

July 16, 2001

Via Facsimile 239-4430

Yvonna Pierce
TNRCC, MC-148
P.O. Box 13087
Austin, Texas 78711-3087

RE: Texas Aquaculture Association Comments on Staff Draft General Permit for Aquaculture

Dear Yvonna:

The following are the comments of the Texas Aquaculture Association ("TAA") regarding the Staff Draft General Permit for aquaculture.

TAA's primary concern with the draft dated June 1, 2001 is the limitations on coverage of the general permit are, in the TAA's opinion, overly stringent to the degree that most facilities will not qualify for coverage. In the June 1, 2001 draft, a facility is not eligible for coverage if it discharges more than an annual daily average of .36 million gallons per day ("mgd"). This flow limitation was derived based on a simulation of a discharge into a perennial stream with a .1 cubic feet per second ("cfs") headwater flow. Simulations by Texas Natural Resource Conservation Commission ("TNRCC") of discharges to other types of receiving waters (open bay, title rivers, and intermittent streams) did not require that the volume of discharge be so drastically restricted.

Since the June 28, 2001 meeting, Charles Marshall of TNRCC, has done additional runs with different headwater flow assumptions. It appears that a perennial stream with a headwater flow of 2.5 cfs, which is equal to 1.6 mgd, will meet the dissolved oxygen criteria if the aquaculture discharge is limited to 1 mgd with a quality of 30 BOD/2 ammonia/5 dissolved oxygen. It appears that it is only in perennial streams with a headwater flow of less than 2.5 cfs that one might have a problem. It appears that, in most cases, the applicant could provide objective data to show whether or not the proposed discharge would be into a stream that might, in fact, be a perennial stream with a headwater flow of less than 2.5 cfs. For example, the applicant could show that the facility would discharge into a title stream or open bay. In the case of inland discharges, the applicant could show that the receiving stream was intermittent based on the USGS Topographic Map, or could show that the discharge was to a watercourse having a

flow of at least 2.5 cfs. For example, the stream may have a flow gauge on it or it could be a stream segment for which TNRCC has established a regulatory low flow.

TAA believes that level 1 facilities should have somewhat more lenient discharge requirements since they are either limited by the number of days they can discharge or limited by the number of pounds of produce they can produce. Further, TNRCC might take into account whether a facility uses artificial aeration. If the facility does not use artificial aeration equipment, it should qualify for authorization under the general permit because the water discharged will be of a quality proven to be sufficient to support aquatic life. Once the water is discharged to a stream, it should continue to be of sufficient quality to protect aquatic species.

TAA continues to believe that using modeling coefficients based on effluent generated through treatment processes other than pond oxidation tends to skew the modeling results in a manner that is overly stringent when applied to aquaculture facilities. TAA is aware of the fact that developing a set of modeling coefficients that would more accurately reflect the impact of an aquaculture facility is a difficult, complicated task. TAA is in the process of trying to identify potential existing data that could be helpful in this exercise. This effort is ongoing. TAA will continue to coordinate with TNRCC staff and the Texas Parks and Wildlife Department (“TPWD”) staff in this effort.

Another problem with the coverage of TNRCC’s proposed general permit for aquaculture involves the shrimp research facility. Previously, the TNRCC, Texas A&M University, and the University of Texas worked on a modification of the criteria for being a shrimp research facility. The problem arose because most of the research facilities have a very small amount of discharge on almost every day. In the Staff Draft General Permit for Aquaculture, however, TNRCC excludes facilities that discharge thirty days or more, irrespective of how insignificant the amount of effluent may be. TAA believes that TNRCC should contact Texas A&M and the University of Texas to work on the criteria for inclusion of a research shrimp facility under the general permit.

At the June 28, 2001 Stakeholder’s meeting, several people objected to the exclusion of coverage for aquaculture facilities that use copper sulfate. TNRCC staff indicated that they would require only that label instructions be followed.

It appears that at least some of the categories listed in Part I A.2.a.iv should be exempt rather than requiring authorization by the general permit. Several of these categories are excluded from the definition of a point source under EPA rules. One example that was discussed at the Stakeholder meeting is holding tanks that are use only for temporary storage of fish. EPA rules appear to exempt from the definition of points source aquaculture facilities that “produce” 100,000 pounds or less of aquatic species. Requiring all of the types of facilities listed under iv. appears likely to result in an avalanche of NOIs.

Paragraph 1, in Part II, Section B (page 9) prohibits the construction of “waste management units” without receiving authorization under the general permit or individual

permit. This provision is not clear. The prohibition should only include wastewater treatment facilities that are associated with a discharge of wastewater.

TAA requests that the testing requirement in Paragraph 4, in Part II, Section B (page 10) be removed. If the treatment is as directed on the label, the concentration in the pond will be a level that EPA has determined is safe for waters of the US. Testing would just add unnecessary expense.

In Part II, Section C, (pages 12- 14) the groundwater protection provisions appear to be an overkill. There is really nothing in an aquaculture pond that is any more of a threat to groundwater than a regular stock tank. This is particularly true of the production ponds.

Part II, Section E, paragraph 4 (page 18) should be modified. It states:

All discharges shall be controlled such that flow rates minimize any increase in turbidity of receiving stream due to the erosion or suspension of sediments. Discharge shall not cause substantial and persistent changes from ambient conditions of turbidity or color.

TAA recommends rewording this restriction by modifying the second sentence to read:

“Discharges shall not cause substantial and persistent changes from ambient conditions of turbidity or color due to erosion or resuspension of sediments.”

Control of algae should not be the standard for this BMP as it is focused on erosion. The general criteria have the more general language that is included in the staff draft.

Part II, Section E, the first sentence of paragraph 5 (page 18) should be modified as well. TAA proposes:

Earthen levees and dikes, to the extent possible, should be vegetated, excluding trees or shrubs, or stabilized in a manner to control erosion.

This modification is requested to account for the fact that it is difficult to completely vegetate levees and canals on coastal facilities because of the salt content in the water.

TAA believes that the effluent set required for aquaculture facilities should be 30 BOD, 2 ammonia, and 5 dissolved oxygen. TAA believes these effluent limits can reasonably be shown to support the Texas Surface Water Quality Standards.

On page 18 of the Staff Draft, Section E(1) should be reworded to state:

Yvonna Pierce
July 16, 2001
Page 4

Dewatering of ponds should be accomplished by discharge of the uppermost portion of the water if necessary to avoid discharge of disturbed bottom sediments.

As worded, the best management practice may require facilities to redesign their outlet works, even though their particular type of operation does not result in the discharge of disturbed bottom sediments.

TAA appreciates the opportunity to participate in this process. We also appreciate the tenor of the dialogue between TAA, TNRCC, and TPWD. The agencies need to be commended on their professional and business-like approach to this matter.

Very truly yours,

Fred B. Werkenthin, Jr.

FBW/db
174-010712-genpermit-Pierce-ltr