

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

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

**UPDATED MOTION TO DISMISS PETITION FOR REVIEW**

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## **INTRODUCTION**

ExxonMobil Low Carbon Solutions Onshore Storage, LLC (“ExxonMobil”) respectfully moves for the Environmental Appeal Board (“Board”) to dismiss for lack of jurisdiction the Cheek Texas Community Association’s (“CTCA” or “Petitioner”) Opposed Motion to Transfer or in the Alternative Petition for Review (UIC Permit Appeal 25-03). At the same time as it files this Motion to Dismiss the Petition for Review, ExxonMobil files a response in opposition to Petitioner’s Motion to Transfer, arguing that the regulations neither authorize nor contemplate the Board transferring a permit record to a state tribunal, nor is such a transfer necessary. Instead, the Board should grant ExxonMobil’s Motion to Dismiss the Petition because the Board lacks jurisdiction now that the Environmental Protection Agency (“EPA”) is no longer the issuer of Class VI permits in Texas. The Railroad Commission of Texas (“RRC”) is now the Class VI permit issuer in Texas, the RRC’s Class VI permit process is ongoing, and the Board lacks jurisdiction over the Rose Permits. Moreover, the Board should dismiss the Petition as untimely because Petitioner failed to show “good cause” for an extension and misstated the facts in its Opposed Motion for Extension of Time to File Petition for Review (Docket Index No. 1) (hereinafter “Opposed Motion for Extension”). As a result, the Order granting an extension was improperly granted, and the Petition is untimely.

ExxonMobil has contacted counsel for EPA and counsel for Petitioner to ascertain their positions on this motion. Petitioner represents that it reserves its position pending review of the filed motion. EPA takes no position on this motion.

## **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. 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>.

While EPA'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, EPA also posted the Response to Comments. *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).

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 (Docket Index No. 3) at 2. 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,<sup>1</sup> Petitioner’s motion incorrectly asserted “the current docket lacks any response to comments.” Opposed Mot. for Extension of Time 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 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”).<sup>2</sup> As Petitioner acknowledges, Section II.D of the Memorandum of Agreement Addendum 2 (“MOA”) between the RRC and EPA Region 6 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

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<sup>1</sup> 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).

<sup>2</sup> 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.



Index No. 3), Attach. 2 - Email from Office of Regional Counsel for EPA Region 6. ExxonMobil is currently seeking permits from the RRC for the Rose Project, and Petitioner 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 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 Texas Railroad Commission Is Now the Class VI Permit Issuer in Texas, and the Board No Longer Has Jurisdiction Over the Rose Project Permits.**

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 now that EPA granted Class VI primacy to Texas, and the RRC is now the Class VI permit issuer in Texas. In outreach regarding Petitioner’s Motion to Transfer and Petition, EPA stated:

1. The Texas Railroad Commission, not EPA, is now the UIC Class VI permitting authority in Texas,
2. EPA has appropriately transferred materials pertaining to the subject permitting matter to the Texas Railroad Commission, and
3. EPA 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.

“[T]he Board is a tribunal of limited jurisdiction.” *In re Hf Sinclair Tulsa Refining LLC - West Refinery*, 2025 WL 2443074, at \*1 (EAB 2025). The Board’s authority is “limited by the statutes, regulations, and Administrator’s delegations that authorize and govern the Board’s authority.” *Id.* (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. Now that EPA is not the UIC Class VI permit issuer in Texas, the Board lacks jurisdiction over this appeal under 40 C.F.R. part 124.

“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 Board 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. 27, 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). Dismissal is consistent with the Board's standard practice.<sup>3</sup> 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").

Dismissal is appropriate here because the State of Texas now has primacy for Class VI permitting in Texas and will issue a final permit for the Rose Project. The RRC's permit process for the Rose Project is underway. Petitioner must seek relief utilizing the state procedures and is already doing so in proceedings before the RRC. 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 proceeding before the Hearings Division of the RRC is currently scheduled for March 16-20, 2026.

Because the Board does not have jurisdiction, the Board must dismiss the Petition.

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<sup>3</sup> As addressed in ExxonMobil's Response in Opposition to Petitioner's Motion to Transfer, 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 (Docket Index No. 3) at 3. The Region 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 and agrees that the RRC must issue a final permit for the Rose Project.

**II. Even If the Board Retained Jurisdiction, the Petition for Review Should Be Dismissed Because the Board’s Order Granting an Extension Was Predicated on Assumed Facts That Were Incorrect.**

The Board’s lack of jurisdiction is reason enough to dismiss the Petition. Even if the Board retained jurisdiction, dismissal would be appropriate because the Board’s order granting an extension to file the Petition was predicated on assumed facts provided by Petitioner that were not correct. Therefore, the Petition is untimely. “A petition for review must be filed with the Clerk of the Environmental Appeals Board within 30 days after the Regional Administrator serves notice of the issuance of a . . . UIC . . . final permit decision under § 124.15(b).” 40 C.F.R. § 124.19(a)(3). The Board may “relax or suspend the filing requirements,” but the Board may only do so for “good cause.” 40 C.F.R. § 124.19(n). “Petitioner bears the burden of demonstrating that review is warranted.” *In Re: City of Ruidoso Downs & Village of Ruidoso Wastewater Treatment Plant*, 2019 WL 1231327, at \*2 (EAB March 12, 2019). In its Opposed Motion for an Extension of Time to File a Petition for Review (Docket Index No. 1), Petitioner asserted three bases for good cause, none of which satisfy Petitioner’s burden to demonstrate good cause. Because the Board granted the extension “[b]ased on the representations in [Petitioner’s] motion,” Order Granting Extension of Time to File Petition for Review (Docket Index No. 2) at \*2, the Order granting the extension was improper, and the Petition is untimely.

**A. Petitioner incorrectly represented to this tribunal that the Region failed to post a response to comments on the docket.**

EPA is required to post a response to comments “at the time that any final permit decision is issued under [40 C.F.R. § 124.15].” 40 C.F.R. § 124.17(a). The response to comments must “[b]riefly describe and respond to all significant comments on the draft permit raised during the public comment period.” 40 C.F.R. § 124.17(a)(2).

Petitioner’s Opposed Motion for Extension claimed “the current docket lacks *any* response

to comments” and “[w]ithout *any* response to comments, it may be difficult for the Community Association to adequately prepare its Petition for Review.” Opposed Mot. For Extension (Docket Index No. 1), at 2 (emphasis added). This statement is false. EPA posted a 52-page Response to Comments on October 17, 2025, the same time EPA posted the final Rose Permits. *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).

Throughout the Response to Comments, EPA responds to Petitioner’s comments. *See, e.g.*, Response to Comments, at 23-24, 28-29, 44-46, 48-51. Because EPA posted a response to comments that complied with the requirements of 40 C.F.R. § 124.17, Petitioner had all information afforded to it by the regulations to “adequately prepare its Petition for Review.” Opposed Mot. For Extension (Docket Index No. 1) at 2. Thus, Petitioner’s incorrect statement that EPA failed to provide a response to comments cannot serve as a basis for finding good cause to extend the deadline to file a petition.<sup>4</sup>

**B. The government shutdown does not provide good cause for an extension because EPA was under no obligation to respond to late comments or meet with members of the public to discuss permits after the public comment period.**

Petitioner’s Opposed Motion to Extension argued that the government shutdown provided good cause for the extension of the petition period, but the government shutdown did not impede the issuance of the permits or Petitioner’s ability to file a petition. Petitioner claims that, due to the government shutdown, Petitioner was unable to meet with EPA Region 6 staff to discuss

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<sup>4</sup> Although Petitioner clearly suggests throughout the Opposed Motion for Extension that there was no Response to Comments available in the docket, to the extent Petitioner meant to complain that EPA did not issue a response to Petitioner’s *late* comments, EPA was not required to respond to comments filed after the close of the comment period. Lack of a response to late comments cannot serve as good cause to extend the deadline to file a petition. In any event, Petitioner’s statement that EPA did not provide any response to comments was facially incorrect, and Petitioner need only have reviewed the online docket to determine this information.

Petitioner's late-filed comments. Opposed Mot. For Extension (Docket Index No. 1), at 2-3. There are two issues with this contention. First, EPA has no obligation to respond to late submitted comments. *See Bd. of Regents of Univ. of Washington v. E.P.A.*, 86 F.3d 1214, 1222 (D.C. Cir. 1996) (“[T]he EPA was under no obligation to consider petitioners’ comments in the first place, as they were submitted well after the close of the comment period.”); 40 C.F.R. § 124.17(a)(2) (EPA’s response to comments must “[b]riefly describe and respond to all significant comments on the draft permit *raised during the public comment period.*”).

Second, because the Board’s review is based on the administrative record that was complete at the time EPA issued the permits, Petitioner did not need to coordinate with EPA prior to filing its petition. Even if Petitioner insisted on speaking to EPA staff to inform its petition, Petitioner could have submitted an initial petition noting that it was awaiting EPA’s response to its late comments and subsequently filed a motion for supplemental briefing to incorporate information it deemed relevant. *See In Re Town of Marshfield, Massachusetts*, 2007 WL 1221207, at \*4 n.10 (EAB March 27, 2007).

Because the government shutdown did not inhibit Petitioner’s filing of a petition for review, it does not provide good cause for an extension of the deadline to file a petition.

**C. The need for additional time to prepare for an appeal is not a basis for good cause under the Board’s precedent.**

Although the Board did not cite this reasoning as a basis for granting the extension, in its Opposed Motion for Extension (filed on November 5, 2025), Petitioner claims that the “additional 60 days will also ensure that all parties have additional time to prepare outside the busy end of year season.” Opposed Mot. for Extension of Time (Docket Index No. 1), at 3. “Having to conduct legal and technical research in preparation for an appeal does not, without more, fall into the category of circumstances the Board would consider special.” *In Re Town of Marshfield*,

*Massachusetts*, 2007 WL 1221207, at \*4.

Nor should the possibility that EPA would need more time for a response serve as a basis for extending the deadline to file a petition. Opposed Mot. For Extension (Docket Index No. 1), at 3 (“This is likely even more important now because once the government reopens, it can reasonably be assumed that a backlog of actions will need attention.”). If EPA needed additional time after the Petition was filed, it could have sought extra time from the Board for its response. *See e.g., In re: Essroc Cement Corp.*, No. 13-03, 2013 WL 5793395 at \*1, (EPA Oct. 23, 2013) (granting EPA’s motion for extension in part due to a government shutdown); *In re Penneco Environmental Solutions, LLC*, No. 23-01 (Nov. 7, 2023) (granting EPA’s motion for an extension to file a reply to a petition for review). Neither the need for additional time to prepare the petition nor the potential that EPA could need more time to prepare a response provide good cause for extending the deadline for a petition for review.

Because Petitioner failed to demonstrate good cause for the extension and because the Board’s order granting the extension was based on the representations in the Petition, some of which were false, the extension was improperly granted, and Petitioner’s motion is untimely and must be dismissed.

For all of these reasons, the Board’s order granting an extension of time to file the Petition was improper, and the Petition should be deemed untimely.

For all of these reasons, the Board should grant ExxonMobil’s Motion to Dismiss.

Dated: January 29, 2026

Respectfully submitted,

/s/ Kerry L. McGrath

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## CERTIFICATE OF SERVICE

I hereby certify that, on January 29, 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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