

Section 401/Clean Water Act: Association of Clean Water Administrators' June 15th Letter to U.S. Army Corps of Engineers



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The Association of Clean Water Administrators (“ACWA”) sent a June 15th letter to Mr. James C. Dalton, P.E., Director of Civil Works of the United States Army Corps of Engineers (“Corps”) addressing the state’s use of Section 401 of the Clean Water Act.

The ACWA letter is authored by Jennifer Wigal, Deputy Water Quality Administrator, Oregon Department of Environmental Quality.

The ACWA describes itself as an independent, non-partisan, 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. Arkansas Department of Environmental Quality Associate Director (Office of Water) Caleb Osborne serves as a Regional Representative of the organization.

The June 15th ACWA letter references the Administration’s efforts to streamline the federal permitting process for critical infrastructure projects. While supportive of additional and/or innovative funding for infrastructure projects and streamlining the federal permitting process, concern is expressed about certain unintended consequences revising the environmental review processes might cause. The organization states:

The reforms as currently designed would limit states’ ability to exercise their authority to certify that infrastructure and development projects will not adversely impact state water quality standards and would also create additional confusion for those states interested in pursuing assumption of the § 404 program under the Clean Water Act.

The role of Section 401 of the Clean Water Act is noted to provide the states and tribes the ability to certify, deny, condition or waive nationwide permits. ACWA further states:

Section 401 assures that federal agencies will not issue permits or licenses that result in exceedances of water quality standards, or other applicable authorities, of a state. The importance of this provision in assuring continued state control over their aquatic resources is well established. Section 401 can also be a useful tool in integrating state and federal programs, reducing overlap in a more holistic approach to resource management. The water quality certification, made by the state in which the discharge originates, declares that the discharge will comply with applicable provisions of the act, including water quality standards. Section 401 provides states with two distinct powers: one, the power withhold certification; and two, the power to impose conditions upon federal permits by placing limitations on

certification. Many states have come to view § 401 as an important tool in their overall programs to protect the physical, biological, and chemical integrity of their waters. Without § 401 certification, federal agencies could permit activities that would undermine a state's knowledge of and investment in pollution control efforts and impose a double standard for different activities affecting the same in-stream values.

ACWA requests that the Corps consult with the states as the federal infrastructure permitting process is examined.

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