

# AG Kaul: Joins multistate lawsuit challenging Trump administration rule curtailing states' clean water act oversight

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MADISON, Wis. – Attorney General Kaul today joined a coalition of 21 attorneys general in filing a lawsuit challenging the U.S. Environmental Protection Agency's (EPA) final rule unlawfully curtailing state authority under Section 401 of the Clean Water Act.

For more than three decades, the EPA has consistently acknowledged and respected that Section 401 provides states with the authority to review, impose conditions on, or deny certification for federally permitted projects. However, as directed by President Trump's April 2019 executive order, the EPA issued a final rule radically altering its water quality certification regulations to restrict state authority under the Clean Water Act. In the lawsuit, the coalition argues that the final rule violates the Administrative Procedure Act and Clean Water Act and must be vacated.

"We need to be doing more to protect clean water, not less," said AG Kaul. "This rule is a step in the wrong direction."

The Clean Water Act reflects Congress' policy to "recognize, preserve, and protect the primary responsibilities and rights of states to prevent, reduce, and eliminate pollution" of waters within their borders. Under Section 401 of the statute, a project requiring federal approval that may result in discharges into the waters of the United States must obtain state certification confirming that the project meets state

water quality standards and other appropriate state law requirements. The projects requiring Section 401 certification range from housing and commercial land development to hydropower and pipeline construction. This certification process ensures adequate assessment of the impacts of proposed projects and the imposition of necessary conditions to remedy these impacts.

On July 13, 2020, the EPA issued a final rule arbitrarily re-writing existing water quality certification regulations to limit state authority under the Clean Water Act. The rule will impair states' ability to fully and efficiently review project proposals for water quality impacts and make it more difficult for states to fulfill their fundamental obligation to protect their waters and wetlands. The multistate coalition challenging the rule represents a substantial portion of the United States, including the entirety of the Pacific Coast from Mexico to Canada, large portions of the Atlantic Coast, the Great Lakes and Lake Champlain, the Chesapeake Bay, and the majority of the Columbia River.

In the lawsuit, the coalition argues that the EPA's drastic curtailment of state authority under Section 401 is unlawful because it is contrary to:

- The plain language, structure, purpose, and legislative history of the Clean Water Act;
- Binding Supreme Court precedent interpreting Section 401; and
- The EPA's own guidance on Section 401, which spans decades and multiple administrations.

In 2019, Attorney General Kaul joined a multistate coalition in filing a comment letter opposing the EPA's unlawful guidance and proposed rule seeking to curtail state authority under Section 401 of the Clean Water Act.

In filing the lawsuit, Attorney General Kaul joins the attorneys general of California, New York, Washington, Colorado, Connecticut, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Virginia, and the District of Columbia.