

**From:** [Sunset Advisory Commission](#)  
**To:** [Elizabeth Jones](#)  
**Subject:** FW: Public Input Form for Agencies Under Review (Private/Before Publication)  
**Date:** Tuesday, June 21, 2022 2:52:00 PM

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**From:** Texas Sunset Advisory Commission <sunset@sunset.texas.gov>  
**Sent:** Tuesday, June 21, 2022 2:05 PM  
**To:** Sunset Advisory Commission <Sunset.AdvisoryCommission@sunset.texas.gov>  
**Subject:** Public Input Form for Agencies Under Review (Private/Before Publication)

Submitted on Tue, 06/21/2022 - 13:03

Submitted by: Visitor

Submitted values are:

**Choose the agency that you would like to provide input about**  
[Texas Commission on Environmental Quality](#)

**Public Comments**

1

**First Name**

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**Last Name**

Burks

**Title**

Director of Government Relations

**Organization you are affiliated with**

Hydron

**Email**

**City**

Austin

**State**

Texas

**Your Comments or Concerns**

Comments from Hydron regarding the TCEQ sunset review.

**Your Proposed Solution**

Please see attached.

**Attachment**

[Hydron Sunset Comments.docx](#) (36.58 KB)

**My Comments Will Be Made Public**

Yes

In the 12 years since the last Sunset Commission review of the Texas Commission on Environmental Quality, the population of Texas has increased by nearly 4 million people, six counties have been added to EPA Clean Air Act non-attainment status, and the state added 2.5 million new jobs.<sup>1,2,3</sup> The future of Texas infrastructure and transportation includes technologies barely considered a dozen years ago that now represent the core of the Hydron business model – hydrogen fuel cells and autonomous vehicles to provide clean, reliable, long distance freight transportation. These strategies are essential to protecting the environment we all cherish and the health of our citizens, and the current sunset review of TCEQ provides an important opportunity to ensure that the statutory and regulatory framework is up to the challenge. The Sunset Commission should consider additional recommendations to their evaluation report in order to transform TCEQ into an agency that is far more proactive than reactive, and pushes innovation rather than waiting for major revisions through the Sunset review process.

**The Legislature should consider changes that transform TCEQ into an agency that is proactive rather than reactive.**

**TCEQ programs should focus on results, not technologies.**

For purposes of legislative and rulemaking clarity and ease of administration, the TCEQ often lists specific technologies required for pollution reduction or eligible for pollution reduction incentives. This practice stifles innovation, locks in technological choices that may become inappropriate, and favors established players over new market entrants.

As an example, the Texas Emissions Reduction Program (TERP) for the Natural Gas Vehicle Grant Program (NGVGP) was initially established in 2011.<sup>4</sup> In the decade since, the use of natural gas as a low emissions fuel has been superseded by cleaner diesel technology, battery electric vehicles, and hydrogen fuel cell vehicles. The use of natural gas as an alternative fuel is so disfavored that TCEQ awarded less than one third of the appropriated funds for the NGVGP during the current biennium.<sup>5,6</sup>

Relatively few, minor changes to this statute and others like it could give substantially greater flexibility to the TCEQ and result in more effective use of pollution reduction funds. Simply changing the eligible vehicles to include any “alternative fuel vehicle” instead of a “natural gas vehicle” would provide the TCEQ with regulatory authority to adapt to changing industry demand and technological development.<sup>7</sup> This change would allow for an additional avenue of funding to encourage conversion to heavy duty hydrogen fuel cell vehicles – a technology not yet envisioned in 2011 at the creation of the NGVGP. It would also “future proof” the program and ensure that the legislative authorization did not fall behind technological innovation.

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<sup>1</sup> <https://www.census.gov/library/stories/state-by-state/texas-population-change-between-census-decade.html>

<sup>2</sup> [https://www3.epa.gov/airquality/greenbook/anayo\\_tx.html](https://www3.epa.gov/airquality/greenbook/anayo_tx.html)

<sup>3</sup> <https://texaslmi.com/>

<sup>4</sup> Tex. Health and Safety Code Sec. 394.001, <https://statutes.capitol.texas.gov/Docs/HS/htm/HS.394.htm>

<sup>5</sup> <https://www.tceq.texas.gov/airquality/terp/tngvgp.html>

<sup>6</sup> Similarly, no natural gas vehicle rebates have been processed for the Light Duty Motor Vehicle Purchase or Lease Program: <https://www.tceq.texas.gov/airquality/terp/ld.html>

<sup>7</sup> Tex. Health and Safety Code Sec. 394.003

### **TCEQ programs should drive behavior to seek new pollution reduction.**

One of the foundational objectives of TERP is to drive changes in behavior that lead to reductions in pollution, and advance new technologies that reduce emissions.<sup>8</sup> The commission has an obligation to spend these funds in a way that is both cost effective and whose benefit remains in Texas non-attainment areas; as well as provide a computation of emissions reductions.<sup>9</sup>

During the last TCEQ Sunset Review in 2010, the number of plug-in electric cars registered in Texas numbered in the low hundreds.<sup>10</sup> They now account for over 120,000 registered Texas vehicles.<sup>11</sup> This rapid growth in electric vehicle registration has been encouraged, in part, by TERP funding of the Light-Duty Motor Vehicle Purchase or Lease Incentive Program (LDPLIP).<sup>12</sup> However, this program fails to provide the benefits of other TERP programs.

As an initial matter, the rationale for this program seems to have been met – Texas consumers are now purchasing electric vehicles where they make sense to do so, and manufacturers are providing customers with attractive options that no longer need subsidies to be economically viable. The new Ford F-150 Lightning is so popular with consumers that Ford has doubled expected output to 150,000 vehicles per year.<sup>13</sup> Rather than driving the development of a nascent technology whose vehicles are uncommon or undesirable, LDPLIP is now a program subsidizing the purchase of Porsches, costing Texas taxpayers over \$50,000 for high performance luxury vehicles.<sup>14</sup>

The actual terms of the LDPLIP make it unclear if the state is realizing benefit from the program. Unlike all other TERP programs, there is no requirement that eligible vehicles be operated in nonattainment areas. Emissions reductions from this program may not even be inuring to the stated goal of TERP – to reduce the emissions of nitrogen oxides, particulate matter, or volatile organic compounds in a nonattainment area to comply with the EPA State Implementation Plan.

This is unknown since the TCEQ has not (and perhaps cannot) developed a methodology to measure the cost effectiveness of per-ton emissions reductions from this program. Between 2014 and 2019 this program provided \$11.75 million in grant funding. However, it is unclear what the relative value of this program is compared to programs such as the Diesel Emission Reduction Incentive Program (\$6,257 per ton of NOx reduced) or Seaport and Railyard Area Emissions Reduction Program (\$20,934 per ton of NOx reduced).<sup>15</sup> Finally, the term of operation for a LDPLIP grant is substantially shorter than other, similar TERP programs. Generally, any grant funded vehicle or fleet expansion must have a service

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<sup>8</sup> Texas Health and Safety Code Sec. 386.052

<sup>9</sup> Id.; Tex. Health and Safety Code Sec. 386.054; 389.003

<sup>10</sup> <https://www.texastribune.org/2010/07/23/subsidies-electric-cars-gaining-foothold-texas/>

<sup>11</sup> <https://www.statesman.com/story/business/2022/04/25/electric-austin-travis-county-tops-texas-electric-vehicle-ownership/7368608001/>

<sup>12</sup> Tex. Health and Safety Code Sec. 386.153

<sup>13</sup> <https://www.forbes.com/sites/dalebuss/2022/01/04/ford-plans-to-nearly-double-output-of-hot-f-150-lightning-to-150000/?sh=2f54d10972a0>

<sup>14</sup> Texas Emissions Reduction Program Biennial Report (2019-2020); [https://www.tceq.texas.gov/assets/public/comm\\_exec/pubs/sfr/079-20.pdf](https://www.tceq.texas.gov/assets/public/comm_exec/pubs/sfr/079-20.pdf) at pg. 40.

<sup>15</sup> Id. at 33, 37.

life of at least five years or 400,000 miles.<sup>16</sup> The LDPLIP grant only requires a single year of operation anywhere in Texas.<sup>17</sup>

The Sunset Commission and Legislature should examine the LDPLIP program carefully. The TCEQ should establish metrics to measure the amount of criteria pollutants reduced through this program, require that the vehicles be sold and registered in designated non-attainment areas, require repayment of a portion of the grant if the vehicle is registered outside of those areas within 3 years, and establish an MSRP ceiling for vehicle eligibility to ensure that the program is driving behavior rather than subsidizing luxury vehicles.

**The TCEQ should be encouraged to expand their use of drones and other remote sensing technologies.**

During the last biennium, the TCEQ Emergency Management Support Team established an unmanned aerial system (UAS) program to leverage drone technology in emergency response.<sup>18</sup> This program has now expanded to include inspectors in regional offices and their use for on-site inspections as well as emergency response. The legislature should encourage and fund this innovative use of technology by the TCEQ.

The use of UAS aircraft for inspection and emergency response has many benefits to the regulated community in Texas. When on-site inspections of large or complex facilities are necessary, the use of a UAS can substantially streamline the process – resulting in faster inspection times, fewer operational disruptions, and less cost for the regulated entity. Additionally, in the event that an emergency does arise the speed of deployment of a UAS means that a problem can be isolated and resolved faster, potentially avoiding further environmental impacts that might result from slower diagnosis. Finally, the use of a UAS means that these objectives can be accomplished remotely, reducing the risk to plant and TCEQ personnel.

The Legislature should examine line item funding in the 2023 biennial Legislative Appropriations Request to ensure that this program is adequately funded. Additionally, the Legislature and Sunset Commission should engage with the TCEQ UAS program to ensure that there are no statutory barriers to effective operation.

**The Legislature should pursue changes that allow TCEQ to encourage innovation in Texas industry.**

**The Legislature should create innovation funds for the TCEQ to encourage and develop promising technologies.**

One difficulty that may hamper the TCEQ in allocating funds to best alleviate the emission of criteria pollutants in non-attainment areas is the prescriptive nature of statute. Not only is TERP program eligibility narrowly defined by statute, but the very allocation of funding is based upon statutory minimums and maximums. Not only does this create a situation where some funds are

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<sup>16</sup> Tex. Health and Safety Code Sec. 386.104(c)

<sup>17</sup> <https://www.tceq.texas.gov/downloads/air-quality/terp/ldplip/ldplip-22-application.pdf> at pg. 9.

<sup>18</sup> <https://blog.tceq.texas.gov/2021/07/21/unmanned-aerial-systems-program-takes-flight/>

undersubscribed while other funds are substantially oversubscribed, but TCEQ staff may be prohibited from supporting new technologies if they do not fit into the rubric established by legislation.

In order to provide the TCEQ with the flexibility to meet technical and environmental challenges, the Legislature and Sunset Commission should investigate the creation of “innovation funds” under the TERP rubric. These funds should emphasize flexibility, cutting edge technologies, and high reward possibilities. In order to reduce risk, these programs could be limited in time and funding, while still providing incentives to attempt new technologies or control measures.

**The Sunset Advisory Commission and the Legislature should review Emission Reduction Credit program for efficiency in meeting the goal of emissions reductions.**

Established in 2001, the Emission Reduction Credit program provides a way for a site in the Houston-Galveston or Dallas-Fort Worth nonattainment area to offset NOx emissions with permanent reductions from other sources.<sup>19</sup> This program appears to be underutilized, with aspects of the program webpage not receiving updates for years at a time.<sup>20</sup> The focus solely on NOx leaves out particulate matter non-attainment. Additionally, the geographic limitation does not reflect the full impact of non-attainment designation and Clean Air Act National Ambient Air Quality Standards. The current regulatory framework lacks concrete regulations for the creation of mobile emission reduction credits or the purposes for which they can be used.

The Legislature and Sunset Commission should review the Emission Reduction Credit program with TCEQ staff and industry partners to determine what changes could be made to create a broader, more useful, voluntary emissions trading program. These changes could include the addition of other criteria pollutants, broader geographic eligibility, a streamlined process for the generation of mobile source reduction credits, and greater usefulness of the credits to purchasing entities.

**The Sunset Advisory Commission should consider whether 12 year review cycles are adequate to provide industry and public input in an area of rapid technological change.**

Finally, the Legislature and Sunset Commission should consider whether the state may benefit from a more frequent review of the TCEQ, given the rapid population growth and attendant environmental issues. During the 5 year period encompassing the past Sunset Commission review cycle, the TCEQ processed an average of 94 concrete batch permits per year.<sup>21</sup> By 2019 that number had risen to 227.<sup>22</sup> At the current time, review of concrete batch plants takes a disproportionate amount of time, resources, and public meetings for TCEQ staff. While the Legislature and Sunset Commission should not miss this current opportunity to address issues such as this and those identified in the Sunset Advisory Commission Staff Report, the next generation of environmental challenges may not be identified and may not be able to wait a dozen years for in depth review.

Although sunset review can be a burden on an agency, it represents the single best chance to address issues that may be obscure, contentious, or both. A recommendation that the TCEQ be

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<sup>19</sup> Tex. Health and Safety Code Sec. 386.056

<sup>20</sup> <https://www.tceq.texas.gov/assets/public/implementation/air/banking/guidance/area-mobile-emissions.pdf> updated 12/06/2017.

<sup>21</sup> TCEQ, Amendments to the Concrete Batch Plants Air Quality Standard Permit (2012),

<https://www.tceq.texas.gov/assets/public/permitting/air/NewSourceReview/Mechanical/cbpsp-finalpreamble.pdf>

<sup>22</sup> <https://www.texastribune.org/2020/11/24/texas-concrete-batch-plants/>

reviewed in 8 or 10 years should not be seen as reflecting negatively on the management or staff work of the TCEQ – rather, it should be a recognition of the vital work that the agency does and the need to make sure that the Legislature provides appropriate financial and statutory support to the agencies mission.

These comments are submitted in a spirit of gratitude to the Sunset Advisory Commission for the opportunity to participate in the review process, and gratitude to the Commissioners, senior leadership, and tireless staff of the Texas Commission on Environmental Quality. The agency is competent, professional, and should be commended for their hard work. We look forward to working with the TCEQ, Sunset Commission, and Legislators to ensure that it continues this vital work into the decade ahead.

## **Brody Burks**

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**HYDRON**

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**From:** [Sunset Advisory Commission](#)  
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**Subject:** FW: Public Input Form for Agencies Under Review (Private/Before Publication)  
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**From:** Texas Sunset Advisory Commission <sunset@sunset.texas.gov>  
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**To:** Sunset Advisory Commission <Sunset.AdvisoryCommission@sunset.texas.gov>  
**Subject:** Public Input Form for Agencies Under Review (Private/Before Publication)

Submitted on Tue, 06/21/2022 - 14:13

Submitted by: Visitor

Submitted values are:

**Choose the agency that you would like to provide input about**  
[Texas Low-Level Radioactive Waste Disposal Compact Commission](#)

#### **Public Comments**

1

#### **First Name**

Brody

#### **Last Name**

Burks

#### **Email**

#### **City**

Austin

#### **State**

Texas

#### **Your Comments or Concerns**

The Texas Low Level Radioactive Waste Compact Commission (the agency) lacks efficiencies common to state agencies. The quasi-independent nature of the agency, combined with a part time contract staff, leaves the agency without the benefit of full time professional guidance. This places the agency at a decided disadvantage when compared to other Radioactive Waste Compact Commissions, who have the luxury of a full time, state employee staff. The agency does not have a dedicated attorney, but relies on an appointed Assistant Attorney General to provide advice on a highly specialized area of legal regulation. This raises concerns about the timeliness of advice, compliance with open records, open meetings, and other state regulations. The agency does not



have access to state offices, but relies on an independent commercial lease for office space. Although the agency does excellent work with the resources it has, a more formal agency structure could be beneficial.

**Your Proposed Solution**

The Sunset Commission and Legislature should explore placing the agency within the Texas Commission on Environmental Quality. This would allow the agency to seek greater efficiency and work more closely with the relevant regulatory staff at the TCEQ.

**My Comments Will Be Made Public**

Yes