FOUNDATION FOR AMERICAN INNOVATION

THE STATE PERMITTING PLAYBOOK

Part 2

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Glossary

CAA: Clean Air Act

CGP: Construction General Permit

CWA: Clean Water Act

DEQ: Department of Environmental Quality

EA: Environmental Assessment

EIS: Environmental Impact Statement

EPA: Environmental Protection Agency

ESA: Endangered Species Act

ITP: Incidental Take Permit

MSGP: Multi-Sector General Permit

MS4: Municipal Separate Storm Sewer Systems

MW: Megawatt

NAAQS: National Ambient Air Quality Standards

NEPA: National Environmental Policy Act

NOI: Notice of Intent

NPDES: National Pollution Discharge Elimination System

NSPS: New Source Performance Standards

NSR: New Source Review

PAL: Plantwide Applicability Limit

PBR: Permit-by-Rule

SEPA: State Environmental Policy Act

SESA: State Endangered Species Act

SIP: State Implementation Plan

USACE: U.S. Army Corps of Engineers

VOC: Volatile Organic Compounds

Background

The United States faces significant challenges in its ability to build and maintain critical infrastructure, develop new technologies, and compete globally in strategic industries. A major factor contributing to these challenges is the intricate system of environmental regulations and permitting processes that has evolved over the past five decades.

Since the early 1970s, landmark federal environmental laws such as the National Environmental Policy Act (NEPA), the Clean Air Act, the Clean Water Act, and the Endangered Species Act (ESA) have played an important role in protecting America's natural resources and public health. However, over time, these laws and their associated regulations have grown increasingly sclerotic, leading to lengthy delays, excessive costs, and unintended consequences that hinder economic development and, ironically, often harm the environment.

While much attention is given to federal regulations, states have significant autonomy and flexibility in implementing and enforcing environmental laws. Many states have their own versions of these federal laws, such as State Environmental Policy Acts (SEPAs), as well as state-specific implementations of federal clean air and water regulations. More than 75 percent of the permits authorized by federal law are actually issued by the states.[1] This presents both challenges and opportunities for state policymakers.

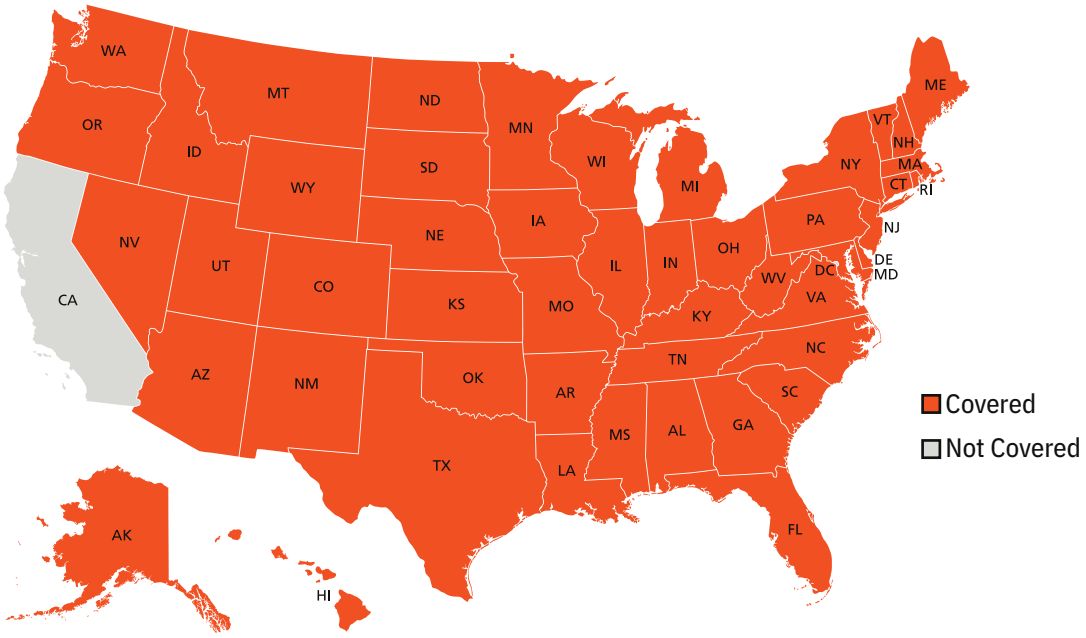
States have the power to streamline permitting processes, reduce unnecessary bureaucratic hurdles, and create more efficient regulatory frameworks without compromising environmental protections. By doing so, they can foster economic growth, attract investment, and maintain their competitive edge in crucial industries such as manufacturing, energy production, and technology development.

1 Terry Davies et al., "Reforming Permitting," Resources for the Future (November 30, 2001), https://www.rff.org/publications/reports/reforming-permitting.

This playbook aims to provide state legislators with a comprehensive understanding of the key environmental permitting issues affecting economic development and to highlight potential areas for reform.

The playbook is structured in two parts. The first part introduces four key environmental laws—SEPAs, the Clean Air Act, the Clean Water Act, and State Endangered Species Acts (SESAs)—describing how each law is implemented at the state level, outlining key issues, and suggesting broadly applicable reforms. The second part addresses each state individually, considering each state's unique challenges and opportunities.

With the 17 states covered here in addition to the 32 states covered in the previous playbook, 49 states are covered in total, as illustrated below.



Though California is not covered in the state-by-state analysis, many of the general recommendations included here are applicable.

The Challenges

State Environmental Policy Acts

State Environmental Policy Acts, often referred to as "little NEPAs" or "SEPAs,"[2] are state-level laws modeled after the federal NEPA.[3] These acts require state agencies to consider the environmental impacts of certain proposed actions or projects. While intended to promote environmental stewardship, SEPAs are typically *procedural* laws that create significant hurdles for economic development and infrastructure projects without offering *substantive* environmental protections.[4] SEPAs require that agencies describe environmental impacts, but most do not mandate specific environmental outcomes (with a few exceptions, such as the California Environmental Quality Act and New York's State Environmental Quality Review Act). Information on timelines is limited, but studies to date have suggested that Environmental Impact Statements (EISs) consistently take more than a year to complete.[5]

2 Greta Raser, "States as Laboratories: State Environmental Policy Acts Are Tools to Address Pressing Environmental Harms," *Vermont Law Review*, December 5, 2023, https://lawreview.vermontlaw.edu/states-as-laboratories-state-environmental-policy-acts-are-tools-to-address-pressing-environmental-harms/.

3 "States and Local Jurisdictions with NEPA-Like Environmental Planning Requirements," Council on Environmental Quality, accessed October 15, 2024, https://ceq.doe.gov/laws-regulations/states.html.

4 Environmental Quality Council Members, *Improving the MEPA Process: Senate Joint Resolution No. 18: Report to the 57th Legislature of the State of Montana* (2000), https://leg.mt.gov/content/Publications/Environmental/2000mepa_report/2000-mepa-report.pdf.

5 City of Columbus Joint Planning Commission, *Environmental Review* (2023), https://www.ci.columbus.mn.us/vertical/sites/%7B3E6BBFCC-1CDD-4B18-AFB1-2CB97872D422%7D/uploads/2023-06-07_PRESENTATION_-_Environmental_Review_Inservice.pdf; Environmental Quality Council Members, *Improving the MEPA Process*.

How It Works

SEPAs generally follow a process similar to NEPA:

1. **Trigger:** SEPAs are typically triggered by state agency actions, state funding, or projects requiring state permits. The trigger can include activities such as

    - Construction of state facilities (e.g., roads, schools)
    - Activities on state land
    - Large-scale private developments requiring state permits

2. **Initial Review:** When a project is proposed, the relevant state agency determines if it falls under SEPA requirements. This often involves checking if the project is above certain thresholds (e.g., size, cost) or if it is on a list of actions requiring review.
3. **Environmental Review:** If SEPA applies, some form of environmental review is required. This typically involves

    - Describing the proposed action
    - Analyzing potential environmental impacts
    - Considering alternatives

    The depth and complexity of this review can vary significantly based on the state and the project.

4. **Impact Determination:** Based on the initial review, the agency decides whether a more comprehensive analysis is needed. Some states use a tiered system, while others may have a single level of review for all applicable projects.
5. **Comprehensive Analysis:** For projects deemed to have potentially significant impacts, a more detailed environmental study is often required. This process

    - Involves a thorough examination of all potential environmental impacts
    - Requires months or even years to complete
    - Often includes multiple opportunities for public comment

6. **Final Decision:** After the environmental review process, the agency makes a decision on the project. In most states, SEPAs do not mandate a specific outcome but only require that environmental impacts be considered.

Key Issues

- **Bureaucratic Burden:** SEPAs often require extensive environmental assessments (EAs) or EISs, which can be time-consuming and costly for both developers and state agencies. North Carolina, for instance, has a dedicated State Environmental Review Clearinghouse to manage SEPA projects.[6]
- **Project Delays:** The review process required by SEPAs can significantly delay projects, sometimes by years. This is particularly problematic for time-sensitive developments or in industries where rapid innovation is crucial.
- **Potential for Litigation:** SEPAs can provide grounds for legal challenges to projects, even when environmental impacts are minimal, leading to further delays and increased costs.[7]
- **Duplicative Reviews:** In many cases, projects may be subject to both federal NEPA review and state SEPA review, leading to redundant processes and further delays. While some states have provisions for joint NEPA/SEPA documents, the coordination is rarely seamless.[8]
- **Inconsistent Application:** The implementation of SEPAs varies widely among states. For example, in North Carolina, everything from solar projects to transportation infrastructure can trigger SEPA review, while Indiana has exempted so many actions from its state NEPA that some describe it as a "forgotten" law.[9] This inconsistency creates an uneven playing field for development across the country.

It's important to note that while SEPAs can pose challenges to development, they are not universal. In fact, *most states do not have their own SEPAs*,[10] choosing instead to rely on federal environmental regulations and state-specific rules. This creates a patchwork of environmental review requirements across the country, with some states at a competitive disadvantage because of more stringent SEPA requirements.

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6 "State Environmental Review Clearinghouse," North Carolina Department of Administration, accessed October 15, 2024, https://www.doa.nc.gov/about/special-programs/environmental-review-clearinghouse.

7 "MEPA Court Cases," Montana Legislature, accessed October 15, 2024, https://leg.mt.gov/committees/interim/past-interim-committees/2017-2018/eqc/montana-environmental-policy-act/mepa-court-cases/; Environmental Quality Council, *A Guide to the Montana Environmental Policy Act* (2021), https://leg.mt.gov/content/Publications/Environmental/2021-mepa-handbook.pdf.

8 Patrick Marchman, "'Little NEPAs': State Equivalents to the National Environmental Policy Act in Indiana, Minnesota, and Wisconsin," Dukespace (2012), https://dukespace.lib.duke.edu/items/a249cf4b-e073-4e1c-8782-fd7a5389a027.

9 Marchman, "Little NEPAs."

10 "States and Local Jurisdictions," Council on Environmental Quality.

For state legislators looking to streamline permitting processes, examining the necessity, scope, and implementation of SEPAs (where they exist) will be a fruitful area for reform. Potential strategies include raising thresholds for review, expanding exemptions for low-impact projects, improving coordination between state and federal review processes, and implementing time limits on review processes to prevent indefinite delays.

SEPA Recommendations

1. **Full Repeal:** Most states do not have SEPAs, relying instead on federal environmental laws and state-specific rules. For states with SEPAs, a full repeal would reduce regulatory burden and align with the majority of states.
2. **Reduce SEPA Applicability and/or Impact:**
    - **Raise Review Thresholds:** Increase the size, cost, or impact thresholds that trigger SEPA review, focusing only on truly significant projects.
    - **Expand Exemptions:** Broaden the list of activities exempt from SEPA review, particularly for low-impact or routine projects.
    - **Restrict Legal Challenges:** Tighten the criteria for legal standing to challenge SEPA decisions, reducing potential for frivolous lawsuits. Put time limits on injunctive relief.
3. **Clarify SEPA Standards:** Develop clearer, more standardized criteria for environmental impact assessments to increase predictability and efficiency.

Clean Air Act

The Clean Air Act (CAA), enacted in 1970, is a cornerstone of U.S. environmental policy. It established a comprehensive framework for regulating air pollution from both stationary and mobile sources. The CAA has been undeniably successful in reducing air pollution—the six most common pollutants dropped by an average of 69 percent between 1980 and 2019[11]—but it has also created significant challenges for industrial development and manufacturing in the United States.[12]

While the CAA is a federal law, its implementation largely falls to the states. States are tasked with developing and implementing State Implementation Plans (SIPs) to meet the National Ambient Air Quality Standards (NAAQS) set by the Environmental Protection Agency (EPA). They also have primary responsibility for issuing permits, conducting inspections, and enforcing regulations. This state-level implementation allows for some flexibility in how air quality goals are achieved, taking into account local conditions and priorities.

How It Works

1. **National Standards:** EPA sets NAAQS for six criteria pollutants.
2. **State Implementation:** States develop SIPs to meet these standards, which must be approved by EPA.
3. **Permitting:** Both major and minor stationary sources of pollution require permits under the CAA. New major sources or significant modifications undergo New Source Review (NSR), a lengthy process demanding detailed environmental analyses and advanced emission controls. While less complex, minor source permitting

11 Joseph E. Aldy et al., "Looking Back at Fifty Years of the Clean Air Act," Resources for the Future (January 6, 2020), https://www.rff.org/publications/working-papers/looking-back-at-fifty-years-of-the-clean-air-act.

12 Thomas Hochman, "It's Not Just NEPA: Reforming Environmental Permitting," *American Affairs* (Winter 2023), https://americanaffairsjournal.org/2023/11/its-not-just-nepa-reforming-environmental-permitting; Arthur G. Fraas, John Graham, and Jeff Holmstead, "EPA's New Source Review Program: Time for Reform?," Resources for the Future (January 9, 2017), https://www.rff.org/publications/journal-articles/epas-new-source-review-program-time-for-reform; and Howard K. Gruenspecht and Robert N. Stavins, "New Source Review Under the Clean Air Act: Ripe for Reform," *Resources* vol. 147 (2002), https://media.rff.org/archive/files/sharepoint/WorkImages/Download/RFF-Resources-147-newsource.pdf.

still poses a significant regulatory hurdle, particularly for small businesses, with upfront review times that take several months and requirements around emissions monitoring and reporting.

4. **Ongoing Compliance:** Facilities must continually monitor and report their emissions to ensure they meet permit requirements.

The CAA's complex permitting process, particularly NSR, can lead to significant delays and increased costs for industrial projects, discouraging new development or modernization of existing facilities.

Flexible Major NSR (PALs)

Major sources are sources that emit pollutants above a specific pollutant threshold—typically either 100 tons per year or 250 tons per year, depending on the source type. New major sources must undergo NSR.

Plantwide Applicability Limits (PALs) are a type of flexible air permit introduced by EPA in 2002 to streamline the NSR process. PALs set a facility-wide emissions cap, which allows operators to make changes within their facility without triggering NSR as long as they stay below the cap. The idea is that by providing a clear and flexible emissions cap, facilities can more easily manage and optimize their operations, reduce the administrative burdens, and expedite project timelines, all while maintaining compliance with air quality standards.[13] PAL permits have 10-year terms and may be renewed at the end of that term.

KEY ISSUES

- **Limited State Adoption:** Some states, such as Montana, have not incorporated PALs into their SIPs, making them unavailable to facilities in those jurisdictions.[14]
- **Additional Stringency:** Other states, such as New York, have added extra requirements to their PAL programs. For example, New York requires PAL emissions to be

13 U.S. Environmental Protection Agency, *Memorandum on Guidance on Plantwide Applicability Limitation Provisions Under the New Source Review Regulations* (2020), https://www.epa.gov/sites/default/files/2020-08/documents/pal_guidance_final_-_signed.pdf.

14 Representative of the Montana Department of Environmental Quality, phone conversation with Thomas Hochman, July 18, 2024.

reduced to 75 percent of the initial cap after five years unless the facility can prove this is technologically impossible.[15] Such additions can discourage facilities from applying for PALs.

- **Lack of Clear Guidance:** Many states have not provided clear information about the benefits of PALs or addressed common misconceptions, leading to hesitancy among facility operators to pursue this option. Most state departments of environmental quality do not even put PALs alongside other permitting options on their air permitting websites.
- **Low Uptake:** As a result of these factors, PAL adoption has been extremely limited. Between 2002 and 2020, only about 70 facilities across 20 states were issued PALs.[16]
- **Expertise Gap:** The low adoption rate has created a self-perpetuating problem where permitting authorities lack experience with PALs, potentially leading to longer review times and further discouraging their use.

These issues have resulted in a missed opportunity for many facilities to benefit from the operational flexibility and potential emissions reductions that PALs can offer. Addressing these challenges could significantly streamline the permitting process for many industrial facilities while maintaining environmental protections.

PAL RECOMMENDATIONS

1. **Incorporate PALs into SIPs:** States that have not included PALs in their State Implementation Plans should do so in order to make them available as a permitting option. State legislatures could mandate this inclusion if environmental agencies are hesitant.
2. **Remove Additional Stringency:** States that have added extra requirements to their PAL programs (such as New York's 75 percent reduction after five years) should remove these additional barriers. PALs should closely align with federal guidelines to maximize their efficacy.
3. **Promote PAL Awareness:** State environmental agencies should develop comprehensive guidance documents about PALs, explaining their benefits and application

15 New York State Compilation of Codes, Rules and Regulations, Title 6, Department of Environmental Conservation, Chapter III, Air Resources, Subchapter A, Prevention and Control of Air Contamination and Air Pollution, Part 231, Subpart 231-9, "Setting the Initial PAL," 6 CRR-NY 231-9.4, accessed October 15, 2024, https://www.law.cornell.edu/regulations/new-york/6-NYCRR-231-9.4.

16 U.S. Environmental Protection Agency, *Memorandum on Guidance on Plantwide Applicability Limitation Provisions*.

process. These should be prominently featured on agency websites alongside other permitting options.

4. **Clarify PAL Renewal Process:** States should develop clear guidance on the PAL renewal process, emphasizing that there is no automatic downward adjustment or "ratcheting" of PALs at renewal. They should explain that reviewing authorities have significant discretion in setting renewed PAL levels. If baseline actual emissions plus the significant level are equal to or greater than 80 percent of the PAL, the reviewing authority may renew the PAL at the same level without additional considerations. Even when below 80 percent, authorities have discretion to renew PALs at the current level or higher if justified. EPA recommends that reviewing authorities approach any downward adjustments with restraint to avoid penalizing emission reductions.
5. **Create Certainty in PAL Renewal Language:** Federal language around PAL renewal states says that if the emissions level is equal to or greater than 80 percent of the current PAL level, the administrator "may renew" the PAL at the same level or the administrator "may adjust" the PAL limit "based on various factors."[17] This ambiguity around renewal has driven much of the concern about PALs, so some states, such as North Carolina, have elected to change "may renew" to "shall renew" in an effort to provide regulated entities with more certainty.[18] States should replicate this approach.
6. **Improve Legislative Oversight:** State legislatures should require environmental agencies to report on PAL implementation, including uptake rates and explanations for low adoption if applicable.

Flexible Minor NSR

Minor New Source Review is the permitting process for smaller sources of air pollution that do not meet the threshold for major source regulation under the CAA. While less stringent than Major NSR, Minor NSR can nevertheless create significant regulatory barriers for small businesses and local development projects, including small manufacturing plants, auto body shops, and certain agricultural operations.

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17 Prevention of Significant Deterioration of Air Quality, 40 C.F.R. § 52.21 (2024).
18 North Carolina Administrative Code, Title 15A, Chapter 02, Subchapter D, Rule .0530, "Prevention of Significant Deterioration," https://www.law.cornell.edu/regulations/north-carolina/15A-N-C-Admin-Code-02D-0530.

Flexible Minor NSR programs are state-level initiatives designed to streamline the permitting process for minor sources. These programs reduce the administrative burden without compromising environmental protections, maintaining the same substantive standards but reducing review times by establishing preset requirements and emissions limitations.

There are three common approaches to flexible Minor NSR permitting: general permits, permits-by-rule (PBR), and registration programs. Each of these approaches offers a streamlined alternative to traditional individual permitting, with varying levels of regulatory oversight and flexibility.

- **General Permits:** These are pre-approved permits for specific types of facilities or equipment that have similar operations and emissions. Instead of going through individual permit applications, which require each facility to submit detailed technical information and undergo a lengthy review process, qualifying sources can simply apply to be covered under the general permit.

  To obtain coverage under a general permit, facilities typically must submit a Notice of Intent (NOI), certify that they meet all eligibility requirements, and agree to comply with all permit conditions. The NOI process usually involves filling out a standardized form with basic information about the facility, its operations, and how it meets the general permit criteria. Facilities then submit this form to the relevant environmental agency for review and approval.
- **Permits by Rule:** These allow facilities to construct and operate without an individual permit application if they meet certain predefined criteria and agree to specific operational limitations.

  The permit-by-rule process is even more streamlined than the general permit process. Rather than submitting an NOI, facilities obtaining coverage under a PBR typically must self-certify their compliance with the rule's requirements, maintain records demonstrating ongoing adherence, and, in some cases, notify the regulatory agency of their intent to operate under the PBR.
- **Registration Programs:** These are simplified regulatory mechanisms designed for small sources of emissions that don't warrant full permitting. To complete the registration process, facilities typically must submit basic information about their operations, certify compliance with applicable standards, and agree to specific operational limitations. The registration process usually involves filling out a

standardized form with essential details about the facility, its emissions sources, and how it meets the registration criteria.

Registration programs are designed to be the least burdensome regulatory option, typically for very small sources or those with minimal environmental impact. They usually require less detailed information than PBRs or general permits and often have more flexible criteria.

KEY ISSUES

- **Inconsistent Availability:** The types of flexible permits available vary widely from state to state, creating an uneven playing field for businesses. Some states, such as Texas, have designed hundreds of flexible permit categories. Others, such as Wyoming, have not designed any.
- **Lack of Federal Guidance:** Unlike Major NSR, there is minimal federal guidance on flexible approaches for Minor NSR, leading to inconsistent implementation across states.
- **Resource Constraints:** Developing new flexible permitting programs requires significant state resources and expertise, which many state agencies lack.
- **Legal Uncertainty:** Novel approaches may face legal challenges from environmental groups, discouraging states from innovating. Texas's flexible permit program, for example, was subject to years of legal battles before finally gaining approval.[19]
- **Limited Scope:** Many flexible options are only available for certain industry types or sizes of operations, leaving some businesses without access to streamlined processes.
- **Balancing Act:** States must balance the desire for streamlined permitting with the need to ensure compliance with NAAQS and other air quality goals.

MINOR NSR RECOMMENDATIONS

1. **Expand Flexible Permit Options:** Expand PBR, general permit, and registration permit options wherever possible for low-impact projects and specific industry categories to reduce the administrative burden, particularly for industry categories that are covered by flexible permits in multiple other states.

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19 Hollie O'Connor, "Court Faults EPA's Rejection of Flexible Permits Program," *Texas Tribune*, August 13, 2012, https://www.texastribune.org/2012/08/13/court-permits-were-disapproved-inadequate-reasons/.

2. **Develop Clear Guidance:** Create comprehensive guidance documents explaining flexible Minor NSR options, their benefits, and application processes. Make these prominently available on state environmental agency websites.
3. **Allow Pre-Construction Activities:** Allow certain pre-construction activities to begin before the full air permit is issued, reducing project delays.
4. **Train Agency Staff:** Invest in training programs for permitting staff to build expertise in flexible permitting approaches for minor sources.

Clean Water Act

The Clean Water Act (CWA), enacted in 1972, is the primary federal law governing water pollution in the United States. Its objective is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. While the CWA has been instrumental in improving water quality across the country, it has also created significant regulatory challenges for development and industry.

How It Works

1. **Water Quality Standards:** States establish water quality standards for water bodies, subject to EPA approval.
2. **Permitting Programs:** The CWA establishes two main permitting programs:
    - Section 404 for the discharge of dredged or fill material into waters of the United States
    - National Pollutant Discharge Elimination System (NPDES) for point source discharges
3. **Enforcement:** EPA and authorized states enforce the CWA through inspections, monitoring, and legal action when necessary.

While the CWA has successfully reduced water pollution, its complex permitting requirements and broad jurisdiction have often led to delays in development projects and legal uncertainties for landowners and businesses.

Section 404

Section 404 of the Clean Water Act regulates the discharge of dredged or fill material into waters of the United States, including wetlands. This program is crucial for many development projects, including construction, water resource projects, and infrastructure development.

The Section 404 permit process typically involves a detailed application submitted to the U.S. Army Corps of Engineers (USACE), which includes project plans, EAs, and proposed

mitigation measures. For larger or more complex projects, obtaining a Section 404 permit can take several months to years, in part because the issuance of a 404 permit tends to be considered a "major federal action," triggering NEPA review. This extensive review process, while designed to protect water resources, often becomes a major hurdle for developers.

While Section 404 permitting is predominantly carried out by the USACE, states have the right to "assume" authority. Section 404 assumption is rare, but a number of states have begun to consider taking control over the program over the last decade.

SECTION 404 ASSUMPTION

Section 404 state assumption allows states to take over the administration of the Section 404 permit program from the USACE within their borders. This process offers several advantages, including local control, streamlined permitting, and better integration with other state environmental programs. In Michigan, for example, the average processing time for Section 404 general permits is 14 days or less.[20] By comparison, the USACE sets a "goal" of 60 days for general permits, though the "actual time … depends on the project's complexity, impact on the aquatic environment, effect on ESA-listed species, archaeological and/or tribal issues, Corps workload, and other factors."[21]

States must commit substantial resources to implement the program, however, and the approval process is complicated. Oregon considered assuming Section 404 authority in the late 2010s and estimated that the assumption application package would cost $970,000 and that the program would cost just over $1.7 million per biennium.[22] As of 2023, only two states have successfully assumed Section 404 administration: Michigan in 1984 and New Jersey in 1994.[23] Florida briefly held this authority starting in 2020, but it was subsequently revoked in response to legal challenges from environmental

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20 "Introduction to Michigan's Wetland Program," Michigan Department of Environmental Quality, accessed October 15, 2024, https://www.michigan.gov/-/media/Project/Websites/egle/Documents/Programs/WRD/Wetlands/Introduction-to-Michigans-Section-404-Wetland-Program.pdf?rev=a1ad3d8e01bc42a680a0ed2bf47ff8c9.

21 "Discharge of Dredged or Fill Material into Water," Governor's Office for Regulatory Innovation and Assistance, last updated February 22, 2022, https://www.oria.wa.gov/site/alias__oria/mid__12357/403/handbook-entry?ItemID=37.

22 "SPGP's and 404 Assumption: Oregon's Experience," National Association of Wetland Managers, March 22, 2021, https://nawm.org/pdf_lib/assumption_webinar/spgps_and_404_assumption_oregons_experience_022621_metz_poage.pdf.

23 U.S. Environmental Protection Agency, "*State and Tribal Assumption of Section 404 of the Clean Water Act*," accessed October 15, 2024, https://www.epa.gov/cwa404g.

groups.[24] The Trump administration made a concerted push to facilitate state assumption, and a number of states, such as Nebraska, Minnesota, and Alaska, have reportedly begun making plans to pursue assumption.[25]

Importantly, state assumption appears to remove the federal trigger for NEPA requirements, which offers enormous advantages in terms of administrative and regulatory burden.[26] In New Jersey, for example, certain elements of Endangered Species Act and National Historic Preservation Act review are incorporated into the state's permitting assumption agreement, but NEPA is not.[27]

KEY ISSUES

- **Legislative Requirements:** States must enact laws and regulations that are at least as stringent as the federal program.
- **Resources:** States must demonstrate they have adequate funding and staffing to implement the program effectively.
- **Program Development:** States must develop comprehensive permit, compliance, and enforcement programs specifically for Section 404.
- **Partial Authority:** States can only assume authority over certain waters (for example, the USACE would likely retain authority over waters involved in interstate commerce), which can create confusion and reduce the perceived benefits of assumption.
- **EPA Approval:** The state must apply for and receive EPA approval, a process that can be lengthy and complex.
- **Interagency Coordination:** States must establish agreements with federal agencies, including EPA, the USACE, and the U.S. Fish and Wildlife Service.
- **Political Will:** There must be strong political support to take on this responsibility, given the significant challenges involved.

The low rate of state assumption for Section 404 permitting, compared to NPDES

24 Center for Biological Diversity, et al. v. Michael S. Regan, et al., D.D.C. Civil Action No. 21-119 (2024), https://floridaspecifier.com/wp-content/uploads/2024/02/Moss-404-Vacatur.pdf.

25 E. A. Crunden, "EPA Preps Trump-Era Plan to Push Wetlands Permitting to States," *E&E News*, May 8, 2023, https://www.eenews.net/articles/epa-preps-trump-era-plan-to-push-wetlands-permitting-to-states.

26 "Clean Water Act Section 404 State Assumption," National Association of Wetland Managers, November 2010, https://www.oregonlegislature.gov/committees/hagnr/WorkgroupDocuments/Eric%20Metz,%20DSL%20(fact%20sheets%20-%2011-5-2018%20meeting).pdf.

27 Representative of the New Jersey Department of Environmental Protection, email correspondence with Thomas Hochman, September 25, 2024.

primacy, highlights the unique challenges associated with this program. The complex nature of wetland regulation, the partial nature of state authority under assumption, and the significant resources required have deterred many states from pursuing this option. However, recent interest, as evidenced by Florida's assumption in 2020, as well as recent efforts from Alaska, Nebraska, and Minnesota, suggest that some states are considering the potential benefits of local control over this important regulatory program.

SECTION 404 RECOMMENDATIONS

States should strongly consider assuming Section 404 permitting authority from the USACE. State assumption can offer increased local control, streamlined permitting processes, and better coordination with other state environmental programs, which could lead to more efficient and environmentally sound decisions.

This process does come with significant resource requirements and complex approval processes, but the experiences of Michigan and New Jersey demonstrate that successful implementation is possible and can yield positive outcomes. States interested in assumption should conduct a thorough cost-benefit analysis, assessing their capacity to handle the administrative and technical demands of the program.

NPDES

The National Pollutant Discharge Elimination System is a permit program that controls water pollution by regulating both traditional point sources and certain stormwater discharges that release pollutants into waters of the United States.

NPDES permits fall into two general categories: stormwater and non-stormwater.

Stormwater permits cover discharges from precipitation events, such as rain or snowmelt, that flow over land and impervious surfaces (such as paved streets, parking lots, and building rooftops). These permits are designed to prevent pollutants from being washed into local water bodies. They typically apply to three main sectors:

1. Construction activities disturbing one or more acres of land
2. Industrial activities exposed to stormwater
3. Municipal Separate Storm Sewer Systems (MS4)

Non-stormwater permits cover point source discharges of pollutants to surface waters. These permits are primarily focused on regulating the surface discharge of wastewater from various sources, including municipal wastewater treatment plants, industrial facilities, and commercial and agricultural operations. Non-stormwater permits set specific limits on the types and amounts of pollutants that can be discharged and often mandate monitoring and reporting requirements.

NPDES permitting is predominantly carried out by the states, with a few exceptions.

NPDES AUTHORITY

NPDES authority refers to the authority granted by EPA to a state to implement and enforce the NPDES program within its borders. This arrangement has been far more widely adopted than Section 404, with 47 states currently holding NPDES authority as of 2023. The exceptions are Massachusetts, New Hampshire, New Mexico, the District of Columbia, and most U.S. territories, where EPA directly implements the program.[28]

NPDES authority offers several advantages, including local control, the potential for faster permit processing, and closer oversight of permitted facilities.

KEY ISSUES

- **Legislative Requirements:** States must pass laws and regulations that are at least as stringent as the federal program.
- **Resources:** States must demonstrate that they have adequate personnel and funding to implement the program.
- **Program Development:** States must develop comprehensive permit, compliance, and enforcement programs.
- **EPA Approval:** States must apply for and receive EPA approval, a process that can be lengthy and complex.

28 "NPDES State Program Authority," U.S. Environmental Protection Agency, last updated August 29, 2025, https://www.epa.gov/npdes/npdes-state-program-authority.

NPDES GENERAL PERMITS

NPDES permitting is split between general and individual permits. Individual permitting is the conventional permitting approach, whereby facilities undergo case-by-case review and receive tailored permits based on their specific discharge characteristics, location, and potential environmental impacts. This process typically involves a detailed application, thorough evaluation by the permitting authority, opportunity for public comment, and development of permit conditions specific to the individual facility.

By contrast, much like general permits under the CAA, NPDES general permits are a type of permit designed to provide coverage for multiple facilities or activities that have similar operations and types of discharges. These permits streamline the permitting process for both the regulating authority and the regulated community, offering a more efficient alternative to individual permits for certain categories of dischargers while maintaining the same substantive environmental standards. Whereas individual permits tend to take six months or more to process, general permits often take just a few weeks.[29]

The majority of states have developed three general permits for stormwater:

- **The Construction General Permit:** The CGP covers stormwater discharges from construction activities that disturb one or more acres of land.
- **The Multi-Sector General Permit:** Also known as the Industrial General Permit, covers stormwater discharges from specific categories of industrial activity.
- **The Small Municipal Separate Storm Sewer System General Permit:** This permit covers stormwater discharges from municipal separate storm sewer systems serving populations of less than 100,000. Large MS4s serving populations of 100,000 or more still require individual permitting.[30]

Non-stormwater general permits are more variable, though some, such as the Pesticide General Permit, are almost ubiquitous. Some states, such as Wisconsin and Missouri, have developed more than 25 general permits. Others, such as Kansas and Wyoming, have developed fewer than 10.

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29 Representative of the North Dakota Department of Environmental Quality, phone conversation with Thomas Hochman, July 17, 2024; Kansas Department of Health and Environment, *Proposed Project Information Water and Wastewater Regulatory Requirements Kansas Department of Health and Environment* (2024), https://www.kdhe.ks.gov/DocumentCenter/View/40095/2024-03-15-Proposed-Project-Letter-PDF?bidId=.

30 U.S. Environmental Protection Agency, *Stormwater Phase II Regulations: An Overview* (2023), https://www.epa.gov/system/files/documents/2023-09/EPA-Stormwater-Phase-II-Final-Rule-Factsheet-1.0-Overview.pdf.

NPDES RECOMMENDATIONS

1. **Assume Authority:** Massachusetts, New Hampshire, and New Mexico should align with the rest of the United States and assume NPDES authority.
2. **Expand General Permits:** General permit options should be expanded wherever possible for low-impact projects and specific industry categories to reduce the administrative burden, particularly to industry categories that are covered by general permits in multiple other states.
3. **Consider Other Flexible Permits:** Some states have experimented with other flexible permit options, such as PBR. Michigan uses a PBR for stormwater construction, for example. Given that PBR is typically more streamlined than general permits, states should consider designing such programs where appropriate.

State Endangered Species Acts

State Endangered Species Acts are state-level laws modeled after the federal ESA. These acts require state agencies to protect species at risk of extinction within their borders. While intended to complement federal protection efforts, SESAs vary widely in their scope, effectiveness, and implementation across the country and often create months of regulatory delays.

How It Works

1. **Listing and Prohibitions:** States maintain their own lists of threatened and endangered species, often including federally listed species. Most states prohibit the taking, possession, transportation, or sale of listed species. This means that development projects or activities that could potentially harm or disturb listed species are often delayed, modified, or even blocked entirely. The definition of "take" varies by state but tends to cover the harassment, hunting, capturing, or killing of listed animals.
2. **Consultation:** Some states require state agencies to consult with wildlife departments on actions affecting listed species. This is a time-consuming procedural requirement—Nebraska reports that its formal consultation takes an average of almost five months, for example.[31] These consultations can significantly delay project timelines and increase costs, especially for large-scale development or infrastructure projects that may affect multiple species or habitats.
3. **Critical Habitat:** A few states go further, authorizing the designation of critical habitat. This designation can impose additional restrictions on land use and development within these areas by requiring more stringent environmental reviews, mandating specific conservation measures, limiting the types of activities permitted, or even prohibiting certain forms of development altogether.
4. **Permits:** Some states have established incidental take permit programs, which, similar to the federal ESA system, provide some flexibility for development activities by allowing projects to proceed even if they may result in the unintentional harm or

31 Representative of the Nebraska Game and Parks Commission, email correspondence with Thomas Hochman, September 25, 2024.

death of protected species. These permits typically require mitigation measures to minimize and offset impacts on protected species. Additionally, many states offer exemptions for take related to scientific research, wildlife management, zoological display, or educational purposes, subject to specific conditions and approvals.

Key Issues

- **Regulatory Burden:** Much like the federal ESA, SESAs can create significant regulatory hurdles for development projects, often requiring extensive assessments and mitigation measures, limiting land use options for public- and private-sector projects, and creating significant permitting delays.
- **Inconsistent Application:** The strength and scope of SESAs vary dramatically between states, creating an uneven playing field for businesses operating across state lines.
- **Outdated Lists:** Several states report that their endangered species lists are outdated, potentially protecting species that no longer need protection while creating unnecessary regulatory burdens.[32]
- **Private Land Challenges:** Because much of the habitat for listed species is on private land, SESAs can significantly affect property rights and land values.

Well-designed state wildlife protections can play a role in preventing costly federal listings by protecting species before they reach critical levels. However, there is significant room for improvement in many states to streamline these laws, reduce regulatory burdens, and create more balanced approaches that protect both species and economic interests.

32 National Caucus of Environmental Legislators, *A Natural Legacy for the Future: State Laws for Endangered and Threatened Species* (2023), https://www.ncelenviro.org/app/uploads/2023/03/SESA-Report.pdf.

SESA Recommendations

1. **Consider Targeted Alternatives:** States that want to protect species from federal listing to prevent the federal ESA from applying should enter into Conservation Agreements or programmatic Conservation Benefit Agreements, which much more efficiently target at-risk species than heavily procedural state ESA equivalents.
2. **Focus on Pre-Federal Listing:** States should ensure that SESAs primarily target species that are at risk of becoming federally listed. This proactive approach can prevent more stringent federal regulations while allowing states to maintain control over species management.
3. **Develop Incidental Take Permits:** States can use incidental take permits to allow for self-regulation on the part of developers while still ensuring protection for listed species. These permits can require developers to create habitat conservation plans that mitigate impacts, but they also provide regulatory certainty and streamlined approval processes for projects that meet predetermined criteria. This approach can balance species protection with economic development needs, reducing conflicts and encouraging proactive conservation efforts from the private sector.
4. **Make Regular List Updates:** States should implement mandatory, periodic reviews of their endangered species lists to ensure they reflect current scientific data, remove species that have recovered, and focus on those truly at risk of federal listing. They can develop clear, achievable recovery goals for each listed species to provide a path for delisting and regulatory relief.
5. **Consider Landowner Incentives:** States can explore establishing incentive programs such as safe harbor agreements for private landowners to voluntarily conserve species and habitats.

State Permitting Dashboards

State permitting dashboards are public "package trackers" for permits. They consolidate status data across programs into one view per application—showing where it sits, who owns the next step, what comes next, and when it should be done—alongside simple, color-coded signals for lateness. They do not change environmental standards; they expose the process so that applicants, agencies, and legislators can see progress and bottlenecks in real time.

More states should adopt dashboards because they convert scattered, opaque workflows into measurable timelines. Visibility reduces status-inquiry calls, helps applicants plan crews and financing, and lets managers target staff to the longest queues. A shared, time-stamped record improves fairness (first-in/first-out instead of "loudest caller first"), strengthens oversight, and provides the evidence base for fixing slow steps—without rewriting statutes or rules.

How It Works

1. **Automates Routine Tasks:** The system time-stamps each step, hands work to the next owner without email chains, sends due-date reminders, and generates standard deficiency letters. A public status page updates automatically, reducing the number of "Where is my permit?" calls.
2. **Identifies Bottlenecks:** The timeline shows how long files sit at each step and flags stalls in plain language (e.g., "Completeness review—6 days past due"). Repeated trouble spots—forms that trigger resubmittals or consults that always wait on another office—become visible rather than anecdotal.
3. **Creates Impetus for Improvement:** Dates and simple signals create pressure to fix delays. Managers can shift staff to the longest queue that week, set clear service promises, and run quarterly "permit sprints" to remove the slowest step, measuring results in days saved.

Key Issues

- **Unclear Tracking Encourages Buck-Passing:** Without a single source of truth—milestones, owners, due dates—responsibility diffuses and files age in inboxes while each office claims that the delay lies elsewhere.
- **Cascading Delays in a Linked Timeline:** Permitting is a chain. When one step slips (such as a public notice or interagency consult), every downstream step slides. A visible timeline pinpoints the first slip so leaders fix causes, not symptoms.
- **Incentives Misaligned with Steady Progression:** Many programs do not publish expected-by dates or overdue counts, so effort follows the loudest caller, not the oldest file. Daily movement is not rewarded; lingering files are not surfaced.

State Permitting Dashboard Recommendations

1. **Create an Inventory of All State Permits:** For each permit, list the trigger, required steps, owning office, normal time per step, and handoffs. This inventory defines the steps an application must follow and clarifies the critical path.
2. **Stand Up a Tracking System Within the State Department of Environmental Protection:** Use a common milestone list across programs. For every application, the public page should display the current step, responsible office, what is needed from the applicant (if anything), expected-by date, days spent in the step, and clear late notice with reason. Publish timing and ownership only; keep sensitive details out.
3. **Tie Continuous-Improvement Metrics to Evaluations:** Make straightforward measures part of division scorecards and individual reviews: share of steps finished by the promised date, overdue files reduced quarter-over-quarter, and days saved at the slowest step after a sprint. Reward steady throughput, not just volume processed.

Done well, state permitting dashboards shorten timelines without loosening standards. There are fewer surprise delays, clearer dates, and a fairer first-in/first-out system that moves projects and protections through the same rules, faster.

State Checklists

NOTE: Bolded text reflects areas in need of attention. Asterisks reflect a qualified status that is further explained in the state-by-state analysis.

State Environmental Policy Act

STATE	SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
Colorado	No	–	–	–
Connecticut	**Yes**	**Yes**	No	Yes
Delaware	No	–	–	–
Hawaii	**Yes**	**Yes**	**Yes**	Yes
Illinois	No	–	–	–
Maine	No	–	–	–
Maryland	**Yes**	No	No	Yes
Massachusetts	**Yes**	**Yes**	**Yes**	Yes
Michigan	No	–	–	–
Nevada	No	–	–	–
New Jersey	No*	–	–	–
New Mexico	No	–	–	–
New York	**Yes**	**Yes**	**Yes**	Yes
Oregon	No	–	–	–
Rhode Island	No	–	–	–
Vermont	No	–	–	–
Washington	**Yes**	**Yes**	**Yes**	Yes

Clean Air Act

STATE	PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/REGISTRATION PERMITS	GENERAL PERMITS	OTHER
Colorado	Yes	**No**	**No**	Yes*	Yes	–
Connecticut	**No**	**No**	**No**	Yes	**No**	Premise-Wide Limits
Delaware	Yes	Yes	**No**	Yes	**No**	–
Hawaii	Yes	**No**	**No**	**No**	Yes	–
Illinois	Yes	**No**	**No**	Yes	Yes*	Lifetime Permits
Maine	Yes	**No**	**No**	**No**	Yes	–
Maryland	Yes	Yes	**No**	Yes	Yes	–
Massachusetts	Yes	Yes	**No**	Yes	Yes	–
Michigan	Yes	**No**	Yes	**No**	Yes	–
Nevada	Yes	**No**	**No**	**No**	Yes	–
New Jersey	**No**	**No**	**No**	**No***	Yes	–
New Mexico	Yes	**No**	**No**	Yes	Yes	–
New York	Yes	**No**	**No**	Yes	Yes*	–
Oregon	**No***	Yes	Yes	**No**	Yes	PSEL
Rhode Island	**No**	**No**	**No**	**No**	Yes	–
Vermont	**No**	**No**	**No**	Yes	**No**	–
Washington	Yes	**No**	Yes	Yes*	Yes*	–

Clean Water Act

STATE	SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES GENERAL PERMITS
Colorado	**No**	Yes	23
Connecticut	**No**	Yes	15
Delaware	**No**	Yes	5
Hawaii	**No**	Yes	12
Illinois	**No**	Yes	11
Maine	**No**	Yes	10
Maryland	**No**	Yes	12
Massachusetts	**No**	**No**	13
Michigan	Yes	Yes	55
Nevada	**No**	Yes	8
New Jersey	Yes	Yes	68
New Mexico	**No**	**No**	7
New York	**No**	Yes	7
Oregon	**No**	Yes	19
Rhode Island	**No**	Yes	6
Vermont	**No**	Yes	8
Washington	**No**	Yes	15

State Endangered Species Act

STATE	SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Colorado	**Yes**	No	No	**No**
Connecticut	**Yes**	**Yes**	**Yes**	Yes
Delaware	**Yes**	No	No	**No**
Hawaii	**Yes**	No	No	Yes
Illinois	**Yes**	**Yes**	**Yes***	Yes
Maine	**Yes**	No	No	Yes
Maryland	**Yes**	No	**Yes**	Yes
Massachusetts	**Yes**	**Yes**	**Yes**	Yes
Michigan	**Yes**	No	No	**No**
Nevada	**Yes**	No	No	Yes
New Jersey	**Yes**	No*	No*	**No**
New Mexico	**Yes**	No	No	Yes*
New York	**Yes**	No	No	Yes
Oregon	**Yes**	No	No	Yes
Rhode Island	**Yes***	–	–	–
Vermont	**Yes**	No	**Yes***	Yes
Washington	**Yes**	No*	No*	**No**

State Environmental Permitting Dashboard

STATE	PERMITTING DASHBOARD	REAL-TIME STEP TRACKING
Colorado	**No**	**No**
Connecticut	**No**	**No**
Delaware	Yes	**No**
Hawaii	Yes	**No**
Illinois	Yes	**No**
Maine	Yes	**No**
Maryland	**No**	**No**
Massachusetts	Yes	**No**
Michigan	Yes	**No**
Nevada	**No**	**No**
New Jersey	Yes	Yes
New Mexico	**No**	**No**
New York	Yes	**No**
Oregon	Yes	**No**
Rhode Island	Yes	**No**
Vermont	Yes	Yes
Washington	Yes	Yes

State-by-State Analysis

Colorado

State Environmental Policy Act

SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
No	–	–	–

NOTES

Colorado does not have a SEPA.

RECOMMENDATIONS

N/A

Clean Air Act

PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/ REGISTRATION PERMITS	GENERAL PERMITS	OTHER
Yes	**No**	**No**	Yes*	Yes	–

NOTES

Colorado incorporates PALs into its SIP.[33] EPA signed the SIP approval in May 2019.

However, there is not a single PAL in use in the state. Given that Colorado has a significant presence of heavy industry, this suggests either a lack of industry awareness or a

33 U.S. Environmental Protection Agency, "Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation 3," 84 Fed. Reg. 18991 (May 3, 2019).

lack of clear guidance from the Colorado Department of Public Health and Environment (CDPHE) about the benefits of PALs.

The state also requires that the vast majority of Title V or major construction permits must file an environmental justice (EJ) summary; applications in "disproportionately impacted communities" get enhanced modeling and monitoring.[34]

Colorado does not have a traditional PBR or registration permit system. Instead, it exempts particular sources and sources below a threshold from having to register or acquire a permit altogether. Some sources exempt from permit requirements must register for an Air Pollutant Emission Notice (APEN).[35]

Colorado's general permit program covers the following range of facilities:[36]

- Condensate Storage Tank Batteries
- Natural Gas–Fired Reciprocating Internal Combustion Engines (for oil and gas operators)
- Land Development
- Produced Water Storage Tank Batteries
- Diesel-Fired Reciprocating Internal Combustion Engines
- Hydrocarbon Liquid Loadout (oil and gas operations)
- Oil and Gas Industry Storage Tanks (condensate, crude oil, produced water)
- Oil and Gas Well Production Facilities (attainment)
- Oil and Gas Well Production Facilities (nonattainment)
- Oil and Gas Industry Routine or Predictable Gas Venting Emissions

RECOMMENDATIONS

The Colorado legislature should direct CDPHE to develop and publish comprehensive PAL guidance documents on its website, explaining the benefits and application process and referencing EPA's 2020 PAL guidance where relevant. CDPHE should clarify the PAL renewal process, emphasizing that there is no automatic downward adjustment

34 5 Colo. Code Regs. § 1001-5:3-III.C.14 (2025) (environmental justice summary requirement).
35 U.S. Environmental Protection Agency, "Approval and Promulgation of Air Quality Implementation Plans; Colorado; Disapproval of Certain APEN Exemptions," 76 Fed. Reg. 5036 (October 2011).
36 Colorado Department of Public Health and Environment, Air Pollution Control Division, "Public Notice of Revisions to General Permits GP01–GP11" (August 1, 2024), https://publicnotices.douglas.co.us/wp-content/uploads/2013/02/8-1-24-Colorado-Air-Pollution-Control-Division-County-Letter.pdf.

at renewal, which could alleviate industry concerns about future operational flexibility. The legislature should also mandate annual reporting from CDPHE on PAL implementation, including uptake rates and explanations for low adoption. By enacting these measures, legislators can promote more efficient permitting processes while maintaining environmental protections, making Colorado more attractive for industrial development.

Colorado should modify its PAL renewal language to provide greater certainty for regulated entities. Currently, federal PAL language states that if the emissions level is equal to or greater than 80 percent of the current PAL level, the administrator "may renew" the PAL at the same level or "may adjust" it based on various factors. This ambiguity has caused concern about the potential for "automatic ratcheting" of the PAL level upon renewal among regulated entities. To address this, Colorado should follow North Carolina's example and change the language from "may renew" to "shall renew" in its state regulations. This approach would offer regulated entities more certainty in the PAL renewal process.

Colorado should also remove its EJ summary, which causes unnecessary delays and leads to job-creating facilities being located outside of the covered areas. Because Colorado's definition of "disproportionately impacted community" includes any area where more than 50 percent of households spend more than 30 percent of their income on housing costs, census blocks in areas with median household incomes above $150,000 are often included.[37] With an average response time for an initial Title V permit of 933 days and construction permit turnarounds increasing from 165 to 459 days since 2019, the state clearly cannot afford more permitting hurdles.[38]

For Minor NSR, CDPHE should be directed to expand its general permit program wherever possible for low-impact projects and specific industry categories to reduce the administrative burden (see **Appendix I**).

37 "Disproportionately Impacted Communities," Colorado Department of Public Health and Environment, accessed October 29, 2025, https://cdphe.colorado.gov/ej/learn.

38 Colorado Department of Public Health and Environment, *FY 2025-26 Joint Budget Committee Hearing Responses* (2024), p. 9–10, https://www.leg.colorado.gov/sites/default/files/fy2025-26_pubheahrg.pdf.

Clean Water Act

SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES GENERAL PERMITS
No	Yes	23

NOTES

Colorado assumed NPDES authority in 1975 and issues 23 statewide general permits, while Section 404 dredge-and-fill permitting remains with the U.S. Army Corps of Engineers.[39] The Water Quality Control Division under CDPHE operates the program. Forty-six percent of Colorado's NPDES permits are backlogged.[40]

Colorado has established the following general permits under its non-stormwater program:[41]

- Coal Mining Facilities
- Oil and Gas Process Water (produced-water treatment facilities)
- Aquatic Animal Production
- Sand and Gravel Mining
- Discharges Associated with Hydrostatic Testing of Pipelines, Tanks, and Similar Vessels
- Non-Contact Cooling Water
- Commercial Washing of Outdoor Structures
- Water Treatment Plants Not Discharging to Waters Designated Habitat for Threatened and Endangered Species
- Domestic Discharges Under 1 MGD with Dilution ≥ 100:1
- Domestic Discharges Under 1 MGD with Dilution < 100:1
- Discharges from Short-Term (< 2 years) Construction Dewatering Activities
- Discharges from Short-Term (< 2 years) Remediation Activities
- Discharges from Long-Term (≥ 2 years) Remediation Activities
- Discharges from Subterranean Dewatering Activities
- Discharge to Surface Water from Well Development and Pump Testing Activities
- Minimal Discharge
- Discharges from Applications of Pesticides

39 Regulate Dredge and Fill Activities in State Waters, H.B. 24-1379, 74th Colo. Gen. Assemb., 2d Reg. Sess. (2024), p. 2.
40 Colorado Department of Public Health and Environment, Water Quality Control Division, *Request for Information (R-02): Protecting Water Quality* (2025), p. 16.
41 U.S. Environmental Protection Agency, Region 8, *Colorado NPDES Program and Permit Quality Review* (2024), p. 9, https://www.epa.gov/system/files/documents/2024-11/colorado2022.pdf.

Colorado has established the following general permits under its stormwater program:

- Industrial
- Metal Mining
- Construction
- Standard Small MS4
- Nonstandard Small MS4
- Cherry Creek Reservoir Basin MS4

RECOMMENDATIONS

For the main Section 404 recommendations, see **p. 17**.

For NPDES, Colorado should expand its general permit program to other commonly covered facilities and operations (see **Appendix II**).

State Endangered Species Act

SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Yes	No	No	**No**

NOTES

Colorado's Nongame, Endangered, or Threatened Species Conservation Act of 1973 prohibits unlawful take of listed wildlife but does not mandate formal project-by-project consultation.[42]

Instead, Colorado Parks and Wildlife (CPW) designates High-Priority Habitat in a publicly available mapping layer that local governments routinely consult during land-use proceedings. Oil and projects must provide a Wildlife Mitigation plan if located in a High-Priority Habitat.[43]

The statutory definition of "take"—"to kill or otherwise acquire possession of wildlife"—is narrower than the federal Endangered Species Act and omits "harm" or "harass."[44] Incidental-take authorizations are limited to special scientific-collecting or damage-control licenses, leaving most development projects to negotiate voluntary avoidance or mitigation measures with CPW.

42 Colo. Rev. Stat. § 33-1-102(43) (2024).
43 2 Colo. Code Regs. 404-1:304 (Colorado Energy and Carbon Management Commission, Form 2A requirements (2025), https://www.law.cornell.edu/regulations/colorado/2-CCR-404-1-304.
44 Colo. Rev. Stat. § 33-1-102(43) (2024).

RECOMMENDATIONS

Given that Colorado has state-listed species beyond those federally listed under the Endangered Species Act and prohibits take of those species, it should design a broader incidental take permit to allow for take under specific circumstances. This would give developers some flexibility to move forward on critical projects that may result in incidental take so long as they implement approved conservation measures and mitigate any potential impacts on protected species.

Colorado should also consider shifting away from its SESA program towards a more targeted series of Conservation Agreements and Programmatic Conservation Benefit Agreements so that it focuses on efficiently preventing the federal listing (and thus federal regulation) of at-risk species.

For more, see the general State Endangered Species Act recommendations on **p. 23**.

Connecticut

State Environmental Policy Act

SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
Yes	**Yes**	No	Yes

NOTES

Connecticut has a State Environmental Policy Act known as CEPA.[45] It requires state agencies to evaluate and publicly disclose the environmental consequences of proposed actions through a two-step process that begins with a Scoping Notice and, when warranted, proceeds to a full Environmental Impact Evaluation (EIE).[46] CEPA is used regularly at the state level. CEPA has historically taken a year on average, but the backlog has grown over time, with over 600 legacy (more than five years old) permits as of January 2025. To the credit of the Department of Energy and Environmental Protection (DEEP), over 70 percent were reported cleared as of April 2025.[47] Even after DEEP's approval, projects must receive permits from each of the potentially 169 affected townships for the portion of the project within that jurisdiction.

Much like NEPA, the statute can reach both public and mixed public-private undertakings, but purely private projects are covered only when they receive state funding, licensing, or other discretionary approvals. CEPA reviews most often involve transportation corridors, state-financed buildings, land acquisitions, and housing grants.

While comprehensive, the law excludes certain categories: routine maintenance, in-kind repairs, and emergency responses are exempt by regulation, and agencies may conclude a project with a "No EIE Required" finding after the initial scoping stage.[48]

45 Conn. Gen. Stat. §§ 22a-1–22a-1h (2025).
46 Conn. Agencies Regs. §§ 22a-1a-6, 22a-1a-9 (2025).
47 Connecticut General Assembly, Office of Legislative Research, Research Rep. No. 2005-R-0176, *CEPA Reviews* (2005), https://www.cga.ct.gov/2005/rpt/2005-R-0176.htm; "Cutting Legacy Permit Backlogs," Connecticut Department of Energy and Environmental Protection, last updated September 2025, https://portal.ct.gov/deep/about/20by26/20by26-initiative/cutting-legacy-permit-backlogs.
48 "Generic Environmental Classification Document (ECD) for Connecticut State Agencies," State of Connecticut Office of Policy and Management, effective March 2, 2021, https://portal.ct.gov/-/media/opm/igpp/org/cepa/revised-generic-ecd_03022021.pdf.

The Office of Policy and Management (OPM) oversees implementation, reviews the final Record of Decision, and publishes guidance on timelines and content.

Public participation mirrors NEPA, featuring a comment period of more than 30 days on Scoping Notices and a separate comment window on draft EIEs. Connecticut has both a limited citizen-suit provision to prevent pollution, Connecticut General Statute (CGS) Section 22a-16, and a provision, CGS Section 22a-19, that allows intervention in agency proceedings to protect natural resources.[49]

RECOMMENDATIONS

Just as NEPA imposes an enormous regulatory burden on federal agencies and infrastructure development, CEPA imposes an enormous regulatory burden on state agencies and state infrastructure development. Where possible, the Connecticut legislature should reform, create exclusions from, and raise the trigger threshold for CEPA.

For example, the legislature could

1. Significantly increase the threshold for triggering CEPA on state projects. Similar reforms have been carried out in North Carolina (in 2015) and Georgia (in 2016) to great success.
2. Expand exemptions, particularly in the energy and transportation sectors, to streamline private-sector development. Indiana's and South Dakota's various state NEPA exemptions, from the issuance of permits to "actions of an environmental protective regulatory nature," are good examples of efforts to this end.
3. Set a time limit on injunctive relief to reduce the ability of obstructionists to block projects.
4. Repeal CEPA in its entirety, aligning Connecticut's environmental regulatory requirements with the majority of the country.

49 Connecticut General Assembly, Office of Legislative Research, Research Rep. No. 97-R-1481, *CGS §§ 22a-14–22a-20 Citizen-Suit Standing* (1997), https://www.cga.ct.gov/PS97/rpt/olr/htm/97-R-1481.html.

Clean Air Act

PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/ REGISTRATION PERMITS	GENERAL PERMITS	OTHER
No	**No**	**No**	Yes	**No**	Premise-Wide Limits

NOTES

Connecticut's SIP includes premise-wide limits, but it has not yet adopted EPA's PAL provisions.[50] Connecticut's premise-wide limits are voluntary, notification-only caps at 50 percent or 80 percent of Title V thresholds, indefinite and enforced via annual record-keeping and certification. This differs from PALs, which are formal permits with pollutant-specific caps set at baseline emissions and significance thresholds for a 10-year term.

DEEP has issued 139 premise-wide limit permits under the 50 percent threshold and 22 under the 80 percent threshold.[51]

Transparency and throughput have improved through the 20BY20 and 20BY26 programs, DEEP initiatives targeting measurable improvements in the permitting process, such as reducing the legacy permit backlog by 65 percent.[52] Connecticut participates in the Regional Greenhouse Gas Initiative (RGGI) for CO_2 trading.[53]

Connecticut has a PBR program for the following categories:[54]

- Auto Body
- Boilers
- Combined Heat and Power
- Distributed Generators
- Emergency Engines
- Rock Crushers
- Solvent Degreasing
- Surface Coating
- Limit Potential to Emit (limitations on premise-wide actual emissions below a Title V source)

50 Regs. of Conn. State Agencies §§ 22a-174-33a, 22a-174-33b (2025).

51 "Active 33a and 33b Sources," Connecticut Department of Energy and Environmental Protection, September 3, 2024, https://portal.ct.gov/-/media/deep/air/permits/2024-09-03---active-33a-and-33b-sources-for-deep-website.pdf.

52 "20BY26 Initiative Overview," Connecticut Department of Energy and Environmental Protection, accessed October 29, 2025, https://portal.ct.gov/deep/about/20by26/20by26-initiative/overview-of-20by26.

53 "Regional Greenhouse Gas Initiative (RGGI) Program," Connecticut Department of Energy and Environmental Protection, last updated February 2022, https://portal.ct.gov/deep/air/climate-change/regional-greenhouse-gas-initiative-rggi.

54 "Permitting Process Overview," Connecticut Department of Energy and Environmental Protection, accessed October 29, 2025, https://portal.ct.gov/deep/permits-and-licenses/permitting-process-overview/application-process-general-permits-and-permit-by-rule.

RECOMMENDATIONS

The Connecticut legislature should direct DEEP to develop and publish comprehensive PAL guidance documents on its website, explaining the benefits and application process and referencing EPA's 2020 PAL guidance where relevant. DEEP should clarify the PAL renewal process, emphasizing that there is no automatic downward adjustment at renewal, which could alleviate industry concerns about future operational flexibility. The legislature should also mandate annual reporting from DEEP on PAL implementation, including uptake rates and explanations for low adoption. By enacting these measures, legislators can promote more efficient permitting processes while maintaining environmental protections, making Connecticut more attractive for development.

DEEP should also expand its public dashboard for Title V applications, showing statutory clocks, the current reviewer, and days-in-stage to give applicants and reviewers insight into permitting bottlenecks.

Building off its 20BY26 program, DEEP should release a comprehensive guide of lessons learned and benchmarks met, then develop a 30BY30 program to make DEEP a leading permitting model for other states.

The Connecticut legislature should direct DEEP to develop a robust minor source flexible permitting program, expanding its registration permit system to cover additional categories (see **Appendix I**).

Clean Water Act

SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES GENERAL PERMITS
No	Yes	15

NOTES

Connecticut has not assumed authority over the Section 404 program, which remains under the jurisdiction of the U.S. Army Corps of Engineers and EPA. Connecticut has had NPDES authority since 1973 and has established a set of general permits under its water quality programs.[55]

55 "National Pollutant Discharge Elimination System (NPDES)," U.S. Environmental Protection Agency, last updated September 25, 2025, https://www.epa.gov/npdes.

Connecticut has established the following general permits under its non-stormwater program:[56]

- Comprehensive Discharges to Surface Water and Groundwater
- Concentrated Animal Feeding Operations
- Domestic Sewage
- Food Service Establishment Wastewater
- Groundwater Remediation Wastewater
- Miscellaneous Industrial Users
- Nitrogen Discharges
- Point-Source Pesticide Discharges
- Significant Industrial Users
- Subsurface Disposal Systems
- Swimming Pool Wastewater

Connecticut has established the following general permits under its stormwater program:[57]

- Commercial Activity
- Construction Activities
- Industrial Activity
- Small MS4

RECOMMENDATIONS

For the main Section 404 recommendations, see **p. 17**.

For NPDES, Connecticut should expand its general permit program to other commonly covered facilities and operations (see **Appendix II**).

State Endangered Species Act

SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Yes	**Yes**	Yes	Yes

NOTES

Connecticut has a SESA.[58] The Connecticut Endangered Species Act (CESA) automatically adopts every federally listed species found in the state. "Take" includes collecting,

56 "Water Discharge Permits and General Permits," Connecticut Department of Energy and Environmental Protection, effective July 1, 2019, https://portal.ct.gov/deep/permits-and-licenses/water-discharge-permits-and-general-permits.
57 Ibid.
58 Conn. Gen. Stat. §§ 26-303 et seq. (2024).

killing, injuring, or harming protected plants or animals.[59]

State agencies must ensure that their actions do not jeopardize listed species.[60] State law, through DEEP, requires Section 7–style agency consultation. DEEP also often forces private applicants to trigger review by requesting a Natural Diversity Data Base (NDDB) letter when applying for a separate permit, such as a water quality certificate. Median NDDB response time is 8–10 weeks, but required field surveys can stretch reviews to a year.[61]

Incidental-take exemptions under CESA are available only to state agencies and for some routine landowner activities; developers unable to avoid take under CESA must rely on state-agency exemptions or risk administrative denial of permits and may face separate CEPA-based challenges on environmental impact grounds, though CEPA does not itself impose take liability.

RECOMMENDATIONS

Connecticut's consultation requirements under its SESA impose an unnecessary regulatory burden on agencies. This state-level requirement is very unusual; very few states have formal consultation as part of their SESA process. Consultation is ultimately a procedural rather than a substantive process and creates regulatory delays despite many of the species in the state's SESA not being at high risk of becoming federally listed. Connecticut should strongly consider removing the formal consultation requirement, aligning itself with the majority of the country.

Given that Connecticut has state-listed species beyond those federally listed under the Endangered Species Act and prohibits take of those species, it should broaden its incidental take permit to allow for take for private developers under specific circumstances. This would give developers some flexibility to move forward on critical projects that may result in incidental take so long as they implement approved conservation measures and mitigate any potential impacts on protected species.

Connecticut should also consider shifting away from its SESA program towards a more targeted series of Conservation Agreements and Programmatic Conservation Benefit

59 Conn. Gen. Stat. § 26-303(11) (2024).
60 Conn. Gen. Stat. § 26-310(a) (2024).
61 "NDDB Frequently Asked Questions," Connecticut Department of Energy and Environmental Protection, revised March 2024, https://portal.ct.gov/DEEP/NDDB/NDDB-Frequently-Asked-Questions.

Agreements so that it focuses on efficiently preventing the federal listing (and thus federal regulation) of at-risk species.

For more, see the general State Endangered Species Act recommendations on **p. 23**.

Delaware

State Environmental Policy Act

SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
No	–	–	–

NOTES

Delaware does not have a SEPA.

RECOMMENDATIONS

N/A

Clean Air Act

PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/ REGISTRATION PERMITS	GENERAL PERMITS	OTHER
Yes	Yes	**No**	Yes	**No**	–

NOTES

Delaware's Division of Air Quality (DAQ) administers the Clean Air Act permitting program. Under the SIP, only one PAL, for the Dupont Experimental Site, is currently in use.[62] Major permits (Title V renewals) average 786 days—well beyond the federal 547-day limit.[63]

Delaware has no general permit system but does have a registration permit system and its 1102 Source Category Permit program.[64] The covered categories under the 1102

62 "Title V Permit Renewal Application: DuPont Specialty Products USA," Delaware Department of Natural Resources and Environmental Control, April 13, 2025, https://dnrec.delaware.gov/public-notices/aq20250139.

63 Delaware Department of Natural Resources and Environmental Control, Air Quality, *Annual Title V Fee Committee Status Report*, May 2025, p. 9, https://documents.dnrec.delaware.gov/Air/Title-V/Fee-Committee/2024-Title-V-Fee-Committee-Status-Report.pdf.

64 "1102 Permits," Delaware Department of Natural Resources and Environmental Control, June 11, 2016, https://

program are

- Air Contaminant Controls
- Small External Combustors
- Fuel Input < 10 MMBtu
- Gas Combustors < 15 MMBtu
- Air Conditioning Systems
- Office Vacuum Cleaners
- Print Cabinet Ventilation
- Steam Heat Exhaust
- Lab Analysis Equipment
- Vehicle Transport Engines
- Equipment Maintenance Replacement
- Harmless Gas Emitters
- Restaurant Exhaust Systems
- Air Gas Separation
- Outdoor Fireworks Displays
- Orchard Frost Heaters
- Painting and Blasting Equipment
- Lawn and Farm Equipment
- Low-Volume Gas Stations
- Small Gasoline Storage
- Farm Tanks < 550 gal
- Pre-1979 Tanks < 2,000 gal
- Post-1978 Tanks < 250 gal
- Firefighting Training Courses
- Residential Wood Burners
- Low-Pressure Storage Tanks
- Closed Chemical Storage
- Sewage Treatment Facilities
- Water Treatment Units
- Quiescent Wastewater Operations
- Non-Contact Cooling Towers
- Laundry Drying Machines
- Hydraulic Testing Equipment
- Blueprint Photo Processes
- Small Ceramic Kilns
- Acid Storage Tanks
- Emergency Standby Generators
- Small Combustion Equipment

RECOMMENDATIONS

The Department of Natural Resources and Environmental Control (DNREC) should publish a PAL guide—complete with flowchart and detailed examples—and rebate 50 percent of the PAL application fee upon issuance. Legislatively, Delaware should modify its PAL language from "may" to "shall"to auto-renew PALs at the same cap when prior actual readings are greater than 80 percent of the limit, mirroring North Carolina's 2015 rule.

DNREC should also launch a public dashboard for Title V applications showing statutory clocks, the current reviewer, and days-in-stage to give applicants and reviewers insight into permitting bottlenecks.

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regulations.delaware.gov/AdminCode/title7/1102.

DNREC should be encouraged to expand its registration permit program to cover additional industrial categories (see **Appendix I**).

Clean Water Act

SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES GENERAL PERMITS
No	Yes	5

NOTES

Delaware assumed NPDES authority in 1974 and issues five statewide general permits, while Section 404 dredge-and-fill permitting remains with the U.S. Army Corps of Engineers.[65] The Division of Water under DNREC operates the program. Delaware's permit backlog was recently found to be the highest in EPA's Region 3, at 34.1 percent of pending permits.[66]

Delaware has established the following general permits under its non-stormwater program:[67]

- Aquatic Pesticides
- Concentrated Animal Feeding Operations

Delaware has established the following general permits under its stormwater program:

- Construction
- Industrial
- Tier I/II MS4

65 U.S. Environmental Protection Agency, "Notice of Approval of Revisions to Delaware's NPDES Program," 72 Fed. Reg. 11874–11875 (March 14, 2007), https://www.federalregister.gov/documents/2007/03/14/E7-4643/notice-of-approval-of-revisions-to-delawares-national-pollutant-discharge-elimination-system-npdes.

66 U.S. Environmental Protection Agency, *FY 2024 End of Year NPDES Individual State-Issued Existing Permit Backlog* (2024), https://www.epa.gov/system/files/documents/2024-12/npdes-state-individual-permit-backlog_0.pdf.

67 "National Pollutant Discharge Elimination System," Delaware Department of Natural Resources and Environmental Control, accessed July 31 2025, https://dnrec.delaware.gov/water/commercial-government/npdes.

RECOMMENDATIONS

For the main Section 404 recommendations, see **p. 17**.

For NPDES, Delaware should expand its general permit program to other commonly covered facilities and operations (see **Appendix II**).

DNREC should also deploy a public NPDES dashboard on the existing ePermitting back-end—showing days-in-queue, statutory clocks, and current reviewer—to provide certainty and insight to both developers and reviewers.

State Endangered Species Act

SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Yes	No	No	**No**

NOTES

Delaware has a SESA.[68] Delaware's SESA does not include formal consultation requirements in the same sense as the federal ESA, nor does it provide for critical habitat designation.

Delaware prohibits collecting, possessing, selling, or transporting any state-listed endangered species. The regulations do not have a broad "take" definition like the federal ESA.[69] It does not offer incidental take permits. Delaware's current state list covers species beyond those that are listed under the federal ESA.

The Delaware Ecological Network (DEN) is a mapping layer that flags core habitats and corridors; reviewers often request applicants to overlay projects on DEN to screen impacts.[70]

RECOMMENDATIONS

Delaware should consider shifting away from its SESA program towards a more targeted series of Conservation Agreements and Programmatic Conservation Benefit Agreements so that it focuses on efficiently preventing the federal listing (and thus federal regulation) of at-risk species.

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68 Endangered Species Act, Del. Code tit. 7, ch. 6, §§ 601–605 (2024).
69 7 Del. Admin. Code 3900-16.0 §§ 16.1–16.3; § 3900-9.1.1.2 (2024).
70 "Delaware Ecological Network 2.0," Delaware FirstMap, updated September 29, 2023, https://de-firstmap-delaware.hub.arcgis.com/datasets/delaware::delaware-ecological-network-2-0.

Delaware should establish a public SESA dashboard showing each review's clock start and stop dates and median turnaround. To triage review, DNREC should integrate an automated DEN-overlay checker into the application process to auto-clear "no-impact" submissions.

For more, see the general State Endangered Species Act recommendations on **p. 23**.

Hawaii

State Environmental Policy Act

SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
Yes	**Yes**	**Yes**	Yes

NOTES

Enacted in 1974, Hawaii's Environmental Policy Act (HEPA) requires the proposing or approving agency to prepare a threshold determination for a large-swathe governmental proposal for action, including permits, funding decisions, and land-use plans. The test is whether the proposal *may* cause a significant adverse environmental impact; if so, an EIS must follow.[71]

Much like NEPA, HEPA applies to both public- and private-sector projects. It covers a wide range of activities, including energy projects, infrastructure development, industrial expansions, and water-related projects.

Additionally, HEPA has provisions for public participation, including comment periods on EAs and EISs. It also provides for judicial review of decisions regarding the need for and adequacy of environmental review documents. Enforcement is vigorous: any aggrieved party has standing, and Chapter 343 cases are routed to the specialized Environmental Court, which hears approximately 10 civil cases a year.[72] Statistics on litigation length are hard to find, but anecdotes bear out similar horror stories to NEPA.

Many areas are categorically exempted from HEPA review, including the following:[73]

- Minor maintenance and repairs of existing structures
- Replacement of structures with similar new ones
- Construction of new small structures or facilities
- Minor alterations to land, water, or vegetation

71 Environmental Impact Statements, Haw. Rev. Stat. ch. 343 (2023), https://capitolwebsite.azurewebsites.net/hrscurrent/Vol06_Ch0321-0344/HRS0343/HRS_0343-.htm.
72 Haw. Rev. Stat. § 604A-2 (2024).
73 Haw. Code R. § 11-200.1-15 (2024).

- Basic research, monitoring, and testing with minimal disturbance
- Demolition of non-historic structures
- Zoning variances excluding shoreline setbacks
- Continuing routine administrative activities
- Land and property acquisition for affordable housing
- Construction of new affordable housing projects

RECOMMENDATIONS

Just as NEPA imposes an enormous regulatory burden on federal agencies and infrastructure development, HEPA imposes an enormous regulatory burden on state agencies and state infrastructure development. Where possible, the Hawaii legislature should reform, create exclusions from, and raise the trigger threshold for SEPA. For example, the legislature could

1. Significantly increase the threshold for triggering SEPA on state projects. Similar reforms have already been carried out in North Carolina (in 2015) and Georgia (in 2016) with a great deal of success.
2. Expand exemptions, particularly in the energy and transportation sectors, to streamline private-sector development. Indiana's and South Dakota's various state NEPA exemptions, from the issuance of permits to "actions of an environmental protective regulatory nature," are good examples of efforts to this end.
3. Set a time limit on injunctive relief to reduce the ability of obstructionists to block projects.
4. Repeal SEPA in its entirety, aligning Hawaii's environmental regulatory requirements with the majority of the country.

Clean Air Act

PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/ REGISTRATION PERMITS	GENERAL PERMITS	OTHER
Yes	**No**	**No**	**No**	Yes	–

NOTES

Hawaii has written a PAL into its SIP. The state's PAL language aligns closely with federal regulations and does not contain additional stringent permitting language.[74]

However, there is not a single PAL in use in the state. This may be a result of Hawaii's not having as much traditional heavy industry as other states. Regardless, clear guidance from the Hawaii Department of Health about the benefits of PALs would provide a framework for industries that may be interested in taking advantage of Hawaii's strategic location and educated workforce.

Hawaii has a general permit program for similar nonmajor sources, but does not currently have any listed active general permits.[75]

Hawaii also has a number of exemptions, the installation of which requires neither a permit nor registration, including the following:[76]

- Low-Emitting Stationary Sources
- Residential Wood Heaters
- Small Volatile Organic Compound (VOC) Storage Tanks
- Small Fuel-Burning Equipment
- Small Gas-Fired Boilers/Heaters
- Small Ceramic Kilns
- Emergency Standby Generators
- Paint Spray Booths
- Welding Booths
- Portable Gasoline Equipment
- Handheld Particulate Tools
- Laboratory Analysis Equipment
- Solvent-Free Dipping Containers
- Closed Tumblers
- Oceangoing Vessels
- Fire-Water Pump Engines
- Smoke Training Systems
- Mobile Internal Combustion Engines
- Nonroad Engines
- Aircraft Ground-Support Equipment
- Plant Maintenance Activities

74 Hawai'i Department of Health, Hawai'i Administrative Rules § 11-60.1-131, February 8, 2024, https://health.hawaii.gov/cab/files/2024/02/HAR_11-60_1_searchable.pdf.
75 Haw. Admin. Rules § 11-60.1-92 (2024).
76 Haw. Admin. Rules § 11-60.1-82(d)–(g), (k) (2024).

- Residential Fuel Heaters
- Food-Prep Ovens/Grills
- Sewer Vent Stacks
- Non-Pollutant HVAC Systems
- Woodworking Shops
- Asbestos Demolition Sources
- Ozone-Depleting HVAC Systems

RECOMMENDATIONS

The Hawaii legislature should direct the Hawaii Department of Health (DOH) to develop and publish comprehensive PAL guidance documents on its website, explaining the benefits and application process and referencing EPA's 2020 PAL guidance where relevant. The DOH should clarify the PAL renewal process, emphasizing that there is no automatic downward adjustment at renewal, which could alleviate industry concerns about future operational flexibility. The legislature should also mandate annual reporting from the DOH on PAL implementation, including uptake rates and explanations for low adoption. By enacting these measures, legislators can promote more efficient permitting processes while maintaining environmental protections, making Hawaii more attractive for industrial development.

Hawaii should modify its PAL renewal language to provide greater certainty for regulated entities. Currently, federal PAL language states that if the emissions level is equal to or greater than 80 percent of the current PAL level, the administrator "may renew" the PAL at the same level or "may adjust" it based on various factors. This ambiguity has caused concern about the potential for "automatic ratcheting" of the PAL level upon renewal among regulated entities. To address this, Hawaii should follow North Carolina's example and change the language from "may renew" to "shall renew" in its state regulations. This approach would offer regulated entities more certainty in the PAL renewal process.

Hawaii should also launch a public dashboard for Title V applications showing statutory clocks, the current reviewer, and days-in-stage to give applicants and reviewers insight into permitting bottlenecks.

Hawaii should consider expanding its existing general permit program to cover sources that other states' flexible permitting programs commonly cover (see **Appendix I**).

Clean Water Act

SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES GENERAL PERMITS
No	Yes	12

NOTES

Hawaii has not assumed the federal Section 404 permitting program, which remains under the jurisdiction of the U.S. Army Corps of Engineers and EPA.[77] Hawaii has had NPDES authority since 1974 and has established a set of general permits under its DOH.[78] Data on Hawaii's NPDES permitting is scarce, but as of 2023, 93 percent of permits were current, an excellent rate.[79]

Hawaii has established the following general permits under its non-stormwater program:

- Underground Storage Tank Remedial Effluent
- Once-Through Cooling Water (< 1 MGD)
- Hydrotesting Waters
- Construction Dewatering Effluent
- Petroleum Bulk Station and Terminal Process Wastewater
- Well Drilling Process Wastewater
- Recycled Water System Discharges
- Decorative Pond Circulation Water
- Pesticide Application Point Source Discharges

Hawaii has established the following general permits under its stormwater program:

- Industrial
- Construction
- Small MS4 Storm and Certain Non-Storm Discharges

RECOMMENDATIONS

For the main Section 404 recommendations, see **p. 17**.

For NPDES, Hawaii should expand its general permit program to other commonly covered facilities and operations (see **Appendix II**).

77 "NPDES State Program Authority," U.S. Environmental Protection Agency, last updated August 29, 2025, https://www.epa.gov/npdes/npdes-state-program-authority.

78 "NPDES General Permits," Hawai'i Department of Health, Clean Water Branch, accessed October 29, 2025, https://health.hawaii.gov/cwb/general-permits/.

79 U.S. Environmental Protection Agency, Region 9, *Final National Pollutant Discharge Elimination System (NPDES) Permit Quality Review Report for Hawaii Department of Health—2022* (2024), https://www.epa.gov/system/files/documents/2024-03/hawaii-2022-pqr-report.pdf.

State Endangered Species Act

SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Yes	No	No	Yes

NOTES

Hawaii has a SESA. Hawaii's SESA does not include formal consultation requirements in the same sense as the federal ESA, nor does it provide for critical habitat designation.[80]

Hawaii prohibits take of state-listed species, with narrow exemptions. It does offer incidental take permits.[81] Hawaii's current state list covers species beyond those that are listed under the federal ESA, though only a handful. Hawaii has 489 federal endangered or threatened species within its borders, nearly 200 more than the state with the second-most listed species. As a result, most protection occurs under federal auspices rather than those of the state.

RECOMMENDATIONS

Hawaii should consider shifting away from its SESA program towards a more targeted series of Conservation Agreements and Programmatic Conservation Benefit Agreements so that it focuses on efficiently preventing the federal listing (and thus federal regulation) of at-risk species.

For more, see the general State Endangered Species Act recommendations on **p. 23**.

80 Conservation of Aquatic Life, Wildlife, and Land Plants, Haw. Rev. Stat. ch. 195D, (2023), https://dlnr.hawaii.gov/wildlife/files/2013/02/HRS-CHAPTER-195-D.pdf.

81 "Incidental Take License/Habitat Conservation Plan Information Package," Hawai'i Department of Land and Natural Resources, Division of Forestry and Wildlife, April 2011, https://dlnr.hawaii.gov/wildlife/files/2013/11/Habitat-Conservation-Plan-Incidental-Take-License-Information-Package-2012.pdf.

Illinois

State Environmental Policy Act

SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
No	–	–	–

NOTES

Illinois does not have a SEPA.

RECOMMENDATIONS

N/A

Clean Air Act

PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/ REGISTRATION PERMITS	GENERAL PERMITS	OTHER
Yes	**No**	**No**	Yes	Yes*	Lifetime Permits

NOTES

Illinois has incorporated PALs into its SIP.[82] The state's PAL language aligns closely with federal regulations and does not contain major additional stringent permitting language.

However, there is not a single PAL in use in the state. Given that Illinois has a significant presence of heavy industry, this suggests either a lack of industry awareness or a lack of clear guidance from the Illinois Environmental Protection Agency (IEPA) about the benefits of PALs.

According to Illinois's data, permitting times for CAA permits are all well within statutory guidelines, in most cases well under one-third of the statutory maximum.[83] However,

82 40 C.F.R. pt. 52 subpt. O (2025), table listing 35 IAC 204 subpt. K (PAL sections; 86 Fed. Reg. 50459).

83 "Permits Issued by Illinois EPA's Bureau of Air for CAAPP Sources—Calendar Year 2024," Illinois Environmental Protection Agency, Bureau of Air, accessed October 29, 2025, https://epa.illinois.gov/content/dam/

IEPA defines time-to-approval from the date the agency received all information necessary for the issuance of the permit, not the date the application was originally received, which makes comparison difficult. Difficulties aside, given that Illinois's CWA division uses time-since-application-received and has similar results, the numbers are likely roughly correct.

Illinois has a general permit system, but there are only two listed categories for applying, both for concrete batch plants. Additionally, the state has a series of statutory exemptions that require neither registration nor a permit.[84]

Illinois also has a special lifetime permit system that does not require renewal or reapplication.[85] All nonsynthetic minor sources are effectively treated as lifetime permits upon registry, and the following further categories can apply:

- Aggregate Processing Plant
- Boiler
- Concrete Batch Plant
- Grain Elevator
- Diesel-Powered Generator Set
- Gasoline Bulk Plant/Terminal and Volatile Organic Liquid Storage Vessel
- Human and Companion Animal/Pet Crematory

For smaller sources, Illinois has the Registration of Smaller Sources program.[86] Any source that meets the following requirements must complete a registration but does not require a permit:

- Not required to get a Title V or Clean Air Act Permit Program permit
- Not required to get a Federally Enforceable State Operating Permit
- Not required to get a permit under the New Source Performance Standards or under the National Emission Standards for Hazardous Air Pollutants or by EPA
- Actual emissions from the source's emission units are less than the following limits for the prior calendar year:

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soi/en/web/epa/topics/forms/permit-annual-summary/documents/boa/caapp-permit-data.pdf.

84 Ill. Admin. Code tit. 35, § 201.146 (2024).

85 "Lifetime Permit Forms," Illinois Environmental Protection Agency, accessed October 29, 2025, https://epa.illinois.gov/topics/forms/air-forms/lifetime.html.

86 "Registration of Smaller Sources (ROSS) Program," Illinois Department of Commerce and Economic Opportunity, accessed October 29, 2025, https://dceo.illinois.gov/smallbizassistance/environmentalassistanceprogram/sbeap-rossprogram.html.

- 5.0 tons/yr of combined pollutants (particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide and volatile organic material)
- 0.50 tons/yr of combined Hazardous Air Pollutants
- 0.05 tons/yr of mercury air emissions
- 0.05 tons/yr of lead air emissions

Illinois also has a single state permit-by-rule for boilers.

RECOMMENDATIONS

The Illinois legislature should direct IEPA to develop and publish comprehensive PAL guidance documents on its website, explaining the benefits and application process and referencing EPA's 2020 PAL guidance where relevant. IEPA should clarify the PAL renewal process, emphasizing that there is no automatic downward adjustment at renewal, which could alleviate industry concerns about future operational flexibility. The legislature should also mandate annual reporting from IEPA on PAL implementation, including uptake rates and explanations for low adoption. By enacting these measures, legislators can promote more efficient permitting processes while maintaining environmental protections, making Illinois more attractive for industrial development.

Illinois should modify its PAL renewal language to provide greater certainty for regulated entities. Currently, federal PAL language states that if the emissions level is equal to or greater than 80 percent of the current PAL level, the administrator "may renew" the PAL at the same level or "may adjust" it based on various factors. This ambiguity has caused concern about the potential for automatic ratcheting of the PAL level upon renewal among regulated entities. To address this, Illinois should follow North Carolina's example and change the language from "may renew" to "shall renew" in its state regulations. This approach would offer regulated entities more certainty in the PAL renewal process.

For Minor NSR, IEPA should be directed to expand its general permit and PBR programs wherever possible for low-impact projects and specific industry categories to reduce the administrative burden (see **Appendix I**).

Clean Water Act

SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES GENERAL PERMITS
No	Yes	11

NOTES

Illinois assumed NPDES authority in 1977 and issues 11 statewide general permits, while Section 404 dredge-and-fill permitting remains with the U.S. Army Corps of Engineers.[87] The Bureau of Water under IEPA operates the program.

According to Illinois's data, permitting times for CWA permits are all well within statutory guidelines, in most cases well under half the statutory maximum.[88]

Illinois has established the following general permits under its stormwater program:[89]

- Stormwater Discharges Associated with Industrial Activity
- Stormwater Discharges from Construction Site Activities
- Municipal Separate Storm Sewer Systems

Illinois has established the following general permits under its non-stormwater program:

- Pesticide Application Point Source Discharges
- Concentrated Animal Feeding Operations
- Discharges from Non-Coal Mining Activities (sand and gravel, crushed stone, industrial sand)
- Domestic Lagoon Wastewater Facilities
- Sewage Treatment Systems
- New and Replacement Surface-Discharging Private Sewage Disposal Systems
- Wastewaters from Public Water Supply Treatment Facilities
- Hydrostatic Testing of Pipelines and Tanks

87 "NPDES State Program Authority," U.S. Environmental Protection Agency, last updated August 29, 2025, https://www.epa.gov/npdes/npdes-state-program-authority.

88 "Permits Issued by Illinois EPA's Division of Water Pollution Control 2024," Illinois Environmental Protection Agency, accessed October 29, 2025, https://epa.illinois.gov/content/dam/soi/en/web/epa/topics/forms/permit-annual-summary/documents/bow/wpc-permit-data.pdf.

89 "Water Permits," Illinois Environmental Protection Agency, accessed October 29, 2025, https://epa.illinois.gov/topics/forms/water-permits.html.

RECOMMENDATIONS

For the main Section 404 recommendations, see **p. 17**.

For NPDES, Illinois should expand its general permit program to other commonly covered facilities and operations (see **Appendix II**).

State Endangered Species Act

SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Yes	**Yes**	**Yes***	Yes

NOTES

Illinois has a SESA, called the Illinois Endangered Species Protection Act.[90] It was passed in 1972 and is administered by the Department of Natural Resources (IDNR). Illinois's SESA has formal consultation requirements: state agencies must ensure that their actions do not jeopardize species.

Under Illinois's Endangered Species Protection Act, any state or local agency action that would "likely jeopardize" a listed species must undergo formal consultation with the IDNR via the EcoCAT system.[91] Agencies submit an Agency Action Report through EcoCAT, triggering a required response within 30 days (and, if needed, a full biological opinion within a further 60 days), mirroring the federal ESA's Section 7 consultation process.

Illinois prohibits take of state-listed species—which it defines as the harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting of animals—with narrow exemptions.[92] Illinois offers incidental take permits, which are less stringent than their federal counterparts. Applications require a conservation plan with a pre-defined set of criteria, but no NEPA review or binding Habitat Conservation Plan structure is imposed.

Illinois's current state list covers species beyond those that are listed under the federal ESA.

90 Illinois Endangered Species Protection Act, 520 Ill. Comp. Stat. § 10/10.
91 Ibid., § 11(b).
92 Ibid., § 2.

RECOMMENDATIONS

Illinois's consultation requirements under its SESA impose an unnecessary regulatory burden on agencies. This state-level requirement is very unusual; very few states have formal consultation as part of their SESA process. Consultation is ultimately a procedural—rather than a substantive—process, and creates regulatory delays despite many of the species in the state's SESA not being at high risk of becoming federally listed. Illinois should strongly consider removing the formal consultation requirement, aligning itself with the majority of the country.

Illinois should also consider shifting away from its SESA program towards a more targeted series of Conservation Agreements and Programmatic Conservation Benefit Agreements, so that it focuses on efficiently preventing the federal listing (and thus federal regulation) of at-risk species.

For more, see the general State Endangered Species Act recommendations on **p. 23**.

Maine

State Environmental Policy Act

SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
No	–	–	–

NOTES

Maine does not have a SEPA.

RECOMMENDATIONS

N/A

Clean Air Act

PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/ REGISTRATION PERMITS	GENERAL PERMITS	OTHER
Yes	**No**	**No**	**No**	Yes	–

NOTES

Maine incorporated PAL provisions into its SIP by adopting PAL definitions in Chapter 100 and detailed procedures in Chapter 115.[93]

Maine's Department of Environmental Protection (DEP) issues the following general permits:[94]

- Non-Metallic Mineral Processing Plants (rock crushers)
- Concrete Batch Plants
- Class IV-A Incinerators

93 06-096 C.M.R. ch. 100, § 112, https://www.law.cornell.edu/regulations/maine/06-096-C-M-R-ch-100-SS-112.

94 "Air Permits, Licenses, Certifications," Maine Department of Environmental Protection, accessed October 29, 2025, https://www.maine.gov/dep/air/permits/index.html.

RECOMMENDATIONS

Maine's legislature should direct the state's DEP to develop and publish comprehensive PAL guidance documents on its website, explaining the benefits and application process and referencing EPA's 2020 PAL guidance where relevant. The DEP should clarify the PAL renewal process, emphasizing that there is no automatic downward adjustment at renewal, which could alleviate industry concerns about future operational flexibility.

Currently, federal PAL language states that if the emissions level is equal to or greater than 80 percent of the current PAL level, the administrator "may renew" the PAL at the same level or "may adjust" it based on various factors. This ambiguity has caused concern about the potential for "automatic ratcheting" of the PAL level upon renewal among regulated entities. To address this, Maine should follow North Carolina's example and change the language from "may renew" to "shall renew" in its state regulations.

DEP should expand its public dashboard for Title V applications to display statutory clocks, the current reviewer, and days-in-stage.

Likewise, it should broaden its registration permit program to cover additional low-impact categories (see **Appendix I**).

Clean Water Act

SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES GENERAL PERMITS
No	Yes	10

NOTES

Maine has not assumed authority over the Section 404 program, which remains under the jurisdiction of the U.S. Army Corps of Engineers and EPA. Maine has had NPDES authority since 2001 and has established a set of general permits under its water quality programs.[95]

95 "NPDES State Program Authority," U.S. Environmental Protection Agency, last updated August 29, 2025, https://www.epa.gov/npdes/npdes-state-program-authority.

Maine has established the following general permits under its non-stormwater program:[96]

- Antifouling Paint Contaminated Vessel Wash Water
- Pesticides
- Discharge of Waste Snow to Certain Estuarine or Marine Waters
- Discharge of Waste Snow to Ground Waters
- Herbicides for the Control of Invasive Aquatic Plants
- Net Pen Aquaculture

Maine has established the following general permits under its stormwater program:

- Municipal Separate Storm Water Sewer System
- Discharge of Stormwater to Municipal Separate Storm Sewer Systems
- Post-Construction Discharge of Stormwater in the Long Creek Watershed
- Multi-Sector Stormwater Associated with an Industrial Activity

RECOMMENDATIONS

For the main Section 404 recommendations, see **p. 17**.

For NPDES, Maine should expand its general permit program to other commonly covered facilities and operations (see **Appendix II**).

State Endangered Species Act

SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Yes	No	No	Yes

NOTES

Maine has a SESA. Maine's Endangered Species Act (MESA), enacted in 1975, lists 57 animal species (26 endangered, 31 threatened); several, such as Atlantic salmon and Canada lynx, also appear on the federal ESA list.[97] "Take" is narrowly defined; however,

96 "Maine NPDES Permits," U.S. Environmental Protection Agency, last updated October 7, 2025, https://www.epa.gov/npdes-permits/maine-npdes-permits.

97 "Listed Species: Endangered & Threatened Species," Maine Department of Inland Fisheries and Wildlife, accessed October 29, 2025, https://www.maine.gov/ifw/fish-wildlife/wildlife/endangered-threatened-species/listed-species.html.

any act that hunts, traps, harasses, or possesses a listed species is prohibited.[98]

While Maine has no required critical habitat provision, the Maine Department of Inland Fisheries and Wildlife Commissioner (MDIFW) has authority to designate "essential habitat," which does factor into the considerations for approving permits.[99]

MESA bars any state agency or municipality from permitting, funding, or carrying out a project that would "significantly alter" habitat mapped as Essential Habitat for a listed species or violate the MDIFW protection guidelines.

RECOMMENDATIONS

Maine should consider shifting away from its SESA program towards a more targeted series of Conservation Agreements and Programmatic Conservation Benefit Agreements so that it focuses on efficiently preventing the federal listing (and thus federal regulation) of at-risk species.

Maine's legislature should also consider incentive programs for private landowners to voluntarily conserve species and habitats, such as safe harbor agreements.

For more, see the general State Endangered Species Act recommendations on **p. 23**.

98 Me. Rev. Stat. Ann. tit. 12, § 12808, https://www.mainelegislature.org/legis/statutes/12/title12sec12808.html.

99 Ibid., § 12804.

Maryland

State Environmental Policy Act

SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
Yes	No	No	Yes

NOTES

Maryland's Environmental Effects Report (EER) program implements the Maryland Environmental Policy Act (MEPA). An EER is required for any proposed state action that significantly affects the environment, with no minimum dollar threshold, and each action requires a mandatory climatology analysis.[100] Despite this broad trigger, agencies in practice confine EER preparation to capital projects that receive a General Assembly appropriation or other legislative action (bonds, statutory authorization, etc.), so many routine permitting decisions escape review.

MEPA's reach covers state-funded buildings and roads; dredging; airport expansions; major water and sewer infrastructure; and private developments requiring wetlands, NPDES, or air permits.[101] Projects already reviewed under a federal NEPA document, emergency responses, and purely planning or research studies are usually exempt from further analysis.[102]

MEPA confers no private right of action, leaving enforcement solely to state agencies.[103]

RECOMMENDATIONS

Just as NEPA imposes a substantial regulatory burden on federal infrastructure, MEPA—though infrequently invoked—adds paperwork and delay for Maryland's agencies and project sponsors.

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100 Md. Code Ann., Nat. Res. § 1-303 (2024).
101 "A Guide to the Maryland Environmental Policy Act (MEPA) Requirements, Process, and Compliance," Transect Resource Center, accessed October 29, 2025, https://resourcecenter.transect.com/regulations/state/maryland/maryland-environmental-policy-act-mepa.
102 Md. Code Regs. 34.01.02.06 (2025).
103 Leatherbury v. Peters, 24 Md. App. 410 (Md. Ct. Spec. App. 1975).

For example, the legislature could

1. Significantly increase the threshold for triggering SEPA on state projects. Similar reforms have already been carried out in North Carolina (in 2015) and Georgia (in 2016) with a great deal of success.
2. Expand exemptions, particularly in the energy and transportation sectors, to streamline private-sector development. Indiana's and South Dakota's various state NEPA exemptions, from the issuance of permits to "actions of an environmental protective regulatory nature," are good examples of efforts to this end.
3. Set a time limit on injunctive relief to reduce the ability of obstructionists to block projects.
4. Repeal SEPA in its entirety, aligning Maryland's environmental regulatory requirements with the majority of the country.

Clean Air Act

PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/ REGISTRATION PERMITS	GENERAL PERMITS	OTHER
Yes	Yes	**No**	Yes	Yes	–

NOTES

Maryland incorporated EPA's 2002 NSR-reform language wholesale, except adjusting the 10-year PAL term down to five. EPA approved those rules into the SIP in August 2012.[104] In practice, only one PAL has ever been issued statewide–for Johns Hopkins University.

For Minor NSR, the Maryland Department of the Environment (MDE) relies on a General Permit-to-Construct (GPC) program that covers the following categories:

- Vehicle Refinishing (Autobody)
- Small Gasoline Refueling Facilities
- Medium Gasoline Refueling Facilities
- Large Gasoline Refueling Facilities
- Charbroilers and Pit Barbecues
- Groundwater Air Strippers and Soil Vapor Extraction
- Perchlorethylene Dry Cleaning Equipment
- Small Fuel Burning (Boiler/Heater)

104 40 C.F.R. pt. 52 (2025) (EPA-R03-OAR-2011-0866; FRL-9705-5).

Equipment
- Sheetfed Lithographic Printing
- Concrete Batch Plant
- Medium-Sized Boilers < 30MMBtu
- Off-Road Gasoline Refueling Facilities
- Emergency Generators

Maryland does have a PBR for oil operations and underground storage tank facilities.

Turnaround times are unclear. MDE's published matrix shows standards for GPC coverage letters in approximately 45 days, Permit-to-Construct reviews in approximately four months (absent expanded public notice), and Prevention of Significant Deterioration (PSD) and Major NSR reviews in 12–14 months.[105] However, after years of decline, MDE stopped publishing on-time permitting turnaround rates in 2022.[106]

Maryland offers several flexible mechanisms. Emission-reduction-credit (ERC) banking under enables in-state NO_x and VOC trading.[107] Maryland now requires large-emitter applications to include an environmental justice cumulative-impact score and added outreach, extending typical schedules by weeks. Data-center expansion is swelling the docket—Amazon alone filed for 99 3-MW emergency generators in 2025.[108]

RECOMMENDATIONS

Maryland should publish a PAL guide—complete with flowchart and detailed examples—and rebate 50 percent of the PAL application fee upon issuance. The state should modify its PAL language from "may" to "shall" to auto-renew PALs at the same cap when prior actual readings are greater than 80 percent of the limit, mirroring North Carolina's 2015 rule.

Maryland should also launch a public dashboard for Title V applications showing statutory clocks, the current reviewer, and days-in-stage to give applicants and reviewers insight into permitting bottlenecks.

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105 "Apply for a Permit, License or Certification," Maryland Department of the Environment, accessed October 29, 2025, https://mde.maryland.gov/programs/permits/pages/turnaroundtime.aspx.

106 Maryland Department of the Environment, *Fiscal Year 2026 Operating Budget: Response to the Department of Legislative Services Analysis* (2025), https://dbm.maryland.gov/budget/FY2026Testimony/U00A.pdf.

107 Md. Code Regs. 26.11.17.04 (2025).

108 Dan Swinhoe, "Amazon to Expand Virginia Cloud Region into Maryland, Develop Data Centers in TPG's Quantum Frederick Park," *Data Center Dynamics*, April 25, 2025, https://www.datacenterdynamics.com/en/news/amazon-to-expand-virginia-cloud-region-into-maryland-develop-data-centers-in-tpgs-quantum-frederick-park/.

Maryland should be encouraged to expand its general permit program to cover additional industrial categories (see **Appendix I**).

Clean Water Act

SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES GENERAL PERMITS
No	Yes	12

NOTES

Maryland has not assumed Section 404 responsibilities. Legislative bids in 1994 and 1995 to authorize assumption failed, and a 2015 MDE feasibility review flagged the need for a sustainable fee base.[109]

Maryland obtained NPDES delegation in 1974.[110] MDE currently administers a broad suite of general permits:

- Stormwater
  - Construction
  - Industrial MSGP
  - Phase II Small MS4
  - State/Federal MS4
  - Surface Coal Mines
- Non-Stormwater
  - Hydrostatic Testing and Dewatering
  - Pesticide Applications
  - Mineral Mines and Concrete/Asphalt Plants
  - Marinas
  - Swimming Pools and Spas
  - Animal Feeding Operations
  - Seafood Processing

For the Construction general permit, MDE promises approximately 45 days from NOI to coverage; internal metrics show most authorizations in one to two months.[111] Individual

109 Maryland Department of the Environment, *Maryland's Wetland Management Framework: History of Current Regulatory Programs*, Appendix II, p. 147, https://mde.maryland.gov/programs/water/WetlandsandWaterways/MDWetlandConservationPlan/Documents/www.mde.state.md.us/assets/document/wetlandswaterways/appendix_2fnl.pdf.

110 "NPDES Profile: Maryland," U.S. Environmental Protection Agency, https://www.epa.gov/npdes/npdes-state-program-authority.

111 "Construction Stormwater Permit 20-CP: Frequently Asked Questions," Maryland Department of the Environment, updated August 16, 2024, https://mde.maryland.gov/programs/water/wwp/Documents/20CP-Final/20CP-FAQ.pdf.

NPDES permits target one to two years, and MDE publishes no KPI dashboard.[112]

RECOMMENDATIONS

For the main Section 404 recommendations, see **p. 17**.

For NPDES, Maryland should expand its general permit program to other commonly covered facilities and operations (see **Appendix II**) and pilot a permit-by-rule program for sub-acre construction sites.

State Endangered Species Act

SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Yes	No	**Yes**	Yes

NOTES

Maryland's Nongame and Endangered Species Conservation Act of 1975 established a full consultation duty: every state agency must ensure that its actions "do not jeopardize" listed species or destroy designated critical habitat.[113] The Department of Natural Resources (DNR) completes most consultation letters in approximately 30 days through its Environmental Review Program.[114]

Through its platform MERLIN, Maryland maps and publishes areas deemed "critical habitat for endangered species" under the statutory definition.[115] Maryland's rare-species list is extensive, featuring 566 species, 39 of which also appear on the federal ESA list.[116]

"Take" is broadly defined to include actions that "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect."[117] Unlike many states, Maryland offers only

112 Maryland Department of the Environment, *FY23 Standard Application Turnaround Times* (2023), https://mde.maryland.gov/programs/permits/Documents/FY23%20Standard%20Application%20Turnaround%20Times%20Effective%201Jan23.pdf.
113 Md. Code, Nat. Res. § 10-2A-01 et seq. (2025).
114 "Environmental Review Program," Maryland Department of Natural Resources, accessed October 29, 2025, https://dnr.maryland.gov/wildlife/pages/plants_wildlife/er.aspx.
115 Md. Code Regs. 08.19.01.03 (2025).
116 "Rare, Threatened, and Endangered Species—Plants & Animals," Maryland Department of Natural Resources, accessed October 29, 2025, https://dnr.maryland.gov/wildlife/pages/plants_wildlife/rte/espaa.aspx.
117 Md. Code, Nat. Res. § 10-2A-01(k).

species-specific endangered species incidental-take pathways, one for the Puritan tiger beetle and another for the Delmarva fox squirrel.[118] No safe harbor or Conservation Agreement with Assurances (CCAA) analogue exists, leaving most private-land projects to rely on federal Habitat Conservation Plan tools.

Recent activity is nudging the program toward greater transparency and dynamism. Maryland now obliges DNR to review and update the state list at least every five years, with clearer data standards for delisting.

RECOMMENDATIONS

For incidental take, Maryland should expand its program by extending the Puritan beetle and Delmarva fox squirrel frameworks to additional high-conflict species, allowing sponsors to mitigate rather than stall projects.

Maryland should also consider shifting away from its SESA program towards a more targeted series of Conservation Agreements and Programmatic Conservation Benefit Agreements so that it focuses on efficiently preventing the federal listing (and thus federal regulation) of at-risk species.

List maintenance should be made more regular by shortening the review cycle from five years to two, requiring peer-reviewed delisting when recovery criteria are met, and publishing an annual "candidate for delisting" docket.

Maryland should launch transparent dashboards with interactive maps of critical-habitat polygons, active incidental-take permits, and pending Environmental Reviews to give early-stage certainty and reduce surprise discoveries.

For more, see the general State Endangered Species Act recommendations on **p. 23**.

118 Md. Code Ann., Nat. Res. §§ 10-2A-05.1, 10-2A-05.2.

Massachusetts

State Environmental Policy Act

SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
Yes	**Yes**	**Yes**	Yes

NOTES

Massachusetts has a State Environmental Policy Act known as MEPA. It requires the completion of an Environmental Notification Form (ENF), which includes a description of the project, potential environmental impacts, proposed mitigation measures and alternatives, compliance with state-level codes and regulations, and any review thresholds the project may meet or exceed.[119]

In addition to an ENF, the Secretary of the Executive Office of Energy and Environmental Affairs may require an Environmental Impact Review (EIR),[120] typically prepared as draft and final reports with alternatives analysis, impact assessment, and responses to comments. No state permits may be issued until the secretary certifies that the EIR adequately complies with MEPA. For many projects, an EIR adds roughly 9–12 months and about $350,000 to $1 million in soft costs, which increases carrying costs and project risk.[121]

The 2024 Climate Act brought with it a number of major reforms to MEPA, with a focus on streamlining the permitting of "clean energy technologies." These technologies were defined in the bill as "advanced and applied technologies that significantly reduce or eliminate the use of energy from non-renewable sources including, but not limited to: (i) energy efficiency; (ii) demand response; (iii) energy conservation; (iv) carbon dioxide removal; (v) embodied carbon reduction; or (vi) technologies powered, in whole or in

119 "Introducing Federal National Environmental Policy Act Practitioners to the Massachusetts Environmental Policy Act," Council on Environmental Quality, December 31, 2015, https://ceq.doe.gov/docs/laws-regulations/state_information/MA_NEPA_Comparison_31Dec2015.pdf.

120 "Environmental Impact Report (EIR) Preparation and Filing," Massachusetts Environmental Policy Act Office, accessed October 29, 2025, https://www.mass.gov/guides/environmental-impact-report-eir-preparation-and-filing.

121 Commonwealth of Massachusetts, *Building for Tomorrow: A Report from the Unlocking Housing Production Commission* (2025), https://www.mass.gov/doc/building-for-tomorrow-a-report-from-the-unlocking-housing-production-commission/download.

part, by the sun, wind, water, geothermal energy, including networked geothermal and deep geothermal energy, hydrogen produced by non-fossil fuel sources and methods, alcohol, fuel cells, fusion energy, nuclear fission or any other renewable, nondepletable or recyclable fuel."[122]

Major provisions in the bill included significant streamlining for

- "Large clean energy infrastructure facilities" (defined as having generation capacity ≥ 25 MW, storage capacity ≥ 100 MWh, large-scale offshore wind interconnections, or large transmission to energy facilities) as specified under the 2024 Climate Act are exempt from MEPA review and are instead required to obtain a single consolidated permit from the Energy Facilities Siting Board (EFSB) with a "shot clock" of 15 months.[123]
- "Small clean energy infrastructure facilities" (generation < 25 MW, storage < 100 MWh, smaller transmission and distribution upgrades) are not subject to MEPA and instead have to obtain a single consolidated permit from local municipality with a shot clock of 12 months.[124]
- "Bridge-exempt" projects that are functionally equivalent to the existing structure are exempt from MEPA, Chapter 91, and the Wetlands Protection Act.

However, the Climate Act added a host of new requirements and potential roadblocks, including a Department of Public Utilities (DPU) and Energy Facilities Siting Board (EFSB) Intervenor Support Fund that pays for attorneys, expert witnesses, and consultants for eligible intervenors in DPU and EFSB proceedings, lowering the cost of opposition and increasing the likelihood and intensity of legal challenges.[125]

RECOMMENDATIONS

Ideally, Massachusetts would repeal MEPA because—while nominally protective—it is overwhelmingly procedural, delivers little measurable environmental benefit, and drives up housing and energy costs.

However, recognizing political realities in the state, Massachusetts could consider more

122 Mass. Acts ch. 239, § 6 (69T–69U) (2024), https://malegislature.gov/Laws/SessionLaws/Acts/2024/Chapter239.
123 Ibid., §§ 52–60, 74.
124 Ibid., § 69A.
125 Ibid., §§ 10, 12, 82.

narrowly tailored reforms, such as

1. Further lowering the trigger threshold for what constitutes a "large facility" or removing thresholds entirely and having one consolidated EFSB permit for all clean facilities or all facilities in general with a strict shot clock.
2. Universal NEPA reciprocity: accepting any federal EA or EIS (e.g., Federal Energy Regulatory Commission, Bureau of Land Management, USACE) as the state EIR when greenhouse gas, environmental justice, and climate-resilience chapters are annexed and MEPA public notice is still given.
3. Shot clocks and constructive approval for the *conventional* MEPA track: 45 days for ENF certificate, 90 days for a single EIR, and a cap of 180 days overall, mirroring Section 69T(i) deadlines.
4. Tightening the criteria for legal standing to challenge MEPA decisions, reducing the potential for frivolous lawsuits. Put time limits on injunctive relief.

Clean Air Act

PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/ REGISTRATION PERMITS	GENERAL PERMITS	OTHER
Yes	Yes	**No**	Yes	Yes	–

NOTES

PALs are in Massachusetts' SIP, and the Massachusetts Department of Environmental Protection (MassDEP) has issued two PALs to date, although one of the companies operating under its PAL has closed its Massachusetts facility; the PAL is incorporated into the facility's operating permit.[126]

Projects must receive approval from MassDEP before starting work that adds a new emissions source or changes or replaces an existing source, unless they qualify for an exemption or an alternative compliance pathway.[127]

Projects applying for a Major or Non-Major Comprehensive Plan Approval (CPA) must

126 Air Pollution Control, 310 CMR 7.00 (2024), https://www.mass.gov/doc/310-cmr-700-air-pollution-control-regulation/download.

127 "MassDEP Air Plan Applications," Mass.gov, accessed October 29, 2025, https://www.mass.gov/guides/massdep-air-plan-applications.

prepare a two- to four-page fact sheet providing details about the proposed project and neighboring "Environmental Justice" communities, defined as census blocks where one or more of the following criteria apply:[128]

- The annual median household income is 65 percent or less of the statewide annual median household income.
- Minorities make up 40 percent or more of the population.
- Twenty-five percent or more of households identify as speaking English less than "very well."
- Minorities make up 25 percent or more of the population, and the annual median household income of the municipality in which the neighborhood is located does not exceed 150 percent of the statewide annual median household income.

According to one expert, the average additional cost incurred by a developer when building in an EJ block ranges from $150,000 to $1 million and can add anywhere from 6–12 months of delays on top of an already lengthy permitting process.[129]

General Permits: Under the Environmental Results Program, construction or installation and substantial reconstruction or alteration of the following are authorized and may proceed without a CPA:

- Boilers (New) 10–40 MMBtu/Hour
- Commercial Printing (Heatset): ≤ 10 Tons VOC Facility-Wide per Rolling 12-Month Period
- Commercial Printing (Non-Heatset): < 50 Tons VOC or NO_x, < 10 Tons Any Hazardous Air Pollutants (HAP), < 25 Tons Combined HAPs, or < 100 Tons Any Regulated Air Pollutant per Rolling 12-Month Period
- Dry Cleaning (Dry-to-Dry Perchloroethylene)
- Outdoor Hydronic Heater (Wood-Fired Boiler) < 1 MMBtu/hr
- Emergency Turbines < 1 MW and Non-Emergency Turbines < 10 MW
- Emergency Engines ≥ 37 KW and Non-Emergency Engines ≥ 50 KW

128 Ibid.
129 Salim Furth (@SalimFurth), "#TIL that Massachusetts re-implemented #redlining in 2022. Here's how it works 🧵," X, November 26, 2024, https://x.com/salimfurth/status/1861470284911374568.

RECOMMENDATIONS

The Massachusetts General Court should direct MassDEP to develop and publish comprehensive PAL guidance documents on its website, explaining the benefits and application process and referencing EPA's 2020 PAL guidance where relevant. MassDEP should clarify the PAL renewal process, emphasizing that there is no automatic downward adjustment at renewal, which could alleviate industry concerns about future operational flexibility.

Currently, federal PAL language states that if the emissions level is equal to or greater than 80 percent of the current PAL level, the administrator "may renew" the PAL at the same level or "may adjust" it based on various factors. This ambiguity has caused concern about the potential for "automatic ratcheting" of the PAL level upon renewal among regulated entities. To address this, Massachusetts should follow North Carolina's example and change the language from "may renew" to "shall renew" in its state regulations.

Since the governor and legislature of Massachusetts plan to review EJ legislation in 2026, they should consider scrapping the "Environmental Justice Populations" designation. If this is politically unworkable, EJ legislation in Massachusetts should be reformed such that neighborhoods have to fulfill more than one criterion to qualify and reduce the mandatory period for public comments from 60 to 30 days.

Clean Water Act

SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES GENERAL PERMITS
No	**No**	13

NOTES

Massachusetts is one of only three states that does not have primacy over Clean Water Act point-source permitting and where EPA presides over those permitting processes instead. MassDEP therefore issues zero federal NPDES permits.

Massachusetts has not assumed authority over the Section 404 program, which remains under the jurisdiction of the U.S. Army Corps of Engineers and EPA.

Every NPDES permit from EPA is accompanied by a MassDEP Surface Water Discharge Permit. These state "Part II" permits add Massachusetts-specific conditions and are

enforceable under state law.[130]

The following Surface Water Discharge (SWD) permits are issued by the EPA in Massachusetts:[131]

- Dewatering and Remediation (MAG910000)
- Non-Contact Cooling Water (MAG250000)
- Small Wastewater Treatment Facility (WWTF) (MAG580000)
- Medium WWTF (MAG590000)
- Potable-Water Treatment Plants (MAG640000)
- Hydroelectric Generating Facilities (MAG360000)
- Pesticide Applications (MAG870000)
- Construction Dewatering Water Quality Certification (MAG910000-WQC)

RECOMMENDATIONS

For the main Section 404 recommendations, see **p. 17**.

Massachusetts should assume NPDES authority as soon as possible and make sure it includes the same commonly covered facilities and operations as similar states (see **Appendix II**).

The General Court of Massachusetts should consider shot clocks for groundwater discharge permits and (if NPDES authority is assumed) surface water discharge permitting as well.

Massachusetts should strongly consider assuming Section 404 permitting authority from the USACE. State assumption can offer increased local control, streamlined permitting processes, and better coordination with other state environmental programs, which could lead to more efficient and environmentally sound decisions (see **p. 16**).

130 Surface Water Discharge Permit Program, 314 CMR 3.00 (2007), https://www.mass.gov/regulations/314-CMR-300-surface-water-discharge-permit-program.

131 "Massachusetts Final General Surface Water Discharge Permits and Associated Documents," Mass.gov, accessed October 29, 2025, https://www.mass.gov/info-details/massachusetts-final-general-surface-water-discharge-permits-and-associated-documents.

State Endangered Species Act

SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Yes	**Yes**	**Yes**	Yes

NOTES

Massachusetts has a SESA. The Massachusetts Endangered Species Act of 1990 regulates the listing of threatened and endangered species in the commonwealth and is one of the most comprehensive and restrictive SESAs in the nation. All "agencies, departments, boards, commissions and authorities" must review the impact of their projects and "use all practical means and measures to avoid or minimize damage" to state-listed species.[132]

Projects must complete a MESA Project Review Checklist with the Natural Heritage and Endangered Species Program (NHESP), providing a locus map; current site plans; photographs; and, in projects that disturb more than 10 acres, a vegetation-cover map and Priority Habitat overlay; along with the statutory filing fee. If NHESP determines that the work will cause a "take" of a listed species, the proponent must then apply for a Conservation and Management Permit (CMP),[133] which requires a thorough alternatives analysis, documented mitigation and minimization measures, long-term net-benefit mitigation plan, and proof of financial and implementation capacity.

NHESP has 30 days to deem a CMP application complete and 60 days to issue a decision once the file is complete. All CMP conditions are effectively incorporated into subsequent MEPA certificates or state wetland, air, or water permits, and a Certificate of Compliance is recorded when mitigation is finished.

There are 453 total species listed, the majority of which are not listed federally.[134]

Massachusetts has a critical habitat provision mandating that all "significant habitats" must be designated and reviewed on an annual basis.[135] Local zoning boards, planning boards, or conservation commissions are required to notify the director of MassWildlife

132 Mass. Gen. Laws ch. 131A, § 4 (2023), https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXIX/Chapter131A/Section4.
133 Conservation and Management Permit, 321 CMR § 10.23, https://www.law.cornell.edu/regulations/massachusetts/321-CMR-10-23.
134 "List of Endangered, Threatened, and Special Concern Species," Mass.gov, last updated August 16, 2024, https://www.mass.gov/info-details/list-of-endangered-threatened-and-special-concern-species.
135 24. Mass. Gen. Laws ch. 131A, § 4t, https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXIX/Chapter131A/Section4.

about petitions, requests, or applications for permits, orders, or approvals regarding proposed activity within significant habitats within 21 days of the filing.

MassWildlife provides incidental take permits under its Natural Heritage and Endangered Species Program.[136]

RECOMMENDATIONS

Given that Massachusetts has state-listed species beyond those federally listed under the Endangered Species Act and prohibits take of those species, it should broaden its incidental take permit to allow for take for private developers under specific circumstances. This would give developers some flexibility to move forward on critical projects that may result in incidental take so long as they implement approved conservation measures and mitigate any potential impacts on protected species.

Massachusetts should also consider shifting away from its SESA program towards a more targeted series of Conservation Agreements and Programmatic Conservation Benefit Agreements so that it focuses on efficiently preventing the federal listing (and thus federal regulation) of at-risk species. The General Court should also consider incentive programs for private landowners to voluntarily conserve species and habitats, such as safe harbor agreements.

MassDEP should create a public dashboard showing permit turnaround times, land conserved per CMP, and a priority habitat API with parcel overlay using GIS.

For more, see the general State Endangered Species Act recommendations on **p. 23**.

136 Ibid., § 5.

Michigan

State Environmental Policy Act

SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
No	–	–	–

NOTES

Michigan does not have a SEPA.

RECOMMENDATIONS

N/A

Clean Air Act

PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/ REGISTRATION PERMITS	GENERAL PERMITS	OTHER
Yes	**No**	Yes	**No**	Yes	–

NOTES

Michigan has incorporated PALs into its SIP. The state's PAL language aligns closely with federal regulations and does not contain additional stringent permitting language.[137]

However, there is not a single PAL in use in the state. Given that Michigan has a significant presence of heavy industry, this suggests a lack of industry awareness about the benefits of PALs. Some of Michigan's largest automotive plants are covered under the state's Flexible Permitting Initiative, which may lower demands for PALs.

Michigan has developed and published some PAL guidance. The *Practical Guide to Michigan's Prevention of Significant Deterioration Regulations* includes information on

137 Air Quality Division, Clean Corporate Citizen Program, Mich. Admin. Code R. 336.2415, https://www.law.cornell.edu/regulations/michigan/Mich-Admin-Code-R-336-2415.

PALs, including expiration and renewal.[138]

Michigan's permitting turnarounds lag, with only 70 percent of permits-to-install decided in the required time frame. Renewable operating permits lag further still, with less than 30 percent meeting the deadline.[139]

Michigan has a general permit program covering the following categories:[140]

- Anhydrous Ammonia Storage and Handling
- Coating Lines Emitting up to Ten Tons per Year of VOCs
- Diesel Fuel-Fired Engine Generators
- Ethylene Oxide Sterilizers
- Natural Gas–Fired Burn-Off Ovens
- Nonmetallic Mineral Crushing Plants
- Propane or Natural Gas–Fired Boilers
- Remediation Processes for Gasoline and Petroleum-Based Contaminants

The state does not have a PBR program. However, it does exempt a large list of items from requiring a permit or registration altogether.

RECOMMENDATIONS

Michigan should mandate annual reporting from its Department of Environment, Great Lakes, and Energy (EGLE) on PAL implementation, including uptake rates and explanations for low adoption. By enacting these measures, legislators can promote more efficient permitting processes while maintaining environmental protections, making Michigan more attractive for industrial development.

Michigan should modify its PAL renewal language to provide greater certainty for regulated entities. Currently, federal PAL language states that if the emissions level is equal to or greater than 80 percent of the current PAL level, the administrator "may renew" the PAL at the same level or "may adjust" it based on various factors. This ambiguity

138 Michigan Department of Environmental Quality, *PSD Workbook: A Practical Guide to Michigan's Prevention of Significant Deterioration Regions* (revised 2014), https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Regulatory-Assistance/Guidebooks/PSD-Workbook.pdf.

139 Michigan Department of Environment, Great Lakes, and Energy, Air Quality Division, *Annual Program Report: Fiscal Year 2024* (2025), https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Legislative/AQD/Report-FY24.pdf.

140 "Air Quality General Permits to Install (PTI)," Michigan Department of Environment, Great Lakes, and Energy, accessed October 29, 2025, https://www.michigan.gov/egle/about/organization/air-quality/air-permits/new-source-review/general-permits.

has caused concern about the potential for "automatic ratcheting" of the PAL level upon renewal among regulated entities. To address this, Michigan should follow North Carolina's example and change the language from "may renew" to "shall renew" in its state regulations. This approach would offer regulated entities more certainty in the PAL renewal process.

For Minor NSR, EGLE should be directed to expand its general permit program wherever possible for low-impact projects and specific industry categories to reduce the administrative burden (see **Appendix I**).

Clean Water Act

SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES/404 GENERAL PERMITS
Yes	Yes	55

NOTES

EGLE has assumed both NPDES and Section 404 permitting authority and issues a broad suite of sector-based general permits across stormwater, non-stormwater, and dredging.[141] The U.S. Army Corps of Engineers retains jurisdiction over the Great Lakes and adjacent wetlands. Eighty-three percent of Michigan NPDES permits are issued on time.[142]

Michigan has established the following general permits under its stormwater program:[143]

- Stormwater Discharges from Municipal Separate Storm Sewer Systems
- Stormwater Discharges Not Associated with Special-Use Areas for Cycle-Year 1 Watersheds
- Stormwater Discharges Associated with Special-Use Areas for Cycle-Year 1 Watersheds
- Stormwater Discharges Not Associated with Special-Use Areas for Cycle-Year 2 Watersheds
- Stormwater Discharges Associated with Special-Use Areas for Cycle-Year 2 Watersheds
- Stormwater Discharges Not Associated with Special-Use Areas for Cycle-Year 3 Watersheds
- Stormwater Discharges Associated with Special-Use Areas for Cycle-Year 3 Watersheds
- Stormwater Discharges Not Associated with Special-Use Areas for Cycle-Year 4 Watersheds

141 "Tribal and State Section 404 Assumption Efforts," U.S. Environmental Protection Agency, accessed October 29, 2025, https://www.epa.gov/cwa404g/tribal-and-state-section-404-assumption-efforts.
142 Michigan Department of Environment, Great Lakes, and Energy, *NPDES Program Report: Fiscal Year 2024*.
143 U.S. Environmental Protection Agency, Region 5, *Region 5 NPDES Program and Permit Quality Review Michigan* (2024), p. 11, https://www.epa.gov/system/files/documents/2024-06/michigan-pqr-2022.pdf.

- Stormwater Discharges Associated with Special-Use Areas for Cycle-Year 4 Watersheds
- Stormwater Discharges Not Associated with Special-Use Areas for Cycle-Year 5 Watersheds
- Stormwater Discharges Associated with Special-Use Areas for Cycle-Year 5 Watersheds

Michigan has established the following general permits under its non-stormwater program:

- Ballast Water Control Port Operations and Ballast Water Discharges
- Forest Canopy Pest Control
- Mosquito and Other Flying Insect Pest Control
- Nuisance Animal Control and Fish Reclamation
- Nuisance Plant and Algae Control
- Concentrated Animal Feeding Operations
- Groundwater Cleanup Wastewater
- Mining Wastewater
- Secondary Treatment Wastewater
- Wastewater Discharge from Municipal Potable Water Supply
- Public Swimming Pool Wastewater
- Land Application of Biosolids
- Non-Contact Cooling Water
- Hydrostatic Pressure Test Water
- Wastewater Stabilization Lagoons

Michigan has the following general permits under its Section 404 program:[144]

- Aids to Navigation
- Amateur Recreational Gold Prospecting
- Clear Span Bridge
- Construction and Maintenance of a Path on Great Lakes Bottomlands
- County Drains
- Culvert Clean-Out
- Culverts and Bridges: Small
- Culverts: Wetland Equalizer
- Cutting and Selective Hand Removal of Invasive Species
- Dry Fire Hydrant
- Maintenance Dredging on Inland Lakes and Streams
- Maintenance Dredging on the Great Lakes and Section 10 Waters
- Maintenance of Storm-Water Management Facilities: Wetlands
- Maintenance: Wetlands
- Minor Permit Revisions and Transfers
- Moist Soil Management for Wildlife
- Mooring Buoy
- Pipeline Safety Program Designated Time-Sensitive Inspections and Repairs

144 "General Permit Categories in the State of Michigan," Michigan Department of Environment, Great Lakes, and Energy, August 12, 2021, https://www.michigan.gov/-/media/Project/Websites/egle/Documents/Programs/WRD/Wetlands/General-Permit-Categories.pdf.

- Public Transportation Projects
- Recreational Facilities: Boardwalks, Platforms, and Walkways
- Removal of Structures
- Scientific Measuring Devices
- Snow-Road Stream Crossings for Forestry Operations
- Soil Borings
- Spring Piles and Piling Clusters
- Stormwater Management Facilities: Inland Lakes and Streams
- Survey Activities
- Utility Line Activities

The state also has a single permit-by-rule for stormwater construction discharge.

RECOMMENDATIONS

For NPDES, Michigan should expand its general permit program to other commonly covered facilities and operations (see **Appendix II**).

Michigan should also deploy a public NPDES dashboard—showing days-in-queue, statutory clocks, and current reviewer—on top of the EGLE database to provide certainty and insight to both developers and reviewers.

To establish itself as a leader in the permitting space, Michigan should publish a report containing data on Section 404 processing times, best practices, NEPA and ESA nexuses, and the like as a resource for other states considering undertaking Section 404 assumption.

State Endangered Species Act

SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Yes	No	No	**No**

NOTES

Michigan has a SESA.[145] Michigan's SESA does not include formal consultation requirements in the same sense as the federal ESA, nor does it provide for critical habitat designation.

Michigan prohibits "take"—which includes to "harass, harm, pursue, hunt, shoot, wound,

145 Mich. Comp. Laws Ann. § 324.36501 et seq.

kill, trap, capture or collect"—of any state-listed species. It does not offer incidental take permits for development.[146] Michigan's current state list covers species far beyond those that are listed under the federal ESA.

RECOMMENDATIONS

Given that Michigan has state-listed species beyond those federally listed under the Endangered Species Act and prohibits take of those species, it should design an incidental take permit to allow for take under specific circumstances. This would give developers some flexibility to move forward on critical projects that may result in incidental take so long as they implement approved conservation measures and mitigate any potential impacts on protected species.

Michigan should also consider shifting away from its SESA program towards a more targeted series of Conservation Agreements and Programmatic Conservation Benefit Agreements so that it focuses on efficiently preventing the federal listing (and thus federal regulation) of at-risk species.

Michigan should establish a public SESA dashboard showing each review's clock start and stop dates and median turnaround. To triage review, the Michigan Department of Natural Resources should integrate an automated overlay checker into the application process to auto-clear "no-impact" submissions.

For more, see the general State Endangered Species Act recommendations on **p. 23**.

146 Mich. Comp. Laws Ann., pt. 365, §§ 36501–36507.

Nevada

State Environmental Policy Act

SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
No	–	–	–

NOTES

Nevada does not have a SEPA.

RECOMMENDATIONS

N/A

Clean Air Act

PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/ REGISTRATION PERMITS	GENERAL PERMITS	OTHER
Yes	**No**	**No**	**No**	Yes	–

NOTES

For purposes of CAA implementation, Nevada is split into three regions. Clark County (Las Vegas) and Washoe County (Reno) have their own air quality offices. The Nevada Department of Environmental Protection (NDEP) covers the rest of the state.[147]

Nevada has written a PAL into its SIP.[148] The state's PAL language aligns closely with federal regulations and does not contain additional stringent permitting language.

However, there is not a single PAL in use in the state. While Nevada may not have as much traditional heavy industry as other states, it has a significant and diverse industrial

147 "Clean Air Act Permitting in Nevada," U.S. Environmental Protection Agency, last updated June 2, 2025, https://www.epa.gov/caa-permitting/clean-air-act-permitting-nevada.

148 "EPA-Approved Nevada-Wide Air Quality Statutes and Regulations," U.S. Environmental Protection Agency, last updated September 30, 2025, https://www.epa.gov/air-quality-implementation-plans/epa-approved-nevada-wide-air-quality-statutes-and-regulations.

base, with a number of sources that could potentially benefit from PALs. This suggests either a lack of industry awareness or a lack of clear guidance from the NDEP about the benefits of PALs.

Despite having three separate offices, Nevada has no true PBR or registration permit system, and only three general permits are available under the NDEP's jurisdiction: Temporary Sources (Largely Construction), Nonmetallic Minerals Crushing and Screening, and Concrete Batch Plants.[149]

RECOMMENDATIONS

The Nevada legislature should streamline Nevada's SIPs by folding the separate Clark and Washoe County plans into a unified, statewide SIP under the NDEP. This consolidation would require legislative reform to transfer permitting and planning authority from those local boards to the NDEP. The consolidated SIP would then need to be submitted to EPA, after which EPA would review and formally approve the statewide plan within the statutory 12-month review period.

Nevada should also direct the NDEP to develop and publish comprehensive PAL guidance documents on its website, explaining the benefits and application process and referencing EPA's 2020 PAL guidance where relevant. The NDEP should clarify the PAL renewal process, emphasizing that there is no automatic downward adjustment at renewal, which could alleviate industry concerns about future operational flexibility. The legislature should also mandate annual reporting from the NDEP on PAL implementation, including uptake rates and explanations for low adoption. By enacting these measures, legislators can promote more efficient permitting processes while maintaining environmental protections, making Nevada more attractive for industrial development.

Nevada should modify its PAL renewal language to provide greater certainty for regulated entities. Currently, federal PAL language states that if the emissions level is equal to or greater than 80 percent of the current PAL level, the administrator "may renew" the PAL at the same level or "may adjust" it based on various factors. This ambiguity has caused

149 Nevada Division of Environmental Protection, Bureau of Air Pollution Control, *Guidance Document: Class II General Air Quality Operating Permit for Concrete Batch Plants and Non-Metallic Mineral Crushing and Screening Plants* (2022), https://ndep.nv.gov/uploads/air-permitting-docs/220830_general_guidance_document.pdf; Nevada Division of Environmental Protection, Bureau of Air Pollution Control, Class II Permitting Branch, *Class II General Air Quality Operating Permit Application for Temporary Construction Sources* (2021), https://ndep.nv.gov/uploads/air-aqm-docs/210217_class_2_gen_app_for_pdf.pdf.

concern about the potential for automatic ratcheting of the PAL level upon renewal among regulated entities. To address this, Nevada should follow North Carolina's example and change the language from "may renew" to "shall renew" in its state regulations. This approach would offer regulated entities more certainty in the PAL renewal process.

The Nevada legislature should also direct NDEP to expand its existing general permit program to facilities covered in other states' flexible permit programs (see **Appendix I**).

Clean Water Act

SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES GENERAL PERMITS
No	Yes	8

NOTES

Nevada assumed NPDES authority in 1975 and issues eight statewide general permits, while Section 404 dredge-and-fill permitting remains with the U.S. Army Corps of Engineers.[150] The Bureau of Water Pollution Control under NDEP operates the program. As of 2024, 56.1 percent of Nevada's NPDES permits were backlogged, among the worst in the country.[151]

Nevada has established the following general permits under its non-stormwater program:[152]

- De Minimis Discharge
- Pesticide Application
- General Permit for Routine Maintenance Activities

Nevada has established the following general permits under its stormwater program:[153]

150 "NPDES State Program Authority," U.S. Environmental Protection Agency, last updated August 29, 2025, https://www.epa.gov/npdes/npdes-state-program-authority.

151 U.S. Environmental Protection Agency, *FY 2024 End of Year NPDES Individual State-Issued Existing Permit Backlog* (2024), https://www.epa.gov/system/files/documents/2024-12/npdes-state-individual-permit-backlog_0.pdf.

152 "General Permits," Nevada Division of Environmental Protection, accessed October 29, 2025, https://ndep.nv.gov/water/water-pollution-control/permitting/general-permits.

153 "Stormwater Discharge Permits," Nevada Division of Environmental Protection, accessed October 29, 2025, https://ndep.nv.gov/water/water-pollution-control/permitting/stormwater-discharge-permits.

- Construction Stormwater
- Mining Stormwater
- Multi-Sector (Industrial) Stormwater
- Large MS4 General Permit
- Small MS4 General Permit

RECOMMENDATIONS

For the main Section 404 recommendations, see **p. 17**.

For NPDES, Nevada should expand its general permit program to other commonly covered facilities and operations (see **Appendix II**).

State Endangered Species Act

SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Yes	No	No	**Yes**

NOTES

Nevada's Threatened and Endangered Species Program serves as the state's functional endangered-species statute.[154] It authorizes the Nevada Department of Wildlife to issue permits to "capture, remove or destroy" fully protected wildlife, but it lacks a federal-style consultation mandate and provides no statutory framework for critical-habitat designations. An independent Native Plant Protection Act governs rare flora listings.[155]

Nevada prohibits take of state-listed species, with narrow exemptions. It offers incidental take permits, but only on a case-by-case basis, and its current state list covers species beyond those that are listed under the federal ESA.

RECOMMENDATIONS

Given that Nevada has state-listed species beyond those federally listed under the Endangered Species Act and prohibits take of those species, it should design a broader incidental take permit to allow for take under specific circumstances. This would give developers some flexibility to move forward on critical projects that may result in

154 Nev. Rev. Stat. § 503.584 et seq.
155 Nev. Rev. Stat. §§ 527.260–527.300.

incidental take so long as they implement approved conservation measures and mitigate any potential impacts on protected species.

Nevada should also consider shifting away from its SESA program towards a more targeted series of Conservation Agreements and Programmatic Conservation Benefit Agreements so that it focuses on efficiently preventing the federal listing (and thus federal regulation) of at-risk species.

For more, see the general State Endangered Species Act recommendations on **p. 23**.

New Jersey

State Environmental Policy Act

SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
No*	–	–	–

NOTES

New Jersey does not have a SEPA; instead, it has Executive Order 215, enforcing EAs and EISs for state-led actions.

RECOMMENDATIONS

Executive Order 215 should be rescinded.

Clean Air Act

PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/ REGISTRATION PERMITS	GENERAL PERMITS	OTHER
No	**No**	**No**	**No***	Yes	–

NOTES

New Jersey has not written a PAL into its SIP. After adopting its 2002 NSR reform package, New Jersey kept its much stricter emission-offset rule for non-attainment areas (a designation that covers the entire state).[156] Historically, New Jersey has completed more than 95 percent of permit applications on time but has not reported the data since 2021.[157]

New Jersey keeps a list of equipment that requires a minor source permit, including incinerators, surface cleaners, and a host of other categories. While it does not maintain a traditional permit-by-rule system, it creates a list of characteristics for which, if met,

156 Emission Offset Rule, N.J. Admin. Code § 7:27-18.

157 "Performance Indicators," New Jersey Department of Environmental Protection, February 2020, https://www.nj.gov/transparency/documents/performance/dep/202002.pdf.

its list of minor source equipment types are deemed nonsignificant. The list of required sources follows; the carveouts are Sections (d),(e),(f), and (g) of the cited regulations:[158]

- Commercial Fuel Burning Equipment ≥ 1,000,000 Btu/hr Heat Input
- Any Operation Emitting Group I/II TXS > 0.1 lb/hr
- Dry Cleaning Equipment
- Surface Cleaners with ≥ 5 Percent VOC/HAP Content and Size or Throughput Thresholds
- Graphic Arts Equipment Using ≥ 0.5 gal/hr Ink or Solvents
- Etching, Pickling, and Plating Tanks and Vessels > 100 gal
- VOC or Gasoline Transfer Operations Requiring Control Devices
- Stationary Liquid Storage Tanks > 10,000 gal
- VOC Storage Tanks ≥ 2,000 gal with Vapor Pressure ≥ 0.02 psi
- Solid Storage Bins > 2,000 ft^3
- Stationary Material Handling Equipment with Emissions
- Surface Coating Equipment Using ≥ 0.5 gal/hr Coatings or Cleaners
- Noncommercial Fuel or Byproduct Burning Equipment
- Incinerators
- Wastewater Treatment Equipment Exceeding VOC/TXS or Sludge Thresholds
- Waste Soil/Sludge Treatment Equipment ≥ 2 Percent Solids
- Solid Waste Facility Venting Equipment
- Wood Shredders Powered by ≥ 1,000,000 Btu/hr Engines
- Equipment Processing > 50 lb Raw Materials/hr
- Welding Equipment Using > 12 lb Rod or Wire/Day
- Stationary Reciprocating Engines ≥ 37 KW (non-emergency)
- Fumigation Equipment Emitting > 0.1 lb/hr Fumigants

For general permits, New Jersey has[159]

- Fuel-Dispensing Facilities
- Fuel-Dispensing Facilities with Phase I Vapor Recovery
- Boilers/Heaters < 5 MMBtu/hr
- Emergency Generators Burning Distillate Fuels
- Solid Material Storage Equipment
- Reserved
- Stationary Storage Tanks Without Floating Roof, ≤ 300,000 gal Storing VOCs Within Specified Vapor Pressure Limits

158 N.J. Admin. Code § 7:27-8.2.
159 N.J. Admin. Code § 7:27-8.8.

- Soil Vapor Extraction/Groundwater Air Stripping at Gasoline Station Remediation Sites
- Boilers/Heaters ≥ 5 and < 10 MMBtu/hr
- Non-HAP VOC Solvent Degreasers
- Boilers ≥ 10 and < 50 MMBtu/hr
- Perchloroethylene Dry-Cleaning Equipment with Refrigerated Condenser and Carbon Adsorber
- Methylene Chloride or 1,1,1-Trichloroethane Solvent Degreasers
- Non-HAP Dry-Cleaning Equipment
- Emergency Generators Burning Gaseous Fuels
- Plating, Etching, Pickling, and Electropolishing Operations
- Manufacturing and Materials Handling Equipment
- Temporary Equipment
- Research and Development Operations
- Indoor Fumigation of Cocoa Bean Products
- Outdoor Fumigation of Containerized Commodities

RECOMMENDATIONS

New Jersey should streamline its Emission Offset Rule by establishing an emissions offset bank of pre-certified credits managed by the New Jersey Department of Environmental Protection (NJDEP) to lower transaction costs and ensure timely access to ERCs; permitting interstate trading of NO_x and VOC offset credits within the Ozone Transport Region to expand the offset supply and lower pricing; authorizing offset averaging and banking flexibility across multiple projects within the same nonattainment planning area to reduce netting triggers; shortening the baseline netting period from five to three years (New Jersey Administrative Code [NJAC] Sections 7:27–18.7) to increase baseline emissions and reduce offset requirements; and broadening the general permit categories under NJAC Sections 7:27–8.8 to cover low-emitting sources such as small data-center chillers, minimizing the need for individual offset demonstrations.

New Jersey should also launch a public dashboard for Title V applications showing statutory clocks, the current reviewer, and days-in-stage to give applicants and reviewers insight into permitting bottlenecks.

New Jersey should consider expanding its existing general permit program to cover sources that other states' flexible permitting programs commonly cover (see **Appendix I**).

Clean Water Act

SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES AND SECTION 404 GENERAL PERMITS
Yes	Yes	68

NOTES

NJDEP has assumed both NPDES and Section 404 permitting authority and issues a broad suite of sector-based general permits across stormwater, non-stormwater, and dredging.[160] The U.S. Army Corps of Engineers retains jurisdiction over tidal waters and adjacent wetlands. As of 2024, 45 percent of New Jersey's individual NPDES permits were backlogged—over 200 total.[161]

New Jersey has established the following general permits under its stormwater program:[162]

- Basic Industrial Stormwater (MSGP) General Permit
- Concentrated Animal Feeding Operation Stormwater General Permit
- Concrete Products Manufacturing Activity Stormwater General Permit
- Construction Activities Stormwater General Permit
- Hot Mix Asphalt Producers Stormwater General Permit
- Mining and Quarrying Activity Stormwater General Permit
- MS4 Tier A Municipal Stormwater General Permit
- MS4 Public Complex Stormwater General Permit
- MS4 Highway Agency Stormwater General Permit
- Newark Airport Stormwater General Permit
- Sand and Gravel Stormwater General Permit
- Scrap Metal Processing/Auto Recycling Stormwater General Permit
- Vehicle Recycling Stormwater General Permit
- Wood Waste Recycling and Leaf Composting Stormwater General Permit

160 "New Jersey's Clean Water Act §404 Permit Program," U.S. Environmental Protection Agency, last updated April 25, 2025, https://www.epa.gov/wetlands/new-jerseys-clean-water-act-ss404-permit-program.

161 U.S. Environmental Protection Agency, *FY 2024 End of Year NPDES Individual State-Issued Existing Permit Backlog* (2024), https://www.epa.gov/system/files/documents/2024-12/npdes-state-individual-permit-backlog_0.pdf.

162 N.J. Admin. Code § 7:14A-6.13(c).

New Jersey has established the following general permits under its non-stormwater program:

- Consolidated Potable Water Treatment Plant General Permit
- Consolidated School General Permit
- General Remediation Clean-up Discharge General Permit
- Groundwater Petroleum Product Cleanup General Permit
- Harmful Algal Bloom Management General Permit
- Hydrostatic Test Water Discharge General Permit
- Non-Contact Cooling Water Discharge General Permit
- Pesticide Application Discharge General Permit
- Short Term De Minimis Discharge General Permit
- Swimming Pool Discharge General Permit
- Basin Discharges at Sanitary Landfills General Permit
- Dental Amalgam General Permit
- Lined Surface Impoundments General Permit
- Potable Water Treatment Plants General Permit
- Sanitary Subsurface Disposal General Permit
- Sanitary Wastewater Discharges at Farms General Permit
- Sanitary Wastewater Discharges from Farm Labor Housing General Permit
- Sanitary Wastewater Discharges ≤ 20,000 GPD General Permit
- Sludge Quality General Permits for Domestic Treatment Works
- Sludge Quality General Permits for Industrial Treatment Works
- Land Application of Food Processing Byproducts General Permit
- Residuals Transfer Facilities General Permit

New Jersey has established the following general permits under its Section 404 program:[163]

- Maintenance and Repair of Existing Features General Permit
- Underground Utility Lines General Permit
- Discharge of Return Water General Permit
- Hazardous Site Investigation and Cleanup General Permit
- Landfill Closures General Permit
- Non-Tributary Wetlands General Permit
- Transition Areas Adjacent to

163 N.J. Admin. Code § 7:7A-7.

Non-Tributary Wetlands General Permit
- Human-Made Ditches or Swales in Headwaters General Permit
- House Additions General Permit
- Airport Sight Line Clearing General Permit
- Very Minor Road Crossings General Permit
- Minor Road Crossings General Permit
- Outfalls and Intake Structures General Permit
- Surveying and Investigating General Permit
- Lake Dredging General Permit
- Water Monitoring Devices General Permit
- Mosquito Control Activities General Permit
- Habitat Creation and Enhancement Activities General Permit
- Trails and Boardwalks General Permit
- Non-Motorized Multiple-Use Paths General Permit
- Dam Repair General Permit
- Docks and Piers General Permit
- Bank Stabilization General Permit
- Aboveground Utility Lines General Permit
- Expansion of Cranberry Operations in the Pinelands General Permit
- Spring Developments General Permit
- Malfunctioning Individual Subsurface Sewage Disposal General Permit
- Minor Channel or Stream Cleaning for Government Agencies General Permit
- Redevelopment of Previously Disturbed Areas General Permit
- Application of Herbicide to Control Invasive Species General Permit
- Construction of an Addition to a Residential Dwelling General Permit
- Repair or Modification of a Malfunctioning Individual Subsurface Sewage Disposal General Permit

RECOMMENDATIONS

For NPDES, New Jersey should expand its general permit program to other commonly covered facilities and operations (see **Appendix II**).

New Jersey should also deploy a public NPDES and Section 404 dashboard—showing days-in-queue, statutory clocks, and current reviewer—to provide certainty and insight to both developers and reviewers.

To establish itself as a leader in the permitting space, New Jersey should publish a report containing data on Section 404 processing times, best practices, NEPA and ESA

nexuses, and the like as a resource for other states considering undertaking Section 404 assumption.

State Endangered Species Act

SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Yes	No*	No*	**No**

NOTES

New Jersey's Endangered and Nongame Species Conservation Act prohibits any "take" (harass, hunt, capture, kill, etc.) of state-listed wildlife.[164] Although the act itself does not include a stand-alone formal consultation clock akin to the federal ESA's Section 7, all NJDEP land-use and permit programs—such as the Coastal Area Facility Review Act (CAFRA), Freshwater Wetlands, Coastal, Flood Hazard, and the New Jersey Pollutant Discharge Elimination System (NJPDES)—incorporate mandatory review or coordination with the Endangered and Nongame Species Program, barring permit approvals that "jeopardize the continued existence" of listed species and triggering species impact assessments during CAFRA or freshwater-wetlands filings.[165]

New Jersey does not offer incidental take permits. New Jersey's current state list covers species beyond those that are listed under the federal ESA.

RECOMMENDATIONS

New Jersey should begin by decoupling endangered-species review under the Endangered and Nongame Species Conservation Act from its other permit programs. Any automatic requirement for formal consultation and critical-habitat analysis in CAFRA, Freshwater Wetlands, Coastal Zone, Flood Hazard, NJPDES, and related rules should be removed so that SESA reviews occur only under the act itself.

New Jersey should also establish a project-level incidental-take permit for routine land-use approvals, complete with clear minimization and mitigation standards, and launch a voluntary Safe Harbor program granting landowners binding assurances against

164 N.J. Stat. Ann. § 23:2A-1 et seq.
165 N.J. Admin. Code § 7:7A-4.3(b)(3).

future “take” liability for approved habitat enhancements.

In the long term, New Jersey should also consider shifting away from its SESA program towards a more targeted series of Conservation Agreements and Programmatic Conservation Benefit Agreements so that it focuses on efficiently preventing the federal listing (and thus federal regulation) of at-risk species.

For more, see the general State Endangered Species Act recommendations on **p. 23**.

New Mexico

State Environmental Policy Act

SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
No	–	–	–

NOTES

New Mexico does not have a SEPA.

RECOMMENDATIONS

N/A

Clean Air Act

PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/ REGISTRATION PERMITS	GENERAL PERMITS	OTHER
Yes	**No**	**No**	Yes	Yes	–

NOTES

New Mexico has incorporated PAL provisions into its SIP by adopting PAL definitions in the New Mexico Administrative Code.[166]

The New Mexico Environment Department (NMED) publishes an Interactive Air Permit Map using GIS.[167]

The Albuquerque–Bernalillo County Air Quality Program administers PSD for major sources alongside minor and Title V permitting.[168] Applicants must demonstrate NAAQS compliance (dispersion modeling), apply required controls, and complete public notice.[169]

166 NMAC 20.11.61.20, https://www.srca.nm.gov/parts/title20/20.011.0061.html.
167 "New Mexico Environment Department: Air Quality Bureau's Air Permit Map (APMAP)," New Mexico Environment Department, July 19, 2019, https://rsmt.air.net.env.nm.gov/.
168 "Air Quality Permits," City of Albuquerque, accessed October 29, 2025, https://www.cabq.gov/airquality/air-quality-permits.
169 NMAC 20.11.61 NMAC, https://www.srca.nm.gov/parts/title20/20.011.0061.html.

The state publishes an interactive "Active Air Quality Permits" map to display existing permitted stationary sources.[170]

NMED issues the following general permits:[171]

- Oil and Gas Facilities (GCP-O&G)
  - Compressor stations not co-locating with petroleum refineries, chemical manufacturing plants, bulk gasoline terminals and natural gas processing plants and following additional regulations[172] may be eligible for further streamlining.
- Quarrying, Crushing, and Screening Facilities (GCP-2)
- Hot Mix Asphalt Plants (GCP-3)
- Concrete Batch Plants (GCP-5)
- Oil and Gas Storage Vessels (GCP-6)
- Temporary Control Facilities (GCP-TC-Major)

For all major stationary source PALs, the NMED is required to provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department is required to address all material comments before taking final action on the permit.[173]

RECOMMENDATIONS

New Mexico's legislature should direct the NMED to develop and publish comprehensive PAL guidance documents on its website, explaining the benefits and application process and referencing EPA's 2020 PAL guidance where relevant. The NMED should clarify the PAL renewal process, emphasizing that there is no automatic downward adjustment at renewal, which could alleviate industry concerns about future operational flexibility.

Currently, federal PAL language states that if the emissions level is equal to or greater than 80 percent of the current PAL level, the administrator "may renew" the PAL at the same level or "may adjust" it based on various factors. This ambiguity has caused concern

170 "Active Air Quality Permits," City of Albuquerque, accessed October 29, 2025, https://cabq.maps.arcgis.com/apps/instant/interactivelegend/index.html?appid=530f5c65ce544fe2911aff23b68c9905.
171 "Permitting," New Mexico Environment Department, accessed October 29, 2025, https://www.env.nm.gov/air-quality/permitting-section-home-page.
172 NMAC 20.2.72, https://www.srca.nm.gov/parts/title20/20.002.0072.html.
173 Ibid.

about the potential for "automatic ratcheting" of the PAL level upon renewal among regulated entities. To address this, New Mexico should follow North Carolina's example and change the language from "may renew" to "shall renew" in its state regulations.

Clean Water Act

SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES GENERAL PERMITS
No	No	7

NOTES

New Mexico is one of only three states that does not have primacy over Clean Water Act point-source permitting and where EPA presides over those permitting processes instead. NMED therefore issues zero NPDES permits.[174]

However, EPA does have general NPDES permits that apply in the state, including

- Small MS4 General Permit
- Middle Rio Grande MS4 General Permit
- Multi-Sector General Permit: Industrial Stormwater
- Construction General Permit
- Pesticide General Permit
- Hydrostatic Testing General Permit
- Concentrated Animal Feeding Operations General Permit

New Mexico has not assumed authority over the Section 404 program, which remains under the jurisdiction of the U.S. Army Corps of Engineers and EPA.

RECOMMENDATIONS

For the main Section 404 recommendations, see **p. 17**.

New Mexico should assume NPDES authority as soon as possible and make sure it includes the same commonly covered facilities and operations as similar states (see **Appendix II**).

New Mexico should strongly consider assuming Section 404 permitting authority from USACE. State assumption can offer increased local control, streamlined permitting processes, and better coordination with other state environmental programs, which could lead to more efficient and environmentally sound decisions (see **p. 16**).

174 "NPDES State Program Authority," U.S. Environmental Protection Agency, last updated August 29, 2025, https://www.epa.gov/npdes/npdes-state-program-authority.

State Endangered Species Act

SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Yes	No	No	Yes*

NOTES

New Mexico has a SESA. New Mexico's Wildlife Conservation Act, enacted in 1974, lists 118 animal species (26 federally listed, 92 state-only taxa) and 46 plant species (13 federally listed, 33 state-only taxa).[175]

There is an incidental take statute for plants but not for animal species. [176]

RECOMMENDATIONS

Given that New Mexico has state-listed animal species beyond those federally listed under the Endangered Species Act and prohibits take of those species, it should expand its incidental take permit to allow for take of animals under specific circumstances. This would give developers additional flexibility to move forward on critical projects that may result in incidental take so long as they implement approved conservation measures and mitigate any potential impacts on protected species.

New Mexico should also consider shifting away from its SESA program towards a more targeted series of Conservation Agreements and Programmatic Conservation Benefit Agreements, so that it focuses on efficiently preventing the federal listing (and thus federal regulation) of at-risk species. New Mexico's legislature should also consider incentive programs for private landowners to voluntarily conserve species and habitats, such as safe harbor agreements.

For more, see the general State Endangered Species Act recommendations on **p. 23**.

175 NMAC 19.33.6.8, https://regulations.justia.com/states/new-mexico/title-19/chapter-33/part-6/section-19-33-6-8.

176 NMAC 19.21.2.11, https://regulations.justia.com/states/new-mexico/title-19/chapter-21/part-2/section-19-21-2-11/.

New York

State Environmental Policy Act

SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
Yes	**Yes**[177]	**Yes**	Yes

NOTES

New York's State Environmental Quality Review Act (SEQRA) is triggered when a state or local agency undertakes, funds, or approves any "action" that *may* have a significant adverse environmental impact, with no dollar or acreage threshold.[178] Agencies must first screen non-exempt (Type I) actions with an Environmental Assessment Form; the vast majority of actions end there via Negative or Conditioned Negative Declaration. Only a small fraction proceed to a full EIS, stretching median review to 18–24 months.[179] Scope spans permits, capital spending, land-use approvals, and rulemaking; federal NEPA documents may be adopted but do not waive SEQRA.

Enforcement is entirely through New York's Civil Practice Law and Rules Article 78, and standing requirements for seeking annulment or injunction are minimal relative to other statutes; there is no dedicated citizen-suit provision or damages remedy.[180] In practice, litigation volume and lead-agency disputes are the dominant veto points, while Type II exemptions (e.g., maintenance and minor subdivisions) keep many routine permits off the SEQRA grid. The typical negative decision track finishes in 60–90 days; the EIS track often exceeds two years.

177 Michael B. Gerrard, "Judicial Review Under SEQRA," *Albany Law Review* vol. 65, no. 2 (2001–2002), p. 365–92, https://climate.law.columbia.edu//content/judicial-review-under-seqra-statistical-study.

178 Consolidated Laws of New York, ch. 43-B, art. 8 (2014), https://www.nysenate.gov/legislation/laws/ENV/A8.

179 Arthur J. Giacalone, "Proposed SEQR Regulations: Developers and SEQR-Adverse Agencies Win, the Environment and Public Lose," *With All Due Respect* (blog), March 5, 2017, https://withallduerespectblog.com/2017/03/05/proposed-seqr-regulations-developers-and-seqr-adverse-agencies-win-the-environment-and-public-lose/.

180 New York State Department of Environmental Conservation, *The SEQR Handbook, Fourth Edition* (2020), https://extapps.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf.

RECOMMENDATIONS

Just as NEPA imposes an enormous regulatory burden on federal agencies and infrastructure development, SEQRA imposes an enormous regulatory burden on state agencies and state infrastructure development. Where possible, the New York legislature should reform, create exclusions from, and raise the trigger threshold for SEQRA.

For example, the legislature could

1. Raise the trigger bar by confining EIS requirement to projects ≥ $10 million or disturbing ≥ 10 acres, mirroring North Carolina's 2015 reforms.
2. Expand the Type II list to include less-than-50-unit infill housing and EV-charger installs.
3. Adopt federal reciprocity by deeming a final NEPA EA/EIS or Finding of No Significant Impact presumptively sufficient for SEQRA, ending duplicative review.
4. Create a 120-day shot clock per milestone with default-to-approve.
5. Adopt a sunset review clause: mandate a 10-year legislative reauthorization of SEQRA; absent action, the statute would terminate. This would force periodic cost-benefit audits.

Clean Air Act

PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/ REGISTRATION PERMITS	GENERAL PERMITS	OTHER
Yes	**No**	**No**	Yes	Yes*	–

NOTES

New York largely imported EPA's 2002 NSR reforms when it overhauled 6 NYCRR Part 231 in 2009–2010. The rules include a 10-year PAL with an 80 percent renewal trigger. The state previously had active PALs, including the Delphi Thermal plan, but it lists none currently. Permit timelines are slow, with over 58 percent of Title V permits backlogged as of 2022 and no substantial decrease in the backlog since.[181]

The state's Department of Environmental Conservation (DEC) relies on permit

181 New York State Department of Environmental Conservation, *2022 Title V Operating Permit Program Evaluation: Response to Final Report* (2024), https://www.epa.gov/system/files/documents/2025-06/10-1-2024dec-response-to-title-v-audit-1.pdf.

exemptions (Subpart 201-3) for dozens of low-risk sources in what is effectively a PBR system.[182] Categories are

- Small Combustion Installations
- Waste Oil Space Heaters
- Small Internal Combustion Engines
- Small Gas Turbines
- Emergency Standby Engines
- Non-Contact Cooling Towers
- Grain Milling and Storage
- Animal Slaughter Equipment
- Bakery Flour Silos
- Manual Flavoring Emissions
- Handheld Screen Printing
- Low-Emission Graphic Arts
- Stamping/Rolling Label Operations
- Exempt Graphic Arts Processes
- Registered Gasoline Dispensing
- Low-Volume Surface Coating
- Enclosed Abrasive Cleaning
- Ultraviolet Curing Operations
- Small Landfill Gas Vents
- Small Fuel Oil Storage Tanks
- Pressurized Fixed-Roof Tanks
- External Floating Roof Tanks
- Floating Roof Tanks with Seals
- Small Petroleum and Asphalt Tanks
- Horizontal Volatile Liquid Tanks
- Solid Material Storage
- Pre-1983 Wet Crushing Equipment
- Small Monmetallic Mineral Processing
- Exempt Surface Coating
- Tablet Branding Operations
- Thermal Packaging Operations
- Powder Coating operations
- Metal Tumblers Cleaning
- Plastic Molding Presses
- Controlled Concrete Batch Plants
- Non-Portland Cement Conveyors
- Small Solvent Cleaning Degreasers
- Laboratory Exhaust Systems
- Precious Metal Melting Exhaust
- Paint Mixing Exhaust Systems
- Solvent Transfer Exhaust Systems
- Odor Neutralizer Application
- Hydrogen and Natural Gas Fuel Cells
- Water-Based Dry Cleaning
- Farm Manure Management
- Covered Manure Storage Vents
- Small Coffee Roasting Processes
- Small Brewery Emissions
- Small Winery Emissions
- Small Distillery Emissions
- Small Wood Kiln Emissions

New York has established the language for general permits but has only one currently issued: a small-combustion general permit (Air State Facility, or ASF).

For turnaround times, DEC aims to acknowledge registrations or PBR within seven days,

182 6 N.Y.C.R.R. § 231-9.

while Minor NSR and initial Title V permits are supposed to be acted on within 90 days of "complete" status—yet EPA's 2024 evaluation found that 58 percent of all permits were backlogged.[183] Reviews of PSD and Major NSR for controversial sources typically take 12–18 months.

New York offers several flexible mechanisms. Emission-reduction-credit banking enables in-state NO_x and VOC trading, as does RGGI CO_2 Budget Trading. New York now requires permits in disadvantaged communities to include an environmental justice cumulative-impact score and added outreach.

RECOMMENDATIONS

New York should publish a PAL guide—complete with flowchart and detailed examples—and rebate 50 percent of the PAL application fee upon issuance. The state should modify its PAL language from "may" to "shall" to auto-renew PALs at the same cap when prior actual readings are greater than 80 percent of the limit, mirroring North Carolina's 2015 rule.

New York should also launch a public dashboard for Title V applications showing statutory clocks, the current reviewer, and days-in-stage to give applicants and reviewers insight into permitting bottlenecks.

New York should be encouraged to expand its general permit program to cover additional categories (see **Appendix I**).

183 U.S. Environmental Protection Agency, Region 2, *Title V Operating Permit Program Evaluation: New York State Department of Environmental Conservation: Final Report* (2024), https://www.epa.gov/system/files/documents/2024-07/2022-title-v-evaluation-report.pdf.

Clean Water Act

SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES GENERAL PERMITS
No	Yes	7

NOTES

New York has not assumed Section 404 responsibilities. As of 2024, 28 percent of New York's individual NPDES permits were backlogged—over 400 in total.[184]

The state obtained NPDES delegation in 1975; EPA Region 2 retains only biosolids oversight.[185]

DEC currently administers a broad suite of general permits:

- Stormwater
  - Construction
  - MSGP
  - Municipal, small MS4s
- Non-Stormwater
  - Aquatic Pesticide Applications
  - Private/Commercial/Industrial to Groundwater
  - Animal Operations
  - Vessels

Submittals for construction receive responses within a few business days with automatic coverage in 5 or 60 business days depending on the type of permit.[186]

RECOMMENDATIONS

For Section 404, see **p. 17**'s relaunch assumption feasibility study.

For NPDES, New York should expand its general permit program to other commonly covered facilities and operations (see **Appendix II**) and pilot a permit-by-rule program for sub-acre construction sites.

184 U.S. Environmental Protection Agency, *FY 2024 End of Year NPDES Individual State-Issued Existing Permit Backlog* (2024), https://www.epa.gov/system/files/documents/2024-12/npdes-state-individual-permit-backlog_0.pdf.

185 "NPDES Profile: New York and Indian Country," U.S. Environmental Protection Agency, Office of Wastewater Management, March 10, 2005, https://purl.access.gpo.gov/GPO/LPS44780.

186 "Frequently Asked Questions About Permit Requirements of the SPDES General Permit (GP-02-01) for Stormwater Discharges from Construction Activities, Version 3.0," New York State Department of Environmental Conservation, September 12, 2006, https://extapps.dec.ny.gov/docs/water_pdf/constrfaq.pdf.

State Endangered Species Act

SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Yes	**No**	No	Yes

NOTES

New York's Endangered and Threatened Species Act (Environmental Conservation Law Section 11-0535) and its Part 182 rules impose a sweeping "no-take" ban that reaches harassment and habitat alteration. DEC now lists roughly 190 species, a large number of which also appear on the federal roster. Reviews start with an online screening; DEC targets a jurisdiction letter in 30 days, good for one year.[187]

Applicants depend on the Environmental Resource Mapper and species tables, though filings remain in an email PDF format. A 2024–2025 rewrite both restored text vacated by litigation and created a Mitigation Bank Fund, nudging the program toward fee-for-impact mitigation. Article 78 cases press DEC to treat habitat loss alone as prohibited take.[188]

RECOMMENDATIONS

Given that New York has state-listed species beyond those federally listed under the Endangered Species Act and prohibits take of those species, it should broaden its incidental take permit to loosen the requirement for take for private developers by removing the net conservation benefit requirement. This would give developers some flexibility to move forward on critical projects that may result in incidental take so long as they implement approved conservation measures and mitigate any potential impacts on protected species.

New York should also consider shifting away from its SESA program towards a more targeted series of Conservation Agreements and Programmatic Conservation Benefit Agreements, so that it focuses on efficiently preventing the federal listing (and thus federal regulation) of at-risk species.

For more, see the general State Endangered Species Act recommendations on **p. 23**.

187 New York State Department of Environmental Conservation, "Uniform Procedure Act (UPA) Part 621: Jurisdictional Determination and Permit Process Improvements," January 3, 2018, https://govt.westlaw.com/nyreg/Document/I5b2be95ff06f11e7aa6cc5ca70196500?viewType=FullText.

188 "New York's Endangered Species Regulations," New York State Department of Environmental Conservation, March 23, 2021, https://dec.ny.gov/nature/animals-fish-plants/biodiversity-species-conservation/endangered-species/regulations.

Oregon

State Environmental Policy Act

SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
No	–	–	–

NOTES

Oregon does not have a SEPA.

RECOMMENDATIONS

N/A

Clean Air Act

PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/ REGISTRATION PERMITS	GENERAL PERMITS	OTHER
No*	Yes	Yes	**No**	Yes	PSEL

NOTES

Oregon has a program called Plant-Site Emission Limit (PSEL) that is a functional equivalent of the federal PAL program and is incorporated into its SIP.[189] The PSEL language is an improvement on typical PAL language, setting a fixed baseline that does not allow for unilateral adjustment every 10 years, providing certainty for long-term fixed investments.

PSELs have been issued in the state to facilities such as Intel's Aloha Plant.[190] However, the stringency of the program was recently increased by shifting from generic caps to a source-specific regime that substantially undermines the scale benefits of the previous program.

189 Oregon Secretary of State, Stationary Source Plant Site Emission Limits, OAR 340-222-0010 (2023), https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1542.

190 "Oregon DEQ Intel Projects," Oregon Department of Environmental Quality, updated April 16, 2024, https://www.oregon.gov/deq/programs/pages/intel.aspx.

Oregon has developed and published PSEL guidance. The "Instructions for Using Air Contaminant Discharge Permit Application Forms" document includes information on PSELs, including expiration and renewal.

Permit timeliness in Oregon is low, with only around 63 percent of all CAA permit applications are completed by their deadline despite an enormous fee hike of 83 percent.[191]

Oregon has both basic and general permit programs covering the following categories:[192]

- Air Curtain Incinerator
- Asphalt Plants
- Autobody Repair or Painting Shops
- Boilers
- Bulk Gasoline Plant
- Clay Ceramics
- Coffee Roasters
- Concrete Manufacturing
- Crematories
- Degreasers
- Dry Cleaners
- Electric Power Generator
- Gasoline Dispensing Facility
- Grain Elevators
- Hospital Sterilizers
- Metal Fabrication and Finishing
- Plating and Polishing
- Prepared Feeds, Cereal, and Flour
- Rock Crusher
- Sawmills and Millwork
- Seed Cleaning
- Surface Coating
- Other Sources Requesting Enforceable Limits

The state does not have a PBR or registration program; however, its Department of Environmental Quality (DEQ) can impose required registration upon request.

RECOMMENDATIONS

Oregon should roll back its 2023 changes to the PSEL program and return to generic caps on pollutants to provide the necessary flexibility for individuals and businesses within the state. It should also put together a study on the effectiveness of the previous PSEL program to encourage other states to adopt it.

The Oregon legislature should direct the DEQ to expand its general permit program to cover additional industrial categories (see **Appendix I**).

191 Oregon Department of Environmental Quality, *Annual Performance Progress Report: Reporting Year 2024* (2024), https://www.oregonlegislature.gov/lfo/APPR/APPRProposed_DEQ_2024-10-16.pdf.

192 "Basic and General Air Contaminant Discharge Permits," Oregon Department of Environmental Quality, accessed October 29, 2025, https://www.oregon.gov/deq/aq/aqpermits/pages/acdp-general.aspx.

Clean Water Act

SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES GENERAL PERMITS
No	Yes	19

NOTES

Oregon has not assumed the federal Section 404 permitting program, which remains under the jurisdiction of the U.S. Army Corps of Engineers and EPA. Oregon has had NPDES authority since 1973 and has established a set of general permits under its DEQ.[193] Only 70 percent of Oregon's NPDES permits are current as of 2024. Fifty-eight percent of individual permits are backlogged.[194]

Oregon has established the following general permits under its non-stormwater program:[195]

- Cooling Water
- Fish Hatcheries
- Log Ponds
- Seafood Processing
- Oil and Water Separators
- Petroleum Hydrocarbon Cleanup
- Wash Water
- Irrigation Systems
- Filter Backwash
- Boiler Blowdown
- Suction Dredges
- Pesticide General Permit
- Floating Residences
- Geothermal Heat Exchange
- Seasonal Irrigation

Oregon has established the following general permits under its stormwater program:[196]

- Industrial
- Construction
- Phase II MS4

193 U.S. Environmental Protection Agency, Region 10 and Oregon Department of Environmental Quality, *National Pollutant Discharge Elimination System Memorandum of Agreement* (2010), https://www.oregon.gov/deq/wq/Documents/WQP-moa-DEQEPA.pdf.

194 Oregon Department of Environmental Quality, *Annual Performance Progress Report*.

195 "Oregon DEQ Electronic Reporting for Water-Quality Permits," Oregon Department of Environmental Quality, accessed October 29, 2025, https://www.oregon.gov/deq/wq/wqpermits/pages/npdes-e-reporting.aspx.

196 "Stormwater Permit Application Forms and Permit Fees," Oregon Department of Environmental Quality, accessed October 29, 2025, https://www.oregon.gov/deq/wq/wqpermits/Pages/Stormwater.aspx.

RECOMMENDATIONS

For the main Section 404 recommendations, see **p. 17**.

For NPDES, Oregon should expand its general permit program to other commonly covered facilities and operations (see **Appendix II**).

State Endangered Species Act

SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Yes	No	No	Yes

NOTES

Oregon has a SESA.[197] It defines "take" narrowly as "killing" or "possessing" wildlife; the statute lacks "harm" or "harass" language.[198] Oregon lists 30 animals and 76 plants in its SESA, with only four animals that are not also federally protected. Oregon's SESA does not include formal consultation requirements in the same sense as the federal ESA, nor does it provide for critical habitat designation.

Oregon prohibits take of state-listed species, with narrow exemptions. It does offer incidental take permits.[199] Oregon's current state list covers a few species beyond those that are listed under the federal ESA.

RECOMMENDATIONS

Oregon should shift away from its SESA program towards a more targeted series of Conservation Agreements and Programmatic Conservation Benefit Agreements so that it focuses on efficiently preventing the federal listing (and thus federal regulation) of at-risk species.

For more, see the general State Endangered Species Act recommendations on **p. 23**.

197 Or. Rev. Stat. §§ 496.171–496.182 (2025).
198 Or. Rev. Stat. § 496.171(16) (2017).
199 Or. Rev. Stat. § 496.172(4) (2017).

Rhode Island

State Environmental Policy Act

SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
No	–	–	–

NOTES

Rhode Island does not have a SEPA.

RECOMMENDATIONS

N/A

Clean Air Act

PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/ REGISTRATION PERMITS	GENERAL PERMITS	OTHER
No	**No**	**No**	**No**	Yes	–

NOTES

Rhode Island's Department of Environmental Management (RIDEM) administers Minor NSR, PSD, and Title V programs without PALs or a permit-by-rule framework.[200]

Rhode Island does not have a traditional PBR system; instead, it only requires sources that produce contaminants above a certain threshold to acquire a minor-source permit. Residential incinerators are exempted altogether.[201] The state has a Title V backlog of 46 percent, with 11 of the 24 issued Title V permits backlogged as of late 2024.[202]

200 Rhode Island Department of Environmental Management, Division of Air Resources, *Air Pollution Control Regulation 9: Air Pollution Control Permits* (revised 2019), https://www.epa.gov/system/files/documents/2021-12/ri-reg9.pdf.

201 Ibid., § 9.3.2(b).

202 U.S. Environmental Protection Agency Region 1, *Questionnaire for EPA's 2024 Title V Program Evaluation for Rhode Island's Department of Energy and Environmental Protection* (2024), p. 3, https://www.epa.gov/system/files/documents/2024-11/title-v-program-evaluation-2024-ri.pdf.

Rhode Island only has two general permits, one for emergency generators and one for distributed generators.[203]

RECOMMENDATIONS

The Rhode Island legislature should direct RIDEM to write PALs into its SIP.

Upon writing PALs into its SIP, the Rhode Island legislature should direct RIDEM to develop and publish comprehensive PAL guidance documents on its website, explaining the benefits and application process and referencing EPA's 2020 PAL guidance where relevant. RIDEM should clarify the PAL renewal process, emphasizing that there is no automatic downward adjustment at renewal, which could alleviate industry concerns about future operational flexibility. The legislature should also mandate annual reporting from RIDEM on PAL implementation, including uptake rates and explanations for low adoption. By enacting these measures, legislators can promote more efficient permitting processes while maintaining environmental protections, making Rhode Island more attractive for development.

For Minor NSR, RIDEM should be directed to expand its general permit program to cover additional categories (see **Appendix I**).

Clean Water Act

SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES GENERAL PERMITS
No	Yes	6

NOTES

Rhode Island assumed NPDES authority in 1984 and issues six statewide general permits, while Section 404 dredge-and-fill permitting remains with the U.S. Army Corps of Engineers.[204] The Office of Water Resources operates the program. Forty-six percent of

203 Rhode Island Department of Environmental Management, *Application for a General Permit—Emergency Generator* (form, 2022); Rhode Island Department of Environmental Management, *Application for a General Permit—Distributed Generator* (form, 2022).

204 "Overview: Rhode Island Pollutant Discharge Elimination System Storm Water Discharge Associated with Construction Activity," Rhode Island Department of Environmental Management, Office of Water Resources, accessed October 29, 2025, https://dem.ri.gov/sites/g/files/xkgbur861/files/programs/benviron/water/permits/ripdes/stwater/pdfs/over.pdf.

individual permits under NPDES are backlogged.[205]

Rhode Island has established the following general permits under its non-stormwater program:[206]

- Noncontact Cooling Water
- Aquatic Pesticides
- Remediation

Rhode Island has established the following general permits under its stormwater program:

- Construction
- Muti-Sector
- Small MS4

RECOMMENDATIONS

For the main Section 404 recommendations, see **p. 17**.

For NPDES, Rhode Island should expand its general permit program to other commonly covered facilities and operations (see **Appendix II**).

State Endangered Species Act

SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Yes*	–	–	–

NOTES

Rhode Island's State Endangered Species Act deals only with trafficking, not take. Reforms related to trafficking are beyond the scope of this playbook.

RECOMMENDATIONS

N/A

205 U.S. Environmental Protection Agency, *FY 2024 End of Year NPDES Individual State-Issued Existing Permit Backlog* (2024), https://www.epa.gov/system/files/documents/2024-12/npdes-state-individual-permit-backlog_0.pdf.

206 "Rhode Island NPDES Permits," U.S. Environmental Protection Agency, last updated September 17, 2025, https://www.epa.gov/npdes-permits/rhode-island-npdes-permits.

Vermont

State Environmental Policy Act

SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
No	–	–	–

NOTES

Vermont does not have a SEPA.

RECOMMENDATIONS

N/A

Clean Air Act

PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/ REGISTRATION PERMITS	GENERAL PERMITS	OTHER
No	**No**	**No**	Yes	**No**	–

NOTES

Air permitting is administered by the Department of Environmental Conservation's (DEC) Air Quality and Climate Division (AQCD).[207] DEC routinely issues combined "Permit to Construct and Operate" documents, valid for five years, with public notice through the Environmental Notice Bulletin.[208]

Because Vermont is in statewide attainment for all current NAAQS, major new sources undergo PSD review; non-major sources follow the state's Minor NSR program. Vermont does not offer PALs in its SIP.[209]

207 10 V.S.A. §§ 555–556a (2024), https://law.justia.com/codes/vermont/title-10/chapter-23/section-556a.

208 "Environmental Notice Bulletin," Vermont Department of Environmental Conservation, accessed October 29, 2025, https://dec.vermont.gov/permits/environmental-notice-bulletin.

209 NESCAUM, *Basis for Vermont's Decision to Retain Its Existing NSR SIP Provisions: Historical Record* (2005), https://www-f.nescaum.org/documents/new-source-review-equivalency-demonstration-letters/

Each operator of a source that emits more than five tons of any and all air contaminants per year is required to register the source with the secretary of the Vermont Agency of Natural Resources[210] and must renew this registration annually for a fee.[211]

RECOMMENDATIONS

The Vermont legislature should direct AQCD to adopt PALs and publish comprehensive PAL guidance documents on its website, explaining the benefits and application process and referencing EPA's 2020 PAL guidance where relevant. AQCD should clarify the PAL renewal process, emphasizing that there is no automatic downward adjustment at renewal, which could alleviate industry concerns about future operational flexibility.

The legislature should also mandate annual reporting from PAL implementation, including uptake rates and explanations for low adoption. By enacting these measures, legislators can promote more efficient permitting processes while maintaining environmental protections, making Vermont more attractive for development.

AQCD should also establish a public dashboard for Title V applications showing statutory clocks, the current reviewer, and days-in-stage to give applicants and reviewers insight into permitting bottlenecks.

For Minor NSR, AQCD should be directed to expand its registration program to cover additional categories (see **Appendix I**).

Clean Water Act

SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES GENERAL PERMITS
No	Yes	8

vermont/vt-nsranalysis_doc.pdf.

210 "Requirement of Registration, Section 5-802," U.S. Environmental Protection Agency, effective April 20, 1988, https://www.epa.gov/sites/default/files/2017-10/documents/2003-vt-section-5-802.pdf.

211 "Registration Procedure, Section 5-803," U.S. Environmental Protection Agency, effective April 20, 1988, https://www.epa.gov/sites/default/files/2017-10/documents/2003-vt-section-5-803.pdf.

NOTES

Vermont administers the NPDES through the Vermont Pollutant Discharge Elimination System (VPDES). EPA delegated the base NPDES program on March 11, 1974, added federal-facility delegation on March 16, 1982, and approved the state's authority to issue general permits on August 26, 1993.

Vermont has not assumed the Clean Water Act Section 404 dredge-and-fill program; jurisdiction remains with the U.S. Army Corps of Engineers.

The state enacted a preventive ban on hydraulic-fracturing wells; DEC may not issue injection-well or discharge permits associated with oil or gas recovery.

Vermont administers the following NPDES general permits:[212]

- Stormwater
  - MSGP
  - Construction Stormwater
  - Small MS4
  - Transportation Separate Storm Sewer System
- Non-Stormwater
  - Pesticide
  - Petroleum Remediation
  - Potable-Water Infrastructure and Well-Pumping
  - Concentrated Animal Feeding Operations

RECOMMENDATIONS

For the main Section 404 recommendations, see **p. 17**.

For NPDES, Vermont should expand its general permit program to other commonly covered facilities and operations (see **Appendix II**).

212 "Vermont Environmental Notice Bulletin (ENB)," Vermont Agency of Natural Resources, accessed October 9, 2025, https://enb.vermont.gov/default.

State Endangered Species Act

SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Yes	No	**Yes***	Yes

NOTES

Vermont adopted a SESA in 1981.[213] The statute authorizes the Secretary of Natural Resources to list species by rule and administer permits.

The most recent public briefing by the Fish and Wildlife Department reports 51 listed animals (36 endangered, 15 threatened) and 163 listed plants (69 endangered, 94 threatened), for a total of 214 state-listed species.[214] Only around 2 percent of Vermont's state listings overlap with federal listings, meaning most projects that trigger Vermont's SESA do not require parallel federal Endangered Species Act review.

An incidental take may be approved only when the take is secondary to an otherwise lawful activity and is unavoidable and minimized and will not impair recovery of the species. The Secretary of Natural Resources must also first obtain advice from the nine-member Endangered Species Committee. Fees for incidental takes are $250 for each listed wildlife or wild plant taken up to a maximum of $25,000. The secretary may require the implementation of mitigation strategies and may collect mitigation funds in addition to the permit fees in order to mitigate the impacts of a taking or the destruction of or adverse impact on critical habitat.[215]

Every state agency must review its own programs and, "in consultation with the Secretary," exercise its authority only in a manner that does not jeopardize listed species, critical habitat, or recovery plans.[216] However, Vermont does not have Section 7–style formal consultation. The Secretary of Natural Resources must issue or deny an incidental-take permit within 60 days of deeming the application administratively complete.[217]

213 10 V.S.A. ch. 123, §§ 5401–5408 (2024), https://legislature.vermont.gov/statutes/fullchapter/10/123.
214 "Endangered and Threatened Species," Vermont Fish and Wildlife Department, accessed October 29, 2025, https://www.vtfishandwildlife.com/conserve/endangered-and-threatened-species.
215 10 V.S.A. § 5408 (2024), https://legislature.vermont.gov/statutes/fullchapter/10/123.
216 Ibid., § 5406.
217 10A V.S.A. § 10 (2015), https://www.energy.gov/sites/prod/files/2015/06/f22/10VSA123.pdf.

Vermont forbids critical-habitat designations inside designated downtowns and village centers (see also the tier system for Act 250).[218]

RECOMMENDATIONS

Given that Vermont has state-listed species beyond those federally listed under the Endangered Species Act and prohibits take of those species, it should broaden its incidental take permit to allow for take for private developers under specific circumstances. This would give developers some flexibility to move forward on critical projects that may result in incidental take so long as they implement approved conservation measures and mitigate any potential impacts on protected species.

Vermont should also consider shifting away from its SESA program towards a more targeted series of Conservation Agreements and Programmatic Conservation Benefit Agreements so that it focuses on efficiently preventing the federal listing (and thus federal regulation) of at-risk species.

For more, see the general State Endangered Species Act recommendations on **p. 23**.

218 10 V.S.A. § 5402a(f) (2024), https://legislature.vermont.gov/statutes/fullchapter/10/123.

Washington

State Environmental Policy Act

SEPA	USED OFTEN	INCLUDES PRIVATE SECTOR	MAJOR EXEMPTIONS
Yes	**Yes**	**Yes**	Yes

NOTES

Enacted in 1971, Washington's SEPA requires a lead agency to prepare a threshold determination for any governmental proposal for action, including permits, funding decisions, and land-use plans.[219] The test is whether the proposal is *likely* to cause a significant adverse environmental impact; if so, an EIS must follow.

Much like NEPA, SEPA applies to both public- and private-sector projects.[220] It covers a wide range of activities, including energy projects (solar, wind, pipelines, transmission lines), infrastructure development, industrial expansions, and water-related projects.

Courts have recently tightened checklist scrutiny where SEPA overlaps with Growth Management Act land-use decisions. Chronic delays arise because the statute lacks a mandatory clock for draft EIS completion, allowing pauses and supplemental studies to stretch into multiyear megaprojects. The average time to prepare is 31 months, with a range from 9 to 76.[221]

Similar to NEPA, SEPA has provisions for public participation, including comment periods on EISs. It also provides for judicial review of decisions regarding the need for and adequacy of environmental review documents.

Many areas are categorically exempted from SEPA review, including the following:[222]

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219 Wash. Rev. Code § 43.21C (2025).

220 "State Environmental Policy Act (SEPA)," Municipal Research and Services Center, last updated September 22, 2025, https://mrsc.org/explore-topics/environment/regulations/state-environmental-policy-act.

221 Washington State Department of Ecology, *Report to the Legislature: Average Time to Complete Final Environmental Impact Statements* (2024), p. 4, https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=AverageTimeEIS_d4109298-3830-4b75-8629-8984fab92af2.pdf.

222 Wash. Admin. Code § 197-11-800 (1984), https://app.leg.wa.gov/WAC/default.aspx?cite=197-11-800.

- Minor New Construction: Flexible Size/ Threshold Limits
- Other Minor New Construction (e.g., transit stops, signage, minor street improvements)
- Repair, Remodeling, and Maintenance Activities
- Water Rights Appropriations up to Specified Flows
- Purchase, Sale, or Lease of Real Property
- Land Use Decisions (e.g., short plats, variances, property line adjustments)
- Open Burning and Related Licenses
- Clean Air Act Variances of One Year or Less
- Water Quality Certifications Under the Clean Water Act
- Activities of the State Legislature
- Judicial and Quasi-Judicial Actions
- Enforcement and Inspection Activities
- Business and Other Regulatory Licenses (e.g., trades, amusements, vehicle-for-hire, food services)
- Agency Administrative, Fiscal, and Personnel Activities
- Financial Assistance Grants Between Agencies
- Formation of Local Improvement or Special-Purpose Districts
- Information Collection, Research, and Planning Studies
- Acceptance of Mandatory Filings
- Procedural Actions (legislation, rules, resolutions)
- Adoption of Noise Ordinances Matching Department of Ecology Standards
- Review and Comment on Another Agency's Actions
- Utility-Related Activities (lines, hook-ups, maintenance, rights-of-way)
- Natural Resources Management (grazing leases, firewood removal, recreational sites, etc.)
- Wireless Service Facilities (collocation, small towers)
- State Transportation Projects (within existing rights-of-way)
- Repair or Replacement of Structurally Deficient Local Bridges

RECOMMENDATIONS

Just as NEPA imposes an enormous regulatory burden on federal agencies and infrastructure development, SEPA imposes an enormous regulatory burden on state agencies and state infrastructure development. Where possible, the Washington legislature should reform, create exclusions from, and raise the trigger threshold for SEPA.

For example, the legislature could

1. Significantly increase the threshold for triggering SEPA on state projects. Similar reforms have already been carried out in North Carolina (in 2015) and Georgia (in 2016) with a great deal of success.
2. Expand exemptions, particularly in the energy and transportation sectors, to streamline private-sector development. Indiana's and South Dakota's various state NEPA exemptions, from the issuance of permits to "actions of an environmental protective regulatory nature," are good examples of efforts to this end.
3. Set a time limit on injunctive relief to reduce the ability of obstructionists to block projects.
4. Repeal SEPA in its entirety, aligning Washington's environmental regulatory requirements with the majority of the country.

Clean Air Act

PALS IN SIP	PALS IN USE	PAL GUIDANCE	PBR/ REGISTRATION PERMITS	GENERAL PERMITS	OTHER
Yes	**No**	Yes	Yes*	Yes*	–

NOTES

Washington implements the federal CAA through a federated model: the Department of Ecology (DOE) holds PSD authority statewide (outside Energy Facility Site Evaluation Council [EFSEC] and tribal lands) and issues Title V permits in many counties, while seven local air authorities administer Minor NSR, source registration, and Title V in their jurisdictions; NOC permits are obtained from either DOE or the appropriate local agency. DOE has exclusive permitting authority over most large industrial projects.[223]

Washington has written a PAL into its SIP.[224] The state's PAL language aligns closely

223 "Industrial Facility Permits and Regulation," Washington State Department of Ecology, accessed October 29, 2025, https://ecology.wa.gov/regulations-permits/permits-certifications/industrial-facilities-permits.

224 "Washington SIP: EPA Approved Regulations (Table 3: Energy Facilities Site Evaluation Council," U.S. Environmental Protection Agency, last updated January 24, 2020, https://19january2021snapshot.epa.gov/sips-wa/washington-sip-epa-approved-regulations-table-3-energy-facilities-site-evaluation-council_.html.

with federal regulations and does not contain additional stringent permitting language. Despite issuing limited guidance around PALs, there has yet to be any uptake.[225]

Each authority, including DOE, has its own PBR and general permit program (with some overlap). For a full overview, see **Appendix III**.

RECOMMENDATIONS

The Washington legislature should also mandate annual reporting from DOE on PAL implementation, including uptake rates and explanations for low adoption. By enacting these measures, legislators can promote more efficient permitting processes while maintaining environmental protections, making Washington more attractive for industrial development.

Washington should modify its PAL renewal language to provide greater certainty for regulated entities. Currently, federal PAL language states that if the emissions level is equal to or greater than 80 percent of the current PAL level, the administrator "may renew" the PAL at the same level or "may adjust" it based on various factors. This ambiguity has caused concern about the potential for "automatic ratcheting" of the PAL level upon renewal among regulated entities. To address this, Washington should follow North Carolina's example and change the language from "may renew" to "shall renew" in its state regulations. This approach would offer regulated entities more certainty in the PAL renewal process.

The Washington legislature should direct DOE to implement a robust minor-source flexible permitting program, designing either general permits or permits-by-rule to cover additional industrial categories (see **Appendix I**).

225 Washington State Department of Ecology, Pub. No. 17-02-014, *Guidance on Washington State's Prevention of Significant Deterioration Permitting Program* (2017), § 4, https://apps.ecology.wa.gov/publications/documents/1702014.pdf.

Clean Water Act

SECTION 404 ASSUMPTION	NPDES AUTHORITY	NUMBER OF NPDES GENERAL PERMITS
No	Yes	15

NOTES

Washington has not assumed authority over the Section 404 program, which remains under the jurisdiction of the U.S. Army Corps of Engineers and EPA.[226] Washington has had NPDES authority since 1973 and has established a set of general permits under its water quality programs. General permits are completed quickly, with the average turn-around time for a complete construction stormwater permit being two days, but individual NPDES permits lag, with 70 percent backlogged—the third-worst in the nation.[227]

Washington has established the following general permits under its non-stormwater program:[228]

- Aquatic Pesticide
- Bridge and Ferry Terminal Washing
- Concentrated Animal Feeding Operation
- EPA Vessel (greywater)
- Fresh Fruit Packing
- Nutrient General
- Upland Finfish
- Vessel Deconstruction
- Water Treatment Plant General
- Winery General

Washington has established the following general permits under its stormwater program:[229]

- Construction
- Industrial
- MS4
- Sand and Gravel
- Boatyard

226 "U.S. Interactive Map of State and Tribal Assumption Under CWA Section 404," U.S. Environmental Protection Agency, last updated January 19, 2021, https://19january2021snapshot.epa.gov/cwa404g/us-interactive-map-state-and-tribal-assumption-under-cwa-section-404_.html.

227 "Construction Stormwater General Permit—NPDES," Oregon Governor's Office for Regulatory Innovation and Assistance, , last updated May 1, 2025, https://www.oria.wa.gov/site/alias__oria/mid__12357/403/handbook-entry?ItemID=16.

228 "Water Quality General Permits," Washington State Department of Ecology, accessed October 29, 2025, https://ecology.wa.gov/water-shorelines/water-quality/water-quality-permits/water-quality-general-permits.

229 "Stormwater General Permits," Washington State Department of Ecology, accessed October 29, 2025, https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Stormwater-general-permits.

RECOMMENDATIONS

For the main Section 404 recommendations, see **p. 17**.

For NPDES, Washington should expand its general permit program to other commonly covered facilities and operations (see **Appendix II**).

State Endangered Species Act

SESA	CONSULTATION REQUIREMENTS	CRITICAL HABITAT DESIGNATION	INCIDENTAL TAKE PERMIT
Yes	No*	No*	**No**

NOTES

Washington has a SESA.[230] Washington's SESA does not include formal consultation requirements in the same sense as the federal ESA,[231] except for requiring state agencies to consult for Hydraulic Projects Approvals and state forest practices. It does not provide for critical habitat designation, though the state Forest Practices Board does separately designate critical habitat for particular species.[232]

Washington prohibits take of state-listed species, with narrow exemptions. It does not offer incidental take permits, only offering permits for scientific and wildlife rehabilitation purposes.[233] Its current state list covers species beyond those that are listed under the federal ESA.

RECOMMENDATIONS

Given that Washington has state-listed species beyond those listed under the federal Endangered Species Act and prohibits take of those species, it should design a broader incidental take permit to allow for take under specific circumstances. This would give developers some flexibility to move forward on critical projects that may result in incidental take so long as they implement approved conservation measures and mitigate any potential impacts on protected species.

Washington should also consider shifting away from its SESA program towards a more

230 Wash. Rev. Code § 77.12.010 et seq. (2025).
231 Wash. Admin. Code § 220-660-050 (2025); Wash. Rev. Code § 77.55 (2025).
232 Wash. Admin. Code § 222-16-080 (2025).
233 Wash. Admin. Code § 220-440-060 (2025).

targeted series of Conservation Agreements and Programmatic Conservation Benefit Agreements so that it focuses on efficiently preventing the federal listing (and thus federal regulation) of at-risk species.

For more, see the general State Endangered Species Act recommendations on **p. 23**.

Appendices

Appendix I

Common Flexible Air Permit Categories (In Use in 3+ States)

- Abrasive Cleaning
- Aggregate Processing
- Air Curtain Incinerators
- Asphalt Plants
- Auto Body Refinishing
- Boilers and Combustion Devices
- Bulk Gasoline Facilities
- Chrome Plating
- Coal Operations
- Concrete Batch Plants
- Cotton Gins
- Crematories
- Crushing and Screening Operations
- Degreasing Operations
- Dry Cleaning
- Dust Control
- Emergency Generators
- Fuel Dispensing
- Grain Operations
- Incinerators
- Internal Combustion Engines
- Landfills
- Mineral Processing
- Oil and Gas Facilities
- Printing Operations
- Remediation Projects
- Surface Coating
- Wood Processing

Appendix II

Common NPDES General Permit Categories

(In Use in 3+ States)

STORMWATER

- Construction General Permit (CGP)
- Industrial Stormwater General Permit (MSGP)
- Municipal Separate Storm Sewer System (MS4) General Permit

NON-STORMWATER

- Aquaculture Facilities and Fish Farms
- Asphalt Plants
- Concentrated Animal Feeding Operations (CAFO)
- Concrete Batch Plants
- Dewatering Activities
- Dredging Operations
- Hydroelectric Facilities
- Hydrostatic Testing Discharges
- Landfills
- Mining and Mineral Processing
- Non-Contact Cooling Water Discharges
- Oil and Gas Facilities
- Pesticides
- Petroleum Remediation
- Sand and Gravel Operations
- Seafood Processing
- Small Sewage Treatment Plants
- Swimming Pools
- Temporary Discharges (various types)
- Vehicle Wash Facilities
- Water Treatment Plants

Appendix III

Washington's Local Air Authorities

Washington implements the federal Clean Air Act through a federated model. The Washington Department of Ecology (DOE) retains authority for Prevention of Significant Deterioration (PSD) permits statewide and issues most Title V operating permits, while seven local air authorities administer minor-source permitting (Notice of Construction, or NOC), source registration, and some Title V permitting in their jurisdictions. DOE has incorporated the Plant-Wide Applicability Limit (PAL) provisions (WAC 173-400-850) into the State Implementation Plan (SIP), but it has issued only limited guidance, and PAL permits are not currently used. Each local authority operates its own registration and/or permit-by-rule (PBR) programs, and several issue general orders of approval (general permits) for common source categories. The brief below summarizes the permitting programs used by each local air authority.

Benton Clean Air Agency (BCAA)

- **Coverage Area:** Benton County (outside EFSEC and tribal land); issues minor-source NOC permits; regulates portable sources; Title V may be issued by DOE or BCAA.
- **PALs/SIP:** DOE's PAL provisions apply statewide; no PAL permits issued.
- **PBR/Registration:** Registration program; NOC required for all new and modified stationary or portable sources. For portable sources, NOC allows one year of operation; each relocation requires a Notice of Intent (NOI). No permit-by-rule.
- **General Permits:** None listed (relies on case-by-case NOC).
- **Notes:** Standard NOC/registration framework; portable sources relocate via NOI.

Olympic Region Clean Air Agency (ORCAA)

- **Coverage Area:** Clallam, Jefferson, Mason, Grays Harbor, Pacific, Thurston Counties; issues NOC and administers Title V for local sources.
- **PALs/SIP:** PAL provisions in SIP apply; none issued.

- **PBR/Registration:** Annual source registration; no general permit-by-rule beyond statewide exemptions.
- **General Permits:** General Rock Crusher Approval Order (via NOC) allowing operation at qualifying sites and relocations without a separate NOI.
- **Notes:** Voluntary general order that pre-approves certain equipment changes; non-qualifying sources use standard NOC.

Southwest Clean Air Agency (SWCAA)

- **Coverage Area:** Clark, Cowlitz, Lewis, Skamania, Wahkiakum Counties; issues minor-source NOC and some Title V.
- **PALs/SIP:** Ecology PAL provisions apply; not used.
- **PBR/Registration:** Registration program; Small Unit Notification (SUN, Section 400-072) functions as a permit-by-rule for selected categories. For coffee roasters, this requires thermal/catalytic oxidizer and sets particulate matter and VOC limits.
- **General Permits:** None (uses SUN in lieu of general orders).
- **Notes:** SUN expedites permitting for small sources.

Puget Sound Clean Air Agency (PSCAA)

- **Coverage Area:** King, Pierce, Snohomish, Kitsap Counties; issues NOC, registration, and Title V within jurisdiction.
- **PALs/SIP:** PAL provisions available via Ecology; not used.
- **PBR/Registration:** Registration program; some category-specific exemptions.
- **General Permits:** General Orders of Approval, including CRO-1 for coffee roasting (requires thermal/catalytic oxidizers; limits particulate and organic emissions).
- **Notes:** Continues to issue individual NOC permits for other sources.

Northwest Clean Air Agency (NWCAA)

- **Coverage Area:** Whatcom, Skagit, Island, and San Juan Counties; issues minor-source NOC, registration, and some Title V.

- **PALs/SIP:** PAL provisions available; seldom used.
- **PBR/Registration:** Registration program; streamlined permitting for common sources.
- **General Permits:** General orders for specific categories (e.g., spray-coating toolkit with application and order; gas station general order; dairy digester general order).
- **Notes:** Coverage obtained via streamlined applications under category toolkits.

Spokane Regional Clean Air Agency (SRCAA)

- **Coverage Area:** Spokane County; issues NOC, registration, and some Title V.
- **PALs/SIP:** Ecology PAL provisions apply; none issued.
- **PBR/Registration:** Registration program plus permit-by-rule options (Reg. 1, Article 5). Certain small sources (e.g., batch coffee roasters ≤5 kg, small surface-coating) exempt from NOC if registered.
- **General Permits:** May apply for coverage under a General Order of Approval (WAC 173-400-560) instead of a full NOC.
- **Notes:** Mix of permit-by-rule exemptions and coverage under Ecology general orders.

Yakima Regional Clean Air Agency (YRCAA)

- **Coverage Area:** Yakima County; issues NOC and operates registration.
- **PALs/SIP:** PAL rules apply; no PAL permits issued.
- **PBR/Registration:** Registration program (Reg. 1, Article 4); no permit-by-rule for industrial sources. Issues General Rule Permits (GRP) for open-burning activities (e.g., GRP 3.03 for structural fire training outside urban growth areas).
- **General Permits:** No local industrial general orders; GRPs cover open-burning scenarios.
- **Notes:** Industrial stationary sources use standard NOC; GRPs are limited to open burning.

About the Author

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