

Follow-up Meeting Materials

Nutrient Criteria Development Advisory Workgroup: June 20, 2011
Texas Commission on Environmental Quality (TCEQ)
Water Quality Standards (WQS)

General Follow-up Items

- Handout correction – Science Advisory Board (SAB) review (April 2010) by the Ecological Processes and Effects Committee Review of Empirical Approaches Nutrient Criteria Guidance
[http://yosemite.epa.gov/sab/sabproduct.nsf/0/E09317EC14CB3F2B85257713004BED5F/\\$File/EPA-SAB-10-006-unsigned.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/0/E09317EC14CB3F2B85257713004BED5F/$File/EPA-SAB-10-006-unsigned.pdf), noted correction to the link on the handouts.
- Diane Evans of United States Environmental Protection Agency (EPA) Region 6 confirmed via email Wisconsin's Water Quality Standards NR 102.6 total phosphorus criteria are approved NR by EPA. Wisconsin adopted two regulations for nutrients, the water quality standards and the Implementation Guidance in Chapter 217 (which is different than Texas Procedures to Implement the Water Quality Standards). EPA is still reviewing the Wisconsin Implementation Guidance regulation. In addition, neither regulation has been repealed by the state; however, the legislature is looking more closely at the Implementation regulation.
For more information visits [Wisconsin's Nutrient Water Quality Standards Webpages](#). EPA's Approval Letter of Wisconsin's total phosphorus criteria is listed the NCDAWG webpage with June 20, 2011 meeting materials.
- Link to Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) letter regarding Florida
<http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2009-0596-1371>. In addition, the ASIWPCA webpage has been updated with [ASIWPCA's current priorities](#) with regards to nutrient program issues and position letters.
- Link to Texas Parks and Wildlife District's small stream studies:
http://www.tpwd.state.tx.us/publications/pwdpubs/media/pwd_bk_v3400_1216.pdf.
- Dian Evans, EPA Region 6, provided follow up on this topic via email.
"As TCEQ noted during presentations, the federally-promulgated criteria become effective 15 months following the publication of the final rule in December 2010. (Provisions for derivation of Federal site-specific alternative criteria (SSAC) went into effect 60 days after publication)

The federal rule does allow the use of compliance schedules in NPDES (National Pollutant Discharge Elimination System) permits to meet nutrient limits.

Presumably, these NPDES permits would be reissued as they came up for renewal or if the facility requested a modification earlier (same process as happens now).

EPA did not promulgate a compliance schedule in its regulation, because the Florida WQS already include the provision.

In the August 2010 fact sheet at:

<http://water.epa.gov/lawsregs/rulesregs/upload/floridafaq.pdf>, please see the third paragraph in the response to question:

"16. How is EPA responding to the concern that not all water bodies are the same and case-by-case approaches are needed?"

"Finally, the state may utilize any of the current mechanisms allowed under the Clean Water Act that provide flexibility in implementing water quality standards, such as variances and compliance schedules, if additional time is needed to meet the new criteria.

Section V of the preamble to the final rule provides more detail about the requirements for pursuing any of the options for modification, and describes when the utilization of a given approach would be most appropriate."

Section V of the preamble to the December 2010 federal regulation (<http://edocket.access.gpo.gov/2010/pdf/2010-29943.pdf>) includes the following information.

D. Compliance Schedules

(1) Final Rule

Florida has adopted a regulation authorizing compliance schedules. That regulation, Subsection 62-620.620(6), F.A.C., is not affected by this final rule. The complete text of the Florida rules concerning compliance schedules is available at <https://www.flrules.org/gateway/RuleNo.asp?ID=62?620.620>. Florida is, therefore, authorized to grant compliance schedules, as appropriate, under its rule for WQBELs based on EPA's numeric criteria.

(2) Background and Analysis

A compliance schedule, or schedule of compliance, "refers to a schedule of remedial measures included in a "permit, "including an enforceable sequence of interim requirements * * * leading to compliance with the CWA and regulations." (See 40 CFR 122.2, CWA section 502(17)). In an NPDES permit, WQBELs are effluent limits based on applicable WQS for a given pollutant in a specific receiving water (See NPDES Permit Writers Manual, EPA-833-B-96-003, December, 1996). EPA regulations provide that schedules of compliance may only be included in permits if they are determined to be "appropriate" given the circumstances of the discharge and are to require compliance "as soon as possible" (See 40 CFR 122.47).169

(3) Summary of Major Comments

EPA generally received favorable comment on its description of compliance schedules. Some commenters asked EPA to consider promulgating its own compliance schedule provisions as part of the final rule. Florida's regulations, however, already include an authorizing provision that allows NPDES permit writers to include compliance schedules in permits, where appropriate. Florida's regulations do not limit the criteria which may be subject to compliance schedules. Therefore, Florida may choose to issue permit compliance schedules for nitrogen/phosphorus pollution, as appropriate. As a result, there is no need for EPA to provide an additional compliance schedule authorizing provision in this final rule. EPA disagrees with commenters who assert that Florida's regulation at Subsection 62-620.620(6), F.A.C., authorizing compliance schedules applies only to industrial and domestic wastewater facilities. Chapter 62-620, F.A.C., sets out permit procedures for wastewater facilities or activities that discharge wastes into waters of the State or which will reasonably be expected to be a source of water pollution. (See Subsection 62-620.100(1), F.A.C.). Subsection 62-620.620(6), F.A.C., applies, therefore, more broadly than to just industrial and domestic wastewater facilities. In addition, Chapter 62-4, F.A.C., which sets out procedures on how to obtain a permit from FDEP, provides that permits may include a reasonable time for compliance with new or revised WQS. Subsection 62-4.160(10), F.A.C., does not limit the type of permits that may include such compliance schedules.

169 Hanlon, Jim, USEPA Office of Wastewater Management. 2007, May 10. Memorandum to Alexis Strauss, Director of Water Division EPA Region 9, on "Compliance Schedules for Water Quality-Based Effluent Limitations on [in] NPDES permits" [available at: <http://water.epa.gov/lawsregs/guidance/wetlands/upload/signed-hanlon-memo.pdf>]"