



# TWCA Summary of TCEQ Sunset Report – May 2022

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# Overview of Sunset Staff Report on TCEQ

- 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.
- Issue 2 - TCEQ's Compliance Monitoring and **Enforcement** Processes Need Improvements to Consistently and Equitably Hold Regulated Entities Accountable.
- Issue 3 - TCEQ's Oversight of **Water** Could Better Protect the State's Scarce Resources.
- Issue 4 - TCEQ and **OPIC** Lack Certain Transparent and Efficient Processes for OPIC to More Effectively Represent the Public's Interest.
- Issue 5 - The State Has a **Continuing** Need for the Texas Commission on Environmental Quality.
- Issue 6 - The State Benefits From **Continued** Legislative Oversight of the Texas Low- Level Radioactive Waste Disposal Compact Commission.

# Issue 1 – Transparency and Public Input

## Key Findings:

- Lack of full transparency and meaningful public participation contribute to distrust of TCEQ
  - Perception that TCEQ favors industrial polluters over health & safety
- Delegation of key policy decisions to staff makes it hard for the public to understand and engage in regulatory processes
  - Examples: science v. policy (regulatory standards), late timing of permit hearings after staff has already decided permit conditions, & unclear rules on who may contest a permit (affected persons)

## Key Recommendations:

- Require public meetings on permits to be held both before and after the issuance of a final draft permit (statutory)
- Direct the Commission to vote in public meetings on foundational policy decisions that establish how staff approach permitting and other regulatory actions (mgmt.)
- Develop a guidance doc explaining how TCEQ uses factors in rule to determine who is an affected person (mgmt.)

# Issue 2 – Enforcement

## Findings:

- TCEQ’s evaluation of compliance history can treat small entities more harshly and larger entities more favorably, excludes self-reported violations, and isn’t sufficiently used to inform permitting and enforcement decisions.
- TCEQ’s definition of “repeat violator” misses habitual noncompliance and may incentivize industry to conceal vital monitoring and recordkeeping violations.
- Inefficient processes and increasing nuisance-based complaint investigations diminish TCEQ’s ability to investigate more serious complaints/noncompliance.

## Recommendations:

- 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. (statutory)
- Require TCEQ to consider all violations when classifying an entity as a repeat violator. (statutory)
- Reclassify recordkeeping violations based on the potential risk and severity of the violation. (mgmt.)
- Cap repeat investigations of nuisance without alleged health effects. (mgmt.)

# Issue 3 – Water: Environmental Flows

## Findings:

- Stalled adoption of e-flow standards (4 basins in NETX incomplete)
- Environmental Flows Advisory Group (EFAG) hasn't met since 2017
- Unclear framework for revisions: timeline, funding, and abolishment of BBASCS/BBESTs, contradictory understandings of how to initiate revisions

## Recommendations (Statutory):

- Remove the abolishment date for EFAG and the Science Advisory Committee
- Require EFAG to develop a biennial statewide adaptive management work plan
  - TWDB would fund the recommended studies through existing funds
- Provide that BBASCS and BBESTs are abolished after adoption or revision of a basin's standard and those entities would be recreated as needed for adaptive management updates and standard revisions

# Issue 3 – Water: Cancellation of Water Rights

## Findings:

- Per statute, water permits are subject to full or partial cancellation for nonuse, with exceptions for long-term planning for municipal use & electric generation
- 58% of water right holders reported zero use of their water
- Water use reporting indicates only 20-39 million acre-feet was used of 50 million acre-feet permitted in any given year
- In 20 years, TCEQ has pursued cancellation once (a group of 67 permits in the Rio Grande in 2003)

## Recommendations (Management):

- Direct TCEQ to conduct a comprehensive study of its water usage data (TCEQ to determine steps and timetable for the study)
- Direct TCEQ to initiate cancellation proceedings for water right permits with non-use over 10 years, in line with statute

# Issue 3 – Water: Priority Groundwater Management Areas (PGMAs)

## Findings:

- TWDB and TCEQ meet annually to identify and potentially initiate studies of areas of the state that may experience in water shortages, contamination, or subsidence in the next 50 years.
- No formal mechanism exists for the public or local stakeholders to request a study of a local area or present information, or to hear agency deliberations as to why an area is or is not recommended for a PGMA.

## Recommendations (Statutory):

- Require TCEQ/TWDB to hold their annual meeting in a public setting and include opportunity for public comment

# Contact

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