

December 28, 2004

MEMORANDUM

SUBJECT: Public Review and Comment on Draft National Whole Effluent Toxicity (WET) Implementation Guidance

FROM: Linda Boornazian, Director
Water Permits Division

TO: EPA Regional Water Management Division Directors
States Water Program Directors
Interested Parties

We have posted the “*Draft National Whole Effluent Toxicity (WET) Implementation Guidance Under the NPDES Program*” on our web site (www.epa.gov/npdes/permitbasics) for public review and comment for a period of sixty (60) days. Comments on the draft document may be submitted to the EPA Docket Center under Docket ID No. OW-2004-0037. For more information on submitting comments please see the attachment.

OVERVIEW

EPA has developed this draft guidance with three basic goals in mind: (1) promoting national consistency within the existing National Pollutant Discharge Elimination System (NPDES) WET Program; (2) re-stating the need for compliance with existing NPDES WET regulations (especially with respect to EPA reasonable potential (RP) regulations at 40 CFR Part 122.44(d)); and (3) re-emphasizing existing EPA guidance, policy, and regulations for regulatory authorities and NPDES permittees. The draft guidance addresses a number of issues and questions that have been raised by states, regions, and stakeholders. The guidance also outlines options that states may consider to provide flexibility within the existing regulations, such as allowing additional time for permittees to collect more data to assess RP and using an enhanced approach to evaluating WET toxicity in low-flow dilution cases.

Section 402 of the Clean Water Act requires EPA and authorized states and territories to administer the NPDES program in compliance with the Act and the implementing regulations at 40 CFR Parts 122-125. The regulations at 40 CFR Part 122.44 (d) require EPA and regulatory authorities to perform a reasonable potential analysis and to establish permit limits for WET when an effluent discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a numeric or narrative criterion within an applicable water quality standard. One exception to the requirement for a WET limit is when a narrative criteria exists, the source of the toxicity has been identified, and a chemical limit can be developed that reduces or eliminates the toxicity, such that it does not exceed the applicable water quality standards (40 CFR Part 122.44 (d)(1)(v)).

Please contact me (boornazian.linda@epa.gov or 202-564-9545) or Laura Phillips of my staff (phillips.laura@epa.gov or 202-564-0741) if you have any questions.

Attachment

EPA Docket Center: Submitting Comments on This Document:

Copies of the Draft National Whole Effluent Toxicity (WET) Implementation Guidance may be downloaded at www.epa.gov/npdes/permitbasics

1. *Docket.* EPA has established an official public docket under Docket ID No. OW-2004-0037. The official public docket consists of the draft WET guidance document, this transmittal memo, and any public comments received on the draft guidance. The official public docket is the collection of materials that is available for public viewing at Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426. To view these documents materials, please call ahead to schedule an appointment. Every user is entitled to copy 93 pages per day before incurring a charge. The Docket may charge 15 cents a page for each page over the 93-page limit plus an administrative fee of \$14.00.

2. *Electronic Access.* You may access the draft document electronically at www.epa.gov/npdes/permitbasics or through EPA's on-line docket system at www.epa.gov/edocket. You may use EPA eDocket system to submit or view comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless your comments and information contain copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

3. Submitting Comments. You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comments. Please ensure that your comments are submitted within the specified period. Comments received after the close of the review period will be marked "late." EPA is not required to consider these late comments.

A. Electronically. If you submit electronic information as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comments. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comments and allows EPA to contact you in case EPA cannot read your comments due to technical difficulties or needs further information on the substance of your comments. EPA's policy is that EPA will not edit your comments, and any identifying or contact information provided in the body of the comments will be included as part of the comments that are placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments.

< **EPA Dockets.** Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket>, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OW-2004-0037. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your information.

< **E-mail.** Comments may be sent by electronic mail (E-mail) to OW-Docket@epa.gov, Attention Docket No. OW-2004-0037. In contrast to EPA's electronic public docket, EPA's E-mail system is not an "anonymous access" system. If you send an E-mail with comments directly to the Docket without going through EPA's electronic public docket, EPA's E-mail system automatically captures your E-mail address. E-mail addresses that are automatically captured by EPA's E-mail system are included as part of the information that is placed in the official public docket, and made available in EPA's electronic public docket.

< **Disk or CD ROM.** You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

B. *By Mail.* Send your comments to: Water Docket in the EPA Docket Center, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW, Washington, DC, 20460, Attention Docket ID No.OW-2004-0037.

C. *By Hand Delivery or Courier.* Deliver your comments to: Water Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC, Attention Docket ID No.OW-2004-0037. Such deliveries are only accepted during the Docket's normal hours of operation.

4. *Factors to Consider When Submitting Comments to EPA.*

You may find the following suggestions helpful for preparing your comments:

2. Explain your comments as clearly as possible.
3. Describe any assumptions that you used.
4. Provide any technical information and/or data you used that support your comments and the basis for it.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response.