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February 24, 2009

Mr. Larry Starfield
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 6
1445 Ross Ave., Ste. 1200
Mail Code 6RAD
Dallas, TX 75202-2733

Re: Texas' Air Permitting Program

Dear Mr. Starfield:

As a former Chair of the Texas Air Control Board, the predecessor agency to the Texas Commission on Environmental Quality, and as the State Senator representing Austin, a city on the verge of falling into federal air quality non-compliance, issues relating to air quality in Texas are a high priority of mine.

I am aware of correspondence between EPA and TCEQ and documenting potential deficiencies with Texas air permitting program, and I am seeking more specific information about these concerns.

A list of specific questions is attached. Because our biennial legislative session is already underway, I respectfully request that you respond in writing to the attached questions as expeditiously as possible.

Thank you for your help, and I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Kirk Watson".

Kirk Watson

QUESTIONS REGARDING TEXAS' AIR PERMITTING PROGRAM

Clean Air Act Permitting:

1. Does the Clean Air Act require EPA to review and approve or disapprove the rules Texas uses to permit both major and minor sources of air pollution?
2. Is Texas currently implementing permitting rules that are not SIP approved?
3. Is Texas currently issuing permits pursuant to rules that are not SIP approved? If so, are those permits federally recognized permits?
4. What are EPA's plans and possible timelines for acting to approve or disapprove those aspects of Texas' air permitting program that are not currently approved?
5. If EPA disapproves a portion of the Texas program, what are the possible sanctions and timelines for those sanctions?

Public Participation:

6. TCEQ has indicated in correspondence to EPA, and in its response to the City of Houston's Benzene Action Plan, that changes to TCEQ's rules regarding public participation will require statutory changes.¹ When does EPA anticipate finalizing its proposed limited approval, limited disapproval of Texas public participation rules, published at 73 Fed.Reg. 72001 (Nov. 26, 2008)?
7. If EPA finalizes a limited approval, limited disapproval, how long will Texas have to make changes to its public participation rules before sanctions apply?
8. Must TCEQ finalize changes to Texas rules and submit those rules as a SIP revision before a sanctions clock would stop?
9. Does EPA believe that statutory changes are necessary to address some of the deficiencies identified in its public participation federal register proposal?

¹ In a letter from Mr. Glen Shankle, TCEQ Executive Director, to Mr. Larry Starfield, dated June 13, 2008, Mr. Shankle stated that changes to TCEQ's rules regarding public participation "may require statutory changes which would need to be presented to the Texas Legislature." Similarly, in its response to the City of Houston's Benzene Action Plan, TCEQ stated, "changing the public notice procedures would require a change to the statute. See Texas health and Safety Code Section 382.056(g)." TCEQ Response to Recommendations, City of Houston Benzene Action Plan, An Interim Report (May 27, 2008).

Qualified Facilities:

10. When does EPA anticipate acting on Texas' qualified facility rules?
11. Has EPA notified Texas in writing of concerns regarding its qualified facility rules? If so, would you please identify and provide that correspondence?
12. Does EPA anticipate that changes to the Texas statutory definitions of "modification" would be required before EPA could approve Texas' qualified facility rules?

Flexible Permits:

13. When does EPA anticipate acting on Texas' flexible permit rules?
14. Is it a violation of the Clean Air Act for sources to authorize emissions through flexible permits, rather than SIP-approved permit mechanisms, until such time as the flexible permit rules are approved into the Texas State Implementation Plan?
15. Has EPA notified Texas in writing of concerns regarding its flexible permit rules? If so, would you please identify and provide that correspondence?
16. Does EPA anticipate that changes to Texas rules and/or statutes would be required before EPA could approve Texas flexible permit rules?

NSR Reform Rules:

17. When does EPA anticipate acting on Texas' NSR Reform rules?
18. Has EPA notified Texas in writing of concerns regarding its NSR Reform rules? If so, would you please identify and provide that correspondence?
19. Does EPA anticipate that changes to Texas' rules and/or statutes would be required before EPA could approve Texas' NSR Reform rules?

Permits by Rule:

20. Has EPA notified Texas in writing of concerns regarding its use of permits by rules? If so, would you please identify that correspondence?

MSS Permits:

21. Has EPA identified in writing any concerns regarding Texas' authorization of MSS emissions? If so, would you please identify and provide that correspondence?