

September 16, 2004

Lt. Governor David Dewhurst
House Speaker Tom Craddick
Members of the Legislative Budget Board

Dear Lt. Governor Dewhurst, Speaker Craddick and members of the LBB,

The Texas Center for Policy Studies (TCPS), a 501-C-3-N research and policy organization appreciates the opportunity to comment on TCEQ's Legislative Appropriations Request for Fiscal Years 2006 and 2007. While the views expressed in these comments are purely those of TCPS, many of the concerns outlined are shared by the larger coalition of approximately 20 consumer, environmental, religious and public interest groups known as the Alliance for Clean Texas.

While there is much that we support in the TCEQ's LAR -- including riders to appropriate more TERP, Dry Cleaning Funds, and increasing the amount of recovery costs from responsible parties in hazardous waste clean-ups -- we are concerned about TCEQ's apparent unwillingness to ask for increased funds in some of its main agency responsibilities, including inspections, enforcement, permitting, and better and more extensive water monitoring and clean-up. By failing to acknowledge these very real needs, TCEQ's budget request is a disservice to the general public it is charged with protecting, as well as the regulated community which depends upon timely review of permits and impartial enforcement actions. Finally, the LAR fails to take into account several policy changes likely to occur over the coming year, including a new enforcement policy, new federal drinking water standards, newly adopted site operating plans for landfills and increased attention to rock crushers and quarries. Fortunately, TCPS believes that by reallocating some GR from one strategy to another, appropriating more GR-dedicated fees during the upcoming biennium and by considering fee increases, TCEQ should be able to meet these challenges without dipping into GR, which is needed for other state agencies and programs. Thus, TCPS does not support the use of more GR for TCEQ, but instead reallocation of existing GR and increased use of GR-dedicated funds, potentially through fee increases.

INTRODUCTION and BACKGROUND

First of all, TCPS has been following the budget and budget process of the natural resource agencies for several years. Texas' quality of life is threatened by the challenges

of increasing air and water pollution, difficulties in meeting future water needs, and a scarcity of public recreation and wildlife resources. Yet Texas spending on natural resource agencies is notably low compared to most states. Currently, about \$2 billion of the current appropriated budget-- or about two percent of the total-- is earmarked for natural resource agencies. In 2002, TCPS released a report on funding levels and needs at Natural Resource Agencies in Texas. In that report, we found that while the average state spends about \$50 per person per year on natural resource protection, the State of Texas spent about \$33. (U.S. Census Bureau, Government Finances, September 2001). Similarly, the average state spends about \$14 dollars per person in parks and recreation, while Texas spent about \$3 per person (U.S. Census Bureau, Government Finances, September 2001). Those findings are still true today.

As an example of the result of this low level of spending, Texas inspects only about two-thirds of its public water systems and one-third of its large agricultural facilities each year, and monitors less than half of its rivers and stream miles. In fact, little is known about the quality of 20,000 out of 40,000 miles of the state's permanent rivers and streams, as well as some 140,000 miles of "intermittent" streams, which flow only during periods of high rainfall. Water monitoring for toxics and fish tissue testing is practically non-existent. At the same time, reduced inspections and monitoring has been matched by reductions in the average penalties assessed and collected from environmental violators, directly impacting Texan's quality of life.

Yet markers demonstrating the scope of Texas' pollution problems abound. According to recent information, Texas emitted more toxic air pollution from manufacturing facilities (2001 Toxics Release Inventory); generated more hazardous wastes (Biennial Reporting System, 2001); emits more global warming gases; and has more people living in cities with dirty air than any other state except California among other indicators (EPA Air Quality Study). Of the state surface waters it assessed between 1998 and 2002, nearly 20 percent of streams and rivers, and nearly 30 percent of reservoirs and estuaries failed to fully meet water quality standards (TCEQ, 2002 Water Quality Inventory).

Despite these challenges to public health, budgets for state agencies that regulate pollution and promote clean-up have remained stagnant over the past eight years -- especially if inflation is considered. No natural resource agency receives more funds than the TCEQ. Funded nearly 80 percent by fees generated by regulated industry and the general public, TCEQ is responsible to a significant degree for inspecting, enforcing and permitting thousands of facilities each year, as well as monitoring the air we breathe, the water we drink and swim in, and the land we live on.

The Specifics: Is the 2006-2007 LAR adequate?

As Table 1 indicates, TCEQ's total budget has varied considerably from the 2002-2003 cycle, to the budget approved in 2004-2005 and to the proposed LAR for 2006-2007. At first glance, one might in fact be surprised by the substantial increase proposed in the budget compared to the 2002-2003 period. For example, excluding unappropriated riders and exceptional requests, the table shows that TCEQ's total budget would rise from about

\$815 million in 2002-2003 to some \$938 million in 2004-2005 over the biennium to a proposed request of \$893 million in 2006-2007. If riders are added, in fact, that total would jump from \$824 million in 2002-2003 to some \$954 million in 2006-2007.

Comparison of 2002-2003 Budget, 2004-2005 Budget and TCEQ LAR 2006-2007

Category	2002-2003 Estimate	2004-2005 Approved Budget	2006-2007 TCEQ LAR (8/20, 2004)	Difference 2002-2003 and 2006-2007 LA	Difference 2004-05 and 2006-2007 LA
Air Quality Assessment and Planning	180,011,276	364,505,780	345,526,000	165,514,724	-18,979,780
<i>TERP FUNDED</i>	24,046,833	257,041,146	257,041,146	232,994,313	0
<i>Low-Income Vehicle Repair Assistance</i>	17,140,000	20,992,500	9,216,445	-7,923,555	-11,776,055
<i>Additional TERP grants</i>			54,000,000	54,000,000	54,000,000
<i>Additional Dry Cleaner</i>			225,000	225,000	225,000
Water Assessment and Planning	57,078,339	58,734,152	52,173,578	-4,904,761	-6,560,574
Waste Management Assessment and Planning	27,519,479	26,887,219	26,952,617	-566,862	65,398
Air Quality Permitting	25,385,418	24,325,155	23,800,983	-1,584,435	-524,172
Water Resources Permitting	21,294,820	22,722,177	22,364,364	1,069,544	-357,813
Waste Management and Permitting	18,444,442	17,020,796	17,036,279	-1,408,163	15,483
Occupational Licensing	6,768,926	8,958,764	5,906,803	-862,123	-3,051,961
LLRWA	127,785	1,980,853	1,980,853	1,853,068	0
Total, Goal 1	336,630,485	525,134,896	495,741,477	159,110,992	-29,393,419
Safe Drinking Water	19,022,971	16,470,024	18,906,791	-116,180	2,436,767
Water Utilities Oversight	4,944,500	4,907,089	4,601,246	-343,254	-305,843
Total, Goal 2	23,967,471	21,377,113	23,508,037	-459,434	2,130,924
Field Inspections and Complaints	77,055,671	73,249,534	74,187,185	-2,868,486	937,651
Enforcement and Compliance	20,960,070	22,196,200	23,873,967	2,913,897	1,677,767
Pollution Prevention and Recycling	18,917,841	12,836,305	9,583,556	-9,334,285	-3,252,749
Total, Goal 3	116,933,582	108,282,039	107,644,708	-9,288,874	-637,331
Storage Tank Administration Clean-up	170,259,562	124,691,241	111,302,704	-58,956,858	-13,388,537
<i>Costs Recovered from Petroleum Storage Tank Remediation</i>	200,000	200,000	1,000,000	800,000	800,000
Hazardous Materials and Cleanup	72,983,511	66,743,741	65,320,519	-7,662,992	-1,423,222
<i>Recovered Costs and Responsible Party Payments</i>	9,087,275	200,000	5,000,000	-4,087,275	4,800,000
Total, Goal 4	243,243,073	191,434,982	176,623,223	-66,619,850	-14,811,759
Central Administration	37,567,435	36,358,645	36,269,675	-1,297,760	-88,970
Information Resources	28,447,555	27,118,150	25,898,167	-2,549,388	-1,219,983
Other Support Services	28,656,092	27,958,032	28,296,146	-359,946	338,114
Total, Goal 5	94,671,082	91,434,827	90,463,988	-4,207,094	-970,839
Total Excluding Riders	815,445,693	937,663,857	893,981,433	78,535,740	-43,682,424
Total Excluding TERP	791,398,860	680,622,711	636,940,287	-154,458,573	-43,682,424
Total Including Riders & TERP	824,732,968	938,063,857	954,206,433	129,473,465	16,142,576
EXCEPTIONAL ITEMS			24,659,344	24,659,344	24,659,344

Nonetheless, in nearly every category except for Strategy 1.1.1 -- Air Quality Assessment and Planning -- TCEQ's proposed budget for 2006-2007 is substantially less than the budget actually expended in 2002-2003. The reason for the large increase of nearly \$165 million in this one strategy is the implementation and generation of fees under the Texas Emissions Reduction Program Fund. While TCPS supports the implementation, collection and use of these fees --- as well as the use of \$54 million in additional TERP generated fees over the biennium as proposed in a rider -- it is important to consider the TERP monies separately when comparing the budget of TCEQ over the years.

Eliminating the TERP money and a few other grant programs, the budget proposed for TCEQ by TCEQ actually represents a substantial decline in funding for basic programs, from approximately \$791 million to \$636 million. The proposed budget is even less than the bare-bones budget passed by the legislature for TCEQ less than two years ago in the midst of a financial crisis.

Unfortunately, by proposing such an insubstantial LAR, TCEQ is doing a disservice to the public, the environment and to the regulated community it also serves. As Table 1 again demonstrates, for a number of TCEQ's key strategies, the proposed reductions are substantial. TCPS is particularly concerned with the lack of funding in the water assessment and planning strategy, air quality permitting, water resource permitting, the hazardous waste clean-up strategy and both field inspections and enforcement and compliance assistance. While a slight increase is proposed for this last category, TCPS is concerned that the increase is not substantial enough, and that funds within Enforcement and Compliance Assistance are being and will be used for activities that are not central to the agency's mission.

Water Resource Assessment and Planning. Proposed funding for Water Assessment and Planning (Strategy 1.1.2) has been slashed. While the estimated expenditure in the 2002-2003 budget cycle was a paltry \$57 million, and raised slightly in 2004-2005 to nearly \$59 million, TCEQ has proposed cutting this strategy by some \$6.5 million over the previous biennium. This is of great concern. A look at TCEQ's proposed output measures makes the impact of these funding request decisions clear. TCEQ's proposed number of surface water assessments would actually decrease from 66 accomplished in 2003 to 43 proposed in 2007, while the percentage of Texas's surface water protected by site-specific standards would remain at approximately 36 percent.

While it should be noted that part of the decline in funding and output measures is due to the expected loss of federal funds -- particularly for nonpoint source implementation funds and other TMDL funding -- it is still the agency's job to adequately monitor, plan, and clean-up impaired waterbodies. While TCEQ is actively fighting the EPA's authority to approve TMDL implementation plans, Texas rivers, reservoirs, bays and groundwater continue to be polluted, and Texas continues to fail to adequately monitor both basic water quality parameters as well as toxics in water, sediment and fish. Instead of hoping that EPA will not be able to approve or deny TMDL implementation, TCEQ should seek adequate funding to monitor its waterways and clean them up, whether through TMDL or another process. TCPS supports the exploration of an increase in the water quality fee, or

the implementation of a non-point source pollution fee as a means to increase funding for this category both for monitoring and clean-up. For example, the legislature could fund the development of 25 TMDLs -- proposed but never funded in the last budget cycle -- by allowing TCEQ to cover the cost through increased Water Quality Fees (approximately \$2.5 million). A fee mechanism could be established to better monitor and test fish and toxics similar to the fee assessed on shell fish to help keep bays properly monitored.

Air Quality Permitting. While the proposed cut to the air quality permitting is less substantial, given several TCEQ undertakings, the proposed budget underfunds this important strategy. More specifically, as mentioned in the LAR itself, TCEQ is in the midst of converting many General Operating Permits to Site Operating Permits, which require more time and resources. Moreover, it is likely that following legislative actions out of a special interim committee on Rock Crushing and Rock Quarries, that further review of permits from this industry will be required. TCEQ should explore the use of additional fees from those applying for these new categories of permits to increase funding in this area or propose increasing fees in Clean Air 151 as it has in the past. TCPS for many years has advocated raising the fee cap on the air emissions fee from 4,000 tons per pollutant to 8,000 tons per pollutant in order to increase funding for the Title V Permitting Program, which is historically underfunded.

Water Permitting. Similarly, the TCEQ's LAR proposes making a slight cut in the Water Permitting Strategy compared to 2004-2005 levels just as the agency will be reviewing an even larger number of CAFO wastewater discharge permits as well as approximately 500 municipal stormwater permits. Again, TCEQ could consider asking to appropriate more GR-dedicated fees for these activities, or consider fee increases to adequately review and permit these activities.

Drinking Water. While the LAR proposes a substantial increase in funds for the drinking water strategy compared to 2004-2005, (but a slight decrease compared with 2002-2003) it is important to note that a number of new federal treatment standards -- as well as implementation of the arsenic standard -- will force the need for substantial new resources and commitments by staff. Why not ask for the money needed to actually implement these new standards?

In terms of performance measures, it is surprising that the agency proposes a decline in output measures on #of drinking water systems being in compliance and the number of samples collected from those systems. Instead, TCEQ should be aiming to inspect more systems and collect more samples to assure greater compliance. If this requires more money, TCEQ should ask for it and if need be, propose to increase the public drinking water fee that systems currently pay.

Field Inspections and Complaints. No task is more important to the agency's mission than the actual detailed inspections and responses to citizen complaints. In the past, particularly during the sunset review process that the agency underwent in 2000 and 2001, hundreds of citizens complained about the lack of response by the agency to citizens complaints, and the low levels of adequate inspection. The 2004 and 2005

budget, however, was cut by nearly \$3 million in this category. Despite a proposed increase of nearly \$1 million, the number of inspections that the agency proposes to perform in the next biennium appear to be declining. As an example, air inspections fall from 19,000 in 04 and 05 to only 16,000 in 06 and 07. In fact, with the exception of water rights inspections, inspections are slated to decline over the period. TCPS feels the goal should be to increase inspections not decrease them.

Currently, following both outside public criticism, and a very critical report from the Auditor's Office, the TCEQ has been conducted a very public process to review its enforcement policy. While the final results of these policy changes are yet unknown -- and certainly could be influenced by the Legislature -- it is clear that the agency is choosing to make those changes without asking for any new dollars for enforcement. The agency in the LAR admits as such, stating: "Agency resources for compliance monitoring and enforcement continue to be limited and therefore careful prioritization and additional streamlining efforts will continue." We would ask that the agency not engage in careful prioritization and additional streamlining efforts because they don't have adequate resources. They should ask for additional resources to do the job they are charged with doing. While TCPS does not have a specific number in mind, it would seem reasonable to at least return to 2002-2003 levels to more adequately inspect, and respond to citizen complaints.

Enforcement and Compliance Support. Enforcement and compliance support is one of the few budget categories which has seen an increase between 2002-2003 and 2004-2005 as well as a proposed increase in the LAR for 2006 and 2007. While a small increase, it is an encouraging sign. Unfortunately, based upon conversations with staff members of the TCEQ, much of this increase is earmarked for "compliance support" and not enforcement per se. While compliance support is an important role of TCEQ's and we support the use of compliance support where appropriate -- including providing information about how to meet the letter of the law -- the continued use of significant amounts of public funds to bring small business and local government into compliance is questionable. In particular, TCEQ is using a large number of staffers and hours to conduct audits and reviews of compliance for small businesses and increasingly local governmental entities. We would ask where this authority comes from? Has the legislature provided this statutory authority?

The output performance measures are indicative of this trend. While TCEQ proposes to continue to "assist" 54,000 small business and local governments a year through 2007, the number of administrative orders is expected to decline from the actual 2003 levels. In other words, considerable more effort and monies are going into compliance assistance rather than writing tickets. While we are hopeful there will be greater emphasis on enforcement now that their policy is under review, we are concerned that significant amounts of money are being wasted to provide basic technical services which might be better made by the thousands of environmental consultants who make a living by helping businesses understand the law and get into compliance. We hope the LBB and Legislature will look carefully at the level of funding in this strategy and consider some strong rider language to assure that the bulk of it is used for actual enforcement.

Hazardous Materials Clean-up. During the last budget cycle, monies in this strategy were cut dramatically, directly impacting the timing and effectiveness of clean-up efforts. Unfortunately -- at least in the regular budget -- TCEQ is proposing an additional million dollar cut to the hazardous materials clean-up program. Similarly, in terms of output measures, the agency is proposing to go back from what was actually achieved in FY 2003. Thus, even as the number of state and federal clean up sites increase, the number that will actually be clean up declines, albeit slightly. Because clean-up of hazardous waste sites directly impacts the health and environment of area residents, this work is of prime importance. Still, TCPS does recognize the inclusion of a rider that would potentially add some \$5 million to this category over the biennium.

Riders

As already noted, TCPS supports the inclusion of riders increasing funding for TERP (#705), the Dry Cleaning Program (#704) and for Recovered Clean-up Costs from Responsible Parties (#25) among other matters. Nonetheless, TCPS is concerned about the elimination of several riders.

First of all, the legislature has for several years appropriated monies for burning tires in cement kilns because of the resulting decline in nitrogen oxide emissions and as a means to get rid of large stockpiles of scrap tires. We hope the LBB and Legislature will take a fresh look and consider to what extent burning tires is really a solution to both the air quality and stockpiled tire problem. There are in fact studies which suggest that while burning tires decreases criteria air pollutants, it increases toxics and heavy metal emissions. Those same funds could be used to help cement kilns improve their pollution control technology to make additional emissions cut. At the same time, TCEQ has proposed eliminating two riders meant to study the market for crumb rubber with TXDOT (No. 11) and with the Texas Comptroller of Public Accounts to investigate remaining stockpiles and their management (No. 18). While initial information has been placed on TCEQ's website, we feel that there is a greater role for TCEQ to play in investigating and promoting the use of crumb rubber as a solution to the stockpiled tire problem. We will be suggesting language to promote the use of crumb rubber and the elimination of stockpiles of tires.

Secondly, TCEQ has also proposed eliminating the rider which appropriates air emission fees from upset emissions (No. 27). While TCEQ does have the authority to charge air emission fees to upset emissions, we are concerned that without a rider forcing the agency to report and keep track of this information, they will fail to do so. A recent report by the Environmental Integrity Working Group found that upset emissions occur widely throughout Texas, and often go unreported. We think that a specific rider on upset emissions and on the ability to charge fees would help spur both the companies and the TCEQ into action. We would however suggest a much higher amount than \$520,000 per fiscal year, based on recent evidence of the extent of upset emissions.

Finally, we hope the LBB would consider adding a rider specific to the problem faced by many communities because of inadequate enforcement and inspections of rock crushing facilities. The TCEQ has recently spearheaded a special effort in this regard and we would like to make sure it continues. Toward that end, we will work with Senator Fraser and TCEQ to suggest appropriate language.

Summary

In summary, TCPS believes that the proposed LAR is short sighted and does not provide adequate monies to allow TCEQ to perform its job and ensure quality of life for Texans.

We support the use of more GR-dedicated fees already being generated and available, possible increases in the Air Emissions Fee, Water Quality Fee and Public Drinking Water Fee -- and even consideration of additional fees such as a fee to support further fish testing -- to increase funding for Water Assessment and Planning, Air Permitting, Water Resources Permitting, Safe Drinking Water, Field Inspections and Enforcement. In addition, within Enforcement and Compliance Assistance, we believe that too much monies -- some of which is GR -- is going toward the latter, and not enough toward the former.

Finally, while we support several of the riders to increase funds for the agency, we are concerned with proposals to eliminate riders that would force the agency to look at promoting the use of crumb rubber and at tracking and charging for upset emissions. We are concerned about the use of agency funds to pay cement makers to burn tires and would instead support the use of those funds to provide better pollution technology equipment or the use of natural gas at those facilities. Finally, we believe a specific rider on rock crushing may be necessary to ensure that TCEQ more adequately inspects and enforces this industry.

We look forward to working with the Legislature to more adequately fund this important agency.

Sincerely,

Cyrus Reed
Director

cc. Wendy White, Governor's Office
Tom Lambert, LBB
TCEQ Commissioners and Executive Director
Members of the Alliance for Clean Texas