



For Immediate Release:

July 13, 2020

Contact:

Maya van Rossum, the Delaware Riverkeeper, Delaware Riverkeeper Network, 215-801-3043

**Delaware Riverkeeper Network Files Legal Challenge
of Clean Water Act Rollbacks**

Philadelphia, PA – On July 13, the Delaware Riverkeeper Network (DRN) filed a complaint in the U.S. District Court for the Eastern District of Pennsylvania, challenging the Trump administration’s rollbacks to Section 401 of the Clean Water Act announced on June 1, 2020.

Section 401 of the Clean Water Act requires, “[a]ny applicant for a Federal license or permit to conduct any activity ...which may result in *any discharge* into the navigable waters” to “provide the licensing or permitting agency a certification from the State [or other certifying authority] in which the discharge originates or will originate...that any such discharge will comply with ...” that state’s applicable water quality standards. The new rulemaking attempts to usurp this legislatively protected right of states.

The proposed changes have particular relevance for fracked gas pipelines that have been on the leading edge of the debate about the strength and future of section 401. Until the rollbacks, a federal agency could not authorize a project such as a fracked gas pipeline until the state issued a 401 certification or waived their right to do so. The new rules seek to temper this authority in significant and illegal ways. A 2019 Executive Order issued by Mr. Trump emphasized that this changed rule was intended to help advance fossil fuel infrastructure.

“This dramatic change in policy after nearly fifty years of cooperative federalism is nothing more than the Trump administration bending over backwards to accommodate the fossil fuel industry by removing any regulatory obstacles the industry faced, when in reality these ‘obstacles’ are legal and necessary measures that help states protect their environment and communities,” said **Maya van Rossum, the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network**. “The new rulemaking is an illegal and unconstitutional power grab designed to undermine states’ rights, state authority, state sovereignty, and the role of Congress as the lawmakers of our nation. The Delaware Riverkeeper Network will continue to stand up for the rights of communities and states to protect themselves and their environment.”

The legal challenge states, “The Certification Rule is arbitrary, capricious, and not in accordance with law for several reasons,” and that the administration “ignored the text of the Clean Water Act and Supreme Court precedent in deciding to narrow the scope of Section 401 certifications.”

Among the concerns identified in the legal action, the Rule:

- Failed to put forth any analysis of how promulgation of the Certification Rule will impact water quality;
- Illegally narrowed a certifying authority's review to the effects of a point source discharge only, excluding nonpoint sources of pollution; the plain text of the law clearly includes both pollution inputs, the EPA does not have the authority to re-write the Clean Water Act;
- Narrowed the scope of Section 401 Certification to make it duplicative of Section 402, and therefore superfluous. The law is clear that section 401 and 402 are independent and necessary legal mandates;
- Deprives certifying authorities of the ability to determine when an application is complete for review;
- Limited the legal authorities that could be used by a certifying authority to approve, deny, or condition a certification;
- Vested the power of enforcement with the Federal agency; and made the determination as to whether an activity may affect a neighboring jurisdiction entirely discretionary.

View the Delaware Riverkeeper Network's legal challenge here:

<https://www.delawareriverkeeper.org/sites/default/files/401%20Clean%20Water%20Act%20Rollback%20-%20Filed%20Complaint%20%282020-07-13%29.pdf>

###

Delaware Riverkeeper Network (DRN) is a nonprofit membership organization working throughout the four states of the Delaware River Watershed including Pennsylvania, New Jersey, Delaware and New York. DRN provides effective environmental advocacy, volunteer monitoring programs, stream restoration projects, public education, and legal enforcement of environmental protection laws.