

February 17, 2026

Lee Zeldin  
Administrator  
EPA Docket Center, Water Docket  
Mail Code 28221T  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW,  
Washington, DC 20460

Re: Comments on Proposed Rule “Updating the Water Quality Certification Regulations” Submitted to Docket ID No. EPA-HQ-OW-2025-2929 via [regulations.gov](https://www.regulations.gov)

Dear Administrator Zeldin:

On behalf of the National Wildlife Federation and affiliate partners from Alaska, Arkansas, California, Hawai'i, Iowa, Kentucky, Maine, Maryland, Missouri, Montana, Nebraska, Nevada, Oklahoma, Oregon, Puerto Rico, Texas, Vermont, and West Virginia, along with our millions of members and supporters, we write in opposition to the Environmental Protection Agency's (EPA) proposal to again revise regulations related to Section 401 of the Clean Water Act (CWA or the Act), a tool used by states and Tribes to protect state and Tribal water resources from the impacts of federally permitted or licensed projects. This proposed rule largely recycles an ill-conceived rule issued in 2020 that upended almost fifty years of strong state and Tribal authority to ensure that projects such as dams, pipelines, highways, and data centers are protective of state and Tribal waters and the important services they provide to both people and wildlife. The 2020 rule was subsequently replaced in 2023 by a rule that restored the strong proper role for states and Tribes envisioned by the Act while making some needed updates. We urge the EPA to keep the 2023 rule in place.

The National Wildlife Federation represents seven million members and supporters—including millions of conservation-minded hunters, anglers, and outdoor enthusiasts—and 52 state and territorial affiliates. Conserving our Nation's wetlands, streams, and rivers for fish, wildlife, and communities is at the core of our mission.

The proposed rule is unnecessary and will harm waters while undermining state and Tribal rights and sovereignty. Of foremost concern, it would violate the Act by rejecting its clear meaning and overturning Supreme Court precedent by limiting the scope of certification from the activity as a whole to the

“discharge from a point source” of a project. This would dramatically limit the ability of states and Tribes to look at the totality of potential impacts and harms to waters from a project. For instance, it could eliminate or undermine state and Tribes from being able to put in place protective measures so that rivers and streams have adequate flow, habitat is protected, fish passage can occur, and that public access to designated uses like fishing and recreation is maintained.

We also have several other concerns with the proposal. It undercuts the ability of states and Tribes to ensure that they have the information they need in a timely manner to allow them to assess how various projects may impact their waters. It improperly gives the applicant an effective veto over modifications to protective conditions if a project changes. It places inflexible time restrictions on states and Tribes, potentially forcing them to make decisions during times of emergency or government shutdown. It undercuts Tribal sovereignty by removing the ability of Tribes to apply for treatment as a state for Section 401 certification only, making it harder and more costly for Tribes to protect their own waters. And it appears to remove the ability of states and Tribes to protect non-federal waters with 401 certification – a critical rollback given that EPA is also considering a rule that would leave less than 20 percent of historically covered wetlands and only a fraction of historically covered headwater streams still federally jurisdictional. Finally, it limits the ability of states and Tribes to protect “other water quality-related requirements of state law” by narrowing the definition of these requirements to applicable and appropriate state or tribal water-quality related requirements for discharges only. This would make it harder for states and Tribes to protect things like flow and habitat.

The 2023 rule adequately addressed any concerns regarding uncertainty around timing or process while clarifying that certification, conditions, and denial must regard water quality requirements. It did this while restoring the broad and longstanding ability of states and Tribes to protect their waters, as envisioned by the Act. This proposal amounts to little more than an unsubstantiated weakening of that ability without justification. The Section 401 process rarely results in the denial or undue delay of projects. For example, as EPA’s Economic Analysis shows, almost all permits issued by the Corps (which make up the overwhelming number of permits subject to Section 401) are either granted (95.5%) or waived (3.8%). Only 0.8% are denied.

Furthermore, this proposal must be seen in relation to recent significant changes to the scope of Clean Water Act protections generally. Section 401 is only triggered when a federal permit or license involving a discharge to “waters of the United States” is at issue. Most federal permits and licenses that trigger Section 401 are Section 404 discharge permits under the Clean Water Act itself. In 2023, the U.S. Supreme Court issued a decision in *Sackett v. EPA* that dramatically reduced the number of waters covered by the federal Clean Water Act. Adding to this, the EPA is now finalizing a rule that would even further limit the number of waters protected by the Act. If the proposed EPA rule governing “waters of the United States” is issued as proposed, it would result in an estimated 81% of historically federally protected wetlands lacking Clean Water Act protection. Protections for millions of miles of streams are also likely to be lost. With these rollbacks, many projects will no longer need CWA permits, meaning that the trigger for Section 401 review for many projects will disappear altogether. As such, if both this proposal and the “waters of the United States” rule are finalized, there will be far fewer opportunities and weaker options for states and Tribes to protect their waters under Section 401. This threatens

waters, wildlife, state and Tribal sovereignty, plus the people and communities that rely on these protections.

We strongly urge you to adhere to the requirements and charge of the Clean Water Act and not move forward with this proposed rule, instead keeping the existing 2023 rule in place.

Sincerely,

Arkansas Wildlife Federation  
Association of Northwest Steelheaders  
Conservation Coalition of Oklahoma  
Conservation Council for Hawai'i  
Conservation Federation of Missouri  
Iowa Wildlife Federation  
Kentucky Waterways Alliance  
Montana Wildlife Federation  
National Aquarium  
National Wildlife Federation  
Natural Resources Council of Maine  
Nebraska Wildlife Federation  
Nevada Wildlife Federation  
Planning and Conservation League  
Sociedad Ornitológica Puertorriqueña, Inc  
Southeast Alaska Conservation Council  
Texas Conservation Alliance  
Vermont Natural Resources Council  
West Virginia Rivers Coalition