



October 21, 2019

Lauren Kasparek
Oceans, Wetlands, and Communities Division
Office of Water (4504-T)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: *Docket ID No. EPA-HQ-OW-2019-0405*, "Updating Regulations on Water Quality Certification," 84 Fed. Reg. 44080 (August 22, 2019)

Dear Lauren Kasparek:

On behalf of the Healing Our Waters – Great Lakes Coalition and 68 nonprofit conservation organizations representing millions of concerned citizens in the Great Lakes region, we write to provide comment on the U.S. Environmental Protection Agency's ("EPA") proposed rule *Updating Regulations on Water Quality Certification* (Docket # *EPA-HQ-OW-2019-0405*).

The Great Lakes define our region's way of life, provide drinking water for over 30 million Americans, and is at the heart of a binational economy that is the 3rd largest in the world. Millions depend on the Great Lakes and more benefit from the business, industry, and commerce that is connected to them. Even with all they provide, the Lakes have long suffered from a legacy of pollution and development. This legacy is now being rewritten because of the region's investment in restoring and protecting the drinking source for more than 30 million Americans. Great Lakes restoration and the protection is happening because of the unique partnership between federal, tribal, state, and local governments and the tools the Clean Water Act provides to help set and enforce strong water quality standards.

This EPA proposal now threatens to unbalance this critical partnership between federal, state, and tribal authorities. It weakens the ability of states and tribes to effectively ensure their water quality is protected from federally permitted projects as they have historically been empowered to do under the Clean Water Act's Section 401 Water Quality Certification.

The Clean Water Act's Section 401 water quality certification ("WQC") process is an essential tool available to states and tribes to protect the water resources that our communities depend on for clean drinking water, habitat for wildlife, and safe opportunities for fishing, paddling, and swimming. WQC is a cornerstone of the federal structure envisioned by the Clean Water Act, a structure to "recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution" of their waters.¹ This framework recognizes that federal permits and licenses often do not guarantee that a project will meet state or tribal water quality standards. The WQC process thus allows local resource managers to prevent or impose conditions on federal permitting for projects that do not meet those standards. This practice ensures federal and local agencies cooperatively protect the water resources we all rely on.

¹ 33 U.S.C. §1251(b)

However, the EPA's current proposal threatens to upend this long-established regulatory process, eroding state and tribal authority in opposition to the Congressional intent codified in the Clean Water Act and upheld by the Courts. We are particularly concerned that the proposal:

- 1) Encroaches on a certifying agency's WQC application and review process. The proposal limits what is determined to be "sufficient" information for an application to start the clock on a review. It also subsequently places roadblocks to requesting additional information from an applicant threatening the state or tribe's ability to ensure they have sufficient data to conduct the thorough review necessary to protect local waters.
- 2) Restricts the time available for state or tribal review of an application. This allows federal agencies to further constrain state's or tribe's by setting shorter timelines wherein they must make decisions about major projects impacting their water resources without any mechanism to extend the deadline.
- 3) Limits the scope of review, preventing states or tribes from conducting a holistic review of an application and denying a project due to its potential direct and negative impact in violation of state or tribal water quality standards and appropriate laws beyond EPA approved Clean Water Act regulatory program provisions.
- 4) Prevents certifying entities from placing conditions on projects that relate to the overall water quality impacts of a project rather than just the specific "discharge" from the project. This gives the federal government unprecedented authority to reject conditions designed to protect local water quality set by a state or tribe.

We urge the EPA to reconsider the proposed rule. Section 401 is intended to grant the state's and tribe's a seat at the table to protect their waters from federally permitted projects. This proposal threatens to upend this important cooperative process by granting the federal government the authority to sideline important local voices and force projects through without giving the states and tribes the right to intervene when federal permitting leaves their water resources in jeopardy. If finalized as it stands today, it would represent a major shift in how Section 401 of the Clean Water Act is implemented and enforced by states and tribes, forcing many to curtail their review process and make hasty decisions that will only serve to weaken our clean water protections.

The Healing Our Waters-Great Lakes Coalition strongly opposes the current proposal. Great Lakes restoration and the protection of our water resources are dependent on the cooperation between the federal government and our local, state, and tribal representatives. We must ensure we are protecting and enhancing the ability of our communities to effectively ensure their local water quality is protected, not limiting them. We urge the agency to withdraw this proposed rule and work cooperatively to further empower states and tribes to protect their waters.

Please do not hesitate to contact Chad Lord, our coalition's policy director, at (202) 454-3385 or clord@npca.org with questions.

Sincerely,

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