



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

APR -9 2008

Mr. Dan Eiden, Deputy Director
Office of Permitting, Remediation & Registration (MU-132)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Dear Mr. Eiden:

The Environmental Protection Agency (EPA) has completed its review of several provisions 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 provisions as documented in the enclosure to this letter, pursuant to sections 303(c) of the Clean Water Act (CWA) and the implementing regulation at 40 CFR Part 131. This action includes new and revised provisions in §307.4, §307.7, and §307.9 of the TX WQS. EPA is taking no action on Table 2 - Total Hardness and pH Values Used for Determining Select In-stream Toxic Criteria found in §307.6 of the TX WQS. EPA considers Table 2 to be an implementation provision.

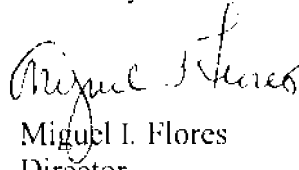
The EPA has previously stated that it takes no action on the revised definition of "surface water in the state" in the TX WQS, which includes an area extending 10.36 miles offshore into the Gulf of Mexico. Under the CWA, Texas does not have jurisdiction to regulate water standards more than three miles from the coast. Therefore, EPA's approval of the items in the enclosure recognizes the state's authority under the CWA to include waters extending offshore three miles in the Gulf of Mexico, but does not extend past that point. Beyond three miles, the EPA retains authority for CWA purposes. EPA's approval also does not include the application of the TX WQS for the portions of the Red River and Lake Texoma that are located within the state of Oklahoma. Finally, the EPA is not approving the TX WQS for those waters or portions of waters located in Indian Country.

Section 7(a)(2) of the Endangered Species Act requires that all federal agencies engage in consultation to ensure their actions are not likely to jeopardize the continued existence of any threatened or endangered species or result in adverse modification of designated critical habitat. EPA is approving the following provisions subject to completion of consultation between Region 6 and the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. §307.7(b)(3)(A)(ii); §307.7(b)(5); §307.9(c)(3)(A) and (C); and §307.9(f). Because EPA retains the full range of options available under CWA §303(c), including discretion to revise its approval decision based on new or additional information developed in those consultations, these conditional approvals are fully consistent with §7(d) of the Endangered Species Act.

The EPA has previously approved the human health provisions in the TX WQS; new and revised language in §307.2, §307.3 and 6307.5; the revised aquatic life criteria for saltwater in Table 1; 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 I - Site-specific Criteria. The EPA will take separate action on the remaining new and revised parts in §307.6, §307.8, and Appendix E 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

Enclosure

cc: Jim Davenport, TCEQ - Water Quality Assessment Section (MC-150)

§307.4 General Criteria

§307.4(b). Aesthetic parameters. Paragraph (3) was modified to clarify that activities under Clean Water Act §404 dredge and fill permits are not prohibited by the narrative criterion for settleable solids. Also, the term "surface water in the state" replaced "reservoirs, lakes and bays."

§307.4(d). Toxic substances. Language was added to the narrative toxics criterion to clarify the level of protection previously established in other provisions of the TX WQS.

§307.4(g). Salinity. Paragraph (1) was clarified by specifying that existing and designated uses, in addition to attainable uses, will be maintained. A reference to the numeric criteria for chlorides, sulfates and total dissolved solids in Appendix A was added in paragraph (2). The narrative provision in paragraph (3) was revised to state that salinity gradients in estuaries will be maintained to support attainable aquatic life uses.

§307.4(h). Aquatic life uses and dissolved oxygen. Paragraph (1) was clarified to state that dissolved oxygen levels will be sufficient to support existing, designated and attainable aquatic life uses. References to the aquatic life uses and dissolved oxygen criteria in Appendix A for classified segments and Appendix D for unclassified segments were adopted in paragraph (2). Language related to the presumed high aquatic life use for unclassified perennial waters and the dissolved oxygen criteria for intermittent streams was reformatted as paragraph (3), without changes to the level of protection. Paragraph (4) was revised to state that dissolved oxygen criteria apply to intermittent streams when water is present.

§307.4(i). Aquatic life uses and habitat. A narrative criterion for protection of aquatic habitat was adopted in the WQS. References to the CWA §404 permitting program and the Texas regulations for §401 certification of federal permits were included.

Additional editorial changes in §307.4, which don't alter the meaning or implementation of the WQS, were made.

§307.7. Site-specific Uses and Criteria

§307.7(b)(2)(A)(ii). Aquifer protection. Language was added to clarify that the aquifer protection use applies to portions of segments that are within the recharge, transition or contributing zones as defined in 30 TAC Chapter 213.

§307.7(b)(3)(A). Dissolved Oxygen. Clause (ii) was modified to allow the use of Table 5 for classified waters in Appendix A. Language was also added to include streams with bedslope values which are above or below those found in Table 5. Under clause (iv) of this subsection, language was added to allow the use of site-specific data to adjust critical low flow values in Table 5 based on other factors (e.g., temperature or hydraulic conditions). Use of site-specific low flow values in permits or for assessment under Clean Water Act §303(d) is subject to EPA approval.

§307.7(b)(5). Additional Uses. Uses for seagrass propagation and wetland water quality functions were adopted.

Additional editorial changes in §307.7, which don't alter the meaning or implementation of the WQS, were made.

§307.9. Determination of Standards Attainment

§307.9(a). General standards attainment sampling and assessment procedures. Additional sources of information on sampling and assessment procedures were added to this provision.

§307.9(b). Language on the establishment of sampling stations was modified, but the intent of this provision was not changed.

§307.9(c). Collection and preservation of water samples. References for monitoring, assessment and analytical procedures were updated under items (1) and (2). Under item (3)(A), the requirement for measuring dissolved oxygen in un-mixed non-tidal flowing streams was changed from a depth-integrated sample to a sample near the surface. Information on assessment in bays and tidal streams was combined under item (3)(C) and the requirement for monitoring the vertical complete depth in bays was removed. Language allowing the use of data collected at a depth of one foot for assessment of toxics criteria was added under item (4).

§307.9(d). Sampling analysis. A general reference to TCEQ's quality assurance program plan was revised to cite the *Texas Surface Water Quality Monitoring Procedures Manual* under item (1). A requirement for the use of EPA-approved methods for radioactivity analyses was added to item (2). Language specifying the use of the multiple tube fermentation or membrane filter techniques for bacteria analyses was removed (item (4) in 1997 TX WQS).

§307.9(e). Sampling periodicity and evaluation. Under item (1) - Chlorides, sulfates, total dissolved solids (TDS), the assessment procedures for determining attainment of minerals criteria were revised. Under items (4) - Toxic materials and (5) - Temperature and pH, references to the state's Guidance for Screening and Assessing Texas Surface and Finished Drinking Water were added. Under item (6)(B), the requirement for sampling during night for comparison to the minimum criteria for dissolved oxygen was revised to allow any measurement collected during diurnal sampling to be compared to the appropriate criterion for minimum concentrations.

§307.9(f). Biological integrity. A narrative provision for biological integrity was added. This item states that the aquatic community will be assessed by indices found in documents such as the *Texas Receiving Water Assessment Procedures Manual*.

§307.9(g). Additional parameters. A provision was added to reference the state's document titled *Guidance for Screening and Assessing Texas Surface and Finished Drinking Water* for assessment of narrative criteria in the TX WQS.

Additional editorial changes in §307.9, which don't alter the meaning or implementation of the WQS, were made.