

Section 401/Clean Water Act: Energy Marketers of America (formerly PAA) EPA Requests for Comments Addressing Implementation



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08/14/2025

The trade association Energy Marketers of America (“EMA”) (formerly, Petroleum Association of America) submitted August 6 comments to the United States Environmental Protection Agency (“EPA”) addressing:

Establishment of Public Docket and Listening Sessions on Implementation Challenges Associated with Clean Water Act Section 401.

See Docket No. EPA-HQ-OW-2025-0272.

EMA describes itself as a federation of 48 state and regional trade associations representing family-owned and operated small business energy marketers throughout the United States. The members are stated to supply 80% of all finished motor and heating fuel products sold nationwide including renewable hydrocarbon biofuels, gasoline, diesel fuel, biofuels, heating fuel, jet fuel, kerosene, racing fuel, and lubricating oils.

Especially relevant to these comments is the fact that EMA states that it supplies heating fuel to more than 500 million homes and businesses.

The Arkansas Oil Marketers Association is a state chapter of EMA.

The EPA docket was open to solicit public feedback on the implementation challenges under Section 401 of the Clean Water Act. Section 401 of the Clean Water Act prohibits federal agencies from issuing permits or licenses that result in exceedance of water quality standards, or applicable authorities, of the state. This provision of the Clean Water Act requires an applicant for a federal license or permit to provide a certification that any discharges from the facility will comply with applicable water quality standards. If not provided, the federal permit or license may not be granted. Further, the states can impose certain conditions upon federal permits or licenses as a prerequisite to granting the permit or license.

If a state fails or refuses to act on a request for certification in a timely manner, the certification requirements are waived with respect to such federal applications.

Examples of federal licenses and permits that may require a Section 401 water quality certification include (but or not limited to):

- Clean Water Act Section 404 Dredge and Fill Permits.
- Federal Energy Regulatory Commission Hydroelectric Licenses.
- Clean Water Act Section 402 Pollutant Discharge Permits.

- Natural Gas Pipeline Certificates issued by the Federal Energy Regulatory Commission.

The expanse and/or scope of Section 401 has been a subject of debate for many years. The Biden Administration arguably expanded the scope of 401 while the Trump Administration has argued that it should be used only for its statutory purpose – to protect water quality – and not as a weapon to shut down projects for reasons with no basis in the statute or applicable regulations.

Various states and environmental organizations have countered that such constraints would limit its ability to protect state water quality standards.

EMA's August 6 comments urge EPA to:

...consider how permitting decisions may impact energy diversity, small business viability, environmental innovation, and consumer choice—particularly in regions like the Northeast where modern liquid fuels remain essential. Preserving a diverse energy mix that includes liquid heating fuels is critical to achieving energy independence and dominance, while also advancing clean air and water stewardship.

The comments request that EPA, as it considers ways to improve the 401 certification process, also evaluate “the unintended financial burdens that could arise from fast-tracking major infrastructure projects by circumventing established safeguards.” Concern is expressed regarding policies that it argues promote natural gas pipeline expansion based on the presumption that doing so displaces “dirty” heating oil. The trade association states:

...This assumption is both outdated and misleading. Indeed, modern liquid heating fuels—including ultra-low sulfur heating oil (ULSHO) and renewable BioHeat® blends—have undergone dramatic improvements, achieving environmental profiles on par with natural gas in many respects.

EMA specifically recommends that EPA:

- Promote energy diversity by preserving access to ultra-low sulfur heating oil (ULSHO) and its renewable blends—reliable and increasingly clean heating options that offer consumers alternatives beyond utility-supplied natural gas.
- Acknowledge the environmental progress of modern liquid fuels, which have achieved dramatic reductions in particulate and sulfur emissions and continue to advance through renewable blending.
- Support continued innovation in renewable fuel development to further reduce emissions from existing heating infrastructure without requiring costly system overhauls.
- Encourage adoption of high-efficiency heating technologies through voluntary, performance incentives that improve energy efficiency and reduce emissions in both residential and commercial settings.

A copy of the August 6 comments can be downloaded [here](#).