

Cecelia Hartley

From: Sunset
Sent: Tuesday, November 30, 2010 4:54 PM
To: Cecelia Hartley
Subject: FW: Staff Report Feedback

-----Original Message-----

From: Sunset
Sent: Tuesday, November 30, 2010 4:38 PM
To: Sunset
Subject: Staff Report Feedback

E-mail address: robin@texasenvironment.org

Agency name: Environmental Quality, Texas Commission on

Response to staff report: To: Chloe Lieberknecht & Sunset Advisory Commission Staff
Fr: Robin Schneider, Texas Campaign for the Environment
Re: Additional issues not raised in the Sunset Staff Report on TCEQ regarding waste permitting
November 30, 2010

Issue: Waste permits do not require applicants to assess the availability of alternative sources of water if the facility is going to impact water supplies in its regular operations or if the water is contaminated by its operation.

Currently, the only thing that applicants are responsible for is polluting water, but not for extracting it to the detriment of others. Therefore, applicants are required to design landfills not to leak, and are supposed to provide monitoring to detect leaks, but they have no responsibility for assessing the availability of alternative sources of water to anyone who might be affected by either leaking or by being dried up.

TCE Recommendation:

Require that waste permits consider the impact of extraction of water and alternate sources of water on existing water supplies and if they were to be contaminated by a waste facility.

Issue: TCEQ technical staff performs no independent technical scrutiny of the accuracy or correctness of the technical information submitted in the application.

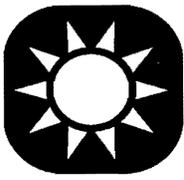
TCEQ waste permitting process is a legalistic and rote procedure for applicants to follow, with a without regard to the substantive question of whether or not the applicants obtain and submit the correct answer. The only function the permitting staff performs is to determine whether the applicant has addressed all of the required technical issues, and that the application does not contain inconsistencies. The TCEQ staff assumes that all of the technical information submitted by the applicant is in fact correct. Unless there are protestants who have the financial ability and sophistication to effectively participate in a contested case hearing with independently funded expert witness, there is insufficient scrutiny of applications to determine whether the Texas environment is receiving any appropriate protection. Protestants are essentially having to do the job that TCEQ staff should be doing.

The permitting staff tends to function as "handholders" to the applicants, and after the lengthy application process, they become invested in the application and feel compelled to defend its technical completeness. This destroys the neutrality of the staff toward the application.

This is a stark contrast to the Railroad Commission approach in which staff do independently assess the technical accuracy and correctness of an application. The Railroad Commission also has staff sited in District Offices around the state, who are familiar with the local environment, and who can be brought into the evaluation of an application. TCEQ permitting staff who are located in Austin do not, as a matter of course, consult with enforcement staff in the TCEQ regional offices. Unless there is a public meeting on the application, waste permitting staff have not ever seen the proposed site. The Railroad Commission staff is allowed to advocate for or against an application once they have performed their own independent technical investigations, and as a result, they are generally much more neutral toward applications.

TCE Recommendation:

TCEQ staff should independently assess the technical accuracy and correctness of the application, in the same way that the staff of the Railroad Commission is required to do.



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Waste Not, Want Not

Reboot Recycling, Texas

Recycling is on the rise. Nationally, we recycle about one-third of our discards, but some major cities achieve recycling rates of 50%, 60% or even 75%.¹ More Americans now say they recycle than vote regularly! Nevertheless, the latest national study put the recycling rate in Texas at only 18%—and the amount of trash going to our landfills continues to increase.

State lawmakers took up this issue years ago, but unfinished business remains. In 1989, the Texas Legislature set a 5-year goal to reduce the amount of trash going to landfills by 40% through recycling and waste diversion. This goal was never met; today, the state environmental agency (Texas Commission on Environmental Quality, or TCEQ) doesn't even keep track of our recycling rates! Fortunately, TCEQ is under review by state lawmakers this year.

Recycling our resources creates at least 10 times as many jobs as trashing them.² In addition, higher recycling rates means more state tax revenue. A South Carolina study found that for every 1,000 tons recycled, the state gained 1.68 more jobs and \$3,687 in additional tax revenues to the state. Texas is staring down the barrel of a massive deficit, so we need all the help we can get.

Landfills are Part of the Problem

Landfills are quite literally a growing problem: in the Lone Star State, 12 landfills tower above 200 feet tall.³ Environmental standards for Texas waste facilities are among the weakest in the nation, and even existing laws often go unenforced. This leaves us with a system in which dumping or incinerating trash artificially appears to be cheaper than recycling. This is a significant reason recycling isn't available in every community, home and business across the state.

Unfortunately, the current *produce* → *consume* → *dispose* model wastes more than just paper or plastic. It wastes energy, and lots of it. Plastic products serve as perfect examples because they're made primarily from oil. Imagine a typical plastic water bottle filled one third with oil: that's how much crude was used to make it. Nearly 10% of American oil consumption—which equals approximately two million barrels per day—is used to make plastics. Yet, in the U.S., we only recycle about 10% of our plastic bottles while we manage to waste roughly 22 billion of them every year, trashing our state's waterways and communities in the process.

Money Well Spent?

Funding for garbage and recycling collection comes from city and county budgets, competing with other public services such as police and libraries. However, a growing number of consumer products contain toxic materials and are designed for the dump, making them difficult and expensive to recycle. Handling household hazardous waste costs taxpayers \$750 a ton, according to an estimate by the City of Fort Worth. Yet most manufacturers bear little or no responsibility for the end-of-life management of their products, leaving local governments holding the proverbial bag. This amounts to a taxpayer subsidy for designing and manufacturing disposable products. Ending this subsidy by making producers responsible for recycling their products creates strong market incentives to reduce waste (and disincentives to manufacture toxic products).

Expanding the Electronics TakeBack Law

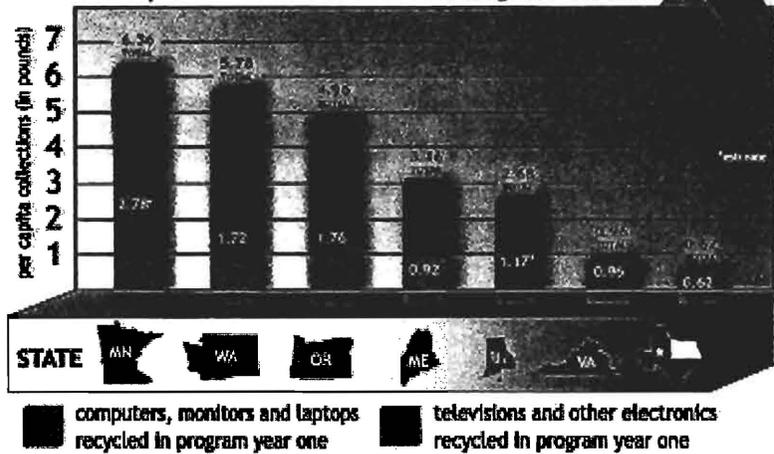
The existing electronic waste recycling law for computers should be strengthened and expanded to cover TVs in 2011. Other states recycled three times more computer equipment per capita than Texas; however, when televisions are included, these same states recycled seven times more per capita. Televisions account for approximately 56% by weight of all obsolete electronics, and CRT televisions contain four to eight pounds of lead. Last session, the bi-partisan TV recycling bill passed overwhelmingly in the House and unanimously in the Senate prior to gubernatorial veto. Gov. Perry's veto message called for more uniformity in the TVs and computer recycling legislation. **House Environmental Committee Chairman Byron Cook is committed to get TVs covered this session.**

¹ *Waste & Recycling News: 2009 Municipal Recycling Survey*, available at <http://www.wasterecyclingnews.com/rankings/mrs2009.html>

² Institute for Local Self-Reliance, *Recycling Means Business*, December 2008, available at <http://www.ilsr.org/recycling/recyclingmeansbusiness.html>

³ Texas Commission on Environmental Quality, *2008 Municipal Solid Waste in Texas: A Year in Review*.

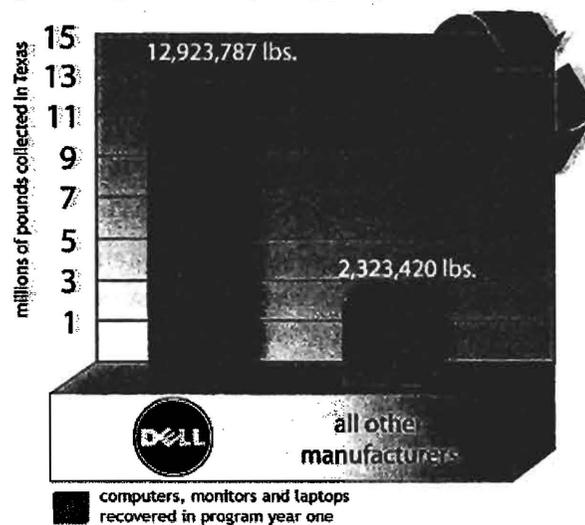
State-by-State Electronics Collection in Program Year One



The electronics recycling law must include enforceable minimum collection goals for each company so that all companies – not just Dell and Best Buy – actually set up effective collection programs. Manufacturer reports showed that Dell collected 85% of all the computer equipment recycled – almost 13 million pounds. 44 of the 83 companies registered with TCEQ reported zero pounds collected in 2009. Companies such as IBM, Toshiba, LG and Lenovo collected less than 10,000 lbs. Enforceable goals, as other states have, can be based on the market share of the company as the TV legislation was written. These goals set a level playing field and provide manufacturers with an impetus to provide recycling programs that work..

State law should ensure that all Texans - urban, suburban and rural residents – have access to free and convenient programs. Currently, the computer takeback law says that a mailback system that is enough to qualify as “reasonably convenient.” To provide adequate statewide collection, Texas should define “reasonably convenient” to establish minimum availability for drop-off collection options to areas based on population densities and/or provide incentives for collection goals to service all parts of the state.

In addition, the recycling law should **prohibit the trashing of e-waste** in our landfills. South Carolina and other states prohibit people from putting their old electronics in the trash. (Currently in Texas, it is illegal to trash 220 pounds or more of electronic waste in a month.) Landfill operators should post signs, notify contract haulers by mail and not knowingly take loads with more than an incidental amount of e-waste.



TCEQ Sunset Should Impact Waste & Recycling

There are several provisions that the Sunset Advisory Commission can include to improve recycling programs in Texas and better protect people who live and work near poorly-run landfills and other problem recycling facilities.

1. Recycling is an engine of economic growth and the **TCEQ should at least be tracking the recycling rates** in Texas, as Florida, Arkansas, New Mexico and other states do – and providing public education on the electronics takeback law. A lack of focus and promotion on recycling and reusing resources is hurting the Texas economy.
2. Improve public education efforts: the TCEQ was mandated to provide public education on the Computer TakeBack Law (HB 2714) passed in 2007. However, a TCE Fund survey of 200 local government websites and recycling information personnel found that less than 20% referenced the TCEQ website or any other producer takeback program. TCEQ should, at the very least, inform all local governments about the existing law. TCEQ should also significantly expand its public education efforts.
3. Municipal Solid Waste facility permits for landfills, transfer stations and other waste facilities should be brought into line with other facilities by instituting a **10-year term limit**. Without a time limit or review process, facilities can operate for decades or centuries without thorough review. According to the 2010 TCEQ annual report of the MSW Permits Section, 67 of the 197 active landfills in Texas have at least 50 years of capacity left and 32 landfills have more than 100 years of capacity left. Permittees of solid waste facilities should undergo a **Good Neighbor Reviews** of their performance. The facilities would post notices with detailed information on their tonnages recycled, composted, landfilled, or processed, plans for updates in technology, site operating plans, planned expansions. The facilities would report details on complaints, violations, penalties assessed and provide for written comments and a public meeting. The information from the facilities and the public would be compiled by the facility and be made available on the facilities’ and TCEQ’s website.
4. Texas should raise the Solid Waste Disposal Fee to keep pace with inflation and adequately funding permitting, enforcement, statewide and local recycling efforts. The existing \$1.25 per ton SWD fee on has not been raised to keep pace with inflation since it was first put in place in 1989. Arkansas has a \$2.50 charge per ton. These funds would allow TCEQ to perform its responsibilities to evaluate waste applications, enforce the laws on waste, disburse funds to the regions for local grants, track recycling rates across the state, fulfill the public education responsibilities of the Computer TakeBack Law passed in 2007 and provide more robust statewide recycling efforts, which will create economic development, jobs and improve the state’s tax base.