25-2938

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RARITAN BAYKEEPER, INC., FOOD & WATER WATCH, PROTECTORS OF PINE OAK WOODS, INC., SIERRA CLUB, SURFRIDER FOUNDATION, NATURAL RESOURCES DEFENSE COUNCIL, INC.,

Petitioners,

v.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, AMANDA LEFTON, Commissioner, New York State Department of Environmental Conservation, TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC,

Respondents.

On Petition for Review from the New York State Department of Environmental Conservation

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BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE BUSINESS COUNCIL OF NEW YORK STATE, INC. AS *AMICI CURIAE* SUPPORTING RESPONDENTS AND AFFIRMANCE

(Names and addresses of attorneys appear inside cover.)

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(a), *amici* make the following disclosures:

The Chamber of Commerce of the United States of America ("Chamber") states that it is a nonprofit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

The Business Council of New York State, Inc. (the "Business Council") states that it is a non-profit statewide chamber of commerce incorporated in the State of New York and has no parent corporation. No publicly held company has 10% or greater ownership in the Business Council.

Date: March 30, 2026

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INTERESTS OF *AMICI CURIAE*[1]

Amici curiae the Chamber of Commerce of the United States of America ("Chamber") and the Business Council of New York State, Inc. (the "Business Council") file this brief in support of Respondents New York State Department of Environmental Conservation ("NYSDEC") and Amanda Lefton, and in support of Respondent-Intervenor Transcontinental Gas Pipe Line Company, LLC ("Transco").

The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Business Council is the leading business organization in New York State, representing the interests of large and small firms throughout the state. The Business

[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Counsel for all parties consented to this brief's filing.

Council's membership is made up of more than 3,000 companies, local chambers of commerce, and professional and trade associations. The Business Council's membership consists of both small businesses and some of the largest corporations in the world. The Business Council serves as an advocate for businesses in the state's political and policy-making arenas, working for a healthier business climate, economic growth, and jobs.

Many of *amici*'s members are involved in building, maintaining, improving, and using the nation's infrastructure across a wide variety of industries, including construction, transportation, energy transmission, and power generation. Because many of these infrastructure projects—which benefit both industry and the general public—require federal licenses or permits, *amici* regularly advocate for a predictable and durable regulatory framework for making timely decisions on associated applications for licenses and permits. This case implicates a statutory provision that is sometimes improperly invoked to obstruct federal permitting and licensing decisions: Section 401 of the Clean Water Act ("CWA"). This provision affords states a limited role in federal permitting and licensing processes. Section 401 does so by authorizing states to make certification decisions about project discharges that could affect water quality.

Because *amici's* membership covers past, current, and future applicants for federal licenses and permits across many economic sectors and regulatory contexts,

amici bring a valuable perspective to this case. *Amici* are deeply interested in the states' exercise of water quality certification under Section 401 of the CWA, and in ensuring that the interpretation and application of Section 401 remain true to Congress's design.

ARGUMENT

I. THIS COURT SHOULD REVIEW NEW YORK STATE'S DECISION IN LIGHT OF THE LIMITED GRANT OF AUTHORITY THAT SECTION 401 OF THE CLEAN WATER ACT PROVIDES TO STATES.

a. Congress designed Section 401 to allow state participation by imposing an additional, limited obligation for projects seeking federal permits.

States appropriately play an active role in federal project-approval process under Section 401 of the CWA. But that role is limited to only a part in such federal processes, including the approval process managed by the Federal Energy Regulatory Commission ("FERC") in this case. *See Nat'l Fuel Gas Supply Corp. v. Pub. Serv. Comm'n*, 894 F.2d 571, 579 (2d Cir. 1990) ("Because FERC has authority to consider environmental issues, states may not engage in concurrent site-specific environmental review."). Here, NYSDEC properly recognized and performed its bounded role under Section 401. After carefully analyzing the Transco pipeline project and confirming that its discharges would not violate state water quality standards, NYSDEC issued a Section 401 certification.

Section 401 is unique among the CWA's provisions. Its primary object and grant of permitting review authority are not directed to the Environmental Protection Agency (which issues CWA permits for discharges of pollutants) or the U.S. Army Corps of Engineers (which issues CWA permits for discharges of dredged or fill material). Instead, Congress designed Section 401 to give states an important but statutorily limited role in the federal government's licensing and permitting processes.

Section 401 provides that "[a]ny applicant for a Federal license or permit to . . . construct[] or operat[e] facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates . . . that any such discharge will comply with the applicable" water quality standards. 33 U.S.C. § 1341(a). But Section 401 does not *require* a state to make a certification: "[i]f the State . . . fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the [401] certification requirements . . . shall be waived." *Id.* Both in defining the state's substantive role (i.e., analyzing potential impacts on state water quality) and imposing a fixed timeframe for the state to exercise the same (i.e., a reasonable period not to exceed one year), Section 401 carefully cabins the state role and ensures that federal permits cannot be unreasonably delayed by state inaction.

NYSDEC properly reviewed Transco's project under the Section 401 process. "The [Natural Gas Act] and [Clean Water Act] converge where, to construct an interstate pipeline, a company must discharge into—or displace water from—the navigable waters of the United States." *Twp. of Bordentown v. FERC*, 903 F.3d 234, 244 (3d Cir. 2018). Under the Natural Gas Act, "a natural gas company must obtain from FERC a 'certificate of public convenience and necessity' before it constructs, extends, acquires, or operates any facility for the transportation or sale of natural gas in interstate commerce." *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 302 (1988); *see* 15 U.S.C. § 717f(c). FERC considers a project's environmental impacts, primarily in meeting its own environmental review obligations, as part of its broader consideration of whether granting a certificate to construct and operate new interstate natural gas facilities is required by public convenience and necessity. *E.g.*, *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1322-25 (D.C. Cir. 2015). In analyzing public convenience and necessity, FERC "consider[s]," among other things, "the enhancement of competitive transportation alternatives, the possibility of overbuilding, the avoidance of unnecessary disruption of the environment, and the unneeded exercise of eminent domain." Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227, 61,737 (1999) (Certificate Policy), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000).

For its part, a state has the opportunity to review discharges from a project under Section 401 and then certify (or waive its certification authority) that those discharges comply with state water quality standards. The state's review occurs alongside the federal permitting process and is initiated upon the request of the applicant for the federal permit. The state's review must be finished before the federal permit can issue; if a state validly and timely denies certification, the project cannot proceed. No federal agency can issue a license or permit authorizing the applicant "to conduct any activity . . . which may result in any discharge into the navigable waters" unless "the certification required by [Section 401] has been obtained *or has been waived*," and "[n]o license or permit shall be granted if certification has been *denied* by the State." 33 U.S.C. § 1341(a) (emphases added). Section 401 therefore creates a significant, though cabined, role for the states in an otherwise federal process; even for projects subject to a comprehensive federal siting and approval scheme such as interstate natural gas pipelines, a state can have a say to ensure that projects do not violate the state's water quality standards.

b. Section 401 should not be interpreted or applied to grant an unfettered veto power to states or reviewing courts.

Although states can influence federal agency decision-making, and can even prevent a project from moving forward by denying certification (if such denial is timely and otherwise valid), interpreting Section 401 as an unfettered "veto power" for the states would sweep far beyond the scope of authority that the statute vests in

states, and would incorrectly "subordinate" the "comprehensive" powers of certain federal agencies. *First Iowa Hydro-Elec. Coop. v. Fed. Power Comm'n*, 328 U.S. 152, 164 (1946); *see also California v. FERC*, 495 U.S. 490, 506 (1990) (in case involving FERC's similar authority over hydropower projects under the Federal Power Act, concluding that state efforts to impose stricter environmental requirements, in that case minimum stream flow requirements, "interfere with [the Commission's] comprehensive planning authority").

Individual states can and do play a decision-making role in FERC's Natural Gas Act pipeline-approval process by virtue of Section 401. Congress, however, gave FERC—not the states—the principal authority to determine whether a proposed interstate pipeline is consistent with the "public convenience and necessity" after accounting for potential environmental impacts. 15 U.S.C. § 717(f)(c). Section 401, properly interpreted and applied, does not undermine FERC's primary role in making such a determination. The CWA "envisions 'cooperative federalism' in the management of the nation's water resources." *Catskill Mountains Chapter of Trout Unlimited, Inc. v. EPA*, 846 F.3d 492, 502 (2d Cir. 2017); *Arkansas v. Oklahoma*, 503 U.S. 91, 101 (1992) (the Act "anticipates a partnership between the States and the Federal Government").[2] The federal

[2] *See also* Federal Water Pollution Control Act Amendments of 1971, S. Rep. No. 92-414, at 69 (1971) ("The purpose of the certification mechanism provided in this

government and the states have "a shared objective"—the federal statute balances various obligations between the parties. *Arkansas*, 503 U.S. at 101.

Therefore, this Court has explained that a state's exercise of Section 401 certification authority "is not a sovereign state right." *Islander E. Pipeline Co. v. Conn. Dep't of Env't Prot.*, 482 F.3d 79, 92-93 (2d Cir. 2006). Rather, the state only has as much power as Congress has decided to delegate. *Id.* And in the FERC-authorization context, Congress did not intend Section 401 to play a role beyond granting the states specific water-quality-review authority. It did not give states the power to consider issues beyond compliance with state water quality standards. *See Nat'l Fuel Gas Supply Corp.*, 894 F.2d at 579.

Here, NYSDEC understood its limited mandate. After reviewing updated applicant-provided information, it appropriately granted Transco's application for water quality certification under Section 401. NYSDEC's decision to issue a water quality certification was reasonable and reasonably explained. *See* Resp. Br. 42-44 (responding to, and rebutting, Petitioners' assertion that agency relied on internally contradictory information); Resp. Inter. at 31-32 ("the underlying technical data—the alleged 'contradictory factual findings'—never changed"). NYSDEC should not be held to any higher standard; the Department was not changing a position, but

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law is to assure that Federal licensing or permitting agencies cannot override State water quality requirements.").

acting on new information, and its decision was supported by a painstaking explanation.

NYSDEC also correctly relied, in part, on post-certification compliance plans. Nothing in Section 401 forbids states from requiring applicants to develop compliance measures after a certification is issued. Indeed, such measures often serve valuable purposes that benefit applicants, the environment, and the general public. NYSDEC even clarified that the plans would be submitted and reviewed before Transco could begin construction—a method not uncommon in other circuits. Resp. Br. 55-56. These plans serve as an additional layer of water-quality protection that the State—in its discretion—required Transco to implement. Resp. Inter. at 49 ("these plans were *additional* protections incorporated into the WQC—not the basis for NYSDEC's determination").

Given NYSDEC's limited mandate under federal law, this Court's review is similarly limited. *See Islander E. Pipeline Co.*, 482 F.3d at 94 (reviewing for consistency with federal law); *id.* (utilizing "more deferential arbitrary-and-capricious standard of review" when analyzing "state agency's factual determinations" (citation omitted)). The Court should accordingly decline Petitioners' invitation to "flyspeck" NYSDEC's work to require more environmental analysis than is actually mandated, and should uphold the certification. *See Del. Riverkeeper Network v. FERC*, 857 F.3d 388, 396 (D.C. Cir. 2017) (courts should

not "'flyspeck' [an] agency's findings in search of 'any deficiency no matter how minor'" (citation omitted)); *cf. Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 183 (2025) (A reviewing court may not 'substitute its judgment for that of the agency as to the environmental consequences of its actions'" (citation omitted)).

II. SECTION 401 SHOULD NOT BE INTERPRETED OR APPLIED TO BECOME AN UNWARRANTED IMPEDIMENT TO INFRASTRUCTURE DEVELOPMENT.

a. Infrastructure investments rely on predictable permitting.

Project developers in the private and public sectors depend on predictable, efficient, and durable federal permitting regimes in planning, financing, constructing, and operating projects that often require long lead-times and large up-front capital commitments. *See* Martin Durbin, *We Need Permitting Certainty, From Start to Finish*, U.S. Chamber of Com. (Sept. 3, 2025), https://perma.cc/JHC8-QCQG (noting the "enormous private sector investment that will be needed" to "meet our nation's growing energy demand – for data centers and AI, new manufacturing, and more").

Large infrastructure projects are particularly vulnerable to litigation challenging authorizations because they often involve a complex and inter-connected matrix of regulatory approvals and carefully coordinated construction timelines that can be easily derailed by delays. *Cf. Islander E. Pipeline Co.*, 482 F.3d at 85 (noting that large energy infrastructure projects can be subject to "death by a

thousand cuts" given "time frames" for permitting and appeals); *Appalachian Voices v. FERC*, 139 F.4th 903, 916-17 (D.C. Cir. 2025) (Henderson, J., concurring) (criticizing "cottage industry" of groups "us[ing] the nation's environmental laws to retard new development," including via "tidal wave of litigation" challenging necessary environmental permits). Infrastructure and other major construction projects create jobs, support families, and improve the quality of life in our communities by delivering important (and often essential) goods and services, including affordable energy and enhanced public services.

Given the long lead-times and complex permitting, financing, commercial, and logistical challenges that major projects face, uncertainty can generate problematic and sometimes fatal instability. Regulatory and litigation delays can dramatically change the financial assumptions underlying a project, whether due to increased construction and labor costs, lags in bringing infrastructure online (which typically must occur before revenues are received), or changes in underlying markets as customers and others shift to alternative arrangements. Disruption to even one permit or authorization can have cascading effects on project development and timing. *See Columbia Gas Transmission, LLC v. 1.01 Acres*, 768 F.3d 300, 315 (3d Cir. 2014) ("[D]elay in possession of the easements will likely cause [the pipeline] to miss the in-service deadline . . . [and if the pipeline] misses the in-service deadline, it will lose the right to seek reimbursement from its customers. Thus the harm . . .

involve[s] . . . safety, reputation, and economic interests."). The combination of permitting delays and protracted litigation can sharply increase costs and elongate project timelines—and sometimes results in the outright cancellation of major infrastructure investments.

Even short delays in getting a project permitted can delay key aspects of construction for months or longer. That is particularly true in parts of the country where the ground freezes or where certain construction activities must fit into narrow seasonal windows to accommodate environmental and practical considerations. Similarly, permitting or litigation-related delays of even a few weeks or months could mean missing a critical delivery window with an equipment supplier. And many construction contracts have milestones and time-sensitive price collars. Depending on the length of the delay, these contracts may need to be re-negotiated, forcing the developer to incur additional costs that are often passed on to consumers.

Unpredictability in permitting means that "[f]ewer projects make it to the finish line," or even "to the starting line." *Seven Cnty. Infrastructure Coal.*, 605 U.S. at 184. The consequences are more than theoretical. For example, delays in permitting for a number of large energy projects have stopped those projects altogether. In 2021, PennEast Pipeline Company announced an end to the development of an interstate natural gas pipeline after years of permitting-related litigation. *PennEast Pipeline Calls Halt to Natural Gas Pipeline Project, Cites*

Permitting Issues, IIR Energy (Sept. 28, 2021), https://perma.cc/TG8K-M3V5. And in 2021, Jordan Cove canceled its proposed LNG terminal after being denied a Section 401 certification by the Oregon Department of Environmental Quality in 2019. *Jordan Cove Energy Project*, Oregon.gov, https://perma.cc/88UQ-24RL (last visited Mar. 26, 2026).

b. Infrastructure projects spanning many vital industries are often subject to Section 401.

Myriad industries depend on federal permits and authorizations subject to Section 401, from roads and airports to water, communications, and flood-control projects, and from housing and manufacturing developments to information technology infrastructure and beyond. When Section 401 is used as a weapon against targeted projects, those projects become harder to finance and build. And the broader community suffers from the subsequent chilling effect on investment. *See How Infrastructure Impacts Business*, U.S. Chamber of Com. (Sept. 15, 2021), https://perma.cc/K4E7-BYMJ (explaining that, by 2039, underinvestment in infrastructure would "lead to a loss of $10 trillion in [U.S.] GDP, $2.4 trillion in exports, and more than three million jobs"). The ability to timely construct new infrastructure and to replace aging infrastructure is too frequently undermined by the consistent and creative misuse of federal environmental laws designed to encourage cooperation—not stagnation.

For example, robust utility and electric generation infrastructure is vital to the overall health of the U.S. economy, and the nation's generating capacity is rapidly diversifying. *Today in Energy*, *New U.S. Electric Generating Capacity Expected to Reach a Record High in 2026*, U.S. EIA, https://perma.cc/8VKG-Z4NJ (last visited Mar. 17, 2026). But this progress is not sustainable if litigants are allowed to wield Section 401 as a cudgel against disfavored projects—whether they be hydropower facilities, natural gas pipelines, solar farms, transmission lines, or battery storage facilities.[3]

III. DELAYS TO INFRASTRUCTURE PROJECTS HARM ORDINARY BUSINESSES AND CONSUMERS.

The inability to timely construct infrastructure such as transmission lines, pipelines, hydroelectric dams, highways, railway lines, and other similar projects will ultimately increase project costs. Such costs are often passed on to businesses and consumers—in the form of higher electricity or energy rates, inflated costs of goods due to additional transportation costs, or scarcity of available resources. Energy costs represent a sizable portion of consumer budgets. Aimee Bell-Pasht,

[3] *Cf.* Conservation Law Found., *Environmental Nonprofits File Appeal of VT and NH Water Quality Certifications for Hydropower Facilities* (May 19, 2025), https://perma.cc/F33Z-XX8P (announcing environmental NGOs' appeals from Section 401 certifications issued by Vermont and New Hampshire for renewable hydropower facilities); *see Bellows Falls Hydroelectric Project Water Quality Cert. Appeal, et al.*, Nos. 25-ENV-00030, 25-ENV-00031, 25-ENV-00032 (Vt. Super. Ct. 2026) (litigation pending).

Combined Energy Burdens: Estimating Total Home and Transportation Energy Burdens 1, ACEEE (May 2024), https://perma.cc/3XHP-6ZVU ("Roughly one in four households experienced high combined energy burdens (spent more than 12% of their income just on energy) and a staggering three in four low-income households experienced high combined burdens."). Due to pipeline constraints, Northeast U.S. residents must pay the highest natural gas prices in the country. During peak winter periods, wholesale natural gas in Boston and New York prices are 166% and 144% more expensive, respectively, than the national benchmark price. U.S. Chamber of Commerce, *S&P Global Study Reveals Economic & Environmental Benefits of U.S. LNG* (Mar. 6, 2025), https://perma.cc/DU8T-YEED (links to full report cited in fact sheet cited below, plus other resources).

Pipeline-driven price reductions would "save residential gas customers in New England $1,435 through 2040, while New York and New Jersey customers [would] save $813." U.S. Chamber of Commerce, *Economic and Environmental Benefits of U.S. LNG: Top Findings from S&P Global Phase 2 LNG Impact Study Supported by the U.S. Chamber of Commerce*, https://perma.cc/ZV7B-NAXL (fact sheet) (last visited Mar. 26, 2026). And "[e]xpanding pipeline capacity out of the low-cost Marcellus and Utica regions in Pennsylvania, West Virginia, and Ohio would save American consumers an average of $5.5 billion annually, for total nationwide energy cost reductions of $76 billion through 2040." *Id.* Without the

expansion of pipeline infrastructure, consumers cannot access these savings and will continue bearing the brunt of increased energy costs.

These increases are felt most acutely by those who can least afford to see increases in their monthly bills. Across the United States, low-income households spend a larger portion of their income than other households on energy costs, such as electricity, natural gas, and home heating fuels. Ariel Drehobl et al., *How High Are Household Energy Burdens? An Assessment of National and Metropolitan Energy Burden Across the United States* ii (2020), https://perma.cc/QVV2-CHZ4 ("Nationally, 67% (25.8 million) of low-income households (≤ 200% of the federal poverty level [FPL]) face a high energy burden and 60% (15.4 million) of low-income households with a high energy burden face a severe energy burden."). This greater energy cost is amplified by the fact that low-income households are less likely to have energy-efficient homes—their homes typically consume more energy to maintain reasonable temperatures, provide warm water, cook meals, and so on. *Id.* at 5. Some studies indicate that over 60% of low-income households pay at least 6% of their incomes to meet energy needs, with the energy burden for some reaching as high as 10%. *Id.* at 52 tbl. B2.2.

Because "[c]onsumers can't easily cut consumption on short notice, as they can with discretionary purchases, . . . higher prices act as a tax, draining the money they have available to spend on other goods and services." Josh Mitchell, *Soaring*

Energy Prices Raise Concerns About U.S. Inflation, Economy, Wall St. J. (Oct. 10, 2021), https://bit.ly/3Peukcy. Increased costs are passed on to consumers in the form of higher energy rates and steeper price tags on everyday items. And when consumers have less disposable income, they understandably reduce spending, triggering negative consequences for the economy." *Id.*

Bringing energy projects online more quickly is important, especially as the demand for electricity continues to climb due to economic and population growth, among other factors. *Today in Energy*, *U.S. Electricity Generation in 2025 Hit a Record, Again*, U.S. EIA (Mar. 5, 2026), https://perma.cc/74ZF-XCR5 ("In 2025, U.S. retail sales of electricity to ultimate customers, which is a key indicator of demand, increased compared with 2024 in all three sectors: residential (by 2.2%), commercial (by 2.9%), and industrial (by 0.7%)"); *see also Short-Term Energy Outlook*, U.S. EIA (Mar. 10, 2026), https://perma.cc/YCK6-RX2F ("We expect U.S. electricity generation will grow by 1.2% in 2026 and by 3.1% in 2027 led by demand growth in the Electric Reliability Council of Texas (ERCOT) region").

One of the drivers of this demand is AI computing. That driver shows no sign of slowing down. In fact, AI computing is predicted to outpace "any other end use [of electricity] in the commercial sector, including lighting, space cooling, and ventilation." *Today in Energy*, *Electricity Use for Commercial Computing Could Surpass Space Cooling, Ventilation*, U.S. EIA (June 25, 2025),

https://perma.cc/P9JT-AW6Q. Some sources identify AI data centers as consuming "more than 4% of the country's total electricity consumption last year," and by 2030, the amount of electricity they consume "is projected to grow by 133%." Rebecca Leppert, *What We Know About Energy Use at U.S. Data Centers Amid the AI Boom*, Pew Rsch. Ctr. (Oct. 24, 2025), https://perma.cc/3DAC-MZ52. Although increased demand related to AI has been rapid, it also reflects the transformative potential of AI to drive industrial productivity, accelerate scientific discovery, enhance national security, and fuel economic growth. With increased demand comes an increased need for cost-effective and dependable electricity.

Pipelines are one of the most important ways to transport the materials that support diverse energy grids, particularly as the majority of electricity continues to be generated from natural gas and other conventional fuels. A robust generation system helps lower energy costs, which facilitates downstream industrial investment and economic growth to the benefit of businesses and consumers.

In addition to energy projects, other forms of infrastructure are also subject to the risk of delays or outright cancellation from abuse of the CWA 401 process. In recent years, key congressional committees have held hearings to explore widespread concerns over the misuse and misapplication of Section 401 authority to stall or block needed infrastructure projects. *See, e.g.*, *Hearing to Examine Implementation of Clean Water Act Section 401 and S. 3303, the Water Quality*

Certification Improvement Act of 2018 Before the S. Comm. on Env't and Pub. Works, S. Hrg. 115-344 (Aug. 16, 2018), https://perma.cc/L2B7-VZF9; *Hearing on S. 1087, the Water Quality Certification Improvement Act of 2019, and Other Potential Reforms to Improve Implementation of Section 401 of the Clean Water Act: State Perspectives Before the S. Comm. on Env't and Pub. Works*, S. Hrg. 116-145 (Nov. 19, 2019), https://perma.cc/APP8-PUSX. These efforts resulted in the introduction of similar legislation (identical bills—S. 3303 and H.R. 6889) in the 115th Congress. The concerns potentially sweep as widely as the Clean Water Act itself, affecting projects and infrastructure from housing to highways, hospitals to homes, and dams to bridges. *E.g.*, U.S. Coast Guard, *U.S. Coast Guard Bridge Program* 18 (Mar. 2025), https://tinyurl.com/3xun4y2k (urging applicants to apply for state 401 certification "at least a full year before" needed for a Coast Guard bridge permit application),; U.S. Coast Guard, *U.S. EPA: "Implementation Challenges Associated with the Clean Water Act Section 401" Listening Sessions* (July 2, 2025), https://perma.cc/E4AJ-NXJ9 (urging stakeholders to engage with EPA regarding "regulatory uncertainty or implementation challenges associated with the Clean Water Act [S]ection 401 certification process").

Given the wide range of contexts in which water-quality certification authority can affect critically needed infrastructure and other investments, courts should interpret and apply Section 401 in a predictable manner that is consistent with

states' statutory limited role, and that avoids unnecessary delays in permitting and advancing new projects.

CONCLUSION

The Court should deny the petition for review.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

1. This brief complies with the word limits of Federal Rule of Appellate Procedure 5(c)(1) and Second Circuit Local Rule 29.1(c) because, excluding parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 4,312 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure, I hereby certify that, on March 30, 2026, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Second Circuit using the appellate CM/ECF system, and served copies of the foregoing via the Court's CM/ECF system on all ECF-registered counsel.

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