



Water Environment
Association of Texas



ASSOCIATION OF WATER
BOARD DIRECTORS - TEXAS



October 11, 2021

U.S. Environmental Protection Agency
Office of the Administrator, MC-1101A
William Jefferson Clinton Building
1200 Pennsylvania Avenue NW
Washington, D.C. 20004

Re: Citizen Petition to the Environmental Protection Agency (EPA)

Dear Mr. Regan:

The Water Environment Association of Texas (WEAT), Texas Association of Clean Water Agencies (TACWA), Texas Water Conservation Association (TWCA), Association of Water Board Directors (AWBD), and Texas Rural Water Association (TWRA), collectively referred to as the Coalition, have reviewed the recent Citizen Petition to the Environmental Protection Agency (EPA) on behalf of Perales, Allmon & Ice, P.C., Earthjustice, and Environmental Integrity Project. The Petition urges the EPA to make substantial changes to its oversight of Texas' delegated NPDES program, which is managed by the Texas Commission on Environmental Quality (TCEQ). The Petition includes a request that EPA initiates proceedings to withdraw Texas' authority over NPDES permitting if specific changes to the TCEQ's water quality permitting program are not made.

The Coalition has consistently supported the importance of state oversight of the NPDES/TPDES program and support the continued success of NPDES delegation to the TCEQ. Without addressing each of the Petition's specific water quality oversight claims in detail at this time, the Coalition believes that TCEQ, with its significant existing infrastructure and regulatory program, is best positioned to implement Chapter 402 of the Clean Water Act in light of nearly a quarter-century of successful state permitting and enforcement. For example, Texas required secondary treatment long before EPA. In addition, TCEQ is also best positioned to continue its oversight responsibilities as evidenced by stringent permitting requirements and enforcement criteria updated in Fall 2020.

The Coalition also notes that many of the Petitioners' claims are premature because the referenced permit decisions are not final. Some of the petitioners' other concerns should first be taken up with a petition for rulemaking at the TCEQ or are already consistent with federal law. Further, while it's true that few if any, dischargers have had to do a Tier 2 analysis under the State's antidegradation policy, it's not because the TCEQ never finds a need for Tier 2 review. It is because the TCEQ and predecessor agencies have developed, over the last 30 plus years, a very stringent water quality standards and permitting program that does not allow for harm to its State's waters. TCEQ and its predecessor agencies have reviewed its water quality standards and implementation procedures



every three years as required by the CWA, allowing any and all public comments by various interest groups in order to make the rules and procedures better and stronger. Each rule making requires TCEQ approval as well as EPA approval, thus TCEQ won't develop a permit that would potentially harm the State's water and applicants understand what is required. Applicants also desire to avoid a balancing test that looks at economic justification; and thus, applications are targeted to avoid that scenario. Finally, there is no doubt that Texas' contested case process and administrative review provides a much more meaningful ability to challenge a permit than what is provided by federal law.

The Coalition values and participates in the robust engagement opportunities that TCEQ consistently affords and stands by the state regulator in its efforts to implement Clean Water Act programs in Texas.

Sincerely,

Julie Nahrgang

Executive Director

WEAT | TACWA

Stacey Steinbach

General Manager

TWCA

Augustus Campbell

Executive Director

AWBD

Lara Zent

Executive Director

TRWA