

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

May 24, 2019

Ms. Lauren Kasparek  
Attn: Docket ID No. EPA-HQ-OW-2018-0855  
U.S. Environmental Protection Agency  
Office of Water (4502-T)  
Oceans, Wetlands, and Communities Division  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

Subject: *Memorandum* posting EPA-HQ-OW-2018-0855 to Regulations.gov for public access and comment; an administrative docket for pre-proposal recommendations on the forthcoming Clean Water Act Section 401 Water Quality Certification rulemaking and guidance efforts; published for public access on April 15, 2019 and was amended on April 26, 2019 to shorten the comment period from June 10 to May 24, 2019

Dear Ms. Kasparek:

The Texas Commission on Environmental Quality (TCEQ) appreciates the opportunity to provide input on the Environmental Protection Agency's (EPA) evaluation of Clean Water Act (CWA) Section 401 to identify provisions that require clarification in guidance and federal regulations.

The TCEQ has compiled input in the attached document with respect to questions posed by the EPA and concerns regarding potential impact on state authority and processes we have established with the U.S. Army Corps of Engineers. 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; however, we are concerned 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 US Army Corps of Engineers 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.

The attached document contains the TCEQ's comments for consideration by the EPA. 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](mailto:loreal.stepney@tceq.texas.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Baker', with a long horizontal flourish extending to the right.

Toby Baker, Executive Director  
Texas Commission on Environmental Quality

Attachment