IV. POLICYMAKING STRUCTURE

A. Complete the following chart providing information on your policymaking body members.

Texas Commission on Environmental Quality Exhibit 3: Policymaking Body			
Member Name	**Term/ Appointment Dates/ Appointed by _____** (e.g., Governor, Lt. Governor, Speaker)	**Qualification** (e.g., public member, industry representative)	**City**
Commissioner Buddy Garcia	Appointed on Jan. 25, 2007, by Governor Perry. Term expires Aug. 31, 2011.	Former advisor to Governor Rick Perry and Senator Eddie Lucio specializing in environmental, coastal, and border issues Former Deputy Secretary of State B.A. in Political Science, Texas State University	Austin, Texas
Commissioner Bryan W. Shaw, Ph.D. - Chairman	Appointed on Nov. 1, 2007, by Governor Perry. Term expires Aug. 31, 2013.	Associate Professor, Biological and Agricultural Engineering Department, Texas A&M University (TAMU) Ph.D., University of Illinois, Urbana-Champaign B.A. and M.S. in Agricultural Engineering, TAMU	Bryan, Texas
Commissioner Carlos Rubinstein	Appointed on Aug. 31, 2009, by Governor Perry. Term expires Aug. 31, 2015.	Former City Manager for City of Brownsville, Texas Former Deputy Executive Director of TCEQ Serves on the Governmental Advisory Committee that provides advice to the EPA Administrator on NAFTA Bachelor of Science in Biology and Chemistry, University of Texas - Pan American	Austin, Texas

B. Describe the primary role and responsibilities of your policymaking body.

Three full-time commissioners are appointed by the governor to establish overall agency direction and policy, and to make final determinations on contested permitting and enforcement matters. Consistent with the agency's philosophy, the commissioners:

- base decisions on the law, common sense, good science, and fiscal responsibility;
- ensure that regulations are necessary, effective, and current;
- apply regulations clearly and consistently;
- ensure consistent, just, and timely enforcement when environmental laws are violated;
- ensure meaningful public participation in the decision-making process;
- promote and foster voluntary compliance with environmental laws and provide flexibility in achieving environmental goals; and
- hire, develop, and retain a high-quality, diverse workforce.

C. How is the chair selected?

The chair is selected by the governor, as set forth in Section 5.058 of the Texas Water Code.

D. List any special circumstances or unique features about your policymaking body or its responsibilities.

The commission has jurisdiction and responsibilities over a variety of issues within the air, water, and waste programs. The commissioners are the ultimate decision makers on policy directions taken by the agency and contested matters requiring resolution. Because of the large breadth of subject matters the commission regulates, the working knowledge exhibited and exercised by the commissioners is necessarily unique and invaluable.

Chapter 5, Subchapter C, of the Texas Water Code contains the specific criteria that a person must meet for appointment as a commissioner.

E. In general, how often does your policymaking body meet? How many times did it meet in FY 2008? In FY 2009?

In general, the commission meets every two weeks in open session. On occasion, the commission may also meet three times during a four-week period. During FY 08, the commission met in Agenda 26 times and in Work Session 5 times. During FY 09, the commission met in Agenda 23 times, which included one emergency Agenda. No Work Sessions were held in FY 09.

Additionally, the commission can schedule Work Sessions to work on and discuss policy or other agency matters.

F. What type of training do members of your agency's policymaking body receive?

The nature and content of the required commissioner training is set forth in Section 5.0535 of the Texas Water Code. This broad spectrum of subject matter training is provided to each newly appointed commissioner by knowledgeable staff from various programs across the agency. In addition to oral training, detailed written materials on all aspects of commission operations are developed and provided to each newly appointed commissioner.

Each commissioner also completes training on ethics, and on statute-specific responsibilities and procedures, including the Open Meetings Act, the Public Information Act, and the Administrative Procedures Act.

G. Does your agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, describe these policies.

The agency maintains detailed delegation documents, setting forth the specific functions delegated from the commission to the executive director. Decision-making authorities that fall within the purview of the executive director are also set out in rules on a case-specific basis. The statutory authorities underlying the respective roles are found in Texas Water Code, Sections 5.113, 5.122, and 5.221.

TCEQ's Employee Ethics Policy, OPP 12.08, advises all employees of potential conflicts of interest, how to avoid them, and requires disclosure of actual and potential conflicts. The policy clearly defines "interested persons" (i.e., those who have business before and with the commission and/or the agency) and when interactions with these groups may cause conflicts of interest to arise. Employees are also advised that violations of the ethics policy subject the employee to disciplinary action, up to and including termination from employment. In addition to the policy, TCEQ trains all staff at initial hire and biennially thereafter on the ethics policy, as well as the fraud, waste and abuse policy, OPP 3.10. Our internal ethics webpage contains training materials, answers to frequently asked questions, other information about ethics, and links to reporting potential fraud, waste or abuse. Employees can also submit questions to the Ethics Advisor directly.

Disclosure is also required to avoid even the appearance of a conflict of interest. For example, disclosure of a family relationship with an interested person is required. Additionally, all employees seeking outside employment are required to seek approval from their Division Director and are subject to review for any ethics concerns by the General Law Division Director. Annually, the agency reviews an average of 78 outside employment requests.

TCEQ's Employee Ethics Policy also advises employees of the potential conflicts of interest that continue after leaving TCEQ's employment and provides notice of the applicable "revolving door" statutes. In accordance with Government Code Section 572.054, former commissioners and executive directors are prohibited from communicating with the

commission either on behalf of a client or with the intent to influence for a period of two years, and former employees who earned salaries in pay groups B9 and above are prohibited from representing any person or receiving compensation for rendering service to anyone regarding a particular matter in which the employee participated while at the TCEQ. There are also specific "revolving door"-like provisions that apply specifically to TCEQ permits and require the agency to deny an application pertaining to any permit that a former employee worked on as part of his agency duties and then also worked on for his new employer.

TCEQ periodically receives gifts from outside entities, an average of 15 per fiscal year quarter, most often in the form of reimbursement of travel expenses primarily from other governmental entities or professional associations, and not from regulated entites or other "interested persons." Every 90 days, in accordance with Government Code Chapter 575, the commissioners acknowledge the acceptance of these gifts during an open agenda meeting.

H. What information is regularly presented to your policymaking body to keep them informed of your agency's performance?

The executive director provides a variety of information to the commissioners, both formally and informally, on a wide variety of matters pertaining to the agency's performance. Such matters include reports on enforcement efforts and penalty/fee collections, legislative implementation efforts, staffing and personnel information, and performance and operational requirements mandated under state or federal law. The commission also considers and approves the agency's annual operating budget and the agency audit plans developed by the chief auditor. Other agency operating processes and protocols are brought before the commission for approval within varying contexts, including rule promulgations.

I. How does your policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of your agency?

- Advisory Committees, Work Groups, and Task Forces, as contemplated through Texas Water Code, Section 5.107 – The commission solicits and considers the recommendations of various advisory committees in formulating agency policies and operation protocols.

- Stakeholder Groups – In connection with the development of agency policy developed through rulemaking, guidance documents, or otherwise, the commission routinely seeks the early and meaningful involvement of stakeholder groups representing varied interests to ensure maximum discourse among interested persons.

- Rulemaking and Rule Petitions – Rulemaking includes a comment period during which the agency receives both written and oral comments. All written and oral comments timely received are vetted, considered, and responded to in writing by the executive

director's staff. The comments are often addressed through changes to the rules being promulgated. Additionally, agency rules provide a petition process through which a person may request that the commission initiate a rulemaking to address an issue of particular concern. The commission considers each rule petition during an open session. Agency rules implementing the rulemaking and petition process are set forth in Title 30 of the Texas Administrative Code, Chapter 20.

- Notice and Comment Periods – Permitting applications and enforcement matters undergo robust public notice processes and comment periods. Timely comments received by the agency are considered by the commission in the decision-making process, and are responded to in writing by the agency. Agency rules implementing the public comment criteria are set forth in Title 30 of the Texas Administrative Code, Chapter 55.

- Contested Case Hearing Process – Many matters that require agency action are subject to the opportunity for a contested case hearing at the State Office of Administrative Hearings (SOAH) prior to final decisions. SOAH receives cases referred by the commissioners and executive director staff, after which an administrative law judge renders a recommendation for the commissioners' deliberation. Applicants may also request a direct referral to SOAH for a contested case hearing if certain criteria are met. The contested case hearing process affords affected persons the opportunity to present evidence in support of a position on the contested matter. The information generated from the contested case hearing process is a critical component in the commission's ultimate case-specific decisions. Agency rules implementing the protocols for contested case hearings are found in Title 30 of the Texas Administrative Code, Chapters 55 and 80.

- Appellate Review of Executive Director Actions – Agency rules provide a regulatory vehicle whereby a person can seek commission review of various executive director actions. The Motion to Overturn process, implemented mainly through Title 30 of the Texas Administrative Code, Chapter 50, includes opportunities for the submission of written briefings, and oral arguments on a case-specific basis before the commission.

- Open Commission Meetings – As contemplated in statute and agency rules, including Title 30 of the Texas Administrative Code, Chapters 10, 50, and 55, the commission meets regularly in open session to consider a variety of contested and uncontested matters, including permitting, enforcement, and rulemaking items. These open meetings include opportunities for the public to address the commission and present information and positions for commission consideration during the decision-making process.

- Public Meetings – The agency regularly conducts public meetings across the state on permitting and rulemaking matters, in order to provide the public with an opportunity to obtain information, provide comment, and fully participate in the decision-making process exercised by the commission.

J. If your policymaking body uses subcommittees or advisory committees to carry out its duties, fill in the following chart. See Exhibit 4 Example or click here to link directly to the example.

Texas Commission on Environmental Quality Exhibit 4: Subcommittees and Advisory Committees			
Name of Subcommittee or Advisory Committee	**Size/Composition/How are members appointed?**	**Purpose/Duties**	**Legal Basis for Committee**
Pollution Prevention Advisory Committee	Composed of nine members with a representation of environmental groups, public interest groups, and the regulated community. Members are appointed by the commission.	Advises the commission and interagency coordination council on efforts to promote waste reduction and minimization, educate citizens about hazardous waste, provide assistance to local governments on waste management strategies, and implement waste management technologies.	Texas Health and Safety Code Section 361.0215
Municipal Solid Waste Management and Resource Recovery Advisory Council	Composed of eighteen members including representatives from local governments, industry, and environmental groups, as well as other professionals with solid waste experience. Members are appointed by the commission.	The council:(1) reviews and evaluates the effect of state policies and programs on municipal solid waste (MSW) management; (2) makes recommendations to the executive director and the commission on matters relating to MSW management; (3) recommends legislation to the commission to encourage efficient management of MSW; (4) recommends policies to the commission for the use, allocation, or distribution of the planning funds, including the priorities for the use of the funds, the applications for financial assurance, and the criteria for financial assistance; and (5) recommends to the executive director special studies and projects to further the effectiveness of MSW management and resource recovery.	Texas Health and Safety Code, Chapter 363, Subchapter C (Sections 363.041–363.046)

Dry Cleaner Remediation Program Advisory Committee	Five members composed of three representatives of the dry cleaning industry, one public representative of urban areas, and one public representative of rural areas. Members are appointed by the executive director.	The advisory committee: (1) reviews and comments on the methodology used by the commission to rank dry cleaner remediation sites under Texas Health and Safety Code (THSC) Section 374.154; (2) reviews and comments on the report the commission prepares each biennium under THSC Section 374.056 (related to the status and use of the fund and the status of sites undergoing cleanup); (3) assists in the ongoing development of rules to implement, administer, and enforce THSC, Chapter 374.	Texas Health and Safety Code Section 374.004
Texas Emissions Reduction Plan Advisory Board	Composed of fifteen members and seven ex officio members. The fifteen members are appointed as follows: (1) five members by the governor to represent various specified industries, regional transportation, and a certain non-profit organization; (2) five members by the lieutenant governor to represent various specified industries and the environmental community; and (3) five members by the speaker of the House to represent various specified industries and consumer groups. The seven ex officio members are: (1) a member of the Senate, appointed by the lieutenant governor; (2) the presiding officer of the House standing committee having primary jurisdiction over matters related to environmental regulation; (3) a representative of the commission, designated by the executive director; (4) a representative of the General Land Office (GLO), designated by the commissioner of the GLO; (5) a representative of the comptroller's office, designated by the comptroller; (6) a representative of the Railroad Commission, designated by the presiding officer of the agency; and (7) a representative of the U.S. Environmental Protection Agency's Region 6 Office, designated by the EPA Region 6 administrator.	The board reviews the emissions reduction plan and recommends to the commission any changes to revenue sources or financial incentives, or any needed legislative, regulatory, or budgetary changes.	Texas Health and Safety Code Section 386.058

Texas Radiation Advisory Board	Composed of 18 members from varying areas of representation and experience pertinent to radiation control (expressly set forth in statute), including three members representing the public. Members are appointed by the governor.	Reviews and evaluates state radiation policies and programs; makes recommendations and furnishes technical advice to the Department of State Health Services, the TCEQ, the Railroad Commission, and other state agencies relating to the development, use, and regulation of sources of radiation; and reviews proposed rules and guidelines.	Texas Health and Safety Code Sections 401.015–401.019
Pollution Control Property Permanent Advisory Committee	Consists of an unspecified number of representatives of industry, appraisal districts, taxing units, and environmental groups, as well as members who are not representatives of the aforementioned entities but have substantial technical expertise in pollution control technology and environmental engineering. Members are appointed by the commission.	To advise the commission regarding the implementation of Section 11.31 of the Texas Tax Code, regarding pollution control devices.	Texas Tax Code Section 11.31(n) (HB 3544, 81st Legislative Session)
Small Business Compliance Advisory Panel	Composed of seven members: (1) two members appointed by the governor who are not owners or representatives of owners of small business stationary sources, to represent the public; (2) two members appointed by the speaker of the House who are owners or representatives of owners of small business stationary sources; (3) two members appointed by the lieutenant governor who are owners or representatives of owners of small business stationary sources; and (4) one member appointed by the chairman of the TCEQ to represent the commission.	Created as part of the Small Business Compliance Assistance Program pursuant to Texas Water Code Section 5.135. The panel is required to give advisory opinions on the effectiveness of the program; review the information that the program provides to small businesses to ensure that it is understandable to non-experts; report to the EPA administrator as to the program's compliance with three federal laws; and distribute opinions, reports, and information developed by the panel.	Texas Water Code Section 5.135(c)

Environmental Flows Advisory Group*	Composed of nine members: (1) three appointed by the governor (one from the TCEQ, one from the Water Development Board, and one from Parks and Wildlife); (2) three members of the Senate, appointed by the lieutenant governor; and (3) three members of the House of Representatives, appointed by the speaker of the House.	Conducts public hearings and studies public policy implications to balance the demands on the water resources of the state resulting from a growing population and the requirements of the riverine, bay, and estuary systems, including granting permits for instream flows dedicated to environmental needs or bay and estuary inflows, use of the Texas Water Trust, and any other issues the Environmental Flows Advisory Group determines to have importance and relevance to the protection of environmental flows.	Texas Water Code Section 11.0236
Environmental Flows Science Advisory Committee	Consists of at least five but not more than nine members with expertise in a variety of disciplines pertinent to the evaluation of environmental flows. Appointed by the Environmental Flows Advisory Group.	Serves as an objective scientific body to advise and make recommendations to the Environmental Flows Advisory Group on issues relating to the science of environmental flow protection and develop recommendations to help provide overall direction, coordination, and consistency relating to: (1) environmental flow methodologies for bay and estuary studies and instream flow studies; (2) environmental flow programs at the commission, the Parks and Wildlife Department, and the Water Development Board; and (3) the work of the basin and bay expert science teams described in Texas Water Code Section 11.02362.	Texas Water Code Section 11.02361

Watermaster Advisory Committee	Consists of a minimum of nine members but no more than fifteen, who are holders of water rights or representatives of holders of water rights in that watermaster division. Members are appointed by the executive director, who shall consider geographic representation, amount of water rights held, different types of holders and users, as well as experience and knowledge in water management practices.	Makes recommendations to the executive director regarding activities of benefit to the water right holders in the administration and distribution of water to holders of water rights; reviews and comments on the annual budget of watermaster operations; and performs other duties as requested by the executive director with regard to the watermaster operations or as requested by holders of water rights in a water division that the committee deems of benefit to the administration of water rights.	Texas Water Code Sections 11.3261 & 11.552
Texas Groundwater Protection Committee	Composed of ten members (executive directors and commissioners of different agencies) expressly appointed by statute.	An interagency committee for the coordination of state agency actions for the protection of groundwater quality in Texas. The committee: (1) coordinates groundwater protection activities of the agencies represented on the committee; (2) develops and updates a comprehensive groundwater protection strategy for the state; (3) studies and recommends to the legislature groundwater protection programs for each area in which groundwater is not protected by current regulation; (4) files with the governor, lieutenant governor, and speaker of the House a report of the committee's activities and any recommendations for legislation for groundwater protection; and, (5) publishes the joint groundwater monitoring and contamination report.	Texas Water Code Sections 26.403–26.405

* See Texas Water Code Section 11.02362(b) and (c), which sets forth a prioritized list of river basins and bay systems and a corresponding schedule for the Environmental Flows Advisory Group to appoint the Basin and Bay Area Stakeholders Committees (BBASCs). The BBASCs, in turn, appoint the Basin and Bay Expert Science Teams as required by Texas Water Code Section 11.02362(i).