

From: [Sunset Advisory Commission](#)
To: [Elizabeth Jones](#)
Subject: FW: Public Input Form for Agencies Under Review (Private/Before Publication)
Date: Monday, June 27, 2022 8:51:10 PM

From: Texas Sunset Advisory Commission <sunset@sunset.texas.gov>
Sent: Monday, June 27, 2022 4:52 PM
To: Sunset Advisory Commission <Sunset.AdvisoryCommission@sunset.texas.gov>
Subject: Public Input Form for Agencies Under Review (Private/Before Publication)

Submitted on Mon, 06/27/2022 - 15:49

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

Ty

Last Name

Embrey

Title

Attorney

Organization you are affiliated with

Owner / Operator Members of the Uranium Committee of the Texas Mining and Reclamation Association

Email

tembrey@lglawfirm.com

State

Texas

Your Comments or Concerns

Good afternoon,

Attached please find public comments submitted on behalf of the Owner / Operator Members of the Uranium Committee of the Texas Mining and Reclamation Association regarding TCEQ. Thank you.

Your Proposed Solution

Good afternoon,

Attached please find public comments submitted on behalf of the Owner / Operator Members of the Uranium Committee of the Texas Mining and Reclamation Association regarding TCEQ. Thank you.

Attachment

[2022.06.27 - TMRA-UC's Comments to Sunset Advisory Commission on TCEQ.pdf](#) (245.8 KB)

My Comments Will Be Made Public

Yes

Mr. Embrey's Direct Line: (512) 322-5829
Email: tembrey@lglawfirm.com

June 27, 2022

The Honorable Charles Schwertner
Chairman
Sunset Advisory Commission of Texas
P.O. Box 13066
Austin, Texas 78711

Jennifer Jones
Executive Director, Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711

Re: Owner / Operator Members of the Uranium Committee of the Texas Mining and Reclamation Association (TMRA) Comments to Sunset Advisory Commission on TCEQ

Dear Chairman Schwertner and Ms. Jones:

The uranium mining industry in Texas has successfully operated in Texas since the 1950s and the production side of the uranium mining industry in Texas is regulated by the TCEQ. The owner / operator members of the Uranium Committee for the Texas Mining & Reclamation Association (TMRA) who are the companies that are actively mining for uranium in Texas would like to take the opportunity provided by the Sunset Advisory Commission (SAC) review process to make comments on the industry's experience with the TCEQ and provide some recommendations on issues that are currently impacting the regulation of the industry.

Regulatory Certainty

TCEQ statutes and regulations do not establish any time period for the TCEQ to complete application reviews for uranium mining-related applications, which include the Administrative Completeness and Technical Review phases. This complete lack of regulatory certainty has been an issue for the uranium mining industry for decades.

TCEQ reviews involve a process of reviewing application documents and if necessary, issuing a request for additional information if applications/responses lack the required elements, upon which TCEQ typically places a 30 to 60 day time period to respond to their requests. In fact, TCEQ has included in some of their requests for additional information to applicants that no additional requests will be issued and they will deny the application. Completely contrary to the applicants

time limits, TCEQ has no time constraint placed on their review of the application/submittal documents.

Applicants need clear certainty as to when a permit is expected to be approved. Under the current regulatory process, there is a lack of regulatory certainty as the TCEQ has no statutory or regulatory requirement to be expeditious in reviewing application packages.

To compound this issue, this regulatory uncertainty is present with all uranium mining-related applications - initial applications, amendments, and renewal applications. The regulated community recognizes that an initial application may require additional information and review time for staff to evaluate the proposal. However, applications for amendments and/or renewals on previously reviewed and approved permits/licenses should not require any significant review time as the majority of the information required by the application has previously been reviewed and approved by TCEQ and TCEQ should only focus their efforts on the specific proposed amendment to the existing approved permit/license.

TCEQ needs to adhere to the same time constraints that they place on the regulated community in their review process of applications. Changes need to be made to statutes and regulations that establish specific time periods within which TCEQ will approve an application.

Need to Address TCEQ Staff Issues through Additional Funding and Use of Regional Offices

The areas of the TCEQ that regulate the uranium mining industry in Texas – the Radioactive Materials and the Underground Injection Control Programs – are in dire need of additional staff resources as well as funding from the Texas Legislature. In light of geopolitical events currently unfolding all over the world, an increased effort to ramp up domestic energy production, including nuclear power, is occurring and the domestic mining and production of uranium which provides the fuel for nuclear power is very much part of that equation. As uranium mining companies in Texas increase their production efforts, the lack of TCEQ staff resources has become apparent. It is clear the TCEQ needs to hire additional staff with the proper technical skills and to retain existing staff with crucial institutional knowledge to be able to review and process the increased number of applications and requests for regulatory approvals in a timely matter to enable the uranium mining industry in Texas to remain viable.

The TCEQ management should also be given the discretion and authority to move staff positions to regional TCEQ offices. This movement of staff positions would enable the TCEQ to hire more staff and potentially more qualified staff at salaries that are more competitive in areas of Texas where the cost of living is not as high as the Austin area. The reallocation of staff positions could also increase the regulatory efficiency of the TCEQ. For example, most of the uranium mining activities occur in South Texas and are in relative close proximity to the TCEQ's regional office in Corpus Christi. If additional staff positions were added to the TCEQ's Corpus Christi regional office, then uranium company representatives could meet in person with TCEQ regulatory staff to address questions and to be able to hand deliver documents to expedite the communication between TCEQ staff and uranium company representatives.

Criteria for Determining Major Amendments

The TCEQ Rules (30 TAC 305.62) provide that a major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit. This citation, as written, leads to confusion on multiple levels.

First, the term “substantive” is not defined, which leads to inconsistent interpretation by the TCEQ staff as to whether the amendment being requested by the applicant is determined to be “substantive.”

Second, does the word “substantive” apply to each of the words “term,” “provision,” “requirement,” and “limiting parameter of a permit?” As written, it would appear to apply to all.

Third, the language as written will even designate a reduction of a limiting parameter as a major amendment as the language says “a major amendment is an amendment that changes... a limiting parameter of a permit.” A person can easily interpret this language to mean that a change, regardless of which direction the change to the limiting parameter goes, would be a major amendment.

These examples of uncertainty in how TCEQ staff determines how a specific permit amendment request will be classified hinders permittees from having an idea of any permitting timeline for their proposed project to proceed.

Another example of regulatory ambiguity is also highlighted with the permit range table as applied to uranium mining operations. Is TCEQ interpreting the permit range table in the Area Permit as a static table in that once established, then no changes can occur to the permit range table?

The TCEQ rules appear to require amendments/updates to the Area Permit range table. 30 TAC 305.49(a)(10) states an application for a new, amended, or renewed Class III injection well area permit for an in situ uranium mine must contain a range table of pre-mining low and high values for each groundwater quality parameter listed in 30 TAC 331.104(b). These values shall be established from groundwater samples collected prior to mining from: a) **all** baseline wells that are within the area of review associated with the existing or proposed permit boundary; and b) **all** available wells within the existing or proposed permit boundary, provided the well is completed within the production zone identified in the existing or proposed permit [emphasis added]. From this process, the number of wells that are used to establish the permit range table is fluid as evidenced below.

The Production Area Authorization (PAA) process allows permittees to permit additional areas within an established Area Permit. As part of the PAA permitting process, the permittee must obtain pre-mining water quality data which is used to develop PAA permit conditions (e.g., Restoration goals, Upper Confidence Levels (UCLs)). Therefore, to comply with 30 TAC 305.49(a)(10) and its requirement that all baseline wells and all other available wells in the permit area are to be included in establishing the permit range table, the permittee must amend the mine area permit range table each time a new PAA is proposed in order to incorporate this additional pre-mining data that is required to be included in establishing the permit range table.

The uranium mining industry contends that classifying increases to values in a permit range table as a major amendment is arbitrary with no scientific basis to do so. As indicated above, the TCEQ rules require the permit range table be comprised of **all** available pre-mining water quality. This data represents background water quality within and around the permit area. Additional pre-mining data that becomes available through the PAA permit process will only provide a more complete representation of the pre-mining water quality. Industry should not be arbitrarily forced into a major amendment simply because new data from pre-mining, background, native groundwater that represents the undisturbed natural environment, results in increases to values of an existing permit range table.

TCEQ Self Evaluation Report Issue 9 - Public Notice for Permit Applications

The uranium mining industry concurs with TCEQ that public participation must be an integral component in the permitting process. TCEQ and the Sunset Commission have expressed an interest in expanding the notice process to allow for electronic publication of notices. TCEQ notice requirements for some permit programs follow federal notice requirements. Changes to state requirements for these permits would necessitate a change to the federal rules for some regulatory programs.

Notice cycles on uranium mining permit applications occur after TCEQ declares applications are either administratively complete and/or when the TCEQ staff completes the technical review and have generated a draft permit. Contrary to TCEQs permit application review process, the notice process does include strict time periods for completion of the notice requirements.

TCEQ's desire for electronic publication needs to be considered carefully as to the extent of how this novel approach will be implemented. Will the extent of this electronic publication be limited to the webpage of the newspaper(s) where the printed notice currently is required to be published; or is it TCEQs and the SAC's intent to provide this electronic notice over multiple general media platforms?

The same transparency issue at hand presently, regarding the perceived limited extent of the notice will not disappear if electronic publication occurs as members of the public who do not use the platforms where the notice appears will continue to claim that the notice was deficient because it was not published on the social media platform(s) that they use.

TCEQ staff time is crucial in obtaining timely actions on permit applications. It is likely that if electronic publication of notices occurs to a greatly expanded audience (i.e., statewide, nationwide, worldwide), the end result will only be countless non-affected persons attempting to become involved in every notice cycle resulting in TCEQ staff time being needlessly expended on refuting the countless frivolous comments/assertions made by these perceived interested persons.

Should TCEQ pursue electronic publication of notice, this electronic publication should be limited to the webpage of the newspaper(s) where the printed notice currently is required to be published.

TCEQ Self Evaluation Report Issue 15 – Public Meetings on Permit Applications

TCEQ is recommending virtual public meetings be allowed to occur in lieu of in-person public meetings indicating that virtual meetings would save TCEQ resources while providing a convenient avenue to participate in the permitting process. TCEQ contends that in-person meetings can significantly impact permitting time frames due to scheduling and venue issues and suggests that virtual meetings will resolve these permitting delays.

Virtual meetings would seem to address delays pertaining to the meeting venue; but there seems less certainty that scheduling of the needed participants representing TCEQ at public meetings is enhanced through a virtual meeting. Public meeting schedules are typically established in advance to easily allow TCEQ staff to eliminate or rearrange any scheduling conflicts so staff can participate in the very important public meeting process. Therefore, it is unclear as to the real time savings gained with virtual meetings as opposed to in-person meetings.

It also appears that virtual public meetings may vastly expand the statutory intent that public meetings are to be held “in the county” in which the facility is located, which the Texas Legislature clearly determined is where interested parties to the permitting action would likely be located.

Public meetings require public notice and the method of how the meeting notice is communicated to the public can also be contrary to the legislative intent of focusing on the area in the vicinity of the facility. TCEQ proposes electronic notice (see Issue 9 above) which would offer the opportunity for anyone to participate in the meeting regardless of their proximity to the facility. TCEQ is required to respond to any/all comments received at the virtual public meeting. If anyone can participate and provide comments in the virtual public meeting regardless of their association/interest with the permittee or regardless of where they are located, TCEQ staff time will undoubtedly be spent on generating responses to these comments which will act contrary to TCEQ’s and the regulated community’s goal of reducing the permitting time frames.

Further evaluation by TCEQ appears to be warranted to thoroughly assess the benefits of virtual meetings and how the meetings will be conducted, including: 1) analysis of the expected improvement in the permitting time frames that virtual meeting will provide; 2) the public notice process that would be used for the virtual public meeting; 3) the rules of order that would be in effect for the meeting; and 4) limitations, if any, on the number of individual participants from any one interested party that can attend/participate.

Sincerely,



Ty H. Embrey