



June 29, 2021

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Meeting Request to Discuss 401 Rule Revision Timeline and Impacts to States

Dear Administrator Regan:

We, the undersigned directors of state certifying agencies, write to request a meeting to discuss the timeline for the U.S. Environmental Protection Agency's (EPA) reconsideration and revision of the 2020 Clean Water Act Section 401 Certification Rule (otherwise known as the 401 Rule). The 401 Rule significantly alters certification procedures and attempts to curtail states' authority granted under the Clean Water Act. We agree with EPA that the 401 Rule needs revision in order to meet the promise of the Clean Water Act and restore cooperative federalism to the certification process. We urge EPA to act quickly.

The 401 Rule is resulting in harm to our waters, our communities and our economy, and this harm increases dramatically the longer it persists in its current form. Current implementation of the 401 Rule limits states' and tribes' abilities to fully protect waters against harmful impacts and degradation, including in communities that already bear a disproportionate burden of water pollution. In Washington and Oregon, the Rule also is interfering with our responsibilities to protect tribal treaty resources. In Virginia and Maryland, the Rule may also hinder our ability to include timely state water quality certifications necessary for Chesapeake Bay protection and restoration.

We share many concerns with the 401 Rule with EPA, from defining the scope of the 401 review too narrowly to inadequate timeframes and limitations on state enforcement. Above all, we agree that the longer this poorly-conceived rule remains in place, the greater the risk to clean water and our communities that depend on those waters.

Michael S. Regan, Administrator

June 30, 2021

Page 2

Our work cannot stop while the 401 Rule is under revision. So long as the 401 Rule is in place in its current form, our states will be asked to make constrained certification decisions on federal permits and licenses that will authorize activities that will continue to affect our waterways for decades. At a time when our nation has committed to putting the health of communities, clean water, jobs, and environmental justice front and center, the EPA should not sanction tying the hands of its state and tribal partners.

We stand ready to offer solutions that work for states, tribes and EPA. Our goal is to create stability for the regulated community as well as the residents of our states as we navigate changes in the certification process. Again, we respectfully request a time to speak with you on this matter at your earliest convenience. For purposes of scheduling, please contact Teri North at the Washington State Department of Ecology at (360) 790-3934 or Teri.North@ecy.wa.gov.

We appreciate your attention to this matter and look forward to working with you on a solution.

Sincerely,



Laura Watson, Director
Washington State Department of Ecology



Richard Whitman, Director
Oregon Department of Environmental Quality



Basil Seggos, Commissioner
New York Department of Environmental Conservation



Ben Grumbles, Secretary
Maryland Department of the Environment



James C. Kenney, Cabinet Secretary
New Mexico Environment Department



David Paylor, Director
Virginia Department of Environmental Quality

cc: Radhika Fox, Assistant Administrator for the Office of Water, EPA
Brenda Mallory, Chair of the Council on Environmental Quality
Casey Katims, Deputy Associate Administrator for Intergovernmental Affairs, EPA