



OFFICE OF THE
HARRIS COUNTY ATTORNEY
CHRISTIAN D. MENELEE

September 8, 2025

Corey Bowling
Office of Legal Services
Texas Commission on Environmental Quality
P.O. Box 13087, Austin, Texas

Re: 2024-003-039-LS

Harris County Attorney's Office (HCAO) appreciates the opportunity to provide comment on the Texas Commission on Environmental Quality (TCEQ) proposed revisions to 30 TAC Chapter 39 and 55 and Corresponding Revisions to the State Implementation Plan. HCAO has previously commented on TCEQ's Sunset Report and Public Participation Plans (Exhibit A & Exhibit B). To the extent that those comments are relevant to this action, they are incorporated herein.

HCAO represents the interests of Harris County through the civil justice system to preserve access to clean air and water; ensure safe, healthy neighborhoods; protect consumers against fraud, exploitation, and other bad acts; and defend voting rights. The office provides legal counsel to Harris County government, elected officials, and employees, and represents them in civil lawsuits. Harris County has the unique mix of both a large population (the largest in Texas), and a large presence of industry. HCAO frequently engages in TCEQ's public participation process throughout the various stages of rulemakings and permitting actions, often through providing comments and requesting contested case hearings. As such, HCAO is well positioned to make recommendations to TCEQ both as a stakeholder itself and as an entity with close ties to the communities most affected by TCEQ decisions.

HCAO commends TCEQ for its efforts to update their public participation policies to ensure clarity, consistency, and transparency to stakeholders. HCAO makes several recommendations to assist in furthering these goals, including: requesting that physical, in-person access to permitting documents relevant to ongoing permitting actions be maintained, requesting more clarity regarding the exceptions to posting application materials online, and requesting specificity for the locations of online documents.

1. New Subchapter A. Definitions

Final Permit Action

HCAO recommends TCEQ add the definition of "Final Permit Action" to this new subsection. Permits go through several iterations and stages of review, and it is not always apparent to stakeholders at which point the "Final Permit Action" has transpired. HCAO understands that the

Final Permit Action might look different between different permit types, and HCAO suggests this section define what final permit action means for each type of permit.

Substantial Public Interest

HCAO requests that the term “substantial public interest” be defined or clarified in this section. The presence of significant or substantial public interest is used within the proposed revisions as a trigger for potential action. For example, page 176 of the proposal states “The executive director shall hold a public meeting on permit applications listed in (a)(1) – (2) and (6) of this section if requested by a member of the legislature who represents the general area where the facility is to be located, if there is *substantial public interest* in the proposed activity, or if requested by any interested person” (emphasis added). This term is nebulous and, while a subjective standard, would benefit from added guidance to ensure that the intent of this language is carried out. HCAO suggests that TCEQ add factors that might be weighed in making a determination regarding whether significant or substantial public interest is present.

Public Meeting vs. Public Hearing

HCAO also requests that the difference between a “public meeting” and “public hearing” is further clarified in this definition.

2. Subchapter H. Applicability and General Provisions

Large and overly burdensome file exemption

New language has been added for applications to require the executive director to make application materials available on the commission’s website for a certain amount of time. This requirement exempts materials that “would be overly burdensome or too large for posting on the commission’s website.”

HCAO asks that TCEQ clarify and define within the rule what “too large” for posting means in this context, perhaps in the definition section. There should be a tangible file size limit that triggers this exemption. The nebulous “too large” language within the rule is not workable without further clarification.

HCAO would also note that permit materials are often hundreds, if not thousands, of pages. This is not an irregularity, but the norm. Some permit materials also include graphs, maps, and other graphics, much of which pertain to the monitoring and testing requirements many TCEQ controlled permits have. Graphics can greatly add to the size of an electronic file, but are also the mechanisms by which stakeholders receive insight into crucial aspects of permit applications. It is then all the more important for transparency and consistency that there is tangible threshold for how large permitting materials can be before they are exempt from posting. HCAO suggests this limit be as large as technologically possible to accommodate for the reality of most permitting and application materials.

HCAO further asks that TCEQ provide explicit instructions and procedures for stakeholders to view permitting documents that are exempted from being posted online under this subsection. If the materials are not online, and some of the proposed rule language reduces the requirements for TCEQ to house physical documents, how are stakeholders to access this information? As HCAO has noted throughout various comments to TCEQ for years, it is often difficult for HCAO staff and agents to gain access to permitting materials at TCEQ offices. Page ten of this proposal even states “... TCEQ regional offices no longer keep hard copies of compliance files, and *many offices do not have viewing capabilities for the public.*” (emphasis added). HCAO understands this to mean that many regional offices do not provide public file access to stakeholders. If the permitting materials cannot be accessed at regional offices, and are “too large” to be posted online, TCEQ must provide a mechanism by which stakeholders can obtain these materials. Instructing stakeholders to file a Public Information Act (PIA) request is not sufficient because it often takes the maximum ten days (sometimes more) for TCEQ to provide responsive materials. This delay would unacceptably cut into stakeholders’ allotted comment period time, which is often 30 days or less. The purpose of this rulemaking is to provide greater transparency and ease in accessing certain documents and public participation, and not providing a mechanism for the viewing of documents exempt under this proposed subsection frustrates that purpose.

HCAO also asks TCEQ provide examples of what would constitute “overly burdensome” materials such that it would be exempt from posting, besides the mere size of the file. The size of the file is already accounted for in this exemption.

Online location of files

Several proposed amendments to this subsection require a statement that a copy of the administratively complete application can be found online at the commission’s website and that the location of the website must be included in the notice.

HCAO asks TCEQ to specify in the rule that the exact URL where the application can be found is required to be put in the text of notices. TCEQ’s website is very large and, as the Sunset Commission noted, often very difficult to navigate. Providing an exact URL ensures that the public can locate the materials without unnecessary hurdles.

Hard copies of files

Current §39.411(e)(14) is proposed to be deleted. The proposal asserts that this is because TCEQ regional offices no longer keep hard copies of compliance files, and many offices do not have viewing capabilities for the public. HCAO asks that this section remain in the rules and is not deleted. Further, HCAO does not recommend any rule be adopted that provides for stakeholders to have exclusively online access to documents, meetings, and other public participation procedures. Though TCEQ has made improvements to its website to make it more user-friendly, the website is currently still difficult to navigate. Many Texans do not have regular internet access or internet literacy skills. Often, permitted facilities are located in or near low resources communities, which would benefit from having access to materials both virtually and via physical access.

Further, the fact that regional offices have not recently been keeping hard copies of compliance histories and are not engaging in inclusive public participation practices is not reason to write lower standards into the rules. Regional offices should be required to house compliance history files *and* provide physical access to such documents upon request of stakeholders to support the ideals and goals of public participation. Subject to the limitations provided in the acts administered by the commission and the Public Information Act and copyright law, information collected, assembled, or maintained by the agency is public record open to inspection and copying during regular business hours. 30 Tex. Admin. Code § 1.5.

3. Subchapter N: Public Notice of Post-Closure Orders

HCAO commends TCEQ for proposing to make applications available electronically. As discussed above, HCAO recommends that the exact location and URL of relevant applications be made available to the public.

4. Subchapter P: Other Notice Requirements

The commission proposes to amend 39.1009(a) to delete the requirement to include in the public notice the location and phone number of a regional office to be contacted for information about accessing a public copy of the application because the commission posts a copy of the application on the commission's website, the TCEQ public education program provides customer service to the public regarding pending applications, and the location of a public copy of the application is not readily available to the individual who answers the phone at a region office. As discussed above, HCAO asserts that a copy of the application should be made physically available to the public.

HCAO appreciates the opportunity to provide comment on this matter. For further discussion, please contact Elizabeth Hidalgo at Elizabeth.hidalgo@harriscountytexas.gov.

/s/ Elizabeth Hidalgo

Elizabeth Hidalgo
Assistant County Attorney
Environmental Division



OFFICE OF THE
HARRIS COUNTY ATTORNEY
CHRISTIAN D. MENEFFEE

June 27, 2022

Ms. Jennifer Jones
Executive Director
Texas Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711

Re: Texas Commission on Environmental Quality Sunset Staff Report

Dear Ms. Jones,

The Office of the Harris County Attorney (“HCAO”) appreciates this opportunity to comment on the Texas Sunset Advisory Commission (“Sunset Commission”) Staff Report for the Texas Commission on Environmental Quality (“TCEQ”), referred to herein as the “Staff Report.” At a population of over 4.7 million residents,¹ Harris County is the most populous county in Texas and is home to the petrochemical capital of the nation, the Houston Ship Channel. Industry occupies much of the 1,778 square miles that comprise Harris County.

Texas law vests Harris County with authority to enforce environmental laws concurrently with the TCEQ.² This means that the TCEQ and Harris County enforce the same environmental statutes and rules in Harris County. Harris County’s Pollution Control Services Department (“PCS”) administers environmental enforcement for the County, and reviews and comments on TCEQ rules and permits. PCS was first established in 1953 – making it the first county pollution control agency in the United States. Since then, the HCAO has used available legal tools such as filing comments with the TCEQ and filing enforcement actions to redress environmental issues in Harris County. Based on these many years of experience, the HCAO submits the following comments.

I. Comments and Recommendations Related to the Staff Report

Staff Report Issue 1: TCEQ’s Policies and Processes Lack Full Transparency and Opportunities for Meaningful Public Input, Generating Distrust and Confusion Among Members of the Public.

¹ U.S. Census Bureau, 2019 Population Estimates.

² Tex. Water Code § 7.351; Tex. Health & Safety Code §§ 382.111, 382.113.

1.1 Clarify statute to require public meetings on permits to be held both before and after the issuance of the final draft permit.

Position: The HCAO agrees with this recommendation.

1.2 Direct the commission to vote in a public meeting on key foundational policy decisions that establish how staff approach permitting and other regulatory actions.

Position: The HCAO agrees with this recommendation.

Additional Comments:

- 1) The HCAO supports the use of a formalized advisory committee in the rulemaking process to provide an opportunity for communities, the regulated community, and co-regulators, like Harris County, to provide input and suggestions on TCEQ rules earlier in the rulemaking process. Harris County has participated in stakeholder meetings for pending rulemaking proceedings and found that these are helpful tools to raise concerns about rules. But learning about pending rulemaking and stakeholder opportunities usually requires signing-up for email listservs. Residents often express frustration after learning of these opportunities only by happenstance from neighbors or by navigating TCEQ's often complicated website. Further, this information is usually in English, thereby depriving access to the 20% of Harris County residents who do not speak English or do not speak it well. A more formal process, which would hopefully include improved public notice, would allow for enhanced public involvement.
- 2) If this recommendation is implemented, the HCAO recommends an assessment of any prior policies that need to be presented to the TCEQ Commissioners for review and decision – especially those that have unclear implementation and are a matter of concern to the public. An example is TCEQ's implementation of the state law requirement for TCEQ to develop and implement policies, by specific environmental media, to protect the public from cumulative risk in areas of concentrated operations.³ Cumulative impacts and cumulative risk in areas of concentrated operations are a concern in Harris County. As mentioned above, industry continues to proliferate throughout much of Harris County and many of the facilities within our borders are next to fenceline communities where black,

³³ Tex. Water Code §7.130

brown, and poor people bear the brunt pollution.⁴ How this requirement is implemented has a major impact on our population, especially the most vulnerable. It is unclear how the TCEQ implements this requirement to protect the public from cumulative risk. A recent open records request to the TCEQ asking for any policy, memorandum, or rule that implements this statutory requirement returned only TCEQ enforcement related policies. The HCAO acknowledges that these are unlikely TCEQ's only implementation strategies, but this highlights the confusion regarding major policy issues that exist even within TCEQ staff.

- 3) The HCAO recommends that the TCEQ provide all documentation on its website, including scientific studies, underlying data, and policy documents the TCEQ considers in its decision-making process and that it do so during the public comment period. The U.S. Environmental Protection Agency process for including supporting documentation through regulations.gov could be used as an example of the type of documents that are helpful in reviewing agency decisions. TCEQ's recent action on the Standard Air Permit for Concrete Batch Plants highlights this need. Many of the documents and data referenced during the TCEQ Commissioners meeting regarding the permit amendment were not easily accessible to the public, which is especially important during the comment period. In fact, there were no supporting documents made available during the comment period. This lack of information curtails the public's ability to review, understand, and provide comment on TCEQ decisions.

1.3 Direct TCEQ to develop a guidance document to explain how it uses the factors in rule to make affected person determinations.

Position: The HCAO agrees with this recommendation.

1.4 Direct TCEQ to adopt a policy guiding its rule review process to ensure that identified deficiencies in the rules are addressed.

Position: The HCAO agrees with this recommendation.

Additional Comments:

- 1) The HCAO recommends that the TCEQ be required to include an element of public participation in the quadrennial rule review process, including the ability to submit recommendations and comments to the TCEQ. Harris County is concerned that

⁴ Harris County has 2,927 chemical facilities reporting under the Emergency Planning and Community Right to Know Act (EPCRA)⁴, 1,734 of which have Extremely Hazardous Substances (EHS)⁴, and— the highest number of RMP Facilities in any County in the United States.

some of TCEQ's rules are outdated. Currently, the only state process for the public to seek amendment of a rule is by submission of a rulemaking petition. For example, most of the TCEQ rules regarding federally-required Reasonably Available Control Technology ("RACT") for the Houston-Galveston-Brazoria ozone nonattainment area haven't been updated in 15 years, even though new technologies exist. Charts noting the last amendments to TCEQ RACT rules for volatile organic compounds ("VOCs") and nitrous oxide ("NOx") are provided below. An improved quadrennial review process would have allowed Harris County to raise concerns with the TCEQ and seek improved technology requirements through a formalized state law process.

Table 1: TCEQ RACT rules for NOx with last amendment dates

30 TAC 117 (NOx RACT Rules)		
Subchapter	Description	Last Modified
SUBCHAPTER B	COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL SOURCES IN OZONE NONATTAINMENT AREAS	2007
SUBCHAPTER C	COMBUSTION CONTROL AT MAJOR UTILITY ELECTRIC GENERATION SOURCES IN OZONE NONATTAINMENT AREAS	2007
SUBCHAPTER D	COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS	2007
SUBCHAPTER E	MULTI-REGION COMBUSTION CONTROL	2007
SUBCHAPTER F	ACID MANUFACTURING	2007
Last Modified 2010 or Before		
Last Modified Between 2011-2019		
Modified After 2019		

Table 2: TCEQ RACT rules for VOC with last amendment dates

30 TAC 115 (VOC RACT Rules)		
Subchapter A: Definitions	Description	Last Modified
Rule 115.10	Definitions (10)	
Subchapter B: General Volatile Organic Compound Sources		
Division 1	Storage of Volatile Organic Compounds (112)	2020
Division 2	Vent Gas Control (121)	2015
Division 3	Water Separation (131)	1995
Division 4	Industrial Wastewater (140)	2003
Division 5	Municipal Solid Waste Landfills (152)	1994
Division 6	Batch Processes (160)	2001
Subchapter C: Volatile Organic Compound Transfer Operations		
Division 1	Loading and Unloading of Volatile Organic Compounds (211)	2003
Division 2*3	Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities (221)	2014
Division 3*3	Control of Volatile Organic Compound Leaks from Transport Vessels (221)	1999
Division 4*3	Stage II Vapor Recovery Definitions (240)	2013
Division 5*3	Control of Reid Vapor Pressure of Gasoline (252)	-
Subchapter D: Petroleum Refining and Petrochemical Processes		
Division 1	Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries (311)	2003
Division 2	Fugitive Emission Control in Petroleum Refineries in Gregg, Nueces, and Victoria Counties (322)	-
Division 3	Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas (352)	2010
Subchapter E: Solvent-Using Processes		
Division 1	Degreasing and Clean-Up Processes (412)	2004
Division 2	Surface Coating Processes (421)	2015
Division 3	Graphic Arts (Printing) by Flexographic and Rotogravure Processes (432)	2011
Division 4	Offset Lithographic Printing (442)	2015
Division 5	Control Requirements for Surface Coating Processes (450)	2015
Division 6	Industrial Cleaning Solvents (460)	2011
Division 7	Miscellaneous Industrial Adhesives (470)	2015
Last Modified 2010 or Before		
Last Modified Between 2011-2019		
Modified After 2019		

- 2) The HCAO recommends that the TCEQ include a process for local governments to have a stakeholder role in any formalized process for quadrennial rule review. Harris County, like all local governments, has the authority to inspect and enforce violations of TCEQ rules and permits for compliance with various state environmental statutes, and TCEQ rules and orders issued thereunder.

As mentioned above, PCS is the Harris County department designated to inspect facilities in Harris County for compliance with environmental quality laws and regulations, review permit applications, and submit comments to the TCEQ on permitting actions. PCS also works closely with the TCEQ's Houston regional office that as a matter of course refers environmental complaints, including nuisance complaints, from Harris County citizens to PCS. As a part of its mission, PCS conducts investigations, routine, and complaint, and, when appropriate, issues Violation Notices ("VNs") and refers cases to the Harris County Attorney's Office or District Attorney's Office for civil or criminal enforcement. Based on this experience with TCEQ regulated facilities and work in our communities, PCS comments or recommendations could aid the TCEQ evaluating the need to update a rule.

1.5 Direct TCEQ to review and update its website to improve accessibility and functionality.

Position: The HCAO agrees with this recommendation.

Additional Comments: The TCEQ has indicated it is in the process of improving the public's access to online resources. As a part of that process, the HCAO submits the following more specific requests for online resource needs:

- 1) The HCAO requests that the TCEQ make all permit application documents, including TCEQ Notices of Deficiency and any applicant responses or permit application amendments available on-line during the permitting process either through the TCEQ website, or by requiring permit applicants to post the information online. During the COVID-19 pandemic, the TCEQ has made great efforts to ensure the public had access to pending permit applications. With the knowledge that libraries and government offices were closed, the TCEQ provided much of the above requested information on its own website. If this is too burdensome for the TCEQ to continue providing this information on its website, the HCAO requests that legislature amend statutory public notice requirements so the TCEQ can require all permit applicants to independently provide the information online. TCEQ rules already require certain landfill applications to make all permitting information available online, and this would be an expansion of that requirement.⁵
- 2) The HCAO recommends that a complete copy of all permits be easily located on the TCEQ website. Search capabilities of TCEQ records online is extremely cumbersome and it is difficult to locate any particular document, much less a complete copy of a particular permit. It is often easier to submit an open records request than spend hours sorting through TCEQ databases attempting to locate a particular piece of information.
- 3) The HCAO recommends that the TCEQ provide copies of internal memorandum and policy documents in an online searchable database. Often the only way to obtain these documents is by submitting an open records request.
- 4) The HCAO recommends that TCEQ make greater efforts to provide meaningful participation to Limited English Proficient ("LEP") Texans. In response to a civil rights complaint, TCEQ has made progress in this area by, for example, translating

⁵ See 30 Texas Administrative Code § 330.57.

its penalty policy into Spanish and Vietnamese, translating agency Agenda notices, and hiring some bilingual staff. At stakeholder meetings, the TCEQ Chief Clerk's staff has made clear that greater access in certain circumstances would require additional resources, such as funding more multilingual staff and contracts for translation and interpretation services. Translation of the TCEQ complaint process into Spanish is a priority issue for Harris County LEP environmental justice communities. Advocates have repeatedly asked the agency to translate its online complaint portal and complaint tracker. While the agency recently published a useful brochure in Spanish regarding the complaint process, the online tool and tracker remain inaccessible to approximately 20% of Harris County residents who are LEP people.

Additional Recommendations to Improve Public Participation in TCEQ processes:

1) The HCAO requests that public notice requirements for TCEQ permit proceedings, rulemaking and other administrative process be updated. The current TCEQ process relies heavily on newspaper publication, posting signs at the proposed facility, and publication in the Texas Register to notify the public of permit applications.⁶ These processes were designed for a different era and fail to effectively provide the public with notice of pending permit applications and decisions. A recent example of the deficiencies in the process was the application by Avant Garde to operate under the Standard Permit for Concrete Batch Plants in Harris County.⁷ Concrete batch plant impacts on public health and the environment are a major concern for Harris County and its residents, and when made aware of a pending application, residents often file comments and seek a contested case hearing. Avant Garde proposed to construct a concrete batch plant across the street from an all-inclusive park, one of the few parks in the County that serves children with physical disabilities. The current public participation process for this type of application fails to notify residents so that they can become engaged in the process. Below is a timeline of the events for the Avant Garde application:

Submits Application for TCEQ Permit	December 17, 2021
Notice of Application to Public (final publication)	February 9, 2022
Notice of Public Meeting	March 15, 2022
First Hearing Request	April 1, 2022
Public Meeting	April 7, 2022
TCEQ issues registration	May 16, 2022

⁶ See generally, 30 Texas Administrative Code, Chapter 39

⁷ TCEQ Registration No. 167453.

According to the TCEQ Commissioner Integrated Database, 746 comments were submitted on the Avant Garde application. The overwhelming majority of these comments were submitted after April 6, 2022, the same day that a local leader held a press conference on the permit application.⁸ Prior to that date there was little community awareness of the pending application. The fact that over 700 comments were filed after the press conference shows how actively a community will engage with the TCEQ when fully aware of a pending permit application.

Accordingly, HCAO recommends the following to improve the public notice requirements:

- a) Notice by mail to all property owners, businesses, and residents within a set distance from the facility seeking a permit;
- b) Notice by posting at nearby schools and community centers; and
- c) Provide a mechanism for citizens concerned about pending applications in their area, perhaps by census tract, to access the Chief Clerk's mailing lists by registering for email and/or notices by mail for all applications within the area.

2) TCEQ rules regarding opportunities for contested case hearings and comment periods vary greatly between permit types. In the HCAO's experience, the applicable statutes and rules are cumbersome and extremely difficult for community members to decipher and contribute to public distrust with the TCEQ. For instance, in order to seek a contested case hearing in certain air permits a person must file a written request for a contested case hearing within 30 days of the publication of the Notice of Receipt of Application and Intent to Obtain a Permit ("NORI").⁹ In contrast, the deadline to file a contested case hearing in other permits is tied to the TCEQ decision letter.¹⁰ Once again, the Avant Garde permit proceeding discussed above provides an example. The deadline to seek a contested case hearing ran on March 11, 2022 – four days before the notice of the public meeting. The first request for a contested case hearing was submitted to the TCEQ on April 1, 2022, and during the public meeting numerous residents asked for a contested case hearing. The TCEQ took no steps to inform the public that this deadline had lapsed. The community only became aware that the deadline had lapsed after TCEQ issued the response to comments and issued the permit. The community made several calls to the TCEQ and received different answers regarding the ability to seek a contested case hearing, further adding to the confusion. Understandably, this created substantial anger in the community once they realized the deadline passed. The HCAO recommends the TCEQ provide

⁸ Only 26 comments were filed with the TCEQ on the Application prior to April 6.

⁹ Tex. Health & Safety Code § 382.056(g).

¹⁰ *Id.*, Texas Water Code § 5.556, *See* TCEQ guidance:

<https://www.tceq.texas.gov/downloads/publications/gi/public-participation-in-permitting-gi-445.pdf>

language in the notice to inform residents not only about the deadline for contested case hearing and comment periods but include language indicating that if no hearing requests are made in response to the NORI, the public will lose the right to do so later.

3) The HCAO recommends that the TCEQ provide information on the Commissioner Integrated Database indicating when comment periods end. Often the deadline to file a comment will end 30 days after notice in the newspaper. However, only the TCEQ and the applicant are aware of the final newspaper publication date. Including this date in the system will better inform the public of the comment submission deadline.

Staff Report Issue 2: TCEQ's Compliance Monitoring and Enforcement Processes Need Improvements to Consistently and Equitably Hold Regulated Entities Accountable.

2.1 Require TCEQ's compliance history rating formula to consider all evidence of noncompliance while decreasing the current emphasis on site complexity and direct the agency to regularly update compliance history ratings.

Position: The HCAO agrees with this recommendation.

2.2 Require the TCEQ to consider all violations when classifying an entity as a repeat violator

Position: The HCAO agrees with this recommendation.

Additional Recommendation:

As stated above, PCS conducts investigations, routine and complaint, to determine compliance with Texas law and TCEQ rules and permits. If PCS finds violations, it may issue VNs pursuant to the Texas Clean Air Act, Texas Solid Waste Disposal Act, the Texas Water Code and the rules and permits issued thereunder. However, the vast majority of these violations are not included in TCEQ compliance history calculations because the only violations included in the TCEQ Compliance History ("CH") scores are those that result in civil litigation and are resolved through a final judgment.¹¹ Therefore, the majority of PCS's documented violations of TCEQ rules are not included in TCEQ CH scores.

Violations resulting from community complaints forwarded to PCS by the TCEQ illustrate the information gap. In the last 5 years, TCEQ forwarded 1,125 complaints to PCS. In response, PCS conducted complaint investigations which resulted in the issuance of 172 VNs for violations of TCEQ rules. This includes violations of 30 Tex. Administrative

¹¹ Civil enforcement is pursued by Harris County according to statutory authority in Texas Water Code § 7.351

Code § 101.4, which prohibits “the discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.” Of these violations, a small subset resulted in civil litigation and were incorporated into CH scores. Therefore, the vast majority of these VNs were not included in TCEQ compliance history scores. The result is that documented off-site impacts are not included in TCEQ permitting and enforcement determinations even when either PCS or TCEQ could have conducted an enforcement action. Accordingly, HCAO requests that the TCEQ evaluate how it might better include these violations in CH scores. Otherwise, TCEQ is making regulatory decisions without the benefit of the complete compliance status at a facility.

2.3 Require TCEQ regulated entities with temporary or open-ended permits to annually conform their operational status.

Position: The HCAO agrees with this recommendation.

2.4 Direct TCEQ to reclassify recordkeeping violations based on the potential risk and severity of the violation.

Position: The HCAO agrees with this recommendation.

2.5 Direct TCEQ to develop and implement clear guidance to evaluate affirmative defense request for air emissions.

Position: The HCAO agrees with this recommendation.

Additional Recommendation: In its response to the Staff Report, the TCEQ noted that it previously reviewed its emission event investigative processes and “created a centralized emission event review section to review all reported emission events.” Further, the TCEQ stated it will “ensure that there is clear guidance for evaluating affirmative defense claims and an agency-wide approach to provide transparent and consistent evaluations.” The HCAO request that any policy or guidance document used to evaluate affirmative defense claims be publicly available on TCEQ’s website.

2.6 Direct TCEQ to modify its approach to nuisance complaints to make better use of the agency’s investigative resources.

Position: The HCAO agrees with this recommendation.

Staff Report Issue 4: TCEQ and the Office of Public Interest Counsel (“OPIC”) Lack Certain Transparent and Efficient Processes for OPIC to More Effectively Represent the Public’s Interest.

3.1 Direct OPIC to consider developing and using umbrella contacts to procure expert assistance.

Position: The HCAO agrees with this recommendation.

Additional Recommendation: The HCAO recommends that the Legislature ensure that OPIC is provided with sufficient funding to retain and fully utilize expert assistance that OPIC deems appropriate to participate in permit, enforcement, and rulemaking matters.

3.2 Direct TCEQ Commissions to take formal action on OPIC’s rulemaking recommendations.

Position: The HCAO agrees with this recommendation.

II. Additional Recommendations

- 1) TCEQ will now require a plain language summary of each proposed permit action. Consistent with community demands, the HCAO asks that TCEQ require applicants to explain the short- and long-term health effects of the pollutants that are regulated by the proposed permit.
- 2) The Texas Water Code provides for a civil penalty for violations of TCEQ rules, permits and orders related to the Texas Solid Waste Disposal Act, the Texas Clean Air Act, and Chapter 26 of the Texas Water Code are assessed at no less than \$50 nor greater than \$25,000 per day per violation.¹² The penalties at their current thresholds were adopted in 1997 – 25 years ago. Factoring in inflation – it is cheaper to violate TCEQ rules and orders today that it was 20 years ago. In order to make sure that there is sufficient penalty power to deter violations and ensure companies are not afforded an economic benefit for noncompliance, HCAO asks the legislature to consider increasing the statutory maximum.
- 3) Harris County, located in close proximity to the Gulf of Mexico, is a hurricane and flood-prone. Harris County has about 2,500 miles of channels and has classified 22

¹² Texas Water Code § 7.102

major watersheds that drain into four major waterways.¹³ These identified watersheds include creeks and bayous where water levels can rise and fall quickly.¹⁴ A major flooding event happens somewhere in Harris County about every two years. The public health and safety risk associated with these extreme weather events is compounded by industrial plants spread out throughout Harris County.

The 2017 Arkema incident, a notable reactive chemical incident during Hurricane Harvey, was a weather-related disaster. This incident could have been prevented or even mitigated if the operator had been required to take additional precautions to prevent such incidences. However, the Arkema incident was not the only incident to occur during Hurricane Harvey. According to the U.S. Chemical Safety and Hazard Investigation Board (“CSB”), data from the National Response Center indicated that 201 incidents involving releases to the environment were in some way caused by Hurricane Harvey.¹⁵ Some of the largest releases to the environment were from large storage tanks. Examples of those releases are a 461,000-gallon release gasoline, and a 440-hour event at Valero that emitted over 200,000 pounds of pollutants. Modeling from the SSPEED Center at Rice University estimates that should a small category 4 storm hit the ship channel, “upwards of 2,200 petroleum and chemical storage tanks would experience some form of inundation, potentially releasing updates of 90 million gallons of oil and hazardous substances.”¹⁶ Given these risks, the HCAO requests that the legislature require facilities to evaluate risks from extreme weather events and be required to implement measures to mitigate those risks.

We appreciate your consideration of these comments and recommendations. If you have any questions, please contact me at sarah.utley@harriscountytexas.gov or (713) 274-5124.

Sincerely,

CHRISTIAN D. MENEFE
Harris County Attorney

JONATHAN G. C. FOMBONNE
First Assistant County Attorney

TIFFANY S. BINGHAM

¹³ Harris County Flood Control District, More information available at: <https://www.hcfd.org/About/Flooding-and-Floodplains/Drainage-Network>

¹⁴ SSPEED Center, Houston A Year After Harvey: Houston We Are and Where we Need to Be (SSPEED Center After Harvey Report), Rice University’s Baker Institute for Public Policy, Jam Blackburn and Phil Bedient, PhD., (August 2018). Available at: https://8ed4fb93-0a65-4904-a19c-83610559d0e9.filesusr.com/ugd/d29356_e091a002a4044214a943df4d5d2100df.pdf

¹⁵ Arkema CSB Report, Page 124.

¹⁶ SSPEED Center After Harvey Report at Page 34

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By: 

Sarah Jane Utley
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OFFICE OF THE
HARRIS COUNTY ATTORNEY
CHRISTIAN D. MENEFE

August 24, 2023

Amy Browning
TCEQ Environmental Law Division
P.O BOX 13086, MC-173
Austin, Texas 78711

Re: Harris County Attorney's Office Comment on the Implementation of the Disability Nondiscrimination Plan, Public Participation Plan, and Language Access Plan

Dear Ms. Browning:

Harris County Attorney's Office (HCA) appreciates the opportunity to comment on the implementation of the Disability Nondiscrimination Plan, Public Participation Plan, and Language Access Plan (the Plans). HCA commends the work the Texas Commission on Environmental Quality (TCEQ) has done to improve public access and participation in TCEQ actions and the permitting process. HCA writes this comment to offer recommendations to improve the Plans and public engagement with TCEQ more broadly.

Public Participation

1) Public Participation Plan Document

The "TCEQ Public Participation Plan" summary states that TCEQ aims to "promote respectful and meaningful dialogue between community members, organizations, industry, and TCEQ." HCA asks that local government is included in this goal. Local governments are often best positioned to assist TCEQ in identifying underserved communities, as we provide a broader range of services and spend time engaging the communities we serve.

Further, the Public Participation Plan summary states that TCEQ aims to identify underserved communities and develop tailored communication plans that best serve their specific cultural and logistical needs. HCA asks for clarification on what this might entail and for an example of what tailoring communication to specific cultural needs means, apart from language access.

2) Comment Process

HCA has several suggestions to improve the public comment process, outlined below. HCA asks for a streamlined method to submit public comment. Currently, the TCEQ utilizes a variety of methods to collect comments, which can add to public confusion. Commenters might be directed to submit via online portals at <https://www14.tceq.texas.gov/epic/eComment/> or

<https://tceq.commentinput.com/comment/search>, depending on the action open for comment. However, this option is not available for all actions, and comments must be submitted by email or mail directly to the chief clerk, another TCEQ division or employee, the general law division, or to amda@tceq.texas.gov, depending on the action. Comments can also be faxed to the TCEQ.

HCA requests that TCEQ create a centralized webpage to submit all comments. For postal submissions, HCA asks TCEQ to provide a single employee, division, or office in which the public can address all comments to. A more uniform approach to comment submission would reduce confusion and error and would ensure that the public knows where they can submit comments to in the event the TCEQ inadvertently omits that information in a notice.

HCA requests that the public be provided more consistent clarity on when a comment period ends and when the deadline to file for a contested case hearing is. Currently, the burden is often put on the public and stakeholders to research when a deadline might be. TCEQ rules regarding opportunities for contested case hearings and comment periods vary greatly between various types of TCEQ actions and permitting processes. The applicable statutes and rules are cumbersome, difficult for community members to decipher, and contribute to public distrust of the TCEQ. For instance, in order to seek a contested case hearing for certain air permits a person must file a written request for a contested case hearing within 30 days of the publication of the Notice of Receipt of Application and Intent to Obtain a Permit (NORI). In contrast, the deadline to file a contested case hearing in other permits, such as a Texas Pollutant Discharge Elimination System (TPDES) permit application, is tied to the TCEQ decision letter.

Additionally, comment submittal deadlines on permitting actions are often articulated in notices as being a specified number of days after the publication date. However, the notices include issuance dates, not publication dates, and a notice can be published weeks after the issuance dates. Therefore, if an interested member of the public did not access the notice via newspaper publication, potentially through a mailing list, the library, or online as is often the case, they would not know the deadline for comment without engaging in some research. This extra hurdle to comment might deter some from participating.

The HCA recommends the TCEQ require applicants to include language in the notice informing the public about the specific deadline for contested case hearings and comment periods, in addition to directing the public to an online resource or webpage where information on current deadlines is available.

Additionally, HCA also asks all supporting documents relied on by the TCEQ in rulemakings and other internal actions up for public comment be made available online.

3) Permit Notice

HCA recommends TCEQ implement a mechanism or plan to ensure notices put forth by permit applicants are accurate and provide adequate notice. Currently, there appears to be little oversight and TCEQ relies on industry to self-regulate. However, HCA has identified notices for varying types of permits and actions that contain inaccurate information and / or fails to meet relevant notice requirements.

Without more active TCEQ oversight, the burden is then placed on the public and other stakeholders to look for and raise complaints about issues within notices. In HCA's recent experience, these issues can be significant and create a barrier to public participation. For example, Harris County comment letters have noted an incorrect facility address in a public notice and a failure to provide an application in a public place. The PIP requirements are a great improvement, but the helpfulness of filling out a PIP is limited if TCEQ is not ensuring the information listed is accurate or correctly implemented by permit applicants.

While HCA appreciates occasional mistakes and clerical errors are inevitable, the frequency in which consequential inaccuracies occur can be frustrating and undermine public trust in the TCEQ. A higher level of agency oversight to ensure notices prepared by permit applicants are correct could help build public trust and ensure the public's right to participate in the permitting process is protected.

Additionally, HCA asks that long- and short-term health effects associated with the pollutants that are regulated by the proposed permit are listed in their short summaries.

4) Permit Application Availability

Effective September 1, 2023, the TCEQ must post permit applications and associated materials on its website. HCA asks that in addition to online availability, TCEQ continue to require applicants to provide a physical copy of their application packet in a public space, such as a library, in the relevant county. HCA believes it is important to provide all Harris County residents with uncomplicated access to applications, including those residents with limited internet access or computer literacy. At the very least, HCA asks physical copies of applications be made available to the public at TCEQ regional offices.

5) Public Involvement Plan (PIP)

Forgoing a PIP

The Public Participation Plan states "Each TCEQ program office will follow its own statutory or regulatory public notice requirements in addition to the PIP. If statutory or regulatory requirements for a specific activity would make a PIP impractical (e.g., a quick approval timeframe), the TCEQ program office should note in writing such special circumstances."

HCA requests clarification on what this sentence indicates and for examples of circumstances that might qualify for a "quick approval timeframe." Who would deem a PIP impractical? What are the criteria for "impractical?" Would this designation be something the applicant would need to apply for? What happens once this designation is given? Will the applicant never have to complete a PIP?

Significant Public Interest

In order for a PIP to be necessary, a permitting action must 1) require public notice 2) be “considered to have significant public interest” and 3) be located in one of several enumerated geographic locations.¹ When filling out the secondary screening portion of the PIP to determine whether completing the full PIP is necessary, applicants are asked to provide a brief explanation as to why the PIP is not applicable to their application if all three of the above criteria are not met.

HCA asks TCEQ to define or lay out factors to determine the threshold for “significant public interest.” Currently, it appears sufficient for an applicant to simply put that there historically hasn’t been public interest in related actions, therefore there will not be any currently. For example, in a recent application by Equistar Chemicals Channelview Complex for TPDES WQ0000391000, applicant simply states “Previous TPDES applications have not involved significant public interest” in the “brief explanation” box.

In the document entitled “Instructions for Completing a Public Involvement Plan Form for Permit and Registration Applications (TCEQ-20960)”, TCEQ suggests that applicants consider the following when contemplating whether a permit action is considered to have significant public interest: 1) If the new permit or activity is for an industry which typically has significant public interest when located in the proposed area and 2) If past permitting actions for this location received significant public interest.²

These considerations are very vague, do not either explain what “significant public interest” means or provide relevant examples, and relies on the past *absence* (which is very difficult to prove or provide evidence for) of unspecified actions of a community to determine whether their heightened involvement should be considered.

The logic behind this guidance is flawed. A lack of robust notice (that the PIP is meant to promote) can often lead to a lack of public interest. Notice for permitting actions has been historically lacking for certain communities, such as those with high numbers of limited English proficiency individuals, and it’s likely there might have been more significant public interest for certain actions in those communities had there been a higher level of notice. Depriving communities of the benefits of a PIP simply because they were not put on notice for a related action in the past is counterintuitive to the goals of the PIP. Additionally, community priorities can change over time. Therefore, it does not logically follow that there would not be significant interest in a permitting action in the future because a community was not interested in a related permitting action in the past, and that community therefore should be deprived of the benefits of a PIP.

HCA asks TCEQ to put forth guidance with non-retroactive factors for applicants to consider when determining “significant public interest” for secondary PIP screenings and to provide examples of situations indicating “significant public interest” to look for. HCA suggests considering whether the facility is sited in a community that is disproportionately over-burdened by industry, whether

¹ Public Involvement Plan Form for Permit and Registration Applications, TCEQ.

² Instructions for Completing a Public Involvement Plan Form for Permit and Registration Applications (TCEQ-20960), 5 (2022) <https://www.tceq.texas.gov/downloads/agency/decisions/hearings/environmental-equity/instructions-for-pip-form-tceq-20960.pdf>.

the facility or facilities in the area has experienced notable compliance issues, whether the nearby community has experienced an industry-related disaster, whether the facility is sited near a location of social, cultural, or recreational interest, or whether there are neighborhood associations or community-based groups in the area that have a history of advocacy or interest in local environmental and industrial issues.

6) Virtual Meetings

TCEQ often utilizes virtual meetings with no in-person option. HCA asks that in-person options are routinely available for public meetings and hearings, especially those covering topics of significant community and stakeholder interest.

Unfortunately, virtual TCEQ meetings are often plagued with technical issues that can bar effective public participation. For example, at the Stakeholder Meeting regarding the Plans on June 20, 2023, it was continually difficult for the public to hear TCEQ employees during the meeting. A more egregious example occurred at a hybrid public hearing for the Air Quality Standard Permit for Concrete Batch Plants, where technical issues occurred resulting in difficulty hearing TCEQ employees at the in-person meeting and the inability for online participants to participate, despite being noticed they would be able to do so. Only one online participant was able to provide oral comment and did so by calling an acquaintance that was attending in-person and having that acquaintance hold their phone up to the microphone. Online attendees were only able to ask questions via chat.

The value of public hearings is in the opportunity for people to provide oral comment and ask questions. This opportunity is crucial to the public participation process, especially for those with low literacy skills who might find providing written comment challenging. 1 in every 3 adults in Harris County has low functional literacy,³ and it is thus imperative that live dialogue and participation opportunities are available to them during the public participation process.

Virtual meeting options can be of great value, especially to home-bound residents and residents with limited transportation options. However, virtual meetings are unproductive if they do not afford or limit public participation opportunities. If TCEQ is going to continue to utilize virtual options, which HCA encourages TCEQ to do, TCEQ must do everything to ensure incidents like the public meeting on Air Quality Standard Permit for Concrete Batch Plants do not occur. Additionally, in-person options should be available for public meetings and hearings to facilitate participation, especially in the event of technical issues, and to ensure community members with limited computer access are able to participate.

Similarly, HCA asks that if fully virtual meetings are utilized, TCEQ employees conducting the meeting be in-office or at a TCEQ facility equipped with professional equipment, such as a microphone, and with technical support staff available.

³ *Houston's Adult Literacy Blueprint*, Mayor's Office for Adult Literacy, <https://houstontx.gov/adultliteracyblueprint/#:~:text=1%20in%20every%203%20adults,their%20family%2C%20or%20in%20society> (last visited Aug. 10, 2023).

7) Complaints

Effective September 1, 2023, TCEQ will have the discretion to not investigate certain complaints, including complaints that are “repetitious or redundant of other complaints concerning the same site investigated in the preceding 12 months that were not substantiated by the [TCEQ]” or “have been filed by a complainant who has filed in the preceding seven years at least five complaints that were not substantiated by the [TCEQ]”.⁴

HCA asks that TCEQ use its discretion to investigate all complaints. In HCA’s experience, detection of an environmental hazard can sometimes take multiple attempts due to their frequently evanescent nature, as is often the case with odors or soot. Additionally, community members at the fence-line of industry in Harris County often face multiple, simultaneous environmental hazards. Therefore, HCA believes that limiting the number of investigated complaints based on frequency will chill public participation, particularly for fence-line and environmental justice (EJ) communities. HCA asks TCEQ to use their discretion to continue to investigate all complaints.

8) Faulty Links

HCA would like to flag that Harris County employees have received seemingly faulty links for Commissioners’ Agendas from TCEQ emails that route to pages that look like the following:

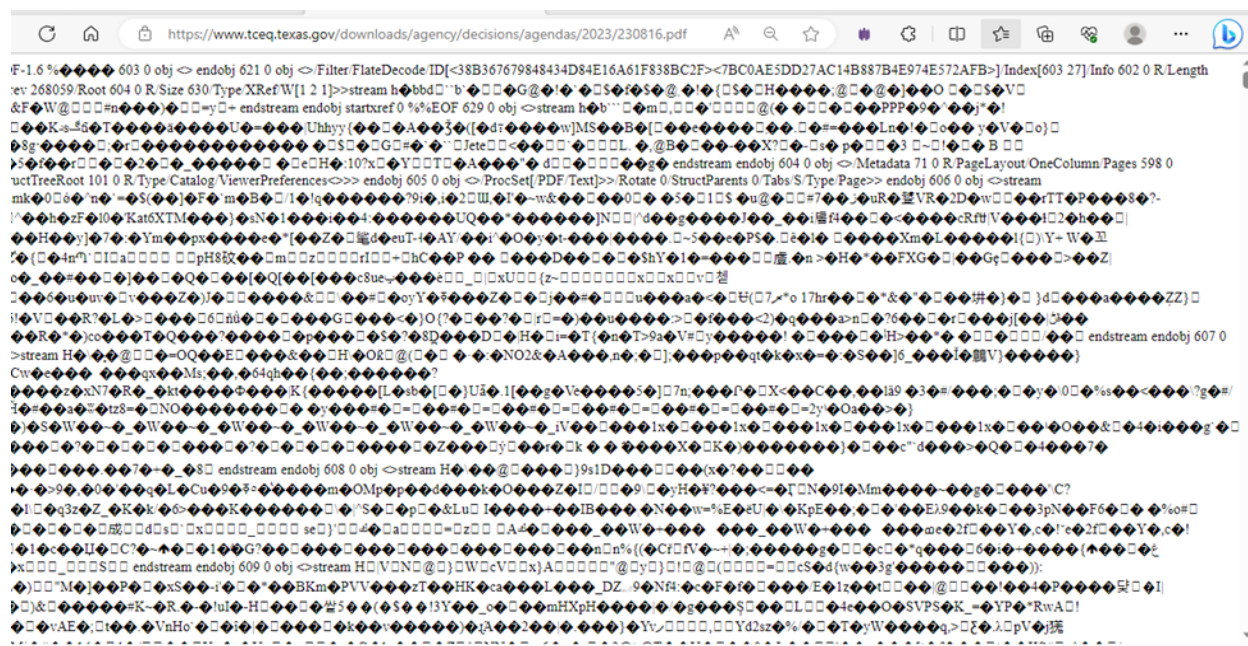


Image A: Screenshot taken on 8:35 a.m. on 7/31/2023 of webpage linked on a TCEQ email entitled “Draft Aug. 16, 2023 Commissioners' Agenda” sent out on 7/28/2023.

This issue has occurred on 7/28/23, 7/12/23, 6/20/23, 5/25/23, 5/2/23, and 4/21/23. These links will route to a faulty webpage for a few days then will eventually route to the correct agenda. For

⁴ S.B. 471, 88th Reg. Sess. (Tex. 2023).

example, the link associated with the above screenshot displayed that image from at least 7/28 to 7/31. As of 8/11/2023, the error is no longer present.

Language Access Plan

HCA commends TCEQ on their recent efforts to translate various documents into Spanish and provides the following suggestions to improve language access.

1) Translation and Interpretation

Bilingual Staff Members

HCA commends TCEQ for utilizing bilingual staff members to direct limited English proficiency (LEP) individuals to certain services or departments. However, HCA encourages TCEQ to utilize professional, qualified translators and interpreters and to not rely heavily on bilingual staff lacking such a professional background to provide those services.

The Language Access Plan defines “Bilingual Staff Member” as “A TCEQ staff member who has demonstrated proficiency in and ability to communicate information accurately in English and at least one other language. A bilingual staff member has the ability to speak or write directly to an LEP individual in a language other than English.” HCA asks for clarity regarding how proficiency is demonstrated. Per Department of Justice (DOJ) guidance, “Competency requires more than self-identification as bilingual. The most accurate way to validate language proficiency is through an independently-administered [sic] language assessment and periodic reassessment.”⁵

TCEQ Oversight of Applicant Provided Language Services

HCA is concerned about the lack of oversight regarding applicant participation in ensuring LEP Texans fully participate and are heard at meetings.

For example, at a public meeting for Yellow Jacket Readymix LLC’s (Yellow Jacket) application for an air quality permit amendment, an HCA employee witnessed a Yellow Jacket representative not wearing a provided interpretation device while non-English speakers were participating. The representative continued to not wear the device despite this issue being pointed out by a community member speaker. If applicants do not wear interpretation devices while an LEP individual is providing comment or asking a question, they are effectively silencing that member of the public and barring their meaningful access to the meeting.

HCA asks guidance is put out regarding applicants’ role in live interpretation to ensure LEP individuals’ participation opportunities are equal to that of proficient English speakers, which is the intent of the Language Access Plan. Additionally, HCA appreciates that some applicants or their representatives might be bilingual and thus not feel compelled to wear an interpretation device. HCA asks that TCEQ also provide guidance or protocols for this situation.

⁵ Tips on Building an Effective Staff Language Service Program, <https://www.justice.gov/crt/page/file/923341/download> (last visited Aug. 14, 2023).

HCA asks TCEQ to provide some manner of oversight to ensure the language services provided by permit applicants are adequate. During the June 2023 Stakeholder Meeting for the Plans, a community member inquired about this issue. TCEQ employees indicated that providing translation was the applicant's responsibility, and that applicants had been so far satisfactorily doing so. TCEQ noted that if a meeting attendee felt the interpretation services were not qualified, then the attendee should put that in a comment and explain why they felt the interpretation was inadequate. HCA would like to note that comment deadlines are often very close to the conclusion of meetings, that the opportunity for oral comment will likely have passed by the end of the meeting, and that a limited English speaker might not know how or to what extend an interpretation was inadequate because they do not speak English. This issue is especially problematic when considering the highly technical nature of many permitting actions. For these reasons, asking the LEP public to explain when and why interpretation is inadequate seems inefficient.

Interim Guidance for Less-Commonly Spoken Language Services Requests

There is not currently a uniform time limit to request non-Spanish translation services for TCEQ meetings. At the June 2023 Stakeholder Meeting on the Plans, a community member requested clarification about the TCEQ's ability to provide language services in languages other than Spanish and Vietnamese. TCEQ employees indicated that guidelines were being developed. The community member then asked for a recommended amount of time to request language services prior to a meeting. TCEQ employees stated that they were "still evaluating that," referred to the time-period requirement in 30 Tex. Admin. Code § 39.426 which is relevant to permit applicants,⁶ and recommended "the more time you can give us, it's very helpful."

In Harris County, 1,958,472 people speak a language other than English at home.⁷ While the majority of those residents are Spanish speakers, followed by Vietnamese speakers, many other languages are accounted for. Residents of Houston, the largest city in Harris County, speak at least 145 different languages at home.⁸ In 2017, 25% of Harris County school children were identified as English learners, with 113 languages spoken.⁹

The availability of language services in multiple languages is vital to the public participation of Harris County residents. HCA asks interim guidelines are put forth to give community members a more concrete deadline to request language services. Directing interested individuals to put in requests as soon as possible is insufficient, as TCEQ then has the discretion to deny requests based on criteria unknown to the public.

⁶ "The applicant shall provide for competent interpretative services in the same alternative language at the public meeting. Interpretation services must be provided if...the chief clerk has received comments in the alternative language at least two weeks before the public meeting is scheduled."

⁷ United States Census, <https://data.census.gov/table?q=Harris+County,+Texas+language> (last visited Aug. 14, 2023).

⁸ *About Houston*, City of Houston, <https://www.houstontx.gov/about/houston/houstonfacts.html> (last visited Aug. 21, 2023).

⁹ Shelby Webb, *ESL students in Harris County schools speak 113 languages*, Hous. Chron. (Dec. 12, 2017) <https://www.chron.com/news/houston-texas/education/article/Students-in-this-Texas-county-speak-113-languages-12406806.php>

2) Reading Level

As previously discussed, many adults in Harris County have low literacy levels. To facilitate public participation, HCA asks TCEQ to include a portion dedicated to pursuing appropriate reading levels for notices, websites, guidance, etc. in the Language Access Plan. HCA recommends TCEQ decide on appropriate reading levels to aim for when writing certain public documents. For example, John Hopkins recommends no higher than an 8th grade reading level for informed consent in the medical context and provides various guidelines on simplifying language.¹⁰ While HCA appreciates that many of the subjects within TCEQ's jurisdiction involves highly technical material which would not be on par with a grade school reading level, HCA believes TCEQ should aim to ensure their writing is accessible to as many people as possible, including those with lower literacy levels.

Disability Nondiscrimination Plan

For clarity purposes, HCA asks the definition of “person with disability” be featured towards the beginning of the Disability Nondiscrimination Plan document. The definition is currently found on page 6 of 8.

A concise list of the services and information TCEQ provides for LEP Texans is found on page 3 of the Disability Nondiscrimination Plan. HCA asks this list is moved to the Language Access Plan document.

Plan Implementation

1) Website

HCA asks the Plans are featured in a more conspicuous and prominent place on the TCEQ'S website homepage. Currently, one must scroll towards the bottom of the home page to the “connect with us” heading and click “public representation and participation” that directs the user to another webpage. From there, a user needs to click on the link entitled “Title VI Compliance at TCEQ,” which then takes the user to another webpage entitled “Title VI Compliance at TCEQ.” The Plans are found about halfway down this webpage. The sequence of links and scrolling one needs to go through to get to the Plans is not self-evident and could diminish interest in and access to the Plans.

HCA asks a link that routes directly to the Plans is featured in a prominent place on the TCEQ homepage, perhaps at a tab located at the very top or bottom of the homepage. Additionally, the link title should signal to the public what the Plans entail, as “Title VI” and “public representation and participation” might not signal the nature of the documents to a community member. HCA suggests utilizing the term “non-discrimination.”

¹⁰ II. *Informed Consent Guidance - How to Prepare a Readable Consent Form*, Office of Human Subject Research Institutional Review Board, John Hopkins Med., (Apr. 2016)
https://www.hopkinsmedicine.org/institutional_review_board/guidelines_policies/guidelines/informed_consent_ii.html

2) Stakeholder Meetings and Public Feedback

HCA asks for clarity regarding how oral feedback on the Plans provided to TCEQ during stakeholder meetings is being put into the record. How is TCEQ keeping track of comments and suggestions being made during this time?

HCA recommends a more formal comment period (with a deadline) be implemented. With no clear deadline, interested parties might miss their opportunity to meaningfully comment on these actions. Further, a more formal comment period could facilitate engagement between TCEQ and members of the public, as TCEQ could respond in writing to the suggestions and concerns they have actively solicited. This would also bolster public trust in TCEQ. Currently, the public has no way of knowing how and if their input is being considered.

Environmental Justice

Page 2 of the Disability Plan states TCEQ's Environmental Equity Program aims to "serve as your TCEQ contact to address concerns about environmental injustice." It is unclear who/what this contact is or what that function entails. HCA asks for clarity on this statement.

TCEQ has included discussion of environmental justice and equity within various portions of the three plans, concentrated mostly in the Disability Nondiscrimination Plan. HCA asks that these portions are removed from the Plans and are incorporated into a separate EJ Plan document so that community members who are interested in TCEQ's EJ policies can access it in a concise, centralized, and intuitive location.

HCA appreciates the opportunity to comment on the Plans. If you have any questions, please contact Elizabeth Hidalgo at elizabeth.hidalgo@harriscountytexas.gov or 713-274-5394.

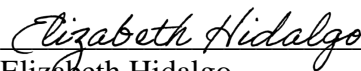
Sincerely,

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