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November 3, 2026

The Honorable Shelly Moore Capito
Chairman, Senate Committee on Environment & Public Works
United States Senate
Washington, DC 20510

The Honorable Mike Lee Chairman
Senate Committee on Energy & Natural Resources
United States Senate
Washington, DC 20510

The Honorable Brett Guthrie Chairman
House Committee on Energy & Commerce
United States House of Representatives
Washington, DC 20515

The Honorable Sam Graves Chairman
House Committee on Transportation & Infrastructure
United States House of Representatives
Washington, DC 20515

The Honorable Bruce Westerman Chairman
House Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

The Honorable Sheldon Whitehouse
Ranking Member
Senate Committee on Environment & Public Works
United States Senate
Washington, DC 20510

The Honorable Martin Heinrich
Ranking Member
Senate Committee on Energy & Natural Resources
United States Senate
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The Honorable Frank Pallone Jr.
Ranking Member
House Committee on Energy & Commerce
United States House of Representatives
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The Honorable Rick Larsen
Ranking Member
House Committee on Transportation & Infrastructure
United States House of Representatives
Washington, DC 20515

The Honorable Jared Huffman
Ranking Member
House Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

Dear Chairman Capito, Chairman Lee, Ranking Member Whitehouse, Ranking Member Heinrich, Chairman Guthrie, Chairman Graves, Chairman Westerman, Ranking Member Pallone, Ranking Member Larsen, and Ranking Member Huffman:

ACWA is the independent, nonpartisan, national organization of state, interstate, and territorial water program managers who serve alongside the agencies as co-regulators of the CWA. States have a unique and important interest in any changes to the Clean Water Act (CWA). Under the cooperative and collaborative framework established by the CWA, states are responsible for establishing water quality standards, Total Maximum Daily Loads (TMDLs) and for performing section 401 water quality certifications. Moreover, forty-seven, soon to be forty-eight states are authorized to manage the National Pollution Discharge Elimination System (NPDES) program. As Congress considers the Bipartisan American Affordability and Jobs Act of 2026 (BAAJA), States appreciate the motivations driving this comprehensive legislation and share the broad goals of modernizing permitting processes, enhancing interagency coordination, and advancing resilient energy and water infrastructure to meet growing demands. Our member agencies are also committed to ensuring that longstanding and successful CWA safeguards remain in place and are effective to protect public health and the environment in our communities.

BAAJA would significantly change how states, EPA, and the Army Corps implement the Act: the changes would require APA rulemaking for Section 304(a) criteria, substantially rewrite Section 401 certification standards and procedures, double the maximum NPDES permit term to ten years, and reshape Section 404 permitting and judicial review. Because states carry out these programs day to day, our analysis focuses on what the changes would mean for state procedures and workload, and we welcome the chance to discuss it with you and your staff. ACWA's members want to ensure that you

have a comprehensive understanding of state perspectives with the proposed changes to the CWA as you consider this important legislation. Please contact Julia Anastasio, janastasio@acwa-us.org/ 202-746-8017, with any questions or to schedule a time to chat further.

Sincerely,



Julia Anastasio
Executive Director & General Counsel

Attachments:
BAAJA Analysis
401 Fact Sheet
401 Survey Results

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October 1, 2026

Summary and Analysis of Provisions Affecting Clean Water Act Programs Included in the Bipartisan American Affordability and Jobs Act of 2026

On September 30, 2026, the U.S. Senate released proposed language in the "Bipartisan American Affordability and Jobs Act of 2026." The bill contains several significant amendments to the Clean Water Act (CWA) affecting state and federal implementation of water quality standards, Section 401 water quality certification, Section 402 National Pollutant Discharge Elimination System (NPDES) permitting, and Section 404 dredge-and-fill permitting. The legislation also establishes new judicial-review requirements and includes separate transmission-permitting provisions that expressly encompass state Section 401 certifications.

The bill's CWA provisions are contained primarily in Division A, Title II (§§1201–1205). In broad terms, the legislation would: (i) require EPA to use Administrative Procedure Act rulemaking when developing CWA Section 304(a) water quality criteria and expressly provide for judicial review of final Section 304(a) criteria and definitions of "waters of the United States" (WOTUS); (ii) substantially revise Section 401 water quality certification procedures and the substantive standards governing state certifications; (iii) increase the maximum NPDES permit term from five to ten years; (iv) significantly revise the Section 404 general and nationwide permit program and limit EPA's Section 404(c) authority; and (v) establish new limitations and procedures for judicial review of Section 404 actions.

Section 1201 – Water Quality Criteria

Section 1201 would amend CWA Section 304(a) by requiring EPA to conduct a formal rulemaking under the Administrative Procedure Act when developing any criterion under Section 304(a). This would alter the current statutory framework which currently requires EPA to publish criteria as national scientific recommendations that states and authorized Tribes may use when developing water quality standards. The new requirement would subject development of those criteria to notice-and-comment rulemaking procedures.

Section 1201 also amends CWA Section 509(b)(1), which governs judicial review of certain EPA actions in federal courts of appeals. The legislation would add two categories of EPA actions to Section 509 review: (i) finalization of Section 304(a) water quality criteria; and (ii) EPA actions defining the scope of "waters of the United States" for purposes of the CWA.

Section 1202 – Section 401 Water Quality Certification

Section 1202 would make significant statutory changes to Section 401 water quality certification, establishing new federal statutory parameters governing: (i) the scope of certification review; (ii) certification conditions and denials; (iii) application requirements; (iv) information requests; and (v) other certification procedures. Importantly, these changes would be incorporated directly into the CWA. and could substantially affect how states and authorized Tribes administer certification programs.

- **Narrowing the Scope of Certification Review.** Section 1202 would provide that the scope of a Section 401 certification is limited to ensuring compliance with applicable "water quality requirements." This represents a shift from the broader "activity" approach reflected in EPA's 2023 Section 401 regulations. The legislation would, therefore, establish a statutory limitation on the matters a certifying authority may consider when reviewing a federally licensed or permitted activity.

- **New Requirements for Certification Conditions.** The proposal would impose significant new requirements on a state's ability to condition a certification. A certifying authority could impose a condition only where it determines, *based on clear and convincing evidence,* that the condition is necessary to ensure compliance with applicable water quality requirements. Conditions would also *have to constitute the "least burdensome"* means of ensuring compliance and be consistent with the requirements of the underlying federal license or permit.

  These provisions could require states to develop a more detailed administrative record supporting individual certification conditions. In particular, states would be required to document both why a condition is necessary to address an identified water quality concern and why a less burdensome alternative would not adequately ensure compliance.

- **Higher Threshold for Certification Denials.** Section 1202 would also *establish a new evidentiary standard for denying certification*. A certifying authority could deny an application only upon determining, based on clear and convincing evidence, that certification cannot be granted without violating applicable water quality requirements. The state would need to determine that modifications to the proposed activity or reasonable certification conditions could not adequately address the water quality issue.

  In practice, this provision would make certification denial more explicitly a measure of last resort and could require states to document why potential project modifications or certification conditions would be insufficient before denying certification.

- **More Standardized Certification Applications.** The bill would establish statutory requirements for a "certification application." Required information would include: (i) identification of the applicant and relevant federal license or permit; (ii) a description of the proposed activity; (iii) information regarding the location and nature of potential discharges and receiving waters; and (iv) specified information and certifications from the applicant.

  The proposal would therefore move toward a more nationally standardized process for determining what constitutes a certification application and when the limited timeline for Section 401 review process begins.

- **Limitations on Additional Information Requests.** Section 1202 would also constrain state requests for additional information during certification review. Additional materials requested by a certifying authority would need to relate to the information necessary to evaluate the certification application and applicable water quality requirements. EPA would be directed to promulgate regulations addressing certification application requirements.

  These provisions could reduce states' flexibility to request information during the review process unless the state can demonstrate a clear connection between the requested information and its Section 401 water quality review.

- **Pre-Filing and Public Participation Procedures.** The proposal would place additional procedural requirements directly into Section 401. A prospective applicant could request a pre-filing meeting with the certifying authority, which would generally be required to respond within seven days and conduct the meeting within 30 days. The legislation also includes public-notice and hearing provisions associated with certification applications.

Section 1202 would preserve the fundamental state role in Section 401 certification: states would continue to grant certifications, grant certifications with conditions, deny certification, or waive certification. However, the legislation would establish considerably more detailed federal statutory standards governing how states exercise that authority.

Section 1203 – NPDES Permit Terms

Section 1203 makes a short but potentially consequential amendment to Section 402. It would change the statutory maximum term for permits issued by authorized NPDES *programs from five years to ten years*. The provision does not require every permit to have a ten-year term, nor does the language in Section 1203 itself establish separate eligibility criteria for longer permit terms.

For permitting authorities, the change could reduce the frequency of routine permit reissuances and potentially reduce permit backlogs and administrative workload. At the same time, longer permit cycles could affect how frequently permit limits and conditions are reconsidered in light of revised water quality standards, TMDLs, effluent guidelines, new monitoring information, or changes in facility operations.

Sections 1204–1205 – Section 404 Dredged and Fill Material Permitting

Sections 1204 and 1205 contain several significant amendments to the Section 404 Dredged and Fill Material program.

- **EPA Section 404(c) Authority.** Section 1204 would limit the period during which EPA may exercise its Section 404(c) authority to prohibit, restrict, deny, or withdraw specification of an area as a disposal site. Under the bill, EPA's authority *would begin when an applicant submits a complete §404 permit application and end when the Secretary of the Army issues the permit*. EPA would no longer have the same ability to exercise Section 404(c) authority either before a

permit application has been submitted or after the Corps has issued the permit. The provision would apply to Section 404 applications submitted after the bill's enactment.

- **General Permit Terms.** The bill would increase the maximum duration of Section 404 general permits *from five years to ten years*, similar to changes to Section 402 permitting.

- **Scope of Environmental-Effects Review.** In determining the environmental effects of activities for purposes of Section 404(e) general permits, the Secretary would be directed to consider *only the effects of a dredged-or-fill discharge on compliance with the bill's defined "water quality requirements."* The bill further provides that effects associated with discharges into less than two acres of navigable waters are to be considered a "minimal adverse environmental effect." This would establish a statutory presumption regarding the environmental effects of certain smaller discharges and could substantially affect how the Corps determines eligibility for general permits.

- **Required Nationwide Permits.** Section 1204 would require the Corps to maintain nationwide general permits for activities currently covered by Nationwide Permits 12, 14, 43, 57, and 58, provided the activity results in a dredged-or-fill discharge affecting less than two acres for each single and complete project.

- **Reissuance of Nationwide Permits.** The bill also streamlines the process for reissuing nationwide permits. For qualifying reissuances, it would *eliminate specified state and federal Endangered Species Act consultation requirements and National Historic Preservation Act consultation*, while providing that NEPA requirements would be satisfied through a programmatic environmental assessment. These streamlined procedures would apply only where reissuance does not narrow or eliminate preconstruction requirements or raise applicable preconstruction thresholds.

Section 1205 – Judicial Review of Section 404 Decisions

Section 1205 establishes a new statutory judicial-review framework specifically for Section 404. The bill would impose a *150-day statute of limitations* for challenges to: (i) EPA approval of a state Section 404 permit program; (ii) individual or general Section 404 permits; and Corps verifications that activities are authorized under a Section 404 general permit.

For certain challenges, plaintiffs would also have to demonstrate that they participated in the applicable public-comment process and submitted comments sufficiently detailed to place EPA, the Corps, or the state on notice of the issue later raised in court. This lidsmitation applies where a draft action was published and the agency provided at least a 30-day comment period.

The bill also significantly limits judicial remedies. Where a court finds that the Corps or an authorized state failed to comply with Section 404 or acted arbitrarily and capriciously, the normal remedy would be remand to the permitting authority. A court generally *could not vacate, revoke, enjoin, or otherwise limit a permit* unless the permitted activity presents an "imminent and substantial danger" to human health or the environment for which no other equitable remedy is available. Similar restrictions would apply to injunctions involving general-permit verifications. Where a matter is remanded, the court

generally would be required to establish a schedule requiring the responsible federal agency or state to *act within 180 days*.

Other Provisions Affecting CWA Implementation

Outside the CWA title, the legislation contains at least one provision of particular relevance to state water programs. Section 2101, addressing interstate electric transmission, amends the Federal Power Act to expressly include a Section 401 certification issued by a state or other certifying authority within the definition of a "Federal authorization" for purposes of coordinated transmission permitting. The legislation would therefore bring state §401 decisions associated with covered transmission facilities into the Federal Power Act's coordinated authorization process. It also provides for judicial review of actions by federal agencies or state administrative agencies acting under federal law to issue, condition, or deny these authorizations in the same federal courts that review relevant FERC orders.

Key Takeaways for State CWA Programs

The legislation would affect state CWA programs in several distinct ways. For water quality standards programs, Section 304(a) criteria development would become subject to APA notice-and-comment rulemaking, and final criteria—as well as EPA WOTUS definitions—would expressly be subject to direct appellate judicial review under Section 509.

The Section 401 amendments are the most extensive direct change to state authority, establishing narrower substantive boundaries, heightened evidentiary standards for conditions and denials, more prescriptive application procedures, and new judicial-review requirements. The special rules for interstate natural-gas pipelines and transmission projects would narrow certification further by focusing review on direct point-source discharges and imposing a nine-month maximum review period.

For NPDES programs, the principal statutory change is straightforward but significant: the maximum permit term would double from five to ten years. States would need to evaluate whether and when to use longer permit terms and how those terms interact with permit modification, reopening, water quality standards, TMDLs, and other evolving requirements.

Finally, the Section 404 provisions would substantially change both federal and assumed state program implementation by limiting EPA's Section 404(c) authority, extending general permit terms, establishing a less-than-two-acre threshold for minimal adverse effects, statutorily maintaining specified nationwide permits, streamlining nationwide permit reissuance, and imposing new restrictions on litigation and judicial remedies.

The bill would make substantial changes to several of the principal mechanisms through which states, EPA, and the Corps regulate federally permitted projects and point- and dredge-and-fill discharges. For state agencies, the provisions most likely to require changes to existing program procedures are the Section 401 certification requirements, the potential use of ten-year NPDES permits, and—particularly for states with assumed Section 404 programs—the new dredged and fill material permitting and judicial-review framework.

The Association of Clean Water Administrators (ACWA) is the independent, nonpartisan, national organization of state, interstate, and territorial water program managers who serve as co-regulators of the federal Clean Water Act (CWA). The U.S. Environmental Protection Agency (EPA) has announced that it is in the process of determining whether guidance or rulemaking may be necessary to address identified areas of regulatory uncertainty or implementation challenges regarding the scope of state water quality certification under CWA Section 401.

To better understand what aspects of Section 401 can be improved to more effectively and efficiently protect the nation's waters, ACWA has gathered information from state clean water regulators regarding their experiences in the Section 401 water quality certification process. Reponses were received from officials from 24 states, largely demonstrating that: (i) CWA Section 401 certification denials are minimal; (ii) delays in certification – while rare – are largely due to applicants' submittal on incomplete applications or other federal statutory requirements (e.g., National Environmental Policy Act, Endangered Species Act), rather than state certification processes; and (iii) that states have taken a variety of steps to promote timely, transparent, and scientifically-supported water quality certification determinations.

The following is a summary of state responses to 12 questions covering a broad spectrum of issues relating to CWA Section 401 state certification processes:

What is the average length of time it takes to complete a Clean Water Act Section 401 water quality certification ("certification") once you have received a completed application?

State responses averaged **77 days** for certification completion. Responses varied from **14 days to 180 days**.

Approximately how many certification requests does your state review each year? How many are denied?

State responses varied greatly as to the number of certifications processed annually. However, the number of denials of certifications reported was notably low. **A majority of responding states (13) reported no certification denials**. 17 states indicated 0-2 certification denials. No state reported a certification denial rate higher than 3.5%.

What steps has your state taken to make timely certification decisions?

States reported using a mix of front-loading, standardization, automation, interagency coordination, and targeted staffing to reduce back-and-forth and shorten review times. Steps described included:

- **Pre-filing / early engagement**
  - Detailed pre-filing meetings with applicants (and the Corps) to resolve issues before formal submittal; some states prepare drafts by the end of the public comment period.
  - Frequent, transparent communication with applicants throughout review.

- **Clear guidance and application improvements**
    - Revised application forms and instructional materials (many updated after the 2023 federal rule) so requests are complete on first submission.
    - Publicly posted process descriptions, templates, and example applications (via FOIA or website) so applicants know expectations.

- **Standardization & templates**
    - Standardized data requirements (e.g., sediment characterization), standardized conditions, and use of templates/decision documents to speed application and review.
    - Categorical/programmatic certifications and condensed permit conditions placed in state regulations to reduce need for individual decisions.

- **Regulatory/administrative changes**
    - Regulatory updates to streamline certification of nationwide/general permits (avoiding lengthy state rulemaking) and to embed common conditions in regulation.
    - Use of programmatic reasonable periods (many states typically reported ~90 days rather than defaulting to six months).

- **Electronic processing & web tools**
    - Online submission portals that validate fields, allow e-signatures, track workflow, and send automated reviewer notifications.
    - Acceptance of electronic information and correspondence to speed exchange.

- **Interagency coordination**
    - MOUs and formal coordination with USACE to align pre-filing, timelines, concurrence steps, and programmatic certifications — saving time and resources.

- **Staffing, training & internal controls**
    - Dedicated staff or FTEs, hiring contractors to augment capacity, staff training, internal SOPs, and tracking of deadlines and metrics.
    - Internal performance expectations and tracking to keep reviews on schedule.

- **Expedited processes for emergencies**
    - Special/expedited public notice and processing procedures for disaster recovery and emergency projects.

States emphasized preventing incomplete submissions (clear guidance + pre-filing), reducing repetitive review work (standardized requirements, templates, programmatic certifications), speeding handling (electronic systems + staffing), and improving coordination with the Corps to achieve timelier certification decisions.

What factors does your state consider in determining whether a certification request is complete and acceptable? Do you have clear requirements outlining what constitutes a complete application?

Most states reported having clear, codified, or guidance-based requirements that define what makes a Section 401 application complete. Completeness determinations typically rely on federal requirements under 40 CFR §121.5, state regulations or administrative codes, and agency-developed forms, checklists, or guidance documents. The goal is to ensure that all necessary project details, water quality information, and supporting documentation are submitted at the outset to minimize delays. Common factors considered in determining an application's completeness included:

- **Compliance with Federal and State Regulatory Requirements**
  - Many states directly referenced 40 CFR §121.5(a)–(b) as the baseline for completeness.
  - Several also cited state statutes or administrative rules
  - Applications must align with both federal and state water quality standards.

- **Basic Administrative Requirements**
  - Completed and signed application form.
  - Payment of applicable fees.
  - Accurate contact information, project location, and maps.
  - Submission of the public notice (if applicable) and proof of publication.

- **Project Description and Technical Detail**
  - Clear and complete description of proposed activities and discharges.
  - Inclusion of plans, maps, site drawings, and photographs.
  - Quantification and characterization of impacts on waters, including wetland delineations, stream assessments, and mitigation proposals.
  - Explanation of avoidance and minimization measures.

- **Supporting Documentation**
  - Copy of the federal license or permit application (e.g., U.S. Army Corps 404 permit or FERC documents).
  - Documentation of agency coordination, including correspondence with USACE, USFWS, and state natural resource agencies.
  - Water quality-related data, sediment characterization, and/or use attainability analyses.
  - Mitigation plans with legal protection mechanisms (e.g., easements).
  - Applicable best management practices (BMPs).

- **Environmental and Regulatory Context**
  - Consistency with state water quality standards, management plans, and antidegradation policies.
  - Consideration of feasible alternatives, cumulative impacts, and threatened or endangered species.
  - Demonstrated compliance with state and federal stormwater management and nonpoint source requirements.

- **Agency-Specific or Activity-Based Requirements**

- Some states require specialized studies or forms depending on project type (e.g., wetland fills, stream modifications, hydropower relicensing).
- A few agencies tie completeness reviews to other permitting programs (e.g., wetlands or flood hazard applications) with synchronized timelines.

Most states have formalized, transparent, and federally aligned standards defining a "complete" 401 certification request. Completeness hinges on providing a full, accurate, and well-documented project description—including federal permit information, water quality data, and mitigation details—so that reviewers can assess compliance with water quality standards without extensive follow-up.

Do you have best practices, such as early consultation processes, types of materials needed, etc. for applicants to understand what constitutes a complete application? If so, please elaborate.

Nearly all respondents indicated that they have established formal or informal mechanisms to support applicants and improve application completeness. Common themes included the use of pre-filing meetings, detailed checklists or guidance documents, online submission tools that ensure completeness, and active interagency coordination.

- **Pre-Filing Consultation and Early Coordination:** A strong majority of states emphasized the importance of pre-filing or pre-application meetings to ensure applicants understand requirements before submission. Many states require or strongly encourage pre-filing meetings, often at least 30 days prior to submittal. These meetings allow agencies to discuss project details, clarify expectations, identify potential deficiencies, and tailor information requests.

  Early coordination also provides opportunities for joint engagement with federal permitting agencies, such as the U.S. Army Corps of Engineers (USACE), and other state or local entities to align requirements and avoid duplication.

  Some states (e.g., Nevada, Maryland, and California) noted that early consultation reduces incomplete applications and expedites review by identifying data gaps in advance.

- **Checklists, Forms, and Guidance Documents:** Many states use application checklists, standardized forms, or detailed guidance documents to outline the specific materials and information needed for a complete submission. Some states provide formal lists of required elements in regulation or via agency websites. Several states have project-specific or activity-specific checklists (e.g., for dredge and fill, linear projects, or stormwater-related activities).

  Guidance documents often include examples or templates for required plans such as inadvertent return plans, groundwater protection plans, and stormwater pollution prevention plans. Some states have developed comprehensive, fillable forms that serve as both guidance and the official application vehicle. A few respondents (e.g., California, Arizona, and Nevada) have detailed online application portals that prevent submission until all required information fields are completed.

Across the board, states recognize that early and proactive communication is the most effective strategy to ensure complete and high-quality Section 401 certification applications. The combination of structured pre-filing meetings, clear written guidance, interactive online tools, and ongoing consultation has proven successful in minimizing delays and improving application quality.

If an application for certification is incomplete, what steps are taken as a remedy?

When a Section 401 certification application is found incomplete, nearly all states reported taking immediate corrective action by notifying the applicant in writing—most often through email or formal letters—detailing the deficiencies and requesting the missing information. States emphasized maintaining communication and providing clear direction to help applicants achieve a complete submission without restarting the process. Common steps states pointed to included:

- **Written Notification of Deficiencies**
  - The most common remedy is a formal notice of deficiency or incomplete letter that:
    - Lists the specific missing or insufficient items.
    - Explains what is required to correct them.
    - Provides instructions, guidance documents, or examples to assist the applicant.

- **Timely Communication**
  - Several agencies commit to sending notices within a defined timeframe (e.g., within 15 business days of receipt).
  - Follow-up notices may be sent at regular intervals (e.g., 35, 55, and 65 days) if deficiencies remain unresolved.

- **Direct Applicant Engagement**
  - Many states contact applicants directly via email or phone to discuss deficiencies and clarify expectations.
  - Some agencies conduct coordination meetings or consultations (often including the U.S. Army Corps of Engineers) to resolve complex issues.

- **Iterative Information Requests**
  - If initial corrections are incomplete, agencies continue to request additional information until the submission meets completeness standards.
  - This process is collaborative, not punitive—agencies rarely "deny" applications outright for incompleteness.

- **Administrative Handling**
  - In some cases, incomplete applications are formally rejected or returned as "administratively incomplete" (not denied) until all required materials are received.
  - Once deficiencies are corrected, the application can be re-entered into the review process.

- **Provision of Resources**
    - Some states direct applicants to reference materials (e.g., example applications available through FOIA or agency websites) to clarify expectations and improve future submissions.

- **Interagency Coordination**
    - A few states coordinate closely with USACE to ensure that the applicant's materials are consistent with the federal public notice process and related NPDES or stormwater requirements.

Across states, incomplete water quality certification applications are handled through a transparent, supportive, and iterative process. State agencies reported promptly identifying missing information, communicating clearly with applicants, and providing resources or coordination to ensure the application becomes complete - helping maintain efficiency and avoid formal denials or delays.

What types of studies or requests for more information are most often requested?

The most frequently requested additional information or studies for Section 401 certification concern site characterization, environmental impacts, mitigation, and compliance documentation. Applicants are most often asked to provide maps, plans, photos, and technical analyses that clarify potential effects on water quality, aquatic life, wetlands, and endangered species. Requests for more information generally fall into a few consistent categories:

- Project documentation and mapping
- Ecological and habitat studies,
- Engineering and hydrologic analyses
- Mitigation and restoration planning, and
- Administrative completeness and coordination materials.

What complicating factors may extend the time required to gather appropriate information?

States consistently reported that delays in receiving complete, accurate, or updated information from applicants are the primary factors extending review timelines for WQC applications. Other major causes include project complexity or changes, interagency coordination delays, seasonal or technical study requirements, and public comment responses. Overall, delays arise from both applicant-side issues (such as incomplete submittals or redesigns) and external coordination factors (such as federal permitting, environmental review documents, or seasonal field constraints).

The time required to gather appropriate information for Water Quality Certification is most often extended by:

- Slow or incomplete applicant responses,

- Evolving or complex project scopes, and
- Coordination dependencies with federal or state partners.

Additional complications—such as public comments, seasonal field conditions, and internal staffing or administrative limits—further lengthen review timelines. In short, timeliness and quality of applicant-provided information, combined with project complexity and interagency coordination, are the dominant factors influencing delays in the WQC process.

What are the top three reasons for a delay in issuing a certification?

States reported that the most frequent reasons for delay in issuing certifications are:

1. **Incomplete or inadequate applications** (including missing information or insufficient documentation).

2. **Slow or unresponsive applicants** (delayed responses to requests for information, or submission of incorrect materials).

3. **Interagency coordination and public process requirements** (e.g., waiting on U.S. Army Corps of Engineers (USACE), public comments, or environmental review documents).

Additional but less frequent reasons include project changes during review, complex or controversial projects, staffing and workload constraints, and applicant payment or administrative issues.

The most consistent sources of delay in issuing water quality certifications are incomplete applications and slow applicant responses. These are compounded by federal coordination requirements, public review processes, and staffing limitations. Timeliness depends on applicant preparedness, responsiveness, and interagency alignment—factors largely outside the immediate control of state 401 programs.

At what point or points in the review process may your state decide to deny with or without prejudice a certification request?

Most states reported that denial of a water quality certification is rare and typically occurs late in the review process—after a complete application has been received, technical review has been conducted, and public notice requirements have been satisfied. However, states distinguish between two main categories of denial:

1. **Denial *without prejudice*** – most often issued when an applicant fails to provide sufficient information or becomes nonresponsive, making it impossible to complete review within the reasonable period of time (RPOT) under the Clean Water Act.

2. **Denial *with prejudice*** – issued when the project as proposed cannot meet state water quality standards, even with potential modifications or conditions.

In general, respondents expressed a strong preference to work with applicants to resolve deficiencies and avoid outright denials whenever possible.

States may deny certification requests at multiple points, but in practice:

- Procedural denials (without prejudice) occur when information is incomplete or deadlines approach.

- Substantive denials (with prejudice) occur only after full review confirms noncompliance with water quality standards.

Most states emphasized **collaboration, flexibility,** and **avoidance of formal denials** - favoring withdrawal or resubmission - to ensure compliance and maintain cooperative relationships with applicants and federal partners.

Other than the CWA, what statutes, regulations, and/or related requirements factor into the certification timeline review timeline?

States widely reported that the timeline for Section 401 water quality certification review is shaped not only by the federal Clean Water Act, but also by a patchwork of state statutes, administrative codes, environmental regulations, and procedural requirements. These additional authorities typically fall into four broad categories:

- State water quality laws and implementing regulations

- Public notice, hearing, and administrative procedure requirements

- Environmental review and coordination mandates (e.g., NEPA, CEQA, state-level equivalents)

- Other programmatic requirements (wetlands, floodplain, coastal zone, endangered species, etc.)

Collectively, these overlapping requirements determine how quickly an application can be processed, when the clock starts, and whether additional consultation or comment periods are required, often extending overall review time. While the Clean Water Act provides the federal foundation for Section 401 certification, state-specific laws and administrative codes overwhelmingly determine the pace and sequencing of reviews. These include:

- Mandatory pre-filing and public notice periods,

- Integration with other state permitting and environmental review processes, and

- Distinct procedural and antidegradation requirements.

As a result, certification timelines vary widely by state—reflecting each state's broader regulatory framework, environmental protection priorities, and administrative coordination requirements.

Please describe other challenges or hurdles that your state has faced in implementing the Section 401 water quality certification program under recent federal rules.

Most states acknowledge that the 2023 Section 401 rule improved clarity and restored flexibility compared to the 2020 version. However, they continue to face implementation challenges - particularly around coordination with federal agencies, inconsistent timelines, limited staffing, and the constantly shifting regulatory landscape. Persistent uncertainty over WOTUS definitions, RPOT determinations, and scope of state authority remain significant hurdles to smooth administration of the Section 401 certification program.

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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 f. 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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