



## DEPARTMENT of AGRICULTURE and NATURAL RESOURCES

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Submit comments to <https://www.regulations.gov/> identified by Docket ID No. EPA-HQ-OW-2025-2929 by February 17, 2026.

### SD DANR 401 Proposed Rule Comments

February 6, 2026

Re: Docket ID No. EPA-HQ-OW-2025-2929 Updating the Water Quality Certification Regulations

Thank you for the opportunity to comment on EPA's proposed revisions to Clean Water Act (CWA) Section 401 Water Quality Certification regulations. The South Dakota Department of Agriculture and Natural Resources (DANR) supports cooperative federalism and appreciates EPA's goals of improving clarity, transparency, and timeliness in certification processes.

South Dakota's current Section 401 program functions effectively: we have no backlog of certifications, we base conditions on water-quality-related state laws, and we collaborate well with applicants and federal agencies. While the current rule has worked successfully in South Dakota, we recognize the need to ensure predictable timelines and a clear and transparent regulatory framework.

DANR offers the following recommendations to ensure the final rule both protects water quality and delivers regulatory certainty for states and applicants.

#### Scope of Certification Review

**Recommendation:** While DANR understands EPA's intent to focus on point source discharges, Section 401's statutory language – "any discharge into navigable waters" – supports a broader interpretation. DANR recommends EPA develop a rule that focuses certification review on point source discharges as the primary trigger for certification while allowing states to use certification to address reasonably foreseeable, water quality related impacts caused by any discharge clearly linked to the licensed activity.

This approach is consistent with the CWA while minimizing open-ended "activity-as-a-whole" reviews by ensuring certification conditions are only used to address reasonably foreseeable water quality impacts clearly linked to the licensed activity.

## "Water Quality Requirements" and Use of State Law

**Recommendation:** Clarify that certification conditions must be water quality related and enforceable under state law, consistent with CWA §401(d) and ensure that states can continue to rely on both numeric and narrative standards, antidegradation policies, and designated use criteria to minimize water quality impacts from licensed activities to both WOTUS and state waters within their borders.

## Waters Covered (WOTUS and Waters of the State)

**Recommendation:** Affirm that Section 401 certification pertains to any discharges into WOTUS while recognizing that many projects affect a mix of WOTUS and non-WOTUS waters within a connected footprint. The proposed rule should continue to allow states to reference applicable state requirements for non-WOTUS features within the project area when necessary to prevent the discharge from causing or contributing to violations in WOTUS (e.g., upstream conveyances or hydrologically connected features). This preserves federal jurisdictional clarity while allowing states to protect connected waters.

## Conclusion

DANR's goal is to protect and preserve South Dakota's water resource while maintaining regulatory certainty. We appreciate EPA's engagement and stand ready to collaborate on a final rule that upholds cooperative federalism, ensures durable permitting timelines, and maintains strong, enforceable water-quality protections.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hunter Roberts", with a long horizontal flourish extending to the right.

Hunter Roberts,  
Secretary