

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 9, 2010

Alfredo Armendariz, Ph.D.
Regional Administrator
U.S. Environmental Protection Agency
1445 Ross Avenue Suite 1200
Dallas, Texas 75202-2733

Dear Dr. Armendariz,

I would like to take this opportunity to summarize the various activities that the Texas Commission on Environmental Quality (TCEQ) has undertaken over the past 10 months and to express concern about the direction that I perceive we are headed in the near future. Whether intended or not, I feel that we have lost some focus on the goals that the two agencies had agreed upon. Accordingly, I would like to ask that we realign our efforts to honor our past agreements.

On October 8, 2009, I met with you and representatives from Washington DC, and we agreed that the TCEQ would embark on a deliberate path to address the global issues that EPA has raised about our air permitting program. That meeting was followed up with a letter dated October 23, 2009, where we outlined this path in specific detail. The TCEQ has strived to meet every deadline and goal laid out in that letter.

The TCEQ has proposed and/or adopted rules regarding public participation, qualified facilities, and flexible permits and will propose rules regarding New Source Review (NSR) reform in just a few days (August 11, 2010). Agency staff has also entered into discussions with EPA related to our Title V permitting program in an attempt to increase transparency of new and re-issued Title V permits. The TCEQ has responded to approximately 26 of the 39 objection letters that have been filed against existing Title V permitting actions. In addition, TCEQ has submitted to you a proposal to address EPA's issues with Incorporation By Reference (IBR) and has conveyed that it is also working with industry representatives on other approaches to address your IBR concerns. Lastly, the TCEQ has submitted to you a proposal for companies to voluntarily "de-flex" existing flexible permits. The main goal of the "de-flex" proposal was, in a very quick time frame of approximately 60 to 90 days, to issue a permit with individual emission limits and to fully ground the revised permit within the State Implementation Plan (SIP) approved 30 Texas Administrative Code Chapter 116 Subchapter B rules of the agency. As an additional condition, the company would also be required to file an amendment to the agency where staff would review the application on a "look back" approach to reaffirm that there had

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been no circumvention of both state and federal New Source Review that were in place at the time the permitted facilities were modified. To ensure transparency, the amendment application would be subject to our public participation rules where the public could review the alteration and amendment applications and TCEQ staff's evaluation of both steps of the "de-flex" process. The conceptual idea of this approach was to provide EPA with an enforceable federal permit with individual emission limits within 60 to 90 days and then to conduct the "look back" over a longer period of time while also involving the public.

I am sure you share our desire to resolve our issues and to allow Texas to continue down a path of improving the air quality of the state. However, I do have concerns that we are not focusing on our agreed-to path forward regarding rulemakings and that EPA has now changed its goals and is attempting to take the TCEQ down a different path. Regarding our rulemakings, it is time that we begin a meaningful dialogue on all of our rulemakings to ensure that the adopted rule packages will be supported and included into our SIP. We appreciate the written comments and the various discussions regarding these rules, but we must begin an aggressive schedule of dialogue between the agencies so that we can get our rules approved by your agency. It appears that our rulemakings have taken a back seat instead of the forefront. Looking back at our October 2009 agreements, the agency rulemakings were the focus of those agreements, and we should make every effort to continue that as our primary goal.

As I mentioned above we have also submitted responses to your Title V objections, and we will continue to modify our permits as needed to confirm that our Title V permits are consistent with the federal program. Except for your initial letter dated June 10, 2010 where you raised your concerns about IBR, we have only received one formal response to our objection responses [Southwest Public Service Company, Harrington Station Power Plant (Permit No. O15)], received July 2, 2010. In that response letter, two of the three issues that EPA objected to were resolved and the third issue (relating to IBR) has also been resolved due to further detailed discussions with EPA. We are making every effort to resolve these matters, but we need EPA to work with the TCEQ to seek final resolution on these responses so that we have a clear understanding on how we can move forward and continue our goal of issuing federal operating permits without EPA objections.

In regards to our "de-flex" proposal, you recently countered our proposal with an option using the Title V Federal Operating permit as the mechanism to require companies to "de-flex" their existing minor NSR Title I permit authorization. As you have been informed by TCEQ staff, this process will be quite lengthy taking up to two to five years for an applicant to obtain a federally enforceable permit. Additionally, this process will require the TCEQ to duplicate its resource efforts because the Title V permit will have to be revised twice: first to address EPA's concern with IBR of Major NSR provisions and then again after a permit has gone through the "de-flex" process. The TCEQ option to "de-flex" would have only required the Title V permit to be revised once. Notwithstanding the agency's workload issues, it is not acceptable for the TCEQ to agree that companies should be forced to forego a federally enforceable permit pursuant to SIP approved rules for years when existing rules provide a mechanism for this to occur within

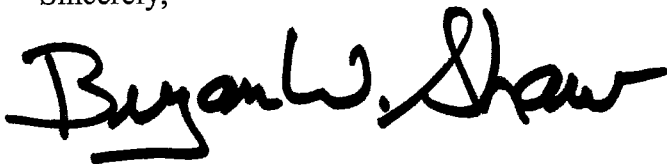
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months. The TCEQ would still require companies to address all other EPA expectations such as public participation and “look back.”

The difference is that our proposal is more efficient for the companies, TCEQ and EPA. Our proposal provides for a federally enforceable permit with individual emission limits within 60 to 90 days, instead of two to five years. Next, the company would also be required to file an amendment where staff would review the application on a “look back” approach to reaffirm that there had been no circumvention of both state and federal law. As TCEQ staff has discussed with EPA, this part of our proposal is expected to take two to five years, but at least your agency has an enforceable permit with individual emission limits while we pursue this “affirmation process.”

I think EPA’s proposal will compel companies to determine their own solution to “de-flex” their permits under our existing SIP approved rules. Those solutions may not meet your expectations, and the TCEQ will be forced to evaluate these applications, as well. I suggest we meet as soon as possible to re-focus on the plan to address the global issues that EPA has raised.

Sincerely,

A handwritten signature in black ink that reads "Bryan W. Shaw". The signature is written in a cursive, flowing style with a prominent loop at the end of the last name.

Bryan W. Shaw, Ph.D., Chairman
Texas Commission on Environmental Quality