

404/Clean Water Act: U.S. House Committee on Transportation and Infrastructure Request that Trump Administration Nationwide Permits be Reexamined



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The Chairman of the United States House of Representatives Committee on Transportation and Infrastructure, Peter DeFazio (“Chairman”), sent an October 13th letter to the Biden Administration addressing Section 404 Clean Water Act Nationwide Permits (“NWP”).

The Chairman in the October 13th letter asks that a Section 404 Clean Water Act rule promulgated on January 13th by the Trump Administration be reopened and reexamined:

Reissuance and Modification of Nationwide Permits, 86 Fed. Reg. (January 13, 2021)

The United States Corps of Engineers (“Corps”) issues two types of Clean Water Act Section 404 permits. An individual permit authorizes specific activities on a case-by-case basis. In contrast, a NWP is a general permit that provides standing permission for all activities that fit the description of the permit. Such permits provide for preauthorized permission for activities that conform to the standards of the NWP. Certain NWPs do require some type of authorization after notice to the Corps prior to starting work.

NWPs were intended to provide expedited review of projects that have more limited impact on the aquatic environment. Examples include activities such as linear transportation projects, bank stabilization activities, navigation aids, and certain maintenance activities, etc.

The Corps is required to periodically renew expiring NWPs. However, besides renewing existing permits, the Corps also sometimes takes the opportunity to revise or add certain NWPs.

Chairman DeFazio references the reissuance of 12 NWPs, as well as the creation of four new permits during the Trump Administration. He argues:

. . . Not only were these 16 permits finalized in a rushed process with limited opportunity for public comment, but they were written based on the Trump administration’s deeply flawed National Environmental Policy Act (NEPA) updates. The NEPA final rule itself is under review. Allowing those 16 permits to remain in place despite this dubious reliance on the Trump administration’s NEPA provisions is a perilous approach to the protection of water resources nationwide. By continuing to use the 16 recently finalized NWPs, the Corps would be failing to protect the health and safety of our nation’s waters and our communities.

The October 13th letter also argues:

- NWPs were intended to authorize projects with minor environmental impacts to land, wetlands, and waterways
- NWPs were not meant to be applied to large projects that have far-reaching cumulative impacts
- Broadening ability of the NWPs could mean impacts to hundreds of small waterbodies cumulatively destroying water supplies of entire communities
- If not appropriately scrutinized, NWPs could allow projects to avoid the Clean Water Act, NEPA, Endangered Species Act, and other laws
- References a number of pipeline projects utilizing NWPs

A copy of the letter can be downloaded [here](#).