



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

DEC 16 2010

Mr. Ken Levine
Director
Sunset Advisory Commission
Post Office Box 13066
Austin, Texas 78711-3066

Dear Mr. Levine:

Thank you for providing the Sunset Advisory Commission Staff Reports on the Texas Commission of Environmental Quality (TCEQ) and on the Railroad Commission of Texas (RRC) on November 29, 2010, and providing another opportunity for the U.S. Environmental Protection Agency (EPA) to share comments. EPA appreciates the Sunset Commission meeting with us on July 10, 2010, and maintaining an on-going dialogue as you continue your process of assessing both TCEQ and RRC. In addition to our responses shared throughout the process, below are specific comments regarding your Staff Reports.

Within the section "The Statutory Cap on Emissions Limits TCEQ's Ability to Adequately Fund the Title V Air Permit Program," the Staff Report provides a recommendation to authorize TCEQ to adjust the annual emissions tonnage cap when necessary to increase the Air Emissions Fees to adequately fund the Title V Operating Permit program. EPA's approval of the Texas Title V program was based on TCEQ having adequate funds through fees based on the quantity of emissions of regulated air pollutants. We support the Sunset Staff report recommendation, and support the TCEQ evaluation of approaches to ensure adequate fees are collected for meeting the Title V program expectations.

EPA shares the Sunset Commission's concerns regarding TCEQ in the area of public assistance and supports the recommendation that TCEQ enhance its website to provide easy access to environmental information. Specifically, EPA requests that at a minimum, TCEQ post draft permits, fact sheets/statement of basis information, and final permits for Texas Pollutant Discharge Elimination System permits on its public website. EPA recommends that TCEQ makes their general permit Notice of Intent (NOI) database that is used for storm water general permits accessible to the public on-line with a search function like EPA's eNOI system.

On the issue of transparency of the Air Permitting Program, it is important for the public to be adequately informed of environmental permitting decisions. Based on EPA's evaluation of the Texas Permitting process, we were concerned that the public participation process was not adequate, which was documented in our proposed limited approval/limited disapproval of TCEQ's public participation rule on November 26, 2008. EPA appreciates TCEQ reconsidering portions of the rule and completing an adoption of a new rule on June 2, 2010, which has been submitted for our consideration. One important aspect of public participation is to ensure that timely information related to facility permit actions is available to the regulated industry and interested citizens. Many states do this through computerized information systems where documents associated with each permit action are made electronically available to the public.

This allows the public and local officials to understand the permit changes at a facility and to track such authorizations to facilities in their communities. EPA encourages TCEQ to authorize adequate funding, either through Title V emission fees or through appropriations, in order to implement this type of information system. TCEQ has an excellent system to provide real time air monitoring data, reports and historical information, and an outstanding system for tracking upsets and excess emissions at facilities. A similar comprehensive system does not exist to provide the public with access to information about permit actions at individual facilities. This should be considered as a much needed future investment.

EPA supports requiring previous tank owners or operators to share responsibility, as appropriate, for contamination from leaking Petroleum Storage Tanks (PST), prohibiting delivery of certain petroleum products to uncertified tanks and providing for administrative penalties, and expanding use of the remediation fee to allow TCEQ to remove non-compliant PSTs that pose a contamination risk. However, EPA has concerns with the Commission's report in that it does not resolve the issue of Texas not meeting the Energy Policy Act for inspection frequency. The inspection frequency, as stated in the Energy Policy Act, is once every three years. Inspection frequency is not discussed in the "Gaps in Petroleum Storage Tank Regulation and Remediation Fee Expiration Threaten the State's Ability to Clean Up Contaminated Sites" in the Sunset Advisory Commission's Staff Report. It is important to ensure that TCEQ has the capability to meet the three year inspection frequency requirement of the Energy Policy Act.

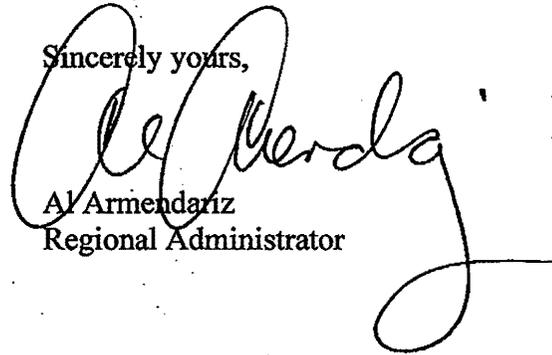
With regard to the recommendation to transfer the authority for making groundwater protection recommendations regarding oil and gas activities from TCEQ to RRC, EPA does not support this transfer for the following reasons. First, this is a very important function for protection of freshwater aquifers. A transfer of authority would likely be less protective. EPA's experience suggests the RRC would have a lesser standard of protection for these aquifers. RRC has historically failed to use the term Underground Sources of Drinking Water (ground water up to 10,000 ppm), preferring instead to use the less inclusive term fresh water (up to 3,000 ppm). RRC received Underground Injection Control primacy by essentially stating they would protect down to 3,000 ppm and not inject into anything less than 10,000 ppm. The 3,000 ppm is the historical state mandated pre-primacy protection standard and they have shown reluctance to consistently apply surface casing recommendations from TCEQ for waters up to 10,000 ppm. TCEQ's surface casing program is based on protection of ground waters up to 10,000 ppm. TCEQ's delegated UIC program is required to meet equivalent federal protection standards, and RRC's program is not. Also, TCEQ has held this responsibility historically and has acquired impressive expertise in this area. This expertise and knowledge would be lost for oil and gas related applications. The second reason is that such a transfer of responsibility may create opportunity for two standards of protection to exist in a single area and possibly conflict. EPA believes maintaining the sole responsibility with TCEQ ensures a consistent single standard for the State of Texas. Third, this proposal conflicts with the recent recommendations made by the joint agency task force charged with evaluating which agency would administer the new Class VI rules outside of oil fields. Both of the task forces' recommendations to the legislature support TCEQ's continued administration of this critical function for all classes of UIC wells in

the State. Lastly, such a transfer of authority may constitute a substantial revision to both EPA approved programs for primacy purposes, which may require additional EPA approval.

I would like to conclude with two additional comments: In the section "Current Enforcement Processes Hinder the Commission's Ability to Prevent Future Threats to the Environment and Public Safety," EPA concurs with the recommendations and believes that these proposed actions would strengthen enforcement capabilities and assist the public in understanding the state of compliance by industry. Furthermore, the proposals with "Texas' Interstate Pipelines Lack Needed Damage Prevention Oversight to Ensure Public Protection" section would assist in closing a regulatory gap.

Again, thank you for your continued efforts to seek feedback from the EPA. If you have any further questions, please contact me at (214) 665-2100, or your staff may contact Mr. Austin Vela of my staff at (214) 665-9792.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Al Armendariz". The signature is fluid and cursive, with a large initial "A" and a long, sweeping tail that extends to the right.

Al Armendariz
Regional Administrator