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Texas Clean Water Act NPDES Permitting Program: Environmental Organizations Petition U.S. Environmental Protection Agency to Revoke Delegation

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The Sierra Club and 20 other environmental organizations (collectively, “Sierra Club”) submitted a September 23rd Petition to the United States Environmental Protection Agency (“EPA”) styled:

Citizen Petition for Corrective Action or Withdrawal of NPDES Program Delegation from the State of Texas (“Petition”)

The Sierra Club requests that EPA:

... withdraw Texas’ delegated authority to administer the NPDES program, unless the corrective actions set forth below are implemented.

States are encouraged by the Clean Water Act to develop their own National Pollution Discharge Elimination System (“NPDES”) permitting and enforcement programs. Once EPA determines a state’s program is adequate, it may develop such authority to the appropriate agency. However, if the state agency fails to maintain the requisites as set forth by the Clean Water Act, EPA is empowered by the Clean Water Act to revoke the program.

Revocation of a state administered program is typically an unlikely response in most instances. The EPA resources that would be diverted would probably make the assumption of the state program an unwelcome prospect. Nevertheless, the Clean Water Act does in theory provide for revocation of delegation in certain instances.

The Sierra Club’s *Petition* states that Texas was delegated the NPDES program in 1998. The *Petition* argues that Texas’ deficiencies include:

- Failure to implement an anti-degradation policy
- Failure to provide sufficient opportunities for judicial review

Specific arguments made in support of the *Petition* include:

- State-issued permits must contain limitations necessary to ensure discharges comply with Water Quality Standards, including an effective anti-degradation policy
- TCEQ fails to require a demonstration that a discharge is necessary for important economic or social development, thereby, failing to implement an effective antidegradation policy

- Texas improperly limits public participation in application of water quality standards
- Inadequate scope of standing for judicial review

A copy of the *Petition* can be downloaded [here](#).