



March 12, 2010

Mr. Michael Parrish
Office of Legal Services MC 205
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

Dear Mr. Parrish:

In 2008, our coalition of water quality organizations was formed specifically to respond to the water quality standards rulemaking and the revision of the *Procedures to Implement the Texas Surface Water Quality Standards* (Implementation Procedures). The coalition includes the Water Environment Association of Texas, the Texas Water Conservation Association, and the Texas Association of Clean Water Agencies. We formed this coalition because we believed that it would be more effective and helpful to the agency if the staff could hear one voice from permittees.

Three issues are of particular interest to the coalition:

- The need for a tiered approach to criteria for, and categories of, waters for recreation use;
- The development of numeric nutrient criteria; and
- The regulatory approach to whole effluent toxicity (WET) sub-lethal test results.

With respect to the recreational use and nutrient criteria, we believe that the proposed draft rules represent a significant and positive step forward. We appreciate the staff's willingness to consider stakeholder input on these issues. Several suggestions for revisions to the proposed language in these areas are attached.

With respect to the sub-lethal WET issues, we have no comments on the proposed rules. However, we are submitting by separate letter detailed comments on this portion of the Implementation Procedures.

We know the sub-lethal WET issue has been a difficult issue for staff to negotiate with EPA Region 6. We appreciate the staff's efforts to develop Implementation Procedures that are environmentally protective, achievable, and scientifically based. While we believe that most aspects of the proposed Implementation Procedures, as currently proposed, provide a viable approach, we continue to believe that there are still significant inconsistencies between the findings and capabilities of the science and the requirements of the regulatory program. Our coalition is available to continue to work with TCEQ staff and the EPA to find a reasonable approach to the regulatory program for sub-lethal effects. We believe that permittees should not be subject to undue burdens to comply with requirements that are

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not consistently achievable and have not been demonstrated to be necessary to protect the environment, especially during these difficult economic times. A sound regulatory program for sub-lethal WET must incorporate a valid determination of Reasonable Potential, meaningful permit language, and appropriate enforcement provisions.

Thank you for the opportunity to comment. Please feel free to contact me at 512-924-2102 or carol@weat.org if you have any questions or need any additional information.

Sincerely,



Carol Batterton

Executive Director

Water Environment Association of Texas

ENCLOSURE

**COALITION COMMENTS
ON
TEXAS SURFACE WATER QUALITY STANDARDS
Rule Project Number 2007-002-307-EN**

NUTRIENT CRITERIA

The Coalition supports many aspects of the proposed numeric criteria for reservoirs and appreciates the cooperative work of TCEQ staff over the years on this effort.

Appendix F

With regard to the specific proposal outlined in proposed Appendix F and at 307.9(e) (7), we support the use of chlorophyll-*a* as the ultimate response variable that is supported by additional indicators of eutrophication concern, and the general procedure used in developing the criteria values. We also support the use of the **median** of at least 10 samples in determining attainment. However, we do have several specific concerns.

Use of Secondary Screening Parameters in Determining Impairments

The Coalition appreciates that there has been a response to previous comments on the need to only employ data developed using the improved analytical methods currently available. Particularly with respect to chlorophyll-*a*, the older data significantly underestimate the concentrations present in many instances. However, there appear to be a number of cases where the agency's proposed criteria cannot be duplicated following what are understood to be the revised procedures. It is not clear whether this is a result of the inclusion of data from the early 1990s, or earlier, in order to obtain a sufficiently sized data base; from eliminating higher values as "outliers" based on Best Professional Judgment when these data may actually be representative; or some other factor.

While the Coalition supports the overall process and recognizes that the time to deal with specific data points may have passed, there appear to be enough problems with the values presented to require a change in Appendix F that will minimize the chance for unintended effects. Therefore, the Coalition proposes either of two alternative recommendations:

Recommendation: Retain the present structure in Appendix F (confirmation required for either Total Phosphorus (TP) **or** Transparency), but use the chlorophyll-*a* values in the alternative proposal (those calculated with the .01 confidence value); or

Recommendation: Use the chlorophyll-*a* values as they are in Appendix F (calculated with the .05 confidence value), but require confirmation based on **both** TP and Transparency.

Use of Secondary Screening Criteria When Removing Segments from 303 (d)

It is also recommended that the role of the secondary screening parameters in the event of a 303(d) listing for nutrients be more fully defined. There should not be a requirement to achieve compliance with the secondary screening parameters to fulfill Total Maximum Daily Load (TMDL) requirements. For example, a segment listed for exceeding a chlorophyll-*a* criterion may never be able to achieve the transparency screening value if low transparencies are a result of geologic conditions and not planktonic algae.

Recommendation: Clarify that compliance with secondary screening criteria is not required in order to remove a segment from the 303(d) list for exceedance of a nutrient criterion.

RECREATIONAL USES

During 2008 and 2009 the Coalition has worked closely with TCEQ staff to try to address problems with standards dealing with appropriate recreational use criteria. Some of the major concerns were that while all want to see clean water and appropriate recreational uses, there were many listings occurring where there was little human activity or any significant amount of recreational use. The criteria that were the source of these inconsistencies were developed to protect persons swimming in lakes in good weather. In spite of this, the criteria were subsequently applied to essentially all streams at all times.

After review of the proposed Chapter 307 changes and criteria, we find that significant progress has been made in the development of more appropriate recreational use criteria.

- More classes of recreational use have been established, and the criteria applied to each of these classes have been adjusted to a limited degree;
- Steps have been taken to streamline the Use Attainability Analysis (UAA) process;
- Appropriate modifications to procedures for determining attainment have been made. Water bodies would no longer be listed based on single sample results. Also, the potential for samples collected during storm-related high flows (with associated high bacteria) to affect attainment determinations would be reduced.

While progress has clearly been made, it is not appropriate to declare mission accomplished. Indicator bacteria occur in intestinal waste, but they are also common throughout our watersheds, in soils and sediments, and are found in high concentrations in runoff waters, with or without human activity in the watershed. With the level of water quality monitoring commonly used today (infrequent sampling at essentially random flows), it will be a continuing challenge to differentiate between false alarms and real correctable problems.

At this time, we do not suggest any further modifications to the specific values in the proposed standards. The only minor modification we recommend in this version is that the definitions of *Escherichia coli* (*E. coli*) and Enterococci be modified to acknowledge that there are sources other than warm-blooded animals. This will make these definitions consistent with the fecal coliform definition, and make it clear that, while the shared goal is water suitable for recreational uses, the tools available for identifying real correctable problems are far from perfect.

Recommendation: Revise the definitions of *E. coli* and *Enterococci* in §307.3. **Definitions and Abbreviations** to read as follows:

(20) [(18)] ***E. coli*** - *Escherichia coli*, a subgroup of fecal coliform bacteria that is present in the intestinal tracts and feces of warm-blooded animals and other environmental sources. It is used as an indicator of the potential presence of pathogens.

(22) [(20)] **Enterococci** - A subgroup of fecal streptococci bacteria (mainly *Streptococcus faecalis* and *Streptococcus faecium*) that is present in the intestinal tracts and feces of warm-blooded animals and other environmental sources. It is used as an indicator of the potential presence of pathogens.

The proposed revisions to the standards mark the successful completion of an important step. We look forward in the coming years to working with the new standards and with the staff in developing further refinements.

In support of this objective, we would like to recommend that the agency undertake the following:

- Conduct studies to improve the quantitative measures of risk that should inform the criteria for specific uses; *e.g.*, develop better information on ingestion rates and illnesses associated with specific types of waterborne recreation.
- Develop specific procedures to implement the high flow exclusion provisions in Section 307.9.

The regulated community will also have tasks going forward. These include continuing to seek and correct problems (*e.g.*, sanitary sewer leaks), and working to implement the UAA provisions in the standards to establish more appropriate uses and criteria.

WHOLE EFFLUENT TOXICITY TESTING (BIOMONITORING)

The Coalition has no comments regarding the provisions in 30 TAC Chapter 307 related to "Total Toxicity." However, we have submitted extensive comments applying to the chapter in the IPs entitled, "Whole Effluent Toxicity Testing (Biomonitoring)."