



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

AUG 11 2008

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (7007 1490 0000 3068 9334)

Dan Eden, Deputy Director
Office of Permitting, Remediation and
Registration
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Dear Mr. *Dan*

As you are aware, the Environmental Protection Agency (EPA) Region 6 initiated a process with its State counterparts in February 2005, to come into full compliance with the State and Federal regulations applicable to the State-authorized National Pollutant Discharge Elimination System (NPDES) implementation of whole effluent toxicity (WET) requirements. These minimal requirements consist of 1) a procedure to assess reasonable potential (RP) for WET during permit development (40 CFR §122.44(d)(1)(ii)) and 2) where reasonable potential for WET is demonstrated (based on lethal and/or sub-lethal effects), the inclusion of WET limits in permits.

EPA Region 6 originally established January 2007, as the date for States to adopt appropriate procedures and/or regulatory requirements to ensure that permits will control WET in effluent discharges consistent with applicable Federal and State requirements. Several States requested additional time, citing the need to implement appropriate regulatory changes. In my letter of May 16, 2007, I extended the date to June 30, 2008, to accommodate this request. This deadline is consistent with direction from EPA Headquarters as noted in the April 3, 2007, memorandum from James A. Hanlon, previously provided to the Texas Commission on Environmental Quality (TCEQ).

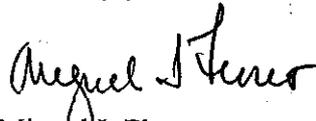
As you know, the Arkansas and Louisiana Departments of Environmental Quality (ADEQ and LDEQ) have both chosen to adopt EPA's Technical Support Document (TSD) approach; however it is our understanding that the TCEQ is revising its water quality standards implementation procedures to address RP and to include sub-lethal WET limits in permits. We would appreciate an update indicating the status of those efforts, approaching milestone targets, and the expected date of completion. While we understand that the TCEQ is in the process of developing its own approach to assessment of RP, and we are willing to assist you in its development, the option of using EPA's approach as outlined in the TSD remains available. However, until TCEQ has an EPA-approved methodology in place, we will utilize the TSD approach as the basis for evaluating draft TCEQ discharge permits. If our preliminary review indicates that RP for WET exists, we will notify TCEQ of our preliminary concerns via a general objection to the draft permit.

In order for EPA to determine whether draft TCEQ discharge permits meet the applicable requirements, the following information is required as part of the package submitted to EPA Region 6:

- 1) A summary of all WET data reported for the five-year period prior to permit application, including passing tests, failing tests, tests reported as invalid, and the laboratory conducting the testing. The report format should include each test date, the NOEC/LOEC for lethal effects, and the NOEC/LOEC for sub-lethal effects (for chronic testing).
- 2) The WET RP analysis should be included as an attachment to the permit fact sheet. The RP procedure should show all calculations and data used. If RP is found to exist but a WET limit is not included, the permit fact sheet must, consistent with our permitting regulations, explain clearly and in detail why the limit is not included and how the proposed action will ensure compliance with the applicable State water quality standards and federal regulations. Any special considerations or instances where a test result has been modified or changed should be noted.

EPA Region 6 remains committed to providing support and technical assistance as its States move to adopt the necessary procedures and/or regulatory revisions to ensure that the States will control WET in effluent discharges consistent with applicable Federal and State requirements. Please advise me as to the status of the regulatory changes TCEQ is developing. Should you have any questions regarding the issues set forth in this letter please contact me or have your staff contact Claudia Hosch at 214-665-6464 or via e-mail at: hosch.claudia@epa.gov.

Sincerely yours,



Miguel I. Flores
Director

Water Quality Protection Division