

EXHIBIT 2
ADMINISTRATIVE RECORD # 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

MAR -9 2006

Dan Eden, Deputy Director
Office of Permitting Remediation and Registration
Texas Commission on Environmental Quality (MC-122)
P.O. Box 13087
Capitol Station
Austin, Texas 78711-3087

Re: TPDES Permit No. TX0054186
Texas State Permit No. 11401-001
San Jacinto River Authority
The Woodlands, Texas

Dear Mr. Eden:

This letter is to inform you that the Texas Pollutant Discharge Elimination System (TPDES) permit No. TX0054186 (Texas State Permit No. 11401-001), which the Texas Commission on Environmental Quality (TCEQ) issued for the San Jacinto River Authority in The Woodlands, Harris County, Texas is not a valid NPDES permit under the federal Clean Water Act (CWA). Upon request, this permit was forwarded to the Environmental Protection Agency, Region 6 (EPA) on December 2, 2005, for review as provided by 40 C.F.R. §123.44(j) and Section IV.C.3 of the Memorandum of Agreement (MOA) signed by EPA and TCEQ upon authorization of the TPDES program.

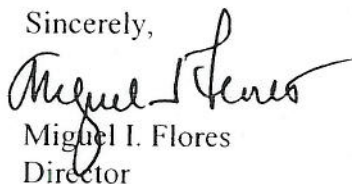
Pursuant to section C.3.b of the MOA and 40 C.F.R. §123.44, EPA specifically objected to the draft permit by letter dated January 6, 2006, stating: "EPA specifically objects to this permit for its failure to include: 1) appropriate requirements to address lethal toxicity, 2) a toxicity reduction evaluation (TRE) to identify the causative toxicant(s) and control(s) related to sub-lethal effects, and 3) adequate measures to monitor for persistent sub-lethal test failures." Despite EPA's specific objection, TCEQ issued TPDES permit No. TX0054186 on January 17, 2006, without being revised to meet EPA's objections. The permit as issued is not a valid NPDES permit because TCEQ's issuance of this permit violates the CWA and Texas state law. Specifically, CWA §402(d)(2) and 40 C.F.R. § 122.4 and 123.29 require State NPDES programs to provide that "no permit shall be issued when the [EPA] has objected in writing under §123.44." Texas law includes this prohibition against permit issuance when EPA objects. See 30 Texas Admin. Code § 305.538.

For TCEQ to issue a valid permit, the permit must address the specific objections in EPA's letter of January 6, 2006. Pursuant to CWA §402(d)(4), if TCEQ fails to submit a revised permit that meets EPA's objections, exclusive authority to issue the permit will pass to EPA on April 6, 2006 (90 days after EPA's objection letter). According to federal

regulations at 40 CFR §123.44(e), "within 90 days of receipt by the State Director of an objection by the Regional Administrator, the State . . . or any interested person may request that a public hearing be held by the Regional Administrator on the objection," or if no public hearing is requested, the State, pursuant to 40 CFR §123.44(h)(1) must resubmit "a permit revised to meet the Regional Administrator's objection." No public hearing was requested, and as of yet, the State has not submitted a revised permit that meets EPA's objections. Pursuant to 40 CFR §§123.44(h)(1) and (3), "[i]f no public hearing is held . . . and the State does not resubmit a permit revised to meet the . . . objection within 90 days of receipt of the objection," "[e]xclusive authority to issue the permit passes to EPA." The MOA is consistent with these requirements, stating in section IV.C.3.g, that "If EPA makes a specific objection to a draft permit under 402(b) of the CWA and 40 CFR §123.44(c) that is not resolved by [TCEQ], exclusive authority to issue the NPDES permit passes to EPA."

Again, in order for San Jacinto River Authority's permit to be considered a valid NPDES permit, it must be revised and resubmitted to meet EPA's objections, otherwise exclusive authority to issue the permit will vest in the EPA on April 6, 2006, pursuant to 33 U.S.C. § 1342(d)(4) and 40 C.F.R. §123.44. If TCEQ fails to submit a revised permit that meets EPA's objections, San Jacinto River Authority's authorization to discharge will continue under their previous NPDES permit, TX0054186, effective October 2, 1989, expired October 1, 1994 and administratively continued, until EPA issues a new permit that reflects the additional terms and conditions required by our January 6, 2006 letter. Thank you for your consideration of this matter. If you have any questions or concerns, please feel free to call me or have your staff contact Claudia Hosch of my staff at (214) 665 – 6464, or email [hosch.claudia@epa.gov].

Sincerely,



Miguel I. Flores
Director

Water Quality Protection Division

cc: Donald Sarich, San Jacinto River Authority Woodlands Division Manager
Lauren Kalsiek, Esq.