

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 21, 2019

Ms. Lauren Kasperek
Attn: Docket ID No. EPA-HQ-OW-2019-0405
U.S. Environmental Protection Agency
Office of Water (4504-T)
Oceans, Wetlands, and Communities Division
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Subject: Updating Regulations on Water Quality Certification under CWA Section 401

Dear Ms. Kasperek:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to provide input on the Environmental Protection Agency's (EPA) proposed rule providing updates and clarifications to the substantive and procedural requirements for water quality certification under Clean Water Act (CWA or the Act) section 401. The TCEQ is providing recommendations and input in the attached document with respect to modifications proposed by the EPA to the rules implementing CWA Section 401.

The comments provide both recommendations and concerns regarding potential impact on state authority and processes we have established with the U.S. Army Corps of Engineers (USACE). In our comments, the TCEQ provides detailed input with regard to strategies to enhance coordination and efficiencies in the processing of CWA Section 401 water quality reviews.

The TCEQ is concerned that the revisions to guidance and rule will negatively impact our agency's processes that have been negotiated with the USACE to conduct a review of the water quality impacts from certain CWA Section 404 applications. In addition, the TCEQ is concerned that the EPA will reduce the scope of state authority laid out in CWA Section 401.

If you have questions concerning the enclosed comments, please contact L'Oreal W. Stepney, P.E., Deputy Director of the Office of Water at (512)239-1321, or by e-mail at loreal.stepney@tceq.texas.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Toby Baker".

Toby Baker, Executive Director
Texas Commission on Environmental Quality

Attachment