



Mar 17, 2022

Amy Browning  
TCEQ Environmental Law Division, MC-173,  
P.O. Box 13087,  
Austin, Texas 78711

**Re: Comments on the TCEQ Public Participation Plan and Language Access Plan**

Dear Ms. Browning,

Thank you for the opportunity to submit these comments on the Public Participation Plan and Language Access Plan<sup>1</sup>. We appreciate TCEQ's efforts in furthering public participation through language access.

Air Alliance Houston urges the TCEQ to follow through on this commitment to providing meaningful access to LEP individuals consistent with the requirements of Title VI and President Biden's mandate pursuant to Executive Order 13985 that agencies identify potential barriers underserved communities face in accessing agency resources. While we applaud TCEQ for agreeing to undertake these measures, we must also call attention to the fact that our recommendations—and the critical concerns underlying them—have been raised with TCEQ persistently and repeatedly over at least a decade. People of Color, Indigenous Peoples, LEP, and low-income communities have for too long felt the adverse health and other effects of inadequate environmental protection.

TCEQ must work with diverse stakeholders to develop and distribute supplemental internal and external Title VI Limited English Proficiency Guidance, as well as guidance on accessibility for people with disabilities in order to further access to TCEQ programs, activities, and services.

**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**

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<sup>1</sup> Texas Commission on Environmental Quality. 2021. Language Access Plan. *See electronically at:* <https://www.tceq.texas.gov/downloads/agency/decisions/participation/language-access-plan-gi-608.pdf>

Efforts to strengthen requirements for meaningful language access and accessibility should start from the Environmental Justice (EJ) Principle that the communities most affected have the “right to participate as equal partners at every level of decision-making”<sup>2</sup>--and strive to dismantle the barriers to making that a reality. Meaningful engagement of residents in EJ communities and the general public requires more than inviting community members to meetings that include public comment periods or developing plans without community feedback at its inception. Despite having good intentions, TCEQ staff are currently at best ill-equipped and at worst disinterested in the lived experiences and needs of people on the frontlines and fencelines of pollution and climate change. Building trust with communities that have been consistently and systematically oppressed for generations will not happen overnight.

TCEQ’s Public Participation Plan and Language Access Plan should direct both time and resources to train staff on culturally appropriate and trauma-informed approaches to engage with EJ communities, people with limited English proficiency, people with disabilities, and other populations that have been left out of the rooms and processes where decisions are made. As a starting point, regional staff should be encouraged to foster relationships with people and organizations working to address the impacts of the climate crisis and environmental racism in their areas.

One concrete way that TCEQ could start to shift this dynamic and foster trust with impacted communities is to implicitly state its understanding and commitment to Environmental Justice as a whole in its processes. A seat at the table and an opportunity to be heard are the bare minimum, affected communities must be empowered to help government officials make the decisions that directly impact their health, environment, and quality of life. It is unacceptable to solicit feedback only to put it on a shelf. Engagement is not meaningful unless the information gathered from the community is incorporated into policies, permits, and regulations. TCEQ’s mission should include its commitment to the revitalization of overburdened communities and consideration for disproportionate cumulative impacts in its permitting process.

### **III. RECOMMENDATIONS**

While we recognize and applaud TCEQ for its efforts toward expanding public participation and accessibility. TCEQ should seek to collaborate with seeing organizers and community-based organizations whenever possible. Commenters propose the following recommendations:

#### **A. Clarify and Expand The Definition Of “Vital Documents”**

In the Language Access plan, TCEQ defines a Vital Document as “Paper or electronic material that is critical to access TCEQ’s programs, activities, and services. Classification of a document as “vital” depends upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP individual if the information in question is not provided accurately or in a timely manner.”<sup>3</sup>

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<sup>2</sup> First National People of Color Environmental Leadership Summit, The Principles of Environmental Justice (EJ) (Oct. 24-27, 1991), *See electronically at*: <https://www.ejnet.org/ej/principles.pdf>.

<sup>3</sup>Texas Commission on Environmental Quality. 2021. Language Access Plan. *See electronically at*: <https://www.tceq.texas.gov/downloads/agency/decisions/participation/language-access-plan-gi-608.pdf>

The definition of “vital documents” should be expanded to ensure translation of materials, including but not limited to notices and agendas of public meetings and hearings, notices of violations or enforcement or disciplinary action, permit summaries, proposed and final rules, and documents relevant to natural disasters or other emergencies. If the goal of both the Public Participation Plan and the Language Access Plan is to expand access and invite participation, necessarily, the meaning of vital documents must be expansive enough to cover documents that provide context for TCEQ programming and activities. The goal should be that a majority of documents and web pages on the agency’s website should be translated or invite requests for translations.

#### B. Identify LEP Individuals

The Language Access Plan states that “TCEQ uses multiple methods to identify LEP individuals including use of demographic information, a newly developed survey for TCEQ divisions, and stakeholder outreach, which will include holding three public meetings to discuss the Plan, gather stakeholder input, and review public comment as discussed in Section 12.”<sup>4</sup> Commenters believe that this is a great start towards achieving language access however, a more robust plan is needed. TCEQ should develop and distribute guidance and methodology for identifying populations with limited English proficiency, anticipating language needs relative to any given program or activity, and providing interpretation or translation services whenever requested. TCEQ should issue translated notices of the availability of interpretation services at public meetings and hearings, as well as clear instructions for how to request language access services if they will not automatically be provided, with the provision of language access services being the default. Depending on where a facility or proposed facility is located, TCEQ must do the necessary work of assessing the demographics of each community and anticipating the needs. Spanish-language translation alone is insufficient in places as diverse as Houston.

#### C. Training For Staff, Interpreters and Translators Should be Comprehensive

In the plans, TCEQ established a Nondiscrimination coordinator who organizes TCEQ’s effort to comply with required civil rights laws. However, there is no mention of the type of training this position will complete to ensure culturally competent services. TCEQ should establish a set of core competencies and quality control protocols to ensure that interpreters and translators, and staff are equipped with the relevant training, skills, and subject matter expertise necessary to ensure access to any given program or activity. This training should include topics such as Environmental Justice, Community-based organizing, Trauma-informed approaches, and Health impact training. A staff that is well-trained in understanding the problem, addressing the problem from a bottom-up perspective centered on a trauma-informed approach, and improving health impacts can drastically improve the conditions that inaction from TCEQ has caused.

#### D. Public Participation Must Be Proactive and Offer Multiple Options

TCEQ states the purpose of the Public Participation as Meaningful public involvement ensures that those who are most likely affected by a TCEQ decision are notified, understand the proposed decision, and have an opportunity to provide input before TCEQ action. This document provides guidance to TCEQ staff, the regulated community, and the public in understanding

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<sup>4</sup> Id. at p. 2

expectations for meaningful public participation<sup>5</sup> yet TCEQ satisfies only the minimum requirements of public notification.

- Update and distribute guidance on best practices for fulfilling public notice requirements to proactively expand access for public participation. For example, ensuring notices are published in ethnic, community, and foreign-language newspapers and shared on social media and hyperlocal media, as well as online; employing email and phone lists in partnership with community-based organizations and institutions, and taking into account and addressing overall barriers to digital access in environmental justice communities.<sup>6</sup>
- Develop and distribute guidance for public engagement and participation that maximizes access for people with disabilities and people with limited English proficiency within the meaning of Executive Order 13166 and EPA Order 1000.32, including, but not limited to, expanding time limits for public comment, assuring virtual and telephone access wherever possible (in addition to in-person access), providing for after-traditional work hours participation opportunities, allowing people to give comments in their own language and responding to their comments in the same language, and developing standards for interpretation and translation services to ensure participants can both speak and understand proceedings in real-time.

The COVID-19 pandemic has, by necessity, required TCEQ, as well as organizations and institutions worldwide, to develop strategies to reach stakeholders through reliance on digital technology. Moving forward, TCEQ must build on the lessons learned and resist the urge to establish a new status quo, asking, instead, who can show up, where, and for how long. TCEQ should use this opportunity to expand access, in consultation with the disability community, through well-facilitated and interpreted virtual options. However, online meetings cannot replace the value of in-person public participation, given the continued disparities created by the digital divide, particularly within EJ communities. TCEQ must embrace a range of options for engagement that prioritize directly connecting the people most affected by a decision to the people holding the power to make that decision.

#### IV. CONCLUSION

Overall, the future environmental and climate harms require TCEQ to rethink how the agency makes decisions, distributes resources, and holds itself and permitted facilities accountable to ensure that those communities historically and currently underserved and overburdened are at the center of the decision-making process. For TCEQ to better ensure individuals with limited English proficiency (LEP) may meaningfully access TCEQ programs,

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<sup>5</sup> Texas Commission on Environmental Quality. 2021. Public Participation Plan. *See electronically at:*

<https://www.tceq.texas.gov/downloads/agency/decisions/participation/public-participation-plan-gi-607.pdf>

<sup>6</sup> *See* Dep't of Just., *Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs* (May 2011), *See electronically at:*

[https://www.lep.gov/sites/lep/files/resources/2011\\_Language\\_Access\\_Assessment\\_and\\_Planning\\_Tool.pdf](https://www.lep.gov/sites/lep/files/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf); Dep't

of Just., *Common Language Access Questions, Technical Assistance, and Guidance for Federally Conducted and Federally Assisted Programs* (Aug. 2011),

[https://www.lep.gov/sites/lep/files/resources/081511\\_Language\\_Access\\_CAO\\_TA\\_Guidance.pdf](https://www.lep.gov/sites/lep/files/resources/081511_Language_Access_CAO_TA_Guidance.pdf).

activities, and services in a timely and effective manner, systemic and structural changes including a significant investment of staff and resources; actual ongoing, regular engagement, and information sharing with the people most affected, including communities living at the fencelines and frontlines of environmental and climate risks and burdens; and investment into a culture shift within the agency.

Addressing racial disparities in environmental exposure and ensuring environmental justice requires a new commitment to civil rights enforcement. We urge that affirmative implementation of Environmental Justice Principles in decision-making will further civil rights compliance. These are not separate endeavors. Ultimately, the goal must be increased access to TCEQ programs, activities, and services, tangible reductions in emissions and pollution, environmental restoration, and improved health outcomes in environmental justice communities to address longstanding and current disparities on the basis of race and national origin.

Thank you for your time and consideration of these comments. We appreciate this opportunity to comment and to make recommendations for institutional change within TCEQ. We would be glad to discuss further and assist however possible as you move forward. Should any questions arise, please contact the undersigned individual.

Sincerely

/s/

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