

BEFORE THE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Proposed Revisions to 30 TAC)
Chapters 307 and Subsequent)
Revisions to RG-194 re Texas)
Surface Water Quality)
Standards (TCEQ Rule Project)
No. 2007-002-307-OW))

Room 201S, Building E
TCEQ Complex
12100 Park 35 Circle
Austin, Texas

Thursday,
March 11, 2010

The above-entitled matter came on for
hearing, pursuant to notice, at 10:00 a.m.

BEFORE: PATRICIA DURON
General Law Division, TCEQ

ALSO PRESENT:

DEBBIE MILLER, Water Quality Standards Unit
LORI HAMILTON, Water Quality Standards Unit
JIM DAVENPORT, Water Quality Monitoring and
Assessment Section
DAVID GALINDO, Water Quality Standards
Implementation Team
ROBERT HANSON, Water Quality Standards
Implementation Team
BOB BRUSH, Environmental Law Division

ON THE RECORD REPORTING
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P R O C E E D I N G S

1
2 MS. DURON: Good morning. I would like to
3 welcome everyone to this public hearing being conducted by
4 the Texas Commission on Environmental Quality. My name is
5 Patricia Duron, and I am with the General Law Division. I
6 would also like to introduce Debbie Miller and Lori
7 Hamilton from our Water Quality Standards Unit, Jim
8 Davenport from our Water Quality Monitoring and Assessment
9 Section, David Galindo and Robert Hanson from our Water
10 Quality Standards Implementation Team, and Bob Brush from
11 our Environmental Law Division.

12 We are here this morning to receive oral and/or
13 written comments on the proposed revisions to 30 TAC
14 Chapter 307 -- Texas Surface Water Quality Standards (TCEQ
15 Rule Project No. 2007-002-307-OW and subsequent provisions
16 to the *Procedures to Implement the Texas Surface Water*
17 *Quality Standards (IPs)*, RG-194.

18 If you intend to present oral testimony and you
19 have not already signed in at the registration table,
20 please do that now. If you are not familiar with the
21 proposed changes, copies of the proposal from the Texas
22 Register are available at the registration table.

23 We also have copies of the hearing notice so
24 that if anyone is planning to submit written comments you
25 can quickly find the information on where to fax or mail

1 those. You may also submit comments via eComments. We
2 will continue to accept written comments until Monday,
3 March 17.

4 This hearing is structured strictly for receipt
5 of oral or written comments. Open discussion during the
6 hearing is not allowed; however, any additional comments
7 or questions regarding this proposal, there will be
8 another opportunity after the hearing to have your
9 questions answered.

10 There will be a time limit of eight minutes per
11 commenter. We will now begin receiving testimony in the
12 order in which you registered.

13 At this time will Raj Bhattarai come up at the
14 podium? Please list your name and who you represent.

15 MR. BHATTARAI: Thank you very much for the
16 opportunity to testify. Good morning. My name is Raj
17 Bhattarai. I'm the past president of the Water
18 Environment Association of Texas and I'm representing the
19 Water Environment Association of Texas here.

20 By way of background, the Water Environment
21 Association of Texas is a part of a coalition of the water
22 quality organizations formed specifically to respond to
23 the proposed Texas Surface Water Quality Standards
24 rulemaking and division of implementing and procedures.
25 The coalition includes Water Environment Association of

1 Texas, the Texas Water Conservation Association, the Texas
2 Association of Clean Water Agencies and the Texas
3 Municipal League.

4 And as I said before, I am representing WEAT,
5 the Water Environment Association of Texas. And there
6 will be other members of the other organizations will be
7 addressing different issues. I am here to comment
8 specifically on the replacement uses, you know, for the
9 bacteria.

10 At this time we do not suggest any great
11 modifications to the specific values in the proposed
12 standards. The only minor modification we request in this
13 version is in the definition of the E. coli and the
14 enterococci be modified acknowledge that there are sources
15 other than warm-blooded animals. We recommend revising
16 the definitions of E. coli and enterococci by inserting
17 after "species of warm-blooded animals" inserting the
18 phrase "and other environmental sources."

19 I think that would take care of our concern as
20 far as the bacteria are concerned. So we appreciate the
21 staff's effort, TCEQ working with us for a long, which has
22 been a rather long experience working in this and we
23 acknowledge the help our the cooperative spirit from the
24 staff.

25 That's all I have. Thank you again for the

1 opportunity to testify.

2 MS. DURON: Thank you, Mr. Bhattarai.

3 Next up is Mr. Dickie Clary. Please come up to
4 the podium, state your name and who you represent.

5 MR. CLARY: Good morning. My name's Dickie
6 Clary and I'm a Hamilton County Commissioner speaking on
7 behalf of the people of Hamilton County. I appreciate the
8 opportunity to address your commission here today on
9 matters that will ultimately impact the lives and
10 livelihoods of not only the people in Hamilton County but
11 the people of Texas.

12 First, I want to commend TCEQ staff for
13 earnestly listening to the comments and concerns and
14 recommendations that local stakeholders and many water
15 quality professionals have made in recent months
16 concerning the Texas Surface Water Quality Standards. I
17 commend your staff on proposing the revisions to the
18 standards and look forward to working side by side with
19 TCEQ staff to find reasonable solutions to our water
20 quality issues.

21 I've personally witnessed a partnership
22 approach being fostered by TCEQ staff and I feel extremely
23 optimistic that these partnerships will produce future
24 success stories for TCEQ and local stakeholders. The
25 Texas Surface Water Quality Standards serve a vitally

1 important role in directing this state's endeavors to
2 protect or improve surface water quality for this
3 generation of Texans and for generations that follow.

4 Some may disagree but I believe that the goal
5 of the Texas Surface Water Quality Standards is not to
6 just protect the water quality in the state but ultimately
7 to protect the lives of the people who live in Texas. If
8 the Water Quality Standards are to serve Texans well they
9 must certainly be based on sound science and be
10 scientifically defensible, but they must also be very
11 practical in their fair treatment of Texans. Otherwise,
12 these standards can be used to advance covert regulatory
13 agendas by holding many water bodies to more stringent
14 standards than are reasonable and necessary to adequately
15 protect people from waterborne illnesses.

16 The current standards are more stringent than
17 necessary to ensure that surface waters in Texas are safe
18 for human use. The current standards hold many water
19 bodies to overly stringent standards and should be revised
20 during this triennial review. The current Texas Surface
21 Water Quality Standards need to be revised to prevent
22 social and economic hardships from being unnecessarily
23 placed on the lives of the same people which the standards
24 are designed to protect.

25 In my opinion the standards should be

1 sufficiently stringent to protect or improve water quality
2 but not overly stringent and impose social and economic
3 hardships on Texas for no practical benefit. The Texas
4 Surface Water Quality Standards must be carefully written
5 to provide a practical level of environmental protection
6 without crushing Texans beneath additional layers of
7 unnecessary or overly stringent environmental regulations.

8 I commend TCEQ for proposing a broader approach
9 to water body assessment and standards attainment by
10 adding two additional recreation use categories and
11 assigning revised criteria to each of these categories.
12 This tiered set of use categories coupled with properly
13 conducted use attainability analysis will give TCEQ the
14 tools and flexibility to assign recreational uses and
15 criteria to a particular water body based on a broad range
16 of site-specific conditions rather than the one-size-fits-
17 all method that currently exists.

18 Raising the most stringent bacteria standard
19 from 106 to 206 and providing high-flow exemptions are
20 both reasonable and practical revisions. If the 206
21 standard were put on trial for being hazardous to human
22 health, there would be little if any evidence to convict
23 the standard, especially since the evidence proves that
24 many water bodies in Texas have had bacteria
25 concentrations that greatly exceed 206 for years, but

1 there is no medical evidence indicating that anyone is
2 getting sick.

3 If there was evidence that Texans were actually
4 getting sick from coming into contact with surface water
5 and streams, more stringent bacteria criteria and
6 additional regulatory and cleanup measures would be
7 justifiable. Without any evidence of this nature,
8 continuing to assess water bodies using the 126 criteria
9 has no practical benefit except to advance unspoken
10 regulatory agendas aimed at the eventual regulation of
11 every activity known to man.

12 There seems to be a troubling evolution process
13 under way across our nation. Environmental regulations
14 have dramatically increased in the past few decades. Many
15 of the regulations were needed but others were not.
16 During the Industrial Revolution industries dumped
17 tremendous amounts of pollutants into our rivers and
18 streams as a regular part of their business practices.
19 Regulating these activities certainly has merit.

20 The dangerous progression that I see at work
21 started with the regulation of industrial waste. Then as
22 industrial pollution subsided regulatory attention turned
23 to large cities, then to small cities, then to pesticide
24 applications, then to the regulation of large-scale animal
25 agriculture operations, then to rural on-site septic

1 facilities and numerous other activities and businesses.
2 Today there is a flurry of interest in non-point source
3 pollution that many see as a precursor to upcoming
4 attempts to regulate the everyday activities of mankind.

5 In conclusion, I acknowledge that there are
6 many ways to view the effects of environmental
7 regulations. Some view stringent standards and
8 regulations as the only means to achieve the environmental
9 utopia that they seek. Others would gladly cast aside all
10 regulations and live with no environmental conscience at
11 all. I believe, however, that Texans are best served by
12 water quality standards that lie somewhere between these
13 two extreme viewpoints.

14 The proposed revisions to the Texas Surface
15 Water Quality Standards are by no means perfect, but the
16 proposed standards will serve Texans much better than the
17 current standards do. The proposed standards will provide
18 TCEQ with an additional measure of flexibility to better
19 regulate the surface waters within the state of Texas
20 without imposing unnecessary regulatory burdens on the
21 backs of hard working Texans.

22 And I thank you for the time and for the
23 opportunity to speak.

24 MS. DURON: Thank you, Mr. Clary.

25 Our next speaker is Peggy Glass.

1 Ms. Glass, if you'll please come up, state your
2 name and who you represent.

3 MS GLASS: Thank you. My name is Peggy Glass.

4 I'm here on behalf of the Texas Association of Clean
5 Water Agencies. As Mr. Bhattarai mentioned, the Texas
6 Association of Clean Water Agencies is a member of a
7 coalition formed to develop consistent and uniform
8 comments on the Water Quality Standards representing
9 permittees across the state of Texas. The Texas
10 Association of Clean Water Agencies is the state member of
11 the National Association of Clean Water Agencies.

12 The Texas Association of Clean Water Agencies,
13 also known as TACWA, because it's easier to say,
14 represents approximately 20 of the largest utilities in
15 Texas. These utilities combined serve over 10 million
16 citizens of the state. With respect to nutrient
17 standards, others will comment on those, but I would like
18 to say that the TACWA does support the Coalition comments
19 on nutrients.

20 We would like to emphasize two points, just to
21 highlight. First, is I think it's very important to
22 maintain the current provisions proposed in the IPs that
23 would establish permit limits that recognize the ability
24 to reasonably achieve certain levels of treatment. At the
25 present time the standards propose .5 milligrams per liter

1 of phosphorus as a technology-based limit in consideration
2 of when limits are needed. That is, we think, a valid and
3 achievable goal for those cases where it's warranted.

4 To develop permit limits below that
5 substantially increases the cost and rapidly gets to the
6 point of there just simply not being technology out there
7 that will achieve that. And given that we're still
8 learning how to really assess potential in-stream impacts,
9 that warrant of costs seems inappropriate at this time.

10 The other comment is that there are a number of
11 provisions on how to do screening based on the narrative
12 criteria for both local conditions and reservoirs and
13 streams. It would probably be helpful if we could have a
14 little more dialogue on that. Those have kind of been
15 evolving towards the end of the process and there hasn't
16 been as much opportunity.

17 Second area of comment is recreational uses.
18 Here again, we strongly support the Coalition comments.
19 We think that it's very important the steps that have been
20 made and the standards as they are currently proposed to
21 develop standards that are more consistent with risk and
22 actually achievability with the natural environment,
23 taking into consideration risks associated with levels of
24 use and the impacts of high-flow conditions are certainly
25 very important. As time goes on we will need to continue

1 to refine how we address those issues but we strongly
2 commend the staff on their work in that area. There's
3 been a lot of work there.

4 There are two new approaches to setting
5 Appendix A standards that are presented this time in the
6 Standards 307 on which the state is requesting comment and
7 I'd like to comment on those. The first is a site-
8 specific dissolved oxygen standard has been proposed of
9 4.5 milligrams per liter. Traditionally, DO standards
10 have moved from 4.0 to 5.0. In response to the request
11 for comments, we think that this is inappropriate and
12 unnecessary. It has the potential for triggering a number
13 of unnecessary TMDLs and increasing costs for permittees.

14 Remembering that the DO standard is established
15 to protect aquatic life, I would suggest that we really
16 can't correlate aquatic life impacts to a .01 milligram
17 per liter level. The data on DO and aquatic life is in
18 much bigger chunks. Also, I think that we need to
19 recognize that our monitoring capability is not that
20 refined; the TCEQ manual on in-stream monitoring accepts
21 data in a post-calibration check that's within .5
22 milligrams per liter of the correct value so we don't have
23 the ability to precisely refine our data that lowly.

24 Also, I think that frequently DO standards,
25 site-specific standards, are set based on reference

1 conditions at another site. Reference sites are never
2 perfect and so to tightly refine our values based on
3 reference sites is not necessarily a good idea.

4 The other new approach to standards that
5 comments are requested on is there is a segment for which
6 a different aquatic life use is proposed for fish and for
7 benthics. TACWA would also suggest that this is not an
8 appropriate method. We have to remember that the purpose
9 of the aquatic life use designation is to characterize the
10 segment and, based on that characterization, to then
11 develop numeric criteria that are appropriate. That
12 really doesn't lend itself to multiple designations of
13 aquatic life use.

14 The other thing is an ecosystem is a whole. A
15 segment as a whole supports a certain level of aquatic
16 life and we need to recognize that. Finally, there is a
17 reason we have three metrics, habitat, benthics and fish.

18 None of those metrics is in and of itself perfect; they
19 are all subject to temporary or subtle misinterpretations.

20 For example, with respect to benthics it's
21 possible some of the benthics that are very high value
22 recolonize very rapidly. So if you happen to catch a
23 segment when the benthics have just recolonized it may be
24 too high. There are also benthics that are very good
25 long-term integrators so that's a good aspect of benthics.

1 But the important reason to have three metrics is any one
2 of the three can be wrong at some point in time and we
3 need a weight of evidence.

4 Okay. That gets me my favorite topic of whole
5 effluent toxicity. Permittees are extremely concerned
6 about how sublethal test results are handled in a
7 regulatory perspective. They are very concerned that they
8 will incur permit violations, enforcement penalties and
9 costs for lengthy expensive studies and that there is no
10 real environmental benefit associated with this level of
11 regulation.

12 We are well aware that you've had an ongoing
13 dialogue with EPA on this very subject and that EPA will
14 tell you that they feel very strongly that sublethal
15 effects relate to in-stream effects and that doing studies
16 to identify causes of sublethal TRES are not a problem.
17 We don't really think they have --

18 MS. DURON: Time.

19 MS. GLASS: -- the backup for that.

20 MS. DURON: Time.

21 MS. GLASS: Oh.

22 MS. DURON: Can you please wrap it up?

23 MS. GLASS: I'm sorry.

24 MS. DURON: That's okay.

25 MS. GLASS: I missed that we had a time.

1 MS. DURON: Yes.

2 MS. GLASS: Okay.

3 MS. DURON: Eight minutes goes by quick.

4 MS. GLASS: Well, we have comments -- I have
5 what?

6 MS. DURON: I said eight minutes goes by quick.
7 Just go ahead and wrap it up.

8 MS. GLASS: Okay. This is all in our comments.
9 We -- like I say, we submitted a four-year request to
10 EPA. We do not feel like they have the backup for this
11 and this is a very important issue so we commend our
12 written comments to you. Thank you.

13 MS. DURON: Thank you so much.

14 Next up is Mr. Ken Kramer.

15 If you'll please come up, state your name and
16 who you represent.

17 MR. KRAMER: Good morning. My name is Ken
18 Kramer. I'm representing the Lone Star Chapter of the
19 Sierra Club. I'm somewhat reminded of the phrase from the
20 old Monty Python show, "And now for something completely
21 different" in terms of my comments as compared to the
22 previous speakers. I, first of all, though, want to say
23 that I understand, especially from participating in the
24 advisory workgroup sessions over the past, I believe,
25 almost three years that a great deal of hard work has gone

1 into the preparation of the proposed Water Quality
2 Standards revisions by TCEQ staff and I certainly
3 understand that there are a lot of complicated and very
4 contentious issues involved in the proposed revisions and
5 the background to them.

6 And so my comments are not to be taken as
7 criticism of the hard work of the staff in trying to come
8 up with what they perceive to be the best way of pursuing
9 water quality protections in the state.

10 Today I'm going to limit my comments just to
11 focusing on some of the aspects of the bacterial pollution
12 issue. The Sierra Club will have written comments
13 submitted by your comment deadline on Wednesday, March 17,
14 and they'll cover more topics in -- or aspects of this
15 topic.

16 But just to hit a few of the important points
17 from our perspective, quite frankly, we see the effort to,
18 in our opinion, weaken the bacteria pollution standards to
19 be coming primarily from a concern expressed by the
20 regulatory community about how those standards impact
21 their operations and also, very candidly, from a sense
22 that the agency staff feels that their workload in trying
23 to deal with the bacteria pollution issue is so large that
24 you have to make revisions in order to come up with a more
25 manageable workload and try to address things that you

1 think are most important.

2 I do want to say that, without equivocation,
3 the Sierra Club believes that TCEQ does not have the
4 funding and the resources to be able to do all the things
5 that you're asked to do with regard to water quality
6 protections. And we have testified and worked at the
7 Texas Legislature almost every session to try to provide
8 you with more money in order to carry out your
9 responsibilities for water quality.

10 And so we recognize the concern, and it's a
11 legitimate concern about workload, but we don't think that
12 the best interest of the state or the agency are served
13 by, in our opinion, weakening the bacteria standards in
14 order to deal with the workload issue. Rather, we should
15 proactively in partnership look at how we can better
16 prioritize the efforts to deal with bacteria pollution in
17 a way that'll allow you to take the resources you have and
18 make the best use of those resources.

19 So let me say for the record that the Sierra
20 Club opposes the proposed downgrade, in our opinion, of
21 water quality standards for bacteria pollution in the
22 stream segments around the state. We believe that the
23 change from 126 to 206 for the proposed priority contact
24 recreation streams is inappropriate.

25 Our understanding is that it is based upon a

1 study, or studies, done by EPA in another part of the
2 country in which basically 126 was considered to be sort
3 of the most protective standard and the 206 criteria was
4 considered to be, if you will, the upper level in terms of
5 e coli that could even be considered a protective
6 standard. We don't believe that Texas necessarily has to
7 go for the lowest amount of protection with regard to
8 bacteria pollution in order to achieve the goals of having
9 a manageable system of water quality protection.

10 In our opinion, one person's regulation, or
11 regulatory burden, may be another person's protective
12 levels for human health and recreational and other uses.
13 And so we strongly oppose the downgrading of the E. coli
14 bacterial standard.

15 We also are concerned that -- and this is
16 somewhat related to the water quality standards although
17 not necessarily part of the proposed standards -- that in
18 revising the recreational use categories and undertaking a
19 fairly extensive effort to do recreational use
20 attainability analyses on many stream segments that we're
21 going to wind up with many stream segments that are
22 legitimately contact recreation streams that are no longer
23 considered or designated as contact recreation streams
24 simply because you've not been able to gather the evidence
25 necessary to prove that there is recreational use of

1 certain types.

2 And we feel that basically that effort in
3 conjunction with the proposed water quality standards
4 revisions are going to have the result of very
5 dramatically undermining bacteria pollution protections
6 for the health of Texans who recreate in waters of the
7 state.

8 We also object to the changes in water quality
9 sampling requirements for standards attainment, especially
10 the requirement for two years of water quality sampling
11 data to establish a geometric mean for seeing whether or
12 not standards have been attained.

13 And we also object to the dropping of the
14 single water sample showing high bacteria levels as an
15 indication of non-attainment of standards. We believe
16 that a human being who recreates in a Texas water body is
17 not going to be concerned about whether or not there are
18 two years of data that show violations of the standard.
19 They're going to be concerned about whether or not there's
20 a violation of the standard at one particular time that
21 may impact their health as a result of ingestion of water
22 through swimming or other recreational activities.

23 Also, we do object to the total exclusion of
24 water samples during high-flow events or flooding to
25 establish whether or not a stream violates water quality

1 standards. We all know that there are enormous amounts of
2 pollution that flow in water bodies during heavy rain
3 events.

4 There may be some legitimacy for having some
5 restrictions on samples during that period in terms of
6 calculating a geometric mean, but the way the proposed
7 standards are written it basically gives a great deal of
8 wiggle room, if you will, or judgment, in terms of
9 determining when a high-flow situation is in existence.

10 It's not just when there's a 90th percentile
11 flow situation but also when the stream is considered
12 unsafe for swimming which totally disregards the fact that
13 there may be other primary contact recreation activities
14 involved during high-flow situations such as canoeing and
15 kayaking where people could be exposed to pollution levels
16 that would be harmful to human health. And so it doesn't
17 seem right to us to totally exclude high-flow situations
18 and samples taken during that time in the calculation of
19 whether or not standards are or are not being attained.

20 We will have other specific comments about the
21 bacteria standards and the other standards that are
22 proposed and, contrary to some opinions, we do agree with
23 some of the proposals in the Water Quality Standards
24 revisions and we'll outline those in our written comments.

25 But I just want to say, in conclusion and in general,

1 that we feel that the inevitable result of all the changes
2 that you're proposing with regard to bacterial
3 contamination is that basically tens of water bodies that
4 should be better protected and should have --

5 MS. DURON: Please wrap it up.

6 MR. KRAMER: Sure. Should have TMDLs and
7 cleanup plans developed for those streams who basically no
8 longer have a sufficient level of protection for the
9 health of Texans and the well-being of our economy and our
10 environment in the state.

11 Thank you very much for the opportunity to
12 comment.

13 MS. DURON: Thank you so much, Mr. Kramer.

14 Our next speaker will be Randy Palachek.

15 Mr. Palachek, please come up, state your name
16 and who you represent.

17 MR. PALACHEK: My name is Randy Palachek and
18 I'm representing TWCA, the Texas Water Conservation
19 Association. We're also one of the members in the Water
20 Quality Coalition that represents -- our membership is
21 over 1,000 statewide. We represent all interests in the
22 state with river authorities, water right holders,
23 wholesale water providers as well as retail providers,
24 wastewater providers, groundwater drainage districts,
25 irrigation districts.

1 So our membership is very broad and covers a
2 lot of these, both sides of the fence, as it has to do
3 with water quality standards. So we've got a very active
4 membership there and have been working with the TCEQ and
5 involved in these revisions for the last couple of years.

6 And we believe that in general the standards represent a
7 very good step forward in continuing to protect and
8 improve the state waters as well as we want to thank the
9 staff for their dedication and hard work with these.

10 In general, we agree with the adoption of the
11 nutrient standards for reservoirs. I know it's been a
12 tough process and we've conducted our own studies several
13 years ago that helped lead to where we are today and that
14 the membership fully supported the adoption of the
15 nutrient criteria on these 100-plus reservoirs. We feel
16 that it's a very good step forward.

17 We, however, think that there needs to be
18 additional time with a couple of the issues in the IPs in
19 working things out a little bit longer, kind of late in
20 the game, the ideas came forward about how we were going
21 to handle the permitting on the upper ends of the
22 reservoir, the dischargers that are into the reservoir
23 some distances away as well as the approach that are
24 listed in the IPs for handling the streams and rivers.

25 So we think that that needs a little bit more

1 vetting out because it really didn't get a chance to go
2 over it in detail and find out where some of the numbers
3 came from, et cetera, in the workgroups. So that's
4 something that we would like if possible to have another
5 meeting or so on with the IPs and to try to work that out
6 a little bit further just to understand where some of the
7 stuff is coming from and the questions we've got there.

8 We wanted to say that we fully support the
9 revisions to the bacteria criteria. We think it's a much-
10 needed improvement in the science and the setting of these
11 standards for the different water bodies. We agree with
12 the addition of the other uses that have been added. So
13 we fully support that and, like I said, think it's great
14 improvement on the science side as to where we are.

15 Concerning the implementation of wet and the
16 standards of wet, TWCA has a number of comments and we'll
17 be providing those in our written comments. Having been
18 at TCEQ, or the predecessor agency, when the first
19 toxicity testing and wet standards were put into place and
20 the procedures for that, I've got a lot of experience in
21 both the state and the regulated community side.

22 And we have a major concern over the approach
23 that EPA is putting forward with that. I think it's
24 unbelievable, the approach that they're trying to push
25 onto the state, and it is simply not plausible that

1 sublethal effects which might occur one, two or three
2 times at a very low magnitude of 20 or 30 percent effect
3 over multiple years, one or two times, one or two hits
4 over three years is going to cause any kind of in-stream
5 sublethal effects or that a permittee would ever be able to
6 identify what the cause is and have an opportunity to
7 address it before getting slapped with a permit limit and
8 potential violations.

9 It's just unfathomable that EPA is taking that
10 approach that one hit over three or four years of a
11 sublethal magnitude of 20 or 30 percent is potential for
12 in-stream effects. As Dr. Glass was starting to allude
13 on, we did a four-year request to EPA and tried to figure
14 out where they were coming from on this, get their
15 background information, get the documents they had.

16 They couldn't provide any documents that had
17 been done in the last ten years that had any substantial
18 sublethal wet procedures in them or to be able to show any
19 impact on streams and rivers that might have occurred in
20 any of their science or studies that they've done in the
21 last ten years. So I think that approach is basically a
22 non-starter.

23 So in that sense we fully support TCEQ's plan
24 and movement ahead to address these on a case-by-case
25 basis. Let me also reiterate the fact though that we are

1 certainly in favor of identifying and controlling
2 substantial and persistent sublethal toxicity and
3 maintaining our state waters free from sublethal effects.

4 So we're not opposed in any way with
5 controlling sublethal toxicity where there is persistent
6 and sublethal occurrence of that. It's just the situation
7 of where we have one, two, three potential sublethal tests
8 that show a 20 or 30 percent difference over a period of
9 several years that we think is just not reasonable,
10 especially considering the economics in the state right
11 now, the cities struggling -- they're going to spend
12 hundreds of thousands of dollars trying to identify these
13 when, you know, they have a hard time of even getting one
14 hit in a year to be able to do any work with.

15 And I wanted to also state that our
16 organization fully supports TCEQ in this approach and we
17 are willing and ready to go to Washington to talk about
18 this issue. We're willing to go and sit down and talk to
19 the legislators and to talk to EPA headquarters and
20 hopefully something can be worked out because we're not
21 talking about giving away everything on sublethal effects
22 and we think that needs to be controlled but it's just the
23 reasonable potential for one or two hits that we have a
24 concern over.

25 The one other item I wanted to bring up, the

1 final item, is on TDS, chlorides and sulfates, With the
2 future use of reuse water coming up in the state, it's
3 going to amount to, in some cases, an overall average of
4 about 15 percent of all new water is going to be reuse
5 water. In some cases like around the Metroplex, they may
6 be predicting 25 to 30 percent of all future new water is
7 going to be reuse water; therefore, I wanted to state that
8 the TDS, chlorides and sulfate limits and determination is
9 critical in terms of being able to help the state move
10 forward with the reuse concepts and these protocols so
11 that we would hope --

12 MS. DURON: Time. Would you please wrap it up.

13 MR. PALACHEK: Okay. We would hope that in the
14 future we can look towards setting the TDS, chlorides and
15 sulfates based on sound science and protecting the
16 existing uses as opposed to as much reliance on background
17 and historical values but keep it more on the sound
18 science and as well as on protecting the existing uses.

19 Okay. With that, I will conclude and will be
20 providing written comments.

21 MS. DURON: Thank you, Mr. Palachek.

22 Our next speaker will be Paul Jensen.

23 Mr. Jensen, if you'll please come up, state
24 your name and who you represent.

25 MR. JENSEN: Thank you. I'm Paul Jensen

1 representing TWCA as Mr. Palachek and also WEAT and I just
2 want to reinforce some of the points that have already
3 been made. First of all, we support the changes in the
4 nutrient standards that are proposed. In going through
5 the specific proposal we have some suggested modifications
6 that will be supplied in the written form to address some
7 of the concerns with data values that are reflected in the
8 current proposal.

9 And as Randy mentioned, there are some other
10 issues on the implementation standards for nutrients that
11 we want to discuss in more detail. But overall, the
12 message is good job. And we appreciate all the effort
13 over the years on the nutrients.

14 With regard to bacteria, I've been heavily
15 involved in the bacteria effort over the years. We
16 basically and strongly support the efforts that the agency
17 has made. We all recognize that this issue exists because
18 we started out in the year 2000 with criteria that EPA
19 developed for swimming in lakes in good weather, basically
20 clean water, but taking those numerical criteria and
21 applying them to very small streams, very high run-off
22 events, conditions that are very different from what was
23 envisioned in the application.

24 Y'all have made a good effort to make those
25 changes to make the system work better. We do propose two

1 minor modifications in the definition for E. coli and
2 enterococci to reflect the fact that where the current
3 definitions do not indicate that there's any other
4 environmental sources involved and, in fact, there are, as
5 we all know. And so the definition should reflect that to
6 be consistent with the definition of fecal coliform test
7 too.

8 Finally I want to support the suggestion on the
9 revision for TDS, chloride and sulfate. Sulfates, these
10 are parameters that are kind of an anomaly in the
11 standards. They are based on the historical average data
12 rather than the values needed to support and use. As we
13 go forward changes are going to happen with reuse and
14 having criteria developed consistent with the other
15 parameters in the standards to support a use is something
16 we would all like to see.

17 So thank you very much and good job.

18 MS. DURON: Thank you, Mr. Jensen.

19 Is there anyone else who would like to present
20 testimony at this time?

21 (No response.)

22 MS. DURON: Once again, the Commission will
23 continue to accept written comments on the proposed
24 revisions to 30 TAC Chapter 307 and to the *Procedures to*
25 *Implement the Texas Surface Water Quality Standards* until

1 Wednesday, March 17.

2 If there are no further comments, this hearing
3 is now closed. We appreciate your comments, and we thank
4 you all for coming.

5 (Whereupon, at 10:50 a.m., this hearing was
6 concluded.)

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IN RE: TCEQ Rule Project No. 2007-002-307-OW
LOCATION: Austin, Texas
DATE: March 11, 2010

I do hereby certify that the foregoing pages,
numbers 1 through 3131, inclusive, are the true, accurate,
and complete transcript prepared from the verbal recording
made by electronic recording by Penny Bynum before the
Texas Commission on Environmental Quality.

K.A. Russell 03/15/2010
(Transcriber) (Date)

On the Record Reporting
3307 Northland, Suite 315
Austin, Texas 78731