

From: [Sunset Advisory Commission](#)
To: [Elizabeth Jones](#)
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>
Sent: Monday, June 27, 2022 2:41 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 - 10:14

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

Milann

Last Name

Guckian

Title

Citizen

Email

City

New Braunfels

State

Texas

Your Comments or Concerns

TCEQ is not adhering to the totality of their mission statement, but they and most legislators think that they are. TCEQ has swung too far from its core mission "to protect our state's public health and natural resources" and skewed towards the final verse "consistent with sustainable economic

development" - seemingly to appease industry. In the eyes of Texas citizenry, TCEQ has become a de facto business partner to industry, focused primarily on achieving economic development.

Permitting with regard to the aggregate production operation (APO) industry is abysmal. No one can question that the APOs are doing very well and producing ample product for the growth in Texas and profits for their shareholders. They have attained "consistent and sustainable economic development." However, as mentioned previously, the pendulum has swung too far, and our state's public health and natural resources have become casualties.

TCEQ and some Sunset Commissioners make excuses for TCEQs shortcomings and inefficiencies. They downplay the public (Texans) as uninformed or NIMBYism. We are getting frustrated and increasingly more distrustful of not only the agency but state leadership that blatantly disregards the concerns of its citizens. We are concerned about the well-being and the health of our state, our citizens, our environment and our natural resources. Sustainable economic development must not be at the expense of environmental degradation.

Your Proposed Solution

TCEQ is broken, their permitting process is confusing and lacks transparency. If TCEQs permits were focused more on their core mission values of protection for public health and natural resources, then nuisance complaints and non-compliance issues could be minimized. I have scrutinized the SAC staff report submitted to the Sunset Commission and though I think they are headed in the right direction, there are some areas of specific concern that need to be addressed to reform the agency. I have attached my observations and my additional solutions (recommendations).

Attachment

[Milann Guckian Comments on SAC Report.docx](#) (32.15 KB)

My Comments Will Be Made Public

Yes

Comments and Additional Recommendations on the Sunset Advisory Commission Staff Report on the Texas Commission on Environmental Quality

Milann Guckian

Comal County Resident,
President of all-volunteer grassroots organization
Preserve our Hill Country Environment (PHCE)
DBA Stop 3009 Vulcan Quarry, Friends of Dry Comal Creek

Overall Assessment

Based on in-depth assessment of the TCEQ, the Sunset staff's recommendations fall short of addressing the significant needs for reform of the agency. The TCEQ is broken and needs to be fixed. Numerous changes need to be added to your report to accomplish this. The report states that the "TCEQ Commissioners have become reluctant regulators." This is an accurate and reasonable assessment, a good starting point for repairs. SACs charge is to address changes to procedures and processes within the TCEQ, but not directly address legislative/regulatory changes. The five (5) Texas Senators and five (5) Representatives on the SAC are positioned to address both areas: process and procedural changes from the SAC and legislative and regulatory changes from their individual positions in the state legislature.

The TCEQ has swung too far from its core mission "to protect our state's public health and natural resources" and skewed towards the added verse "consistent with sustainable economic development." I feel strongly that a well-functioning TCEQ, faithfully fulfilling its mission, would result in equity for all stakeholders involved which would lead to healthier, safer, and more desirable communities and industries better aligned with the concerns of the communities in which they operate. With this being said, TCEQ has a lot to accomplish so the Sunset Advisory Commission should call for a six-year continuance of the TCEQ, rather than the usual twelve-year. This will give the legislature an opportunity to track the agency's progress sooner and make additional modifications as necessary. The importance of the TCEQ's work and the degree to which they have drifted from their core mission warrant this more frequent oversight.

Furthermore, with specific regard to surface mining of aggregates, regulatory responsibility should be in the hands of an agency that has the authority, expertise, and capacity to regulate mining activities comprehensively and effectively. At present, the Railroad Commission of Texas (RRC) is better positioned to serve in this role, as they already oversee surface mining of coal and other minerals comprehensively and effectively, under the Texas Surface Coal Mining and Reclamation Act. The RRC could similarly provide the necessary oversight of mining operations for the aggregates industry, complementing the TCEQ's continued specific regulation of air pollution. If impracticable, another solution would have TCEQ oversee the mining operation separately. With proper authority, staffing, training, and oversight, the agency could effectively oversee both the mining operations and air quality permitting.

Comments on Sunset Staff Recommendations

Issue 1 – Policies and Process

1.1 Direct the Texas Legislature to clarify statute to require public meetings on permits to be held both before and after the issuance of the final draft permit.

This recommendation is very important and should be applied to all TCEQ permits. The Sunset Advisory Commission needs to clarify this point in their final draft.

- The importance of an additional meeting before the issuance of the final draft permit is to maximize public input. This can be achieved by strategically timing the first public meeting during the technical review process for a permit application, before internal and administrative decisions are made on the draft permit.
- The Sunset staff recommendation should make it clear that public interest *and/or* legislator requests would be necessary to prompt both meetings.

1.2, Direct the commission to vote in a public meeting on key foundational policy decisions that establish how staff approach permitting and other regulatory actions.

This recommendation is supported but needs clarification. What constitutes “key foundational policy decisions?”

- For example, during the hearing, Senator Borris Miles (District 13) shared real-life examples of multiple Concrete Batch Plants (CBPs) being placed next to a playground for special needs children in Houston. When he asked TCEQ Chairman Jon Niermann who (what agency) was responsible for addressing the cumulative impacts, Mr. Niermann could not point to a specific entity that would be able to address the senator’s concerns. His agency could only look at one CBP at a time and if they were administratively complete, the permit was issued. Mr. Niermann even stated that he wouldn’t want one next to his child’s school and that the agency “didn’t relish placing them next to schools.”
- The Sunset Commission needs to clarify (to legislate) a governmental entity to have the authority and responsibility to make the common-sense decision to say no to something like this. The onus is on citizens. As it stands now, citizens must expend large sums of money and time to confront these issues during the contested case hearing (CCH) process. Specifics of how determinations of justice, ethics, cumulative exposures, public concerns, etc. will be considered in permitting decisions should be specified in statute and publicly shared.

1.3, Direct TCEQ to develop a guidance document to explain how it uses the factors in rule to make affected person determinations.

This recommendation is supported but needs clarification.

- Affected Person's (AP) Determination is confusing to say the least – the type of permit application determines the guidance's and statutes.
- Distance Considerations are problematic and need clarification and transparency. As it stands, distance requirements can be used to deny a person a hearing because they're too far away and the TCEQ doesn't have to clarify how they reached that determination. They can interpret how they see fit.
- For a New Source Review permit there is an unwritten 1-mile guidance from the permitted equipment. In this permit type, an AP is someone directly & personally impacted by the operation not someone with a general concern.
- During PHCEs contested case hearing process with Vulcan Construction Materials, the TCEQ adhered stringently to their 1-mile guidance from the portable rock crusher itself and only extended AP status to eight (8) entities, even though the Office of Public Interest Council (OPIC) recommended a 2-mile radius. However, we were fortunate. The SOAH administrative law judge in our CCH Preliminary Hearing extended the distance consideration to 5 miles from the boundary (fence line) of the property in all directions. She agreed with the communities concern that air pollutants, particularly respirable crystalline silica PM2.5 and PM10 DO NOT DROP OUT at the fence line. She gave AP status to all who testified that day that were within 5-miles of the fence line, adding an additional 70 Affected parties to the Contested Case.
- For a Standard Permit – Texas Health & Safety Code Section 382.058(c) extends the right to request a hearing as an affected person to “only those persons residing in a permanent residence within 440 yards of the proposed plant. The rule is confusing because it does not specify where to measure the distance from....the property line or from the permitted equipment or building. Also, it limits its scope to only a permanent residence.
- In their 2017-2018 Biennial Report, OPIC recommended changing the definition of “affected persons” for the purposes of requesting a contested case hearing to include, “schools, places of worship, licensed day-care facilities, hospitals, medical facilities, and persons.” TCEQ needs to change this definition as OPIC has recommended.
- AP determinations, for air pollution, must consider proximity to the pollution source, prevailing winds, the concentration of air pollution permits already granted in the area (cumulative impacts), and the vulnerability of the parties – particularly if they are children, elderly, or people with chronic health conditions.

1.4, Direct TCEQ to adopt a policy guiding its rule review process to ensure that identified deficiencies in the rules are addressed.

This is just a good common-sense recommendation

1.5, Direct TCEQ to review and update its website to improve accessibility and functionality.

Any improvement to the website would create transparency. The TCEQ should take it a step further and create a user-friendly mobile phone application. Users could submit complaints and upload photos, see a

calendar of upcoming events, browse compliance histories, receive notifications on public applications and permit violations, etc.

1.6, Direct TCEQ to evaluate its current use of advisory committees to provide more public involvement in rulemaking and other decision-making processes, and continue advisory committees by rule, as appropriate.

Advisory committees that include the populace - not just agency personnel and industry - would be a positive step forward in developing transparency and public trust in the agency. These advisory committees could provide much needed input on rulemaking, the permit process, and any number of other issues.

Issue 2 - Compliance Monitoring and Enforcement

2.1, Require TCEQ's compliance history rating formula to consider all evidence of noncompliance while decreasing the current emphasis on site complexity and direct the agency to regularly update compliance history ratings.

The following should be added to further increase the effectiveness of TCEQ's compliance history database:

- Add Geographical Information System data and mapping capability to compliance score results.
- Add capability to search by Standard Industrial Classification code or North American Industrial Classification System code to allow for the comparison of individual facilities' compliance ratings to those of other operators within the same industry, in Texas.
- Add capability to search by company, so that all of a particular company's Texas operations' compliance histories can be viewed together.
- Every facility that receives a permit from TCEQ must have a compliance score.
- Any time a violation has occurred, compliance history rating of the offending industry needs to be updated immediately.
- Self-reported violations should appear in the database, as well.

2.2, Require TCEQ to consider all violations when classifying an entity as a repeat violator.

Strong Recommendation

2.3, Require TCEQ-regulated entities with temporary or open-ended permits to annually confirm their operational status.

Strong Recommendation

2.4, Direct TCEQ to reclassify recordkeeping violations based on the potential risk and severity of the violation.

Strong Recommendation

2.5, Direct TCEQ to develop and implement clear guidance to evaluate affirmative defense requests for air emissions.

Don't agree with this one. We suggest that affirmative defense be modified to encourage industry self-reporting but not have that be the basis for non-violation. Self-reported violations should appear in the compliance history record.

2.6, Direct TCEQ to modify its approach to nuisance complaints to make better use of the agency's investigative resources.

This recommendation raises concerns that the public would be further discouraged from reporting issues and potential violations to the TCEQ. Perhaps a useful approach would be better messaging from the TCEQ to the public, educating the public on who to turn to for various types of complaints. Also, if permits were conceived better on the front end, then nuisance complaints would be as relevant.

Issue 3 – Oversight of Water – No comments

Issue 4 - TCEQ and OPIC

4.1, Direct OPIC to consider developing and using umbrella contracts to procure expert assistance.

Strong recommendation

4.2, Direct TCEQ commissioners to take formal action on OPIC's rulemaking recommendations.

Recommend with additional comments regarding OPIC in the following section.

Issue 5 - Continuing Need for TCEQ

As stated, TCEQ is an important agency that is far adrift from its mission statement. If this round of the TCEQ Sunset Review and the next legislative session don't succeed in getting TCEQ to more effectively meet the first two parts of its mission statement 1) "to protect human health" and 2) "to preserve our natural resources," and put less emphasis on the last part 3) "consistent with sustainable economic development," and if they don't improve their permitting process, their enforcement and compliance monitoring, and their website, they should come up for another more stringent review in six years, not twelve.

Additional Recommendations

In addition to the recommendations identified in the staff report, TCEQ's operations and effectiveness could be improved in several areas. We have identified three priority recommendations: Empowerment of the TCEQ to effectively oversee aggregate production operations, Consideration of Cumulative Impacts, and Election

of TCEQ Commissioners. A brief discussion of each is below, followed by additional recommendations for the Sunset Commissions consideration.

Empowerment of the TCEQ to effectively oversee aggregate production operations

Empower the TCEQ to effectively carry out its responsibilities on an ongoing and sustainable basis, with regards to APOs, by:

- Putting in place obligatory Statewide Best Management Practices (BMPs) for APOs. BMPs should be reviewed and updated at least every five years and all permits should be reviewed at the same interval and be reconditioned to reflect any changes to BMPs.
- Implementing comprehensive APO legislation in Texas including requirements for air quality monitoring, water conservation, safe road access, reclamation, noise monitoring, and lighting controls. Application of the Surface Mining Control and Reclamation Act (SMCRA) that governs APO mining in most states would be an important component of any comprehensive APO legislation.
- Regulatory authority and responsibility for aggregate production operations should be entrusted to those with the appropriate expertise and regulatory capacity. Currently, in our view, the Texas Railroad Commission is better suited to surface mining issues. However, with concerted effort and application of the Surface Mining Control and Reclamation Act, the TCEQ could become an effective regulating agency for APOs.

Consideration of Cumulative Impacts

Amend air quality permitting process to consider cumulative impacts of existing permits. TCEQ should have the authority to deny permits based on holistic considerations in service of its mission to protect public health and natural resources. We recommend an amendment to the Texas Clean Air Act to clearly grant this authority. In conjunction, TCEQ should liberally apply the concept of “affected party.”

Election of TCEQ Commissioners

We strongly maintain that the TCEQ Commissioners should be beholden to Texans and not just state leadership. TCEQ Commissioners should be selected by popular vote, same as the Texas Railroad Commissioners.

Additional Recommendations

- Public meetings should be held in person, with a remote option, whenever practical or necessary. Remote attendance should be available through Zoom or a comparable, user friendly, video conference platform. The platform should include a call-in only option.
- TCEQ should end the current procedure of public meetings with a non-recorded “Q&A” portion followed by a recorded comment portion. This model leads to confusion and difficulty among inexperienced members of the public. The whole meeting should be on the record
- For Geological Assessment (GA) of Karst systems over the Edwards Aquifer: 1) Establish numerical criteria for relative water infiltration rate; 2) Require objective measurements for each Karst feature in Geological Assessment (GA) of Karst systems.

- The TCEQ Processes and Organizational Chart dated 1-1-22 should be revised to put the Office of Public Interest Council on equal standing with the Executive Director. Budgeting should reflect the change by giving OPIC a comparable policy and legal staff to that of the Executive Director.