

From: [Sunset Advisory Commission](#)
To: [Elizabeth Jones](#)
Subject: FW: Public Input Form for Agencies Under Review (Private/Before Publication)
Date: Wednesday, June 22, 2022 7:03:25 AM

From: Texas Sunset Advisory Commission <sunset@sunset.texas.gov>
Sent: Tuesday, June 21, 2022 9:56 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 - 20:51

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

Ann

Last Name

Newman

Title

Acting President

Organization you are affiliated with

Bandera Canyonlands Alliance

Email

City

Vanderpool

State

Texas

Your Comments or Concerns

See Attached Letter

Your Proposed Solution

See Attached Letter

Attachment

[BCA_Sunset_Response_062122.pdf](#) (147.69 KB)

My Comments Will Be Made Public

Yes



June 21, 2022

Sunset Advisory Commission
Attn: Texas Commission on Environmental Quality
P.O. Box 13066
Austin, TX 78711
Via email: sunset@sunset.texas.gov

Dear Sunset Advisory Committee Members:

The Bandera Canyonlands Alliance wants to express our thanks to the members of the Sunset Advisory Committee for the extensive work you have conducted in reviewing the mission and performance of the Texas Commission on Environmental Quality. Our organization promotes stewardship of our natural resources, including protection of our land, water, and wildlife.

The Sunset Review process provides an opportunity to strengthen the credibility and effectiveness of the TCEQ at a critical time since our state is experiencing the pressures of unprecedented growth. The Draft Report makes it clear that the TCEQ is suffering from a structural credibility gap, is not responsive to the public or the OPIC, and is in need of significant reforms to regain the confidence of multiple stakeholders, including the public.

The Bandera Canyonlands Alliance previously submitted comments as part of the Sunset Review process and a copy of that letter is attached. We have the following comments in response to the Draft Report:

Issue 1: TCEQ's Policies and Processes Lack Transparency and Opportunities for Meaningful Public Input, Generating Mistrust and Confusion Among Members of the Public

We agree with this finding and support the recommendation that public meetings on permits should be conducted both before and after the issuance of final draft permits. Formalizing this change by statute would require applicants (and TCEQ staff) to hear community concerns before a draft permit is finalized. Adding a public meeting prior to the issuance of a draft permit ensures that applicants have the opportunity to fully consider public concerns and can modify permits accordingly before they are approved in draft form.

We believe it is crucial that public meetings be held in person at locations in the communities near where permits are proposed. This would promote and encourage community access and participation. Virtual meetings are not a viable alternative since many of these permits are in rural areas where internet access is difficult and not reliable for citizens, though they are a welcome supplement to in-person meetings since they provide an additional method

of participation. Public participation is essential since these permits issued by the TCEQ have the potential to dramatically impact private property rights and affect property values. Providing more opportunities for public engagement is something that would build the credibility of the TCEQ and ensure that the public meetings are more than just a tick-the-box step in the process.

Establishment of who constitutes an affected party is another area of concern that causes landowners to really question the process. Our organization has been involved in several proposed TPDES Permit Applications along pristine streams and has been struck by the arbitrary nature of how affected parties are identified. There seems to be little or no consideration for the damage the direct discharge of treated effluent can cause for miles downstream of a discharge point. Algal blooms caused by the discharge of phosphorus and other nutrients can stretch for many miles downstream thereby impacting the enjoyment of rivers and streams and negatively impacting property values. TCEQ often employs a 1-mile rule, which is not a formal agency rule, but a standard distance in-stream miles from a proposed discharge point, that the TCEQ often considers to be the area in which landowners may be impacted. The clear problem with this standard is that it is arbitrary and does not follow the legal principles of “standing.” It also allows a wastewater proponent to “game” the system, whereby an applicant of a small property may place its discharge points at the edge of their property, and the owner of a large tract may place the facility on its own property in such a way so that there may not be any “affected parties” within the 1-mile range. There should not be any bright-line distance determinations. The inquiry of who will be an “affected person” should follow established legal principles of “standing.”

As we stated in our initial comments to the Sunset Advisory Committee, we support a comprehensive revision of the TCEQ website to enable the public to gain easy access to information. Permit applications, Notices of Deficiency (NODs), and other relevant application materials should be posted online for the public to access. More action than a mere study by the Sunset Review Commission is necessary since the online portal and presence of TCEQ is a critical link to the public and other stakeholders. Specific deadlines for action should be mandated by the Sunset Advisory Committee to address all the severe deficiencies outlined in both public comments and the Sunset Review Commission’s recommendations.

Issue #2 TCEQ’s Compliance Monitoring and Enforcement Processes Need Improvements to Consistently and Equitably Hold Regulated Entities Accountable

The lack of compliance and enforcement efforts is another reason the TCEQ’s credibility suffers with the public. TCEQ lacks the resources to enforce compliance with the permit requirements and Applicants are aware of these failures. This acts as a disincentive for them to prevent or address problems in a timely manner. TCEQ is ineffective at ensuring compliance and actual enforcement often comes only after egregious violations receive public attention through media coverage and investigation. In addition, the way the TCEQ calculates and takes into account the compliance history of an applicant leads the public to believe that prior compliance and enforcement matters simply do not matter in applicants’ opportunities to obtain new permits.

We support significant additional funding by the legislature to provide staffing and other resources necessary to allow the TCEQ to build a model compliance and enforcement organization. This would provide the public with confidence that regulated entities would truly be held accountable for any violations. Investment in this effort would either generate significant revenue for the organization in the form of fines and penalties for non-compliance or better yet, decrease violations due to enhanced enforcement of permit requirements.

Issue #3 Oversight of Water Could Better Protect the State's Scarce Resources

A petition was presented to the TCEQ Commissioners in March 2022 by landowners and others seeking a rule change that would prevent the direct discharge of wastewater into the last remaining 22 pristine stream segments of Texas. The proposal was rational and reasonable and recommended the use of Septic, Aerobic Septic, TLAP, and/or Reuse Permits instead of direct discharge in these unique and sensitive waterways. The petition was rejected by the Commissioners in a 2-to-1 vote, despite overwhelming public support, and no opposition appearing at the hearing. Commissioners agreed protecting these pristine streams is an urgent issue and asked staff in the Office of Water to explore options with various stakeholders. Just last week a tentative meeting on the issue was scheduled for August 31st. It is important to point out that this five-month delay in scheduling a stakeholder meeting, especially after Commissioners set this as a priority, adds to the lack of public confidence the TCEQ gives any weight or attention to public concerns.

Furthermore, we support recommendations to update the process to obtain and retain water rights permits. Additionally, we think the current landowner's right to dam up and impound up to 200 acre-feet for personal convenience should be significantly reduced and include a requirement to show proof of need. For instance, reducing impoundments to 25-acre feet would be reasonable and align with the current pumping limits for a livestock or domestic well which does not fall under the water rights process. Making a change to these restrictions would help ensure an adequate flow, especially during drought conditions that Texas is currently experiencing. Large impoundments restrict the flow of rivers and streams and impact fish and other wildlife that depend on these waterways.

A situation in Bandera County that is currently under review is a good example of why additional vigilance is necessary from the TCEQ. A landowner began construction of a significant dam over the Sabinal River north of Vanderpool and a cease-and-desist order has been issued by the US Army Corps of Engineers. There were no permits secured for the project from the TCEQ, Corps of Engineers, Texas Parks and Wildlife, or any other entity. This project along the navigable Sabinal River, if allowed to continue, would impound a significant amount of water, and greatly impact downstream flow. The regulatory agencies involved are now determining how to proceed since there were no permits or studies conducted on this project to determine the impact on water flow, and damage to the bed and banks of the river.

Issue #4: TCEQ and OPIC Lack Certain Transparent and Efficient Processes for OPIC to More Effectively Represent the Public's Interest

We support many of these recommendations to strengthen the OPIC as the internal entity charged with representing landowners and public concerns during the permitting process. Additional funding is necessary to provide expertise and resources to this office so they can be an effective advocate for citizens during interaction with the TCEQ. Specifically, OPIC representatives have proposed several rule changes in recent years which reflect public concerns. These rules should be adopted. Ensuring the OPIC continues to evaluate and advocate for rule changes is vital. OPIC should be involved in identifying and advocating changes that represent the interests of private landowners and citizens concerned about proposed permits and other issues.

All Texans should be advocates for a strong TCEQ that is well funded to evaluate permit applications and their potential impacts. Compliance and enforcement efforts should be funded to ensure permit holders know they will be held to account for violations. Ensuring the credibility of the organization is key to ensuring that Commissioners and staff are effective in fulfilling the mission of the TCEQ.

We thank you for the opportunity to participate in this process and will continue to be involved by providing input before the final report is sent to the Legislature. We appreciate the diligence and dedication of the Sunset Advisory Committee and are hopeful that your efforts lead to substantive and meaningful changes at the TCEQ to resolve the critical issues highlighted throughout this process. Again, thank you very much for the time and energy you have dedicated to this process to ensure the TCEQ serves the people of Texas.

Sincerely,

/s/ Ann Newman

Ann Newman

Acting President

Bandera Canyonlands Alliance