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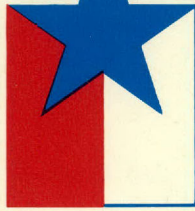
# TEXAS RESEARCH LEAGUE

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Government Publications  
Texas State Documents  
JANUARY 1994  
Volume 15 Number 1

APR 12 1994

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# ANALYSIS

## TEXAS' NEW ENVIRONMENTAL SUPERAGENCY

The Texas Natural Resource Conservation Commission (TNRCC), created by the legislature in a bill passed in July 1991, vested most of the state's environmental functions in one superagency. The new agency primarily consolidated the responsibilities of the Texas Air Control Board and the Texas Water Commission (TWC).

Prior to the merger, the TWC had absorbed the solid waste obligations of the Texas Department of Health. In addition, several smaller agencies were disestablished, and their duties were shifted to the new agency. Thus, the TNRCC responsibilities embrace pollution prevention in the major areas of air, hazardous waste, solid waste, and water.

### ORGANIZATION

The TNRCC is organized along media lines (air, waste and water) similar to the federal Environmental Protection Agency, taking into account each medium's complexity and reliance on specific technology.

Overall, the TNRCC organization seems to be working rather well. Continued attention needs to be given to communication lines, training and policy development.

Because of its recent implementation, it is difficult to determine which of the structural kinks that do exist result from newness and which are systemic. Probably, the TNRCC should be reevaluated in two or three years after the organization has had time to stabilize.

### About This Issue

**TNRCC: Evaluating the New Organization** was prepared in response to a request from the Lt. governor for the League to undertake an examination of the new environmental agency resulting from the merger of the Texas Water Commission and the Texas Air Control Board.

This first report deals with organization issues; a second report, to be issued in 1994, will deal explicitly with the TNRCC permitting and enforcement processes.

Copies of the first report are available at no cost to League supporters, and to others for a nominal charge.

### GOVERNANCE

Primarily because of the Open Meetings Act requirements, a full-time, three-member governing body is an ineffective method of administering a major state agency. Consideration should be given to a single executive (appointed or elected), to a modified three-member commission (with extraordinary authority vested in the chairman), or to a part-time board as a replacement for the three-member TNRCC commission.

### ADMINISTRATIVE HEARINGS

The administrative hearings process should be transferred out of the TNRCC to the State Office of Administrative Hearings. Any perception that the hearings process might create a conflict of interest for the hearings examiners who are employees of the regulatory agency would be moderated.

The article beginning on page 2 discusses this report in more detail.

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# TNRCC: Evaluating the New Organization

## The Push for an Environmental Superagency

State officials and many organizations had called for a single state environmental agency prior to 1990, but momentum began to build after the 1990 elections. The lieutenant governor, in particular, made establishing such an agency a top priority, and subsequent support was provided from a comptroller's study and a governor's office report.

The comptroller (*Texas Performance Review: Breaking the Mold*) recommended the creation of a Department of the Environment to include the Air Control Board, the Structural Pest Control Board, the Water Well Driller's Board, most programs of the Water Commission, and the environmental duties of four other agencies -- the Department of Health, the Railroad Commission, the Department of Agriculture, and the Water Development Board.

The governor issued a "blueprint" for streamlining all state government operations by consolidating those with similar programs or functions. A Department of Natural Resources with a cabinet-level commissioner was one of the specific proposals.

**Environmental Agency Approved.** In a 1991 special session, legislation was passed creating an agency composed of the Water Commission (TWC), the Air Control Board (TACB), and most of the Department of Health's (TDH) environmental programs.

The TDH programs were to be merged with the TWC in March 1992, but the union with the TACB was to be delayed until September 1, 1993. On that date, the Texas Natural Resource Conservation Commission (TNRCC) would come into existence.

The statute included several required organizational elements (e.g., separate directors for air, water and waste), and set a timetable for specific actions to insure an orderly consolidation.

To guide the consolidation, the governor created an Environmental Agencies Transition Committee with members representing business, citizen and environmental groups, local

governments, and state agencies. The committee report addressed key consolidation topics, including a mission statement, goals and strategies, an organizational structure, and a timetable for consolidation of functions and activities.

In early 1993, top TWC and TACB personnel were drafted for membership on a consolidation management team. Eleven major issues facing the new agency were identified (see box), and interagency teams were assigned to explore each issue and to make recommendations.

The TWC and the TACB had very different cultures, as might be expected of long-established agencies. The two had different forms of governance, were of different size, and had developed distinct relationships with the regulated community. These dissimilar institutional histories, if not recognized, are a potential impediment to a smooth transition.

A concerted effort was made to overcome institutional and process dissimilarities and to smooth the transition process. The governor's

### Consolidation Team Topics

- Agenda
- Budget/Planning
- Enforcement
- Facilities
- Field Operations
- Financial Administration
- Hearings
- Operating Procedures & Policies
- Permitting
- Purchasing
- Rulemaking



committee, the consolidation management team, and numerous TWC and TACB employees identified and sought to reconcile myriad functional differences. *Their work meant that the TNRCC exceeded all the statutory consolidation time lines by substantial margins -- a commendable feat.*

### THE NEW ORGANIZATION

In creating the TNRCC, the legislature decided that the new agency would be governed by a three-member, full-time commission (the TWC pattern), rather than by a part-time citizen board (the TACB format). The three TWC incumbents were retained as TNRCC members.

One spin-off from that approach was that, in effect, the TNRCC organizational design was built around the TWC structure as it had been reorganized in 1991 following the assimilation of the TDH environmental programs. The TACB programmatic responsibilities essentially were added organizationally intact.

### MEDIA DRIVEN ORGANIZATION

The TNRCC is organized (see chart) along media lines (air, waste and water) for two primary reasons.

- First, the environmental programs interact with the U. S. Environmental Protection Agency on a similar basis, and there is little interrelation among the statutes (state or federal) governing the functional programs.
- Second, each program area is complex and is highly reliant on a specific technology with limited applicability across media lines.

There is a downside to the media approach in that compartmentalization can inhibit formulation of a single, coordinated approach to cross-media policy development, particularly as it relates to permitting and enforcement. However, as will be discussed later, this largely can be overcome by coordinated policy formulation.

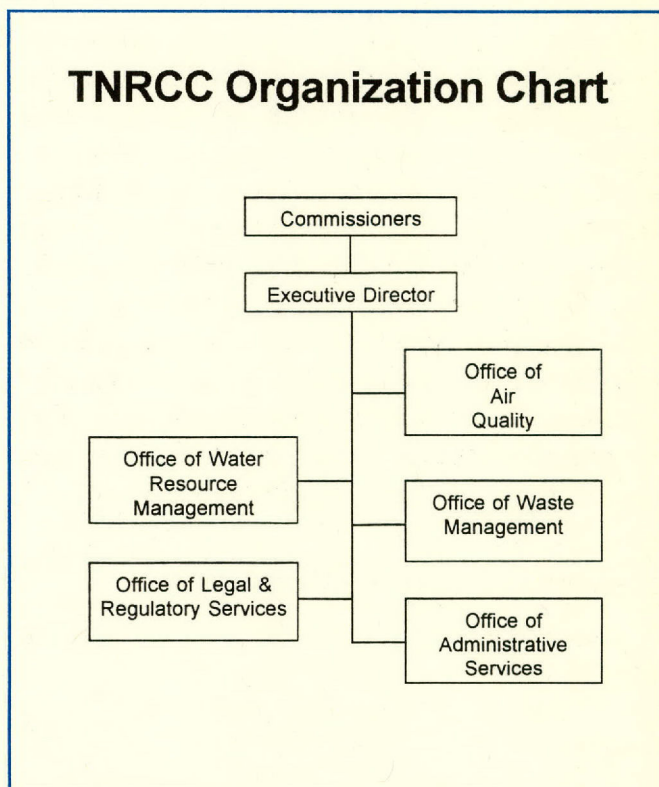
### COMBINATION OF LIKE FUNCTIONS

The TNRCC implementing statute also mandated a director of administrative services. This, too, likely would have resulted without legislative direction. In fact, the Office of Administrative Services combining TWC and TACB like functions (e.g., financial activities, human resources, and information resources) was mostly operational before the merger.

A fifth organizational cluster -- the Office of Legal and Regulatory Services (OLRS) -- consolidates legal services, enforcement policy, technical training and field operations. TWC's 14 and TACB's 12 field offices were merged into 15 regional offices which conforms with the Uniform State Service Regions.

Legal services and field operations were combined (1) to correct complaints of inconsistent enforcement procedures among the regions, and (2) to keep field office personnel better informed of subsequent action on enforcement cases filed.

Despite TNRCC's rationale, some criticism has been directed to the combination of legal (staff)





and program (line) responsibilities in one office. These critics suggest that a closer association of field offices with the programs, rather than with legal services is desirable since the field offices are where most regulated businesses (and the general public) have greatest contact with the TNRCC.

Furthermore, they contend that the proximity of field operations to legal services, which handles permit violations, imbues the field offices with an enforcement rather than a problem-solving aura. While this combination may be unusual in industry, it should be remembered that the TNRCC is a regulatory agency charged with enforcing complex environmental rules. *Nonetheless, at a later date, the TNRCC may want to reexamine OLRs to consider separating these line and staff functions.*

### **FIELD OFFICE MATRIX**

Each field office is headed by a regional manager who has overall responsibility for TNRCC operations in a specific geographic area. In addition, the manager is expected to maintain direct contact with the regulated community and to provide a public presence in the region.

Program supervision in each region is provided by three media-related managers who maintain direct linkage to the program offices. (In some regions, one program supervisor is responsible for both waste and water.) Three media-related directors in the central Field Operations Division are responsible for developing regional work plans. This means that the field personnel have two communication lines -- one to the regional manager for direct day-to-day supervision, and a second to the media offices and to field operations for programmatic direction and assistance. (See box for depiction of this arrangement.)

### **COMMUNICATION IS THE KEY**

Communication lines are blurred following any reorganization, not because they don't exist, but simply because they are new. The TNRCC is no exception.

**The TNRCC should maintain constant vigilance and review to see that communication lines are clear and well understood at all organization levels, and to see that employees at all levels understand the commission's mission and focus.**

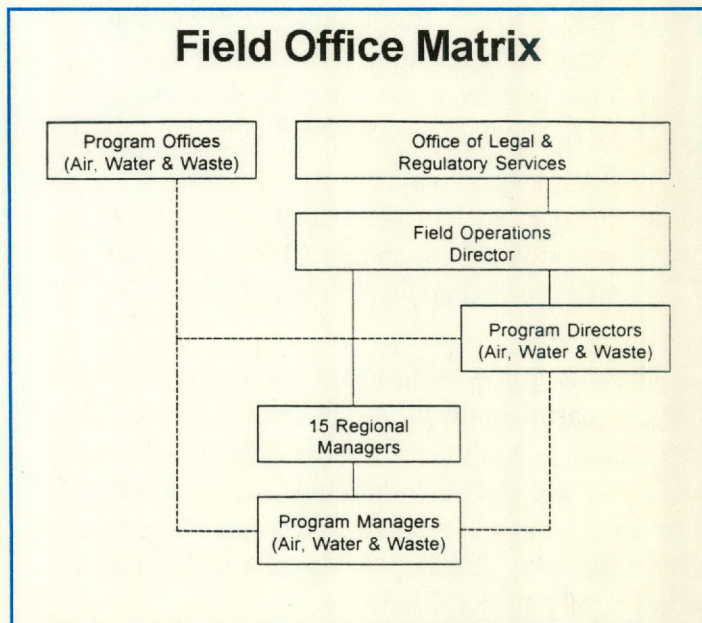
The commission is well aware of many of the communication problems and already is working toward improvements.

### **TRAINING**

Another key to TNRCC success is employee training -- most particularly as it relates to technical staff. Here too, the commission is moving in the right direction through the development of new training programs, the use of quality management training, and the use of electronic training media.

**The commission should continue to seek adequate resources to maintain and to expand employee training endeavors.**

Staff training will continue to be a problem area as the agency expands in response to new federally-mandated regulatory activities, particularly those related to the Clean Air Act Amendments.





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## **POLICY FOCUS**

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Regulatory inconsistency and lack of enforcement uniformity, particularly at the field level, were the most frequent complaints voiced by the regulated community. In many respects, this results from too little attention being given to policy development from a formalized, institutional perspective.

Keeping air, waste and water separated into independent offices has merit in many respects; however, one undesirable ramification is that there is no locus for coordinated policy development from an agency-wide perspective.

The Regulatory Affairs Section now is responsible for caseworkers that bring media teams together to facilitate permit issuance in cooperation with the Texas Department of Commerce. That same type of effort is needed to coordinate policy development.

**The commission should combine the Regulatory Affairs and Policy & Research Sections into a Policy, Planning and Regulatory Affairs Section in the Executive Director's office. The combined section should be given the additional responsibility of overseeing a formalized, institutional process for policy development.**

The person charged with the responsibility to develop an overall agency policy perspective would draw upon the individual media and enforcement policy section heads to provide technical expertise.

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## **OVERALL ORGANIZATION EVALUATION**

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A tremendous effort was devoted to developing the TNRCC both in the very early stages when legislation was being formulated, and subsequently, through the use of consolidation teams. The most serious organizational issues were analyzed, and alternatives were considered.

**From an overall perspective, the TNRCC organization is workable; lines**

**of communication are reasonable; the span of control is realistic.**

**Even if minor changes should be desirable, the TNRCC would be best served to let the new organization settle into a routine with a focus on clearing existing communication lines before any additional changes are implemented. A formal reexamination would be appropriate after two or three years.**

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## **THE GOVERNANCE ISSUE**

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The Open Meetings Act requires a notice and a public hearing when a quorum of board or commission members meets. For a three-member commission such as the one governing the TNRCC, this requirement places a restriction on effective, legal communication among the members. No two members may discuss in private any matter concerning the commission, but instead must communicate through intermediaries.

In addition, the three-member, full-time governing body has the potential for interpersonal conflict among three coequals. With the current incumbents, this has not been the case. *In fact, under the existing commissioners, a long list of accomplishments and improvements in the regulation and control of pollution has been compiled, resulting in Texas being regarded by many as a model for other states.*

It can be argued that the problem lies not with the three-member commission, but with the Open Meetings Act. However, there is no apparent practical approach to balancing the public's interest in having policy decisions made in open meeting with the very real problem created when two governing board members cannot discuss any differences they might have in something less than a public forum.

**In sum, the League staff has come to the conclusion that the three-member, full-time commission is an ineffective governing body for the TNRCC.**



There are several acceptable alternatives to the three-member board and listed below, in no special order, are other possible forms of agency governance.

A **single appointed executive** would enhance accountability and responsibility because the executive would be responsible for the governor's program in a specific policy area, and the governor could be held accountable at the polls for the agency's performance.

Critics argue that this form does not allow for formal input from the affected interests relative to policy formation and that there is a potential for sharp policy deviations without a forum for reasoned debate. It is also suggested that without the buffer of a part-time board, it would be impossible to divorce political considerations from the demands of policy-neutral administrative efficiency.

A **single elected executive** makes one person directly responsible at the polls for a prescribed functional area. In addition to the criticisms listed above, there is the additional consideration of making the long ballot longer. Furthermore, the campaign for the office, and the candidate's

proposed policy or program, may not receive the attention it deserves.

In the case of either the appointed or elected single executive, the judicial function could be vested in the agency head or in a three-member body selected solely for the adjudication process.

A **modified commission** could retain the three-member format (a chairman and two commissioners) to serve as a judicial body; however, the governance of the agency would be the sole province of the chairman. There would be no problems with the Open Meetings Act because the chairman alone would have the responsibility of agency administration and policy.

The **part-time commission** is the most common form of agency governance in Texas. Central to this idea are citizen participation and neutral competence. The board, appointed by the governor, could represent the chief executive's policy view while insulating a board-appointed, professional administrator from the politics of the day. Axiomatic to the concept of part-time governance is the belief that citizen boards bring long-term stability to administration of state agencies.

## TNRCC Advisory Committee

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Critics point out that part-time boards too often are coopted by agency staff and that they can thwart the policies of the governor who has limited removal authority. The time commitment for members also can be a problem, particularly when the board oversees an agency such as the TNRCC which is responsible for a wide variety of technically complex issues. In addition, the use of a part-time governing body can make the decision-making process more cumbersome and time consuming.

The accompanying chart compares the strengths and weaknesses of the two major alternatives.

### ADMINISTRATIVE HEARINGS

Three separate reports have called for the transfer of the TNRCC's office of administrative hearings to the State Office of Administrative Hearings. The major reason cited is the perception

that the hearings process might create a conflict of interest for the hearings examiners who are employees of the regulatory agency.

The focus is on the chance of perceived conflicts; if one perceives a conflict of interest, that very perception can become reality to that person. That can be compounded if the case is appealed because it is reported that the district courts tend to defer to the agency's expertise in complex cases. Since the TNRCC has announced that it is trying to create a bond of trust among itself, the public, and the regulated community, its credibility is paramount.

**The TNRCC hearings function should be transferred to the State Office of Administrative Hearings.**

The transfer can be accomplished either by a statutory change or through the execution of an interagency contract between the TNRCC and the

<u>ISSUE</u>	<u>SINGLE EXECUTIVE</u>	<u>PART-TIME BOARD</u>
Ability To Make Policy Decisions More Expeditiously	+	-
More Direct Representation of Affected Interests	-	+
Can Be Slotted	-	+
More Direct Gubernatorial Policy Input	++	-
Accountability More Easily Identifiable	+	-
Hands-On Administration	+	-
Management Conflict More Easily Overcome	+	-
Management Policy More Apt To Be Tempered By Compromise And Negotiation	-	+
Management Policy Changes More Apt To Be Direct and Swift	+	-
Management Policy Changes More Apt To Be Gradual and Incremental	-	+

\*Obviously, if the single executive were elected, the governor would have little, if any, policy input depending upon the philosophy, party, etc. of the other statewide elected official.



State Office of Administrative Hearings. *In either case, proper safeguards can be taken to insure that necessary technical expertise is utilized in the hearings process and that the commission remains as the final arbiter in the case of contested hearings.*

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