



Environmental Council of the States

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February 17, 2026

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Via regulations.gov: EPA-HQ-OW-2025-2929

Re: U.S. EPA's Proposed Rule, *Updating the Water Quality Certification Regulations*

Dear Administrator Zeldin:

Members of the Environmental Council of the States (ECOS), the national nonprofit, nonpartisan association of state environmental agency leaders, appreciate the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) proposed rule, *Updating the Water Quality Certification Regulations*.

Congress built the Clean Water Act (CWA) on the foundation of cooperative federalism—the principle that states are best positioned to implement federal environmental laws because of their expertise on local conditions and concerns. The CWA therefore clearly recognizes that states have primary legal authority to protect, restore, develop, and use their water resources. Section 401 of the CWA, which was added specifically as a safeguard for states as part of cooperative federalism, provides states with an important tool to review activities associated with a wide range of federal permitting decisions and to protect water quality from the impacts of those decisions. States have effectively used and coordinated with federal agencies under this statutory authority for over 50 years. It is important that 401 regulations respect the variety of approaches and requirements implemented throughout states and provide the clarity and flexibility needed for states to achieve the goals and requirements of the CWA.

ECOS appreciates the agency's efforts last year to collect feedback during the federalism consultation process on the implementation of the current regulations. EPA's summary of state input from this process indicated that many states, with some exceptions, find that the current rule preserves long-standing state authority and flexibility under Section 401. During the development of the *2023 Clean Water Act Section 401 Water Quality Certification Improvement Rule*, ECOS encouraged the previous administration to maintain states' rights to exercise Section 401 authority, including clarifications to ensure that nothing precludes states from enforcing certification conditions when so authorized under state law, while also retaining elements of the *2020 Water Quality Certification Rule* that increased clarity and efficiency in the certification process. States urge the agency to continue to preserve this important state authority as established and defined by the CWA, while pursuing clarity in these revisions. ECOS provides the following comments for consideration during development of the final rule.

Scope of Certification

Historically and under existing practice, states assess whether a federally permitted or licensed activity will comply with state water quality requirements in the presence of a point source discharge. Some states have also historically and under existing practice assessed where water quality may be impacted in ways that are not directly attributable to the point source discharge. The proposed rule would restrict the scope of Section 401 certification to point source discharges into waters of the United States and their compliance with water quality requirements. Many states are concerned about this revision as state water quality can often be threatened by impacts closely associated with the project receiving a federal permit or license. Such a new restriction will also necessitate changes to many state certification programs and put increased pressure on the importance of state nonpoint source controls.

Request for Certification

States have concerns with EPA's proposed restriction of the ability of state certifying authorities to define additional contents in a request for certification, consistent with the agency's rulemaking authority. This section requires applicants to include information in the certification request, as determined to be necessary by the certifying authority, to address water quality impacts and ensure compliance with state water quality requirements. Certifying authorities must be allowed to define additional requirements related to water quality at their discretion associated with water quality impacts. This attempt to limit application requirements, while intended by EPA to create certainty and efficiency, could instead create additional information requests, delays and inefficient timelines, and could unintentionally lead to increased certification denial decisions due to insufficient information. Those outcomes create uncertainty for applicants. The proposed rule's removal of state authority to determine compliance with state water quality requirements and completeness of the application unnecessarily diminishes the role of states as the primary regulators responsible for protecting waters within their borders.

Request for the Applicant to Withdraw a Request

States recognize and support the very clear provision in the CWA imposing a one-year review period, but some have concerns with the addition of a provision to deny a certifying authority's ability to request that an applicant withdraw and resubmit a certification request. In some cases, when a request contains incomplete information, it may be in the applicant's best interest to resubmit a request rather than necessitate a denial for an inadequate and substantially incomplete application. Certifying authorities should retain the discretion to use this option on a very limited basis, where appropriate, and after consultation with the applicant.

Modification to a Grant of Certification

Under the current rule, the certifying authority may modify grants of certification, with or without conditions, with agreement from the federal agency. While the certifying authority and federal agency may consult the applicant during this process, the applicant does not have a formal role in the modification process. Under the proposed rule, the modification of grants would also necessitate agreement from the applicant, with the certifying authority required to obtain the applicant's agreement for the exact language of the modification. This creation of a regulatory role in the certification process for the applicant is not supported by statute, and limits the ability of certifying authorities to modify conditions when changes or new data indicate a risk

to water quality. Requiring applicant consent to modification language could also introduce delays and legal uncertainty. States support retaining the language in the current rule to avoid eroding states' authority to protect water quality as intended by Congress under the CWA.

Potential Limitation of Certification Conditions to Numeric Water Quality Criteria

EPA's proposal states that the proposed definition of "water quality requirements" would not limit states to evaluating only numeric water quality criteria in a certification review, and requests comment on whether it should limit "water quality requirements" to only numeric water quality criteria. ECOS encourages EPA to avoid limiting certification conditions to numeric water quality criteria. Water quality standards include designated uses, numeric and narrative criteria, and antidegradation requirements. Narrative criteria are integral to water quality protection and are developed to supplement numeric criteria or when numeric criteria cannot be established. Many critical protections lack numeric standards, and in the absence of specific numeric targets, narrative criteria are essential to certifying authorities' ability to manage pollutants. For example, plastics and many highly toxic chemicals do not have current recommended numeric criteria. Removing the ability to apply narrative criteria for plastics and other chemicals would disallow states from limiting many pollutants. The importance of narrative criteria is illustrated in how states are working to address nutrient and toxics pollution. Both numeric and narrative standards inform state certification conditions that protect water quality in a variety of projects. A final rule should make clear that certification conditions may be based on applicable numeric and narrative criteria and with any other appropriate requirement of state law.

Request for Final Rule Effective Date

ECOS requests that EPA set an effective date for any adopted final rule that provides states with sufficient time to evaluate any changed requirements and implement any needed changes to their programs and guidance. Adequate time will support effective implementation of any new procedures and support a timely and clear water quality certification process.

States share in EPA's goal to promulgate a final rule that provides a clear and consistent certification process while ensuring protection of vital water resources, and our members appreciate the agency's consideration of these comments in support of that goal. In addition to consideration of these comments, ECOS encourages EPA to review the comments of our member agencies and partner state associations. Please reach out to Ben Grumbles, at 202-266-4929 or bgrumbles@ecos.org, with any questions.

Sincerely,



Ben Grumbles
Executive Director