



September 12, 2019

Ms. Lauren Kasparek, Oceans, Wetlands, and Communities Division Office of Water (4504-T)  
Environmental Protection Agency 1200 Pennsylvania Avenue, NW Washington, DC 20460;  
[cwa401@epa.gov](mailto:cwa401@epa.gov)

**Re: “Updating Regulations on Water Quality Certification”; Submitted to Docket ID No. EPA-HQ-OW-2019-04015 online.**

Dear Ms. Kasparek,

The Association of State Wetland Managers (ASWM) is a nonprofit professional organization that supports the use of sound science, law, and policy in development and implementation of state and tribal wetland programs. The Association of State Floodplain Managers (ASFPM) is an organization of professionals involved in flood risk management, flood hazard mitigation, National Flood Insurance Program, and flood preparedness, warning and recovery. ASWM and ASFPM write to request a 60-day extension to the comment period for the “Updating Regulations on Water Quality Certification” Proposed Rule.

As a co-regulator with states that are tasked with implementation of regulations governing water quality, ASWM understands the complexity of Clean Water Act Section 401 and the cases governing implementation of the Act. ASWM and its member states and tribes have longstanding, positive and effective working relationships with EPA and other federal agencies involved in the implementation of Section 401 certifications.

The important and unique role of states in the management of water resources is clearly recognized in the Clean Water Act (CWA). Therefore, any action taken by the federal government to either expand or contract the scope of federal protection and the role of states in the cooperative federalism relationship will have direct and significant impacts on the states and tribes. We appreciate the agencies’ efforts to work with states to create a clear, effective rule around Section 401 certifications, and look forward to providing detailed comments. The ability of ASWM, states and tribes to weigh in on changes in the regulatory framework and implementation process, timing and strategies can play a critical role in increasing the effectiveness and fidelity of the new rule.

Of utmost importance, we have identified that this rule represents a significant shift in policy and the development of new language, interpretations, requirements and procedures that will strongly affect state and tribal roles and their ability to protect aquatic resources within their boundaries. The new rule also relies on novel interpretations of legal cases to serve as its foundation (e.g. Chevron, P.U.D No. 1).

Finally, and most critical to our request for an extension to the timeline for providing comment, ASWM's review of the proposed rule document **finds that the new rule includes more than 100 specific requests for comment**, which when broken into individual questions equate to at least 130 individual questions. **More than half of these questions require some level of formal legal analysis**, with many to benefit from legal expertise outside the staffing of ASWM, ASFPM and likely many state agencies. Review of the rule's accompanying economic analysis is a major review task as well because it is so limited in scope (only analyzes two cases) and would be better served by inclusion of other cases during comment. These cases require time to gather and analyze the data. Finally, **at least 35 of the requests for comment in Federal Register-published rule include invitations to submit additional information** (in the form of lists, case studies, or other documentation), which will require time to collect and provide in a meaningful manner.

Accordingly, as ASWM, ASFPM and individual states prepare comments, we require adequate time to thoughtfully evaluate the likely effect of the proposed rule, to assess potential intended and unintended consequences of the rule, how it may alter state program structures and responsibilities, and other implementation concerns.

Given the critical importance of the regulatory action, we respectfully submit that an additional 60 days should be added onto the existing 60-day comment period. Thorough deliberation is necessary so that state and tribal programs can provide the agencies with helpful comments regarding this complicated issue, which will in turn contribute to an improved final rule. Thank you and we look forward to EPA's response to this request. Should you have questions regarding this request, please contact Marla Stelk, ASWM Executive Director.

Sincerely,



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