



American Road  
& Transportation  
Builders Association

250 E Street, S.W.  
Suite 900  
Washington D.C. 20024

P 202.289.4434  
W [artba.org](http://artba.org)

December 12, 2023

VIA ELECTRONIC SUBMISSION

The Honorable Michael S. Regan  
Administrator  
Office of the Administrator  
Mail Code 28221T  
Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**RE: Implementing the Supreme Court's Maui Decision in the Clean Water Act Section 402 National Pollutant Discharge Elimination System Permit Program (Docket No. EPA-HQ-OW-2023-0551; FRL-8242.2-02-OW).**

Dear Administrator Reagan:

On behalf of our 8,000 members of the American Road & Transportation Builders Association (ARTBA), we write to respectfully request a **45-day extension** of the comment deadline on the Environmental Protection Agency (EPA)'s draft guidance concerning the National Pollutant Discharge System (NPDES) permit program. This guidance aims to apply principles outlined by the Supreme Court in its *Maui* decision and would replace a now rescinded 2021 guidance on the same subject.

ARTBA members work to plan, design, and build critical repairs and improvements that contribute to the safety and efficiency of our roadway systems. Our members are committed to responsible transportation infrastructure development that balances these priorities with good environmental stewardship. Uncertainty in permitting leads to costly delays and impedes the ability of our members to deliver on the historic levels of funding provided for in the Infrastructure Investment and Jobs Act. It is therefore imperative that this guidance be reasonable and responsive to current Clean Water Act principles.

In September 2021, EPA rescinded its previous NPDES *Maui* guidance despite support from ARTBA and industry allies. ARTBA in comments stated that the 2021 guidance was responsive to

the Supreme Court, and that it aligned with other Clean Water Act regulations.<sup>1</sup> The regulatory landscape has drastically changed since that time. EPA has issued two new final regulations pertaining to the Waters of the United States; one in response to the Supreme Court's *Sackett* decision. It is unclear at this stage how those changes may impact the NPDES program. Additionally, this guidance itself seeks to introduce several new policies that were not outlined in previous agency regulatory actions.

Given the complexity and nuances of current Clean Water Act jurisprudence, ARTBA requires additional time to consult with our members on the guidance. Doing so will allow the association to analyze and provide thorough and detailed comments from the transportation construction industry. These comments will help to better inform EPA decision-making and ensure that the agency's final guidance is responsive. We therefore respectfully request that EPA extend the comment deadline for an additional **45-days**. Should you have any questions or require further information please do not hesitate to contact me at [psharma@artba.org](mailto:psharma@artba.org).

Sincerely,

A handwritten signature in black ink that reads "Prianka Sharma". The script is cursive and fluid.

Prianka P. Sharma  
Vice President and Counsel for Regulatory Affairs

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<sup>1</sup> See Comments from the American Road & Transportation Builders Association, filed on Jan.11, 2021, available at <https://www.artba.org/wp-content/uploads/2021/01/ARTBA-Comments-Re-Docket-No-EPA-HQ-OW-2020-0673.pdf>.