



SIERRA
CLUB
FOUNDED 1892

Alamo Group of the Lone Star Chapter

May 14, 2016

To: Sunset Commission
From: Margaret Day, Alamo Sierra Club, 210-829-5632;
peggyday@hotmail.com

RE: Response to the Sunset Advisory Commission Staff Report:
Railroad Commission of Texas

The Alamo Sierra Club endorses, word-for-word, the Lone Star Chapter comments in response to the Sunset Staff Report on the Railroad Commission of Texas. We have over 2,400 members in the Alamo Sierra Club Region, which encompasses most of the Eagle Ford Shale oil and gas development. For some time now we have been urging the RRC to modernize and become more a responsive and protective regulatory agency. We recognized and applaud the work of the Sunset staff and other stakeholders, including the Railroad Commission of Texas, that provided information to the Sunset staff for this report.

Below are the Sierra Club Lone Star Chapter's comments that we endorse:

While we are generally supportive of the recommendations of the Sunset Staff Report, we believe many of the recommendations should be strengthened, and also believe certain issues surrounding the Railroad Commission of Texas should have been addressed that were not. We are hopeful that the Sunset Commission itself will address these additional issues if the staff is unable to do so.

Thus, our comments first address the Sunset Staff recommendations, followed by additional recommendations that we believe should have been suggested as part of the needed reform of the agency.

Sunset Commission Staff Recommendations

Issue 1. Continue the Railroad Commission of Texas for 12 Years With a Name That Reflects the Agency's Important Functions.

The Sierra Club has been supportive since 2011 with the need to change the name of the agency. The public is confused about what the agency does and who to contact in the event of a problem. We support the proposed name as a more reasonable reflection of the work of the Commission.

In regards to continuing the agency for another 12 years, given the substantial import of the agency to our environment and economy, we should only continue the agency for another 6 years, before an additional sunset review is required.

Issue 2. Contested Hearings and Gas Utility Oversight Are Not Core Commission Functions and Should Be Transferred to Other Agencies to Promote Efficiency, Effectiveness, Transparency, and Fairness.

The Lone Star Chapter of the Sierra Club is in complete agreement with the following Sunset staff recommendations:

- *Require use of the State Office of Administrative Hearings for contested gas utility cases.*
- *Require the Railroad Commission to use the State Office of Administrative Hearings for all other contested case hearings.*
- *Transfer gas utility regulation from the Railroad Commission to the Public Utility Commission*

While arguments have been put forward that there are special “safety” issues that can only be handled by independent hearings examiners employed by the Railroad Commission, there is no reason that these same hearings examiners could not be employed by SOAH and their expertise could be utilized.

There is also no reason not to have the PUC, OPUC and SOAH assess proposed natural gas utility rate hikes. This would separate the current potential conflict-of-interest between elected commissioners at the Railroad Commission of Texas, who often take campaign contributions from natural gas utilities, and proposed rate hikes. Transferring these functions to the PUC, and making any contested case hearing go through SOAH just makes good government sense.

Issue 3. Oil and Gas Monitoring and Enforcement Need Improvements to Effectively Ensure Public Safety and Environmental Protection.

We believe these are among the most important recommendations made by the Sunet Staff Report. No issue is more important to public safety, human health and environmental protection than proper oversight of the operations of oil and gas wells, related equipment and disposal sites.

The Railroad Commission of Texas has an outdated, antiquated penalty policy that relies on a limited number of inspectors to assure that oil and gas companies actually comply with the law. Much of this policy relies on self-reporting, the statutory fines and penalties are artificially low and the public has limited access to data on enforcement and complaints.

Thus, we are in support of the following recommendations by the Sunset Staff:

- *Require the Railroad Commission to develop a strategic plan for the Oil and Gas Division that tracks and measures the effectiveness of monitoring and enforcement.*

- *Require the Railroad Commission to develop in rule a process for issuing expedited penalties for minor violations.*
- *Direct the Railroad Commission to accurately track and report the number of oil and gas violations annually.*
- *Direct the Railroad Commission to develop a definition of repeat violations in rule and report the number of repeat violations on its website.*
- *Direct the Railroad Commission to audit a sample of oil and natural gas production reports and transportation reports.*
- *Direct the Railroad Commission to develop a policy to require production reports to be filed electronically.*

Still, the recommendations do not go far enough. As an example, current statutory limits mean the maximum daily environmental charge for an oil or gas violation -- even an egregious one - is only \$10,000 per day. For some water code violations, the limit is even lower, at \$5,000 per violation per day. Sunset Staff should have specifically recommending raising the maximum statutory to \$25,000 per day. In fact, in today's dollars, \$25,000 is equal to \$10,000 dollars in 1983, when the oil and gas daily maximums were established.

Thus, raise the maximum statutory caps to \$25,000 per day per violation.

In addition, the penalty policy must consider both the economic benefit of non-compliance and repeat violators. Again, most other agencies specifically attempt to assure that penalty policy does not allow violators to gain economically by ignoring the law.

In addition, while Sunset staff would require the RRC to accurately track the effectiveness of monitoring and enforcement, there is no specific recommendation on how this data would be shared with the public. Instead, RRC should be required -- as suggested in previous Sunset staff reports -- to create a trackable, searchable database of enforcement and complaint issues.

Moreover, the procedure for making a complaint by the public, and assuring there is follow-up inspection and potentially enforcement is confusing and ill-defined. Sunset staff should have investigated the complaint process and recommended additional measures.

Finally, the Railroad Commission should be directed to create a process for creating MOUs with local governments, including counties, cities and groundwater districts to jointly inspect and enforce statewide rules on oil and gas and disposal wells.

Thus, the Sunset Commission and the Legislature should adopt the following major enforcement reforms, including:

- *Raising the maximum statutory penalty on oil and gas violations from \$10,000 per violation per day, to \$25,000 per violation per day;*
- *Adopting a new penalty policy that penalizes repeat violators more substantially than present policy and also recovers the economic benefit of non-compliance;*

- *Publishing enforcement data on-line and creating a searchable, county-by-county, company-by-company online database;*
- *Creating a complaint policy that allows complaints to be tracked, and creates a role and responsibility for the individual or local government making the complaint;*
- *Establish a “Memorandum-of-Understanding” program with local governments, including counties, cities and local groundwater districts that will allow these governments to inspect, monitor and enforce state rules.*

Issue 4. Insufficient and Inequitable Statutory Bonding Requirements Contribute to the Large Backlog of Abandoned Wells.

We agree with this recommendation. With current requirements only covering roughly 17 percent of the cost of oil and gas clean-up, now is the time to reassess the bond requirements. The Sierra Club would support updating the financial assurance requirements on oil and gas wells so they cover 100% of the clean-up costs for any well that might be abandoned in the future.

Issue 5. Improved Oversight of Texas’ Pipeline Infrastructure Would Help Further Ensure Public Safety.

We are in agreement that damage prevention requirement and public safety in general are not adequately covered by current Commission policy. While improvements have been made with the hiring of additional pipeline inspectors, and raising the fines that can be assessed to those breaking the law, public safety is still at risk because of the lack of inspectors and lack of tools. We also believe that beefed-up inspection and safety requirements for pipelines in densely populated areas are needed. We also believe that the Legislature should give specific authorization to the Commission to regulate pipelines related to fracking, including those related to fracking waste.

Thus, we are in support of the two basic recommendations of the Sunset staff.

- *Authorize the Railroad Commission to enforce damage prevention requirements for interstate pipelines.*
- *Authorize the Railroad Commission to create a pipeline permit fee.*

Issue 6. The Railroad Commission’s Contracting Procedures Are Improving, but Continued Attention Is Needed

We do not have specific information about this issue, but believe that in general more transparency on contracting issues and procedures seem reasonable.

Issue 7. The Railroad Commission’s Statute Does Not Reflect Standard Elements of Sunset Reviews.

We are in agreement with the following recommendations:

- *Apply the Sunset across-the-board recommendation regarding alternative dispute resolution to the Railroad Commission.*

- *Allow the Oil and Gas Regulation and Cleanup Fund Advisory Committee to expire.*
- *Continue requiring the Railroad Commission to submit its report on the Oil and Gas Regulation and Cleanup Fund to the Legislature.*

Other Issues

We continue to believe that the Sunset Commission Staff missed an opportunity to address other issues important to the public.

Sierra Club lists some of our main issues below.

I. GOVERNANCE

In addition to changing the Railroad Commission's name, we believe it is critical to address the governance of the agency. We support the following recommendations:

Recommendation 1: Establish the Texas Energy Resources Commission, governed by a full-time appointed board, to assume the regulatory role currently served by the Railroad Commission, and continue the agency for 12 years.

Recommendation 2: If there is no decision to change the RRC from an elected to an appointed body, we recommend the following changes in election and campaign finance laws:

- *Limit contributions to \$2,500*
- *Limit timing of contributions to election season*
- *Mandatory disclosure of all contributions*
- *Resign-to-run provision for Commissioners*
- *Prohibit commissioners from accepting contributions from people who have pending matters before the commission*

II. Disposal Wells and Water

One of the most contentious issues facing the Railroad Commission are the large number of disposal wells and other waste sites, which we believe are not properly regulated. Thus, Sierra Club recommends the following changes.

- *Permit fees must reflect the work of the agency -- \$100 for a commercial wastewater disposal permit is ridiculous -- this must be changed in statute.*
- *Require the Railroad Commission to gather and provide information on oil and gas water use to the Texas Water Development Board as part of their Texas Water Plan*
- *Clarify role of cities, groundwater districts and counties in enforcement so they can enforce Railroad Commission rules, including subsurface completion inspections to assure safety in urban and suburban areas (deputize the cities, groundwater districts and counties through MOUs)*
- *RRC should be required to implement better and updated rules on injection wells – including seismicity, notice, groundwater protection, and waste pits – including considering impacts of traffic and fumes and requiring they be safe for 100-year-flood*
- *Require producers to report spills of toxic produced water and flow-back wastewater and develop accurate and enforceable spill response requirements.*
- *Expand safety for oil and gas waste reclamation sites, by requiring assessments for 100-year floods*

and creating buffers for creeks, rivers and reservoirs to protect water safety.

III. SAFEGUARD THE PUBLIC FROM AIR EMISSIONS

The mission of the Railroad Commission should be expanded to directly safeguard the public and private property rights from the impacts of energy resource extraction.

Grant the Railroad Commission more authority to enforce and regulate the following areas:

- *Flaring and venting*
- *Noise*
- *Lighting*
- *Required leak detection and repair programs through MOU with TCEQ*
- *Emissions from fracking that can affect air quality during completion process and MOU with TCEQ*

IV. LET NON-ESSENTIAL FUNCTIONS GO

In-situ uranium exploratory mining should be transferred from the Railroad Commission to the TCEQ. There is no reason to have one agency permit exploratory uranium mining functions, and another -- the TCEQ -- do the final permits.

Thank you for this opportunity for input into this regulation.

Sincerely,



Margaret Day
Alamo Group Sustainable Education Contact