Testimony of

Robert D. Singletary

Executive Director, Oklahoma Department of Environmental Quality

to the

House Transportation Committee

Water Resources and Environment Subcommittee

February 11, 2025

OKLAHOMA
Environmental
Quality

TRANSPORTATION COMMITTEE
WATER RESOURCES AND ENVIRONMENT SUBCOMMITTEE
ORAL TESTIMONY

Testimony

Good morning Chairman Collins, Ranking Member Wilson, and Members of the Subcommittee. My name is Rob Singletary and I have the privilege to serve as the Executive Director of the Oklahoma Department of Environmental Quality. Thank you for the opportunity to appear before you this morning and to share Oklahoma's views on the implementation of various portions of the Federal Clean Water Act.

The Oklahoma Department of Environmental Quality is the primary agency responsible for protecting human health and the environment in the State of Oklahoma, and our responsibilities include the implementation of the Clean Water Act within the State.

Clean Water Act Section 401

To begin, Oklahoma is a fierce proponent of the proper implementation of cooperative federalism, as well as the right of States to set water quality standards and to protect water quality (in general) within their boundaries. Section 401 of the Clean Water Act provides a powerful tool that allows States to ensure that water quality within their boundaries is properly protected. However, the § 401 certification process has been used (in the past) as an opportunity to address general or non-water quality related concerns. We feel strongly that this powerful tool should be reserved for efforts specifically related to the protection of water resources.

Although not directly an issue with the current rule, we believe that allowing the scope of review under this Clean Water Act provision to be broadened beyond the protection of water resources (as has been done in the past) would undermine the legitimacy of the § 401 certification process and misalign it from the overall purpose of the Clean Water Act. In addition, even if a particular State was not interested in expanding the process beyond the protection of water resources, third parties could potentially seek to force a State to address broader concerns through this process - if the broader scope of review was allowed.

Even the scope of the current version of EPA's implementing rule, which purports to limit the § 401 certification review to water related impacts, is still ambiguous and potentially subject to misapplication. For example, where a US Army Corps of Engineers permit would authorize discharges associated with building a pipeline, the current rule would require the certifying State to evaluate not only the effects of the discharges the Corps permit would authorize, but also any effects of operating the pipeline even though the operation may be subject to a different Federal license or permit. Effectively, this would result in the certifying authority addressing the adverse impacts contributed to by a federally licensed permitted activity, not just the adverse water quality impacts caused exclusively by the activity.

This ambiguity expands the workload of State agencies, complicates and lengthens the review process, and makes certification determinations more vulnerable to legal challenge - potentially forcing State agencies to defend in court why they did or did not consider every potential "water-quality related" impact of a project, a difficult legal standard to meet.

We don't anticipate that the current EPA administration will seek to broaden such review; however, if statutory changes are ever considered, we would advocate for clarifying language that would ensure that future EPA administrations would not seek to promulgate regulations expanding the use of this process beyond the protection of water resources or beyond those water quality impacts clearly attributable to the project at issue. It's important to mention that even in the event that unforeseen impacts to water quality were to occur, we (in Oklahoma at least) still have the authority to address any such pollution through our State program and State authority.

Waters of the United States (WOTUS)

In regard to WOTUS, Oklahoma has not sought authority under § 404 of the CWA, so our implementation (except for the 401 certification process) is focused solely on stormwater and discharge permits. Since our agency has delegation to issue NPDES permits into WOTUS under § 402 of the Act and since we have State authority to issue discharge permits in all other waters of the State, our programs (except, of course, for our § 401 certification program) are not directly impacted by the welcomed changes to the definition of WOTUS under the Supreme Court's decision in *Sackett*. However, we have anecdotally heard from applicants within the State that they continue to experience some delays in receiving Applicability Determinations from our Federal counterparts. We believe it would be useful if there was a joint Federal/State effort (employing the best available data and tools, of course) to map jurisdictional waters. This type of initiative would require ongoing effort, but it would likely decrease permitting timelines and provide more clarity or certainty to applicants.

Conclusion

Again, thank you for the opportunity to come before you and to participate in this important discussion. As always, we look forward to working with you, our federal co-regulators, and other stakeholders, as we pursue our mission to protect and improve human health and the environment in a manner that supports and advances prosperity for current and future generations. Thank you!