



April 26, 2022

To: Chairman Brooks Landgraf
Members, House Committee on Environmental Regulation

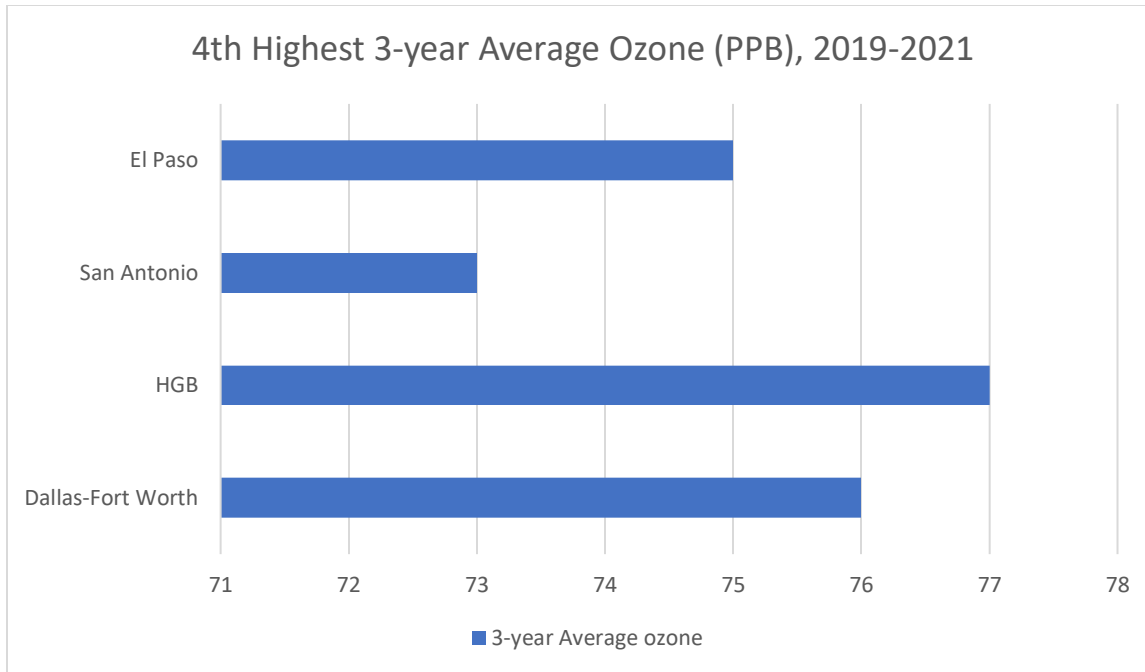
Re: House Committee Interim Charge, TERP and SB 900

TERP

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 and 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.

TERP Needed More than Ever As New Regulations Are on the Horizon

Unfortunately, we still have 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 and are proposing bumping up both areas from moderate to serious, 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. While there is currently a comment period and a public meeting occurring May 9th, it is very likely these proposals will be finalized soon.



In addition to these regulations, EPA is proposing a new “Good Neighbor” rule which if implemented could 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.

Moreover, having just recently finalized new light duty vehicle standards, EPA is currently looking at significantly more rigorous medium and heavy-duty emission and fuel economy standards. 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.

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.

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 PM2.5 and even through programs like the New Technology Implementation Grant we can also address stationary emissions, such as from the oil and gas sector.

What's Needed Going Forward

More transparency is needed in TERP in terms of reporting on the status of the programs. Not only do we need frequent reporting for TXDOT's 35% of TERP funds, but TCEQ should be required to report annually, as suggested in SB 1. This reporting is important not only for the legislature, but for the EPA which ultimately must approve our state implementation plan.

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

The legislature should consider changing the light duty vehicle program. First, last year no natural gas vehicles received any grants because there is no demand for them. Rather than capping the program at 2000 vehicles, perhaps it should be open as long as there is money available. The legislature should also consider a point-of-sale rebate to dealers, with the savings going to customers. The paperwork is very cumbersome for individuals to fill out and making the rebate a point-of-sale will greatly expand the use of the program. 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.

In addition, the Legislature may want to explore how to better incorporate PM 2.5 reductions as part of TERP with new standards expected in August.

In addition, TCEQ has more air quality monitoring needs that could be funded through TERP, such as were contemplated in the version of HB 4472 that was passed by the House.

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 \$500 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. Still, a small amount of TERP funding would be useful as a matching grant to gain access to this federal funding.

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 majority 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.

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, legislative intent must be better established, or some clarifying language must be placed in statute.

SB 900

The Sierra Club appreciated the efforts made with the passage of SB 900 last session and are awaiting the beginning of stakeholder meetings and rulemaking. Still, we were disappointed that SB 900 did not address more specifically the issues that can arise with excessive rainfall and hurricanes, such as roof design, drain size, as well as having fire prevention equipment on site. We also believe that Texas would be better served with a more frequent inspection regime. Still, we believe there is the potential to address these issues during rulemaking. If not, we would be interested in having this committee look at some specific hurricane/extreme rain events that occurred with storage tanks in the aftermath of Harvey.