



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

MAY 20 2009

Ms. Carol Batterton, Executive Director  
Water Environment Association of Texas  
2619 Jones Road  
Suite C  
Austin, TX 78745

Dear Ms. Batterton:

Thank you for your letter of March 27, 2009, in which you expressed the concerns of several groups speaking for municipal wastewater treatment facilities including the Water Environment Association of Texas (WEAT). As a result of our several letters and meetings, I believe the Environmental Protection Agency (EPA) understands the positions and concerns of your constituency and we will continue to give them all due consideration. EPA cannot concur with the proposed approaches presented in your letter with regard to reasonable potential, permit violations, test endpoint and sub-lethal toxicity reduction evaluations. Based on our understanding, the proposals would allow a 25% failure rate for lethal effects in biomonitoring tests, and an even higher failure rate for sub-lethal effects. The Texas water quality standard at 30TAC Part I §307.6(e)(1) does not allow for multiple excursions:

“Chronic total toxicity, as determined from biomonitoring of effluent samples, will be precluded in all water in the state with existing or designated aquatic life uses except in mixing zones and at flows less than critical low-flows, in accordance with §307.8 of this title.”

As you point out in your letter, the final decisions must be made by EPA and the Texas Commission on Environmental Quality (TCEQ), and must meet the minimum requirements established in the Texas water quality standards and federal NPDES permitting regulations. The Clean Water Act requires that States authorized to administer the NPDES program implement procedures to assess reasonable potential for whole effluent toxicity (WET) during permit development and, where reasonable potential for WET is demonstrated, include WET limits in permits. TCEQ has not provided an appropriate determination of reasonable potential for WET in either its proposed implementation procedure revisions or any of its permit fact sheets to date. Permits that do not address WET reasonable potential (lethal and sub-lethal, as appropriate) do not meet the requirements of federal regulations at 40 CFR 122.44(d)(1).

EPA Region 6 has communicated its concerns to TCEQ several times; most recently our letter of March 10, 2009 (attached). The Agency hopes to reach resolution on the required revisions to the TCEQ WET program in the near future. In the interim, EPA will continue to review draft permits and fact sheets using the Region 6 approach to reasonable potential for

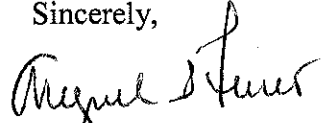
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WET and requiring limits on toxicity where reasonable potential exists based on lethal and/or sub-lethal effects, as appropriate.

EPA supports public participation in the various stakeholder workgroups and public meetings hosted by TCEQ as generally the most efficient forum for advancing issues and concerns. I encourage your continued participation in this format.

Thank you again for your letter. If you have any questions regarding technical aspects of the issues, please contact Phillip Jennings at (214)-665-7538 (Email: [jennings.phillip@epa.gov](mailto:jennings.phillip@epa.gov)).

Sincerely,



Miguel I. Flores  
Director  
Water Quality Protection Division

Enclosures

cc: Dan Eden, TCEQ  
L'Oreal Stepney, TCEQ