

BACKGROUND

Status of EPA Region 6/State Whole Effluent Toxicity (WET) Implementation Revisions

Region 6 - In December 2004, based on a core National Pollutant Discharge Elimination System program weakness identified by EPA's Permitting for Environmental Results (PERs) initiative and a recent decision by the Washington DC Court of Appeals, EPA Region 6 committed to EPA Headquarters that it would begin working with its States to fully implement the federal NPDES permitting regulations for WET established at 40 CFR 122.44(d)(1). This included a reasonable potential (RP) assessment for WET and incorporating WET limits into permits based on a finding of reasonable potential for lethal and/or sub-lethal effects to cause an excursion above a State's criterion for the protection of aquatic life. Since 2004, Region 6 has developed appropriate implementation procedures, provided training, guidance and assistance to its State counterparts and presented its program revisions to the public both at EPA offices and in each Region 6 State on multiple occasions.

New Mexico - EPA is the permitting authority for the New Mexico Environment Department. As such, in May 2005, EPA began fully implementing the federal regulations under its new Region 6 WET Implementation Strategy. A number of permits have been issued with WET limits based on the revised implementation. None of the permits have been challenged.

Louisiana - After going through public participation with no comments received, the Louisiana Department of Environmental Quality (LDEQ) submitted approvable revisions to its WET implementation procedures in 2008. An RP analysis is now performed on all draft permits, full documentation is provided as part of the permit fact sheet and a number of permits have been issued with limits on toxicity (lethal and/or sub-lethal effects).

Arkansas - Similar to LDEQ, the Arkansas Department of Environmental Quality submitted approvable revisions to its WET implementation procedures in 2008. An RP analysis is now performed on all draft permits, full documentation is provided as part of the permit fact sheet and a number of permits have been issued with limits on toxicity (lethal and/or sub-lethal effects).

Oklahoma - The Oklahoma Department of Environmental Quality (ODEQ) has not accepted that it must perform an RP analysis and include toxicity limits in permits on that basis. However, at EPA's request since late 2009, ODEQ has revised several permits to include toxicity limits based on multiple WET test failures for sub-lethal effects demonstrated in previous WET testing.

Texas - After six years of negotiating, EPA and the Texas Commission on Environmental Quality (TCEQ) have not yet agreed on appropriate revisions to the water quality standards implementation procedures. On December 2, 2010, EPA disapproved TCEQ's adopted revisions for its implementation procedures for WET and directed the agency to submit a number of permits to which EPA previously voiced concerns regarding WET requirements. The two agencies continue to work towards resolution of several contentious issues, however TCEQ has not indicated a willingness to make the revisions required to fully support federal regulations and ensure compliance with its water quality standards established to protect aquatic life.