

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

### 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.

#### Change in Statute

##### **Rec. 1.1, Alternative Recommendation Adopted**

Replace the original staff recommendation to require public meetings on permits to be held both before and after the issuance of the final draft permit. Instead, require the public comment period for a permit application remain open for at least 36 hours after the conclusion of a public meeting for air permit applications with a consolidated notice of receipt of application and intent to obtain permit (NORI) and notice of application and preliminary decision (NAPD), if a public meeting is held.

As a management action, direct TCEQ to extend the deadline to request a contested case hearing to 36 hours after the conclusion of a public meeting for air permit applications with a consolidated notice of receipt of application and intent to obtain permit (NORI) and notice of application and preliminary decision (NAPD), if a public meeting is held.

#### Management Action

##### **Rec. 1.2, Adopted as Modified**

Direct the commission to vote in a public meeting on the acceptable level of health-based risk used in the development of toxicity factors for permitting and other regulatory actions.

##### **Rec. 1.3, Adopted as Modified**

Direct TCEQ to develop a guidance document that explains what information the commission needs to evaluate whether a person is potentially affected by a permit application and states that each request is reviewed on a case-by-case basis, considering all the factors in its rule, including — but not limited to — distance.

#### **Rec. 1.4, Adopted**

Direct TCEQ to adopt a policy guiding its rule review process to ensure that identified deficiencies in the rules are addressed.

#### Change in Statute

#### **Rec. 1.5, Adopted as Modified**

Require TCEQ to post all permit applications and associated materials on TCEQ's website once the agency determines the application to be administratively complete and include the website's address in any public notice issued for the permit. For water right permit applications, the posting would also include maps and supporting material. Posting online may be in lieu of placing the required documents in a public building. Under this recommendation, TCEQ would be required to consider and accommodate if there are affected persons in areas of the state lacking internet availability who might need assistance with access to the documents, particularly if there is heightened interest or in response to comment or request.

As a management action, direct TCEQ to review and update its website to improve accessibility and functionality. When updating its website, TCEQ should make easily accessible to the public, and provide to regional water planning groups, the webpage link to the database of GCDs, MUDs, SUDs, river authorities, water systems, WCIDs, etc. with contact information and separated by county.

#### Management Action

#### **Rec. 1.6, Adopted**

Direct TCEQ to evaluate its current use of advisory committees to provide more public involvement in rulemaking and other decision-making processes, and continue advisory committees by rule, as appropriate.

## **Issue 2**

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

#### Management Action

#### **Rec. 2.1, Adopted as Modified**

Direct TCEQ to review and update the agency's compliance history rating formula to ensure it accurately reflects a regulated entity's record of violations, including considerations of site complexity and cumulative violations or multiple violations of the same type. TCEQ should specifically consider major, moderate, and repeat occurrences of the same minor violations when calculating compliance history

ratings. Finally, TCEQ should regularly update an entity's compliance history rating throughout the year as the agency receives additional information that could alter the rating.

When updating the agency's compliance history rating formula, TCEQ should determine whether its current formula adequately allows for comparing the compliance performance of facilities of similar complexity. If TCEQ determines that the current formula does not meaningfully assess compliance performance among complex facilities, the agency should develop a separate compliance history rating formula for facilities that are sufficiently complex to warrant application of a separate formula.

Also, direct TCEQ to re-evaluate its compliance history rating formula to ensure a facility's compliance rating does not improve if the facility reports an unauthorized air pollution emission and seeks an affirmative defense.

### Change in Statute

#### **Rec. 2.2, Adopted**

Require TCEQ to consider all violations when classifying an entity as a repeat violator.

#### **Rec. 2.3, Adopted**

Require TCEQ-regulated entities with temporary or open-ended permits to annually confirm their operational status.

### Management Action

#### **Rec. 2.4, Adopted**

Direct TCEQ to reclassify recordkeeping violations based on the potential risk and severity of the violation.

#### **Rec. 2.5, Adopted as Modified**

Direct TCEQ to develop and implement clear guidance to evaluate affirmative defense requests for air emissions. Under this recommendation, TCEQ is also directed to establish a centralized committee of agency staff authorized to review and approve all applications for an affirmative defense related to unauthorized air pollution emissions.

#### **Rec. 2.6, Adopted**

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

## **Issue 3**

TCEQ's Oversight of Water Could Better Protect the State's Scarce Resources.

### Change in Statute

#### **Rec. 3.1, Adopted as Modified**

Remove the abolishment clause for the E-Flows Advisory Group and E-Flows Science Advisory Committee and require the advisory group to adopt a biennial statewide work plan for adaptive management updates of environmental flow standards. Continue the Bay and Basin Stakeholder Committees and Expert Science Teams with renewable five-year terms for members, which continue in effect until a replacement member is named or a vacancy occurs through resignation or inability to continue to serve.

#### **Rec. 3.2, Not Adopted**

Require TCEQ to hold its annual meeting regarding priority groundwater management area studies in a public setting.

### Management Action

#### **Rec. 3.3, Alternative Recommendation Adopted**

Replace the original staff recommendation to 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. Instead, direct TCEQ to publish a report on the status of its water availability models (WAMs) as they are updated, including the development and structure of WAMs, information on ongoing WAM updates, prioritization for other WAM dataset updates, and estimated cost for the prioritized updates. As part of this recommendation, TCEQ should post this report on its website.

## **Issue 4**

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

### Management Action

#### **Rec. 4.1, Adopted**

Direct OPIC to consider developing and using umbrella contracts to procure expert assistance.

## **Rec. 4.2, Adopted**

Direct TCEQ commissioners to take formal action on OPIC's rulemaking recommendations.

## **Issue 5**

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

### Change in Statute

#### **Rec. 5.1, Adopted**

Continue the Texas Commission on Environmental Quality for 12 years and remove the Sunset date of the agency's enabling statute.

#### **Rec. 5.2, Adopted**

Update the standard across-the-board requirement related to board member training.

#### **Rec. 5.3, Adopted**

Update the standard across-the-board requirement regarding the separation of duties of commissioners from those of staff.

## **Issue 6**

The State Benefits From Continued Legislative Oversight of the Texas Low-Level Radioactive Waste Disposal Compact Commission.

### Change in Statute

#### **Rec. 6.1, Adopted**

Amend the compact commission's Sunset review date to 2035.

## **Adopted New Recommendations**

### ***Permits and Notice Requirements***

- Require TCEQ, when posting or sending out notices on all permit applications and permit amendments, to include, at a minimum, the name of the applicant, type of permit, and address of the proposed or existing site.
- Create a new permit for the operation of a temporary concrete batch plant that supports a public works project. This public works permit will operate under the existing environmental regulations required by the standard concrete batch plant

permit. This new permit can only be used in conjunction with a specific public works project.

- Require TCEQ to provide notice when it receives an application to create a new district, such as a municipal utility district (MUD), to state representatives and senators that represent any portion of the proposed district's boundaries.
- Expand TCEQ's authority to include both newspaper and electronic publication notice for pending environmental permit applications. The electronic publication should include posting on a website as well as an option to receive notifications through email. Federal requirements for newspaper or public location notification would be in addition to electronic publication. TCEQ would be required to consider and accommodate if there are affected persons in areas of the state lacking internet availability who might need assistance with access to the notices, particularly if there is heightened interest or in response to comment or request.

### ***Enforcement and Compliance***

- Increase statutory limits on administrative penalties for all violations with a current cap of \$25,000 per day to \$40,000 per day.
- Create the Compliance Training and Safety Program within TCEQ's Small Business and Local Government Assistance program. As part of this recommendation, authorize TCEQ to divert qualifying facilities to receive additional training and on-site follow-up by TCEQ staff in response to minor or moderate violations that do not present an imminent threat to public health or safety, rather than formal enforcement action. Establish that facilities would be eligible for participation in the program once in a 24-month period.
- Authorize TCEQ to review and potentially suspend a facility's compliance history rating in the event of exigent circumstances, such as an emergency event causing death or injury.

### ***Public Meetings, Comments, and Access***

- Expressly authorize the commission the discretion to hold virtual public meetings in lieu of in-person public meetings. The commission will consider and accommodate if there are affected persons in areas of the state lacking internet availability that might need assistance with access to the meetings, particularly if there is heightened interest or in response to comment or request.
- Direct TCEQ, upon receiving public comments that are not under the jurisdiction of the agency, to answer the comment with information on the agency or organization with the relevant jurisdiction. (Management action - nonstatutory)
- Direct TCEQ to prepare and deliver a report by September 1, 2023, to the Legislature on its efforts to enhance public participation and language access as part of its

November 3, 2020, Informal Resolution Agreement with the EPA. (Management action — nonstatutory)

- Direct TCEQ to consider developing Spanish language versions of its online form through which individuals may submit a complaint. (Management action — nonstatutory)