



October 21, 2019

Environmental Protection Agency
Office of Water
Oceans, Wetlands, and Communities Division
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Updating Regulations on Water Quality Certification
Docket ID No. EPA-HQ-OW-2019-0405, RIN 2040-AF86

Dear Administrator Wheeler:

The Natural Gas Council¹ submits this letter in response to the proposed rule published by the Environmental Protection Agency (“EPA”) on August 22, 2019, that proposes to update and clarify the substantive and procedural requirements for water quality certification under Clean Water Act (“CWA”) Section 401.² As representatives of the full spectrum of the natural gas industry—producers, suppliers, pipelines and local gas utilities—the members of the Natural Gas Council support EPA’s efforts to restore a level of predictability and balance to the permitting of natural gas infrastructure. Providing guidance and instruction on the appropriate process by which Section 401 is implemented is critical for the development of natural gas infrastructure.

The United States is the leading natural gas producer in the world. Greater use of natural gas in the United States and abroad, through liquefied natural gas (LNG) exports, has yielded tremendous benefits to our economy. One of the central elements in realizing the full value of natural gas produced in the United States is the continued development of a robust natural gas infrastructure along the entire value chain so that natural gas can be delivered wherever and whenever it is needed. The need for new energy infrastructure has never been more important

¹ The Natural Gas Council was formed in 1992, uniting all sectors of the natural gas industry to work together toward common goals. The five full members of the Council -- the American Gas Association, the American Petroleum Institute, the Interstate Natural Gas Association of America, the Independent Petroleum Association of America and the Natural Gas Supply Association -- collectively represent nearly all the companies that produce, transport and distribute natural gas consumed in the United States. For more information, please visit www.naturalgascouncil.org.

² *Proposed Rule, Updating Regulations on Water Quality Certification*, EPA, 84 Fed. Reg. 44080 (Aug. 22, 2019) (hereinafter, “Proposed Rule”).

because its development delivers countless opportunities to communities across America. Moving all energy resources safely, affordably, efficiently, and reliably requires a modern and highly interconnected system and delays in permitting projects, such as natural gas infrastructure projects, hinders the advancement of critical infrastructure.

CWA Section 401³ provides a federal agency may not issue a license or permit to conduct any activity that may result in any discharge into waters of the United States, unless the state or authorized tribe where the discharge would originate either issues a Section 401 water quality certification finding compliance with existing water quality requirements or waives the certification requirement.⁴ As the agency charged with administering the CWA, EPA is responsible for developing a common framework for certifying authorities to follow when completing Section 401 certifications.⁵ However, EPA has not updated its certification regulations in over 50 years.⁶ In April 2019, the President issued Executive Order 13868, “Promoting Energy Infrastructure and Economic Growth,” which directed EPA to review CWA Section 401 and the EPA’s existing certification regulations and interim guidance, issue new guidance to states, tribes, and federal agencies, and propose new Section 401 regulations.⁷

The Natural Gas Council appreciates EPA’s efforts, in the Proposed Rule, to clarify the timeline and scope of the CWA Section 401 certification review. The Proposed Rule is a recognition that the permitting process for natural gas infrastructure has become more protracted and challenging in recent years and that certain permitting reforms should be undertaken. The implementation of CWA Section 401, which provides states with the opportunity to consider the potential water quality impacts of infrastructure projects requiring federal approval, has proven particularly challenging and would benefit from clarification by EPA. The recent implementation of Section 401 has created much confusion and frustration and has resulted in significant delays to infrastructure projects. Moreover, some states are improperly using Section 401 to inappropriately delay or halt altogether the permitting process for pipelines that transport natural gas in interstate commerce.

In the case of interstate natural gas pipelines, the improper implementation of Section 401 by certain states has undermined the Federal Energy Regulatory Commission’s exclusive authority to approve interstate natural gas infrastructure and denied other states the opportunity to benefit from said infrastructure. These state actions are a disservice to the cooperative federalism central to the efficient and predictable permitting of infrastructure.

EPA, by providing clear instruction on the implementation of Section 401, can ensure that Section 401 is implemented consistent with the CWA. This includes ensuring that a state is not manipulating the process through enforcement of the statutory time period and confirming

³ 33 U.S.C. § 1341.

⁴ Proposed Rule at 44081.

⁵ *Id.*

⁶ *Id.* at 44099.

⁷ Exec. Order No. 13868, 84 Fed. Reg. 15496 (Apr. 15, 2019).

state actions are related to applicable water quality standards. The Natural Gas Council generally supports the Proposed Rule because it contains certain appropriate clarifications of the overall certification process.⁸ EPA's efforts are a step in the right direction in ensuring that natural gas infrastructure can be modernized and expanded to meet the needs of citizens, enhance reliability, and help meet the nation's energy security and independence goals.

Sincerely,



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⁸ The individual associations that constitute the Natural Gas Council will be providing separate and specific comments on the Proposed Rule.