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BILL CALLEGARI STATE REPRESENTATIVE

17 August 2010

Dr. Alfredo Armendariz
Regional Administrator, EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

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EXTERNAL AFFAIRS DIVISION

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Dear Dr. Armendariz,

A coalition of Texas cities and river authorities recently met with me to express its concern regarding a proposed EPA Region 6 directive to the Texas Commission on Environmental Quality (TCEQ) to require that wastewater treatment facilities comply with sublethal whole effluent toxicity (WET) limits as part of their Texas Pollution Discharge Elimination System (TPDES) permits. To my knowledge, several Texas cities, state-operated facilities, water districts, and corporations have had their TPDES permits placed on hold at TCEQ pending the incorporation of sublethal WET limits. I write to express my concern that incorporating these requirements for TPDES permits may be meaningless as a matter of policy, and ultimately very costly to Texas' water users.

The proper role of WET testing in permits is to identify those instances when a discharge has a real potential to produce toxic effects in in-stream organisms and to facilitate the identification of appropriate measures to control these toxic effects. While there is evidence that WET tests demonstrating significant lethality can be indicative of adverse effects on aquatic life in receiving waters, there is no evidence that sublethal test failures in the laboratory are indicative of similar environmental impacts. In fact, in 1999 one EPA study found that sublethal effects on indicator species do not necessarily correlate with a detectable adverse ecosystem response. No study has been conducted since 1999 to prove otherwise.

In the absence of firm evidence demonstrating that sublethal WET test failures have any relationship to the condition of stream ecosystems, such limits should not be included within TPDES permits. Incorporating sublethal WET limits would not improve water quality or benefit stream ecosystems. More critically, this proposed limit would require that wastewater operators ensure compliance with a standard that offers nothing by way of public or ecological benefit.

My concern that sublethal WET limits provide zero public benefit is aggravated by the fact that both the sublethal WET test, and efforts to cure test failures, will substantially increase Texas' wastewater facilities' operating costs. Evidence from wastewater treatment plants in other states suggests a high price tag for the cost of compliance. For example, one regional wastewater treatment plant in South Carolina spent nearly \$250,000 on studies that were incapable of identifying the cause of sublethal WET test failures. The plant's operator estimates that it will cost \$1.3 million to build a pipeline to discharge to a larger water body, and (hopefully) mitigate the problem. In another case in South Carolina, one small town spent nearly \$100,000 trying to determine methods to eliminate sublethal WET test failures. The study found no solution. Nevertheless, in an effort to solve the problem of sublethal test failures, this town is spending nearly \$2 million to build a land disposal system to eliminate effluent discharge.

Another town in North Carolina was able to achieve compliance with WET requirements after building a five mile pipeline, upgrading its treatment process to activated sludge, and added powdered activated carbon as a treatment component.

In each of the instances described above the costs of testing and compliance were significant, particularly for the smaller cities. These examples underscore the fact that applying sublethal WET limit requirements to TPDES permits will increase many systems' compliance costs. These costs would, in turn, be passed on to the local taxpayers, many of whom are already feeling the burden of higher rates. I am particularly concerned of the effect that this requirement would have on smaller systems, especially in rural or low-income areas that may not possess the financial wherewithal to attain compliance. In the absence of evidence demonstrating that sublethal WET limits truly benefit stream ecosystems, I think it is unfair to ask Texas taxpayers to foot the bill for the high cost of sublethal WET limit compliance.

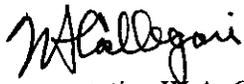
The cost of compliance for sublethal WET limits may go beyond dollars. As I mentioned in an earlier paragraph, one town is building a land disposal system to eliminate discharge and thereby solve the problem of sublethal test failures. This will remove water from that basin. In Texas, where many downstream users have come to rely on treated effluent, this approach to curing sublethal test failures could ruin the reliability of downstream water rights as well as environmental flows for our bays and estuaries. Moreover, such a policy could detract from in-direct re-use efforts, where treated effluent serves as a water resource for our citizens. Texas cannot sustain any permitting policy that may provide an incentive for dischargers to permanently remove water from a state watercourse.

The coalition of Texas cities and river authorities with which I have met has met with EPA several times on this matter. Unfortunately, the coalition has been unsuccessful in finding a solution. Therefore, I am asking you to support the coalition's position in this matter, which is that EPA should not require the Texas Commission on Environmental Quality to implement sublethal WET limits until meaningful, predictable test indicators are identified. Further, I request that EPA refrain from implementing sublethal WET limits until a reliable method to mitigate test failures is defined. Lastly, I ask that EPA rescind its requirement that certain TPDES permits pending before TCEQ include sublethal WET limits as a condition for issuance.

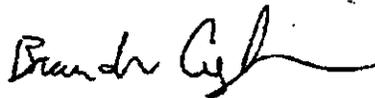
I sincerely believe that Texas cities, water districts, and river authorities are committed to protecting our state's water resources. These entities do not take their commitment to clean water lightly. They are willing to make every effort to comply with meaningful, effective measures to improve water quality and comply with TPDES requirements. If they truly recognized a benefit to employing sublethal WET limits, they would not object to their incorporation as a permit requirement.

Thank you for your time and attention to this matter. As always, I would welcome the opportunity to discuss this matter with you in further detail.

Sincerely,



Representative W.A. Callegari



Representative Brandon Creighton

CC:

Mark Vickery, Executive Director, Texas Commission on Environmental Quality