TEXAS DEPARTMENT OF AGRICULTURE

TODD STAPLES
COMMISSIONER

May 27, 2008

Mr. Buddy Garcia
Chairman
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Dear Chairman Garcia:

Thank you for your work to revise the rules related to Texas' water quality standards. Making these revisions is a complex task, and I appreciate the Texas Commission on Environmental Quality pursuing this initiative to protect our state's natural resources.

I support the concept of a tiered approach to water quality management. Within this system, I support efforts to further delineate the contact recreation classification, create a high flow exclusion and consider additional data sets when determining stream impairment. Please find enclosed detailed comments which enumerate the perspective of the agricultural community on the proposed rule changes.

Thank you for allowing TDA to participate in this revision process. Please do not hesitate to contact me if I can provide additional information.

Sincerely yours,

Todd Staples

Todd Staples

TS/RE/CD/mw

Enclosure

cc: Mr. Larry Soward
Mr. Bryan Shaw
Mr. Glenn Shankle

P.O. Box 12847 Austin, Texas 78711 (512) 463-7476 Fax: (888) 223-8861
For the Hearing Impaired: (800) 735-2989 (TTY)
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May 27, 2008

VIA EMAIL STIEMANN@TCEQ.STATE.TX.US

Ms. Sidne Tiemann
Texas Commission on Environmental Quality
Office of Permitting, Remediation, and Registration –Water Quality
MC-150
PO BOX 13087,
Austin, Texas 78711-3087

RE: Draft Revisions to the Texas Surface Water Quality Standards

Dear Ms. Tiemann:

Staff of the Texas Department of Agriculture (TDA) would like to thank the Texas Commission on Environmental Quality (TCEQ) staff for listening to stakeholders and initiating the 30 Texas Administrative Code (TAC) Chapter 307 Surface Water Quality Standards rule revision process. TDA recognizes water quality standards revisions are a complex and difficult regulatory challenge and we applaud and support TCEQ for taking this bold initiative. We believe it is prudent to provide more options for recreational uses than either full contact or non-contact recreation standards.

The 2008 draft 303(d) list indicates there are at least 400 assessment units impaired for excessive bacteria in Texas. Many of these are related to the current standards for recreation.

TDA supports the tiered approach TCEQ has initiated and offers the following suggestions. Currently the TCEQ risk level is 0.8 or 8 illnesses per 1000 swimmers. A 2006 letter from EPA Region 6 to the Bacteria Task Force recommends TCEQ adopt criteria reflective of risk levels up to and including 10 illnesses per 1,000 swimmers (1.0%) for freshwater (inland) and up to 1.9% for marine waters. The proposed revisions agree with this recommendation for marine waters but do not change the criteria for freshwaters.

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TDA supports EPA's recommendation of using 1.0% for freshwater and suggests an additional recreational use, Primary Contact Recreation (PCR 3) and proposes to expand the revisions as follows.

TDA recommends using 0.8 Primary Recreation 1 (PCR1) for waterbodies with high recreation uses such as Barton Creek (Segment 1430) and 1% for PCR's 2 and 3 and for Secondary Contact Recreation (SCR). An identical level of risk would be applied to Enterococcus (saltwater) for use with salty inland waters.

TDA further suggests that PCR1 should be reserved for waterbodies with the highest recreational uses. TDA also recommends TCEQ perform a use attainability assessment to determine which waterbodies should be placed into PCR1.

- Primary Contact Recreation 2 (PCR2) should be applied to those classified or unclassified segments with perennial flow or pools located in or adjacent to national/state parks. A listing of PCR2 for the Lampasas (Segment 1217) or Leon (Segment 1221) Rivers would be appropriate. PCR2 should have a 1.0% risk level applied, such that the geometric mean standard for E. coli would be 206 cfu/100mL. This level of risk would be applied to Enterococcus (saltwater) for use with salty inland waters
- Primary Contact Recreation (PCR 3) should be applied to classified or unclassified segments that have intermittent flow (without perennial pools) and nontidal wetlands. Buck Creek (Segment 0207A) is a good example of where PCR3 might be applied. PCR3 should have a risk level of 5 times the PCR2 risk level, such that the geometric mean standard for E. coli would be 1,030 cfu/100mL. An identical level of risk would be applied to Enterococcus (saltwater) for use with salty inland waters.
- Secondary Contact Recreation. TDA believes the definition of secondary recreation as currently proposed is too restrictive to be useful. "Unclassified intermittent streams without perennial pools" does not describe many waterbodies in Texas. The majority of intermittent streams in Texas have at least one perennial pool along its reach. TDA recommends perennial pools should not include anthropogenic hydro-modifications such as bridge crossings and small private dams impounding 200 acre feet or less. Secondary Contact Recreation should be applied to those classified or unclassified segments with less than 50% coverage by perennial flow or pools not located in or adjacent to national/state parks. Secondary CR could apply to Elm (Segment 1803A), Sandies (Segment 1803B) or Peach (Segment 1803C) Creeks. Secondary CR should have a risk level of 2 times the PCR2 risk level, such that the geometric mean standard for E. coli would be 412 cfu/100mL. An identical level of risk would be applied to Enterococcus for salty inland waters.

- Noncontact Recreation (NCR) should be reserved for site-specific designations and have a risk level of 10 times the PCR2 risk level, such that the geometric mean standard for E. coli would be 2,060 cfu/100mL. An identical level of risk would be applied to Enterococcus (saltwater) for use with salty inland waters.

TDA strongly supports TCEQ's proposed revision limiting the use of fecal Coliform as a surrogate indicator in effluent limits for wastewater discharges for a maximum of one year after the adoption of this title. TDA also concurs with TCEQ's recommendation to use the geometric mean instead of the single sample maximum for determining standards attainment. The single sample method could still be used to for swimming advisories when appropriate.

TDA supports TCEQ's use of a low flow exclusion for perennial streams below 0.1 cfs for intermittent streams, but suggests using 50% coverage by perennial pools along individual sampling reaches as an alternative to the 20% coverage TCEQ has proposed.

TDA highly recommends a high flow exclusion be considered by TCEQ as part of the current revisions. Contact recreation will be minimal during most high flow conditions. *At some point in the flow frequency, control of pollutant sources becomes unfeasible. Pollutant loadings at these high flow events typically exceed design specifications for control actions. For this reason, it may be reasonable to exclude data and loadings that occur at flooding conditions* (Page 13 of Bacteria Task Force 2007 Report).

TDA recommends TCEQ strongly consider a higher minimum number of data sets in the revised water quality standards for bacteria as they have done for nutrients. TCEQ's current rules allow as little as 10 samples over 5-7 years to list a stream as impaired. TCEQ should require a minimum of 60 –75 samples over 5-7 years. It is not sound science to list a waterbody as impaired without generating sufficient data to confirm the impairment.

Thank you for allowing TDA to participate in this complex and difficult revision process. We look forward to continuing working on these and other shared concerns and issues in the future.

Sincerely,

Richard Eyster, P.G.
Department Hydrologist
Pesticides Division
Texas Department of Agriculture