



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
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MAR 10 2009

Mr. Dan Eden, Deputy Director
Office of Permitting and Registration (MC-122)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Dear Mr. Eden:

Thank you for the opportunity to review and comment on the draft proposals Texas Commission on Environmental Quality (TCEQ) has developed with respect to the "Procedures to Implement the Texas Surface Water Quality Standards" (IPs) guidance document. Our detailed comments are included as an attachment to this cover letter.

In February 2005, the Environmental Protection Agency Region 6 (EPA) initiated a process, in conjunction with its National Pollutant Discharge Elimination System (NPDES)-authorized State counterparts, to come into full compliance with federal regulations applicable to implementation of whole effluent toxicity (WET) under the NPDES system and the Clean Water Act (CWA). As we have previously discussed, the CWA requires, at a minimum, that authorized States implement procedures to 1) assess reasonable potential for WET during permit development, and 2) include WET limits in permits where reasonable potential for WET is demonstrated through toxicity testing, based on lethal or sub-lethal effects.

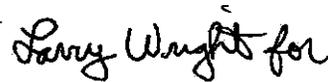
Over the past four years, EPA and TCEQ have coordinated closely in their efforts to ensure that NPDES requirements are met. EPA has provided training, materials and documentation regarding the minimum federal requirements for WET, and both agencies have engaged in numerous conference calls and meetings at the staff and management levels to bring resolution to this issue. We have also met with several groups representing the public and regulated community interests. EPA has twice extended its WET program revision date, most recently to June 30, 2008, to accommodate TCEQ. EPA previously provided comments on TCEQ's proposed IP WET revisions by letter dated May 23, 2008. Subsequent to those comments, and following further discussions with TCEQ, I personally met with staff and management at EPA Headquarters and advanced on TCEQ's behalf an alternative proposal for determining WET reasonable potential.

Based on EPA's review of the IP revisions for WET released by TCEQ in the public meeting on January 7, 2009, on which we are now providing comment, we are concerned about an apparent widening of the gap between what EPA is comfortable with, and what TCEQ is proposing. For example, "Option 2" in TCEQ's previous IP proposal has been eliminated from

the most recent proposal. As discussed previously, Option 2 was the only approach proposed by TCEQ which EPA believed, with more definition, might have provided a basis for an approvable method of determining reasonable potential for WET. As previously stated, EPA cannot approve the approach TCEQ is currently considering for its WET reasonable potential determination. In addition, as previously discussed in EPA's May 23, 2008, comments on TCEQ's revised IPs, and as reiterated in the attachment to this letter, there are a number of other WET implementation issues with which EPA has serious concerns.

We look forward to continuing work with you and your staff on the protection of water resources. If you have any questions, please contact me at (214) 665-7101 or have your staff contact Claudia Hosch at (214)-665-6464 (Email: hosch.claudia@epa.gov).

Sincerely,



Miguel I. Flores

Director

Water Quality Protection Division

Enclosure

cc: Tiemann Sidney, TCEQ