



SIERRA CLUB

LONE STAR CHAPTER

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Sierra Club Position on Sunset Advisory Commission on Texas Commission on Environmental Quality (TCEQ)

The Lonestar Chapter of the Sierra Club has signed onto separate comments with several other organizations, but these comments are a more succinct version of those comments with a few additions.

I. General Agreement

A. Regarding Issue 1: we agree that TCEQ lacks transparency and opportunities for meaningful public input.

In terms of the Sunset's recommendations on Issue 1, we are in support of the three main recommendations, including:

- Recommendation 1.1. Clarify statute to require public meetings on permits to be held both before and after the issuance of the final draft permit.
- Recommendation 1.2. Direct the commission to vote in a public meeting on key foundational policy decisions that establish how staff approach permitting and other regulatory actions.
- Recommendation 1.3. Direct TCEQ to develop a guidance document to explain how it uses the factors in rule to make affected person determinations.

We recommend not only that the first public meeting be held before the draft permit is issued, but also that:

- All permits—including standard permits—have the option to be amended to address public concerns.

Permits include a response to comments that clearly indicates each instance of a permit being amended in response to a public comment.

We would note that while we support these recommendations in general, some additional modifications are needed on Recommendation 1.3 to comply with federal law.

While the TCEQ touts its contested case hearing process as an extra opportunity for meaningful public participation that federal law does not require, the process is not actually implemented in this way. Instead, the TCEQ reads its state-law “affected person” requirements, which identify the factors the Commission should evaluate when deciding who has standing to participate in a contested case hearing, to establish constraints that are significantly more stringent than standing requirements established by Article III of the United States Constitution. For example, the TCEQ has consistently refused to recognize aesthetic, recreational and economic interests that would clearly satisfy Article III standing requirements as sufficient to establish a justiciable interest consistent with “affected person requirements” under Texas state law. Additionally, the Commission routinely denies contested case hearing requests submitted by people who live more than a mile away from the permitted source based on a presumption that such people are not affected by air pollution in a way that is distinguishable from the general public. This presumption is not supported by science, is not required by any applicable regulation or statute, and operates as an arbitrary constraint on public participation in the air permitting process.

While Commenters support Sunset’s recommendation 1.3, this recommendation alone will not remedy the TCEQ’s long standing failure to provide opportunities for public participation required by federal law. Consistent with the federal Clean Air Act and the Texas State Implementation Plan, the Texas Legislature should revise the Texas Clean Air Act to: (1) provide that unless and until Texas’s contested case hearing process and affected person requirements are approved as part of Texas’s federally-approved State Implementation Plan, participation in a contested case hearing is not a prerequisite for judicial review of the TCEQ’s air permitting decisions; and (2) establish affected-person criteria that are not more restrictive than standing requirements in Article III of the United States Constitution.

B. Regarding Issue 2: we agree that TCEQ’s compliance monitoring and enforcement processes need improvements. We do not believe the recommendations go far enough.

We agree with the report's conclusion that the compliance monitoring and enforcement programs need improvement.

Within the existing compliance history framework, we agree that the key recommendations are improvements. With the caveat that our preference would be eliminating compliance history in favor of a stronger approach to enforcement across the board, we agree with each of the key recommendations in issue 2:

- Requiring TCEQ's compliance history rating formula to consider all evidence of noncompliance.
- Deemphasizing site complexity as a mitigating factor.
- Regularly update compliance history ratings (the "ITC problem" identified by TCEQ ED Toby Baker)
- Consider all violations when classifying an entity as a repeat violator.
- Annual confirmation of the operational status of permits.
- Reclassify recordkeeping violations based on the potential risk and severity.

Despite this support, we disagree that guidance will solve the problems created by the affirmative defense. The affirmative defense is used by companies to avoid enforcement for illegal air pollution. While Texas billed the defense as narrow one, available only upon a thorough demonstration of eligibility, the affirmative defense is established by a minimal showing of diligence on the part of the offending party, this is not how it is implemented. As the Sunset Report indicates, the affirmative defense has been granted for between 80 and 90 percent of all unauthorized emission events between 2017 and 2021. The TCEQ uncritically accepts claims of the defense, even in cases involving repeat offenders. So long as the affirmative defense remains in place, polluters have little reason to fear consequences for failing to prevent unauthorized releases of dangerous pollution. In this way, the affirmative defense disincentivizes investment in effective maintenance practices and equipment improvements that would protect the public from unauthorized pollution during malfunctions and unplanned maintenance events.

We previously recommended eliminating the affirmative defense in Texas. The EPA proposed in 2016 to remove the affirmative defense from its implementation of the federal Clean Air Act. This proposal was reissued in March 2022 ([see here](#)). About its proposal, the EPA wrote:

Emergency affirmative defense provisions allow sources to avoid liability in enforcement proceedings by demonstrating that violations of certain emission limitations were caused by an "emergency" situation. All such affirmative defense provisions are

inconsistent with the enforcement structure of the CAA, following the reasoning of the D.C. Circuit's 2014 *NRDC v. EPA* decision.

Right now, Texas is at odds with the federal government in its use of the affirmative defense. The recommendation to issue guidance about its use will not resolve this conflict. We renew our recommendation that the affirmative defense be eliminated in Texas.

Our chief concern is that enforcement actions—fines—are not large enough to change the behavior of large companies. TCEQ's fines for polluters are capped at \$25,000 per incident per day, a cap that was increased from \$10,000 during the last Sunset review of the TCEQ in 2011. Thus, we would request that the following additional changes be made to TCEQ authority through statutory provisions:

- Raising the maximum daily penalty from \$25,000 to \$50,000 with an annual inflation index going forward;
- Additional fines or maximums should be established for any violations that lead to major injuries or fatalities;
- Requiring that the economic benefit of noncompliance be recovered. Currently, TCEQ does not fully require that the economic benefit of non-compliance be captured in any total penalty assessed, but only bumps up a fine by 50% if there was more than a certain amount of economic benefit from the entity violating the law. Instead, TCEQ should recover the full economic benefit of non-compliance (up to the maximum penalty) where there was an economic benefit gained by the company;
- Speciating pollutants to require that pollutants be considered as separate violations;
- Requiring that TCEQ conduct both an annual physical inspection of facilities holding major permits, as well as an annual review of industrial facility reports to assess potential violations for enforcement action. Minor facilities could be placed on a two (or longer) cycle depending upon their potential impact to citizens, the environment and public health. We must assure that major facilities are both physically inspected and reviewed for violations each year. TCEQ must have a public plan that lays out these timelines.

C. Regarding Issue 3: we agree that oversight of water could better protect the state's scarce resources, and generally support those recommendations with some modifications

We support **Recommendation 3.1**, and offer the following modifications to the staff recommendation to better develop and adopt environmental flow standards.

- Modify the recommendation to provide for an ongoing, and specifically defined, role for Basin and Bay Area Stakeholder Committees (BBASCs) and Bay and Basin Expert Science Teams (BBESTs) in development, and revision, of local work plans and identification of affirmative strategies to help meet flow needs rather than abolishing those bodies and creating them anew every 10 years to develop new recommendations for revised flow standards and work plans.
- Modify the recommendation to include direction to the Environmental Flows Advisory Group to act on the unfulfilled statutory directive to address improved water right enforcement approaches and methods for facilitating affirmative flow-protection strategies by requiring the EFAG to establish an environmental flows management advisory panel to develop specific recommendations on those tasks for consideration by the EFAG.
- Provide for a more robust approach for development of statewide work plans and progress updates by directing the Science Advisory Committee, working with state agencies along with BBESTs and BBASCs, to recommend biennial work plans for consideration and approval by the EFAG.

We support **Recommendation 3.2** and offer the following modifications to make this public meeting, and ultimately, the PGMA process more meaningful, resulting in more effective management of groundwater.

- The recommended public meeting should be held at a regular, and predictable, interval to increase the potential for public participation, including by GCD representatives.
- Topics covered should include evaluation of whether “critical groundwater problems” still exist within delineated PGMAs and of recommendations for how to resolve these problems, such as identifying data gaps and modeling needs, funding deficiencies, and ineffective governance structures.
- When considering whether to delineate a new PGMA or expand an existing one, TCEQ and TWDB should work more closely and deliberately with local communities and GCDs in and adjacent to the proposed PGMA to ensure the most effective governance structure.

We support Recommendation 3.3, but offer the following modifications:

- Before initiating cancellation proceedings, direct TCEQ to identify, in consultation with TPWD, rights potentially subject to cancellation that, instead, should be prioritized for consideration of placement in the Texas Water Trust.
- Direct TCEQ to establish a process for evaluating the potential of water made available from canceling specific rights to be set aside for environmental flow protection.

D. Regarding Issue 4: We agree with directing TCEQ commissioners to take formal action on OPIC's rulemaking recommendations.

The Office of Public Interest Counsel (OPIC) is an important representative of the public interest. Despite this role, OPIC is often dismissed or ignored by the commissioners when decision making. We agree with the recommendation to address OPIC rulemaking recommendations each year.

OPIC has made recommendations in the past that clearly should have been implemented by the TCEQ. In the August 14, 2018 biennial report to the TCEQ (available [here](#)) OPIC recommended an amendment to the statute defining "affected person"--an issue that exists to this day and is found in the Sunset report. TCEQ could not have implemented this law change itself, but the agency could have supported legislation that did, or at least speak to the issue in front of the legislature. Instead, bills have been heard for several sessions without comment from TCEQ or action from the legislature (see, e.g. HB 289 at the April 19, 2021 hearing of the House Committee on Environmental Regulation [here](#)).

II. Additional Recommendations

In addition to the proposed modifications to the issues raised by Sunset Staff, there were several issues that were not adequately addressed in the Sunset report.

A. Remove economic development from the TCEQ's mission.

The TCEQ's mission is "to protect our state's public health and natural resources consistent with sustainable economic development." The TCEQ is the only state environmental agency that has economic development in its mission. We recommend this mission be changed, as the goal of the agency should only be protection of public health and natural resources. We also believe this approach to regulation--ensuring a business-friendly climate first--is a source of many of the TCEQ's problems.

B. Environmental Justice and Cumulative Impacts -

The absence of any discussion of environmental justice or environmental racism is a glaring omission in the staff report. The TCEQ itself has almost pathologically avoided using the words "environmental justice" in favor of the term "environmental equity." Now the Sunset Commission has done the same in its report.

The problem of the cumulative impacts of polluting facilities is an environmental justice phenomenon. Although there was extensive discussion of this problem during the months the agency was under review, it is not addressed in the report.

One of our recommendations is to give the commissioners additional authority to deny a permit that is administratively and technically complete if considerations of justice (“equity”) suggest it should not be issued, and require the Commission to actually implement currently-existing requirements regarding such issues. For example, 42 U.S.C. 7503(a)(1)(5) of the federal Clean Air Act requires applicants seeking authorization to construct a new major source or a major modification to an existing source located in a nonattainment area to “demonstrate[] that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.” This existing provision of federal law, which is included in Texas’s federally-approved State Implementation Plan, is calculated to address just the kind of social and environmental disparities faced by environmental justice communities in non-attainment areas. Yet, the TCEQ does not actually have a process for evaluating social and environmental costs for projects subject to this requirement and has consistently failed to give it any effect.

Without a significant policy change, TCEQ will continue to approve permits for polluters in Black, Brown, and low-wealth communities without regard for the cumulative and historical impacts of those permits on their health and quality of life for decades. The economic strain of poor health - from lost productivity, medical costs, hospitalizations, and even premature death - cannot and should not be second to private industry.

To remedy these long-standing violations, the Legislature should require TCEQ to modify its regulations to include an environmental justice review in all air permit reviews.

In addition, the legislature should

- A. Require revisions in statutory provisions incorporated in Texas’ SIP to clarify that judicial review of permitting decisions is available to anyone who commented on the permit and would have standing under Article III of the U.S. Constitution, and require TCEQ to adopt regulations clarifying that participation in a contested case hearing is not required to exhaust administrative remedies for purposes of appealing TCEQ permitting decisions in state court.
- B. Require revisions to the Texas Public Information Act and Texas Clean Air Act to clarify that “emission data” as defined by the federal Clean Air Act is public information under Texas law and may not be exempted from disclosure as “confidential” and require TCEQ to adopt regulations to assure timely public access to information as

required by the Clean Air Act, including:

- Public access to emission data as defined under federal law,
- Public access to all information that constitutes a permit term or condition or is necessary to make a permit term or condition practicably enforceable,
- A process for resolving any claims of confidentiality in a timely manner. For information related to permits or permit applications, the process should assure all public information is available at the time an application is noticed or subject to a public comment period.

C. Require TCEQ to adopt regulations governing permits by rule (“PBRs”) and to revoke or revise existing PBRs to be consistent with the new regulations, including:

- Limit the use of PBRs to true minor sources,
- Require an opportunity for public comment on a source’s eligibility for a claimed PBR,
- Require that PBRs include: (1) technically accurate emission limits for all sources and projects eligible for coverage under the PBR and (2) monitoring, testing, and recordkeeping requirements sufficient to make those emission limits practicably enforceable, and
- Require EPA approval before a new PBR or change to an existing PBR is made effective.

C. “No Means No” Provision for Permits with Significant Notices of Deficiency

TCEQ staff often spend significant time and resources fixing deficient permit applications. Neither in the permit procedures and guidelines nor in statute are there specific provisions about when a permit application that does not meet the requirements for TCEQ to be considered administratively and technically complete for possible approval is the permit considered “dead” or withdrawn. Indeed, often applicants continually come back to the TCEQ with changes and proposals, leading to a constant barrage of back and forth and which is a burden both on TCEQ staff but also on the public which is put in the position of not knowing whether a permit application is about to be approved for public input. We believe that either through statute or management directives, TCEQ should have a policy that applicants should only be given two rounds of opportunities to fix deficient applications after which the application would be declared null and void and the applicant would be required to begin the permit application process anew – with required payment of a new application fee. This has been an issue in all program areas, but particularly in the air program.

D. Science Matters: follow it

We have major issues with the agency's continual denial of basic science. First, they appear to have no process in place to regularly assess the need to update scientific health-based standards for air or water toxics, and worse, appear to actively oppose efforts to improve these standards. For years, while considering potential changes to the regulations of ethylene oxide, TCEQ staff conducted frequent meetings with industry representatives in secret, and relied on their information to arrive at weak proposed standards. Worse, TCEQ then refused efforts by organizations to get copies of those documents on which their proposal was based. Similarly, ambient standards for toxics like hydrogen sulfide were set decades ago, even though the science would support a review and establishment of more protective standards.

Other examples include water quality nutrient standards, failure to implement anti-degradation standards, and the selective use of outdated effects screening levels.

We recommend that the Legislature direct TCEQ to be required to review and update ambient air quality standards for pollutants that are not already covered by the federal government, and their effects screening levels every three years in a public process.

The TCEQ has also systematically weakened guidelines it uses to assess the impact of toxic air pollutants on communities. The Center for Public Integrity analyzed the TCEQ's reviews of air pollution guidelines from 2007 to 2014. During those seven years, forty-five chemicals were reviewed. Two-thirds of the chemical standards reviewed were weakened. This means that, two times out of three, the public had less protection from toxic chemicals after the TCEQ's work.

Some in Texas leadership engage in climate denialism, a position that the TCEQ has at least tacitly accepted over the years. When the agency is clear about its position on the climate crisis, it is one of inaction. In a recent review of state agency policies on climate, WFAA received a statement from TCEQ that concluded, "the agency does not use climate change projections to evaluate future impact on air quality."

E. Water Quality Must Be Prioritized

Texas's Surface Water Quality Standards (SWQS) have long been piecemeal of different years' standards. During the EPA's review of the 2018 Standards, TCEQ was still using portions of standards from 1997, 2000, 2010, and 2014 for the Texas Pollutant Discharge Elimination System (TPDES) program. By TCEQ's own admission on its website, TCEQ regularly fails to implement and gain EPA approval of the most current water quality standards, resulting in a

situation where water quality standards are unpredictable and cobbled together across multiple revision years. TCEQ is presently undergoing its 2022 revision of the SWQS, and will once again be submitting the standards to EPA for review and approval. It's imperative that TCEQ be required to adopt current SWQS for both permit and standards predictability as well as potential impacts to public health and the environment.

In addition to the SWQS generally, there are a number of specific water quality issues where more statutory and management direction is needed for the TCEQ to fulfill its mission of protecting Texas's natural resources and the environment. TCEQ's operations and effectiveness could be improved in several areas.

We recommend that the Sunset Commission:

- Direct TCEQ to contract with a qualified entity to audit the effectiveness and existing barriers to effective implementation of the Total Maximum Daily Load program, as well as develop clear solutions to address the outstanding TMDL backlog.
- Require development of an appropriate list of priority-setting criteria that includes the impacts of given impairments on: social vulnerability of impacted communities, time a segment has been on the 303(d) list without TMDL development, severity of impact to endangered and threatened species, and severity of human health and other environmental impacts. This process should be open to public participation.
- Require timely development of TMDLs.

Pristine Streams Protection

A diverse range of stakeholders has supported a rule that would end new wastewater discharge permits on the state's last remaining pristine streams, while allowing development to continue with the issuance of permits for land application of effluent and authorization for the beneficial reuse of effluent. HB 4146, a bill that would have established this rule, was passed by the House on a bipartisan 82-61 vote in the 2021 Legislative Session. The Pristine Streams Petition, which asked TCEQ to adopt a similar policy through its internal rulemaking process, was considered by the agency's commissioners earlier this year but rejected on a 2-1 vote. However, all three commissioners agreed that the 22 classified stream segments that would be protected by the rule are treasures for the whole state that deserve more protection.

We recommend that:

- TCEQ be directed to adopt a rule that would end the issuance of new wastewater discharge permits on all classified stream segments in the state with levels of naturally occurring phosphorus below 0.06 milligrams per liter, as indicated in 90% of water quality testing data as recorded by the agency in the past 10 years. In addition, TCEQ should encourage prospective developers in pristine stream basins to utilize TLAP

permits for wastewater land application and Chapter 210 authorization for the beneficial reuse of water.

Nutrient Criteria Standards

Nutrient pollution results from dangerously high levels of nitrogen and phosphorus in waterways. Besides harming wildlife and the economies that depend on them, nutrient pollution also threatens human health when people consume toxic drinking water, eat polluted fish, and swim in polluted water. Recurring blooms of toxic blue-green algae from an abundance of nutrients have resulted in the death of multiple pet dogs and led the City of Austin to place permanent warning signs around Lady Bird Lake. This is a problem across the state.

Despite funding studies since 2001 that would help Texas set specific phosphorus and nitrogen water quality standards, however, the TCEQ to date has largely failed to adopt numeric nutrient water quality standards – leading to the continued degradation of natural ecosystems and threats to human health throughout the state.

- Direct TCEQ to adopt numeric limits for total phosphorus and total nitrogen that would cover all streams with low naturally occurring levels of these substances, and to develop limits that would prevent any increase in eutrophication (algae growth) in these streams.

Antidegradation rules set by the TCEQ and the US Environmental Protection Agency (EPA) outline substantive standards, however following TCEQ's checklist of procedures for antidegradation review does not assure compliance with these substantive standards. The US EPA recommends numerical criteria be established based on section 3-4(a) of the Clean Water Act and suggests being more precise in identifying nutrient levels based on smaller geographic scales.

- Direct the TCEQ to use nutrient monitoring data to determine whether to add more protective nutrient limits to existing permits when they come up for renewal.
- Direct the TCEQ to include strict nutrient limits in new wastewater discharge permits, especially when cumulative discharges have the potential to significantly harm naturally occurring nutrient levels in receiving water bodies.

Antidegradation Policy for Water Quality Standards

Under federal law, each Texas Pollutant Discharge Elimination System (TPDES) permit must contain any requirements necessary to achieve the state's water quality standards.¹ Each state's water quality standards must include an "anti-degradation" policy, and every TPDES regulatory decision must comply with that policy.

To our knowledge, TCEQ, in practice, universally finds that applications for a new or amended TPDES permits result in less-than de minimis lowering of water quality. TCEQ thereby exempts

¹ 40 C.F.R. 122.44(d), applicable to states pursuant to 123.25.

all TPDES applications from a demonstration that the proposed discharge is necessary for important social or economic development. TCEQ's unreasonable interpretation of the term "de minimis" has created an exemption that swallows the rule. so long as it doesn't undermine the purposes of a Tier II review.

- The commission should direct TCEQ to either remove or objectively define the "de minimis" exemption and require meaningful alternatives analysis.

Experience has established that the current wording of the TCEQ water quality standards, as interpreted by TCEQ and generally upheld by Texas courts, is inadequate to ensure a proper Tier II anti-degradation review. To correct this deficiency, either the "de minimis" exception contained in 30 TAC § 307.5(b)(2) must be entirely removed, or the term "de minimis" must be explicitly defined by rule in an objective manner that enables meaningful evaluation and comment by the public. An approach defining "de minimis" consistent with the standard set forth in the King Memo would be a step toward resolving this issue.

- The Commission should direct TCEQ to require water quality standards to incorporate non-discharge alternative requirements.

These requirements should be analogous to those set forth in the Pennsylvania Code.² Measures are needed to ensure that performance of an alternatives analysis is embodied in TCEQ's normal processing of TPDES applications. Imposing this requirement in Texas would go far toward resolving the water quality issues being experienced in clear Hill Country streams, where re-use and land application of domestic wastewater are feasible alternatives to direct discharges.

F. Air Quality Monitoring

Whereas TCEQ typically meets the federal minimum regulatory requirements for air quality monitoring outlined at 40 CFR 58.10 and corresponding Appendices, they continue to overlook explicit direction from the EPA to apply an environmental justice analysis to its ambient air monitoring planning as follows: *"For future plans, including next year's plan we encourage TCEQ to continue to evaluate areas with environmental justice concerns related to ambient air monitoring. Where possible, please add detail to the plan discussing the environmental justice considerations taken into account related to the ambient air quality network."* In TCEQ's 2022 Air

² 25 Pennsylvania Code (Pa. Code) § 93.4c, sets forth procedures for implementation of anti-degradation requirements. For High Quality or Exceptional Waters, these procedures include a requirement that an applicant, "shall evaluate nondischarge alternatives to the proposed discharge and use an alternative that is environmentally sound and cost-effective when compared with the cost of the proposed discharge." Under the Pennsylvania Regulations, if a nondischarge alternative is not environmentally sound and cost-effective, a new, additional or increased discharge shall use the best available combination of cost-effective treatment, land disposal, pollution prevention and wastewater reuse technologies.

Monitoring Network Plan (ANMP), there is no explicit analyses of either the cumulative impact of pollution or the siting of ambient air monitors in response. Residents and local organizations in these neighborhoods continue to take it upon themselves to monitor their local-level air quality through community air monitoring programs.

According to its own report released in January 2022, TCEQ does not consistently monitor industrial air pollution immediately before and after severe weather events, when real-time information about health and environmental harm is needed most. This is yet another example of TCEQ using risk estimation methodologies that do not benefit communities and result in less protection when there should be more. For example: in this report, TCEQ drew premature conclusions about how they should monitor natural disasters based on a a limited dataset. Moreover, drawing the conclusion that monitoring efforts should be curtailed due to previous logistical and technical challenges is short-sighted. Having identified their shortcomings, TCEQ should apply this information to improve *in situ* disaster air monitoring. It is clear that TCEQ does not have a resilient storm-ready air monitoring system and has not been held accountable to create one. This leaves a significant gap in air quality at the times when the community and the environment are the most vulnerable.

Furthermore, there continues to be minimal accountability from TCEQ to communities in regards to the results of air monitoring. TCEQ must make transparent the data on how it is applying monitor data to address local polluters. It is critical that ambient air monitoring in overburdened communities is used to hold the sources of such pollution accountable to meeting National Ambient Air Quality Standards (NAAQS).

G. State Agency Party Status in TCEQ Permitting Actions

In 2011, as part of the TCEQ Sunset bill, the Legislature adopted a House Floor Amendment that resulted in state agencies, including TPWD, being prohibited from contesting any proposed TCEQ permit by participating in a contested case hearing, except when the agency is the applicant. Until that time, TPWD had been an active participant in contested-case hearings on applications for significant water right permits and, less frequently, for waste discharge permits as necessary to protect the State's natural resources.

This shortcoming can be corrected without setting up the potential for other state agencies to challenge final decisions made by TCEQ when the agency is not the applicant. Prior to TCEQ's final decision, participation of other state agencies in the decision process is necessary to allow the TCEQ commissioners to make fully informed decisions.

- Amend Section 5.115 (b) of the Texas Water Code as follows:

A state agency that receives notice under this subsection may ~~submit comments to the commission in response to the notice but may~~ not contest the issuance of a permit or license by the commission by seeking judicial review of the decision, unless the state agency is the applicant.

H. Equitable Fee and Funding Structure

TCEQ runs a number of programs in waste, air and water, and more than 80 percent of TCEQ's revenues are paid for through annual program fees, application and permit fees. However, within individual fees and programs, there are wide discrepancies on the sufficiency of fees to support the program needs (rule development, permit writers, inspection, enforcement, etc), and there are often equity issues where large users or polluters are paying less on a per-volume basis than smaller entities or polluters. Some of these fee amounts are set statutorily and others are set by TCEQ. There is a need to look broadly at TCEQ's annual and permit fees in all programs and make changes to assure that revenues are sufficient and that the fees are equitable. We would note for example that within the air program, currently major air permit fees are capped at \$75,000 and the main annual fee for major sources – based on emissions of criteria pollutants – is capped at a maximum of 4,000 tons per pollutant, meaning large polluters are paying significantly less in annual fees compared to small polluters. While some cap might be reasonable, we would suggest raising the maximum permit fee and the maximum tons that can be assessed the air emissions fee, while also looking at the levels of the annual inspection fee.

The issue in the water program is perhaps even more egregious. While the legislature and TCEQ have made some small steps to increase fees and revenues in the water program, given the vast number of lakes, stream miles, coast lines, and groundwater resources of Texas, overall water rights, wastewater discharge permit fees, and annual fees are too low to support the need of the agency. In addition, the three main annual fees – the Public Health Service Fee, the Consolidated Water Quality Fee and the Water Use Assessment Fee – are not equitable, as large public utilities, water rights users and wastewater discharge permit holders pay a proportionally low amount of total revenues. The agency should be directed to raise fees overall by at least 100 percent and directed to arrive at a more equitable distribution of those fees between large and small public utilities, water rights and wastewater discharge permit holders, and the Legislature must look at caps that prevent equitable funding structures. In addition there are large categories of water rights holders that are exempt from paying fees, and those entities should be providing at least some revenues to help our state agency manage water quantity and water quality.