



DEPARTMENT OF THE ATTORNEY GENERAL

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Hawaii Attorney General Files Comment Letter on EPA's Proposed Rule to Limit States' Clean Water Act Oversight

HONOLULU – Hawaii Attorney General Clare E. Connors as part of a twenty-three (23) jurisdiction coalition lead by California Attorney General Xavier Becerra, New York Attorney General Letitia James, and Washington Attorney General Bob Ferguson, filed a comment letter opposing the U.S. Environmental Protection Agency's (EPA) proposed rule which would unlawfully curtail state authority under Section 401 of the Clean Water Act. In the Clean Water Act, Congress recognized and preserved states' broad, pre-existing powers to protect their state waters. EPA has no statutory authority to limit state powers under Section 401. The proposed rule is an unlawful and misguided policy that would degrade water quality and infringe on states' rights. Consistent with the plain language of the Clean Water Act and the clear legislative intent, EPA's acknowledgement of state authority spans three decades and four administrations. The proposed rule is a dramatic departure from the prior agency position and the states demand that EPA withdraw it.

"Hawaii's ability to preserve the quality of its waters cannot be compromised." said Attorney General Connors. "The federal government should continue to recognize the states' roles in the protection of the environment."

In the letter, the coalition asserts that the proposed rule conflicts with the Clean Water Act's language, Congressional intent, and applicable case law interpreting the Clean Water Act's language. The proposed rule:

- Unlawfully limits the scope of state certification authority only to certain types of discharges;
- Illegally restricts state conditions on Section 401 certifications to a narrow set of EPA-approved water quality standards;

- Purports to authorize federal agencies to illegally disregard state-issued denials and conditions on certification applications; and
- Unlawfully restricts the timing and scope of state review of certification applications.

The EPA's unlawful action is the product of President Trump's April 2019 Executive Order issued to undermine state authority and not to protect water quality. The proposed rule violates the Administrative Procedure Act, because the rule is also contrary to law, arbitrary and capricious and an abuse of discretion. The rule violates the plain language of the Section 401 and the Clean Water Act. Moreover, the EPA fails to consider any water-quality related factors in its decision, fails to explain why it is changing its position from the prior Section 401 regulations and guidance, and fails to analyze the effects of the proposed rule on the states. Because the rule conflicts with Section 401 and limits state authority, EPA does not have the authority to issue it.

Attorney General Connors filed the comment as part of a coalition including the attorneys general of Washington, New York, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Wisconsin, the District of Columbia, and the Commonwealths of Massachusetts, Pennsylvania, and Virginia.

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