



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

Office of the Regional Administrator

January 24, 2023

Mr. Eric Allmon
Perales, Allmon & Ice, P.C.
Attorneys at Law
1206 San Antonio Street
Austin, Texas 78701

Re: Citizens Petition for Corrective Action or Withdrawal of NPDES Program Delegation From the State of Texas

Dear Mr. Allmon:

This letter is to update you on the progress of the U.S. Environmental Protection Agency Region 6's review of the Citizen Petition for Corrective Action or Withdrawal of NPDES Program Delegation from the State of Texas filed on September 23, 2021, on behalf of the Petitioners.

As noted in our October 12, 2021, letter acknowledging receipt of the Petition, 40 CFR §123.64(b) allows the EPA to conduct an informal investigation of the allegations cited in the Petition to determine if cause exists to order "the commencement of proceedings to determine whether to withdraw approval" of the state's National Pollutant Discharge Elimination System program under the Clean Water Act § 402(c) and 40 CFR §123.64. In accordance with that authority, Region 6 is in the process of informally investigating the allegations in the Petition.

As part of our informal investigation, Region 6 attorneys have had preliminary discussions with attorneys representing the Petitioners to clarify the allegations and the underlying support for the allegations¹ in the Petition. These discussions have focused on the allegations related to the state's public participation processes, including the alleged shifting of the burden of proof in permit proceedings and alleged roadblocks to the ability of the public to obtain judicial review of state issued NPDES permits. Discussions also focused on allegations that the TCEQ is not properly implementing the antidegradation policy and implementation methods required as part of the state's water quality standards under 40 CFR § 131.12. Region 6 is in receipt of additional information forwarded to the EPA in support of the Petition by you and other attorneys for the Petitioners, including copies of Texas Commission on Environmental Quality record documents and court decisions. We will be reviewing the additional documents provided, along with the information in the Petition to determine if cause exists to commence proceedings under 40 CFR §123.64.

¹ The preliminary discussions have also included concerns related to public participation in preconstruction air permits issued by TCEQ, as presented in a petition to the EPA dated June 28, 2022, by the Port Arthur Community Action Network, San Antonio Bay Estuarine Waterkeeper, Diane Wilson, Familias Unidas del Chamizal, Shrimpers and Fishermen of the RGV, Citizens Alliance for Fairness and Progress, West Dallas 1, Texas Environmental Justice Advocacy Services (t.e.j.a.s.), Air Alliance Houston, Texas Campaign for the Environment, Environmental Integrity Project, Sierra Club Lone Star Chapter, and the Sierra Club.

If proven to be true, the allegations outlined in the Petition are concerning. As noted in our discussions, CWA § 402(c)(3) provides that whenever the EPA “determines after public hearing that a state is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed 90 days, the Administrator shall withdraw approval of such program.” See also 40 C.F.R. § 123.64(b). Pursuant to 40 CFR § 123.63, criteria for state program withdrawal include circumstances where the State’s legal authority no longer meets the requirements of Part 123, including “[A]ction by a State legislature or court striking down or limiting State authority,” and where the operation of the state program fails to comply with the requirements of Part 123, including “[F]ailure to comply with the public participation requirements” of that Part. 40 CFR §§ 123.63 (a)(1)(ii) and (a)(2)(iii).

Thank you again for your interest in protecting surface waters in the State of Texas. The region will continue to update you as we proceed with our informal investigation of the allegations in the Petition. We have also been in contact with TCEQ concerning the Petition and the TCEQ will receive a copy of this letter as well.

If you have any questions, please feel free to contact Troy Hill, Acting Director, Water Division, at (214) 665-6647 or at Hill.Troy@epa.gov. You may also contact Mark Hayes, Section Chief, NPDES/Wetlands Review Section, at (214) 665-2705 or hayes.mark@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Maguire". The signature is fluid and cursive, with a large loop at the end.

Charles W. Maguire
Acting Deputy Regional Administrator

cc: Cari-Michel La Caille, Director
Office of Water (MC-158)
TCEQ

Robert Sadlier, Deputy Director
Water Quality Division (MC-145)
TCEQ

Sam Short, Acting Director
Office of Air (MC 122)
TCEQ