



JOSÉ RODRÍGUEZ

STATE SENATOR

SENATE DISTRICT 29

EL PASO, CULBERSON, HUDSPETH, PRESIDIO & JEFF DAVIS COUNTIES

November 4, 2016

The Honorable Rep. Larry Gonzales, Chair
The Honorable Sen. Van Taylor, Vice Chair
The Honorable Sen. Juan "Chuy" Hinojosa
The Honorable Sen. Robert Nichols
The Honorable Sen. Charles Schwertner
The Honorable Sen. Kirk Watson
The Honorable Rep. Cindy Burkett
The Honorable Rep. Dan Flynn
The Honorable Rep. Richard Peña Raymond
The Honorable Rep. Senfronia Thompson
LTC (Ret.) Allen B. West
Mr. William Meadows

Texas Sunset Advisory Commission
1501 North Congress Avenue, 6th Floor
Robert E. Johnson Building
P.O. Box 13066
Austin, Texas 78711

VIA U.S.P.S. AND ELECTRONIC MAIL

RE: Additional comments on Texas Sunset Advisory Commission's staff report on the Railroad Commission of Texas

Dear Chairman Gonzales, Vice Chairman Taylor, and Members:

I write to offer additional comments on recommendations made by the Texas Sunset Advisory Commission staff to reform the Railroad Commission of Texas (the RRC). This letter is intended to supplement correspondence that I sent to your attention in August supporting the staff recommendations (enclosed).

As I explained previously, I am alarmed by recent reporting by the *El Paso Times*, which found that chemicals from oil and gas production sites spilled into multiple Texas waterways during recent severe flooding events. The *Times* reporting and my own inquiries with the RRC have led

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me to conclude that the agency is not currently able to adequately monitor such spills, and is ill equipped to ensure they are properly remediated. These concerns with the RRC take on special relevance for the far West Texas constituencies I represent, and surrounding areas, which may soon be centers for oil and gas production. These areas will have to balance the economic benefits associated with that production against the potential for economic harm.

Below, I comment on specific recommendations made in the Sunset Commission staff report, as well as recommend additional changes to the report, which will help the RRC better fulfill its role to protect the health of Texas citizens and the environment while regulating the state's vital oil and gas industry.

Recommendation 1.1: I agree with the staff's recommendation that the RRC be renamed as the Texas Energy Resources Commission or other similar moniker. However, I suggest the agency be continued for six years instead of 12. Given rapidly changing industry and regulatory issues, the legislature should have an earlier chance to thoroughly review how well the agency implements this round of Sunset amendments.

Additionally, for reasons set forth in my previous correspondence and discussed by various stakeholders for a number of years, I strongly believe Texas would be better served by one or more appointed Commissioners, instead of its current three elected Commissioners. I suggest adding this recommendation to Issue 1 of the Sunset staff report.

Recommendation 3.1: I agree with the recommendation that the RRC develop an annual strategic plan to improve its monitoring and enforcement. In addition to the minimum strategic plan elements outlined by the Sunset staff report, the final Sunset report should also recommend that the RRC adopt a deterrence policy that considers the economic benefit to regulated entities for non-compliance, and allows the RRC to increase penalties if it finds that an entity did in fact benefit economically for not complying with applicable law. Relatedly, the final Sunset report should also recommend that RRC raise its \$10,000 per violation per day cap on penalties to \$25,000 per violation per day, which is the cap currently set by the Texas Commission on Environmental Quality (TCEQ) for egregious violations that harm human health or the environment.

Finally, in light of recent *El Paso Times* reporting, the final Sunset report should also recommend that the RRC be directed to review all relevant rules on spill reporting and response, and make necessary changes to ensure appropriate cleanup of chemical contaminants, as well as report such spills and the results of any cleanup effort to the TCEQ.

Recommendation 3.3: I agree with the recommendation that the RRC track the complete number of oil and gas violations its staff cite annually and report this number on its website. To ensure the information reported online is adequate and useful to the public, I recommend that the RRC be required to develop searchable and downloadable web-based databases where the public can search, by company name, for (1) violations, related inspection reports, and enforcement actions; and (2) complaints against companies and relevant reports for how those complaints were resolved. Notably, TCEQ currently maintains similar websites.

Thank you for your consideration of these proposed amendments to the Sunset staff report, and thank you for your service to Texas. Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "José Rodríguez". The signature is written in a cursive style with a prominent flourish at the end of the name.

José Rodríguez

Enc: August 22, 2016 Rodríguez letter RE: Comments on Texas Sunset Advisory Commission's staff report on Railroad Commission of Texas



JOSÉ RODRÍGUEZ

STATE SENATOR

SENATE DISTRICT 29

EL PASO, CULBERSON, HUDSPETH, PRESIDIO & JEFF DAVIS COUNTIES

August 22, 2016

The Honorable Rep. Larry Gonzales, Chair
The Honorable Sen. Van Taylor, Vice Chair
The Honorable Sen. Juan "Chuy" Hinojosa
The Honorable Sen. Robert Nichols
The Honorable Sen. Charles Schwertner
The Honorable Sen. Kirk Watson
The Honorable Rep. Cindy Burkett
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VIA U.S.P.S. AND ELECTRONIC MAIL

RE: Comments on Texas Sunset Advisory Commission's staff report on the Railroad
Commission of Texas

Dear Chair Gonzales, Vice Chair Taylor, and members:

I write to submit comments in support of recommendations made by the Texas Sunset Advisory Commission staff to reform the Railroad Commission of Texas (the RRC). In particular, I believe that implementation of staff recommendations outlined in Issue 3, regarding improvements to RRC's oil and gas monitoring and enforcement, will go a long way toward ensuring the agency can fulfill its role in regulating the oil and gas industry while also protecting the health of Texas citizens and the environment.

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These recommendations seem particularly apt now in light of recent reporting by the *El Paso Times*. The newspaper has been reporting on photographs taken since at least 2014 by the Texas Wing of the Civil Air Patrol and posted on a University of Texas at Austin website, which appear to show environmental damage caused by floodwaters sweeping unknown chemicals from oil and gas production sites, including hydraulic fracturing sites, into the Brazos, Colorado, Red, Sabine, San Jacinto, and Trinity rivers. I'm sure you are familiar with the adverse health consequences associated with exposure to the myriad carcinogens present at oil and gas operation sites, as well as the danger production chemicals pose to streambeds, flora, and fauna as they wash downstream to the Gulf of Mexico.

The RRC is responsible for ensuring remediation of spills from inland oil and gas production sites, but the *El Paso Times* reporting and my own inquiries have led me to conclude that the agency is ineffectual in its role of protecting the environment from such spills. First, it is abundantly clear that the RRC needs to update its system for documenting oil spills. The agency currently seems less than capable of describing specifically what oil and chemicals may have migrated downstream during flooding events, and similarly unable to describe the volume of chemicals released during flooding.

For example, the *El Paso Times* reported on Civil Air Patrol photos from May of this year that showed oil spilling into the San Jacinto River and migrating to just feet from waterfront homes northeast of George Bush Intercontinental Airport. Other photos from June 2015 showed large black plumes radiating away from a flooded oil and gas operation along the Lower Trinity River toward Lake Livingston. In both of these cases, when asked, the RRC was unable to provide the *El Paso Times* any detailed information about these spills, what types of chemicals leaked into the environment, at what quantities, or what response the agency took to remediate the spills. This despite the RRC telling me in a July 1, 2016 letter:

Operators must report to the RRC crucial information about the incident in a Form H-8 report. The reports specify the exact location and what steps have been taken, or are in progress, to remedy the situation. These reports also include the quantity of oil, gas or geothermal resources lost, destroyed or permitted to escape.

It appears that RRC's reliance on operator self-reporting failed in the case of the July 2015 Lower Trinity River spill. Only after prompting by the *El Paso Times* in May of this year—nearly a year after the spill occurred—did the RRC report that it actually *didn't* receive an H-8 spill report from the operator that owned the leaking production site. In its July 1, 2016 letter to me, RRC said the operator ultimately reported releasing 1,000 barrels of oil into the river, although the operator said it remediated the spill.

This sequence of events is unacceptable. It shouldn't be the case that the RRC only knows about a spill if the operator remembers to tell the agency about it. That is no oversight at all.

The Sunset Commission staff reported extensively on RRC's faulty data collection problem, concluding that among other issues, it fails to adequately distinguish between minor and major

violations, resulting in nearly 40,000 actionable spills not being referred for enforcement. Sunset staff report that, in the fall of this year, RRC "launched a new inspection database designed to track more detailed information about inspections and violations. However, the extent to which the new system will capture necessary data and address concerns identified in this report is not yet clear."

I have seen the results of RRC's new inspection system, and it's still woefully inadequate. In a letter dated June 22, 2016, I asked both the RRC and the Texas Commission on Environmental Quality (TCEQ) to provide me a total number of spills the agencies had documented in calendar years 2014, 2015, and 2016 to date. In their reply, TCEQ was able to provide succinct paragraphs detailing a total number of oil and gas spills for each year, and how many of those were referred to another agency.

By contrast, I received no such succinct response from RRC, nor did I receive a spreadsheet, report, or database. What I received was a compact disk containing, quite frankly, a jumble of documents—and they only dated back to 2015. I appreciate RRC being so forthcoming with the volume of documents it provided my office, and I also appreciate that these documents may be proof that the agency is putting to use a new inspection database. However, these documents also seem to bear out Sunset staff's concern that RRC will continue to fail in capturing necessary data.

With all the difficulty RRC seems to have accurately documenting oil spills, it is little wonder their enforcement record is also abysmal. I am convinced that the agency's reliance on self-reporting, coupled with its overriding focus on bringing operators who violate state law into compliance—rather than bringing to bear RRC's substantial enforcement power—results in a system where operators can violate the law with near impunity, knowing full well they'll likely face no adverse consequences for violating the law. This was the conclusion of Sunset staff, who found that RRC referred just two percent of total violations for legal enforcement in 2015, down from four percent in 2011. They also found that, in the rare case where RRC actually did use its ability to sever a production lease, more 1,500 operators thumbed their noses at the agency and continued to produce. This culture of no consequences has also been documented by the *El Paso Times*; to my knowledge, the RRC has yet to provide any examples of enforcement actions taken against the oil and gas producers whose spills into Texas waterways were documented by the newspaper.

I'm inclined to believe the RRC's focus on continually checking on repeat violators is not only ineffectual in actually ensuring compliance, but also unduly ties up staff from responding to other spill events. For instance, the Sunset staff reports that RRC field inspectors followed up on 15,056 known oil and gas violations 46,133 times. At best, this seems to be inefficient, unnecessary work for RRC staff. Instead of coddling these repeat violators with unlimited chances, RRC should more readily use its enforcement power to ensure compliance after the first violation. This would be a much better use of staff time, and thus taxpayer dollars. Unfortunately, as it stands now, concerned citizens reported to the *El Paso Times* that they simply stopped reporting spills to the RRC because they knew agency staff wouldn't respond. Maybe staff was simply too busy checking in, once again, on a recalcitrant oil and gas operator.

For the forgoing, I wholeheartedly support the Sunset Commission staff recommendations outlined in Issue 3. In particular, I support staff's recommendations that RRC be required to make available online an annual strategic plan, developed in consultation with local government and environmental stakeholders, to track and measure the effectiveness of its monitoring and enforcement. I also support staff's recommendation that RRC clean up its system for reporting the total number of oil and gas violations, develop a definition for repeat violators, and develop a system of issuing expedited penalties.

I would also like to suggest three additional proposals not found in the Sunset Commission staff report. First, in light of the *El Paso Times* reporting, I remain concerned that RRC rules are not adequate to prevent spills caused by floods. I am concerned that intense storms are likely to occur more frequently in Texas. It's imperative that RRC take preventive steps now to ensure more spills don't happen as a result of severe storm flooding. Accordingly, the Sunset Commission should recommend that the RRC immediately review relevant rules and propose changes to ensure the agency can provide adequate environmental protection from oil and gas industry contamination during such flooding.

Second, I propose the Sunset Commission also recommend the state designate the TCEQ a repository for all information regarding spills by oil and gas operators, regardless of what agency actually has jurisdiction over those spills. In my June 22, 2016 letter, I asked RRC and TCEQ to describe what agency has jurisdiction over oil and gas spills. In a July 5, 2016 reply letter, TCEQ reported that although the agency is responsible for spills of all hazardous substances, it only responds to spills of refined petroleum products from pipelines or crude oil if transported over roadways. All other oil spills are within the jurisdiction of the RRC, excluding spills that enter or threaten to enter coastal waters, jurisdiction for which rests with the General Land Office (GLO). TCEQ reports that it does not necessarily keep records of spills under the jurisdiction of the RRC or GLO. Putting aside that this three-way jurisdictional split would likely confuse the average Texan, it strikes me as inappropriate that a citizen interested in obtaining information on oil spills in Texas should have to go to as many as three different state agencies to receive this information. Instead, if in fact TCEQ is generally responsible for all hazardous spills, RRC and GLO should also transmit reports of their remediation efforts to TCEQ. I believe this proposal aligns nicely with Sunset staff recommendations requiring RRC to improve its own data collection and retention efforts.

Finally, I recommend the Sunset Commission go a step beyond the staff report and propose moving away from having an elected Railroad Commission, to instead have a modern oil and gas regulatory agency with one or more appointed members. During the 84th Legislative Session, the Sunset Commission was in fact given detailed instructions from the legislature to examine alternative organizational structures for the RRC. Sunset staff elected to make no such recommendations during this review of the agency, recognizing what a lightning rod the topic has been during the past two legislative sessions.

I can't help but conclude that the issues outlined above—lax oversight and near-zero enforcement against operators—will persist so long as we continue to allow our oil and gas agency to have a cozy relationship with the industry it's supposed to regulate. Issue 2 of the Sunset Commission staff report strongly supports a view that the RRC's current structure allows its elected

commissioners to be extensively involved in the day-to-day operations of the agency, and allows commissioners to influence what should be impartial determinations by their employees. These commissioners have each received more than half of their campaign funds from industry contributors, according to a 2015 report from Texans for Public Justice. Common sense would suggest that getting money from the oil and gas industry would influence commissioners' decision making, and directives to staff, in favor of that industry.

Last session, with passage of House Bill 30, the legislature eliminated local communities' ability to regulate oil and gas operations. If the state is committed to reserving oil and gas regulation for itself, it must ensure that the people of Texas have confidence in the state's ability to regulate in an unbiased manner, and protect their health and the health of the environment. Recent reports make clear that the Railroad Commission is not succeeding in that role. For the foregoing, I implore the Sunset Commission to adopt the Sunset staff recommendations and also consider the additional suggestions I include in this letter.

Thank you for your consideration, and your service to Texans. Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "José Rodríguez". The signature is written in a cursive style with a prominent flourish at the end of the name.

José Rodríguez

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