

January 2, 2014

Water Docket
Environmental Protection Agency, Mail Code 2822T
1200 Pennsylvania Ave. NW
Washington, D.C. 20460
Attn: Docket No. EPA-HQ-OW-2010-0606

Re: Comments on Water Quality Standards Regulatory Clarifications

The Water Environment Association of Texas (WEAT), the Texas Association of Clean Water Agencies (TACWA), and the Texas Water Conservation Association (TWCA) are pleased to offer the following comments on the Environmental Protection Agency's proposed Water Quality Standards Regulatory Clarifications Proposed Rule. WEAT, TACWA, and TWCA members include wastewater service providers, including cities, river authorities, and water districts, and engineering consultants throughout the State of Texas. More information regarding WEAT, TACWA, and TWCA can be obtained at their respective websites at www.weat.org, www.tawca.org, and www.twca.org.

The EPA has proposed changes to six areas of the Water Quality Standards Regulation. WEAT, TACWA, and TWCA will offer some general comments and then focus on the following three areas: 1) antidegradation implementation methods; 2) triennial review scope and requirements; and 3) variances to water quality standards.

General comments

As stated in our previous comments dated September 16, 2010, the proposed revisions, with the exception of the section on "Administrator's Determinations that New or Revised WQS Are Necessary", are unnecessary and inappropriate. All of these issues are already adequately addressed in existing regulations. In some cases, what is proposed goes beyond the scope of the water quality standards program, or the proposal provides detailed mandates for implementation methods that are the purview of the State in the structure of the Clean Water Act. The more detailed programmatic requirements in these proposed revisions, in particular, have the potential to impede rather than assist States in providing effective and efficient measures to protect and enhance water quality.

To the best of our knowledge, the Texas Commission on Environmental Quality (TCEQ), EPA Region VI, and Texas permittees are all generally supportive of the Texas programs in the areas of the establishment of designated uses, triennial review of water quality standards, implementation of the antidegradation program variances, and the use of compliance schedules in permits issued pursuant to the NPDES program. The proposed revisions to the Part 131 regulations will not enhance these programs and have the potential to impede their effective implementation.

If some States have not appropriately implemented the existing regulations, we suggest that the solution to this is not to issue redundant regulations or micromanage the programs in all States but, rather, to work with the specific States that are deficient.

Antidegradation Implementation Methods

EPA has requested comment on whether the Regulation should be amended to require implementation methods to be adopted by rule and to specify minimum requirements, including a requirement for an alternatives analyses and a limitation on lowering of high water quality if any “practical” alternatives are available. WEAT, TACWA, and TWCA do not support such a stringent approach.

Our members encourage EPA to review the approach to antidegradation long ago adopted by Texas in the Texas Surface Water Quality Standards (Texas Standards) and Procedures to Implement the Texas Surface Water Quality Standards (Implementation Procedures), because the Texas program very clearly addresses the issues of concern to the EPA. We believe that most other states have also adopted acceptable programs during the decades since the legislation was passed. The appropriate antidegradation program can vary widely from State to State. The Clean Water Act (CWA) does not specify detailed requirements for the program, and EPA should not attempt to apply a one-size-fits-all approach at this late date. As noted before, if there are issues in some States, EPA should address those directly and not attempt to reconfigure all of the State programs into a uniform mold.

With respect to the requirement that the implementation procedures should be included in the water quality standards, we again refer you to the current documents in Texas. In its water quality standards regulations, TCEQ includes about two and a half pages identifying tiers and the objectives of the anti-degradation review for each tier. The standards state that the process for the review and associated public coordination are set out in the implementation procedures. The Implementation Procedures then contain about 14 pages of detailed information on the processes. To require the implementation procedures to be incorporated into the rule setting forth the water quality standards would burden the standards with detail that is unnecessary and makes needed periodic refinements of the antidegradation review process unworkable.

Similarly, the requirement for a detailed, EPA-directed alternatives analysis unnecessarily interferes with the primacy of the states with respect to the establishment of water quality standards. As proposed, the acceptability of a lowering of water quality would be based on the lack of availability of a “practical” alternative. This can lead to extensive, expensive, and repetitive studies because of differing opinions regarding whether all possible alternatives have been evaluated and whether any of them meet the definition of “practical”.

The existing antidegradation provisions in the Texas Standards strike an appropriate balance between establishing a framework for implementation of the antidegradation policy and ensuring that the regulations are not overburdened with so much detail that flexibility is lost. The Texas program is a good example of how to structure a State’s antidegradation policies. However, the proposed revisions would impose required changes that would substantially increase the administrative burden on the State and decrease the State’s ability to provide sound water quality management based on conditions as they exist in the State of Texas.

Triennial Review Scope and Requirements

If adopted, the proposed regulation would establish a new triennial review requirement that states must evaluate whether existing water quality criteria continue to be protective of designated uses. We are concerned that the approach described in the proposed rule will limit TCEQ’s flexibility to adopt criteria different from what is in the 304(a) guidance document. This will further limit a state’s ability to deal with site-specific issues, leading to inappropriate one size fits all water quality standards development. WEAT, TACWA, and TWCA believe that the TCEQ successfully achieves this standard through its current approach to the triennial review and the proposed language should be modified as follows:

The third sentence in 40 CFR Part 131.20 (a) [the proposed amendment to this section] should be revised as follows, “Similarly a State shall re-examine its water quality criteria to determine if any criteria should be revised in light of any new or updated CWA Section 304 (a) criteria recommendations taking into consideration the appropriate adaptation of such recommendations based on the relevant ecological, physical, and hydrological characteristics of the water subject to the criteria, to assure that designated uses (continue to be) are protected.” [Parenthesis indicates deletions; underline indicates additions]

Variations to the Water Quality Standards

We are concerned that the revisions contained in the proposed rule relating to variances will needlessly complicate and render Texas’s current variance procedure ineffective—a procedure that already addresses the concerns EPA is trying to address in this rulemaking. In Texas, variances to a water quality standard are temporary in nature, in accordance with water quality regulations. A temporary variance to a water quality standard can only be granted when scientific information indicates an adjustment to the standard is justified. Generally, this means that the person seeking the variance (usually the permittee) must first provide some level of justification for the variance.

The length of time temporary variances are in effect before a standards revision is approved is controlled through the issuance of a short-term permit (three years rather than five years).¹ The permit contains special provisions establishing a schedule for submission of the work plan and specifies the effluent limits that will be applied in the next permit cycle if the permittee does not comply with the requirements of the variance or if the existing standard is not revised. The variance may be extended through the next permit cycle to allow for the standards revision if TCEQ and EPA have approved the site-specific standard. However, the Texas Standards specifically provide that if a permittee is not complying with the conditions of the variance, then the succeeding permit is issued with final effluent limits based on the existing standard, effective immediately without a compliance period.² These procedures provide incentive for permittees to adhere to workplan schedules so that variances do not linger unnecessarily. If EPA believes that any situation has extended for too long, it can exercise control at the time of permit renewal.

The approach for temporary variances in the proposed regulations could be construed as requiring an amendment to the Water Quality Standards as well as a fixed date for the variance to expire which will simply cause TCEQ to restructure its entire variance process. In addition, the requirement to identify the highest attainable interim use and related specific interim numeric limit needlessly complicates and extends the permitting process by requiring a preliminary study to make these findings rather than focusing on the crux of the issue—the determination as to whether a long-term site specific standard is appropriate. Because variances in Texas are time-limited due to a shortened permit term, it is unlikely that a permittee would be able to perform the studies necessary to develop the interim use and related limit and the final long term site specific standard. If EPA wants to shorten the time for variances, it should eliminate the need for the interim use and limit identification.

WEAT, TACWA, and TWCA members believe that existing Texas regulations adequately and fairly address the variance process for Water Quality standards.

As noted in these examples above, Texas, and it can be assumed other states, are already implementing methods that address the issues raised by EPA in this proposed rulemaking. Any rules revisions should not seek uniformity among state programs for the sake of uniformity alone, but rather retain these existing effective approaches. In addition, rules revisions should allow states as much flexibility as possible to craft program details to meet the individual challenges of each state.

¹ 30 Texas Admin. Code § 307.2(d)(5)

² *Id.*

WEAT, TACWA, and TWCA appreciate the opportunity to provide these comments and strongly encourage EPA to adopt only those rule changes that protect and support these elements while maintaining state flexibility in the implementation of water quality standards.

Sincerely,

A handwritten signature in cursive script that reads "Carol Batterton".

Carol Batterton
Executive Director
Water Environment Association of Texas
Texas Association of Clean Water Agencies
1825 Fortview Road, Suite 102
Austin, Texas 78704
512-924-2102
carol@weat.org