

# Summary of EPA Action on the 2010 Surface Water Quality Standards

Surface Water Quality Standards Advisory Workgroup, March 28, 2012

Texas Commission on Environmental Quality Water Quality Standards (WQS)

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## Introduction

- 29 June 2011 letter
- 5 Types of Actions on 2010 SWQS
  - Revisions disapproved
  - Revisions approved subject to completion of consultation under Endangered Species Act
  - Revisions not considered water quality standards under CWA
  - Revisions still under review by EPA
  - Revisions approved
- A highlighted version of the rule indicating action status is available on [TCEQ's website](#)

## Proposed Revisions Disapproved by EPA

- Human Health criterion for Methylmercury of 0.7 mg/kg
  - EPA has a 2001 criterion of 0.3 mg/kg
  - EPA: TCEQ may choose to adopt a different criterion than EPA, but must demonstrate that it is scientifically defensible and protective of human health
  - Previously approved criteria for mercury remains in effect
  - "If Texas does not adopt a revised mercury human health criterion that is scientifically defensible and protective of human health, in an expeditious manner, EPA may promulgate the agency's criterion recommendation."
  - **EPA requests a timeline for adoption of a revised criterion with the assumption that the process will take less than three years.**
  - **EPA requests that TCEQ provide the timeline for this action within six months. TCEQ complied with this request in a response letter dated 11/30/2011.**
- High Flow Exemption for Bacteria
  - Proposed revision exempted data collected during or 24 hrs after high flow events (90<sup>th</sup> percentile flow or flow severity index of flood) for determining compliance with the bacteria criteria
  - EPA: no assurance recreation would not occur during these flows
  - EPA: on smaller streams contact recreation more likely to occur during these flows
  - EPA: disapproved because it does not protect the designated or presumed recreation use that applies at all times
  - EPA: TCEQ may correct this deficiency by removing it from SWQS or amending the regulation to require assessment with samples from all flows

## Revisions Approved but Subject to Consultation with United States Fish and Wildlife Service (USFWS) on Endangered Species Review

- Site Specific Uses and Criteria for Classified Segments
  - 7 classified water bodies for revised aquatic life uses and D.O. criteria – Appendix A
  - TCEQ can use these criteria now, until USFWS formally contacts EPA with a request to take action on the criteria
- Site-Specific Uses and Criteria for Unclassified Segments

- 16 unclassified water bodies for revised aquatic life use and D.O. criteria – Appendix D
- TCEQ can use these criteria now, until USFWS formally contacts EPA with a request to take action on the criteria

### **Revisions Not Considered Water Quality Standards Under the CWA**

- No Action
  - Not defined in the CWA or EPA regulations
  - Likely means that EPA does not consider themselves to be bound by these provisions because they have not been approved or disapproved and are not considered water quality standards
- 307.6 – Toxic Materials
  - TCEQ has included provisions to control total toxicity and provide support for biomonitoring in its SWQS since 1988
    - EPA taking *no action* on provisions related to biomonitoring and Toxicity Reduction Evaluations (TRE)
    - EPA: “Although these provisions were arguably covered by, but not specifically mentioned in, EPA’s previous approval actions, EPA does not consider them to be water quality standards...”
    - “Thus EPA hereby clarifies that the Agency did not take CWA...action on [these provisions] in its action letters dated June 29, 1988, September 24, 1991, March 11, 1998, and August 6, 2008.”
    - Main issue related to when a facility must conduct a TRE
- Diazinon Provisions
  - Removed provision regarding diazinon and TRE requirements
  - EPA taking *no action* for the same reasons listed above
- Low Flow Criteria
  - Revision removed 7Q2 and Harmonic Mean table for stream flows
  - EPA taking no action for the same reasons listed above
- Definition of Surface Waters of the State
  - Revision referenced SWQS definition to the Texas Water Code definition which includes an area 10.36 miles off-shore into the Gulf of Mexico
  - EPA: Texas does not have CWA jurisdiction to establish water quality standards more than three nautical miles from the coast
  - Red River and Lake Texoma waters not under Texas jurisdiction are also with no action

### **Revisions Still Under Review by EPA**

- Provision for assigning a presumed use of secondary contact recreation 1 to an unclassified water body, and associated public process
- Numeric nutrient criteria for 75 reservoirs in Appendix F
- Site-specific aquatic life uses and dissolved oxygen criteria for seven specific segments, and revised criteria for minerals, pH and temperature in numerous segments in Appendix A
- Segment description for two segments in Appendix C
- Site-specific aquatic life uses and dissolved oxygen criteria for three unclassified water bodies in Appendix D
- All aquatic life numeric criteria in Table 1
- Deferred listings based on presumed aquatic life use

## Revisions Approved by EPA

- Revisions to numeric criteria for 99 potentially toxic substances for the protection of human health (all revisions were approved except for mercury)
- Expanded recreation use criteria categories (primary, secondary contact 1, secondary contact 2, noncontact) and their definitions
- Provision to use only the long-term geometric mean criteria when assessing recreation standards compliance, so that "single sample" criteria for bacteria will no longer be used in the assessment
- Partial approval of the majority of site-specific revisions in Appendices A (classified water site-specific uses & criteria), C (segment descriptions), D (unclassified water site-specific uses & criteria), and E (site-specific toxic criteria)
- Numerous revisions to the main standards text in §§307.1 – 307.3, §307.5
- Appendix B (new list of sole source water supplies as required by state legislation)
- Approval of Appendix G (site-specific recreation standards), which included assigning a secondary 1 recreation use to three streams in the Houston area
- Other portions of the standards except as described above