



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

March 1, 2022

Earl Lott, Director
Office of Water (MC-158)
Texas Commission on Environmental Quality (TCEQ)
P.O. Box 13087
Austin, TX 78711-3087

Re: TPDES Permit No. TX0138347 (WQ0005253000)
Port of Corpus Christi (POCC) Authority of Nueces County

Dear Mr. Lott:

The Environmental Protection Agency, Region 6 (EPA) is in receipt of your letter dated January 31, 2022, acknowledging receipt of the EPA's December 15, 2021, Interim Objection -- Request for Additional Information, regarding the above-referenced permit ("Interim Objection letter"). We appreciate your inclusion of the Interim Objection letter in the administrative record for this permit, as we requested in that letter, which is enclosed and incorporated herein for reference. The revised POCC permit currently scheduled for contested case hearing before the State Office of Administrative Law Judges is referred to as the "draft permit" in your letter and hereafter in this letter.

As discussed in detail in the enclosed Interim Objection letter, because the POCC facility is a Major facility¹, the TCEQ was required to forward the draft POCC permit to the EPA for review in accordance with 40 C.F.R. §§ 123.24(d)(6) and 123.44 and Section IV.C of the EPA/TCEQ Memorandum of Agreement (MOA). Following the EPA's September 20, 2021, request for review of this permit, we received electronic access to the permit files via the TCEQ's FTP website on October 1, 2021. By email dated October 27, 2021, the TCEQ granted the EPA a 30-day extension of the deadline to complete our permit review from November 15, 2021, to December 15, 2021.

In our Interim Objection letter, the EPA requested additional information regarding the draft permit to determine whether the permit meets the guidelines and requirements of the Clean Water Act (CWA), specifically information and the rationale to support the best professional judgment (BPJ) reporting and monitoring requirements included in the permit for total dissolved solids, sulfates, and chlorides. This letter is a reminder that, pursuant to 40 CFR § 123.44(d)(2), the full period of time for the EPA's review of the permit will recommence when the EPA receives the information requested.

In addition, it is the EPA's understanding that the contested case hearing regarding the draft permit is scheduled to begin on March 14, 2022 (Docket No. 582-20-1895). The EPA reiterates its request, as discussed in our Interim Objection letter, that the Proposal for Decision (PFD) prepared by the Administrative Law Judge (ALJ) following those proceedings be forwarded to the EPA for review 30

¹ 40 C.F.R. § 122.2 rests the authority for classification of Major facilities under approved state NPDES programs with the EPA Regional Administrator "in conjunction with the State Director."

days prior to the record being closed and that the TCEQ forward the proposed permit prepared at the close of the contested case hearing to the EPA for review before the proposed permit is forwarded to the Commission for action. See Sections IV.C.3 and IV.F. of the MOA and 40 C.F.R. § 123.44(j) (providing that a proposed permit must be forwarded to EPA for review if the proposed permit “differs from the draft permit reviewed by the Regional Administrator, the Regional Administrator has objected to the draft permit, or there is significant public comment”).

We note that 40 C.F.R. §123.44(c)(3) provides that the EPA may object to a state-issued NPDES permit whenever the procedures followed in connection with formation of the permit fail in a material respect to comply with the procedures required by the CWA, the regulations thereunder, or the MOA. It would be a material failure to comply with the required permitting procedures if the TCEQ does not submit: (1) the additional information requested in the Interim Objection letter, (2) the PFD prepared by the ALJ following the upcoming contested case hearing, or (3) the proposed permit prepared by TCEQ after the contested case hearing but before it is forwarded to the Commission for action. Additionally, the EPA reserves the right to object to the POCC permit pursuant to any other procedural or nonprocedural grounds established under 40 C.F.R. §123.44(c).

Finally, if the TCEQ were to issue TPDES Permit No. TX0138347 (WQ0005253000) to the POCC without responding to the EPA’s Interim Objection in violation of the provisions of CWA Section 402, the implementing regulations at 40 C.F.R. Part §123, and the MOA, then it would not be a validly issued final NPDES permit.

Again, thank you for the inclusion of the Interim Objection letter in the permit’s administrative record and for your continued attention to this matter. If you have any questions or concerns, feel free to contact me at 214-665-8138, or have your staff contact Mark Hayes at (214) 665-2705, or EMAIL: hayes.mark@epa.gov.

Sincerely,



Charles W. Maguire
Director
Water Division (WD)

Enclosure

cc: (electronic) Robert Sadlier, Deputy Director
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