



## OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

August 20, 2024

**In Reply Refer to:**

EPA Complaint No. 05NO-23-R6

Kelly Keel  
Executive Director  
Texas Commission on Environmental Quality  
Post Office Box 13087, MC 109  
Austin, TX 78711-3087  
[kelly.keel@tceq.texas.gov](mailto:kelly.keel@tceq.texas.gov)

**Re: Closure of EPA Complaint No. 05NO-23-R6**

Dear Executive Director Keel:

This letter is to advise you that the U.S. Environmental Protection Agency's (EPA) Office of External Civil Rights Compliance (OECRC) is administratively closing EPA Complaint No. 05NO-23-R6 (Complaint), involving the Texas Commission on Environmental Quality (TCEQ). The complaint alleged that TCEQ discriminated on the basis of national origin, particularly limited English proficiency (LEP), by failing to ensure meaningful access to Spanish-speaking, Comal County, TX residents for the public comment process and public meeting processes for the Simmons Valley Wastewater Treatment Facility (Texas Pollutant Discharge Elimination System [TPDES] Permit No. WQ0016052001).

OECRC is responsible for enforcing several federal civil rights laws that prohibit discrimination on the bases of race, color, national origin (including limited English proficiency), disability, sex, and age in programs or activities that receive federal financial assistance from the EPA.

Section 2.5 of OECRC's Case Resolution Manual (CRM) provides that if, after accepting a complaint for investigation, OECRC obtains information leading OECRC to conclude that an investigation is

not warranted for prudential reasons, OECRC may administratively close the complaint.<sup>1</sup> This would include when the issues are moot because OECRC obtains credible information indicating that the issues raised by the complaint have been resolved and there are no systemic issues.<sup>2</sup>

## Background

This civil rights complaint arose from TCEQ's approval of a water quality permit for the Simmons Valley Wastewater Treatment Facility (TPDES Permit No. WQ0016052001) in Comal County, Texas. Comal County is located in central Texas, on the Edwards Plateau. As of 2022, Comal County has a population of 165,201.<sup>3</sup> Approximately 28.6 percent of Comal County residents are Hispanic or Latino (of any race). 13.9 percent of residents, at least five years old, speak Spanish. Additionally, 3.1 percent of residents, at least five years old, and whose primary language is Spanish, report that they do not speak English "very well".<sup>4</sup>

Part of TCEQ's responsibilities includes approving water quality permits. TCEQ's Texas Pollutant Discharge Elimination System (TPDES) permit regulates the discharge of pollutants to Texas surface water, with the exception of discharges associated with oil, gas, and geothermal exploration and development activities.<sup>5</sup> The Simmons Valley Wastewater Treatment Facility (TPDES Permit No. WQ0016052001) manages the treatment and disposal of municipal wastewater in Comal County, TX. TCEQ deemed TPDES Permit No. WQ0016052001 for the Facility administratively complete on December 14, 2021.<sup>6</sup>

On January 9, 2022, SJWTX Inc. (at the time doing business as Canyon Lake Water Supply Corporation) ("the Applicant") published a Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI). The applicant published the notice for the Permit in the Herald Zeitung newspaper in Comal County, in accordance with the NORI. According to 30 TAC Section 39.426,<sup>7</sup> applicable permit applicants, including the applicant for TPDES Permit No. WQ0016052001, are required to publish translated public notices in an alternative language (i.e. Spanish) where appropriate.<sup>8</sup> On June 8, 2022, the Applicant submitted its Alternative Language Exemption (ALE) portion of the

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<sup>1</sup> U.S. EPA, Office of External Civil Rights Compliance (formerly, External Civil Rights Compliance Office) Case Resolution Manual, Section 2.5, pp. 19-21, available at [https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5\\_final\\_case\\_resolution\\_manual.pdf](https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual.pdf)

<sup>2</sup> *Id.* at 20.

<sup>3</sup> See <https://data.census.gov/table/ACSDP5Y2022.DP05?q=Comal%20County,%20TX>

<sup>4</sup> See <https://data.census.gov/table/ACSDP5Y2022.DP02?y=2022&d=ACS%205-Year%20Estimates%20Data%20Profiles&g=050XX00US48091&tid=ACSDP5Y2022.DP02>

<sup>5</sup> See [https://www.tceq.texas.gov/permitting/wastewater/pretreatment/tpdes\\_definition.html](https://www.tceq.texas.gov/permitting/wastewater/pretreatment/tpdes_definition.html)

<sup>6</sup> See TCEQ Commissioners' Integrated Database:

[https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item\\_id=597367972021356&detail=action&StartRow=1&EndRow=1&Step=5&requesttimeout=5000](https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item_id=597367972021356&detail=action&StartRow=1&EndRow=1&Step=5&requesttimeout=5000)

<sup>7</sup> See <https://www.tceq.texas.gov/downloads/agency/decisions/participation/rg-633-tac-public-notice-requirements.pdf>

<sup>8</sup> Note that Title 30, Texas Administrative Code § 39.426(d), Alternative language requirements for public meetings (i.e., new alternative language requirements apply to permit applications deemed administratively complete after May 1, 2022) which was after this permit was deemed administratively complete.

NORI Public Notice Verification Form.<sup>9</sup> The Applicant certified in the ALE that the Applicant conducted a diligent search, and was unable to publish in an alternative language newspaper or publication of general circulation in the municipality and county in which notice was required, because one could not be found.

Per TCEQ policy, TCEQ relied upon the Applicant's certification that the applicant conducted a diligent search and was unable to publish notice in an alternative language newspaper or publication of general circulation in the municipality and county in which notice was required, because one could not be found.<sup>10</sup>

On July 6, 2022, the Applicant published a Notice of Public Meeting for TPDES Permit No. WQ0016052001 in the Herald Zeitung newspaper in Comal County.<sup>11</sup> During the public comment period for the permit on August 11, 2022, TCEQ received a written comment that raised lack of public notice in Spanish.<sup>12</sup> Specifically, the comment stated: "A public notice was required to be published in Spanish based on the permit application. Can you please provide a copy of the translated notice, as well as information on where it was published?"

On the same day, TCEQ held a Public Meeting for TPDES Permit No. WQ0016052001 at the Smithson Valley Middle School in Comal County, Texas. The close of the meeting marked the end of the public comment period for the Permit.<sup>13</sup> On October 27, 2022, TCEQ issued the Executive Director's (ED) Response to Comments (i.e. the public comments). The response to comments did not address the public comment raising concerns about the need for public notice in Spanish.<sup>14</sup> On November 16, 2022, the Complainants filed a Complaint with OECRC alleging that TCEQ violated Title VI and 40 C.F.R. Part 7 by failing to enforce the alternative language notice provisions under 30 TAC Section 39.426,<sup>15</sup> thereby failing to ensure meaningful access for individuals with LEP.<sup>16</sup>

### **Complaint Investigation and Resolution**

On January 10, 2024, after determining that the complaint met the jurisdictional requirements,<sup>17</sup> OECRC accepted EPA Complaint No. 05NO-23-R6 for investigation of the following issue:

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<sup>9</sup> See TCEQ Commissioners' Integrated Database:

[https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item\\_id=597367972021356&detail=action&StartRow=1&EndRow=1&Step=5&requesttimeout=5000](https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item_id=597367972021356&detail=action&StartRow=1&EndRow=1&Step=5&requesttimeout=5000)

<sup>10</sup> RFI Response at 9.

<sup>11</sup> *Id.*

<sup>12</sup> See "RESPONSE 12" in Executive Director's Response to Public Comment for TPDES Permit No. WQ0016052001

<sup>13</sup> TCEQ Commissioners' Integrated Database, *supra* at note 9.

<sup>14</sup> *Id.*

<sup>16</sup> See 30 TAC Section 39.426: <https://www.epa.gov/air-quality-implementation-plans/texas-30-tac-chapter-39-subchapter-h-section-39426-alternative>

<sup>17</sup> *Id.*

<sup>17</sup> See 40 C.F.R. § 7.120(d)(1).

1. Whether the Texas Commission on Environmental Quality (TCEQ) excluded from participation, denied benefits to, or subjected to discrimination on the basis of national origin, residents with limited English proficiency with respect to the permit review process for the Simmons Valley Wastewater Treatment Facility (Texas Pollutant Discharge Elimination System Permit No. WQ0016052001), in violation of Title VI and EPA's implementing regulation at 40 C.F.R. Part 7.

OECRC investigated this matter in accordance with OECRC's jurisdiction and procedures in OECRC's Case Resolution Manual. OECRC interviewed the complainant to gather information with respect to the complaint allegations. On February 23, 2024, TCEQ submitted a response to the allegations accepted for investigation. On May 15, 2024, OECRC issued TCEQ a request for information (RFI). On June 14, 2024, TCEQ timely responded to the RFI by providing both narrative responses and supporting documentation.

TCEQ averred that in the past five years, the public comment at issue was the only comment received regarding issues with alternative language notice. TCEQ stated that it inadvertently failed to respond to the public comment raising concerns about the need for providing notice in Spanish, explaining:

This application [for Simmons Valley Wastewater Treatment Facility, Texas Pollutant Discharge Elimination System Permit No. WQ0016052001] received approximately 290 comments, including oral comments made at the public meeting held on Aug. 11, 2022. This particular comment was embedded at the end of a two-page Word document, which was mostly devoted to technical issues regarding the application . . . The ED notes that the RTC filed on Oct. 27, 2022, addressed many of the commenter's concerns raised in their written and oral comments made at the public meeting. Moreover, the RTC addressed concerns related to public notice. Due to the large volume of comments received, a response to this particular comment was inadvertently omitted.<sup>18</sup>

TCEQ expressed to OECRC its commitment to providing meaningful access to individuals with limited English proficiency and highlighted recent efforts to enhance language access and public participation. Specifically, TCEQ adopted new rules for alternative language public notice requirements whereby TCEQ's Office of the Chief Clerk will any notice of public meeting in both English and the alternative language to everyone on the mailing list for the application; alternative language notice will be published on TCEQ's website regardless of whether an alternative language newspaper was identified; and a subset of applicants must submit a public involvement form that involves screening to determine whether additional actions are warranted to enhance public participation.<sup>19</sup> Additionally, TCEQ developed a new plans with respect to language access,

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<sup>18</sup> RFI Response at 10.

<sup>19</sup> 30 TEX. ADMIN. CODE § 39.426(a)(2).

public participation, and accessibility for individuals with disabilities, and TCEQ updated employee training to ensure federal nondiscrimination laws, policies, and procedures are included.<sup>20</sup>

As described a Section 2.5 of OECRC's Case Resolution Manual, administrative closure is appropriate when the issues raised by the complaint have been resolved and there are no systemic issues. Here, the record reflects that in one instance, TCEQ inadvertently failed to respond to a comment raising concerns about notice for Spanish speakers. The comment requested that TCEQ provide a copy of the notice in Spanish and state where the notice was published. Following these events, the Texas administrative code was updated to provide that such notices will be published on TCEQ's website and that the chief clerk will mail notices in appropriate alternative languages, among other requirements. Additionally, TCEQ subsequently made significant strides to strengthen its public participation processes and language access policies, as described above.

On review of these facts, OECRC has concluded that TCEQ has taken sufficient actions to resolve the concerns underlying the Complaint. OECRC encourages TCEQ to continue to find ways to enhance public participation and language access, such as assessing whether it needs to take additional actions to ensure that it responds to all public comments, including those raising concerns about language access.

## **Conclusion**

For the reasons set forth above, OECRC is administratively closing EPA Complaint 05NO-23-R6 because OECRC has obtained credible information indicating that the issues raised by the complaint have been resolved and there are no systemic issues. OECRC expresses its appreciation to the Complainant and TCEQ for their participation in this matter.

This letter is not a formal statement of OECRC policy and should not be relied upon, cited, or construed as such. This letter and any findings herein do not affect TCEQ's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA 's regulations at 40 C.F.R. Parts 5 and 7, nor do they affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not addressed in this letter.

If you have questions about this letter, please feel free to contact me at (202) 564-3357 or by email at [wilson.adam@epa.gov](mailto:wilson.adam@epa.gov).

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<sup>20</sup> TCEQ took many of these actions to resolve a related language access complaint, EPA Complaint No. 02NO-20-R6.

Sincerely,

Adam Wilson  
Acting Deputy Director  
Office of External Civil Rights Compliance  
Office Environmental Justice and External  
Civil Rights

cc: Erin Chancellor  
Director, Office of Legal Services  
[Erin.chancellor@tceq.texas.gov](mailto:Erin.chancellor@tceq.texas.gov)

Ariadne Goerke  
Deputy Associate General Counsel  
U.S. EPA Civil Rights & Finance Law Office

Stacey Dwyer  
Deputy Regional Administrator  
Deputy Civil Rights Official  
U.S. EPA Region 6

James McGuire  
Regional Counsel  
U.S. EPA Region 6