



## **401 Certification Program Summary** **~Louisiana~**

### **Overview**

The Louisiana Department of Environmental Quality (LDEQ) coordinates 401 water quality certification with the Corps of Engineers for dredge and fill permits (Section 10/Section 404.) The Coastal Zone Management program in the Louisiana Department of Natural Resources (LDNR) issues its own permit for projects within the coastal zone; elsewhere, 401 certification represents the state's primary means of providing input on regulation of dredge and fill activities. The state works closely with the Corps and the applicant to ensure that state's concerns are incorporated into the final Corps permit. The Corps retains most compliance and enforcement responsibility.

### **Definition of Waters of the State**

The official definition of Waters of the State in Louisiana is interpreted to include all wetlands.

“Waters of the state” refers to both the surface and underground waters within the State of Louisiana including all rivers, streams, lakes, estuaries, ground waters, and all other water courses and waters within the confines of the state, and all bordering waters and the Gulf of Mexico (Section 33-9-1).<sup>i</sup>

In addition, Louisiana has a definition of “surface water” that more specifically addresses wetlands.

“Surface water:” all lakes, bays, rivers, streams, springs, ponds, impounding reservoirs, wetlands, swamps, marshes, water sources, drainage systems and other surface water, natural or artificial, public or private within the state or under its jurisdiction that are not a part of a treatment system allowed by state law, regulation or permit (LA Regulations: Chapter 1, p. 5).<sup>ii</sup>

### **Permits Requiring 401 Certification**

About 99% of the permits that Louisiana certifies are 404 permits. They also certify a small number of FERC and NPDES permits.

### **States 401 Certification Standards (Water Quality and other)**

Louisiana utilizes their general water quality standards to create conditions for wetlands. They have narrative standards only and reference them to varying degrees on a case-by-case basis. They conduct a qualitative analysis of each wetland being impacted. They focus largely on the change in land use which directs how stringently they will test it against their water quality

standards, e.g. if a project is proposed for a recreational field, less review is required than a parking lot is proposed. The parking lot proposal would be closely examined against water quality standards with specific parameters. Additionally, Louisiana has several waste water assimilation demonstration projects and has developed specific water quality numeric and narrative standards for those projects that do not apply to others.

An example of how Louisiana applies water quality standards is highlighted in a proposed subdivision that includes a canal ~~to~~ attached to a scenic stream/outstanding natural resource. Louisiana is closely analyzing the change in land use and stormwater impacts to the stream and to on-site wetlands, which could be used to buffer the stream from storm water runoff.

Louisiana's Water Quality Regulations can be found in Chapter 11 page 42 here:  
[http://aswm.org/pdf\\_lib/401\\_cert/la\\_title\\_33\\_environmental\\_quality\\_water\\_quality\\_regulations.pdf](http://aswm.org/pdf_lib/401_cert/la_title_33_environmental_quality_water_quality_regulations.pdf)

### **Description of Designated Uses and Existing Uses**

Designated uses in Louisiana apply to all waters of the state, and are not specific to wetlands. Louisiana recognizes that wetlands can be used as a BMP to buffer streams from impact from residential projects. They have given people credit for using wetlands as a buffer. Louisiana does not have a standardized checklist of BMPs but handles each application on a case-by-case basis.

Louisiana's list of designated uses can be found in Chapter 11 page 49 and further on page 63 here:  
[http://aswm.org/pdf\\_lib/401\\_cert/la\\_title\\_33\\_environmental\\_quality\\_water\\_quality\\_regulations.pdf](http://aswm.org/pdf_lib/401_cert/la_title_33_environmental_quality_water_quality_regulations.pdf)

### **Antidegradation Applications**

The antidegradation policy in Louisiana is not specific to wetlands and is applied only in general to waters of the state. Louisiana's antidegradation policy can be found in Chapter 11 page 60 here:  
[http://aswm.org/pdf\\_lib/401\\_cert/la\\_title\\_33\\_environmental\\_quality\\_water\\_quality\\_regulations.pdf](http://aswm.org/pdf_lib/401_cert/la_title_33_environmental_quality_water_quality_regulations.pdf)

### **401 Certification Implementation**

Louisiana does not waive certification. They generally certify, and deny on very rare occasions, only when the project as proposed will violate state water quality standards. Denial is a last resort as they will try to work with applicants to bring projects into compliance if possible. Louisiana does apply some flexibility for minor revisions and modifications to proposed project applications. They handle situations as they occur. Louisiana receives an average of roughly 700 total applications for 401 certification per year, and currently receives fewer applications than in the past.

Louisiana does not impose their own conditions but instead works with the Corps and the applicant to make sure their input is included in the Corps permit so that they can certify it. They require applicants to change the project to comply so that conditional permits are unnecessary. They utilize a pre-application meeting to allow issues to be addressed early on and have a very good working relationship with the Corps. Instead of attaching separate conditions to the permit after the Corps issues it, Louisiana works to fill in gaps and make clear their objectives by being clear and upfront with the Corps from the beginning. According to Louisiana regulations, a certification is an approval that the activity described in a permit action will comply with state water quality standards. A 401 certification is not a permit action.

In terms of Nationwide permits, when these are revised every five years Louisiana looks at their current 303d list, and refers to the causes and sources of impairment and compares the proposed Nationwide permits to that. They denied 7 Nationwides in the last round and all 7 related to existing causes of water quality impairment in the state. For the Nationwide permits that were denied, the applicant will work with the Corps to determine whether the project may qualify, in which case it is then sent to the water quality office.

### **Coordination of Programs:**

Louisiana's coordination with the Corps, other state and federal agencies, and its executive staff are features that they recognize as major assets in their process. They also have the benefit of easy access to talented engineers.

### **Coordination with Corps Districts**

Louisiana primarily coordinates 401 certification with three different Corps districts: New Orleans, Galveston, and Vicksburg. Rarely, projects are received from Fort Worth and Mobile Districts. The majority of their 401 certifications, about 95%, are coordinated through the New Orleans district, and therefore have developed a particularly good working relationship with the New Orleans district—they communicate regularly via email and phone, and meet with them once a month. They also have a good working relationship with the other districts, but it is less frequent and direct.

### **Coordination with other Agencies**

Louisiana receives great support and comments that solidify their position from the various state and federal agencies, including the Department of Fish and Wildlife and Coastal Zone Management. This allows them to be more detailed in their comments to applicants, aiding the applicant in their ability to move into compliance. The LDEQ (main 401 certification agency) has regular application meetings with Coastal Zone Management, which has jurisdiction over the lower quarter of the state, and operates a permitting program within the coastal zone. The majority of the state's population is located within the coastal zone so roughly half of the projects that require 401 certification are located there. Legislation to expand the coastal zone has been approved, but not yet implemented, and may be further refined prior to implementation.

If needed, the LDEQ can access the final permit once it is issued, but they are rarely able to review them due to heavy work load.

### Coordination with Other Authorities

There is a Scenic Rivers program in Louisiana that indirectly offers a similar form of protection to 401 certification.

### Project Analysis

Louisiana is not proactive in conducting their own independent project analysis but they do assist the Corps with their analysis. They have not adopted the 404(b)(1) guidelines to direct their analysis but they do effectively encourage applicants to avoid and minimize.

### Application of 401 Certification to Wetlands that have been declared non-jurisdictional due to the US Supreme Courts decisions in SWANCC

N/A

### Mitigation Requirements

The Louisiana Department of Environmental Quality does not require mitigation. The Louisiana Department of Natural Resources' Coastal Zone Management program does require mitigation.

### Monitoring and Enforcement Approaches

Louisiana does not have their own enforcement policies but instead recognizes the Corps as the permitting agency that is responsible for enforcement. They do support the Corps, and help them gather information (for example ambient water quality) when needed. The Coastal Zone Management program does have enforcement policies when there is an incidental or direct impact.

### Staffing

Currently two full time employees work on 401 certifications in Louisiana. One person spends 100% of their time on certifications; the other employee has other responsibilities. The program is expected to have 1.5 FTE in the near future.

### Tracking Techniques/Databases

Louisiana tracks 401 Certifications but the data is strictly internal. They log in all requests and this list is available on one staff member's computer. The Corps has provided a grant to the Department of Natural Resources to maintain a database for projects located in the coastal zone as well.

## **Program fees**

Louisiana requires a fee of \$33 if the project is non-commercial and a fee of \$350 if the project is commercial.

## **Important Court Cases**

Timber Branch Case Premise:

A certification was granted for a subdivision. Thorough water quality analysis was not conducted and the certification was challenged in court. At the time, there was a need to determine the applicable water quality standards for the project site's watershed basin or subsegment and also to define a change in land use/and what effects it may have on water quality standards. In response, Louisiana gathered as much information as possible from public noticing, the state's water quality management plan, and available BMP cases studies regarding pollutant removal efficiencies and made a determination. The certification was upheld in court after it went through this analysis since the state was able to base their determination on case studies and scientific data. Now this type of thorough analysis is standard.

The following link to the Department of Natural Resources Office of Coastal Management Frequently Asked Questions includes helpful information that can be found here:

<http://dnr.louisiana.gov/CRM/faq.asp#7>

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<sup>i</sup> <http://www.ecos.org/section/publications>

<sup>ii</sup> [http://aswm.org/pdf/lib/401\\_cert/la\\_title\\_33\\_environmental\\_quality\\_water\\_quality\\_regulations.pdf](http://aswm.org/pdf/lib/401_cert/la_title_33_environmental_quality_water_quality_regulations.pdf)