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Public comments filed online via <https://tceq.commentinput.com/> and by email to amy.browning@TCEQ.texas.gov.

Re: Public comments submitted on Rule Project Number 2024-003-039-LS, amendment of 30 TAC Chapter 39, Public Notice; and Chapter 55, Requests for Reconsideration and Contested Case Hearings

Attention Amy Browning:

The League of Women Voters Texas (LWVTX) files the following comments to the Texas Commission on Environmental Quality's ("TCEQ") Sunset Implementation of Sunset Bill, SB 1397 (88R) ("Sunset legislation"), based on a review of the Sunset Implementation chart issued by TCEQ (July 1, 2024), the applicable portions of the Sunset Report and Sunset Bill, and our participation in the TCEQ's public processes. Local League chapters and members throughout Texas have long been engaged in TCEQ rulemaking and efforts to improve the agency. We have long called for improvements in the TCEQ's public notices, transparency in agency policy changes and rulemaking, stronger enforcement, and increased information transparency within the agency. The League works for good government and promotes processes to get comments from the public and stakeholders to move forward on additional changes in guidance and rules. **The League works to make democracy work for all the people.**

List of recommendations:

1. Public Notices of all meetings and hearings can be improved with more public notice options.

Public Notices are necessary for citizens to learn about stakeholders seeking pre-construction permits to construct new plants and permits to perform major modifications at existing facilities. TCEQ faces immense challenges with the largest inventory of industrial plants in the U.S. and the nation's largest air permit program. With over a thousand large industrial plants in Texas and more than 1,000 plants with multiple facilities existing on multiple sites, informing the public with accessible public notices is a critical way to convey information to the public affected by large and complex industrial sites.

TCEQ needs to improve its public notice regulations in broadly circulated print and other media to allow the affected public more opportunities to find and read the TCEQ's public notices and plaques/billboards placed by companies and others seeking permits along fence lines, at entrances to the facilities, and in appropriate locations accessible to the public. Sometimes public notice is made in a small rural news source or a limited distribution of print news, making the source inaccessible to the public, and the public may never see it. Multiple notices should be required. The League opposes any steps by TCEQ to weaken the public notice regulations. Ways to improve public notices are by increasing electronic notices, such as by emails to the public, especially if the citizen has attended any previous TCEQ meetings, and notices to elected officials (city, county, state, and federal levels), since they also network with their constituents and can share these notices with them.

TCEQ can make the democratic process work better for all the people. The League opposes any efforts by TCEQ to make changes that would limit current notice requirements including newspaper publication, signposting at the proposed location of a facility, and centralized notice through TCEQ offices and other public city, county, and state posting locations.

2. Regarding public meetings relating to Permits, Contested Case Hearings, and Requests for Reconsideration.

a. Expand participation options and transparency of all information relating to the issues in the public meetings and hearings.

The League supports and requests that TCEQ make revisions to expand the meeting options for public meetings and contested case hearings. In-person meetings present an opportunity for personal, face-to-face interaction, and virtual meetings increase accessibility for those unable to attend in person. TCEQ needs to expand both options for all public meetings and contested case hearings. Meetings should be located in an easily accessible location with good lighting and access.

Public meetings should have more internet options available with easy access to getting the meetings' links. Internet access should work for all the people who want to participate. The TCEQ needs to allow video participation for all attendees and an open chat with a "Question and Answer" feature.

TCEQ needs to amend 30 TEX. ADMIN. CODE § 55.154(f), which now provides for an audio recording or written transcript of public meetings to be "made available" to the public, specifically requires that TCEQ produce slides, meeting audio recordings, written transcripts, and presentation materials on its website and/or by email immediately following each meeting's conclusion. This type of TCEQ transparency is critically needed in the same way that public meetings are held by the Chief Clerk's Office. The written testimony of the meetings should be actual, unedited transcripts and videos of the discussions and all presentations.

b. Standing Requirements

Standing requirements are one of the most critical elements for democracy to work for the public to participate in the complex and technical permitting processes at TCEQ. Over several decades, thousands of citizens across the state have sought standing as community members to participate in agency-permitting decisions. TCEQ needs to make improvements to its standing requirements.

TCEQ should conform “affected person” status requirements for contested case hearings with standing requirements applicable in federal court to ensure litigants’ full procedural rights to challenge permitting decisions. Currently, TCEQ has taken the position that a contested case hearing, or a denial of one, may be a prerequisite to appeal. See 30 TEX. ADMIN. CODE §§ 80.272(b), 55.211. Protestants to permitting decisions thus must exhaust these administrative remedies before filing in state court, or, for natural gas processing facilities in federal court. See 15 U.S.C. §§ 717b, 717r(d)(1) (providing original jurisdiction over challenges to state administrative agency permitting actions to the Court of Appeals).

Due to the TCEQ creating extra procedural barriers for a litigant to be considered an “affected person” who can pursue a matter in court, the TCEQ has restricted and even blocked Protestants’ access to litigate these issues. Compare 30 Tex. Admin. Code §§ 55.201, 55.203, and Tex. Water Code § 5.115 (permitting TCEQ to consider certain factors in determining whether a person has a justiciable interest), with *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560–61 (1992) (outlining the three elements of constitutional standing). Further, for the sake of efficiency, clarity, and legal certainty, litigants should have a uniform standard for justiciability in administrative hearings and courts alike. Accordingly, TCEQ should eliminate rules imposing more arduous standing requirements than those applicable to federal court proceedings.

c. Public Funding for Public Participation

The contested case hearing is a legal proceeding that often necessitates costly legal advice and technical experts; however, members of communities co-located with facilities seeking permitting are often lower-income or have large populations of people of color with limited access to legal resources. A series of environmental justice-Title VI civil rights complaints have been filed with the EPA Civil Rights Office over certain TCEQ practices that pose discriminatory treatment by the agency in low-income and people of color neighborhoods, with the TCEQ drafting new multi-lingual policies for public notices, permits, and related issues. TCEQ’s amendments should establish a fund by which community members may pay for necessary contested case costs.

d. Requests for Reconsideration

Requests for reconsideration need a stronger standard and improved guidelines. TCEQ should amend § 55.211 to provide guidelines for when a person not deemed an “affected person” is entitled to reconsideration and what the requestor must provide to meet such a standard.

F. Extending comment periods past the public meetings

SB 1397 requires certain permits to extend the time the public can make public comments from the end of the public meeting to 36 hours after the meeting; however, that provision only applies

to a small number of air quality permits that require a consolidated public notice. That time should be extended to a week to allow the public to respond. Twenty percent of the Texas population does not have access to the internet and must go to other locations with free WiFi and computers.

3. Public Availability of TPDES[1] Permit Information

The TCEQ implements and enforces the regulations on the Texas Pollutant Discharge Elimination System (TPDES) where toxic water pollutants are released by industrial plants. The TCEQ should expand public availability and notice for National Pollutant Discharge Elimination System (NPDES) permit applications and draft NPDES permits. The League recommends that the requested revisions to the public participation process be in addition to, and not instead of, existing requirements.

Public participation is a necessary part of the Clean Water Act. “Congress identified public participation rights as a critical means of advancing the goals of the Clean Water Act in its primary statement of the Act’s approach and philosophy.” *Environmental Defense Center, Inc. v. U.S. E.P.A.*, 344 F.3d 832, 856–57 (9th Cir. 2003).

Public participation is most important in the NPDES permitting process because those permits contain key, legally enforceable toxic chemical effluent limits that control pollution. The public needs to be able to participate, especially in a democratic form of government, because the affected citizens can be directly impacted by the effluent discharges particularly when violations occur where a plant exceeds its permitted effluent limits into the surrounding waters. Participation in the NPDES permitting process is the most important time for the public to speak to the TCEQ to communicate their concerns to the regulatory agency and for the regulator to consider more stringent effluent limits.

5. Public Availability of Federal Clean Air Act Air Permit Information

Federal Operating Permits are issued under Title V of the Clean Air Act, including the “applicable requirements” are listed in Title V permits and should be electronically available for everyone. Every person with internet access, even if in a public library, should be able to click on a source’s Title V Permit. They should be able to click on the applicable requirements, including the source’s applicable permits and certain applicable regulations. Other states have established this level of transparency for their Air permits, and Texans should have full access available by clicking on them.

Texas has many communities with cases of cumulative air pollution where two or more proximate industrial plants with large cumulative pollution impacts; however, many large combined impacts are typically ignored in the state and EPA air permitting reviews. These sites have negative impacts on public health and the environment for long periods. Some areas of Texas now have “Severe” air pollution that is preventable with adequate regulations and thorough oversight.

6. Additional Public Concerns

Every effort should be made to increase informed citizen participation at every level of the political process at TCEQ and the Texas State Legislature. Funding for the full TCEQ process should be available to meet complete access in a democracy for full citizen participation. Repeat violators should have consequences that lead to correcting problems quickly at sites with access to a hearing process to protect public health and the environment. TCEQ needs to ensure that its revisions are consistent with the EPA-TCEQ Memorandum of Agreement. In addition, the TCEQ should use the best available science in making decisions, which the agency has shown that it has not followed best practices in science leading to the endangerment of public health and the environment.

The League of Women Voters believes:

- That democratic government depends upon informed and active participation in government and requires that governmental bodies protect the citizen's right to know by giving adequate notice of proposed actions, holding open meetings, and making public records accessible.
- That efficient and economical government requires competent personnel, the clear assignment or responsibility, adequate financing, and coordination among the different agencies and levels of government.
- That responsible government should be responsive to the will of the people; that government should maintain an equitable and flexible system of taxation, promote the conservation and development of natural resources in the public interest, share in the solution of economic and social problems that affect the general welfare, promote a sound economy, and adopt domestic policies that facilitate the solution of international problems.
- That cooperation with other nations is essential in the search for solutions to world problems, and that the development of international organization and international law is imperative in the promotion of world peace.