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EPA Issues Final Rule to Strengthen Water Protections, Support Clear and Timely Reviews of Infrastructure and Development Projects

WASHINGTON (September 14, 2023) – Today, the U.S. Environmental Protection Agency (EPA) announced a final rule to restore the fundamental authority granted by Congress to states, territories, and Tribes to protect water resources that are essential to healthy people and thriving communities. The agency's final Clean Water Act Section 401 Water Quality Certification Improvement Rule will support clear, efficient, and focused water quality reviews of infrastructure and development projects that are key to economic growth.

"The Biden-Harris Administration is committed to supporting economically secure, healthy, and sustainable communities" said **EPA Administrator Michael S. Regan**. "To achieve this goal, we must protect our water resources while also making investments that move our nation forward. With EPA's final Clean Water Act Section 401 rule, we are affirming the authority of states, territories, and Tribes to protect precious water resources while advancing federally permitted projects in a transparent, timely, and predictable way."

"Clean water is critical to the health and success of our communities," said **North Carolina Governor Roy Cooper**. "This rule will help provide North Carolina with the ability to protect our water quality and strengthen our infrastructure."

"Section 401 of the federal Clean Water Act gives states and Tribes an important role regarding federally licensed or permitted projects. As Attorney General, I stood up to efforts to undermine this and now, as Governor, I'm grateful to see it restored," said **Massachusetts Governor Maura Healey**. "Massachusetts thanks the U.S. EPA for strengthening the partnership envisioned by the Clean Water Act with today's rule, helping us fulfill our commitment to protecting waterways across Massachusetts."

"Connecticut is very happy to see EPA release this final rule," **Connecticut Governor Ned Lamont said**. "We thank EPA for partnering with states to protect our vital water resources while enabling us to move forward quickly on our critical infrastructure projects."

"EPA's action will better protect New Mexico's water quality at a time when federal and state protections are needed most," said **New Mexico Governor Michelle Lujan Grisham**. "New Mexico must do all it can to protect our most precious resource - our water."

"In my state, clean water is the keystone of our economy - from tourism to seafood to small business growth," said **Maryland Governor Wes Moore**. "I applaud the Biden Administration's commitment to working in partnership with state leaders to protect our waters from harmful

pollution. By collaborating across all levels of government, we will build cleaner and more economically vibrant communities that benefit everyone for decades to come."

"DEC applauds the Biden-Harris Administration and EPA Administrator Regan for continuing to prioritize the protection of water quality and giving states a critical role in protecting our natural resources," said **New York State Department of Environmental Conservation Commissioner Basil Seggos**. "New York State will fully review the final requirements announced today and continue working with EPA to further implement this and other proven Clean Water Act initiatives."

"This new rule will allow states to fulfill the role Congress established for them in the Clean Water Act to protect water quality within their borders," said **Laura Watson, director of the Washington Department of Ecology**. "I applaud EPA's willingness to work with states and restore the partnership that Congress designed."

"The Clean Water Act has been a valuable tool for states to protect their waters," said **Environmental Council of States Executive Director Ben Grumbles**. "We appreciate EPA's renewed engagement under section 401 and will continue to strive for regulatory partnerships that safeguard states' rights and clean water."

For 50 years, the Clean Water Act has protected water resources that are essential to thriving communities, vibrant ecosystems, and sustainable growth. This final rule strengthens that foundation while recognizing the essential partnership among the federal government, states, territories, and Tribes in protecting our waters.

Clean Water Act Section 401 enables states, territories, and authorized Tribes to protect their water quality from adverse impacts of construction or operation of federally permitted projects. Under Section 401 of the Act, a federal agency may not issue a license or permit to conduct any activity that may result in any discharge into a water of the United States, unless the appropriate state, territory, or authorized Tribe issues a CWA Section 401 water quality certification or waives certification. EPA's 2023 rule realigns the scope of Section 401 certification with decades of established practice and restores and strengthens the role of states, territories, and authorized Tribes.

The rule enhances certification review and provides regulatory certainty to advance federally permitted projects. For example, the rule establishes a 6-month default timeframe (when the federal agency and certifying authority fail to reach an agreement) and a 1-year maximum timeframe for certification review (the statutory maximum). The rule emphasizes that states, territories, and Tribes may only consider the adverse water quality-impacts from the activity. To limit delays, the rule also provides a clear approach to defining the required contents in a request for certification.

For more information, including a pre-publication version of the *Federal Register* notice, fact sheets, and information on upcoming trainings on the final rule, visit [EPA's CWA section 401 website](#).

Background

Executive Order 13990 on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis directed EPA to review and, as appropriate and consistent with applicable law, take action to revise or replace the 2020 CWA Section 401 Certification Rule. On June 2, 2022, EPA announced the signing of a [proposed rule to update the regulatory requirements for water quality certification under Clean Water Act Section 401](#). EPA conducted

pre-proposal engagement and provided a 60-day public comment period on the proposed rule to help inform the content of the final rule.

For further information: EPA Press Office (press@epa.gov)