April 8, 2021

By E-Mail to: kcaviness@mdeq.ms.gov

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RE: Healthy Gulf Comments on 2021 Triennial Review of Water Quality Standards from Healthy Gulf Water Program. Updated, second version of comment letter submitted in extended comment period.

Dear Kim:

Healthy Gulf is a non-profit advocacy group that focuses on the health of the Gulf of Mexico on behalf of its members and supporters in Mississippi, Louisiana, Florida, Alabama and Texas. It submits comments on issues affecting the waters of the Gulf and the streams that flow into it. Mississippi's water quality standards (WQS) affect the Gulf directly, so we submit the following comments on the recently published draft Triennial Review of State Water Quality Standards contained in Part 6, Chapter 2 of the Mississippi Commission on Environmental Quality Regulations for Water Quality Criteria for Intrastate, Interstate, and Coastal Waters.

Comments:

Mississippi Department of Environmental Quality (MDEQ) has not adequately involved the public in the sub-classification of waters within Fish and Wildlife Classification, the sub-classification of uses, codification of variances, or site specific criteria development, despite having drafted guidance documents for all these over the last three years and given presentations on these subjects to selected audiences.

Healthy Gulf sent a Freedom of Information Act (FOIA) request to the Mississippi Department of Environmental Quality (MDEQ) that returned 166 documents at the last minute. Many of these documents reveal that the agency's work, mostly since 2018 toward the completion of a Triennial Review of Water Quality Standards, has been shared primarily with industrial permit holders, private consulting engineers, business associations and EPA. This includes 2019 meetings with the Mississippi Manufacturers Association, Mississippi Rural Water Association, Yazoo Mississippi Delta Joint Water Management District, Mississippi Council of Engineering Companies, and EPA Region 4.

In the 9/24/2019 presentation to EPA Region 4, MDEQ made the statement on a slide that the agency held "*2012-13: Regional stakeholder input sessions for MDEQ to gather feedback regarding waterbody uses and expectations across the state*." If this is true, no evidence of meetings during this time period was found in the FOIA request documents.

The documents from the FOIA revealed stakeholder meetings titled "Exploring Water Use Classifications in Mississippi 2011 Series of Regional Input Sessions" held in October and November of 2011, **almost a**

decade ago. While participants at those meetings were surveyed about their knowledge of various waterbody types and the waterbody classifications in place at the time, they had no idea of what changes to water quality standards or uses MDEQ might propose in 2021 as part of a Triennial Review.

At the 2011 Delta and Upland meetings the meeting attendees, except one person from non-profit Delta Wildlife (1 of 39), all were agency staff, government employees or consultants: MDEQ, ACOE, County Governments, Waterway Management Districts, USDA, NRCS, consulting engineering companies, Mississippi State Water Resources Research Institute, Mississippi Levee Board, and Farm Bureau. At the 2011 Coastal meeting there were only three attendees from non-profit groups: two from Nature Conservancy and myself from Gulf Restoration Network, now Healthy Gulf (3 of 12). If there are more recent stakeholder meetings than these, nearly ten years ago, the agency has not shared them in the FOIA materials.

Gulf Restoration Network (Healthy Gulf) has been on MDEQ's Water Quality Standards email communication list since 2011 (we attended the Regional Coastal meeting then) and on its Nutrients Standards email communication list for nearly as long. In the last three years Healthy Gulf has not received a notice of a presentation anywhere in the state on the Triennial Review. Meanwhile, the Mississippi Manufacturers Association received presentations from MDEQ in 2018 and 2019. MDEQ picks and choose the stakeholders it wishes to inform.

MDEQ now feels justified in representing that the proposed changes to classifications, uses and variance, among others, have been "built on feedback from input sessions" nearly a decade back, at meetings that MDEQ conceived, hosted and lead. It would be much more accurate to say that MDEQ drove these changes for its own reasons, as agency staff stated in the 2019 EPA Region 4 PowerPoint presentation that: " Inappropriate classification of waterbodies has been a concern for years (at least my entire 20+ years at MDEQ)."

One of the documents from MDEQ files produced in the recent FOIA request was a 2006 letter from Ephraim King, of the U.S. Environmental Protection Agency's (EPA) Office of Science and Technology to all Water Division Directors in EPA regions 1-6. It concerned the effectiveness of the use attainability process – a process that MDEQ would have to pursue to move waterbodies into either of its new classifications, Modified Fish and Wildlife, or Drainage Waters. Mr. King wrote:

> *"**Improved public communication leads to improved public acceptance**. It is critical for EPA, states and tribes to engage the public in meaningful discussions regarding the importance and value of getting uses right in maintaining and restoring water quality. WQS that reflect the best available data and information should be used to direct the process of managing water quality. They are essential to informed decision making. Just as important, public understanding and acceptance of WQS is central to broader community support for addressing potentially difficulty pollution control management decisions.*
>
> *In the long run, water quality programs will be most successful if **the public understands the underlying goals, the process by which those goals are set, and is engaged and able to effectively contribute to that process…"***

MDEQ hasn't demonstrably connected its 2011 "Exploring Water Use Classifications" meetings, which began this process, with the current stage of the process – 2021's messy red-line/strikeout public notice version of the Triennial Review featuring major changes to water use classifications. Other than the agency's 2018 slide shows given to industry, and other technical audiences (organizations listed above), the FOIA record - evidence of the agency's public engagement work - doesn't show whether the broader community understands the underlying goals or the process by which those goals are set. Nothing in the FOIA record shows that the agency made any effort toward the public to engage a more general public audience.

Stating at the recent teleconference public meeting that COVID-19 prevented the agency from undertaking the usual "roadshow" meeting circuit to share the Triennial Review document is not a good excuse for the lack of vetting of the standards document with the public. Using Zoom or other teleconference calls for agency public meetings works well enough and doesn't require that stakeholders travel anywhere. The agency missed an opportunity for transparency and clarity in not advertising and holding a "Zoom roadshow" for the draft Standards Triennial Review document.

This state has many groups interested in water quality and thousands of users of the waters that MDEQ hopes to eventually place in new classifications - whether they represent a step down (Modified Fish and Wildlife, Drainage Waters) or a step up (Outstanding Mississippi Waters). If the agency hasn't presented information on the classification or use changes to sportsmen, crappie fishing clubs, bass fishing clubs, fly fishing clubs, master naturalist classes, soil and water conservation districts, canoe and kayak groups, Pearl Riverkeeper, other River groups, Land Trusts, Audubon groups, Sierra Club groups, the Moss Point or Strawberry Plains Audubon Centers, audiences of Science Café at USM/GCRL or other universities, the Naturalist lecture series at the Science Museum, or any number of other possible audiences… then none of these people will understand the underlying goals or the process contemplated by adding these three new classifications, the use changes that go with them, or the methods of using UAAs and variances to place waterbodies in them. It seems MDEQ has done only half of its job of public engagement. There is no evidence in the FOIA materials that any efforts have been made to communicate MDEQ's intentions and goals with this audience or to seek public acceptance from them.

The agency has an electronic newsletter, a public affairs and community engagement staff and it is clear that for three years the MDEQ has developed draft guidance documents on use reclassification, use attainability analysis and variance. Along with existing PowerPoint presentations created for industry and permittees, MDEQ has plenty of material to use for explaining to the broader community – the public - what it wants to accomplish with the Triennial Review changes and amendments. It seems that MDEQ has chosen which parts of the public it wants to educate, and which ones it doesn't.

Also contained in the FOIA materials we received from MDEQ's files was a document from the State of Alaska; its 2018-2020 Triennial Review Summary which contained this statement of the process:

"The Triennial Review process occurs in three phases. Phase I is a widespread call for information on potential issues and projects DEC has identified as being of interest to the state. In Phase II, DEC prioritizes the issues, conducts research, and drafts WQS regulations or guidance. ***Phase III is the public outreach and WQS regulation adoption process."***

Mississippi is far from Alaska in many, many senses, but it follows the same Triennial Review process dictated by the Clean Water Act. If Mississippi was as intentional as Alaska, it would have taken its guidance documents, which it's been developing since 2018, and used them in meaningful public outreach so people interested in the quality of the waters they know, use, and value could understand the basics about what the agency is doing as it moves to change its waterbody classification scheme, designated uses, UAA and variance implementations. They represent the most significant changes to Water Quality Standards in Mississippi in over 20 years, according to one MDEQ PowerPoint presentation. Compared to Alaska, Mississippi has the same obligation to engage a broader public, but FOIA materials show clearly that MDEQ limited its outreach and is moving quickly to the last step - the regulation adoption process.

MDEQ either needs to **show its work** in public outreach – because it looks very limited so far - or slow down and make an attempt to educate the other half of Mississippi stakeholders with an interest in water quality. This means reaching stakeholders other than the manufacturing, industrial, engineering, government and resource management audiences it has already presented to, before it transmits the 2021 Triennial Review changes to the MDEQ Commission for approval.

MDEQ has deviated from EPA's suggestions from Annie Godfrey in 2018 at the "kickoff" of the current Triennial Review process.

The proposal to change waterbody classifications, adding Modified Fish and Wildlife and Drainage Water to the existing list, provide the sub-classifications to Fish and Wildlife Waters that MDEQ has wanted. We know from documents found in the recent FOIA that MDEQ has long desired changes to these water quality standards. Correspondence documents show that EPA Region 4 as recently as 2018 supported limited, focused refinements to Mississippi's Aquatic Life designated uses in Mississippi. In a March 21, 2018 letter from Annie Godfrey, Chief of the Water Quality Standards Section at EPA Region 4 to Mike Freiman at MDEQ, she wrote:

"***Designated Uses***. *Currently, Mississippi's aquatic life are protected by the Fish and Wildlife Classification and the criteria that support the use. Rather than protecting the aquatic life with one large classification, we suggest that the State consider refining the classification. This could be accomplished by adding sub-classifications with criteria that would focus the protection needed.*

40 CFR Sec. 131.20 (a) requires that any waterbody segment with WQS that do not include the uses specified in section 10(a)(2) of the CWA shall be re-examined every three years to determine if any new information has become available. The Ephemeral Stream Classification does not include the Section 101(a) (2) uses. If any information has been collected or received concerning the water bodies included in the Ephemeral Classification, the State should review the available information to determine the level of attainment. If any water body can attain a Section 101 (a)(2) use, the water body must be designated for that use. The State should review the designated uses of these streams to determine if the Ephemeral Classification is appropriate."

The changes that Chief Godfrey specifically suggested were to add subcategories to Mississippi's Fish and Wildlife Classification, and to regularly review available information on the waters in the Ephemeral Waters Classification, which apparently has been a problem for regulators because it does not include

basic uses contemplated in Clean Water Act Section 101(a)(2), which states the bedrock principles of the Act:

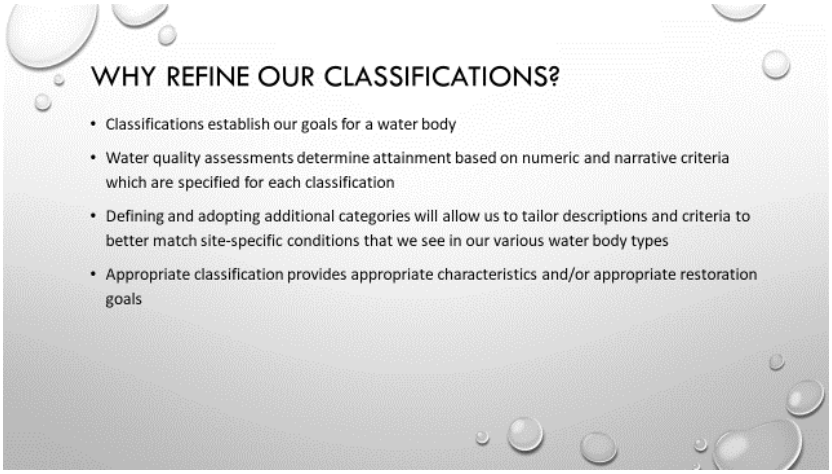
" (2) It is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, wildlife and provides for recreation in and on the water be achieved…"

Regarding Mississippi's proposed use classifications, much is made over what is appropriate. Annie Godfrey's letter asked whether the Ephemeral Waters classification was appropriate, and MDEQ has titled its PowerPoint slide presentation on the waterbody refinements/amendments as "Appropriate Expectations." It is not clear that MDEQ's idea of what is appropriate for solving its Water Quality Standards problems is the same as EPA's view.

Slide from MDEQ's 2019 Presentation to Mississippi Manufacturers Association

Annie Godfrey's 2018 letter was explicit about adding sub-classifications with criteria that would "focus the protections needed." It is not clear that MDEQ's actions will be limited to addressing the problem of the State's Ephemeral Waters deficiencies, or whether in beginning with them, it has stretched to create features of a water classification system that the State has long wanted, but does not really need.

A basic question (not explained well so far) is why MDEQ needs to create a framework for making new **permanent** waterbody classifications when it already has adequate tools to accomplish the water quality goals. It can use site specific criteria, or time limited variances to address individual stream aquatic life protection challenges caused by natural conditions or technological limitations. Changes to underlying classifications and designated uses are permanent and should only be used in very few specific cases as a last resort, and after a thorough Use Attainability Analysis.



Slide on preceding page from MDEQ 2018 Presentation to Mississippi Manufacturers Association.

There is a tension between the first and third bullet points in the slide above which was presented to the Mississippi Manufacturers Association audience in 2018. The first bullet should dictate what the agency does: set goals based on existing uses and what is attainable. The third bullet point suggests that the agency should adapt to current conditions. This conflicts with what is called for in Clean Water Act Section 101(a)(2)'s bedrock, seminal language, and the regulations established to implement the Act. Water quality standards are not intended to be adopted to "better match" site specific conditions. Instead the purpose of the water quality standards is to establish the attainable goals and use those goals in the establishment of treatment controls. As articulated in the federal regulations:

> A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria that protect the designated uses. States adopt water quality standards to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act (the Act). "Serve the purposes of the Act" (as defined in sections 101(a)(2) and 303(c) of the Act) means that water quality standards should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water and take into consideration their use and value of public water supplies, propagation of fish, shellfish, and wildlife, recreation in and on the water, and agricultural, industrial, and other purposes including navigation.
>
> Such standards serve the dual purposes of establishing the water quality goals for a specific water body and serve as the regulatory basis for the establishment of water-quality-based treatment controls and strategies beyond the technology-based levels of treatment required by sections 301(b) and 306 of the Act. 40C.F.R.131.2

The following comments are focused on the 2021 Triennial Review proposed changes to **Part 6: Chapter 2: Mississippi Commission on Environmental Quality Regulations for Water Quality Criteria for Intrastate, Interstate, and Coastal Waters.**

General Comments

Redline format challenging

The format of the document released for the Triennial Review was a red-line strikeout edited version of the state's WQS. In that format it was painful to read. MDEQ should have also released a clean version of the document for the sake of people's eyes. The best looking standards reviewed in the FOIA materials came from Kentucky. If MDEQ switched to that graphic design format, my comments wouldn't be as critical. As it was, reading the red line document was tough on the eyes. The release of a complete, clean document would have been helpful.

New classifications

Based on some of the documents in the FOIA, MDEQ is trying to define and adapt the water quality standards to "better match" current conditions in Mississippi's waters. By creating two new classifications that do not meet the Clean Water Act basic goals of Section 101(a)(2), the agency is adding avenues for limited coverage of uses in the state to the existing Ephemeral Waters Classification that U.S. EPA expressed concerns about (Annie Godfrey letter, 3/21/18). If approved, Mississippi will boast three such classifications to address problems that could instead be addressed through impaired waters listing, TMDLs, site-specific criteria, and time-limited variances.

Use Attainability Analysis

Putting waters into the new classifications and developing variances will be dependent on Use Attainability Analyses (UAA), yet no procedures or guidance have been shared or referenced. We have seen drafts of guidance in the FOIA request, however, without an established and publicly-vetted UAA procedure, how many proposed changes to these water quality standards will be implemented is unclear and impossible to comment on.

"Highest attainable" language

There needs to be a clarification among the different references to "highest attainable" use, "highest attainable" condition, "highest attainable" interim use and "highest attainable" interim condition. (Definitions and Rule 2.5.E.) While MDEQ has included the federal definition for highest attainable use in the definitions, the other terms are not necessarily synonymous nor interchangeable.

Natural conditions

When "natural conditions" are used as part of a criterion, it is necessary to clearly define who determines what conditions are natural, how that determination is made, and what alternative criteria are used in place of the standard criteria.

Waters of the State

In many cases, when Waters of the State are mentioned, it is stated that no EPA review or approval occurs if they are not also Waters of the U.S. When is that likely to be a concern? Has Mississippi

evaluated which waters were removed from WOTUS with the Navigable Waters Protection Rule? How is MDEQ addressing any point sources or 404 permits in those waters? These answers should be explained in this update of the water quality standards because many of the changes proposed call out this distinction. It is important for the public to understand which waters will not receive EPA review and approval as their classifications are changed or variances are proposed for them.

Stream Flow/Hydrologic Alteration

Despite appearing in Annie Godfrey's 2018 Triennial Review "kickoff letter" the 2021 changes to the WQS have not squarely addressed streamflow. The Godfrey EPA letter to MDEQ stated: "The *EPA is encouraging the states and tribes to consider the development of hydrologic WQS using the information outlined in this report" (EPA-USGS Technical Report: Protecting Aquatic Life from Effects of Hydrologic Alteration. 2016.)* Many of the prospective changes to the Fish and Wildlife stream classification, including the new or sub-classifications Modified Fish and Wildlife, and Drainage Waters, have intersections with low flow issues.

Many of the streams that will probably be submitted in the future for inclusion in these two classifications are also streams in which MDEQ and Mississippi Department of Wildlife, Fisheries and Parks (MDWFP) already see low flow problems seasonally, or because streams are disconnected from shallow groundwater sources. MDEQ should join the states that have protected their aquatic life with better streamflow low flow schemes than Mississippi's 7Q10. It is not considered to be a hydrologic flow standard. Currently, there are NPDES discharges that put effluent into streams with 7Q10 flow measurements of zero. This practice looks bad on paper, and must be terrible for the aquatic life actually affected by it.

What drives technological innovation?

In the Variance section, the variances refer to "if no additional feasible pollutant control technology can be identified," the default is to the installed technology with a pollutant minimization plan. How do we drive innovation, test new ideas, push beyond current technologies?

Protection of downstream waters

The multiple references to the protection of downstream waters are legally correct and appreciated.

SECTION SPECIFIC COMMENTS

Rule 2.1 General Conditions Applicable to All Waters of the State

A. Antidegradation

This section needs clarification of Tiers 1-3, clear Tier II procedures for alternatives analysis and socio-economic justification of degradation, reference to Mississippi's ONRW guidance (2011)[1], and clear explanation of how the new Outstanding Mississippi Waters Classification fits in to the overall

[1] https://www.mdeq.ms.gov/wp-content/uploads/2011/02/ONRW_Nomination_Guidance.pdf

Antidegradation Policy and Procedures. Without clear implementation procedures, EPA should not approve this water quality standards package.

> The State shall develop methods for implementing the antidegradation policy that are, at a minimum, consistent with the State's policy and with paragraph (a) of this section. The State shall provide an opportunity for public involvement during the development and any subsequent revisions of the implementation methods, and shall make the methods available to the public. 40C.F.R.§131.12(b)

C. Waterbody Classifications, Designated Uses, and Attainment

We recognize this language is directly from the federal regulations. We recommend that MDEQ include here the list of uses that Mississippi has chosen to protect in its waters through classification. Missing from that list are aesthetic or ceremonial classifications or designations that reflect the existing uses in Mississippi public waterways that flow through tribal lands or that occur in streams and lakes where churches perform baptisms.

We recommend the third paragraph be deleted. There is not enough explanation of how the exceptions or alternatives will be implemented. Since this is the focus of the new classifications and the variance section, it doesn't appear necessary to introduce this in the general conditions.

D. Natural Conditions

There needs to be a clear, transparent, and publicly-vetted process for who determines natural conditions and how that determination is made. (repeated in Rule 2.5.A.) Many following sections and criteria refer to natural conditions.

E. Site specific Modified Criteria

There needs to be a clear explanation of several terms in this section: "sound scientific rationale," "adequate" scientific evidence, and what exactly are criteria that are "more appropriate for the waterbody." The process of developing site-specific modified criteria, whether associated with the new classifications or not, needs to be clear, transparent, and publicly-vetted.

H. Definitions

There are several terms that are used in Mississippi's water quality standards without explanation. This can lead to confusion and difficulty in implementation. We recommend adding definitions in this section for the following terms: existing uses, highest attainable condition, highest attainable interim use, highest attainable interim criterion, mixing zone, natural conditions, pollutant minimization program, and use attainability analysis.

Suggestions for some of these definitions can be found at 40 CFR §131.3, as was the case for highest attainable use.

> (e) Existing uses are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.
>
> (p) Pollutant Minimization Program, in the context of § 131.14, is a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings.

(g) Use attainability analysis is a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in § 131.10(g).

Other comments on definitions:

(15) Modified criterion – We recommend the following edit to the second sentence, "The criterion **shall** be supported by the findings of the respective waterbody's use attainability analysis…"

(18) 7Q10 and (19) 7Q2 – These flow assumptions need to be updated to reflect changing precipitation patterns associated with climate change. These assumptions are used in many ways including on p.12 when calculating acute and chronic toxicity, and when developing NPDES effluent limitations.

(23) Waters of the state – Has Mississippi released to the public documentation of which waters no longer meet the criteria for Waters of the U.S.? Which waters are wholly landlocked and privately owned and are not regulated under CWA?

Rule 2.2 Minimum Conditions Applicable to All Waters of the State

B. Waterbody Classifications and Designated Uses

Table 1

We recommend that descriptions of all the classifications and designated uses in Table 1 be extracted from the sections in Rule 2.3 (where they exist) and included below Table 1 to assist in the interpretation of Table 1. To those existing descriptions should be added descriptions of listed designated uses that do not appear anywhere in the standards such as for Aquatic Life Use – Modified and Aquatic Life Use – Drainage Waters.

We question the pairing of Secondary Contact Recreation designated use with Fish and Wildlife Classification rather than Primary Contact Recreation designated use because all waters default to Fish and Wildlife Classification and should also default to Primary Contact Recreation, as was intended in the Clean Water Act Section 101(a)(2).[2] In addition, the bacteria criteria in Rule 2.3.D. for Fish and Wildlife Classification are the same as in Rule 2.3.C. for Recreation Classification and are established to support Primary Contact Recreation – activities such as swimming and water skiing.

We agree with the default that all Public Water Supply, Recreation or Shellfish Harvesting shall also meet Fish and Wildlife Use. We recommend that Table 1 reflect that by including the Fish and Wildlife Classification and the associated designated uses in each of those cells of the table as depicted below, including the change to Primary Contact Recreation.

We recommend that Outstanding Mississippi Waters be put at the top of the table, signifying the exceptional waters status. We also recommend that these waters be assigned Primary Contact

[2] "…it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;" Clean Water Act §101(a)(2)

Recreation because of the description in Rule 2.3.G. that says “Waters in this classification can include… waters of high recreational or aesthetic value.” High recreational value should signify an associated Primary Contact Recreation designated use and associated criteria. And it says that these waters meet the same water quality criteria as Fish and Wildlife waters, which, as explained above, include the most protective bacteria criteria.

Proposed changes to Table 1

MS Waterbody Classification	**U.S. EPA Associated Designated Uses**
WATERS MEETING CLEAN WATER ACT	
Outstanding Mississippi Water	Aquatic Life Use Fish Consumption Primary Contact Recreation
Fish and Wildlife	Aquatic Life Use Fish Consumption Primary Contact Recreation
Recreation, Fish and Wildlife	Primary Contact Recreation Aquatic Life Use Fish Consumption
Public Water Supply, Fish and Wildlife	Drinking Water Supply Aquatic Life Use Fish Consumption Primary Contact Recreation
Shellfish Harvesting, Fish and Wildlife	Shellfish Consumption Aquatic Life Use Fish Consumption Primary Contact Recreation
WATERS NOT MEETING CLEAN WATER ACT GOALS	
Modified Fish and Wildlife	Aquatic Life Use-Modified Fish Consumption Secondary Contact Recreation
Drainage Waters	Aquatic Life Use-Drainage Waters Fish Consumption Secondary Contact Recreation
Ephemeral Waters	Aquatic Life Use Fish Consumption Secondary Contact Recreation

In addition, we recommend that the Ephemeral Waters be included in this table and, if both the Modified Fish and Wildlife and Drainage Waters classifications are adopted, they should all be appropriately labeled as not meeting Clean Water Act basic goals. In our opinion, there is no need for one such classification if other Clean Water Act tools are appropriately applied to water quality challenges, not to mention three. Perhaps Mississippi could make-do with only one of these categories.

As mentioned above, no aesthetic or ceremonial uses are listed as designated uses despite Mississippi having public waterways that flow through tribal lands and are used for baptisms. We recommend that

MDEQ define and include Aesthetic Use and Ceremonial Use in Outstanding Mississippi Waters, Fish and Wildlife, Recreation, Public Water Supply and Shellfish Harvesting classifications.

Other states create better tables than Mississippi. Look at Kentucky's tables of classifications, uses and criteria. They are complete and don't leave the reader guessing about how these subjects fit together. Mississippi's working documents in 2018 and 2019 spelled out criteria and uses within classifications. If it helped MDEQ's engineers to write clear guidance documents, it will help the public too.

E. Temperature

There is extensive reference to natural conditions in this section. As mentioned in the General Comments, there needs to be a process defined for determining each "natural condition" and seasonal temperature situation.

F. Toxic Substances

(4)(b) - As mentioned in the definition section above, there needs to me more clarity about data on which the streamflow assumptions depend and the regular process of update given such variability related to climate change.

(6) – The fish consumption rate is likely too low at 17.5 gm/person-day in a region that is heavily dependent on fish and shellfish in their diet.

Rule 2.3

B. Shellfish Harvesting Classification

We recommend that MDEQ explain what is meant by "most unfavorable hydrographic and pollutive conditions" and which agency determines these conditions.

C. Recreation Classification

The 90-day geometric mean in marine and estuarine coastal waters would appear to mask any shorter term bacterial spikes that could harm recreational uses.

As mentioned above, it would provide much-needed transparency to have an explanatory document that helps the public understand the significant increase of the Total Dissolved Solids criterion to 1000mg/L, rather than just labeling it as a "correction."

D. Fish and Wildlife Classification

The 90-day geometric mean in marine and estuarine coastal waters would appear to mask any shorter term bacterial spikes that could harm fish and wildlife uses.

As mentioned above, it would provide much-needed transparency to have an explanatory document that helps the public understand the significant increase of the Total Dissolved Solids criterion to 1000mg/L, rather than just labeling it as a "correction."

E. Modified Fish and Wildlife Classification

The process for downgrading waters to this classification is not explained. We recommend MDEQ add specific reference to Use Attainability Analysis in addition to the reference to 40 CFR §131.10(g) factors.

There is no reason given why these waters could not support primary contact recreation given that it is written that "Waters within this classification share the same water quality criteria as Fish and Wildlife waters" until specific criteria are modified, and Fish and Wildlife Classification criteria support primary contact recreation as explained above. We appreciate the consistent reference to protection of downstream waters.

We recommend language that clearly states the requirement that any waters downgraded into this classification will require evaluation of their condition every 3 years based on 40 CFR §131.20(a):

> …The State shall also re-examine any waterbody segment with water quality standards that do not include the uses specified in section 101(a)(2) of the Act every 3 years to determine if any new information has become available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State shall revise its standards accordingly. Procedures States establish for identifying and reviewing water bodies for review should be incorporated into their Continuing Planning Process.

F. Drainage Waters… should add "Classification"

It is not clear from this section what the process may be for downgrading waters to this classification. There should be specific reference to Use Attainability Analysis in addition to the reference to 40 CFR 131.10(g) factors. There is no reason given why these waters could not support primary contact recreation given that it is written that "Waters within this classification share the same water quality criteria as Fish and Wildlife waters" until specific criteria are modified, and Fish and Wildlife Classification criteria support primary contact recreation as explained above. We appreciate the consistent reference to protection of downstream waters.

We recommend language that clearly states the requirement that any waters downgraded into this classification will require evaluation of their condition every 3 years based on 40 CFR §131.20(a):

> …The State shall also re-examine any waterbody segment with water quality standards that do not include the uses specified in section 101(a)(2) of the Act every 3 years to determine if any new information has become available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State shall revise its standards accordingly. Procedures States establish for identifying and reviewing water bodies for review should be incorporated into their Continuing Planning Process.

There is an unnecessary phrase that should be removed in the 4th to last line. "Waters in this classification."

G. Outstanding Mississippi Water Classification

This section needs to clarify what the process is to designate waters as OMWs. The ONRW process is incredibly expensive, and proved to be quite difficult. If MDEQ really wants OMW to be a useful category it should lend its community engagement staff, and water quality standards staff to anyone trying to rally the local support for a nomination and gather the data necessary to write up a nomination. This should be able to be accomplished using existing data, land use mapping, indexes of biological integrity, etc. already in MDEQ records. It should not be a prohibitively expensive or time consuming task to nominate a waterbody to OMW.

We recommend the difference between ONRWs and OMWs be further clarified in this section.

We recommend that the procedures referenced in this section be explained in a procedural guidance document that can be incorporated into the Continuing Planning Process. The guidance should include required processes for determinations on **alternatives analysis** and development of **effluent limitations for new or expanded point source discharges upstre**am.

Also having the Permit Board as the final arbiter of whether "a permit applicant has conducted a thorough evaluation of all practicable treatment and disposal alternatives" is something that opens up the decision to Permit Board politics. Seven of the eight Board members work for executive agencies, and if a permit applicant goes straight to the Governor with a grievance over a permit on an Outstanding Mississippi Water, the Permit Board decision will be skirted or over-ridden. MDEQ has a little-used regulation allowing the Executive Director of MDEQ, in his or her discretion, to take over any Permit Board decision for solitary action. Having the permit board make this decision (above) as contemplated by Rule 2.3 G (2), or asking the Board to establish in 2.3 G (3) what effluent limitations are protective of the downstream OMW are both simply pure fantasy. **Putting the protection of OMW streams into the hands of the Permit Board will not work.** We recommend using the MDEQ Commission for this process and related decisions is a slightly better plan if difficult conflicts arise when permit applicants want to discharge to OMW protected streams or waterbodies.

We recommend MDEQ define what is meant by "appropriate water pollution reduction plans" in subsection (6).

We recommend a specific list of criteria that apply to this classification. "Waters within this classification must meet the same water quality criteria as Fish and Wildlife waters with the exception of any site-specific modified criteria that have been established to protect the outstanding features of the waterbody." As mentioned above, there should be no reason why this classification should not support Primary Contact Recreation uses as is reflected in the description of "waters of high recreational value."

H. Ephemeral Stream Classification

It is not clear that existing uses in ephemeral streams are protected based on the criteria and conditions listed. We recommend language that clearly states that to downgrade waters into this classification requires a Use Attainability Analysis, and that all waters in this classification require evaluation of their condition every 3 years based on 40 CFR §131.20(a):

> …The State shall also re-examine any waterbody segment with water quality standards that do not include the uses specified in section 101(a)(2) of the Act every 3 years to determine if any new information has become available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State shall revise its standards accordingly. Procedures States establish for identifying and reviewing water bodies for review should be incorporated into their Continuing Planning Process.

Rule 2.4 Waterbody-Specific Water Quality Criteria

We recommend greater explanation of the purpose of this section upfront. Will all these site-specific criteria be moved into the Modified Fish and Wildlife or Drainage Classification? Will all the modified criteria that are developed for the new classifications for Modified Fish and Wildlife and Drainage

Waters end up in this section? Or will the site-specific criteria cease to be codified when they are supporting a Modified Fish and Wildlife or Drainage Waters Classification?

Rule 2.5 Implementation of Water Quality Criteria

We recommend that MDEQ begin this section with subsection F. Designation of Uses and Use Attainability Analysis, and that the current opening paragraph of Rule 2.5 follow that section.

C. Mixing zones

We recommend a clarification of, or process to determine what a "large" surface waterbody is and what a "long" distance or a "large" area means for the required mixing zone.

E. Water Quality Standards Variances

Public participation

Public participation requirements must be met in development of a water quality standards variance. For transparency, we recommend that you highlight the different places that public participation is necessary in this process.

1. Pollutant Minimization Program (CFR131.3)
2. Re-evaluation of variance term (2)(a)(v)
3. Documentation of any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant(s) or water quality parameter(s) and waterbody or waterbody segment(s) specified in the variance (2)(b)(iii)

There is some awkwardness in this section because the language was appropriated almost verbatim from the 40 CFR §131.14.

1. Differentiation between Waters of the State and Waters of the United States.
   Has MDEQ done any analysis to determine which Waters of the State are no longer Waters of the U.S.? The refences to where variances will not require EPA review and approval need to include any analysis that MDEQ has done.
2. References to length of the variance based on Commission and/or U.S.EPA approval. As we all know, those actions are sometimes separated by years. We recommend using the official approval of the variance which might be different for discharger-specific and waterbody variances.
3. Pollutant Minimization Program – We have already recommended that the definition of this term from the CFR be added to the definitions for these water quality standards. In this section, there needs to be an explanation of what is required in discharger-specific or waterbody variances.
4. Highest attainable condition - This term is the focus of the development of the length of the variance (subsection (2)(a)(iv). It and related terms (highest attainable interim use and criterion) need to be defined, as mentioned earlier. We recommend that the Use Attainability Analysis guidance explains the process for determining the highest attainable condition and be publicly-vetted.

(2)(a)(iv) We recommend that MDEQ clarify an upper limit for the "time-limited" variances.

(2)(a)(v) We recommend language be added that addresses administrative continuances of permits. Even when the permit is administratively continued, the reevaluation of the variance needs to occur no less frequently than every 5 years. Section (vi) may be setting up consequences if that doesn't happen, but the language is awkward because it is verbatim from the CFR.

(2)(a)(vi) We recommend removing the first words "A provision that".

Healthy Gulf supports the comments submitted separately by Tulane Environmental Law Clinic, And Mississippi River Collaborative. We appreciate the opportunity to submit comments on the Triennial Review WQS document and welcome the chance to discuss any of these comments with MDEQ staff.

Sincerely,

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