



Clean Water Act Section 401 Water Quality Certification Improvement Rule

Under Clean Water Act (CWA) section 401, Congress provides states, territories, and Tribes with a tool to protect water from adverse impacts that could result from federally licensed or permitted projects. The final *2023 Clean Water Act Section 401 Water Quality Certification Improvement Rule* (2023 Rule) restores the fundamental authority granted by Congress to states, territories, and tribes to protect water resources that are essential to healthy people and thriving communities. The 2023 rule will support clear, efficient, and focused water quality reviews of infrastructure and development projects that are key to economic growth.

Overview of the Final 2023 Rule:

The final rule provides stakeholders with a **clear and consistent certification process** while **ensuring protection of vital state, territory, and Tribal water resources** by:

- **Supporting flexible, early coordination with stakeholders** – The 2023 Rule provides states, territories, and Tribes with the flexibility to engage with project proponents and federal agencies before the certification process begins. State, territory, and Tribal **certifying authorities may decide** when a pre-filing meeting request will lead to a **more efficient certification process**.
- **Clearly defining the contents necessary to start the certification process** – The 2023 Rule creates a **bright-line approach** to defining the required contents in a request for certification, **limiting delays** for project proponents, while still allowing state, territory, and Tribal certifying authorities to define the water quality-related information necessary to start the certification process.
- **Ensuring actions occur within the 1-year statutory timeframe** – The 2023 Rule allows certifying authorities to collaborate with federal agencies to determine the timeframe for review, up to the one-year statutory maximum. To **ensure timely action** and negotiations, the 2023 Rule provides a **6-month default timeframe** (half of the statutory maximum) if the certifying authority and federal agency do not agree on a timeframe.
- **Focusing on the water quality-related impacts of federal projects** – The 2023 Rule realigns the scope of section 401 certification with nearly 50 years of established practice that preceded the 2020 Rule. Simultaneously the 2023 Rule addresses stakeholder concerns regarding past practice and provides **regulatory certainty** by clarifying important concepts such as emphasizing that states, territories, and Tribes **may only consider the adverse water quality-impacts** from the activity.
- **Allowing projects to adapt easily and predictably to shifting context** – The 2023 Rule does not allow states, territories, and Tribes to unilaterally modify certifications, but instead allows them to collaborate with federal agencies to do so. This balances certifying authorities' **needs for flexibility** (to protect water quality over the life of a project) and the potential **reliance interests** of project proponents and federal agencies.

For more information:

To learn more about the CWA Section 401 water quality certification process and the Agency's rulemaking effort, please visit the [CWA Section 401 website](#). Available implementation resources include recorded webinars, Frequently Asked Questions, and fact sheets (in English and Spanish). The docket for the final 2023 Rule (Docket ID No. EPA-HQ-OW-2022-0128) can be found at [Regulations.gov](#).