



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY


WASHINGTON, D.C. 20460

4/3/07

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Permitting for Environmental Results (PERs) Update

FROM: *for* 
James A. Hanlon, Director
Office of Wastewater Management

TO: Miguel Flores, Director
Water Quality Protection Division, Region VI

Thank you for your memo of March 1, 2007, responding to our February 2, 2007 request for regional progress updates on NPDES program areas identified through the Permitting for Environmental Results (PER) process as not fully meeting the basic program requirements. While progress has been substantial overall, Region 6 has not met the established target for full implementation of the whole effluent toxicity (WET) program by its NPDES-authorized States.

As you will recall, in December 2004, the Region committed to full implementation of the 1989 NPDES regulations for WET at 40 CFR 122.44(d)(1) by January 2007. The two-year delay was granted at the request of Region 6 in order to allow Region 6 NPDES-authorized States time to make appropriate program document revisions and complete public participation and any legislative processes that might be necessary. The primary program deficiencies identified for Region 6 and its States are: 1) the lack of a reasonable potential determination method that is predictive, rather than reactive, and 2) the failure to include WET limits in permits based on the reasonable potential for sub-lethal toxicity where required by State water quality standards.

According to past Region 6 PER action item updates, Region 6 began fully implementing the 1989 NPDES WET regulations in Federal permits upon issuing its NPDES WET Permitting Strategy to all of its States in May 2005. Region 6 also began fully implementing the NPDES WET regulations in its Regional permits for New Mexico. In its most recent PER status update, Region 6 reported that the Louisiana Department of Environmental Quality (LDEQ) is expected to fully implement the WET regulations by mid-2007. However, the update noted that other Region 6 States have not made similar progress in implementing the regulations. We are concerned with the status of NPDES program revisions for Arkansas, Texas, and Oklahoma, none of which have committed to completion dates for full implementation of the NPDES WET regulations. As previously noted, NPDES permits, including State-issued permits, must fully implement all applicable State and Federal NPDES regulations.

Region 6 should contact its State counterparts to establish a formal timeline that includes all actions to date and the future interim actions and dates that will ensure full compliance with the relevant Federal regulations by no later than June 2008. Please submit this information along with your plan of action for any States that do not commit to full implementation of the NPDES WET program by June 2008. After this date, Region 6 should take the necessary steps including exercising its authority to object to any State permit that does not fully implement EPA NPDES regulations and to issue Region 6 Federal permits for State agencies that fail to make the appropriate permit revisions. During the interim, Region 6 should continue its current practice of objecting to permits where a facility's toxicity testing history clearly indicates the reasonable potential for WET.

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