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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 29, 2014

Mr. Bill Honker, Director
Water Quality Protection Division
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202

Re: TCEQ proposed development strategy for thermal evaluation procedures

Dear Mr. Honker:

Thank you for your July 29, 2013 letter commenting on TCEQ's proposed timeline to develop thermal evaluation procedures. This letter serves as a follow up to our recent discussions concerning thermal permit objections and a path forward. In your letter, EPA suggests mirroring the 2008 interim approach for implementing bacteria limits in permits. While we agree that the bacteria interim approach was successful, it is important to note that the interim approach for bacteria was strictly a schedule to implement an already determined, readily achievable bacteria limit. It is not analogous to determining detailed implementation procedures and Texas Surface Water Quality Standards (TSWQS) revisions for thermal discharges that typically already have longstanding effluent limits in permits. The issues are significantly more complicated.

TCEQ intends to reevaluate existing temperature criteria and may propose revisions in the TSWQS. The process will entail developing implementation procedures for any proposed changes to the TSWQS that are adopted and approved. In fact, TCEQ has already proposed an initial change to the most recent TSWQS revisions which is currently under EPA review and is outlined in the first bullet below. The remaining changes will include significant stakeholder involvement to ensure the development of a procedure which is protective of the various water body types within the state, varying discharge conditions, and facility types.

Revision Process

The following timeline outlines a series of steps and approaches TCEQ proposes to undertake in order to address thermal permitting issues:

- TCEQ adopted changes to the TSWQS at 30 Tex. Admin. Code (TAC) Chapter 307 to (1) add a definition for industrial cooling water areas and (2) clarify that different size mixing zones may be used for different parameters including temperature. This step has been completed by TCEQ and EPA approval is pending.

- TCEQ plans to develop detailed procedures for implementing thermal criteria in TPDES permits, including a decision framework and set of technical procedures to be used in special circumstances when modeling may be necessary. This would be accomplished

with stakeholder involvement and analysis of several different approaches to temperature modeling or other evaluation approaches. TCEQ estimates this can be achieved by August 31, 2017 with the following milestones:

- August 2014 – Initial stakeholder meeting to outline objectives and challenges
- March 2015 – Stakeholder input on modeling approaches, and screening procedures
- April 2015 – December 2015 - Research and benchmarking
- January 2016 – TCEQ and EPA discussion of acceptable modeling or other evaluation approaches
- July 2016 – Initial draft screening process and acceptable modeling or other evaluation approaches released to stakeholders
- November 2017 – Final draft process document released to stakeholders for comment
- January – August 2017 – Implementation Procedure adoption process
- August 31, 2017 – Target date for completion and submittal to EPA
- October 1, 2017 – All draft TPDES permits with temperature limits effectively incorporate EPA approved implementation procedures for meeting temperature criteria

- Conduct a longer-term comprehensive review of temperature criteria in the TSWQS. This review may include (1) an evaluation of the magnitude and applicability of the allowable temperature rise above ambient in 30 TAC 307.4, (2) the maximum temperature criteria for selected water bodies, and (3) spatial and temporal applicability of temperature criteria. It is anticipated this approach may require intensive literature research and, possibly, field data collection, modeling, and interpretation prior to decision making. The research may result in the need for additional changes to the TSWQS resulting in an estimated timeframe of 6 years. The rule revision process is lengthy for this type of change along with the research involved and will require extensive stakeholder input.

TCEQ estimates this can be achieved by March, 2020 with the following milestones:

- April 2014 – August 2015
  - Literature review, evaluation of available data, state benchmarking review, collection of all information, and development of comprehensive report of findings.
- September 2015 – September 2017
  - Internal Work Groups to review data and research, identify data gaps, begin contracting for any additional information, QAPP development, and development of potential strategies to address temperature in TSWQS
- October 2017 – December 2018
  - Engage stakeholders to begin discussions on potential proposals to TSWQS
  - Develop draft TSWQS proposal with stakeholders for 2020 revision to WQS for temperature and other normal triennial revisions
- January 2019 – February 2020
  - Develop final agency TSWQS proposal for rulemaking
  - TSWQS rulemaking and adoption process coinciding with the triennial revision

- March 2020 – Target date adoption for completion and submittal to EPA.

Interim Permit Conditions and Reopener Clause

In the interim, TCEQ will include the following permit provision and reopener clause in TPDES permits with temperature limits for their discharge.

"The permitee shall develop and submit to the TCEQ, within one year of the permit effective date, a plan to characterize the thermal plume in the receiving water through either the use of a model, mass balance, or via collected or existing in-stream temperature data. The permittee would then be required to implement the plan following its approval by the TCEQ."

"The permittee is hereby placed on notice that the Executive Director of the TCEQ will be initiating changes to evaluation procedures and/or rulemaking that may affect thermal requirements for this facility."

TCEQ will commit to continue developing thermal evaluation procedures in accordance with this timeline and adding the reopener clause, with an understanding that EPA will withdraw existing thermal related interim permit objections and not submit new objections on this issue.

Thank you for your consideration of this proposed path forward. We look forward to hearing from you, and working together to resolve this issue expeditiously.

Sincerely,

L'Oreal Stepney

L'Oreal W. Stepney, P.E., Deputy Director
Office of Water
Texas Commission on Environmental Quality