Water Quality Certification Improvements Act of 2018: Association of State Wetland Managers/Association of Clean Water Administrators September 6th Letter to U.S. Senate Environment & Public Works Committee

Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

09/18/2018

The Association of State Wetland Managers ("ASWM") and Association of Clean Water Administrators ("ACWA") (collectively "Associations") transmitted a September 6th letter to the Chairman and Ranking Minority Member of the United States Senate Environment & Public Works Committee regarding the Water Quality Certification Improvement Act of 2018 (S. 3303).

The Associations express concern about S. 3303 and state in part that they believe:

. . . by curtailing § 401 authority, S. 3303 would diminish states' ability to manage and protect water quality within their boundaries, contrary to the principles of cooperative federalism upon which the Clean Water Act (CWA) is based.

The Associations describe themselves as:

. . . ACWA is 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 CWA, as well as the comprehensive and diverse set of state water programs that exist beyond he CWA. ASWM plays a similar role nationwide working directly with state and tribal managers who administer wetland programs both as required by the CWA and independent of the CWA.

Section 401 of the Clean Water Act prohibits federal agencies from issuing permits or licenses that result in exceedances of water quality standards, or other applicable authorities of the state. This provision of the Clean Water Act requires and 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.

Key points articulated in the Associations' September 6th letter include:

- States are best suited to determine whether a federally permitted activity will fully protect a state's designated uses because states comprehensively manage water quality and water quantity
- Curtailing or reducing state authority in maintaining water quality would inflect serious harm to the collaborative and cooperative relationship established pursuant to the Clean Water Act, undermining state expertise/experience with local waterbodies
- States have decades of experience implementing § 401 authority to review the water quality impacts of federal licenses/permits, impose water quality conditions where necessary, and, in rare cases, withhold water quality certification entirely
- States have acted efficiently using this provision in regards to certification of projects, establishing procedures, etc.
- The majority of certifications are issued in a timely fashion
- The opportunity to discuss the legislation is requested

A copy of the September 6th letter can be found here.