

SUNSET ADVISORY COMMISSION (SSAC) HEARING SUMMARY

HEARING DATE: December 15, 2010

MEMBERS PRESENT: Senators Hegar (Chairman), Whitmire, Hinojosa, Huffman and Nichols; Representatives Bonnen (Vice Chairman), Harper-Brown, Cook, B., Taylor and Anchia; and Senate Public Member McMahan

HEARING TOPIC: Consideration of Staff Reports on TxDOT, Railroad Commission (RRC), PUC, TCEQ and TOWTRC.

SUMMARY on Discussion of Report on TCEQ

The SSAC Commissioners spent more than six hours in consideration of the SSAC Staff Report on the TCEQ. Over 121 people signed up to speak; however, due to the length and lateness of the hearing about 75 testified.

The discussion on TCEQ began with a presentation by the SSAC staff on their recommendations in the Staff Report. They responded to questions regarding: agency's ability to deny permits (Hinojosa); dam safety regulations and violations (Nichols & McMahan); implementation of drought contingency plans (Nichols); PST remediation requirements, including providing a possible statute of limitations on liability (Nichols & Harper-Brown); transfer of water utility rate making activities to PUC from TCEQ (Harper-Brown).

Ken Levine, Director of SSAC, also responded to questions from Anchia about why the staff believes, even with all that is going on at the federal level affecting TCEQ operations, that the agency's ability to handle these demands warrants continuation for 12 years, rather than some lesser amount of time.

Following very brief opening comments, Chairman Shaw, Commissioners Rubinstein and Garcia, as well as Executive Director Vickery all were available to respond to questions from the Sunset Commissioners.

Chairman Shaw and Vickery responded to questions from Anchia about the use of speculation in assessing penalties. Shaw explained that though the

agency has the authority to speculate, the Commission is seeking clearer direction from the Legislature before utilizing.

Anchia also asked about Barnett Shale activities and if the agency has conducted studies regarding air emissions from these activities. Both Shaw and Vickery provided information on the agency's recent effort to develop an inventory of emissions sources in the Barnett Shale area, as well the current efforts to quantify total air emissions related to these activities. The inventory of air emissions is expected to be completed in January 2011.

There was also interest in the recommendation in the SSAC Staff Report addressing the current compliance history program. Anchia asked what changes the agency may proceed with to address the findings in the report on this program. Vickery mentioned two items: to move from a uniform standard (as suggested in the report); and to recognize and consider a facility's complexity.

There was also a discussion about the recommendation addressing the current 4,000 ton emissions cap on the assessment of the air emissions fee. In the discussion, Vickery mentioned that the revenue stream from this fee was decreasing because of reductions in air emissions. He also told the Members that this fee supports the federal Title V program and that EPA reviews the agency's efforts to determine if the implementation of this federal program should continue to be delegated to the state.

In the discussion on agency's authority to deny permits, Shaw explained the various ways that an application would not move forward, with withdrawals and denials as some of the main ones. Based on this, Vickery testified that in FY '09 14% of applications were withdrawn, voided, returned or denied. Hinojosa questioned the ability for the agency to deny other authorizations, such as registrations.

In follow-up to questions to the SSAC staff, Nichols questioned the agency about enforcement and penalty authority related to dam safety issues. Several Members questioned the agency's regulation of dams that were built many years ago, as well as the need to ensure that the agency has appropriate direction when proceeding with enforcement action against dam owners.

Cook praised the agency for embracing the recommendations presented in the Staff Report.

Several representatives from the Texas On-Site Wastewater Treatment Research Council (TOWTRC) testified in opposition to the SSAC Staff Report

recommendation that TOWTRC responsibilities be transferred to the TCEQ and that the agency be abolished.

The Sunset Commissioners listened to over 4½ hours of comments from the public. Below is a list of the issues/topics that were presented.

- Activities, responsibilities and structure of the Low Level Radioactive Waste Compact Commission.
- Enforcement of water issues in the San Antonio area.
- Complaints about agency's activities surrounding various permits, including Las Brisas, White Stallion and TexCom.
- Need for a public health expert on the TCEQ Commission.
- Penalties and enforcement action should be set to secure compliance and industries' attention.
- Strengthen the role of the Public Interest Council.
- Prohibit former Executive Directors from lobbying the agency.
- Churches should be exempted from drinking water regulations.
- Broaden TCEQ's permit review to include not just impact on job market, but overall impact on the environment.
- Agency staff should not be allowed to "fix" a permit application.
- Agency should be reviewed again in two to four years, not 12.
- Penalties should be increased substantially, to a range of \$100,000 to \$ 1 million.
- TCEQ offers protections only after environmental damage is done.
- Agency needs statisticians to provide assessments.
- Public notice should be provided on expansions of trash facilities.
- Several associations oppose the recommendation to transfer water utility rate authority from TCEQ to PUC.
- Staff Report should have considered policy issues, not only operational matters.
- Agency should be directed to use speciation in its penalty calculations.
- Any change in PST liability needs to respect contractual agreements between buyer and seller.
- Concern how agency will use authority to require implementation of drought contingency plans.
- Staff Report did not address permitting activities; specifically the use of cumulative impacts in issuing permits.
- Recycling efforts at the agency have not succeeded and TCEQ provides very little education and outreach efforts.
- Address sham recycling activities and place time limits on MSW permits.
- Review jurisdiction lines between Railroad Commission and TCEQ relating to emissions from the well in gas and oil drilling activities.

- Permitting limits should be set to protect everyone because pollution intrudes upon the public good.

NEXT HEARING:

On January 12, 2011, the Sunset Commissioners will consider the adoption of the recommendations included in the Staff Report on the TCEQ, as well any "new issues" they want deliberated. All recommendations adopted will be incorporated into the TCEQ Sunset legislation that will be considered by the 82nd Legislature.

FOLLOW-UP:

Provide information on dam safety program and agencies activities associated with bacterial and TMDLs.

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