TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

State Water Quality Certification of Section 404 Permits

One of the requirements for obtaining a U.S. Army Corps of Engineers Section 404 permit is certification from the Texas Commission on Environmental Quality (TCEQ) that the discharge to be permitted will comply with state water quality standards. Because these reviews are done under the authority of Section 401 of the federal Clean Water Act, they are referred to as Section 401 certification reviews.

Every state sets its own water quality standards. They serve many purposes, including acting as the yardsticks for measuring whether the quality of each body of water in the state is kept at the level necessary to perpetuate the human and aquatic life that has historically existed there. In allowing pollutants to be added to state water (which includes a broad range of substances such as chemicals, concrete, rock, sand, or other materials), both the federal and the state governments are required to be sure that the discharge will not create a condition that will impair the ability of life existing in or depending on the water to survive and reproduce. The state is charged with confirming that the federal permit accomplishes this. The TCEQ is the agency with primary responsibility for making sure we adopt and enforce state water quality standards. It conducts 401 certification reviews to ensure that Texas is involved in decisions made by the federal government that affect the quality of the water resources of this state.

The 401 certification program is also an important component for protecting our coastal resources under the Texas Coastal Management Program (CMP). The CMP is designed to accomplish goals set by the state legislature for coastal resource protection and to meet specific requirements for an approved plan under the federal Coastal Zone Management Act (CZMA). Certain activities, such as discharges of material authorized by Section 404 permits, must be consistent with the state CMP when they occur within the coastal zone boundary. Projects that are granted 401 certification are deemed to be consistent with the CMP.

Section 404 permits often involve impacts to wetlands, which, like all waters, are the responsibility of the state. Through 401 certification reviews of Section 404 permit applications, TCEQ is able to preserve these resources and the functions they perform in maintaining human and aquatic uses of state waters. Efforts to avoid and/or minimize adverse impacts to wetlands are taken to retain the important functions these water bodies provide for maintaining and improving water quality. The presence of wetlands on a site can provide important water quality benefits. Wetlands act like sponges, and can soak up and retain runoff, slowing down surface water, which reduces erosion and sedimentation downstream. By holding water, even temporarily, wetlands also remove and retain nutrients, process organic wastes and reduce sediment before the water continues downstream. Some wetlands also recharge underground aquifers that provide drinking water. Because wetlands are among the most biologically productive natural ecosystems in the world, many fish, wildlife, and plants also depend on wetlands for habitat, including a large portion of the threatened and endangered species that survive in Texas.

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401 Certification Program Description:

TCEQ has developed a tiered system of review for all individual Section 404 permit applications based upon project size and the amount of state water affected. The extent of 401 certification review will vary between the different tiers, as well as the type of wetland affected.

Tier I:

Generally, for small projects that affect less than three acres of waters in the state, or less than 1500 linear feet of streams, TCEQ has determined that incorporating certain best management practices (BMPs) and other requirements into the project will sufficiently address the likelihood that water quality will remain at the desired level. For those projects, no further 401 review will be necessary if the permittee agrees to include those BMPs and requirements in their project which makes them part of their Section 404 permit. These BMPs are designed to minimize impacts to water quality. If a project has a combination of impacts that exceed the threshold or is submitted after the fact, it does not qualify as a Tier I project. For purposes of calculating the Tier 1 threshold, one acre of impact is considered equal to 500 linear feet of impact. Applicants desiring to utilize BMPs for Tier I projects must include a signed Tier 1 checklist with their application for an individual Section 404 permit. The checklist must incorporate all applicable BMPs for the proposed project, which the applicant has chosen to implement. If a complete checklist is submitted, no further review or certification by the TCEQ is required (unless an exception to Tier 1 applies — see below). When the permit is issued, the BMPs and other provisions of the checklist become part of it, and failure to implement any of them is a violation of the permit. Applicants who do not wish to incorporate all provisions of the checklist into their project or desire to use alternatives may seek individual 401 review and certification from TCEQ. The TCEQ will periodically review alternative BMPs for inclusion in the checklist.

The required BMPs and descriptions of each are included in this packet.

Exceptions:

Projects that impact certain types of rare or ecologically significant wetlands are not eligible for inclusion in Tier I and will require individual review, even if they are under the size threshold. These wetlands are identified by the Corps in its regional conditions to the Nationwide Permits in Texas, and include the following habitats:

> Pitcher plant bogs, swamps dominated by bald cypress and tupelo gum tree species, the area of Caddo Lake within Texas that is designated as a Ramsar Wetland of International Importance, mangrove marshes and coastal dune swales.

Tier II:

Any project that does not qualify for a Tier 1 review or for which the applicant elects not to incorporate Tier I criteria or prefers to use alternatives will be considered a Tier II project. Tier II projects are subject to an individual certification review by TCEQ. This review will be done consistent with streamlining practices developed by the TCEQ and U.S. Army Corps of Engineers. A Tier II 401 Certification Questionnaire and Alternative Analysis Checklist are included in this packet.