



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

AUG 25 2010

The Honorable Glenn Hegar  
Texas Senate  
Post Office Box 12068  
Austin, Texas 78711-2068

Dear Mr. Hegar:

Thank you for your letter dated July 19, 2010, to U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson regarding sublethal whole effluent toxicity (WET) limits and requirements in wastewater permits issued under the National Pollutant Discharge Elimination System (NPDES) program. Your letter was forwarded to me for response because Texas is within the jurisdiction of EPA Region 6.

We appreciate your interest in this issue and we welcome the opportunity to address the concerns you have raised. As you noted, EPA Region 6 has met several times with representatives of the coalition that approached you regarding this matter. For more than five years, EPA Region 6 has been meeting with, and providing training to, representatives of the Texas Commission on Environmental Quality (TCEQ), Texas municipalities, industries and environmental groups on the issue of WET permit limits based on chronic sublethal effects to aquatic organisms.

You requested that EPA not require TCEQ to implement chronic sublethal WET limits in permits pending two demonstrations identified in your letter. Your request suggests that there is not a meaningful connection between the frequency and magnitude of chronic sublethal WET test failures and actual adverse impacts on aquatic life in the environment. EPA respectfully disagrees, and notes that the technical bases supporting EPA's approach to WET testing and controls are founded on established scientific principles of aquatic toxicity, and that the testing methodologies have withstood legal challenges through the court system. In *Edison Electric Institute, et al, v. EPA*, 391 F. 3d 1267 (D.C. Cir. 2004), a panel of the U.S. Court of Appeals for the District of Columbia Circuit unanimously found that EPA's WET test methods were sound and that the methods, including the testing procedures measuring chronic sublethal effects, generated reliable test results for the purposes of NPDES permit compliance.

You also asked that EPA not require TCEQ to implement chronic sublethal WET limits until "reliable scientific methods" exist "that permittees can use to identify and eliminate the causes of sublethal toxicity." Reliable scientific methods do exist. These include, but are not limited to, EPA's WET test methods promulgated at 40 CFR Part 136, *Toxicity Identification Evaluation: Characterization of Chronically Toxic Effluents, Phase I; Methods for Aquatic Toxicity Identification Evaluations: Phase I Toxicity Characterization Procedures, Second Edition; Marine Toxicity Identification Evaluation (TIE) Guidance Document, Phase I; Methods for Aquatic Toxicity Identification Evaluations: Phase II Toxicity Identification Procedures for Samples Exhibiting Acute and Chronic Toxicity; Methods for Aquatic Toxicity Identification Evaluations: Phase III Toxicity Confirmation Procedures for Samples Exhibiting Acute and Chronic Toxicity and Clarifications Regarding Toxicity Reduction and Identification Evaluations in the National Pollutant Discharge Elimination System Program*. These EPA WET methods, as well as other readily available documents

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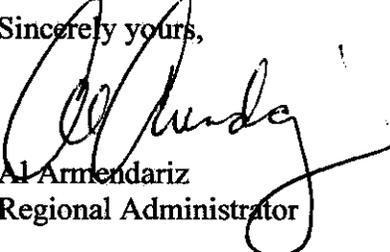
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developed outside EPA, are being used by industrial and municipal permittees nationally to identify and eliminate the causes of chronic sublethal WET test failures. Many states have been effectively implementing sublethal toxicity study requirements and limits, and reducing the toxic effects of undifferentiated waste streams on receiving waters. The low – and declining – rate of noncompliance with those toxicity limits indicates that the causes of lethal and sublethal toxicity can be identified and/or controlled. Further, EPA is aware of at least two successful sublethal-only toxicity studies conducted in EPA Region 6 within the last year. Those studies, completed by laboratories in EPA Region 6 for Texas permittees, identified the sources of sublethal toxicity.

EPA does not agree that achieving compliance with chronic sublethal WET requirements will require Texas permittees to spend millions of dollars unnecessarily. Although the successful completion of sublethal toxicity studies may sometimes present technical challenges for a competent aquatic toxicologist and sanitary engineers, and may require methodical and sustained diligence to identify and reduce causes of toxicity, such studies are the key to eliminating toxic discharges. EPA has reliable WET test methods (for acute and chronic toxicity) that are used in permits nationwide. These same EPA WET test methods are also being used by Texas permittees, laboratories and others, in conjunction with the additional guidance listed above, to identify and eliminate the causes of chronic sublethal WET test failures to meet the requirements of the Texas water quality standards for protecting aquatic life.

I believe that working together we can protect our State's vital water resources while promoting economic growth. We are committed to work with the TCEQ to ensure that permits protect the environment and public health. If you have any further questions, please contact me at (214) 665-2100, or your staff may contact Ms. Cynthia Fanning of my staff at (214) 665-2142.

Sincerely yours,



Al Armendariz  
Regional Administrator

cc: The Honorable Kay Bailey Hutchison  
The Honorable John Cornyn  
The Honorable Joe Barton  
The Honorable Kevin Brady  
The Honorable Michael C. Burgess  
The Honorable John R. Carter  
The Honorable K. Michael Conaway  
The Honorable Henry R. Cuellar  
The Honorable John Culberson  
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The Honorable Sheila Jackson-Lee  
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The Honorable Sam Johnson  
The Honorable Kenny Marchant  
The Honorable Michael McCaul  
The Honorable Randy Neugebauer  
The Honorable Pete Olson  
The Honorable Solomon P. Ortiz, Sr.  
The Honorable Ron Paul  
The Honorable Ted Poe  
Mark R. Vickery, P.G.  
Executive Director  
Texas Commission on Environmental Quality