

Hydropower Policy Modernization Act of 2017 (H.R. 3043): State Organizations' October 5th Letter in Opposition



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Three organizations of state environmental officials authored an October 5th letter to Speaker of the United States House of Representatives Paul Ryan and Minority Leader Nancy Pelosi expressing concern with provisions of H.R. 3034-Hydropower Policy Modernization Act of 2017 ("Act").

The organizations authoring the letter include:

- Environmental Council of the States
- Association of Clean Water Administrators
- Association of State Wetland Managers

The organizations state by way of introduction that:

... If enacted as written, the draft bill would modify Federal Energy Regulatory Commission ("FERC") licensing requirements under the Federal Power Act, and may conflict with the states' authority under Section 401 of the Clean Water Act to protect water quality and provide critical input on federal dredge and fill permits to wetlands and other waters under § 404.

Section 401 of the Clean Water Act requires states to provide a water quality certification before a federal license or permit can be issued for activities that may result in any discharge into jurisdictional waters. Specifically, Section 401 requires one applying for a federal license or permit for an activity "which may result in any discharge into the navigable waters" to obtain state certification "that any such discharge will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307. Section 401(d) further provides that "any certification . . . shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant . . . will comply with any applicable effluent limitations, under section 301 or 302 . . . and with any other appropriate requirement of State law set forth in such certification." The limitations included in the certification become a condition on any federal license.

The October 5th letter cites the role of the states in pursuing the attainment of clean water referencing the Section 401 Clean Water Act certification process. It states in part:

... states and permittees have efficiently been able to balance certification of hydropower facilities while ensuring that water quality standards are met initially or through remedial actions. By weakening § 401 authority, H.R. 3043 would harm the ability of the governmental entity with primary responsibility for water quality protection.

The organizations argue that the Act places FERC in control of permitting timetables (limiting time extensions) which could restrict state's abilities to gather data and scientific studies related to permitting. It is deemed to "needlessly impair" the states' authority under the Clean Water Act, undermining "cooperative federalism."

[A copy of the letter can be downloaded here.](#)