



American Exploration &
Mining Association
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June 25, 2025

The Honorable Sam Graves
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Rick Larsen
Ranking Member
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Graves and Ranking Member Larsen:

The American Exploration & Mining Association (AEMA) wishes to express our support for the Promoting Efficient Review for Modern Infrastructure Today Act or the “PERMIT” Act. This bill includes 17 sections designed to reform and modernize the Federal Water Pollution Control Act, more commonly known as the Clean Water Act (CWA). This package of reforms will greatly help to place the United States on a path to a more secure mineral supply chain, while enhancing the effectiveness of CWA programs that serve to protect our nation’s waters.

AEMA is a 130-year-old, 1,800-member national trade association representing the minerals industry with members residing in 46 U.S. states, seven Canadian provinces or territories and ten other countries. AEMA’s members are reflective of the entire mining life cycle, from exploration to reclamation and closure. More than 80 percent of our members are small businesses or individuals who work for small businesses.

AEMA member operations are often located near aquatic features; they must, correspondingly, evaluate the nature and extent of CWA requirements relative to those features. Consequently, AEMA members have extensive experience with various sections of the CWA and the associated Federal and delegated State permitting processes. They are significantly impacted by decisions that are the direct result of how the CWA is administered by the Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (Corps), the States and Tribes. They frequently must apply for Section 402 and 404 permit coverage, are subject to Section 401 certifications, and must comply with applicable water quality standards (WQS). Our members have been directly impacted by delays in CWA permitting and review processes and are thus key stakeholders when it comes to developing and implementing more efficient, timely and effective programs.

AEMA believes it is important to note that the CWA has been a remarkable success, and has led to dramatic improvements in water quality throughout the United States in the more than 50 years since its enactment. Water management is typically a major focus of our operations, and our members take great pride in their track record of CWA compliance and protection and enhancing water resources. Now is a good time to take stock of what we have learned and make improvements to this cornerstone

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environmental law. We can enhance its effectiveness, while also allowing proponents to develop and operate their projects to meet the nation's needs.

This proposed package of legislation will make targeted changes which will make the CWA more flexible, functional and efficient. In particular, we are pleased to support Section 16, which would update the statutory definition of “waters of the United States (WOTUS)” to include the waste treatment system exclusion, the value of which administrations of both parties have recognized for more than 40 years. Our members frequently rely upon the waste treatment exclusion to obtain CWA permits for their projects. In the wake of the Supreme Court's *Loper Bright* decision, codifying this and other longstanding exclusions is more important than ever. It is also important to update the definition to exclude ephemeral waters, which are clearly not the navigable waters Congress intended to regulate. Finally, it is essential to state that WOTUS does not include groundwater, regulation of which has always been at the State level.

Our members often are subject to CWA Section 401 certifications of Section 404 permits by States and Tribes and we have seen significant issues in Section 401's interpretation based on seemingly endless regulatory changes and litigation. As such, AEMA also supports Section 5, which would properly limit the scope of permit reviews under Section 401 to the permitted discharge itself. This is entirely consistent with the rest of the CWA that regulates discharges, not vaguely defined “activities” or broad ranges of indirect effects that are unrelated to the permit action and typically beyond the authority of the permitting agency. Section 5 would also place reasonable guardrails on certifying entities as they process permit applications, allowing proponents to receive defensible decisions in reasonable timeframes, instead of facing lengthy delays.

Section 8 would provide great value as well. This would provide permittees clarity under the NPDES program by recognizing the long-standing concept of the permit shield, where meeting permit requirements ensures compliance with other CWA provisions including WQS. It is also important to align with the recent Supreme Court decision in *San Francisco v. EPA*.

One of the most important and applicable parts of the legislation to the mining industry is Section 13. For several years now, a backlog of applications for approved jurisdictional determinations (AJDs) and associated Section 404 permit applications has accumulated at various Corps districts. Project proponents want to get projects done and these issues are frequently creating needless roadblocks. Reporting to Congress will allow for a high-level assessment of where the AJD process is and is not working and ensure resources are dedicated to reducing the backlog.

The legislative package under consideration today also includes several other sections that would improve the way the CWA functions, without sacrificing environmental protections. AEMA recommends your support for:

- Sections 7 and 12, which would reduce regulatory uncertainty and burdens on permittees and agencies by providing for 10-year NPDES and Nationwide permit terms;
- Section 3, which would require more accountability in WQS development by EPA, making sure regulated entities have a seat at the table when standards are developed, and Section 4, which recognizes the need to consider the commercial availability of treatment and achievable compliance in WQS setting;
- Section 11, which specifies that EPA may not use its 404(c) veto authority before a permit application has been filed or after a permit has already been issued by the Corps. This will allow projects to undergo a predictable review process where any 404(c) reviews are integrated with the

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standard Section 404 permitting process. It would also establish the certainty of the Section 404 permit once a decision is made.

In closing, AEMA would like to thank the committee and subcommittee staff for their willingness to listen to and incorporate our input. We look forward to working with Chairman Graves, Ranking Member Larsen, and the other members of this committee on these issues as we ensure America has a secure and affordable supply of the minerals and metals needed for our modern society.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Compton". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark Compton
Executive Director