



January 31, 2022

Submitted via email: gee.randy@epa.gov

Randy Gee
Regional Indian Coordinator
Environmental Protection Agency, Region 6
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: SAFETEA – Proposed Withdrawal and Reconsideration

Dear Mr. Gee:

The Petroleum Alliance of Oklahoma (The Alliance) appreciates the opportunity to submit comments to the U.S. Environmental Protection Agency regarding its proposed (Proposal) withdrawal and reconsideration of its October 2020 approval (Decision) approving Oklahoma's request to extend the State's EPA-delegated environmental regulatory programs into certain areas of Indian country within the State under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005 (SAFETEA). The Alliance opposes EPA's Proposal as the October 2020 Decision was consistent with the law, benefits the environment and human health, and provides the necessary regulatory consistency and certainty for our members. We request EPA withdraw this Proposal.

The Alliance is the only trade association in Oklahoma to represent all sectors of the state's oil and natural gas industry. Representing more than 1,300 individuals and companies and their tens of thousands of employees, the Alliance's membership includes oil and natural gas producers, service providers to the oil and natural gas industry, midstream companies, refiners, and other associated businesses, and our members include companies of all sizes, ranging from small, family-owned companies to large, publicly traded corporations. The Alliance addresses industry issues of concern and works toward the advancement and improvement of the domestic oil and gas industry. We support and advocate for legislative and regulatory measures designed to promote the well-being and best interests of the citizens of Oklahoma and a strong and vital petroleum industry within the state and throughout the United States. Our members are committed to extracting, producing, transporting, and refining crude oil and natural gas in a safe and environmentally-sound manner, and protecting waters resources is important to our members.

EPA's Proposal will have significant and profound impacts on all Oklahoma citizens, surrounding states, as well as our members' business operations (e.g., air and water permitting, reporting, enforcement, etc.). As a result, we provide the following comments.



1. Background

On June 9, 2020, the U.S. Supreme Court decided the case of *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). In that decision, the Supreme Court held that the Muscogee (Creek) Nation's reservation in eastern Oklahoma had not been disestablished by Congress and remained Indian country under federal law. Prior to the *McGirt* decision, neither EPA nor the State had understood the Muscogee (Creek) Nation's original reservation boundaries to remain intact, and based on that understanding the State had, as a practical matter, implemented environmental regulatory programs in much of the area now held by the Supreme Court to be Indian country. However, because the State's programs were generally not approved to apply in Indian country, the State's program implementation was no longer appropriate following the Supreme Court's clarification regarding the Indian reservation status of the subject lands.

In 2005, long before the *McGirt* decision, Oklahoma had approximately 37 recognized Tribes. The need for legislation was obvious to avoid a "patchwork" of environmental regulatory programs across the state. Consequently, SAFETEA was enacted by the U.S. Congress in 2005 and it has been in place for well over 15 years.

The negative impacts created by the U.S. Supreme Court's 5-4 decision in *McGirt v. Oklahoma* are extensive but are significant as it relates to the environmental regulatory programs that protect the environment and human health for all Oklahomans. Because this decision impacts other Tribes with similar applicable histories and statutes, the impacts affect approximately 40% of the geographical area of the State of Oklahoma. The State's request to EPA shortly after the *McGirt* decision was prudent, reasonable and in accordance with SAFETEA. Even EPA acknowledges the complexities that may arise by a patchwork of environmental programs by various Tribes in Oklahoma. EPA's October 2020 Decision provides efficient, effective, and consistent implementation of EPA-delegated environmental regulatory programs across Oklahoma and it provides certainty to regulated entities to know what the rules are and how to comply with them.

EPA states in its Proposal to withdraw and reconsider its October 2020 Decision of Oklahoma's request under SAFETEA is needed as a result of additional Tribal consultation conducted in 2021 where the Tribes expressed concerns with the State's environmental regulatory programs, wanted more engagement with the State during implementation and raised questions regarding the adequacy of the October 2020 Decision under SAFETEA. There is no single formula for what constitutes appropriate consultation, but EPA did consult with the Tribes in 2020 prior to its Decision of Oklahoma's request. However, SAFETEA does not require this. Nevertheless, EPA is bound by mandatory requirements provided in SAFETEA and thus EPA's October 2020 Decision was warranted. It is important to note that EPA's October 2020 Decision does not diminish Tribal input into any of the State's environmental regulatory programs. Tribes, as with any other citizen in the State, are always allowed to engage in the State's rulemaking actions as provided by well-established Oklahoma laws, regulations, processes, and procedures. In addition, Tribes can seek administration of regulatory programs through EPA for areas in Indian country expressly excluded in the request and Decision.

EPA's October 2020 Decision of the State's request was essential to protect the environment and human health in all areas of the State. The Tribes have limited resources to manage



environmental regulatory programs in Indian country. Currently, only 2 Tribes (out of 39 recognized Tribes in Oklahoma) are administering regulatory programs in Oklahoma and that administration is limited. The Pawnee Nation is approved to administer the Clean Water Act Section 303(c) water quality standards and Section 401 certification programs, and the Cherokee Nation for the Toxic Substances Control Act lead abatement program. In addition, EPA has limited resources to manage environmental regulatory programs in Indian country in Oklahoma. In light of EPA's October 2020 Decision of Oklahoma's request, it is reasonable, practical, resolves ambiguity and essentially preserves the longstanding regulatory programs implemented by the State.

2. Withdrawal and Reconsideration Will Create Regulatory Inconsistency and Uncertainty

Our members work with many Oklahoma state agencies, including the Department of Environmental Quality (ODEQ), on a variety of environmental programs (e.g., air, water, and waste) and they are very familiar with the regulations, processes, procedures, and guidelines established by ODEQ e.g., rulemakings, obtaining or amending permits, filing reports and information, and obtaining clarifications or guidance. EPA's Proposal would create regulatory upheaval for all citizens of Oklahoma, including our members, and would significantly and negatively impact the environment and human health with a patchwork of environmental programs across the state, and create substantial confusion among the regulated community as to what regulations apply and what entity has regulatory authority. We request EPA withdraw its Proposal.

In addition, surrounding states and their citizens would be impacted by EPA's Proposal. For example, surface water flowing from other states into Indian country or Indian country air sheds that overlap into other states would suffer the same negative impacts – creating inconsistency and uncertainty of existing and longstanding environmental regulatory programs, confusion among regulated entities, and would lead to negative impacts on the environment and human health.

3. SAFETEA

As previously stated, SAFETEA was enacted by the U.S. Congress in 2005 and it has been in place for well over 15 years. The law specially focused on Oklahoma to avoid a patchwork of environmental regulatory programs across the state. The applicable provision of SAFETEA states as follows:

SEC. 10211. ENVIRONMENTAL PROGRAMS.

(a) OKLAHOMA. – Notwithstanding any other provision of law, if the Administrator of the Environmental Protection Agency (referred to in this section as the “Administrator”) determines that a regulatory program submitted by the State of Oklahoma for approval by the Administrator under a law administered by the Administrator meets applicable requirements of the law, and the Administrator approves the State to administer the State program under the law with respect to areas in the State that are not Indian country, on



request of the State, the Administrator shall approve the State to administer the State program in the areas of the State that are in Indian country, without any further demonstration of authority by the State [emphasis added].

Pub. Law 109-59, 119 Stat. 1144, 1937 (August 10, 2005)

Oklahoma has a long-established track record of successfully administering and implementing EPA-delegated environmental regulatory programs in Oklahoma. The State made the appropriate request to EPA under SAFETEA to administer these same programs in Indian country. The law clearly states that EPA, “...**shall** [emphasis added] approve the State to administer the State program in the areas of the State that are in Indian country, without any further demonstration of authority by the State.” In accordance with the law, EPA’s October 2020 Decision followed SAFETEA. In contrast, EPA’s Proposal would not be in alignment with Congress’ intent or with SAFETEA. EPA should withdraw its Proposal and maintain its October 2020 Decision as it provides a durable framework for effective implementation of environmental regulatory programs in Oklahoma.

4. Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships (January 26, 2021)

EPA references the subject memorandum in its Proposal. The General Provisions outlined in Section 3 of the subject memorandum state that:

Sec. 3. General Provisions.

*(b) This memorandum shall be implemented consistent with **applicable law** [emphasis added] and subject to the availability of appropriations.*

It is clear from the memorandum that EPA’s Proposal to withdraw and reconsider its October 2020 Decision of Oklahoma’s request is **not** consistent with the applicable SAFETEA law.

5. Executive Order (EO) on Tackling the Climate Crisis at Home and Abroad

EPA references the subject EO in its Proposal. The General Provisions outlined in Section 301 of the subject EO state that:

Sec. 301. General Provisions.

*(b) This order shall be implemented consistent with **applicable law** [emphasis added] and subject to the availability of appropriations*

Again, it is clear from the EO that EPA’s Proposal to withdraw and reconsider its October 2020 Decision of Oklahoma’s request is **not** consistent with the applicable SAFETEA law.

6. The State of Oklahoma is in the Best Position to Implement the Delegated Environmental Programs in Indian Country

EPA has delegated many environmental regulatory programs to the State of Oklahoma, and the State has a long-established track record of successfully administering and implementing these environmental regulatory programs throughout Oklahoma. Oklahoma’s request under SAFETEA to administer these environmental regulatory programs within Indian country is reasonable, appropriate, and efficient and it protects the environment and human health. The State has established laws, regulations, manpower, funding, processes and procedures,



enforcement, etc. in place and is in a far better position to manage those programs in Indian country as compared to EPA or the Tribes. This benefits all citizens of the State of Oklahoma, by providing regulatory consistency and certainty. EPA should withdraw its Proposal and maintain its October 2020 Decision.

Conclusion

The Alliance appreciates the opportunity to provide EPA comments on this very important issue. We respectfully request EPA withdraw its Proposal. If you have questions, please contact me at brook@okpetro.com or 405-601-2112.

Thank you for your consideration of our request.

Sincerely,

A handwritten signature in black ink, appearing to read "Brook A. Simmons", with a long horizontal flourish extending to the right.

Brook A. Simmons
President