



February 14, 2022

Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue,
Washington, DC 20460

Dear Administrator Regan,

During your visit to Houston on the "Journey to Justice" tour, concerns about the lack of consideration of cumulative impacts in permitting by the Texas Commission on Environmental Quality (TCEQ) and other shortcomings within the agency were raised. You recommended that we contact you directly regarding our concerns, which we have also raised in the Sunset Review process for the TCEQ. The Sunset Review process is an evaluation of the need for the continued existence of an administrative program or an agency in Texas. The review yields a recommendation to either (1) retain the program or agency as is, (2) modify the program or agency, or (3) allow the program or agency to terminate.¹ We have enclosed our comments here alongside a brief follow-up to highlight some of the issues we have faced for decades in Texas that could be improved by direct EPA involvement.

The recommendations we provided to the Sunset Commission center around considering environmental justice concerns in all appropriate TCEQ permitting activities and increasing public participation. TCEQ has repeatedly stated that it does not consider cumulative impacts in permitting activities and has not made a formal commitment to environmental justice. We recommended the following:

- TCEQ must consider environmental justice concerns in all appropriate TCEQ permitting activities
- Collaborate with federal, state, tribal, and local co-regulators, communities, and permit applicants to identify and share tools, promising practices, and approaches.

¹ <https://www.sunset.texas.gov>

- Strengthen enforcement policy to protect public health and advance environmental justice by providing regular compliance and enforcement reports that are easily accessible and helpful to the public.
- Provide all information on the TCEQ website, specifically complaint pages, and commenting pages, in multiple languages and accessible formats.
- Seek opportunities to catalyze the revitalization of overburdened communities through federal partnerships and funding that connect the protection of public health and the environment with resiliency planning.
- The TCEQ public participation process must remain accessible to all including those without digital access.

Despite the many documented areas of environmental injustice in Texas, the State lacks statutes directly addressing environmental justice, and none is likely to pass the current legislature. We urge the EPA to consider issuing comprehensive guidance on permitting that communicates that funding recipients like TCEQ can lawfully deny permits or impose on permit holders conditions or mitigation requirements based on environmental justice and civil rights grounds. This should include the use of environmental justice and equity impact analyses and procedural requirements to determine whether industrial activities cause disproportionately high and adverse impacts to a given population group relative to other population groups. The recommendations are in line with EPA's commitment to promoting environmental justice and civil rights at the federal, tribal, state, and local levels.

We appreciate the EPA's renewed commitment to environmental justice and its strategic plan to take decisive action to advance environmental justice and civil rights and appreciate the opportunity to collaborate in our efforts to further environmental justice. Please feel free to reach out if you have any questions.

Respectfully submitted,

/s/

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We write to urge the Sunset Committee to follow through on its stated commitment to evaluate the agency and issue recommendations for positive change. This will require sustained action and a shift in culture at all levels and across all components within TCEQ. We draw on our collective experience as advocates and practitioners to make several specific recommendations for institutional change within TCEQ, and for ways that TCEQ should strengthen its enforcement role to advance environmental justice. Our proposed recommendations are:

- TCEQ must consider environmental justice concerns in all appropriate TCEQ permitting activities, collaborate with federal, state, tribal, and local co-regulators, communities, and permit applicants to identify and share tools, promising practices, and approaches for furthering environmental justice.
- Strengthen enforcement policy to protect public health and advance environmental justice by providing regular compliance and enforcement reports that are easily accessible and helpful to the public.
- Provide all information on the TCEQ website, specifically complaint pages, and commenting pages, in multiple languages and accessible formats.
- Seek opportunities to catalyze the revitalization of overburdened communities through federal partnerships and funding that connect the protection of public health and the environment with resiliency planning.
- The TCEQ public participation process must remain accessible to all including those without digital access. Therefore, the statutory change proposed by TCEQ in its Self-evaluation under Issue 15, to eliminate in-person public meetings indefinitely should be rejected. In-person meetings that incorporate virtual options are the most accessible.

I. Commenters

Air Alliance Houston (AAH) is a Texas 501(c)(3) non-profit advocacy organization working to reduce the public health impacts from air pollution and advance environmental justice through applied research, education, and advocacy. AAH takes a strong stance against disproportionate exposure to air pollution by emphasizing an agenda centered on equity and environmental justice.

II. Introduction

The health, safety, and well-being of our families and our communities matter. Everyone deserves to breathe clean air regardless of where they live or work, what language they speak, or what color their skin is. The Texas Commission on Environmental Quality's stated mission is "strives to protect our state's public health and natural resources consistent with sustainable

economic development. Our goal is clean air, clean water, and the safe management of waste.”² However, it has become apparent that TCEQ has only lived up to the economic development portion of its mission with an almost complete disregard for the protection of our state's public health and natural resources.

A comparison of two neighborhoods highlights this disregard. Houston's Fifth Ward is home to a cluster of metal recyclers and concrete processing plants. According to an EDF study, NO₂ levels here were 48% higher than the rest of the city with 90% of residents being people of color. Within that community, 40% live below the federal poverty line. They face higher rates of asthma (11%, compared to 9%), Chronic Obstructive Pulmonary Disease (COPD) (10%, compared to 6%), Coronary Heart Disease (9% compared to 5%), and stroke (6% compared to 3%). Life expectancy is almost a decade lower than the rest of the region (69 compared to 78 years).³ By contrast, River Oaks doesn't have any of these industrial sources and features lower levels of pollution. Its largely white population is one of the wealthiest in the area. Residents here have less asthma (7%), COPD (4%), and fewer strokes (2%) than the area average, and those who live there live longer (85 years) than their regional counterparts.⁴

The TCEQ's response to comments for the Standard Permit for Concrete Batch Plants (SPCBP) makes it clear that cumulative impacts are not considered during permitting.⁵ What this means is that a neighborhood with no industrial facilities is given the same level of scrutiny as a neighborhood plagued with industrial facilities. Within the same response to comments for the SPCBP, the TCEQ referred commenters to its website for its action on environmental justice.⁶ To our dismay, the website simply lists links to the EPA's web page on environmental justice where there are key definitions such as:

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, concerning the development, implementation, and enforcement of environmental laws, regulations, and policies. This goal will be achieved when everyone enjoys: (1) The same degree of protection from environmental and health hazards and (2) Equal access to the decision-making process to have a healthy environment in which to live, learn, and work.

However, TCEQ as a state agency has not explicitly made any commitments to environmental justice nor has it stated the ways it incorporates environmental justice and equity into its decision making. Similarly, despite the agency announcing the launching of an initiative aimed at better understanding the environmental justice concerns of Texans to help ensure that everyone enjoys the same protection from environmental and public health hazards and has equal access to the

² TCEQ Website; see electronically at: <https://www.tceq.texas.gov/agency/mission.html>

³ See Environmental Defense Funds website electronically at: <https://www.edf.org/airqualitymaps/houston/findings>

⁴ Id.

⁵ SPCBP Response to comments. See electronically at: <https://www.tceq.texas.gov/permitting/air/nav/standard.html>

⁶ Id.

services and decision-making processes that provide for a safe place to live and work.⁷ It is also noteworthy that the webpage is translated yet no other meaningful pages are. It shows that TCEQ understands the need for multi-language access and other environmental justice concerns.

III. Recommendations

For environmental justice to be achieved as defined above, there must be systemic changes, sustained action, and a shift in culture at all levels. AAH on behalf of the communities we serve recommends the following changes:

A. Consider environmental justice concerns in all appropriate TCEQ permitting activities, collaborate with federal, state, tribal, and local co-regulators, communities, and permit applicants to identify and share tools, promising practices, and approaches.

In Houston, there is a persistent and inequitable distribution of pollution and other environmental burdens on low-income communities and communities of color. This is evidenced by numerous studies by various agencies both state and federal. A prime example of this is the cancer clusters in the city. All of the active concrete batch plants in zip codes 77020, 77026, 77028, 77029 in Houston, TX are located in existing cancer clusters.⁸ According to the EPA's Environmental Justice dashboard, these zip codes where concrete batch plants exist all have higher than average NATA Air Toxics Cancer Risks. TCEQ must take into consideration the cumulative impacts from multiple facilities and must incorporate those impacts into its permitting process

The TCEQ should develop and follow a Community Accountability and Involvement plan for enforcement – that includes seeking input and providing training, information, and resources to boost community citizen suit engagement and enforcement advocacy. TCEQ staff need to talk with fence-line communities – and focus on making life better for them. The best and most important time to do that is in the context of specific enforcement matters where the TCEQ is considering whether to take action on environmental violations and what kind of remedies to seek. TCEQ should assure that in every case or potential case with environmental justice concerns, there is a clear process that staff follow to share information, where possible, and, always, to seek community input initially, and on remedies. TCEQ should make clear when community members affected by pollution have a legal right to intervene in a TCEQ enforcement suit to have a voice in the case itself.

B. Strengthen enforcement policy to protect public health and advance environmental justice by providing regular compliance and enforcement reports that are accessible and helpful to the public.

⁷ <https://blog.tceq.texas.gov/2021/04/29/tceq-launches-new-environmental-justice-initiative/>

⁸ <https://www.houstontx.gov/health/Environmental/bcceh/documents/fwkgcc/cancer-cluster-map-20200518-v2.pdf>

The TCEQ should improve public transparency by providing regular compliance and enforcement reports that are accessible and helpful to the public. The TCEQ should share to the greatest extent possible the information used in enforcement cases – such as inspection reports – and the remedies (consent decrees, settlements) it reaches. In line with the recommendation below, these reports must be provided in formats that are easily accessible and understandable to the public.

TCEQ's Office of Compliance and Enforcement (OCE) enforces compliance with the state's environmental laws, responds to emergencies and natural disasters that threaten human health and the environment, oversees dam safety, and monitors air quality within Texas.⁹ The Enforcement Division protects human health and the environment through the enforcement of the TCEQ rules, regulations, and permits. The division develops formal enforcement cases in accordance with state statutes and agency rules and is consistent with the agency's philosophy that enforcement, when necessary, must be swift, sure, and just. Community members and all interested parties must have access to enforcement-related actions, including proposed enforcement orders that include appropriate penalties and ordering provisions for the commission's consideration and approval, and an explanation of the factors TCEQ considered when assessing penalties on facilities. From the OCE website, the factors listed are the nature, circumstances, extent, duration, and gravity of the violation; the severity of the impact on human health and the environment; compliance history; culpability; good faith effort to comply; economic benefit; deterrence; and other factors as justice may require.¹⁰

While we appreciate that TCEQ releases annual enforcement reports, it is not detailed enough since it does not provide emissions event breakdowns. There must be a thorough explanation of the fines that were given. It also does not provide for alternative language access. It is also nearly impossible to tell how long-term implementation or administration of court orders and consent decrees is going, and the ultimate measure of the impact of the TCEQ's cases. Improving both the monitoring of impact and public information on this would be valuable to help communities know what is or is not happening, and to assist them in tracking the long-term changes at a facility or entity near them, long after a court case has ended.

C. Provide all information on the TCEQ website in alternative languages and accessible formats.

Importantly, in all community engagement and information sharing as discussed in these comments, TCEQ must ensure its engagement represents a model of accessibility for the public. This must include multilingual language access including interpreters, public notices and

⁹ <https://www.tceq.texas.gov/agency/organization/oce.html>

¹⁰ Id.

publicity in multiple relevant languages, and other information as needed to ensure equal opportunities to participate and to fulfill the Executive Order on Limited English Proficiency.¹¹

According to the 2020 Census and a study by Brookings Institute, for the state of Texas, Hispanic-Latino individuals represent 91.9% of the population in McAllen, 82.6 % in El Paso, 54.3% in San Antonio, 37.5% in the Houston-Woodlands region, 29.3% in Dallas, and 31.9% in Austin.¹² This data shows the continuing expansion of diversity in the state. TCEQ must respond to the growing diversity by providing information in accessible formats. At the very least, TCEQ must provide pertinent information on its website and all notices the agency posts in Spanish. Specifically, the portal for interested parties to submit comments for consideration as well as complaint portals must be translated. Additionally, TCEQ should consider seeking data on the county that a facility applies for a permit and providing information in the languages spoken in that area. TCEQ should consider placing this burden on the facilities requesting permits.

Failing to ensure accessible community engagement would mean the TCEQ would never hear from some of the people most affected, whom it must be able to consult to make a meaningful difference in its enforcement cases.

D. Address pollution and public health burdens caused by violations of environmental laws in Texas’s most overburdened communities through remedial measures.

Elected officials and government agencies cannot accept chemical fires and explosions, unlawful pollution releases, and shelter-in-place orders as the cost of business. Responsible leadership can make Texas stronger economically while also creating a cleaner, safer and healthier community for everyone. Remedial measures such as Supplemental Environmental Projects (SEPs) and grants may be used for upgrades to HVAC systems in schools, churches, nursing homes in environmental justice communities. TCEQ could sponsor educational opportunities to train the community in the processes of TCEQ decision-making. Overall, the TCEQ must seek opportunities to catalyze the revitalization of overburdened communities through federal partnerships that connect the protection of public health and the environment with economic development, land development, infrastructure investment, and resiliency planning.

SEPs are projects approved by the Commission to fund projects that benefit the local Texas communities where environmental laws and regulations have been violated. Violators are allowed to put a portion of their penalty dollars to work to benefit the environment in the community affected by the violations, rather than paying the entire penalty to the State’s General Revenue Fund. The direction of SEP funds should be done with extensive community

¹¹ See electronically at:

http://www.catf.us/wp-content/uploads/2017/11/CATF_Pub_FumesAcrossTheFenceLine.pdf, See also: <https://eelp.law.harvard.edu/2020/11/epa-undermines-its-own-environmental-justice-programs/>

¹² See electronically at: <https://www.brookings.edu/research/mapping-americas-diversity-with-the-2020-census/>

involvement. Impacted communities must have meaningful input for what projects should be prioritized.

For example, a multi-year compliance investigation against Pasadena Refining Systems, Inc (PRSI), a 100+-year-old refinery just north of Pasadena along the Houston Ship Channel, found multiple operational violations that resulted in excessive emissions. The TCEQ levied \$907,191 in fines and penalties against the company in an enforcement action enacted in 2018.¹³ Fifty percent of these fines (\$453,595) were conditionally offset by payment into three SEPs: \$250,000 went to a low emission school bus program administered by the Houston-Galveston Area Council that could be applied to a wide geographic area encompassing 27 counties; \$146,595 went to a non-profit nature preserve in the Clear Creek watershed - 12 miles south of the site where the environmental violations occurred; and \$57,000 went to a cleanup effort of trash and pollutants from Galveston Bay and the waterways of the San Jacinto watershed. In short, none of these SEPs directly benefited the Ship Channel communities most affected by years of illegal emissions from the PRSI facility. A more just and equitable distribution of the \$453,595 SEP funds could have been achieved by investment in programs that directly benefit the historically underserved communities that have been impacted by the downwind pollutants of PRSI and its Ship Channel neighbors for the last century.

E. The TCEQ public participation process must remain accessible to all including those without digital access. Therefore, the statutory change proposed by TCEQ (Issue 15) to eliminate in-person public meetings indefinitely should be rejected. In-person meetings that incorporate virtual options are the most accessible.

TCEQ's September 2021 Sunset Self-Evaluation Report outlines the agency's suggested changes to improve the overall functional operations.¹⁴ While we agree with many of the recommendations in the report – particularly those that effectively address greater public transparency – we must take exception to the suggestions outlined in the section of the report entitled “Issue 15: Public Meetings on Permit Applications.”¹⁵

In March of 2020, Texas Governor Greg Abbott temporarily suspended the requirement for in-person accommodations for public participation outlined in the Open Meetings Act in response to the COVID-19 public health emergency and required that open meetings authorized by state agencies comply with Section 551.127 of the Texas Government Code (TGC) related to video conference calls during the peak of the COVID-19 pandemic. A similar suspension was placed on public meetings related to the TCEQ permit and rule actions at this time. While Governor Abbott ostensibly lifted the temporary suspension of the Open Meetings Act on September 1, 2021, the TCEQ has yet to return to in-person meetings related to TCEQ permit

¹³ [TCEQ Docket Number 2014-0228-MLM-E, In the Matter of an Enforcement Action Concerning Pasadena Refining System, Inc RN100716661](#)

¹⁴ TCEQ Sunset Self-Evaluation. See electronically at: <https://www.tceq.texas.gov/agency/sunset/sunset-self-evaluation-2021>

¹⁵ <https://www.tceq.texas.gov/downloads/publications/sfr/123/chapter9-issue15.pdf>

and rule actions required by the provisions of the Texas Health and Safety Code (THSC) and Texas Water Code (TWC), and the agency continues to hold community meetings via remote teleconferencing.

To date, the virtual public meetings held by the TCEQ have consisted of audio-only meetings without an identified physical location open to the public. In addition, there is no record of attendance provided for the meetings and participating members of the public are forced to interact in the process in remote isolation without a sense of who is speaking or who they are speaking to. The entire experience is alienating to the public and not at all aligned with the spirit of an open and transparent public participation process.

Federal law and State statute require that the TCEQ hold public meetings for certain environmental permitting actions. THSC Sections 361.0791 and 382.056(k) and Texas Water Code (TWC Section 5.554 provide that “during the public comment period, the executive director may hold one or more public meetings *in the county* in which the facility is located.”

In the agency’s Sunset Self-Evaluation Report, TCEQ contends that continuing to hold public meetings in an exclusively virtual format would satisfy the spirit of the statutory requirement to hold public meetings in the county in which an applicant facility is located because it would “allow the public to participate in the permitting process without having to leave the county.”¹⁶ They are therefore requesting statutory changes that expressly authorize the use of virtual public meetings in place of in-person public meetings. The state asserts that this measure would streamline the permitting process, decrease the costs associated with public meetings, and “provide the public with a convenient avenue to meaningfully participate in the permitting process and to receive information about pending permit applications and agency projects.”¹⁷ While we take no issue with the first two assertions, the idea that an exclusively virtual public meeting would improve access to the public participation process demonstrates a clear underestimation of the extent of the digital divide present in many environmental justice communities. As outlined below, many residents may consider attending an in-person meeting in a familiar venue within their community a far more convenient and accessible option than acquiring and interacting with the technology necessary to participate in a virtual public meeting.

According to the US Census Bureau’s 2019 5-year American Community Survey (ACS), over 1.8 million Texas households (18.5% of all Texas households) are estimated to either have no home computer (874,368) or have no home internet access (921,044). An additional 1.25 million (12.9%) households are estimated to rely solely on cellular data plans to access the internet.

Across Texas, an average of 20% of households that live within a half-mile of an industrial facility registered in the EPA’s Toxic Release Inventory (TRI) do not have home

¹⁶ Id.

¹⁷ Id.

internet access, according to the ACS estimates. This figure is somewhat higher than the state average. However, in many of the communities most overburdened by industrial pollution, disparities in internet access are even more pronounced. The Houston neighborhood of Manchester is surrounded by chemical plants and refineries, sewage treatment facilities, pipelines, and a railyard that handles hazardous material. The ACS estimates that more than a third of households in Manchester (36.7%) have no home internet access whatsoever. Similarly, in Houston's Fifth Ward neighborhood, a community beset with cancer clusters thought to be caused by industrial groundwater contamination, 33.5% of households are estimated to have no home internet access. 36.7% of households in the City of Port Arthur – home to the largest oil refinery in the United States, the Saudi Aramco Motiva refinery – are estimated to have no internet access, and in many of the Port Arthur neighborhoods most immediately adjacent to the Motiva facilities, a majority of households (>50%) are estimated to have no home internet access.

In addition, a Pew Research study published in September 2021 offers important insight into the familiarity and reliability of teleconferencing options among US demographic groups. The study found that 60% of broadband users with lower household incomes report issues with the speed, reliability, or quality of their high-speed internet connection at home in a way that makes it hard to do things online - a problem that is particularly acute for Black (62%) and Hispanic (56%) broadband users compared to White users (44%). In an April 2021 survey, Pew also evaluated the “tech readiness” of various groups and found that older users (> age 50), those with less formal education, lower-income, and Black adults are more likely to have lower “tech readiness” than other groups. Among those that were evaluated to have lower tech readiness, 30% reported having never used video calls and 31% reported using video calls less than once a week during the COVID-19 crises.¹⁸

Taken together, the ACS and Pew study – in addition to anecdotal evidence from community members and advocacy groups¹⁹ – suggest that the TCEQ's proposal to move to an exclusively-virtual public participation format has the potential to significantly diminish the participation of environmental justice communities in the environmental decision-making process. We recognize, however, that the virtual format does have the potential to provide greater access to certain groups with the required technology and familiarity with teleconferencing tools. We further recognize that the virtual format will be necessary should health and safety concerns demand a future suspension of the Open Meetings Act. Therefore, we ask that the TCEQ maintains in-person public meetings and incorporates virtual options that supplement traditional in-person meeting formats rather than replace them.

Together, we have an opportunity through the state's sunset review of TCEQ to make the agency a responsible manager and watchdog that sets fair and necessary protections against

¹⁸ <https://www.pewresearch.org/internet/2021/09/01/navigating-technological-challenges/>

¹⁹ <https://onebreathhou.org/newsroom/2021/11/tpc-group-texas-tceq-illegal-air-pollution-sunset-review/>

threats and holds polluters accountable. The government only can set and enforce the rules that keep us safe and well. We need action that makes the biggest difference for everyone, and that starts by prioritizing the needs of people over polluters.

If there are any questions concerning these comments please contact Air Alliance Houston through its representative.

Respectfully submitted,

/s/

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