



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

MAY 16 2007

Mr. Dan Eden, Deputy Director
Office of Permitting, Remediation and Registration (MC-122)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711

Subject: Revisions to Whole Effluent Toxicity (WET) Components of the Environmental Protection Agency (EPA) National Pollutant Discharge Eliminations System (NPDES) Program

Dear Mr. Eden:

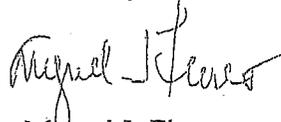
In February 2005, I initiated an effort whereby each of our Region 6 States was to work with Region 6 to develop requirements to establish WET limits for sub-lethal effects (e.g., growth or reproduction), where required by applicable water quality standards, to fully comply with NPDES regulations at 40 CFR Part 122.44(d)(1). My March 9, 2006, letter to you stated my concern that failure to fully adopt all WET requirements in a timely manner places both the Texas Commission on Environmental Quality and Region 6 at risk with respect to administration of the NPDES permitting program. As an integral part of this effort, I requested that Region 6 States begin to develop a mutually acceptable strategy directed toward implementing a predictive approach to determining reasonable potential for whole effluent toxicity (WET). I established a target date for States to be in full compliance by January 2007. In support of this effort, Region 6 has provided training and technical assistance to its States, permittees, WET labs and contractors, and has developed a WET permitting strategy which has been made publicly available. Unfortunately, in the two years provided, none of the Region 6 States authorized to administer the NPDES permitting program has completed the tasks necessary to achieve full compliance with the applicable federal regulations, or with the individual State water quality standards which ensure protection of aquatic life. With the exception of Louisiana, no State has submitted a draft of proposed revisions.

I recently received a memorandum from the Office of Wastewater Management (OWM) on this program deficiency. Pursuant to this memo, Region 6 is establishing a date of June 30, 2008, for its States to complete all tasks necessary, to establish an EPA-approvable method of predicting reasonable potential for WET limits based on lethal and/or sub-lethal effects. I ask that you provide within 30 days a written response to me which includes all pertinent actions you have completed to date and a timeline including dates and activities by which these tasks will be

performed to meet the deadline established by the EPA Office of Water memo. In the interim, EPA Region 6 will continue to object to permits where a WET limit is not included in the permit and reasonable potential exists based on an effluent toxicity testing history of reported multiple lethal and/or sub-lethal WET test failures (i.e. significant lethal or sub-lethal effects demonstrated at or below the effluent critical dilution).

Region 6 is committed to working closely with you to answer questions, resolve impediments to State NPDES WET program revisions and to provide any support you and your staff may need to implement these requirements. If you have questions or would like to discuss this further you may call me or your staff may contact Claudia Hosch at (214) 665-6464 or via e-mail at hosch.claudia@epa.gov.

Sincerely,



Miguel I. Flores

Director

Water Quality Protection Division

Enclosure

Identical State-specific letters sent to:

Ms. Mary Leath, ADEQ
Mr. Chuck Brown, LDEQ
Mr. Derek Smithee, OWRB
Mr. Jon Craig, ODEQ