



REGION 6

DALLAS, TX 75270

January 15, 2025

Mr. Bryan McMath
Executive Administrator
Texas Water Development Board
1700 North Congress Avenue
Austin, Texas 78701

Ms. Brooke Paup
Chairwoman
Texas Commission on Environmental Quality
12100 Park 35 Circle, MC 100
Austin, Texas 78711

Dear Mr. McMath and Ms. Paup:

The purpose of this letter is to notify you that pursuant to the review the EPA performed following the addition of the special condition to Assistance Agreement # 4L 02F48102-0 under 2 CFR 200.208(d), the EPA has determined that it is necessary to de-obligate \$88,291,000 from Texas's Fiscal Year 2023 Bipartisan Infrastructure Law Lead Service Line Replacement capitalization grant award under 2 CFR 200.339. This de-obligation is effective as of the date of this letter.

1. Reason for the Action

The EPA is taking this action because of concerns that Texas did not reliably report data to the EPA under the 7th Drinking Water Infrastructure Needs Survey and Assessment (DWINSA) conducted under Section 1452(h) of the Safe Drinking Water Act (SDWA), which is the information that the EPA relies upon to make allotments of Drinking Water State Revolving Fund (DWSRF) funds to states under Section 1452(a)(1)(D) of SDWA. As we outlined in our September 25, 2024, letter to you, the EPA reached out to Texas numerous times to encourage Texas's participation in the 2023 update to the 7th DWINSA lead service line questionnaire. Even after the EPA discussed the problem of Houston's unreliable data with Texas, Texas did not submit updated information to the EPA to resolve this data entry error. In our September 25, 2024, letter, the EPA notified Texas to submit Lead and Copper Rule Revision (LCRR) initial inventory data for 7th DWINSA surveyed systems via a special condition to Assistance Agreement # 4L 02F48102-0 pursuant to 2 CFR 200.208(d). Upon review of the surveyed systems' LCRR initial inventory data you submitted, the EPA determined that the Fiscal Year 2023 Bipartisan Infrastructure Law Lead Service Line Replacement capitalization grant amount exceeded commensurate needs.

As a result, the EPA has determined it is appropriate to de-obligate these funds that were awarded based on information that is not reliable. The EPA has a duty to allot DWSRF funding to states commensurate with the lead service line replacement needs of each state pursuant to Section 1452(a)(1)(D) of SDWA and the specific DWSRF appropriation that may only be used for lead service line replacement and associated activities, such as inventories, under the Infrastructure Investment and Jobs Act, P.L. 117-58 (Nov. 15, 2021), also known as the Bipartisan Infrastructure Law.

Because Texas submitted the data as required under the special condition pursuant to 2 CFR 200.208(d), the EPA is removing the special condition from the Fiscal Year 2023 Bipartisan Infrastructure Law Lead Service Line Replacement award agreement (#4L02F48102-0).

2. Nature of the Analysis Performed Under the Special Condition

Texas' original allotment was 5.10% for the Fiscal Year 2023 Bipartisan Infrastructure Law Lead Service Line Replacement funding, which was based on estimates of numbers of lead service lines and a projected lead service line count of 648,000. Information on lead service lines has evolved since the initial estimates of lead service line counts. Based on the recently submitted surveyed systems' LCRR initial inventory data, Texas' projected lead service line count is 190,000. In the context of the Fiscal Year 2023 Bipartisan Infrastructure Law Lead Service Line Replacement allotments, this lead service line count would result in a 2.02% allotment for Texas.

3. Timing of the Action

This is an EPA action, which Region 6 has been charged with implementing. The Region will begin the processing of the de-obligation immediately, consistent with 2 CFR 200.339.

4. Method for Disputing this Decision

You or an authorized representative may administratively appeal this decision to de-obligate funds in accordance with 2 CFR 1500.15, Submission of Dispute, by electronically submitting a dispute by email to the EPA Region 6 Dispute Decision Official (DDO), Thomas Rucki at rucki.thomas@epa.gov, with a copy to Mary Stanton, Director, Mission Support Division, Region 6, at stanton.mary@epa.gov, within 30 calendar days of receipt of this letter. An electronic appeal submission to the DDO must include the following:

1. A copy of this notification letter;
2. A detailed statement of the specific legal and factual grounds for the appeal, including copies of any supporting documents;
3. The specific remedy or relief sought under the appeal; and
4. The name and contact information, including email address, of your designated point of contact for the appeal.

Failure to file an administrative appeal within 30 calendar days will result in the Agency Decision becoming the final decision, unless the DDO grants an extension of time to submit the appeal. If Texas requires a time extension to file the appeal, it must electronically submit the request with its justification to the DDO before the expiration of the 30-day calendar period for filing an appeal. The

DDO may grant a one-time extension of up to 30 calendar days when justified by the situation. If an appeal is not filed with the DDO that meets the above requirements within 30 calendar days, the DDO may dismiss the appeal, resulting in the Agency Decision becoming final.

As you are aware, Bipartisan Infrastructure Law Lead Service Line Replacement funds can only be used for lead service line identification and replacement projects. In 2024, systems statewide submitted inventories to the TCEQ as required by the LCRR. The EPA looks forward to working with Texas to ensure that its project priority list continues to include projects that reflect best-available information on the prevalence of lead service lines and reliable cost estimates.

I appreciate your assistance with this action. Please also coordinate with Chloe Adelman (Adelmann.Chloe@epa.gov, 214 665 6796) of the DWSRF program as necessary.

Sincerely,

Melissa Smith
Acting Deputy Director
Mission Support Division Region 6

cc: Jessica Pena, TWDB, Deputy Executive Administrator
Marvin Cole, TWDB, Director, Program Administration and Reporting
Cari-Michel La Caille, TCEQ, Director, Office of Water
Jennifer McLain, EPA, Director, Office of Ground Water and Drinking Water
Yu-Ting Guilaran, EPA, Deputy Director, Office of Ground Water and Drinking Water
Anita Thompkins, EPA, Director, Drinking Water Infrastructure Development Division
Matt Klasen, EPA, Acting Deputy Director, Drinking Water Infrastructure Development Division
Kiri Anderer, EPA, Supervisor, Water Infrastructure Technical Support Branch