



TEXAS
ASSOCIATION OF
MANUFACTURERS

June 22, 2022

The Honorable Charles Schwertner
Chair, Sunset Advisory Commission
P.O. Box 12068
Austin, Texas 78711-2068

The Honorable Justin Holland
Vice Chair, Sunset Advisory Commission
P.O. Box 2910
Austin, Texas 78768-2910

RE: Sunset Staff Report on the Texas Commission on Environmental Quality

Dear Chairmen:

The Texas Association of Manufacturers ("TAM") is pleased to offer comments on the Sunset Commission staff recommendations for the Texas Commission on Environmental Quality ("TCEQ").

TAM actively represents the interests and priorities of more than 600 member companies in Austin and in Washington, D.C. Manufacturers in Texas account for 13.07 percent of the total output in the state - more than \$241 billion in 2019 - and employ more than 881,000 Texans in jobs that pay an average compensation of over \$90,100 annually. On average, each manufacturing job created also provides 5 additional jobs in our communities. For two decades, Texas remains the number one exporting state for manufactured goods in the United States.

TAM supports policies that ensure the protection of public health and the environment. Our members take their responsibility to protect both the public's health and our environment very seriously and support the continuation of TCEQ.

We appreciate the hard work of the Sunset Commission and TCEQ staff and the open dialog that has been afforded TAM. Thank you for your consideration.

Sincerely,

Richard A. "Tony" Bennett
President & CEO

ISSUE 1: TCEQ Policies and Processes Lack Transparency and Opportunities for Meaningful Public Participation, Generating Distrust and Confusion Among the Public.

- Clarify statute to require public meetings on permits to be held both before and after the issuance of the final draft permit.

TAM supports a robust public participation process as part of the TCEQ permitting process. The report is correct that TCEQ needs to do a better job of explaining the purpose of public meetings. The merit of a TCEQ permit application cannot be solely determined by the tone and tenor of comments at a public meeting - turning a rule-based application into a "popularity contest" should be discouraged. Permits are based on sound science and reflect compliance with agency rules and state law. If an applicant can demonstrate that it has met the requirements of the rules, then a permit should be issued.

TCEQ recently enhanced its public participation rules. The new rule requires an applicant to provide a "plain language" summary of the application for a permit as well as a requirement for bilingual translation at public meetings. The addition of a second public meeting will be time and resource intensive. If a second public meeting is deemed necessary, statute or agency rule MUST reflect that the meeting is for a specific purpose, and not just an excuse to extend debate on a particular permit.

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

There are many complex technical decisions that are performed by TCEQ staff daily. These reviews should remain independent of the political process. The Executive Director of the agency is hired by the three commissioners and is ultimately accountable to the commissioners for all decisions.

Public participation and transparency require an on-going review in light of changing rules and decisions made by the Commission. TCEQ has multiple avenues to receive public input including the use of "work sessions" where the Executive Director staff presents issues to the Commissioners and receives guidance. The agency also has a comprehensive public participation plan that outlines how the agency interacts with the public and identifies opportunities for the public to engage with the agency.

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

TAM supports the review and enhancement of the TCEQ website.

ISSUE 2: TCEQ's Compliance Monitoring and Enforcement Processes Do Not Consistently and Equitably Hold Regulated Entities Accountable.

- 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.

TAM supports a review of the compliance history calculations as it applies to small businesses. These entities have unique challenges in complying with complicated environmental regulations and should not be effectively penalized based on complexity. For the largest and most complex facilities the report suggests penalizing these facilities based on a subjective threat to the environment. The mere fact that a process may pose a higher risk should not automatically affect a compliance history score.

TCEQ recently adopted revisions to its Compliance History Rule that gives the agency additional tools to address a site's compliance history classification. The rule allows the Executive Director to review a site's compliance history by placing it under review and provides for the classification to be suspended.

The regulated community must have due process to address any discrepancies or errors prior to making compliance information public.

- Require TCEQ to consider all violations when classifying an entity as a repeat violator.
- Direct TCEQ to reclassify recordkeeping violations based on the potential risk and severity of the violation.

TAM supports providing clear incentives for encouraging compliance versus focusing on minor violations.

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

TAM supports clear guidance regarding affirmative defense and applauds the agency for recently establishing a group of technical experts to work on this issue.

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

TAM supports the concept of allowing the agency to prioritize responses to nuisance complaints.

ISSUE 3: To Better Protect the State's Scarce Water Resources, TCEQ's Oversight and Management Needs Reform.

- Remove the abolishment clause for the Environmental Flows Advisory Group and Environmental Flows Science Advisory Committee, and require the advisory group to adopt a biennial statewide work plan for adaptive management updates of environmental flow standards.
- Require TCEQ to hold its annual meeting regarding priority groundwater management area studies in a public setting.
- Direct TCEQ to conduct a comprehensive study of its water usage data and initiate cancellation proceedings for water right permits with nonuse over 10 years.

TAM supports a clear focus on the state's water resources. It is critical for manufacturing to have an adequate supply of water to allow for continued growth. TCEQ should be encouraged to develop sustainable conservation strategies and provide incentives to achieve them.

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

- Direct OPIC to consider developing and using umbrella contracts to procure expert assistance.
- Direct TCEQ commissioners to take formal action on OPIC's rulemaking recommendations.

TAM supports open and meaningful representation of the public by the Office of Public Interest Counsel.

ISSUE 5: The State Has a Continuing Need for the Texas Commission on Environmental Quality.

- Continue the TCEQ for 12 years and remove the Sunset date of the agency's enabling statute.
- Update the standard across the board requirement related to board member training.
- Update the standard across-the-board requirement regarding the separation of duties of commissioners and those from staff.

TAM supports the continuance of TCEQ for the full twelve years and removal of the sunset date for the agency's enabling statute.