

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
H. S. Buddy Garcia, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 31, 2007

Miguel Flores, Director
Water Quality Protection Division
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

RE: Revisions to Whole Effluent Toxicity (WET) Components of the Environmental Protection Agency (EPA) National Pollutant discharge Eliminations System (NPDES) Program

Dear Mr. Flores:

In your May 16, 2007 letter regarding revisions to the WET Components of the EPA NPDES program, you requested a response including all pertinent actions we have completed to date and a timeline including dates and activities by which these tasks will be performed. Your letter also stated that these changes must be implemented by June 30, 2008.

As mentioned in my previous letter to the EPA dated April 13, 2006 and in our continued discussions, we have concerns about the impacts and feasibility of implementing The EPA Region 6 WET Permitting Strategy as well as the "Draft" National Whole Effluent Toxicity Implementation Guidance Document. The appropriate approach for the Texas Commission on Environmental Quality (TCEQ) to evaluate and consider implementing changes to the overall WET program is during our current review of the TCEQ Procedures to Implement the Texas Surface Water Quality Standards, RG-194, January 2003 (IPs). This review is being conducted along with the major review of our Texas Surface Water Quality Standards rule. We are encouraged by an email from Ms. Claudia Hosch on June 6, 2007, that mentions that states may elect to develop their own reasonable potential method for WET as long as it provides an equivalent level of aquatic life protection. TCEQ understands from this email that EPA will allow each state to develop a revised program that is different from EPA's approach and to establish procedures that are in accordance with other Texas Pollutant Discharge Elimination System procedures and rules. To date, we have completed the following steps in that process:

1. Solicited preliminary public comments
2. Reviewed and evaluated preliminary comments from numerous stakeholders including EPA
3. Held a stakeholder workgroup meeting specifically on the WET issues on June 26, EPA attended this meeting.
4. Developed an EPA approved methodology for a sub-lethal toxicity abatement study (STAS) to control sub-lethal toxicity when warranted for a specific permit.
5. We are reviewing EPA's proposed interim approach received during the TPDES program review on July 26, 2007 and will provide comments to EPA.

Miguel Flores, Director
Page 2
July 31, 2007

As demonstrated from the discussion above, we are actively engaged in this process to review our WET program, but the June 30, 2008 date is an unlikely completion date. The overall agency revision process will extend into 2009 excluding time for EPA's final review and approval.

Finally, you state in your letter that EPA will continue to object to permits where a WET limit is not included in the permit and reasonable potential exists based on an effluent toxicity history of reported multiple lethal and/or sublethal WET test failures. We do not believe that handling these issues case by case, permit by permit is the appropriate forum. The TCEQ IPs and Water Quality Standards have been approved by the TCEQ and EPA with a great deal of stakeholder involvement and this approach has been a long standing process for handling programmatic issues. We believe that this process is important and should not be short circuited. We would like to work with EPA on an interim approach for those permits where we believe additional steps are necessary.

We hope that EPA will agree that this approach will accommodate our mutual goals for ensuring protection of water bodies during the interim period while our Water Quality Standards and IPs are still under development. We urge EPA to remove their objection related to sub-lethal WET permit provisions for the multiple permits submitted for EPA review. This will allow both agencies to meet their respective performance measures.

I look forward to continuing the 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.

Sincerely,



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

LWS/LH/jp