

Congressman Michael C. Burgess, M.D.
Statement before the Texas Sunset Commission
Testimony Regarding Review of Texas Commission on Environmental Quality and
Texas Railroad Commission
December 15, 2010

Thank you, Mr. Chairman, and members of the Sunset Commission.

The Sunset Commission has a long history of reviewing state agencies with the purpose of improving their operations, and keeping them accountable to the people they represent. If the federal government had such a system, we might not experience some of the problems we are seeing with runaway bureaucrats exercising unchecked powers. The federal Environmental Protection Agency's actions are the first that come to mind – and if we have to keep the EPA in check we are required to have functioning and vigilant state agencies.

In plain language, I will say to both agencies what my constituents have been trying to impress upon them for the past several years: Do Your Job! Both the TCEQ and the Railroad Commission need to step it up. If they can't or won't do their authorized jobs of protecting the people, then it's only too clear the federal government is ready to step in and take over. The bottom line is, someone must do this oversight, and if our state agencies won't, federal agencies will.

I am here today with the hope that this Commission will provide the necessary guidance and suggest the proper changes to prevent federal agencies from overstepping their authority and preempting state actions. Too many times over the past few years we have seen overly ambitious federal bureaucrats attempt to step on the toes of state agencies, knowing full well

those state agencies are in a better position to assist the residents of this state than any federal bureaucrat ever could be. But the continued inattention of the TCEQ and the Railroad Commission seem to be driving this. If the state regulators are slow to act – or worse, totally dismissive of citizen concerns – where else can they turn but the federal agency?

The burgeoning natural gas industry in the Barnett Shale region is the perfect example of this. There is no doubt; the TCEQ and the Railroad Commission have experienced growing pains in dealing with the exponentially expanding business of drilling for natural gas, specifically in North Texas. It would be hard to find a resident in North Texas who is unaware of the issues local residents and elected officials have had with TCEQ and the Railroad Commission.

In April of last spring, media reports that TCEQ had failed to brief elected officials on certain air quality test results updates left me especially disturbed. I was one of the elected officials originally briefed on the results from the Fort Worth area. I specifically asked TCEQ staff at that time whether there were any “red flags” with the data and was told there were none.

Subsequent to the reports of TCEQ’s internal audit, I spoke with Commissioner Shaw and other officials at TCEQ. I believe TCEQ has since made a concerted effort to make better outreach to officials and the public on their testing results, but there is no doubt that more must be done.

There is no doubt that their credibility suffered significantly in this process.

In the wake of the increased monitoring of air quality in the Barnett Region, TCEQ instituted a page on their official website to relay up-to-the-minute monitoring results. However, the

information is provided in raw-data form, precluding many residents from understanding the full impacts of the data. Providing explanations of what the data means, and in terms average citizens can understand, would go a long way in addressing residents' fears. People want to be told the truth – good or bad – as to what chemicals are in and around their daily lives. TCEQ and the Railroad Commission owe it to the public to give them all the information, and let them decide what is best for them and their families.

As I stated in my written recommendations, TCEQ should hold regular town hall and informational meetings in neighborhoods across North Texas where drilling activity has increased. Having TCEQ officials in regular contact with the residents they are charged with protecting will provide a perspective not always attainable in government offices where most regulations are enforced. Here's the deal: TCEQ must show that it is accountable to the citizens of the state – not an apologist for the industry it is purported to regulate.

Moreover, my office, and I know many of my constituents, have been discouraged in trying to discern exactly which agency - the TCEQ or the Railroad Commission - is the proper regulator for certain issues. Historically, there were sound reasons to divide up oversight of the oil and gas industry into two separate regulatory bodies. I support the continued existence of both agencies. However, more must be done to assist residents and local officials in discerning which office in which agency can help with their problem. I recommend creating a liaison or ombudsman office where citizens can go and be directed to the proper regulator who can help with their individual issue – and to provide thorough follow-up until the situation is resolved.

Further, we are all aware of looming budget concerns in the upcoming state legislative session. I strongly urge the Legislature to use caution before reducing the budgets of either the TCEQ or the Railroad Commission, given the oil and gas industry's increased activity throughout the state. This activity comes closer and closer to neighborhoods and schools every day. These agencies are tasked with protecting the health and well-being of every person, and we cannot constrain their efforts by failing to provide sufficient resources.

I would recommend, before any significant cuts are made, that legislators look to restructure the fee schedule for operators in the Barnett Shale region and elsewhere – increasing the cost of penalties and citations. Increasing fees paid by bad actors in the community will not only provide greater funding for the agency, but will also deter behavior that is putting our neighbors at risk for serious health conditions.

In reviewing the Commission's staff reports of both the TCEQ and Railroad Commission, I am concerned that, as the report stated in the case of the Railroad Commission: "While the estimated \$186 billion oil and gas industry makes a significant contribution to the State, the Commission relies on General Revenue to fund almost half of its more than \$50 million budget for this industry's oversight." Funding streams for both agencies must be updated to reflect the industry's increased presence in the state. New funding should not be taken from the General Revenue Fund, and the industry should fund, through fees and penalties imposed, the proper oversight necessary for this activity to continue.

Stories in the media are becoming all too common of the federal government coming into Texas and preempting state agencies on a number of issues. Just recently, the federal EPA announced it would be taking over the case of two houses in Parker County where natural gas is suspected to be in the residents' water supply. The federal government will never know better than our own state government how best to protect our communities. And yet it seems as if the dismissive attitude of the Railroad Commission necessitated this intervention. We must give the TCEQ and the Railroad Commission every tool they need to do their jobs so that federal bureaucrats cannot overstep their authority and usurp our state agencies' role. And we must demand of the state agencies that they do their job.

I hope this testimony will underscore just how serious a matter proper regulatory involvement and oversight has become in my District in North Texas. Residents are rightly concerned about the air they are breathing and the water they are drinking and ensuring both are safe. We must get this right – we are talking about people's lives. I have submitted a separate letter to the Commission, which I have also posted on my congressional website, explaining my concerns in further detail. I look forward to working with the Commission and the entire State Legislature to make sure this gets done right.

Thank you, Mr. Chairman and members of the Commission.