

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** February 18, 2022

**Thru:** Laurie Gharis, Chief Clerk  
Toby Baker, Executive Director

**From:** Earl Lott, Director *EL* 12/8/21  
Office of Water

**Docket No.:** 2021-0310-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 307, Texas Surface Water Quality Standards  
Triennial Revision of the Texas Surface Water Quality Standards  
Rule Project No. 2020-014-307-OW

### **Background and reason(s) for the rulemaking:**

Amendments are proposed to the Texas Surface Water Quality Standards (TSWQS), 30 Texas Administrative Code (TAC) §§307.2 - 307.4, 307.6, 307.7, and 307.10. The proposed revisions are a result of a review of the TSWQS as required on a triennial basis by federal Clean Water Act (CWA), §303(c). The TSWQS were last revised in February 2018, and portions of the 2018 TSWQS were approved by the United States Environmental Protection Agency (EPA) in November 2018, May 2019, January 2020, July 2020, and March 2021.

The revisions to the TSWQS are proposed 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 proposed 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 select 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);
- additions of site-specific recreational uses for select water bodies based on the results of recent recreational UAAs; and
- revisions to clarify the prohibition of discharges of visible pre-production plastic into surface water in the state.

Re: Docket No. 2021-0310-RUL

**Scope of the rulemaking:**

**A.) Summary of what the rulemaking would do:**

The proposed revisions to the TSWQS include numerous substantive changes and clarifications in all sections of the standards except for 30 TAC §§307.1, 307.5, 307.8, and 307.9. The proposed 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 of federal regulations and EPA guidance.

The proposed revisions in 30 TAC §§307.2 - 307.4, 307.6, and 307.7 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 revise uses or associated numerical criteria.

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

The CWA and associated EPA rules require states to review and, if appropriate, revise their water quality standards 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 are proposed under TWC, §26.023, which provides TCEQ with the authority to make rules setting TSWQS for all water in the state. These amendments are also proposed under 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 proposed amendments would satisfy the provision in CWA, §303(c) 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.

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

- Revisions to the temporary standards provisions in §307.2 are proposed to improve consistency with federal water quality standards regulations. The proposed revisions would increase flexibility when a temporary standard is adopted for permittees or water bodies, clarify the applicability of temporary standards, and specify requirements for adoption and reevaluation.
- In §307.4, language is added to clarify the prohibition of discharges of visible pre-production plastic into surface water in the state.
- In Table 1 of §307.6, revisions to numerical toxic criteria to protect aquatic life are recommended to incorporate updated EPA criteria documents that utilize new EPA data on toxic effects.

Re: Docket No. 2021-0310-RUL

- In Table 2 of §307.6, revisions to numerical 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, numerous additions and revisions are proposed to site-specific uses and numerical criteria. These changes are based on new data and evaluations for individual water bodies. An UAA is required by EPA to support changes that are less stringent than current water quality standards or presumed uses.
- Changes in Appendices A and C in §307.10 include the deletion of a footnote in Appendix A for Mid Cibolo Creek (1913) and reverting the segment descriptions in Appendix C for Lower Cibolo Creek (1902), Upper Cibolo Creek (1908), and Mid Cibolo Creek (1913) back to the most recent EPA-approved descriptions located in the 2014 TSWQS due to further data evaluation being necessary.
- A footnote was added to Appendix A for Upper North Bosque River (1255) to clarify that the portion of the segment from the confluence with Dry Branch upstream to the confluence with the North/South Forks North Bosque River in Erath County is intermittent with perennial pools based on a 1991 UAA. The UAA resulted in the creation of classified Segment 1255, which was adopted as part of the 1992 revisions to the TSWQS and approved by EPA in an action letter dated June 16, 1993.
- Numerous other minor revisions are proposed throughout Chapter 307 to improve clarity and provide additional specificity.

**Statutory authority:**

TWC, §5.103 and §26.023 and CWA, §303(c).

**Effect on the:**

**A.) Regulated community:**

The TSWQS directly affect permitted wastewater and stormwater 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 stormwater or industrial or domestic wastewater.

Revisions to site-specific standards and the clarification of the prohibition on the discharge of visible pre-production plastic in §307.4 may affect requirements in TCEQ-issued wastewater and stormwater 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.

Re: Docket No. 2021-0310-RUL

Small businesses that discharge wastewater and/or stormwater would also be required to comply with the proposed requirements.

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 proposal.

There will be a fiscal impact to some permitted facilities. Other facilities could benefit from this rulemaking because of cost savings. The proposed 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 to meet the proposed standards. These changes may range from developing new wastewater processes to building new wastewater treatment facilities.

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

Of the facilities expected to be impacted by the proposed language clarifying the prohibition of discharges of visible pre-production plastic, one facility has been identified as being owned by a local government.

**B.) Public:**

For each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes in the proposed rules would be 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 proposed revised criteria are protective of human health and provide a public benefit. The proposed revisions more accurately assess water quality in the state and revise requirements to protect human health and water quality. The proposed 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

Re: Docket No. 2021-0310-RUL

research, and statewide monitoring and sampling data. Promulgation and enforcement of these rules would 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.

**C.) Agency programs:**

Several of the proposed revisions to the site-specific criteria for individual water bodies in §307.10 are intended to address water bodies where recent data shows the current water quality standard is inappropriate. In these cases, the proposed water quality standards can help streamline the water quality management programs of 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. Proposed changes could also result in the removal of water bodies that may appear on the current Texas §303(d) list of impaired water bodies. One of the proposed revisions to Appendix G in §307.10 is anticipated to result in the removal of one impairment, which would eliminate the need for one TMDL study. As a result of the proposed change, the agency expects 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 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:**

One stakeholder meeting was held at TCEQ complex in Austin on March 9, 2020, and a second stakeholder meeting was held via webinar on June 29, 2020.

Other outreach efforts have included presentations at:

- The TCEQ Environmental Trade Fair and Conference,
- TCEQ Autumn Environmental Conference and Expo, and
- Numerous meetings of specific stakeholder groups.

Approximately 60 people attended the in-person meeting in March, and approximately 100 people attended the webinar in June. 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 TCEQ's Surface Water Quality Standards Advisory Work Group home page, with completed meeting minutes and follow-up information posted upon completion of each meeting.

Re: Docket No. 2021-0310-RUL

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

**Potential controversial concerns and legislative interest:**

Due to the anticipated fiscal implications of the visible pre-production plastic provision, there may be legislative interest or critical comments from affected entities.

**Would 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 would 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 proposal rulemaking schedule:**

**Anticipated proposal date:** March 9, 2022

**Anticipated *Texas Register* publication date:** March 25, 2022

**Anticipated public hearing date (if any):** May 2, 2022

**Anticipated public comment period:** March 13, 2022 - May 2, 2022

**Anticipated adoption date:** September 2022

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**Attachments:**

None.

Commissioners  
Page 7  
February 18, 2022

Re: Docket No. 2021-0310-RUL

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