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# Section 401 Water Quality Certification/Clean Water Act: Association of Clean Water Administrators Comments on U.S. Environmental Protection Agency's Recommendations for Clarification

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The Association of Clean Water Administrators ("ACWA") submitted a May 24th letter to the United States Environmental Protection Agency ("EPA") addressing the agency's:

Pre-proposal Recommendations for Clarification of Provisions within Clean Water Act Section 401 and Related Federal Regulations and Guidance ("Pre-Proposal")

ACWA describes itself as:

. . . the independent, nonpartisan, national organization of state, interstate, and territorial water program managers, who on a daily basis implement the water quality programs of the Clean Water Act . . .

Section 401 of the Clean Water Act requires an applicant for a federal license or permit to provide a certification that any discharges from the facility will comply with applicable state water quality standards. If not provided, the federal permit or license may not be granted. Further, states can impose certain conditions upon federal permits or licenses as a prerequisite to granting the permit or license.

Concerns or points raised by the May 24th letter include:

- Disappointment with EPA's engagement and outreach regarding the recommendations
- Concern expressed that clarifications in the recommendations may fundamentally alter the state/federal relationship in managing the nation's water resources
- States' ability to regulate and manage the water resources within their borders may be severely limited
- It is unclear whether changes to Section 401 certification are needed because states have consistently exercised their authority in an efficient, effective, and equitable manner
- Oppositions to any clarifications to Section 401 or changes related to federal regulations and guidance that may curtail or reduce state authority under Section 401
- States have clear authority to protect their water resources under Section 401
- EPA has not provided any concrete reasoning as to why the recommendations are necessary

- The process to clarify Section 401 and make changes to related federal regulations and guidance appear to be an attempt to do the bare minimum allowed under the Administrative Procedure Act

ACWA also includes a number of prior suggestions to increase 401 certification efficiencies.

A copy of the May 24th letter can be downloaded [here](#).