



# Report to the Legislature on TCEQ Title VI Efforts and EPA Agreement

## I. Title VI Background Information

Title VI of the Civil Rights Act of 1964 (Title VI), U.S. Environmental Protection Agency (EPA) regulations, and other federal regulations prohibit discrimination on the basis of race, color, national origin, disability, sex, and age for recipients of federal financial assistance.<sup>1</sup> Since TCEQ receives financial assistance from EPA, it must ensure nondiscrimination in its programs and activities to comply with federal laws and regulations.

## II. Resolution of the 2019 Title VI Language Access Complaint and Separate Petition for Rulemaking

In November 2019, Texas Environmental Justice Advocacy Services (t.e.j.a.s.) and Sierra Club filed both a petition for rulemaking with TCEQ and a Title VI complaint with EPA's External Civil Rights Compliance Office (ECRCO).<sup>2</sup> The Title VI complaint alleged that TCEQ discriminated on the basis of national origin because the agency's permitting public participation process did not meet the needs of limited English proficient (LEP) communities. The rule petition requested that TCEQ expand alternative language translation and interpretation requirements to improve LEP participation in permitting.

EPA accepted the Title VI complaint for investigation. Pursuant to EPA's regulations,<sup>3</sup> TCEQ and EPA agreed to an informal resolution agreement (IRA) on November 4, 2020.<sup>4</sup> In the IRA, TCEQ agreed to create staff training related to Title VI obligations, to conduct both virtual and in-person public meetings to

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<sup>1</sup> Title VI; Section 504 of the Rehabilitation Act of 1973, as amended, Title 29 U.S. Code (U.S.C.) Section 794; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. Section 1681 *et seq.*; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 Section 13, 86 Stat. 903 (codified as amended at 33 U.S.C. Section 1251 (1972)); Age Discrimination Act of 1975, 42 U.S.C. Section 6101 *et seq.*; Title 40 Code of Federal Regulations (C.F.R.) Parts 5 and 7.

<sup>2</sup> On September 24, 2020, EPA established a new national program office, the Office of Environmental Justice and External Civil Rights. It was created by merging three existing programs at the agency: the Office of Environmental Justice, ECRCO, and the Conflict Prevention and Resolution Center.

<sup>3</sup> EPA regulations implementing federal non-discrimination laws, including Title VI, are found in 40 C.F.R. Parts 5 and 7.

<sup>4</sup> IRA between TCEQ and EPA re: EPA Complaint No. 02NO-20-R6, signed November 4, 2020, available at <https://www.tceq.texas.gov/downloads/agency/decisions/participation/20-11-4-ira.pdf>.

educate the public on TCEQ's public participation and enforcement processes, and to draft and implement three EPA-recommended plans: a Disability Nondiscrimination Plan, a Public Participation Plan (PPP), and a Language Access Plan (LAP). The three plans formalized and expanded existing agency policies, procedures, and practices related to providing equal access to TCEQ's program processes for both TCEQ employees and the public. In the year following finalization of the IRA, TCEQ completed staff training, developed the three required plans, and conducted public outreach.

Separate from the Title VI process, the Commission considered the t.e.j.a.s. and Sierra Club rule petition at its December 18, 2019, public Commission Agenda meeting, and directed the executive director to evaluate whether to amend procedural rules to expand language access in the permitting process. After review of agency rules, the executive director recommended proposed rule revisions to expand translation and interpretation in the public participation process for permitting. The Commission ultimately adopted these rule revisions in August 2021, with new requirements applicable to permit applications that were administratively complete on or after May 1, 2022.<sup>5</sup> The new changes are applicable to wastewater, air, and waste permit applications subject to the public participation requirements of 30 TAC Chapter 39.<sup>6</sup>

Significantly, the amendments added new requirements for interpretation at public meetings; translation of hearing notices, transmittal documents, responses to comments, hearing requests, requests for reconsideration; and posting alternative language notices when applications are likely to affect LEP communities. The rule revisions moved the alternative language requirements of 30 TAC Chapter 39 into a new section, 30 TAC Section 39.426, making them easier for the public and applicants to find. Finally, for all applicable permit applications, the rule revisions require applicants to provide a plain-language summary of their application to assist in the public's understanding of the authorization that applicant is seeking.

## **III. Implementation**

In September 2021, TCEQ formed a Title VI compliance implementation team (Implementation Team) to develop tools and implementation strategies for the newly adopted IRA plans and language access rule.

### **A. Rule Implementation**

The new rules apply to permit applications that are administratively complete on or after May 1, 2022. The agency's implementation efforts included extensive public outreach. TCEQ hosted a webinar in November 2021 to solicit comments and answer questions from stakeholders about the agency's implementation plans and presented implementation plans at various agency events (e.g., TCEQ's Environmental Trade Fair and Conference, TCEQ's Advanced Air

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<sup>5</sup> A description of the rule revisions and public comment regarding the revisions is available at: [Amend Public Notice & Participation Requirements \(texas.gov\)](https://www.tceq.texas.gov/public-notice/participation-requirements).

<sup>6</sup> Specifically, these rule amendments are applicable to permits subject to 30 TAC Chapters 39 and 55. 30 TAC Sections 39.402 and 39.403 list the applicable permits.

Permitting Seminar) and industry-group meetings. The agency prepared new guidance documents for both the regulated community and the public and posted them on the agency's website in both English and Spanish.<sup>7</sup>

The rule amendments required an update to agency notices that would direct the public to alternative language resources. While it is an applicant's responsibility to ensure that a notice is accurate, the agency provides templates to assist applicants and ensure consistency. Staff prepared new templates for these notices and translated them into Spanish. Additionally, TCEQ prepared and translated plain language summary templates for some of the most common types of permitted facilities.

The implementation team developed a new, easy-to-use page on TCEQ's public website that posts permit application notices required by 30 TAC Chapter 39 in a user-friendly manner.<sup>8</sup> There are also separate pages for permit applications in each of these programs: air, industrial and hazardous waste, municipal solid waste, radioactive materials, underground injection control, and water quality. All these pages include the required notices for the permit application and the plain language summaries and include the alternative language translations when required.<sup>9</sup> Notices, with accompanying alternative language notices when required, also continue to be uploaded into the Commissioners' Integrated Database, a publicly accessible database that tracks the status of all matters pending before the Commission and Executive Director for approval.<sup>10</sup>

When notice in an alternative language is required, TCEQ rules require the applicant to publish the notice in an alternative-language publication. Previously, if there was no alternative-language publication, a waiver of this requirement was available. Under the new rules, if an applicant receives a waiver of publication for a translated notice because there is no suitable newspaper, the translated notice must still be posted on the agency website and made

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<sup>7</sup> GI-631 Language Access and Public Participation, available at [www.tceq.texas.gov/downloads/agency/decisions/participation/gi-631-language-access-and-participation.pdf](http://www.tceq.texas.gov/downloads/agency/decisions/participation/gi-631-language-access-and-participation.pdf); GI-631 Acceso Lingüístico y Participación Pública, available at [www.tceq.texas.gov/downloads/agency/decisions/participation/gi-631esp-acceso-linguistico-y-participacion-publica.pdf](http://www.tceq.texas.gov/downloads/agency/decisions/participation/gi-631esp-acceso-linguistico-y-participacion-publica.pdf); RG-633 Public Notices: New 30 TAC Section 39.426 Requirement, available at [www.tceq.texas.gov/downloads/agency/decisions/participation/rg-633-tac-public-notice-requirements.pdf](http://www.tceq.texas.gov/downloads/agency/decisions/participation/rg-633-tac-public-notice-requirements.pdf); RG-633 Avisos Públicos: Nuevo 30 TAC Sección 39.426 Requisito, available at [www.tceq.texas.gov/downloads/agency/decisions/participation/rg-633esp-aviso-publicos-nuevo-requisito.pdf](http://www.tceq.texas.gov/downloads/agency/decisions/participation/rg-633esp-aviso-publicos-nuevo-requisito.pdf).

<sup>8</sup> [Pending Permit Application Information: Water Quality Permits/Informacion de permiso pendientes: Calidad del agua - Texas Commission on Environmental Quality - www.tceq.texas.gov](#)

<sup>9</sup> The changes to the alternative language requirements in 30 TAC Chapter 39 did not change TCEQ's long-standing trigger for when applicants are required to provide alternative language notice. After the rule change, the language that tells applicants when alternative language notice is required is found in 30 TAC Section 39.426(a)(2). The requirements apply when the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program as required by Texas Education Code, Chapter 29, Subchapter B and 19 TAC Section 89.1205(a), and either (1) students are enrolled in a program at that school, (2) students from that school attend a bilingual education program at another location, or (3) the school that otherwise would be required to provide a bilingual education program has been granted an exception from the requirements to provide the program as provided for in 19 TAC Section 89.1207(a). The new rules did add a provision to state the requirements apply when TCEQ's executive director determines that alternative language notice is necessary to provide proper notice and meaningful access to affected communities.

<sup>10</sup> [Commissioners' Integrated Database - Texas Commission on Environmental Quality - www.tceq.texas.gov](#)

available for the LEP population. The agency now requires permit applicants to provide translated notice packages, ensuring that translations can be posted on the agency website in a timely fashion.

Since implementation of the new rule, requests for interpretation and public meetings with interpretation services have increased. Generally, applicants provide interpretation services at public meetings for permit applications. Applicants most often provide professional interpretation services with simultaneous interpretation using technological assistance (e.g., headsets). TCEQ's Office of the Chief Clerk (OCC) provides a mailed notice when public meetings are scheduled. These notices are now translated when other alternative language notice documents are required. OCC hired an in-house Spanish translator to translate notices and assist with the development of translated notice templates for air, waste, and water quality. Additionally, OCC cover letters accompanying notices are translated when alternative language notices are required.<sup>11</sup>

The executive director's responses to comments (RTC) are translated for some permit applications, such as when comments were received in a language other than English or when the executive director determines that a translated RTC is needed based on alternative language participation and the LEP makeup of affected communities. These RTCs have been translated using a machine translation program and then checked for quality by TCEQ staff fluent in the language.<sup>12</sup> Although the rule has not been in place long enough for the agency to have translated responses to hearing requests or requests for reconsideration, TCEQ expects they will be necessary as permit applications subject to the new rules begin to make their way to this point in the process.<sup>13</sup> The agency has predominantly encountered translation needs for Spanish for these types of documents. For other languages, the agency may need to use contracted assistance to provide an accurate translation. Given the short turnaround time allowed for responses to hearing requests, if translation is required in a language other than Spanish, the translated response will likely be a machine translation only.

The adopted rule requirements have been fully implemented since May 1, 2022. Response from the public has been generally positive, and increased availability of information for LEP communities and agency efforts to improve communication have been well-received.

## **B. IRA Implementation**

After signing the IRA in November of 2020, the agency immediately began implementing the IRA requirements.<sup>14</sup> The primary tasks were developing staff

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<sup>11</sup> These include transmittal documents for RTCs and documents notifying the mailing list that a permit has been issued and the process for requesting a Motion to Overturn, letters setting challenged permit applications on agenda, notifications of a public meeting, and similar documents.

<sup>12</sup> Both Google Translate and the Microsoft Office Translate function have been and will continue to be used.

<sup>13</sup> A Request for Reconsideration or Request for Hearing will require a translated response when the requests are received in an alternative language.

<sup>14</sup> IRA between TCEQ and EPA re: EPA Complaint No. 02NO-20-R6, signed November 4, 2020, available at <https://www.tceq.texas.gov/downloads/agency/decisions/participation/20-11-4-ira.pdf>.

training materials and having staff complete the training, developing the three required plans, and public outreach and engagement through both virtual, and in-person meetings.

TCEQ developed and posted a new Title VI Compliance webpage.<sup>15</sup> This page took existing information about Title VI at TCEQ, as well as other related information, and consolidated it into one easy-to-find webpage. The IRA is posted on this page, along with the three plans—the Disability Nondiscrimination Plan, the LAP, and the PPP; recordings and transcripts of meetings; information about other public participation webpages at TCEQ; relevant guidance documents; TCEQ’s grievance procedures; and other information. The page is available in both English and Spanish and is regularly updated with new information, including notices of upcoming meetings related to TCEQ’s Title VI compliance and implementation efforts.

## ***Training***

TCEQ developed a virtual training module, and all agency staff completed the training by the end of January 2022. New staff is required to complete the training when they begin at TCEQ.

## ***Development of the Plans***

The Disability Nondiscrimination Plan includes the name of the agency’s designated nondiscrimination coordinator, describes the procedures for filing and the agency’s administration of the investigation of complaints alleging violations of Title VI with TCEQ, and reiterates TCEQ’s commitment to providing accommodations and accessibility assistance when reasonable and necessary.

The Public Participation Plan details how the agency interacts with the public in various contexts. The PPP includes information about public participation opportunities. It also includes guidelines to assist agency personnel to provide necessary accommodations to ensure equal access to agency programs. The PPP also directs permitting programs to add Public Involvement Plans (PIP) to permit application materials. The PIP is a tool that requires permit applicants to consider community demographics when evaluating whether enhanced community outreach is appropriate (e.g., providing alternative language accommodations, ensuring that a meeting is held in an accessible location, ensuring that the public has the resources necessary to participate in a TCEQ meeting).

The Language Access Plan provides a framework to identify individuals and communities that need language assistance and describes how TCEQ will provide language assistance. The LAP also includes information about when language accommodations must be provided to LEP individuals and communities, as well as information about when documents may require translation.

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<sup>15</sup> Title VI Compliance at TCEQ website, available at [www.tceq.texas.gov/agency/decisions/participation/title-vi-compliance](http://www.tceq.texas.gov/agency/decisions/participation/title-vi-compliance).

## ***Public Outreach and Education***

The IRA schedule did not allow much time for public engagement during the development of the three plans, but the plans can be amended when necessary to best meet the needs of the agency and the public. Recognizing this and the importance of public input on these plans, TCEQ held three virtual meetings after the plans were finalized to educate the public about the plans and to receive input.

As of today, TCEQ has conducted all three meetings with the final meeting being held in June 2023. Each meeting included Spanish-language interpretation with the last meeting also including Vietnamese interpretation. The comments received during the meetings continue to assist the agency as it moves forward with implementation and use of the plans. For example, stakeholders in the first meeting strongly urged the agency to consider switching meeting platforms to something similar to Zoom, which has tools to make simultaneous interpretation easier. The agency has since acquired a Zoom license for these and other meetings.

In addition, and as required by the IRA, TCEQ has conducted specific public outreach. The agency conducted a webinar in April 2021 and two in-person meetings in Houston and Pasadena in November 2022. The in-person meetings consisted of formal presentations by TCEQ staff followed by informal sessions for the public to ask questions, see demonstrations of agency monitoring equipment, and view two of the agency's mobile monitoring vehicles. Professional Spanish interpreters helped facilitate these meetings.

## ***Implementation of Plan Requirements***

The agency's overriding goal is to remove barriers to public participation in agency programs for Texans—including improving access for those with language barriers, those who lack internet access, and those with other accommodation needs. Accordingly, the agency has been pursuing many different strategies to meet this goal.

## ***Translated Resources***

Increasingly, TCEQ has been providing information in both English and Spanish, especially new information and web-accessible resources. In August 2023, the agency installed a machine translation tool on its website that allows users to opt to read web pages in Spanish. TCEQ will evaluate the success of this feature before determining the feasibility of expanding it to other languages used by significant portions of its stakeholders. The agenda for each meeting of the Commission is translated into Spanish. The Commissioners' Integrated Database now allows alternative language notices to be posted with English language notices, and the introduction page informs the public that these alternative language documents are available and how to find them in both English and Spanish. TCEQ has developed and published new guidance documents for the public participation processes for permitting, including the new language access requirements, in both English and Spanish. Beginning in 2023, the agency's

Annual Monitoring Network Plan is available in both English and Spanish and was also available in both languages for public comment. The agency has translated its complaint form into Spanish and has improved complaint tracking. The agency's current penalty policy is available in Spanish and Vietnamese. In September 2021, the Office of Chief Clerk hired a Spanish language interpreter/translator to assist with translation and interpretation needs related to public participation in the permitting process, including public meetings on permit applications. This staff person assisted with the translation of many templates, guidance documents, and notices during the implementation of the alternative language rules and continues to provide interpretation assistance throughout the agency. The executive director recently hired a full-time Spanish language translator, who will assist with ongoing efforts to ensure that other vital documents across the agency are timely translated.

### *Public Involvement Plans*

The PPP contemplates implementation of a PIP for actions that require public participation. The PIP is a tool that requires an evaluation of the communities in which certain activities are expected to occur. This includes both applications for permits and activities (e.g., rulemaking) that TCEQ undertakes.

The agency developed a template for applicants to use to develop their PIPs in November 2021 and updated it in February 2022 in response to feedback from regulated industries. The PIP template, which is completed as part of an applicant's application materials, helps permit applicants assess whether alternative-language outreach, including translated notice, would assist public participation. The PIP template also includes a plain language summary of a permit application. The PIP will be a component of all permit applications, including water rights and districts, which are not subject to other 30 TAC Chapter 39 requirements.

The agency is also developing a PIP template for agency activities that have a public participation component, such as rulemaking projects or stakeholder meetings. While the agency is in the process of finalizing a formal PIP template for agency activities to standardize these efforts, a number of agency projects have already begun developing PIPs to assist in public participation planning efforts.

### *Comment Software*

TCEQ acquired new software for accepting comments on rulemaking and similar projects. This software allows the agency to provide information on these projects in both English and Spanish. It translates comments received in other languages and can translate the agency's response to comments into Spanish.

### *Interpretation at Agency Meetings*

Increasingly, the agency is providing interpretation services at its meetings, as well as translated information about the content of the meetings. Because of the

many languages Texans speak and because TCEQ meetings are held across the state, scheduling interpretation services can be both challenging and expensive. Public meetings are usually noticed at least 30 days before the meeting, which leaves the public and the agency little time to accommodate interpretation requests. To address these challenges, TCEQ is developing an improved process for the public to request interpretation at public meetings.

### *Agency Grant Programs*

TCEQ's Texas Emissions Reduction Program (TERP) is an agency program that provides grants to the public. TERP hired a dedicated bilingual staff member to manage outreach activities for the program. TERP documents that have been translated into Spanish include request-for-grant applications, mock contracts, webinar and workshop presentations, letters, booklets, and other documents and materials to help Spanish language communities learn about TERP programs and how to apply for grants. TERP has also provided bilingual workshops in English and Spanish, added resources and features to its website in Spanish, made brochures and outreach materials available in both English and Spanish, implemented a new Air Grants Division customer support phone system that supports direct bilingual (English/Spanish) routing and messaging services with automated general call tracking, and created an internal Spanish immersion group to teach Air Grants Division staff terms and basic concepts to communicate with Spanish-speaking communities.

TCEQ also administers a grant program that is funded through federal Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States (RESTORE) Act. In addition to including Title VI requirements in all grant contracts, the Texas program also began efforts to ensure that grant contracts include the responsibilities of grantees to meet equal access requirements. TCEQ developed a guidance document to assist grantees with Title VI requirements. RESTORE the Texas Coast grantees are local governments and non-governmental organizations instead of individuals, so the information is tailored to ensure that grantees are aware of their obligations to provide equal access to the public.

## **IV. Conclusion**

TCEQ has been continuously evaluating its outreach efforts and implementing changes to improve public participation for all communities across Texas. TCEQ's ongoing efforts continue to improve public access to all TCEQ opportunities for public participation.