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Proposed Rule: Clean Water Act Section 401 Water Quality Certification

Clean Water Act (CWA) section 401 provides states, territories, and authorized tribes with a tool to help protect the water quality of federally regulated waters within their borders in collaboration with federal agencies. On January 13, 2026, the U.S. Environmental Protection Agency (EPA) announced a proposed rule that would return section 401 to its proper statutory purpose, protecting water quality while eliminating regulatory overreach that has imposed unnecessary burden on critical infrastructure projects. This proposed rule would ensure the water quality certification process operates within the clear boundaries established by Congress while maximizing permitting efficiency and eliminating unwarranted delays that have stifled economic growth. The changes directly support the essential role that state co-regulators and authorized tribes play in protecting water resources while advancing the agency's commitment to cooperative federalism.

This action would correct a fundamentally flawed 2023 EPA rule that allows delay tactics and protracted certification timelines inconsistent with the Clean Water Act. The 2023 rule's expansion of Section 401's scope enabled certain states to abuse this provision, creating substantial regulatory burdens that unnecessarily delayed or blocked vital energy, infrastructure, and development projects critical to America's economic and national security. This proposal would eliminate these regulatory hurdles, restoring the law to its intended function while removing impediments to responsible development.

The agency will accept public comments on the proposed rule for 30 days upon publication in the *Federal Register*.

Ensuring an effective and efficient section 401 certification process

EPA's proposed rule would revise several procedural and substantive aspects of the current regulations to increase transparency, efficiency, and predictability for certifying authorities and the regulated community, better align the regulations with the text and legislative history of the Clean Water Act and ensure states and authorized tribes understand and adhere to their section 401 role.

The proposed rule would:

- **Clarify the scope of a state or tribe's review** as limited to determining whether point source discharges into waters of the U.S. will comply with applicable and appropriate water quality requirements, consistent with statutory text, legislative history, and Supreme Court case law.
- **Establish clearer procedures** by defining one list of contents needed for all certification requests in order to begin review for a project. The proposed revisions provide greater certainty for applicants, federal agencies, and certifying authorities about when the review period begins.
- **Improve certainty in the process** by prohibiting certifying authorities from asking an applicant to withdraw and resubmit a request for certification. The proposed revisions ensure the certification process does not extend beyond the one-year statutory maximum.
- **Increase transparency** by defining certain contents that must be included in all certification decisions. The proposed provisions allow applicants, federal agencies, and the public to understand



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the rationale behind certification decisions, including conditions on certifications.

- **Enhance engagement** by providing applicants an explicit role in the certification modification process. The proposed revisions ensure any changes to a certification are also supported by the applicant that will implement the project.
- **Make the process more predictable** by defining a time period for federal agencies to hold a public hearing and resolve a neighboring jurisdiction's objections to a federal license or permit. The proposed revisions ensure the section 401(a)(2) process accomplishes its intended purpose in a timely and transparent manner.
- **Reduce regulatory duplication** by leveraging existing regulations. The proposed rule encourages tribes to obtain TAS authority, or treatment in a similar manner as a state, for section 401 by utilizing the existing TAS pathway for section 303 water quality standards.

Learn more

For more information visit EPA's Clean Water Act section 401 [website](#). View the docket for the proposed rule (Docket ID No. EPA-HQ-OW-2025-2929) at regulations.gov, or email questions to cwa401@epa.gov.