



## BORRIS L. MILES

STATE SENATOR • DISTRICT 13

COMMITTEES: CRIMINAL JUSTICE • HEALTH & HUMAN SERVICES • NATURAL RESOURCES & ECONOMIC DEVELOPMENT • NOMINATIONS

June 22, 2022

Texas Sunset Advisory Commission  
P.O. Box 13066  
Austin, Texas 78711

RE: Recommendations for the Texas Commission on Environmental Quality

Dear Commissioners,

The importance of your review of the Texas Commission on Environmental Quality is paramount to my district and the entire state. You heard and saw compelling testimony during your public hearing on TCEQ, like the landowners concerned with how TCEQ handled permits on one of our last remaining pristine rivers and streams. You heard from children who do not understand why TCEQ allows five concrete batch plants to sit adjacent to each other, just ten minutes away from their schools, when the Concrete Batch Plant Standard Permit intends for plants not to sit adjacent to each other.

I think this is among the most important issues of your career in public service. The Sunset Advisory Commission staff report contains alarming findings of an agency which is derelict of its duties, arbitrarily interpreting statute, and with a mission statement to protect economic development that was taken from one particular water program, and expanded to protect all industry. It is concerning that the sunset staff report notes, "...a concerning degree of general public distrust and confusion on the TCEQ and its ability to regulate in the public interest." The report also expressed a primary concern of my district that, "...see TCEQ as a mere extension of industry, rubber stamping new and expanded facilities, seeming to ignore potential health impacts or public concerns."

For too long, too many Texans, urban and rural, have been powerless to change the decisions made by TCEQ. I respectfully ask that you adopt my suggested recommendations below, many were brought up during staff, agency, and public testimony.

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## **I. Cumulative effects**

- Give the TCEQ the authority to consider the cumulative public health impacts of all the polluting facilities in an area, and to deny permits because of those cumulative effects, (*for example*, Senate Bill 87, 87R).

## **II. Public participation, input, and justice**

- TCEQ needs to allow public input before a draft permit is issued, followed by a subsequent public meeting to directly address input provided *before* any draft permit is issued (*see*, Sunset Advisory Committee Staff Recommendation 1.1, *recommending public meetings on permits both before and after issuance of final draft permits*).
- Grant TCEQ the power to customize permits or deny permits in the interest of environmental justice and allow the commission to approve local agreements between industry, applicant, and the community they want to build in (*for example*, parts of Senate Bill 365, 87R, *allowing local community agreements to be part of permits*).
- Allow large counties and certain municipalities to weigh in on permits (*for example*, Senate Bill 1350, 87R, *requiring local approval of a permit or site by a local city council or county commission*).

## **III. Legal standing to contest a case as an affected person**

- TCEQ needs to adopt a clear and uniformly applicable standard for who an affected person is (*for example* Sunset Advisory Committee Staff Recommendation 1.1, *directing TCEQ to develop guidance on how TCEQ applies the current factors in rule to determine who is an affected person*).

## **IV. Better enforcement: increase fine amounts and end affirmative defenses**

- Maximize TCEQ's ability to levy fines. These fines have not been updated in decades and do not deter industry (*for example*, Senate Bill 366, 87R, *increasing TCEQ's fine schedule. See also*, Sunset Advisory Committee Staff Recommendation 2.5, *directing TCEQ to develop and implement clear guidance to evaluate affirmative defense requests for unauthorized emission events*).
- End the affirmative defense for unauthorized air pollution events (SB 364, 87R, *ending industry's ability to claim an automatic defense to unauthorized emission events*).

**V. Permitting and enforcement**

- TCEQ should not allow applicants to break projects up into separate, smaller, projects for permitting purposes (*for example, Sunset Advisory Committee Staff Issue 2 and Recommendation 2.1, discussing TCEQ's distorted use of site complexity - analogous to TCEQ allowing complex sites to operate under various permits rather than comprehensive permits*).
- TCEQ should develop clear guidelines for protecting confidential information and a process for the public to access such information in a confidential matter in order to determine the adequacy and sufficiency of permits.

**VI. Sunset review frequency**

- Review TCEQ every 6 years to allow Sunset to study TCEQ more often.

These recommendations would have a positive impact on my community and for every Texan. Thank you for your consideration.

Keep the Faith, Keep the Fight!

A handwritten signature in black ink, appearing to be 'Borris L. Miles', with a stylized, cursive script.

Borris L. Miles  
Senator, District 13