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Please see attached.

PUBLICCITIZEN

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Submitted online via https://tceq.commentinput.com/ and by email to amy.browning@TCEQ.texas.gov.

August 2, 2024

Re: 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; Public Comment – Comments by Public Citizen

Public Citizen appreciates the opportunity to provide these comments. Our comments are based on the TCEQ Sunset bill, SB 1397 (88R), and on our extensive participation in the TCEQ Sunset review process.

This effort should begin by granting as true the very first assertion in the Sunset staff report: "TCEQ's Policies and Processes Lack Full Transparency and Opportunities for Meaningful Public Input, Generating Distrust and Confusion Among Members of the Public." The agency has considerable work to do to alleviate this distrust and confusion.

I. Public notice recommendations.

A. Do not limit or restrict current forms of notice.

The goal of public notice should be to reach as many people as possible who may be impacted by the proposed action. This goal is best served by providing as many routes of public notice as possible. To that end, we support additional electronic notices, including notice by email, and notice to relevant elected officials.

We do not support any changes that would limit current notice requirements including newspaper publication, sign posting at the proposed location of a facility, and centralized notice through TCEQ offices and other public posting locations. Although most people may be able to receive internet notice, there are still people who see notice through these other methods. Crucially, some of the types of notice, such as sign posting, will reach people who are not otherwise looking for notice of an action.

In the past, notices were available at the nearest public library to a proposed facility. City Halls were often used if there was no close library. We encourage the agency to resume this practice.

B. Standardize notices and clearly state specific due dates to eliminate confusion.

The notice process is confusing to all but the most experienced participants. The confusion begins with the electronic publication of the first notice, the Notice of Receipt of Application and Intent to Obtain Permit, or NORI.

Because the comment and contested case hearing request deadline is tied to the date of newspaper publication, the electronic publication of the NORI does not contain an actual due date for comments and requests. This is needlessly confusing. Perhaps the applicant could be required to publish notice within a set time of the electronic publication of the NORI, say 15 days. Then the comment deadline could be fixed at 45 days from the electronic publication date. That was a specific due date could be included in every notice published.

Furthermore, there are both 30-day and 15-day comment periods, as well as deadlines for public comment and deadlines for requesting a contested case hearing. Some standardization across these scenarios would be helpful.

Furthermore, it isn't clear whether or not a specific application will be eligible for a contested case hearing. The NORI doesn't do anything to dispel this confusion. Similar problems occur with the opportunity for a public meeting. It's also not stated that deadline extensions are commonly granted by request.

It isn't stated in the NORI how many community members must request a public meeting before the agency will grant one. It isn't stated that the agency is required to grant a public meeting if the local elected official requests one. All of this information would be useful to participants in the public process.

The second notice, the Notice of Application and Preliminary Decision, or NAPD, can further confuse things. It isn't clear to most people when a NAPD will be required and when the NORI and the NAPD will be consolidated. The NAPD, like the NORI, lacks detail about the actual deadline for comments and requests, and the practical thresholds for being granted public meetings and hearings.

C. Improve electronic access to notices.

Online notices are posted as links that lead directly to downloads. The links themselves are quite cumbersome.[1] Having a link that goes straight to a download limits one's ability to share it

[1] *For example, a recent notice link for Permit 72039:* https://www14.tceq.texas.gov/epic/eNotice/com/cAndDFmWS.cfc?method=downloadDocument&argData=0D8FEE8E7EBE6F0F8D9BACCB8EB0F1D2C061F1D0E5112150A5A414142485358010A042C040E0003465A5355525F6C6F6C6B626A696E646A703A113E34163C0E232F0E3C2F2863262D253034233D5B5A43184F5A5151444057415

electronically. A popup blocker will block download links. Being unable to view the notice in a web browser—being forced to download it—will necessarily limit who actually sees it. Notices should be posted on the TCEQ webpage and viewable as links to pdf documents, not direct downloads.[2]

Much more information could be included in the electronic notice. It could include the CN or RN numbers of the applicant and links to the Central Registry. It could include links to the permit or project number through the Commissioners Integrated Database, or the Central Registry. Creating electronic notices but failing to provide links to available electronic resources is a missed opportunity.

D. Improve virtual meeting options. Do not seek to replace in person meetings with virtual meetings.

Virtual-only or hybrid meetings became popular of necessity during the coronavirus pandemic. A set of best practices have emerged for effective virtual or hybrid meetings. These include allowing video and telephone participation, requiring presenters to be on video, allowing open chat, allowing questions by chat or by speaking, and providing slides and presentation materials after the fact. The TCEQ should follow these best practices in its meetings. For most of the pandemic, TCEQ conducted "online" meetings with no video option and no chat. The agency should endeavor to improve its virtual meeting conduct to meet the standard of the day.

Furthermore, during the Sunset review process, the agency advocated to eliminate in-person meetings in favor of virtual-only meetings. We, along with other advocates, fought hard to maintain the in-person option. We know from experience that in-person meetings are an opportunity for real, face-to-face interaction that cannot be equaled on virtual platforms.

In my personal experience attending public meetings on permit applications, much can be accomplished with a handshake and a conversation. Since we know that proposed facilities will be built no matter how strenuously the public objects, we should view the public process as an opportunity for the community to get to know their future neighbor, the permit applicant. A good relationship between the new permit holder and their neighbors can save headaches—and reduce the TCEQ's administrative burden—in the future.

7564D1E4A5E430D554E4604574D51475C00554C7A633D2B6F6D6B756064702267727460212 73F7B7E7D706A327D705F60747.

[2] *The notice for this meeting, for example, is a pdf viewable on TCEQ's webpage: https://www.tceq.texas.gov/downloads/agency/decisions/hearings/notices/2024/2024-07-15-16-18-zoom-update-stakeholder-meeting-notice-2024-00-039-ls-english.pdf.*

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We urge the agency to embrace the in-person meeting and never again seek to eliminate it. A well-run hybrid option can expand access to public meetings without diluting the opportunity for people who can attend in person.

II. Contested Case Hearings should expand access and opportunity for the public, not restrict it.

A. Standing requirements should align with federal standing criteria.

Texas should use the same standing criteria for contested case hearings as is used to establish federal standing. This makes sense as the contested case hearing process is part of the air permitting process, which Texas operates via delegation of authority from the Clean Air Act. This request has been made repeatedly, in the Sunset process and elsewhere, so there is no need to elaborate on it further.

B. The Commission should follow the ALJ's Recommendation.

Commissioners regularly vote to deny a permit even after an administrative law judge (ALJ) has recommended denial. At times commissioners assert that an ALJ decision was wrongly decided and remand it for a revised opinion. The commissioners should respect the ALJ's role in the process and abide by his or her recommendation.

C. The State should fund public participation in the CCH process.

In order for a member of the public to meaningfully participate in a contested case hearing, they need a lawyer and subject matter experts that can easily cost tens of thousands of dollars. The Office of Public Interest Counsel should have a fund that community members can apply to for money to hire attorneys and experts to participate in the CCH process.

III. Please provide details of progress on the community outreach provision of SB 1397.

Section 10 of SB 1397 provides:

> Sec. 5.136. COMMUNITY OUTREACH. The commission shall provide outreach and education to the public on participating in the permitting process under the air, waste, and water programs within the commission's jurisdiction.

This provision was added into the bill late in the process by Senator Borris Miles. Senator Miles was deeply involved in the TCEQ Sunset process and has always prioritized public involvement in TCEQ matters. This is appropriate, as he serves environmental justice communities that disproportionately play host to polluting industry and regularly experience pollution events, disasters, and other disturbances by industry of their daily life.

We urge the TCEQ to collaborate with Senator Miles and other lawmakers who have a demonstrated interest in public participation in TCEQ. We also encourage the agency to collaborate with advocacy groups and members of impacted communities when developing it's community outreach and education plan.

IV. Other miscellaneous comments.

A. The deadline for public comments should be extended beyond the public meeting in all cases.

In Section 4, SB 1397 holds open for 36-hours the public comment period and the contested case hearing request period for permit applications for which consolidated notice was issued. This should be expanded to all permits, not just those with consolidated notice.

This point was raised repeatedly by virtual and in person participants at the July 15 public meeting on this rulemaking. We urge TCEQ to extend the public comment period beyond the public meeting time in all possible cases. Many people know little to nothing about a proposed facility when they attend a public meeting. The information they learn at the meeting might very well prompt them to write a comment or request a contested case hearing. These interested members of the public should be afforded that opportunity.

B. Title VI compliance plans are moving in the right direction.

The various Title VI compliance plans[3], especially the language access plan and the public participation plan, are moving the agency in the right direction. Spanish language notices are becoming more common. We encourage the agency to use EPA's EJSCREEN or another tool to determine the languages spoken in communities near a proposed facility. There will be occasions when there is a significant number of impacted community members who speak Vietnamese, Chinese, Arabic, or various other languages. The TCEQ should establish clear criteria for when it will issue notices and other materials in other languages.

C. Public posting of permit applications.

It is not yet apparent whether TCEQ is posting electronic copies of permits online. We have previously requested that both draft and final permits be posted. It is very likely that impacted community members will want to view a draft permit application during the public comment process. We urge the agency to begin posting draft and final permits as soon as possible and to make those postings as easy to locate as possible. The public notice announcing a permit should include the web address where the draft permit can be viewed.

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[3] *See* *https://www.tceq.texas.gov/agency/decisions/participation/title-vi-compliance*.

D. There is confusion at public meetings about the Q&A portion and the on the record portion.

TCEQ conducts public meetings with two distinct parts: a question and answer session that is off the record and a public comment session that is on the record. The difference between these parts isn't apparent to members of the public. It is a regular occurrence at a public meeting that someone gets up and speaks to the issues during the Q&A portion only to be told, "Thank you, if you want your comments to be on the record, please say them again during the comment period." This can confuse and upset people who feel like they are not being heard.

We suggest the entire public meeting be on the record.

E. Oral comments should be rendered in writing.

Oral comments delivered at public meetings should be transcribed and entered into the written record. Automated transcription software such as otter.ai is inexpensive and 99% accurate. Without oral comments ending up in the written record, they are not directly responded to by TCEQ.

Thank you for the opportunity to provide these comments, if you wish to discuss our position further, I can be reached by email at ashelley@citizen.org or by phone at 512-477-1155.

Respectfully,

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Annalisa Peace, Executive Director
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