



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF WATER

Mr. Matt Ehrhart  
Citizens Advisory Committee  
612 Hull Street, Suite 101C  
Richmond, Virginia 23224

Dear Mr. Ehrhart:

Thank you for your March 13, 2020 letter regarding the Conowingo Dam and the U.S. Environmental Protection Agency's (EPA) rulemaking effort under Clean Water Act (CWA) Section 401.

EPA recognizes the importance of regulatory certainty that allows states to effectively and fairly administer CWA Section 401 and enables project applicants to clearly understand CWA requirements. The CWA Section 401 certification process provides states with an opportunity to evaluate and address potential water quality impacts of federally-issued licenses and permits. It is a direct grant of authority from Congress to the states.

In April 2019, President Trump signed Executive Order 13868, directing EPA to complete a rulemaking to modernize and improve the CWA Section 401 certification process to facilitate efficient permitting processes and increase regulatory certainty. EPA had not updated the CWA Section 401 regulations in almost 50 years. EPA reviewed over 125,000 public comments received in the development of the final rule. On June 1, 2020, EPA signed the final "Clean Water Act Section 401 Certification Rule" to implement the water quality certification process consistent with the CWA text and structure. The final rule establishes procedures that promote consistent implementation of CWA Section 401 and regulatory certainty in the federal licensing and permitting process. For the first time, the final rule provides a holistic analysis of the statutory text, legislative history, and relevant case law informing implementation of CWA Section 401. The final rule was published in the *Federal Register* on July 13, 2020 and became effective on September 11, 2020. For additional information, including factsheets and outreach materials, please visit: <https://www.epa.gov/cwa-401>.

Regarding the two CWA Section 401 rulemaking concerns in your letter: the statute has always provided for the one-year limit on the reasonable period of time (see CWA Section 401(a)(1); see also 40 CFR 121.6) and certifying authorities will continue to have the ability to deny certification based on insufficient information (see 40 CFR 121.7(e)). Additionally, EPA has made some enhancements to the final rule definition of "water quality requirements" to provide better clarity and regulatory certainty, including that the final rule does not require these state and tribal provisions to be EPA-approved (see 40 CFR 121.1(n)).

Regarding your funding concerns, EPA remains committed to supporting the restoration and conservation of the Chesapeake Bay watershed. The Agency recently announced significant funding for the Chesapeake Bay watershed through multiple grant programs; see the press release here: <https://www.epa.gov/newsreleases/epa-announces-record-18-million-projects-chesapeake-bay-watershed>.

Again, thank you for your letter. If you have any further questions, please contact me, or your staff may contact Brian Frazer in EPA's Office of Wetlands, Oceans, and Watersheds at [frazer.brian@epa.gov](mailto:frazer.brian@epa.gov) or (202) 566-1652.

Sincerely,

David P. Ross  
Assistant Administrator