



City of Austin
Founded by Congress, Republic of Texas, 1839
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Telephone 512/974-2000

December 15, 2010

Mr. Ken Levine, Interim Director
Sunset Advisory Commission
PO Box 13066
Austin, TX 78711

RE: City of Austin Comments on Texas Commission on Environmental Quality Sunset Review Staff Report, 2010

Dear Mr. Levine:

Thank you for the opportunity to review the *Texas Commission on Environmental Quality (TCEQ) Sunset Review Staff Report* released in November 2010. We propose the inclusion of additional recommendations regarding the wastewater discharge permitting program with the aim of effective protection for Texas high quality waters. Current permitting practices at TCEQ are not wholly based on supportable science and have not incorporated advances in predicting environmental impact and improvements in wastewater treatment methods.

At the heart of the current permitting problem is an absence of a quantitative definition of what is an unacceptable (above *de minimis*) degradation of water quality in TCEQ regulations or guidance. The lack of quantitative definition for unacceptable degradation leads to confusion in determining appropriate treatment levels. Current anti-degradation reviews required by 30 TAC 307.5 and performed by TCEQ staff are not based on a full scientific evaluation of water quality impacts but rely primarily on setting treatment levels comparable to other permits issued in the area. This practice ignores advances in scientific knowledge and current treatment practices, and leaves affected parties with the burden of proof for environmental protection through long and costly administrative law hearings.

In setting permit limits, TCEQ does not use current best practice assessment methodologies, such as dynamic water quality models that have been developed by national agencies and used by other water quality professionals in Texas. The existing water quality modeling done by TCEQ does not reflect realistic nutrient cycling processes which further compounds the problems created by a solely qualitative definition of water quality degradation.

The most specific, critical changes needed for current TCEQ wastewater permitting policies and procedures include:

- 1) A quantitative definition of *de minimis* degradation developed by TCEQ and consistent with EPA Clean Water Act guidance is needed for use in Tier 1 and Tier 2 reviews as required by 30 TAC 307.5.
- 2) Use of a dynamic water quality model (rather than the steady-state LA-Qual currently in use by TCEQ) that accounts realistically for nutrient impacts is appropriate, feasible and necessary.
- 3) Revisions of wastewater effluent limits are needed to reflect current industry treatment practices now available, including technologies such as membrane bioreactors.
- 4) Flexibility for TCEQ permit writers is needed to recommend alternative technologies and permits (such as Texas Land Application permits) when they are more protective and more appropriate for sensitive environments.

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The City of Austin would also like to note our support for the Sunset Commission's recommendation for consideration of stronger penalty authority for dam safety violations. As a municipality, we depend on the TCEQ to enforce dam safety rules on private dams within the City jurisdiction. Increased enforcement capability for the State would strengthen the dam safety rules and ensure greater safety for our citizens.

We would greatly appreciate your consideration of our proposed additions in finalizing recommendations made by your committee. Thank you for your attention to these concerns and for the recommendations which we support. If you have any questions regarding these comments, please call me at (512) 974-9195 or via email at Victoria.Li@ci.austin.tx.us.

Sincerely,



Victoria J. Li, P.E.

Director

Watershed Protection Department

City of Austin