



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

May 19, 2020

Ms. L'Oreal Stepney, P.E., Deputy Director
Office of Water (MC-158)
Texas Commission on Environmental Quality
Post Office Box 13087
Austin, TX 78711-3087

Dear Ms. Stepney:

The Environmental Protection Agency (EPA) has completed its review of several new and revised provisions in the 2014 Texas Surface Water Quality Standards (TSWQS). These standards were adopted by the Texas Commission on Environmental Quality (TCEQ), on February 12, 2014, and received by EPA for review under section 303(c) of the Clean Water Act (CWA) on April 29, 2014.

This is the fifth action concerning our review of the 2014 standards and includes action on new or revised provisions in §307.3. Definitions and Abbreviations, §307.4. General Criteria, §307.7. Site-Specific Uses and Criteria, and Appendix A Site-specific Uses and Criteria for Classified Segments of the TSWQS, as specified in the enclosure. I am pleased to inform you that the EPA is approving the provisions as documented in the enclosure to this letter, pursuant to section 303(c) of the Clean Water Act (CWA) and the implementing regulation at 40 CFR part 131.

Section 7(a)(2) of the Endangered Species Act states that "all Federal agencies shall utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered and threatened species" and "each Federal agency shall insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species." Because these revisions affect criteria adopted to protect human health, EPA's action is not subject to the requirements of section 7(a)(2) of the Endangered Species Act.

EPA has previously stated that it is taking no action on the definition of "Surface water in the state" in §307.3(a)(70) of the TSWQS, regarding the reference to §26.001 of the Texas Water Code for the area 10.36 miles offshore into the Gulf of Mexico. Under the CWA, Texas does not have jurisdiction to establish water quality standards more than three nautical miles from the coast. Therefore, EPA's approval action on the items in the enclosure recognizes the state's authority under the CWA to include waters extending offshore three nautical miles in the Gulf of Mexico but does not extend past that point. In addition, EPA's approval action also does not include the application of the TSWQS to the portions

of the Red River and Lake Texoma that are located within the state of Oklahoma. EPA is also taking no action on the TSWQS for those waters or portions of waters located in Indian Country.

The EPA will take subsequent action on the remaining new and revised provisions in the 2014 TSWQS. The EPA is also reviewing the remaining provisions in the 2010 and 2018 TSWQS submittals. If you have any questions or concerns, please contact me at (214) 665-7101 or Maria Martinez at (214) 665-2230.

Sincerely,

Charles W. Maguire
Director
Water Division

Enclosure

cc: Lori Hamilton, Director
TCEQ - Water Quality Planning Division (MC-203)

**EPA Review of Texas' 2014 Revisions to *Texas Surface Water Quality Standards*
under Section 303(c) of the Clean Water Act (May 2020)**

On April 29, 2014, the Texas Commission on Environmental Quality (TCEQ) submitted to the EPA for review under section 303(c) of the Clean Water Act (CWA) revisions to the *Texas Surface Water Quality Standards* (TSWQS) adopted by TCEQ on February 12, 2014. The EPA has taken previous actions on portions of the 2014 TSWQS, by letters dated September 23, 2014, November 2, 2018, January 6, 2020, and March 25, 2020.

§307.3. Definitions and Abbreviations

§307.3(a). Definitions.

The definition at §307.3(a)(50) use was modified to add handfishing as an activity protected by the primary contact recreation use, in accordance with a separate state regulation. A definition for “primary contact recreation 2” was adopted under §307.3(a)(51), which includes the same activities as identified under the “primary contact recreation 1” use. The primary contact recreation 2 use may be designated where recreation occurs less frequently due to physical characteristics of the water body or limited public access. Editorial revisions were made to the definition of “secondary contact recreation 1” use at §307.3(a)(57) to reflect the revisions for the primary contact recreation uses. EPA approves the revisions adopted under §307.3(a) of the TSWQS.

§307.4. General Criteria

§307.4(j). Aquatic Recreation. The following provision was adopted at §307.4(j)(2)(B) regarding applicability of the primary contact recreation 2 use adopted under §307.7(b)(1):

“Primary contact recreation 2. No water body is presumed to have a use of primary contact recreation 2. This use is applicable when designated for an individual water body as listed in Appendix A or G in §307.10 of this title. Primary contact recreation 2 applies to water bodies where water recreation activities that involve a significant risk of ingestion of water occur, but less frequently than for primary contact recreation 1 due to:

- (i) physical characteristics of the water body; or
- (ii) limited public access.”

Editorial revisions were made in §307.4(j)(2)(A) and (C), and in §307.4(j)(3)(A) and (B) to be consistent with the provision in §307.4(j)(2)(B). EPA approves the new and revised provisions adopted under §307.4(j) of the TSWQS.

The previously approved provision at §307.4(j)(3)(C) of the TSWQS specifies that a use-attainability analysis (UAA) based on one of the factors in the federal regulation at 40 CFR 131.10(g) is required to

designate a use that is less than a presumed use for a specific water body. TCEQ's procedures for conducting recreational UAAs require evaluation of numerous factors including the location of outfalls from wastewater treatment plants. Where sources of indicator bacteria are characterized predominantly as non-human or non-fecal, development of site-specific alternative criteria using quantitative microbial risk analysis may be appropriate.

§307.7. Site-specific Uses and Criteria

§307.7(b)(1). Recreation. The primary contact recreation 2 use was adopted in paragraph (b)(1), along with editorial revisions specifying that there are five categories of the recreation use. In clause (b)(1)(A)(ii), a geometric mean criterion for *Escherichia coli* (*E. coli*) of 206 per 100 ml was adopted to support the primary contact recreation 2 use. This criterion is consistent with information in the preamble of the proposed regulation for *Water Quality Standards for Coastal and Great Lakes Recreation Waters*, which was based on EPA's 1986 criteria document.^{1,2} The geometric mean criterion of 206 colonies per 100 ml, corresponds to an illness rate of 10 per 1,000 recreators, using the definition of highly credible gastrointestinal illness (HCGI) in the 1986 criteria document. Using the definition of NEEAR-GI illness (NGI) in EPA's 2012 criteria document, the geometric mean criterion of 206 colonies/100 ml for the primary contact recreation 2 use corresponds to a rate of approximately 45 illnesses in 1,000 recreators.³ (For reference, the geometric mean criterion of 126 colonies per 100 ml for the previously approved PCR1 use corresponds to a rate of 8 illnesses per 1,000 recreators using the HCGI definition, and an illness rate of 36 per 1,000 recreators using the NGI definition.) Editorial revisions were made in clauses (b)(1)(A)(i) and (vi) to be consistent with the provision at §307.7(b)(1)(A)(ii). EPA approves the revised standards adopted under §307.7(b)(1) of the TSWQS.

Appendix A - Site-specific Uses and Criteria for Classified Segments

EPA approves the editorial revisions identifying the primary contact recreation 1 use (PCR1) as the designated use for individual segments listed in Appendix A of the TSWQS.

¹ U.S. EPA 2004. *Water Quality Standards for Coastal and Great Lakes Recreation Waters*. 69 FR 41719-41743. July 9, 2004.

² U.S. EPA 1986. *EPA's Ambient Water Quality Criteria for Bacteria – 1986*. U.S. Environmental Protection Agency: Washington, DC. EPA 440/5-84-002.

³ U.S. EPA. 2012. *Recreational Water Quality Criteria*. U.S. Environmental Protection Agency - Office of Water. Washington, DC. EPA 820-F-12-058.