

Advocacy Comments on EPA's Proposed Water Quality Certification Improvement Rule under the Clean Water Act

On August 5, 2022, the Office of Advocacy (Advocacy) submitted comments to the U.S. Environmental Protection Agency (EPA) on its proposed Water Quality Certification Improvement Rule under the Clean Water Act (CWA). The proposed regulation imposes requirements on project proponents when seeking certification from states and certain tribes (Certifying Authorities) to obtain permit coverage under the CWA.

Under the CWA, Certifying Authorities are authorized to protect the quality of their waters from adverse impacts resulting from discharges from the potentially permitted projects. A CWA permit may not be issued unless the Certifying Authority issues a water quality certification that a proposed discharge will comply with applicable water quality provisions under the CWA as well as state law. In the alternative, the Certifying Authority may waive certification.

On June 9, 2022, EPA published its proposed rule setting forth requirements for project proponents seeking certification. The proposed rule requires project proponents to submit draft Federal permits and licenses to the Certifying Authority.

Advocacy is concerned about the ability of small entities to obtain copies of draft Federal permits and licenses and the resulting unnecessary delay of small entity projects. Advocacy is also concerned that EPA improperly certified the proposed rule under the Regulatory Flexibility Act. Specifically, EPA failed to provide a factual basis that requiring draft Federal permits and licenses to Certifying Authorities will not impose a significant impact on a substantial number of small entities. Advocacy recommends EPA eliminate any requirement for project proponents to submit copies of draft Federal permits and licenses to Certifying Authorities.

For more information visit Advocacy's web page at advocacy.sba.gov or contact Astrika Adams at (202) 798-7750 or astrika.adams@sba.gov.

