

SUNSET ADVISORY COMMISSION (SSAC) HEARING SUMMARY

HEARING DATE: January 12, 2011

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 and House Public Member Jefferson

HEARING TOPIC: Consideration of SSAC Staff Recommendations for TCEQ, as well as PUC and TOWTRC-related recommendations affecting TCEQ.

SUMMARY:

Sunset Commission **adopted the following staff recommendations** included in the Sunset Staff Report on TCEQ:

1.1 - Continue the Texas Commission on Environmental Quality for 12 years. - *Change in Statute*

- Rep. Anchia's motion to continue agency for six years, rather than 12, failed.

1.2 - Transfer the authority for making groundwater protection recommendations regarding oil and gas activities from TCEQ to the Railroad Commission. - *Change in Statute*

1.3 - Apply the standard Sunset across-the-board requirement for the Commission to develop a policy regarding negotiated rulemaking and alternative dispute resolution. - *Change in Statute*

2.1 - Charge the Executive Director with providing assistance and education to the public on environmental matters under the agency's jurisdiction. - *Change in Statute*

2.2 - Focus OPIC's efforts on representing the public interest in matters before the Commission. - *Change in Statute*

2.3 - Require the Commission to generally define, by rule, factors OPIC will consider in representing the public interest and establish OPIC's priorities in case involvement. - *Change in Statute*

2.4 - Require OPIC to annually report to the Commission on the Office's performance, budget needs, and legislative and regulatory recommendations. - *Change in Statute*

2.5 - Direct TCEQ, in pursuing changes to its website, to provide easy access to information on agency policy and environmental regulatory efforts in plain language. - *Management Action*

3.1 - Remove the uniform standard from statute and require the Commission to develop a compliance history method to be applied consistently. - *Change in Statute*

3.2 - Remove the requirement to assess the compliance history of entities for which TCEQ does not have adequate compliance information. - *Change in Statute*

3.3 - Expand the statutory components to allow TCEQ to consider other factors in evaluating compliance history. - *Change in Statute*

3.4 - Direct TCEQ to revise its rules on compliance history. - *Management Action*

4.1 - Require the Commission to structure its general enforcement policy in rule and publicly adopt its resulting enforcement policies. - *Change in Statute*

4.2 - Increase TCEQ's administrative penalty caps. - *Change in Statute*

4.4 - Authorize TCEQ to consider Supplemental Environmental Projects for local governments that would improve the environment. - *Change in Statute*

5.1 - Clarify the Executive Director's authority to curtail water use in water shortages and times of drought. - *Change in Statute*

5.4 - Require TCEQ to evaluate the need for additional Watermaster programs. - *Change in Statute*

6.2 - Prohibit delivery of certain petroleum products to uncertified tanks and provide for administrative penalties. - *Change in Statute*

6.4 - Expand use of the remediation fee to allow TCEQ to remove non-compliant PSTs that pose a contamination risk. - *Change in Statute*

7.1 - Clarify the Compact Commission's funding mechanism. - *Change in Statute*

Sunset Commission **adopted the following modifications to staff recommendations** included in the Sunset Report:

- 5.2 - Require water rights holders to maintain monthly water-use information and allow the Commission to access that information upon request. - *Change in Statute*
- Water right holders would not be required to submit monthly water use reports to TCEQ, but would be required to maintain the monthly information. TCEQ would be able to request information as needed in drought or other emergencies.
- 6.3 - Reauthorize the PST remediation fee, change the current fee levels to caps, and authorize the Commission to set fees in rule. - *Change in Statute*
- Added language instructing TCEQ, in setting the fee in rule, to reduce the fee levels as the cost of the PST program declines.

Sunset Commission **adopted the following new issues:**

- Require the agency, when provided an electronic copy of a water rate case, to make it available to the public/rate payer. *Change in Statute* (Nichols)
- Require appointed member of TCEQ (Commissioners) to resign their position before running for office. *Change in Statute* (Nichols)
 - Additional work will be done on this issue to allow for a TCEQ Commissioner to run for a "smaller" office, such as school board, etc..
- Add "public health" to the agency's current mission statement. *Management Action* (Anchia)
- Adopted new language exempting low-hazard dams from adhering to hydrologic and hydraulic criteria. *Management Action* (McMahen)
- Require TCEQ to focus its efforts on the most hazardous dams in the state. *Change in Statute* (McMahen)

Sunset Commission **did not adopt the following staff recommendation:**

- 4.3 - Authorize TCEQ to assess administrative penalties for dam safety violations. *Change in Statute*
- 5.3 - Authorize TCEQ to require implementation of drought contingency plans during times of a potential water shortage. - *Change in Statute*

6.1 - Require previous tank owners or operators to share responsibility, as appropriate, for contamination from leaking PSTs. - *Change in Statute*

8.1 - Authorize TCEQ to administratively adjust the annual emissions tonnage cap for the Air Emissions Fee when necessary to adequately fund the Title V Operating Permit program. - *Change in Statute*

As part of the consideration of the **Public Utility Commission**, the Sunset Commission **adopted the following staff recommendations that affect the TCEQ:**

S1.4 – Transfer responsibility for regulating water and wastewater rates and services from TCEQ to PUC. – *Change in Statute*

S1.5 – Eliminate the existing water and wastewater utility application fees and adjust the Water Utility Regulatory Assessment Fee to pay for utility regulation at PUC. – *Change in Statute*

S1.6 – Require OPUC to represent residential and small community interests relating to water and wastewater utilities, contingent on the transfer to PUC. – *Change in Statute*

S1.7 – Require PUC to make a comparative analysis of statutory ratemaking provisions under its authority, contingent on any transfers, to determine opportunities for standardization. – *Change in Statute*

S1.8 – Require PUC to analyze the staffing requirements, contingent on any transfers, and report potential changes in staffing needs to the Legislative Budget Board. – *Change in Statute*

Also **adopted all of Sunset staff recommendations included in its report on Texas Onsite Wastewater Treatment Research Council (TOWTRC):**

1.1 - Abolish the On-site Wastewater Treatment Research Council and transfer authority to award grants for on-site sewage research to the Texas Commission on Environmental Quality. - *Change in Statute*

1.2 - Direct TCEQ to evaluate the benefits of on-site sewage research and clearly communicate them to the public. - *Management Action*

1.3 - Direct TCEQ to form a working group to consider stakeholder input when issuing grants. - *Management Action*

AGENCY CONTACT: Diane Mazuca/239-3504