

**ADDENDUM TO
THE MEMORANDUM OF AGREEMENT
BETWEEN THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AND THE
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 6
CONCERNING THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

The following provisions of the Memorandum of Agreement (MOA) between the Texas Commission on Environmental Quality (TCEQ) and the U.S. Environmental Protection Agency (EPA) concerning the National Pollutant Discharge Elimination System (NPDES) Program are revised as follows:

SECTION I. GENERAL

Section I, Paragraph 2 is revised as follows:

The TCEQ has primary responsibility for implementing the NPDES program for Texas, herein called the Texas Pollutant Discharge Elimination System (TPDES) program, for facilities within its jurisdiction. The TCEQ has authority under Texas Water Code (TWC) §§26.121, 26.131, and 26.027 to regulate discharges from industrial facilities. The TCEQ has authority under TWC §§26.121 and 26.047 to regulate discharges from publicly-owned treatment works (POTWs), privately-owned treatment works, and concentrated animal feeding operations (CAFOs). The TCEQ has authority to regulate discharges of stormwater associated with industrial activity and discharges of stormwater from municipal separate storm sewer systems. The TCEQ has primary responsibility for implementing a Pretreatment Program in accordance with TWC §26.047 and TCEQ rules contained in Title 30 Texas Administrative Code (30 TAC) Chapter 315, and a Sewage Sludge Program in accordance with Texas Health and Safety Code (THSC) §§361.011 and 361.024, and TCEQ rules contained in 30 TAC Chapter 312. The TCEQ's authority for these programs is discussed in detail in the Attorney General's Statements.

SECTION II. SCOPE OF AUTHORIZATION

Section II is revised as follows:

The TCEQ is authorized to administer NPDES permitting, compliance monitoring and enforcement activities, NPDES pretreatment activities, and NPDES sewage sludge program activities in Texas. This authority applies on land within the State of Texas and extends 3.0 statute miles¹ offshore into the Gulf of Mexico. The TCEQ does not have NPDES authority for discharges located on Indian Country (federally established Indian reservations, etc.).

No changes are made to the footnote in Section II.

SECTION III. STATE AND FEDERAL RESPONSIBILITIES

Section III.C is revised by adding the following provisions:

2. The TCEQ and EPA recognize that one of the most important goals for transferring NPDES program authority to Texas for oil and gas discharge permitting, compliance monitoring and enforcement is to promote and facilitate the expeditious transformation of federal NPDES and state permits into one TPDES permit. Jurisdiction over the NPDES permits shall be transferred to the TCEQ, in accordance with TWC Chapter 26 and 30 TAC §305.533. This section of the MOA describes the permitting, compliance monitoring and enforcement authority which will be transferred to the TCEQ on the date of program authorization and also describes the permitting, compliance

monitoring and enforcement authority which will be initially retained by EPA and later transferred to the TCEQ, including the action that triggers the transfer.

a. Transfer of Oil and Gas Permitting Authority

i. New Individual Permit Applications

Upon the date of program authorization, the TCEQ shall have permitting authority for all NPDES oil and gas discharges subject to its NPDES authorization. Therefore, the TCEQ shall be responsible for all permit applications for new TPDES oil and gas permits that are received on or after the date of program authorization.

ii. Pending Individual Permit Applications

- (1) EPA shall retain jurisdiction for NPDES oil and gas individual permits for which a variance request or amendment/modification request is pending on the date of program authorization. Permitting authority for these permits shall transfer to the TCEQ upon final resolution of the issue that triggered the retention of EPA jurisdiction.
- (2) Except as noted in Section III.C.2.a.ii(1), on the date of program authorization, permitting authority shall transfer to the TCEQ for NPDES oil and gas individual permit applications pending before EPA. The TCEQ will complete the permitting process for these pending applications and either issue a TPDES permit or deny the application request.

iii. Effective (Active) Individual Permits

- (1) EPA shall retain permitting jurisdiction for NPDES oil and gas individual permits for which a permit appeal (including a petition for review before the Environmental Appeals Board) is pending on the date of program authorization. Permitting authority for these permits shall transfer to the TCEQ upon final resolution of the appeal.
- (2) Except as noted in Section III.C.2.a.iii(1), on the date of program authorization, permitting authority shall transfer to the TCEQ for NPDES oil and gas individual permits that are in effect on that date.
- (3) EPA issued NPDES permits shall remain effective until expiration, amendment/modification, or renewal as TPDES permits. The TCEQ will process all permit applications for renewal or amendment that are received after the date of program authorization. When the TCEQ issues a renewed or amended permit, the TPDES permit shall replace both the state-issued and EPA-issued permits.

At the time of renewal or amendment of an NPDES oil and gas individual permit by the TCEQ, the TCEQ may process a request for authorization of the discharge by general permit instead of by individual permit, if the facility meets the eligibility requirements of the general permit. The TCEQ may request that the applicant seek authorization to discharge under a general permit and cancel/terminate the individual permit instead of processing the application for an individual permit.

iv. Effective (Active) General Permits

On the date of program authorization, permitting authority shall transfer to the TCEQ for NPDES oil and gas general permits that are in effect on that date, including permits that are administratively continued under 40 CFR § 122.6. The TCEQ has identified the following EPA-issued general permits that authorize oil and gas discharges that are administratively continued: NPDES

General Permit Numbers TXG330000 and TXG260000. The TCEQ will complete the general permit development process for these permits and either issue a TPDES general permit or suspend general permit development and require permittees to seek authorization under a TPDES individual permit.

b. Transfer of Compliance Monitoring and Enforcement Authority

i. New Individual Permit Applications

The TCEQ shall have primary compliance monitoring and enforcement authority for new TPDES oil and gas permits upon issuance by the TCEQ.

ii. Pending Individual Permit Applications

- (1) For pending applications for which jurisdiction is retained by EPA as described in Section III.C.2.a.ii(1), compliance monitoring and enforcement authority shall transfer to the TCEQ upon transfer of permitting authority from EPA to TCEQ in accordance with that section.
- (2) For pending applications that are transferred to TCEQ on the date of program authorization as described in Section III.C.2.a.ii(2), compliance monitoring and enforcement authority shall also be transferred to the TCEQ. Upon final issuance of the permits by TCEQ resulting from pending applications, TCEQ will be responsible for compliance monitoring and enforcement of the issued permits. Unauthorized discharges will be handled under TWC Chapter 26.

iii. Effective (Active) Individual Permits

- (1) For permits for which jurisdiction is retained by EPA as described in Section III.C.2.a.iii(1), compliance monitoring and enforcement authority shall transfer to the TCEQ upon transfer of permitting authority from EPA to TCEQ in accordance with that section.
- (2) Except as noted in Sections III.C.2.b.iii(1) and III.C.2.b.v, on the date of program authorization, compliance monitoring and enforcement authority shall transfer to the TCEQ for permits that are in effect on that date.
- (3) During the interim when both a state permit and a NPDES permit are effective for the same discharge, the TCEQ shall enforce the provisions of the NPDES permit and any state permit provisions that are more stringent than the NPDES permit provisions. Through this administration of two permits, the TCEQ will ensure that all NPDES provisions are enforced.

iv. Effective (Active) General Permits

On the date of program authorization, compliance monitoring and enforcement authority shall transfer to the TCEQ for NPDES General Permit Numbers TXG330000 and TXG260000.

v. Permits with Pending Enforcement Actions

- (1) EPA shall retain compliance monitoring and enforcement authority for NPDES individual permits and general permit authorizations that are subject to on-going enforcement actions by EPA. EPA shall monitor permittee compliance with the ongoing EPA enforcement actions.

Compliance monitoring and enforcement authority for the permit shall transfer to the TCEQ when:

- the permittee complies with the requirements of the NPDES permit or EPA administrative order; or
 - the TCEQ issues an administrative order to the permittee covering the same violations. If a permittee fails to comply with an EPA administrative order, EPA will notify the TCEQ, and the TCEQ will issue an administrative order to the permittee that addresses both the permit violation(s) and the EPA administrative order violation (equivalent TCEQ order). The TCEQ and EPA may agree that issuance of an equivalent TCEQ administrative order for certain permittees would be mutually beneficial, especially if the ongoing EPA enforcement action includes a protracted compliance schedule. The TCEQ and EPA will evaluate the need for such action within six (6) months after program authorization.
- (2) EPA shall retain compliance monitoring and enforcement authority for all permits with ongoing judicial actions. Compliance monitoring and enforcement authority for these permits shall transfer to the TCEQ upon final resolution of the judicial actions.
- c. Transfer of Information and Records
- i. Within thirty (30) days after program authorization, EPA shall provide an up-to-date and accurate list or table that shows the following information:
 - (1) for all effective NPDES oil and gas individual permits, the permittee name, EPA ID, most recent permit issuance date, and status of permit appeals; and
 - (2) for all pending individual oil and gas applications, the applicant name, EPA ID, application type (i.e., new, modification, reissuance, etc); a description of the status of the application (i.e. drafted, proposed, administratively continued, suspended due to federal consultation, etc.); and the date of receipt by EPA.
 - ii. For permit applications and effective permits that are retained by EPA, as described in Section III.C.2.a. and b., EPA shall notify the TCEQ and transfer all permitting, compliance, and enforcement records to the TCEQ within thirty (30) days of the final action that triggers authority transfer to the TCEQ.
 - iii. For effective and pending NPDES individual permits, NPDES general permit authorizations, and NPDES general permits that are subject to authority transfer to the TCEQ on the date of program authorization, EPA shall transfer all permitting, compliance, and enforcement records to the TCEQ within thirty (30) days following program authorization.
 - iv. Permitting, compliance, and enforcement records include the following, if applicable:
 - (1) Permit application and supporting documentation provided as part of the application process;
 - (2) Existing permit;
 - (3) Draft permit submitted for public notice;
 - (4) Public notice;
 - (5) Public comments received orally and in writing;
 - (6) Fact sheet or statement of basis, including effluent data;

- (7) Inspection reports and compliance information;
- (8) Enforcement orders and documents related to any enforcement actions;
- (9) Discharge monitoring reports, including whole effluent toxicity (WET) and toxicity reduction evaluation (TRE) information;
- (10) Requests for hearing, appeals of permits, and any related information and written responses from EPA; and
- (11) Other pertinent information, memoranda, and correspondence.

d. Notification to Permittees

Within thirty (30) days of authority transfer to the TCEQ, EPA shall notify the permittee or applicant of the authority transfer in writing, including permittees covered under a general permit.

SECTION IV. PERMIT PROCESSING, REVIEW AND ISSUANCE

Section IV.C. is revised by adding the following provision and renumbering subsequent provisions: 3. Regardless of Section IV.C.1, EPA will review the first two TPDES draft permits for each of the following SIC Codes that are developed on or after the date of program authorization: 1311, 1321, 1381, 1382, 1389, 4922, and 4925. EPA review of all subsequent TPDES draft permits for these SIC codes will comply with Section IV.C.1.

SECTION V. COMPLIANCE MONITORING AND PERMIT ENFORCEMENT

No changes

SECTION VI. PRETREATMENT PROGRAM

No changes

SECTION VII. SLUDGE MANAGEMENT PROGRAM

No changes

SECTION VIII. TRANSMITTAL OF INFORMATION

Section VIII.B is revised to add the following provisions:

DESCRIPTION OF TRANSMITTAL	FREQUENCY OF TRANSMITTAL
12. List or table of effective permits and pending permit applications, as described in Section III.C.2.c.i. of this MOA Addendum	Within 30 days of program authority
13. Transmittal of permitting, compliance monitoring, and enforcement records for pending applications and effective permits that are subject to authority transfer to the TCEQ on the date of program authority	Within 30 days of program authority
14. Transmittal of permitting, compliance monitoring, and enforcement records for pending applications and effective permits that were retained by EPA	Within 30 days of the final action that triggers the transfer of authority
15. Notification to applicants and permittees of the transfer of authority	Within 30 days of the transfer of authority

SECTION XI. TPDES PROGRAM REVIEW BY EPA

No changes

SECTION X. AMENDMENTS TO BE APPROVED BY EPA

No changes

SECTION XI. APPROVAL, EFFECTIVE DATE AND TERM OF THE MOA

Section XI.F. is revised as follows:

This agreement shall become binding when the TCEQ's program authorization takes effect, which shall be the date set out in the Federal Register announcing EPA's decision to grant such authorization to the TCEQ.



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Dated: January 15, 2021

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