BEFORE THE ENVIRONMENTAL APPEALS BOARD UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C.

In re:	)	
	)	
ExxonMobil Low Carbon Solutions Onshore	)	
Storage, LLC	)	
Jefferson County, TX	)	
Rose CCS#1, #2, and #3	)	**UIC Appeal No. 25-03**
	)	
Underground Injection Control	)	
Permit Nos.: TX-245-C6-0001,	)	
TX-245-C6-0002, and TX-245-C6-0003	)	
	)	

RESPONSE IN OPPOSITION TO PETITIONER'S MOTION TO TRANSFER TO STATE OF TEXAS

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INTRODUCTION

ExxonMobil Low Carbon Solutions Onshore Storage, LLC ("ExxonMobil") opposes Petitioner's Opposed Motion to Transfer or in the Alternative Petition for Review. At the same time as this filing, ExxonMobil also files a Motion to Dismiss the Petition for Review, which addresses the petition filed in the alternative. The Board should deny the Petitioner's Motion to Transfer to the State of Texas because the regulations neither authorize nor contemplate transferring a permit record to a state tribunal, nor is such a transfer necessary. The Railroad Commission of Texas ("RRC") is now the sole Class VI permit issuer in Texas, and the RRC's Class VI permit process for the Rose Project is currently underway. Because the RRC is now the issuer in Texas for Class VI permits, the Board lacks jurisdiction over this matter. Accordingly, the Board should deny the Motion to Transfer and instead dismiss this action.

BACKGROUND

On July 1, 2025, the Environmental Protection Agency ("EPA" or "Agency") Region 6 issued a notice of intention to issue to ExxonMobil three Class VI UIC permits, UIC Permit Nos. TX-245-C6-0001, TX-245-C6-0002, and TX-245-C6-0003 ("Rose Permits"). The draft Rose Permits were subject to a 35-day public comment period in accordance with the requirements of 40 C.F.R. § 124.10(b)(1), which requires EPA to allow 30 days for public comment. EPA held a public hearing on July 31, 2025. The Cheek Texas Community Association ("CTCA" or "Petitioner") filed two comments during the public comment period. Comments submitted by Earthjustice on behalf of CTCA, EPA-R06-OW-2025-0421-0109; EPA-R06-OW-2025-0421-0021, available at https://www.regulations.gov/docket/EPA-R06-OW-2025-0421/document.

At the same time as the Region's permit process was ongoing, EPA was considering the State of Texas's application for primacy, seeking to designate the RRC as the permitting and

enforcement authority over Class VI injection wells within the State of Texas. *See* Ltr. from Gov. Gregg Abbot to EPA R6 Admin. Earthea Nance (Dec. 12, 2022). Section 1421 of the Safe Drinking Water Act directs EPA to approve programs for states that develop their own Class VI injection well programs and submit applications to the Agency for primacy over Class VI injection wells. 42 U.S.C. § 300h. Once a state submits an application demonstrating that its proposed Class VI program meets the applicable requirements for approval under Section 1422 of the Safe Drinking Water Act, EPA grants the applicant state primacy over Class VI injection wells. 42 U.S.C. § 300h through 300h-1. After receiving primacy from EPA, the applicant state becomes the permitting and enforcement authority over Class VI injection wells within the state for federal purposes, while EPA maintains a supervisory and oversight role. *See* 40 C.F.R. part 145, subpart B. As part of its efforts to obtain primacy, the State of Texas enacted implementing legislation for a Class VI program under Texas Water Code chapter 27, and the Commission promulgated its Class VI program under 16 Tex. Admin. Code ch. 5. *See* 90 Fed. Reg. 51,021, 51,023 (Nov. 14, 2025).

Because the Commission could be granted primacy over its Class VI program prior to EPA's final action to issue federal Class VI permits for the Rose Project and because the RRC regulations already required a permit from the Commission whether or not primacy was granted, ExxonMobil also submitted an application for a Class VI permit to the RRC under its proposed program. *See* Oil and Gas Docket OG-25-00029632 Response to Mot. for Continuance, Exhibit B, available at https://apps.rrc.texas.gov/portal/s/case/500cs00001AQbSHAA1/detail ("please note that Texas statutes require both a permit from EPA and from the Commission until the Commission receives primacy from the EPA"). Thus, ExxonMobil had two separate applications pending on parallel tracks for the Rose Project—one before the Region and one before the RRC. The RRC noticed a draft permit for the Rose Project for public comment on July 24, 2025.

On October 16, 2025, EPA issued the final Rose Permits. That same day the EPA issued the final permits, it also posted the Response to Comments.

Before the permits became effective, on November 5, 2025, Petitioner filed an Opposed Motion for Extension of Time (Docket Index No. 1), seeking an extension of 60 days to file its petition for review. Petitioner's Motion for Extension of Time argued that there was good cause for an extension because it alleged: (1) Region 6 failed to respond to comments, and, "[w]ithout any response to comments, it may be difficult for the Community Association to adequately prepare its Petition for Review . . . ."; (2) the permits were issued during a government shutdown, and the Region did not respond to Petitioner's request for additional meetings regarding the Permits in the weeks leading up to the permits' issuance; and (3) "[t]his short delay of an additional 60 days will also ensure that all parties have additional time to prepare outside the busy end of year season." Opp. Motion for Extension of Time at 2. As detailed more fully in Permittee's Motion to Dismiss, Petitioner's Opposed Motion for Extension of Time included misstatements and failed to show good cause for an extension. For example, although EPA published with the final permits an extensive Response to Comments document,[1] Petitioner's motion incorrectly asserted "the current docket lacks any response to comments." Opposed Mot. for Extension of Time (Docket Index No. 3) at 2. This was not an inconsequential misstatement because the Board relied on it in granting the extension to file the Petition for Review. The Board stated in its order granting the extension: "Based on the representations in [Petitioner's] motion," the Board grants the requested extension of time." This Order, which was based on Petitioner's representation that "no response to comments document was available on the public docket for the permits," allowed

[1] *See* EPA Region 6 Response to Comments on Permit Nos. R6-TX-245-C6-0001, R6-TX-245-C6-0002, and R6-TX-245-C6-0003, https://www.regulations.gov/document/EPA-R06-OW-2025-0421-0129 (posted on Oct. 16, 2025).

Petitioner to file a petition for review by January 16, 2026. Order Granting Extension of Time to File Petition for Review (Docket Index No. 2) at *2.

Between the Order Granting Extension of Time and Petitioner's January 15 filing of its Opposed Motion to Transfer to State of Texas or in the Alternative Petition for Review, EPA issued a final rule transferring primary enforcement responsibility for Class VI injection wells (i.e., granting Class VI "primacy") to the State of Texas. 90 Fed. Reg. 51,021 (Nov. 14, 2025) ("Texas Primacy Rule").[2] As Petitioner acknowledges, Section II.D of the Memorandum of Agreement Addendum 2 ("MOA") between the RRC and the Region requires "[t]he Regional Administrator [to] transfer to the RRC any pending permits, applications, and any other information relevant to Class VI UIC program operation…" Opposed Mot. To Transfer (Docket Index No. 3), Attach. 1 - Mem. of Agreement Addendum at 6. The Region stated in its response to CTCA dated January 6, 2026, that it "has appropriately transferred materials pertaining to the subject permitting matters to the Texas Railroad Commission." Opposed Mot. To Transfer (Docket Index No. 3), Attach. 2 - Email from Office of Regional Counsel for EPA Region 6.

The RRC permit process for the Rose Project is already underway. Under the RRC's Class VI regulations that have been approved by EPA, Petitioner commented on and has brought a contested case proceeding challenging the RRC draft permit for the Rose Project. *See* Oil and Gas Docket OG-25-00029632, available at https://apps.rrc.texas.gov/portal/s/case/500cs00001AQbSHAA1/detail. A contested case hearing before the Hearings Division of the RRC is currently scheduled for March 16-20, 2026. On January 15, 2026, Petitioner filed with the RRC Hearings Division an Opposed Motion to Continue the

[2] The Texas Primacy Rule became effective on December 15, 2025 and the 45-day period to challenge the rule expires on January 29, 2026. 90 Fed. Reg. 51,021 (Nov. 14, 2025); 42 U.S.C. 300j-7.

Contested Case Hearing Pending Outcome of Related EAB appeal (Oil and Gas Docket OG-25-00029632, available at https://apps.rrc.texas.gov/portal/s/case/500cs00001AQbSHAA1/detail), arguing that the RRC should delay its hearing until the Board "adjudicate[s] Community Association's Opposed Motion to Transfer the federal permit application record to this entity and likely, also determine[s] whether the federally issued permits granted prior to primacy are effective, null, or withdrawn."

DISCUSSION

I. The Board Does Not Have Authority to Transfer the Permit Record, Nor Is Such a Transfer Necessary.

The Board should deny the Petitioner's Motion to Transfer because the regulations neither authorize nor contemplate transferring a permit record to a state tribunal, nor is such a transfer necessary. Petitioner's request for the Board to transfer the "the entire federal permit record" is misplaced and misapprehends the Board's role. Opposed Mot. To Transfer (Docket Index No. 3) at 2.

The Board's authority is "limited by the statutes, regulations, and Administrator's delegations that authorize and govern the Board's authority." *In re Hf Sinclair Tulsa Refining LLC - West Refinery*, 2025 WL 2443074, at *1 (EAB Aug. 18, 2025) (citing *In re Tewa Women United, Dr. Maureen Merritt, and Concerned Citizens for Nuclear Safety*, 2015 WL 10091215, at *2 (EAB May 15, 2015) (Order Dismissing Petition for Lack of Jurisdiction); *In re Stericycle Inc.*, 2013 WLW 6141692, at *4-5 (EAB Nov. 14, 2013) (Order Dismissing Appeal for Lack of Jurisdiction); *In re DPL Energy Montpelier Elec. Generating Station*, 9 E.A.D. 695, 698-99 (EAB March 13, 2001)). The Board's authority, as delegated by the EPA Administrator, is "to issue final decisions in RCRA, PSD, UIC, or NPDES permit appeals filed under this subpart, including informal appeals of denials of requests for modification, revocation and reissuance, or termination of

permits under Section 124.5(b)." 40 C.F.R. § 124.2. Nothing in the EAB or Class VI regulations contemplates or provides the Board with authority to transfer the permit record to a state tribunal, nor is there precedent for such a transfer.

It is the role of the EPA Regional Office that issued the permit, not the Board, to transfer pending Class VI permit applications and permits to the RRC *if that is appropriate*. Indeed, EPA Region 6 did transfer all pending permits and applications to the RRC upon issuance of the final Texas Primacy Rule. Opposed Mot. To Transfer (Docket Index No. 3), Attach. 2 - Email from Office of Regional Counsel for EPA Region 6.

The RRC Class VI permit process is currently ongoing for the Rose Project, with Draft Permits noticed for public comment by the RRC on July 24, 2025. Following protests raised by Petitioner on the RRC Draft Permits, a contested case hearing before the Hearings Division of the Texas Railroad Commission is scheduled for March 16-20, 2026. No transfer from the Board is necessary for that process to continue.

Because the Board lacks authority to grant the Motion to Transfer, the Board must deny the motion.

II. Transfer of Class VI Primacy to Texas Deprived the Board of Jurisdiction Over the Rose Project Permits.

As set forth in more detail in ExxonMobil's Motion to Dismiss, the appropriate action for the Board to take in this case is to dismiss the petition because the Board no longer has jurisdiction over the Rose Class VI permits. "[T]he Board is a tribunal of limited jurisdiction." *In re Hf Sinclair Tulsa Refining LLC - West Refinery*, at *1. "Where the Board lacks jurisdiction, it dismisses the appeal." *Id.* When EPA has delegated to a state agency responsibility to administer a permit program, the EAB will dismiss the petition for lack of jurisdiction, and "[p]etitioners instead must utilize the available state law procedures for challenging such actions." *See, e.g., In Re: Delta*

Energy Center, 17 E.A.D. 371, 2017 WL 2726844, at *1 (EAB June 20, 2017) ("The Board lacks jurisdiction under 40 C.F.R. part 124 to adjudicate challenges to a PSD permit, or permit modification, when a [state agency] has obtained EPA approval to administer the PSD program."); *see also, e.g., In re Seminole Elec. Coop., Inc*., 14 E.A.D. 468, 2009 WL 3122567, at *11-12 (EAB Sept. 22, 2009) ("[T]he door shut to Board review at the moment of [state] program approval.") (determining that the Board did not have jurisdiction over a final PSD permit that was issued pursuant to an EPA-approved state permitting program because the final permit was no longer considered a federal permit, even though the draft permit had been issued pursuant to an EPA delegation before the program had been authorized). In this case, now that EPA issued the Texas Primacy Rule, and the RRC is the Class VI permit issuer in Texas, the Board does not have jurisdiction over the Rose Permits.

Although *dismissal* is consistent with the Board's standard practice, Petitioner seeks the unusual relief of a transfer, arguing that the Board should not merely dismiss the appeal because "the applicant here may argue the EPA's permits were in fact final agency actions without the EAB appropriately adjudicating Community Association's concerns." Opposed Mot. To Transfer (Doc. Index No. 3) at 3. Even in a transition period where there is some uncertainty, the Board has declined to assert jurisdiction once the state has become the permitting agency. *See, e.g., In re Seminole Elec. Coop., Inc.*, at *11-12 (finding the Board had no jurisdiction even where the "unusual procedural posture" of state approval during the permit process meant that there may be no opportunity for public participation, advising that federal and state permitting authorities should "clearly address[] any transitional issues relating to public participation and judicial review as part of state program approval"). In any event, here, EPA stated that it "agrees the federal permits are not effective and will not become effective because the State of Texas has UIC Class VI primacy."

Opposed Mot. To Transfer (Docket Index No. 3), Attach. 2 - Email from Office of Regional Counsel for EPA Region 6. ExxonMobil does not object to that characterization. ExxonMobil agrees that it cannot commence injection activity until the RRC issues a final permit.[3]

III. The Board Should Dismiss the Petition for Review Because the Board Lacks Jurisdiction, and the Petition Was Untimely.

As further explained in ExxonMobil's Motion to Dismiss, the Board should dismiss the Petition for Review because it lacks jurisdiction, and the Petition was not timely filed. The RRC is the Class VI permit issuer in Texas, and the Board does not have jurisdiction over the Rose Permits. Moreover, the Board's order granting Petitioner's request for an extension to file the Petition was based on misstatements of the facts made in Petitioner's Motion. *See* Motion to Dismiss at 8-9. To the extent that the Board has the authority to "relax or suspend the filing requirements" in Subpart 124 for "good cause," Petitioner's Motion for Extension failed to demonstrate there was good cause for the 60-day extension, and the Board's order granting the extension was based on incorrect representations made in the Motion. *See* Motion to Dismiss at 8-9. As such, the extension was improperly granted, and the Petition is untimely.[4]

For all of these reasons, the Board should deny Petitioner's Motion to Transfer to Texas.

Dated: January 28, 2026

Respectfully submitted,

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[3] The RRC issues one permit per geologic sequestration project, unlike EPA, which issues one permit per injection well. *See generally* 15 Tex. Admin. Code § 5.202(a).

[4] Nothing in this filing should be construed to concede that authority exists for Petitioner to obtain an extension of the initial filing deadline, which is plain on the face of the regulations and is not subject to the extension provisions in the regulations. Petitioner should have instead filed a request to file a supplemental brief, not a motion to extend the jurisdictional deadline for filing the petition for review.

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CERTIFICATE OF SERVICE

I hereby certify that, on January 28, 2026, I filed the foregoing document electronically with the Board through its online docketing system. In addition, by my signature below, I certify that this response has been provided to the following parties through e-mail in accordance with the Environmental Appeals Board's September 29, 2025, Order on Electronic Service of Documents:

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