



SIERRA CLUB

LONE STAR CHAPTER

To: Governor's Office, Lt Governor's Office, Speaker's Office, Legislative Budget Board
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The Sierra Club is pleased to offer these initial and brief comments on the TCEQ's 26-27 LAR.

We would note that because the Legislature recently approved SB 1397 - the sunset bill for TCEQ - as well as some management directives, there are ongoing implementation of improvements regarding transparency and public information during the permitting issues. 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 for the most part on the LAR presented by TCEQ, as well as their exceptional item requests.

First, we are generally in support of the base budget request, including the new federal funding that has become available to the TCEQ through the IRA and other programs. We were pleased to see the state apply for funding available through the MERP (methane emissions reduction program) which will be important to reduce methane emissions and meet strict new methane rules approved by the government.

Second, we are very supportive of EI request no 1, which is related to asking for approximately \$27.9 million over the biennium to Enhance Permitting, Compliance and Public Engagement. Part of this request is related to the need for TCEQ to come up with a future State Implementation Plans for the new PM 2.5 standard, revise the State Implementation Plan for ozone as several areas have been bumped up, and create a new State Action Plan for methane, which now has a new NSPS released in December of 2023. Under the new methane rule, the state is expected to develop a State Plan by early 2026. There are also some new federal standards on drinking water which necessitate additional efforts by the agency. We assume that this exceptional item would also cover some funding to increase public access to the agency's most requested agency records and continuing to put items on-line.

However we wanted to note that in addition to money for staff and modeling as part of these new standards and SIP we absolutely will need additional monies for air quality monitoring. It is

unclear what is included from the LAR in terms of additional air monitoring in the capital budget of \$1.72 million for exceptional Item requests.

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, H₂S and SO₂ monitoring. Fortunately, there are additional federal monies available through the IRA and IIJA that could be utilized. 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.

In addition, we believe there may be a role for supporting an enhanced monitoring network for methane leaks modeled on some work being done in the Permian Basin. TCEQ should consider adding some money for a statewide methane monitoring network - a network of sensors designed to catch super-emitter events - which would assist in reducing emissions and in helping industry comply with the new methane rule.

Furthermore, PM 2.5 compliance will require specific funding around PM 2.5 speciation – we must assure that there is funding to help identify the causes of high PM levels in Houston, Dallas, Austin, San Antonio and the Valley, among others.

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 to defray state-funded costs.

Moreover, we would note that the Legislature should also consider boosting funding for local governmental entities that are facing both ozone non-attainment, but also potentially non-attainment for PM 2.5. Thus, we would support boosted funding for both Rider 4 and Rider 7 for non-attainment and near-non-attainment areas.

In addition to our support for EI Number 1, we are also supportive of EI No. 2 (\$39.5 million for salary increase and retention) and EI No. 3 (\$3.9 for Administrative Support). Stated simply, a well run state requires a well run agency with sufficient staff. We can not afford shortcuts in permitting both for the applicants but also to assure that those permits are protective of the public.

Second, we also support the exceptional item related to Exceptional Item No. 6 - RESTORE the Texas Coast. We believe given the continued existence of funding, TCEQ can play an important role in bringing new sustainable projects to the coast.

The Sierra Club fully supports these four Exceptional Item Requests (No 1, 2, 3 and 6).

In addition to the base budget and these four exceptional items, we believe that TCEQ also needs enhancement in some aspects of water quality, and as already mentioned, 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 do support maintenance of the annual reporting requirement, and flexibility of access to TERP monies for administrative purposes.

Remove Rider No. 26

Moreover, we believe that Rider No. 26 related to an oil and gas study of the Barnett Shale should be removed. It is outdated and frankly speaking prevents TCEQ from looking at additional controls outside the Barnett Shale that could be needed as part of the methane SIP. Texas statutes already have protections in place for the industry that would prevent additional regulation without study but to prevent TCEQ from conducting a study to do so is counter-intuitive and is setting policy in a budget rider. It must be removed.

Since 2011, TCEQ has included this rider and the legislature has approved this rider directing TCEQ not to spend money on any studies to potentially improve air quality standards beyond the protective rules for oil and gas operators in the Barnett Shale, developed by TCEQ over a decade ago. With new methane rules, it makes no sense to limit's TCEQ ability. In addition, because of the passage of SB 1134 in 2011, there are already statutory protections in place that make it difficult for TCEQ to extend the rules. Rider 26 assures that will never happen. The Text can be found below.

In a budget document that doesn't make sense and would prevent TCEQ from even exploring the need to update air quality rules to be protective in other areas of the state. It should be struck from the document.

The Commission on Environmental Quality (TCEQ) is not authorized to expend any funds appropriated in this Act to implement a rule that would extend 30 Texas Administrative Code, Section 106.352, Oil and Gas Handling Production Facilities, Rule Project No. 2010-018-106-PR ("Barnett Shale permit by rule") to oil and gas sources located outside the 23-county area of the Barnett Shale identified in subsection (a)(1) of the Barnett Shale permit by rule region ("Barnett Shale Region") until after August 31, 2025, and until after the agency conducts a study and files a report with the Legislature on the economic impact of extending the provisions of the Barnett Shale permit by rule to other areas of the state. Such a study may be funded through (1) grants, awards, or other gifts made to the TCEQ for that purpose; (2) funds directed to this study through supplemental environmental projects; or (3) by the use of the Texas Emissions Reduction Plan funds, as available.

The study shall:

- (a) Be based on data collected during the 18-month period following initial implementation of the Barnett Shale permit by rule in the Barnett Shale Region;*
- (b) Assess the technical feasibility and economic reasonableness of the implementation of the Barnett Shale permit by rule in geographic areas outside of the Barnett Shale Region, including an assessment of the economic impacts on the oil and gas industry and the Texas economy; and*

(c) Assess any other factors the TCEQ deems relevant.

Nothing in this rider shall be construed to limit the TCEQ's authority to develop a permit by rule or other authorization for planned maintenance, startup, and shutdown emissions from oil and gas sources located outside the Barnett Shale Region.

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 some 500 water body segments that have been listed as impaired. A significant number of these water bodies have yet to be addressed through a TMDL. 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 continue to 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 enable additional pilot studies. 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 and is now beginning development of the 2026 Water Quality Standards. However in adopting the 2022 standards, they rejected a requirement that its own staff had initially suggested - no discharge pre-production plastic standards. Since then, TCEQ commissioners have discussed the potential to open rulemaking on creating a no-discharge standard for pre-production plastics, but have thus far failed to act. We believe that the TCEQ could be directed within the budget to assure they have the staff needed to complete this task.

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