

February 27, 2023

To the Members of the House Committee on Appropriations – Subcommittee on Articles VI, VII, and VIII.

*Via hand delivery and by email.*

CC: Rep. Cecil Bell, Rep. Trey Martinez Fischer, Rep. Ed Thompson, Rep. Steve Toth.

**Re: HB 1 Testimony by Public Citizen**

Dear Chairman Walle and Members of the Committee:

Public Citizen appreciates the opportunity to provide these comments on House Bill 1, the General Appropriations Act for FY 2024-2025. We welcome the opportunity to discuss our recommendations further. Please contact Adrian Shelley at [ashelley@citizen.org](mailto:ashelley@citizen.org), 512-477-1155.

Our recommendations are for the budgets for the Texas Commission on Environmental Quality and the Railroad Commission:

1. TCEQ Exceptional Item requests related to the agency's Sunset review.
2. TCEQ Rider 7, Air Quality Planning, should be expanded to include particulate matter pollution and certain other planning activities.
3. TCEQ Rider 21, Aggregate Operations, the TCEQ should follow through on its charge in this rider. Best management practices should be developed with the goal of reducing public health impacts.
4. TCEQ Rider 28, TERP Annual Report, should explicitly incorporate TXDOT's report on the use of TERP funds and compare cost effectiveness.
5. Railroad Commission Rider 17, Infrastructure Investment and Jobs Act Funds, using IJJA funds to expand the state's well plugging target may allow Texas to reduce the total number of unplugged orphaned wells.
6. Fully Appropriate Railroad Commission Funds for Well Plugging and Cleanup and Monitoring and Inspections.

**TCEQ Exceptional Items are needed to implement Sunset recommendations.**

We support certain TCEQ exceptional items that are needed to implement recommendations from the agency's Sunset review. These include:

1. **Targeted Salary Increases for Mission Critical Staff.** TCEQ has identified high staff turnover as one source of difficulty for the agency. Staff turnover limits the experience and effectiveness of TCEQ employees.
2. **Increase Access to Public Records.** The Sunset commission identified public skepticism and mistrust as a major issue for the agency. This exceptional item would provide easier access to TCEQ's most frequently requested records.
4. **Agency Website Usability Enhancements.** Website upgrades are directly linked to the following Sunset recommendations:

- All public meetings are posted to the calendar page.
- Related webpages link to each other.
- Data is available in downloadable and manipulatable formats.
- Permit applications and final permits are all easily accessible online.
- Public information is easily accessible online.

**TCEQ Rider 7, Air Quality Planning, should be modified to allow for more activities.**

We suggest modifications to TCEQ Rider 7, Air Quality Planning, to allow for more activities. In 2017, Governor Abbott vetoed Rider 7, citing with disapproval funding for “among other things, bicycle use programs, carpooling awareness, environmental awareness campaigns, and locally enforceable pollution reduction programs in near non-attainment areas.”<sup>1</sup> We believe the activities permitted under Rider 7 could be expanded while staying faithful to the Governor’s intent in this veto. Specifically, we recommend allowing activities other than public awareness campaigns and locally enforceable pollution reduction programs.

Second, we recommend expanding permitted activities to include activities to reduce particulate matter. The Texas Emissions Reduction Plan (TERP) is one of the largest air-pollution reduction programs in Texas. It was amended in 2013 to include activities to reduce particulate matter pollution (SB 1727, 83R). This was done both to improve public health by reducing PM pollution and to help Texas avoid nonattainment designations for particulate matter.

The EPA is currently reviewing the fine particulate matter standard and is likely to reduce the annual standard to between 9 and 10  $\mu\text{g}/\text{m}^3$ .<sup>2</sup> Expanding permitted air pollution planning activities to include activities to reduce particulate matter now will help Texas get ahead of the designations that will happen in a few years after this revision is complete.

Third, we recommend removing the list of affected counties and instead relying on an objective definition based on a county’s design value. Specifically, we recommend including in the program any counties with a design value above a specific threshold, 60 parts per billion (ppb) for ozone, 8  $\mu\text{g}/\text{m}^3$  for the annual PM<sub>2.5</sub> standard and 25  $\mu\text{g}/\text{m}^3$  for the 24-hour PM<sub>2.5</sub> standard. These levels were chosen because they are the lower bound of values recommended by the EPA’s Clean Air Science Advisory Committee during the most recent proposed revisions of the ozone and PM<sub>2.5</sub> national ambient air quality standards (NAAQS).

Finally, we recommend more funds for Rider 7 to adequately fund additional activities that will become possible with the expansion of permitted activities, pollutants, and affected counties.

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<sup>1</sup> See <https://gov.texas.gov/news/post/sb-1-signature-and-item-disapproval-proclamation>.

<sup>2</sup> See <https://www.epa.gov/pm-pollution/national-ambient-air-quality-standards-naaqs-pm>.





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**TCEQ Rider 21, Aggregate Operations – we still support funding for adoption and publication of best management practices.**

TCEQ’s Rider 21 was added in the 2022-2023 appropriations act to fund twice yearly aerial inspections of aggregate operations and adoption and publication of best management practices for the industry. We supported this rider last biennium and we continue to support it. Unfortunately, as far as we are aware, there has been no adoption of best management practice by TCEQ. Although we do support an ongoing effort by the TCEQ to revise the standard permit for concrete batch plants, we urge the TCEQ to follow through on the legislature’s direction to adopt and publish best management practices for this industry.

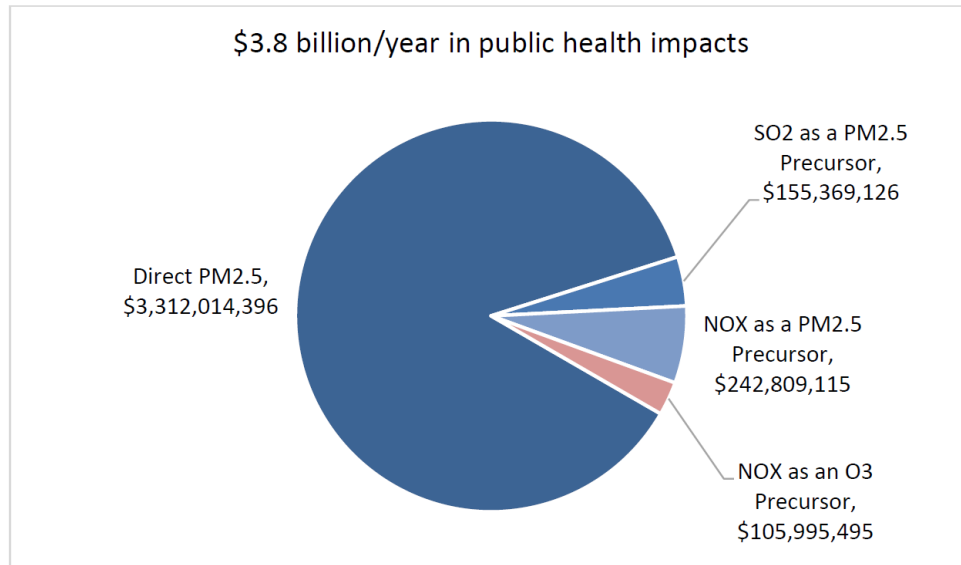
Dust—a.k.a. particulate matter pollution—is not just a nuisance, it is detrimental to public health. Best management practices for the aggregate industry should seek first to ameliorate that industry’s negative impact to public health. We therefor recommend the following change to Rider 21:

21. Aggregate Operations. Amounts appropriated above in Strategy C.1.1, Field Inspections and Complaint Response, to the Commission on Environmental Quality shall be used to adopt and make accessible on the commission’s internet website best management practices for aggregate production operations regarding public health impacts and nuisance issues relating to dust, noise, and light, and to conduct aerial observations at least twice per fiscal year to ensure enforcement of existing statutes and rules relating to aggregate operations.

This change will ensure that best management practices are developed with public health in mind. The public health costs of PM2.5 pollution range well into the billions of dollars across the state. They are estimated for example to exceed \$3.3 billion dollars in Central Texas alone:<sup>3</sup>

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<sup>3</sup> See “CAC Meeting 8/12/2020 Item 6: Consider Participation in EPA’s Particulate Matter Advance Program” memo from Andrew Hoekzema, CAPCOG Director of Regional Planning and Services, to Clean Air Coalition Members (3 August, 2020).



Note that this is the cost of *all* particulate matter pollution in Central Texas, not simply that PM associated with the concrete industry. Still, this change would better reflect the intent of best management practices to reduce public health impacts.

**TCEQ Rider 28 TERP Annual Report should include the cost-effectiveness of funds transferred to TXDOT for the CMAQ program.**

TCEQ’s Rider 28 requires the agency to produce an annual report that includes, “the cost-effectiveness of each program authorized as part of TERP that are spent out of the TERP Trust Fund.” The passage of HB 4472 (87R) led to the transfer of 35% of TERP funds to TXDOT for the “Congestion Mitigation Air Quality” (CMAQ) program, an amount that exceeded \$81 million last biennium.

TXDOT produced a report on the use of these funds last year.<sup>4</sup> TXDOT used the money to expand a single highway from four lanes to six. TXDOT estimates the cost effectiveness of this program as follows:

- Nitrogen Oxides (NOx): \$2,183,929 per ton.
- Volatile Organic Compounds (VOC): \$1,781,056 per ton.
- Coarse particulate matter (PM10): \$67,246,319 per ton.

By contrast, TERP’s most cost-effective program is the diesel emissions reduction incentive (DERI) grant program, which has a lifetime cost effectiveness of \$6,304 per ton of NOx and a FY 2020-2021 cost effectiveness of \$8,787 per ton of NOx. This means that TXDOT’s use of TERP funds for the CMAQ program is *248 times* less effective than DERI at reducing NOx pollution, the stated intent of the program. Unfortunately in it’s most recent the TCEQ omitted any mention of TXDOT’s use of 35% of TERP funds.

<sup>4</sup> See <https://ftp.txdot.gov/pub/txdot/gov/hb-4472-terp-report.pdf>.



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We oppose TERP's use for CMAQ. TXDOT's report is evidence that it does not work. Our recommendation is still that this use of TERP funds be ended. Within the context of Rider 28, we recommend that TCEQ explicitly incorporate the TXDOT report on CMAQ's cost effectiveness and compare it to the cost effectiveness of other programs including DERI. We suggest the following edit to Rider 28:

28. Texas Emissions Reduction Plan (TERP) Annual Report. In addition to other reporting requirements, the Commission shall produce an annual report on its expenditures, number of projects, and the estimated pollution reduced, and the cost-effectiveness of each program authorized as part of TERP that are spent out of the TERP Trust Fund. The report must include an analysis of the report by the Texas Department of Transportation (TxDOT) on the use of TERP funds for congestion mitigation and air quality improvement projects in nonattainment areas and affected counties. The annual report must be delivered to the Legislative Budget Board, and Governor's Office by December 1 of each year.

**Railroad Commission Rider 17, Infrastructure Investment and Jobs Act Funds, we strongly support the use of IIJA funds to expand the state's well plugging target.**

We strongly support the use of Infrastructure Investment and Jobs Act funds to increase the state's annual orphaned oil and gas well plugging target from 1,000 wells to 2,000 wells. As oil and gas activity continues to increase in Texas, the Railroad Commission has not even kept pace with the rate of newly orphaned wells.<sup>5</sup>

The use of \$62,900,000 of IIJA funds each year will allow the Railroad Commission to fund an additional 1,000 wells in FY 2024 and 1,200 wells in FY 2025. This increase in the number of wells plugged by the state may allow Texas to make progress on the total number of abandoned wells, which may be near 8,000.

**Fully Appropriate Railroad Commission Funds for Well Plugging and Cleanup and Monitoring and Inspections.**

The legislature should full appropriate Oil and Gas Regulation and Cleanup Funds (OGRC) and any funds that the Railroad Commission collected into the General Revenue Fund. The funds should be used for both the Well Plugging and Cleanup Strategy and the Monitoring and Inspection strategy. Last year, Railroad Commission's state funds were under appropriated by \$40 million.

**Conclusion**

Again, we appreciate the opportunity to provide these comments. If you wish to discuss the issues raised, please contact Adrian Shelley at [ashelley@citizen.org](mailto:ashelley@citizen.org), 512-477-1155.

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<sup>5</sup> See Steffy, Lauren "Unplugged and Abandoned: The growing orphan well crisis facing the Railroad Commission of Texas" (Feb. 2021) available at <https://commissionshift.org/wp-content/uploads/2021/02/UnpluggedandAbandoned.pdf>.



Respectfully,

Adrian Shelley  
Texas Director, Public Citizen