



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

NOV 12 2008

Mr. Mark R. Vickery
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Dear Mr. Vickery:

We sincerely appreciate the Texas Commission on Environmental Quality's (TCEQ) comments provided in response to the notice published on July 17, 2008, in the Federal Register announcing the availability of the Environmental Protection Agency's (EPA) final action to list Corpus Christi Bay (Segment 2481) pursuant to Clean Water Act Section 303(d).

In your letter of August 18, 2008, you indicated that TCEQ strongly disagrees with the federal action to list Corpus Christi Bay on the 2008 Texas 303(d) list. You recommended that EPA allow the state to develop quality assurance methods for assessing this type of data and information, to review and document the quality of the available data, and to take public input on the listing and appropriateness of a Total Maximum Daily Load (TMDL). While we appreciate TCEQ's position, EPA maintains that this federal listing action should remain in place. When preparing 303(d) lists, states are required to assemble and evaluate all existing and readily available water quality-related data and information. This includes data and/or information about waters for which water quality problems have been reported by local, state, and federal agencies, members of the public, or academic institutions. See 40 CFR part 130.7(b)(5). It is EPA's position that the above requirement applies to Texas Beach Watch data collected by the Texas General Land Office, and that the data is of adequate quantity and quality for use in assessing contact recreation uses and criteria as described in the state's water quality standards. We do not believe that the present lack of an assessment method or data review and documentation procedures specific to Texas Beach Watch data constitutes an adequate technical rationale for excluding or deferring the use of these data in a section 303(d) assessment context. While EPA stands by its previous decision to list beach waters in Corpus Christi Bay, we would welcome a re-evaluation of the status of Corpus Christi Bay beaches in the 2010 list cycle at which point the state may consider alternate listing methods, additional data quality reviews, and stakeholder input in the assessment of Texas Beach Watch data.

As also noted in your letter, TCEQ asserts that it is not appropriate to use localized beach site monitoring results as a basis for listing the entire bay as impaired and also the bay should not be placed in category 5a of the integrated report. TCEQ recommends that, if EPA maintains its original position on the listing of Corpus Christi Bay for bacteria, the listing be geographically restricted to the Corpus Christi Bay urban beaches (Ropes Park Beach and Cole Park Beach) and re-categorized in category 5c of

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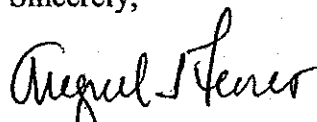
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the integrated report. In the state's integrated report framework, placement of a water body in category 5a indicates that a TMDL is appropriate and imminent, while placement of a water body in category 5c indicates that additional data or information is required to determine the best way to address the listing before a TMDL is developed. EPA agrees that localized data should not be used to list the entire bay. It was always EPA's intention to solicit guidance from TCEQ and the public as to the best manner in which to characterize the listing. Based on TCEQ's comments and recent negotiations between EPA Region 6 staff and TCEQ's Surface Water Quality Monitoring (SWQM) Team staff, EPA will change the listing description to geographically define the impairment as restricted to the full extent of Ropes Park Beach and Cole Park Beach of Corpus Christi Bay as presently delineated by the Texas Beach Watch Program (see Attachment). EPA understands that this change may be temporary in nature as TCEQ may subdivide the bay into alternative and appropriate assessment units in the near future. Likewise, EPA is amenable to further evaluations by the state of water quality data collected from localized beach areas within Corpus Christi Bay before a TMDL is developed. As such, EPA agrees to re-categorize the impairment in category 5c of the state's 2008 integrated report.

In separate correspondence provided via email on August 28, 2008, by TCEQ SWQM Team staff to EPA Region 6 staff, it was noted that the geometric means of enterococcus data collected at stations NUE031 (Cole Park #2) and NUE029 (Ropes Park #3) had been miscalculated in the original assessment. The corrected geometric means for these stations resulted in a finding that water quality standards are being attained at station NUE031 (corrected geometric mean: 32.8 colony forming units/100ml). Upon review of the data, we agree with this new finding and have removed this station from the list of stations exceeding geometric mean criteria. Changes to geometric mean densities of enterococci are reflected in the attached table (see Attachment 1). Please note that the amendment to the geographic description of impaired portions of Corpus Christi Bay and the integrated report category are reflected in this table as well.

Again, we appreciate TCEQ's thoughtful comments on EPA's action on the Texas 2008 303(d) list. TCEQ's SWQM Team leader and staff have provided valuable feedback on EPA's action and have maintained open lines of communication with EPA Region 6 staff throughout this process. If you have questions on any of the above information, feel free to give me a call at 214/665-7101 or have your staff contact Mike Schaub at 214/665-7314.

Sincerely,



Miguel I. Flores

Director

Water Quality Protection Division

Enclosure