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February 17, 2026

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

Re: Comments of Louisiana, Arkansas, Mississippi, and Wyoming on EPA's  
Proposed Rule "Updating the Water Quality Certification Regulations"  
Docket No. EPA-HQ-OW-2025-2929

Dear Administrator Zeldin:

The States of Louisiana, Arkansas, Mississippi, and Wyoming appreciate the opportunity to comment on EPA's proposed revisions to the regulations implementing Section 401 of the Clean Water Act. 91 Fed. Reg. 2,008 (Jan. 15, 2026). The States support EPA's goals of improving regulatory clarity, administrative efficiency, and timely decision-making. Clear, administrable rules benefit States, federal permitting agencies, and regulated entities alike.

Section 401 reflects the Clean Water Act's cooperative federalism framework. Congress tied certification to "discharges" while preserving the States' primary authority to apply and enforce water quality standards within their borders. Maintaining this balance—clear federal limits paired with meaningful State implementation—honors congressional intent, protects State sovereignty, and promotes consistent water quality protection. A final rule must remain faithful to the statutory text Congress enacted, neither expanding nor contracting the role Section 401 assigns to the States.

Given the repeated changes to Section 401 regulations in recent years, regulatory stability is critical. The final rule should provide a durable framework that can be consistently implemented across administrations.

## **I. Scope of Certification Review**

The States agree that Section 401 is a discharge-focused provision. The statute directs certifying authorities to determine whether "any such discharge" will comply



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with applicable provisions of the CWA and water quality requirements. A discharge-focused scope provides necessary limiting principles, promotes national consistency, and reduces litigation risk by ensuring certification is not used to regulate matters untethered to the water quality impacts of a discharge. Clear and nationally consistent guardrails also reduce the risk of forum shopping and uneven application among States, promoting greater stability for all stakeholders.

At the same time, a discharge-focused scope does not eliminate State judgment. Within Congress's statutory boundaries, States must retain authority to apply their water quality standards—including designated uses, narrative and numeric criteria, and antidegradation requirements—to determine compliance. The scope limitation defines what is being certified, not who makes the determination. This includes the ability to apply duly adopted water quality standards and implementing regulations approved or recognized under the Act, consistent with statutory limits.

EPA should clarify that certifying authorities may evaluate discharge characteristics and reasonably foreseeable impacts necessary to determine compliance, while excluding indirect, speculative, or attenuated effects lacking a clear causal nexus to the discharge. States must also retain authority to impose conditions clearly linked to assuring discharge compliance. A discharge-focused, nexus-based framework best reflects the statutory text and supports durable, consistent implementation.

## **II. Certification of General Permits and Federal Projects**

The States urge EPA to retain a clear and workable approach to certification of general permits and federally authorized projects where discharges are subject to Section 401. States have historically applied water quality standards in these contexts, ensuring discharge compliance at the appropriate stage.

Unduly narrowing certification risks creating regulatory gaps and shifting discharge compliance issues to later permitting stages, resulting in duplicative review, inconsistent requirements, and uncertainty. Clear delineation of when certification applies promotes national consistency and reduces litigation over the scope of Section 401. The States seek clarity to ensure water quality considerations remain predictably integrated into federal decision-making.

## **III. Certification Application Completeness and Statutory Review Period**

The States agree that the one-year statutory deadline is mandatory and that clarity regarding when the review period begins is important. However, meaningful review



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depends on sufficient information to evaluate compliance with applicable water quality requirements.

States rely on State statutes and regulations to determine completeness. These requirements are designed to ensure that certifying authorities have the information necessary to conduct a technically sound review. An inflexible federal standard could trigger the review period before adequate information is available, undermining defensibility and increasing the risk of disputes and litigation. EPA should establish minimum federal elements while preserving State authority to require additional water-quality-relevant information before the review period begins. This approach balances predictability with sound decision-making. At the same time, the States support procedural clarity that ensures certification decisions are timely, well-documented, and grounded in identified water quality requirements.

#### **IV. Certification Conditions**

The States agree that certification conditions must be tied to compliance with applicable water quality requirements and should not be used to regulate matters unrelated to water quality. Section 401 should function as a water quality compliance tool, not as a generalized land-use or permitting authority beyond the discharge compliance determination Congress prescribed.

At the same time, limiting conditions to monitoring alone would unduly constrain the States' ability to assure compliance. Monitoring is not always sufficient to prevent violations. States must retain authority to impose substantive, preventative conditions clearly linked to discharge compliance. EPA should clarify the required nexus while preserving State discretion within those bounds.

#### **V. Modification of Certifications**

The States recognize the importance of predictability and reliance interests for regulated entities. Frequent regulatory shifts and constrained implementation tools can undermine confidence in the Section 401 process and require States and applicants alike to repeatedly adjust to new requirements.

States also face increased administrative and legal burdens when they lack adequate tools to address new information or evolving compliance concerns over the life of a permitted discharge. Certification modification authority has long been an essential tool to address new information, changed circumstances, or noncompliance affecting water quality. Requiring applicant consent as a prerequisite to certification modification would unduly restrict State authority to ensure ongoing compliance with



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water quality standards. The States urge EPA to preserve the ability of certifying authorities to modify certifications when necessary to protect water quality, while allowing for appropriate procedural safeguards that promote transparency and fairness.

## VI. Implementation and Effective Date

Finally, the States request a delayed effective date for any final rule. Implementing the proposed changes will require updates to State regulations, guidance, and procedures, as well as coordination with federal agencies and regulated entities. Providing sufficient implementation time will reduce confusion, avoid inconsistent application, and support stable and effective administration of Section 401.

### Conclusion:

Section 401 functions best when federal rules establish clear statutory boundaries while preserving meaningful State authority to apply water quality standards. A discharge-focused framework with defined limiting principles and a clear causal nexus promotes durability, reduces litigation risk, and provides predictability for States and regulated entities alike.

Clear and stable rules also reduce administrative burdens and strengthen confidence in the Section 401 process. The States respectfully urge EPA to finalize a rule that reflects these principles and preserves effective State implementation under the Clean Water Act.

Sincerely,

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Tim Griffin  
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