



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.

Introduction: Homeowner in Erath County for 73 years combined. Our experience is with dairy permitting. Waco lost. Problem many years in our county. 30% of all dairies in Texas are in our county.

Everything I'm about to share with you is documented and verifiable

The experiences that are expressed are based on operations of dairies (CAFO's)

In article it states that TCEQ strives to protect human health and the environment however we have found this not true in this case. ~~Waco lost~~

Statements regarding Issue 1

1. Public meetings were denied because they were not affected persons. However, a public meeting is very different then a contested case hearing which has to be an affected person.
2. Public meeting specifications should take into consideration the population in the area and proximity to the facility. In our area we are few in number because we are in the country however that does not make us irrelevant.
3. TCEQ should accept and take into consideration current qualitative data for permits during their review by the public and affected persons instead of just quantitative data that is who knows how old in our case some data was 38 years old.
4. TCEQ assigned a contested case hearing even though it was not requested however the public hearing that was requested never took place.
5. TCEQ should find in violation any entity that makes changes or expands before the permit is issued or before notices are mailed to adjacent land owners such is the case with ~~Waco lost~~ giving the public a chance to protest before changes are made.
6. TCEQ creates distrust when public calls to investigate about a permit that is pending and after the conversation suddenly the permit that was in question is suddenly active.
7. TCEQ creates distrust when told by TCEQ officers there is no violation unless a TCEQ officer is a witness to the event.
8. When the public reports a complaint to the regional office it will be investigated when the TCEQ officers are in the office Monday-Friday between 9:00-5:00. The investigating officer then reports to the facility that is causing the event however does not come to investigate the actual place of the event so in essence never witnesses a violation so there is never a violation.
9. Distance considerations should be relative to the pollutants such as nuisances(flies) that have a 4 mile radius not a 1 mile radius. Distance should also be measured from the borders of the permitted facility.

10. Prevention of nuisances, if protestants can provide qualitative data and evidence that are current showing that the current BMP, NMP, and PPP are not effective then draft permit should not be issued. How old is the data and tables used to determine the BMP, NMP, PPP is also an important factor in determining a permit.
11. All these examples create distrust in TCEQ and disbelief that the TCEQ truly is trying to protect human health and the environment.
12. Agreed website is horrible and does not seem to have any organization to it.

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

1. Unannounced site inspections would help to differentiate between those in compliance and those not in compliance.
2. Consider complaints and current qualitative data from the public when monitoring compliance.
3. Self-monitoring can be manipulated when a complaint has come in. Possible solutions the daily inspections, weekly inspections and monthly inspections and all self-monitoring activities should be done electronically and turned over to a third party so they cannot be manipulated (not necessarily monitored just data base that cannot be changed once it is turned in). This can be reviewed by TCEQ or anyone who has authority to see these records for verification purposes when a complaint comes in. Example when manure water is spread onto fields and following day or weeks thereafter the neighbors complain that the nuisance conditions have increased. The self-monitoring entity would not be able at that point to deny.
4. A complaint is just that-it is not a violation unless a TCEQ officer is witness to the event. However, TCEQ officers do not come to the event place only to the facility that is the cause.
5. How can the public trust the TCEQ that doesn't visit the site of the complaint for verification or how can the public trust the TCEQ when actual physical evidence is provided and TCEQ totally disregards it.

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

1. OPIC helps the public with procedural matters only when in a contested case hearing.
2. It is our opinion based on our personal experience that OPIC does not take into consideration that laws implied by public unless they are able to actual site and quote them

when deciding closing statements and will agree with the ED of the TCEQ regardless of qualitative data.

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

1. Agreed TCEQ is needed but is not transparent.
2. TCEQ also should take into account that if an individual takes the initiative to represent themselves that this person is experiencing major problems and is willing to sacrifice what it takes to make that point known and that comes at a very high price for that individual. Not all protestants can afford tens of thousands of dollars for an attorney to protect their homes against organizations that have lots of resources to defend their businesses.

In closing, this permit we have been opposing since 10/29/2020 still has not been issued yet all changes have been made (no violations according to the TCEQ). TCEQ has denied recent qualitative data and complaints and 73 years of combined history and homeownership living next to a dairy with not 1 complaint.

In one of these Issues SOAH was mentioned. Our experience with SOAH is this. As Pro-se SOAH asked us not to file into the SOAH txresearch web site that is used but to email it to them and they would file it. Half way through these proceedings SOAH quit filing our documents or they were very delayed. Also, about ¾ of the way through these proceedings SOAH quit sending us documents filed by the TCEQ and the applicant's attorney. SOAH also opened up a new file with the same case number ~~50-22-1045~~ that only included TCEQ, OPIC and the applicant's attorney but did not include us so those legal documents for the case were never sent to us. When we called to find out the time and zoom number of the scheduled hearing, we were told by SOAH that the hearing was not on the document therefore we were caught off guard the day of the hearing. We also were told that a second judge was assigned to the case however we still do not know why we needed two judges or who ordered two judges. It is excusable for 1 possibly 2 mistakes by SOAH but purposefully leaving out the Pro-se in a legal hearing document is inexcusable and not legal. On June 20, 2022 is when this was discovered when doing research and the Pro-se added themselves to the other case file that did not include them.

SOAH Judges Ross Henderson and Christiaan Siaano have been very gracious, kind, and helpful of the fact that we did not know legal terms or rules or court etiquette and that we only had a few months to learn these new languages in order to save our homes.

OPIC'S Jennifer Jamison has also been a tremendous help with procedural matters and explaining laws and what we could and could not present.

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Dear Sunset Advisory Commission Members,

Thank you for your important service on this committee by representing the people of Texas.

The TCEQ is considering approval of Van Ruiten dairy expanded draft permit no. WQ0003290000 (SOAH HEARING CLOSED ON JUNE 20,2022). However, the evidence in the attached photos shows that the current expanded dairy operation (Van Ruiten) either cannot or will not comply with TCEQ's standard CAFO regulations, or the current proposed permit is not effective and is therefore in serious violation, and that TCEQ is not enforcing those permit regulations, so that the subject dairy is operating without expanded permit and that TCEQ is not performing its stated mission, "to protect human health and environment."

"The rules also require facilities to operate in such a manner as to prevent a condition of air pollution as defined by Texas Health and Safety Code § 382.003(3). Additionally, the rules require an operator to take the necessary action to identify any nuisance conditions that occur and to take action to abate such conditions as soon as practicable or as specified by the Executive Director. 30 TAC § 321.32(36) defines "nuisance" as:

“Any discharge of air contaminant(s), including but not limited to odors, of sufficient concentration and duration that are or may tend to be injurious to or that adversely affects human health or welfare, animal life, vegetation or property, or that interferes with the normal use and enjoyment of animal life, vegetation, or property.”

The combined testimony of 73 experienced years of protestants living next to the former (De Ridder, fully compliant) dairy with no complaints during that stretch of time, together with current photographic evidence presented to the TCEQ is overwhelmingly sufficient for TCEQ to deny the Van Ruiten draft permit. Nevertheless, the ED’s response was, and we quote:

“The draft permit and applicable rules, *if followed, should* prevent the Applicant’s

facility from causing odor or degradation of air quality. However, if any odor or other noncompliance issue is detected by the residents, please call the TCEQ Regional Office in Stephenville at (254) 552-1900 or the or the statewide toll-free number at 1-888-777-3186 to make an odor complaint. Citizens can also file online complaints at:

<https://www.tceq.texas.gov/compliance/complaints>. Noncompliance with the terms of the permit may result in an enforcement action against the permittee.”

Our experience(s) with TCEQ belies calling with complaints as directed by the Executive Director because complaints are neither investigated at the scene nor are permittee violations remedied by penalties.

We also are including photos showing the facility already has made the changes they are seeking approval for in their draft permit, and that the TCEQ is also aware of this. Consider that a facility does not reasonably spend hundreds of thousands of dollars making changes before a draft permit is issued *unless they are guaranteed that permit will be approved by the governing agency without question*.

According to the TCEQ website there have been no violations made against facility for making these changes before this permit has been approved despite multiple reports of grievances by protestants. We vigorously request that TCEQ will deny this permit based on protestants’ facts and evidence that there are major odor and nuisance problems already existing owing to the unauthorized expansion of the Van Ruiten facility.

In Erath County the mounting pollution caused by dairies has been a long term problem. The TCEQ has denied only one permit within the last 10 years relating to the dairy industry in a county which houses approximately *30% of the total dairies in the state of Texas*.

On the day of the hearing May 23, 2022 a new document appeared on the TCEQ website that had not been seen before: the transfer of the current permit. However, according to TCEQ’s

website that permit (WQ0003290000) expired in April 2020, yet the transfer date on the newly appeared document is dated September 2020.

Moreover, TCEQ posted all the documents for the contested case hearing on its website excepting those presented by the protestants in this hearing. One can only wonder the reason for this.

Evidence and testimonies of protestants overwhelmingly demonstrate that TCEQ is a Do-Nothing agency, because it stonewalls protestants' complaints, considers protestants' evidence as inadmissible because they are not "experts," turns a blind eye to permittee's violations, and is willing to rubber stamp permittee's draft permit when permittee is seriously out of compliance.

Such gross negligence and ineffectiveness leaves protestants without recourse for the health and safety of themselves and their family, their land, and community. Our conclusion and strong recommendations are that TCEQ's policies should be carefully reviewed and revised for reliable enforcement, and that TCEQ's administrators and staff made accountable immediately for negligence, and that perhaps the Do-Nothing TCEQ be accountable to the people in an electee capacity.

As an additional note, we agree with Senator Miles that we the people do not need to wait another 12 years to have this organization investigated but that 6 years would be more appropriate to see if the TCEQ is actually making the necessary changes and fulfilling its mission "to protect human health and the environment."

We also agree with Senator Springer that nuisance calls are costly and time consuming. By denying this permit it is quite likely TCEQ would experience a significant drop in what they consider nuisance calls.

Sincerely,

Monica J. Warden, James and Ruby Carlile

Cc: Senator Charles Schwertner, M. D. Chairman

Representative Justin Holland Vice Chair

Senator Nathan Johnson

Senator Angela Paxton

Senator Charles Perry

Senator Drew Springer, Jr.

Representative Keith Bell

Representative Terry Canales

Representative Travis Clardy

Representative Craig Goldman

James “Jim” Lee, Public Member

Jeff Austin III, Public Member

Jennifer Jones Executive Director