



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
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DALLAS TX 75202-2733

AUG 4 2010

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

Dear Mr. Vickery:

Thank you for your letter dated May 26, 2010, regarding the efforts of the U.S. Environmental Protection Agency (EPA) Region 6 and the Texas Commission on Environmental Quality (TCEQ) to reach agreement on a number of whole effluent toxicity (WET) issues affecting the Texas Pollutant Discharge Elimination System (TPDES) program. We appreciate your agency's efforts to resolve these issues, and we welcome this opportunity to address the concerns raised in your letter.

In reviewing our agencies' interactions and discussions regarding WET issues, we find recent progress toward our shared goal of protecting water quality by preventing toxic discharges. As noted in your letter, EPA has received two permits for review that have been revised to include sublethal WET limits. We look forward to receiving the few revisions that are needed in those permits before they are issued. We have also received, and are now reviewing, what appears to be the first draft TPDES permit to include a proposed sublethal WET limit that EPA has not previously required. EPA Region 6 does appreciate TCEQ's efforts to implement a WET program that includes sublethal WET limits. We look forward to reviewing more draft TPDES permits that include sublethal WET limits where reasonable potential (RP) for toxicity exists.

You expressed concern about the number of facilities that would require permits with sublethal WET limits. Region 6 has estimated that 10 percent to 15 percent of Texas permits will require sublethal WET limits. We based that estimate on our implementation of the EPA Region 6 WET Permitting Strategy (May 2005), and our review of more than 100 TPDES permits. The TCEQ estimates a much higher percentage of permits will be affected based on EPA's 1991 Technical Support Document For Water Quality-based Toxics Control (TSD) approach. TCEQ has not explained how it reached this estimate, so we are unable to determine the cause of the difference. One possible source of this discrepancy might be a misunderstanding concerning the Region's flexibility in our implementation of a TSD-based approach to WET.

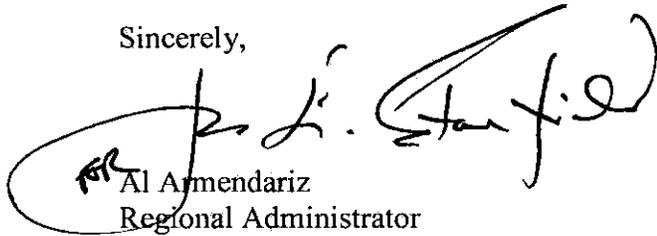
Region 6 has consistently voiced support for any approach that would yield equivalent RP determinations to those that would follow from the TSD approach. You wrote that EPA has rejected several alternative RP assessment methods proposed by TCEQ without any specific rationale. We believe Region 6 has provided feedback to TCEQ on each RP approach presented for our consideration. A brief overview of our responses follows:

- Test failure rates – EPA does not believe the Texas water quality standards (WQS) allow for multiple exceedances of the standard. Thus, a single WET test failure would trigger a requirement for a permit control, i.e., WET limits.
- South Carolina method – This is a method of analyzing data from a single discrete test to determine compliance for a monitoring period, and is not an approach to determine reasonable potential for WET.
- Risk-based – TCEQ has not proposed an acceptable alternative to the risk-based TSD approach used by Region 6.
- Weight-of-evidence – We believe that an approach that finds "no reasonable potential for toxicity" despite multiple WET test failures, is neither scientifically nor legally defensible under the Texas WQS and EPA's regulations.

Finally, we note that the "Procedures to Implement the Texas Surface Water Quality Standards" (IPs) were submitted to the TCEQ Commissioners for their approval on June 30, 2010. We reviewed these standards, but do not believe that they provide EPA, the regulated community, or the public a clear and definitive process for determining whether WET limits will be included in TPDES permits. Without a clearly defined approach to assessing RP for WET, the current IPs are not approvable.

We appreciate and share your commitment to protect Texas water resources. EPA remains committed to working with TCEQ to resolve WET testing procedures issues. Collaboration between Texas and EPA has resulted in environmental successes in the past and we believe it will in the future. If you have further questions, call me at (214) 665-2100, or Mr. Miguel Flores, Director, Water Quality Protection Division, at (214) 665-7107.

Sincerely,



Al Armendariz
Regional Administrator