

Supreme Court Re-Instates the Clean Water Act Section 401 Certification Rule

Reflections on Water

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Today, in a 5-4 [decision](#), the Supreme Court re-instated the U.S. Environmental Protection Agency's (EPA's) 2020 Clean Water Act (CWA) section 401 rule (Certification Rule). The Court stayed a decision by the U.S. District Court for the Northern District of California, which had [vacated and remanded](#) the Certification Rule back to EPA without first addressing the merits of the rule. The Supreme Court's stay of the Certification Rule will remain in effect pending final disposition of the case.

Section 401 requires that any applicant for a federal license or permit that may result in a discharge to navigable waters seek a water quality certification from the appropriate state or tribal authority in which the discharge will originate. The Certification Rule was the first overhaul of EPA's CWA section 401 regulations in 50 years, and sought to align EPA's regulations with the text of the modern Clean Water Act. It also sought to clarify the substantive and procedural aspects of the rule, including the scope of state and tribal authority and the time period for a state or tribe to act on a certification request.

The Biden administration is working to propose a new section 401 regulation that would replace the Certification Rule. According to the Office of Management and Budget's dashboard, on March 25, 2022, the EPA [submitted](#) a proposed rule proposal for interagency review.

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