MACA | MID AMERICA CROPLIFE ASSOCIATION

Water Update

July 15, 2025

Andrea Rice, MACA Water Consultant

Fun Fact: President Richard M. Nixon vetoed the Clean Water Act and never signed the legislation. It became law only once Congress overrode the President's veto, with strong bipartisan support.

The U.S. EPA has publicly announced there will be a series of stakeholder listening sessions on how the agency will implement section 401 of the Clean Water Act (CWA). This section provides authorized States and Tribal governments to play a role with the EPA in the licensing and permitting process. The input from stakeholders will be used to determine whether guidance or rulemaking are necessary to address identified areas of regulatory uncertainty or implementation challenges in reference to the certification process. Currently, if the State or Tribe does not certify the permit or waive certification, the permit may not be issued.

The first Trump administration adopted a new regulation through the EPA that would have changed the implementation of section 401 by limiting the scope of the section, making the permits only applicable to certain CWA permits. This open comment period is to address and define the scope of certification, referring to the authorized State or Tribe's analysis when evaluating a request for certification in determining if the request will be denied, waived, or grated and if any conditions are included.

A 2023 Rule change to the CWA states that certifying States or Tribes "shall evaluate whether the activity will comply with applicable water quality requirements." Water quality requirements were defined very broadly and included the construction and operation of the activity seeking a permit. The 2023 Rule change also granted a certifying authority to include any conditions for the grant of certification assuring the activity will comply with applicable water quality requirements.

EPA is not providing a specific proposal to remedy concerns at this time. The public comment is open on several issues such as the scope of the certifications and the scope of water quality requirements to be included in a certification. Groups such as Federal Water Quality Coalition suspect the EPA will issue a set of proposed rule changes for comment once the current comments have been received.

Written feedback must be received on or before August 6, 2025. If you or your organization would like to submit comment, more information can be found HERE

Each month Andrea Rice, CCA, Director of Research, Education, and Outreach, CCA Program Administrator for the Missouri Agribusiness Association, which serves as MACA's Water Consultant; provides an update on current water issues. Please share their information with others in your company.

– Rodney Schmidt, MACA Executive Director.