

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 19, 2018

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2016-1070-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 307, Texas Surface Water Quality Standards
Triennial Revision of 30 TAC Chapter 307, Texas Surface Water Quality
Standards
Rule Project No. 2016-002-307-OW

Background and reason(s) for the rulemaking:

The adopted revisions to 30 Texas Administrative Code §§307.2, 307.3, 307.6, 307.7, 307.9, and 307.10 are a result of a review of the Texas Surface Water Quality Standards (TSWQS) as required on a triennial basis by §303(c) of the federal Clean Water Act. The TSWQS were last revised in February 2014, and portions of the 2014 TSWQS were approved by the United States Environmental Protection Agency (EPA) in September 2014.

The revisions to the TSWQS would be adopted to incorporate new information and the results from studies on the appropriate uses and criteria of individual water bodies, incorporate new scientific data on the effects of specific pollutants, and address new provisions in federal regulations and EPA guidance.

Specific changes to the rules include:

- revisions to statewide toxic criteria to incorporate new data on toxicity effects and address revised EPA procedures;
- revisions and additions to site-specific toxic criteria to incorporate local water quality data into criteria for selected water bodies;
- revisions and additions to the uses, criteria, and descriptions of individual water bodies based on new data and results of recent use-attainability analyses (UAAs);
- addition of site-specific recreational uses for selected water bodies as a result of recent recreational UAAs; and
- revisions to provisions regarding coastal recreation waters to comply with the federal Clean Water Act.

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Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The revisions to the TSWQS include numerous substantive changes and clarifications in all sections of the standards except §§307.1, 307.4, 307.5, and 307.8. The revisions to the TSWQS incorporate new information and studies on the appropriate uses and criteria of individual water bodies, incorporate new scientific data on the effects of specific pollutants, and address new provisions in federal regulations and EPA guidance.

The revisions in §§307.2, 307.3, 307.6, 307.7, and 307.9 are changes in the basic numerical and narrative requirements of the TSWQS that apply to all surface water in the state. The numerous revisions and additions to site-specific uses and criteria in the appendices of §307.10 are tailored to individual water bodies. These site-specific revisions are based on studies and evaluations of each water body, and UAAs have been conducted as needed to develop revisions to uses or associated numerical criteria.

B.) Scope required by federal regulations or state statutes:

The federal Clean Water Act and associated EPA rules require states to review and, if appropriate, revise the TSWQS at least once every three years. The Texas Water Code (TWC) states that the Texas Commission on Environmental Quality (TCEQ, agency, or commission) may amend the standards from time to time.

These amendments would be adopted under the TWC, §26.023, which provides the TCEQ with the authority to make rules setting TSWQS for all water in the state. These amendments would also be adopted under the TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state. The adopted amendments will satisfy the provision in §303(c) of the federal Clean Water Act that requires states to adopt water quality standards and to review and revise those standards from time to time, but at least once each three-year period.

Revisions to the temporary standards provisions in §307.2 would be adopted to comply with changes to federal water quality standards regulations. The adopted revisions would clarify the applicability of temporary standards and specify requirements for adoption and reevaluation.

Specific amendments regarding coastal recreation waters would be adopted in accordance with §303(i)(1)(B) of the federal Clean Water Act, which comes from the Beaches Environmental Assessment and Coastal Health Act (BEACH Act) of 2000. These federal provisions require states with coastal recreation waters to adopt and submit to EPA new or revised water quality standards for those waters to which new or revised water quality criteria for pathogens and pathogen indicators are applicable. The following revisions would be adopted:

- In §307.3, a definition for "Coastal recreation waters" is added.

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- In §307.7, a revision is made to the single sample criterion for coastal recreation waters.
- In §307.9, a revision is made to base standards attainment in coastal recreation waters on a geometric mean or a single sample criterion.

C.) Additional staff recommendations that are not required by federal rule or state statute:

- In Table 1 of §307.6, revisions to numeric toxic criteria to protect aquatic life are recommended to incorporate updated EPA criteria documents that utilize new EPA data on toxic effects.
- In Table 2 of §307.6, revisions to numeric toxic criteria to protect human health are recommended to incorporate updated EPA guidance procedures for calculating human health criteria and additional EPA data on toxic effects.
- In Appendices A, D, E, and G in §307.10, a large number of additions and revisions to site-specific uses and numerical criteria would be adopted. These changes are based on new data and evaluations for individual water bodies. A UAA is required by the EPA to support those changes that are less stringent than current water quality standards or presumed uses.
- Numerous other minor revisions would be adopted throughout Chapter 307 to improve clarity and provide additional specificity.

Statutory authority:

TWC, §5.103 and §26.023 and the federal Clean Water Act, §303(c).

Effect on the:

A.) Regulated community:

The TSWQS directly affect permitted wastewater dischargers in Texas, including cities, counties, state agencies, water districts, municipal utility districts, investor-owned utilities, river authorities, mobile home parks, recreational vehicle parks, hotels, motels, industries, campgrounds, or any other business or governmental entity with a permit to discharge industrial or domestic wastewater.

Revisions to site-specific standards may affect requirements in TCEQ-issued wastewater discharge permits and lead to changes at the permitted facilities. These changes may involve alterations or new treatment methods or techniques that can range from best management practices to renovating, expanding, or building new treatment facilities. Upon permit expiration, these permit holders may need to seek permit amendments to adjust treatment criteria to newly adopted standards. Small businesses that discharge wastewater would also be required to comply with the adopted requirements.

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The rulemaking does not create a group of affected entities in the regulated community who were not affected previously. Numerous water quality uses and criteria are revised, but the scope and applicability of the rules or affected permitting actions are not expanded with this adopted rulemaking.

There will be a fiscal impact to some permitted facilities. Other facilities could benefit from this rulemaking because of cost savings. The adopted amendments have potential cost implications associated with revised criteria for toxic substances to protect human health and aquatic life, revised criteria for recreational uses, and revised dissolved oxygen criteria and aquatic life uses for classified and unclassified water bodies. These cost implications are generally associated with chemical screening and monitoring and with the additional treatment of wastewater that may be needed to meet the standards for water quality. Dischargers may have to change or employ new wastewater treatment methods or techniques in order to meet the adopted standards. These changes may range from developing new wastewater processes to building new wastewater treatment facilities.

The adopted changes in dissolved oxygen criteria are anticipated to affect some local governments that operate domestic wastewater facilities. None of the revisions for dissolved oxygen criteria for classified or unclassified water bodies are anticipated to require more stringent treatment by domestic wastewater facilities. However, adopted changes for dissolved oxygen criteria for eight water bodies are less stringent and could facilitate future facility expansion for governmental entities. Including non-governmental dischargers, there are approximately 12 domestic and 14 industrial permitted wastewater dischargers on water bodies that could be aided by the adopted revisions.

B.) Public:

For each year of the first five years the adopted rules will be in effect, the public benefit anticipated from the changes in the adopted rules will be the continued protection of public drinking water supplies and aquatic life resources, an improved regulatory process for permitted wastewater discharges, and improved quality of the surface water resources of the state.

The rulemaking does not create a group of affected parties from the general public who were not affected previously.

These adopted revised criteria are protective of human health and provide a public benefit. The adopted revisions more accurately assess water quality in the state and revise requirements to protect human health and water quality. The rules would substantially advance this stated purpose by adopting revised water quality criteria and requirements that are supported by site-specific studies, federal and state research, and statewide monitoring and sampling data. Promulgation and enforcement of these rules will not burden private real property that is the subject of the rules because the amendments revising the TSWQS do not limit or restrict a person's rights in private real property.

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C.) Agency programs:

Several of the adopted revisions to the site-specific criteria for individual water bodies in §307.10 are intended to address water bodies where recent data show the current water quality standard is inappropriate. In these cases, the adopted water quality standards can help streamline the water quality management programs of the TCEQ by curtailing unnecessary restorative activities, such as establishing total maximum daily loads (TMDLs), and redirecting funds to water bodies where restoration activities are needed. Adopted changes could also result in the removal of water bodies that may appear on the current Texas 303(d) list of impaired water bodies. Removal of water bodies listed for dissolved oxygen and contact recreation impairments would eliminate the need for approximately 45 TMDL studies. Changes to designated site-specific dissolved oxygen criteria and contact recreation criteria would remove approximately 52 impairments. As a result of the adopted changes, the agency expects that it would reallocate its resources for other water quality management activities and initiatives.

The rulemaking does not create a group of affected agency programs which were not affected previously.

No additional costs are anticipated for the TCEQ to implement the revisions to the TSWQS. The revised water quality standards are primarily operational and procedural. The statewide monitoring and assessment of surface water quality data and review of wastewater permit applications may need to incorporate numerous changes and additions.

Stakeholder meetings:

Two stakeholder meetings were held at the TCEQ complex in Austin on January 25, 2016 and March 31, 2016.

Other outreach efforts have included presentations at:

- The TCEQ Environmental Trade Fair and Conference,
- TCEQ Water Quality/Stormwater Conference, and
- Numerous meetings of specific stakeholder groups.

On average, approximately 50 people attended each meeting. Electronic notices of the stakeholder meetings were sent to the Surface Water Quality Standards Advisory Work Group, which is a balanced group of regulated entities, environmental groups, consumers, and professional organization representatives; as well as to individuals interested in local water quality issues. Notices of the meetings were posted on the TCEQ's TSWQS home page, with completed meeting minutes and follow-up information posted upon completion of each meeting.

Other interested parties or individuals who requested notification of stakeholder meetings were provided an open invitation to the meetings via written notice provided via an electronic listserv. The revisions were developed with extensive input and involvement from stakeholders through participation in the surface water quality standards workgroups.

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Public comment:

The commission received 17 comment letters from organizations, affiliations, and one individual. No attendees provided oral comments at the public hearing on October 16, 2017. Major interests expressed in the comment letters included:

- support from two commenters and opposition from five commenters regarding the addition of the new segment, Blind Oso Bay; and
- three commenters who expressed general opposition to the addition of 51 water bodies to Appendix G along with one additional commenter who suggested edits to several of the proposed Appendix G additions.

Significant changes from proposal:

- Temporary standards - The commission received comments both in support of and in favor of revision to the proposed language in §307.2(g). Proposed changes to this language were necessitated by recently adopted revisions to federal rules listed in 40 Code of Federal Regulations §131.14. While the EPA expressed general support for the proposed language, two other commenters suggested edits for further clarification. The language was divided into paragraphs to improve readability, and language regarding the duration and expiration of a temporary standard was clarified.
- Numeric nutrient criteria assessment - The commission received comments from the EPA regarding changes to §307.9(e)(7) and §307.10(6), Appendix F. Because of ongoing discussions between the TCEQ and the EPA regarding EPA's chlorophyll *a*-related concerns, the proposed language in §307.9(e)(7) and the opening paragraphs of §307.10(6), Appendix F, was removed. The TCEQ will continue to work with the EPA to resolve this issue in the next triennial revision of the TSWQS.
- Catfish Creek addition to Appendix D - The proposed addition of Catfish Creek to Appendix D included a 24-hour average dissolved oxygen criterion of 3.0 milligrams per Liter (mg/L) and 24-hour minimum dissolved oxygen criterion of 2.0 mg/L that would apply year-round. After reviewing comments made by the Texas Parks and Wildlife Department, a seasonal 24-hour average dissolved oxygen criterion of 3.0 mg/L and 24-hour minimum dissolved oxygen criterion of 2.0 mg/L will apply from May through September. The remainder of the year, a 24-hour average dissolved oxygen criterion of 4.0 mg/L and a minimum dissolved oxygen criterion of 3.0 mg/L will apply.

Potential controversial concerns and legislative interest:

- Contact Recreation Use for Sweetwater Creek (0299A) - A stakeholder in the watershed was concerned that primary contact recreation 1 was too stringent.
- Contact Recreation Standard for Saltwater - The BEACH Act of 2000 requires states to adopt EPA's updated recreational water quality criteria for coastal waters within 36 months of publication. The TCEQ is replacing the single

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sample criterion of 104 colony-forming units (cfu) per 100 milliliters (mL) for Enterococci with the EPA-recommended 130 cfu per 100 mL. One commenter expressed concerns that this change is inconsistent with the goals of the federal Clean Water Act, and another asked if there are any data that demonstrate that this change will not reduce water quality protection.

- Oso Bay - The EPA disapproved a standards change in the 2010 TSWQS for Oso Bay, and a change in the 2014 revision is still pending EPA approval. The TCEQ is creating a new segment, Blind Oso Bay, with its own site-specific dissolved oxygen criteria. This new segment would represent the shallow western portion of Oso Bay. The TCEQ received two comments stating that neither the proposal to create a new segment for Blind Oso Bay nor lower dissolved oxygen criteria were presented to the stakeholders during the two meetings that were held in 2016. As a result, the commenters did not benefit from the discussion of other stakeholders on this topic.

Does this rulemaking affect any current policies or require development of new policies?

The TSWQS establish state goals and targets for water quality. For individual water bodies, the standards assign water quality-related uses and specify associated numerical criteria to protect the assigned uses. In addition, some narrative and numerical criteria are applied statewide, and the TSWQS include procedures on how water quality standards are applied and assessed. This rulemaking will not require the development of new policies.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The TSWQS establish the instream water quality conditions for surface waters in the state. The TSWQS are the basis for establishing discharge limits in wastewater and stormwater discharge permits, setting instream water quality goals for TMDLs, and providing water quality targets to assess water quality and identify impaired water bodies.

If this rulemaking is not approved, these different TCEQ water programs would be addressing some water quality standards that have been shown to be inappropriate for water in the state and would not represent the most recent scientific basis for setting criteria. This would result in the inappropriate allocation of resources externally and internally.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** September 8, 2017

Anticipated *Texas Register* adoption publication date: February 23, 2018

Anticipated effective date: March 1, 2018

Six-month *Texas Register* filing deadline: March 8, 2018

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Attachments:

None.

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