

From: [Texas Sunset Advisory Commission](#)
To: [Sunset Advisory Commission](#)
Subject: Public Input Form for Agencies Under Review (Private/Before Publication)
Date: Friday, June 17, 2022 9:14:31 AM

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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

Todd

Last Name

Staples

Title

President

Organization you are affiliated with

Texas Oil & Gas Association

Email

City

Austin

State

Texas

Your Comments or Concerns

Please see attached.

Your Proposed Solution

Please see attached.

Attachment

[Final Comments.pdf](#) (264.82 KB)

My Comments Will Be Made Public

Yes



TEXAS OIL & GAS ASSOCIATION | SINCE 1919

Alan L. Smith
Chairman

D. Todd Staples
President

June 17, 2022

The Honorable Charles Schwertner
Chairman, Sunset Advisory Commission
P.O. Box 12068 – Capitol Station
Austin, Texas 78711

The Honorable Justin Holland
Vice Chairman, Sunset Advisory Commission
P.O. Box 2910
Austin, Texas 78768-2910

RE: Sunset Staff Report on the Texas Commission on Environmental Quality

Dear Chairmen:

The Texas Oil and Gas Association (“TXOGA”) appreciates the opportunity to comment on the Sunset Commission staff recommendations on the Texas Commission on Environmental Quality (“TCEQ”). TXOGA is a statewide trade association representing every facet of the Texas oil and natural gas industry including small independents and major producers. Collectively, the membership of TXOGA produces in excess of 80 percent of Texas’ crude oil and natural gas, operates over 80 percent of the state’s refining capacity, and is responsible for the vast majority of the state’s pipelines. In fiscal year 2021, the oil and natural gas industry employed more than 422,000 Texans in direct jobs and paid \$15.8 billion in state and local taxes and state royalties, funding our state’s schools, roads and first responders.

TXOGA supports the continuation of the TCEQ. As one of the regulatory bodies overseeing the oil and natural gas industry in Texas, the TCEQ embraces a stable, science-based regulatory approach that is protective of public health and the environment and acknowledges the state’s growing economy. The oil and natural gas industry is one of the most regulated industries in the state and is subject to air, water, and waste regulations.

We applaud the work of the Sunset Commission staff and that of the TCEQ to undertake this worthwhile process. While we agree with several of the items recommended, we do have concerns with others. Our comments are enclosed.

Thank you for your consideration.

Sincerely,

Todd Staples

CC: Texas Sunset Advisory Commission Members

Enclosure

TXOGA Comments to Sunset Staff Report on TCEQ

ISSUE 1: TCEQ Policies and Processes Lack Transparency and Opportunities for Meaningful Public Participation, Generating Distrust and Confusion Among the Public.

1.1 Statute Change—Clarify statute to require public meetings on permits to be held both before and after the issuance of the final draft permit.

- “The first meeting would provide a more informal opportunity for the public to make suggestions about what should go into the permit during TCEQ staff review of the application and before finalizing the draft permit. The second meeting would allow the public a formal opportunity to submit comments to the agency on the final version of the permit, focused on whether the draft permit meets the legal and technical requirements to be issued.”
- **TXOGA Response—OPPOSE**
 - Current law sufficiently affords the public with the opportunity to participate in a public meeting.
 - Requiring an additional public meeting would add time to the permitting process. Additionally, scheduling a public meeting can be challenging for the agency due to cost constraints, scheduling—especially when using a public building for a meeting space—and travel time for agency staff. When meetings are scheduled outside of Austin, agency staff from Austin often have to work extended hours in order to have a public meeting in the evening to accommodate a convenient time for members of the public to attend. This would result in further time delays to the process.
 - Technical and legal requirements should inform permitting decisions. At least some of the input at a first public meeting is likely to result in requested changes that are not able to be attained based on the misalignment with the request and the legal and technical regulatory requirements.
 - Texas is always competing with other states, like Louisiana, for business. If the permitting is more arduous, contentious, and costly here, projects could move to other states.

1.2 Direct the commission to vote in a public meeting on key foundational policy choices that establish how staff approach permitting decisions and other regulatory actions.

- “Direct the commission to review its decision-making processes to ensure it has publicly established all policy decisions that govern TCEQ’s regulatory functions...[like] guidelines for determining acceptable risk of exposure to pollutants and whether to follow staff recommendations when they differ from federal guidelines.”
- **TXOGA Response—OPPOSE**
 - TXOGA strongly believes that the TCEQ should maintain its ability to delegate to the Executive Director implementation of agency policy and to evaluate the underlying scientific data to support agency decisions.

1.3 Direct TCEQ to develop a guidance document to explain how it uses the factors in rule to make affected person determinations.

- “Would direct TCEQ to establish a guidance document regarding how the commissioners and the agency consider the factors specified in rule to determine affected person status. TCEQ should consider clarifying in rule more objective factors, such as how the agency measures distance restrictions as it has done for concrete crushing facilities.”
- TXOGA Response—none at this time.

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

- “Would direct TCEQ to adopt a policy formally establishing and explaining its review process...to consider current factual, legal, and policy reasons for readopting each rule...clear notice in the Texas Register”
- TXOGA Response—none at this time.

1.5 Direct TCEQ to review and update its website to improve accessibility and functionality.

- “Would direct TCEQ to ensure better accessibility and functionality of the agency website and review other ways to improve public access to information. Include: all public meetings posted to the calendar page, data is available in downloadable format and manipulatable formats, permit applications and final permits are all easily accessible online...”
- TXOGA Response—SUPPORT
 - TXOGA supports the idea of a more accessible website to create easier access of information to all stakeholders. There are costs and impacts that come with website overhauls and would request that the agency and legislature take the appropriate considerations of costs, resources, and timelines into account when considering this issue.

1.6 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.

- “Would direct TCEQ to examine how it is currently using its authority to create advisory committees and consider how these committees could involve the public earlier in key agency decisions.”
- TXOGA Response—none at this time.

ISSUE 2: TCEQ’s Compliance Monitoring and Enforcement Processes Do Not Consistently and Equitably Hold Regulated Entities Accountable.

2.1 Statute Change: Require TCEQ’s compliance history rating formula to consider all evidence of noncompliance while decreasing the current emphasis on site complexity, and direct the agency to regularly update compliance history ratings.

- “Would require TCEQ to update its rules related to how it calculates an entity’s compliance history rating and require the agency to incorporate and consider as part of the calculation of a regulated entity’s compliance history rating all available data showing evidence of noncompliance, even if that noncompliance does not result in a formal enforcement action, such as emissions events data submitted into the STEERS system and violations noted during inspections but fixed on-site...TCEQ should update an entity’s

compliance history rating throughout the year as the agency received additional information that could alter the rating, such as new enforcement action.”

- TXOGA Response—OPPOSE

- TCEQ recently adopted revisions to its Compliance History Rule that gives the agency additional tools to address a site’s compliance history classification by placing it “under review” and reclassify it to “suspended” if criteria are met.
- TXOGA believes care should be taken to avoid making changes to the compliance history rating process that would punish proactive environmental improvements, inspections, and reporting or would punish sites for events that were beyond their control to predict or prevent.
- TXOGA opposes inclusion of information for which the company did not have the opportunity or reason to oppose and that has not been proven under due process. For example, just because an agency inspector writes an alleged violation on an inspection does not mean that TCEQ has proven there is a violation under the law. Similarly, a company’s report of an excess emissions event doesn’t mean there has been a violation of law.
- TXOGA believes that it is appropriate for TCEQ to consider a site’s complexity in compliance history assessment. Not only do more complex sites have more potential emission points, more components that could fail, and more permits than less complex sites, they also have more rules, regulations, and recordkeeping requirements that they must comply with and often have systems that are interrelated and may cause cascading violations if failure occurs.

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

- “Would require TCEQ to expand its criteria for classifying a repeat violator to include all levels of violations. TCEQ would set, by rule, the number of moderate or minor violations needed to be classified as a repeat violator.”
- TXOGA Response—OPPOSE
 - TXOGA believes care should be taken to avoid making changes to the repeat violator classification process that would punish proactive environmental improvements, inspections, and reporting or would discourage sites for events that were beyond their control to predict or prevent.
 - Any changes would need to consider a site’s complexity to ensure that complex facilities are treated equitably.
 - It may be beneficial to require TCEQ to demonstrate that repeated same or similar violations of moderate or minor violations have occurred before counting toward repeat violator status.

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

- “TCEQ would require entities that hold temporary permits or permits with no expiration date, and that do not otherwise have annual reporting requirements, to annually confirm to the agency the regulated facility is still operating.”
- TXOGA Response—OPPOSE
 - The TCEQ administers a variety of permit programs that have different purposes, statutory requirements, and in some cases are the subject of delegation or approval by a federal agency. The added value (or lack thereof) in a permit expiration and renewal cycle or for other periodic reporting can only be assessed in the context of a specific permit or permitting program and not on a generic, agency-wide basis.
 - In many cases, non-expiring permits without reporting requirements may involve activities that are numerous but inconsequential. For example, there are many facilities in Texas that use permits by rule (PBRs) to authorize minute levels of air emissions that do not trigger annual emissions inventory reporting. The existence of PBRs for such facilities is only warranted because the Texas Clean Air Act is structured to require a permit of some kind for any air emission source no matter how small (PBRs in this context were previously, and perhaps more informatively, characterized as “standard exemptions” to indicate that they were too trivial to require any substantive level of permit review at the facility level). Instead of requiring each such PBR to become subject to an expiration and renewal or reporting cycle, the TCEQ’s regulations are appropriately designed to trigger review by the agency only if there is a change with some level of significance. Imposing an across-the-board reporting cycle would generate a large volume of paperwork that would not be expected to yield useful or actionable information.

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

- “Would direct TCEQ to reclassify recordkeeping violations in accordance with the potential risk caused by the lack of recordkeeping. TCEQ should evaluate those violations where failure to keep accurate records or other monitoring equipment and reports will impair the agency’s ability to detect other, more serious noncompliance issues.”
- TXOGA Response—OPPOSE
 - TXOGA has concerns that this may diminish the agency’s ability to focus on actual harm violations.
 - This will likely be challenging to make this assessment in a consistent manner across the state and across various programs.

2.5 Direct TCEQ to develop and implement clear guidance to evaluate affirmative defense requests for air emissions.

- “Would direct TCEQ to revisit its air emissions affirmative defense criteria and develop guidelines for field investigators to use when evaluating affirmative defense requests.”
- TXOGA Response—OPPOSE
 - TXOGA agrees that clarity is needed for air emissions affirmative defense criteria.
 - TCEQ has already undertaken actions to bring uniformity into agency evaluation and determination of affirmative defense requests. TCEQ has authority to accomplish these improvements without further legislative action.
 - The agency has also modified its affirmative defense review and approval process in an effort to assess consistency and ensure appropriate criteria are met before approving affirmative defense requests.
 - Agency efforts are underway and continuing, and TXOGA plans to support those efforts to bring clarity to this topic.

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

- “TCEQ should amend its nuisance complaint investigation policy and institute a timeframe cap on repeat investigations that balance public health and safety concerns while protecting limited staff resources.”
- TXOGA Response—SUPPORT
 - TXOGA supports the effort to ensure that TCEQ has the ability to limit expenditure of agency resources related to consistent, unsubstantiated nuisance complaints without alleged health effects. This will allow the agency to focus on more critical agency responsibilities.

ISSUE 3: To Better Protect the State’s Scarce Water Resources, TCEQ’s Oversight and Management Needs Reform.

3.1 Statute change—Remove the abolishment clause for the Environmental Flows Advisory Group and Environmental Flows Science Advisory Committee, and require the advisory group to adopt a biennial statewide work plan for adaptive management updates of environmental flow standards.

- “This recommendation would allow the E-flows Advisory Group and its appointed science advisory committee to remain in existence to continue to coordinate the adoption of and periodic updates to e-flow standards.”
- TXOGA Response—OPPOSE
 - The e-flows development process is multi-faceted and involves multiple disciplines to ensure an appropriate scientific outcome. The Legislature should review the process for improvements before continuing it in perpetuity.

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

- “TCEQ and TWDB would consider areas for conducting PGMA studies in a public meeting, subject to open meetings requirements, including the opportunity for public comment.
- TXOGA Response—OPPOSE
 - The current process is appropriate as it is based on the best available scientific data.

3.3 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.

- “TCEQ should review the data it collects regarding water usage to determine which water right permits violate statute’s nonuse requirement and use this information to take steps to cancel those water right permits.”
- TXOGA Response—SUPPORT
 - TXOGA supports a review of water usage data to ensure optimal beneficial use of surface water.
 - In reviewing the water usage data, TXOGA suggests that TCEQ identify those water right holders that have not used their water rights for 10 years. Then, if any of those water right holders are no longer in existence, TCEQ should seek to cancel their water right.
 - Any change in the review should be cognizant of the possibility that rights holders may seek to unnecessarily exercise the water right in order to maintain it even though the water may not otherwise have been used.

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

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

- “Would direct OPIC to consider hiring expert consultants through umbrella contracts, which establish a contractual relationship and set the price for work well before the work is needed...Establishing umbrella contracts up front would reduce the time it takes to obtain experts and help ensure OPIC can access expert assistance to promote the public interest.”
- TXOGA Response—none at this time.

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

- “Would direct TCEQ commissioners to formally act on OPIC’s regulatory recommendations, as it currently does for other TCEQ staff rule proposals and public rulemaking petitions.”
- TXOGA Response—none at this time.

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

5.1 Statute Change—Continue the TCEQ for 12 years and remove the Sunset date of the agency’s enabling statute.

- “This recommendation would continue TCEQ until September 1, 2035, and would also remove the Sunset date of the agency’s statute to ensure only the agency, not its statute expires.”
- TXOGA Response—SUPPORT

5.2 Statute Change—Update the standard across the board requirement related to board member training.

- “Would require the agency to develop a training manual that each commissioner attest to receiving annually, and require existing commissioner’s training to include information about the scope of and limitations on the commission’s rulemaking authority.”
- TXOGA Response—none at this time

5.3 Statute Change—Update the standard across-the-board requirement regarding the separation of duties of commissioners and those from staff.

- “Would require the agency to adopt policies to clearly separate the commissioners’ policy functions from agency staff’s day-to-day operations.”
- TXOGA Response—OPPOSE
 - TXOGA strongly believes that the TCEQ should maintain its ability to delegate to the Executive Director implementation of agency policy and to evaluate the underlying scientific data to support agency decisions.