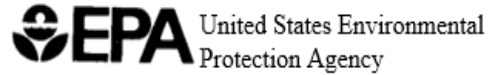




U.S. Department of Commerce
National Oceanic and Atmospheric
Administration



RESPONSE TO PUBLIC COMMENTS

To: File

From: Allison Castellan (NOAA), Shelby Butz (NOAA/CSS), Don Waye (EPA HQ), Robert Goo (EPA, HQ), Catherine Brady (EPA HQ), Brian Fontenot (EPA R6)

Date: 05/04/2022

RE: Response to Public Comments Received on NOAA's and EPA's Intent to find that Texas has Satisfied all Conditions of Approval on its Coastal Nonpoint Pollution Control Program.

On February 14, 2022, NOAA and EPA (Federal agencies) jointly announced in the Federal Register a 30-day public comment period regarding the Federal agencies' intent to find that Texas has satisfied all conditions of approval on its coastal nonpoint program. Under Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), all states participating in the National Coastal Zone Management Program need to develop coastal nonpoint programs to address nonpoint source pollution to coastal waters. NOAA and EPA approved Texas's coastal nonpoint program, subject to certain conditions, in 2003.

In response to the request for comments, the Federal agencies received one comment during the public comment period. On March 16, 2022, the Ingleside on the Bay Coastal Watch Association (IOBCWA) expressed concern about several instances of pollution in the Texas Coastal Bend region they believe violate the Clean Water Act and Clean Air Act (see comment and response below).

A summary of the comment, as submitted, and a formal response is included below:

Comment 1: The commenter expressed concern about the growth of industrial activities over the past 10 years, The commenter asserted these activities have degraded air and water quality in the Texas Coastal Bend region and listed four specific local cases of pollution and one complaint about permitting granted for wastewater outflows that they had observed:

1. "Dredge spoil overflow into Corpus Christi Bay. Two complaints filed with USACE, TPWD, FWS, EPA dated 1/24/2022 and on 1/27/2022 by IOBCWA.
2. Particulate Matter from dredge spoil containment dike construction. 10/13/2021 complaint filed with TCEQ by IOBCWA.

3. Silt plume causing acres of seagrasses destruction from docking of vessels at Enbridge Ingleside Oil Terminal. Clean Water Act Violation never enforced. Multiple complaints to various agencies from 11/24/2020 – 11/1/2021 by IOBCWA. Seagrasses Study by Dr. Kirk Cammarata, Texas A&M Corpus Christi near completion 3/2022 shows incredible loss of seagrasses within one year.
4. Air borne emissions from Enbridge facility, docking/docked vessels and dredging vessels. Numerous complaints filed as recently as 3/7/2022 with TCEQ by IOBCWA. These emissions fall into Corpus Christi Bay as well as flow from onshore deposits into nearby watersheds.
5. Permits granted for wastewater outflows into the waters contiguous with Corpus Christi Bay without the science of cumulative effects to marine habitats.”

The commenter noted that “residents of Ingleside on the Bay and other Coastal Bend communities have filed numerous complaints and yet violations of the Clean Water Act and Clean Air Act go on without penalties. IOBCWA [Ingleside on the Bay Coastal Watch Association] asks for a review of compliance and violations and protect their constituents from what appears to be a lack of enforcement.”

Response: The water quality concerns appear to be related to permitted point source discharges and commercial boating activities that are outside the scope of the state’s coastal nonpoint source program¹. However, NOAA and EPA have forwarded this comment to the Texas Commission on Environmental Quality (TCEQ) about the specific pollution instances referenced in the comment. The TCEQ is aware of the complaints that were submitted to the State (numbered two through five above). Per an email dated March 31, 2022, TCEQ noted that in each case they have either conducted an investigation directly or referred the complaint to the U.S. Army Corp of Engineers, the permitter of the activity, and are undergoing the appropriate steps to assess and address these instances of pollution. For additional information regarding each referenced instance or specific review process steps taken to address cumulative effects, please contact TCEQ directly.

Several of the water quality concerns (e.g., permitted wastewater flows) appear to be related to permitted point source pollution and National Pollutant Discharge and Elimination System (NPDES) permits issued under the Clean Water Act. Point source pollution, including activities regulated under NPDES permits, are expressly exempted from CZARA because they are not nonpoint source pollution (see Appendix B of NOAA and EPA’s 1993 *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance*). In addition, the concerns about air quality are also outside the scope of this decision. CZARA addresses nonpoint

¹ Texas Commission on Environmental Quality and Texas State Soil and Water Conservation Board. Nonpoint Source Management Program. 2017. Accessed 05/13/2022.
<https://www.tceq.texas.gov/assets/public/waterquality/nps/mgmt-plan/2017-nps-management-program.pdf>

source pollution only to coastal waters, not air pollution.

There are no CZARA management measures that directly address dredge activities or the docking of vessels at port facilities. Dredging activities are covered under Section 404 of the Clean Water Act. Although there is a CZARA management measure for boat operation that calls on states to restrict boating activities where necessary to decrease turbidity and physical destruction of shallow-water habitat, the management measure applies to recreational boating activities only, not commercial shipping (item #3 above).