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## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

December 8, 2010

Mr. Al Armendariz, Ph.D.  
Regional Administrator  
United States Environmental Protection Agency  
Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

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Dear Dr. Armendariz:

We read the Environmental Protection Agency's (EPA) December 2, 2010 News Release and received your letter of the same date relating to the Texas Pollutant Discharge Elimination System (TPDES) draft permits that have not been issued because of concerns raised by the EPA. It's perplexing to the Texas Commission on Environmental Quality (TCEQ) that after so many months and years of working with your staff on this issue, a news release is the communication tool of choice. This approach does not advance our common goal of clean water.

Your letter mentions 80 pending draft permits that the EPA is requesting be issued, and details two permits with concerns related to toxic discharges. I am aware of and have reviewed this growing list of EPA delayed unissued permits with concern because of the need to update the requirements. In fact, I initiated and made several visits to the EPA Region 6 and met with your staff to specifically discuss the list of objections raised by the EPA; some of which had never been raised before. In Dallas, I expressed our concern that many of these permits, as the TCEQ drafted and presented to the EPA for review, have other more restrictive permit limits that would improve the protection of water quality in Texas. However, they were stalled because of the EPA's unwillingness to work cooperatively on an effective solution for toxicity requirements.

The TCEQ is concerned with this EPA-imposed delay in issuing updated TPDES permits, particularly for those permits for which the TCEQ has taken corrective action that is being continued and/or improved in the proposed permits. Specifically, Red River Redevelopment Authority (RRRA) already has lethal Whole Effluent Toxicity (WET) limits at Outfall 001, effective since January 1998, where 48-hour acute testing is performed. In July of 2005, RRRA entered into a chronic TRE, followed later by a 24-hour acute TRE for Outfall 002. In March of 2008 we proposed chronic lethal WET limits and 24-hour acute WET limits for two species, which the EPA took issue with, causing further delays. More protective limits would be in place had the TCEQ permit been issued in 2008 as proposed. Similarly, the City of South Houston had chronic lethal WET limits that became effective in January 1999. For this proposed permit, the EPA wanted an approach contrary to our EPA approved Implementation Procedures for sublethal effects, which again caused delays. The TCEQ has reviewed these permits with our latest weight of scientific evidence method and these permits are ready to be processed.

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Once the EPA finally approves the permit and fact sheet language that has been sent to the EPA for review in May, and subsequently in early November, 2010, they can be issued.

For almost a year the TCEQ has expressed a willingness to move beyond its current EPA approved procedures to implement a WET program with the EPA's support. Most recently, and as mentioned above, in May we presented proposed permit language for all the permits that are on hold because of the toxicity limits. We were surprised to learn that the EPA now objects to a reasonable compliance period for the permittee to resolve the toxicity issues. Although it has been a common practice for new limits and was previously considered appropriate by your staff. We responded in early November with revised permit language for your consideration and still have not received approval. Until we have some established language for the permits and fact sheets it is inefficient to proceed with sending the other permits for review and comment; including permits for the City of South Houston and Red River Redevelopment Authority. Once the language is vetted between our two agencies the process can be expedited. We are eager to get the permits issued and will do so as soon as possible, but at this point, we have been waiting on EPA.

In the meantime, we are also sending new draft permits forward for your review with toxicity limits based on our analysis, and you have approved one, which has been issued with similar language.

Also, with respect to the rest of the permits included on the EPA's list of objections, we believe it is important to consider the technical merits of each issue and work with the EPA to develop protective permits. As an example, we have been able to develop a mutually agreed upon solution for permits with EPA objections on 316(b) requirements, which cover approximately 23% of permits you reference.

As you are aware, the EPA in 2006, federalized a Texas permit and began the process to add toxicity limits, and has still not issued this permit. We certainly do not want to encounter the same difficulty as we move forward to issue our permits. Having an EPA approved systematic approach for all permits to follow is the best path forward.

We desire to work with the EPA to protect water quality in Texas. We remain open to meetings and further discussions to establish mutually acceptable WET limits in permits. If you have any questions, please contact me at 512-239-5308.

Sincerely,



Charles W. Maguire, Director  
Water Quality Division  
Texas Commission on Environmental Quality

✓ cc: Mr. Miguel Flores, United States Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202