

## **EPA Takes Action to Empower States, Territories, and Tribes to Protect Water Resources, Support Sustainable Development**

**WASHINGTON** (June 2, 2022) – Today, the U.S. Environmental Protection Agency (EPA) announced a proposed rule to update the regulatory requirements for water quality certification under Clean Water Act (CWA) section 401. This proposed rule would strengthen the authority of states, territories, and Tribes to protect their vital water resources while supporting an efficient, predictable, and common-sense certification process.

“For 50 years, the Clean Water Act has protected water resources that are essential to thriving communities, vibrant ecosystems, and sustainable economic growth,” said **EPA Administrator Michael S. Regan**. “EPA’s proposed rule builds on this foundation by empowering states, territories, and Tribes to use Congressionally granted authority to protect precious water resources while supporting much-needed infrastructure projects that create jobs and bolster our economy”

This proposed rule is a key milestone in the regulatory process announced in [May 2021](#) to revise the 2020 CWA Section 401 Certification Rule. The proposed rule would update the existing regulations to be more consistent with the statutory text of the 1972 CWA and clarify elements of section 401 certification practice that has evolved over the 50 years since the 1971 regulation was promulgated. EPA conducted pre-proposal engagement to help inform the content of its proposal.

“The Clean Water Act quite clearly gives states, territories, and Tribes the ability to protect their water quality when projects are permitted or licensed,” said **Senator Carper, Chairman of the Senate Committee on Environment and Public Works**. “I commend Administrator Regan and the technical experts at EPA for taking a prudent step to help these governments act to address local water quality.”

“Today’s actions by the EPA will enable states, territories and tribes to uplift their economies by protecting their water resources as they deem appropriate,” said **New Mexico Governor Michelle Lujan Grisham**. “I applaud Administrator Regan for his collaborative approach to ensuring that our state and federal partnership on this important issue leads to improved water quality for ecosystems, cultural uses and continued economic growth.”

Congress provided authority to states, territories, and Tribes under CWA section 401 to protect the quality of their waters from adverse impacts resulting from federally licensed or permitted projects. Under section 401, 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 state, territory, or authorized Tribe where the discharge would originate either issues a CWA section 401 water quality certification or waives certification.

The Agency is taking comment on this proposed rule for 60 days beginning on the date it is published in the *Federal Register*. For more information on submitting written comment on the proposal or to register for the virtual public hearing on the proposed rule, see [www.epa.gov/cwa-401](http://www.epa.gov/cwa-401).

**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 (2020 Rule). Prior to the 2020 Rule, EPA promulgated implementing regulations for water quality certification before the 1972 amendments to the Federal Water Pollution Control Act (commonly known as the Clean Water Act), which created section 401.

###