



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202 – 2733

March 31, 2015

The Honorable Eddie Rodriguez
Texas House of Representatives
Vice Chair
Texas House Committee on Environmental Regulation

Dear Mr. Rodriguez:

I am writing in response to your letter dated March 27, 2015, in which you asked for EPA's input regarding legislation that has been filed this session with the Texas Legislature that would alter the Texas Commission on Environmental Quality's (TCEQ's) permitting processes, and what impact, if any, these proposed statutory changes might have on the EPA's approval or authorization of federal programs in the State. In particular, you asked for input regarding House Bills 1865 and 1247, which would create a presumption during contested case hearings that the draft permit meets all applicable federal and state legal and technical requirements.

As you are aware, federal environmental programs that are approved or authorized to be operated by state agencies must be operated consistent with federal law. EPA is concerned that as currently drafted, House Bills 1865 and 1247 could be read to impact the applicability of federal requirements to federal permit programs being implemented by the TCEQ. These proposed bills appear to shift the burden of proof during a contested case hearing away from the party seeking the permit to those potentially impacted by the permittee's operations, thereby affecting Texas' public participation process. Although a contested case hearing process is not required as part of a federally-approved program, EPA needs to ensure that state processes and legislation do not impede or conflict with federal law. Thus, the changes suggested by House Bills 1865 and 1247 should be reviewed by EPA to ensure they do not interfere with federal requirements or alter the basis for one or more program approvals.

As noted in your letter, the EPA has a long history of consulting with the Texas Legislature in regard to the potential impacts of statutory proposals on the EPA's approval or authorization of federal programs in the State of Texas. We have long enjoyed a productive relationship with the Texas Legislature and are always available to engage in discussions with you about this bill or any other legislation being considered by the Legislature.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "David W. Gray".

David W. Gray, Director
External Affairs