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ENVIR. APPEALS BOARD

To: Clerk of the Board, Environmental Appeals Board

Date: 03/25/08

Urgent

From: Willie R. Horton c/o Teresa Rivers

Please comment

Fax: 202.233.0121 Phone:

Pages: 04

For Review

Re: San Jacinto River Authority; NPDES Permit

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Comments



March 25, 2008

U.S. Environmental Protection Agency
 Clerk of the Board, Environmental Appeals Board
 (MC 1103B) - Ariel Rios Building
 1200 Pennsylvania Avenue, N.W.
 Washington, D.C. 20460-0001

VIA FACSIMILE
 & U.S. MAIL
 (202) 233-0121

Re: San Jacinto River Authority; NPDES Permit No. TX0054186,
 Appeal No. NPDES07-19
 Region 6 Notice of Withdrawal filed March 14, 2008

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 U.S. EPA.
 ENVIR. APPEALS BOARD
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Dear Environmental Appeals Board:

TACWA, a subset of the National Association of Clean Water Agencies ("NACWA"), represents the interests of major wastewater utilities throughout the State of Texas. Its membership includes over 20 utilities providing wastewater collection and treatment service to over 10 million Texas citizens. TACWA was in the process of preparing an amicus brief in support of the petition for review filed by the San Jacinto River Authority ("SJRA") in the above-referenced proceeding when U.S. Environmental Protection Agency, Region 6 ("Region 6") filed a notice of withdrawal of the contested portions of SJRA's permit and motion to dismiss, or in the alternative, stay the proceedings.

In its petition, SJRA seeks the EAB's review of Region 6's decision to impose lethal and sublethal Whole Effluent Toxicity ("WET") limits in SJRA's permit despite SJRA's successful challenge of the imposition of WET limits during the Texas Commission on Environmental Quality state permitting process. The petition also requests review of permit conditions that establish (i) how the WET limits are calculated, and (ii) what type of WET test result constitutes a permit violation.² Inherent in SJRA's appeal, and of significant interest to TACWA's membership, is the precedent this case may set for Texas and the Region on the following issues:

¹ NACWA represents the nation's wastewater treatment agencies and plays a key role in the development of environmental regulations and policies that govern water quality. Contemporaneous with the emergence of the Clean Water Act in the mid-1970's, NACWA was founded (i) to secure federal funding for municipal wastewater treatment, and (ii) to discuss emerging national interest in improving the quality of the nation's waters. Based upon the shared goal of effectively representing the interests and priorities of publicly-owned treatment works (POTWs), founding members formed NACWA. In the four decades that have followed, NACWA's membership has grown and its interests have diversified to include all facets of water quality protection. Today, NACWA is a dynamic national organization, and recognized leader in environmental policy. See the organization's website at <http://www.nacwa.org> for further information.

² SJRA's Petition at 14-15.

- viability of the state permitting process, including the right to a meaningful evidentiary hearing and application of agency rules and policies governing the Texas Pollutant Discharge Elimination System program previously approved by EPA;
- the ability to challenge individual WET test results in accordance with the District of Columbia Court of Appeals' decision in *Edison Electric Inst. v. E.P.A.*, 391 F.3d 1267 (D.C. Cir. 2004);
- revised definition of "No Observed Effects Concentration;"
- definition of a permit violation for WET testing; and
- definition of a test "failure."

TACWA appreciates that the Region has withdrawn the contested permit provisions in order to take additional public comment on the issues raised by SJRA's appeal and looks forward to the opportunity to provide such comments to the Region during this process. However, because the issues detailed above are of significant interest to the regulated community that TACWA represents, it urges the EAB to stay, rather than dismiss, SJRA's petition. There is no indication that the Region's withdrawal and proposed permit modifications will resolve these important policy issues, and it is likely that they will continue to be before the EAB after the modification process is complete. Therefore, TACWA supports SJRA's motion to stay these proceedings.

Sincerely,



Willie R. Horton, P. E.
President

cc: Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 2008, a copy of the foregoing was served upon the following parties via facsimile.

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