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Glenn Shankle, *Executive Director*



Phil J

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 13, 2006

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EPA-6WQ-DIR OFC

Mr. Miguel I. Flores, Director
Water Quality Protection Division, 6WQ
United States Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Re: Revisions to Whole Effluent Toxicity (WET) Components of the Texas Pollutant Discharge Elimination System Program (TPDES)

Dear Mr. Flores: *Miguel*

Thank you for forwarding the U.S. Environmental Protection Agency (EPA) Region 6 WET Permitting Strategy with a letter dated March 9, 2006. In that letter, you requested that the Texas Commission on Environmental Quality (TCEQ) provide a status update, by April 1, 2006, on initiating the EPA Region 6 WET Permitting Strategy. The update is to include identification of milestones that will allow the TCEQ to implement the revisions in TPDES permits by January 2007.

Major components of the EPA Region 6 WET Permitting Strategy are (1) imposition of sublethal testing for all phases of the WET process, and (2) imposition of WET limits based on "reasonable potential," in accordance with EPA's 1991 guidance document entitled *Technical Support Document for Water Quality-based Toxics Control, EPA/505/2-90-001*.

As the TCEQ staff have indicated in earlier discussions, we have concerns about the impacts and feasibility of implementing this policy. The TCEQ expressed similar concerns in the attached comment letter, dated March 30, 2005, on EPA's proposed National Whole Effluent Toxicity Implementation Guidance.

The appropriate venue for TCEQ to evaluate and consider implementing the EPA Region 6 WET Permitting Strategy will be during the upcoming review of the TCEQ *Procedures to Implement the Texas Surface Water Quality Standards, RG-194, January 2003* (IPs). This review will be conducted in conjunction with a major review of the Texas Surface Water Quality Standards rule (Title 30, Chapter 307 of the Texas Administrative Code). The review will include substantial input from an advisory workgroup and opportunities for public written and oral comment. The TCEQ may have additional specific comments on the EPA Region 6 WET Permitting Strategy as we conduct a public review of our current permitting process.

Mr. Miguel I. Flores, Director
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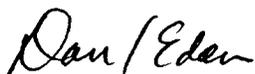
The TCEQ has started the review process by requesting preliminary public comment on the existing IPs in the Texas Register on January 27, 2006, with a comment period that closed on March 1, 2006. The TCEQ has also received comments on the IPs from the EPA Region 6 in a letter dated March 9, 2006. The TCEQ staff are currently evaluating the comments that were received on the IPs. Over the next several months, the TCEQ staff will request to initiate rulemaking to review and revise the Texas Surface Water Quality Standards and IPs. There will be a more defined schedule when rulemaking is formally initiated by the TCEQ, and we expect the review to be well underway by January 2007. However, the overall revision process will still be ongoing during most of 2007.

In the interim, the TCEQ will continue to develop and issue TPDES permits in accordance with the existing IPs until subsequent revisions are approved by the TCEQ and by the EPA. If the EPA requires elements of the EPA Region 6 WET Strategy to be included in TPDES permits prior to revising the IPs, the TCEQ will have several concerns. An example is the EPA's requirement to include a sublethal toxicity reduction evaluation as one of the provisions for issuing a recently drafted TPDES permit.

During the upcoming review of the IPs, TCEQ staff intend to conduct a thorough evaluation of the EPA Region 6 WET Permitting Strategy, the EPA's guidance on WET in the 1991 Technical Support Document, and the EPA Region 6 comment letter on the IPs. Past revisions of the IPs have exercised flexibility in addressing the EPA guidance, in order to establish procedures that are in accordance with other TPDES procedures and rules. We recognize that procedures must meet the requirements of the EPA regulations and the federal Clean Water Act, but we anticipate that EPA will afford similar appropriate flexibility in future revisions of the IPs. As in past revisions of the IPs, TCEQ staff intend to coordinate closely with staff at EPA Region 6 to develop mutually acceptable WET procedures.

I look forward to continuing dialogue on these important water quality issues. I will be glad to further discuss our overall coordination and WET testing approaches with you or you may contact L'Oreal Stepney, of my staff at (512)-239-1321 or if by correspondence, include MC148 in the letterhead address below.

Sincerely,



Dan Eden, Deputy Director
Office of Permitting, Remediation and Registration
Texas Commission on Environmental Quality

Enclosures