



November 30, 2010

Ken Levine
Director
Sunset Advisory Commission
PO Box 13066
Austin, TX 78711
sunset@sunset.state.tx.us

Re: Staff Report on the Texas Commission on Environmental Quality

Dear Mr. Levine,

Thank you for the opportunity to provide comments on the Sunset Advisory Commission's staff report on the Texas Commission on Environmental Quality. Environmental Defense Fund (EDF) is in general agreement with the comments submitted by the Alliance for Clean Texas (ACT). EDF offers these comments and two specific recommendations as a supplement to ACT's comments.

EDF appreciated the candid summary provided in the staff report of the ongoing controversies surrounding the TCEQ's air permitting program. However, we disagree with the decision to abstain from making recommendations about these issues. While the report argues that the air permitting controversy is a policy matter, we would argue that the ability of the TCEQ to conduct its permitting program consistent with state and federal law is an integral operational issue, as it directly affects the agency's ability to fulfill its statutory mission.

Consequently, **EDF recommends that the Sunset Advisory Commission explicitly make a recommendation that reasserts the need for the TCEQ to follow state and federal law.** The TCEQ's recent track record of rows with the EPA suggests the TCEQ does not feel compelled to consistently operate in compliance with state and federal law and, on occasion, even its own rules. Please see the attached summary of two recent examples of the TCEQ's operating its air permitting program contrary to federal law and/or its own rules.

If the Legislature allows the TCEQ to continue operating its air permitting program in a manner contrary to state and federal law it will be an accomplice in the failure to adequately protect Texans' health and environment as well as impair economic growth by fostering a climate of regulatory uncertainty for business.

Our second comment relates to the split jurisdiction of the TCEQ and the Railroad Commission

over air emissions from the oil and gas industry. We agree with the staff report's assessment that, after an "initial flat-footed response," the TCEQ is making strides in responding to air emissions concerns raised by growing natural gas production in the Barnett Shale and other areas of the state. However, we question whether the TCEQ and RRC have processes in place to adequately oversee the full range of the industry's activities that generate air emissions. Specifically, while the TCEQ seems to have clear authority over emissions from equipment at a well pad once a well begins producing, there remains an important gap in the oversight over emissions during well drilling and well completion phases.

The RRC issues a notice to operators in March 2010, emphasizing the need to control emissions from wells.¹ This qualitative requirement appears difficult to enforce since it lacks any numerical limit on emissions. TCEQ's recently proposed revisions to authorizations for oil and gas facilities do not appear to apply to natural gas well emissions. Wells are not listed among the facilities evaluated by the TCEQ in its review of the PBR and therefore may not be listed in a PBR registration. *See* Section 106.352(d)(1); *see also* Background and Summary of the Factual Basis for the Proposed Rules ("Background and Summary"), 35 TexReg 6937, 6938-6939 (August 13, 2010).

There are a number of activities that contribute to natural gas well emissions, including well completions, re-completions, workovers, and unloading. All of these have the potential to emit a number of air pollutants, including air toxics such as benzene and volatile organic compounds which contribute to ground-level ozone pollution.

To clarify the TCEQ's authority to ensure the public is protected from all emissions resulting from natural gas (and oil) production, **the Sunset Commission should recommend providing clear authority for the TCEQ to set limits for air emissions during all phases of drilling and production, including well emissions.**

Sincerely,

/s/

Jim Marston
Texas Regional Director

Attachments:

- Recent examples of TCEQ operating its air permitting program contrary to federal law
- EPA, Correspondence about proposed air permit for White Stallion Energy Center
- National Association of Clean Air Agencies, "GHG Permitting Programs Ready to Go by January 2nd" (October 28, 2010)

¹ <http://www.rrc.state.tx.us/forms/reports/notices/airemission21010.pdf>