



Water Environment
Association of Texas



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February 20, 2020

Mr. David W. Galindo
Director
Water Quality Division
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, Texas 78753

Re: Comments related to January 23, 2020 Pretreatment Stakeholder Meeting

Dear Mr. Galindo,

The Water Environment Association of Texas (WEAT) and Texas Association of Clean Water Agencies (TACWA) appreciate the opportunity to provide input on the above referenced January 23, 2020 Pretreatment Stakeholder meeting. WEAT and TACWA members are responsible for the design, operation, and maintenance of publicly owned wastewater collection and treatment systems all across Texas. WEAT and TACWA are made up of environmental professionals, practitioners, operations specialists, and public officials in the water and wastewater industry working together to benefit society through protection and enhancement of the water environment. To further the joint mission of WEAT and TACWA a Pretreatment Committee (Committee) was formed. The Committee consists of pretreatment program coordinators and consultants that have extensive understanding of the pretreatment program regulations and experience in implementing pretreatment programs.

On January 23, 2020, the Texas Commission on Environmental Quality (TCEQ) conducted a Texas Pollutant Discharge Elimination System (TPDES) Pretreatment Program Stakeholders' meeting. As part of the meeting TCEQ requested further comments on two topics:

- The document titled *TCEQ Frequently Asked Dental Rule Compliance Questions for Control Authorities (CAs), Draft 1/16/2020*, and
- The TPDES permit language regarding technical based local limit (TBLL) Guidance Documents.

In addition, the Committee would like to offer further comments on the following topics discussed in the Stakeholders' meeting:

- TPDES permit action process for all substantial modifications
- Methods Update Rule (MUR), Minimal Analytical Limits (MALs), and New Water Quality Standard Pollutants
- Revisions to the sludge rules in 30 TAC 312 that relate to the Class A biosolids criterion for Selenium

TCEQ Frequently Asked Dental Rule Compliance Questions for Control Authorities (CA)

The Committee requests further clarification to Question 1, bullet 8, Question 4, and Question 5 of the *TCEQ Frequently Asked Dental Rule Compliance Questions for Control Authorities (CA)* (Dental FAQ). A CA needs to know how to proceed when its Enforcement Response Plan (ERP) or Legal Authority requires enforcement actions for late reports for all industrial users (IUs) and is not specific to permitted or significant industrial users.

Question 1, Bullet 8 states:

What are the TCEQ Water Quality Division's expectations for CA regarding the implementation of the final dental rule (40CFR Part 441)?

CAs may choose to enforce against dental discharges. In such instances, the CA will ensure that it has the legal authority, appropriate procedures and other documentation incorporated into its approved pretreatment program in order to do so.

Question 4 states:

Does a CA need to modify their legal authority regarding regulating dental dischargers?

If a CA desires to enforce against its dental discharges, it will need to make sure that it has the appropriate legal authority in its approved pretreatment program in order to do so.

Question 5 states:

Does a CA need to modify their standard operating procedures (SOPs), forms or templates, Enforcement Response Guide/or Plan (ERG/ERP) to implement the final dental rule?

If a CA desires to enforce against its dental discharges, it will need to make sure it has the appropriate procedures and other documentation incorporated into its approved pretreatment program order to do so...

During the meeting, a stakeholder requested clarification if they would have to issue a violation and publish a dental discharger in significant noncompliance (SNC) if it fails to submit its one-time compliance report in accordance with the regulations since dental dischargers are classified as IUs. TCEQ staff responded that it is leaving enforcement up to the CAs; however, if a CA's Program (i.e. legal authority and ERP) requires enforcement for late reports for all IUs, then TCEQ would expect the CA to follow what is described in their Program and enforce appropriately.

The Committee believes TCEQ's verbal response to the stakeholder's question, and responses to Question 1, bullet 8, Question 4, and Question 5 in the Dental FAQ, are misleading. Terminology used in these sections of the Dental FAQ seem to allude that CAs have a choice to enforce and do not have to modify its Program. These sections should be revised to clarify TCEQ's expectations that if a CA's Program requires reporting enforcement actions on all IUs then enforcement on a dental discharger is required. Additionally, if a CA's Program is written to apply noncompliant determination for late reporting for all IUs, TCEQ should provide guidance for

modifications for those CAs that have chosen not to enforce reporting requirements for dental dischargers.

The TPDES Permit Language Regarding Technical Based Local Limit (TBLL) Guidance Documents

Currently, TPDES permits require CAs to use both the 1993 EPA Region 6 Guidance Memorandum (1993 memo) and the 2004 EPA Local Limit Guidance Document (2004 Guidance) when undergoing development and redevelopment of technically based local limits (TBLLs). (These comments are based on the original 1993 memo and not the memo that was revised by TCEQ after the 2004 Guidance was published.)

Stakeholders previously requested that TCEQ require development and redevelopment of TBLLs be consistent with the 2004 Guidance, rather than requiring the elements specified in the 1993 memo. During the January 23, 2020 Stakeholders meeting, TCEQ requested that stakeholders comment on specific issues for the why the 1993 memo should be discontinued.

In addition to the fact that the 1993 memo was superseded by 2004 Guidance, the Committee believes the 1993 memo should be discontinued for the following reasons:

- Requirement to submit a sampling plan - The 1993 memo indicates that a CA should submit a sampling plan prior to conducting the monitoring for TBLL development. TCEQ has in the past interpreted this 1993 memo provision as a requirement that a sampling must be submitted to TCEQ and revised based on TCEQ comments before initiating the sampling. The 2004 Guidance, however, does not require a CA to submit a sampling plan and indicates that a sampling plan is not required per the 40 CFR Part 403 regulations (See 2004 Guidance, page 9-4). However, EPA does recommend a CA develop a sampling plan. The Committee's recommendation is to change the requirement that a TBLL sampling plan must be submitted and revised according to TCEQ comments to allowing a CA to submit a sampling plan for review and comment. This would enable the permittee to pursue redevelopment of TBLLs in a more expedient and efficient manner, which is also consistent with the 2004 Guidance and 40 CFR Part 403 regulations.
- Sampling requirement - The 1993 memo requires CAs to conduct a six consecutive day monitoring for initial development and redevelopment of TBLLs if six monthly sampling events cannot be conducted. The 2004 Guidance, however, only requires seven to fourteen consecutive days of sampling for initial TBLL development. For redevelopment of TBLLs the 2004 Guidance allows CAs that conduct influent, effluent, and sludge sampling as part of its pretreatment program, to use this data for subsequent local limits reviews and headworks analyses. (See 2004 Guidance, page 4-1) The Committee believes that being able to use monitoring data that have been collected as part of pretreatment program requirements will significantly reduce the economic burden for CAs that need to redevelop their TBLLs.

In addition, the Committee would like to offer assistance with making revisions to the TCEQ sampling plan checklist, which is used to review sampling plans. The current sampling plan is

based on information from the 1993 memo and requires information that is beyond the scope of sampling and the 2004 Guidance.

TPDES Permit Action Process for all Substantial Modifications.

Previously, stakeholders have requested that approval of new pretreatment programs and substantial modifications be decoupled from the TPDES permit renewal/amendment process. This would allow CAs to expedite the implementation of new pretreatment programs and substantial modifications faster upon TCEQ approval. During the January 23, 2020 Stakeholder meeting, TCEQ indicated the TCEQ Pretreatment Team will start processing substantial modifications as staff-initiated amendments to the TPDES permits. TCEQ further relayed verbally the actions involved with the staff-initiated amendment process that would have to occur before the TPDES permit could be amended. In addition, activities that the CA is responsible for related to approval of its legal authority were discussed.

The Committee would like to suggest that TCEQ prepare an outline or fact sheet that is related to obtaining approval of a substantial modification request. This will allow the CAs to plan for and to understand the steps that will be taken when a request for a substantial modification is made and what other requirements in the TPDES permit may be affected.

Methods Update Rule (MUR), Minimal Analytical Limits (MALs), and New Water Quality Standard Pollutants

The WEAT Pretreatment Committee and WEAT Laboratory Committee previously submitted comments on Dec. 30, 2019 related to MUR and the proposed MALs specified in Appendix E of the TCEQ *Procedures to Implement the Texas Surface Water Quality Standards*. If the Pretreatment Committee can be of some assistance to discuss further the perceived impacts of the proposed MALs, members of this Committee can be made available.

Additionally, during the stakeholder meeting TCEQ relayed they are considering a proposed approach for implementing the four new pollutants listed in the Surface Water Quality Standards. The four new pollutants are:

- Epichlorohydrin
- Ethylene Glycol
- 4,4'-Isopropylidenediphenol (bisphenol A)
- Methyl tert-butyl ether (MTBE)

TCEQ mentioned during the meeting that monitoring for these four new pollutants will only be required if the pollutant is believed to be present in the CA's influent from an industrial source.

The Committee requests clarification for the following:

- What are TCEQ's monitoring and reporting expectations for the CAs that do not have the updated pollutants listed in the example Pretreatment Annual Report form that is in their TPDES permit?
- What is the timeframe by which a CA must determine if a new pollutant is suspected to be present or absent in IU discharges?
- What documentation is expected to be kept by the CA to verify presence or absence of the pollutants in IU discharges?

These questions would be excellent topics to discuss at the next stakeholders meeting in order to obtain input from the regulated community.

Revisions to the Sludge Rules in 30 TAC 312 that Relate to the Class A/AB Biosolids Criterion for Selenium

The Committee requests TCEQ revise the selenium (Se) concentration limit for Class A/AB biosolids that is in Table 3 of 30 TAC 312.41(b)(3) to be consistent with the federal regulations. This would require the limit in Table 3 to be revised from 36 milligram per kilogram (mg/kg) Se to 100 mg/kg Se, which is the criterion established in 40 CFR Part 503.13(b).

The 100 mg/kg Se criterion established by EPA is risk-based to protect public health and the environment from reasonably anticipated adverse effects. The EPA document *A Guide to the Biosolids Risk Assessments for the EPA Part 503 Rule*, September 1995 (EPA/832-B-93-005), provides supporting documentation and a description of the lengthy assessment process that was conducted prior to issuance of the current 503 Rule.

The Se criterion adopted by TCEQ is not scientifically supported and could be burdensome to Programs that use biosolids in accordance with acceptable Class A/AB practices. Because the Se criterion in 30 TAC 312 is stringent, it is the critical factor when calculating a Se technically based local limit (TBLL) and results in a stringent discharge limit for IUs. As you are aware, CAs are required to develop TBLLs that are defensible. The TCEQ Se criterion in 30 TAC 312 is not scientifically defensible. Therefore, CAs may have difficulty defending a stringent TBLL for Se if it is challenged by an IU.

Thank you for your consideration of these comment. Please contact Jennifer Moore at (972) 975-4322 or MooreJ@trinityra.org with any questions.

Sincerely,



Julie Nahrgang
WEAT / TACWA Executive Director

Cc: Jennifer Moore, WEAT Committee Chair
Heather Cooke, WEAT President
Ron Patel, TACWA President