# TCEQ LogoNational Comments

# Executive Review Summary

**TCEQ Proposed Comments On:**

Request for Public Comment on a 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.

**Overview of Proposal:**

On August 22, 2019, the U.S. Environmental Protection Agency (EPA) published proposed revisions to the rules implementing CWA Section 401 under EPA Docket ID No. EPA-HQ-OW-2019-0405. The public comment period ends on October 21, 2019. The EPA is seeking public comment on their efforts to initiate the first comprehensive effort to promulgate federal rules governing the implementation of CWA section 401. The Agency’s existing certification

regulations at 40 CFR part 121 pre-date the 1972 CWA amendments. This proposal therefore provides the EPA’s first holistic analysis of the statutory text, legislative history, and relevant

case law informing the implementation of the CWA section 401 program by the Agency and our federal, state, and tribal partners. The proposal, while focused on the relevant statutory provisions and case law interpreting those provisions, is informed by policy considerations

where necessary to address certain ambiguities in the statutory text.

**In preparation for these efforts, on April 10, 2019, the President issued Executive Order 13868 titled Promoting Energy Infrastructure and Economic Growth. Its purpose is to encourage greater investment in energy infrastructure in the United States by promoting efficient federal permitting processes and reducing regulatory uncertainty. The Executive Order identifies the EPA’s outdated federal guidance and regulations as one source of confusion and uncertainty hindering the development of energy infrastructure.**

**Summary of Comments:**

**TCEQ’s 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) and other federal permitting and licensing agencies. 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. In addition, the TCEQ is concerned that the EPA will reduce the scope of state authority laid out in CWA Section 401.**

**Lead Office:**

Allison Woodall, Office of Water

**Internal Coordination:**

Gregg Easley, Water Quality Division, Office of Water

**Deputy Director Approval:**

**L’Oreal W. Stepney, P.E., Office of Water**

**Deadline**:

October 21, 2019