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To the members of the House Committee on Appropriations - S/C on Articles VI, VII & VIII.
Via hand delivery.

March 2, 2021

Re: State Budget FY 2022-2023, Articles VI, VII, and VIII, testimony by Public Citizen

Dear Chairman Walle and members of the committee:

Public Citizen appreciates the opportunity to testify on the State Budget Articles VI, VII, and VIII. Our testimony is limited to discussion of the Texas Commission on Environmental Quality (TCEQ) and the Railroad Commission of Texas (RRC).

Texas Commission on Environmental Quality

Texas Emissions Reduction Plan (TERP) Fund is properly funded.

During the 86th session, HB 3745 created the Texas Emissions Reduction Plan (TERP) Fund. TERP is an incentive program that reduces air pollution by replacing old, polluting vehicle engines. Reducing air pollution saves lives, improves public health, and brings us closer to meeting federal air pollution standards. The cost of air pollution to public health each year in Texas is many billions of dollars.

TERP's most effective program, the Diesel Emissions Reduction Incentive (DERI) Program, has reduced 183,434 tons of nitrogen oxides (NOx) at an average cost of \$6,257 per ton.¹ This is the most cost-effective air pollution reduction strategy in Texas.

SB 1 properly allocates \$150,000,000 a year from the State Highway Fund No. 006 to the TERP fund. This money is collected from vehicle owners via the certificate of title fee for the intended purpose of reducing air pollution with TERP. The money is given to TxDOT for historical reasons and then allocated to the TERP Fund.

Although we interpreted HB 3745 as automatically allocating all funds—including the Certificate of Title fee—directly to the TERP Fund, if the drafters of SB 1 believe that this pass through is necessary then we support it. We believe that the more than \$250 million collected for TERP each year should be spent reducing air pollution. As a matter of public policy, we believe that when a tax or fee is established for a stated purpose, the Texans who pay that tax or fee deserve to have their funds spent for that purpose. Doing so will provide significant benefits to public health and bring Texas into attainment of the federal ozone standard.

¹ "Texas Emissions Reduction Plan Biennial Report (2019-2020)" TCEQ Air Grants Division (Dec. 2020) at p. 7.



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Transparency is needed in administration of TERP Fund.

As explained above, TERP is one of the most cost-effective programs to reduce air pollution and improve public health in Texas. The TERP Fund is also huge, with an estimated balance of \$1.99 billion in unexpended funds through FY 2021 and annual revenue of more than \$250 million.² HB 3745 means the TERP Fund will grow from spending \$50-75 million a year to \$250 million or more. There also should be a plan to spend down the \$1.99 billion corpus of the existing TERP Fund.

It is in the interest of taxpayers and those who would breathe clean air to have transparency in administration of TERP funds. With the TERP budget quadrupling in size, now is the time to develop a more robust and transparent public accounting of the program. This should come with a reporting requirement for TCEQ, perhaps within the biennial report on TERP that is already produced for the legislature. More transparency in the TERP Fund might also increase awareness of and access to the program.

Air Monitoring budget increases are good, but additional funds are needed.

\$4 million has been allocated to the TCEQ to operate ten new stationary air monitors across Texas in response to public pressure, consisting of three monitors in Houston, four around Aggregate Production Operations, and, and three near oil and gas activities in the Permian Basin.³ SB 1 allocates an additional \$4 million to support air monitoring at TCEQ. We support this allocation, particularly the additional allocation to allow twice yearly inspections of Aggregate Production Operations.

Stationary Air Monitoring

However, more funds still are needed for air monitoring across Texas. In comments to the TCEQ's 2020 Annual Monitoring Network Plan,⁴ public health advocates suggested several additional areas for monitoring, including:

- Fine particulate matter (PM2.5) 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 PM2.5 levels in communities.
- Ozone pollution monitoring in the Greater San Antonio Area

² "Texas Emissions Reduction Plan Biennial Report (2019-2020)" TCEQ Air Grants Division (Dec. 2020) at p. 2.

³ See *TCEQ FY 22/23 LAR* at p. 4.

⁴ "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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- 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 an additional allocation of \$2 million for more stationary air monitoring capacity.

Mobile Air Monitoring

During the last legislative session, the Texas Commission on Environmental Quality received an allocation of \$947,500 to purchase air monitoring equipment. This funding was used to upgrade three mobile air monitoring vehicles the TCEQ maintains in Austin. In SB 1, the funding for capital equipment for monitoring and analysis is just \$590,990 in FY 2022 and \$292,790 in 2023, down almost 50% from the previous biennial total of \$1,688,080.

TCEQ Executive Director Toby Baker has expressed his desire for three additional air monitoring vehicles located in each of Beaumont/Port Arthur, Houston, and Corpus Christi.⁵ We support this goal and urge this committee to allocate additional capital equipment funds for mobile air monitoring.

Data upgrades

We support a one-time allocation of \$1,250,000 for legacy modernization of the TCEQ's air and water monitoring data management system. As public health advocates who use TCEQ data on a regular basis—we appreciate the agency's commitment to making public data publicly available, accessible, and intelligible to the public.

Expedited Permit processing program seems to lack funding from surcharges.

SB 1 allocates \$2,250,000 over the biennium to the expedited processing of air permit application, an increase of one million dollars over the previous biennium. The expedited permitting program was created by HB 3317 (86R) and SB 698 (86R) and is intended to be funded by a permit application fee surcharge assessed pursuant to Health and Safety Code § 382.05155(d).

⁵See TCEQ Commissioner's Work Session – September 24, 2020 at <https://www.youtube.com/watch?reload=9&v=UBb5jYOD49Y&t=950>.



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Rider 27 in the TCEQ budget in SB 1 estimates \$0 in revenue from the expedited permit review surcharge. The revenue estimate last year was also zero. It seems like these surcharges are not being collected, thereby depriving the expedited permit program of its intended revenue.

If this conclusion is incorrect, we would appreciate an explanation as to how the program is funded. Otherwise, we recommend that if TCEQ chooses to make expedited permitting its priority, it should at least fund the program via the surcharge the legislature created for that purpose. The legislature, for its part, should not increase the TCEQ's budget for expedited permitting if TCEQ cannot recoup that budget in surcharges.

Additional Inspectors are needed.

In addition to the \$2.25 million allocated to expedited permitting (strategy A.2.1) TCEQ allocates \$32,303,740 over the biennium for air quality permitting (Strategy A.2.1). TCEQ sets an annual target to review 7,800 state and federal New Source Review (NSR) air permit applications and 900 federal operating permit applications.

The massive scale of industry in Texas also necessitates considerable investment in enforcement. SB 1 allocates \$103,309,388 to Field Inspections & Complaints (strategy C.1.1) and \$28,042,496 to Enforcement & Compliance Support (all media) (strategy C.1.2). Strategy C.1.1 includes a target of more than 73,000 investigations of air, water, and waste sites across Texas each year.

This investment in compliance and enforcement is not enough. The TCEQ enforces against fewer than 3 percent of air pollution emissions events.⁶ These are industry self-reported events, each of which represents a broken law or laws and the potential for a \$25,000 a day fine. We recommend a larger allocation to TCEQ and bigger enforcement targets.

Furthermore, we recommend measuring TCEQ's success with metrics other than simply sites investigated. Other metrics might include the number of notices of violation (NOVs) issued, number of penalties assessed (Notice of Enforcement or NOEs), or the number of self-reported emissions events enforced against in any way.

Aggregate Production Operations warrant additional observation.

We support Rider 21, which directs the TCEQ under Strategy C.1.1. to conduct twice yearly aerial inspections of aggregate operations “to ensure enforcement of existing statutes and rules[.]”

⁶ “Illegal Air Pollution in Texas 2020” Environment Texas Research and Policy Center (13 Oct. 2020) *available at* <https://environmenttexas.org/reports/txe/illegal-air-pollution-texas-2020>.



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Aggregate production in Texas has increased by 30 percent from 2005 to 2019, becoming a \$3.2 billion industry.⁷ People living near these facilities across Texas are increasingly raising concerns about air pollution, noise, traffic, and other disruptions to their quality of life. Numerous bills have already been filed this session to address concerns about this industry.

We support the allocation of additional resources to monitor this industry and limit its impacts to the health and welfare of its neighbors.

We Support TCEQ Exceptional Item 1: Targeted Salary Increases

TECQ's Legislative Appropriation Request for FY 2022/2023 included Exceptional Item 1, "Targeted Salary Increases for Investigators, Enforcement Coordinators, Engineers, Permit Specialists, and Attorneys." We agree with TCEQ that recruitment and retention of talented staff is necessary for the Agency to operate effectively.⁸ 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.

Railroad Commission

Well Plugging Target should be increased.

The Railroad Commission (RRC) of Texas's budget includes \$57,362,932 in FY 2022 and \$56,888,115 in FY 2023 for Oil and Gas Well Plugging and Remediation (strategy C.2.1). With this budget, the RRC has set a well plugging target of 1,000 wells per year.

In FY 2020 the Railroad Commission plugged 1,477 abandoned wells, exceeding its target by 77 wells.⁹ As of August 2020, there are 6,208 abandoned, orphaned wells in Texas. Each well presents the possibility of spills or leaks that can damage property, contaminate groundwater and

⁷ "Interim Report to the 87th Texas Legislature" House Interim Study Committee on Aggregate Production Operations (Jan. 2021) at p. 6 available at <https://www.tramtexas.org/wp-content/uploads/2021/01/Aggregate-Production-Operations-Committee-Interim-Report-2018.pdf>.

⁸ ED Baker discussed this problem last year. See *TCEQ Commissioner's Work Session – September 24, 2020* at <https://www.youtube.com/watch?reload=9&v=UBb5jYOD49Y&t=800>.

⁹ "2020 Oilfield Cleanup Program Annual Report" Railroad Commission of Texas (26 Jan. 2021) available at <https://www.rrc.state.tx.us/media/jjhlaywd/2020-oilfield-cleanup-program-annual-report-fiscal-year-2020.pdf>.



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pollute the air. The Railroad Commission should set well plugging targets and budgets adequate to complete the backlog and keep pace with Texas' abandoned and orphaned well problem.

We recommend an annual target of 1,500 wells plugged with a budget of \$30,000,000 each year.

Additional Inspectors are needed.

Texas well-plugging backlog is one symptom of the Railroad Commission's failure to prioritize and fund cleanup. Another is illegal flaring. A recent report by Earthworks showed that 75% of flares operated on state lands are unpermitted.¹⁰ The Railroad Commission also issued 6,900 exceptions to the Rule 32 flaring rule, up 65 times from the 107 exceptions in 2008.

All of this polluting activity at oil and gas wells across Texas necessitates more inspectors. We recommend an additional allocation to the Railroad Commission to hire 20 to 30 more inspectors.

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

Respectfully,

Adrian Shelley, Texas Office Director
Public Citizen

CC: Vice-Chair Cecil Bell, Rep. Alex Dominguez, Rep. Ed Thompson, Rep. Steve Toth.

¹⁰ "Flaring Away: Damaging our Health and Climate, and School Funds" Earthworks (Jan. 2021) *available at* https://www.earthworks.org/cms/assets/uploads/2021/01/FlaringAway_TX-GLO_FINAL-1.pdf.