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EPA's New 401 Certification Rule: Expanded Scope and Unanswered Questions

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The U.S. Environmental Protection Agency (EPA) has finalized a new regulation to implement the Clean Water Act (CWA) section 401 water quality certification program. Continuing the recent practice of promulgating regulations and then promptly replacing them, EPA's "CWA Section 401 Water Quality Certification Improvement Rule"(the 2023 Rule) replaces the "Clean Water Act Section 401 Water Quality Certification Rule" that was finalized in 2020 (the 2020 Rule). The 2023 Rule was published in the Federal Register on September 27, 2023 and will become effective on November 27, 2023. This article provides background on the CWA water quality certification program, followed by a deep dive into the 2023 Rule and how it compares to the 2020 Rule.

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