



AMERICAN PUBLIC WORKS ASSOCIATION

Your Comprehensive  
Public Works Resource

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February 17, 2026

Lauren Kasparek  
Oceans, Wetlands, and Communities Division  
Office of Water  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW, Washington, DC 20460

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

Dear Ms. Kasparek,

The American Public Works Association (APWA) represents 32,000 public works professionals across North America who serve in both the public and private sectors providing expertise at the local, state and federal government levels. Working in the public interest, our members plan, design, build, operate, and maintain, America's vast infrastructure network that is so fundamental to our economy, environment, public health, and safety. APWA appreciates the opportunity to provide comments on the U.S. Environmental Protection Agency's (EPA) proposed rule updating the water quality certification regulations.

Under Clean Water Act (CWA) section 401, States and Tribes with "treatment in a similar manner as a State" (TAS) perform an essential function in establishing and enforcing water quality standards pursuant to CWA Sections 301, 302, 303, 306, and 307 and relevant state law when a project also requires federal permits. The public works professionals APWA represents work in large and small, urban and rural, water supply, wastewater treatment, stormwater management, drainage and flood control systems. Clear application requirements and transparent metrics for the review of section 401 certifications are crucial to ensuring critical infrastructure projects important to the communities they serve can be completed on time and on budget.

With this in mind, we would like to offer the following recommendations on the proposed updates to the Water Quality Certification Regulations.

PRESIDENT  
Vic Bienes, P.E.

CHIEF EXECUTIVE OFFICER  
Scott D. Grayson, CAE



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## 1. Maintaining state authority and the tradition of cooperative federalism in section 401 certifications.

The CWA is built on a foundation of cooperative federalism wherein Congress recognized that it is the “rights of States to prevent, reduce, and eliminate pollution, to plan the development and use of land and water resources, and to consult with the [EPA] Administrator in the exercise of his authority under this chapter”. Section 401 provides a bridge between state and TAS water quality standards and federal permitting and licensing programs. This collaborative approach ensures that the technical expertise and specialized knowledge states and TAS have is central in water resource protections, such as the effluent limitations and standards of performance for new and existing discharge sources, water quality standards and implementation plans, and toxic pretreatment effluent standards.

*Loper Bright v. Raimondo* established a statutory interpretation which must be based on the agency’s “best reading” of the statute. It is clear that Congress intended states and TAS to be the primary leaders in establishing water quality protections while also supporting the federal government in their authorizing activities.

APWA urges EPA, in its final rule, to protect this successful example of cooperative federalism and the importance of the certifying authority’s role in setting water quality standards.

## 2. Preventing a piecemeal approach to certification requests

APWA appreciates the EPA’s proposal to standardize the content of a “request for certification” to establish clear expectations for applicants. Doing this will create more certainty around the request for certification process and establish a bright line approach to the timeline for application review.

However, we are concerned that this effort to expedite the process will unintentionally slow it down. Certifying authorities’ water quality standards differ. Therefore, the information they need to sufficiently evaluate a request for certification also varies. The most effective way to ensure a project will go smoothly and comply with water quality requirements is by making sure that the certifying agency reviewing the application has all relevant information before commencing the process. While certifying authorities and applicants can leverage pre-filing meetings or other communications to discuss an application, this does not guarantee that, if the regulatory requirement to trigger a request for certification happens prior to this process are limited, the completed application will result in a project that complies with all legal water quality requirements. This may lead to an increase in projects being denied or given conditional approval or have the certifying authority request application modifications. In all cases, these requests will cause unnecessary delays and increasing project cost.

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Therefore, APWA recommends that, the final rule explicitly allows certifying authorities to request specific additional, readily available, information and that the timeline for reviewing a request for certification does not begin until both federal and certifying authority information requirements have been submitted.

### 3. Importance of modifications

APWA supports establishing a collaborative modification process and including the applicant as part of that agreement. APWA would also like to highlight that any additional information requested as part of a modification should be readily available, as defined in Section (V)(A)(2) in the preamble, and include supporting legal or technical rationale for such a request.

### 4. Considerations in a “may affect” determination

An important part of protecting communities and water quality is the section 401(a)(2) process under which neighboring jurisdictions can be notified and have the opportunity to provide input about potential water quality implications for proposed projects is. Not only does unintentional discharge create a public health risk, it puts a burden on the ratepayers who would pay for additional remediation. This process is also especially important for bordering communities whose neighboring jurisdiction may have different water quality standards, and the additional discharge could put them out of compliance with their own discharge permits. Because of this, it is important that neighboring jurisdictions are notified.

APWA supports a final rule that retains the 2023 Rule’s list of factors that EPA should consider when judging whether a discharge from a project “may impact” a neighboring jurisdiction and incorporates the additional parameters EPA uses in their current practices as outlined in Section (V)(F) to the preamble.

While we recognize that every project is unique and not all parameters may be relevant in every circumstance, establishing a rule that specifies which factors should be taken into account will provide clear direction to the federal agencies and certifying authorities making the determination and transparency for applicants and neighboring jurisdiction regarding how and why a decision was made.

It is important that neighboring jurisdictions are aware of potential risk to their water quality, but it is also important that the agency balances their legal requirement to make this determination, with ensuring certification applications

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are processed within a reasonable period of time, as required under section 401(a)(1). Therefore, APWA recommends retaining the 2023 Rule's assertion that the "may affect" determination should not be a high analytical bar and should not consume considerable federal administrative resources or time.

### Conclusion

On behalf of public works professionals across North America, we thank you for the opportunity to provide comments on this important topic. We are committed to working with the EPA on our common goal of clean water. If you have any questions, please contact APWA's Government Affairs Manager, Leah Harnish at [lharnish@apwa.org](mailto:lharnish@apwa.org) or 202-218-6727.

Sincerely,

A handwritten signature in black ink that reads "Scott D. Grayson". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Scott D. Grayson, CAE  
Chief Executive Officer

PRESIDENT  
Vic Bienes, P.E.

CHIEF EXECUTIVE OFFICER  
Scott D. Grayson, CAE