
**HOUSE COMMITTEE ON ENVIRONMENTAL REGULATION
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2002**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
78TH TEXAS LEGISLATURE**

**REPRESENTATIVE WARREN CHISUM
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Committee On
Environmental Regulation

November 23, 2002

Warren Chisum
Chairman

P.O. Box 2910
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The Honorable James E. "Pete" Laney
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Environmental Regulation of the Seventy-Seventh Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Seventy-Eighth Legislature.

Respectfully submitted,

Warren Chisum, Chairman

Dennis Bonnen, Vice Chairman

Fred Bosse

Dawna Dukes

Charlie Geren

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Edmund Kuempel

D.R. "Tom" Uher

Zeb Zbranek

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INTRODUCTION

At the beginning of the 76th Legislature, the Honorable James E. “Pete” Laney, Speaker of the Texas House of Representatives, appointed nine members to the House Committee on Environmental Regulation: Warren Chisum, Chair; Dennis Bonnen, Vice Chair; Fred Bosse, Dawanna Dukes, Charlie Geren, Charlie Howard, Edmund Kuempel; D.R. “Tom” Uher, and Zeb Zbraneck.

During the interim, the Speaker assigned charges to the committee. The Committee on Environmental Regulation has completed its hearings and investigations, and has adopted the following report.

The committee wishes to express appreciation to the following people for their invaluable assistance:

Dr. Dale Klein, Assistant Secretary of Defense for Nuclear and Chemical and Biological Defense Programs

Edward Selig, Director, Center for Responsible Environmental Strategies

The Paso del Norte Joint Advisory Committee

From the Bureau of Radiation Control, Texas Department of Health:

Richard Ratliff, Bureau Chief

Ruth McBurney, Director, Division of Licensing and Registration and Standards

Art Tate, Director of Compliance and Inspection

Bob Free, Deputy Director for Emergency Response and Investigation

From the Texas Commission on Environmental Quality:

Susan Jablonski, Low-Level Radioactive Waste Specialist

Victor Hugo Valenzuela, Planner III, Region 6, El Paso

We also offer special appreciation to Ambrose Gonzales, Information Specialist, Texas Legislative Council, for his unending good humor and patience in dealing with Committee computer issues.

Finally, the Committee wishes to express appreciation to the citizens and local government officials who participated in our hearings for their time and efforts on behalf of the Committee.

HOUSE COMMITTEE ON ENVIRONMENTAL REGULATION

INTERIM STUDY CHARGES

- 1. Examine problems related to lost and stolen radioactive material, including sources abandoned downhole in drilling operations.**
- 2. Study the production, transportation, use and disposal of hazardous and radioactive materials that could be used in terrorist actions. Review the management and security of public drinking water systems. Review government regulations and business practices to determine whether legislation is needed to protect life and property and to detect, interdict and respond to acts of terrorism.**
- 3. Identify and prioritize environmental issues on the Texas-Mexico border, including air quality and solid waste.**
- 4. Examine the progress of programs related to vehicle inspection and maintenance and low-income repair assistance.**
- 5. Actively monitor agencies and programs under the committee's oversight jurisdiction, including specifically, implementation of H.B. 2912, the Texas Natural Resource Conservation Commission Sunset Legislation, and S.B. 5, 77th Legislature, to ensure compliance with federal Clean Air Act standards and deadlines.**

OVERSIGHT

SPEAKER'S CHARGE TO THE COMMITTEE

On November 5, 2001, Texas House Speaker James E. "Pete" Laney issued five charges to the House Committee on Environmental Regulation, including instructions to:

. . . Actively monitor agencies and programs under the committee's oversight jurisdiction, including specifically, implementation of H.B. 2912, the Texas Natural Resource Conservation Commission Sunset Legislation, and S.B. 5, 77th Legislature, to ensure compliance with federal Clean Air Act standards and deadlines.¹

OVERVIEW

The 77th Texas Legislature focused intently on environmental issues, including the first sunset review of the Texas Natural Resource Conservation Commission (TNRCC) since the creation of the agency in 1993.² Imminent deadlines to meet federal air quality standards also accounted for a considerable amount of the workload of the Committee in 2001. The end result of environmental legislation included the addition of several stand-alone bills into the TNRCC sunset bill in the form of amendments addressing major issues such as 'grandfathered facilities'³ and 'upset emissions.'⁴ As additional steps in addressing looming federal deadlines for compliance with the federal Clean Air Act, the legislature created The Texas Emissions Reduction Plan (TERP)⁵ and approved sweeping auto emissions testing legislation.⁶ By the end of the session, the legislature even changed the name of the TNRCC to the Texas Commission on Environmental Quality (TCEQ).⁷

An active legislative session necessarily means significant changes in programs, policies and rules which the TCEQ must implement according to changes in statutes. In response to environmental actions taken by the 77th Texas Legislature, the TCEQ identified 64 rulemaking initiatives and another 56 projects which will not require new rules.⁸ The agency already completed the implementation of the vast majority of new legislative requirements and work is underway on the remaining programs; the agency website provides a site to track the progress.⁹

H.B. 2912 -- TNRCC SUNSET BILL

The legislature created the TNRCC in 1993, by consolidating the Texas Water Commission, Texas Air Control Board and environmental programs from the Texas Department of Health. In its review of TNRCC, the Sunset Advisory Commission found that the traditional, prescriptive regulatory approach employed by the agency focused on outputs and failed to adequately support innovation or provide incentives to reward performance. The Sunset Commission also recommended that additional changes should ensure greater public access to the agency's decision making process. House Bill 2912 continues TNRCC until September 1, 2013 and contains the commission's recommendations to better position the agency to address the state's environmental regulatory needs.¹⁰ Sunset recommendations ultimately adopted include provisions that:

- establish a performance based regulatory structure based on compliance history;
- strengthen agency actions to reduce emissions from emissions events;
- establish a laboratory accreditation program;
- establish a mechanism for providing environmental research to support the agency's environmental regulatory policies;
- ensure greater public interest representation before the commission;
- clarify the executive director's role in contested cases;
- expand the agency's ability to investigate and respond to complaints;

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- provide the agency with funding flexibility to better support its activities;
 - strengthen the agency's revenue management practices;
 - require the agency to review solid waste disposal permits to assess compliance performance;
 - clarify the authority of the agency to certify water treatment specialists; and
 - continue the agency for 12 years.¹¹

In addition to Sunset Commission recommendations, over 113 amendments were offered on either the House or Senate Floor, adding several major issues not initially included by the Sunset Commission.¹² The provisions added in addition to the Sunset Commission recommendations, include provisions to:

- change the name of the agency;
- clarify the commission's role regarding economic development;
- establish specific timeframes for grandfathered facilities to become permitted and to reduce emissions;
- establish the Texas Environmental Health Institute;
- protect the public from cumulative risks;
- change agency requirements regarding notice for public hearings;
- require contracting under provisions of professional services procurement;
- prohibit the storage and disposal of hazardous waste in certain geological formations;
- allow an order for remediating hazardous waste at a solid waste facility;
- exclude certain persons as responsible parties for purposes of remediation;
- tighten the regulation of concrete and rock crushing facilities;
- authorize remedial action at a scrap tire site that threatens to release a hazardous substance;
- clarify regulatory and operational requirements for solid waste facilities;
- require a permit, instead of registration, to land apply certain sewage sludge;
- require secondary containment for certain underground storage tank systems;
- expand availability of information about the Edwards Aquifer and the commission's Edwards Aquifer programs;
- establish a regulatory approach for dealing with runoff and managing waste from dairy operations in the Lake Waco watershed;
- establish timeframes for commission standards for low-emission diesel; and
- authorize the disposal of animal remains under certain conditions.¹³

S.B. 5 -- THE TEXAS EMISSIONS REDUCTION PLAN

The federal Clean Air Act authorizes the EPA to establish maximum allowable concentrations of pollutants because these pollutants in excess can endanger human health, harm the environment, and cause property damage. Areas where pollutants exceed EPA standards may be designated as nonattainment areas and if these areas do not meet EPA standards by 2007, a non-complying state faces severe sanctions. Texas has four nonattainment and three near nonattainment areas, comprising 37 counties, which combined all represent 70% of the state's population, 76% of aggregate employment, 82% of personal income and 83% of gross state product. Because of Texas' integrated economy, all parts of the state have a stake in bringing these areas into compliance. Even though the TCEQ submitted a SIP to regulate emissions in nonattainment areas, the agency cannot regulate significant areas of potential emissions reductions though reductions might be realized through an incentive program. With these circumstances in mind, the legislature passed S.B. 5 which established the Texas Emissions Reduction Plan (TERP) to reduce emissions in the state.¹⁴

The legislature created the TERP to provide grants, rebates and other incentives for

improving air quality, including:

- a grant program limited to 22 counties to pay incremental costs through the use of grants for clean air projects, such as:
 - on-road and off-road vehicle purchases and leases, re-powers and retrofits or additions, specifically diesel engines in nonattainment counties;
 - infrastructure projects;
 - clean fuel projects;
 - new technology projects;
- a rebate program for new light-duty vehicles administered by the Comptroller;
- an energy efficiency program administered by the Public Utility Commission;
- energy efficient building codes on a statewide basis;
- the creation of a new Texas Council on Environmental Technology to assist in developing new technologies.¹⁵

The legislature provided that several revenue sources to provide funds for the final version of S.B. 5, including:

- a 1% surcharge on the sale or lease of off-road, heavy-duty construction equipment;¹⁶
- a 2.5% surcharge on the sale or lease of on-road diesel motor vehicles over 14,000 pounds and of a model year 1996 and newer;¹⁷
- a 10% surcharge on the registration of commercial trucks;¹⁸
- a \$10 surcharge on each commercial motor vehicle inspection;¹⁹ and
- a \$225 fee on vehicles being registered in Texas from out-of-state for the first time.²⁰

The Legislative Budget Board expected S.B. 5 to generate between \$133 million and \$165 million in each of the years between 2002 and 2005.²¹ However, on August 15, 2001, several auto dealers filed suit in Travis County District Court against the \$225 ‘green sheet’ fee used to fund S.B. 5; the court later ruled that the fee violates the federal constitution.²² The lawsuit effectively prevents the collection of two-thirds of the anticipated funding.

In light of the loss of the lions share of the funding for S.B. 5, the EPA issued notice that unless the state restores funding, the federal government will declare the state’s clean air plans as flawed and begin considering federal penalties.²³

BONDING OF OIL AND GAS WELLS

House Rule 3, Section 12 confers jurisdiction to the House Committee on Environmental Regulation over, “*all matters* pertaining to . . . air, land and water pollution . . . [and] the regulation of waste disposal,”²⁴ (emphasis added). The Chair determines that the implementation of bonding requirements for oil and gas operations under Senate Bill 310, 77th Legislative Session²⁵ directly relate to orphaned oil and gas wells which directly affect land and water pollution as well as waste generation and disposal.

First and foremost, the legislature recognizes in statute that abandoned or orphaned oil and gas wells directly affect the environment and established the Oil-Field Cleanup Fund in response.²⁶ Secondly, abandoned oil and gas wells can involve substances strictly controlled by The Texas Radiation Control Act²⁷ defined as naturally occurring radioactive material (NORM) waste,²⁸ over which statutes grant the Railroad Commission of Texas with the sole authority to regulate.²⁹ In regulating NORM waste, statutes require the Railroad Commission to consult with the [Texas Commission on Environmental Quality]³⁰ and the Texas Department of Health and ensure that Texas retains Agreement Status with the U.S. Nuclear Regulatory Commission.³¹ House Rules specifically charge the House Committee on Environmental Regulation with jurisdiction over, “environmental matters that are regulated by the Department of Health or the [Texas Commission on

Environmental Quality]”³² such as NORM waste. Based on the direct links between oilfield bonding requirements, abandoned wells, land pollution, water pollution and NORM waste, the House Committee on Environmental Regulation may properly consider and address these issues.

Overview of Bonding

In 1991 the legislature realized the need to increase the state’s ability to plug abandoned oil and gas wells and to remediate abandoned oil field sites and created the Oil Field Cleanup Fund.³³ Since that time, the Railroad Commission clearly works toward it’s regulatory goal of eliminating the threat of pollution posed by abandoned unplugged wells and it’s goal to minimize the number of non-compliant wells requiring plugging with oil field cleanup funds.³⁴

If furtherance of environmental goals, in the summer of 1999, the agency, the industry and landowner groups initiated discussions to reduce the growth in the number of inactive wells without an active operator which are classified as orphaned or abandoned. The workgroup identified three primary contributors to the growth in orphaned wells. The first revolves around the W-1X program which allowed operators to perpetually avoid plugging an inactive well by paying a \$100 annual extension fee. The second issue deals with the industry-wide practice of transferring wells to operators with lower and lower operating costs as production declines, which can naturally result in an operator with wells but without resources or revenue to plug the wells. The third issue involves isolated instances of unbonded operators who intentionally acquired large numbers of inactive wells for the sole purpose of stripping the wells of any salvageable equipment, selling the equipment, going out of business, and leaving the well bores to be plugged by the state.

The workgroup identified several solutions to limiting the growth in orphaned wells, including limiting the transfer of inactive wells, limiting the number of plugging extensions and beginning a transition to universal bonding of all operators. The agency took the first step and essentially ended the W-1X issue by adopting rules effective in November of 2000 to require a bond after three years of inactivity for an inactive well. The two remaining issues would require legislative approval.³⁵

Legislative History

The Sunset Report to the 77th Legislature relating to the Railroad Commission concludes that financial security options first established in 1991 failed to adequately curb the increase in abandoned wells, and thus diminished the agency’s ability to ensure environmental protection.³⁶ One noteworthy issue identified by the Sunset process involves the “good guy option” under which an operator could pay a \$100 fee in lieu of a bond if the operator had no significant violations for the past 48 months.³⁷ In order to address the abandoned well issue, the Sunset Commission recommended that the legislature *eliminate* the good guy option, phase in universal bonding of all oil and gas operators by September 1, 2004 and require immediate bonding prior to transferring an inactive well.³⁸

As filed and reported from Senate committee, Senate Bill 310 essentially included the Sunset Commission recommendations.³⁹ One amendment approved by the full Senate added the good guy option back into the legislation with the caveat that the fee would increase to \$1,000 and the option would only apply if bonds are not available at reasonable prices.⁴⁰ A separate Senate Amendment raised the option for posting a fee in lieu of a bond in from three percent of the face value of a bond to 12.5%.⁴¹ Both Senate amendments would only apply until September 1, 2004 at which time universal bonding would become the standard.⁴²

The House Committee on Energy Resources left the Senate provisions on bonding in tact, but added an alternative to allow letters of credit in lieu of a bond.⁴³ The full House added amendments with a new scheme for bonding which proposed to require inactive operators to immediately provide a bond, letter or credit or cash deposit ranging from \$25,000 to \$250,000 depending on the number of wells operated.⁴⁴

Bonding requirements which the legislature ultimately wrote into current law include provisions that:

- immediately impose universal requirements for active operators with one or more wells in production or inactive operators to post either:
 - an individual bond in the amount of \$2 for each foot of well depth for each well;
 - a blanket bond to cover all wells in the amount of \$25,000 for 10 or fewer wells, \$50,000 for 10 to 100 wells or \$250,000 for more than 100 wells; or
 - a letter of credit or cash deposit in the same amount as would otherwise be required for an individual bond or a blanket bond.⁴⁵

In addition, until September 1, 2004 statutes provide alternatives to bonding with:

- the \$1,000 good guy option, but only if the commission determines that bonds are not available at reasonable prices and the operator demonstrates an acceptable level of compliance with safety and pollution prevention requirements for 48 months; or
- a nonrefundable annual fee equal to 12.5% of the bond that would otherwise be required.⁴⁶

Railroad Commission Rules

On August 10, 2001, the Railroad Commission proposed rules to implement the new statutory bonding provisions finally approved in Senate Bill 310 which essentially track statutory requirements.⁴⁷ However, the preamble to the proposed rules states that records reflect an increase in 117 operators filing bonds from January 18, 2001 to June 26, 2001 due to rules changes for financial assurance requirements for inactive wells, otherwise known as the W-1X extensions.⁴⁸ The agency found that:

The increase in operators filing organizational bonds also reflects a general availability of bonds for operators. Based on this increase in the number of operators filing organizational bonds, the Commission has determined that bonds are available at reasonable prices. . . . The Commission further recognizes that while this determination is generally applicable to operators throughout the state, that there may be specific operators who are unable to obtain bonds at a reasonable price.⁴⁹

In order to provide an opportunity to overcome the presumption regarding bonds, the rules proposed to allow an operator to request a hearing and present proof that, “. . . no fewer than three companies which have issued a bond filed with the Commission in the past 12 months will not issue a bond to the requesting operator for an annual fee less than 12% of the face amount of the bond.”⁵⁰

The agency only received three comments on the proposed rules with two from associations.⁵¹ The Texas Independent Producers & Royalty Owners Association (TIPRO) suggested that the rule should determine reasonable prices for bonds based on 12.5% of the face value of a bond to track the statute rather than the 12% value in the rule.⁵² The Texas Land & Mineral Owners Association (TLMA) supported the 12% reasonableness test because it protects industry from excessive rates.⁵³

In the November 9, 2001 issue of the *Texas Register*, the Railroad Commission withdrew

the bonding rules published on August 10, 2001 and essentially re-published the same rules with regard to bonding.⁵⁴ The bonding rules took effect January 9, 2002 without changes.⁵⁵ However, the agency first began enforcing the bonding requirements in March 2002 when the agency could efficiently implement the rule.⁵⁶

Implementation of Bonding Requirements

By the end of July 2002, agency records showed that 3,818 of the 6,987 or 55% of the active oil and gas operators in the state already filed their annual form P-5 with a bond or other acceptable financial assurance.⁵⁷ Because the annual renewal for P-5 operating forms occur year round, each operator in the state will not have determined whether to post a bond or other financial assurance until a full year has elapsed since bonding rules took effect.⁵⁸

As of October 2, 2002, the Railroad Commission reports that the agency received 265 applications for the good guy option, which include:

- 130 withdrawals and dismissals, resulting because:
 - 6 applicants failed to meet the 48 months of compliance operation test and therefore failed to qualify for the option;
 - 21 applicants failed to appear for the hearing;
 - 80 applicants withdrew their request or the agency dismissed the application because the operator subsequently supplied another form of financial assurance;
 - 8 operators withdrew their requests after transferring all their wells; and
 - 15 applicants either withdrew their request or the agency dismissed the application for various other reasons;
- 23 applications the commissioners heard (22 denied and one granted);
- 112 applications that remain in various stages of the hearing process, including 13 with proposals for decision made (1 recommended to grant and 12 recommended for denial).⁵⁹

Since the agency released the statistics on October 2, 2002, the agency denied 17 good-guy options and granted 2 at the October 8, 2002 agenda of the Railroad Commission.

The Railroad Commission received letters and comments from numerous legislators regarding bonding, especially relating to the good guy option. At least four Senators and five members of the House of Representatives wrote the Railroad Commission expressing concerns about the availability of bonds at reasonable prices, the need for flexibility for operators in the event that the market may fail to provide reasonably priced bonds and concerns that the legislature never intended a mandatory hearing to exercise the good guy option.⁶⁰

In addition to the correspondence directly with the agency, 19 legislators serving in the Texas House signed a letter on July 30, 2002 requesting that Texas Comptroller Carole Keeton Rylander analyze the economic impact of the implementation of the bonding regulations on the state.⁶¹ In the request letter, the legislators express their belief that the Railroad Commission misinterpreted the intent of the legislature with regard to the good guy option by implementing the option in such a way as to render the provision practically meaningless.⁶² In response, Rylander expressed concerns that implementation of the rules, “. . . is putting [small oil and gas operators] out of business and, ironically, adding abandoned wells for the state to plug,” and agreed to, “. . . look at the issue with an eye toward developing the economic impact analysis”⁶³ Railroad Commissioner Tony Garza responded, in part, that because of a potential liability of \$540 million for abandoned oil field sites and unplugged wells, “The potential burden that will fall to the State . . . makes [the request for an economic impact analysis] . . . shortsighted.”⁶⁴

The TIPRO takes the position that the legislature intended the state to phase-in bonding over three years, but the agency structured the good guy option in such a way that for practical purposes almost all independent producers must provide financial security in one year.⁶⁵ TIPRO's executive committee voted unanimously on August 25 to petition the Railroad Commission to, "... conform bonding rules to legislative intent ..."⁶⁶ TIPRO filed the petition on September 16, 2002 along with The Texas Alliance of Energy Producers (The Alliance).⁶⁷ The groups believe that the structure of agency rules in effect forces producers to seek bonds rather than apply for a good guy option, which accounts for the relatively small number of operators who requested the good guy option.⁶⁸ The petition proposes several changes to current bonding regulations, including:

- remove the presumption that bonds are generally available at reasonable prices;
- allow the determination for a good guy option to be handled administratively rather than requiring a hearing; and
- use 4% of the face value of a bond, rather than 12%, as the guide to whether or not a bond is priced reasonably.⁶⁹

At the October 8, 2002 Railroad Commission Agenda, the agency voted to deny the petition filed by TIPRO. However, in addition to the petition, the Alliance filed suit on August 21, 2002, alleging that the agency arbitrarily set 12% as a reasonable rate upon which to base the good guy option.⁷⁰ The Alliance estimates that the state will lose approximately \$60 million per year in severance tax collections due to the regulations forcing small, independent producers to prematurely plug wells and go out of business.⁷¹ Prior to filing suit, the Alliance requested three changes that the group believes would satisfy legislative intent, including eliminating the requirement for a hearing, use 3% of the face value of a bond as reasonable instead of 12% and allowing an operator to write a letter that at least one bonding company would not write a bond.⁷²

The Abilene Reporter-News recently editorialized that:

The Texas Railroad Commission is applying a well-intentioned piece of legislation in a way that threatens the very existence of many independent oil producers . . . bigger companies have the assets [to cover bonding requirements but] the expense is prohibitive for many independents if the bonds can be obtained at all . . . Plus, how some bonding companies value assets to qualify for bonding omits smaller producers' main asset -- the oil in the ground. Without taking that into account, most of independent producers' "liquid" assets are tied up in equipment, leases and payroll.⁷³

Echoing the concerns of *The Abilene Reporter-News*, Railroad Commissioner Charles Matthews requested that Texas Commissioner of Insurance Jose Montemayor, "... examine the reluctance of surety companies . . . to write bonds at reasonable prices . . ."⁷⁴ Matthews expressed a concern that surety companies followed excessive underwriting standards in light of reports that some insurance carriers refused to write a bond without an operator providing 100 percent cash collateral.⁷⁵ Commissioner Montemayor requested a meeting with several insurance carriers to discuss bonding for oil and gas operators.⁷⁶ In requesting the meeting, he cited that from 1995 through June of 2002, operators filed 2,833 performance bonds with the Railroad Commission for a bond liability in force per year of \$32.7 million, though during the same period of time only two operators forfeited bonds for a total of \$100,000, or 0.3% of the average liability in force each year.⁷⁷

On the other hand, Railroad Commission Chairman Michael Williams and Commissioner Garza both strongly defend agency rules as in the best interest of the state. Williams points out that by the end of June, only four months after the beginning of the program, 3,586 of the state's 7,161 operators, or over 50%, already secured a bond or letter of credit, accounting for 83% of the state's wells and 95% of the state's production.⁷⁸ Noting the

importance of independent producers to the state, he further asserts that less than only two percent of the operators asked for the good guy option, and many of the two percent resulted from “high-risk” operators unwilling or unable to post collateral as a condition of buying a bond.⁷⁹

Commissioner Garza asserts that many of the 17,000 abandoned, nonproducing oil and gas wells in the state pose a potential threat to water, and that bonds, cash and letters of credit, “. . . assure Texans that sites are cleaned up, wells are plugged and our water is protected long after oil and gas production has ceased.”⁸⁰ Generally agreeing with the statistics presented by Chairman Williams, Garza adds that the operators requesting the good guy option account for 0.14 percent of the oil produced in Texas and only 0.03 percent of the natural gas.⁸¹ He says:

But the unfortunate reality is that some low-producing oil and gas operators never will generate enough revenue from their wells to pay for the cost of plugging them when it becomes necessary. So the commission’s new requirements promise to play an important role in safeguarding our environment and must be protected themselves.⁸²

The San Antonio Express-News seems to agree with Chairman Williams and Commissioner Garza with the statement that:

Texas is better off if only companies that can afford to be responsible environmental stewards stay in the oil and gas business. Companies that are too weak to post a performance bond are more likely to leave environmental problems for their industry peers and state taxpayers to address.⁸³

Lastly, The TLMA agrees that Railroad Commission should continue along the present course, asserting that:

The state is finally making some progress in addressing the abandoned well problem in Texas . . . [which] should not be undermined by a few operators who are unwilling to change their business model to deal with the realities of the universal bonding requirements that go into effect in 2004. Likewise, any action by the Railroad Commission that is not consistent with achieving the goal of universal bonding would be shortsighted.⁸⁴

FINDINGS AND RECOMMENDATIONS

FINDING NO. 1: The TCEQ has worked diligently since the passage of H.B. 2912 to implement legislative mandates. Some rulemaking proposals, rulemaking adoptions and some policy changes incited a substantial amount of controversy and others did not. However, given the sweeping changes made to the agency through the sunset bill, the effectiveness of many of the changes will not arise until an adequate amount of time passes.

RECOMMENDATION NO. 1: The legislature and the respective committees should continue to monitor implementation of legislation passed in the 77th Legislative Session to ensure the agency meets legislative expectations.

FINDING NO 2. It is clearly in the best interests of the State of Texas to comply with the federal Clean Air Act, and funding the TERP program established by S.B. 5 provides a clear way to meet federal law.

RECOMMENDATION NO. 2. The legislature should make every effort to adequately fund S.B. 5 in a manner that allows the state to meet federal clean air mandates.

FINDING NO. 3: The legislature intended to establish a phase-in period for universal bonding requirements in a manner that a bond or other financial assurance cover every well by September 1, 2004. However, The implementation of bonding requirements has fallen short of legislative intent, as evidenced by the minutely small number of good guy options granted. Implementation effectively requires universal bonding immediately.

RECOMMENDATION NO. 3: The 78th Legislature should consider lowering the requirements for the good guy option with the goal of allowing more operators to qualify until September 1, 2004.

ENDNOTES

1. **77TH LEGISLATURE, INTERIM CHARGES, TEX. HOUSE OF REPS. (November 2001).**
2. **See H.B. 2912, 77th Tex. Leg., R.S. 2001 and BACKGROUND AND PURPOSE, BILL ANALYSIS, Enrolled version, H.B. 2912, 77th Tex. Leg., R.S., 2001.**
3. **See H.B. 3545, 77th Tex. Leg., R.S. 2001; House Floor Amendments 40 - 42, April 19, 2001, H.B. 2912, 77th Tex. Leg., R.S. 2001; Senate Floor Amendment 26A, May 14, 2001, H.B. 2912, 77th Leg., R.S. 2001.**
4. **See H.B. 3584, 77th Tex. Leg., R.S. 2001 and House Floor Amendments 36 - 39, April 19, 2001, H.B. 2912, 77th Tex. Leg., R.S. 2001.**
5. **See S.B. 5, 77th Tex. Leg., R.S. 2001 and BACKGROUND AND PURPOSE, BILL ANALYSIS, Enrolled version, S.B. 5, 77th Tex. Leg., R.S., 2001.**
6. **See H.B. 2134, 77th Tex. Leg., R.S. 2001 and BACKGROUND AND PURPOSE, BILL ANALYSIS, Enrolled version, H.B. 2134, 77th Tex. Leg., R.S., 2001.**
7. **H.B. 2912, 77th Tex. Leg., R.S. 2001, ARTICLE 18.**
8. **See the TNRCC web site at <http://www.tnrcc.state.tx.us/oprd/77legimp.html> (November 26, 2001.)**
9. **See the TCEQ web site at <http://www.tnrcc.state.tx.us/oprd/77legimp.html> (October 15, 2002).**
10. **See H.B. 2912, 77th Tex. Leg., R.S. 2001 and BACKGROUND AND PURPOSE, BILL ANALYSIS, Enrolled version, H.B. 2912, 77th Tex. Leg., R.S., 2001.**
11. **SUNSET ADVISORY COMMISSION, SUMMARY OF LEGISLATION - 77TH LEGISLATURE, 77th Tex. Leg., pp. 33 - 34 (2001).**
12. **See HOUSE JOURNAL, 77th Tex. Leg., R.S. 2001, pp. 1,222 - 1,315, (April 19, 2001); SENATE JOURNAL, 77th Tex. Leg., R.S. 2001, pp. 2,007 - 2,033, (May 14, 2001).**
13. **SUNSET ADVISORY COMMISSION, SUMMARY OF LEGISLATION - 77TH LEGISLATURE, 77th Tex. Leg., pp. 33 - 34 (2001).**
14. **See BACKGROUND AND PURPOSE, BILL ANALYSIS, engrossed version, S.B. 5 , 77th Tex. Leg., R.S. 2001.**
15. **See generally TEX. HEALTH & SAFETY CODE ANN., Chapters 386 - 388 (West Supp. 2002).**
16. **SECTION 2, S.B. 5, 77th Tex. Leg., R.S. 2001, Enrolled version.**
17. **SECTION 3, S.B. 5, 77th Tex. Leg., R.S. 2001, Enrolled version.**
18. **SECTION 7, S.B. 5, 77th Tex. Leg., R.S. 2001, Enrolled version.**
19. **SECTION 10, S.B. 5, 77th Tex. Leg., R.S. 2001, Enrolled version.**

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20. SECTION 9, S.B. 5, 77th Tex. Leg., R.S. 2001, Enrolled version.
 21. See LEGISLATIVE BUDGET BOARD FISCAL NOTE, enrolled version, May 23, 2001, S.B. 5, 77th Tex. Leg., R.S. 2001.
 22. *H.M. Dodd Motor Co., Inc. and Autoplex Automotive L.P. v. Texas Department of Public Safety, et. al*, Cause No. GN 102585, Travis County District Court.
 23. Neil Strassman, *Pollution plan may be rejected*, FORT WORTH STAR TELEGRAM, July 26, 2002; Tony Hartzel, *EPA's ultimatum has heavy price*, DALLAS MORNING NEWS, July 26, 2002.
 24. Rule 3, Section 12, HOUSE RULES, 77th Tex. Leg., 2001.
 25. S.B. 310, 77th Tex. Leg., R.S., 2001.
 26. TEX. NAT. RES. CODE. ANN., §§91.111 & 91.112 (West Supp. 2002).
 27. See generally TEX. HEALTH & SAFETY CODE ANN., CHAPTER 401 et. al. (West 2001 & Supp. 2002).
 28. TEX. HEALTH & SAFETY CODE ANN §401.003(26) & (27) (West Supp. 2002).
 29. TEX. HEALTH & SAFETY CODE ANN §401.415 (West Supp. 2002).
 30. H.B. 2912, 77th Tex. Leg., R.S. 2001 changed the name of the Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality.
 31. *Id.*
 32. Rule 3, Section 12(3), HOUSE RULES, 77th Tex. Leg., 2001.
 33. RAILROAD COMMISSION OF TEXAS, OIL FIELD CLEANUP PROGRAM, ANNUAL REPORT--FISCAL YEAR 2000, OIL AND GAS DIVISION, at 1 (January 24, 2002).
 34. *Id.*
 35. The information and for the most part the text of the preceding paragraphs in this section was taken in substantial part from the document entitled RAILROAD COMMISSION OF TEXAS, RECENT CHANGES IN FINANCIAL ASSURANCE REQUIREMENTS FOR OIL AND GAS OPERATORS, at 1 (April 11, 2002).
 36. SUNSET ADVISORY COMMISSION, RAILROAD COMMISSION OF TEXAS, STAFF REPORT, 77th Tex. Leg., pp. 13 - 19 (2000).
 37. *Id.*, at 14.
 38. SUNSET COMMISSION DECISIONS, RAILROAD COMMISSION OF TEXAS, 77th Tex. Leg., pp. 7 - 9 (January 2001).
 39. SECTIONS 7 - 9, INTRODUCED VERSION, S.B. 310, 77th Tex. Leg., R.S., 2001; SECTIONS 8 - 10, SENATE COMMITTEE REPORT, S.B. 310, 77th Tex. Leg., R.S., 2001.

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40. **Senate Floor Amendment 3 by Ogden, S.B. 310, 77th Tex. Leg., R.S. (April 17, 2001).**
 41. **Senate Floor Amendment 2 by Brown, S.B. 310, 77th Tex. Leg., R.S. (April 17, 2001).**
 42. **See supra Senate Floor Amendment 3 and Senate Floor Amendment 2.**
 43. **SECTIONS 15 - 19, HOUSE COMMITTEE REPORT, S.B. 310, 77th Tex. Leg., R.S. (2001).**
 44. **House Floor Amendment 5 by Farabee and House Floor Amendment 6 by Hawley, S.B. 310, 77th Tex. Leg., R.S. (May 15, 2001).**
 45. ***Text of section effective September 1, 2004, TEX. NAT. RES. CODE. ANN., §91.104 (West Supp. 2002).***
 46. ***Text of section effective until September 1, 2004, TEX. NAT. RES. CODE. ANN., §91.104 (West Supp. 2002).***
 47. **Tex. Reg., Vol. 26, No. 32 at 5919 (August 10, 2001).**
 48. **Id.**
 49. **Id.**
 50. **Id., at 5919 in the preamble and at 5929 in the text of rules proposed to be codified at TEX. ADMIN. CODE tit. 16, §3.78(f)(2)).**
 51. **Tex. Reg., Vol. 27, No. 1 at 140 - 141 (January 4, 2002).**
 52. **Id.**
 53. **Id, at 141.**
 54. **Tex. Reg., Vol. 26, No. 45 at 8938 (November 9, 2001).**
 55. **Tex. Reg., Vol. 27, No. 1 at 139 - 150 (January 4, 2002).**
 56. ***Testimony of Ronald L. Kitchens, Director of Energy Operations - Railroad Commission of Texas, House Committee on Environmental Regulation, Interim Hearing on Implementation of Financial Assurance Requirements for Oil and Gas Operators Pursuant to Senate Bill 310, October 3, 2002, House Committee on Environmental Regulation, 77th Tex. Leg., R.S. 2001.***
 57. **RAILROAD COMMISSION OF TEXAS, FINANCIAL ASSURANCE FOR OIL AND GAS OPERATORS (presented by Ron Kitchens, Director, Oil and Gas Division, Texas Railroad Commission to legislative staff, August 20, 2002).**
 58. **Id.**
 59. **Supra *Testimony of Ronald L. Kitchens***

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60. Letter from Troy Fraser, Senator, *Texas Senate*, to Charles R. Matthews, Commissioner, *Texas Railroad Commission* (March 1, 2002)(on file with the Texas Railroad Commission); Letter from Jeff Wentworth, Senator, *Texas Senate*, to Charles R. Matthews, Commissioner, *Texas Railroad Commission* (April 8, 2002)(on file with the Texas Railroad Commission); Letter from Craig Estes, Senator, *Texas Senate*, to Charles R. Matthews, Commissioner, *Texas Railroad Commission* (April 10, 2002)(on file with the Texas Railroad Commission); Letter from Steve Ogden, Senator, *Texas Senate*, to Charles R. Matthews, Commissioner, *Texas Railroad Commission* (April 8, 2002)(on file with the Texas Railroad Commission); Letter from Bob Hunter, Representative, *Texas House of Representatives*, to Charles Matthews, Commissioner, *Texas Railroad Commission* (March 18, 2002)(on file with the Texas Railroad Commission); Letter from Warren Chisum, Representative, *Texas House of Representatives*, to Michael L. Williams, Chair, *Texas Railroad Commission* (April 1, 2002)(on file with the Texas Railroad Commission); Letter from David Counts, Representative, *Texas House of Representatives*, to Michael Williams, Chair, *Texas Railroad Commission* (April 8, 2002)(on file with the Texas Railroad Commission); Letter from James L. Keffer, Representative, *Texas House of Representatives*, to Charles Matthews, Commissioner, *Texas Railroad Commission* (April 8, 2002)(on file with the Texas Railroad Commission); Letter from David Farabee, Representative, *Texas House of Representatives*, to Michael L. Williams, Chair, *Texas Railroad Commission* (April 9, 2002)(on file with the Texas Railroad Commission).
61. Letter from Jim Keffer, George “Buddy” West, David Farabee, Rick Hardcastle, Judy Hawley, Bob Hunter, Elizabeth Jones, Phil King, Tracy King, Edmund Kuempel, Bob Turner, Jaime Capelo, Robert L. Cook, III, David Counts, Tom Craddick, Robert “Rob” Junell, Brian McCall, Tommy Merritt, Todd Smith, Representatives, *Texas House of Representatives*, to Carole Keeton Rylander, Comptroller, *Texas Comptroller of Public Accounts* (July 30, 2002)(on file with the Texas Comptroller of Public Accounts).
62. *Id.*
63. Letter from Carole Keeton Rylander, Comptroller, *Texas Comptroller of Public Accounts*, to Tony Garza, Commissioner, *Texas Railroad Commission* (August 12, 2002)(on file with the Texas Comptroller of Public Accounts and the Texas Railroad Commission); Letter from Carole Keeton Rylander, Comptroller, *Texas Comptroller of Public Accounts*, to Jim Keffer, Representative, *Texas House of Representatives* (August 12, 2002)(on file with the Texas Comptroller of Public Accounts).
64. Letter from Tony Garza, Commissioner, *Texas Railroad Commission*, to Elizabeth Jones, Representative, *Texas House of Representatives*, (August 15, 2002)(on file with the Texas Railroad Commission).
65. *TIPRO to Petition for Bonding Rule Changes, TIPRO’S TUESDAY TARGET* (Update From The Texas Independent Producers & Royalty Owners Association, Austin, Tx.) Vol. 4, No. 16, Wednesday, September 4, 2002.
66. *Id.*
67. Letter from Joseph C. Abel, President, *Texas Independent Producers & Royalty Owners Association*; Roy Pitcock, Jrl, Chairman, *The Texas Alliance of Energy Producers*, to Mr. Rich Varela, *Railroad Commission of Texas* (September 16, 2002)(on file with the Texas Railroad Commission).

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68. **Id.**, at 2.
69. **Id.**, at 1.
70. **Ted Russ, *Energy alliance suing state*, WICHITA FALLS TIMES RECORD NEWS, August 22, 2002.**
71. **Id.**
72. **Letter from Roy Pitcock, Jr., *Texas Alliance of Energy Producers*, to Michael Williams, Chair, *Texas Railroad Commission* (August 8, 2002) (on file with the Texas Railroad Commission).**
73. ***State agency hurting region's oil producers*, ABILENE REPORTER-NEWS, September 1, 2002.**
74. **Letter from Charles R. Matthews, Commissioner, *Texas Railroad Commission*, to Jose Montemayor, *Texas Commissioner of Insurance* (May 23, 2002)(on file with the Texas Railroad Commission and the Texas Department of Insurance).**
75. **Id.**
76. **Letter from Jose Montemayor, *Texas Commissioner of Insurance*, to Mr. Jonathan Edward Michael, President, *RLI Insurance Company*, and others (August 1, 2002)(on file with the Texas Railroad Commission and the Texas Department of Insurance)**
77. **Id.**
78. **Michael Williams, *Support good guys, protect Texas water*, ABILENE REPORTER NEWS, August 7, 2002.**
79. **Id.**
80. **Tony Garza, *Texas must be sure old oil wells can be capped*, DALLAS MORNING NEWS, August 25, 2002.**
81. **Id.**
82. **Id.**
83. ***Can't afford the bond? Then don't run a well*, SAN ANTONIO EXPRESS NEWS, August 9, 2002.**
84. **Letter from John M. Hawkins, Executive Director, *Texas Land and Mineral Owners Association*, to Jim Keffer, Representative, *Texas House of Representatives* (August 20, 2002)(on file with the House Committee on Environmental Regulation)**