

Bryan W. Shaw, Ph.D., *Chairman*  
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Zak Covar, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 3, 2014

Ms. Vivian Daub  
Director, Planning Staff, Mail Code 2723A  
Office of the Chief Financial Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW.  
Washington, DC 20460

Attn: Docket ID No. EPA-HQ-OA-2013-0555

Re: Notice of Availability for Public Review and Comment: Draft FY 2014-2018 EPA Strategic Plan

Dear Ms. Daub:

The Texas Commission on Environmental Quality appreciates the opportunity to respond to the U.S. Environmental Protection Agency announcement of a public comment period published in the November 19, 2013 edition of the Federal Register on the Draft FY 2014-2018 EPA Strategic Plan.

Enclosed, please find the TCEQ's detailed comments relating to the referenced document. If you have any questions concerning the enclosed comments, please contact Mr. Mike Hoke at (512) 239-4899 or at [Mike.Hoke@tceq.texas.gov](mailto:Mike.Hoke@tceq.texas.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Zak Covar" followed by a flourish.

Zak Covar  
Executive Director

Enclosure

**Comments by the Texas Commission on Environmental Quality**  
**on**  
**EPA Draft Strategic Plan 2014–2018**  
**Docket ID No. EPA–HQ–OA–2013–0555**

**Page 25: Goal 3: Cleaning Up Our Communities**

EPA proposes the FY 2014-2015 Agency Priority Goal to clean up contaminated sites to enhance the livability and economic vitality of communities. EPA estimates 18,970 sites will be made ready for anticipated use. EPA should consider measuring this goal by number of acres cleaned up as this is a more meaningful measure and one that the public can visualize.

**Page 26: Promote Sustainable and Livable Communities**

EPA's objective to, "Promote Sustainable and Livable Communities" lists many goals that are clearly under the purview of local governments such as adopting local planning and zoning codes. The TCEQ views its mandate as administering statutes and regulations that have been assigned to us by the state legislature or through federal authorization in a way that is fair and rational and does not harm the economy so that the private sector can make decisions on how best to pursue their efforts in the state and local governments can make decisions about how best to grow and develop their communities. EPA mentions the federal government's 2009, "livability principles" under this goal upon which TCEQ asserts that many of these principles, including, "enhanced competitiveness", can only be realized by limiting regulations to ensure what is necessary to protect human health and the environment. Also, state and federal regulations must be scientifically sound and risk-based.

**Pages 29-30: Restore Land**

In the proposal, EPA continues to promote the goal of accelerating the Superfund cleanup process. EPA should ensure that the accelerated schedule leaves adequate time for substantive state and stakeholder input. This has historically been the case and should continue. In particular, states should have adequate time to ensure long-term stewardship is not compromised by new methodologies and technologies and consider the often onerous financial obligation assumed by the state for the long-term (30-plus years) operation and maintenance of the remedial actions enacted at federal Superfund sites.

EPA should also recognize the budgetary implications of any proposed accelerated cleanups to state Superfund programs and consider the funding limitations of the states to participate in the mandatory cost sharing. The Code of Federal Regulation at 40 CFR Sec. 300.510(b) requires that states participate in the remedial action at federal Superfund sites by contributing ten percent of the costs. Accelerating the pace of cleanups and thereby the number of concurrent remedial actions at federal Superfund sites will require an increasing percentage of the states' budgets be automatically set aside for payment to EPA. This has and will continue to impact the ability of states to identify, assess, and remediate state Superfund sites.

Texas was one of the 14 states that participated in the EPA study on leaking petroleum storage tank cleanups. The study recognized Texas' significant progress in cleaning up



contaminated leaking petroleum storage tank sites and bringing those sites to closure. Texas has continued to streamline cleanups through the implementation of a risk-based approach. To date, the Texas program has cleaned up over 25,000 leaking petroleum storage tank sites.

### **Page 31: External Factors and Emerging Issues**

EPA states that “As appropriate EPA must incorporate emerging science into decision making...” States should be able to rely on decisions being made based on state and federal regulations that are scientifically sound, which includes a full vetting of the science behind the regulation.

### **Pages 66 – 67: Goal 1 : Addressing Climate Change and Improving Air Quality**

Throughout the document, EPA makes frequent references regarding the need to address climate change adaptation and has inserted requirements to address climate change adaptation. Of particular concern to the TCEQ is the continuation of revised strategic measures that require state programs to allocate resources to climate change adaptation such as the strategic measures under Goal 1, Objective 1.1, (pages 66-67) which state:

- “By 2018, 240 state, tribal, and community partners will integrate climate change data, models, information, and other decision support tools developed by EPA for climate change adaptation into their planning processes.”, and
- “By 2018, 240 state, tribal, and community partners will incorporate climate change adaptation into the implementation of their environmental programs supported by major EPA financial mechanisms (grants, loans, contracts, and technical assistance agreements).”

TCEQ continues to strongly object to EPA requirements that divert primary funds allocated to state programs under federal statute, particularly in light of the high uncertainty associated with estimates of the severity and rate of climate change. TCEQ has previously made comments and identified specific concerns are provided in response to EPA’s proposed office and regional implementation plans for climate change adaptation. It is requested EPA revise the strategic measure to the following:

- “By 2018, 240 state, tribal, and community partners will consider, as appropriate, climate change data, models, information, and other decision support tools developed by EPA for climate change adaptation in their planning processes.”, and
- “By 2018, 240 state, tribal, and community partners will consider climate change adaptation, as appropriate, in the implementation of their environmental programs supported by major EPA financial mechanisms (grants, loans, contracts, and technical assistance agreements).”

**Pages 16 – 24, 85: Goal 2, Protecting America’s Waterways; Objective – Protect and restore Watersheds and Aquatic Ecosystems**

The TCEQ appreciates the efforts of EPA to engage its partners in setting the direction for water quality programs such as the Total Maximum Daily Load (TMDL) and Nonpoint Source (NPS) Programs which will be consistent with meeting the goal of “Protecting America’s Waterways”. For example, EPA recognizes the need to evaluate the TMDL Program and develop a vision which would provide states with the opportunity to use available resources and focus on achieving water quality improvements. The TCEQ has participated in the on-going discussions to develop the new TMDL vision. Similarly, the EPA has encouraged the update of the Nonpoint Source Management Programs. The TCEQ updated its Nonpoint Source Management Program in 2012.

While the TCEQ is supportive of the goal and objectives in EPA’s Strategic Plan for the protection and restoration of waterways, it is concerned that the implementation of these objectives may not reflect the cooperative partnership expressed in the Plan. States should be afforded the ability to address the issues which are their priorities for achieving water quality protection and restoration. It is requested that the following Proposed FY 2014-2015 Agency Priority Goal:

**“Proposed FY 2014-2015 Agency Priority Goal: Improve, restore, and maintain water quality by enhancing nonpoint source program leveraging, accountability, and on-the-ground effectiveness to address the nation’s largest sources of pollution.** By September 30, 2015, 100 percent of the states will have updated nonpoint source management programs that comport with the new Section 319 grant guidelines that will result in better targeting of resources through prioritization and increased coordination with USDA.” (p. 16 and p. 85)

be revised to:

**“Proposed FY 2014-2015 Agency Priority Goal: Improve, restore, and maintain water quality by enhancing nonpoint source program leveraging, accountability, and on-the-ground effectiveness to address the nation’s largest sources of pollution.** By September 30, 2015, 100 percent of the states will have updated nonpoint source management programs that comport with the new Section 319 grant guidelines that will result in better targeting of resources through prioritization.”

This will provide entities administering the program with the ability to target resources towards priorities appropriate for their area rather than arbitrarily requiring an increased coordination with USDA which may not be necessary. The revised wording does not preclude increased coordination with USDA as appropriate.



### **Page 71: Measuring and tracking water quality improvements**

Two substantially revised strategic measures to evaluate improvement in water quality are included on page 71 under “Improve Water Quality on a Watershed Basis” (first and second measures). These two measures are labeled as “under development”. While there is insufficient information to provide specific comments at this time, the TCEQ is providing comments on the draft proposals for the measures.

The first measure is an estimation of the amount of previously impaired waters that now meet water quality standards. One change to the measure appears to be utilizing the area of restored watersheds, rather than the number of water bodies, as the measure of improvement. The second measure is an estimation of the extent of “incremental water quality improvements”, counted in terms of “12-digit scale” watersheds. It is unclear from the description of the second measure whether this would also be applied primarily to impaired waters or other priority categories. EPA is encouraged to clarify the measure as it continues to be developed.

For a number of years, TCEQ has reported on impairments and improvements in Texas in terms of water body sizes (stream miles, lake acres, reservoir square miles). The TCEQ has been engaged in the discussion with EPA regarding a new ten-year vision for the Total Maximum Daily Load (TMDL) program. While the use of the National Hydrography Dataset plus (NHDPlus) approach appears to be beneficial for measuring incremental improvements made through programs such as TMDL and Nonpoint Source (NPS), use of the “12-digit scale” watersheds may not be appropriate for assessing and reporting water quality. The TCEQ is concerned with the potential redundancy and level of state/federal effort required to convert to a reporting system based on watersheds. TCEQ urges EPA to continue to coordinate with states as these measures are developed and to clarify the scope of the measure. EPA should further evaluate and consider the resulting state/federal effort that would be required for the use of the “12-digit scale” watersheds for reporting on impairments.

The TCEQ encourages EPA to continue development of the Strategic Measures for Objective 2.2 in a manner which is consistent with the new ten-year vision for the TMDL program. The NHDPlus approach provides the opportunity to track progress on a smaller scale thereby demonstrating water quality improvements. This also defines small watersheds that stakeholders can use to target implementation activities for TMDLs. The TCEQ encourages EPA to develop measures which focus on improvements to water quality rather than meeting an arbitrarily set number.

The TCEQ appreciates the efforts of EPA to engage states in the development and implementation of a new ten-year vision for the Total Maximum Daily Load (TMDL) program to more effectively achieve the water quality goals of each state. The development and implementation of this new 10-year vision is consistent with the



representations in the Strategic Plan that EPA seeks to collaborate with the states to develop innovative, effective, and sustainable solutions. This is exemplified on page 53 with the “Cross-Cutting Fundamental Strategy: Launching a New Era of State, Tribal, Local, and International Partnerships”. TCEQ encourages EPA to fulfill this collaborative approach and ensure the implementation of the new ten-year vision for TMDL does not result in a measure that is driven by numbers of TMDLs per year but rather demonstration of incremental water quality improvement.

**Pages 17, 19, 20, 21, 22, and 71: National aquatic resource surveys and state assessments**

Sections 303(d) and 305(b) of the Clean Water Act establish a process for states to monitor and assess water quality, identify impairments, and report the results to EPA for consolidation into a national assessment. In recent years, however, EPA has been progressively replacing the national assessment with a separate federal monitoring and evaluation system (the National Aquatic Resource Surveys). In the discussion on Goal 2 of the draft Strategic Plan (“Protect and Restore Watersheds and Aquatic Ecosystems”), EPA continues to increase focus on the separate EPA assessment (page 17-third paragraph; page 19-last paragraph; page 20-first paragraph; page 21-fourth paragraph, and page 22-first paragraph.). The third measure under “Improve Water Quality on a Watershed Basis” on page 71 reflects this focus in the revised strategic measure to maintain existing water quality conditions as defined by the relative percent of good/fair/poor water quality in EPA’s independent surveys. EPA is revising this measure to add baseline conditions for wetlands and coastal waters, but this baseline is not yet available for comment.

The TCEQ objects to EPA’s increasing emphasis on independent national-level assessments of water quality for several reasons:

1. This approach is counter to the Clean Water Act directive in 305(b) for state assessments to be utilized and combined into a national assessment.
2. The arbitrary grading system unilaterally imposed by EPA (poor, fair, and good) is separate and contradictory to criteria used in long-term assessments conducted by the states and is creating confusion among stakeholders. TCEQ has similar concerns about the continued use of poor/fair/good terminology in the related measure under “Improve Coastal and Ocean Waters on page 71. The terminology is used in the first measure on improving regional coastal aquatic ecosystem health.
3. The fully randomized monitoring in the national-level assessments remains completely independent of states’ long-term efforts to assess standards compliance for individual water bodies. This dual monitoring effort is creating a growing additional reduction in available joint state/federal resources. EPA should explore the use of stratified assessment approaches to utilize existing state monitoring data for statistically valid national-level summaries of water quality.