



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
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DALLAS, TX 75202-2733

MAR 25 2005

Dan Eden, Deputy Director
Office of Permitting, Remediation & Registration (MC-122)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Dear Mr. ^{Dan}Eden:

The Environmental Protection Agency (EPA) has completed its review of the new and revised provisions in §307.5 - Antidegradation of the *Texas Surface Water Quality Standards* (TX WQS). These standards were adopted by the Texas Natural Resource Conservation Commission, now the Texas Commission on Environmental Quality (TCEQ), on July 26, 2000, and submitted to the EPA for approval on September 27, 2000. I am pleased to inform you that the EPA is approving the provisions documented in the enclosure to this letter, pursuant to §303(c) of the Clean Water Act (CWA) and the implementing regulation at 40 CFR Part 131.

The EPA has previously stated that it takes no action on the revised definition of "surface water in the state" in the TX WQS, which includes an area extending 10.36 miles offshore into the Gulf of Mexico. Under the CWA, Texas does not have jurisdiction to regulate water standards more than three miles from the coast. Therefore, EPA's approval of the items in the enclosure recognizes the state's authority under the CWA to include waters extending offshore three miles in the Gulf of Mexico, but does not extend past that point. Beyond three miles, the EPA retains authority for CWA purposes. EPA's approval also does not include the application of the TX WQS for the portions of the Red River and Lake Texoma that are located within the state of Oklahoma. Finally, the EPA is not approving the TX WQS for those waters or portions of waters located in Indian Country.

Section 7(a)(2) of the Endangered Species Act (ESA) requires that federal agencies, in consultation with the Services, ensure that their actions are not likely to jeopardize the existence of federally listed species or result in the adverse modification of designated critical habitat of such species. By memorandum dated January 27, 2005, the EPA Office of Science and Technology stated that ESA consultation with the Services is not required for antidegradation policies and antidegradation implementation methods. Since the Agency does not possess the regulatory authority to require more than the minimum required elements of EPA's regulations for antidegradation policies and implementation procedures, the EPA cannot implement measures that would specifically benefit listed species.

In November 2002, the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* were approved conditionally because of several permitting issues. At that time, the EPA noted that some portions in the Implementation Procedures, such as the processes

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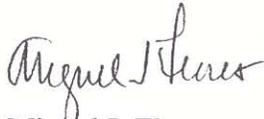
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for antidegradation review, may be included in EPA's consultation under the ESA on the new and revised provisions of the TX WQS. Based on the January 27, 2005, memorandum, the EPA will not consult on the antidegradation provisions in the Implementation Procedures.

The EPA previously approved the new and revised items in §307.2 and §307.3 (with the exception of the definition of "surface waters of the state"); human health provisions; the water-effects ratio provision in §307.6(9); revised minerals criteria for numerous segments in Appendix A - Site-specific Uses and Criteria for Classified Segments, along with the intermediate aquatic life use for segment 230 - Pease River; the revised standards for segment 0230 - Pease River in Appendix A; all new and revised items in Appendix C - Segment Descriptions and Appendix D - Site-specific Receiving Water Assessments; and, criteria based on nine of the water effects ratios for aluminum and copper in Appendix E - Site-specific Criteria. The EPA has also approved mineral criteria for seven segments in Appendix A subject to the completion of consultation under §7(a)(2) of the ESA. The EPA will take separate action on the remaining new and revised parts of the TX WQS.

I would like to commend the TCEQ staff for its commitment in completing the task of reviewing and revising the state's water quality standards. If you have any questions or concerns, please contact me at (214) 665-7101 or have your staff contact Diane Evans (214) 665-6677.

Sincerely,



Miguel I. Flores
Director

Water Quality Protection Division (6WQ)

Enclosure

cc: Jim Davenport, TCEQ - Water Quality Assessment Section (MC-150)
Allen White, USFWS - Austin Ecological Services Office

§307.5 Antidegradation

§307.5(a). Application. Total maximum daily loads (TMDLs) were added to the list of activities subject to the antidegradation policy. The term “pollutant loads” was replaced with “pollution.”

§307.5(b). Antidegradation policy. Specific “tiers” of the antidegradation policy were identified under items 1, 2 and 3 and are consistent with the federal regulation. Language related to the protection of existing uses was added under item 1. The term “to more than a de minimis extent” was changed to “by more than a de minimis extent” under item 2. Language under item 4 was clarified to state that activities regulated by state or federal law may not lower water quality if the *Texas Surface Water Quality Standards* will not be attained.

§307.5(c). Antidegradation implementation procedures. This section was revised to describe the actions subject to antidegradation review and the procedures for the review. Specific language for TPDES permits, CWA §404 permits, and TMDLs was adopted in the WQS. A general provision to include “other state and federal permitting and regulatory activities” was adopted. Review procedures were reformatted consistent with the identification of Tier 1, Tier 2 and Tier 3 water bodies under §307.5(b). Language on Tier 3 reviews was added, along with a statement that outstanding national resource waters (Tier 3) are those specifically designated in the TX WQS (no waters currently designated). The processes for antidegradation review of TMDLs and waste load evaluations were clarified.

Additional editorial changes in §307.5, which don’t alter the meaning or implementation of the WQS, were made.