

February 17, 2026

Ms. Jessica Kramer  
Assistant Administrator for Water  
Office of Water  
Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

RE: Updating the Water Quality Certification Regulations; EPA-HQ-OW-2025-2929;  
FRL-6976.2-01-OW

Dear Assistant Administrator Kramer:

On behalf of the undersigned organizations, we write to express our support for the Environmental Protection Agency's (EPA) proposed revisions to the Clean Water Act (CWA) Section 401 water quality state certification requirements. These changes represent a critical step toward modernizing the efficiency, predictability, and transparency of the Section 401 certification process.

Making the Section 401 permitting process more efficient is foundational to driving the investments needed to build smart, modern, resilient infrastructure across our nation. The proposed rule addresses longstanding implementation challenges, offers key solutions to contributing to affordability issues facing consumers, and reflects valuable stakeholder feedback from the regulated community. The following highlights key issues and improvements in the proposal:

### **Shift in Scope — Back to “Discharge-Only”**

The proposed rule appropriately limits certification review to point source discharges into waters of the United States (WOTUS), eliminating the overly broad “activity as a whole” approach from the 2023 Rule. This change aligns with the statutory text of the CWA, the 1972 amendments, the principles of cooperative federalism, and recent court decisions. By focusing on discharges, the proposed rule would ensure that certifiers cannot regulate or condition aspects of a project unrelated to water quality discharges, providing much-needed clarity and reducing regulatory inconsistency across states.<sup>1</sup>

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<sup>1</sup> [Bottleneck to Breakthrough: A Permitting Blueprint to Build – National Petroleum Council](https://permitting.npc.org)  
(<https://permitting.npc.org>)

## **Contribute to Affordability Solutions**

Delaying or stopping projects using Section 401 based on rationales other than the relevant water quality issues has real impact on affordability. For example, due to pipeline constraints driven in part by state decisions on CWA state certifications, Northeast U.S. residents pay the highest natural gas prices in the country. During peak winter periods, wholesale natural gas in Boston and New York prices are 166% and 144% more expensive, respectively, than the national benchmark price.<sup>2</sup>

Expanding pipeline capacity out of the low-cost Marcellus region in Pennsylvania could save American consumers an average of \$5.5 billion annually, totaling to nationwide energy cost reductions of \$76 billion through 2040.<sup>3</sup>

Other statutes can and should be utilized to address any environmental concerns that are not tied to the water quality impacts that are properly within the scope of Section 401.

## **Exclusive, Standardized List of Required Elements for Certification Requests**

The proposed establishment of a single, national list of required elements for certification requests is also a welcome improvement. By eliminating the possibility of additional requirements (whether imposed by States or by Tribes), the proposed rule would remove uncertainty about when the statutory one-year review period begins. This process change would help reduce delays caused by inconsistent or subjective completeness determinations.

## **Statutory Review Timeline — Tightened and Clarified**

The proposed rule would reinforce the statutory one-year review timeline by prohibiting automatic extensions and limiting joint extensions to no more than one year. Importantly, it would prevent certifying authorities from pressuring applicants to withdraw and resubmit requests to reset the clock. These changes would enhance accountability and ensure timely decision-making, reducing burdens on companies, especially small businesses.

## **Contents of Certification Decisions — New Mandatory Elements**

Requiring all certification decisions to be in writing and to include specific

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<sup>2</sup> <https://www.uschamber.com/energy/new-s-p-global-study-demonstrates-economic-environmental-benefits-of-u-s-lng>

<sup>3</sup> <https://www.uschamber.com/energy/new-s-p-global-study-demonstrates-economic-environmental-benefits-of-u-s-lng>

citations to water quality requirements would provide applicants with clear, actionable information, and keep decisions on track. For denials, the requirement to identify specific violations or missing information would help applicants address deficiencies and avoid unnecessary delays.

### **Changes to “Water Quality Requirements” Definition**

The proposed revised definition appropriately limits water quality requirements to those directly applicable to point source discharges under the CWA. By limiting the review to discharges into WOTUS, the rule, if finalized, would prevent the misuse of Section 401 to enforce land use or other non-discharge-related regulations.

The proposed rule would appropriately update the requirement for written agreement among the certifying authority, federal agency, and applicants for any certification modifications. We appreciate the Agency’s decision to align with our suggestion. This approach would help ensure that modifications cannot be used to circumvent statutory timelines or to impose unilateral changes.

### **Provisions to §401(a)(2) “Neighboring Jurisdiction” Process**

The proposed updates to the “neighboring jurisdiction” process, including the removal of the term “neighboring jurisdiction” and the requirement for written objections with specific citations, would enhance clarity and consistency. The proposed 90-day deadline for public hearings and determinations would allow for meaningful public engagement while ensuring timely resolution of cross-border concerns. We encourage that the Agency consider minimum standards for neighboring States and Tribes to be proximate to the discharge in downstream communities to justify any “may affect” review.

### **Seeking Efficiencies During the 401 Certification Process for Federal General Permits**

The proposed rule solicits the public’s input on whether federal general permits such as CWA Section 404(e) nationwide wetland permits (NWPs) or the CWA Section 402 National Pollutant Discharge Elimination System (NPDES) for stormwater discharges from active construction sites should undergo the CWA 401 certification process during the general permit program reauthorization process. The membership of many of the signatory organizations included in this comment letter rely upon the continued availability of these federal CWA general permitting programs to obtain important CWA authorizations in a more efficient manner than the alternative of seeking individual permits. We are therefore keenly interested in achieving an efficient CWA Section 401 certification process for federal general permits that reflect their

importance relative to individual permits, and we look forward to working with the Agency to achieve that goal.

### **Economic and Administrative Effects**

The proposed rule is expected to reduce burdens, costs, and uncertainty for applicants and certifiers while improving the efficiency and predictability of the Section 401 process. By standardizing requirements and clarifying roles, the rule would minimize delays and foster a more transparent regulatory environment. In conclusion, we strongly support the EPA's proposed revisions to Section 401 water quality state certification rule. These changes, if finalized, will enhance the effectiveness of the CWA, reduce unnecessary regulatory burdens, and promote economic growth, while safeguarding our nation's water quality. We urge the EPA to finalize the rule expeditiously.

Thank you for your leadership on this important issue. We look forward to continued collaboration to ensure the successful implementation of these efforts.

Sincerely,

American Exploration & Mining Association  
American Exploration & Production Council  
American Farm Bureau Federation  
American Gas Association  
American Petroleum Institute  
American Road & Transportation Builders Association  
Associated Builders & Contractors  
Associated General Contractors of America  
Essential Minerals Association  
Independent Petroleum Association on America  
Liquid Energy Pipeline Association  
National Association of Home Builders  
National Association of REALTORS®  
National Federation of Independent Business  
National Mining Association  
National Pork Producers Council  
National Rural Electric Cooperative Association  
Treated Wood Council  
U.S. Chamber of Commerce