

5. Clean Water Act Section 401 Certifications (in Louisiana and Texas)

The Section 401 certification process will vary depending on the rules of certifying authority—state environmental agencies, tribes, or EPA—and the EPA’s federal rules, which are in flux as of 2022. It is imperative to have read the rules that apply to your project to successfully participate in this process.

Notes	Section 401 Permitting Process and Appeal	Guide
	<input type="checkbox"/> Sign up through FERC to get automatic updates for the project and easy access to background information about the project  FERC Observation Checklist (#2)	FERC Observation Checklist
	<input type="checkbox"/> Identify the federal licenses that will require certification (typically the FERC and Corps permits)	pp. 241–242
	<input type="checkbox"/> Identify the certifying authority—the agency, tribe, or EPA—that will be certifying each license  In Louisiana, often the Department of Environmental Quality (LDEQ)  In Texas, often the Railroad Commission (RRC)	pp. 228–229
	<input type="checkbox"/> Identify local attorneys experienced with the certifying authority(s) and familiarize yourself with their rules and procedures for 401 as well as EPA’s federal rules on 401 <input type="checkbox"/> Familiarize yourself with the scope of the certifying authority’s power to protect its waters	pp. 231–236, 241–244
	<input type="checkbox"/>  Begin identifying experts who could opine on topics like: <ul style="list-style-type: none"> <input type="checkbox"/> Water quality; <input type="checkbox"/> Wetlands delineation; <input type="checkbox"/> Biological systems; <input type="checkbox"/>  Begin working with them and allies to identify impacts from the project that might be overlooked or under-appreciated	pp. 241–244, App. 56–57
	 Watch for the request for certification. The federal agency may make this request on behalf of an applicant or the applicant may directly request certification of the certifying authority. <input type="checkbox"/> To avoid waiver litigation, the certifying authority should issue its certification decision no later than one year from the date of this request; track this deadline and the authority’s progress	pp. 236–237

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	<p> LDEQ tracks certification requests here: edms.deq.louisiana.gov (use the AI lookup to find your project). For certifications of Corps permits in the New Orleans district, the request is official when the district forwards the applicant’s Corps application to LDEQ</p> <p> In Texas, the RRC does not publish requests publicly and requests can be made by the applicant or federal licensing authority; contact the RRC directly for information; also monitor the applicant’s filings in the FERC docket for clues about timing</p>	<p> pp. 237–238</p> <p> pp. 239–240</p>
	<p><input type="checkbox"/> Read and share with allies the certification request and any publicly available material on the project; continue identifying issues to raise in comments</p>	<p>pp. 241–244, App. 56–57</p>
	<p> Watch for the public notice setting participation deadlines (e.g., public comment, hearings, requests to extend deadlines, etc.). It may be a joint notice issued by the federal licensing authority (e.g., by the Corps)</p>	<p>pp. 229–230</p>
	<p><input type="checkbox"/> Track the deadlines for comment and hearings (often overlapping)</p> <p> For Corps-related certifications in Louisiana’s New Orleans district, a default 10-day comment period opens after LDEQ has conducted its substantive review.</p> <p> In Texas, the default period is 30 days after notice is mailed</p> <p><input type="checkbox"/> Mobilize allies to request a public hearing / meeting during the comment period (likely only granted if significant public opposition to a certification exists)</p> <p> In Louisiana, if a public hearing is granted, an additional 30-day period for comments opens after the hearing—consider using this time to rebut any points raised in the hearing</p> <p> In Texas, RRC must hold a public meeting if the RRC determines a meeting would be in the “public interest”</p>	<p> pp. 237–238</p> <p> p. 240</p> <p> p. 238</p> <p> p. 240</p>

 Read or watch for (passive task)
 Active task
  On-going task
  Write and file
  Go to Checklist

Notes	Section 401 Permitting Process and Appeal	Guide
	<p> Draft and submit comments to the certifying authority within the comment period, including evidence and expert opinion</p> <p> In Texas, the joint notice with the Corps may not always explain where to submit 401 comments. In that event, contact the RRC for direction and send a copy of comments to the Assistant Director of Environmental Services, Railroad Commission, 1701 North Congress Avenue, P.O. Box 12967, Austin, TX 78711-2967</p>	<p>pp. 241-244, App. 56-57</p> <p> p. 240</p>
	<p><input type="checkbox"/> Also submit a copy of your 401 comments to the federal licensing authority at the same time, e.g., FERC, Corps, etc.:</p> <p> FERC Participation Checklist (#1, Application Stage)</p> <p> Corps Checklist (#4, Application Stage)</p>	<p>pp. 92-94, 201-202</p>
	<p> Watch for the certification decision and read it once it issues</p> <p><input type="checkbox"/> Consult with experts and experienced attorneys to determine if there are substantive or procedural flaws that should be appealed and in which court or administrative agency</p>	<p>p. 230</p>

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