

EPA

**Moderator: Brent Larsen
January 5, 2021
10:05 p.m. ET**

OPERATOR: This is Conference #: 9473297

Operator: We now have our first testimony from the line of Cyrus Reed. Your line is open.

Cyrus Reed: Thank you so much. Good evening. This is Cyrus Reed. I'm here calling today. I'm representing the Lone Star Chapter. That's the state chapter of the Sierra Club, which has approximately 30,000 members in Texas. I'm just going to make some very brief comments. Tonight we will be submitting more detailed written testimony by the deadline, which I believe is the 11.

The first comment I'm going to make is a little more about process and our disappointment in the timing of this process. And if you read the notice provided by the EPA it said that you determined the state's October 12, 2020 program submission including the November 5 verification was a complete package and pursuant to federal regulation you could potentially approve or disapprove the program on or by January 11 in 2021.

So my first comment is really disappointing about the timing over the holidays making it difficult for a lot of members of the public to both see the federal register right around the Thanksgiving holiday and then have the time to digest the many hundreds of pages of the application and then make comments by the 11. And in particular we're concerned with the notion that EPA could approve this application the same day that comments are due.

Now I realize subsequent to that (P.T. community at EPA) did reach an agreement to extend the time for potentially approving the project still the 19 of January, but again I would argue that's a very swift timeline to approve such an important delegation application, and I would argue given that the application was not deemed completely complete until November 5 due to the clarification that I believe EPA and (TCP) for that matter have more time and the public should have more time to make comments.

So my first comment is please consider extending the comment period and the decision period beyond the January 12 and January 19 present – what you presently have an agreement for. So that – my first comment is consider extending the public comment period and potential approval until at least February 5, which would be 90 days after the application was determined complete, so that's my first comment.

Second comment I'll make – and again we'll be doing written comments – is that we as we said from the beginning had be particularly concerned with the lack of affluent standards for waste water for oil and gas producers who would be attempting to seek permits under the exception in 435 that would allow them to do direct discharges if they're west of the 98th meridian. And I think it's not a – I'm not here criticizing (TCP) itself.

I'm criticizing federal rules that were developed before the advent of widespread fracking so that the affluent standards in place for those producers west of the 98th meridian, which is approximately half the state of Texas, are not sufficient to assure protections from different (toxins and constituents) that can be found in (this water), and I think this is a fairly above the state government and federal government.

And our belief is that we shouldn't be allowing direct discharge west of the 98th meridian until there's a thorough review and dissolution of affluent standards and guidance, and I know EPA was considering opening up a rulemaking, but this year they're (as presently marked). And therefore, I think (TCP) itself should be developing standards if we're going to allow direct discharge.

So we are really concerned about the potential for direct discharge without having the studies or affluent standards in place. And then a third concern, which I'll say here and again we'll be doing developing more in a written testimony, is just whether the state has sufficient budgetary allocation to the program in terms of people, in terms of inspections, in terms of the potential for enforcement of any way sort of discharge projects.

We know we're about to go into a legislative session. We know that times are a little tough right now in terms of the revenues coming in the state, and it's unclear to us whether the just the number of boots on the ground and permit writers will be sufficient that any discharge permit gets a – gets a review that's needed to assure public health and safety.

So I'll end it there and just review my comments again. We think the deadline for public comments and the deadline for looking at this application should be extended until at least February 5.

We're very concerned with the direct discharge provisions (of TFR 435) and believe that state standards should be developed. And three, we're concerned about the capability of (TCP) to take on such a major program in a time of lower revenues in the state. And with that I'll end it there and we'll be submitting further written comments by the deadline. Thanks so much.

(Schaffer Swartzki): Thank you for your testimony. Operator, I believe we have another individual in the queue, can you please identify them.

Operator: I'm sorry, there are no other person in the queue at this time.

(Schaffer Swartzki): OK, thank you. OK, so this is (Schaffer Swartzki) again, the hearing officer for this hearing and I'll just note again that we don't have anyone in the queue presently, but we will keep the lines open until 8:00 pm.

If we observe additional people logging in to the meeting then I will repeat the instructions for how to get into the queue to provide testimony in case any of the late comers do wish to offer their comment.

For the moment I will – I'll mute my line and keep my webcam off and we will be vigilant in looking for any other individuals who call in.

Operator: We have another testimony from Alex Ortiz, you may now speak.

Alex Ortiz: Hi, thank you for the opportunity to present testimony today. My name is Alex Ortiz, I am a water resources specialist with the Lone Star Chapter of the Sierra Club and I just wanted to provide some additional context to some of the stuff that Cyrus said earlier and offer up a couple of other things.

The first one is that I think we really feel that the proposed authorization raises a serious environmental justice and environmental racism issue, giving Texas the authority to implement 40 CFR 435 Subpart E, the 90th learning rule is sort of – it flirts with an environmental justice issue in the sentiment.

The majority of the communities that exist west of the 98th Meridian in Texas are majority Hispanic and Hispanic – well mixed populations are a minority in the state of Texas, so I just think it's something that we all need to aware of that the affect in populations in the state of Texas are – may and very – may very well primarily Hispanic populations that are affected.

Additionally, at the beginning of this hearing I heard that the notice since had been published in several newspapers, and I'm happy to be corrected if I'm wrong, but I did not hear the "San Antonio Express News" as one of those newspapers. That's also a little bit concerning from a public notice standpoint, just seeing as this city of San Antonio is the seventh largest city in the country.

And once again, it is a majority Hispanic city. It exists wholly west of the 98th Meridian and so there it would be subject to the 40 CFR 435 Subpart E Regulations, talking about beneficial use discharges. The city of San Antonio would likely be more affected, more harmed by potential discharge increases than say the city of the Houston or Austin or Dallas.

Additionally, I wanted to point out that EPA's Oil and Gas Extraction Waste Management Report from May of last year showed that there was relatively clear scientific consensus that their shift in submission data and knowledge in

terms of the composition of produced water and what that means and what I think we understand that to mean that if scientists are really seeing sort of consensus in a world in which we don't know what's in the waters, whether it's because they're proprietary or because we have little experience in regulating them, either way it tends to make that sort of discharge and inappropriate discharge nonetheless.

It could also put a serious strain on not only a given ecosystem, but it can also put a strain on public water supplies, things like produced water that come back or that are a byproduct of fracking tend to be much higher in salinity than other waters and desalination technology they're very unfeasibly expensive. So, there's kind of a lot of sort of nitty gritty problems in that area.

And the last think that I just wanted to point out is that the Texas surface water quality standards are never really fully up to date. And you can see this, I think, very clearly that during the 2018 review portions from the 1997, the 2000, the 2010 and the 2014 standards were all in affect.

And I think without any sort of uniform ability to create service water quality standards, it might be asking a lot to be able to regulate an entirely new form of discharges when it's unclear how that might interact with service quality water standards across the state of Texas now.

It raises serious concerns about the water quality in the state generally, especially since it – there is a potential that more discharges could begin to happen. And with that, I have nothing else. As Cyrus said earlier, we will be submitting written testimony. I appreciate the time and opportunity to contribute today and thank you so much.

(Schaffer Swartzki): Thank you for your testimony. At this time we do not have any additional speakers in the queue to speak, but as I noted previously we will keep the lines open till 8:00 pm and we will be watchful of anymore people who log in to the public hearing web application.

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