UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

JUN 12 2006

Mr. Dan Eden, Deputy Director
Office of Permitting, Remediation & Registration (MC-122)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Dear Mr. Eden:

The Environmental Protection Agency (EPA) has completed its review of the revised standards for segment 2101 - Nueces River tidal in the *Texas Surface Water Quality Standards* (TX WQS). These standards were adopted by the Texas Natural Resource Conservation Commission, now the Texas Commission on Environmental Quality (TCEQ), on July 26, 2000, and submitted to the EPA for approval on September 27, 2000. I am pleased to inform you that the EPA is approving the revised aquatic life use and dissolved oxygen criteria for segment 2101 - Nueces River tidal, pursuant to §303(c) of the Clean Water Act (CWA) and the implementing regulation at 40 CFR Part 131 and subject to the completion of consultation under §7(a)(2) of the Endangered Species Act (ESA).

Appendix A of the TX WQS includes aquatic life uses and for classified segments. In the 1997 TX WQS (and earlier versions), Segment 2101 - Nueces River tidal was designated with a presumed exceptional aquatic life use and a corresponding dissolved oxygen criterion of 5.0 mg/l (24-hour mean). A Use Attainability Analysis (UAA) was conducted to determine whether a reclassification of the aquatic life use and different dissolved oxygen criteria were appropriate. Based on the findings of the UAA, the aquatic life use for segment 2101 was revised in the 2000 TX WQS from exceptional aquatic life to high aquatic life, with a corresponding dissolved oxygen criterion of 4.0 mg/l (24-hour mean).

Section 7(a)(2) of the Endangered Species Act requires that federal agencies, in consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, ensure that their actions are not likely to jeopardize the existence of federally-listed species or result in the adverse modification of designated critical habitat of such species. Although this process has not been completed as of today, the EPA's approval is fully consistent with ESA §7(d) and the agency retains the full range of options available under CWA §303(c), including the discretion to revise its approval decision based on new or additional information developed in the consultation. Any wastewater permits with effluent limitations based on the revised standards for segment 2101 should contain a re-opener clause to ensure the activities can be adjusted if changes are made to the dissolved oxygen criteria based on the results of the ESA consultation.

EPA has completed a biological evaluation on the proposed revisions and believes that its approval will not adversely affect federally-listed species or critical habitat. We understand that TCEQ is working with the Texas Parks and Wildlife Department on a separate project to evaluate aquatic life uses in tidal streams. A draft report for this project is scheduled to be released in fall 2006. TCEQ staff has conducted a preliminary review of the project data which indicates that dissolved oxygen levels below 5.0 mg/l in minimally-impacted tidal streams are supporting healthy aquatic communities. Following review of the draft report, EPA will initiate consultation under §7(a)(2) of the ESA on the revised standards for segment 2101.

The EPA previously approved the human health provisions in the TX WQS; new and revised language in §307.2, §307.3 and §307.5, revised minerals criteria and designation of the aquifer protection use for numerous segments in Appendix A - Site-specific Uses and Criteria for Classified Segments; the revised standards for segment 0230 - Pease River in Appendix A; all new and revised provisions in Appendix C - Segment Descriptions and Appendix D - Site-specific Receiving Water Assessments; and criteria based on water effects ratios for several segments in Appendix E - Site-specific Criteria. The EPA will take separate action on the remaining new and revised parts of the TX WQS.

I would like to commend the TCEQ staff for its commitment in completing the task of reviewing and revising the state's water quality standards. If you have any questions or concerns, please contact me at (214) 665-7101, or have your staff contact Diane Evans at (214) 665-6677.

Sincerely,

Miguel I. Flores
Director
Water Quality Protection Division

cc: Jim Davenport, TCEQ- Water Quality Assessment Section (MC-150)
Allen White, USFWS - Austin Ecological Services Office
Allan Strand, USFWS - Corpus Christi Ecological Services Office