



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 6

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

DEC 22 2009

Mark R. Vickery, P.G., Executive Director  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

Re: Revisions to the Procedures to Implement the Texas Water Quality Standards with  
Regard to Whole Effluent Toxicity Requirements in Wastewater Discharge Permits

Dear Mr. Vickery:

In February 2005, EPA Region 6 notified the Texas Commission on Environmental Quality (TCEQ) that certain revisions were necessary to the Texas Pollutant Discharge Elimination System (TPDES) permitting procedures for whole effluent toxicity (WET) in order to comply with federal regulations and State water quality standards. In particular, Region 6 discussed with TCEQ the need to 1) perform an analysis of WET data to determine whether a facility's wastewater discharge has the reasonable potential to cause or contribute to an exceedance of the Texas water quality standard for the protection of aquatic life and, 2) include limits in wastewater discharge permits where Reasonable Potential (RP) is found based on lethal and/or sub-lethal effects to aquatic organisms.

Over the past four years, Region 6 has met with TCEQ on numerous occasions to discuss this issue, as well as to provide training and technical assistance in making appropriate revisions to the State's implementation procedures for WET. In spite of numerous discussions, including a video conference call with you and your staff, I am disappointed that we have been unable to agree on a methodology for RP and the need for WET limits in permits. As a result, EPA continues to maintain that TPDES permits do not adequately protect aquatic life against chronic toxicity as required by federal regulations and the Texas water quality standards. In addition, the TPDES permit fact sheets do not provide an appropriate determination of reasonable potential for whole effluent toxicity, a specific requirement of federal regulations (40CFR 122.46(d)(1)).

Since 2007, EPA Region 6 has issued letters to TCEQ regarding permits that have a large percentage of lethal and sub-lethal test failures, and has required the inclusion of acceptable toxicity limits in those permits. The growing list of facilities receiving such letters (see enclosure) demonstrates that the current TCEQ procedures are inadequate to identify facilities requiring WET limits, even where test failures have already occurred. It is EPA's position that test failures are demonstrated exceedances of the State water quality standard criteria for aquatic life protection and therefore require the inclusion of WET limits in permits.

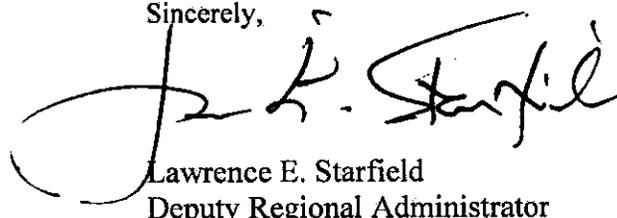
During recent TPDES program review discussions between EPA and TCEQ we were informed of TCEQ's plan to present revisions to the permitting implementation procedures to the Commissioners in January, 2010. While EPA has reviewed and submitted comments on several drafts (public and deliberative) of the implementation procedures, none of these proposals has incorporated protective WET procedures to adequately implement the State's water quality standards in compliance with the Clean Water Act and federal regulations.

The same is true of the draft proposal provided to EPA by TCEQ on November 5, 2009. While this version of proposed revisions to TCEQ's Implementation Procedures and Standard Operating Procedures, if finalized and followed, would address the more egregious cases with more numerous test failures, the procedures as presented would fall short of a WET permitting program that EPA would view as meeting the requirements of the Clean Water Act. Therefore, we would not expect TCEQ's implementation of these procedures to resolve the issue of EPA objecting to a significant percentage of TCEQ draft permit decisions.

EPA strongly recommends that any WET implementation procedures proposed by TCEQ incorporate EPA's recommendations to meet the minimum established state and federal requirements, which, per TCEQ rules, could include a compliance schedule of up to three years, if appropriate. If TCEQ's WET implementation procedures are not revised to meet the minimum State and federal requirements, EPA will have little recourse but to object to issuance of TCEQ permits that do not include an acceptable reasonable potential determination and appropriate toxicity limits.

EPA and the State of Texas share common goals of ensuring compliance with all federal requirements for the State TPDES program, and ensuring that Texas water quality standards are met. With those ends in mind, EPA will continue to work with TCEQ toward resolving the above concerns. In addition, our offer still stands to accompany TCEQ to Washington, DC to discuss the matter with the Office of Water if it would help resolve the matter.

Sincerely,



Lawrence E. Starfield  
Deputy Regional Administrator

Enclosure

cc: L'Oreal Stepney, TCEQ

### Proposed TCEQ Permits Backlogged With Toxicity Issues

DATE	NPDES #	Permittee	Lethal Failures Species 1 and/or Species 2	Sub-Lethal Failures Species 1 and/or Species 2	Highest Fail Rate
03.02.07	TX0064734	Langham Creek MUD	1 / 7	4 / 7	67%
06.28.07	TX0075388	TDC (Beto Unit)	1 / 10 and 2 / 21	1 / 10 and 9 / 21	43%
07.23.07	TX0057029	White Oak Joint Powers Board	0 / 14 and 2 / 29	1 / 14 and 9 / 29	31%
09.28.07	TX0092789	TDC (Estelle Unit)	1 / 2 and 0 / 4	2 / 2 and 3 / 4	76%
10.01.07	TX0063029	Houston Homestead	2 / 20	7 / 20	36%
12.21.07	TX0003689	Goodyear	1 / 10	4 / 10	40%
01.24.08	TX0091715	SJRA Woodlands #2	0 / 10	5 / 10	60%
03.05.08	TX0081337	NW Harris County MUD #20	0 / 26	10 / 26	39%
03.25.08	TX0126152	NW Harris County MUD #9	3 / 15	7 / 15	47%
07.09.08	TX0003824	Texas Instruments	13 / 26	20 / 26	80%
07.17.08	TX0057304	South Houston	9 / 29	19 / 29	66%
07.28.08	TX0007048	Lubrizol	1 / 17 and 1/29	7 / 17 and 9 / 29	41%
08.15.08	TX0025062	Harris County Water District #51	1 / 19 and 3/25	1 / 19 and 13 / 25	62%
09.11.08	TX0089125	Exxon-Mobil	0 / 19	5 / 19	26%
09.15.08	TX0087971	Solvay Chemicals	6 / 11	6 / 11	66%
10.14.08	TX0126098	Red River Redevelopment 001	1 / 13 and 5/16	NA	31%
		002	14 / 17 and 15/17	14 / 17 and 15 / 17	88%
10.31.08	TX0005592	Huntsman Corp.	0 / 17 and 0/19	2 / 15 and 7 / 19	37%
11.19.08	TX0022667	Georgetown	2 / 15 and 2/15	2 / 15 and 2 / 15	13%
03.13.09	TX0073954	Bryan Dansby Electric	0 / 16 and 1/22	2 / 16 and 8 / 22	36%
05.05.09	TX0023914	McGregor South	6 / 31 and 7/13	6 / 31 and 7 / 13	64%
07.01.09	TX0069736	City of Houston (Metro Central)	8 / 36 and 3/26	9/36 and 16 / 26	62%
07.06.09	TX0111201	Prairie View A&M University	2 / 26	7 / 26	27%
07.08.09	TX0047457	Memorial Villages Water Authority	1 / 22	8 / 22	36%
09.09.09	TX0034461	City of Bay City	0 / 21 and 2/30	3 / 21 and 10 / 30	33%
09.24.09	TX0071790	City of Navasota	1 / 27	6 / 27	22%
10.23.09	TX0098957	Cinco Municipal Utility District No. 1	1 / 19 and 0/13	2 / 19 and 2 / 13	16%
10.29.09	TX0034401	City of Humble- Southwest	0 / 15	2 / 15	13%
11.06.09	TX0021474	City of El Campo	0 / 15 and 0/11	2 / 15 and 1 / 11	16%
11.12.09	TX0035009	City of Houston-Southeast	0 / 19	4 / 19	21%
11.04.09	TX0106071	City of Lubbock	0 / 24	2 / 24	8%