

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 12, 2016

U.S. Environmental Protection Agency
Water Docket Mail Code 28221T
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Attn: Docket ID No. EPA-HQ-OW-2016-0551

Re: Request for Public Comment; Technical Support Materials for EPA's Aquatic Life Ambient Water Quality Chronic Criterion for Selenium-Freshwater 2016; Drafts for Public Comment; posted in Docket ID No. EPA-HQ-OW-2016-0551 of Regulations.gov.

Dear Sir or Madam:

The Texas Commission on Environmental Quality (TCEQ) is providing comments on four draft technical support materials published by EPA to implement the federally-recommended criterion for selenium to protect aquatic life in freshwater. These guidance documents were developed by EPA to assist states when considering adoption and implementation of EPA's criterion in water quality management activities such as surface water quality standards, monitoring, assessment, Total Maximum Daily Loads, and wastewater permitting. The comments describe concerns raised by multiple regulatory programs, which would be impacted if EPA's complex selenium criterion were adopted into state water quality standards. The comments on the proposed criterion are enclosed.

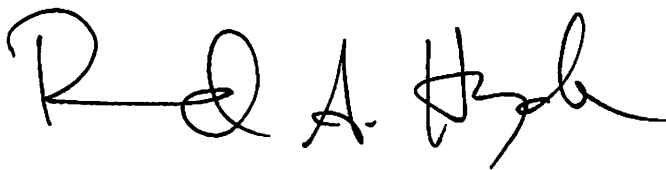
The TCEQ is concerned that the proposed changes could interfere with the effectiveness of existing TCEQ water quality management processes. In particular, the comments address the need for clarity and flexibility regarding the adoption and implementation of EPA's recommended criterion into state water quality management programs. The primary TCEQ concerns and associated recommendations included in the comments are as follows:

- EPA should afford states the flexibility to adopt water column concentrations as the primary component of state standards;
- EPA should allow states the flexibility to adopt and implement aspects of the selenium criterion that consider the constraints of established state fish tissue monitoring programs. If implemented, draft guidance for fish tissue monitoring will impact existing state resources to sample fish tissue;
- Clarification is needed on the availability and acceptability of analytical methods to determine selenium in fish tissue;
- EPA should allow states flexibility when implementing the criterion in surface water assessments and identification of impairments. If adopted, EPA's recommended selenium criterion may result in an increase of inappropriate listings of water bodies as impaired on the 303(d) List;

- Additional guidance is needed to clarify assessment methodologies, particularly for the removal of impairments from the 303(d) List, once identified as impaired;
- TCEQ recommends that natural sources of selenium be incorporated into assessment determinations;
- Clarification is needed regarding the use of distance and residence time thresholds to determine reasonable potential (RP);
- Additional clarification is needed for key terms used in the technical support materials for 402 NPDES Programs; and,
- EPA should reconsider the amount of information needed to conduct RP analyses and clarify remaining issues so that states can conduct RP analyses according to established timeframes. The amount of information required to assess RP is overly burdensome, would increase timeframes to issue permits, and is in need of clarification.

The TCEQ appreciates the opportunity to comment on the EPA's draft technical support documents for selenium in freshwater. We urge the EPA to consider our comments and to continue discussions with the states to ensure that any revised criteria adopted by states are flexibly implemented and existing state water quality management programs are not negatively impacted. If you have comments or questions concerning the enclosed comments, please contact Kelly Holligan, Director, Water Quality Planning Division at (512) 239-2369 or by e-mail at Kelly.Holligan@tceq.texas.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "R. A. Hyde". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Richard A. Hyde, P.E., Executive Director
Texas Commission on Environmental Quality

Enclosure

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TCEQ Comments on Selenium Criterion
Technical Support Materials
December 12, 2016

bcc: L'Oreal W. Stepney, P.E., Deputy Director, Office of Water
Kelly Holligan, Division Director, Water Quality Planning Division
David Galindo, Division Director, Water Quality Division