



SIERRA CLUB

LONE STAR CHAPTER

To: Governor's Office and Legislative Budget Board

**From: Cyrus Reed, Conservation Director, Lone Star Chapter of the Sierra Club,
512-888-9411 cyrus.reed@sierraclub.org**

Alex Ortiz, Water Resources Specialist, alex.ortiz@sierraclub.org

September 26, 2022

The Sierra Club is pleased to offer these initial and brief comments on the TCEQ's 24-25 LAR. We would note first that because TCEQ is under sunset review, with decisions expected in November, there are several issues raised by the Sunset Advisory Commission staff and the public that may necessitate additional budgetary items. These include two of the exceptional items put forward by TCEQ regarding transparency and public information, but other issues - such as a required analysis of water rights and potential water available for cancellation - may also require additional staff and resources. However, we are concentrating our comments on the LAR presented by TCEQ in these initial comments, but may have additional ideas depending upon decisions made by Sunset Commissioners in November.

First, we are generally in support of the base budget request and the four EIRs, and in particular Items related to public information.

First, we fully support Item No. 2 (**Increase Access to Public Records**), which requests additional funding to increase public access to the agency's most requested agency records. The project would involve imaging, document review, redaction, and placement of the records on the TCEQ records online portal. In accordance with the law, confidential information must be redacted from the original agency records prior to making them available to the public. The Sunset Advisory Commission's Staff Report noted the need for improvements to the information the agency provides on its website. This exceptional item request would increase the number of records available to the public on the Internet. The project cost is estimated at \$3,573,590 in FY 2024 and \$3,573,590 in FY 2025.

Second, we fully support Item No. 4 (**Agency Website Usability Enhancements**) As part of the Sunset Commission's review in Major Issue 1, improvements to TCEQ's agency website were detailed to assist in usability and ease of access to data for the public, The public frequently has

trouble finding permits, applications and public meetings and this enhancement would make a more responsive agency. The agency is requesting \$5,659,289 in FY 2024 and \$618,789 in FY 2025 for these website enhancements. In addition, the agency is requesting 9.0 FTEs to maintain and develop content and ensure cross functionality.

The Sierra Club fully supports these two Exceptional Item Requests.

In addition to the base budget and these four exceptional items, we believe that TCEQ also needs enhancement in some aspects of water quality, air quality monitoring and modeling, cumulative impact assessments, and enforcement. We would also note that while TERP funding has been removed from the budget through the creation of a trust fund, and the Sierra Club supports the use of this funding through the trust fund, we believe that TCEQ should be directed through the budget to fully report on an annual basis its spending by programs as well as the reduction of pollutants achieved through those programs. This is an important budgetary rider that should be maintained. ***We would note that TCEQ failed to produce the annual report in December of 2021 as required according to this rider. A rider on annual reporting of TERP should be maintained as part of the budget.***

Water Quality

There are four additional issues in TCEQ's water programming that could be addressed through additional appropriations for FTEs in TCEQ's Water Quality Planning Division

(1) The Total Maximum Daily Load (TMDL) program faces an exceptional backlog. There are more than 500 water body segments listed as impaired that have not yet received a TMDL for their given impairment(s). TCEQ's obstacles to addressing this backlog are unclear. By granting more capacity to this program, TCEQ could and should be directed to perform an audit of outstanding TMDL projects and what factors have prevented their timely development. Moreover, TCEQ should establish clear and appropriate priority-setting criteria (with public input) that prioritizes water bodies on the impaired waters list for TMDL development based on: the severity of a threat to human health, the social vulnerability of impacted communities, the length of time a segment has been on the 303(d) list without TMDL development, and the severity of impact to endangered and threatened species

(2) Similarly to the TMDL program, TCEQ faces an unprecedented challenge related to ongoing studies and implementing standards regarding salinity gradients in Texas's bays and estuaries. TCEQ has been gathering data on Texas's salinity gradients since 2000. Unfortunately, no numeric standards for salinity gradients have been adopted "because of the high natural variability of salinity in estuarine systems, and because long-term studies by state agencies to assess estuarine salinities are still ongoing." The biggest threat to Texas coastal salinity is climate change. In fact, the 1997 Surface Water Quality Standards note that "weather is the dominant factor influencing salinity gradients..." and that protecting those gradients is integral to maintaining "balanced and desirable populations of estuarine dependent marine life." This includes some of Texas's most valuable coastal economies: recreational fishing, tourism, and

commercial fisheries. The State Climatologist's Office expects that the Texas coast will continue to see more frequent storms of more varied intensity — putting additional pressure on Texas's under-protected bays and estuaries. TCEQ likely needs additional FTEs to *rapidly* understand Texas's coastal salinity so that numeric salinity criteria are promptly set and sufficiently protect our coastal communities, economies, and wildlife.

(3) TCEQ will need significant support to participate in pilot projects set up by the Texas Produced Water Consortium. The Texas Produced Water Consortium's report found that there is significant study and standards development required prior to "verifying or recommending their application for beneficial use outside of the oil & gas industry." (p. 83) Moreover: "[u]nderstanding the composition of the produced water, development of new analytical methods for characterization of unknown constituents and the risks these constituents can pose are all important topics and active areas of research that the Consortium will continue to take into account in its future research and pilot work." (p. 84) Additional staff to supervise the establishment and study of standards (both for surface water quality and effluent) will be immediately needed if the state decides to press forward with pilot projects. Even if the state does not immediately begin pilot projects, it is likely that TCEQ will still need additional FTEs to study standards and site-specific water issues across the state.

(4) TCEQ recently adopted its 2022 Water Quality Standards as required by federal law. However in doing so, they rejected a requirement that its own staff had initially suggested - no discharge pre-production plastic standards. Since, TCEQ commissioners have discussed the potential to open rulemaking on creating a no-discharge standard for pre-production plastics. We believe that the TCEQ could be directed within the budget to assure they have the staff needed to complete this task.

Air Quality

EPA has recently ruled that four areas in Texas continue to violate federal air quality standards for ozone - San Antonio, El Paso, Dallas-Fort Worth and Houston-Brazoria-Galveston. Several other urban areas are in near non-attainment, while certain counties face non-attainment for sulfur dioxide emissions and ambient levels. Finally, parts of the Permian Basin are being assessed for contributing to high ozone levels in Eastern New Mexico.

Finally, it is worth noting that the EPA is expected to reassess both the ozone standard as well as the Particulate Matter (2.5 microns) standard which could mean other areas in Texas face air quality challenges.

The Sierra Club has long maintained that TCEQ should and must increase its monitoring network for air quality. While recent investments in mobile monitoring and additional monitoring along the coast have been helpful, there are still areas in Texas that lack basic ozone, HTS and SO₂ monitoring. Fortunately, there are additional federal monies available through the IRA and IIJA that could be utilized. Currently, as an example, the EPA has announced the possibility that areas of the Permian Basin could be declared non-attainment for ozone, but the fact of the

matter is it is very difficult to determine attainment levels because of the lack of adequate monitoring stations in Midland, Odessa, Pecos, Fort Stockton and other areas. The Sierra Club would support money for additional monitoring in rapidly industrializing areas like Corpus Christi and San Patricio, San Antonio, Houston and West Texas.

Similarly, currently TCEQ ignores federal laws and does not conduct a cumulative impact analysis in non-attainment areas when issuing new air permits, but they should. The budget is one tool to give TCEQ additional tools to conduct this type of analysis, especially in communities that have been overburdened by pollution.

Thus we recommend specific funding to increase monitoring and if needed personnel to assess compliance with federal air quality standards, as well as exposure of communities to local toxic air pollution. Again, we should consider the availability of federal funding.

Enforcement

While the TCEQ does have an established policy on enforcement, and does maintain an extensive monthly and annual report, they seem to lack a real strategy in terms of the number of inspections, and paper reviews of self-reported data. Sierra Club and other organizations have been involved in multiple enforcement cases through the citizen enforcement procedures of the Clean Air Act, and often found that TCEQ has failed to conduct the basic review of both their own inspections and reviews of industry data. We would suggest that through the budget process, TCEQ be given more specific direction to conduct inspections, but also enforcement reviews. It could be that TCEQ lacks sufficient staff and we would support additional staff in the compliance and enforcement division, but only with a clear strategic direction.

Cleanup of brownfields and superfund sites

We would note the large number of contaminated sites in Texas, including both federal and state superfund sites, and other brownfield areas that have been placed in voluntary cleanup programs. We would note again that some federal funding is available through the IIJA, and Texas should take advantage of this federal funding.

The Sierra Club appreciates the opportunity to make these brief comments.