

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §307.4 and §307.10, concerning the Texas Surface Water Quality Standards.

No changes are proposed for the other sections of Chapter 307. The TNRCC water quality standards are established and reviewed on a periodic basis pursuant to the Texas Water Code, §26.023, as amended, and the Federal Water Pollution Control Act (Clean Water Act), §303(c), as amended. The statewide surface water quality standards were last amended on July 13, 1995. The revisions proposed at this time are both substantive and editorial. As substantive changes, the commission proposes to change the presumed standard for unclassified perennial streams in East Texas from “intermediate aquatic life” to “high aquatic life” in §307.4(h)(1), and to designate site-specific standards for 37 additional streams in Appendix D of §307.10.

States adopt water quality standards for surface waters under §303 of the Federal Clean Water Act [33 USC §1313]. The TNRCC has adopted site-specific standards for all classified streams and presumed standards for all unclassified streams for which the state has not yet completed site-specific studies. The TNRCC has also established a program to conduct receiving-water assessments, which are site specific studies consisting of fish sampling and habitat assessment, and in some cases invertebrate sampling, to determine the attainable aquatic-life uses and dissolved-oxygen criteria for unclassified streams. A receiving-water assessment is conducted when a permitting action is proposed that could affect an unclassified, perennial stream. Sampling is conducted over one or two days in an area of the stream that is relatively unimpacted. When a stream has been individually studied, site-specific standards (uses and criteria) may replace the presumed standards for that stream.

When the surface water quality standards were revised in 1995, the presumed standard for perennial streams in East Texas was changed from an aquatic-life use of “high” to an aquatic-life use of “intermediate.” “High aquatic life” requires an instream dissolved oxygen concentration of 5 milligrams per liter, while “intermediate aquatic life” requires an instream dissolved concentration of 4 milligrams per liter.

The purpose of the lowered presumption was to avoid the time consuming process and administrative burden of adopting site-specific standards in cases where a site-specific study would indicate that the intermediate aquatic life standard was appropriate. However, on March 27, 1996, EPA Region 6 notified the TNRCC that the change in presumed standards for East Texas streams was disapproved. Under §§303(c)(3) and 303(c)(4) of the Clean Water Act (33 U.S.C. §§1313(c)(3) and 1313(c)(4)), EPA must promulgate a federal standard to replace the disapproved standard - unless the disapproval is resolved by subsequent state revision of the standards.

In a letter to EPA dated April 26, 1996, the TNRCC proposed a plan to resolve EPA disapproval of the standards. EPA approved the plan in a letter dated June 5, 1996. As part of the plan, the TNRCC is proposing to change the presumed standard for unclassified, perennial streams in East Texas back to “high aquatic life.” Also as part of the plan, the TNRCC is proposing site-specific standards to be added to Appendix D of §307.10 for waterbodies for which receiving-water assessments have recently been completed.

Waterbodies listed in Appendix D of §307.10 are assigned an aquatic-life use and a criterion for dissolved-oxygen concentration. Geographic location of these waterbodies is indicated by the nearest downstream designated segment. Designated segments are major waterbodies which are defined in Appendices A and C of §307.10.

The following waterbodies are proposed for addition to Appendix D: Wagner Creek in Segment 0304, Cross Bayou in Segment 0400, Hart Creek in Segment 0404, Tankersley Creek in Segment 0404, County Relief Ditch in Segment 0501, Unnamed Tributary of Flat Fork Creek in Segment 0504, Wards Creek in Segment 0505, Cedar Creek in Segment 0604, Hurricane Creek in Segment 0604, One-Eye Creek in Segment 0604, Blackfork Creek in Segment 0606, Prairie Creek in Segment 0606, West Mud Creek in Segment 0611, Ragsdale Creek in Segment 0611, Keys Creek in Segment 0611, Mud Creek in Segment 0611, Blackhawk Creek in Segment 0611, Unnamed tributary of Coley Creek in Segment 0802, Keechi Creek in Segment 0804, Unnamed tributary (Northwest Branch) in Segment 0804, Toms Creek in Segment 0804, Duck Creek in Segment in Segment 0819, Cottonwood Creek in Segment 0820, Rowlett Creek in Segment 0820, Brookshire Creek in Segment 1202, Hog Branch in Segment 1202, Little Sandy Creek in Segment 1202, New Year Creek in Segment 1202, Carters Creek in Segment 1209, Cottonwood Creek in Segment 1242, Still Creek in Segment 1242, Unnamed tributary of Cottonwood Creek in Segment 1242, Brushy Creek in Segment 1244, Mustang Creek in Segment 1244, Red Gully in Segment 1245, Elm Creek in Segment 1426, and Martinez Creek in Segment 1902.

Editorial corrections are proposed for site-specific standards now listed in Appendix D for the following waterbodies: Rabbit Creek in Segment 0505, Eightmile Creek in Segment 0505, Black Fork Creek in

Segment 0606, Little Sandy Creek in Segment 0610, Horsepen Creek in Segment 1014, Brickhouse Gully/Bayou in Segment 1017, Cole Creek in Segment 1017, Vogel Creek in Segment 1017, Linnville Bayou in Segment 1304, Barons Creek in Segment 1414, and Comanche Creek in Segment 1415.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years these proposed sections are in effect there will be fiscal implications as a result of enforcement or administration of the sections.

The effect on state government will be an increase of approximately 34 additional permit amendments to be issued over the next 5 years. The additional permit amendments will be needed in order to allow time for site-specific revisions of the presumed "high aquatic-life use." This increase represents approximately 7 permit actions per year added to the roughly 600 permit actions per year which are conducted for wastewater permitting. This addition will not require additional staff.

The proposed change in the presumed standard for aquatic-life use, which also changes the presumed instream dissolved-oxygen criterion, can substantially affect permit limits for domestic wastewater discharges and a few large industrial discharges. The proposed revision of the presumed standard will increase administrative requirements for some municipal wastewater facilities in the Eastern portion of the state. In order to facilitate the development of a site-specific standard, permittees must typically obtain a standards variance when the permit is issued, and then return for a permit amendment after the site-specific standard has been adopted in the standards rule.

The costs to affected permittees are the administrative costs of preparing and coordinating an additional permit application and the costs of additional application fees. Administrative and coordination costs are case-specific. Application fees for domestic wastewater discharges range from \$350 for discharges less than 50,000 gallons per day to \$2,015 for dischargers greater than 1,000,000 gallons per day. Approximately 34 additional permittees are projected to need a site-specific change to the standards rule if this proposal is adopted.

The proposed change in the presumed standard could have cost implications for small businesses. Additional costs of proposed revisions to water quality standards for small businesses served by affected domestic treatment facilities would depend on the rate policies of the individual domestic discharge permittees and their recovery of additional operational costs. The costs to small businesses of meeting these requirements compared to those of larger businesses will vary with site-specific circumstances rather than the size of the affected concern.

Adoption of the proposed revision of the presumed standard will preclude federal promulgation of the Texas standards, since EPA has already disapproved the presumed standard for East Texas streams which is now in the standards rule. Federal promulgation would hinder delegation of the NPDES federal permitting program to Texas. The state would have less control over EPA implementation of an EPA-promulgated standard.

The proposed addition of site-specific standards for 37 streams in Appendix D is expected to reduce potential costs to municipal wastewater permittees. If the proposed site-specific changes are adopted

now, then approximately 22 permittees will avoid additional administrative requirements and the need for an additional permit amendment.

Mr. Minick has also determined that for the first five years these proposed sections are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be improvements in the regulation of permitted wastewater discharges and the quality of the surface water resources of the state, increased protection of public drinking water supplies and aquatic life resources, and improved compliance with the provisions of the Texas Water Code and the regulations of the Texas Natural Resource Conservation Commission. The anticipated economic costs to individuals required to comply with these sections as proposed will be similar to those for small businesses. Those persons served by municipal discharge facilities may indirectly face increased service rates from local governments or operators of domestic treatment facilities which must recover increased costs of compliance from their customers.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The specific purpose of the revision is to change the presumed standard for unclassified perennial streams in East Texas from “intermediate aquatic life” to “high aquatic life.” The proposed revision will increase administrative requirements and costs for affected permittees. The action is taken to fulfill an obligation mandated by federal law. EPA has disapproved the current presumed standards for East Texas streams. The revisions are being proposed in order to avoid promulgation of a federal standard.

Public hearings on the proposal will be held in Tyler on November 20, 1996 at 7:00 p.m., in the City Council Chambers, Second Floor of the City Hall, 210 North Bonner, Tyler; and in Austin on November 18, 1996 at 10:00 a.m. at the Texas Natural Resource Conservation Commission Office Complex, Room 201S, Building E, 12015 N. Interstate 35, Austin. The hearings are structured to receive oral or written comments by interested persons. Individuals may present oral statements when called upon in the order of registration. There will be no open discussion by the audience during the hearings; however, a commission staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after each hearing.

Written comments on the proposal should refer to Rule Log No. 96138-307-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission the written comments. Written comments must be received by 5:00 p.m. on December 2, 1996. For further information concerning this proposal, please contact Charles Bayer MC-150, Water Planning and Assessment Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-4583.

These sections are proposed under the authority of the Texas Water Code, §§5.103, 5.105, and 5.120, which provide TNRCC with authority to promulgate rules as necessary to protect the quality of the state's waters.

These sections are also proposed pursuant to the Texas Water Code, §26.023, which provides the TNRCC with the authority to make rules setting water quality standards for all water in the state.

There are no other rules, codes or statutes that will be affected by this proposal.

#### **§307.4. General Criteria.**

(a) - (g) (No Change.)

(h) Dissolved oxygen and aquatic life uses.

(1) Dissolved oxygen criteria for unclassified waters with aquatic life uses will be sufficient to support appropriate aquatic life use categories, in accordance with §307.7 of this title (relating to Site-specific Uses and Criteria). [Except for perennial pools in intermittent streams and perennial streams and rivers in the northeast and southeast portion of the state defined as an area east of a line demarcated by Interstate Highway 35 and 35W from the Red River southward to the Williamson County and Travis County line and then northward and eastward of the Colorado River Basin divide to the Texas coast, those] Perennial streams, rivers, lakes, bays, estuaries, and other appropriate perennial

waters which are not specifically listed in Appendix A or D of §307.10 of this title are presumed to have a high aquatic life use and corresponding dissolved oxygen criteria. [Those perennial streams and rivers located in the northeast and southeast portion of the state (as defined in §307.7(b)(3)(A)(ii)) which are not specifically listed in Appendix A or D of §307.10 of this title are presumed to have an intermediate aquatic life use and corresponding dissolved oxygen criteria.] In accordance with results from statewide ecoregion studies, unclassified perennial streams in southeast and northeast Texas are assigned dissolved oxygen criteria as indicated in §307.7(b)(3)(A)(ii) of this title. Higher uses will be maintained where they are attainable.

(2) (No change.)

(i) - (k) (No change.)

#### **§307.10. Appendices A - E.**

The following appendices are integral components of this chapter of the Texas Surface Water Quality Standards:

(1) - (3) (No Change.)

(4) Appendix D - Site-specific Receiving Water Assessments. (**Figure 1: 30 TAC**)

**§307.10(4))**

(5) (No Change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas on