January 30, 2019

Add Funding for TERP, LIRAP/LIP, Mobile Monitoring Equipment, Air Quality Planning Grants, Monitors for Permian-Basin & Strike out Rider 28

Dear Chair Nelson,

The Lone Star Chapter of the Sierra Club appreciates the opportunity to provide comments on the proposed budget for TCEQ. While we are supportive of many aspects of the proposed budget, we would note several areas where funding should be increased for TCEQ, either by directly funding these areas, or providing contingency measures should certain legislation pass.

While the State of Texas has made tremendous progress in reducing air pollution, at least three areas -- Houston, Dallas and San Antonio -- do not meet the health-based ozone standards, and we must use the resources and revenues to continue to assure Texas residents can breathe easy. And while TCEQ has adjusted their performance measures to set a goal to meet 100% of the areas in attainment for ground-level ozone by 2021 -- as required by EPA for marginal areas - this performance is only credible if the Legislature commits more resources to TERP, a replacement strategy for LIRAP/LIP, and planning grants for the areas having to come into compliance or that are close to non-compliance.
SOME CHANGES WE SUPPORT

We are supportive of the proposed slight increase in funding for field inspections and complaints, even as the federal government lowers monies for these activities. We would note in particular the need to address issues related to CAFOs, municipal solid waste facilities and aggregate facilities that have led to large-scale complaints and issues in the field.

Similarly, we want to highlight the important decision that the Legislature took in passing SB 1105 which authorized the transfer of the Used Oil Recycling Account into the Water Resources Management account, shoring up funding for these important water quality programs. We would also be supportive of increasing the maximum permitting fee for water permits from $2,000 to $5,000 in Rider 17. Unfortunately, this present budget keeps the maximum amount at $2,000. Additionally, the Legislature should consider raising the maximum air permits from $80,000 to a higher level such as $100,000, given the complex air permitting that is occurring along the Gulf Coast.
Rider 1 Performance Measure Targets for Air Quality Performance Measures: Are they realistic?

TCEQ is proposing to change several performance measures in the air quality aspect. First they are proposing to set a 2021 goal of making 100% of Texans to live in attainment areas for ozone. This is a worthy goal, given the need to meet EPA requirements that all marginal areas - which include Dallas-Fort Worth, Houston-Galveston-Brazoria and now San Antonio -- meet ozone standards by the end of 2021. However, the other indicators indicate that TCEQ is expecting to achieve less reductions of ozone-forming chemicals.

As an example, TCEQ is proposing that a goal of 3% reduction in stationary and mobile source pollution reductions be set for 2020 and 2021, a significant decrease from previous goals, and that the amount of reduction from TERP programs in daily tons of ozone reduced be changed from some 30 tons per year to around 20 tons per year. While these reductions in actual tons and ozone percentage may be more reflective of recent trends, they are clearly insufficient to meet the 100% goal of clean air areas. Part of these reductions seem to be based on the belief that achieving NOx reductions from TERP will increase to some $13,000 per ton, but if the Legislature were to invest the majority of money in the most cost-effective programs these per-ton costs could be reduced.

The Lone Star Chapter thus proposes that the legislature invest more in TERP, local programs and planning so that these goals can actually be achieved.

TERP

First, the Legislature must increase the TERP allocation and also include additional funding if the fees that fund TERP are extended. SB 1 sets the TERP budget at exactly what was allocated last legislative session, even though there will be more than $1.7 billion available in TERP Account 5071. In fact, during the last legislative session, TERP funds were reduced by $20 million per year due to actions on the House floor of representatives that were never restored during budget negotiations. Instead, the Legislature should recommit funding for TERP in 2020 and 2021. We would suggest additional funding of at least $150 million per year for additional TERP balances, or a contingency rider based on additional funds coming in assuming that TERP fees are extended beyond 2019 (or some combination). Thus the total amount should be set at $200 to $250 million per year for TERP programs rather than a paltry $77 million (see Chart).
We would also note that Rider 18 continues to allocate $3 million per year for monitoring equipment in North Central Texas, but it is unclear whether this number should be adjusted to reflect the actual costs.

We would suggest providing additional funding through TERP the Energy Systems Laboratory for its building energy code and related work, and support air quality planning grants to affected counties. TERP money can be used to support ESL’s work, and ESL’s budget from TERP has been cut for several years. Adding $1 million per year would help ESL bring areas into compliance with building energy codes, and support efforts to get credit for energy efficiency efforts with the EPA. Furthermore, some of the money could be used for local air quality planning grants, severely cut during the last legislative cycle.
LIRAP/LIP

Second, we recognize that last legislative session, Governor Abbott chose to line-item veto the LIP and LIRAP program, which was approximately $48,000,000 per year. It is important to recognize that LOCAL COMMUNITIES paid this money into the Clean Air Account 151 with the expectation that it would be spent on clean air programs benefiting their region, and the veto effectively prevented this from happening. The Legislature should add an exceptional item for a similar amount of money that was generated locally in the Dallas-Fort Worth, the Austin area and Houston area for clean air efforts. While we expect that legislation will be introduced that will make changes to the LIRAP and LIP that may allay some of the Governor’s concerns, we believe TCEQ should identify the money generated for these programs previously through local fees and make the Legislature and LBB aware of this revenue stream. Indeed, if money is not spent on these local programs to help clean up the air, there will be according to the TCEQ’s recent LAR (Page 4 of 23 in 6.E) more than $320,809,000 in Account 151 by the end of 2021, of which a significant amount was generated by fees intended for the LIP and LIRAP program. In other words, this fact - that money is being generated for clean air programs - should be acknowledged as an exceptional item. We believe that an exceptional item for at least $45 million per year for local programs should be added to TCEQ’s budget, perhaps subject to passing legislation that makes fixes to LIRAP/LIP.

Local Planning Efforts: Rider 4 and Rider 7

The proposed budget only includes in Rider 4, some $2.65 million per year for local funds to non-attainment areas, even though the number of non-attainment areas has increased from two areas to three areas. We would propose that the total be increased by $1 million per year to provide support to the San Antonio area as it now needs to engage in planning efforts to come into compliance over the next two years.

In addition, areas like Austin, Corpus Christi, San Antonio and Tyler-Longview were severely impacted by the Governor’s veto of air quality planning monies for near-non-attainment. As an example, the local utility in San Antonio --CPS Energy -- ended up using some funds for monitoring ozone levels when the Governor vetoed Rider 7, and several committees were disbanded. In Austin and Corpus, several monitors were discontinued, employees let go and planning efforts scaled back due to this abolition of needed funds.
The Sierra Club believes that either last session’s Rider 7 should be restored -- perhaps with some more specific guidelines on how the money can be used -- or Rider 18 should include money for air quality planning for affected counties through TERP. Thus, we would suggest an amount similar to what was in the previous LAR for air quality planning either as part of Rider 20, or as a separate rider similar to Rider 7 from last legislative session.

**Time To Eliminate Rider 25**

Rider 25 -- which prevents TCEQ from looking at the need for additional controls on oil and gas operations outside of the Barnett Shale -- is unnecessary. Statutorily, TCEQ must already look at real monitoring data before considering additional controls on oil and gas operations, and can’t rely on worst-case modeling. But a rider that states they can’t spend any money to look at the need for additional controls unless specifically authorized by the Legislature, is overkill. TCEQ should have the ability to consider the need for additional controls on oil and gas operations without interference from the legislature. We instead would propose that funding be provided to TCEQ to do the studies needed to see if there would be benefit in considering additional controls. It is time for our state to grow up, recognize that there are pollution impacts from oil and gas activities, and do the studies needed to consider what are cost-effective controls, rather than ignore real-world problems and protect the oil and gas industry.

**TCEQ’s Exceptional Items 2 and 4**

The Sierra Club supports additional money to inspect municipal solid waste facilities (about $932,000) and more money ($1,531,500) for monitoring equipment. Increasing funding for equipment needed for field investigations, particularly for areas impacted by disasters like those impacted by Harvey, would be tremendously valuable to communities. If this can be paid for as part of the supplemental bill (SB 500) we would be supportive. Indeed, we would suggest a more robust request, including the ability of TCEQ to be able to purchase a TAGA -- Trace Atmospheric Gas Analyzer (TAGA) -- mobile laboratory. TCEQ relied on such equipment from the EPA during Harvey, but having our own unit would be tremendously important for future weather or other disasters.

**Monitors in Permian Basin**

While TCEQ has some monitoring sites in Amarillo, Lubbock and San Angelo, Odessa and Big Spring, there is a lack of permanent monitors in
the Permian Basin, including the “newer” areas from Fort Stockton to Pecos. There are no ozone monitors, one SO2 monitor in Big Springs, one canister (toxics like benzene) in Odessa, and none of hydrogen sulfide monitors. But there should be. With so much development occurring, and so much reported emissions events in the Permian Basin, TCEQ is unable to respond to concerns of the community about pollution. We believe some money should be spent on additional monitors in the Midland/Odessa, Fort Stockton and Pecos areas.

The Lone Star Chapter of the Sierra Club appreciates the opportunity to make these comments on TCEQ’s proposed budget as part of SB 1.

Again, we would suggest changes to the TERP rider to include money for ESL administration and air quality planning, additional monies for a mobile laboratory, and monitoring in West Texas, and specific exceptional items for LIRAP-LIP and TERP revenues, totaling some $200 million per year in additional funding. If Texas is actually to comply with a goal of 100% compliance with ozone standards by 2021 we will need to actually spend money on local programs, local air quality planning and cost-effective TERP grants.

Sincerely,

Cyrus Reed
Lone Star Chapter, Sierra Club
Cyrus.reed@sierraclub.org

cc. The Honorable Greg Abbott
    The Honorable Dan Patrick