



At a Glance

Why We Did This Audit

The Office of Inspector General for the U.S. Environmental Protection Agency sought to determine whether the EPA's reviews of state-proposed National Pollutant Discharge Elimination System, or NPDES, permits verify that the permits adhere to Clean Water Act, or CWA, requirements. This audit was initiated based on three complaints submitted to the OIG Hotline about the Agency's oversight of state-issued NPDES permits in EPA Regions 3 and 5.

The EPA has federal authority over the implementation and oversight of CWA and NPDES regulations. As of August 2020, 46 states and one territory were authorized by the EPA to implement their own state NPDES programs.

This audit addresses the following:

- *Ensuring clean and safe water.*

This audit addresses these top EPA [management challenges](#):

- *Overseeing states implementing EPA programs.*
- *Integrating and leading environmental justice.*

Address inquiries to our public affairs office at (202) 566-2391 or OIG_WEBCOMMENTS@epa.gov.

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Improved Review Processes Could Advance EPA Regions 3 and 5 Oversight of State-Issued National Pollutant Discharge Elimination System Permits

What We Found

In Regions 3 and 5, the EPA did not follow all relevant CWA and NPDES regulations and guidelines while reviewing permits.

Region 3 did not adequately perform its oversight responsibilities to ensure that NPDES permits issued by the State of West Virginia meet CWA and NPDES regulatory requirements. Specifically, West Virginia reissued 286 NPDES mining permits to reflect revisions made to its water quality regulations in 2015, but it is unclear whether Region 3 took steps to verify that the CWA's anti-backsliding provisions were met. In addition, Region 3 experienced permit review delays, and states within the region issued permits without addressing the EPA's comments.

Region 5 did not address all CWA and NPDES regulations during its review of a draft NPDES permit for a mine and processing facilities to be built by PolyMet Mining Inc. along the St. Louis River in northeastern Minnesota. Despite its concerns about the NPDES permit, Region 5 did not provide written comments to Minnesota, contrary to the region's standard operating procedures and per common EPA practice. In addition, Region 5 repeatedly declined to make a formal determination under CWA § 401(a)(2) regarding whether discharges from the PolyMet NorthMet project may impact the quality of waters within the jurisdiction of the Fond du Lac Band of Lake Superior Chippewa, whose tribal lands are 125 miles downstream from the site of the PolyMet NorthMet project. The tribe was therefore unable to avail itself of the NPDES permit objection process set forth in CWA § 401(a)(2).

Improved EPA oversight could ensure that state NPDES programs are protecting human health and the environment.

Recommendations and Planned Agency Corrective Actions

We make a total of five recommendations to the regional administrators for Regions 3 and 5, including that Region 3 review West Virginia's reissued NPDES mining permits to ensure that no backsliding has occurred and that they contain appropriate limits for pollutant discharges; that Region 3 develop a formal internal operating procedure for its NPDES review process; that Region 5 provide written input regarding any resubmitted NPDES permit for the PolyMet NorthMet project; and that Region 5 commit to making formal determinations regarding downstream water quality impacts, pursuant to the CWA. Region 5 agreed with our two recommendations specific to that region; those recommendations are resolved with corrective action pending. Region 3 did not agree with our three recommendations specific to that region; those recommendations therefore remain unresolved.