STATEMENT

OF

SHAWN M. LATOURETTE

New Jersey's Commissioner of Environmental Protection

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

Committee on Transportation and Infrastructure

Subcommittee on Water Resources and Environment

February 11, 2025

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Good morning, Chairman Collins, Vice Ranking Member Scholten, and esteemed members of the Subcommittee on Water Resources and Environment. I am honored by your invitation to join this morning's Subcommittee hearing on "Clean Water Act Permitting and Project Delivery." For those members I have yet to meet, my name is Shawn LaTourette, and I have the privilege of serving the 9.3 million residents of the State of New Jersey as their Commissioner of Environmental Protection. I also serve as the chairperson of the Infrastructure Working Group of the Environmental Council of the States, the nonpartisan organization of state environmental leaders, and as an adjunct professor of environmental law at Rutgers Law School. Prior to my public service career, I was an attorney-advisor that specialized in transportation and infrastructure projects and provided counsel to private industry and public entities on permitting, including under the Clean Water Act.

Today, I hope to offer this Subcommittee a perspective from New Jersey—the most densely populated state in the nation—and the perspective of a state regulator, because, as you know, the Clean Water Act is largely implemented on the state level by agencies like the New Jersey Department of Environmental Protection (NJDEP).

The moniker "environmental protection" actually fails to capture the full scope of services that agencies like NJDEP provide for the public we serve—because our work sits squarely at the intersection of environmental, health, and economic improvement. We do not protect our environment simply because natural beauty should be recognized and preserved, but because the economic growth and long-term success of our communities demands that the government maintain the free public services that clean, healthy, and accessible natural capital provides for the people we all serve.

Much like this Subcommittee's work to evaluate regulatory processes and identify opportunities to expedite infrastructure development without sacrificing environmental quality, my NJDEP colleagues and I have committed ourselves to a practice of continual process improvement. As we work to consistently improve our programs and services, we ask ourselves hard questions about how best we can achieve the delicate balance of promoting economic growth while improving and protecting public health and the environment we all share.

In answering those questions, we ground ourselves in the fact that natural capital is always performing valuable but largely invisible services for the public. Our air, land, water, fish, wildlife and their habitats are all doing important work that our fellow residents and taxpayers would otherwise have to pay for if we do not act thoughtfully to conserve natural resources and invest in environmental improvements. Degrade the wetlands and marshes, which filter our water for free, or permit the discharge of too many pollutants into our waterways, and our residents will pay more to build and operate drinking water treatment plants. Remove too much riparian vegetation (*i.e.*, the trees whose roots literally hold together our riverbanks and help control flooding) and our residents pay to build a flood wall where that forest once was that protected their community from riverine flooding.

In New Jersey, we see clearly our residents' expectation that their government will work to facilitate economic growth and opportunity while also improving and protecting water quality and, by extension, public health. There is a poignant example within one of New Jersey's most notable industries: tourism. Our small densely populated state has one of the nation's largest coastlines. Breathtaking bays, tidal rivers, and the famed Jersey Shore

are home to millions, a cherished getaway for millions more, and an economic engine that helps powers our state and region. Our pristine beaches and quaint shore towns drive $50 billion in annual travel and tourism spending. And all of that depends on one thing: the quality of our waters.

The Value of Cooperative Federalism

As this Subcommittee knows, the Clean Water Act is a program of cooperative federalism that relies upon a partnership between the states and the federal government to effectuate our shared national goal of improving and maintaining the quality of our waterways. The beauty of cooperative federalism as seen through the Clean Water Act lies in how the law empowers and supports state regulatory programs in taking local conditions into account while meeting minimum federal standards. This enables states to integrate their more discrete natural resource and economic considerations when determining how best to improve water quality.

This cooperative federalism is at play in Section 401 of the Clean Water Act, which enables states to review federal actions or federally regulated activities that may result in discharges to waters within a state's jurisdiction to ensure that federal action does not conflict with state water quality requirements, standards, or criteria. As just one New Jersey example of Section 401 in practice, note that NJDEP routinely denies a Water Quality Certification for all nationwide permits (NWPs) adopted by the U.S. Army Corps of Engineers. This denial is grounded in the fact that New Jersey administers its own water quality and related programs that have historically exceeded minimal federal standards. In short, NJDEP offers statewide general permits for the same activities governed by the NWPs,

but with different and more stringent criteria. Thus, we routinely find that the NWPs do not adequately protect the health and safety of our jurisdictional waters. The practical application is that permit applicants must obtain a state permit for activities that would otherwise be subject to the NWPs.

As one of only two states that have successfully assumed responsibility for implementing Section 404, New Jersey's wetland program provides another important reflection on cooperative federalism under the Clean Water Act. New Jersey sought assumption to achieve two primary goals: (1) ensure protective measures that avoid or minimize wetland disturbance and (2) provide a streamlined, consistent, and more accessible permitting process. In the absence of assumption, project applicants were often challenged to adhere to two different but overlapping permitting processes at both the state and federal levels. With assumption, receipt of a state-issued permit obviated the requirement for a federal permit for the same regulated activity, especially since New Jersey's wetland program exceeds federal minimum standards.

Very importantly, assumption has provided a measure of consistency and reliability for New Jersey's regulated community. As federal implementation of Section 404 has been the subject of perennial change, New Jersey's assumed program has remained stable for several decades because state wetlands law remains unaffected by changes at the federal level. New Jersey's regulated community has appreciated this stability and has advocated for the State assumption. Additionally, assumption has enabled New Jersey to integrate its wetland program with other water-resource and watershed-management functions to implement one comprehensive program. As a result, NJDEP staff consider potential impacts

more completely and seek to avoid or minimize potential conflicts resulting from isolated programs doing isolated reviews. This is both efficient and more protective of human health and the environment.

The Criticality of Water Infrastructure Investment

As this Subcommittee knows all too well, our nation's infrastructure is the backbone of our economy. We rely on water system assets to ensure that our people, communities, and businesses can thrive. As the most densely populated state in the nation, and with a thriving commercial and industrial sector, the stakes are particularly high for New Jersey when it comes to water infrastructure. The most recent Clean Water and Drinking Water needs surveys estimate twenty-year nationwide needs of over $1.2 trillion, which includes $31.6 billion in needs in New Jersey. Clean Water needs alone are estimated at $630 billion nationally over the next twenty years, which includes $19.4 billion in needs in New Jersey.

Over the last several years, New Jersey has put its base Clean Water State Revolving Fund capitalization grants and the added funds made available under the Bipartisan Infrastructure Law to work for the people, communities, and business of our state. The continuity of these federal funding sources is critical to our Water Infrastructure Investment Plan, which brings state, federal, and private market funds together to extend the reach and impact of our investments. With crucial federal support, our New Jersey Water Bank facilitated more than $1 billion of water infrastructure investments in the prior state fiscal year—the most project value facilitated in a single year.

All told, over the life of our water infrastructure program, the New Jersey Water Bank has issued $9 billion in low-interest long-term loans and has an additional $2 billion in short-

term construction loans outstanding. Importantly, through reduced interest costs and principal forgiveness, these funding programs have saved New Jersey taxpayers $3.2 billion. The positive impact of these programs on our State's economy cannot be understated. Beyond the fact water infrastructure investments enable our communities and businesses to grow and thrive, our funding program itself has generated nearly 170,000 direct, one-year construction jobs throughout New Jersey.

The uncertainty created by intended or suspected disturbance to longstanding and reliable federal funding sources too cannot be understated. As an example, our water infrastructure funding program runs concurrent to our state fiscal year, which begins July 1. This means that right now, we are in the process of formulating our Clean Water SRF Intended Use Plan, which provides water utilities, contractors, and others in the regulated community with guidance about how best to sequence years-long infrastructure projects to maximize savings. A disruption in federal funding for Clean Water programs, even a temporary freeze, has cascading effects across the water sector and other industries, and can lead to the delay or abandonment of projects that are critical to economic development and to the protection of public health and the environment.

Conclusion

In administering Clean Water Act permitting and funding programs, my NJDEP colleagues and I are ever mindful of the balance we must strike. We must always be careful not to overburden business with regulation and process that may not be as valuable to the public. We must also be attentive to the reality that the environmental externalities we fail to avoid or correct in one sector often become a cost dislocated to another sector, and that

taxpayers are too often the ones left holding the bag. For example, the externalities wrought by a lack of adequate pollution control on wastewater discharges must inevitably be addressed and can fall unfairly upon the shoulders of other users of a waterway—be it the taxpayer-funded drinking water system that must now remove those pollutants, the commercial or recreational fisherman foreclosed from waters that are not fishable, or the disruption of tourist-serving businesses that line beaches forced closed due to poor water quality.

New Jersey has a long, proud, and bipartisan history of exceeding minimum federal standards for water quality, knowing that the quality of our waters bears directly upon our economic vitality. We view the protection and improvement of public health, safety, and the environment as a sound investment—because that is what our residents and economy demand. This Subcommittee may find that New Jersey provides an important case study for achieving balance among environmental quality and economic goals. We have assumed responsibility for critical sections of the Clean Water Act, enacted additional state-based water quality laws, and continued to grow our economy as we improve and protect public health and the environment. New Jersey is proof that a dynamic balance is possible without upending the Clean Water Act, which has not yet achieved its national goal of eliminating pollutant discharge into navigable waters and ensuring water quality that is fishable and swimmable. Let us not make false choices between a healthy environment and a healthy economy. Let us work instead to unite the forces of economic development and environmental improvement to promote the public good.