

SUNSET ADVISORY COMMISSION
Recommendations on the Texas Commission on Environmental Quality
Testimony of Bob Gregory
December 15, 2010

My name is Bob Gregory. I am the Chairman and CEO of Texas Disposal Systems and related companies. I have three specific issues to address regarding the Sunset Advisory Commission staff report on the Texas Commission on Environmental Quality. My recommendations can be summarized as follows:

- 1. Expand the number of TCEQ Commissioners from three to five.**
- 2. Make the Office of Public Interest Counsel an independent agency.**
- 3. Closely monitor the currently proposed Texas Low-Level Radioactive Waste Disposal Compact Commission rule allowing the import of radioactive waste from states other than Vermont, particularly as it relates to your Recommendation Issue 7 found on pages 65 through 69 of your Staff Report.**

1. Expand Number of Commissioners.

I recommend expanding the number of Commissioners from three to five full-time Commissioners to allow more communication between the Commissioners on TCEQ issues. The TCEQ has a broad range of responsibilities on which a Commissioner must be informed. With only three members, the current Commissioners cannot discuss these responsibilities with each other except in a public meeting since two Commissioners constitute a quorum under the Open Meetings Act. This makes for a very inefficient system of governance because typically the Commissioners meet about every two weeks in a public meeting. Their meeting time is full of agenda items that need to be addressed. This does not leave much time for the Commissioners to discuss issues that are of general

concern. I think most citizens would be surprised to hear the governing board of a state agency that employs around 3,500 people can only communicate with each other on business matters in a public meeting.

With a five-member Commission, at least a Commissioner can have a conversation with another Commissioner about TCEQ responsibilities without violating the Open Meetings Act. I believe the policymaking should improve with the ease of communication outside of the formal agenda meetings. Also, with five members, the Commissioners can represent more geographic areas of the state similar to the Texas Transportation Commission. I also notice the Sunset Commission staff has recommended a similar five-member appointed Commission to replace the three elected Commissioners on the Texas Railroad Commission. Five commissioners appears to be the best number for these large state agencies.

2. Office of Public Interest Counsel (OPIC).

I recommend setting up the OPIC as a separate state agency to be governed by a single Public Interest Counsel appointed by the Governor with the advice and consent of the Senate. The Counsel must be licensed to practice law in Texas. OPIC should have clear responsibility and legislative direction for representing the public interest. OPIC should have the right to represent the public in contested cases, participate in rulemaking projects, appeal decisions by TCEQ to state district court, intervene in appeals brought by others to state district court, and recommend legislation on matters under TCEQ's jurisdiction. The character of environmental regulation demands an active consideration of the public's interest in TCEQ decisions. OPIC should have its own funding separate from the TCEQ and be able to hire its own staff and retain independent technical experts when necessary. OPIC currently lacks adequate resources and does not have similar support in budgeting like the public counsels for insurance and utilities. This proposed OPIC

should be similar to the Office of Public Insurance Counsel and the Office of Public Utility Counsel that are also under Sunset review this session and are recommended for continuation. Having independence to advocate for the interests of the public in environmental matters will give the citizens of Texas more confidence in OPIC's role of protecting public health, safety, and the environment.

3. Interaction of the Texas Low-Level Radioactive Waste Disposal Compact Commission with the TCEQ, their Budgets, and the State's liability related to the proposed Compact Commission rule to allow the importation of radioactive waste from outside the Texas Compact.

I support the Sunset Staff Report recommendation in TCEQ Issue 7 to remit the portion of the statutory fee on the disposal of low-level radioactive activities to a newly-created General Revenue Dedicated Account that funds the Compact Commission. However, this fee will not be collected until the disposal facility is actually in operation. The Compact Commission clearly has a need for operating funds to meet its statutory duty and conduct business until the Compact disposal facility begins operating and collecting the fee to support Compact Commission activities. The Compact Law requires each party state (Texas and Vermont) to provide financial support for the Compact Commission activities prior to the date the disposal facility begins operation.

The Compact Commission will have a need for support to cover the cost of various activities required by the Compact Commission statute before and after the disposal facility is in operation. The Compact Commission's primary activities required by law include:

- Meeting once a year;
- Prepare an annual report;
- Prepare contingency plans for disposal of low-level waste;

- Adopt bylaws;
- Sue and be sued;
- Consider export petitions;
- Consider import petitions (if adopted under pending rulemaking); and
- Monitor exports from Texas for processing and storage.

I recommend funding these activities out of General Revenue Dedicated Account No. 88 Low-Level Radioactive Waste until the facility is operating and generating revenue for the Compact from disposal fees. The estimated fund balance is approximately \$13,224,000. The bulk of this fund came from party state Vermont's payment of \$12,500,000 under the compact requirements. Vermont will owe another \$12,500,000 (\$25,000,000 total) when the compact disposal facility is opened. This fund has more than enough to cover Texas' share of the Compact Commission budget until the facility is open. The compact law requires each state to pay its share of support for the Compact Commissioners' expenses for administrative, legal, and other purposes.

In addition, if non-party state radioactive waste is allowed to be imported into Texas for disposal in the Compact disposal facility, the Legislature needs to implement a separate facility access fee to reimburse Texas for the current and future liability associated with the transport and disposal of that imported waste. Once the disposal facility opens and begins accepting low-level radioactive waste, Texas will become the owner of the property and will forever be responsible for the long-term liabilities associated with the disposed waste. The State of Vermont, as a party to the Compact, has agreed to pay Texas \$25,000,000 for Vermont's share of the future liability. Currently the Compact Law does not authorize any additional fee on imported waste for long-term future liability. This puts non-party state generators in a better position than Texas or Vermont generators. I believe a

fair fee to be assessed on imported waste is at least \$55 per cubic foot to be dedicated to the General Revenue Dedicated Account No. 88. This amount is approximate, given what Vermont is paying for its future liability on a per cubic foot basis.

I also recommend that, if imports are acceptable to the Texas Legislature, you consider an additional Access Fee on out of Compact imported waste to benefit the General Revenue Fund of Texas. When a South Carolina facility was accepting waste for disposal from other states, it charged a \$240 per cubic foot access fee on imported waste. This access fee would seem to be a reasonable expectation for non-party state generators. I believe the Legislature in Texas and Vermont, as well as the TCEQ, should take these things into consideration in evaluating whether imports should be allowed from other states and whether Texas is being appropriately compensated for having to assume the additional liability related to transportation and disposal.

For more information on the Compact Commission and the pending rule-making, please see <http://www.tllrwdcc.org>.

Thank you for allowing me to present these recommendations. I will be happy to respond to any questions.

Some questions regarding the Texas Low-Level Radioactive Waste Disposal Compact Commission and Item 7 in the Sunset Advisory Commission Staff Report on the TCEQ and Bob Gregory's responses

- 1) Are you also a Commissioner serving on the Low-Level Radioactive Waste Disposal Compact Commission?

Answer: Yes, but I am not here today representing the Compact Commission. My opinions expressed today are simply my own.

- 2) Has the Texas Low-Level Radioactive Waste Disposal Compact Commission (Compact Commission) taken a formal position concerning Item 7 of the Sunset Commission Staff Report?

Answer: No.

- 3) Do you personally support the Findings and Recommendations related to Staff Report TCEQ Item 7?

Answer: Yes.

- 4) Are you telling us that the Compact Commission has proposed rules pending that would allow the Compact Commission to approve applications to import radioactive waste from all other states in the nation for disposal in the Texas Compact facility, and that there is currently no proposed provision for the State to collect additional fees to cover the State's added liabilities?

Answer: Yes; that is my understanding.

- 5) Does the fact there is no additional fee to cover the State's future liabilities mean a non-compact state has a financial advantage over Texas and Vermont?

Answer: Yes.

- 6) Does the Compact Commission currently have the funds to administer a radioactive waste import program and to defend itself from related legal challenges?

Answer: No.

- 7) Has the Compact disposal facility even begun construction of its disposal cells? Has the disposal rate for waste generated within Texas, Vermont, or from other states been set? And, does the Compact facility license allow the facility operator to accept radioactive waste from generators outside of Texas and Vermont?

Answer: No, to all three questions.

- 8) Has the Legislature specifically addressed the issue of importing and disposing of radioactive waste from non-compact states and expressed a form of approving such imports?

Answer: No.

- 9) Do you know of any reason this Compact Commission proposed import rule needs to be approved before the facility is open, the disposal rates are set by the TCEQ, and before the Legislature and the TCEQ have had the opportunity to consider whether they want to allow the Compact facility operator to be able to enter into contracts to accept the import of waste from generators in non-Compact states?

Answer: No.