



July 30, 2021

The Honorable Michael Regan  
Administrator  
US Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20510

*Subject: Comments on Notice of Intention to Reconsider and Revise the Clean Water Act  
Section 401 Certification Rule Docket #EPA-HQ-OW-2021-0302*

Dear Administrator Regan:

Thank you for the opportunity to comment upon the proposal indicating the “Notice of Intention to Reconsider and Revise the Clean Water Act Section 401 Certification Rule. Oklahoma always supports the idea of protecting the tenets of cooperative federalism, but in doing so, EPA should look deeper to balance the interests of the state in protecting the state’s right to protect its water quality by using the certification process under Section 401 while also understanding all states’ interest in participating in interstate commerce as protected by the Commerce Clause under the US Constitution. In short, Oklahoma asks EPA to carefully protect these equities while addressing legitimate implementation concerns among the states.

There are several factors we would like you to consider in moving forward as set forth below. Oklahoma and Governor, Kevin Stitt, are fierce defenders of the state’s right to set water quality standards and want to ensure that nothing in the proposal infringes upon that right. The 2020 Rule was promulgated and finalized, in part, to prevent a state’s abuse of the process to prevent certain commercial activities in interstate commerce that did not degrade water quality, but were objectionable by the state for other policy reasons.

Over the past several years, and prior to implementation of the 2020 Rule, there was an unfortunate increase in several states misusing Section 401 to block important pipeline projects that actually impair the ability to get environmentally beneficial fuels to other parts of the country to replace less-efficient and higher emission fuel sources to areas in need of air quality improvements. For example, during the recent winter storm known as the “Polar Vortex,” the northeast was forced to utilize Russian Liquefied Natural Gas (“LNG”) from a Russian Tanker docked in Boston Harbor rather than responsibly sourced US fuels. This abusive process also blocks US LNG from providing these emission-reducing products to emerging markets who, in their absence, will look to less environmentally friendly fuels to power their economic growth.


In considering comments and reconsidering the 2020 Rule, these are some points we would like you to consider:

1. We ask that EPA look to the original text of the CWA to restore original jurisdictional language that properly defines the roles of the state and federal government.
2. In the Federal Register “Questions for Consideration” Number 4, we support the 2020 Rule that narrows the scope of reviews to what congress intended with the original passage of Section 401 limiting to water quality requirements and not a broadening of that that examines the activity itself.
3. In the Federal Register “Questions for Consideration” Number 3. The Notice states that it is reconsidering unintended consequences from the Reasonable period of time provisions of the 2020 Rule. While Oklahoma believes the one-year limitation is reasonable, we certainly want to respect the opinions of other states in the ability fully and fairly determine certification to protect water quality. Most importantly and paramount to this process is the idea that a state cannot unreasonably withhold a determination on certification which robs the federal agency of a jurisdictional prerequisite to making a decision on a proposed permit. The need for a not to exceed date is real and important, particularly as the Biden Administration pushes for infrastructure and jobs
4. Regulatory certainty and provision of a process that is reasonable, predictable, and cost-effective to scientifically and properly set water quality standards is of utmost importance to Oklahoma.
5. Lastly, it paramount that EPA balance the legitimate states’ rights with the necessity that states be allowed to move products in interstate commerce to support a healthy, growing economy throughout the United States.

If EPA decides to do any additional State and Tribal listening sessions or other workshops, please know that we would love to participate with the intended outcome of a fair, equitable and reasonable rule for all states.

Thank you for considering Oklahoma’s comments on this important Rule. We support revisions that truly protect proper role of states’ to certify those legitimate water quality interests while ensuring the integrity of interstate commerce equitably for all states. Please know that we in Oklahoma stand ready to assist anyway possible and I can be reached at [kenneth.wagner@ee.ok.gov](mailto:kenneth.wagner@ee.ok.gov) or (405)522-7215.

Respectfully Submitted,



Kenneth E. Wagner  
Secretary of Energy and Environment