

**Testimony – Sunset Public Hearing
Texas Commission on Environmental Quality and Texas Railroad Commission
9 a.m., Dec. 15, 2010
Senate Finance Committee Room (E1.036, Capitol Extension)**

**On TCEQ and RRC Sunset Review
By David Weinberg, Executive Director
Texas League of Conservation Voters**

Thank you, Chairman Hegar, Vice Chairman Bonnen and distinguished members of the Sunset Advisory Commission.

My name is David Weinberg, and I am Executive Director of the Texas League of Conservation Voters, a statewide organization whose broad-based membership believes firmly that conservation in policy and practice can enhance Texans' quality of life, improve our health and preserve some of our state's most precious natural resources and landmarks.

I appreciate the opportunity to share my organization's thoughts with you on critical reforms that must be made to the Texas Railroad Commission and Texas Commission on Environmental Quality in the interest of every Texan, not just the regulated industries these two state agencies serve.

Our opportunity to modernize, reform and ensure public interests – including public health and the preservation of our state's natural resources – are protected by state agencies comes but once every 12 years.

And, in the case of the Texas Railroad Commission and the Texas Commission on Environmental Quality, that opportunity couldn't come at a better, more crucial time.

Today, Texas energy and environmental regulatory agencies are a disparate, unwieldy mess of elected and appointed officials with too many contradictory or competing roles in environmental regulatory matters. It's a patchwork quilt of regulatory bodies that should be transformed.

The Sunset process presents an opportunity to make both energy regulation and utility regulation more streamlined, transparent and effective—serving the best interest of all taxpayers and the public at large, not just the companies that are regulated.

In both the TCEQ and the RRC, we can and must seize the opportunity to add teeth to enforcement and muscle to their regulatory roles.

The Sunset Advisory Commission aptly points to the RRC's ineffectiveness on enforcement actions and the need to shift enforcement hearings to the State Office of Administrative Hearings while revamping the agency's tracking of violations and enforcement actions to ensure clear, consistent and transparent sharing of information with the public and other regulatory bodies on violation data, trends, complaints and actions taken.

It is important to note that no amount of legislative changes to the RCC through Sunset review can overcome the fundamental issue of its effectiveness being tied to the adequate funding of the agency. The RCC oversees a vast oil and gas infrastructure in Texas. ***The RCC must have sufficient staffing to enable the agency to enforce its own rules and regulations.***

On the TCEQ front, we believe the most vital reforms involve updates to the agency's compliance history measurement system, permitting process and air fee caps. ***As a fundamental starting point to revamping TCEQ's air permitting program, the agency needs clear-cut authority to turn down a bad actor's permit or the renewal of its permit.***

One size fits all rarely fits right or well, and in the case of the TCEQ's compliance history measurement system, it's a rigid approach that doesn't allow the state to identify good actors from bad actors and protect the public, our health and environment.

Sunset Commission cites a good example of the current limits in TCEQ's regulatory oversight. TCEQ applies the same system to their regulation of small car lots and of large complex chemical plants. Just one example where one size fits all fails most egregiously.

Lawmakers need to remove the roadblock that effectively blocks TCEQ's ability to effectively and appropriately tailor permit conditions, enhance administrative penalties or deny permits to perennial bad actors.

As the state struggles with an anticipated \$25 billion shortfall, it's worth noting that reforms like this have no fiscal note tied to them. It won't cost taxpayers a dime, but it will vastly improve the state's ability to punish those who cause the most public harm while ensuring incentives go to those who earn them.

For air caps, by allowing TCEQ to administratively adjust the annual emission cap and tonnage fees, the agency can ensure it meets the requirements of an important provision of air quality requirements.

Facilities that emit air contaminants must already pay either an Air Emissions Fee or an Air Inspection Fee – whichever is greater – and those dollars go directly toward the state's air permitting program.

If we don't update state law and ensure TCEQ can meet the funding requirements of the air permitting program, we all stand to lose.

It could result in penalties from the federal government, the loss of federal transportation funds, and it would negatively impact the agency's ability to protect public health through air quality monitoring.

And, here again, during tight budgetary times, the change would give flexibility and ensure additional revenue (to General Revenue, Dedicated Fund) that would help us meet our Title V Air Permit program budgetary needs. It would not increase individual families' taxes nor add to or decrease the state's budget shortfall.

Let me close by emphasizing that in spite of the significant reforms that I'd urge state lawmakers to make, we cannot, nor should not turn a blind eye to the substantial role these entities, along with the Public Utility Commission, can play in advancing a clean energy policy that serves Texas' long range interests well.

In particular, we should continue to look for ways through statute and agency rulemaking to ensure that cleaner fuel sources are fully embraced and that we move away from our state's stubborn and wrong-headed insistence to use more highly polluting coal and petroleum coke to generate its electricity. The TCEQ, in particular, has become nothing more than a rubber stamp for the coal industry, a commodity that largely is imported into Texas, provides few jobs to Texans and even less in terms of revenue through severance taxes.

As we look for ways to address revenue shortfalls in the state budget and as we work to ensure the state's energy and environmental regulatory bodies are serving and protecting the interests of every Texan, we would be wise to look for ways to improve and diversify the state's energy mix.

Converting coal plants to natural gas fired facilities or turning away outright from new coal plant approvals is a reasonable and responsible action. Couple those moves with appropriate regulation of and safe production of natural gas in Texas, and we'll truly be on a bridge to a cleaner, greener Texas energy mix.

TLCV and our members are committed to ensuring that conservation is not a partisan value, but a Texas one, and we will continue to advocate for conservation and clean energy as a top priority for Texas.

Thank you for this opportunity to provide testimony. I hope the commission will seize this once-in-twelve-years opportunity to make meaningful reforms to the RRC and TCEQ that benefit Texans, not just the industries that stand before them.

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