# TCEQ LogoNational Comments

# Executive Review Summary

**TCEQ Proposed Comments On:**

Request for Public Comment on an administrative docket for pre-proposal recommendations on the forthcoming Clean Water Act Section 401 Water Quality Certification rulemaking and guidance efforts.

**Overview of Proposal:**

On April 15, 2019, the U.S. Environmental Protection Agency (EPA) published a *Memorandum* posting EPA-HQ-OW-2018-0855 to Regulations.gov for public access. The memorandum was amended on April 26, 2019 to change the public comment period end date from June 10, 2019 to May 24, 2019. The EPA is seeking public comment in preparation of their evaluation of Clean Water Act (CWA) Section 401 to identify provisions that require clarification in guidance and federal regulations in response to Executive Order 13868 which stipulates that,

“This review shall include examination of the existing interim guidance entitled, “Clean Water Act Section 401 Water Quality Certification: A Water Quality Protection Tool for States and Tribes” (Section 401 Interim Guidance). This review shall also take into account federalism considerations underlying section 401 of the Clean Water Act and shall focus on:

(i) the need to promote timely Federal-State cooperation and collaboration;

(ii) the appropriate scope of water quality reviews;

(iii) types of conditions that may be appropriate to include in a certification;

(iv) expectations for reasonable review times for various types of certification requests; and

(v) the nature and scope of information States and authorized tribes may need in order to substantively act on a certification request within a prescribed period of time.”

**Summary of Comments:**

**TCEQ’s comments include responses to questions posed in two webinars, as well as concerns expressed with regard to potential impacts on state authority and processes coordinated with the U.S. Army Corps of Engineers (USACE). In addition, t**he TCEQ provides detailed input with regard to strategies to enhance coordination and efficiencies in the processing of CWA Section 401 water quality reviews. The comments also state that the 39-day public comment period is not adequate to fully review the numerous and complex issues, and to consider the impacts these revisions may have on programs of the TCEQ. The 45-page guidance handbook under review contains a substantial amount of detail that deserves a concerted and iterative review process prior to finalizing changes. 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.

**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**:

May 24, 2019