

WRITTEN TESTIMONY FOR SUBMISSION TO THE SUNSET COMMITTEE FOR THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, HELD IN AUSTIN, TEXAS, DECEMBER 15, 2010

Thank you for the opportunity to testify to the members of the Sunset Commission on the TCEQ. My name is Dr. Robert Fitzgerald. I am past president and current vice-president of the Medina County Environmental Action Association Inc. This organization was established in 2000 and consists of 130 families in Medina and Bexar Counties. I have 10 years of experience in dealing with the TCEQ thru numerous public and private meetings during this period. It is impossible in the 3 minute time period allotted to relate to you all of the problem areas our organization has had with TCEQ during this period. I will give you some highlights of the areas we feel that TCEQ should be improved on. Much of my comments are from data in Section 2 of TCEQ's staff report to the Sunset Commission.

Currently TCEQ is perceived by the public as favoring the entities it regulates over the public in permitting matters. This perception is well-founded. There is not a level playing field in this contest as the following comments will demonstrate.

1. After my research, no air permit applications for rock crushers have ever been denied. They are always permitted as long as the blanks are filled in properly. Today, when TCEQ Commissioners were asked by Senator Hinojosa if TCEQ ever denied a permit application? The answer given was 'yes, 14% of applications were denied.' This answer is at best misleading if not downright dishonest. This answer pertains to permits that are 1. Withdrawn, and 2. Never completed. Obviously in these instances no permits are granted. These factors were purposely concealed and withheld from the Sunset Commission by the TCEQ commissioners to purposely mislead the commission into believing that 14% of permit applications are denied because of pollution of Texas Air and Water would result. I believe this fact must be made known to the sunset commission to correct the misleading and false statement that 14% of applications are denied by TCEQ commission.
2. No consideration is given when granting air permits to the sum-total output of multiple aggregate quarries in a given area whose combined particulate matter output would exceed Federal EPA standards. Under current regulations, as long as the individual rock crusher's particulate matter output does not exceed limits for that quarry's boundary, an air permit is granted.
3. TCEQ's Office of Public Information Counsel (OPIC) and Office of Public Assistance (OPA) were created to assist and educate the public in TCEQ's permitting process. According to the Sunset Advisory commission staff report on page 33, these offices are required by law to report to TCEQ Commissioners and were given authority by the 2001 Legislature following the last Sunset Commission hearing to do the following:
 - 1) Recommend legislative and regulatory changes,
 - 2) Contract for outside technical support, and 3) Provide expertise in cases. Since 2001, not once has OPIC used either authority. No wonder the public believes that their comments and suggestions are ignored.
4. As per the TCEQ Staff Report, page 31, TCEQ's budget greatly favors regulated entities over that of the public by a huge margin: \$15.3M over \$1.3M. In addition, TCEQ's Small Business Environment Association office (SBEA) which was created to assist regulated entities in getting permits, has a staff of 67, as compared to the combined staff of the OPIC and OPA staffs of 20.
5. On page 32 of the report, TCEQ admits its responsibility to assist the public 'is diluted' by a heavy workload, having a monthly agenda of 85 items. TCEQ uses this excuse, combined with its required responsibility to provide public assistance and general information about TCEQ, while at the same time

helping regulated entities navigate the default enforcement process, takes time away from the public. Additionally, OPIC representatives are not required to attend public meetings sponsored by TCEQ, where interested public makes known their questions and comments. This demonstrates there is inadequate assistance given to the public. A solution to this problem would be to increase the staff and budget for the OPIC.

6. TCEQ commissioners have the authority to overrule the administrative law judges' opinions to deny permits issued in a public hearing cases. This is at best difficult for the public to understand, and certainly creates the impression that TCEQ favors regulated entities over the public interests.
7. TCEQ admits its penalties for violations are inadequate and recommends increasing them to levels equal to those imposed by the Attorney General's Office. We concur with this recommendation.
8. On page 38, TCEQ's admission that it has no data to verify compliance history to evaluate 80% of the regulated entities because TCEQ has no record of their performance, only serves to validate the public's impression that TCEQ is not doing its assigned duty to properly evaluate the entities it is supposed to regulate. How can the public think anything but the fact that TCEQ is showing favoritism to the regulated entities.

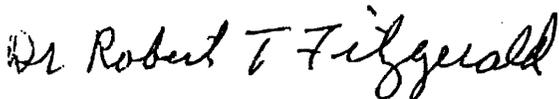
Areas where TCEQ needs to exercise regulatory authority to protect Texas' air and water quality:

Over the past ten years, TCEQ's failure to heed public comments and to make regulations concerning aquifer protection, is demonstrated by the fact that TCEQ requires that abandoned wells are to be properly plugged. However, TCEQ allows aggregate quarries hundreds of acres in size to be mined to unregulated depths over aquifer recharge zones. Furthermore, these quarries are routinely abandoned without the reclamation protection required for other types of mines, leaving the underlying aquifer unprotected from pollution for infinity. How can TCEQ justify this?

Another example causing public frustration was when TCEQ granted extensions of an air permit for an as-yet undeveloped aggregate quarry in Medina County not once- but twice, since initially granting the permit in 2006. These extensions were made without any public notification or opportunity for public comment. Not even TCEQ's Region 13 office knew of these extensions until it was brought to their attention by the public.

In conclusion, I suggest that TCEQ's Commissioners should be elected by the public instead of appointed by the governor. This would serve the public interest and remove the stigma of being able to gain positions of power by political contributions from regulated industries. I would also support Dr. Stafford's suggestion that one member of the Commission should be a physician with public health experience. This addition could replace an existing commissioner and would not require increased funding.

Respectfully submitted on December 21, 2010, by



Dr. Robert T. Fitzgerald

The Medina County Environmental Action Association, Inc.

FAX MESSAGE

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4:30 PM

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Written comments to legislative commission
in sunset commission hearings on TCEQ. ~~And~~ Completing
of my oral testimony given Dec 15 2010 in Austin
Temi did not permit me to give my complete
testimony. Please see that the Leg. Sunset
committee gets my complete testimony.

Thank you

Dr. Robert Fitzgerald

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