



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JUL - 9 2019

OFFICE OF WATER

Ms. Julia Anastasio  
Executive Director and General Counsel  
Association of Clean Water Administrators  
1634 I Street, NW, Suite 750  
Washington, D.C. 20006

Dear Ms. Anastasio:

Thank you for your February 20, 2019 letter regarding Clean Water Act (CWA) Section 401 and your thoughtful list of potential process reforms. The EPA also received your May 24, 2019 letter, which was included in the official docket, identified by Docket ID No. EPA-HQ-OW-2018-0855, and available for viewing, along with other comments, at [regulations.gov](http://regulations.gov).

The EPA recognizes the importance of regulatory certainty that allows states to effectively and fairly administer CWA Section 401 and enables project applicants to clearly understand the CWA requirements. The CWA Section 401 provisions provide states with an opportunity to evaluate and address potential water quality impacts of federally-issued licenses and permits. It is a direct grant of authority from Congress to the states. The EPA supports the states' use of the CWA Section 401 provisions to maintain water quality as one of several important regulatory programs under the CWA.

Executive Order 13868, signed on April 10, 2019, directs the EPA to issue new guidance to states and federal agencies and initiate a rulemaking to modernize and improve the CWA Section 401 certification process to facilitate efficient permitting processes and increase regulatory certainty. The EPA's Section 401 regulations have not been updated in almost 50 years.

On June 7, 2019, the EPA released "*Clean Water Act Section 401 Certification Guidance for Federal Agencies, States, and Authorized Tribes*" that provides clarification and recommendations on CWA Section 401 certifications in the following specific areas:

- Statutory and regulatory timelines for review and action on a CWA Section 401 certification;
- The appropriate scope of CWA Section 401 certification conditions; and
- Information within the scope of a state or authorized tribe's CWA Section 401 review.

The EPA's new guidance, which replaces the agency's prior interim guidance from 2010, also provides additional recommendations to federal agencies, states and authorized tribes to promote early collaboration and coordination through the CWA Section 401 certification process. Executive Order 13868 also directed the EPA to propose new rules modernizing the agency's CWA Section 401 implementing regulations by August 8, 2019. The agency intends to propose regulations that may help further clarify and streamline CWA Section 401 certifications.

Since the Executive Order was issued on April 10, 2019, the EPA has initiated formal consultations with its state, local, and tribal partners, as well as outreach with its federal partners on this rulemaking effort and invited written pre-proposal recommendations through the public docket mentioned above. The EPA is carefully reviewing the input received through these engagements and the docket prior to issuing a proposed rule. To learn more about Section 401 certification and the EPA's proposed Section 401 rulemaking and to download the new guidance, please visit: [epa.gov/cwa-401](http://epa.gov/cwa-401).

Again, thank you for your letter. If you have any further questions, please contact me, or your staff may contact Britt Carter in the EPA's Office of Intergovernmental Relations at [carter.brittany@epa.gov](mailto:carter.brittany@epa.gov) or (202) 564-6312.

Sincerely,



David P. Ross  
Assistant Administrator