



May 5, 2011

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington D.C., 20460

Dear Administrator Jackson:

The Texas Association of Clean Water Agencies, the Water Environment Association of Texas, the Texas Section American Water Works Association, and the Texas Water Conservation Association represent public water and wastewater utilities (“POTWs”) throughout the State of Texas. Representatives of these associations have worked together over the last several years through a committee known as the WET Coalition to respond to the shift in Environmental Protection Agency (EPA) policy in Region 6 regarding Whole Effluent Toxicity (“WET”). The WET Coalition has provided input to Region 6 and the Texas Commission on Environmental Quality (“TCEQ”) as the Region has sought to implement a policy requiring sublethal WET limits in Texas Pollutant Discharge Elimination System (“TPDES”) permits.

Based on our members’ experience with regard to WET testing, the Coalition has significant concerns that the regulatory burden imposed by sublethal WET limits based on sublethal test results will do little more than expose permittees to significant expenses and liability without any related enhancement to water quality protection. This concern is based primarily on three factors:

- Implementing this policy could cost Texas communities in excess of \$20 million per year.
- EPA’s own studies indicate that there is no demonstrated correlation between sublethal WET testing in the laboratory and actual instream impacts.¹

¹ de Vlaming, Victor and Teresa Norberg-King. A Review of Single Species Toxicity Tests: Are the Tests Reliable Predictors of Aquatic Ecosystem Community Responses? EPA 600/R-97/114. Page 24. 1999

- Toxicity investigations attempting to identify the causes of test failures when only sublethal effects are present can cost hundreds of thousands to millions of dollars, and to the limited extent that such studies have been attempted, they have typically been unsuccessful in identifying and eliminating the causes of sublethal WET test failures.
- Sublethal WET permit limits subject a permittee to potential enforcement by state agencies and EPA and to third-party citizen suit liability for test failures that may simply be the result of the statistical error rate of the test.

We are writing to you to request that the WET Coalition be given the opportunity to work with EPA and Region 6 to resolve these concerns within the framework of the Clean Water Act. The WET Coalition is willing to explore alternative approaches. For example, one possible approach may be to suspend the imposition of sublethal WET limits until additional studies are conducted that clearly demonstrate a correlation between sublethal test results and instream sublethal toxicity. Another possible approach is to impose a sublethal WET limit only after a permittee has conducted a successful Toxicity Reduction Evaluation. It is our understanding that TCEQ is supportive of alternatives such as these. There may certainly be other approaches that address the unique challenges of sublethal WET testing while providing adequate protection against instream effects that could be developed through an open discussion.

A more detailed discussion of WET regulatory issues was provided to EPA Headquarters by the WET Coalition on March 23, 2011, in response to the EPA request for public input to a retrospective review of its rules, which was published in the Federal Register on February 23, 2011. Because of issues such as those set forth in that submittal and this letter, we strongly recommend that EPA include the WET regulatory program as one of the top ten programs to be included in their retrospective review.

We want to make clear that the WET Coalition and the associations it represents are not seeking to avoid or minimize permittee responsibility for water quality protection and adherence to the requirements of the Clean Water Act. Rather our goal is to exercise our responsibilities to our ratepayers and taxpayers and ensure that, when they have to incur increased costs, those costs are justified by the achievement of enhanced water quality protection. Our members have decades of experience in owning and operating POTWs and in the conduct of WET testing, as the methods and policies have developed over the years. It is our hope that EPA Headquarters and Region 6 will take an opportunity to work with us so that we can ensure that the policies on which we all rely to implement the Clean Water Act are based on sound science and truly result in cleaner waters.

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Thank you for your attention to this matter.

Sincerely,

WATER ENVIRONMENT
ASSOCIATION OF TEXAS

TEXAS ASSOCIATION OF
CLEAN WATER AGENCIES

Carol Batterton
Executive Director

Gordon Pederson
President

Date

Date

TEXAS WATER CONSERVATION
ASSOCIATION

TEXAS SECTION AMERICAN
WATER WORKS ASSOCIATION

Leroy Goodson
Executive Director

Mike Howe
Executive Director

Date

Date