

**Mark Alvarado's
Responses to Questionnaire for EPA Region VI Administrator Candidates**

What is your experience with air pollution?

As an agency attorney with the Texas Water Commission & Texas Natural Resource Conservation Commission (“TNRCC”), I participated in contested permitting hearings for hazardous waste incinerators, medical waste Incinerators, a hazardous waste recycling facility, and other contested permitted facilities. In this capacity, I worked with technical staff, reviewed administrative and technical information filed by the permit applicant and represented the executive director of the agency at trial. The most important aspect of this process was cross-examining expert witnesses and scrutinizing technical representations made by the company in applications.

As Public Interest Counsel of the TNRCC, I was a statutory party to every matter before the agency, and I had staff that participated in air permitting hearings across the state, and some air enforcement hearings. I personally participated in permitting hearings, including, hearings for a coal mine, a hazardous waste storage facility, a cement processing plant, and a medical waste incinerator; and, I either participated or one of my staff members participated in air policy work group meetings, and other agency air policy committees.

What experience do you have with water pollution?

As a staff attorney for the Water Commission, I enforced the rules of the TWC relating to petroleum storage tanks, solid waste, and industrial & hazardous waste, in addition to the statutes found in the Texas Water Code, the Solid Waste Disposal Act, and the Health & Safety Code; drafted rules to protect Edwards Aquifer from leaking underground storage tanks; participated in contested case hearings in leaking underground storage tank cases; participated in contested permitting hearing pertaining to landfills, hazardous waste incinerators, medical waste incinerators, hazardous waste storage and recycling facilities, and solid waste transfer facilities; reviewed for legal compliance with federal regulations contracts prepared by staff of the Galveston Bay National Estuary Program—to protect the bay.

As Public Interest Counsel, I was a statutory party to every matter before the TNRCC. Therefore, I took a position, or my office participated in agency items relating to water quality discharge permitting and enforcement matters; and, we participated in hundreds of solid waste and industrial & hazardous waste permitting, and some enforcement matters. Also I was a legal party to enforcement of drinking water quality standards before the agency, as applied to municipalities, municipal utility districts, water supply corporations and other public water systems.

What experience do you have in enforcement?

- I served as an agency attorney with the Texas Water Commission, enforcing the agency's Petroleum Storage Tank Rules & pertinent statutes; and, the Solid Waste Rules & pertinent statutes in the Health & Safety Code, Solid Waste Disposal Act, RCRA, Hazardous & Industrial Waste Rules.

- For Petroleum Storage Tanks and Municipal Solid Waste and Hazardous & Industrial Waste: I participated in enforcement screening committees where field technical staff presented cases that they had investigated, and documented noncompliances, and we determined whether to proceed with formal enforcement against the potentially responsible parties;
- For Petroleum Storage Tanks and Municipal Solid Waste and Hazardous & Industrial Waste: I held meetings with responsible parties, with central office and field staff, discussed noncompliances, remediation plans, and proposed penalties; offered responsible parties the opportunity for settlement;
- For Petroleum Storage Tanks and Municipal Solid Waste and Hazardous & Industrial Waste: I drafted and presented orders with proposed penalties and remediation plans to Commissioners for final approval;
- trained field staff & gave professional presentations when the new PST rules were adopted (federal rules);
- Drafted agency rules pertaining to PST above the Edwards Aquifer, in Ch.313 of the Texas Administrative Code, and Hazardous Waste Recycling Rules; held public meetings, responded to public comments, etc.;
- Represented the Executive Director of the Texas Water Commission in the first enforcement hearings pertaining to enforcement of PST rule violations;
- As Public Interest Counsel, participated in various enforcement contested case hearings and cases, and took formal position on others where office did not participate, to support position that was most protective of human health, and of citizens' concerns.
- I also worked as a Law Clerk for the Railroad Commission of Texas, enforcing oil well plugging rules to protect birds from landing in and drinking from pools of oil that looked to them like pools of water.

TCEQ is in many ways a rogue agency— operating in violation of many provisions of the CAA and CWA—how would you bring them into control and at what point would you consider revoking the delegation to implement federal laws?

Depending on the wishes of Administrator Jackson, I would consider revoking the TCEQ's delegation to implement federal laws immediately because the agency has failed to meet its obligation to maintain the integrity of the regulatory process. Because the TCEQ has been noncompliant for many, many years, and the regulatory community has played a large part in this noncompliance, I don't believe that it would be much of a surprise to either the agency or the regulated community. An effective move for Region 6 to bring them under control would be to:

- revoke the agency's delegation authority to implement the Clean Air Act
- declare permits that do not comply with federal law "noncompliant,"
- require compliance within a certain amount of time, or payment of stipulated penalties & upgrades & increased reporting & recordkeeping,

- require agency training & reporting & recordkeeping,
- develop standardized, additional, reporting requirements (agency should be trained to do the work properly, in terms of what technical proof a permit applicant must provide to meet the requirements of the CAA).
- All permits issued in the meantime should be provisional (unless a clear demonstration of full compliance with federal law is made), subject to future review within 18 months, with additional standardized reporting requirements.

Are you familiar with Region VI efforts to address non-point source water pollution problems? Given the fragility of water resources in the region, how would you address non-point water pollution?

Although I'm not familiar with Region 6's efforts in this respect, I'm certain I could effectively address non-point source water pollution problems in the Region. For example, by working with County and Municipal environmental regulators, the EPA could identify the sources of the pollutants (municipal, construction, commercial parking lots, etc.), the recipients of the pollution (aquifers, streams, rivers, etc.) and recommend potential methods to reduce the pollutants, including the use of retention ponds to reduce sediments, and various pollutant removal. Local ordinances can require that every construction project with a certain amount of impervious cover include retention ponds; municipalities could, as a part of regional watershed management, utilize regional retention ponds to help address non-point source water pollution problems; zoning or land use planning may also help. Also, public education about the use of certain fertilizers & chemicals used in homes, and the harm they cause would help reduce the amount of non-point source water pollution generated and the harm they cause. I'd be willing to work with state and local governments, financially, and through joint programs, to address the problems. The EPA has many resources available to help address this problem.

Many old landfills in Texas have been grandfathered and continue to be granted expansions over unlined, non-Subtitle D compliant dumps with very limited water monitoring. What would you do as RA to address these issues?

The policy of grandfathering facilities that are issued permits by governmental agencies has outlived its legitimacy, particularly as applied to facilities that discharge pollutants that impact public health. We should examine the facility and the impacts to the surrounding community in terms of balancing interests. That is, when you weigh the interests of the public to maintain their bodily integrity, to protect their health, and the quality of their lives, against the interest of the owners of the landfill to earn a profit, there is no comparison. While some may argue that the public or the community has an interest in extending the life of a landfill, regardless of whether it is lined, or whether it is compliant with the requirements of Subtitle D of RCRA, that perspective is, on its face, contrary to the public interest because Subtitle D requirements were developed after much deliberation, with certain siting standards to be protective of human health and safety and the environment. Also, we should encourage and facilitate recycling at those landfills because recycling and resource recovery were original goals of the Act, as follows:

“Subtitle D—State or Regional Solid Waste Plans

OBJECTIVES OF SUBTITLE

SEC. 4001. The objectives of this subtitle are to assist in developing and encouraging methods for the disposal of solid waste which are environmentally sound and which maximize the utilization of valuable resources including energy and materials which are recoverable from solid waste and to encourage resource conservation. Such objectives are to be accomplished through Federal technical and financial assistance to States or regional authorities for comprehensive planning pursuant to Federal guidelines designed to foster cooperation among Federal, State, and local governments and private industry. In developing such comprehensive plans, it is the intention of this Act that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs, including those needs created by thorough implementation of section 6002(h), of the recycling and resource recovery interest within the area encompassed by the planning process.

Sec. 4001, “SWDA,” 42 U.S.C. 6901.

Would your appointment contradict President Obama’s pledge to avoid putting lobbyists in charge of regulatory agencies? Have you ever consulted for industries regulated by local, state or national environmental agencies? If so, which companies or other entities have you been employed by? What matters have you be prohibiting from participating in because you lobbied on that particular matter or specific issue area?

No, my appointment would not contradict President Obama’s pledge as I am not a registered lobbyist and have never consulted or lobbied for any industry before any state legislature or the U.S. Congress.

There have been a lot of complaints about TCEQ's permitting process over the last several years by citizens' groups, particularly about the lack of public participation. As RA, what do you think EPA could do to improve the process?

The EPA could write rules establishing “standing” guidelines for citizens who are affected by a proposed permit in an application before the TCEQ, to have the right to invoke contested case status, and to actively participate in an evidentiary hearing. This could be used in negotiations with the TCEQ, as part of the leverage for the state to keep their delegation for the air and waste programs. In the event that delegation is soon revoked, this guideline could be imposed now as a requirement for the state agency to obtain future delegation of the air and waste programs.

Despite 20 years of trying to achieve “attainment” for ozone pollution, neither D/FW nor Houston are close to that goal. As RA, what would you do differently, if anything, to attempt to finally bring both metro areas into compliance with the Clean Air Act?

The EPA should strongly consider revoking the TCEQ’s delegation with respect to the air program. The SIPS that have been proposed by the TCEQ and the TNRCC have, for years, been inadequate. The EPA should send notice to the TCEQ that the SIP is inadequate, with respect to ozone pollution (power

plants must reduce nitrogen oxide production & VOC's), or EPA will disapprove the SIP in its entirety.

President Obama and EPA Administrator Jackson have identified Environmental Justice as an important component for their environmental decision-making. Please tell us what the term means to you, and some examples of how you've worked toward the goal of environmental justice.

Environmental Justice means giving weight in the decision-making process to the fact that the public that will be impacted by the pollutants generated by a permitted facility are of a class that has been, historically, disproportionately impacted because they are in a lower-income class, or they are in an ethnic minority. It is true that studies have shown that low-income and ethnic minorities are disproportionately living in areas where industrial facilities are sited. As a matter of environmental justice, this class deserves consideration when determining whether to permit a facility in one place or another. That is, the facility should be placed elsewhere. It may be that the Civil Rights Act of 1964 affords ethnic minorities the right to be free of this type of discrimination, particularly since the state and federal government will be issuing the permit to engage in the operation that will result in the discharge of the pollutants.

When I was the Public Interest Counsel of the TNRCC, my office argued the Environmental Justice issue in contested case permitting hearings, as applicable. Despite the position of industry lawyers that, under the rules of the agency, only technical issues could be addressed on the record, we argued the issue on broader, constitutional and moral grounds. Also, President Bill Clinton issued an Executive Order in 1994 on Environmental Justice, which provided policy support for our position that the record should include evidence on this issue.

The Midlothian cement plants have been identified as a large source of regional air pollution in North Texas. What strategies or technologies would you consider as RA to reduce their emissions of Nitrogen Oxides and air toxics in general?

These plants have, for many, many years been a source of regional air pollution to the detriment of health of the citizens in North Texas. If allowed by Administrator Jackson, I would use the SIP process to close down the old, outdated kilns that continue to operate without sufficient pollution control equipment, and I would require upgraded, state of the art pollution control equipment on the other kilns.

The EPA could order them to add additional NOX controls to reduce NOX from their smokestacks; require state of the art, real time reporting/monitoring. The EPA could possibly restrict the waste streams that they burn in the event they fail to upgrade the equipment, impose administrative fines for noncompliance, strict monitoring and recordkeeping; also, implement streamlining of the MACT rules with respect to cement kilns.

Houston is nationally recognized as a pollution hot spot for air toxics because of its concentration of petro-chemical facilities. What, if anything, would you do as RA to help reduce the cumulative emissions from these facilities?

1). The flexible air permits issued by the TCEQ that allow for the averaging of the concentrations over time, authorize more toxic air pollution than the Clean Air Act really allows. These permits should be declared illegal, or declared "noncompliant," so that the agency can commence the process of issuing

the New Source Review Permits that need to be in place. Administrative fines can be imposed on a daily, or monthly basis, until the facility is compliant. Because both the agency and the regulated community knew these permits failed to meet the legal requirements of the Clean Air Act, their resistance to the regulatory shift should be questioned by comparing their operations in other Regions.

2). The EPA should look at air toxic levels in Houston & Golden Triangle, and should initiate targeted enforcement against facilities for uncontrolled releases and unpermitted upsets at oil refineries and chemical plants. The number of uncontrolled and unpermitted upsets is significant, and it appears that enforcement is greatly lacking in this regard. Also concentrations released at start ups and shut downs should be included when determining whether the operator has exceeded the allowable permit parameters. The EPA should, as part of the enforcement effort, impose administrative fines, and corrective measures to ensure the upsets do not continue to occur. Stipulated penalties should be imposed for continued occurrences of the same upset, otherwise the permittee has no incentive to correct the problem.

Several metro areas in Texas are on the brink of violating the national ambient PM standard. Do you believe the current standard is scientifically defensible and what pro-active measures could you take as RA to prevent these areas from becoming non-attainment for PM pollution?

Yes, I believe the current national ambient PM standard is scientifically defensible. As RA, I would work with local communities to identify the sources of the pollutants and exceedances, and possibly develop a "pre-SIP" that would identify specific pollution control technologies.