

December 15, 2010

Senator Glenn Hegar, Jr.
Chair
Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711

Dear Senator Hegar,

Enclosed are my personal comments regarding the Texas Sunset Advisory Commission (SAC) November 2010 staff report on the Texas Commission on Environmental Quality (TCEQ).

1) **Page 1, Staff Report, Summary**, as a citizen it is disappointing and unfortunate that TCEQ wants to again fight with the U.S. Environmental Protection Agency (EPA) over protection of the public's health and welfare from air pollution. This type of belligerent attitude has been the hallmark of TCEQ and its predecessor agencies, the Texas Natural Resource Conservation Commission and the Texas Air Control Board for almost 40 years. Such attitudes and actions provide no help to citizens and waste our money. The SAC staff abdicates its authority by not stating plainly what the U.S. Supreme Court has said, that EPA has the authority to regulate greenhouse gases as an air pollutant under the Clean Air Act.

It is not just TCEQ and stakeholder groups that are left with uncertainty but the citizens who expect cooperation, collaboration, and compromise from the TCEQ. EPA has been clear about the problems so there should be no uncertainty about what needs to be done. The fact that the SAC staff abdicates its responsibility to plainly speak what the problem is does not bode well for the sunset review for TCEQ. There must be a completely honest and open discussion of the problems. It appears that the SAC staff is withholding some of the openness required to shine a light of truth into what TCEQ problems are. That is unfortunate and does the citizens of Texas no good.

2) **Page 2, Staff Report, Summary**, regarding the Barnett Shale, the SAC staff suggestion that things have worked well with the TCEQ feeding the Railroad Commission (RRC) recommendations on air quality and that the RRC should be given authority over water quality too with regard to oil/gas operations flies in the face of the debacle that the Barnett Shale has become for citizens who want stability and public health and welfare to be protected. Why reward an agency, the RRC, with additional authority, when it has shown that it is incapable of protecting the public with its present authority? This makes no sense.

What really is most unfortunate is that the SAC staff ignores the political interference with science and law that has occurred at TCEQ. The low-level

radioactive waste permit is exhibit number one. The staff people at TCEQ who were the top professional technical experts on the effects that a low-level radioactive waste dump would have on the environment resigned because of the politicization of science and the administrative process that the TCEQ Executive Director allowed. It seems odd that the SAC staff would not mention this and how incident reinforces why the public has little or no faith in TCEQ to do the right thing.

3) Page 3, Staff Report, Summary, Issue 1 – Texas Has Continuing Need for the TCEQ, I agree with this assessment. We need a TCEQ that protects the public's health and welfare. Currently, we have an agency which is captured by the industries it regulates. I do not favor waiting 12 years for a review of TCEQ again.

As a result, at the very least the SAC should recommend to the Texas Legislature is that the TCEQ be brought back for sunset review in 2 or 4 years to determine if this wayward agency has changed and is now focused on protection of the public's health and welfare.

Pages 26 and 27, Recommendation 1.2 – Transfer the authority for making groundwater protection recommendations regarding oil and gas activities from TCEQ to the RRC, I do not agree that groundwater protection recommendations authority for oil/gas activities should be moved from TCEQ to the RRC. The RRC has no expertise in groundwater protection. As bad as TCEQ is the RRC is even worse. The influence that oil/gas has due to its economic muscle ensures that the RRC will bend against the public interest if there is a true conflict with what oil/gas interests want. TCEQ has the expertise about protection of groundwater and can be more unbiased in its recommendations than the RRC.

On **page 19, Findings,** I certainly do not agree that "tailored effort by Texas regulators to develop and implement environmental programs to suit Texas' special circumstances" has worked. In fact, you could read this as tailor-made for oil/gas, chemical, and other large industries and not the citizens' health. After all with so many large facilities and the fence-line communities that are immediately and directly affected by these companies Texas should do a better job and has not proved that it has, without EPA cajoling.

On **pages 22 and 23,** the entire idea of a cooperative, voluntary, non-regulatory approach ensures that Texas does not mandate meaningful pollution reduction via not just TCEQ but also the RRC and the Texas State Soil and Water Conservation Board. Water is the purview of TCEQ and should remain in its authority. Transfer of any water quality protection, whether groundwater or surface water, to the RRC does not make sense and should not be allowed.

4) Page 4, Staff Report, Summary, Issue 2 – TCEQ’s Public Assistance Efforts Lack Coordination and Focus, I agree that TCEQ’s public assistance efforts need better coordination and focus. I agree with the three recommendations which include “TCEQ has a specific legislative directive for providing assistance and education to the public on environmental matters under its jurisdiction; the Office of Public Interest Counsel (OPIC) focus on representation of the public interest before the TCEQ; and that TCEQ define by rule factors that OPIC will consider in representation of the public interest and in the establishment of priorities in case involvement.”

5) Pages 4 and 5, Staff Report, Summary, Issue 3 – TCEQ’s Approach to Compliance History Fails to Accurately Measure Entities’ Performance, Negating Its Use as an Effective Regulatory Tool, I agree with this issue and the recommendations which include “Removal of the uniform standard from statute and require the TCEQ to develop a compliance history method to be applied consistently; Removal of the requirement to assess the compliance history of entities for which TCEQ does not have adequate compliance information; and Expansion of the statutory components to allow TCEQ to consider other factors in evaluating compliance history.”

6) Page 5, Staff Report, Summary, Issue 4 – TCEQ’s Enforcement process Lacks Public Visibility and Statutory Authority, I agree that this is the case and the recommendations which include “Require the TCEQ to structure its general enforcement policy in rule and publically adopt enforcement policies; Increase administrative penalty caps; Assess administrative penalties for dam safety violations; and Authorize TCEQ to consider Supplemental Environmental Projects (SEPs) for local governments that would improve the environment.”

However, I do support fining local governments when they violate the law. Local governments should know better. They are not above the law and their citizens should be visibly informed when their local government has broken the law and should be informed that this costs taxpayer dollars in addition to resolving the problem.

7) Pages 5 and 6, Staff Report, Summary, Issue 5 – TCEQ Does Not Have the Tools Necessary to Effectively Protect Surface Water Availability During Drought or Emergency Conditions, I agree TCEQ needs this authority. I agree with the recommendations which include “Give the Executive Director authority to curtail water use in water shortages and time of drought; Require water rights holders to maintain monthly water-use information and allow the TCEQ to access that information upon request; Authorize TCEQ to require implementation of drought contingency plans during times of a potential water shortage; and Require TCEQ evaluate the need for additional water-master programs.”

8) **Pages 6 and 7, Staff Report, Summary, Issue 6 – Gaps in Petroleum Storage Tank Regulation and Remediation Fee Expiration Threaten the State’s Ability to Clean Up Contaminated Sites**, I agree with this assessment. I agree with the recommendations which include “Require previous tank owners or operators to share responsibility for contamination for leaking petroleum storage tanks (PSTs); Prohibit delivery of certain petroleum products to uncertified tanks and provide for administrative penalties; Reauthorize the PST remediation fee, change the current fee levels to caps, and authorize the TCEQ to set fees in rule; and Expand use of the remediation fee to allow RCEQ to remove non-compliant PSTs that pose a contamination risk.”

9) **Page 7, Staff Report, Summary, Issue 7 – TCEQ Lacks Guidance on How to Fund the Texas Low-Level Radioactive Waste Disposal Compact Commission**, I agree with this statement. I also agree with the recommendation which requires a “Clarification of the Compact Commission’s funding mechanism.”

10) **Page 7, Staff Report, Summary, Issue 8 – The Statutory Cap on Emissions Limits TCEQ’s Ability to Adequately Fund the Title V air Permit Program**, I agree with this statement. I also agree with the recommendation which “Authorizes TCEQ to administratively adjust the annual emissions tonnage cap for the Air Emissions Fee when necessary to adequately fund the Title V Operating Permit Program.”

11) **Page 24, Performance Measures**, the staff report says that TCEQ met 39 of 56 key measures. This means that TCEQ meets 69.64% of all performance measures. This is a failing grade. Certainly, TCEQ must do better.

12) **Page 30, Findings**, the staff report states “TCEQ’s lack of focus on public assistance can contribute to a perception of a lack of concern for the public.” I can assure the SAC staff that this lack of concern for the public is not a perception. The low-level radioactive waste permit issue and the many times that TCEQ has stated that it could shutdown the entire Houston Ship Channel and still not reach the ozone air quality standard are two good examples of how TCEQ has a lack of concern for the public.

12) **Page 32, Potential Conflicts**, the staff report says “may be put in the position of assisting individuals whose interests may not align with the public interest.” What is the public interest? Does TCEQ have a regulatory, statutory, or administrative definition? Has this definition been vetted to the public for their review, comment, and understanding? Without knowing the definition how can the TCEQ or the public determine where to go and what progress is made?

13) **Page 41, Recommendation 3.3 – Expand the statutory components to allow TCEQ to consider other factors in evaluation compliance history**, the staff report says “without having those enforcement orders penalize the respondent’s compliance history score.” As a citizen I want all enforcement orders to penalize a company’s compliance history score. People in companies that violate the law must take responsibility for their actions. One of those actions is if you violate the law then you will get a worse score for compliance history. Why are we afraid of holding people accountable for the consequences of their actions?

14) **Page 44, Findings**, the staff report says “penalty policy does not direct TCEQ to recover economic benefit associated with the avoided costs of compliance.” **The SAC should recommend that full recover of economic benefit by not complying with the law must be recovered by any penalty policy.**

15) **Page 49, Recommendation 4.2 – Increase TCEQ’s administrative penalty caps**, the cap should be raised at least to \$100,000 to \$1,000,000. Citizens need a state agency that can lower the boom economically when it is necessary and when the violation is significant enough.

16) **Pages 50 and 51, Recommendation 4.4 – Authorize TCEQ to consider Supplemental Environmental Projects for local governments that would improve the environment**, while I have no problem with local governments doing SEPs I also want them fined so taxpayers understand in cold, hard, cash how their local government has wasted their money.

17) **Pages 59-63, Issue 6 – Gaps in Petroleum Storage Tank Regulation and Remediation Fee Expiration Threaten the State’s Ability to Clean Up Contaminated Sites**, many of the contamination problems and costs of leaking underground storage tanks would be prevented if TCEQ required above ground storage tanks.

18) **Pages 65-69, Issue 7 – TCEQ Lacks Guidance on How to Fund the Texas Low-Level Radioactive Waste Disposal Compact Commission**, it is amazing that the SAC staff fails to include in the **Background** how several TCEQ top professional technical staff resigned when the low-level radioactive waste permit was issued. That is a very significant part of this controversy especially since a large political contributor to the governor of Texas owns the low-level radioactive site.

I appreciate this opportunity to comment. Thank you.

Sincerely,

Brandt Mannchen

A handwritten signature in cursive script that reads "Brandt Mannchen". The signature is written in black ink and is positioned to the right of the typed name.