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To the members of the House Committee on Appropriations - S/C on Articles VI, VII & VIII.
Via email to Appropriations@house.texas.gov.

September 30, 2020

Re: ART678 – Comments by Public Citizen on the TCEQ Legislative Appropriation Request

Dear Chair Rose and members of the committee:

Public Citizen appreciates the opportunity to provide these comments on the Texas Commission on Environmental Quality's Legislative Appropriation Request for 2022-2023. We also delivered oral comments on this subject to the TCEQ Commissioners Work Session on September 30, 2020.¹ Our comments are based on the Sept. 30, 2020 document "Summary of the Recommended 2022-2023 Legislative Appropriations Request."

I. TCEQ Should Seek Additional Mobile Monitoring Funds

During the 86th legislative session, this committee approved a one-time appropriation of \$947,500 for mobile air monitoring equipment. Those funds are being used to upgrade three existing mobile monitoring vehicles operated by the TCEQ.² Public Citizen and our allies in the One Breath Partnership have long advocated for quicker, more thorough, and more transparent air monitoring response to natural disasters such as Hurricanes Harvey and Laura, and manmade disasters such as the ITC fire in Deer Park in March 2019 and the TPC explosion in Port Neches in November 2019.

TCEQ does not have the funding necessary to place mobile air monitoring vehicles permanently along the Texas Gulf Coast. This leads to delay in deploying these resources. Hurricane Laura, for example, made landfall overnight on Wednesday/Thursday August 26/27, 2020. The TCEQ moved its vehicles from Austin to East Texas on Thursday and was not able to begin monitoring until the morning of Friday, August 28.

During the September 24, 2020 TCEQ Commissioner's Work Session, TCEQ Executive Director voiced his desire that TCEQ find funding to retrofit three of its vehicles to serve as mobile monitoring vehicles located permanently in Houston, Beaumont, and Corpus Christi.³ We support this wish and suggest that the legislature appropriate sufficient funds for these three vehicles and staff.

¹ Available online at <https://www.youtube.com/watch?v=90g-ZJVtwfw&t=840>.

² TCEQ Executive Director Toby Baker discussed this investment and its use after Hurricane Laura at a recent TCEQ Commissioners' work session. See *TCEQ Commissioner's Work Session – September 24, 2020* at <https://www.youtube.com/watch?reload=9&v=UBb5jYOD49Y&t=950>.

³ See *TCEQ Commissioner's Work Session – September 24, 2020* at <https://www.youtube.com/watch?reload=9&v=UBb5jYOD49Y&t=997>.



The only request from TCEQ in the LAR for mobile air monitoring is \$298,200 for “Mobile Monitoring Equipment (DUVAS).” This subcommittee should also determine whether TCEQ has enough funding to maintain and effectively deploy the three mobile monitoring vehicles it upgraded with last session’s appropriation.

II. TCEQ Should Seek Additional Funding for the Ambient Air Monitoring Network

TCEQ should seek additional funding to implement recommendations for improvements to the Ambient Air Monitoring Network. On May 14, 2020, comments were jointly submitted to the TCEQ on its 2020 Annual Monitoring Network Plan by Sierra Club, Environmental Defense Fund, Environmental Integrity Project, Public Citizen, Environment Texas, and Texas Environmental Justice Advocacy Services on behalf of their members and supporters.⁴ These comments made the following recommendations for additional monitoring:

- Fine particulate matter (PM_{2.5}) monitoring in the Houston region, including in Houston’s Fifth Ward and in West Houston where monitoring by Environmental Defense Fund had showed the potential for elevated PM_{2.5} levels in communities.
- Ozone pollution monitoring in the Greater San Antonio Area
- Monitoring in the Permian Basin, including additional ozone monitors and sulfur dioxide monitors and modeling
- Monitoring of sulfur dioxide (SO₂) to support compliance with the 1-hour SO₂ National Ambient Air Quality Standard (NAAQS)
- Monitoring in El Paso, including real-time fence-line monitoring at Western Refining and a near-road monitor for NO₂/CO.

We recommend additional funding for these recommended additions to the Ambient Air Monitoring Network. These additional monitors will help us to reach and maintain attainment of federal air pollution standards. They will also ensure that public health is protected and not threatened by excessive air pollution.

III. We Support the following Expenditures

a. Air Monitoring and Capital Equipment

Given the above considerations about air monitoring needs, we are supportive of the request for Monitoring and Analysis Equipment. We are also supportive of allocations for air monitoring sites, mobile monitoring, optical gas imaging, and emergency response.

⁴ See “Re: Public comment and public hearing request on proposed 2020 Annual Monitoring Network Plan by Sierra Club, Environmental Defense Fund, Environmental Integrity Project, Public Citizen, Environment Texas, and Texas Environmental Justice Advocacy Services, Air Alliance Houston.” Submitted via email to monops@tceq.texas.gov (14 May 2020).



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b. Exceptional Item 1: Targeted Salary Increases

We agree with TCEQ that recruitment and retention of talented staff is necessary for the Agency to operate effectively.⁵ We understand from TCEQ staff discussion during the Sept. 30, 2020 Commissioners Work Session that hiring 1 FTE costs an average of \$30,000, and that with as many as 40-50 FTEs to restaff each year in the investigation division, the annual cost of poor retention is as much as \$1.5 million per year.

TCEQ salaries lag behind those of their peers in Harris County and the City of Houston, TCEQ turnover rates are higher than those of other Texas natural resource agencies. For these reasons, we support Exceptional Item 1, Targeted Salary Increases for Investigators, Enforcement Coordinators, Engineers, Permit Specialists, and Attorneys.

c. We Support Rider 19: TERP Cash Flow Difficulties Funds

We support this rider to fund TERP administration during the transition to the newly created TERP Fund. We note that if the fund operates as HB 3745 (86R) intended, and if revenue sources for the fund continue and are not altered by the legislature, then the TERP Fund will be well funded in future years. TCEQ should provide revenue estimates now for the TERP Fund over the biennium. TCEQ should also include recommended allocation amounts for each TERP program.

IV. We Oppose the Following Items

a. Rider 27: Expedited Processing of Permit Applications, unless it is revenue neutral

During the 86th legislative session, SB 698 by Senator Birdwell was passed to authorize TCEQ to add a surcharge to its air permit application fees in order to fund expedited processing of air permit applications. We believed the intent of that legislation was that additional funding for expedited permit processing would come through additional surcharges—and that the expedited permitting program would therefore be revenue neutral. The bill passed and was effective on September 9, 2019, meaning that TCEQ could have begun assessing the surcharge then.

In Rider Number 27, TCEQ states that it has collected \$0 in expedited permit review surcharges. Yet it has increased its requested appropriation from Clean Air Account 151 from \$1,250,000 to \$2,500,000. It appears that the Commission is asking for an additional \$1.25 million for expedited permitting even though it has collected no surcharges to fund the program. TCEQ should provide an accounting of the expedited permitting program and its funding, from surcharges or elsewhere. If the program is not revenue neutral, we would oppose this expense.

⁵ ED Baker discussed this problem recently. See *TCEQ Commissioner's Work Session – September 24, 2020* at <https://www.youtube.com/watch?reload=9&v=UBb5jYOD49Y&t=800>.



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b. Rider 26: Barnett Shale Permit By Rule Study

We join the Lone Star Chapter of the Sierra Club in opposing Rider 26. Ostensibly for a permit study in the Barnett Shale, Rider 26 actually prevents TCEQ from studying controls on oil and gas operations by requiring specific authorization from the Legislature for any study outside of the Barnett Shale.

We oppose unnecessary restrictions on the Commissions' ability to study new controls. We believe this is especially important given rollbacks of federal regulations under the Trump administration, including recently the methane rules.

V. Conclusion

Thank you for the opportunity to provide these written comments, if you wish to discuss our position further, I can be reached by email at ashelley@citizen.org or by phone at 713-702-8063.

Respectfully,

Adrian Shelley, Texas Office Director
Public Citizen

CC:

Chair Toni Rose, Vice Chair Cecil Bell, Rep. Ina Minjarez, Rep. Sergio Muñoz, Jr., Rep. Reggie Smith, Rep. Steve Toth, Rep. Terry M. Wilson
TCEQ Commissioners Jon Niermann, Emily Lindley, and Bobby Janecka
TCEQ Executive Director Toby Baker