



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

March 10, 2010

VIA ELECTRONIC AND FEDEX DELIVERY

Ms. Eurika Durr
U.S. Environmental Protection Agency
Clerk of the Board, Environmental Appeals Board
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

Re: San Jacinto River Authority NPDES permit appeal no. 09-09

Dear Ms Durr:

Enclosed for electronic filing is Respondent EPA Region 6's Response in Opposition to San Jacinto River Authority's Motion for Abatement for filing in the above referenced matter. Copies of these documents are being filed electronically with the Board through the CDX system. Counsel for the Petitioner is receiving this document through FedEx delivery.

If you have any questions, please contact me at (214) 665-7467. Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "T. D. Gillespie".

Thomas David Gillespie
Assistant Regional Counsel, Region 6

cc: Lauren Kalisek, Counsel for Petitioner (with hard copy enclosures)

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

In the Matter of:)
)

) NPDES Appeal No. 09-09
)

San Jacinto River Authority)
)

Permit No. TX0054186)
_____)

**RESPONDENT EPA REGION 6'S RESPONSE IN OPPOSITION TO
SAN JACINTO RIVER AUTHORITY'S MOTION TO ABATE PROCEEDINGS**

Counsel for the United States Environmental Protection Agency, Region 6

Thomas David Gillespie
Assistant Regional Counsel
Office of Regional Counsel
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1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Stephen J. Sweeney
Pooja S. Parikh
Office of General Counsel (2355A)

The United States Environmental Protection Agency, Region 6 (Respondent or EPA Region 6 or the Region) responds to and opposes the Motion to Abate Proceedings (Motion) filed by the San Jacinto River Authority (Petitioner or SJRA) filed on February 24, 2010, in the above captioned matter.

SJRA requests that the Board grant an indefinite stay of this matter, which was fully briefed as of December 11, 2009. The Region opposes the Motion as an unnecessary and an inefficient use of the Board's, Petitioner's, and Respondent's resources.

The Motion incorrectly alleges that the Petitioner would be unduly burdened if the Board does not grant the Motion and that granting the Motion would avoid duplication of time and effort by SJRA, the Region, and the Board, based on the possibility that action would be taken on another at SJRA permit, SJRA Woodlands # 2. Motion at 3. As a preliminary matter, the Region notes that the challenged provisions of the permit for SJRA Woodlands # 1, the only permit relevant to this Petition, cannot become effective until the Board takes action on the Petition.

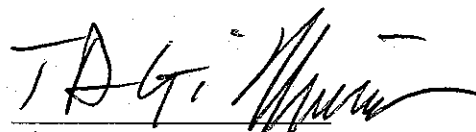
The duration of the requested abatement would be determined by the possible outcomes of discretionary decision making by two separate governmental actors, the Texas Commission on Environmental Quality (TCEQ) and EPA Region 6. First, TCEQ would need to exercise its discretion to re-issue another Texas Pollution Discharge Elimination System (TPDES) permit for SJRA Woodlands # 2, which is another facility that Petitioner operates under an administratively continued TCEQ permit. *See* 40 C.F.R. § 122.6. TCEQ would need to decide whether and when to re-issue that permit, as well as determine the permit terms, that may or may not include Whole Effluent Toxicity (WET) requirements. The TCEQ action, if taken, could take several months or even years because, as SJRA concedes in its motion, of "ongoing tension between [EPA Region 6 and TCEQ] regarding the implementation of WET limits." Motion at 3.

Depending on the terms of the re-issued TCEQ permit (if and when TCEQ re-issue the permit), EPA Region 6 would need to exercise its discretion to object to the re-issued permit pursuant to the provisions of Clean Water Act section 402(d) and implementing regulations at 40 C.F.R § 123.44. If EPA Region 6 does elect to object to the permit that TCEQ may decide to re-issue, the Region would need to provide additional time for TCEQ to respond to the objection. 40 C.F.R. § 123.44(e)-(h). TCEQ would then need to exercise its discretion to re-evaluate its earlier decision, and if TCEQ decides not to change the permit to meet the objection, then authority to issue the permit would pass to EPA. 40 C.F.R. § 123.44(h)(3). EPA Region 6 would then propose action to federally re-issue the permit for SJRA Woodlands # 2, which depending on the Region's allocation of permitting resources, would take at least several months or longer.

SJRA's motion amounts to a request for an indefinite delay that could result in their EPA-issued permit never taking effect.

For these reasons, EPA Region 6 opposes SJRA's Motion to Abate Proceedings as unnecessary and inefficient with respect to the resolution of the issues presented in the current Petition relating to SJRA Woodlands # 1.

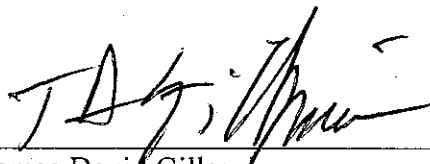
Dated: March 10, 2010:



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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2010, copies of the foregoing were served upon Lauren Kalisek, attorney for the San Jacinto River Authority, by FedEx delivery, properly addressed and with sufficient postage affixed thereto to ensure proper delivery, and to the Clerk of the Board, Environmental Appeals Board, by electronic delivery.



Thomas David Gillespie

MAILING AND ELECTRONIC DELIVERY LIST

VIA FEDEX

Lauren Kalisek, Esq.
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Austin, Texas 78701

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