

EXHIBIT 1
ADMINISTRATIVE RECORD # 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

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

JAN 6 2006

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (7004 1160 0003 0356 5360)

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: Specific Objection to Issuance of NPDES Permit No. TX0054186 / TPDES 11401-001
Permittee: San Jacinto River Authority

Dear Mr. Eden:

On December 2, 2005, EPA received a paper copy of the above-referenced permit revised pursuant to the directive issued by the Texas Commission on Environmental Quality (TCEQ) Commissioners. By this letter, EPA specifically objects to San Jacinto River Authority NPDES Permit No. TX0054186 / TPDES Permit No. 11401-001 for the reasons provided below.

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 § 122.43 (h)(1) must resubmit "a permit revised to meet the Regional Administrator's objection." While EPA continues to work with TCEQ and the San Jacinto River Authority to arrive at permit conditions that are mutually acceptable, we are providing this specific objection to ensure that the permit meets all requirements of the Clean Water Act (CWA) and all applicable federal regulations.

As stated in EPA's follow up letter of November 21, 2005, under 40 C.F.R. § 123.44(j), when the State "proposes to issue a permit which differs from the draft permit reviewed by the Regional Administrator" the State shall transmit the proposed permit to EPA for review. This regulatory requirement is also memorialized in sections IV.C.3 and IV.C.4 of the Memorandum of Agreement (MOA) between EPA and TNRCC (now TCEQ). Under the MOA, EPA shall have the opportunity for re-review of the proposed permit and the ability to provide additional comments or objections within thirty (30) days after receipt of the proposed permit. Section IV.C.4 provides that "[i]f the terms of any permit are affected in any manner by court action or by the final disposition of an administrative appeal, the TNRCC [now TCEQ] shall promptly transmit to the EPA a copy of the amended permit and the supporting judicial or administrative decision." In accordance with the agreement between EPA and TCEQ, dated December 28, 2005, and pursuant to § XI.B.2 of the MOA, the date upon which EPA must submit its comments or object to the revised permit is January 9, 2006.

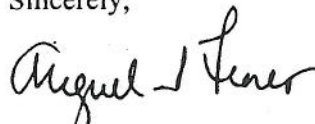
After a complete review of the terms and conditions of the subject permit the EPA specifically objects to this permit for its failure to include: 1) appropriate requirements to address lethal toxicity, 2) a toxicity reduction evaluation (TRE) to identify the causative toxicant(s) and control(s) related to sub-lethal effects, and 3) adequate measures to monitor for persistent sub-lethal test failures.

Pursuant to the requirements of the CWA Section 101(a)(3), "it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited." In Texas, EPA implements this policy under the authority of Section 402 (d)(2) of the CWA and Section III.A.2.7 and III.C.2.b of the TNRCC/EPA MOA. This specific objection is made pursuant to 40 CFR §§ 123.44(c)(1), (4), (5), (7), and (8). The CWA and regulatory cites that support and require the need to address toxic impacts in this case include CWA §§ 301(b)(1)(C) and 402(a)(1), as well as 40 CFR §§ 122.44(d)(1)(i) and (v) and (vii)(A), 122.44(d)(5), 122.44(l) and 122.48. Additionally, the TCEQ water quality standards support the control of toxic impacts at 30 TAC Part 1 §§ 307.3(a) (10), (34), (64), (65), and (66), 307.6(b)(2) and (4), 307.6(e) and (e)(2)(D), and 307.8(a)(C) and (b)(1)(C), and (b)(4).

Based upon information currently available to EPA, to meet EPA's specific objection TCEQ must provide EPA, within 90 days of the date of this letter if no public hearing is requested, a revised permit that controls chronic lethality, reduces sub-lethal toxicity to required levels, and increases the monitoring frequency to ensure that toxicity is reduced to and remains at or below required levels. TCEQ could meet this objection by revising the permit to include the following: 1) a requirement that activates a WET limit effective within 90 days after a test result shows statistically significant lethal effects to the *Ceriodaphnia dubia* test species at or below effluent dilutions of 85% effluent and that meets all EPA test acceptability criteria for Method 1002.0, 2) a requirement for immediate initiation of a sub-lethal toxicity reduction evaluation, and 3) an increase in the *C. dubia* monitoring frequency from once per quarter to once per month with no reduction in frequency. If EPA were to issue this permit, it would include these conditions except that it would include a limit for sub-lethal toxicity rather than requiring a toxicity reduction evaluation. An EPA permit would be issued for a five year duration.

If TCEQ issues a revised permit satisfying the terms of this objection EPA will withdraw its specific objection. Otherwise, unless a hearing is requested, 90 days after receipt of this specific objection, exclusive authority to issue the permit passes to the EPA pursuant to 40 CFR 123.44(h)(3). If you have any questions regarding this issue please contact me at 214/665-8587 or Claudia Hosch of my staff at 214/665-6464 [e-mail: hosch.claudia@epa.gov].

Sincerely,



Miguel I. Flores, Director
Water Quality Protection Division

cc: Donald Sarich, SJRA Woodlands Division Manager
L'Oreal Stepney, Division Director, TCEQ