



SIERRA CLUB

LONE STAR CHAPTER

May 25, 2022

To: Chairman Brooks Landgraf

Members, House Committee on Environmental Regulation

From: Cyrus Reed, Lone Star Chapter Sierra Club, cyrus.reed@sierraclub.org, 512-888-9411 (office)

Re: House Committee Interim Charges: TERP, New EPA rules, and Infrastructure Oil and Gas Opportunities

TERP (Texas Emissions Reduction Plan)

The Sierra Club continues to believe that TERP remains a vital program to help Texas lower air pollution, improve public health, create economic development and meet our clean air obligations. While we were disappointed with the final version of HB 4472 – and in particular the removal of several key programs added in the version that passed the house floor as well as the requirement that at least 35 percent of the TERP fees flow to TXDOT, we still think the programs are worthy of support and continuation.

In terms of which programs may be underutilized and may need some tweaks either administratively or statutorily, we would like to point out that electric vehicle sales continue to grow – covering about 8 percent of all vehicles sold in the USA in March of 2022 - and the current limit within TERP on EV rebates could be revisited. In particular, there have been only a handful of rebates provided to other alternative-fueled vehicles, so we would suggest allowing any funds not expended for natural gas vehicles to be used for the EV program. This would significantly expand state rebates to encourage the purchase or lease of EV cars, which have the most benefit in terms of reduction of air pollution. We would also suggest considering a legislative fix to allow point of sale incentives, as opposed to the current time-consuming and bureaucratic rebate process for individual car owners. In addition, the Legislature should consider a larger rebate for EV pick-up trucks.

In general, with the expansion of electric cars, trucks and buses, TERP could play a vital role in helping with electrification of transportation which would greatly reduce air pollution. Expanding current programs to more fully incorporate electrification could be important.

Oil and Gas Emissions

While changes were made to the TERP program to better incentivize technologies to reduce flaring and oil and gas emissions, the program has yet to make any investments in the oil and gas field. While recent proposed rules on reducing methane and VOCs by the new administration may help – if and when implemented – the fact is that studies indicate that a small amount of production from low-producing wells is responsible for the lionshare of emissions. Putting more emphasis on finding and fixing leaks or installing new equipment in the oil and gas field could help reduce ozone-forming particles and other pollutants. Thus far, this New Technology Implementation Grant program has been undersubscribed, with the exception for grants for battery storage. The program can also be used for other point sources for reduction of emissions that use innovative technology, but with one exception has not been used for such. Better outreach may be needed to reach the potential for this program.

Energy Efficiency and Renewable Reporting and Credit

Furthermore, we must continue to include reporting from the Texas Energy Systems Laboratory on efforts to grow renewable energy, implement modern energy codes and conserve energy which has a direct benefit in terms of less pollution. ESL has been allocated limited money to do these reports, but allocations must keep up with these efforts so that Texas gets credit for the good work it is doing on growing renewables, implementing energy efficiency programs and implementing modern building codes. We have suggested raising the amount of money going to ESL to prepare these analyses.

Additional Program Needs

Furthermore, we still believe that TERP is well positioned to also fund energy efficiency programs. We have long advocated for having SECO run a loan revolving program for residential and commercial energy efficiency inputs. In the House version of the program, that money and program were included, but were stripped out by the Senate. However, the good news is that as part of the IIJA, some \$250 million is available for states to apply for funding to begin or expand such a program, and the Sierra Club has been discussing the potential for SECO to apply for this funding, which would likely be at least \$15 million based upon our size as a state. Authorizing the use of this money through statute - including robust reporting on reduction of energy and

emissions along the lines of the proposed legislation - could make our state well positioned to take advantage of this funding.

Building Codes

Finally, while not part of TERP itself, the Legislature created Chapter 388 of the Health and Safety Code as part of the original TERP legislation. This chapter requires SECO to set and update Texas' Building Energy Code for new residential and commercial construction. Currently, SECO has been analyzing the potential to raise the current Texas Energy Building Code -- based on the International Energy Conservation Code -- to the 2021 IECC, based on its ability to reduce energy use and therefore reduce air pollution. However, though they began a stakeholder process to adopt the new code, our understanding is that SECO believes that HB 2439 by Phelan from the 2019 session may create an impediment to fully adopting the 2021 IECC. This would be a significant step backward as Texas has been a leader on meeting energy efficient codes.

While Sierra Club believes that HB 2439 was not intended to prevent state agencies like SECO from moving forward on energy code adoption, it will likely require some clarifying language in statute to allow SECO to move forward on both adoption of energy codes and adoption of standards, such as high performance standards, for state-funded buildings. Sierra Club is working with stakeholders, including the Speaker's office, on some clarifying statutory language to fix this issue next session. Adopting and updating modern building codes is a key tool in our efforts to lower ozone pollution in the state.

NEW REGULATIONS ARE COMING AND THE STATE MUST BE PREPARED

Ozone Bump-Up

Texas currently has four major areas that fail to meet the health-based standards of the EPA for the 2015 8-hour ozone: Dallas-Fort Worth, Houston-Galveston-Brazoria, San Antonio and El Paso. In fact, the first two not only fail to comply with the 2015 NAAQS for ozone, but also have failed to meet obligations under the 2008 NAAQS. Recently, the EPA has rightly formally pointed out that both DFW and HGB areas failed to meet standards for both the 2008 and 2015 standards and are proposing bumping up both areas from moderate to severe, which will require further obligations. Similarly, San Antonio failed to meet its requirements under the 2015 standards, and EPA is proposing bumping up San Antonio from marginal to moderate for ozone pollution. Public comments on the proposal are due June 6th, but it is widely expected that EPA will bump up these three Texas areas, which will require more effort, not less, to meet our clean air obligations. As an example, San Antonio and Bexar County would likely have to

require air inspections for vehicles, while TCEQ, and the Dallas and Houston areas, would likely need to require further reductions in NOx emissions for industry to expand, or new industry to locate there. Finally, further regulations on oil and gas wells that contribute to ozone formation in those four areas might require additional controls.

Good Neighbor Rule

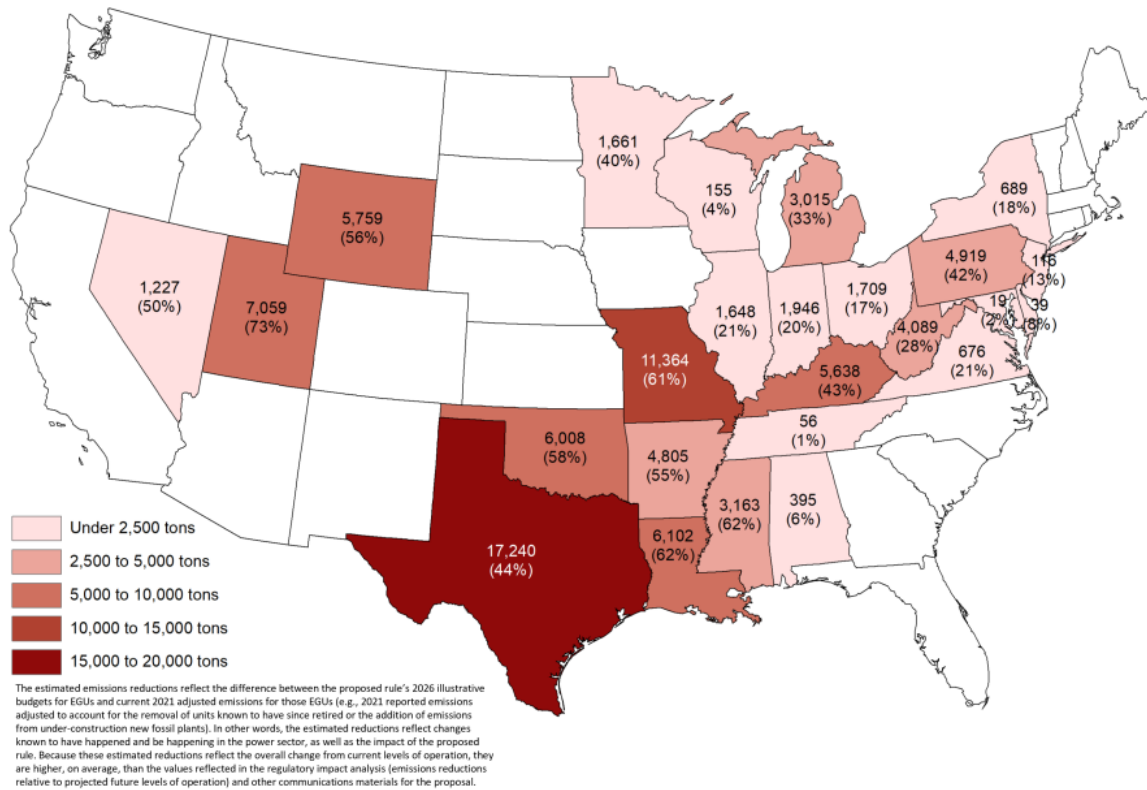
In addition to these regulations, EPA is proposing a new “Good Neighbor” rule which if implemented would require additional measures for certain large industrial plants whose emissions contribute to ozone in other states. While only a proposal, Texas leaders should pay attention to this proposal which is about how transport of smog pollution can impact other downwind states. Additional monitoring and modeling of air pollution would be beneficial so that Texas can design the best SIP to meet any good neighbor obligations.

Comments on the proposal are due on June 21st, 2022. Under the proposal, no state would be required to reduce pollution more from both Electric Generating Units (Coal-fired power plants) as well as some other industrial plants than Texas. It is important to note that the Biden proposal is more expansive than a previous version of the rule proposed under the Obama Administration. Specifically, in addition to requirements on coal plants, EPA evaluated air quality modeling, annual emissions, and information about potential controls to determine which industries beyond the power sector could have the greatest impact in providing ozone air quality improvements in affected downwind states. As a result, EPA is proposing emissions standards for new and existing emissions units in these selected industries:

- reciprocating internal combustion engines in Pipeline Transportation of Natural Gas;
- kilns in Cement and Cement Product Manufacturing;
- boilers and furnaces in Iron and Steel Mills and Ferroalloy Manufacturing;
- furnaces in Glass and Glass Product Manufacturing; and
- high-emitting, large boilers in Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills.

The Sierra Club is supportive of this approach as we still have many large industrial facilities and power plants without modern pollution control that impact the health and well-being of nearby communities but also impact ozone formation in other states.

A map below shows information about how much additional NOx reductions could be required under the Good Neighbor Rule for power plant emissions alone.



More information is available here:
<https://www.epa.gov/csapr/good-neighbor-plan-2015-ozone-naaqs>.

Moreover, having just recently finalized new light duty vehicle standards, EPA is currently looking at significantly more rigorous heavy-duty highway and vehicle emission standards. Under the proposal, The US Environmental Protection Agency (EPA) would set more advanced standards beginning with MY2027 vehicles that would reduce emissions of smog- and soot-forming nitrogen oxides (NOx) from heavy-duty gasoline and diesel engines and set updated greenhouse gas (GHG) standards for certain commercial vehicle categories. This means new heavy vehicles will be even cleaner in the future, and it also means that TERP programs could play a vital part in helping areas move toward these cleaner vehicles, especially between now and 2027. The rule is just one component of EPA's "Clean Trucks Plan" which is a suite of regulations on medium and heavy duty vehicles and engines. More information about Docket ID No. EPA-HQ-OAR-2019-0055 can be found here - <https://www.epa.gov/regulations-emissions-vehicles-and-engines/proposed-rule-and-related-materials-control-air-1>.

Furthermore, EPA recently proposed much more rigorous controls on oil and gas wells, including both new and existing infrastructure that could lead to major reductions in methane emissions and VOCs. A more finalized proposal is expected in August, but the initial proposal would lead to millions of tons of reduction in methane emissions. No state would be more impacted - and would benefit more - than Texas. Information about that rule can be found here. <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/epa-proposes-new-source-performance>.

Finally, EPA is expected to propose a more restrictive standard for Particulate Matter that could mean certain Texas counties would be subject to additional requirements to lower PM levels. Because the PM standards have not been revised in many years, most observers expect EPA to propose a much lower standard that is more protective of public health.

In 2021, the US EPA announced that it will reconsider the previous administration's decision to retain the particulate matter (PM) National Ambient Air Quality Standards (NAAQS), which were last strengthened in 2012. A strong body of scientific evidence shows that long- and short-term exposures to fine particles (PM_{2.5}) can harm people's health, leading to heart attacks, asthma attacks, and premature death. Large segments of the U.S. population, including children, people with heart or lung conditions, and people of color, are at risk of health effects from PM_{2.5}. In addition, a number of recent studies have examined relationships between COVID and air pollutants, including PM, and potential health implications. While some PM is emitted directly from sources such as construction sites, unpaved roads, fields, smokestacks or fires, most particles form in the atmosphere as a result of complex reactions of chemicals such as sulfur dioxide and nitrogen oxides, which are pollutants emitted from power plants, industrial facilities and especially older diesel vehicles.

EPA is expected to issue a proposed rulemaking in the late summer of 2022 and a final rule in Spring 2023, following an open, transparent process with opportunities for public review and comment.

For both existing and these future regulations, TERP remains an important program that is cost-effective and would help meet these obligations. TERP can reduce both ozone and PM_{2.5} and even through programs like the New Technology Implementation Grant we can also address stationary emissions, such as methane from the oil and gas sector.

Oil and Gas Well Cleanup and the IJA

The passage of the IJA remains a unique opportunity for Texas to finally clean up thousands of orphan wells. No state has the potential to benefit more from the Orphan Well Program than Texas. The federal government through the Department of the Interior is making available more than \$4.7 billion in funding to Texas and other oil and gas producing states with a legacy of abandoned infrastructure. Texas could – if we play our cards right – receive approximately \$343 million in three tranches of funding over the next few years. This money could help prevent water pollution, reduce the emissions of methane from these wells, prevent accidents of people and livestock, create jobs and help our economy. We hope the jobs created are good paying, family-sustaining labor.

Recently the DOI held two public meetings to get input on their initial guidelines for the first tranche of money - which allows states that qualify to receive up to \$25 million. Comments on those guidelines were due in March. The RRC has already applied for that first batch of money earlier this month. Guidelines for the future tranches of money are still in development but are likely to be more specific.

Just a reminder that Texas has a lot of orphaned, abandoned and low-producing or out-of-production oil and gas wells, as well as other types of wells that are no longer used and useful such as injection wells, water wells and empty wells that never found a product but are still potentially dangerous to human health and the environment. According to RRC records, from a 2021 annual report, Texas used state funds to plug 1,453 orphan wells in Fiscal Year 2021, and has a goal of plugging another 1,000 this fiscal year. Texas also cleaned up another 158 sites with oilfield waste and other issues. In all we spent about \$50 million on those two activities, the majority of that money from the Oil and Gas Regulatory and Cleanup Fund. But according to RRC data, there are some 8,000 additional wells and many other sites that remain on the sites eligible for state clean-up and that list is currently 55 pages long. \$343 million might not take care of all of these wells, but it could take care of most of them.

While we don't know the final guidelines yet for future tranches of money, some themes are emerging. First, the DOI wants states to engage the public on this use of federal taxpayer dollars.

RRC has to its credit done a good job posting information about the state program, and the proposed prioritization of wells, but there should be a more formal public input process, perhaps with one or more official public meetings at the RRC . Landowners, communities and industry - which has paid fees to create the state program - deserve the chance to give input into this process and help shape the outcome. RRC should consider a public portal for input and provide access in both English and Spanish. Having a more public facing process would also likely help get a leg up on other states that are also seeking this money. Part of this process could also include mapping those wells, and providing actual lat-long coordinates. While the RRC has done a good job showing the visualization of the wells that have been plugged, there does not appear to be a similar tool for those wells waiting for plugging activity.

Second, a likely requirement will be helping communities that have been overburdened with potential water and air pollution that can result from abandoned and orphaned wells. Sometimes called environmental justice factors, when we asked DOI what tool states could use to assess how to prioritize these communities, they mentioned a tool in development at the White House CEQ and an existing tool at the EPA. Using one of these tools to assess our orphan wells would be good exercise in prioritization and making sure that our existing prioritization scheme matches up with prioritizing wells that can most affect overburdened communities.

Third, this money can be used for orphaned wells that are not related to hydrocarbon production, so the current mess in Pecos County related to wastewater could potentially be targeted as a valid use of the funds. We should consider it since we are unlikely to find money elsewhere for this special case.

Finally, they are also looking for reforms to prevent the creation of future abandoned and orphaned wells. While many and indeed most of Texas's wells in the state managed program preceded changes that were made in the 1980s, our regulatory scheme is still in need of reform. The state – both the RRC and the legislature - needs to look at our bonding levels – which are extremely low and were set in the 1980s.

In conclusion, we would hope the RRC will create a public process for more formal input on how to prioritize cleanup, commit to creating an analysis of community impacts from spending this

money through either the EPA environmental justice tool, or the upcoming CEQ tool, and begin a conversation about reforms that are needed both on the front end - in bonding policy – and at the back end, in preventing the creation of new abandoned and orphaned wells by giving industry too easy a path to escape their responsibility.

Orphan Wells and Passage of HB 3973

Fortunately, in 2021 the Legislature signed and Governor Abbott signed HB 3973 (Walle, Senate Sponsor Nichols), which requires an interim committee of the legislature to look at efforts to plug abandoned and orphaned wells, and examine how we fund our Oil and Gas Regulatory and Cleanup Fund. As we look to spend hundreds of millions of taxpayer funds, it is important that we commit to make changes so that 10 or 20 years from now we will not be forced to spend another \$4.7 billion or more to bail out the impacts of oil and gas production.

Recently, Lt. Governor Dan Patrick named the five members of the interim committee on the Senate side, naming Senators Bryan Hughes, Lois Kolkhorst, Robert Nichols, Drew Springer and Judith Zaffarini to the committee. We are still waiting for the Speaker to name his five picks, but the committee is supposed to produce a final report and recommendations by December 1, 2022.

Among its charges, the Committee is directed to:

- (1) study matters related to abandoned oil and gas wells in this state, including the costs associated with plugging abandoned wells and bonding requirements imposed on owners or operators of oil and gas wells;*
- (2) identify potential solutions to reduce the need for general revenue spending to plug abandoned wells;*
- (3) conduct a review of the oil and gas regulation and cleanup fund, including:*
 - (A) revenue sources of the fund;*

(B) projected revenue for the fund through fiscal year 2025 based on the fund's existing fee and fine structure; and

(C) an assessment of the rules and statutory limits that determine the amount of the fees and fines that contribute to the fund; and

(4) evaluate and identify other sources of potential revenue, including federal funds and other existing taxes and fees paid to the benefit of the state which could be utilized to meet the goals of the committee.

The Sierra Club looks forward to participating in the HB 3973 process, as well as the processes related to the IJIA money for plugging wells. Again we reiterate the request that the RRC have a public process for input and look forward to coming up with solutions going forward to assure adequate non-GR revenue to help plug abandoned wells.

Conclusion

The Sierra Club looks forward to collaborating with the Legislature, RRC and TCEQ on establishing programs to reduce NOx, methane and VOC emissions to improve our air quality, and utilize federal funding to plug orphaned wells. While the EPA proposed rules will be challenging to meet, we believe that in the end they benefit our health, clean up the air, and are flexible enough to be achievable. Rather than fight federal regulation, the Legislature should work with stakeholders to design programs that include both regulatory and incentive approaches to clean up our environment and grow good jobs.