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DEPT. OF WATER, ENERGY, AND ENVIRONMENT

February 17, 2026

Via Electronic Submission to Regulations.gov

THE HONORABLE LEE ZELDIN, ADMINISTRATOR
US ENVIRONMENTAL PROTECTION AGENCY
1200 PENNSYLVANIA AVE NW
WASHINGTON DC 20460-0002

RE: Docket ID No. EPA-HQ-OW-2025-2929
Comments on Proposed Rule to Update the Water Quality Certification Regulations

Dear Administrator Zeldin

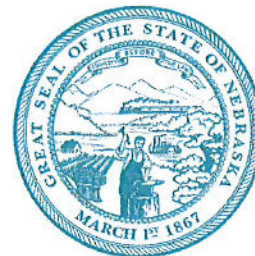
On January 15, 2026, the U.S. Environmental Protection Agency (“EPA”) published a proposed rule, entitled “Updating the Water Quality Certification Regulations,” 91 Fed. Reg. 2,008 (Jan. 15, 2026) (hereinafter “Proposed Rule”). The Nebraska Department of Water, Energy, and Environment (hereinafter “DWEE”) appreciates the opportunity to provide comments on EPA’s Proposed Rule.

Nebraska’s most important resources are its people and its water. Nebraska has nearly 80,000 miles of rivers and streams and innumerable lakes and ponds. These water features are diverse and are used to provide a variety of beneficial uses to the State, including agriculture, power generation, drinking water, and recreation. As steward of its resources, Nebraska is in the best and most knowledgeable position to regulate and balance the use of its waters. Nebraska keeps both of these important resources at the forefront during the section 401 water quality certification process.

As explained in the Proposed Rule, EPA is proposing to update water quality certification regulations that were put in place in 2023. EPA proposes to:

[R]evise several procedural and substantive aspects of the current water quality certification regulations at 40 CFR part 121 to better align its regulations with the text and legislative history of the [Clean Water Act], increase transparency, efficiency, and predictability for certifying authorities and the regulated community, and to ensure States and authorized Tribes understand and adhere to their section 401 role. 91 Fed. Reg. at 2,016.

DWEE provides the following comments in support of the Proposed Rule’s revisions that will bring clarity, transparency, predictability, and efficiency to the Clean Water Act section 401 certification process.



Jim Pillen, Governor

1. **Scope of certification:** The Proposed Rule proposes to narrow the scope of certification to point source discharges rather than the broader activity. DWEE supports this revision because it aligns with Congress's intent in the Clean Water Act. Similarly, DWEE supports limiting consideration of water quality impacts from point source discharges to only the waters of the United States.
2. **Contents of a request for certification:** The Proposed Rule proposes to bring predictability and transparency to the request for certification by setting forth what components must be included with the request to the extent applicable for the reasonable period of time clock to begin. The proposed changes will prevent delays due to requests for additional information. DWEE supports these revisions, because they set appropriate and predictable expectations for applicants and certifying authorities which will prevent delay. But to provide additional clarity and predictability, the State requests that EPA require or provide, through guidance or reference materials, a list of the materials required for each type of federal permit or license that will require 401 review. Identifying these required materials upfront is critical to avoid disputes on what is "readily available," to ensure consistent implementation across jurisdictions, and to support the development of state guidance documents and internal review processes.
3. **Reasonable period of time:** The Proposed Rule proposes to keep the default reasonable period of time at six months and to make it clear that the reasonable period of time cannot exceed one year. Thus, under the Proposed Rule, there would be no automatic extensions and no withdrawal and resubmittal of the request for certification to restart the reasonable period of time. DWEE supports keeping the default reasonable period of time at six months, as well as the revisions because they bring predictability to the schedule.
4. **Contents of certification decisions:** The Proposed Rule proposes to require more specificity for certification decisions by requiring citations to the water quality requirements that provide a basis for each condition and requiring better explanation and description of the certifying authority's reasoning. DWEE supports these revisions because it will bring clarity and transparency to the process for all parties involved.
5. **Modifications:** The Proposed Rule proposes to revise the modification process by creating a role for the applicant when modifying a grant of certification. Under the Proposed Rule, an applicant would have to agree to the modification, including the language. DWEE supports inclusion of the applicant in the modification process.
6. **Neighboring Jurisdiction (Other State) Process:** The Proposed Rule proposes to make a number of changes to the neighboring jurisdiction process, *i.e.*, other State process, including providing deadlines. DWEE supports the inclusion of a deadline for EPA to take action on an objection because it continues with the goal of bringing predictability to this process and preventing delays. DWEE would also be supportive of an objection process that starts at the six-month mark or runs concurrent with the certification decision process as long as the other State would have time to review a certification decision before deciding whether to object.

7. **Public notice and hearing:** In the Proposed Rule, EPA asks whether it should codify a comment period of no more than 30 days instead of determining the length of the comment period on a case-by-case basis. DWEE supports codifying that the comment period for a request of certification is no more than 30 days.
8. **Nationwide Permits:** The Proposed Rule does not address whether the proposed changes will affect the validity or implementation of recently issued Section 401 water quality certifications for Nationwide Permits (NWP). The State notes there is precedent under the 2020 rule indicating that NWPs were not affected by similar changes. Thus, the State requests confirmation that this precedent will continue to apply under the Proposed Rule to avoid uncertainty regarding existing and future NWP certifications.

DWEE believes the Proposed Rule's revisions to the water quality certification process will improve predictability and clarity. DWEE appreciates the opportunity to provide comments on these revisions.

Sincerely



Jesse Bradley, Director
Nebraska Department of Water, Energy, and Environment