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***By email and certified mail***

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**Re: Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, 40 C.F.R. Part 7**

Dear Director Simons and Deputy Chief Neal:

Texas Environmental Justice Advocacy Services (“t.e.j.a.s.”) and Sierra Club (collectively, “Complainants”) submit this complaint against the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) for violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and the Environmental Protection Agency’s (“EPA’s”) implementing regulations, 40 C.F.R. Part 7. TCEQ receives funding from EPA, and, as explained below, its state public meeting notice rules fail to comply with its obligations under Title VI and EPA’s implementing regulations.

Public notice is a protected legal right and an integral part of the environmental permitting decision-making process. Public notice allows the public to become aware of permitting actions and gives communities the opportunity to be involved and assess how issues will affect them so they may effect enhanced permit terms requisite for the protection of their health and their communities. EPA has noted that “[a]ppropriate collaboration during the permitting process can foster trust, and help establish credible,

solid relationships between permitting agencies and communities.”<sup>1</sup> At present, TCEQ rules do not require alternative language notice for public meetings held for state permitting actions. This means that affected non-English-speaking community members throughout Texas are not made aware of public meetings and thus are denied the opportunity to fully participate in the permit decision-making process. And even when they manage to learn of public meetings and attend, TCEQ rules do not require professional language interpretation services at public meetings even when the agency is aware of the high likelihood that Limited English Proficient persons will be in attendance. The burden of this exclusion falls disproportionately on linguistically isolated communities.

In Texas, linguistically isolated communities exist throughout the state and are disproportionately low resource, majority Latinx<sup>2</sup>, and Spanish speaking. The community of Manchester in east Houston, Harris County, Texas, typifies the linguistically isolated communities TCEQ’s rules discriminate against. Encompassed within the 77011 zip code, 46.7% of Manchester’s population speaks English less than very well, according to the U.S. Census Bureau.<sup>3</sup> “Ninety-seven percent of the population in this economically depressed neighborhood is made up of people of color; 90 percent are low income and 37 percent live in poverty.”<sup>4</sup> Yet, “[t]here are more than 30 industrial emitters of wastewater, air contaminants, and hazardous waste in Harrisburg/Manchester that report to the EPA, in addition to many more facilities that handle hazardous materials but are not required to report to the agency,” including facilities regulated by TCEQ and subject to its discriminatory public meeting notice rules.<sup>5</sup>

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<sup>1</sup> EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 Fed. Reg. 14,207, 14,210 (Mar. 21, 2006).

<sup>2</sup> Latinx is an intersectional term used to describe the peoples of Latin America and the Caribbean.

<sup>3</sup> U.S. Census Bureau, 2013-2017 American Community Survey 5-Year Estimates (“U.S. Census ACS”), Language Spoken at Home, American FactFinder, zip code 77011 (figures measured from population 5 years and over), <https://factfinder.census.gov/>.

<sup>4</sup> Union of Concerned Scientists, *Double Jeopardy in Houston (“Double Jeopardy”)*, 5-6 (2016), <https://www.ucsusa.org/sites/default/files/attach/2016/10/ucs-double-jeopardy-in-houston-full-report-2016.pdf>.

<sup>5</sup> *Id.* at 5.

Complainants request that EPA's Office for Civil Rights ("OCR") promptly and thoroughly investigate the allegations set forth in this complaint and take all actions necessary to ensure that TCEQ complies fully with the law, including adoption, as appropriate, of recommendations made by Complainants below. Complainants request that the OCR investigate and ensure that the policies, programs, and activities of TCEQ comply with Title VI of the Civil Rights Act of 1964.

## **I. PARTIES**

### **A. Complainants**

t.e.j.a.s. is a non-profit group whose mission is to create sustainable, healthy communities in the Houston Ship Channel region by educating individuals on health impacts from environmental pollution and empowering them to promote enforcement of environmental laws. t.e.j.a.s. promotes environmental protection through education, policy development, community awareness, and legal action where possible and appropriate. In furtherance of this mission, t.e.j.a.s. educates the public about public participation opportunities regarding industrial facilities in Texas, particularly at refineries and petrochemical facilities along the Houston Ship Channel. For example, t.e.j.a.s. participates in TCEQ permit proceedings by submitting comments and requesting public meetings and hearings.

Sierra Club is a non-profit group whose mission is to explore, enjoy, and protect the wild places of the earth, to practice and promote the responsible use of the earth's ecosystems and resources, to educate and enlist humanity to protect and restore the quality of the natural and human environment, and to use all lawful means necessary to carry out these objectives. The Club's Lone Star Chapter has over 20,000 members throughout Texas. The Club has a long history of participating in TCEQ permit proceedings, including submitting comments, requesting public meetings and hearings, and challenging permits in state and federal courts.

### **B. Recipient**

TCEQ is an agency of the State of Texas charged with implementing and enforcing the state's environmental laws. 30 Tex. Admin. Code § 1.1. TCEQ's duties include providing public notice "for applications, hearings on applications, and hearings on contested enforcement cases." *Id.* § 39.3. As described below, TCEQ is also a recipient of federal funds.

## II. JURISDICTION

Title VI of the Civil Rights Act of 1964 provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. Acceptance of federal funds, including EPA assistance, creates an obligation on the recipient to comply with Title VI and the federal agency’s implementing regulations. 40 C.F.R. § 7.80. As explained below, TCEQ receives federal assistance from EPA and is a federal “program or activity” under Title VI, making it subject to the requirements of Title VI and EPA’s implementing regulations. In addition, this complaint is timely and satisfies all other jurisdictional requirements.

### A. Federal Financial Assistance

TCEQ is a recipient of federal financial assistance as defined in EPA’s Title VI implementing regulations. EPA’s Title VI regulations define a “[r]ecipient” as “any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient ....” 40 C.F.R. § 7.25.

TCEQ received \$59.54 million in federal funds from EPA in Fiscal Year 2018; and TCEQ has received a total of \$661.69 million in federal funds from EPA from Fiscal Year 2008 to 2019.<sup>6</sup> Indeed, EPA recently awarded TCEQ a federal grant in excess of \$9.8 million to support environmental programs in Texas.<sup>7</sup> Because TCEQ receives financial assistance from EPA, it is subject to Title VI and EPA’s Title VI implementing regulations.

### B. Program or Activity

A “program or activity” includes “all of the operations of ... a department, agency, special purpose district, or other instrumentality of a State or of a local

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<sup>6</sup> See USASpending.gov (Profiles – Recipients – 808805154).

<sup>7</sup> EPA, News Release, EPA Grant of More Than \$9.8 Million Will Support Environmental Programs in Texas (Oct. 29, 2019), <https://www.epa.gov/newsreleases/epa-grant-more-98-million-will-support-environmental-programs-texas>.

government ... any part of which is extended Federal financial assistance.” 42 U.S.C. § 2000d-4a. “[I]f any part of a listed entity receives federal funds, the entire entity is covered by Title VI.” *Ass’n of Mexican-Am. Educators v. State of Cal.*, 195 F.3d 465, 475 (9th Cir. 1999), *rev’d in part on other grounds*, 231 F.3d 572 (9th Cir. 2000) (citing *Grimes v. Superior Home Health Care*, 929 F. Supp. 1088, 1092 (M.D. Tenn. 1996)).

TCEQ is an agency of the State of Texas. The Texas Legislature conferred general jurisdiction onto the TCEQ to execute a broad range of environmental regulation for the benefit of all of the residents of Texas. *See* Tex. Water Code § 5.013. The agency is also vested with plenary powers that it may utilize as necessary and convenient to perform acts within its jurisdiction, such as notice requirements for matters within its jurisdiction. *Id.* at §§ 5.002, 5.102. Accordingly, its operations meet the definition of program or activity under Title VI, and it must comply with Title VI in implementing all of its regulatory activities.

### **C. Timeliness**

Rather than being about a specific instance of discrimination, this complaint alleges that TCEQ rules are in continuing violation of Title VI. At present, and as more fully discussed below, TCEQ discriminates against Limited English Proficient persons by failing to provide alternative language public meeting notice and professional interpretation services at public meetings. While EPA regulations require Title VI complaints to be filed within 180 calendar days of an alleged discriminatory act, OCR may waive these time limits. 40 C.F.R. § 7.120(b)(2). In addition, OCR has ongoing authority to periodically review recipients’ programs and activities to ensure Title VI compliance. *Id.* § 7.115. This complaint is timely because TCEQ’s discriminatory rules remain in effect each and every day, its discriminatory acts under those rules are ongoing, and because the discriminatory rules and acts are within OCR’s investigatory authority. Further, as evidenced by the examples below, this complaint is filed within 180 days of the Motiva Port Arthur, Texas refinery public meeting held on September 24, 2019 where affected Spanish-speaking community members were provided with an English-only public meeting notice.

### **D. Other Jurisdictional and Prudential Considerations**

This complaint satisfies all other jurisdictional criteria in Title VI and EPA’s implementing regulations. Specifically, this complaint is in writing, describes the alleged discriminatory acts, identifies the challenged rule, and is filed with EPA by t.e.j.a.s. and Sierra Club on behalf of Limited English Proficient persons who have

experienced adverse impacts as a result of TCEQ's violations of Title VI. 40 C.F.R. § 7.120(a), (b).

### III. FACTUAL BACKGROUND

#### A. National Origin Discrimination in Texas

In Texas, there is a history and pattern of government-sponsored discrimination based on national origin, specifically, against Mexican Americans, also known as Chicanos and Tejanos.<sup>8</sup> In 1848, the Treaty of Guadalupe Hidalgo marked the end of the Mexican-American War and involuntarily naturalized more than 115,000 Spanish-speaking Mexicans into second-class U.S. citizenship status.<sup>9</sup> Government sanctioned terror soon followed for Tejano communities and hundreds would be murdered, many by Texas Rangers, a law enforcement arm of the Texas government.<sup>10</sup> Since the signing of the armistice, dynamic social forces continue to drive steady migration of Mexicans into Texas.<sup>11</sup> Migration from Mexico and other countries plays an important role in shaping a richly diverse contemporary Texas society, where 38% of net migrants to Texas between 2010 and 2015 were international migrants.<sup>12</sup>

Bilingual government is an enriching fact of Texas history. "It is a Texas tradition established by the Mexican government in the 1820's and 1830's to benefit monolingual English-speaking Anglo-American immigrants."<sup>13</sup> The colonizer Stephen F. Austin

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<sup>8</sup> Mexican Americans, Tejanos, and Chicanos are also members of the Hispanic and Latino race and ethnic categories. All of these designations are encompassed within the Latinx identifier.

<sup>9</sup> Laura E. Gómez, *Manifest Destinies: The Making of the Mexican American Race*, 138-39 (2007).

<sup>10</sup> Refusing to Forget, *The History of Racial Violence on the Mexico-Texas Border*, <https://refusingtoforget.org/the-history/> (last visited Nov. 11, 2019).

<sup>11</sup> Rogelio Saenz, et al., *The Demography of Mexicans in the United States*, Roberto M. de Anda, *Chicanas & Chicanos in Contemporary Society*, 3-19 (2d ed. 2004).

<sup>12</sup> The Texas Demographic Center, *Texas Population Projections 2010 to 2050*, 2 (Jan. 2019), [https://demographics.texas.gov/Resources/publications/2019/20190128\\_PopProjectionsBrief.pdf](https://demographics.texas.gov/Resources/publications/2019/20190128_PopProjectionsBrief.pdf).

<sup>13</sup> José Roberto Juárez, Jr., *The Am. Tradition of Language Rights, ¡Que Viva Texas!: The Forgotten Right to Gov't in a "Known Tongue,"* 1 *Scholar* 45, 84 (1999).

himself understood that translation services are requisite to providing a people with just governance and personally undertook "...the burdensome work of preparing legitimate translations of [Mexican law]...because most of these inhabitants [of Texas] do not understand a word of Castilian and it is entirely impossible to govern a people with laws whose existence most of them ignore absolutely."<sup>14</sup> However, bilingualism would not be valued in Texas after the conquest. Texas government targeted schools for discriminatory practices, and "[f]or decades Texas teachers had used English-only laws to sanction punitive actions against Mexican-American students who violated the no-Spanish requirement."<sup>15</sup> The scars of this discrimination are visible in every aspect of Mexican American existence in Texas.

For over 170 years, Tejanos continue to fight discrimination and violence in Texas public spaces. For example, in 1948, the American G.I. Forum of Texas and the League of United Latin American Citizens fought to end segregation of Mexican American children in public schools.<sup>16</sup> And even after successful court cases and national attention on the issue, Tejanos continued to experience discrimination in public schools, due in part to English only instruction, driving Chicano public school students in Crystal City in the Rio Grande Valley to stage a three-week walk-out in 1969.<sup>17</sup> Historically, some school districts in this part of Texas graduated only 10% of initially

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<sup>14</sup> *Id.* at 47 (translation by the author of a letter from Stephen F. Austin to José Antonio Navarro (Oct. 19, 1829) in *The Austin Papers* (Eugene C. Barker, ed.), reprinted in *American Historical Ass'n, II Annual Report* 272 (1922)).

<sup>15</sup> Handbook of Texas Online, Rodolfo Rodríguez, *Bilingual Education*, (these sanctions included financial penalties paid by schoolchildren and physical isolation within the classroom) <https://tshaonline.org/handbook/online/articles/khb02> (last visited Nov. 11, 2019).

<sup>16</sup> *Id.*, V. Carl Allsup, *Delgado v. Bastrop ISD*, <https://tshaonline.org/handbook/online/articles/jrd01> (last visited Nov. 11, 2019).

<sup>17</sup> Armando L. Trujillo, *Teacher Narratives of Movimiento Ideology and Bilingual Education*, Roberto M. de Anda, *Chicanas & Chicanos in Contemporary Society*, 55, 57 ("One of the areas that Chicanos in Cristal [sic] and elsewhere in the broader Chicano movement struggled to change was the language of instruction, which was exclusively in English.").

enrolled Mexican American students<sup>18</sup>, and today, Hispanic students in Texas are more than twice as likely to drop out of school when compared to white students.<sup>19</sup>

Discrimination persists in Texas and Texas government instrumentalities continue to exclude Texans from government processes because of their national origin. Recent litigation regarding gerrymandered congressional districts confirms the enduring effects of national origin discrimination in Texas. Historically, Texas intentionally disenfranchised Mexican American voters using a white man's primary election, poll taxes, the literacy clause, intimidation, corralling, and slating. *Perez v. Abbott*, 253 F. Supp. 3d 864, 888-90 (W.D. Tex. 2017) (citing to testimony from historian Dr. Andrés Tijerina). A federal judge recently confirmed that Texas's racially motivated congressional maps are unconstitutional and required court review of future maps. *Id.* Order on Request for § 3(c) Relief (July 24, 2019) (Doc. No. 1632). "As a result of the historical discrimination against Mexican Americans in Texas, they still bear the effects of this discrimination which hinders their ability to participate effectively in the political process," and "[i]t is clear that the lower rates of voter registration, voting, and running for elective office are directly related to this discrimination." *Perez*, 253 F. Supp. 3d at 888 (testimony from Dr. Tijerina). Thus, even today, Texas excludes people from government processes because of their national origin. As discussed below, these historic patterns of discrimination extend into operations over which EPA has oversight.

### **B. One Example of Discrimination: the Manchester Community of East Houston**

The Manchester neighborhood of east Houston, Harris County, Texas (zip code 77011) is a linguistically isolated community. Manchester is representative of low resource and predominantly Spanish-speaking communities found throughout Texas. Manchester is also an environmental justice community. In Manchester, daily life is marred by disproportionate health and safety impacts from exposure to toxic pollution from industrial facilities along the Houston Ship Channel that overburden the community. To the north, the community is physically bordered by the Houston Ship Channel and a Valero refinery; to the west it is segmented by I-610 and Texas Port Recyclers; and along its southern and eastern edges there is a slew of railroad tracks

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<sup>18</sup> Intercultural Development Research Association, Texas Public School Attrition Study 2017-18, 21 (Dec. 2018), <https://www.idra.org/wp-content/uploads/2018/12/IDRA-Texas-Public-School-Attrition-Study-2017-18Dec.pdf>.

<sup>19</sup> *Id.* at 3.

that entrap the community during chemical and natural disasters. As more fully discussed below, Manchester residents—because of their Limited English Proficiency—experience national origin based discrimination because of the TCEQ rules at issue here.

### **i. History of Manchester**

By the 1930s, Houston “was the nation’s sixth-largest port, a major trading and shipping center in the Sunbelt,” in large part due to the Houston Ship Channel.<sup>20</sup> Houston’s waterfront became a central industrial node in part because it connected neighboring Gulf Coast cities and also because it “proved an attractive location for oil refineries” due to nearby crude oil supplies.<sup>21</sup> The growth of economic and industrial activity at the Port was mirrored by an increase in the Hispanic population: “The growth of Houston’s Hispanic population has been dramatic since the beginning of the city’s development as an oil-industrial center.”<sup>22</sup> The Hispanic population helped fill the labor needs of the growing city, but due to discrimination, they remained powerless and segregated. The segregation experienced by the Hispanic population resulted in many of them residing in central-city communities surrounded by industrial facilities.<sup>23</sup> These historic patterns shaped the communities that exist today, including Manchester, where one can clearly see the continued effects of segregation, lack of power, and lack of access to resources.

Data from the U.S. Census Bureau demonstrate how Manchester is disproportionately linguistically isolated in comparison to the larger U.S., Texas, and Harris County populations.

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<sup>20</sup> Robert Bullard, et al., *Houston: Growth and Decline in a Sunbelt Boomtown*, 15, 41-44 (1989).

<sup>21</sup> Handbook of Texas Online, Marilyn M. Sibley, *Houston Ship Channel*, <https://tshaonline.org/handbook/online/articles/rhh11> (last visited Nov. 11, 2019).

<sup>22</sup> Bullard, *Houston: Growth and Decline in a Sunbelt Boomtown*, 101.

<sup>23</sup> *Id.* at 107 (noting that “less than half of the white population lived in the central city in 1980, [whereas] two-thirds of Hispanics were located in this area.”).

	Total population 5 years and over	Population that speak English less than very well	Percentage of population that speak English less than very well
United States	301,150,892	25,654,421	8.5%
Texas	25,437,762	3,576,480	14.1%
Harris County	4,175,737	851,542	20.4%
Manchester (77011)	17,445	8,148	46.7%

Source: U.S. Census Bureau ACS, Language Spoken at Home, search United States, Texas, Harris County, and zip code 77011.

According to the City of Houston, 93.69% of the population in Manchester is Hispanic/Latino.<sup>24</sup> The median household income in Manchester is \$31,717, and 34.14% of families live below the poverty level.<sup>25</sup> Further, only 6.5% of residents over the age of 25 have a bachelor’s degree or higher.<sup>26</sup>

The public schools in Manchester mirror the community around them, with a majority of students classified by the Texas Education Agency as Hispanic and economically disadvantaged. For instance, at J.R. Harris Elementary School 97.4% of the students are Hispanic, 88.1% are economically disadvantaged, and 63.4% are English Language Learners.<sup>27</sup> At Cesar Chavez High School, 84.6% of the students are Hispanic,

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<sup>24</sup> City of Houston & Harris County, Houston State of Health, 2019 Demographics (search zip code 77011), <http://www.houstonstateofhealth.com/?module=demographicdata&controller=index&action=index&id=38486&sectionId=>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*, Community Dashboard (search zip code 77011), <http://www.houstonstateofhealth.com/indicators/index/indicatorsearch?doSearch=1&grouping=1&subgrouping=1&ordering=1&resultsPerPage=150&l=38486&showSubgroups=0&showOnlySelectedSubgroups=1&primaryTopicOnly=&sortcomp=0&sortcompIncludeMissing=0&showOnlySelectedComparisons=1&showComparisons=1&i=&handpicked=1&requireSubgroups=0&card=0>.

<sup>27</sup> Texas Education Agency, J.R. Harris Elementary School, 2017-18 School Report Card, <https://rptsvr1.tea.texas.gov/cgi/sas/broker?service=marykay&year4=2018&year2=18&debug=0&single=N&title=2018+School+Report+Card&program=perf rept.perfmast.sas&prgopt=2018%2Fsrc%2Fsrc.sas&ptype=H&batch=N&level=campus&level=campus&search=campname&namenum=Harris&campus=101912166>; see Tex. Educ. Code §

69.1% are economically disadvantaged, and 14.6% are English Language Learners.<sup>28</sup> And at Milby High School, 93.4% of the students are Hispanic, 86.0% are economically disadvantaged, and 17.9% are English Language Learners.<sup>29</sup>

## ii. Health Impacts in Manchester

Because of their linguistic isolation and low access to resources, communities like Manchester are predisposed to exclusion from environmental permitting decisions. As seen in Manchester, barriers to participation in the environmental permitting process exacerbate the proliferation of polluting industry in the community. Because of these barriers, including lack of public notice, communities like Manchester are excluded and lack meaningful access to environmental regulatory processes to hold polluters in their community accountable. In environmental justice communities like Manchester, “[l]ong-term daily exposures to air pollution can lead to health effects that go unaddressed due to residents’ limited financial and health care resources.”<sup>30</sup> As illustrated below, the cumulative health impacts of daily exposures to harmful pollution can come from facilities regulated for their output of contaminated air, water, and waste.

Manchester residents are surrounded by industrial facilities and their daily authorized and unauthorized output of hazardous pollutants. The Houston Ship Channel – the largest petrochemical complex in the U.S. – borders the community to the north and leads to the Port of Houston, which is “recognized as the No. 1 U.S. port in

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29.052(1) (“‘Student of limited English proficiency’ means a student whose primary language is other than English and whose English language skills are such that the student has difficulty performing ordinary classwork in English.”).

<sup>28</sup> Texas Education Agency, Cesar Chavez High School, 2017-18 School Report Card, [https://rptsvr1.tea.texas.gov/cgi/sas/broker?\\_service=marykay&year4=2018&year2=18&\\_debug=0&single=N&title=2018+School+Report+Card&\\_program=perf rept.perfmast.sas&\\_prgopt=2018%2Fsrc%2Fsrc.sas&\\_ptype=H&batch=N&level=campus&level=campus&se arch=campname&namenum=Chavez&campus=101912027](https://rptsvr1.tea.texas.gov/cgi/sas/broker?_service=marykay&year4=2018&year2=18&_debug=0&single=N&title=2018+School+Report+Card&_program=perf rept.perfmast.sas&_prgopt=2018%2Fsrc%2Fsrc.sas&_ptype=H&batch=N&level=campus&level=campus&se arch=campname&namenum=Chavez&campus=101912027).

<sup>29</sup> Texas Education Agency, Milby High School, 2017-18 School Report Card, [https://rptsvr1.tea.texas.gov/cgi/sas/broker?\\_service=marykay&year4=2018&year2=18&\\_debug=0&single=N&title=2018+School+Report+Card&\\_program=perf rept.perfmast.sas&\\_prgopt=2018%2Fsrc%2Fsrc.sas&\\_ptype=H&batch=N&level=campus&level=campus&se arch=campname&namenum=Milby&campus=101912011](https://rptsvr1.tea.texas.gov/cgi/sas/broker?_service=marykay&year4=2018&year2=18&_debug=0&single=N&title=2018+School+Report+Card&_program=perf rept.perfmast.sas&_prgopt=2018%2Fsrc%2Fsrc.sas&_ptype=H&batch=N&level=campus&level=campus&se arch=campname&namenum=Milby&campus=101912011).

<sup>30</sup> *Double Jeopardy*, *supra* note 4, at 6.

foreign waterborne tonnage and is the No. 3 ranked U.S. port in terms of total foreign cargo value.”<sup>31</sup> Along Manchester’s eastern edge is the Manchester Terminal and its 72.5 acres of Foreign Trade Zone serving Houston Ship Channel industry.<sup>32</sup> All these industrial and transportation activities grouped together means that East Houston neighborhoods, like Manchester, which “face a number of vulnerabilities based on their marginal social and economic standing[,] also carry a heavier burden of health risks from breathing pollutants in their air. They tend to be located closer to major point sources than most other neighborhoods in the Greater Houston area and to be nearer to major transportation corridors. The burden of these risks taken together poses special needs in these neighborhoods.”<sup>33</sup> A number of studies and reports demonstrate the harm to public health for residents of Houston and also the disproportionate burden that residents of Manchester bear in comparison to other neighborhoods in the city. For instance:

- According to the American Lung Association’s *State of the Air*, Houston is ranked as one of the 25 most ozone-polluted cities and one of the 25 cities most polluted by year-round particle pollution (annual PM<sub>2.5</sub>).<sup>34</sup>
- A study of Medicaid-enrolled children in Harris County showed an association between increases in new asthma cases and increased levels of ozone, nitrogen dioxide, and fine particulate matter (PM<sub>2.5</sub>) levels in the air.<sup>35</sup>

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<sup>31</sup> Colliers International, *Houston Economic Outlook* at 7 (2018), [https://s3.us-east-2.amazonaws.com/colliershouston/2018+Market+Reports+/2018+Economic+Outlook\\_JR\\_EV.pdf](https://s3.us-east-2.amazonaws.com/colliershouston/2018+Market+Reports+/2018+Economic+Outlook_JR_EV.pdf).

<sup>32</sup> Manchester Terminal, About Manchester Terminal, <https://www.manchesterterminal.com/>.

<sup>33</sup> University of Texas School of Public Health, *A Closer Look at Air Pollution in Houston: Identifying Priority Health Risks* at 23, <http://www.greenhoustontx.gov/reports/UTreport.pdf>.

<sup>34</sup> American Lung Association, *State of the Air 2019* at 20-21, <https://www.lung.org/assets/documents/healthy-air/state-of-the-air/sota-2019-full.pdf>.

<sup>35</sup> J. Wendt et al., *Association of short-term increases in ambient air pollution and timing of initial asthma diagnosis among Medicaid-enrolled children in a metropolitan area*, *Envtl. Research*, 131: 50-58 (May 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4502952/>; see also *Envtl. Defense Fund, Asthma in Texas* (Aug. 1, 2016), <http://blogs.edf.org/texascleanairmatters/2016/08/01/asthma-in-texas/>.

- The Houston Chronicle conducted a study of air quality by placing air monitors in four communities in Houston. It found that “[n]owhere were the levels [of chemicals] higher or more widespread, or the industry connection more clear, than in Manchester and Allendale, two predominantly Hispanic neighborhoods that are located close together in southeast Houston.”<sup>36</sup>
- The Union of Concerned Scientists compared the risks and exposures faced by residents of the Harrisburg/Manchester neighborhood in contrast to two neighborhoods that are majority white and higher income (West Oaks/Eldridge and Bellaire). Its analysis showed: (a) “toxicity levels from [chemical] exposures in Harrisburg/Manchester are 12 and more than 3 times higher than in West Oaks/Eldridge and Bellaire, respectively”; (b) [r]esidents of the Harrisburg/Manchester community have a 24 and 30 percent higher cancer risk than those of Bellaire and West Oaks/Eldridge, respectively”; (c) the respiratory hazard index is 22 percent greater for Harrisburg/Manchester compared to the urban Houston area overall; and (d) 90 percent of residents in Harrisburg/Manchester live within one mile of a Risk Management Plan industrial facility (facilities handling extremely hazardous substances), compared to “9 and 14 percent of those living in Bellaire and West Oaks/Eldridge, respectively.”<sup>37</sup>
- A recent study and supplemental analysis by the Texas Department of State Health Services found that, for census tracts analyzed in east Harris County, “the number of other leukemia among all ages was statistically significantly higher than expected,” and that for adults, the numbers of brain and cervical cancers overall were also “statistically significantly higher than expected,” and the same was true in some individual census tracts for additional kinds of cancer.<sup>38</sup>
- Researchers at Texas A&M University performed a study finding disproportionate cumulative impacts from pollution, concluding:

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<sup>36</sup> Dina Cappiello, “Chronicle cross-county study reveals risky load of ‘air toxics,’” Houston Chronicle (Jan. 16, 2005), <https://www.chron.com/news/article/Chronicle-cross-county-study-reveals-risky-load-1643020.php>.

<sup>37</sup> *Double Jeopardy*, *supra* note 4.

<sup>38</sup> Tex. Dep’t of State Health Services, Supplemental Analyses, Assessment of the Occurrence of Cancer, East Harris County, Texas, 1995-2012 (Dec. 28, 2015), <https://www.dshs.texas.gov/epitox/CancerClusters/Supplemental-analyses---Csum-14004.pdf>; <https://www.dshs.state.tx.us/epitox/CancerClusters.shtm>.

“Residents of the environmental justice neighborhood of Manchester, located on Houston’s East End, are disproportionately exposed to toxic pollutants from both industry and transportation infrastructure.”<sup>39</sup>

- In another study, researchers took water samples from thirty zones within the Manchester neighborhood and “[b]arium was discovered in every sample and many of the zones showed alarming levels” of other metals, such as lead, arsenic, chromium, and mercury. Further, “[m]any of the locations exceeded the levels set by the EPA with the national recommended water quality criteria for chronic exposure for aquatic life.”<sup>40</sup>
- A recent residential drinking water pilot study found that 30.8% of homes tested positive for lead at levels ranging from 0.6 to 2.4 (µg/L), and while these levels are below the Safe Water Drinking Act lead action level, they are above EPA’s contaminant level goal of zero because there is no safe level of lead for human exposure.<sup>41</sup>
- Considering emissions burdens borne by Houston Ship Channel communities in comparison to communities in the 8-county ozone nonattainment area, a recent study found that “[t]he confluence of vulnerability and emissions burdens is greatest in the Harrisburg/Manchester community...”<sup>42</sup> The study aggregated emissions

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<sup>39</sup> G. Sansom et al., *Domestic Exposures to Polycyclic Aromatic Hydrocarbons in a Houston, Texas, Environmental Justice Neighborhood*, *Envtl. Justice* (Oct. 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6241524/> (also noting that “In another study, the total PAHs observed in Manchester were more analogous to settled house dust collected in a residential area close to an industrial complex in Sumgayit, Azerbaijan (2.9 mg/m<sup>2</sup>), than in a rural, agricultural community in Texas (0.11 mg/m<sup>2</sup>)...”).

<sup>40</sup> G. Sansom et al., *Confirming the Environmental Concerns of Community Members Utilizing Participatory-Based Research in the Houston Neighborhood of Manchester*, *Int’l J. of Env’tl. Res. and Pub. Health* (2016), 1, 7, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5036672/pdf/ijerph-13-00839.pdf>.

<sup>41</sup> G. Sansom et al., *Vulnerable Populations Exposed to Lead-Contaminated Drinking Water within Houston Ship Channel Communities*, *Int’l J. of Env’tl. Res. and Pub. Health* (2019), <https://www.mdpi.com/1660-4601/16/15/2745>.

<sup>42</sup> Prepared for Natural Resources Defense Council and Texas Environmental Justice Advocacy Services, Sustainable Systems Research, LLC, *Evaluation of Vulnerability and Stationary Source Pollution in Houston*, 25 (Feb. 8, 2019), Attachment 1.

data on particulate matter, volatile organic compounds, polycyclic aromatic hydrocarbons, and other contaminants of concerns – these pollutants include carcinogens.<sup>43</sup>

EPA’s EJScreen Report for Manchester also shows the cumulative toxic burden that is experienced by residents of this particular area, with the community often ranked in the 90th percentile<sup>44</sup> most at risk under various environmental indicators:

Environmental Indicator	State Percentile	USA Percentile
Particulate Matter	95	87
Superfund Proximity	95	90
RMP Facility Proximity	79	83
Hazardous Waste Proximity	97	91
Wastewater Discharge Indicator	96	92
National-Scale Air Toxics Assessment (“NATA”) Cancer Risk	89	80-90

When these harmful environmental indicators are combined with the demographic index (an average of the percent low-income and percent minority demographic indicators), it results in the Environmental Justice Index (“EJ Index”). The EJ Index for Manchester shows similarly high percentile rankings for all variables.

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<sup>43</sup> *Id.* at 9.

<sup>44</sup> Percentiles “are a way to see how local residents compare to everyone else in the United States ... [t]he national percentile tells you *what percent of the US population has an equal or lower value*, meaning less potential for exposure/risk/proximity to certain facilities.” EPA, How to Interpret a Standard Report in EJScreen (last updated Dec. 19, 2016) (emphasis in original), <https://www.epa.gov/ejscreen/how-interpret-standard-report-ejscreen>.

Selected Variables	State Percentile	EPA Region Percentile	USA Percentile
<b>EJ Indexes</b>			
EJ Index for PM2.5	82	87	92
EJ Index for Ozone	74	79	86
EJ Index for NATA* Diesel PM	92	93	93
EJ Index for NATA* Air Toxics Cancer Risk	82	86	91
EJ Index for NATA* Respiratory Hazard Index	86	89	91
EJ Index for Traffic Proximity and Volume	83	87	88
EJ Index for Lead Paint Indicator	97	97	96
EJ Index for Superfund Proximity	96	96	96
EJ Index for RMP Proximity	84	88	92
EJ Index for Hazardous Waste Proximity	97	98	95
EJ Index for Wastewater Discharge Indicator	97	98	96

#### IV. LEGAL BACKGROUND

##### A. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funds from discriminating against individuals on the basis of race, color, or national origin. 42 U.S.C. § 2000d. Title VI directs federal agencies granting federal assistance to issue regulations to achieve the statutory objectives. *Id.* § 2000d-1. EPA’s implementing regulations state that “[n]o person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance on the basis of race, color, [or] national origin[.]” 40 C.F.R. § 7.30. The regulations also provide a non-exclusive list of specific, prohibited discriminatory acts:

(b) A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.

*Id.* § 7.35. These regulations make clear that discrimination on the basis of national origin is a violation of Title VI whether it is the purpose of the decision or the effect. *Id.*

##### B. PUBLIC NOTICE

EPA has noted that “[m]eaningful public involvement consists of informing, consulting, and working with potentially affected and affected communities at various

stages of the permitting process to address their concerns.”<sup>45</sup> The agency has also recommended to recipients of its funds that they “[c]onsider tailoring and integrating public involvement practices that engage communities into as many stages of the process as appropriate, so that public involvement becomes more of a ‘culture’ of how agencies think and operate, as opposed to a list of measures to check off as they are completed.”<sup>46</sup> Due process requires that notice be reasonably calculated, under all the circumstances, to convey all information necessary to apprise interested parties about their rights in a governmental proceeding.<sup>47</sup> Delivery of such notice must be reasonably structured to assure that the person to whom it is directed receives it.<sup>48</sup>

Texas law requires that TCEQ “develop and implement policies that will provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission”<sup>49</sup> and tasks the Chief Clerk with issuance of notice of public hearings.<sup>50</sup> As demonstrated in this complaint, TCEQ regularly misses the mark and this is not the first Title VI complaint alleging deficient TCEQ notice. EPA resolved a Title VI complaint (No. 01R-00-R6) on May 23, 2017 filed by the Sierra Club and People Against Contaminated Environments on April 13, 2000 which alleged that TCEQ allowed ExxonMobil to use an unlawful permit process that allowed it to avoid public participation requirements, including a hearing.<sup>51</sup> The only actionable item in the Informal Resolution Agreement was a requirement for TCEQ to hold two community meetings in Beaumont, Texas to, among other things, inform the community about “TCEQ’s permitting process and opportunities for public involvement.”<sup>52</sup>

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<sup>45</sup> 71 Fed. Reg. at 14,210.

<sup>46</sup> *Id.* at 14,212.

<sup>47</sup> *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950); *North Alabama Express, Inc. v. U.S.*, 585 F.2d 783, 787 (5th Cir. 1978); *Intercontinental Indus., Inc. v. American Stock Exch.*, 452 F.2d 935, 941 (5th Cir. 1971) *cert. denied*, 409 U.S. 842 (1972); *see also, e.g., MCI Telecomms Corp. v. FCC*, 57 F.3d 1136, 1140-41 (D.C. Cir. 1995) (explaining importance of notice in administrative proceedings).

<sup>48</sup> *Greene v. Lindsey*, 456 U.S. 444, 450-56 (1982).

<sup>49</sup> Tex. Water Code § 5.112.

<sup>50</sup> *Id.* § 5.109(c).

<sup>51</sup> EPA, Resolution of Administrative Complaint, EPA File No. 01R-00-R6, 2 (May 23, 2017).

<sup>52</sup> *Id.* at 4.

### C. NATIONAL ORIGIN DISCRIMINATION BASED ON LIMITED ENGLISH PROFICIENCY

Executive Order 13,166 required a sweeping review of federal agency policies and procedures “to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP).”<sup>53</sup> To comply with this order, EPA promulgated the “Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.”<sup>54</sup> The Guidance defines Limited English Proficient, or LEP, persons as “[i]ndividuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English.” *Id.* at 35,606/1-2. A specific example of a population likely to include LEP persons is “[p]ersons who live in communities in close proximity to a plant or facility that is permitted or regulated by an EPA recipient.” *Id.* at 35,606/2.

The Guidance confirms that “Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination.” *Id.* at 35,605/2 (citing to *Lau v. Nichols*, 414 U.S. 563 (1974) (school district was required to provide non-English speaking students of Chinese origin with a meaningful opportunity to participate in federally funded educational programs)). Further, it confirms that written materials informing LEP persons of “rights or services is an important part of ‘meaningful access’” because “[l]ack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access.” *Id.* at 35,610/1. Thus, EPA recognizes that “[i]n certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from [f]ederally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-7, and Title VI regulations against national origin discrimination.” *Id.* at 35,604/3. The Guidance sets criteria for EPA “to use in evaluating whether recipients are in compliance with Title VI and Title VI implementing regulations.” *Id.*

The Guidance identifies two important underlying principles: avoiding exclusion of LEP persons from federally assisted programs and providing LEP persons with

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<sup>53</sup> Exec. Order No. 13,166, Improving Access to Services for Persons With Limited English Proficiency, 65 Fed. Reg. 50,121 (Aug. 11, 2000).

<sup>54</sup> 69 Fed. Reg. 35,602 (June 25, 2004) (“EPA LEP Guidance” or “Guidance”).

services in cost effective ways. *Id.* Relying on these principles, EPA established four factors used to determine the extent of a federal funding recipient's obligation to provide LEP persons with language services:

- (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;
- (2) the frequency with which LEP individuals come in contact with the program;
- (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and
- (4) the resources available to the grantee/recipient and costs.

*Id.* at 35,606/2. For the first factor, EPA offers common sense advice: "The greater the number or proportion of these LEP persons, the more likely language services are needed." *Id.* 35,606/3. Further, it recommends that "[r]ecipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed" and to consult previously eligible "language minority populations," census data, "data from school systems and from community organizations, and data from state and local governments." *Id.*

The second factor requires "enhanced language services" where a Federal funding recipient frequently contacts a particular language group. *Id.* at 35,607/1. "For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact [] may suggest a different and less intensified solution." *Id.* The federal funding recipient should consider "whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups." *Id.*

The third factor weighs the import of "the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals." *Id.* Immediacy and high toxicity are indicators of an obligation to provide LEP persons with language services. *Id.* So too are "[d]ecisions by a Federal, State, or local entity to make an activity, warning or notice compulsory" and this "can serve as strong evidence of the program's importance." *Id.* at 35,607/1-2.

Finally, factor four considers the federal funding recipient's level of resources against the cost of language services, taking into account ameliorating measures such as: technological advancements, standardized documents, and reasonable business practices. *Id.* at 35,607/2.

## V. VIOLATIONS OF TITLE VI

Complainants allege that TCEQ discriminates against Limited English Proficient persons throughout Texas by failing to require public meeting notice in a language other than English and by failing to provide professional language interpretation services where TCEQ has reason to know Limited English Proficient persons will be present. At present, TCEQ rules do not require alternative language notice for public meetings.<sup>55</sup> These rules exclude Limited English Proficient community members from participating in TCEQ public meetings in violation of Title VI. Further, TCEQ rules currently do not require professional interpretation at public meetings, which deprives Limited English Proficient community members of the ability to meaningfully participate in TCEQ public meetings, thus violating Title VI.

By denying LEP community members alternative language public meeting notice, TCEQ's rules exclude them from a critical step in the public participation process Texas affords to environmental permitting. The consequences are important. Public meetings provide meaningful and exclusive opportunities for public participation. They often mark the end of the public comment period and offer the only opportunity to introduce oral public comment into the administrative record. Public meetings serve to democratize important decisions affecting communities for years to come.

TCEQ public meetings provide meaningful opportunities for public participation, community organizing, and developing relationships with government officials and regulated industry that exist within the community. Panelists provide introductory remarks and provide public meeting attendees with a general status of the application. Permit applicants may provide project background including presentations, handouts, raw product samples, job statistics, projected traffic flows, traffic mitigation measures, facility history, and contact information. The TCEQ Executive Director's staff present on the status of the application, technical review, and procedural next steps, and the TCEQ Public Interest Counsel explains the remaining public participation process and offers general legal assistance. Depending on the content of public comments received prior to the public meeting, TCEQ regional staff may also address the applicant's compliance history, including environmental complaints, enforcement matters, and site investigations. Nowhere else can community

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<sup>55</sup> 30 Tex. Admin. Code § 55.154(d) ("Notice of the public meeting shall be given as required by § 39.411(d) or (g) of this title (relating to Text of Public Notice), as applicable."); *see also id.* § 39.411(d), (g) (not requiring alternative language notice).

members receive this information succinctly and tailored to their concerns about a particular facility.

The first part of the public meeting is an informal question and answer session where community members can ask questions of the applicant's legal and technical representatives, TCEQ Executive Director legal and technical staff, and the TCEQ Public Interest Counsel. Community members can pose questions to applicants that are related but outside the scope of the application in an effort to understand the scope of the application and gain insight into how it will affect their community long-term. For example, at the hydrogen cyanide air permit public meeting discussed below, Manchester residents asked Valero representatives whether Valero sought to incorporate this permit amendment into its Federal Operating permit, about recent and proposed plant expansions, land acquisitions and home buy-outs, upcoming federally-required fence-line benzene monitoring, and company sponsored scholarship programs. The informal question and answer part of TCEQ public meetings provide community members with a safe space to hold companies accountable in ways governmental regulators cannot.

Community members can also question TCEQ staff on a broad range of issues. For example, Manchester residents questioned the TCEQ toxicologist present at the public meetings about the development of the Effects Screening Level guidelines for hydrogen cyanide and toxicology guidelines generally, including cumulative impacts. Also, Manchester residents asked the TCEQ attorney regarding the faulty notice and the technical permit reviewer regarding hydrogen cyanide modeling and steps taken during technical review process. These are important matters for Manchester community members as they try to ascertain whether Valero's permit amendment will harm their health and safety.

During the second part of the public meeting, the TCEQ Chief Clerk records formal comments, which become part of the administrative record – it is the only opportunity that community members have to provide oral public comment for permit applications. The ability to provide oral public comment is especially important for low resource community members, like those in Manchester, who may not have the resources to comment online, fax or by mail. The public meeting typically marks the end of the public comment period, which is determinative of one's ability to seek a contested case hearing under Texas administrative law. Throughout the public meeting, community members hear from each other, see the strength of their numbers, and share information. TCEQ's rules cut out community members who are not necessarily proficient in English.

Below, Complainants provide one detailed example and several abridged examples demonstrating how the discriminatory rules place an extraordinary burden on Limited English Proficient populations in violation of Title VI.

#### **A. EXAMPLE OF DISCRIMINATORY RULES IN EFFECT: VALERO HYDROGEN CYANIDE PERMIT AMENDMENT**

In spring 2018, Manchester community members first learned about their exposure to hydrogen cyanide from the Valero refinery located across the street from their community park; they promptly organized in opposition. Hydrogen cyanide is a toxic air pollutant emitted by petroleum refineries<sup>56</sup>, and Valero applied to amend its state air permit to allow it to emit ten times its existing hydrogen cyanide emissions. A systemic chemical asphyxiant<sup>57</sup>, hydrogen cyanide is formally classified as an agent of chemical warfare.<sup>58</sup> The application is in technical review and it is unclear whether TCEQ will issue this permit amendment. Despite the high degree of community engagement, TCEQ's discriminatory rules stultified public participation.

Public notice problems started with the first notice, the Notice of Receipt of Application and Intent to Obtain Air Permit ("NORI"), published in English on March 20 and Spanish on March 21, 2014.<sup>59</sup> This notice failed to list hydrogen cyanide or any

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<sup>56</sup> EPA, Review of Emissions Test Reports for Emissions Factors Development for Flares and Certain Refinery Operations (Apr. 2015), [https://www3.epa.gov/ttn/consentdecreefinal\\_report\\_ef.pdf](https://www3.epa.gov/ttn/consentdecreefinal_report_ef.pdf).

<sup>57</sup> Centers for Disease Control and Prevention, The National Institute for Occupational Safety and Health, Hydrogen Cyanide (AC), [https://www.cdc.gov/niosh/ershdb/emergencyresponsecard\\_29750038.html](https://www.cdc.gov/niosh/ershdb/emergencyresponsecard_29750038.html).

<sup>58</sup> Organisation for the Prohibition of Chemical Weapons, Chemical Weapons Convention, <https://www.opcw.org/chemical-weapons-convention>; *id.* Annex on Chemicals Schedule 3, <https://www.opcw.org/chemical-weapons-convention/annexes/annex-chemicals/schedule-3>.

<sup>59</sup> TCEQ, Notice of Receipt of Application and Intent to Obtain Air Permit, Air Quality Permit Number 2501A (issued Feb. 24, 2014) ("The facility will emit the following contaminants: organic compounds, carbon monoxide, sulfur dioxide, nitrogen oxides, sulfuric acid, and particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less."), [https://www14.tceq.texas.gov/epic/eNotice/index.cfm?fuseaction=main.PublicNoticeDescResults&requesttimeout=5000&CHK\\_ITEM\\_ID=565332272014056](https://www14.tceq.texas.gov/epic/eNotice/index.cfm?fuseaction=main.PublicNoticeDescResults&requesttimeout=5000&CHK_ITEM_ID=565332272014056).

appropriate air contaminant category that would have suggested hydrogen cyanide was even being considered for air permitting. Under TCEQ's rules, because no comments were received after the NORI, the opportunity to request a contested case hearing extinguished. Hydrogen cyanide was added as an air contaminant for the second notice, the Notice of Application and Preliminary Decision for an Air Quality Permit ("NAPD"), published years later in English on March 9 and Spanish on March 11, 2018.<sup>60</sup> TCEQ rules required alternative language publication of the NORI and NAPD.<sup>61</sup>

Community members and elected officials requested a public meeting and the TCEQ Executive Director granted the request and scheduled a public meeting for June 4, 2018 at Hartman Park Community Center in Manchester, across the street from the Valero refinery. However, this notice discriminated against the majority of Manchester residents because it was issued in English only.<sup>62</sup>

The TCEQ rule governing public meetings requires "[n]otice of the public meeting shall be given as required by § 39.411(d) or (g) of this title," 30 Tex. Admin. Code § 55.154(d), and neither one of these sections requires alternative language notice. TCEQ held a public meeting for Valero's application on June 4, 2018 based on an English-only, 14-day mailed notice knowing that TCEQ rules required the first two notices to be published in Spanish.

At the meeting, limited interpretation services were provided for a packed audience and headsets ran out. Prior to the meeting, it was not clear to advocates or community members whether there would be interpretation services available at the meeting because these are not required by TCEQ rules. Local elected officials intervened and pressured TCEQ to make guarantees. Ultimately, the same elected officials and outside organizations pressured TCEQ to hold a second public meeting

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<sup>60</sup> TCEQ, *Amended* Notice of Application and Preliminary Decision for an Air Quality Permit, Permit Number: 2501A (issued Mar. 7, 2018) ("The amendment will authorize the addition of the following new air contaminant: hydrogen cyanide (HCN)."), [https://www14.tceq.texas.gov/epic/eNotice/index.cfm?fuseaction=main.PublicNoticeDescResults&requesttimeout=5000&CHK\\_ITEM\\_ID=398528612018067](https://www14.tceq.texas.gov/epic/eNotice/index.cfm?fuseaction=main.PublicNoticeDescResults&requesttimeout=5000&CHK_ITEM_ID=398528612018067).

<sup>61</sup> 30 Tex. Admin. Code § 39.405(h).

<sup>62</sup> TCEQ, Notice of Public Meeting for an Air Quality Permit, Permit Number: 2501A (issued May 21, 2018), [https://www14.tceq.texas.gov/epic/eNotice/index.cfm?fuseaction=main.PublicNoticeDescResults&requesttimeout=5000&CHK\\_ITEM\\_ID=904498202018141](https://www14.tceq.texas.gov/epic/eNotice/index.cfm?fuseaction=main.PublicNoticeDescResults&requesttimeout=5000&CHK_ITEM_ID=904498202018141).

with Spanish notice and enhanced interpretation services, but even that meeting entailed discrimination against Limited English Proficiency community members.

TCEQ held a second public meeting on September 20, 2018 based on a 22-day English and a 4-day Spanish mailed and published notice.<sup>63</sup> Professional interpretation services were provided at this public meeting. As discussed above, approximately half of the population in Manchester speaks English less than very well, nearly all of the population is low income, and over a third of the population lives in poverty. Because of their LEP status and limited resource status, many Manchester residents were not able to attend this public meeting.

Limited English Proficient families, many with extremely limited resources, face challenges other families do not, and receiving a 4-day notice places them at a significant disadvantage for participation. For example, it decreases the likelihood that they will find out about the meeting in the first place, find childcare, arrange transportation, take time off from work, and arrange care for disabled and elderly relatives.

Limited English Proficient community members should not have to take such extraordinary efforts to participate in TCEQ public meetings because Title VI of the Civil Rights Act already secures their right to meaningful participation. Because the NORI and NAPD notices were required to be published in an alternative language, TCEQ was aware of the presence of affected LEP community members. Readily available public data from the U.S. Census Bureau, the Texas Education Agency, the City of Houston, Harris County, and EPA's EJ Screen demonstrate that Manchester is a community where there is a greater number or proportion of LEP persons; therefore, it is "more likely language services are needed." 69 Fed. Reg. at 35,606/3. TCEQ rules already require public meeting notice because the air pollution at issue has serious implications for community members' health and wellbeing, thus illustrating "the program's importance." *Id.* 35,607/1-2. TCEQ's Region 12 office is in Houston, and TCEQ frequently holds public meetings in Houston with a large number of LEP, Spanish-speaking people in attendance. *Id.* at 35,607/1. As discussed below, TCEQ has

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<sup>63</sup> TCEQ, Consolidated Notice of Receipt of Application and Intent to Obtain Air Permit, Notice of Application and Preliminary Decision, and Notice of Public Meeting, Permit Number: 2501A (issued Aug. 28, 2018), [https://www14.tceq.texas.gov/epic/eNotice/index.cfm?fuseaction=main.PublicNoticeDescResults&requesttimeout=5000&CHK\\_ITEM\\_ID=680446712018241](https://www14.tceq.texas.gov/epic/eNotice/index.cfm?fuseaction=main.PublicNoticeDescResults&requesttimeout=5000&CHK_ITEM_ID=680446712018241).

sometimes provided public meeting notices in alternative languages, demonstrating that it has the resources to do so. *Id.* at 35,607/2.

## **B. OTHER EXAMPLES OF DISCRIMINATORY EFFECT OF RULES**

The abridged examples below illustrate the discriminatory effect of the TCEQ rules complained of here on linguistically isolated communities with high rates of Limited English Proficient residents. Public meetings are held at the discretion of the TCEQ Executive Director<sup>64</sup> and are usually the culmination of extensive community organizing and outreach to local elected officials. Despite these efforts, per TCEQ's rules and with rare exceptions, the public meeting notice is only issued in English. This means that Limited English Proficient persons who are or may be interested in participating in the public meeting and the remainder of the TCEQ permitting process are excluded when compared to English speakers. Further, even if Limited English Proficient persons manage to comprehend English-only public meeting notices, TCEQ rules do not require professional interpretation services at public meetings. As a result, even when Limited English Proficient persons overcome the discriminatory notice rule and manage to attend public meetings—which are held entirely in English—they would not be able to comprehend the information shared at the meeting sufficiently to meaningfully participate at the meeting. In their totality, the rules completely exclude a whole subset—that is 14.1%<sup>65</sup>—of the Texas population because of their limited ability to read or speak English. This outcome contravenes Title VI.

### **1. City of Alamo waste water discharge permit renewal in Hidalgo County**

Approximately 17,670 people live in the City of Alamo, and 30.6% of the population speaks English less than very well.<sup>66</sup> TCEQ rules required the NORI and NAPD to be published in Spanish.<sup>67</sup> A public meeting was held on June 16, 2016, but the

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<sup>64</sup> 30 Tex. Admin. Code § 55.154(c).

<sup>65</sup> U.S. Census Bureau ACS, Language Spoken at Home, American FactFinder, search Texas (14.1% of the Texas population over the age of 5 speaks English less than “very well”).

<sup>66</sup> *Id.* search Alamo City, Texas.

<sup>67</sup> TCEQ, Commissioners' Integrated Database, search TCEQ ID WQ0013633001, [https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item\\_id=486376402015225&detail=action&StartRow=1&EndRow=1&Step=5&requesttimeout=5000](https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item_id=486376402015225&detail=action&StartRow=1&EndRow=1&Step=5&requesttimeout=5000).

notice for this meeting was provided in English only<sup>68</sup> and interpretation services were provided only after requests from City officials.

## **2. Saint-Gobain Ceramics & Plastics Inc. air permit amendment in Bryan, Brazos County**

Jane Long Middle School, a public school approximately one mile from this facility, has a student body that is 69.9% Hispanic, 86.7% economically disadvantaged, and 43% English Language Learners, according to the Texas Education Agency.<sup>69</sup> TCEQ rules required the NORI and NAPD to be published in Spanish, but the public meeting notice was provided in English only.<sup>70</sup> At the July 28, 2016 meeting, no professional interpretation services were provided.

## **3. Nantucket Housing, LLC municipal wastewater discharge permit in Cypress, Harris County**

TCEQ rules required the NORI and NAPD to be published in an alternative language, but the public meeting notice was provided in English only.<sup>71</sup> At the November 12, 2015 public meeting, no professional interpretation services were provided.

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<sup>68</sup> TCEQ, Notice of Public Meeting for TPDES Permit for Municipal Wastewater Renewal, Permit No. WQ0013633001, [https://www14.tceq.texas.gov/epic/eNotice/index.cfm?fuseaction=main.PublicNoticeDescResults&requesttimeout=5000&CHK\\_ITEM\\_ID=528398962016124](https://www14.tceq.texas.gov/epic/eNotice/index.cfm?fuseaction=main.PublicNoticeDescResults&requesttimeout=5000&CHK_ITEM_ID=528398962016124).

<sup>69</sup> Texas Education Agency, Jane Long Middle School, 2017-18 School Report Card, [https://rptsvr1.tea.texas.gov/cgi/sas/broker?\\_service=marykay&year4=2018&year2=18&\\_debug=0&single=N&title=2018+School+Report+Card&\\_program=perf rept.perfmast.sas&\\_prgopt=2018%2Fsrc%2Fsrc.sas&ptype=H&batch=N&level=campus&level=campus&se arch=campname&namenum=jane+long&campus=021902045](https://rptsvr1.tea.texas.gov/cgi/sas/broker?_service=marykay&year4=2018&year2=18&_debug=0&single=N&title=2018+School+Report+Card&_program=perf rept.perfmast.sas&_prgopt=2018%2Fsrc%2Fsrc.sas&ptype=H&batch=N&level=campus&level=campus&se arch=campname&namenum=jane+long&campus=021902045).

<sup>70</sup> TCEQ, Commissioners' Integrated Database, search TCEQ ID Number 20006, [https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item\\_id=186356462016054&detail=action&StartRow=1&EndRow=1&Step=5&requesttimeout=5000](https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item_id=186356462016054&detail=action&StartRow=1&EndRow=1&Step=5&requesttimeout=5000).

<sup>71</sup> TCEQ, Commissioners' Integrated Database, search TCEQ ID Number WQ0015381001, [https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item\\_id=895494662015159&detail=action&StartRow=1&EndRow=1&Step=5&requesttimeout=5000](https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item_id=895494662015159&detail=action&StartRow=1&EndRow=1&Step=5&requesttimeout=5000).

#### **4. Altair Disposal Services, LLC new hazardous waste permit in Colorado County**

TCEQ allowed the NORI to be published in English only, and TCEQ rules required the NAPD to be published in English and Spanish.<sup>72</sup> The public meeting notice was provided only in English<sup>73</sup> and it is unclear whether professional language interpretation services were provided at the public meeting. This facility is within 2.5 miles of several Rice Consolidated School District public schools, including Rice Junior High School where 57.2% of students are Hispanic, 72.4% are economically disadvantaged, and 8% are English language learners.<sup>74</sup>

#### **5. Veranta Capital, LLC new wastewater discharge permit for a land application site in Del Valle, Travis County**

Del Valle is a majority-minority suburb of Austin where 18.4% of the population speaks English less than very well.<sup>75</sup> The nearest public school to the proposed facility, Popham Elementary School, implements a bilingual education program. Yet TCEQ failed to assure that the applicant published alternative language NORI and NAPD notices in accordance with its own rules.<sup>76</sup> A public meeting was held on September 5,

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<sup>72</sup> TCEQ, Order Denying the Application of Altair Disposal Services, LLC, for New Noncommercial Hazardous Waste Landfill in Colorado County, Texas; TCEQ Docket No. 2018-0013-IHW; SOAH Docket No. 582-18-1960 ¶¶ 17-18, 28 (Sept. 27, 2019), [https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.download&doc\\_id=678361832019274&doc\\_name=Order%202018%2D0013%2DIHW%2Epdf&detail=ACTI ON&requesttimeout=5000](https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.download&doc_id=678361832019274&doc_name=Order%202018%2D0013%2DIHW%2Epdf&detail=ACTI ON&requesttimeout=5000).

<sup>73</sup> *Id.* at ¶¶ 21-22.

<sup>74</sup> Texas Education Agency, Rice Junior High School, 2017-18 School Report Card, [https://rptsvr1.tea.texas.gov/cgi/sas/broker?\\_service=marykay&year4=2018&year2=18&\\_debug=0&single=N&title=2018+School+Report+Card&\\_program=perf rept.perfmast.sas&\\_prgopt=2018%2Fsrc%2Fsrc.sas&\\_ptype=H&batch=N&level=campus&level=campus&\\_se arch=district&\\_namenum=rice&district=045903&campus=045903043](https://rptsvr1.tea.texas.gov/cgi/sas/broker?_service=marykay&year4=2018&year2=18&_debug=0&single=N&title=2018+School+Report+Card&_program=perf rept.perfmast.sas&_prgopt=2018%2Fsrc%2Fsrc.sas&_ptype=H&batch=N&level=campus&level=campus&_se arch=district&_namenum=rice&district=045903&campus=045903043).

<sup>75</sup> Del Valle is encompassed in the 78617 zip code. U.S. Census Bureau ACS, Language Spoken at Home, search zip code 78617.

<sup>76</sup> Public comment submitted on behalf of Kevin J. Schwantz Management Trust by Lauren Ice, Associate Attorney, Frederick, Perales, Allmon & Rockwell (May 21, 2019), [https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item\\_id=31](https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item_id=31)

2019 based on an English-only notice and no professional interpretation services were provided.<sup>77</sup>

**6. Motiva Enterprises, LLC refinery air quality permit amendments and new air quality permits in Port Arthur, Jefferson County**

TCEQ rules required the NORI and NAPD to be published in English and Spanish.<sup>78</sup> A public meeting was held on September 24, 2019 based on an English-only notice and no professional interpretation services were provided. Booker T. Washington Elementary, a public school that is approximately 2,000 feet from this Motiva facility, has a student body that is 21.5% English language learners and 84.6% economically disadvantaged.<sup>79</sup>

**7. Soto Ready Mix, Inc. Standard Permit for a new concrete batch plant in Houston, Harris County**

TCEQ rules only require one notice for Standard Permit registrations for concrete batch plants and the rules required notice for this application to be published in

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[8502512018297&detail=protestants&StartRow=1&EndRow=1&Step=5&requesttimeout=5000](https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item_id=318502512018297&detail=protestants&StartRow=1&EndRow=1&Step=5&requesttimeout=5000).

<sup>77</sup> TCEQ, Commissioners' Integrated Database, search TCEQ ID Number WQ0015694001,

[https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item\\_id=318502512018297&detail=action&StartRow=1&EndRow=1&Step=5&requesttimeout=5000](https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item_id=318502512018297&detail=action&StartRow=1&EndRow=1&Step=5&requesttimeout=5000);

*see also* Public comment submitted by Elizabeth Sanchez and received by TCEQ at the public meeting ("I am not in favor because there was no interpreter. I am not in favor of this project. We need information in Spanish.") (original comment in Spanish) (Sept. 5, 2019), Attachment 2.

<sup>78</sup> TCEQ, Commissioners' Integrated Database, search TCEQ ID Number 6056,

[https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item\\_id=163396682016078&detail=action&StartRow=1&EndRow=5&Step=5&requesttimeout=5000](https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item_id=163396682016078&detail=action&StartRow=1&EndRow=5&Step=5&requesttimeout=5000).

<sup>79</sup> Texas Education Agency, Booker T. Washington Elementary, 2017-18 School Report Card,

[https://rptsvr1.tea.texas.gov/cgi/sas/broker?\\_service=marykay&year4=2018&year2=18&\\_debug=0&single=N&title=2018+School+Report+Card&\\_program=perf rept.perfmast.sas&\\_prgopt=2018%2Fsrc%2Fsrc.sas&\\_ptype=H&\\_batch=N&\\_level=campus&\\_level=campus&\\_se arch=campname&\\_namenum=washington&\\_campus=123907117](https://rptsvr1.tea.texas.gov/cgi/sas/broker?_service=marykay&year4=2018&year2=18&_debug=0&single=N&title=2018+School+Report+Card&_program=perf rept.perfmast.sas&_prgopt=2018%2Fsrc%2Fsrc.sas&_ptype=H&_batch=N&_level=campus&_level=campus&_se arch=campname&_namenum=washington&_campus=123907117).

Spanish.<sup>80</sup> A public meeting was held on October 22, 2018 based on an English-only notice and no professional interpretation services were provided.

#### **8. Many more linguistically isolated communities experiencing exclusion and at risk of exclusion**

Linguistically isolated communities at risk of exclusion from TCEQ public meetings exist throughout Texas. For example, the historic Chamizal community of El Paso, just south of Fort Bliss, is an overburdened borderland community<sup>81</sup> that is at risk of discrimination because it is in active redevelopment:

There are a wide range of businesses in Chamizal, from the neighborhood friendly to industrial. The physical condition of businesses in the neighborhood varies throughout the neighborhood. Businesses have expressed a desire to increase commercial traffic in the neighborhood that decreased during the Texas Department of Transportation reconstruction of Alameda Avenue.<sup>82</sup>

According to the City, in 2008, 92.8% of Chamizal households spoke Spanish at home, and 40.9% of this community does not speak English it all or does not speak it well.<sup>83</sup> This and all the above examples typify linguistically isolated communities that are prevalent in every part of Texas and have experienced or are at risk of experiencing discrimination from TCEQ's public meeting notice rules.

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<sup>80</sup> TCEQ, Commissioners' Integrated Database, search TCEQ ID Number 151715, [https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item\\_id=926368032018163&detail=action&StartRow=1&EndRow=1&Step=5&requesttimeout=5000](https://www14.tceq.texas.gov/epic/eCID/index.cfm?fuseaction=main.detail&item_id=926368032018163&detail=action&StartRow=1&EndRow=1&Step=5&requesttimeout=5000).

<sup>81</sup> Community activists recently filed a civil rights complaint against a bus terminal project sited near a public high school, available <https://www.documentcloud.org/documents/4429823-Chamizal-Title-VI-Complaint-Re-Bowie-Bus-Hub.html>.

<sup>82</sup> City of El Paso, Community & Human Development Department Neighborhood Services, Chamizal Neighborhood Revitalization Strategy 33-34 (Jan. 2008), <https://www.elpasotexas.gov/~media/files/coep/community%20and%20human%20development/chamizal%20nrs.ashx?la=en>.

<sup>83</sup> *Id.* at 14.

## VI. DISPROPORTIONALITY

The adverse impacts described above are borne entirely by Limited English Proficient people because of their inability to understand English-only public meeting notices and public meetings held entirely in English. TCEQ's current inconsistent policies and practices exclude Limited English Proficient person from a fundamental element of the public participation process that TCEQ affords to the bulk of its environmental permitting. See *United States v. Maricopa Cty.*, 915 F. Supp. 2d 1073, 1079 (D. Ariz. 2012) (citing *Lau*, 414 U.S. 563). TCEQ is aware of the presence of and high likelihood that Limited English Proficient persons will receive English-only public meeting notices and may attend the public meeting, as evidenced by the agency's alternative language requirements for the first two application notices (NORI and NAPD). Yet the agency consistently fails to provide alternative language public meeting notices and professional language interpretation services under these circumstances. To overcome TCEQ's exclusionary barriers, Limited English Proficient persons must, for example, find assistance to translate the notice, contact elected officials to secure professional language interpretation services, or receive incorrect and incomplete translation from unqualified individuals at the public meeting; English-speaking persons do not face these barriers to participation in TCEQ public meetings.

Lacking a requirement to publish public meeting notice in alternative languages and to furnish professional language interpretation services at public meetings means that TCEQ staff can continue exercising their discretion in inconsistent and exclusionary ways. See *N.Y.C. Envtl. Justice All. v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000) (to demonstrate an adverse disparate impact, plaintiffs must "allege a causal connection between a facially neutral policy and a disproportionate and adverse impact on minorities."). This pattern of exclusion also contributes to the perpetuation of disproportionate pollution burdens in environmentally overburdened immigrant and Latinx communities, such as Manchester in Harris County. For all of these reasons, TCEQ's facially neutral public meeting rule has a disproportionate and adverse impact on Limited English Proficient persons.

## VII. LESS DISCRIMINATORY ALTERNATIVES

The following less discriminatory alternatives are available to TCEQ:

- Revise Tex. Admin. Code § 55.154 to require mailed and published notice of public meetings in an alternative language and provide such notice a minimum of 30-days in advance under the same circumstances alternative

- language notice is required for NORI and NAPD notices under 30 Tex. Admin. Code § 39.405(h).
- Revise Tex. Admin. Code § 55.154 to require professional language interpretation services where public meeting notice must be published and mailed in alternative languages.
  - Require publication of public notice for public meetings in certain newspapers with high Limited English Proficient person readership and require announcement on the radio under the same circumstances alternative language notice is required for NORI and NAPD notices under 30 Tex. Admin. Code § 39.405(h).
  - Require Spanish bilingual notice for applications in counties that include linguistically isolated Spanish-speaking communities according to the U.S. Census Bureau. This list should include, at a minimum the counties of: Andrews, Aransas, Atascosa, -Bee, Bexar, Brazoria, Brazos, Brooks, Burnet, Calhoun, Cameron, Collin, Crane, Dallas, Denton, Dimmit, Duval, Ector, El Paso, Fayette, Fort Bend, Freeport, Freestone, Frio, Galveston, Guadalupe, Hale, Hereford, Harris, Hidalgo, Hudspeth, Jim Hogg, Jim Wells, Kenedy, Kleberg, La Salle, Lubbock, McLennan, Maverick, Midland, Nueces, Ochiltree, Pecos, Potter, Presidio, Randall, Reagan, Rusk, San Patricio, Starr, Tarrant, Titus, Travis, Uvalde, Valdez, Val Verde, Webb, Wilbarger, Willacy, Winkler, Zapata, and Zavala.
  - Require posting of the public meeting notice at the proposed public meeting site in English and appropriate alternative languages.
  - Take into account civil rights requirements/guidance during the permitting process.
  - Create a Public Involvement Plan for permitting actions in environmental justice communities, especially in the Houston Ship Channel region.<sup>84</sup>
  - Make the online permit tracking system more accessible and available in Spanish.

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<sup>84</sup> A Public Involvement Plan (“PIP”) is an “early involvement tool[] to identify community concerns and lay out approaches recipients plan to take to address those concerns through various outreach activities. An effective PIP includes discussions of what recipients plan to do to ensure that the needs and concerns of the affected community are addressed. In addition, an effective PIP strives to keep the community informed of the public involvement opportunities available to them during the decision-making process ... [A]n effective PIP provides members of the affected communities with a sense of partnership in the decision-making process underlying the permitting process.” 71 Fed. Reg. at 14,211.

- Make a system to identify all projects/permits in environmental justice communities.
- Maintain an interested party/community listserv unlike the existing mailing lists maintained by the Chief Clerk.
- Hire professional translators and advertise translation services to Limited English Proficient communities for documents like Responses to Public Comments, Technical Summaries, Proposals for Decision, among others.
- Hire professional interpreters and advertise live interpretation services available for TCEQ public proceedings including public meetings, Commissioners' Meetings, informational meetings, among others.
- Translate technical documents into lay language (in both English and Spanish).
- Assist in the development of public health assessments and programs, including cumulative impact analyses.
- Send public meeting notices to a broader segment of the affected community, such as an entire zip code, using the United States Postal Service Marketing Mail service because some of the most affected community members lack internet access and internet literacy skills. Also, a facility's property boundaries (including setbacks and buffers) and design (such as emission points, discharge points, points of heavy truck traffic, landfill height capacity) may artificially restrict the size of the potentially affected community who receive notice per TCEQ's rules.
- Host in-person, bilingual (Spanish) TCEQ-sponsored workshops to educate members of the most affected communities on how to file public comments with the TCEQ.
- Create and advertise a home service for the collection of public comment from persons with disabilities who cannot attend public meetings because of their disability but would like to provide oral public comments because they are not able to provide written public comments.
- Along existing English notices, publish alternative language public meeting notices on the TCEQ public calendar as well as other TCEQ websites.
- Post physical public meeting notices in English and any required alternative languages at the main entrances of nearby schools, community centers, childcare facilities, senior centers, and places of worship, as well as public transportation stops.
- Make the draft permit and entirety of the application file available at the public meeting and at community points of interest, **Just** in addition to public libraries with restrictive hours, limited internet access, and copying fees.

- Live stream public meeting, like the regularly scheduled Commissioners Meeting, and allow for remote participation and call-in comments during the meeting.
- Promote the public meeting in television, radio, and social media outlets and other platforms.
- Provide laptops for community members at public meetings for submitting public comments. Public meetings can last for hours and, because of the TCEQ's meeting structure, many community members must leave prior to the formal comment session and are prevented from entering oral comments into the record.
- Allow elderly and disabled persons to comment first during both parts of the public meeting, followed by children under the age of 18 and families with children.
- Guarantee internet access at the public meeting location. Where there is no internet access at a meeting location, provide a Wi-Fi hotspot for attendees.
- Begin TCEQ public meetings with a presentation and tutorial on how to submit comments to the TCEQ.
- Include in the public meeting notice whether professional language interpretation services will be available.

## VIII. RELIEF

Complainants request that EPA's Office of Civil Rights accept this complaint and investigate whether TCEQ violated Title VI of the Civil Rights Act and EPA's implementing regulations. We also request that the Civil Rights Division of the Department of Justice play an active role in coordinating these federal investigative and enforcement actions, consistent with the mission of the Federal Coordination & Compliance Section. Further, we request that EPA issue a strong written recommendation to TCEQ that it grant Complainants' state rulemaking petition filed November 12, 2019 intended to partially remediate the discriminatory conditions complained of here.

Complainants request that TCEQ be brought into compliance by, at least, requiring it to: (a) revise Tex. Admin. Code § 55.154 to require mailed and published notice of public meetings in an alternative language under the same circumstances alternative language notice is required for NORI and NAPD notices; (b) provide a minimum of 30-days mailed and published notice for public meetings; and (c) provide professional interpretation services at public meetings where public meeting notice must be provided in alternative languages.

TCEQ must take steps to correct the deficiencies in its public notice rules. As it develops the measures necessary to come into full compliance with Title VI, TCEQ should engage fully with representatives of the community and be guided by the community's needs. To this end, Complainants request to be informed of and invited to any stakeholder groups and similar efforts by TCEQ and EPA to address the civil rights violations complained of here.

If TCEQ does not come into compliance voluntarily, Complainants request that EPA suspend or terminate the federal financial assistance that the agency receives.

Respectfully submitted,

*/s/ Isabel Segarra Treviño*

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*On behalf of t.e.j.a.s. and Sierra Club*