UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
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DALLAS TX 75202-2733

JUL - 2 2013

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

Dear Ms. Stepney:

The Environmental Protection Agency (EPA or the Agency) has completed its review of several new and revised provisions in the *Texas Surface Water Quality Standards* (Texas WQS). These standards were adopted by the Texas Commission on Environmental Quality (TCEQ), on June 30, 2010, and received by EPA for approval on August 9, 2010. This is the third letter concerning our review of the standards, following letters dated June 29, 2011, and August 24, 2011.

This action includes new and revised provisions in §307.4, §307.6, §307.7, §307.8, §307.9 and Appendices A, C, D and F of the Texas WQS, as specified in the enclosures to this letter.[1] Enclosure I includes a brief summary of EPA's actions on the new and revised provisions in these sections. Enclosure II -*Technical Support Document: EPA Review of Reservoir-Specific Chlorophyll a Criteria for 75 Texas Reservoirs* and its appendix includes EPA's detailed review of each reservoir-specific chlorophyll *a* criterion in Appendix F of the Texas WQS.

I am pleased to inform you that the EPA is approving the provisions as documented in Parts I and II of Enclosure I, pursuant to §303(c) of the Clean Water Act (CWA) and the implementing regulation at 40 CFR Part 131. These provisions include:

- the narrative criterion for pH at §307.4(m) of the Texas WQS;
- the provision at §307.8(a)(2) for calculation of alternative critical low flow values in springfed systems;
- aquatic life uses, site-specific dissolved oxygen criteria and flow provisions for Cypress Creek basin streams;
- new or revised pH criteria for eight classified water bodies; and,
- numeric chlorophyll *a* criteria for 39 reservoirs in Appendix F (also see discussion below and Part III of Enclosure I).

As noted in Part II of Enclosure I, EPA is approving specific revisions in §307.8, §307.9, Appendix A and Appendix F, subject to the outcome of consultation with the U.S. Fish and Wildlife Service under §7(a)(2) of the Endangered Species Act.

[1] EPA will take separate action on the remaining new and revised provisions in Appendix A of the 2010 Texas WQS (i.e., those not already addressed in this or previous action letters).

As discussed in Part III of Enclosure I, EPA is disapproving numeric chlorophyll *a* criteria for 36 reservoirs in Appendix F. Under 40 CFR §131.21(e), new and revised standards are not effective for CWA purposes until approved by EPA. The State can resolve this disapproval by developing and adopting numeric chlorophyll *a* criteria that are protective of the designated uses of these reservoirs. EPA staff are available to work with TCEQ staff in this effort. We request that TCEQ incorporate its plans and timeline for revising the disapproved chlorophyll *a* criteria within the next six months.

The Agency has determined that several revised provisions in §307.8 and §307.9 of the 2010 Texas WQS, and specific new language in Appendix F, are implementation or assessment methods, rather than new or revised water quality standards, and, therefore, are not subject to EPA review and approval or disapproval under CWA §303(c). These provisions are identified in Part IV of Enclosure I.

EPA has previously stated that it is taking no action on the definition of "Surface water in the state" in §307.3(a)(66), regarding the reference to §26.001 of the Texas Water Code for the area 10.36 miles off-shore 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 (i.e., beyond the "territorial seas" as defined in CWA §502(8)). Therefore, EPA's approval action on the items in Parts I and II of 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 Texas WQS 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 Texas WQS for those waters or portions of waters located in Indian Country.

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. The development of numeric chlorophyll *a* criteria, and the subsequent implementation of the approved criteria and screening processes for nutrients in the *Procedures to Implement the Texas Surface Water Quality Standards*, are important steps in reducing nutrient loadings to Texas' waters. We appreciate the efforts of you and your staff, throughout the development process and review by stakeholders, to complete this task. In addition to TCEQ's chlorophyll *a* criteria that EPA is approving in this action, EPA anticipates that TCEQ will also develop and adopt numeric nitrogen and phosphorus criteria for these same reservoirs. EPA considers adoption of these criteria to be consistent with its recommendations that states adopt numeric nitrogen and phosphorus criteria for different waterbody types. Furthermore, adoption of numeric nitrogen and phosphorus criteria align with TCEQ's nutrient criteria development plan from 2006 that was mutually agreed with EPA Region 6, as well as its most recent draft nutrient criteria development plan dated October 2012. Adoption of these criteria would also represent an effective extension of TCEQ's longstanding practice of screening its water quality monitoring data for nitrogen and phosphorus as parameters of concern.

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 or Melinda McCoy at (214) 665-8055.

Sincerely,

William K. Honker, P.E.
Director
Water Quality Protection Division

Enclosures

cc: Kelly Holligan, Director, TCEQ - Water Quality Planning Division (MC-203)

EPA Review of 2010 *Texas Surface Water Quality Standards* (Texas WQS)

EPA's action addresses the revisions to water quality standards (WQS) adopted by the Texas Commission on Environmental Quality (TCEQ) in June 2010 and submitted to EPA in August 2010. This enclosure provides a summary of the revisions and the action taken by EPA. The discussion below covers the three types of actions for specific provisions: Part I. Revisions that are approved for purposes of Clean Water Act (CWA) §303(c), as found on pages 1-5 of this enclosure; Part II. Revisions that are approved for purposes of CWA §303(c), subject to completion of consultation under the Endangered Species Act (ESA), as found on pages 5-6; Part III. Revisions that are disapproved for CWA purposes, as found on pages 7; and, Part IV. Revisions that are not new or revised WQS under the CWA, as found on pages 8-9.

I. REVISIONS THAT EPA IS APPROVING

EPA has concluded that approval of certain revisions either will have no effect on listed or proposed endangered or threatened species, or are otherwise not subject to ESA consultation. For the revisions discussed in Part I of this enclosure, ESA consultation is not required. EPA has previously completed consultation under the ESA or has made a finding of no effect on federally-listed species and critical habitat.

EPA also determined that several provisions in §307.4, §307.8 and §307.9 include changes that are non-substantive in nature and thus do not substantively modify Texas WQS. The phrase "low flow criteria" was revised to "critical low-flow" in §307.8(a)(1), (a)(3), (a)(5) and (a)(6), which includes the seven-day, two-year low-flows (7Q2) and the low flow provision for spring-fed systems at §307.8(a)(2), as described in Part II of this enclosure. The new phrase does not include the term "harmonic mean flow," which was inserted in several provisions, as appropriate. Additional non-substantive or editorial changes were made in the above provisions and in the following provisions: §307.4(e). Nutrients; §307.4(f). Temperature; §307.6(a) – third sentence; §307.8(a); §307.8(a)(1)(E); §307.8(a)(7); §307.8(a)(8); §307.8(b); §307.8(b)(1)(E) and (F); §307.8(b)(2); §307.8(b)(2)(A); §307.8(b)(4)-(9); §307.9(e)(1) – first sentence; §307.9(e)(4) – first, second and third sentences; and §307.9(g). In addition, the provision previously found at §307.9(c)(3) was deleted.

EPA considers such non-substantive edits to existing WQS to constitute new or revised WQS that EPA has the authority and duty to approve or disapprove under CWA §303(c)(3). While such revisions do not substantively change the meaning or intent of the existing WQS, EPA believes that it is reasonable to treat such non-substantive changes in this manner to ensure public transparency on what provisions are effective for purposes of the CWA. EPA notes that the scope of its action in reviewing and approving or disapproving such non-substantive changes would extend only as far as the actual non-substantive changes themselves. In other words, EPA's action on non-substantive changes to previously approved WQS would not constitute an action on the underlying previously approved WQS. Any challenge to EPA's prior approval of the underlying WQS would be subject to any applicable statute of limitations and prior judicial decisions. EPA approves the listed non-substantive changes in the 2010 Texas WQS, identified in the above paragraph, pursuant to §303(c) of the Act.

§307.4 General Criteria

§307.4(m). pH. A narrative criteria statement for pH was adopted and is approved.

§307.6. Toxic Materials

§307.6(a) Application. Language was added to subsection (a) regarding limited situations in the assessment program where exceedences of aquatic life criteria for toxic materials occur due to natural phenomena. EPA approves this provision but will review the state's methods for making such determinations, and each application where this procedure is used under CWA §303(d). In addition, an opportunity for public review of each use of this provision should be provided through existing mechanisms.

§307.7. Site-specific Uses and Criteria

§307.7(a). References to Appendix F and Appendix G were added to the existing provision, along with editorial changes. As noted above, EPA approves these revisions, but will review the methodology and each application of this procedure under CWA §303(d). In addition, an opportunity for public review of each use of this provision should be provided through existing mechanisms.

§307.7(b)(3)(A) Dissolved oxygen. Under items (ii) – (iii), language was revised in both provisions to clarify the intended use of Table 4, which is to establish alternative critical low flow values based on bedslope of a water body and the dissolved oxygen criteria associated with the presumed or designated aquatic life use. A provision which allows the use of alternative stream flows for wastewater modeling in selected streams of the Cypress Creek basin was also added to clause (ii). These revisions are approved, in addition to the non-substantive and editorial changes made in both provisions.

§307.7(b)(4)(E). Nutrient criteria. Item E includes a statement regarding the intent of narrative and numeric nutrient criteria to protect multiple uses of surface waters, along with a reference to the numeric nutrient criteria in
Appendix F. This language complements the provision at §307.4(e) and is approved.

§307.8. Application of Standards

§307.8(a)(1)(A). The exemption for application of recreational criteria below seven-day two year (7Q2) stream flows in classified segments was removed in the 2010 Texas WQS and is approved. Non-substantive changes were also made in this paragraph and are also approved.

§307.8(a)(1)(F). The removal of the paragraph that previously included the exemption of recreational criteria below the 7Q2 stream flow in unclassified streams is approved.

§307.8(a)(4). A new provision was adopted in the 2010 Texas WQS that specifies criteria based on long-term means, including human health criteria in Table 2 and minerals criteria in Appendix A, are applicable at all stream flows, except as specified in §307.9(e)(8). Language from §307.8(a)(8) of the 2000 Texas WQS regarding application of the harmonic mean flow in determining wastewater permit limits was moved to §307.8(a)(4) of the 2010 Texas WQS. The standards were also revised to implement minerals criteria for permitting purposes though the harmonic mean flow. These revisions are approved.

§307.8(b)(1)(A). A reference to the numeric nutrient criteria in Appendix F was added to the provision identifying criteria that do not apply within a mixing zone. A reference to Appendix G – Site-specific Recreational Uses and Criteria for Unclassified Water Bodies was also added, but does not supersede the requirements for effluent limitations in domestic wastewater under the state's regulation at 30 Texas Administrative Code Chapter 309. These revisions are approved.

§307.9. Determination of Standards Attainment

§307.9(c). Collection and preservation of water samples. Criteria for chlorophyll α were added to the third sentence in paragraph (2), which specifies the applicability of specific parameters in the mixed surface layer. Dissolved oxygen criteria were also added in the third sentence, which was previously included in paragraph (3) of this provision. These revisions are approved, in addition to the non-substantive changes made in the second sentence of paragraph (3). Please see Part IV of this enclosure regarding paragraph (1), the first two sentences of paragraph (2) and the third sentence of paragraph (3).

§307.9(e). Sampling periodicity and evaluation. Language regarding the applicability of the numeric nutrient criteria was added as §307.9(e)(7) and is approved. Please see Part IV of this enclosure regarding the first sentence of paragraph (7).

A new provision was added at §307.9(e)(8) to exempt the application of human health criteria in Table 2 and criteria to protect recreational uses at flows below 0.1 cfs in perennial streams. The provision also exempts the application in intermittent streams when less than 20% of the stream bed is covered by pools or extremely dry conditions exist, based on TCEQ's flow severity index. These revisions are approved. As described above for the provisions at §307.8(a)(1) and §307.8(a)(4) of the 2000 Texas WQS, the exemptions for assessment of recreational criteria below the 7Q2 flow and human health criteria below the harmonic mean flow, were removed in the 2010 Texas WQS. Please see Part II of this enclosure for approval of this provision for application to minerals criteria.

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

Based on the results of a use attainability analyses (UAAs), aquatic life uses and associated dissolved oxygen criteria were revised for segments as shown in the following table and are approved:

Segment	Water Body	Counties	Aquatic Life Use	Dissolved oxygen criteria * (average)
0406	Black Bayou	Cass	High	DO = 12.11 - 0.309 T + 1.05 logQ - 1.02 logWS where: DO = 24-hour average DO criterion T = temperature in degrees Celsius (C) Q = flow in cubic feet per second (ft^3/s) WS = watershed size in square kilometers (up to 1000 km^2)
0407	James Bayou	Marion, Cass	High	see above
0409	Little Cypress Creek	Harrison, Marion, Gregg, Upshur	(no revision)	see above
0410	Black Cypress Bayou	Marion, Cass	High	see above

* A 24-hour average DO criterion of 5 mg/L is the upper bounds if the indicated DO equation predicts DO values that are higher than 5.0 mg/L. When the 24-hour average DO is predicted to be lower than 1.5 mg/L, then the DO criterion is set as 1.5 mg/L. When the 24-hour average DO criterion is greater than 2.0 mg/L, the corresponding 24-hour minimum DO criterion should be 1.0 mg/L less than the calculated 24-hour average criterion. When the 24-hour average DO criterion is less than or equal to 2.0 mg/L, the corresponding 24-hour minimum DO criterion should be 0.5 mg/L less than the calculated 24-hour average criterion. When stream flow is below 0.1 cfs, then 0.1 cfs is the presumed flow that should be used in the equation.

EPA also approves footnote 2 under the Cypress Creek basin in Appendix A which describes segment 0406 – Black Bayou and segment 0407 – James' Bayou as intermittent streams with perennial pools. TCEQ's assessment of physical habitat, flow regime, and the biological community support the revisions to aquatic life uses.

The revised pH criteria, as shown in the following table are approved.

Segment	Water Body	pH criteria
0401	Caddo Lake	5.5 - 9.0
0402	Big Cypress Creek below Lake O' the Pines	5.5 - 8.0
0406	Black Bayou	5.5 - 8.0
0407	James' Bayou	5.5 - 8.0
0410	Black Cypress Creek	5.5 - 8.0
0608	Village Creek	5.5 - 8.0

A site-specific zinc acute criterion of 29 ug/l was adopted for Segment 2482- Nueces Bay under footnote 2 to protect the oyster waters use and is approved.

EPA will take separate action on the revised criteria for temperature and minerals in individual segments.

Appendix C – Segment Boundary Descriptions

Segment 0410 – Black Cypress Bayou (Creek) was added as a classified segment in the 2010 Texas WQS and includes approximately 40 miles of the water body from the confluence with Big Cypress Creek upstream to the confluence with Kelly Creek. This revision is approved.

Appendix D – Site-specific Uses and Criteria for Unclassified Water Bodies

The following water bodies were added to Appendix D. The aquatic life uses are based on UAAs or receiving water assessments and are approved.

Segment	Water Body	Counties	Aquatic Life Use	Dissolved oxygen criteria (average; minimum)	Segment Description
0401	Harrison Bayou	Harrison	High	See above criteria under Appendix A	Intermittent stream with perennial pools from the confluence with Caddo Lake within the Caddo Lake National Wildlife Refuge (also known as the Longhorn Ordinance Works facility) east of the City of Karnack upstream to FM 1998 east of the City of Marshall
0410 *	Black Cypress Creek/Bayou	Cass	High	See above criteria under Appendix A	Intermittent stream with perennial pools from the confluence with Kelly Creek upstream to FM 250 north of the City of Hughes Springs

* Segment number for Black Cypress Creek/Bayou in Appendix D is revised from 0402 to 0410, with the creation of the classified segment in Appendix A and Appendix C for the lower reach of this water body.

TCEQ's assessment of physical habitat, flow regime, and the biological community support the revisions to aquatic life uses.

Appendix F – Site-specific Nutrient Criteria for Selected Reservoirs

Narrative provisions regarding the application and implementation of numeric nutrient criteria were adopted in the introductory paragraphs of Appendix F and are approved. Please see Part IV of this enclosure regarding language in the first and second paragraphs that EPA does not consider to be new or revised WQS under the CWA.

EPA concludes that the chlorophyll *a* criteria for the water bodies listed in the following table are protective of each reservoir's designated uses consistent with 40 CFR §131.11(a)(1). Therefore, EPA is approving these chlorophyll *a* criteria. Please see Enclosure II and its appendix for more detail regarding EPA's review.

Segment	Site	Reservoir Name	Chlorophyll *a* criterion (µg/L)
0405	10312	Lake Cypress Springs	17.54
0603	10582	B. A. Steinhagen Lake	11.67
0610	14906	Sam Rayburn Reservoir	6.22

Segment	Site	Reservoir Name	Chlorophyll *a* criterion (µg/L)
0613	10638	Lake Tyler East	10.88
0613	10637	Lake Tyler	13.38
0614	10639	Lake Jacksonville	5.6
0813	10973	Houston County Lake	11.1
1426	12180	Oak Creek Reservoir	6.93

II. REVISIONS THAT EPA IS APPROVING, SUBJECT TO ESA CONSULTATION

EPA is approving the provisions in Part II of this enclosure subject to the outcome of consultation with the U.S. Fish and Wildlife Service under Section 7(a)(2) of the ESA. These items include low flow provisions in §307.8 and §307.9; footnotes for site-specific flow values in Appendix A; and nutrient criteria for selected reservoirs in Appendix F of the Texas WQS.

§307.8. Application of Standards

§307.8(a)(1)(A). The removal of the exemption for application of minerals criteria below seven-day two year (7Q2) stream flows in classified segments, except as specified in §307.9(e)(8), is approved.

§307.8(a)(2) A new provision §307.8(a)(2) was adopted to provide increased protection of aquatic species in streams and rivers dominated by springflow. The critical low flow for streams that contain aquatic threatened or endangered species is calculated as the 0.1 percentile low flow. In springflow-dominated rivers and streams, without federally-listed species, the critical low flow value is calculated as the 5th percentile value. These flows will be used in place of the 7Q2 low flow values and are approved.

§307.9. Determination of Standards Attainment

§307.9(e)(8). A new provision was added to exempt the application of criteria for total dissolved solids, chloride and sulfates in Appendix A at flows below 0.1 cubic feet per second (cfs) in perennial streams. The provision also exempts the application of the minerals criteria in intermittent streams when less than 20% of the stream bed is covered by pools or extremely dry conditions exist (based on TCEQ's flow severity index). These revisions are approved. As described above under §307.8(a)(1)(A), the exemption for minerals criteria below the 7Q2 flow was removed in the 2010 Texas WQS.

Appendix A – Site-specific Uses and Criteria for Classified Waters

The revised pH criteria, as shown in the following table are approved.

Segment	Water Body	pH criteria
0306	Upper South Sulphur River	6.5 [no revision] - 9.0
0307	Jim Chapman Lake	6.5 - 9.0

Footnotes were added to identify the segments for which the critical low flow is calculated in accordance with §307.8(a)(2). These segments include the following water bodies: 0218 – Little Wichita River, 1243 – Salado Creek, 1415 – South Llano River, 1424 – South Concho River, 1430 – Barton Creek, 1808 – Lower San Marcos River, 1811 – Comal River, 1813 – Upper Blanco River, 1814 – Upper San Marcos River, 1817 – North Fork Guadalupe River , 1905 – Medina River above Medina Lake, 2109 – Leona River, 2113 – Upper Frio River, 2309 – Devils River, and 2313 - San Felipe Creek. The site-specific critical low flow of 58 cfs for

segment 1814 – San Marcos River, adopted in the 1995 Texas WQS, was replaced by the reference to the flow provision at §307.8(b)(2). These revisions are approved.

Appendix F – Site-specific Nutrient Criteria for Selected Reservoirs

EPA concludes that the chlorophyll *a* criteria for the water bodies listed in the following table are protective of each reservoir's designated uses consistent with 40 CFR § 131.11(a)(1). Therefore, EPA is approving these chlorophyll *a* criteria. Please see Enclosure II and its appendix for more detail regarding EPA's review.

Segment	Site	Reservoir Name	Chlorophyll *a* criterion (µg/L) (calculated criterion, where applicable)
0208	10137	Lake Crook	7.38
0209	10138	Pat Mayse Lake	12.40
0213	10143	Lake Kickapoo	6.13
0217	10159	Lake Kemp	8.83
0223	10173	Greenbelt Lake	5.00 (4.59)
0510	10445	Lake Cherokee	8.25
0811	10970	Bridgeport Reservoir	5.32
0816	10980	Lake Waxahachie	19.77
0817	10981	Navarro Mills Lake	15.07
1207	11865	Possum Kingdom Lake	10.74
1216	11894	Stillhouse Hollow Lake	5.00 (2.07)
1220	11921	Belton Lake	6.38
1228	11974	Lake Pat Cleburne	19.04
1231	11979	Lake Graham	6.07
1233	12002	Hubbard Creek Reservoir	5.61
1234	12005	Lake Cisco	5.00 (4.64)
1235	12006	Lake Stamford	16.85
1240	12027	White River Lake	13.85
1249	12111	Lake Georgetown	5.00 (3.87)
1403	12294	Lake Austin	5.00 (3.58)
1404	12302	Lake Travis	5.00 (3.66)
1405	12319	Marble Falls Lake	10.48
1406	12324	Lake Lyndon B. Johnson	10.29
1408	12344	Lake Buchanan	9.82
1419	12398	Lake Coleman	6.07
1422	12418	Lake Nasworthy	16.91
1429	12476	Lady Bird Lake (Town Lake)	7.56
1433	12511	O.H. Ivie Reservoir	5.77
1805	12597	Canyon Lake	5.00 (4.11)
1904	12826	Medina Lake	5.00 (2.15)
2116	13019	Choke Canyon Reservoir	12.05

III. REVISIONS THAT EPA IS DISAPPROVING

Appendix F – Site-specific Nutrient Criteria for Selected Reservoirs

EPA concludes that the chlorophyll *a* criteria for the water bodies in the following table are not protective of each reservoir's designated uses, as required by 40 CFR §131.11(a)(1). Therefore, EPA is disapproving these chlorophyll *a* criteria. Please see Enclosure II and its appendix for more detail regarding EPA's review.

Segment	Site	Reservoir Name	Chlorophyll *a* criterion (µg/L)
0100	10005	Palo Duro Reservoir	21.73
0212	10142	Lake Arrowhead	11.21
0229	10192	Lake Tanglewood	43.71
0302	10213	Wright Patman Lake	21.49
0507	10434	Lake Tawakoni	37.18
0509	10444	Murval Lake	55.8
0512	10458	Lake Fork Reservoir	14.5
0605	16159	Lake Palestine	27.34
0803	10899	Lake Livingston	22.96
0807	10942	Lake Worth	34.18
0809	10944, 10945	Eagle Mountain Reservoir	25.37
0815	10979	Bardwell Reservoir	22.84
0818	10982, 16749	Cedar Creek Reservoir	30.4
0823	11027	Lewisville Lake	18.45
0826	11035, 16113, 17827	Grapevine Lake	11.9
0827	11038	White Rock Lake	33.65
0830	15151, 11046	Benbrook Lake	27.15
0836	15168	Richland-Chambers Reservoir	15.29
1012	11342	Lake Conroe	24.27
1203	11851	Whitney Lake	18.34
1205	11860	Lake Granbury	22.16
1208	11679	Millers Creek Reservoir	15.65
1212	11881	Somerville Lake	53.05
1222	11935	Proctor Lake	28.15
1225	11942	Waco Lake	23.16
1237	12021	Lake Sweetwater	13.28
1247	12095	Granger Lake	11.72
1252	12123	Lake Limestone	19.26
1254	12127	Aquilla Reservoir	14.1
1412	12167	Lake Colorado City	15.6
1416	12179	Brady Creek Reservoir	24.15
1423	12422	Twin Buttes Reservoir	14.44
1425	12429	O.C. Fisher Lake	39.13
2103	12967	Lake Corpus Christi	17.17
2312	13267	Red Bluff Reservoir	25.14
2454	12514	Cox Lake	13.56

IV. REVISIONS THAT ARE NOT WATER QUALITY STANDARDS UNDER THE CWA

Several new provisions were adopted in the 2010 WQS that EPA does not consider to be new or revised WQS. These include the fourth sentence of §307.9(e)(4), the first sentence of §307.9(e)(7) and specific narrative statements in Appendix F – Site-specific Nutrient Criteria for Selected Reservoirs (first paragraph – second sentence and footnote 1; second paragraph - third and fourth sentences). EPA is not taking action on these provisions because they are not (1) legally binding provisions adopted or established pursuant to State law that (2) address designated uses, criteria, or antidegradation, and (3) describe the desired condition or level of protection of the water body.

In addition, as described below, revisions were made in existing subsections of §307.8 and §307.9, which the Agency does not consider to be new or revised WQS under the CWA.

§307.8. Application of Standards

§307.8(c) Minimum analytical levels, §307.8(d) Once-through-cooling waters and §307.8(e) Storm water discharges.

Section 307.8(c) was originally adopted in the 1988 Texas WQS, with modifications made in the 1991, 2000, and 2010 WQS. Sections 307.8(d) was originally adopted in the 1995 Texas WQS, with editorial changes made in the 2010 Texas WQS. Section 307.8(e) was adopted in the 2000 Texas WQS and modified in the 2010 Texas WQS. Although these provisions were arguably covered by, but not specifically mentioned in, EPA's earlier approval actions, EPA does not consider them to be WQS because they are not legally binding provisions adopted or established pursuant to State law that (2) address designated uses, criteria, or antidegradation, and (3) describe the desired condition or level of protection of the water body. Under CWA §303(c), EPA only has the duty and authority to approve or disapprove new or revised state WQS. Because the provisions at §307.8(c) and (d) were and are not new or revised WQS, EPA could not have approved them in our previous actions. Thus, EPA hereby clarifies that the Agency did not take CWA §303(c) action on §307.8(c) or (d) in its action letters dated June 29, 1988; September 24, 1991; March 11, 1998; and August 6, 2008. Also, the enclosure to EPA's 1998 action letter recognized the provision at §307.8(d) as a permitting implementation tool. Although EPA's August 2008 action letter specifically approved the provision at §307.8(e) as a water quality standard, EPA rescinds the previous approval action on§307.8(e), based on the above analysis.

§307.9. Determination of Standards Attainment

§307.9(c). Collection and preservation of water samples. Non-substantive changes were made in paragraph (1), in the first and second sentences of paragraph (2) and in the third sentence of paragraph (3). These revisions do not alter the intent or implementation of the Texas WQS.

Section 307.9(c)(1) was originally adopted in the 1973 Texas WQS, with modifications made in the 1976 Texas WQS, the 1984 Texas WQS, the 1998 Texas WQS, the 2000 Texas WQS and the 2010 Texas WQS. The first sentence of §307.8(c)(2) was adopted in the 1988 Texas WQS, with modifications made in the 1995 Texas WQS, 2000 Texas WQS and the 2010 Texas WQS. The second sentence of §307.9(c)(2) was adopted in the 1984 Texas WQS, with modifications made in the 1988 Texas WQS, the 2000 Texas WQS and the 2010 Texas WQS. The third sentence of §307.9(c)(3) was adopted in the 2000 Texas WQS and modified in the 2010 Texas WQS.

With respect to the provisions above, EPA specifically approved several of them as new or revised WQS on April 9, 2008, while the remaining provisions were arguably covered by EPA's previous approval actions dated October 25, 1973; February 9, 1976; February 28, 1985; June 29, 1988; March 11, 1998; and April 9, 2008. EPA does not consider any of these provisions to be WQS because they are not (1) legally binding provisions adopted or established pursuant to State law that (2) address designated uses, criteria, or

antidegradation, and (3) describe the desired condition or level of protection of the water body. Under CWA §303(c), EPA only has the duty and authority to approve or disapprove new or revised state WQS. With respect to the provisions above that EPA specifically approved as new or revised WQS on April 9, 2008, EPA hereby rescinds those previous approvals based on the above analysis. With respect to the remaining provisions that were arguably covered by EPA's previous approval actions, EPA hereby clarifies that the Agency did not take CWA §303(c) action on these provisions in its action letters dated October 25, 1973; February 9, 1976; February 28, 1985; June 29, 1988; March 11, 1998; and April 9, 2008.

Please see Part I of this enclosure for EPA's action on the third sentence of paragraph (2) and the second sentence of paragraph (3) under §307.9(c).

§307.9(e). Sampling periodicity and evaluation. Non-substantive changes were made in the second and third sentence of paragraph (1), paragraph (2), the fifth sentence of paragraph (4), paragraph (5) and paragraph (6). These revisions do not alter the intent or implementation of the Texas WQS.

The second and third sentences of §307.9(e)(1) were originally adopted in the 1984 Texas WQS, with modifications made to the second sentence in the 1988 Texas WQS and the third sentence in the 1995 Texas WQS. Editorial changes to both the second and third sentences of §307.9(e)(1) in the 2000 Texas WQS and the 2010 Texas WQS. Sections 307.9(e)(2) was originally adopted in the 1973 Texas WQS, with modifications made in the 1981, 1984, 2000 and 2010 Texas WQS. Under §307.9(e)(4), the fifth sentence was adopted in the 1991 Texas WQS and modified in the 2000 and 2010 Texas WQS. Paragraphs (5) and (6) were adopted in the 1988 Texas WQS, with modifications made in the 2000 and 2010 Texas WQS. An editorial change to §307.9(e)(5) was also made in the 1991 Texas WQS.

With respect to the provisions above, EPA specifically approved several of them as new or revised WQS on April 9, 2008, while the remaining provisions were arguably covered by EPA's previous approval actions dated October 25, 1973; March 5, 1981; February 28, 1985; June 29, 1988; September 24, 1991; March 11, 1998; and April 9, 2008. EPA does not consider any of these provisions to be WQS because they are not (1) legally binding provisions adopted or established pursuant to State law that (2) address designated uses, criteria, or antidegradation, and (3) describe the desired condition or level of protection of the water body. Under CWA §303(c), EPA only has the duty and authority to approve or disapprove new or revised state WQS. With respect to the provisions above that EPA specifically approved as new or revised WQS on April 9, 2008, EPA hereby rescinds those previous approvals based on the above analysis. With respect to the remaining provisions that were arguably covered by EPA's previous approval actions, EPA hereby clarifies that the Agency did not take CWA §303(c) action on these provisions in its action letters dated October 25, 1973; March 5, 1981; February 28, 1985; June 29, 1988; September 24, 1991; March 11, 1998; and April 9, 2008.

Please see Part I of this enclosure for EPA's action on the first sentence in paragraph (1) and the first, second and third sentences in paragraph (4).