flow, and it reduces basement backups that you talked about in sewages and those kinds of things. So, we are using technologies. We have used a lot of funding in the Bipartisan Infrastructure Law to upgrade the wastewater treatment plants and to deal with those issues. And we just passed legislation for potable use as well, so—potable reuse.

Mr. JAMES. Thank you, Madam Secretary.

Gentlemen, in the last minute that we have, can you speak specifically, any tactics, techniques, procedures, any best practices you have seen in addressing specifically, or what the Federal Government could do to address lower income communities, communities that are in economic distress, the areas that the Federal Government can help with clean water in those areas?

Mr. CONWAY. Speaking on behalf of NACWA, there are a number—especially in the combined system areas—there are a number of projects that are being completed, to certain stages of completion, long-term control plants. Funding is critical for those to be successful. Obviously, costs in the last year have skyrocketed, so, estimates of cost for a project in the next 5 years were \$1 billion; now we are finding it is \$2 billion. So, any increase in funding. Because those projects are modern technologies being employed. They are increasing capacity. They are using AI. They are allowing those rivers and streams that get those discharges to be a lot cleaner. So, it is just strictly a funding equation there.

Mr. JAMES. Thank you, Mr. Conway.

Mr. Farris, we will reach out offline.

Thank you, Mr. Chair. I yield.

Mr. ROUZER. The gentleman yields.

Mr. Williams, 5 minutes.

Mr. WILLIAMS OF NEW YORK. Thank you, Mr. Chairman. Glad to be here.

Mr. Farris, specifically in my district, recently, a large chip manufacturer has announced a significant, extremely significant, historic investment. And one of the deciding factors was the availability of water. And clearly, that is used in a lot of manufacturing processes that I am familiar with, and a little bit familiar with some of the testing and treatment of wastewaters.

As a regards to your organizations that you work with, manufacturers, how would you compare the discharge of the quality of water, the cleanness of water discharged from your facilities today than, say, 50 years ago? What has happened in the last 50 years in terms of water quality and water standards in manufacturing?

Mr. FARRIS. In manufacturing, over the last 50 years, we have improved, I believe, it is around 80 percent. We are amongst the cleanest in the world. I can get you—I will find—I can get you that accurate number, but I believe it is around 80 percent amongst the cleanest in the world.

Mr. WILLIAMS OF NEW YORK. And 80 percent in what metrics? Would you generally—what are pollutants that are concerned about? These are chemicals, metals, turbidity, what are some of the things?

Mr. FARRIS. Absolutely. All of the above. Anything that is regulated and discharged into the waterways, we are about 80 percent better than we were 50 years ago. And constantly improving. Manufacturers are constantly innovating and finding new ways to be able to be a good environmental steward of the environment they work in.

Mr. WILLIAMS OF NEW YORK. I understand that a lot of manufacturing also recycles a lot of its water to reduce its waste stream. Do you have any specific examples or context that you can give our

committee about how manufacturing stewards its resource of water, particularly in consuming less and discharging it cleaner, as has been the practice?

Mr. FARRIS. We can follow up with you directly on some more detailed stories, but I can say that manufacturers are constantly innovating, and recycling water is one of those pieces. We are constantly working to improve the environment around us. But we will follow up with you directly with some more stories.

Mr. WILLIAMS OF NEW YORK. Great. Thank you. Does your organization also cover the aggregate industry?

Mr. FARRIS. Yes. So, we have 14,000 members. We represent everything from the five-person manufacturing facility all the way up to some of the biggest across all sectors.

Mr. WILLIAMS OF NEW YORK. So, in my district, we have not only this historic potentially \$100 billion investment in manufacturing and the supporting infrastructure around it, we also have a major overhaul of I-81 running right through the middle of Syracuse, obviously a very significant construction project.

Can you describe the role that aggregate plays? What is aggregate? What is it used for?

Mr. FARRIS. I would say it is—I would defer to you, sir.

Mr. WILLIAMS OF NEW YORK. OK. It is sand and gravel, basically, used as different compounds and building blocks, specifically in concrete. And it adds strength and durability. And there are no streets, there are no buildings, there are no sidewalks, there are no parking lots, there are no dams without concrete. And one of the key ingredients is what is commonly called aggregates, which is all different sizes. Think of it as different size stones and different size sand, all that make up the physical structure of concrete, as has been the case for over 2,000 years, right. The Romans first started using that, and many of their monuments still stand.

But when we are making this tradeoff in terms of clean water, I understand that the mining industry also is subject to very strict water rules and water discharge rules, particularly around something known as TCLP, which maybe you are familiar with in terms of heavy metals.

Can you describe how your organization, I don't know, leans into these testing and water quality standards, and how is it important that these are very clear standards for you to adhere to, for your clients to adhere to?

Mr. FARRIS. So, what we do is we work with manufacturers, we work on best practices, and we often work with EPA or other regulatory bodies to make sure that these standards are technically achievable and technically feasible. They are very important for our members because all of our members ask for regulatory certainty. So, we need to make sure that our members understand them and are able to meet them.

Mr. WILLIAMS OF NEW YORK. Great. Thank you. I yield back.

Mr. ROUZER. The gentleman's time has expired.

Garret Graves, 5 minutes.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Chairman. Mr. Chairman, thank you for holding this hearing. Ranking Member Napolitano, nice to see you as well.

Dr. Travnicek, I understand you have got some experience with 404 permits. We have more than our share of wetlands in Louisiana as well. In the IIJA, there was about \$160 million provided for the Corps of Engineers for regulatory, which is about 50 percent of their budget. I am not sure that I have seen any improvements in their 404 process, and I am just curious if you have seen anything in North Dakota. And as I remember North Dakota, I got to tell you, thank you for sending Kelly Armstrong. Huge fan. He has been fantastic.

Ms. TRAVNICEK. Yes, we are very fortunate to have his leadership in the State.

So, as it relates to what we are seeing in North Dakota with the Army Corps of Engineers and the 404 permitting, we haven't seen anything that has sped up any of the processes. I think we are still seeing those delays in timelines. And if this were to go into place, right, that is why we are nervous about that. I mean, even with the other permits that I have to get through the Army Corps of Engineers for the water infrastructure projects, we don't know when we will get them sometimes. We try to make sure that we are trying to pin them down on a timeline, but sometimes that gets passed. So, we haven't seen anything that has been able to turn that around quickly.

Mr. GRAVES OF LOUISIANA. And I think that there are some mitigation banks that have been in the process for 10 years now, which, of course, causes some additional problems.

Secretary McIlwain, thanks for being here. I was looking at the Maryland OneStop program, where you have an electronic regulatory process. And I didn't know if you could provide any background. We have actually been looking at an electronic NEPA for the Federal process as a way to try and help with compliance and better transparency. I just didn't know if you had any wisdom or insight to share in regard to your Maryland OneStop process for permitting, if there are any lessons learned there for helping to just improve efficiency.

Ms. MCILWAIN. Oh, I could only speak in general terms about increasing efficiency. That is something that I brought to every agency I have been at. I would have to look into—I can provide that to you later, but I don't have any direct knowledge of that.

Mr. GRAVES OF LOUISIANA. Sure. Secretary, maybe I misunderstood, but I thought you all had—Maryland OneStop was kind of a one-stop electronic permitting process that you all had. And again, we are trying to figure out at the Federal level what we can do to help expedite the permitting at the Federal level and, again, better transparency as well. And so, if you all do have any lessons learned, it would be great, love to hear it. If not, no problem. No need to follow up.

But a quick followup for you maybe. So, the reality is, when you look across infrastructure projects across the United States, the majority of those projects actually don't require a NEPA analysis, a National Environmental Policy Act analysis, because the only cases when NEPA is triggered is when you impact certain Federal resources. It could be dollars. It could be Federal natural resources. It could be Federal permits. And so, most projects don't trigger that because they are using local funds, State funds, or private funds,

and so, it doesn't trigger NEPA. But I know in Maryland, you all care about the environment like we do in Louisiana.

So, I am just curious if you could share any insight to your State laws that help to ensure protection of the environment for projects that are built that may not trigger Federal permits or Federal regulatory implications.

Ms. McILWAIN. Well, we monitor—we have comprehensive wetland laws. And back to what you were referring to with the OneStop permit, that doesn't—if I understand your question, that doesn't apply to all the permits that we have. We have a general construction permit. And so, it just depends on what kind of permit that you are talking about.

Yes. But in terms of permitting and NPDES permits, we look at the laws. And we have State reviews and environmental reviews and—just like NEPA, so, we definitely take a comprehensive look at permits.

Mr. GRAVES OF LOUISIANA. And obviously, protection of the environment, even if there is a project that doesn't trigger Federal regulatory, your State process would ensure that you do consider protection of the environment as well?

Ms. McILWAIN. Of course.

Mr. GRAVES OF LOUISIANA. Yes. OK, OK. Great. Thank you.

So, I want to go back. There was a gentlelady who a little while ago made comments about the debt ceiling legislation and suggested, Mr. Chairman, that the debt ceiling legislation would actually cause more problems, would delay permitting and things like that. And I just wanted to be clear on the record that those comments fundamentally misrepresented what was in that legislation.

That legislation actually helps to focus the NEPA process on the environment rather than all of these other ancillary things, and in doing so, you actually would expedite permitting, expedite the NEPA process. It puts in a timeline of 2 years for an environmental impact statement, 1 year for an environmental assessment.

I want to make note, when Jimmy Carter was President, you had 1 year under his regulatory guidance to get through the NEPA process. We have allowed for 2 years under an environmental impact statement.

And so, while I certainly appreciate the gentlelady's concerns about regulatory, I did want to make note that those comments did significantly misrepresent the legislation known as the BUILDER Act that passed this part of H.R. 1 earlier this year.

Mr. Chairman, I have a question. I know that there is additional information that folks would like to get from our expert witnesses today. Is it possible that we have a second round of questions?

Mr. EZELL [presiding]. Yes. Yes, we are going to have a second round.

Mr. GRAVES OF LOUISIANA. Fantabulous. I yield back, and I will wait for a second round.

Mr. EZELL. Thank you.

Anybody have any other questions?

Mr. Graves, you are recognized for 5 minutes.

Mr. GRAVES OF LOUISIANA. Hey, look at that. Thank you very much.

I am curious. One of the biggest challenges we have with permitting is regulatory certainty. You have folks that have resources or investment dollars that are trying to be invested and move projects forward. It was noted by Dr. Travnicek that, in many cases, your permitting is a black box or a black hole where you don't have any idea on permitting certainty.

Mr. FARRIS, I am curious, as of September 2021, there were about 300 permits in the EPA backlog for reissuance, affecting about 14,000 facilities nationwide. We did pass legislation under H.R. 1 that would extend administrative contingencies on EPA for 402 authority. Can you talk a little bit about concerns on what you are seeing right now with Clean Water Act compliance and just delays or uncertainty regarding timelines for multiple permits and how NAM may be looking at this?

Mr. FARRIS. Absolutely. Thank you. And thank you for your leadership on H.R. 1. The NAM was happy support that and make some meaningful changes.

What we are seeing on the Clean Water Act is the same thing we are seeing up and down the board on permitting. We are seeing delays, and we are seeing uncertainty, regulatory uncertainty, which causes investment decisions to be made elsewhere.

We have one member who was working through the 402 permitting process. They make raw materials that are critical for semiconductors, for lithium-ion batteries, for electric vehicles, for hydrogen, and they wanted to be able to build that facility in the U.S. Because of the uncertainty surrounding the so-called NPDES permits, the discharge permits, they were not able to do that in a certain amount of time, and so, they ended up building that facility in the EU that makes raw materials for clean hydrogen.

We are seeing that up and down the board, is when our manufacturers have to make investment decisions, they need to be able to make it in a timely manner. And when they start looking at the environmental impact statements that take on average 4½ years, then they may start to look elsewhere when they make those investment decisions.

Mr. GRAVES OF LOUISIANA. So, Mr. Farris, let me see if I can make sure I am understanding what you are saying. So, companies are going to build their projects, but if we have regulatory uncertainty or if we have delays or if we have repeated rejections, or as I have seen, repeated hurdles thrown up, then what these investors or companies are going to do is they are still going to build the project, they are just going to build it elsewhere.

And you noted an EU example, but I am going to guess that there are probably companies that have taken investment decisions to Mexico, Brazil, India, China, and other countries that don't have the same environmental conscience that we do in the United States. Therefore, if you are concerned about the global environment, then our delays or our lack of regulatory certainty actually is resulting in a net loss for the global environment. Is that fair?

Mr. FARRIS. One hundred percent. When you build in America, we have amongst the cleanest manufacturing in the world. When you build elsewhere, you don't have to meet those same standards. You mentioned China. That is a perfect example of not having to meet the same standards we have here. And many of our members

are global members, so, they are going to build these facilities to meet this demand.

Semiconductors are being made everywhere. We want to make them in the U.S. If we take a critical raw material and take it overseas, we are just defecting where our issues in the supply chain are.

Mr. GRAVES OF LOUISIANA. Got it. Got it.

So, I am curious, Mr. Conway, Mr. Farris, have either of you all seen any changes? I noted \$160 million provided to the Corps of Engineers for regulatory under the IJJA. As I recall, there was \$1 billion for regulatory agencies across the board provided for compliance. Have either of you seen any improvements or efficiency with those additional funds to the agencies?

Mr. CONWAY. Not yet. I would assume that some of those funds are still being distributed. It takes time to hire, especially these days. It is hard to get people moving into positions and onboarded and trained. So, we expect at the local level at least to have some relief on regulatory issues. Because in Colorado, we deal with our State for permitting as opposed to the Federal Government on permitting projects. We are more focused on State dollars there. So, we haven't seen—

Mr. GRAVES OF LOUISIANA [interrupting]. Mr. Conway, do you have any feedback on an electronic permitting system if you think that would be something that is helpful?

Mr. CONWAY. I am not familiar with Maryland's system, but any improvements that would add to efficiencies to speed time, I would be in favor of.

Mr. GRAVES OF LOUISIANA. Mr. Farris, any reaction to that?

Mr. FARRIS. Completely agree. Anything that can give our manufacturers more certainty and a speedier process, we are in favor of.

Mr. GRAVES OF LOUISIANA. Secretary McIlwain, Maryland has a law similar to Louisiana where they allow for performance-based contracting on environmental restoration or ecological restoration. I don't want to put you on the spot, but if you don't mind, I would be curious if you could provide the committee with some information on how that has worked, if it has been a benefit to the State of Maryland as you all have practiced that.

Ms. MCILWAIN. I think you are referring to pay-for-success programs that we have. They have been very beneficial. And it works, because what we do is allow those contracts to perform, and then when it does what it says it is going to do, then we pay. And then we use it also as a benchmark going forward. So, we learned from those projects as well.

Mr. GRAVES OF LOUISIANA. Great. Thank you. I want to thank you all very much.

Madam Ranking Member, if you don't recognize this, this is called filibustering, because I was trying to buy time for somebody to get here, but apparently I failed. That is all I can think of. In any case, it was nice seeing you all.

Thank you, Mr. Chairman.

Thank you all very much. I appreciate it.

Mr. EZELL. Thank you. Are you sure the gentleman yields back?

Are there any further questions from any members of the subcommittee who have not been recognized?

Seeing none, that concludes our hearing for today. I would like to thank each and every one of you witnesses for your testimony. One moment, please.

I ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing.

Without objection, so ordered.

I also ask unanimous consent that the record remain open for 15 days for any additional comments and information submitted by Members or witnesses to be included in the record of today's hearing.

Without objection, so ordered.

The subcommittee stands adjourned.

[Whereupon, at 12:02 p.m., the subcommittee was adjourned.]

APPENDIX

QUESTION FROM HON. DAVID ROUZER TO ANDREA J. TRAVNICEK, PH.D., DIRECTOR, NORTH DAKOTA DEPARTMENT OF WATER RE- SOURCEs

Question 1. Can you describe the importance of Nationwide Permits (NWP), including NWP 12, for states such as North Dakota?

ANSWER. A Nationwide Permit (NWP) is a federally¹ issued permit allowing activities in waters of the United States without going through the lengthy individual permit process. The activities permitted have minimal individual or cumulative harmful impacts to the environment. Examples of the types of activities allowed under discrete NWPs are pipelines, utility lines, road crossings, and culverts. NWPs allow certainty both for development and for the environment without going through the lengthy process of acquiring an individual permit. In a state with a limited construction season, a NWP can mean the difference of a full year. To an oil producing state like North Dakota, NWP 12 is of particular importance.

Upon a preconstruction notification to the US Corps of Engineers District Engineer, NWP 12 allows for construction, maintenance, repair, and removal of oil and natural gas pipelines, provided the activity does not result in the loss of greater than ½-acre of waters of the United States for each single and complete project. North Dakota has 56,679.64 miles of rivers and streams, most of which are in our oil producing counties (see Figure 1), 295 lakes and reservoirs² (715,946.13 acres), and more than 1,000,000 wetlands³ (3,206,820 acres) with densities of more than 150³ per square mile in some areas. The ability to permit activities in waters with minimal impacts and know with relative certainty that the activities will have acceptable impacts to the water and environment is beneficial to both industry and the public. The industry benefits because the expectations are well defined. The public benefits because the environment is protected without undue expenditures, which can result in higher energy costs for the consumer.

While the NWP is an excellent tool, it is not without deficiencies. In North Dakota, NWP 12 is denied Section 401 Clean Water Certification in select waters as the “one size fits all” general conditions do not provide reasonable assurance that North Dakota Administrative Code ch. 33.1–16–02.1, Standards of Quality for Waters of the State, is supported as intended by the North Dakota Century Code § 61–28–04. This is easily remedied by including state specific regional conditions that address the unique geology and environment of North Dakota, as well the unique issues associated with the types of materials carried in the oil and natural gas pipelines.

¹ Clean Water Act, Section 404(e).

² North Dakota 2018 Integrated Section 305(b) Water Quality Assessment Report and Section 303(d) List of Waters Needing Total Maximum Daily Loads, N.D. Dep’t of Health (Apr. 26, 2019), available at: https://deq.nd.gov/publications/WQ/3_WM/TMDL/1_IntegratedReports/2018_Final_ND_Integrated_Report_20190426.pdf at Table III–1.

³ North Dakota Game and Fish Department website on wetlands and lakes available at: https://gf.nd.gov/wildlife/habitats/wetlands-lakes?gclid=EAIaIQobChMI_PTMgf3R_wIVtgytBh0cIgdgEAAAYASAAEGK45_D_BwE.

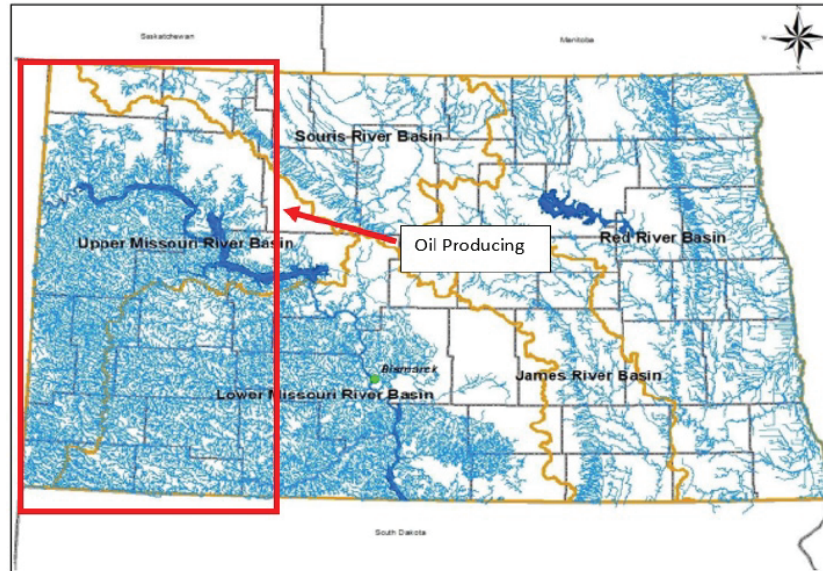


Figure 1: North Dakota Rivers and Streams in Blue.

QUESTIONS FROM HON. GRACE F. NAPOLITANO TO ANDREA J. TRAVNICEK, PH.D., DIRECTOR, NORTH DAKOTA DEPARTMENT OF WATER RESOURCES

Question 1. What would be the consequence in the State of North Dakota of H.R. 2811, the House Republican proposal to eliminate roughly one-quarter of the annual investments in addressing the nation's water infrastructure challenge?

ANSWER. Any funding is greatly appreciated and would be put to good use for projects that benefit the citizens of North Dakota. A reduction in funding may slow up the implementation rate of construction projects. The difference due to a reduction in federal resources may result in a shift of burden to rate payers but other federal, state, and local programs may be able to make up for the funds depending on the outcome. However, this impact does not impact as much as the 50% reduction in funding that has hit the base State Revolving Loan Fund Programs over the last two years because of the resumption of congressional earmarks.

Question 2. What would be the impact to ratepayers and average American families in North Dakota if they had to make up the difference for the cuts in clean water infrastructure spending proposed in H.R. 2811?

ANSWER. Any funding is greatly appreciated and would be put to good use for projects that benefit the citizens of North Dakota. A reduction in funding may slow up the implementation rate of construction projects. The difference due to a reduction in federal resources may result in a shift of burden to rate payers but other federal, state, and local programs may be able to make up for the funds depending on the outcome. However, this impact does not impact as much as the 50% reduction in funding that has hit the base State Revolving Loan Fund Programs over the last two years because of the resumption of congressional earmarks.

Question 3. If the plan contained in H.R. 2811 to cut one-quarter of the funds provided to states to implement their responsibilities under the Clean Water Act were realized, what would the consequences be for your state in terms of water quality protections and the timeliness of state actions to protect North Dakota waters? How would your state make up the difference in clean water funds forgone by enactment of H.R. 2811, or would this work simply not be carried out?

ANSWER. The State has not yet evaluated the impact of cuts to project funding on the ability to implement those programs. If the State is unable to replace those funds through other means, it may be necessary to limit the number of initiated

projects to those that are most critical to protect public and environmental health in the state. This reinforces the need to focus on federal agency core functions essential to protecting public health.

Question 4. How has the Bipartisan Infrastructure Law (BIL) investment in wastewater infrastructure helped your state advance the public, economic, and environmental health benefits?

ANSWER. Any funding is greatly appreciated and would be put to good use for projects that benefit the citizens of North Dakota. This funding will allow us to complete essential projects that would have otherwise needed to wait years to be funded. In a time when water and wastewater infrastructure assets are at, or are exceeding their useful life, this has become an increasingly difficult challenge for utilities of all sizes across the country. Unfortunately, the slow rollout of guidance and funding by EPA, current construction sector inflation outpacing general inflation, lack of BABA compliant construction materials, and a reduction in the number of qualified bidders resulting in higher project costs have impacted project developments and timely completions. Additionally, the BIL funding overshadows that the State Revolving Loan Fund Program base funding has been cut by almost 50% over the last 2 years due to the reintroduction of congressional earmarks. This reduction in the base program in the long run will limit what can be achieved by the State Revolving Loan Fund Programs.

QUESTIONS FROM HON. DAVID ROUZER TO HON. SERENA COLEMAN
MCLWAIN, SECRETARY, MARYLAND DEPARTMENT OF THE ENVIRONMENT

Question 1. The EPA recently entered into a settlement agreement with the Chesapeake Bay Foundation and several states, including Maryland, to increase compliance activities, specifically on the state of Pennsylvania. This means that Pennsylvania farmers will begin experiencing new on-farm inspections, new enforcement actions, and new permitting costs and requirements. Further, the Environmental Protection Agency (EPA) has indicated that some farm operations in Pennsylvania may be regulated, for the first time ever, as point sources under the Clean Water Act. If farmers and landowners are already incorporating conservation practices on their land and making improvements to water quality, please explain whether the level of enforcement is appropriate or whether it has far-reaching implications.

ANSWER. The Maryland Department of the Environment (MDE) and Maryland Department of Agriculture (MDA) have worked collaboratively for many years to ensure compliance among Maryland's Concentrated Animal Feeding Operations (CAFOs), as well as provide technical and financial assistance to those farms for adopting conservation practices. The oversight and transparency for permitted CAFOs was a challenge at first, but has become more routine as the process has matured. The agricultural sector in our state is well versed in dealing with regulations and permits, and we welcome the consistency between farmers and landowners in Pennsylvania to further contribute to improving local water quality the way Maryland's farmers and landowners have been doing for a number of years. The role of EPA, as a 3rd party, should benefit Pennsylvania to also assess how farmers and landowners are already incorporating conservation practices on their land.

Question 2. The 2025 Chesapeake Bay targets were never realistic but the Chesapeake Bay Foundation and some states, including Maryland, continued to press for it in recent years. EPA Administrator Michael Regan said publicly at a House Agriculture hearing on April 19, 2023, that the states will not meet the 2025 deadline and that the agency needs to reassess its goals. In your view, what is a practical timeframe for states, including Pennsylvania, to reasonably meet the pollution reductions in their state WIPs?

ANSWER. Maryland can only answer for the work it does and we do not have the information needed to estimate other jurisdictions' abilities to meet their WIP goals for 2025. We believe that Maryland's level of restoration and implementation will be very close to meeting our 2025 WIP nutrient reduction goals for nitrogen and phosphorus that were established before the partnership's decision to move additional loads identified in the most recent model update to beyond 2025. We're meeting our sediment targets already. If our reduction trends hold steady, and we do not meet our targets in 2025, then it should only be a few more years worth of implementation for our State to reach our WIP goals.

Question 3. With the Bay Total Maximum Daily Load (TMDL) reduction being less than two years away, please explain the Maryland Department of Environment's plans to reach the final goals and what, if anything, the Department intends to ask the agricultural producers in Maryland to do to ensure final goals are met.

ANSWER. As of 2018, MDE managed Bay Restoration Fund (BRF) upgrades to Maryland's 67 major wastewater treatment plants (WWTPs) to the highest levels of treatment technology have been fully obligated. As of September 2022, 65 upgrades of significant municipal plants were completed, with one under construction, and one in the planning phase. Minor WWTPs (less than 0.5 million gallons per day) are also being upgraded using the BRF on a voluntary basis, and when the upgrade is cost-effective. As of September 2023, 12 upgraded minors were in operation, six were in construction, and 17 were in design or planning stages.

With the substantial investments in advanced treatment systems at its municipal wastewater plants, the state is now considering ways to ensure that plants will fully utilize these technologies. The state has developed several performance incentive programs, such as the Wastewater Operations and Maintenance (O&M) Grant through the BRF, to ensure that the wastewater sector surpasses the statewide annual average operational goal, established in the Phase III WIP, of 3.25 milligrams of nitrogen per liter in plant effluent. A statewide annual average concentration of 2.85 milligrams of nitrogen per liter is required to meet the additional nutrient load reductions needed to address 2025 climate change conditions, as explained in the climate change addendum to Maryland's Phase III WIP.

Regarding pollution from septic or on-site waste systems, two of the most significant direct benefits, apart from nitrogen reductions, are public health and groundwater protection. Toward this end, the state agencies are pursuing "high-benefit" reductions in places with impacts to public health and drinking water quality. Additional strategies include accelerating the pace of septic connections to sewers in high-benefit areas to take advantage of the significant investments Maryland has made in treatment at Maryland's WWTPs.

For stormwater, over 80% of impervious surfaces in Maryland are covered under stormwater National Pollutant Discharge Elimination System (NPDES) permits. The Maryland Department of the Environment (MDE) has reissued NPDES Municipal Separate Storm Sewer System (MS4) Permits for the regulated Phase I large and medium jurisdictions and will be reissuing the Maryland Department of Transportation (MDOT) State Highway Administration's (SHA) permit. So far for each permit cycle, the required retrofits that reduce nutrient pollution from historical impervious areas achieve anywhere from 10–20% of total needed restoration. MDE is looking for ways to increase the impact of this implementation by seeking practices that offer multiple co-benefits.

MDE's only direct association with agriculture is through the issuance, inspection, and enforcement of permits for CAFO stormwater. The Maryland Department of Agriculture is the responsible entity for determining what restoration / conservation practices could be implemented within that sector. However, if the agricultural sector part of our Chesapeake Bay Watershed Implementation Plan is implemented as written, the state will achieve its 2025 pollution reduction targets. If this goal is not met in 2025, the State would ask the agricultural producers to continue committing to the plan they helped put together for their sector.

Question 4. Does the Maryland Department of Environment intend to force retirements to achieve higher levels of nutrient reductions to meet the 2025 goals?

ANSWER. It is unclear from this question what specifically is meant by retirements. If this is referring to retiring productive agricultural land, MDE does not purchase and retire land. Any retirement of productive agricultural land to either forest, wetlands, solar, or other land type of land use is the decision of the landowner. MDE does not maintain control of State owned lands that lease to agricultural producers, so MDE cannot retire those acres either.

QUESTIONS FROM HON. GRACE F. NAPOLITANO TO HON. SERENA COLEMAN MCILWAIN, SECRETARY, MARYLAND DEPARTMENT OF THE ENVIRONMENT

Question 1. What would be the consequence in your state of H.R. 2811, the House Republican proposal to eliminate roughly one-quarter of the annual investments in addressing the nation's water infrastructure challenge?

ANSWER. For Maryland, a 23% cut to BIL funding would result in more than a \$100M reduction in funding for projects to clean up the Chesapeake Bay, remove toxic lead service lines, eliminate PFAS in drinking water, and replace Maryland's

aging infrastructure. It would also mean more than \$50M less in loan forgiveness for our economically disadvantaged and environmentally overburdened communities. We already know from our Clean Water and Drinking Water Needs Surveys that we as a nation have underinvested in our water infrastructure and we also on an annual basis receive many more funding proposals than we have funding to support. BIL funds represent a once-in-a-generation investment in our water infrastructure and any cuts to this historic funding threaten further degradation of the nation's water infrastructure.

Sub-points:

- The investments are unprecedented and have the ability to reshape the nation. This investment goes a long way toward bridging the infrastructure gap, but a gap still remains meaning our thinking should be about doing more, not less.
- Disinvesting in infrastructure funding would be devastating with potential negative effects on communities that have suffered from long-standing environmental injustices.
- This money is critical for aging water and wastewater infrastructure.
- States, tribes and local governments would likely struggle to reduce the number of lead service lines in older cities, effectively deal with PFAS contamination in drinking water and fish, and increase resiliency to extreme weather events.
- We have almost 60 community water systems in Maryland with PFAS contamination and about a third of the systems are in disadvantaged communities.

Question 2. What would be the impact to ratepayers and average American families if they had to make up the difference for the cuts in clean water infrastructure spending proposed in H.R. 2811?

ANSWER. The impact of these proposed cuts on ratepayers and average American families would be very negative. BIL funding ensures that water projects are affordable for our communities, particularly those communities and families with lower incomes. Cuts to this funding will mean higher rates for our ratepayers and further inflationary pressure. Worse, for our water infrastructure, families, and economy is if communities put off investing in their water infrastructure projects as a result of cuts to BIL funding—this is a very real possibility. It is also possible that such disinvestment will spur short-sighted cost-containment measures, like switching water supply sources that can have severe public health consequences akin to the Flint, Michigan, lead crisis.

Question 3. If the plan contained in H.R. 2811 to cut one-quarter of the funds provided to states to implement their responsibilities under the Clean Water Act were realized, what would the consequences be for your state in terms of water quality protections and the timeliness of state actions to protect Maryland waters?

ANSWER. Today, Federal funds are currently insufficient to cover CWA programs run by the state and therefore state special (fees) and general funds are used to cover the additional costs.

The impact could be a decrease in compliance inspections leading to a decrease in enforcement, a critical part of the CWA. Permit turn-around times would likely decrease with the potential to slow the economy, including infrastructure construction projects.

As a downstream state, one of our concerns is the impacts if funds were cut to upstream states for pollution reduction projects. Recent monitoring information indicates progress in reducing these pollutants to the Chesapeake Bay. If less protection and restoration occur in upstream areas, we are concerned that this progress could be hindered or even reversed. Furthermore, even if the necessary protection and restoration are afforded in Maryland, other states with waters connected to Maryland's non-tidal waters and/or Chesapeake Bay could fall short in meeting their pollution abatement funding needs. Maryland does not want to see its substantial investment in restoration of the Chesapeake Bay to be undermined by the federal government cutting funds provided to states to implement their Clean Water Act responsibilities.

Question 4. How has the Bipartisan Infrastructure Law (BIL) investment helped your state advance the public, economic, and environmental health benefits that can be achieved by cleanup of the Chesapeake Bay?

ANSWER. Maryland's State Revolving Fund (SRF) programs are receiving more than \$750M in additional funding over five years through the Bipartisan Infrastructure Law. This funding will enable Maryland to fund dozens of additional projects annually, including critical projects to clean up the Chesapeake Bay, remove toxic lead service lines, eliminate PFAS in drinking water, and replace Maryland's aging water, wastewater, and stormwater infrastructure. The BIL funding includes increased levels of additional subsidy, which will allow Maryland to provide loan forgiveness to our economically disadvantaged and environmentally overburdened com-

munities. Without this critical federal investment in our infrastructure we would not have the funding we need to tackle these longstanding environmental and public health challenges.

Also, the Infrastructure Investment and Jobs Act (IIJA) of 2021 authorized \$238 million for the EPA Chesapeake Bay Program Office (CBPO) for federal fiscal years 2022–2026.

- The CBPO receives approximately \$47.6 million per year.
- In FY22 and 23, CBPO allocated over \$5.2 million in IIJA funding awarded to the State of Maryland for use in most effective basins (MEBs). MEBs are tributaries to the bay that have the greatest impact on water quality.
- In FY23, EPA also provided over \$1.07 million in IIJA funding for MD in the form of supplemental funding grants and grants to advance Chesapeake Bay Program partnership priorities such as enhancing tree canopies.
- Maryland also benefits from the remaining IIJA funds which are being allocated to the Chesapeake small watershed and innovative nutrient and sediment reduction grant programs; enhancing water quality monitoring efforts; and funding research focused on water quality and living resources.

Question 5. Since the beginning of the 118th Congress, House Republicans have moved several bills to weaken Clean Water Act authorities. What adverse impacts would occur in the State of Maryland if some of these efforts to weaken water quality standards were enacted?

ANSWER. It is not only about investments in restoration of degraded ecosystems, the CWA serves as a critical tool to protect healthy streams and rivers that flow into the Bay and provide sources of drinking water. Maryland has beautiful cold water trout streams as well as high quality streams with exceptional aquatic diversity. For example, Maryland's small (first, second, and third order) streams support more than 50 native fish species, ten native freshwater mussels, eight native crayfishes, seven salamanders, and more than one hundred genera of benthic macroinvertebrates. The Clean Water Act, through the antidegradation requirements in the water quality standards and implementation of Section 401 (state water quality certification) affords these protections to waters of the United States. Congress intended States to protect their waters from harm associated with the operation of, and discharges from, federally permitted and licensed facilities in Section 401. If an upstream state lacks independent authority, the sole recourse for reviewing federally permitted activities involving a discharge is through Section 401 certification. Severely constraining State authority in the Section 401 review process threatens to increase the risk that activities in upstream waters and wetlands will threaten water quality in Maryland waters.

A State's water quality requirements help to ensure that communities receive similar benefits from environmental protection efforts. To undermine a state's authority in this manner runs in opposition to environmental justice. Such limitations on a certifying state's authority, prohibits protections of overburdened and underserved communities

Question 6. Earlier this year, President Biden vetoed H.J. Res. 27, a resolution to overturn the administration's efforts to clarify the scope of Clean Water Act protections. If that resolution had been enacted, what would have been the impact to the percent of waters and wetlands protected by the Clean Water Act in the State of Maryland?

ANSWER. H.J. Res 27, the new WOTUS Rule published on January 18, 2023, and effective on March 20, 2023, is in effect in Maryland. Maryland is not among the 27 states where the new 2023 Rule currently is not in effect due to ongoing litigation. Maryland strongly supports a science based definition for jurisdictional waters and their linkages to chemical, physical and biological integrity of other waters. Most waters and wetlands, including isolated wetlands, are regulated in Maryland and no changes in state-level jurisdiction have occurred. According to a 1:250,000 scale stream map there are at least 8,800 miles of non-tidal streams and rivers in Maryland. Based on this same map, the vast majority (about 91%) of the total stream miles in Maryland consist of small streams—with most (5,863 miles or 66%) of the total consisting of the smallest mapped streams. Upstream waters (ephemeral, intermittent, and small perennial streams) form essential aquatic networks that act like capillaries that move all sorts of physical and chemical compounds—including pollutants—downstream. The conditions of all of the vital resources mentioned above, the success of restoration and protection efforts, including Maryland regulations for protecting resources and water quality, are strongly influenced by the condition of upstream waters.

Continued progress in conservation efforts relies on sustained protection of all upstream waters. Chesapeake Bay restoration efforts may suffer if upstream states

lack similar authority and at least comparable standards to those of Maryland. Ensuring a federal regulatory floor is critical to states such as Maryland. Having a broader federal definition of Clean Water Act jurisdiction could help avoid complex interstate conflicts that might otherwise arise if the federal definition were too narrow or non-existent. It is important that flowing waters that cross state borders be adequately protected from pollution under the upstream state's law (with provisions for the downstream state to weigh-in on discharge permits and standards) or, if not, be subject to federal jurisdiction so that the downstream state can, if need be, participate as a downstream state in the process of the permitting of discharges and the establishing of water quality standards for such waters. This could potentially be addressed through regional interstate efforts and clear Section 401(a)(2) guidance.

Regionalized approaches are critical for implementation. Maryland favors a scientifically defensible definition of waters and recognizes that some waters (e.g. ephemeral streams and rivers) are more critical in other parts of the country and thus may merit a different level of scrutiny. We do believe that states and tribes, working with regional offices of federal agencies, can identify the levels of review, protection, and regulation, as well as the appropriate tools for regional determinations.

QUESTIONS FROM HON. FREDERICA S. WILSON TO HON. SERENA COLEMAN MCILWAIN, SECRETARY, MARYLAND DEPARTMENT OF THE ENVIRONMENT

Question 1. Secretary McIlwain, in your testimony, you spoke about the need for an accountability system to ensure proper oversight for pollution reduction and removal from water resources. What would a sufficient accountability system look like?

ANSWER. By accountability system, I was referring to the critical importance of having a robust compliance and enforcement framework. A robust compliance and enforcement framework is a structured and comprehensive system to ensure that laws, regulations, standards, and policies are adhered to and violations are appropriately addressed. Such a framework is essential for maintaining order, promoting fairness, and protecting the rights and interests of stakeholders. Key components of a robust compliance and enhancement framework include:

- **Clear Regulations and Standards:** well-defined laws, regulations, and standards. These rules must be clear, specific, and easy to understand to minimize ambiguity and facilitate compliance.
- **Compliance Monitoring:** continuous monitoring of activities and behavior to ensure they align with established regulations. This may involve data collection, audits, inspections, and reporting mechanisms.
- **Education, Training, and compliance assistance:** Those subject to compliance regulations should receive proper education and training to understand their responsibilities and how to comply with the rules.
- **Deterrence and Incentives:** implementing strategies to deter potential violators while also providing incentives for compliance, such as recognition or rewards for outstanding compliance efforts.
- **Risk Assessment:** Identify potential risks and prioritize enforcement efforts based on the severity of violations and the potential impact on stakeholders or the public.
- **Enforcement Authorities:** Clearly define the roles, responsibilities, and regulatory authorities.
- **Penalties and Sanctions:** specific consequences for non-compliance, including fines, penalties, legal actions, suspension, or revocation of licenses or permits.
- **Transparency and Accountability:** Ensure that the enforcement process is transparent and accountable, with mechanisms for appeals, hearings, and dispute resolution.
- **Data Management and Documentation:** thorough records of compliance activities, violations, and enforcement actions. Proper data management is essential for tracking trends, conducting investigations, and demonstrating accountability.
- **Continuous Improvement:** periodic review and updating of the compliance framework to adapt to changing circumstances, emerging risks, and evolving regulations.
- **Resource Allocation:** ensuring adequate resources (financial, human, technological) are allocated to support compliance monitoring and enforcement activities.

- **Ethical Considerations:** incorporate ethical principles and checks and balances into the framework to promote integrity, fairness, and respect.

A robust compliance and enforcement framework should strike a balance between promoting compliance through education and support and deterring non-compliance through enforcement measures. It should also be adaptable to changing circumstances and responsive to emerging challenges. Ultimately, the goal is to foster a culture of compliance, uphold the rule of law, and protect the interests of all stakeholders.

Question 2. Secretary McIlwain, as you said in your testimony, cleaner water contributes to higher property value, and abundant resources, and supports our economy. Could you elaborate on how clean water fosters job and economic market prosperity?

ANSWER. It is very well known that water touches every aspect of life. Clean water is a vital component of economic growth and household welfare because it supports healthy ecosystems, and is essential and fundamental for life itself. Our economy depends on clean water for manufacturing, farming, tourism, recreation, energy production, and other economic sectors that need clean water to function and flourish. Clean water strengthens the State's fishing, tourism, and real estate industries, generating economic and recreational benefits estimated at billions of dollars each year.

The best example is the importance of having a restored and clean Chesapeake Bay. The Chesapeake Bay is an important tourist and recreation attraction in the region. According to Pew¹, countless tourists visit its thousands of miles of shoreline, which generates income and jobs for local residents of the area. Tourism and recreation activities include boating, fishing, wildlife watching, and more. About \$2.03 billion in revenue and 32,025 jobs are generated each year in Maryland due to its recreational boating industry, the Chesapeake Bay Foundation quotes from an *Economic Impact of Maryland Boating* in a 2007 report. Additionally, eight million wildlife watchers spent \$636 million, \$960 million, and \$1.4 billion in Maryland, Virginia, and Pennsylvania, respectively, on trip-related expenses and equipment in 2006 (U.S. Department of the Interior, Fish and Wildlife Service, and U.S. Department of Commerce) ("The Economic Impact of the Bay"). Striped bass alone result in \$500 million in economic activity related to fishing expenditures, travel, and lodging each year. In terms of real estate, clean water can increase the value of a single family home that is located 4,000 feet or closer to the shoreline by up to 25 percent ("The Economic Impact of the Bay"), so cleaning up the Chesapeake Bay would help the economy in that way and many other ways.

Question 3. Secretary McIlwain, in Florida, we have Biscayne Bay in my district, and numerous streams, rivers, lakes, and other water sources throughout the state. Many of our cities are located downstream and are heavily impacted by the actions of those in the upstream areas. How does upstream pollution endanger the well-being of downstream communities and economies?

ANSWER. As mentioned in the previous response, clean water is vital to our health, communities, and economy. We need clean water upstream to have healthy communities downstream. The health of rivers, lakes, bays, and coastal waters depend on the streams and wetlands where they begin. Streams and wetlands provide many benefits to communities by trapping floodwaters, recharging groundwater supplies, filtering pollution, and providing habitat for fish and wildlife.

Upstream waters (ephemeral, intermittent, and small perennial streams) form essential aquatic networks acting like capillaries that move all sorts of physical and chemical compounds—including pollutants—downstream. The conditions of all of the vital water resources, the success of restoration and protection efforts, including Maryland regulations for protecting resources and water quality, are strongly influenced by the condition of upstream waters. Continued progress toward success in conservation efforts relies on sustained protection of all upstream waters. Chesapeake Bay restoration efforts may suffer if upstream states lack similar authority and at least comparable standards to those of Maryland.

¹ "Cleaning Up the Chesapeake Bay." Pew Charitable Trusts: Environmental Initiatives. Feb. 2013. <http://www.pewenvironment.org/news-room/fact-sheets/cleaning-up-the-chesapeake-bay-8589942050#sthash.LDt679FM.dpuf>

QUESTION FROM HON. GARRET GRAVES TO HON. SERENA COLEMAN
MCILWAIN, SECRETARY, MARYLAND DEPARTMENT OF THE ENVIRONMENT

Question 1. It is my understanding that the State of Maryland is currently using performance contracting for ecological restoration projects throughout the state. Could you please describe the benefits of this particular contracting mechanism and why the state of Maryland has embraced it?

ANSWER. Performance Contracting, or Pay for Success (also referred to as pay for performance), is an innovative contracting approach that connects payment to the delivery of quantified and verified outcomes. The Pay for Success approach has many benefits. It leads to greater innovation and efficiency in project delivery, as well as greater certainty around project costs and outcomes. It also reduces upfront costs to governments and leverages the use of private capital to facilitate project delivery. It can transfer the costs for long-term stewardship to the contractor by including ongoing payments that are linked to the verification of sustained environmental outcomes. Pay for Success contracts can be structured to incorporate a range of benefits, including nutrient reductions, DELJ, climate resilience, local job creation/promotion, habitat creation and carbon sequestration.

Pay for Success contracts transfer much of the risk associated with project delivery (such as cost overruns, change orders, supply chain issues, etc.) onto the contractor by securing a unit delivery price at the beginning of the contract. This locks in the price per unit the government is willing to pay. Also, by paying for environmental outcomes the risk of funding ineffective projects is reduced—if outcomes are not delivered, then payments are reduced or eliminated.

Pay for Success programs can also lead to more streamlined procurement processes, attracting additional contractors, engineers, landowners, and investors. It can lead to rapid, large-scale restoration by enabling the project design and implementation to be handled by the contractor. Publishing the outcomes of Pay for Success contracting creates transparency for the public taxpayer and contractors and can serve to further drive down costs and promote innovation in project delivery. However, the payment structure requires either interim or long-term financing depending on the structure of the contract, which can dissuade some contractors from bidding on a project.

Maryland has experience using Pay for Success contracting in the Clean Water Commerce Program (a state funded pay for success program that pays for nitrogen reductions to restore the Chesapeake Bay), State Revolving Fund Program (including the Prince George's County P3 Clean Water Partnership Program), and Maryland State Highway Administration's Full Delivery Stream Restoration procurement. A new State law—The Conservation Finance Act—opens up additional opportunities for Pay for Success contracting in Maryland.

Maryland is also engaging federal agencies like the Army Corps of Engineers (USACE), to modernize existing registration and mapping tools to better support pay for performance projects. For example, modernizing and expanding the USACE Regulatory In lieu fee and Bank Information Tracking System (RIBITS) to include carbon outcomes would provide consistent tracking and accounting of quantified and verified outcomes associated with ecosystem restoration in Maryland and across the Chesapeake Bay region.

QUESTIONS FROM HON. DAVID ROUZER TO MICKEY CONWAY, CHIEF
EXECUTIVE OFFICER, METRO WATER RECOVERY, DENVER, COLORADO,
ON BEHALF OF THE NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES

Question 1. How has the Environmental Protection Agency (EPA) historically interpreted the Section 402(k) "permit shield" policy? How would utilities be affected if this interpretation no longer applied?

ANSWER. CWA Section 402(k)—the NPDES "permit shield" provision—stipulates that compliance with an NPDES permit constitutes compliance with the CWA itself. Under its longstanding "permit shield" policy, EPA has interpreted section 402(k) to mean that, as long as a permittee provides all necessary information throughout its application process, the limits included in its final NPDES permit lay out the extent of the permittee's obligations under the CWA. In other words, "the burden [is] on permit writers rather than permittees to search through the applicable regulations and correctly apply them to a permittee through its permit. This means that

a permittee may rely on its permit to know the extent of its enforceable duties.” EPA, Consolidated Permit Regulations, 45 Fed. Reg. 33290, 33312 (May 19, 1980).

In addition to reiterating that the onus is on permit writers to place all necessary limits in a permit, EPA’s “permit shield” policy also clarifies that an NPDES permit authorizes the discharge of more than just the specific pollutants listed in or limited by the permit. Rather, an NPDES permit authorizes all of the following: (1) pollutants specifically limited in the permit or which the permit, fact sheet, or administrative record explicitly identify as controlled through indicator parameters; (2) pollutants for which the permit authority has not established limits or other permit conditions, but which are specifically identified as present in facility discharges during the permit application process; and (3) pollutants not identified as present, but which are constituents of waste streams, operations, or processes that were clearly identified during the permit application process.” This ensures that a permit writer does not need to list every single pollutant that might be discharged for a discharge to be considered “lawful,” and ensures that permit holders are not subjected to unanticipated post-hoc enforcement efforts.

The U.S. Supreme Court has held that the purpose of the section 402(k) “permit shield” is to “insulate permit holders from changes in various regulations during the period of a permit and to relieve permit holders of having to litigate the question of whether their permits are sufficiently strict. *In short, Section 402(k) serves the purpose of giving permits finality.*” *E.I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112 (1977). EPA’s longstanding interpretation of section 402(k) has been critical to ensuring that utilities are able to avail themselves of this much needed finality by allowing utilities to rely on their NPDES permits to know the extent of their CWA obligations and to shield utilities from unwarranted post-hoc liability. This in turn allows utilities to maintain, upgrade, and operate the nation’s critical stormwater and wastewater infrastructure in a manner that allows for advanced planning and consideration of key factors such as affordability and resiliency.

Question 2. In your testimony, you discuss the city of San Francisco and litigation aimed at forcing EPA to remove “cause or contribute” boilerplate language from one of its National Pollutant Discharge Elimination System (NPDES) permits. Can you discuss how reforms aimed at requiring permit writers to use terms that clearly identify their specific pollutant(s) for compliance can help reduce unnecessary litigation and provide large and small cities with more regulatory certainty?

ANSWER. As EPA has long noted, “despite commonly held beliefs, water quality standards are not directly enforceable.” Rather, under the Clean Water Act, water quality standards get translated by permit writers into enforceable limits—called effluent limitations—that are designed to ensure that a permitted discharge does not violate the water quality standards of the waterbody a permittee is discharging into. EPA’s permitting regulations and guidance lay out detailed processes for how these water quality-based effluent limitations are developed for the various types of pollutants a permittee may discharge.

These water quality-based effluent limitations are supposed to clearly identify what water quality standard(s) they are designed to address, which pollutant(s) they apply to, and what, exactly, a permit holder must do to be in compliance. This clarity not only helps ensure that adequate protections for the receiving waterbody are in place, it also provides utility permittees with the certainty needed to plan and invest in major clean water infrastructure projects. *Clean Water Act compliance should not be either a hidden or a moving target—it should be clearly spelled out in a utility’s NPDES permit.*

However, where permit writers instead use generic, boilerplate “cause or contribute” language that fails to provide guidance to either permittees about what is expected of them or to permitting authorities and citizens about what constitutes a violation of a water quality standard, the careful permitting system Congress designed in CWA Section 402 is turned on its head, and utility permittees are subjected to unnecessary, after-the-fact litigation over what “compliance” actually means.

The threat of such litigation is antithetical to a city’s ability to strategically plan for and undertake projects that will have the greatest environmental and human health benefits for communities. When “compliance” can mean different things from one day to the next—or one courtroom to the next—running a utility that produces the best outcomes for its communities while keeping rates affordable and engaging in forward-looking planning becomes nearly impossible. Reforms aimed at ensuring that permit writers clearly lay out compliance requirements could help alleviate such issues.

Question 3. Earlier this year, EPA finalized its revised Financial Capability Assessment (FCA) Guidance, a critical tool designed to gauge how much a community can afford to pay to meet its Clean Water Act (CWA) compliance requirements.

After several years of collaborative work by EPA under the Obama and Trump Administrations with the water utility sector to revise and improvise this critical document, the Biden Administration's new final guidance does away with the progress made under the previous Administrations. Instead, the guidance appears to give environmental activists everything they asked for, while leaving the public clean water utilities that must implement it frustrated and disappointed.

Can you discuss some of the water affordability challenges communities are facing? What is the importance of ensuring any FCA guidance truly looks at the impact of CWA mandates and related bill increases on low-income households?

ANSWER. Currently countless American households, both urban and rural, are struggling to pay their increasing water and sewer bills all while public utilities are facing increased costs of regulatory compliance, maintaining aging infrastructure, inflation and supply chain issues to name a few. Other growing costs which will impact water bills, such as addressing emerging contaminants and PFAS, loom on the horizon and will make the water affordability challenge even greater.

NACWA and its utility members partnered with other water sector and municipal groups for many years to advocate for an updated approach to EPA's Financial Capability Assessment Guidance that looks at the impacts of new CWA mandates and related bill increases on actual low-income households within an impacted community, as opposed to more broad-brush comparisons of community and national level metrics that often serve to mask the actual impact on individual households. Congress has weighed in over several year including directing a report providing recommendations to improve the guidance.

Unfortunately, despite years of good progress made with both the Obama and Trump Administration, EPA's new FCA Guidance released this past February fails to take this household level approach, meaning that the true impacts on these households—many in Environmental Justice communities—may not be fully considered and leaving them to continue paying a disproportionately higher amount of their income on clean water bills.

The new Guidance also includes an arbitrary cap on the amount of time communities may be allowed to implement CWA mandates and a new requirement for communities to complete a complex economic analysis before regulators will consider providing extended compliance schedules. Both these elements will make it much more difficult, and expensive, for communities to address affordability challenges for their low-income residents.

It is important for Congress to conduct oversight and call on EPA to rewrite this guidance in a manner that actually looks at CWA compliance through the lens of poor households and families who can't afford sudden and major rate increases.

QUESTIONS FROM HON. GRACE F. NAPOLITANO TO MICKEY CONWAY,
CHIEF EXECUTIVE OFFICER, METRO WATER RECOVERY, DENVER,
COLORADO, ON BEHALF OF THE NATIONAL ASSOCIATION OF CLEAN
WATER AGENCIES

Question 1. What would be the consequence to your utility and other NACWA wastewater facilities of H.R. 2811, the House Republican proposal to eliminate roughly one-quarter of the annual investments in addressing the nation's water infrastructure challenge?

ANSWER. NACWA greatly appreciates the investments made under the IIJA to help water utilities maintain and upgrade the critical clean water infrastructure that is critical to protecting the human health and environments of the communities we proudly serve.

Even with those investments, over 90 percent of investment in water still comes from local ratepayers and states. Public clean water utilities and their communities are facing increasingly complex and costly challenges that require maintaining and growing investment, not reducing investment. These include reinvesting in aging infrastructure; managing escalating operations and maintenance costs and supply chain disruptions; attracting and retaining a skilled workforce; addressing new water quality impairments and regulations such as for per- and polyfluoroalkyl substances (PFAS) and nutrients; and investing in climate adaptation and system resiliency and security. It is a constant challenge for public clean water utilities as they work to meet these challenges and strive to provide the highest level of service while preserving water affordability for local ratepayers.

In order to ensure that communities have the resources they need to make critical clean water investments and ensure regulatory compliance without placing undue financial burdens on the backs of ratepayers, it is imperative that the new investments passed into law by Congress in recent years be fully provided as promised in the years ahead.

Question 2. What would be the impact to your ratepayers and average American families served by municipal wastewater facilities if they had to make up the difference for the cuts in clean water infrastructure spending proposed in H.R. 2811? How would your utility make up the difference in clean water funds forgone by enactment of H.R. 2811, or would this work simply not be carried out?

ANSWER. As stated above, over 90 percent of investment in water still comes from local ratepayers and states. The increased federal investment provided by Congress in recent years is providing pivotal help to many local communities to meet their clean water investment needs without further overburdening customers. Without this federal investment, more communities would need to look to more costly market-rate financing which would increase water rates for decades to come. Other utilities may need to forgo projects that have the potential to manage or reduce operational costs long term or meet related utility objectives, such as improving storm resilience. For these reasons we hope to see Congress' investment promises fulfilled in the years ahead.

Question 3. How has the Bipartisan Infrastructure Law requirement that 49 percent of Clean Water State Revolving Fund be distributed as grants or principal forgiveness benefited the families your utility serves?

ANSWER. Metro has not utilized directly the CWSRF dollars provided under IIJA to date. We are working with many of our regional communities to help them access these critical dollars.

Generally speaking, the IIJA provision requiring that 49 percent of the dollars flowing out to the SRF programs to be allocated by the states as additional subsidy is particularly important for getting federal help to disadvantaged communities. The additional subsidy can be in form of forgivable loans or grants, rather than low-interest loans that need to be repaid, benefiting utilities that might not have the capacity for loan financing and targeting areas facing serious needs or financial hardship.

Because the SRFs are run through the states—each of which has its own rules for applying additional subsidy—EPA has provided recommendations for how states should consider targeting the subsidy to reach potentially eligible areas and communities. Strengths of this guidance including encouraging states to look beyond singular metrics of disadvantage and consider various metrics such as unemployment, how water and sewer rates compare to lowest quintile income, and ensuring funds reach urban areas of poverty as well as rural and small communities.

While EPA has laid out guidance, the task of implementation falls to the states. Given the significant influx of funding, NACWA strongly believes that states must be innovative in how they apply this additional subsidy, and we stand ready to serve as a resource in how states update their definitions. To date, we have heard from utilities how numerous states have updated their definitions of disadvantaged communities to be more inclusive. We recommend that Congress continue to monitor how additional subsidies are applied and remain open to potentially providing further direction to the programs as implementation advances. This will help ensure that IIJA addresses pervasive issues of equity and access to infrastructure funding.

This is also an area where clean water utilities can help achieve the goals of IIJA. Particularly in the case of relatively large, regional sewer systems serving a range of communities within a service area. Public clean water utilities should be considered as potential partners to secure and implement federal funding. Public clean water agencies can help the small and disadvantaged cities and towns in their area secure federal assistance for which they otherwise may have struggled to identify as an opportunity, identify a project, apply, and administer funds. Regional clean water utilities can help provide the outreach, technical support, and potentially financial strength to help disadvantaged areas they serve realize the benefits of IIJA.

One challenge to note is that because the additional subsidy is coming through the SRFs, in order to qualify, applicant communities need to demonstrate their ability to pay back the funds. This is the case even with the additional subsidization funding, for which the community receives loan forgiveness. This can be a challenge in some instances, for example, stormwater projects that may be eligible investments under the CWSRF but where a community may not have a sewer fee that can demonstrate the ability to repay a loan that is eligible for principal forgiveness. While the SRFs are a tremendous tool to deliver federal assistance to local commu-

ities, there is also an important role for purely “grant” dollars in the scope of future federal funding.

QUESTIONS FROM HON. DAVID ROUZER TO BRANDON FARRIS, VICE PRESIDENT, ENERGY AND RESOURCES POLICY, NATIONAL ASSOCIATION OF MANUFACTURERS

Question 1. What sort of issues does the Environmental Protection Agency’s (EPA)’s use of Section 404(c) preemptive and retroactive vetoes outside of the conventional Army Corps 404 process cause? How does this affect project certainty?

ANSWER. It is important to have clarity and certainty that Nationwide Permits can be used to speed up the development of projects that support manufacturing and energy security. Congress should clarify that the EPA’s authority under Section 404(c) is not to be used to pre-emptively bar potential activities requiring a Clean Water Act Section 404 permit before there is an applicant or a project; or for the EPA to make a veto determination under 404(c), an entity must apply for an actual Section 404 permit with the Army Corps.

Question 2. How would extending the timeframe for Nationwide Permits (NWP) from five to ten years create a more conducive environment for moving critical projects forward?

ANSWER. In March 2022, the U.S. Army Corps of Engineers announced a formal review of Nationwide Permit 12 for Oil & Gas Pipeline activities. NWP 12 is a key permit for pipeline infrastructure projects, which often take significant capital and time to plan and construct. Extending the timeframe for an NWP would provide additional clarity and certainty for the financing and development of projects that support our energy industry.

Question 3. Since the Corps’ issuance and reissuance of NWP 12 is limited to activities that have “no effect” on listed species or designated critical habitat under the Endangered Species Act (ESA), what affect does consultation with agencies other than EPA have on projects that benefit from NWP 12?

ANSWER. Because the scope of NWP 12 is limited to activities that have “no effect” on listed species or designated critical habitat under the Endangered Species Act, consultation with agencies other than the EPA can delay projects without achieving any of the goals of the ESA.

Question 4. How would including judicial review timelines, as have been proposed in other judicial review provisions, for individual or general permits under NWP 12 improve project completion and certainty?

ANSWER. Manufacturers appreciate the House’s efforts on permitting reform in the Fiscal Responsibility Act, and the inclusion of a 120-day claims bar in the House-passed Limit, Save, Grow Act. We hope the bill sets the stage for more comprehensive permitting reform in months to come. Setting reasonable timelines for bringing legal challenges would significantly improve project certainty. Federal agency actions have routinely been challenged. In some instances, legal challenges were brought forward after significant financial investment in a project or a project had started construction. A lack of a timeline for judicial review introduces substantial project uncertainty for companies that rely on federal decision making.

QUESTION FROM HON. DOUG LAMALFA TO BRANDON FARRIS, VICE PRESIDENT, ENERGY AND RESOURCES POLICY, NATIONAL ASSOCIATION OF MANUFACTURERS

Question 1. Mr. Farris, I have a bill, H.R. 1586, the Forest Protection and Wildland Firefighter Safety Act, which will continue the current policy allowing aircraft to deploy fire retardant to fight and prevent wildfires. It is my understanding that the National Association of Manufacturers has members that, as the makers of aerial fire retardant and also the aircraft used to fight these fires, are quite familiar with this situation. As you may know, due to recent legal activity, the federal agencies in charge of fighting wildfires on our public lands are in danger of losing this absolutely essential tool. Can you tell us what the repercussions will be if the courts rule that aerial firefighting must be halted until a permit can be issued? Additionally, I have seen some half-measures proposed, designed to provide only temporary legal relief instead of a permanent solution, to fix this problem. Can you please explain why a more lasting solution, such as that found in H. R. 1586, is preferred?

ANSWER. As you noted, manufacturers in America make aerial fire retardants as well as the aircraft used to fight wildfires. The devastation wildfires cause is severe, and the effects are widespread, with nearly 100 million people in North America experiencing very poor air quality due to the current wildfires in Canada.¹ The agencies in charge of fighting wildfires need access to every tool in their arsenal for appropriate wildfire response. Lives and health are at risk if aerial firefighting is halted until a permit can be issued. Time is of the essence, and the longer a wildfire is allowed to burn, the greater the devastation. A more lasting solution is preferred to ensure that the people tasked with keeping us safe from wildfires have every tool at their disposal.

¹[Editor's note: The paragraph above contains a footnote number, but a footnote was not provided.]

