



**ASSOCIATION OF
METROPOLITAN
WATER AGENCIES**

LEADERS IN WATER

1250 I Street, NW, Suite 350
Washington, DC 20005

P 202.505.1565
amwa.net

February 17, 2026

The Honorable Jessica Kramer
Assistant Administrator
Office of Water
US Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington DC, 20460

Re: Docket ID No. EPA-HQ-OW-2025-2929 Updating the Water Quality Certification Regulations

Submitted electronically

Dear Assistant Administrator Kramer:

The Association of Metropolitan Water Agencies (AMWA) appreciates the opportunity to comment on the Environmental Protection Agency’s (EPA) proposed revisions to the water quality certification (WQC) regulations under section 401 of the Clean Water Act (CWA). AMWA is an organization representing the largest publicly owned drinking water systems in the United States, and its membership serves more than 160 million people.

As regulated entities, public water systems appreciate the importance of clarity, transparency, and clear timelines in rulemakings and certification processes, particularly when they are applicants for water quality certifications. However, proposed attempts to provide regulatory clarity should not undermine the Clean Water Act’s foundational goal of restoring and maintaining the quality of the nation’s waters,¹ which directly affect the quality of drinking water sources, nor should revisions subvert the principle of cooperative federalism embedded in Section 401 of the law that enables states to protect the quality of local waters. AMWA appreciates the opportunity to provide the following feedback to the Agency regarding its concerns on the impacts of these revisions on source

¹33 U.S. Code § 1251 - Congressional declaration of goals and policy. <https://www.govinfo.gov/app/details/USCODE-2023-title33/USCODE-2023-title33-chap26-subchapI-sec1251>.

BOARD OF DIRECTORS

PRESIDENT	VICE PRESIDENT	TREASURER	SECRETARY	EMERITUS	CHIEF EXECUTIVE OFFICER
Jeffrey Szabo Suffolk County Water Authority	Calvin Farr Prince William Water	Lindsey Rehtin Northern Kentucky Water District	Chris Browning Oklahoma City Water Utilities Trust	John P. Sullivan, Jr. Boston Water and Sewer Commission	Tom Dobbins
Julie Anderson Denver Water	Verna Arnette Beaufort-Jasper Water & Sewer Authority	Cathy Bailey Greater Cincinnati Water Works	Tad Bohannon Central Arkansas Water	Jeff Brown Onondaga County Water Authority	Spencer Bruce Louisville Water Company
Shane Chapman Metropolitan Water District of Southern California	Alex Chen Seattle Public Utilities	Randy E. Hayman Sewerage and Water Board of New Orleans	Matthew Jalbert Trinity River Authority of Texas	Yann Le Gouellec Newport News Waterworks	Angela Licata New York City Department of Environmental Protection
Rachel Murphy Contra Costa Water District	Craig Palmer Erie Water Works	Will Pickering Pittsburgh Water	Shaun Pietig WaterOne	Todd Swingle Toho Water	Jeffrey Thompson Central Alabama Water
Kenneth Waldroup Cape Fear Public Utility Authority					

water quality and cooperative federalism, as well as specific elements of the proposed revisions to the water quality certification regulations.

The Importance of Source Water Protection and Cooperative Federalism

As AMWA has previously noted in its 2021 comments² and 2019 comments,³ protecting the source waters that drinking water utilities rely on is a foremost concern for AMWA members. It is the first duty of drinking water systems to protect public health, which they do by treating raw source waters that ultimately become finished tap water in compliance with health and aesthetic standards set out in the Safe Drinking Water Act and other relevant state regulations. In the United States, 61 percent of the public drinking water supply comes from surface waters,⁴ demonstrating the importance of surface water quality to the health of the nation. Source waters from overburdened, polluted, or otherwise impaired waterways can require additional lengthy and costly treatment steps to meet compliance with public health and safety standards, unfairly passing costs onto water system ratepayers. Comprehensive state CWA regulatory programs, including the Section 401 WQC regulations, ultimately ensure states not only achieve their mission of maintaining the chemical, physical, and biological integrity of the nation's waters, but also allow them to proactively protect drinking water sources.

Furthermore, many of the proposed revisions to the WQC regulations would undermine or severely limit states' abilities to comprehensively assess and protect source water quality, which is out of alignment with the stated Congressional intent of the CWA and the practical realities of Section 401 implementation. Section 401 historically provides states, tribes, and territories (states) with an essential role in protecting water resources. Restricting that authority risks undermining congressional intent reflected in CWA section 101(a) (33 U.S.C. §1251)¹ above, which establishes a national objective to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. Narrow interpretations of certification authority are difficult to reconcile with this broad statutory purpose. Additionally, state regulatory authorities possess localized scientific expertise and watershed knowledge critical for assessing water quality. Limiting state discretion and authority in certification applications could further reduce preventive and holistic protections for water quality and an entire watershed, increasing reliance on downstream treatment rather than upstream pollution prevention, and undermining the intent of the Clean Water Act. For these

² AMWA. (August 2, 2021). AMWA's Comments Re: Docket ID EPA-HQ-OW-2021-0302, Notice of Intention to Reconsider and Revise the Clean Water Act Section 401 Certification Rule.
<https://www.amwa.net/testimonycomments/amwas-comments-epa-its-noi-clean-water-act-section-401-certification-rule>.

³ AMWA and AWWA. (October 17, 2019). AMWA and AWWA Comments Re: Docket ID EPA-HQ-OW-2019-0405, Updating Regulations on Water Quality Certification.
<https://www.amwa.net/assets/AMWA%20and%20AWWA%20Comments%20for%20EPA%20proposed%20rule%20Updating%20Regulations%20on%20Water%20Quality%20Certification%20EPA-HQ-OW-2019-0405.pdf>.

⁴ Dieter, C.A., Maupin, M.A., Caldwell, R.R., Harris, M.A., Ivahnenko, T.I., Lovelace, J.K., Barber, N.L., and Linsey, K.S., 2018, Estimated use of water in the United States in 2015: U.S. Geological Survey Circular 1441.
<https://pubs.usgs.gov/circ/1441/circ1441.pdf>.

reasons, AMWA strongly encourages EPA to preserve state authority to avoid impacts to state water quality to the full extent allowed under the CWA.

Various proposed WQC revisions would undermine the protection of source water quality.

AMWA remains concerned that several specific aspects of the proposal, outlined below by their headers in the preamble⁵ to the revisions, constrain states' abilities to consider local, nonpoint source, cumulative, and watershed-level impacts relevant to water quality. Maintaining states' ability to conduct robust and comprehensive certification authority is essential to ensuring high quality waters, thereby protecting source waters nationwide, and achieving the goals set forth in the CWA.

A. Request for Certification

AMWA urges EPA to maintain states' authority to establish and request a list of necessary contents, or components, for a request for certification, rather than give this authority to the federal government, and to permit states to request this information at the outset of a request for certification. In the revisions, EPA proposes to remove regulatory text currently allowing certifying authorities to define additional contents for certification requests and instead establish a uniform federal baseline of required components. First, as we further describe in our portion of these comments addressing Section 401 certification scope, states must retain the ability to request components and information on more water quality impacts than EPA is proposing in these revisions. If EPA seeks to retain its interpretation that states may only assess water quality impacts from point source discharges, then an alternative process, that allows each state to establish their own list of required components for a WQC, would be more efficient for states and applicants, rather than having states request additional information after a request's timeline has started.

While consistency for applicants and federal agency partners is valuable, restricting states' ability to streamline requests for additional components may limit their capacity to fully assess localized water quality impacts and nullifies the value of their local knowledge of water quality. Section 401 places responsibility on certifying authorities to determine compliance with applicable water quality requirements; limiting states' access and flexibility to obtain necessary information would hinder fulfillment of that statutory duty. State environmental agencies hold extensive knowledge of the historical and developing characteristics of their local water resources and are commonly better situated than federal agencies alone to understand how proposed activities might impact the quality of a given water body in the state. Limiting the list of required components to one set by the federal agency undermines the unique aspect of state watershed programs and limits state environmental agencies' ability to comply with the CWA.

⁵ Updating the Water Quality Certification Regulations, 91 FR 12 2008-2042. (1/15/2026).
<https://www.federalregister.gov/documents/2026/01/15/2026-00754/updating-the-water-quality-certification-regulations#p-222>.

B. Timeframe for Certification Analysis and Decision

AMWA agrees that both federal and state agencies have a responsibility to provide timely reviews of permit and certification applications. Due to the wide variety in the types of projects in need of water quality certifications and the fact that states are working alongside federal agencies to ensure water quality standards are met, states should have a role in setting and extending this timeframe when necessary. States may require flexibility for exceptionally complex projects, public participation, or unforeseen circumstances. The 2023 regulations appropriately recognized such realities. Removing flexibility could prioritize procedural speed over informed water quality protection.

AMWA also cautions against EPA's stated intent to essentially remove states' ability to have the use of withdrawal and resubmittal. EPA states that section 401(a)(1) establishes a maximum one-year timeframe without exceptions, asserting that the statutory text "unequivocally sets the maximum limit" and does not allow for withdrawal and resubmission to extend review. Historically, withdrawal and resubmittal practices have allowed applicants and certifying authorities to ensure complete information and sound environmental review. While we recognize EPA's concerns that states can use withdrawal and resubmittal requirements as a tactic to stall or indefinitely waive certain projects, an overly rigid reading of the statute may discourage thorough analysis and could undermine the main objective of ensuring that complex projects meet requirements essential to protect water quality.¹

C. Appropriate Scope for Section 401 Certification Review

AMWA strongly urges the Agency to maintain states' authority to consider water quality impacts consistent with their own state regulations, including considering the impacts of nonpoint source discharges related to an action, the impact of an "activity as a whole," and a comprehensive array of state waters, in issuing water quality certifications. The Association disagrees with EPA's intention to limit states' authority to consider solely point source discharge impacts to federally recognized Waters of the United States (WOTUS) and to limit water quality requirements, believing that it undermines the duty of states to ensure water quality certifications comply with water quality standards. A straightforward interpretation of the Clean Water Act would suggest that Congress did not intend for states to ignore the impacts of activities that would undermine overall water quality when issuing water quality certifications.

First, AMWA disagrees with EPA's proposed approach of considering state laws addressing nonpoint source discharges or non-federal waters outside of certification considerations, as it would limit states' ability to address real-world threats to drinking water quality that do not fit neatly into point-source regulatory categories. AMWA has previously expressed robust support for state authority to consider nonpoint source impacts of an activity. Allowing for this flexibility when a state is developing the conditions included in a Section 401 water quality certification is crucial to protecting source waters. For example, activities requiring certification, like construction, can often lead to large sediment loads downstream if applicants do not install proper soil erosion control

measures. Implementation of Section 401 of the CWA should allow states to include conditions within a certification that would help protect source waters from related nonpoint source actions.

In response to EPA's request for comment as to whether it should limit "water quality requirements" to only numeric water quality criteria, the Association strongly encourages EPA to maintain the use of additional criteria. The use of solely numeric criteria could unduly narrow the scope of applicable water quality protections, as states often rely on narrative criteria, watershed protections, and nonpoint source controls to protect water quality. Excluding such considerations would weaken holistic water quality protections.

Additionally, it is a practical necessity that states have the authority to consider the impacts of an "activity as a whole" to fully assess the water quality impacts of an activity in issuing a water quality certification. In the preamble to this rule, EPA explains that restricting the scope of certification to point source discharge impacts on established water quality criteria is necessary, as allowing the scope of certification to include the "activity as a whole" has vast economic and political significance, providing states with the authority to unilaterally deny permits for projects for reasons unrelated to direct point source discharges. While the Association recognizes states should not have the authority to deny permits for reasons beyond water quality impacts, AMWA believes that states must retain the ability to consider "downstream" water quality implications of a project in order to properly maintain water quality. For example, for large construction projects that cross a watershed, states historically have considered watershed-scale effects, including cumulative impacts from repeated stream crossings on sedimentation and turbidity, the mobilization and impacts of chemicals that are released from streambeds when construction disturbs them, and the impacts to hydrology from clearing parts of a forest. As another example, for structural projects on waters and coastlines, states have traditionally considered physical and ecological impacts like changes in stream flows, nutrient loading, and water temperature, which can increase the likelihood of algal blooms, alter temperature layers in reservoirs, or otherwise require additional, costly treatment for downstream water systems. While none of these activities constitute direct point discharges, the activities nonetheless have direct, tangible impacts on water quality. Consideration of the "activity as a whole," therefore, allows the state to properly consider impacts from activities directly related to an action in the WQC application. While AMWA recognizes that states should be prevented from abusing Section 401 to delay certain projects that lack an established link to water quality impacts, we also caution against constricting which actions and water quality impacts a state can consider in issuing a WQC.

AMWA also notes that equating section 401 certification strictly with other federal permitting provisions (e.g., sections 402 or 404), as EPA does in the preamble to these proposed revisions, overlooks the unique cooperative federalism function Congress established for certification. Specifically, section 402 allows states to apply their own water quality protections in federal licensing contexts, rather than rely on a limited and narrow definition established by EPA.

Finally, AMWA continues to support allowing certifying authorities to consider impacts across all waters a state deems relevant, rather than the proposed limit to point source discharges made to

federally defined WOTUS. AMWA recently articulated its concerns on the most recent proposed definition of WOTUS,⁶ highlighting that eliminating wetlands, ephemeral waterways, and other specific water ways from consideration as WOTUS, fails to recognize basic hydrological principles on the connection between waterways and undermines the health of an overall watershed. Limiting the scope of waters considered during certification would reduce states' ability to protect water quality comprehensively and maintain overall watershed health.

D. Modifications

AMWA previously supported states' authority to modify water quality certifications following issuance and recognizes the importance of maintaining states' role in the current revisions, which require the applicant, in addition to states and the federal agency, to agree to WQC modifications. Prior to the 2023 rule revisions, minor changes in a project, including additional methods by applicants to reduce adverse impacts, required the beginning of a new certification process. Maintaining states' authority to modify water quality certification will help streamline the overall permitting process and ensure applicants take effective methods to reduce water quality impacts.

Conclusion

Section 401 of the CWA provides states with robust measures to protect the quality of surface waters, which serve as the primary drinking water supply for the majority of Americans. While AMWA recognizes EPA's attempts to provide regulatory certainty in its proposed revisions, the Association cautions that revisions should not undermine states' ability to comprehensively protect water quality. We respectfully urge EPA to ensure that any final revisions preserve robust state authority, maintain comprehensive water quality protections, and uphold the Act's holistic protective framework.

AMWA appreciates the opportunity to comment. If you wish to further discuss the content of this letter, please reach out to Jessica Evans, AMWA's Director of Regulatory Affairs, at evans@amwa.net.

Sincerely,



Tom Dobbins
Chief Executive Officer

Cc: Andrew Sawyers, OWM
Jennifer McLain, OGWDW

⁶ AMWA. (January 5, 2026). AMWA Comments on EPA Docket ID: EPA-HQ-OW-2025-0322 Updated Definition of "Waters of the United States." https://www.amwa.net/system/files/linked-files/AMWA%20Comments%20on%20EPA-HQ-OW-2025-0322%20Updated%20Definition%20of%20WOTUS_0.pdf.