



December 13, 2010

The Honorable Glenn Hegar
Chairman, Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711

RE: Sunset Advisory Commission Staff Report on the Texas Commission on Environmental Quality

Dear Chairman Hegar:

The Texas Association of Manufacturers (“TAM”) greatly appreciates the opportunity to provide the following comments on the Sunset Advisory Commission’s Staff Report on the Texas Commission on Environmental Quality (“TCEQ”). We commend the staff for a job well done on this report.

TAM represents more than 500 Texas companies, from the largest manufacturers down to the hundreds of small “mom and pop” companies that are the backbone of our economy. We represent every sector of the manufacturing industry including, aerospace, forest products, food and beverage manufacturers, automobiles, computers and pharmaceuticals.

Given the sheer volume of information that you’re receiving on this agency, we intend to be short and concise in our comments. If you need additional information or data from us, we are happy to provide it.

As one of the largest environmental regulatory bodies in the world, TCEQ is tasked with safeguarding the Texas environment while not saddling business with unnecessarily complicated and burdensome regulations that stifle job creation. Given the enormity of this task, we could always find some part of the regulatory scheme with which to take issue; however, the Commission and its staff, as a general rule, do a commendable job and deserve our thanks.

Issue 3 – TCEQ’s Approach to Compliance History Fails to Accurately Measure Performance

TAM agrees with the Staff recommendations under Issue 4. Any compliance history standard used should take into consideration a facility’s size and complexity and compare the regulated industries on a sector-by-sector basis. TCEQ should also be required to consider positive actions taken by companies that affect compliance history.

Texas Products. Texas Jobs.

Issue 4 – TCEO’s Enforcement Process Lacks Public Visibility and Statutory Authority

Recommendation 4.1

TAM agrees with the Staff’s assessment that the regulated industries and the public would benefit from more transparent enforcement policies. Larger manufacturers have the resources to track such changes and trends in all their forms, but small companies may not.

We are hesitant, however, to support the recommendation that all such policies be reduced to rules. Enforcement actions are complex and TCEQ needs to maintain flexibility in its approach. Converting all of the enforcement policies to rules could hinder that ability.

Recommendation 4.2

TAM strongly disagrees with Staff’s recommendation to increase the penalty caps. The report cites a very small percentage of cases in which the penalties were reduced due to the current caps.

The report also does not provide any evidence that increasing the caps would increase the deterrent effect of enforcement actions or result in any environmental benefit. Increasing the caps simply for the sake of increasing the caps is not a good argument.

It must also be noted that “speciation” is currently being used as a backdoor route to increasing penalties without statutory authority or a rational basis in public policy. A ton of emissions is a ton of emissions. Differentiating between emission events and increasing penalties based on the number of different compounds in the emission is inherently unfair and should be eliminated.

Issue 8 – The Statutory Cap on Emissions Limits TECEO’s Ability to Adequately Fund the Title V Air Permit Program

TAM is opposed to the Staff recommendation that the cap for the Air Emission Fee be raised without additional evidence that the program is being run efficiently and within the bounds of its statutory obligations.

The Report cites the fact that industry has “more effectively controlled their emissions” as a reason for reduced revenue into the program. It stands to reason that if emissions are declining, then program costs should also be declining; however, the chart included in the Report shows a steady *increase* in expenditures.

It is also worth noting that a very unfortunate effect of this recommendation would be to penalize industry for reducing emissions. This is hardly a message that the State should be sending businesses acting in good faith to improve the environment, especially in these slow economic times.

Again, we greatly appreciate the opportunity to comment on this Staff Report. If we can be of further assistance, please do not hesitate to let us know.

A handwritten signature in black ink, appearing to read "Luke Bellsnyder", with a long horizontal flourish extending to the right.

Luke Bellsnyder
Executive Director
Texas Association of Manufacturers