

# Summary Report of Public Listening Sessions on the U.S. EPA: “Implementation Challenges Associated with the Clean Water Act Section 401”

## Section I. Overview

On July 1, 2025, the U.S. Environmental Protection Agency announced a *Federal Register* notice initiating a series of public listening sessions and a 30-day recommendations docket inviting States, Tribes, applicants, and the public to provide their input on regulatory uncertainty or implementation challenges associated with the Clean Water Act section 401 certification process as defined in the 2023 Water Quality Certification Improvement Rule (2023 Rule).<sup>1</sup> The EPA requested States, Tribes, applicants, and the public provide their feedback on six topics:

1. The 2023 Rule’s interpretation of the scope of certification and certification conditions, including whether clarification is needed on the scope of applicable waters;
2. The 2023 Rule’s definition of “water quality requirements” including, whether the EPA should further clarify or revise its interpretation of the statutory phrase “other appropriate requirements of State law”;
3. How the EPA should consider whether a neighboring jurisdiction’s water quality may be affected by discharge for purposes of 401(a)(2) and whether there are parameters to consider in making this determination;
4. Whether there are specific types of activities, geographic regions, types of waterbodies, or other types of circumstances, etc., which may support the EPA establishing a categorical determination that the quality of no neighboring jurisdiction’s waters may be affected by discharge in such circumstances;
5. Experiences with the application of the 2023 Rule, including certification procedures, the 401(a)(2) process, and the application of treatment in a similar manner as a state (TAS) solely for section 401; and
6. Experiences with the application of the 2023 Rule’s scope of certification, including examples of certification decisions issued under the 2023 Rule that were believed to exceed the 2023 Rule’s scope of certification.

On July 16 and 30, 2025, the EPA hosted two webinar-based listening sessions to hear input on these six topics identified in the *Federal Register* notice. Public listening sessions were open to States, Tribes, applicants, and the public. Additionally, the EPA accepted written feedback for 30 days (July 7 through August 6, 2025). Separate from this process, the EPA initiated the Federalism and Tribal consultation process on July 7, 2025, to obtain written feedback from States, local governments, and their representatives, as well as Tribes and their representatives. The Tribal Consultation kick-off meeting was hosted on July 23, 2025. Both Federalism and Tribal consultation closed on September 7, 2025.

This document summarizes the verbal input received during the two public listening sessions. This summary is available in Docket ID No. EPA-HQ-OW-2025-2929; individual letters and other supporting documents are available in Docket ID No. EPA-HQ-OW-2025-0272.

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<sup>1</sup> 88 FR 66558 (September 27, 2023). The 2023 Water Quality Certification Improvement Rule, referred to as the 2023 Rule, can be accessed at <https://www.federalregister.gov/d/2023-20219>.

## Section II. Attendance Summary

On July 16 and 30, 2025, the EPA hosted two webinar-based public listening sessions to solicit input on the six topics identified in the *Federal Register* notice (see [Section 1](#)). A total of 439 and 19 individuals<sup>2</sup> attended and spoke at the webinar-based public listening sessions, respectively. [Table 1](#) summarizes the attendees and speakers by their affiliation group. Speakers' verbal input is summarized in [Section III](#).

**Table 1.** Total number of individuals attending and speaking at the two webinar-based public listening sessions hosted on July 16 and 30, 2025. Affiliation groups were derived from participants' registration forms.

Affiliation Group	Attendance	Speakers
State Government or Association	186	3
Tribe or Tribal Association	31	0
Local Government or Association	28	1
Regulated Public (total)	52	4
a. Energy Sector and/or Resource Extraction	32	2
b. General Development, Industry, and/or Real Estate	11	2
c. Transportation	9	0
Environmental and/or Conservation Organization	33	9
Federal Agencies (excludes all EPA staff)	40	0
Press	3	0
Other (i.e., private citizen and/or no identified affiliation group)	66	2
<b>Total Participants or Speakers</b>	<b>439</b>	<b>19</b>

## Section III. Verbal Input Summary

A total of 19 speakers provided input on the current implementing regulations. Speakers generally fell into one of three categories: (1) supporting a new rulemaking; (2) opposing a new rulemaking; or (3) other remarks. Within each category, some speakers provided remarks on topics identified in the *Federal Register* notice (see [Section 1](#)). Broadly, these topics covered the 2023 Rule's interpretation of the scope of certification and definition of water quality requirements, the "may affect" process and categorical determinations, and experience with the application of the 2023 Rule. It is important to note that not all speakers provided input on each of the six topics identified in the *Federal Register* notice (see [Section 1](#)).

### Overview

Perspectives on the current implementing framework of section 401 diverged among the 19 speakers. All speakers stressed the importance of clarity, consistency, and effective protection of water resources within the regulatory framework.

Four speakers expressed concerns about States potentially misusing section 401 by imposing conditions unrelated to impacts from direct discharges. These speakers advocated for a framework similar to the 2020 Rule<sup>3</sup>, specifically emphasizing the importance of focusing on direct water quality impacts related to point source discharges into waters of the United States. Speakers also urged the EPA to establish a

<sup>2</sup> See Appendix 1 for the list of speakers.

<sup>3</sup> 85 FR 42210 (July 13, 2020). The 2020 Clean Water Act Section 401 Certification Rule, referred to as the 2020 Rule, can be accessed at <https://www.federalregister.gov/d/2020-12081>.

balanced approach that respects congressional intent and statutory limits, as well as supports energy projects.

Fourteen speakers supported the existing framework under the 2023 Rule, arguing that it provides a necessary foundation for protecting water quality, supporting economic activities, and ensuring community health and safety. These speakers opposed a new rulemaking, especially revisions that narrow the interpretation scope of certification and restrict State and Tribal authority. Furthermore, these speakers highlighted the importance of continued cooperation among State, Tribal, and federal agencies to safeguard the environment and public welfare.

## Support a New Rulemaking

Four speakers from the regulated public expressed support for a new rulemaking action to clarify the certification requirements, as well as make the certification process more efficient. These speakers advocated for a regulatory framework that supports energy projects while upholding clarity and consistency in the section 401 implementation process. Two of these speakers urged the EPA to move quickly with a new rulemaking, with one speaker stating the EPA should issue an emergency rule to help industry groups meet energy demands in light of the recent energy executive order. These speakers also expressed their appreciation for the EPA's May 21 memo<sup>4</sup>.

One speaker representing a State agency noted they did not think a new rule was necessary; however, they provided two recommendations for the EPA to consider if a new rulemaking were initiated. These recommendations are incorporated into their respective areas below.

*Scope of Certification.* Speakers from the regulated public stated the scope of certification should be limited to water quality impacts related to point source discharges into a water of the United States. These speakers further asserted the current implementing regulations use of “activity” goes beyond congressional intent and the authority of the Clean Water Act. These speakers stated the 2020 Rule properly limited the scope of certification and requested the EPA issue a new rule to ensure the scope of certification conforms to statutory text. One speaker representing a State agency noted that if a new rule was promulgated they would appreciate clarity on the location and extent of federal jurisdictional waters, especially waters of the United States, on certain federal projects. This speaker also supported including a requirement of jurisdictional determinations by responsible party to help identify impacts.

*Certification Conditions.* Speakers from the regulated public raised concerns about some States overreaching by imposing conditions unrelated to water quality (e.g., amphitheaters, corral herds of feral hogs). While these speakers appreciated the EPA's recent policy memo<sup>5</sup> clarifying the intent of certification, some speakers urged the EPA to go a step further and explicitly prohibit conditions unrelated to discharge. Additionally, these speakers stated that a new rule should explicitly specify that the Federal agency is responsible for enforcing certification conditions.

*Neighboring Jurisdictions.* One speaker from the regulated public noted the “may affect” process should be discretionary and should focus on projects with real impacts to neighboring jurisdictions. One speaker representing a State agency noted that current requirements under Section 121.13 (i.e., Determination of Effects on a Neighboring State) delay approval by 3-4 months and give certifying authorities less time to

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<sup>4</sup> The EPA issued a [memorandum](#) on May 21, 2024. The EPA's memo clarified the specific and limited role that States and Tribes play in the federal licensing and permitting process under section 401 and reiterate the EPA's longstanding position that States and Tribes must utilize section 401 only for its statutory purpose—to protect water quality.

<sup>5</sup> See footnote 3.

issue certifications. This speaker recommended the EPA revise section 401 implementing regulations to allow neighboring jurisdictions enter into programmatic agreements with States to identify areas that would not have impacts (e.g., localized, small projects, etc.). This speaker noted programmatic agreements would streamline review of “may affects” on neighboring jurisdiction and would eliminate many “may affect” determinations.

*Other input on the certification process.* Another speaker affiliated with the regulated public stated a new rule should prohibit certifying authorities from modifying and rescinding certifications after the reasonable period of time (RPT) ended. This speaker also stated a new rule should limit certifying authorities’ ability to deny for lack of information and require certifying authorities to provide more information in writing.

## Oppose a New Rulemaking

Fourteen speakers representing State and local government agencies, environmental and conservation groups, and individual members of the public supported retaining the 2023 Rule and emphasized the importance of maintaining strong water quality safeguards under Clean Water Act section 401. Several speakers noted the historical success of the Clean Water Act in improving water quality and noted that section 401 was a critical tool to protect water quality and aquatic resources from pollution. These speakers also stated that the 2023 Rule restored the balance of authority among federal, State, and Tribal entities, allowing State and Tribal entities protect their water resources effectively. Many of these speakers expressed concern that a new rule would weaken State and Tribal authority, arguing that such changes could undermine public health, environmental protection, and local economies. Additionally, many of these speakers expressed concerns that a new rule would worsen any current uncertainty that exists due to successive administrations changing rules, complicate existing processes, and stymie progress. Furthermore, speakers advocated for the continued cooperation between State, Tribal, and federal agencies to safeguard the environment and public welfare.

*Scope of Certification.* Overall, speakers representing State agencies, environmental groups, and the public called for maintaining a broad and inclusive approach to the scope of water quality certification to ensure effective protection and management of water quality across diverse regions and communities. Speakers noted that the scope of certification should encompass both direct discharges and broader activities that may affect water quality, including non-point source pollution, and expressed concern that narrowing the scope of certification could undermine efforts to address complex environmental challenges. These speakers noted that existing case law, such as *PUD No. 1* and *SD Warren*, support the 2023 Rule’s activity scope of certification and asserted a departure from this interpretation would be legally risky. Furthermore, at least one speaker representing an environmental group noted that it would be challenging to revise the 2023 Rule’s interpretation of scope of certification due to the *Loper Bright* decision. Several speakers cautioned against any regulatory changes that would restrict the scope of certification or create uncertainty, arguing that a comprehensive scope is essential for safeguarding public health, environmental integrity, and economic interests related to water resources.

*Certification Conditions.* Several speakers emphasized the importance of allowing States and Tribes to impose conditions on federal projects under section 401 of the Clean Water Act. For example, one speaker affiliated with an environmental group noted this authority helped States and Tribes ensure compliance with State and Tribal water quality standards. Generally, speakers supported the current framework and opposed regulatory changes that would restrict the ability to impose certification conditions.

*Neighboring Jurisdictions.* One speaker affiliated with an environmental group was concerned the EPA may revise existing terms (e.g., neighboring jurisdictions). This speaker urged the EPA to maintain current definitions and not to use categorical determinations. Furthermore, the speaker stated taking away ability to raise concerns could remove neighboring jurisdictions' ability to raise concerns about downstream impacts to water quality.

*Experiences with the 2023 Rule.* Several speakers noted that the 2023 Rule established a clear, implementable certification processes. Speakers affiliated with an environmental group and State agency also noted the 2023 Rule provided sensible limits and allowed the certification process to move more expeditiously. One speaker representing a State agency supported pre-filing meetings from the 2023 Rule, and noted early coordination is important to the certification process. One speaker affiliated with a non-governmental organization noted that any delays in the certification process were a result of applicants failing to provide sufficient information to processes their request.

One speaker representing a State agency noted there was bipartisan support for the current framework and that industry has not been able to demonstrate harm under the 2023 Rule. Another speaker affiliated with an environmental group further noted the EPA was inviting criticism without pointing to a problem and had not worked with certifying authorities to gather information about real world experience.

*Other input on the certification process.* Many speakers, including several environmental groups, a State agency, and a private citizen, noted that Congress explicitly gave States and Tribes the authority to have meaningful engagement in the certification process. Furthermore, these speakers expressed the 2023 Rule restored State and Tribal authority to evaluate and condition based on federal projects their impacts on water quality. These speakers collectively advocated for preserving the existing framework. Additionally, one speaker from a State agency highlighted the importance of local expertise and knowledge in assessing water quality impacts, asserting that States and Tribes are best positioned to understand and protect their unique water resources. Speakers cautioned against any regulatory changes that would limit these powers. One private citizen speaker raised the importance of maintaining Federal Tribal trust obligations and communication with Tribes.

## Other Remarks

One speaker recognized the need for a diverse energy portfolio, including natural gas, but urged the EPA to consider the benefits of heating oil, underscoring its importance to small family businesses and local economies.

# Appendix 1

**Supplemental Table 1:** Name and affiliations of the nineteen speakers providing remarks during one of the two public listening sessions.

<b>Speaker Name</b>	<b>Speaker Affiliation</b>
<i>Meeting Date, July 16, 2025 (6 speakers)</i>	
Michael Purdie	National Hydropower Association
Ryan Siggelkow	Private Citizen
Nicole Harrison	American Petroleum Institute
Kristen Haitian	Freshwater Future
Daniel Estrin	Waterkeeper Alliance
Clarissa Lynn	New York City, Department of Education
<i>Meeting Date: July 30, 2025 (13 speakers)</i>	
Nancy Stoner	Environmental Law & Policy Center
Julie MacNamara	Clean Water Action
Chris Shutes	California Sportfishing Protection Alliance
Kelly Wood	State of Washington, Office of the Attorney General
Jon Devine	Natural Resources Defense Council
Jim Collura	Not available
Jennifer Zygmunt	Wyoming Department of Environmental Quality, Water Quality Division
Ian Surdell	Federal Water Quality Coalition
Sally Petrella	Friends of the Rogue
Jim Murphy	National Wildlife Federation
Jennifer Congdon	New York State, Department of Environmental Conservation
Rosa Hance	Private Citizen
Kay Smith	Private Citizen