

Interim Comment Summary Response & Concise Statement
2021 Triennial Review
LAC 33:IX.1109, 1113, and 1123
Log Number WQ111

Concise statement arguments:

FOR: [The reason supporting WHY the suggestion in the comment should be adopted by DEQ. Usually this is the commenter's perspective.]

AGAINST: [The reason WHY the department feels the suggestion should NOT be adopted.]

COMMENT 1: Louisiana must comply with United States Environmental Protection Agency (USEPA) criteria or justify why criteria are less stringent or missing.

FOR/AGAINST: The department agrees with the comment; no arguments are necessary.

RESPONSE 1: The Louisiana Department of Environmental Quality (LDEQ) published the Triennial Review Report of Findings document which includes a complete listing of all USEPA 304(a) criteria recommendations and the agency's actions for each substance, including calculation justifications. The document can be accessed at the following website: <https://www.deq.louisiana.gov/page/triennial-review>

COMMENT 2: EPA has put forward criteria for multiple pollutants. The following are pollutants that EPA recommends that LDEQ has not adopted: Acrolein, Silver, Suspended Solids, Turbidity, Sulfide-Hydrogen Sulfide, and Tributyltin (TBT). We request these criteria to be added to Louisiana's water quality standards. If they are not added, an adequate justification should be given.

FOR: The department should adopt water quality criteria for acrolein, silver, suspended solids, turbidity, sulfide-hydrogen sulfide, and TBT in WQ111.

AGAINST: The department has water quality criteria for turbidity; criteria for acrolein, silver, suspended solids, sulfide-hydrogen sulfide, and TBT were not warranted in WQ111.

RESPONSE 2: As part of the 2021 Triennial Review, the department reviewed available water quality data for EPA's 304(a) new and updated criteria recommendations published since May 30, 2000. Following EPA guidance, "Supplemental Information: New or Updated CWA Section 304(a) Criteria Recommendations Published since May 30, 2000" (EPA-B20-B-15-002), criteria recommendations prior to this date were not reviewed and deemed low priority. EPA criteria recommendation published before May 30, 2000, include: silver (1980), suspended solids (1986), and sulfide-hydrogen sulfide (1986). The department has water quality criteria for turbidity (see LAC 33:IX.1113.B.9). According to the Triennial Review Report of Findings, acrolein and TBT have no data to warrant action in WQ111 and will be reevaluated with the next triennial review. Additionally, a multi-year monitoring project to collect acrolein and TBT data is underway.

COMMENT 3: Further, EPA submitted a memo on April 14, 2016 which outlined criteria that needed to be addressed or updated. We request that LDEQ adopt these criteria.

FOR: The department should adopt criteria for toxic substances listed in EPA's April 14, 2016, memo in WQ111.

AGAINST: The department already has valid criteria for toxic substances listed in EPA's April 14, 2016, memo.

RESPONSE 3: Criteria values listed in EPA's April 14, 2016 memo were generated using default data inputs for average Americans that differ from average Louisianans. Examples of these variable data inputs include fish consumption rate and average adult body weight. Additionally, the department is reviewing EPA's bioaccumulation factor (BAF) methodology for calculating Human Health Criteria (HHC). The department develops criteria to reflect local conditions.

COMMENT 4: EPA has not approved the repeal of Louisiana's ammonia numeric criteria, the criteria must be placed back into Louisiana's Water Quality Criteria.

FOR: LDEQ should adopt numeric freshwater ammonia criteria in WQ111.

AGAINST: Adoption of numeric freshwater ammonia criteria is not warranted in WQ111.

RESPONSE 4: LDEQ's freshwater ammonia numeric criteria were rescinded on

June 20, 2022, as part of rulemaking WQ110. WQ110 was the first step in LDEQ's ongoing rulemakings to adopt a new or revised freshwater ammonia numeric criteria in compliance with applicable state rulemaking procedures. The department is actively working on the adoption of freshwater ammonia numeric criteria into regulation through a separate rulemaking action (tentatively assigned rule WQ112).

COMMENT 5: LDEQ should adopt EPA recommended recreational water quality criteria for two cyanotoxins (microcystins and cylindrospermopsin).

FOR: The department should adopt water quality criteria for microcystins and cylindrospermopsin in WQ111.

AGAINST: Adoption of microcystins and cylindrospermopsin is not warranted in WQ111.

RESPONSE 5: The evaluation of microcystins and cylindrospermopsin recreational criteria is ongoing; it will not be part of WQ111. Additionally, a multi-year pilot study involving the collection of cylindrospermopsin and microcystin data, along with complimentary water quality parameters and satellite imagery, is underway.

COMMENT 6: All 304(a) criteria recommendations must be adopted.

FOR: The department should adopt all 304(a) criteria recommendations in WQ111.

AGAINST: The department adopts 304(a) criteria recommendations based on needs justification, sufficient data, and consideration of site-specific conditions.

RESPONSE 6: Please see Response 1.

COMMENT 7: Adoption of older 304(a) criteria recommendation for methylmercury (measured in fish tissue) must be considered and reviewed. The argument that methylmercury is already measured in mercury samples is not sufficient.

FOR: The department should adopt methylmercury in WQ111.

AGAINST: Adoption of methylmercury is not warranted in WQ111.

RESPONSE 7: The department is evaluating adoption of methylmercury HHC, but it will either be part of the next triennial review or a separate rule; it will not be part of WQ111.

COMMENT 8: We hope LDEQ continues to reevaluate HHC using the bioaccumulation factor (BAF) methodology. Completion of this effort is critical to the protection of the drinking water supply for all Louisianans.

FOR/AGAINST: The department agrees with the comment; no arguments are necessary.

RESPONSE 8: The department appreciates the support.

COMMENT 9: For 31 subsegments in the Lake Pontchartrain Basin, LDEQ has not proposed changes in this triennial review to the currently-applicable water quality standards. On February 25, 2019, a federal court vacated LDEQ's site-specific dissolved oxygen (DO) standard for these 31 waterbodies and remanded the matter to EPA for further proceedings. LDEQ should list the applicable water quality standard for these 31 waters as 5.0 mg/L for freshwaters and 4.0 mg/L for estuarine waters.

FOR: Dissolved oxygen (DO) criteria of 5.0 mg/L for freshwater and 4.0 mg/L for estuarine waters in 31 subsegments located in the eastern Lower Mississippi River Alluvial Plain (eLMRAP) ecoregion, which were identified in an order rendered against the EPA, et al. in Federal District Court on February 25, 2019, should be included in WQ111.

AGAINST: DO criteria for 31 eLMRAP subsegments, which were identified in an order rendered against the EPA, et al. in Federal District Court on February 25, 2019, should not be included in WQ111.

RESPONSE 9: The department acknowledges the order rendered against the USEPA, et al. in Federal District Court on February 25, 2019, concerning DO criteria in 31 subsegments (hereafter, eLMRAP DO criteria). As mentioned, the court remanded the matter to EPA for further proceedings. The department is awaiting action from USEPA regarding eLMRAP DO criteria. Until EPA acts, the dissolved oxygen criteria in these 31 subsegments is 5.0 mg/L for freshwaters and 4.0 mg/L for estuarine waters. Upon action by the EPA pursuant to the Court's remand, if/when it is necessary to revise eLMRAP DO criteria, the department will pursue rulemaking

separately from WQ111.

COMMENT 10: *E. coli* are better indicators of poor water quality and fecal contamination versus fecal coliform. Revising designated uses of fresh surface water bacteria to *E. coli* would be more protective to public health. We also understand that this suggested revision may be considered outside of scope of the current Triennial Review proposed changes, but we hope that the LDEQ will consider this suggested edit as an additional way to strengthen the standard and better protect public health.

FOR: The department should adopt *E. coli* recreational criteria in WQ111.

AGAINST: Adoption of *E. coli* recreational criteria is not warranted in WQ111.

RESPONSE 10: The evaluation of *E. coli* recreational criteria is ongoing; it will not be part of WQ111. Additionally, the department is exploring a data collection effort for *E. coli*.

COMMENT 11: We suggest utilizing the bacteria indicator *E. coli* be applied Statewide for all fresh water.

FOR: The department should adopt *E. coli* recreational criteria in WQ111.

AGAINST: Adoption of *E. coli* recreational criteria is not warranted in WQ111.

RESPONSE 11: Please see Response 10.

COMMENT 12: In reference to §1109.K.4.e.(ii-iv): In each of these subsections, there is a phrase added that states: "One or more of the following criteria are applicable:" followed by the listing of 2-3 criteria statements that limit the degree of vegetative degradation allowed in the identified wetlands. This appears to be a change to the WQS.

FOR: The proposed verbiage at §1109.K.4.e.(ii-iv) changes the existing water quality standard requires sound scientific rationale to justify this change.

AGAINST: The proposed verbiage at §1109.K.4.e.(ii-iv) does not change the existing water quality standard.

RESPONSE 12: The Department agrees this verbiage was an unintentional change to the WQS and will issue an amended proposed rule to remove

“one or more of” from these citations.

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<u>COMMENT #</u>	<u>SUGGESTED BY</u>
01 – 09	Matt Rota & Jasmine Moll, Healthy Gulf
10	Jody Frymire, IDEXX Water
11	Karen Roy, Petroleum Laboratories, Inc.
12	Mike Schaub, US Environmental Protection Agency

Comments reflected in this document are repeated verbatim from the written submittal.

Total Commenters: 04
Total Comments: 12