

DEC 28 2010

December 22, 2010

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Sunset Advisory Commission
PO Box 13066
Austin, TX 78711

RE: TCEQ - Texas Commission on Environment Quality

Dear Sunset Advisory Commission:

Thank you for this opportunity to reflect on the following three questions :

1.) Are the TCEQ's functions needed ? YES

I am a safe drinking water advocate, and it is clear that we need government involvement in achieving safe drinking water for the citizens of this state.

2.) Can the functions be better performed by another agency ? YES

The TCEQ has failed to enforce ***their own regulations*** in regard to oversight of Public Drinking Water. The regulations seem pretty straight forward, perhaps the problem is "politics" or coziness with the industries they are regulating.

Therefore, because, I believe it can be counterproductive to have layers of state agencies (each one "overseeing" another agency), I believe we need to remove the primacy of water from the state of Texas (TCEQ) to a Federal Agency that will actually enforce regulations.

The TCEQ has some aggressive sounding regulations on the books .. but what good are they if they are not enforced ?! Enforcement agencies should not be compromising or looking the other way at the expense of public health.

3.) Should the agency's statute be changed to improve its operation ? YES, primacy of water should be given to the Federal Government so that TCEQ can concentrate on other areas in which they are failing and the Public Health will be protected.

Yes, the agency's statute should be changed to be protective of health, first and foremost. It should clearly not accept any health risk even if an economic "case" can be made.

I believe, a 'real environmentalist' would be embarrassed to admit he/she worked for an agency with the following **lame** Mission Statement:

"The Texas Commission on Environmental Quality strives to protect our state's human and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe 'management' of waste."

Yes, I am an optimist, however, I would rewrite as follows :

"The Texas Commission on Environmental Quality strives to protect our state's human and natural resources. Our goal is clean air, clean water, and clean industry."

On December 15, 2010, I spoke before the Sunset Commission and advised them of the following :

The TCEQ has **NOT** enforced their own Drinking Water Standards in 30 TAC Texas Administrative Code, Chapter 290, Subchapter F :

Fluoride occurs naturally at .3 in the San Antonio area. However, upon receipt of the 2009 Consumer Confidence Report (**see ATT: A**) from my water company, SAWS (San Antonio Water System) earlier this year, I realized that the range of the Regulated Water Contaminant – Fluoride, exceeded the (SMCL) Secondary Maximum Contaminant Level – 2.0 PPM, an "Action Level."

BTW, the SMCL "Action Level" is over twice the "optimal" level – of .8 PPM. The SMCL "Action Level" when exceeded requires that a Public Water System follow TCEQ 30 Texas Administrative Code Chapter 290 Subchapter F and notify all customers. I issued an Open Records Request asking for Proof that the Public was notified and SAWS responded that "there were no documents" - showing the public had been notified.

I issued several Open Records Requests, and found that in December 2004, there was a very serious "spill/overfeed" of "Fluoride" in Downtown San Antonio. The amount of Fluoride found was 280 PPM (at the Westin Riverwalk Hotel) – **70 times**, the Maximum Contaminant Level – 4.0 PPM, a more severe "Action Level." In this case, a local TCEQ employee was involved in investigating this spill !

To put this 2004 Fluoride "spill/overfeed" into perspective, 280 PPM is approximately twice the level estimated in Hooper Bay Alaska in 1992, when a Fluoride "spill/overfeed" resulted in **death** - **See ATT: B** – submitted into the public record (on December 15).

[A report of the San Antonio, 2004 "spill/overfeed" and the subsequent investigation, were also entered into the public record, but has been attached as **ATT: C.**]

I became concerned that the Federal Government, Poison Control, the local news media, newspaper and of course the public were not notified. This led me to surmise, that the TCEQ is **more protective of the Public Policy of Fluoridation than they are of Public Safety and Health.** And even more disturbing, the realization that the public is the "canary in the coal mine."

Hydrofluosilicic Acid, the toxic waste byproduct of the Florida Phosphate Fertilizer Industry used to "Fluoridate" is tasteless and odorless, therefore, human exposure symptoms (sickness) is the only way that the 2004 "spill/overfeed" was detected.

It concerns me that the Consumer Confidence Report for 2004 (see **ATT: D – 2005 CCR**) did **NOT** mention the "spill/overfeed" and the range of Fluoride found did **NOT** show any information about the 280 PPM found at the Westin Riverwalk in 2004. I doubt this was an oversight. The TCEQ oversees Consumer Confidence Reports and this report clearly was fraudulent.

I am attaching further documents of TCEQ's lacksidaisical enforcement of their own regulations :

See **ATT: E**, a list of times that SAWS admits to exceeding the SMCL (Secondary Maximum Contaminant Level Goals).

This attachment shows that SAWS (San Antonio Water System) is NOT able to control the dose of Fluoride. In these instances, the range of Fluoride reported on the CCR is FALSE.

SAWS has exceeded the SMCL and the MCL and has **NEVER** notified the public !

In fact, the "overfeed/spill" in 2004 was reported to a local TCEQ employee, who apparently did not know the regulations or chose NOT to follow them. See **ATT: F** for an explanation of the Maximum Contaminant Level and reference to possible citation for exceeding this level. An Open Records Request was made for documents showing that SAWS was fined/cited and "no documents were found."

This is all very problematic because not only was the public not notified so that they could take measures to avoid the local public water supply company, but it shows that the Consumer Confidence Reports have been falsified. Remember, the Consumer Confidence Report is under the "watchful" eye of the TCEQ.

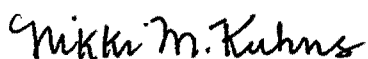
I am convinced that the TCEQ has failed the public in oversight of public drinking water. I ask that the Federal EPA have 'primacy' over water in Texas.

Additionally, during this time, thanks to legislation limiting my access to time spent by an agency on Open Records Requests, I did not ask for all of the times that SAWS exceeded the "optimal" level of the Regulated Water Contaminant Fluoride - .8 PPM. My guess, quite a few.

SAWS' attorney seemed more concerned with limiting my time than the safety of the public. Therefore, I ask that you determine the number of times that SAWS and all public Water suppliers have exceeded the "optimal" Fluoride level and decide for yourself if the TCEQ is doing their job. Then, check every Public Water System to see if they are notifying the public when "Action Levels" have been exceeded and determine if the TCEQ is following up on that. And finally, determine if the Public Water Systems have been cited when the MCL has been exceeded. It is a dirty job but the TCEQ isn't doing it - and I have exceeded my 36 hours.

And finally, I am not asking that you suspend belief in the Public Policy of Fluoridation, but, I am asking that before we continue down this path of protecting polluters, allowing the Florida Phosphate Fertilizer Industry to truck in the toxic waste - Hydrofluosilicic Acid for dilution/dumping into our Public Water Supplies that we determine if in fact this program fulfills the Legislative intent. Additionally, I ask that the TCEQ be more protective of the Public than they are of the Public Policy of Fluoridation.

Sincerely,



Nikki M. Kuhns

San Antonio, TX

ATT: A - 2005 CCR - for prior year including spill in 2004

ATT: B - Hooper Bay Spill Info - Death - F < 150 PPM

ATT: C - 2004 SAWS Spill/Overfeed Open Records Report

ATT: D - 2010 CCR - Range of Regulated Contaminants 2005-2009

ATT: E - SMCL Overfeeds

ATT: F - Info on MCL - Citation for Exceeding

ATT: ~~6~~ - 30 Texas AC TCEQ Regulations for Drinking Water - Notify Public when SMCL Exceeded