



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

JUN 24 2009

Mr. Mark R. Vickery, P.G.
Executive Director
Texas Commissioner on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Dear Mr. Vickery:

Thank you for your letter of June 5, 2009, regarding unresolved issues related to the Texas' air permitting program. I appreciate your willingness to work collaboratively towards addressing the outstanding concerns.

We have tried to provide clarity on our concerns with your proposed State Implementation Plan (SIP) rules through a series of letters over the past years, including our communication to you of March 12, 2008, concerning Flexible Permits. Summaries of these communications are contained in our more recent letters to State Senator Kirk Watson and State Representative Lon Burnam, dated March 19 and April 7, 2009, respectively, of which you were sent copies.

You point out that EPA "has not yet issued Federal Register notices which identify the specific deficiencies (and the legal basis for each) in the TCEQ rules that need to be addressed for EPA to approve TCEQ's air permitting rules." As you are aware, we did propose limited approval/limited disapproval of your Public Participation SIP this past November. In a meeting in Austin on May 26, our senior Region 6 managers indicated that we anticipate issuing Federal Register proposals over the next couple of months identifying our concerns for possible disapproval of the Qualified Facilities, Flexible Permits, and NSR Reform SIPs.

We will, of course, continue working with TCEQ on these issues, but it is important to note that EPA is preparing to sign a Consent Decree with industry plaintiffs requiring action on the Texas permitting SIPs on a tight schedule; thus, this will limit the time available to informally resolve these issues.

You and I have already discussed the idea of my coming to Austin to discuss these issues with each of the Commissioners; I look forward to that opportunity. To the extent those contacts leave issues unclear or unresolved, we can discuss them in even greater detail once the Federal Register notices are published.

In addition, on May 28, 2009, the Administrator granted two citizen petitions which raised concerns about transparency, public participation and monitoring in TCEQ-issued Title V permits for the Citgo and Premcor facilities. The concerns raised in those actions may apply more broadly to other facilities as well, and thus we would hope to discuss those categories of concerns with you, as well as the SIP concerns.

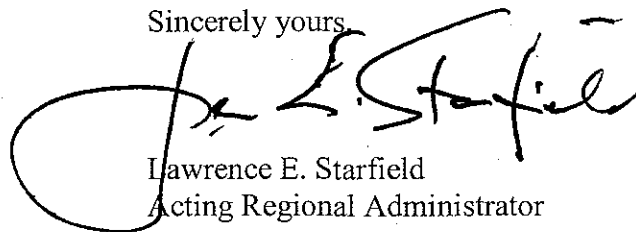
I appreciate your written response to the draft briefing materials our senior managers discussed during the May 26 meeting in Austin, and I especially value your willingness to explore resolution of issues that have been at an impasse for some time. The changes outlined in your June 5 letter provide a good foundation for our discussions, although I would be remiss not to point out that additional changes will be needed to fully address the programmatic and regulatory changes necessary for full EPA approval.

With specific regard to the draft power point slides shared at the Austin meeting, we acknowledge that it is difficult to make direct comparisons between the Texas permitting program and the federal regulatory system. Recognizing that we may not agree on the precise level of emissions described in the slides, our analysis strongly suggests that the Texas air permitting program authorizes emissions significantly above levels allowed by federally authorized permitting programs. We believe this is also supported by an analysis conducted by the City of Houston evaluating benzene emissions in similar states (see letter from Mayor White, dated September 29, 2008; copy is available at <http://www.greenhoustontx.gov/reports/refiningpermitmatter.pdf>).

It will be important in the coming months to work together to ensure that the Texas air permitting program is one that is transparent and understandable to the communities we both serve, and that meets the legal requirements of Federal as well as State law. Just as we made progress to reduce ozone pollution, I am confident we can accomplish this work in a manner that protects public health and the environment, while allowing Texas businesses to thrive.

Please call me anytime to discuss these issues, or have your staff contact Jeffrey Robinson at (214) 665-6435.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Lawrence E. Starfield". The signature is written in a cursive style with a large, looping initial "L".

Lawrence E. Starfield
Acting Regional Administrator