

BEFORE THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

Public Hearing for Title 30)
Texas Administrative Code Chapter 307)
Texas Surface Water Quality Standards)

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

October 17, 2013

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

BEFORE:

Michael Parrish - General Law Division
Debbie Miller - Water Quality Planning Division
Jill Csekitz - Water Quality Planning Division
Robert Brush - Environmental Law Division

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1 PROCEEDINGS, (10:02 a.m.)

2 MICHAEL PARRISH: Good morning. I would
3 like to welcome everyone to this public hearing being
4 conducted by the Texas Commission on Environmental
5 Quality. My name is Michael Parrish and I am with the
6 General Law Division. I would also like to introduce
7 Debbie Miller, Jill Csekitz from the Water Quality
8 Planning Division, and Robert Brush from the
9 Environmental Law Division.

10 We are here this morning to receive oral
11 and/or written comments on the proposed amendment to 30
12 TAC, Chapter 307, Texas Surface Water Quality Standards,
13 TCEQ Rule Project Number 2012-001-307-OW.

14 If you intend to present oral testimony and
15 haven't already signed in at our registration table,
16 please do that now. If you are not familiar with the
17 proposed rules, a copy of the proposal, as published in
18 the Texas Register, are available at the registration
19 table.

20 We also have copies of the hearing notice so
21 that if anyone is planning to submit written comments,
22 you can quickly find the information on where to fax or
23 mail those in, or submit via eComments. We will
24 continue to accept written comments on this proposal
25 until Thursday, October 24, 2013.

1 This hearing is structured strictly for the
2 receipt of oral or written comments. Open discussion
3 during the hearing is not allowed. However, if anyone
4 has any additional questions or comments regarding this
5 proposal, there will be another opportunity after the
6 hearing to have your questions answered.

7 We will now begin receiving testimony in the
8 order in which you registered. Once I call your name,
9 if you will please come up to the podium, state your
10 name and who you represent, then present your testimony.

11 We will start with Dickie Clary.

12 DICKIE CLARY: Good morning, everyone. It's
13 good to be here this morning to see friends and friendly
14 faces. My name's Dickie Clary. I'm a Hamilton County
15 Commissioner, and I'm here today to comment in support
16 of specific provisions of the proposed revisions to the
17 Texas Surface Water Quality Standards.

18 The proposed revisions to add a primary
19 contact recreation to the use category will be extremely
20 advantageous to Texas citizens as well as TCEQ. The 206
21 CFU criteria for this -- for this category is well
22 established to be a safe recreational standard, and
23 should not be feared.

24 TCEQ's adoption of this new use category
25 will provide for a (indiscernible) to apply proper water

1 quality standards to water bodies on a site specific
2 basis, and reduce the likelihood of over-regulation.

3 I would suggest, however, that TCEQ consider
4 including appropriate language in the revised standards
5 to allow TCEQ the flexibility to use other site specific
6 information in addition to physical characteristics of a
7 water body and accessibility to determine when the PCR 2
8 standard should be applied.

9 While many water bodies will clearly fall
10 into either a PCR 1 or PCR 2 category based on public
11 accessibility, I believe they will be water bodies which
12 will need an additional qualifier to help determine when
13 a PCR 2 designation is appropriate. For example, if an
14 RUAA determines that a water body is being used for
15 contact recreation activities, then public accessibility
16 is considered moderate.

17 TCEQ will need the flexibility to use
18 additional site specific -- site specific information to
19 help qualify water bodies for PCR 2. I propose using
20 the site specific circumstances in 307.7(b)1 of the
21 current standards as that additional qualifier.

22 This portion of the standard reads as
23 follows: Classified segments are designated as primary
24 contact recreation unless site specific information
25 demonstrates that elevated concentrations of indicator

1 bacteria frequently occurred, either sources of
2 pollution that cannot be reasonably controlled by
3 existing regulations.

4 Wildlife sources of bacteria are
5 unbelievably high, and there is limited aquatic
6 recreational potential. In my opinion, this component
7 of the current standards is a perfect fit to provide
8 additional site specific information, when needed, to
9 help determine when PCR 2 is an appropriate
10 classification for a water body.

11 I also want to commend TCEQ for supporting
12 the adoption of two additional use categories in the
13 previous revisions to the standards. I fully support
14 the proposed secondary contact recreation one designated
15 -- designation for the South Leon River.

16 And the proposed secondary contact to
17 designation for Indian Creek, Walnut Creek and Wrestling
18 Creek, all tributaries to segment 1221 of the Leon
19 River. These proposed reclassifications will
20 significantly reduce the likelihood of over-regulation
21 and do not jeopardize user safety.

22 Last, I support splitting segment 1221 of
23 the Leon River into two segments, and I appreciate TCEQ
24 listening to stakeholder requests on this issue. And
25 that's all I have to say today, except just thank you

1 for the opportunity to speak.

2 MICHAEL PARRISH: Thank you. Next we have
3 Steve Happ.

4 STEVE HAPP: Good morning. I'm Steve Happ.
5 I'm the Water Quality Director for Bayou Preservation
6 Association. In the Houston area, we benefited from the
7 water quality standards. We've seen a lot of
8 improvement. And I think we've come to a point where we
9 see our bayous as a recreational destination more and
10 more because of their -- their -- their water quality.

11 So I think we've come to a time where we
12 need to pay attention to the aesthetic value of these
13 water bodies. What we need look at is -- we spent a lot
14 of time and money as volunteer organizations, and as
15 businesses and individuals cleaning up these waterways
16 and their watersheds of floatable debris.

17 So we've come to a time, I think, where we
18 need to look at where are we at in compliance with 30,
19 TAC 307.4(b), which are the aesthetic standards, to the
20 water quality standard. These are those that talk about
21 essentially free floating debris and aesthetically
22 attractive condition.

23 I guess I have a couple of questions of the
24 staff. How do we document compliance with these two
25 standards, segment by segment. So how do we do that?

1 There's standards. How do we do that. And do we have
2 any records that show how those are complied with. So
3 I'll be available to the staff to talk about these
4 aesthetic standards.

5 But I think it's time, at least Houston, if
6 not the rest of Texas, to look at the aesthetics. Where
7 are we. We're enjoying our waterways. We're seeing
8 them more. We're getting in them more. I think it's
9 time that we get the trash out of them. Thank you.

10 MICHAEL PARRISH: Thank you. Next we have
11 Ken Kramer.

12 KEN KRAMER: Morning, everybody. For the
13 record, I'm Ken Kramer representing the Lone Star
14 Chapter of the Sierra Club. We will be submitting more
15 extensive written comments on the proposed changes to
16 the Surface Water Quality Standards, so I'm not going to
17 go into a lot of detail on all of the proposed revisions
18 today.

19 I think it will come as no surprise that I'd
20 like to focus a little bit of attention on the issue of
21 the bacteria pollution standards and the recreational
22 use categories. I do want to say at the outset, though,
23 to sort of put my remarks in context, that the Sierra
24 Club has followed water quality issues in Texas for
25 literally decades.

1 And frankly, we don't think that the Texas
2 legislature has ever given the state water quality
3 protection agency, by whatever name, sufficient
4 resources to be able to do the job that's expected of
5 you in trying to assess the water quality of the state
6 and to clean up water pollution problems in those water
7 bodies.

8 And so we recognize that you're always
9 somewhat behind an 8 ball in trying to achieve what the
10 federal Clean Water Act and the State Chapter 26 of the
11 Water Code expect you to do. I think that sometimes
12 leads to unfortunate decisions perhaps as what you can
13 and cannot do with resources available.

14 And I suppose part of our concern about the
15 way in which some of the water quality standards have
16 trended over the past few years, including especially
17 the bacteria pollution standards and the recreational
18 use categories, is that there's been somewhat of a focus
19 from our perspective on trying to move bodies of water
20 off the list of impaired waters; not necessarily by
21 cleaning up those bodies of water to the standards that
22 many of us would like to see and believe are
23 appropriate, but rather by redefining, if you will, what
24 constitutes water pollution.

25 You know, of course, that three years ago we

1 had a very big discussion about what the proper bacteria
2 pollution standard ought to be for primary contact
3 recreation; and also what the standards ought to be for
4 other levels of contact or non-contact active
5 recreation; and whether there ought to be additional
6 categories of contact recreation.

7 I think it's fair to say that in 2010, when
8 the decision was made about what the levels should be
9 for E. coli, for primary contact recreation, there was
10 pretty strong public opposition to us than proposed by
11 the staff which was changed, the standard for the 126 to
12 the 206.

13 And I think the commissioners, in making
14 their final decision about primary contact recreation
15 levels, rightfully went with what was an overwhelming
16 sentiment for the people who commented on the proposed
17 change and they retained their 126 level.

18 I see this proposed addition, another
19 primary contact recreation 2 level, and the proposal to
20 set that bacteria pollution or E. coli standard at 206
21 as going against what the public very clearly stated in
22 2010.

23 And I'm also concerned -- that this proposal
24 really came pretty much at the last minute as these
25 standards were -- standard revisions were being

1 proposed; long after we'd had our Water Quality Advisory
2 Board meetings. In a general sense, you know, we have a
3 little bit of a philosophical difference of opinion,
4 perhaps.

5 Our view of the Federal Clean Water Act and
6 Chapter 26 of the Texas Water Code is that we have the
7 imperative to try and clean up streams that could be
8 used, and in historic circumstances, perhaps have been
9 used for recreational use, such as swimming. Rather
10 than simply say that because those streams, for various
11 reasons, now are not being used for recreational
12 purposes like swimming, we don't need to accept as a
13 high a standard for them.

14 I'm sure there are many people in this state
15 who can attest to the fact that when they were kids they
16 were able to swim and recreate in many of our rural
17 streams around the state because they were enticing, if
18 you will, to kids. The water quality was fairly good.
19 And as a result, they were used for recreational
20 purposes.

21 But over the years, many of those streams
22 have become polluted through various sources, and it's
23 not just any one source. And so over a period of time,
24 many of these streams are no longer used for recreation
25 because people consider them too polluted.

1 So from our perspective, it's sort of a
2 Catch 22 when we often make a determination that while
3 certain streams are not being used for primary contact
4 recreation, and therefore we can set a different
5 category use for them and they can have a less stringent
6 bacteria pollution standard. I think this sort of dooms
7 many of our streams that could be greater resources for
8 us in a recreational sense to being degraded pretty much
9 forever.

10 I'd also like to take issue with the concept
11 that limited public access should be a factor in
12 determining whether or not streams are eligible for
13 primary contact recreation. You know, I'm a rural
14 landowner in Texas; the fourth generation owner of my
15 family's property.

16 And there is an intermittent creek on our
17 property that is not immediately available for public
18 access because it's not necessarily going to be
19 something that people can access without going through
20 our property. But I think my family should have the
21 right to have a clean stream in our area, that even
22 though the general public may not have immediate access
23 to it, my family members should have access to it.

24 And so I have a problem with the concept of
25 using public access or limitations on public access as a

1 factor in determining whether or not a stream should be
2 categorized as primary contact recreation or a potential
3 primary contact recreation. So to wrap it up today,
4 we'll get into more detail in our written comments.

5 We do oppose the proposed primary contact
6 recreation 2 category. And we also oppose the
7 downgrading of certain existing streams that are
8 considered to be primary contact recreation to a
9 secondary contract recreation level or non-contact
10 recreation. I believe there are about 11 of those,
11 including some of the Leon River watershed and some in
12 the bayous of the Houston area.

13 I do want to conclude, though, by again
14 reemphasizing that we fully understand that you as water
15 quality professionals at TCEQ have a large task in front
16 of you all the time, in that we need to have more
17 resources for you to be able to do the job that's
18 necessary. And my comments and oppositions to some
19 proposals in no way indicates that Sierra Club does not
20 appreciate the work that you're doing and trying to do,
21 with very limited resources, to meet our water quality
22 needs.

23 Thank you, very much.

24 MICHAEL PARRISH: Thank you. Is there
25 anyone else who would like to present testimony at this

1 time?

2 Once again, the Commission will continue to
3 accept written comments on this proposed amendment to 30
4 TAC Chapter 307, Texas Surface Water Quality Standards,
5 TCEQ Rule Project Number, 2012-001-307-OW, until
6 Thursday, October 24, 2013.

7 If there are no further comments, this
8 hearing is now closed. We do appreciate your comments
9 and we thank you for coming.

10 (Hearing Concluded, 10:20 a.m.)

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C E R T I F I C A T E

In Re: Public Hearing for Proposed Revision to
30 TAC Chapter 307, Texas Surface Water
Quality Standards
Rule Project Number 2012-001-307-OW

Location: Austin, Texas

Date: October 17, 2013

I, Joy Quiroz-Hernandez, Certified Shorthand
Reporter Number 8391 for The State of Texas, do hereby
certify that I did, in computerized stenotype shorthand,
transcribe proceedings in the above-entitled matter to
the best of my ability and hearing, proceedings before
the Texas Commission on Environmental Quality and that
the above and foregoing pages contain a full and correct
computer-assisted transcription of my computerized
stenotype shorthand notes.



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