



Final 10 Year Permits Survey Summary (8-27-2024)

ACWA General Summary of State Perspectives

A significant majority of the 41 ACWA member states that responded, generally support updating the CWA to **allow for** “up to 10-year permits.” Two states are strongly opposed to any change of CWA permit term. At least three states would support a 10-year permit term if the flexibility only applied to a subset of the NPDES universe – for example “minors with good compliance histories.” One state highly recommends very clear, explicit statutory language to limit implementation inconsistencies and reduce political pressure.

All states indicated opposition to **requiring** 10-year permits.

Implementations Observations/Considerations/Concerns

- The number of permits has increased, as has the NPDES program’s complexity.
- The application and reissuance processes have gotten more burdensome.
- The public has gotten more knowledgeable and litigious.
- Noncore elements of the CWA programs have become higher priorities.
- State permitting programs allow for longer-term permits, as do other national environmental programs.
- Could improve program flexibility and administrative efficiency.
- Could be used as an incentive or benefit for improving compliance.
- Opening the CWA could lead to a number of statutory updates that fall far outside of our control.
- Opening up state environmental legislation/regulation could snowball into unrequested changes.
- National implementation inconsistencies could lead to program implementation and authorization challenges.
- Some states need statutory and/or regulatory update before flexibility could be implemented.
- Not providing criteria for when a 10-year permit is appropriate increases permit authority flexibility but also leaves the permitting program vulnerable to political pressure.
- There may be value in explicitly stating in statute or regulation when a 10 year permit is never going to be an option available.
- There will be opposition to the longer time undermining the ability to update permits to include new ELGs, WQS, TMDLs, etc. There may be perceived and real-world delays.
- The recent *Loper Bright* decisions warrants consideration as deference to EPA is not guaranteed and courts may decide for states when 10 year permits are allowed. Some states have statutes that limit their own discretion (“no more stringent than”).
- Inconsistent adoption and implementation could create disparity between states creating the perception that some states are more business friendly.
- There would likely be more permit modification requests from the permittees who will not want to wait for the next permit to be issued. Would we need stronger, standardized, reopener and modification clauses?
- A lot of things can happen in a 10-year period. Permit modifications can be just as challenging and just as resource intensive as permit renewal and the administrative burden can deter modification, even when environmentally responsible.
- Workload might shift around. Would you need as many permit writers? Would there be a significant increase in need every 10 years? How do you avoid creating a “pig in a python” effect?
- How would this affect backlog? Initially it might go down but only if the workload is staggered and adequately supported.

- Some state permit fee programs fund a significant portion of the state’s NPDES work. How would you address the revenue change? A decrease might mean fewer inspections and less compliance assistance.
- Use of data that is >5 years old but still within the current permit period is not likely helpful/desired but may be viewed as “new information” for a 10-year permit.
- Direct engagement with permittees may be less frequent generally for 10-year permits.
- There is not much information out there regarding the environmental impacts of longer term NPDES permits.
- Some states have used 10-year state permits and can provide examples where they have seen successes and a couple of state permits where things did not go as smoothly as hoped.
- 10-Year permits for general permits would be really helpful but could also appear riskier to the public and will likely raise significant concerns for environmental groups in some states.
- There will be less opportunity to engage with tribes, the public, and neighboring states. EPA will have fewer opportunities to provide feedback and/or object.
- Would there need to be other targeted CWA changes to address sampling frequency/requirements, etc.
- There may be advantages to simply changing the number 5 to 10 in the statute, and then using regulations to put high level guard rails in place, which allow the state discretion to implement conditions/criteria.
- States utilizing a watershed-based approach for sampling, assessment, and permitting would be more greatly impacted as would impact all programs. This would have enormous impacts on staffing resources.
- Permit fee programs would be detrimentally impacted as less frequent applications would occur. State legislature might view this as an opportunity to further cut funding since less frequent permit renewals.
- There could conceivably be 3 WQS Triennial Reviews occur during a 10-year period cycle. Similarly, streams are more likely to be upgraded or downgraded during a longer permit cycle and longer permits could allow be allowing more pollution than desired. This would require more frequent permit modifications than originally envisioned for the programs.
- Permits administratively continued for 5 years+ tend to be the most dated permits in the program and get a lot of attention from outside stakeholders.
- There is already a fairly fast turnover rate for permit writers in our state (5 years or less). 10-year permits would almost guarantee a loss of institutional knowledge and a new permit writer every time renewal comes up.
- In our state, application review is also a tool for providing facility oversight and less frequent applications would yield less oversight.
- In some states there is a linkage between municipal permits and national pretreatment program limits, local limits, and pass through limits that are well synchronized with timing of NPDES permit issuance.
- How do 10-year permits impact inspections, program reviews, audits, and other forms of oversight?
- For states with highly controlled flows, upstream decisions on dams and reservoirs may significantly impact the receiving waters flow regime and 10 years will be too long to wait to update the permit. Changes in flow are also impacted landscape changes, development, and by climate change.
- Mining permits in our state are modified 2-3 times in a 5-year permit term. Longer terms will result in more modification per permit term.
- There needs to be consideration for how longer permit terms increase protection of waters as mandated by the CWA.
- Longer permit terms are a band aid solution that could have real, detrimental downstream water quality impacts and could slow progress in maintaining and/or improving water quality in our state.
- Federal funding of state programs has failed to keep pace with inflation, much less growth and enhanced complexity of state programs.
- Improved federal funding resolves all concerns articulated for why 10-year permits are needed.