

February 17, 2026

To: U.S. Environmental Protection Agency

Re: Docket ID No. EPA-HQ-OW-2025-2929 - Clean Water Act 401 Proposed Rule

Submitted via [Regulations.gov](https://www.regulations.gov)

To Whom It May Concern:

The following comments are submitted on behalf of the Ohio Environmental Council (OEC). The OEC is committed to protecting the environment and the health of all Ohio communities and our thousands of dedicated members across the state. We appreciate the opportunity to comment on EPA's proposed revisions to the Section 401 Water Quality Certification regulations. Ohio relies on Section 401 as a core tool for protecting water quality, ensuring responsible development, and maintaining the ecological integrity of our watersheds. For these reasons, we are concerned that several elements of the proposed rule would unnecessarily narrow state authority, reduce flexibility, and undermine the cooperative federalism framework Congress intended.

1. Protecting State Authority to Address Real-World Water Quality Impacts

Ohio's experience demonstrates that water quality is shaped not only by the chemical characteristics of a discharge, but also by the broader context of the activity causing that discharge. Flow alteration, habitat loss, hydrologic modification, and cumulative watershed impacts all directly influence a waterbody's ability to meet designated uses.

The proposed rule's limitation of state review to "water quality-related impacts of the discharge" would significantly restrict Ohio's ability to evaluate the full range of impacts associated with federally permitted projects. EPA's rule materials confirm that the agency intends to replace the current "activity-based" review with a narrower "point-source discharge" review. This shift would prevent Ohio from considering essential water-related impacts, such as:

- Fish passage and aquatic organism movement
- Recreational access and traditional fishing use areas
- Flow and hydrologic changes that directly affect biological integrity
- Construction-related impacts that influence turbidity, sedimentation, and habitat quality

These factors are not peripheral; they are core determinants of water quality in Ohio's watersheds. Without the ability to evaluate the activity as a whole, Ohio's capacity to protect headwater streams, wetlands, and downstream drinking water sources would be significantly constrained.

We urge EPA to clarify that flow, habitat, hydrologic connectivity, and cumulative impacts are integral components of water quality and therefore fall squarely within the scope of Section 401 review.

2. Ensuring States Can Impose Conditions Necessary to Meet Water Quality Standards

The proposed rule would give applicants an effective veto over modifications to certification conditions when project plans change, and certifying authorities would be required to obtain applicant agreement for the exact language of any modification.

This would undermine Ohio's ability to respond to new information, changed site conditions, or unforeseen environmental risks. It would also weaken Ohio's ability to ensure that evolving project designs continue to meet water quality standards.

EPA should explicitly recognize that conditions addressing construction practices, hydrologic impacts, and mitigation measures are appropriate when they are necessary to assure compliance with applicable water quality requirements, even when they relate to aspects of the activity beyond the immediate discharge point.

3. Maintaining Flexibility in Timelines and Completeness Determinations

Ohio supports clear and predictable timelines for applicants. However, the proposed rule's rigid definitions of "request for certification," "completeness," and clock-starting events may inadvertently increase the risk of waiver, particularly for complex projects such as pipelines, hydropower facilities, and large transportation corridors.

EPA states several changes that would reduce Ohio's flexibility:

- States would be **prohibited from defining additional completeness criteria**, preventing Ohio from requiring essential hydrologic, biological, or engineering information before the waiver clock begins.
- The rule would **remove automatic extensions** for force majeure events such as natural disasters or government shutdowns.
- The rule would **prohibit withdrawal and resubmission**, a tool Ohio has used to avoid waiver when applicants need more time to provide information.

- Extensions to the reasonable period of time would require **mutual agreement** between the federal agency and the state, limiting Ohio's ability to manage its own workload and review needs.

These changes would significantly increase the likelihood of unintended waivers, especially when applicants submit incomplete information or when external events disrupt state operations.

To avoid these outcomes, we urge EPA to:

- Allow states to define reasonable completeness criteria tailored to their programs
- Permit states to request additional information without triggering waiver
- Clarify that the federal agency may not unilaterally deem a request "complete" without state concurrence
- Restore flexibility for extensions during extraordinary circumstances

Ohio's ability to protect water quality depends on having sufficient information to evaluate impacts. A rigid timeline that begins before necessary information is available undermines both state authority and environmental protection.

4. Preserving Cooperative Federalism and State Expertise

Ohio's water resources—including Lake Erie, the Ohio River, and thousands of miles of streams and wetlands—are central to the state's economy, public health, and ecological resilience. Ohio EPA's Section 401 program is staffed by experts who understand local hydrology, geology, and watershed conditions.

The proposed rule shifts significant authority to federal agencies to determine the scope of review, the validity of requests, and whether waiver has occurred. EPA's materials further confirm that the rule would eliminate the ability of Tribes to obtain standalone Treatment as a State (TAS) for Section 401, requiring them instead to obtain TAS through Section 303(c). This change may reduce tribal participation in watershed protection across the region, including in areas hydrologically connected to Ohio waters.

This shift is inconsistent with the cooperative federalism structure of the Clean Water Act, which entrusts states with primary responsibility for protecting water quality within their borders.

We urge EPA to restore a more balanced approach by:

- Affirming that states—not federal agencies—are best positioned to determine the information needed to evaluate water quality impacts
- Ensuring that states retain authority to deny certification when applicants fail to demonstrate compliance with water quality standards

- Recognizing that states may impose additional requirements under independent state law

5. Supporting Ohio's Wetlands and Streams Through Complementary State Authorities

Ohio has made substantial progress in strengthening protections for isolated wetlands, headwater streams, and other sensitive aquatic resources. As EPA finalizes this rule, it is essential that the agency explicitly affirm that states retain the authority to regulate broader environmental impacts under independent state laws—even when those impacts fall outside the narrowed scope of Section 401 review.

The presentation and technical materials accompanying the proposal raise a significant concern: the rule appears to confine Section 401 review to waters of the United States (WOTUS). For Ohio, this limitation is especially consequential. Many wetlands and small streams—particularly in the Western Lake Erie Basin—are non-WOTUS but remain critical for nutrient reduction, flood mitigation, wildlife habitat, and drinking water protection. Activities that alter or degrade these waters can produce direct downstream consequences for WOTUS waters, yet the proposed rule would prevent Ohio from addressing those impacts through the 401 certification process.

EPA should clearly state that nothing in the final rule restricts a state's ability to protect non-WOTUS waters under its own authorities. The agency should also confirm that states may evaluate impacts to non-WOTUS waters when those impacts have the potential to affect the water quality of downstream WOTUS waters. This clarification is essential to ensure that Ohio can continue to safeguard the full range of waters that support the health, resilience, and economic vitality of its communities.

Ohio's clean water future depends on a strong, flexible, and science-based Section 401 program. While we support EPA's goal of improving clarity and predictability, the proposed rule would unduly restrict Ohio's ability to prevent water quality degradation, address cumulative impacts, and ensure that federally permitted projects comply with state water quality standards.

Sincerely,

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