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February 17, 2026

Via eRulemaking Portal: <https://www.regulations.gov>
Docket ID No. EPA-HQ-OW-2025-2929

Lauren Kasparek
U.S. Environmental Protection Agency
EPA Docket Center
Water Docket
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OW-2025-2929
Proposal to Update the Clean Water Act Section 401 Water Quality Certification
Regulations

Dear Ms. Kasparek:

On January 15, 2026, the U.S. Environmental Protection Agency (EPA) issued a Proposed Rule Updating the Water Quality Certification Regulations (Proposed Rule), initiating a comment period that runs through February 17, 2026. 91 Fed. Reg. 20089 (Jan. 15, 2026). The Proposed Rule in large part reinstates the 2020 version of the Water Quality Certification Rule, with some important clarifications. EPA also seeks input on several issues, including its proposed definition of “water quality requirements.”

The Northwest Hydroelectric Association (NWA) is a non-profit trade association that represents and advocates on behalf of the Northwest hydroelectric industry. NWA has over 145 members from all segments of the industry, including electric utilities, water districts, and other hydroelectric project owners and operators. NWA is dedicated to the promotion of the

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Northwest region's waterpower as a clean, efficient energy source while protecting the fisheries and environmental quality that characterize the Northwest region. A combined 37% of total U.S. hydropower capacity comes from Washington and Oregon alone.

Hydropower projects are subject to an extensive licensing process, with significant reviews and participation by natural resource agencies, tribes and the public. States play an important role in this process, both through the water quality certification (WQC) process, as well as reviewing and commenting on the management plans, mitigation measures and licensing provisions. The licensing process often takes years to complete. Thus, it is important that the WQC process be timely, so that it does not further delay the licensing process, and that it be tailored to addressing water quality impacts associated with discharges from the hydropower project (and does not overlap or duplicate with the many other regulatory review processes).

NWHA has reviewed and endorses the comments of the National Hydropower Association (NHA) submitted on the Proposed Rule. NWHA supports: (1) clarifying that the certification applies to the discharge (as opposed to the activity as a whole); (2) limiting conditions in a water quality certification to addressing water quality impacts associated with the discharge; (3) defining water quality requirements as proposed in the Proposed Rule, with the modifications suggested by NHA; (4) confirming that a WQC cannot be modified or reopened without the consent of the licensee; (5) limiting the opportunity to extend the statutory one year time period for issuance of a water quality standard by prohibiting withdraw and refile requirements; and (6) clarifying the enforcement authority for WQC conditions.

NWHA's comments provide some additional context and suggestions for improving the Proposed Rule and the WQC process.

Modification of WQC Conditions

NWHA agrees with the Proposed Rule provisions precluding both the reopening of a WQC and the substantive modification of WQCs without the consent of the applicant. NWHA respectfully requests that this provision be extended to preclude the inclusion of adaptive management conditions or other efforts to implement broader water management plans or objectives. NWHA members have seen states include adaptive management measures that inadvertently create a reopener should certain conditions occur. This undermines the purpose of the WQC process, which is to give states the opportunity to propose conditions to be included in the federal license to ensure that the federal license does not authorize a discharge that could impact water quality. It is not intended to create new authorities or ongoing oversight on the part of the states over federally licensed projects.

Application/Enforcement of WQC Conditions

There has been considerable confusion over how water quality conditions are applied and enforced. The Proposed Rule creates the opportunity to provide clarity on this issue. The Proposed Rule could be modified to (1) authorize federal action agencies to reject WQC conditions that are not related to water quality impacts associated with the discharge; and (2) confirm that federal action agencies are the entities with enforcement authority over WQC conditions, given that they are not effective until incorporated into a federal license.

Appeal Process

The Proposed Rule could alleviate significant confusion and inefficiency by establishing that appeal of a WQC condition occurs in federal court, at the time the federal license is issued. On this last point, out of an abundance of caution, licensees are put in the situation of appealing

WQC conditions both in state court, as well as in federal court (due to the inclusion of the conditions in the federal license or permit). For purposes of judicial economy and regulatory certainty, it makes more sense to challenge such conditions in federal court once the federal action is taken, given that it is the federal action that gives effect to the WQC conditions.

Thank you again for the opportunity to comment on the Proposed Rule. NWAHA supports the Proposed Rule, and urges EPA to move forward to expeditiously finalize it. In finalizing the Proposed Rule, NWAHA respectfully requests that EPA clarify that it applies to all pending and future WQC requests.

NWAHA appreciates your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Brenna Vaughn". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Brenna Vaughn
Executive Director, NWAHA
Northwest Hydroelectric Association
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