



# MEET JON NIERMANN, THE TCEQ'S NEWEST COMMISSIONER

*Environmental Lawyer Continues to Serve the State in a New Role*



**G**overnor Greg Abbott appointed Jon Niermann to the Texas Commission on Environmental Quality to fill the vacancy created by the departure of Zak Covar. Niermann assumed his duties on Oct. 1, 2015; his six-year term expires in 2021. While the role of commissioner is new to Niermann, he is no stranger to the environmental community or the commission's work.

Niermann comes to the TCEQ after nearly seven years with the Texas Attorney General's Office, where he served, since 2012, as chief of the Environmental Protection Division. Before joining the Attorney General's Office, Niermann worked as an environmental attorney with the law firm of Baker Botts in Austin. In these roles, Niermann worked closely with the TCEQ, among other agencies. His docket included enforcement actions, permitting issues, rulemaking, and rule challenges. But, while Niermann's appointment may not come as a surprise to members of the environmental community, his path to leadership of a Texas agency was unpredictable.

### **Life on the West Coast**

Niermann grew up in Irvine, California. While finishing a degree in history at the University of California at Santa Barbara, he developed an interest in architecture. With his history degree in hand, Niermann moved to Oregon to pursue a graduate degree in architecture. But, seeing his friends who were architects struggle to earn a living, he decided to change course, eventually landing the position that began his career in environmental law and policy.

Niermann was hired as a manager for a heavy-equipment manufacturer in Eugene, Oregon. His responsibilities did not initially include environmental or regulatory compliance, but in the summer of 1995 Niermann was asked to escort an investigator from the Oregon Department of Environmental Quality around the site for an unannounced inspection of the facility. A few weeks later, the company received a notice of violation containing a laundry list of violations of environmental statutes. Niermann was promptly promoted to be the company's first safety and environmental manager.



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**Home:** Grew up in Irvine, California. Lives in Austin with his wife Stephanie and daughter Lucy, age 3.

**Education:** Bachelor’s degree, history, University of California at Santa Barbara; MBA and J.D. from the University of Oregon.

**Hobbies and Interests:** Chasing Lucy around, surfing, travel, hiking, backpacking, camping, snow skiing, home-improvement projects, swimming.

Niermann’s first foray into the environmental field did not come without its challenges. “These were really tough guys that were accustomed to making products in a certain way and who weren’t ready to embrace change,” Niermann explained. The company’s culture was one where production took precedence, and regulations were not viewed as a priority. Niermann found that “the only thing that seemed to resonate with my bosses were the penalties—\$10,000 per day, per violation.” Becoming dissatisfied with his role as an environmental manager in such a culture, Niermann, in what would turn out to be an ironic twist of fate, applied to law school to escape the field of environmental regulation and compliance.

### **Finding His Place in the Law**

Niermann enrolled in a dual MBA and J.D. program at the University of Oregon. While many of his classmates were excited about acquisitions and mergers, he turned his attention to the more familiar world of environmental regulation. Now freed from the burden of environmental management, Niermann found environmental law

fascinating and applied himself to the subject with a renewed interest.

After graduating from law school and securing a position as an associate attorney with Baker Botts, Niermann moved to Austin. As a new attorney, he worked with numerous regulated entities and other stakeholders on a range of issues, including enforcement, compliance counseling, permitting, and rulemaking. Niermann saw firsthand that most regulated entities take a more proactive approach to environmental regulation than had his Oregon employer. Niermann was pleased to find that the regulated community largely recognizes that the TCEQ is not opposed to industry but serves a crucial function. It was during this time that Niermann first formulated his core regulatory

philosophy: the combination of industry and agency perspectives, along with the input of all Texans—whether individuals or environmental groups—leads to positive environmental outcomes while also promoting Texas’ economic vitality.

After more than seven years at the firm, Niermann decided to leave private practice for a career in public service.

### **Attorney General’s Office**

Niermann started at the Attorney General’s Office with a diverse docket,



**Commissioner Niermann (right) confers with the TCEQ’s general counsel, Tucker Royall before a public meeting.**

***“As he applies his considerable work ethic, intellect, and his fair and deliberate approach to policy issues here, he will be a tremendous asset to the agency.”***

—TCEQ Deputy Executive Director  
Stephanie Bergeron Perdue

which included TCEQ matters, as well as enforcement of licensing requirements for doctors, child-care providers, and bar owners. However, the agency soon enlisted Niermann to fill a need in the state’s litigation against the EPA. The move proved to be a good fit, as Niermann was able to leverage the Clean Air Act experience he obtained while working in private practice. Niermann enjoyed his new role and working as an advocate for state agencies. Niermann found the work rewarding because, unlike large law firms, working for the attorney general allowed him substantial control over his docket and access to colleagues who had more time to collaborate without the constraints of client billing.

### **Working as an Advocate for the TCEQ**

Many of Niermann’s cases at the Attorney General’s Office involved representing the TCEQ. Notably, Niermann prosecuted challenges to numerous EPA rulemakings (including EPA’s denials of several of Texas’ submissions under the State Implementation Plan for air quality). Most recently, he served as the lead negotiator for the State of Texas in the *Deepwater Horizon* case, litigating BP’s 2010 historic 87-day uncontrolled oil spill into the Gulf of Mexico.

“I was the guy on the Texas delegation who knew the least about the in-the-weeds legal arguments. I had excellent attorneys and subject-matter experts next to me. We assembled a really great team. And we



**TCEQ commissioners take public comment as part of their deliberations at a recent agenda meeting.**

negotiated a good result for Texas,” he says. “The proposed settlement went out for public comment and the judge has not yet entered the order, so it’s not quite a done deal. But, when it is final, and that’s expected this spring, it will be good for the Gulf Coast ecosystems and economy.”

Janis Hudson, a TCEQ attorney, worked closely with Niermann on a series of cases concerning air permitting programs that pitted the state against the EPA. Niermann, quick to share the accolades that come with the legal victory, says that Hudson deserves much of the credit for the winning legal arguments that he presented before the 5th Circuit Court of Appeals.

“He learns very quickly,” says Hudson, “When we worked on the various challenges to EPA disapproval of air-permitting rules, he picked up the nuances of our programs quickly and presented them well in briefs and oral argument before the courts.”

TCEQ Deputy Executive Director Stephanie Bergeron Perdue agrees with Hudson’s assessment, “He did an excellent job of hearing the agency out when he represented us,” Perdue explained. “As he applies his considerable work ethic,

intellect, and his fair and deliberate approach to policy issues here, he will be a tremendous asset to the agency.”

### **Improving the Attorney General’s Office**

While Niermann speaks fondly of the attorney general’s Environmental Protection Division, he recognized that many of those characteristics were threatened. As chief of the division, Niermann set out to understand the reasons for, and implications of, the workforce instability.

Eventually, Niermann determined that one of the key reasons for employee turnover—particularly among mid-level attorneys—was sub-par compensation. This had resulted in a staff consisting primarily of promising junior lawyers and accomplished and expert senior lawyers. Niermann recognized that, left unaddressed, this grouping could lead to an institutional gap in knowledge and expertise once the senior lawyers retired.

“I met with the staff and acknowledged that compensation was low. I told them that it was unlikely that I could do anything about it but that I would keep trying,” Niermann says. “I approached the group with candor, [with] respect and



as their advocate, and, over time, morale really did improve.”

Niermann believed that simple acknowledgment of the problem would be insufficient, and that sufficient reasoning must be provided in order to receive the necessary relief. Niermann directed two of his lawyers to put together a salary survey of what lawyers were earning at other state and local governmental agencies. Niermann then plotted these data points, along with information gleaned from staffers who left his agency, and his agency’s compensation package.

The survey team found that lawyers leaving the agency earned significantly higher salaries than existing lawyers in their new agencies, meaning that lawyers coming from the Attorney General’s Office had experience that was worth more to the receiving employer. He presented these findings to management, along with an analysis of workforce turnover trends, and, eventually, compensation improved.

## Life as a Regulator

Already familiar with the quality of the work of TCEQ personnel, Niermann commented that the breadth of expertise

within the agency is striking. He is excited to have the opportunity to learn more about the range of agency programs.

Commissioner Baker notes: “Niermann’s super smart. He has a great work ethic.” He adds, “Most importantly, he’s a really nice guy. The agency is lucky to have him as a commissioner.”

In his second commissioners’ agenda meeting, Niermann raised the question of stiffer penalties for fraud. Discussions of the penalty policy ensued and, as a result of his concerns, the commission will explore additional or enhanced penalties. “I plan to explore our guidelines and policies to see what can be done.” Niermann knows what it is like for companies to be on the receiving end of penalties; however, he believes there is an important distinction between ignorance or an accident and a conscious act to violate agency rules.

“When somebody knows precisely what the requirement is and engages in fraud to cover up their noncompliance with that requirement that’s just another level for me. So, a \$1,700 penalty seemed like an inappropriately light slap on the wrist for this guy [an irrigator operating with another person’s license],” he explains.

## Promoting Good Government

Niermann defines good government as being responsible to the people of Texas through transparency and efficiency in how we operate our regulatory enterprise. Niermann knows from experience that it is counterproductive for businesses to view environmental regulations as mere burdens. Conversely, Niermann knows that, in order to serve the public, the TCEQ must keep economic interests in mind. Niermann says, “We must be faithful to, and effective in, pursuing our mission to protect Texas’ environment and strive to deliver that service in a manner that promotes Texas’ economic vitality.”

Niermann is looking forward to the work ahead of him. He explains, “I have a high opinion of this agency. It’s a great place to work because we have meaningful work and we do it well. I want to make sure it continues to provide excellent service in protecting the environment.”

Being relatively new to the job, Niermann is uncertain what challenges will arise during his tenure. He believes that the path that has led him to the commission, however unpredictable, has served to prepare him for whatever may come. 🇺🇸



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