



What the Data Show About State Section 401 Certification

Proponents of Clean Water Act Section 401 reform describe it as necessary to stop states from abusing their authority by using the water quality certification process to delay or block federally permitted projects. A survey conducted by the Association of Clean Water Administrators (ACWA) does not support that premise.

ACWA's Recommendations for Congress

Congress should carefully consider state-reported certification data and the documented causes of project delays before making significant statutory changes to Section 401. The available evidence indicates that delays are more commonly associated with incomplete applications or changes in project scope and federal permitting coordination than with misuse of state certification authority.

Water Quality Certification Denials and Delays Are Rare

Denials are uncommon. Most responding states reported zero certification denials; several reported issuing just 0-2 certification denials with prejudice. No state reported a denial rate above 3.5%.

Reviews are generally completed well within statutory timeframes. Average certification time was 77 days (range: 14–180 days), well within the one-year statutory “reasonable period of time” window.

Delays trace to applicants and federal partners, not states. States identified the top three causes of delay as: (1) submission of incomplete or inadequate applications, (2) slow or unresponsive applicants, and (3) interagency coordination and public-process requirements (e.g., USACE review, NEPA, ESA) not state certification procedures.

States already invest in efficiency. Nearly all responding states reported pre-filing consultation, standardized checklists, and online portals to improve review efficiency and reduce avoidable delays.

States favor resolution over denial. States reported that *denial with prejudice is generally used as a last resort*, instead working with applicants through iterative information requests to resolve deficiencies and facilitate certification whenever possible.

Implications for H.R. 3898

Several provisions in PERMIT Act Sec. 5 are intended to address perceived state overreach. However, the ACWA survey indicates that certification denials are rare, reviews are generally completed well within statutory deadlines, and reported delays most often stem from incomplete applications or federal coordination rather than state decision-making. These findings suggest that targeted administrative improvements may better address the documented causes of delay than statutory restrictions on state Section 401 authority.

The Association of Clean Water Administrators (ACWA) is the independent, nonpartisan, national organization of state, interstate, and territorial water program managers who on a daily basis implement the programs of the Clean Water Act (CWA). As the primary entities responsible for carrying out most of the CWA programs, states are very interested in national policy updates that may impact how they implement the CWA in their states.

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