



March 16, 2010

Mr. Michael Parrish (MC-205)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Rule Project Number 2007-002-307-OW

Dear Mr. Parrish:

The Texas Association of Clean Water Agencies (TACWA) appreciates the extensive work that the Texas Commission on Environmental Quality (TCEQ) staff has performed over the years to develop the proposed revisions to 30 Texas Administrative Code Chapter 307. They have performed extensive technical analyses and conducted numerous work group sessions to obtain comments and recommendations from all stakeholders.

TACWA, the Texas Water Conservation Association, and the Water Environment Association of Texas have formed a coalition (the Coalition) for the purpose of presenting unified comments on proposed standards and implementation procedures for nutrients, recreational uses, and whole effluent toxicity (WET). The purpose of this letter is to affirm that TACWA fully supports the Coalition comments in each of these areas. In addition, TACWA is offering comments on additional topics, as presented below.

CRITERIA FOR CHLORIDE, SULFATE, AND TOTAL DISSOLVED SOLIDS

Section 307.7 (b)(4)(A), "Chemical parameters" relates to the criteria for chloride, sulfate, and total dissolved solids (TDS). For these proposed rules, as in the past, the criteria have been developed based on historical data, with the objective of maintaining the existing quality. This method of determining criteria is different from the method employed for other parameters. The intent of the Clean Water Act is to set criteria at the levels needed to support designated uses. From a practical standpoint, setting criteria for chloride, sulfate, and TDS at the concentrations that have occurred historically has been the simplest approach and has been a generally satisfactory approach.

However, as the State moves to implement projects to reuse significant volumes of highly treated effluent to supplement water supplies, this approach may become problematic.

It should be noted that the 2007 Texas State Water Plan projects that approximately 1.6 million acre-feet of supply will be provided by reuse by 2060. Of this amount, nearly 1.3 million acre-feet will come from new reuse strategies, which make up 14% of all new supplies for the State.

Reuse water has higher dissolved mineral levels than the source water from which it originates. Implementation of the needed reuse projects may be constrained if chloride, sulfate, and TDS criteria continue to be based on historical data rather than on the quality needed to support designated uses.

Recommendation: Insert the following language at the end of Section 307.7 (b)(4)(A):

“It is recognized that criteria developed with the objective of maintaining historical water quality may be different than criteria developed with the objective of maintaining the quality needed to support designated, attainable, and presumed uses. The TCEQ intends to address this topic in the future. To facilitate that process, the TCEQ encourages the regulated community to develop use-based, site-specific criteria where appropriate.”

FRACTIONAL DISSOLVED OXYGEN STANDARDS

In Appendix A, the average dissolved oxygen (DO) criteria for Segment 2485, Oso Bay, and Segment 2491, Laguna Madre, have been revised from 5.0 mg/L to 4.5 mg/L, based on site-specific data. Previously, segments that were found not to maintain a 5.0 mg/L DO standard were revised to 4.0 mg/L. It has not been the TCEQ practice to calculate site-specific criteria for DO to the tenth of a part per million. TCEQ has requested comments on this proposed new practice of setting fractional site-specific DO criteria. TACWA recommends that fractional criteria not be established for the following reasons:

- There are no scientific studies that suggest the health of in-stream aquatic life and DO concentrations can be reliably correlated to 0.1 mg/L. The purpose of the DO criterion is to protect aquatic life. The creation of an unnecessarily stringent criterion results in unnecessary costs for both point source and nonpoint source controls.

- Data from reference sites are frequently used as a basis for a recommended site-specific standard. That is true in this case. The data from Laguna Madre have been used as the basis for the proposed standard for Oso Bay. However, reference sites are always different in some respect from the site being evaluated. In this case, seagrass beds (which are a source of significant DO as a result of photosynthesis) are ubiquitous in Laguna Madre but cover much more limited areas of Oso Bay. Therefore, setting a standard that is extremely close to the maximum achievable condition for the reference site may result in an unattainable condition for the water body being evaluated.
- Field monitoring data are not consistently accurate to the nearest 0.1 mg/L. The TCEQ manual, *Surface Water Quality Monitoring Procedures, Volume 1: Physical and Chemical Monitoring Methods for Water, Sediment, and Tissue*, (RG-415, December 2003) accepts field data if the post-calibration check is within 0.5 mg/L of the correct value. Thus, the precision of the standard being established is greater than the precision of the equipment used to measure compliance with the standard.
- Data sets used to calculate achievable standards can only represent a limited range of conditions. There is very little provision for climatic variations in the future if a standard is set so close to the historical condition.

Recommendation: Establish site-specific DO criteria based on the DO increments currently established; i.e., 6.0 mg/L, 5.0 mg/L, 4.0 mg/L, 3.0 mg/L, and 2.0 mg/L

DEFINITION OF SUSTAINABLE FISHERIES

The proposed language regarding the definition of sustainable fisheries needs further clarification. As written, the definition could be applied to very small, tidally influenced ditches that discharge into a tidal water body. These small, tidally influenced ditches should not be considered as sustainable fisheries as they do not have the carrying capacity to support sufficient fish production and fishing activity so as to create a significant, long-term human health consumption exposure.

Recommendation: The definition of “sustainable fisheries” should be revised so that very small, tidally influenced ditches and conveyances are excluded.

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The membership of TACWA appreciates your consideration of the above comments. We are available to meet to discuss any of these comments, if you wish.

Sincerely,

TEXAS ASSOCIATION OF CLEAN WATER AGENCIES

A handwritten signature in black ink that reads "Richard S. Talley". The signature is written in a cursive style with a prominent initial "R".

Richard S. Talley
President

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