



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

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DALLAS, TX 75202-2733

MAR 30 2010

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

Dear Mr. Vickery:

Thank you for your letter of January 26, 2010, responding to our concerns regarding implementation of whole effluent toxicity (WET) requirements in wastewater permits issued by your agency under the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES). As noted in our December 22, 2009, letter to you, EPA believes that the WET implementation procedures (IP) recently proposed by the Texas Commission on Environmental Quality (TCEQ) for public comment are inadequate for issuing permits in compliance with the Texas water quality standards and federal regulations.

While the proposed IP revisions may address facilities demonstrating the most egregious levels of toxicity, we believe they do not constitute an appropriate approach to determining reasonable potential (RP) for all discharges that have demonstrated toxicity. As we have consistently stated since 2005, the requirement to appropriately assess RP for WET and incorporate WET limits in permits where RP is indicated is based on 40 CFR 122.44, which Texas adopted by reference at 30 TAC 305.531. Over the past two years we have raised objections to several Texas Pollutant Discharge Elimination System (TPDES) permits that did not include appropriate WET requirements. We are concerned that objections to TPDES permits will continue as a result of the proposed revisions to TCEQ's implementation procedures, which calls into question TCEQ's ability to administer the TPDES program consistent with the CWA requirements and the Memorandum of Agreement between our agencies.

You wrote that it would not be appropriate to use EPA's 2004 draft WET guidance as a basis for WET reasonable potential. Both EPA Region 6 and EPA Headquarters have repeatedly stated to TCEQ that EPA's draft WET guidance in no way supersedes or revises the reasonable potential method presented in EPA's 1991 "Technical Support Document (TSD) for Water Quality-Based Toxics Control". We have also stated that TCEQ need not strictly follow the 1991 TSD, but may develop an alternative method that ensures that there will be no exceedance of water quality standards for aquatic life. To date, TCEQ has not submitted an acceptable alternate procedure.

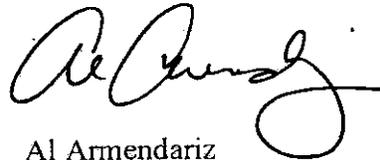
With respect to the permits listed in our letter of December 18, 2009, EPA conditioned its decision not to object on TCEQ's making recommended changes to the draft permits. TCEQ did not propose a revised permit or fact sheet for any of the affected facilities based on EPA's

recommendations. EPA continues to believe that federal and state regulations implementing the NPDES program require that the toxicity demonstrated in WET tests for these facilities be controlled through limits for WET in the facilities' NPDES permits.

EPA does not believe that making the required permitting implementation revisions will result in an undue burden on TPDES permittees or TCEQ. As we have noted on several occasions to your staff and management, EPA has reviewed over 200 TCEQ draft permits and only 10 percent to 15 percent of those permits required WET limits using the Region 6 approach. While the proposed revisions may address the higher levels of toxicity in TPDES permits, we have not been able to agree on the basic procedures for determining reasonable potential for WET. Contrary to what is stated in your letter, EPA's position has not changed in this regard. Therefore, EPA will continue to object to permits where the Agency believes, based on WET test results, reasonable potential exists to exceed water quality standards for aquatic toxicity.

EPA remains committed to working with TCEQ to arrive at a mutually acceptable resolution to these issues. Should you have any questions regarding the issues presented herein, please contact Mr. Miguel Flores, Director, Water Quality Protection Division, at (214) 665-2100.

Sincerely,



Al Armendariz
Regional Administrator

cc: L'Oreal Stepney,
Deputy Director, Office of Water, TCEQ

Charles Maguire
Assistant Director, Water Quality Planning, TCEQ