

**From:** [Sunset Advisory Commission](#)  
**To:** [Elizabeth Jones](#)  
**Subject:** FW: Public Input Form for Agencies Under Review (Private/Before Publication)  
**Date:** Monday, June 27, 2022 3:07:31 PM

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**From:** Texas Sunset Advisory Commission <[sunset@sunset.texas.gov](mailto:sunset@sunset.texas.gov)>  
**Sent:** Monday, June 27, 2022 10:39 AM  
**To:** Sunset Advisory Commission <[Sunset.AdvisoryCommission@sunset.texas.gov](mailto:Sunset.AdvisoryCommission@sunset.texas.gov)>  
**Subject:** Public Input Form for Agencies Under Review (Private/Before Publication)

Submitted on Mon, 06/27/2022 - 09:30

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**

Jane

#### **Last Name**

Voisard

#### **Title**

Volunteer

#### **Organization you are affiliated with**

Midlothian Breathe

#### **Email**

#### **City**

Midlothian

#### **State**

Texas

#### **Your Comments or Concerns**

Laura Hunt and I participated in the public hearing held in Austin on June 22. Our written comments, submitted in PDF format, supplement our in-person comments about this important review process.

**Your Proposed Solution**

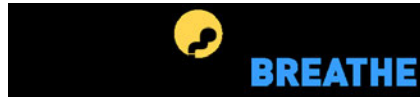
Please see the attached document. We have addressed those issues and recommendations that are most impactful to our organization.

**Attachment**

[MB-SunsetReport-Comments-FIN.pdf](#) (135.93 KB)

**My Comments Will Be Made Public**

Yes



MIDLOTHIAN BREATHE'S RESPONSE  
TO THE SUNSET REVIEW STAFF REPORT  
ON THE TEXAS COMMISSION FOR ENVIRONMENTAL QUALITY

**ISSUE 1: TCEQ's Policies and Processes Lack Full Transparency and Opportunities for Meaningful Public Input, Generating Distrust and Confusion Among Members of the Public**

**In general:** We strongly agree with Issue 1.

**Recommendation 1.5 — Improved website:** We want to address this recommendation first, because the current website is a disgrace. You can spend countless hours searching through the mess that is TCEQ's website, and if you find what you are looking for, the information is generally so highly technical, lengthy and non-user friendly that you need assistance to "interpret" it. For example, to access monitoring data in Midlothian, one of our members had to click through at least three or four screens to find air monitors, then was surprised that most of the Midlothian monitors contain no data because they were inactivated years ago. When she finally landed on the one active monitor, she had to guess her way through the numerous selections required to view the data. Suddenly, hundreds of columns of data on numerous pollutants consumed her screen. There is no color-coding, target values or other context provided, so the numbers are completely meaningless to the average citizen. Publicly available data on regulated activities and entities should be readily accessible in a user-friendly and timely manner on TCEQ's website.

We also recommend involving the public in the website improvement process to assure that it is truly user-friendly, while also helping restore public trust. And we recommend ADDING A MOBILE APP through which users could submit complaints and upload photos/video, see a calendar of upcoming events, browse compliance histories and receive notifications on public applications, air quality alerts, etc.

A well-designed website and accompanying app could clearly designate what does and does not fall under TCEQ's jurisdiction to minimize nuisance complaints, without inappropriately

trivializing them by postponing investigation on the back-end (recommendation 2.6 which we OPPOSE in its current form due to concern that it would further silence the public and erode trust).

An additional benefit of the app is that permitted industries could potentially use it to communicate alerts to the public — such as planned quarry blasts, public notices and explanations of changes in visual appearance of the plant or odors — which would further minimize submission of “nuisance” complaints. It’s time for TCEQ to transition from the antiquated use of newspapers to communicate public notices, which suggests apparent intentional motives to keep the public misinformed, and move into the 21<sup>st</sup> century with online and mobile phone modes of communication. As with an improved website, a well-designed mobile app would be particularly user-friendly and greatly promote public trust.

*The current deficiencies of TCEQ’s website and lack of a mobile app, in the context of all of the other issues with the agency, lead us to conclude that TCEQ either doesn’t have the financial or technical resources to make the data user-friendly and meaningful or intentionally desires to keep the public confused and misinformed, which only fuels animosity and distrust.*

**Recommendation 1.1 — Second public meeting:** Midlothian Breathe supports the recommendation to add a second public meeting before the final draft permit is released, *as long as* that meeting truly provides meaningful interaction between TCEQ and organized public groups. Currently, it’s too easy for the agency to brush off the public (so that as Senator Charles Perry puts it, they don’t “open a can of worms”). As it plays out now, the agency’s procedure is to allow the public to vent, and then have TCEQ’s Executive Director issue static written rebuttals to concerns expressed. A benefit of an additional public meeting earlier in the permitting process is that it would help to establish a relationship with all stakeholders early on that would help ameliorate and prevent later confusion and distrust. That would benefit everyone involved.

Our group spent much time and money to study a recent LaFargeHolcim application and hire an independent expert to review it. Once our very valid, scientific-based concerns were submitted, we were not allowed any time for discussion with TCEQ staff. Industry is afforded back and forth interaction with staff during the permitting process. Organized public groups should be, too.

*If an additional meeting still results in concerned and informed citizens being held at arms-length, the public needs a different way to directly engage with TCEQ — possibly through a special advisory committee (as suggested in recommendation 1.6) or through OPIC.*

**Recommendation 1.3 — Affected person’s status:** Poor communication and lack of engagement with the public means the *only viable way to resolve concerns* is to locate and encourage affected citizens to file a contested case hearing against an applicant. TCEQ’s current contested case hearing process basically puts the onus of responsibility for addressing issues such as cumulative exposures and environmental justice on “affected persons” (i.e., the victims). This benefits everyone other than the actual affected person. It allows TCEQ to claim that decisions regarding where industries are allowed to establish themselves fall under the jurisdiction of local officials and their zoning restrictions. Meanwhile, city officials can deflect responsibility to TCEQ to avoid accountability to their local constituents.

After Midlothian Breathe tried unsuccessfully to partner directly with a permit applicant, voice concerns to our local elected officials and participate maximally in the public hearing process, we realized first-hand that the contested case hearing was the only meaningful means of public participation in the permitting process. Unfortunately, our efforts were summarily dismissed because the affected person lived 1.7 miles from Holcim, just outside of TCEQ’s arbitrary 1-mile-radius rule.

Sadly, we had mixed emotions in receiving this news. We knew it would be an exhausting and daunting effort (even as a group) to afford the legal fees required to complete the contested case hearing process had it been awarded.

While the public may not have deep pockets, please remember that we vote. If you do not legislate a meaningful means of public participation in the permitting process that does not require tens of thousands of dollars in legal fees (minimum), many, many people across Texas will remember this unfavorably on election day.

*We support Sunset recommendations that TCEQ fully explain their standards for distance limitations — and provide more specific guidance around administrative processes related to contested case hearings.*

## **ISSUE 2: TCEQ’s Compliance Monitoring and Enforcement Processes Need Improvements to Consistently and Equitably Hold Regulated Entities Accountable.**

**In general:** Midlothian Breathe supports actions that incentivize compliance and focus attention on the riskiest actors that pose the greatest threat to public health. The most complex facilities typically carry the greatest risk to public health, so we feel their compliance is of the utmost importance — much more so than that of gas-station operators and dry cleaners who seem to be facing an unfair burden of fines currently. (See <https://www.texasobserver.org/too-big-to-fine-too-small-to-fight-back/>.)

**Recommendation 2.5 — Affirmative defense for air pollution emissions:** This allows TCEQ to waive enforcement for air pollution emissions events that are over the acceptable threshold for public safety but are “unplanned, unavoidable and properly reported.” While meant to incentivize voluntary compliance, it’s a boon for industry — historically, most unauthorized emissions are excused. The EPA has actually recommended that affirmative defense be completely ELIMINATED. (See <https://www.epa.gov/system/files/documents/2022-03/fact-sheet-affirmative-defense.pdf>.)

*If affirmative defense cannot be removed per EPA recommendations, we support establishing sufficient guidelines to make the use of affirmative defense very rigorously and narrowly tailored, so as to minimize misuse and provide consistency and fairness in implementation.*

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

**In general:** Midlothian Breathe strongly supports providing more respect, power and money for the Office of Public Interest Council — the entity specifically charged with representing the general public interest before the TCEQ commissioners.

OPIC is a bit of a sham right now. It’s a way to claim TCEQ holds the public interest at heart, but it’s seriously underfunded and disregarded. Out of TCEQ’s total budget of \$653 million in 2021, OPIC’s budget was only \$620,000, with a staff of seven attorneys and one assistant. This group

is stymied by an inability to hire outside consultants. And TCEQ commissioners have routinely ignored OPIC's suggested rule changes for the agency.

In Midlothian Breathe's experience, OPIC recommended to TCEQ that the contested case hearing in LaFargeHolcim's recent permit request be heard. That advice was disregarded, just as it has been in many other contested case determinations around the state.

All of this needs to change. TCEQ has a **HUGE** public trust issue. OPIC could help correct that.

*We would like to see the authority of OPIC expanded so that its judgment has as much weight with TCEQ commissioners as the office of the Executive Director. Shift more of the budget to this poorly funded arm of TCEQ and increase its authority in determining decisions, particularly concerning public engagement and contested case hearings.*

## **WHAT'S LACKING FROM THE SUNSET RECOMMENDATIONS**

- *Legislators need to give TCEQ the statutory authority to amend or deny ANY permit in response to public concerns, risk assessments of cumulative exposures and/or environmental justice.* For example, concrete batch plants could be successfully regulated by enacting legislation such the Surface Mining Control and Reclamation Act that governs APO mining in most states. Experiences of residents from West Dallas near GAF or those overrun by concrete batch plants in Gunter are only a few of those that call for more TCEQ empowerment. Please recall Representative Miles' dismay over a concrete batch plant being placed directly next to a playground for special needs children.

We must empower TCEQ to have the authority to make the common-sense decision that this is not okay. When questioned at the public hearing, TCEQ Chairman Niermann admitted, "We don't relish placing them next to schools." He also noted that they do not take into account siting or zoning when issuing permits. This is presumably because they do not currently have the authority to do so. Pass legislation to change that.

- *Improve numbers and locations of TCEQ's Continuous Ambient Monitoring Stations (CAMS).* Our group has been frustrated by the many Catch 22s that define this agency from the public's viewpoint. One of the worst is air monitoring — used, of course, to gather

critical decision-making data. TCEQ staff can study all they want. But if a monitor is placed *upwind of the area's worst polluters*, that data collection is flawed. Catch 22.

Also, our single TCEQ monitor in Midlothian has been disconnected due to impending nearby construction. It is slated to be moved further upwind than it already is now. And that monitor does not have to be reinstated until March 2023. Another Catch 22.

As a major pollutant area that hovers close to nonattainment, locations like ours need both upwind AND DOWNWIND monitoring. We need TCEQ to adhere to sound scientific and management standards when it comes to air monitoring.

### A FINAL NOTE

From our perspective, **an ineffective response from the Sunset Advisory Commission to the staff recommendations will only make public distrust grow larger**. Please remember that you are in office to represent your constituents. A growing proportion of your constituents are now adversely affected by TCEQ's dysfunction, and your response to the Sunset Report will influence their decisions on election day.

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Midlothian Breathe is a group of informed citizens concerned about air quality in the Midlothian area. We are a growing community south of DFW, with schools and homes pushed up against three cement plants (the largest concentration in Texas), a steel mill and other heavy industry. We recognize the need for the products these industries produce, but we also see the need for stronger public health representation in the agency that's been tasked to protect us.