Environmental Quality - Mrs. Irwin Brand (continued)

5. More Information

The Interim Committee for the Study of Ecological Environment of the State (SCR 46 - RS) consists of:

11 members -- 3 House members appointed by the Speaker of the House
3 Senate members appointed by the Lt. Governor
5 members from the public appointed by the Governor

The Committee is charged with the responsibility to continue the study of the ecological environment of the state and determine the controls needed to assure Texas a continuing supply of pure and abundant water, clean fresh air and a noise-controlled environment.

Present members are:

House Members

Joe Shannon - Fort Worth
Don Cavness - Austin
Dean Neugent - Texas City

Governor Appointees

| | |
|---|---|
| Stone Wells | - Houston |
| L. O'Brien Thompson | - Amarillo |
| Dr. Robert Mitchell | - Lubbock |
| Dr. Harold D. Toy | - Houston |
| Rose Wilhite | - Baytown |

Senate Members

| | |
|---|---|
| Criss Cole | - Houston |
| H. J. (Doc) Blanchard | - Lubbock |
| Charles Herring | - Austin |

This committee, which was named the Interim Committee for the Study of Land Use and Environmental Control, has been holding hearings around the state and will publish a report for the 62nd Legislature.

Incidentally, a Planning and Management of Natural Resources Committee (SCR 84 - RS) consisting of 9 members is in the making. Appointments had not been completed at the time of this writing. This committee is intended to study the organization, coordination, and interrelationship of all agencies responsible for planning, regulation and management of natural resources. The Committee will submit a final report to the 63rd Legislature.

9 members -- 3 House members to be appointed by the Speaker of the House
3 Senate members to be appointed by the Lt. Governor
3 members to be appointed by the Governor
(1) 1 ecologist
(2) 1 member of a statewide conservation organization
(3) 1 attorney

More Bibliography

Local League Files

1. Goals for Texas, Phase One. This report--colorful etc.--seems to be creating more impact outside Texas than within our state. A spokesman from the Governor's Planning Commission defended it by saying that the spelling out of each agency's plans, emphasized the concept of establishing time limits for achieving desired goals. Those that have been set for Air Quality by the TACB are on pages 84, 112-113.



(continued)

2. The Baytown and Houston Leagues have recently sent out background materials. These are excellent.

3. The Baytown League listed an extremely extensive bibliography.

A few other references

1. Air Pollution — Published by the World Health Organization Palais des Nations, Geneva, Switzerland (Try your library.)

2. The First Annual Report of the Council on Environmental Quality Transmitted to the Congress August 1970.

## 6. As Others See the Role of the LWV

The following excerpts were taken from talks given at the Air Pollution Leadership Workshop.

Dr. Leslie A. Chambers, as the Keynote speaker, spoke on AIR POLLUTION: The Larger View (See Mrs. Wackerbarth's report).

"The League of Women Voters has a great record of unbiased, intelligent, education action in the public political sphere. In some cities and states it has been an important instrument of public advisement on air pollution and other environmental problems. It is therefore not unexpected to find a group of its leaders preparing themselves for the continuing task of informing voters not only of the threat inherent in misuse of the air resource but, much more importantly, of realistic actions that should be supported in an effort to postpone the fate some of our doomsday prophets predict with so much certainty."

He concluded his thought provoking speech with, "Your organization, because it is not subject to any governmental mandate, is traditionally unassociated with political party, activist group, or vested interest, is in an excellent position to explore objectively the air pollution and other environmental problems of the communities you represent, and to espouse patterns of action reflecting judicious selection of options. Air pollution, and other symptoms of too rapid consumption, will be with us continuously; its curtailment will, hopefully, be a preventive action and as such will require all the persistence and persuasive ingenuity a group of women can muster."

Mr. John L. Kirkwood, Director of the Department of Environmental Haalth of the Tuberculosis Institute of Chicago and Cook County, spoke about Air Quality Hearings as A Tool for Improving Ambient Air.

"As you can see, the Act (the Air Quality Act of 1967 and amendments now being considered) will now require public hearings at the implementation plan stage and I feel that this will give all of us the opportunity to see that a sound implementation plan is adopted. It will be more difficult than participating in the setting of standards because the implementation plan is infinitely more complex. We will have to do our homework and do it well, because the industrial community will be well represented and will present strong arguments and we must have solid evidence to enter in the record of the hearing to support our position. This

(continued)

means you will have to search out and get the support of technical people in your area that can make a sound evaluation of the local problem and what can be done to solve it. Local universities are the most productive source because there you can find unbiased experts.

"You will have to contact other organizations to help build massive public support such as the Izaak Walton League, the American Association of University Women and your local Tuberculosis and Respiratory Disease Association."

"Also, it is important for you to build support from the local news media. I would suggest a series of press conferences before the public hearing to get your point of view in the newspapers."

"A position paper should be drawn up, outlining the details of a good implementation plan and it should be made available to the public so that people can prepare a solid statement, based on fact, for the public hearing. We must demonstrate our concern to our public officials by making an informed and intelligent case for clean air."

At the Air Pollution Leadership Workshop, Resource Chairmen were defined as Action Chairmen as well as Information Chairmen. The possibilities of this are limitless but it means that we need to set some priorities for our time and efforts.

This brings up the question of "How expert do we need to be?" Mrs. Margaret Foerch, LWV of Michigan (in Human Resources Newsletter No. 4, February 1969) urged members to "concentrate on making basic citizen policy decisions." She stated, "The League is not a research outfit. The League is a citizen participation outfit." Her concluding paragraph was, "I think we must all cool it on the quantities of resource material we think we must have and digest. Let's decide what is truly essential to making a citizen's decision on basic policies only--not technical details, and work with that."

Resource Chairman - Action Chairman - Resource Chairman

## TEXAS TOMORROW

### 1. Information--Coming Later

To make meaningful decisions about what should be done in Texas, we should know what the other states are doing. Hopefully national materials will cover this area. If they don't, we'll try to supply the information.

### 2. Questions to Provoke Thought

How clean the air? To what degree? To what level of purity? When can such be achieved? What kind of a time table should there be? Is it just a question of money? How far are we willing to go? How far can technology go in providing solutions? Are we really still "today" oriented or are we capable of working toward a future in which we won't share? Think! Question!

### 3. More Quotes to Provoke Thought

Dr. Leslie A. Chambers

"perhaps you will also begin consideration of air pollution in relationship to other evidences of environmental deterioration. Should you do so I predict that

(continued)

at some stage you will be forced to conclude that air pollution, along with water pollution, exhaustion of critical resources, solid waste accumulations, unacceptable noise levels, inadequate housing, social deviance and to some extent the economic crises our cities face, are inevitable symptoms of a single problem. How do we achieve dynamic equilibrium among aggregates of people exceeding 40,000 per square mile in the face of relatively rigid social, administrative, transport, legal and management patterns evolved in relation to much smaller, even rural, concentrations of people?

"Yes, the much advertised 'population explosion' does exist as a world-wide phenomenon. It is reflected in the global air changes* we have mentioned, and is most certainly destined to cause wide-spread hunger in some areas of the earth within a few years, much more than now; and the population increase, even in the United States, must be a major cause for concern if for no other reason than that Americans as 'conspicuous consumers' convert 30 to 50 times as much material and energy per capita as the average individual in the rest of the world.

"But in strict terms of over-population, I am unable to sustain the view that such a state has been reached in the United States. The situation in Texas is typical. Since the 1930 census, almost all the towns and cities showing populations of 35,000 and over have grown at rates well above that of the state; on the other hand, about 80% of the 254 counties have experienced a steady decline in population throughout the forty-year period. Thus, for at least 80% of the state, the population density has decreased 30% to 50% since the almost forgotten depression. Our 'population explosion' then is confined to a small number of discrete points around which people and their activities tend to be drawn. Perhaps some dramatic means of reversal of the flow would go far toward relieving the symptoms of urbanization."

He then adds a note of warning, "People who are hungry, poorly housed, without adequate water supply or sanitation facilities, have difficulty developing concern for a deteriorating air supply which will only add to their troubles at some future date."

*Dr. Chambers had talked about the following: global air resource is a fixed quantity, not an unexhaustible reserve; the air supply varies in composition from day to day; it has undergone profound qualitative changes during evolution of the earth; the natural cycling of resources is limited in rate by chemical and physical properties of the system; man is transforming essential resources and energy faster than natural processes can restore them to the reserve; the rates are accelerating exponentially even in relation to the population increase.

A leading industrialist -

> "Business earns profit by serving public needs--but profit, not service, is the goal of business. Society gets many of its tasks done by providing profitable market opportunities--but service, not profit, is the goal of society. The important thing is to stop thinking that the way to increase one is to reduce the other."

The Royal Bank of Canada Monthly Letter (Vol. 50, No. 2, Feb. 1969)

> "A Washington State Supreme Court decision reads: 'An unwritten compact between the dead, the living, and the unborn requires that we leave the unborn something more than debts and depleted natural resources."

A League member -

> "....it is time to encourage vision."

(continued)

Environmental Quality - Mrs. Irwin Brand (continued)

Let us first encourage our own vision. THINK! QUESTION! THINK!

LOCAL LEVEL

Now is the time to gather facts and ideas for meaningful legislative ACTION when the time comes.

(NOTE: Those local Leagues with Air Quality support positions are encouraged to continue action at the local level. See page 35 LL Handbook and EQ section of the June National Board Report.)

Involve your community in this study of a most complex problem. Think through to logical conclusions.

Now is the time to identify local problems. Try to get and provide factual information. Call on local experts--hopefully unbiased--to help analyze the information you gather.

THINK! QUESTION! THINK! QUESTION! THINK! QUESTION!

Here are a few questions to raise more questions:

Is there a local ordinance to control air pollution? If so, what? Open burning? Visual emissions from motor vehicles? Other?

Is there a local environmental or air pollution office? If so, what are the basic attitudes of those in charge? How large is the budget? If not, is one needed? How can you encourage a local health department to set up such an office? Should it be connected with a health department or should it be an independent agency?

Is there a monitoring system?

Who are the "good guys" in the area? Many industrial plants have worked quietly to control emissions--would they appreciate a pat on the back?

What are the attitudes of local industrial leaders? Of local elected officials? Of citizens? How can you affect these?

Who else is in your atmospheric area? Is there a local League there? If so, get together--work together.

Who are the "bad guys"? How do they defend their position? Their emissions? (This can be an eye opener.) Upon what grounds did they receive a variance? Ask them, not the TACB. For how long? How about a go-see-tour to let them show you their problems and how they plan to overcome them. Use your League know-how as they may be "touchy".

What other groups are interested in air quality? What is their approach?

Does public opinion set concepts of pollution? Who forms public opinion? How can the League make a meaningful contribution?

A sense of humor is essential--keep it and your goodwill always.

A Canadian study of envionmental effects upon society plus other findings during and following inversions and smog conditions seem to point to an air pollution syndrome, that of becoming obsessed with pollution problems to the detriment of the personality.

League is needed to provide constant, intelligent and rational attention to all matters pertaining to E.Q.

References

Air Pollution Leadership Workshop Kit

Principal Pollution Laws of Texas, September 1970, Attorney General Martin.

Report of the Committee for the Study of Land Use and Environmental Control to the Sixty-first Legislature, January 1969

S.B. 48 - Clean Air Act - Revision

Texas Air Control Board Procedural Rules

Texas Air Control Board Regulations

* * * * * * * *

TEXAS AIR CONTROL BOARD - 1970

| | | |
|---|---|---|
| Herbert C. McKee, Chairman<br>Southwest Research Institute<br>[redacted] | 6-year term | (Engineering) |
| Mr. Herbert W. Whitney, Vice Chairman<br>[redacted] | 6-year term | (Municipalities) |
| Wendell H. Hamrick, M.D.<br>Memorial Professional Building<br>[redacted] | 6-year term | (Ind. Physician) |
| Mr. Clinton H. Howard<br>American Bio-Medical Laboratory<br>[redacted] | 6-year term | (General Public) |
| Mr. Henry J. LeBlanc, Sr.<br>Standard Brass & Mfg. Co.<br>[redacted] | 6-year term | (General Public) |
| Mr. William Pettus Hobby, Jr.<br>President - Houston Post<br>[redacted] | 4-year term | (General Public) |
| Mr. Fred Hartman, Editor & Publisher<br>Baytown Sun<br>[redacted] | 6-year term | (General Public) |
| Mr. Henry Bartell Zachry, Jr.<br>President - H. B. Zachry Co.<br>Longwood & Harding<br>[redacted] | 6-year term | (Ind. Rep.) |
| Willia Lee Ulich, Ph.D.<br>Professor & Department Chairman<br>Agricultural Engineering Department<br>[redacted] | 2-year term | (Agricultural Engineering) |
| Mr. Charles Barden, Executive Secretary<br>Texas Air Control Board<br>[redacted] | | |

LWV of Texas
August 1970

To: The State Board

From: Mrs. Jack Wackerbarth

Re: Report on Air Quality Leadership Workshop

In early August I spent three exciting days representing the LWV Texas at an Air Quality Conference sponsored by the National Air Pollution Control Administration and the LWV Education Fund. Held at Airlie House in Virginia (famous, I am told, as the setting for numerous such meetings), this gathering proved to be a stimulating, thought-provoking, at times frustrating, and over all thoroughly enjoyable experience. Two days were jam-packed with information on various aspects of the problem; the one-day organization conference concerned what the League can do about it proved to be the frosting on an already delectable cake.

Representatives from each of 49 states (Rhode Island's delegate became ill too late to secure a replacement) plus Puerto Rico and the Virgin Islands constituted the most widely representative League group ever assembled for such a meeting. Some, having worked locally for many years in the air pollution abatement field, were already experts on the subject; others, like me, were novices, and it was this latter group, perhaps, who were the greatest gainers. Viewpoints ranged all the way from "we've got to clean up the air at any cost, no matter whom it hurts" to " if it comes to a question of saving the pelicans or saving me, I'm going to vote for saving me!" (I didn't say that, although I have great empathy for the delegate who did.)

The purpose of the gathering was to examine the subject of air pollution, to furnish information on the need for cleaner air in many localities (principally, though not entirely, cities) and the legislative mechanisms available for achieving it, and to motivate League representatives to go home and attack the problem from the viewpoint of the general public. To this end NAPCA had its entire field staff present during the whole two days of the information section of the conference. A number spoke on various phases of the problem.

The keynote speaker was Dr. Leslie Chambers, director of the Institute of Environmental Health of the University of Texas at Houston, who gave an over-all view of the problem, which, he said, is one to which there are no simple and easy answers. In essence, his theme was: Ladies, in air pollution and in environmental pollution generally, we have a grave problem, but in attempting to solve it, let's not throw out the baby with the bath water. His remarks met with varying reactions, conditioned somewhat by the previous work of the various participants. I was told later that his purpose was to make the delegates think- to stir up controversy. He did, in spades!

Other speakers covered specifics--air pollution from both stationary and vehicular sources, mechanical controls now available and in the planning stage, current and proposed federal legislation to regulate air quality, and an explanation of mechanisms now used for setting criteria and standards. Industry was represented by a gentleman from the Ford Motor Company--most appropos, perhaps, since transportation (cars, buses, trucks, and aircraft) is credited with producing over half the total air pollutants, with the family auto, because of its greater

(over)

numbers, being held responsible for more than half of this. The speaker said this latter is a misconception, for although it does produce 40% of the total pollutants on a weight basis, the automobile contributes only 12-14% of the total toxcisity, although in Los Angeles, the auto is 58% of the air pollution problem.

The role of the citizen when air quality standards are set and in implementation methods to meet those standards was stressed, along with various methods which may be employed. Included were a number of first hand experiences of League members and others, which served the dual purpose of furnishing inspiration and examples of what can be accomplished. NAPCA makes a real effort to involve the public in implementing the federal Air Quality Act, passed in 1967.

One of the speakers, Mr. Harvey Shell of the Missouri Air Conservation Commission, in speaking of ways to meet the standards, stressed the need for a realistic approach when the standards are set. He cautioned that too stringent standards would shut down all traffic and industry and invite evasion or downright violation. I was surprised to learn that uniform standards cannot be set for the country as a whole; in areas of concentrated population it would be impossible to meet standards which would be extremely lax for areas having relatively clean air at present. The problem, then, becomes essentially a local one. The choice need not be progress vs. pollution, but eternal vigilence must be the watchword for some time to come, possibly forever.

The remaining 24 hours were spent in Washington discussing the League's role in the fight for clean air. Here, it was more or less assumed that the consensus will favor support of efforts to achieve better air quality; emphasis was on how to implement this position, once we have it. We were promised a lot of excitement.

League techniques were examined in detail. The role of the research chairman in aiding local Leagues to reach consensus was explored, and a set of criteria for formulating consensus questions was developed. The substantive information required for local League consensus was discussed, along with sources, and methods of presentation, both to the member and to the community.

Action begins actually when an item is adopted, and certainly this one is no exception. Public relations was stressed as vital to building community support, and numerous suggestions were offered. Several new "how to" publications are planned. One, to be titled, MEANINGFUL ACTION, as a companion to MEANINGFUL MEETINGS, will provide a basic outline of methods. Another will deal with effective use of radio and TV. Some techniques for producing effective publications were outlined. The whole new (to the League) field of legal advocacy will be explored, since public policy is now being decided in the courts much more than most of us realize; a number of pertinent tips were given by Mrs. Frank Williams, a national Board member who currently is a student of law at the University of Indiana.

The whole conference was a monument to the careful planning of national Board members, Mmes. Donald Clusen and H. E. Murphree, the members of their commitees, and the national staff members who participated. I am grateful for the opportunity to attend.

If there was any one thought which stood out, it was the importance of goals

(continued)

in League activity--of deciding where we want to go (based on our original consensus), what audience we want to reach, what we want them to do about the problem, and then deciding what is the best way of accomplishing our purpose. I will confess to being a trifle apprehensive over the very militant attitude displayed by some of the delegates toward this particular problem, especially those who have been working with air pollution for some time. Perhaps it is just that I don't yet know enough about the subject. But I do feel there will be a great many hard choices to make all along the way of cleaning up our environment, and I hope that adequate consideration of any alternatives, plus projections of the consequences of various actions, will precede our decisions. Dr. Chambers sees the League in the role of making judicious selection of options and espousing patterns of action reflecting those choices. This is a true challenge, which I am confident the League can meet.

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# LEADERS GUIDE

## OUALITY OF ENVIRONMENT

## PHASE I

## WATER PLANNING

LEAGUE OF WOMEN VOTERS OF TEXAS

changed conditions, or can impose new or additional terms and conditions, after public hearing, on:

its own motion
recommendation of the Executive Secretary
or request of an interested person who presents reasonable grounds

5. What legal authority does the Board have?

All rules and regulations set by the TACB are laws of the State and any violation of such can be referred to the Attorney General. The Attorney General, in M-665, September 1970, ruled that the TACB or any local government can sue solely on violation of TACB rules, regulations or variances and no longer is it necessary to prove pollution injury.

"Sec. 4.02. (a) Whenever it appears that a person has violated or is violating, or is threatening to violate any provision of this Act or of any rule, regulation, variance or other order of the Board, then the Board, or the executive secretary when authorized by the Board, may cause a civil suit "to be instituted in a district court for injuctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than $50 nor more than $1,000 for each day of violation and for each act of violation, as the court may deem proper, or for both injuctive relief and civil penalty. Upon application for injuctive relief and a finding that a person is violating or threatening to violate any provision of this Act or of any rule, regulation, variance or other order of the Board, the district court shall grant the injuctive relief the facts may warrant."

"(b) At the request of the Board, or the executive secretary when authorized by the Board, the attorney general shall institute and conduct a suit in the name of the State of Texas for injuctive relief or to recover the civil penalty, or for both injuctive relief and penalty, as authorized in Subsection (a) of this section."

Sec. 4.03 grants the same rights of enforcement to local governments, providing its governing body adopts a resolution authorizing the exercise of the power. The Board is a necessary and indispensable party to any suit brought by a local government.

"Sec. 4.04. (a) A suit for injuctive relief or for recovery of a civil penalty, or for both injuctive relief and penalty, may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs."

"(b) In any suit brought to enjoin a violation or threat of violation of this Act or of any rule, regulation, variance or other order of the Board, the court may grant the Board or the local government, without bond or other undertaking, any prohibitory or mandatory injuction the facts may warrant including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injuctions."

"(c) A suit brought under this Act shall be given precedence over all other cases of a different nature on the docket of the trial or appellate court."

"(d) Either party may appeal from a final judgment of the court as in other civil cases."

(continued)

(NOTE: The penalty is decided by the court based on the evidence presented per violation per day. However, a sample air pollution petition to a court suit does include a statement that penalties in like amounts should also be assessed for each day the defendant has caused emission in violation and further that "said penalties should continue to accrue from and after the filing of this suit for as long as the defendant violates the Texas Clean Air Act, or the Rules and Regulations..." The Sample Air Pollution Petition is on page 93 of Principal Pollution Laws of Texas prepared by Attorney General Crawford C. Martin, September 1970, for local officials.

3. A Point of View -- as expressed by a League member who has been involved in air contol activities for five years.

"A plan for the Control of Air Pollution in Texas was adopted in 1965. Communications were not good in the beginning. When a variance request was received by the TACB, persons in the affected areas were notified and requested to make comments and/or recommendations--then a hearing was held. Except in unusual instances the general public was unaware of the variance request, what it meant, and too often wouldn't have been interested enough to appear in Austin if they had known what it was all about.

"In some cases during the first years, local city and county officials tried to be objective. But the difficult choices were there--making it hard for even the most able elected officials to be firm without public support. Even more frequently the officials simply didn't understand the technical jargon involved, or had no facts to base a sound answer upon, or were really swayed by very strong arguments--professionally presented. This meant that the TACB had little to go on when attempting to grant or deny a variance request.

"Today, the TACB faces the other side of the coin. Because of intense public pressure, frequently without adequate knowledge, many local politicians and individuals have decided that all variance requests should be denied. Granting a variance over the objection of the governmental or public bodies within the area was never intended. And, conversely, the Board has found it necessary to deny variance requests over the objection of some governmental subdivisions. Texas communities are confronting the Board with these two extremes. Now the Board must try to determine the merits of each variance request in the light of constant objection from many of the governmental subdivisions. As a result, the decisions that are made are usually held to be wrong by one faction or the other.

"In order for the TACB to be effective, the public must be involved--rationally and intelligently involved."

The TACB seems to be moving toward more and more stringent measures. News reports from across the state would indicate that the Board's attitude is now one of believing 5 years is long enough to be lenient and the time has come to act. Variance extension requests are now being denied on that basis and, if granted, reasons are carefully spelled out for the public. The Executive Secretary was recently quoted as saying, "The time for striving for voluntary conpliance has expired."

4. NAPCA Air Quality Control Regions

The Clean Air Act, as amended (42 U.S.C. 1857 et. seq.), provides for an intergovernmental system for the prevention and control of air pollution on a regional basis.



(continued)

Environmental Quality - Mrs. Irwin Brand (continued)

To put the system into operation, The Department of Health, Education, and Welfare must designate air quality control regions and issue air quality criteria and reports on control techniques. State governments are then expected to establish air quality standards for the air quality control regions and to adopt plans for implementation of the standards. The air quality standards and implementation plans must be submitted to the Department for review.

A Federal Air Quality Control Region, as the federal government uses the term, is an area where two or more communities--either in the same or different states--share a common air pollution problem. Designated by the Secretary of HEW, these regions are required to set and enforce consistent air quality standards. Most regions designated thus far are intrastate, however, two of the five in Texas are interstate (Beaumont-Port Arthur-New Orleans and El Paso).

States are responsible for setting air quality standards for any portion of their territory that is included in an air quality control region. They are also responsible for developing and carrying out plans for implementation and enforcement of the standards.

Once criteria and control techniques information for a pollutant are issued, states have 90 days to signify their intent to set air quality standards for that pollutant for areas included in air quality control regions. They have 180 days to hold public hearings and adopt standards, and another 180 days to adopt plans for implementation and enforcement of the standards.

One point brought out by Mr. H. D. Shell (see Mrs. Wackerbarth's report for summary) was that the paper work required put the states in the position of "becoming publishing houses", leaving almost no time for implementation and enforcement of any plan.

The chart on the following page shows the progress of the five regions designated for Texas.

(NOTE: On 8/22/70 the boundries for the Beaumont-Port Arthur-New Orleans Air Quality Control Region were designated. It will be called the Southern Louisiana-Southwest Texas Interstate Air Quality Control Region.

On 9/28/70 the TACB adopted ambient air quality standards for the Houston-Galveston; Dallas-Fort Worth; and San Antonio Air Quality Control Regions.

On 10/2/70 the National Air Pollution Control Administration set the boundaries which encompass El Paso and Hudspeth Counties in Texas and Dona Ana and Otero Counties in New Mexico as an Air Quality Control Region.)

NAPCA AIR QUALITY CONTROL REGION INFORMATION
STATUS OF THE 5 TEXAS REGIONS
July 31, 1970

(1) Relating to standards for sulfur oxides and particulate matter
(2) Relating to standards for carbon monoxide, hydrocarbons, and oxident

| Region | | Boundaries Proposed | Consultation | Designation | Letter of Intent Due | Dated |
|---|---|---|---|---|---|---|
| Houston | (1) | 10-28-69 | 11-10-69 | 1-20-70 | 4-20-70 | 2-12-70 |
| | (2) | 10-28-69 | 11-10-69 | 1-20-70 | 6-19-70 | 5-1-70 |
| Dallas-Ft. Worth | (1) | 10-29-69 | 11-12-69 | 1-20-70 | 4-20-70 | 2-12-70 |
| | (2) | 10-29-69 | 11-12-69 | 1-20-70 | 6-19-70 | 5-1-70 |
| San Antonio | (1) | 10-30-69 | 11-14-69 | 1-20-70 | 4-20-70 | 2-12-70 |
| | (2) | 10-30-69 | 11-14-69 | 1-20-70 | 6-19-70 | 5-1-70 |
| Beaumont-Port Arthur-New Orleans | (1) | 5-5-70 | 5-15-70 | | | |
| | (2) | 5-5-70 | 5-15-70 | | | |
| El Paso | (1) | | | | | |
| | (2) | | | | | |

| Region | | Public Hearings Scheduled/Held | STANDARDS Due | HEW Submitted | HEW Approval | IMPLEMENTAION Due | Submit. | HEW Approval |
|---|---|---|---|---|---|---|---|---|
| Houston | (1) | 6-23-70 | 10-19-70 | | | 4-15-71 | | |
| | (2) | | 12-14-70 | | | 6-14-71 | | |
| Dallas-Ft. Worth | (1) | 7-8-70 | 10-19-70 | | | 4-15-71 | | |
| | (2) | | 12-14-70 | | | 6-14-71 | | |
| San Antonio | (1) | 6-29-70 | 10-19-70 | | | 4-15-71 | | |
| | (2) | | 12-14-70 | | | 6-14-71 | | |
| Beaumont Port Arthur New Orleans | (1) | | | | | | | |
| | (2) | | | | | | | |
| El Paso | (1) | | | | | | | |
| | (2) | | | | | | | |

Please note that the chart had to be divided and that the 2nd section is below the first.

## DEFINITIONS PERTAINING TO TEXAS WATER LEGISLATION

ACRE-FOOT. Volume of water required to cover one acre to the depth of one foot or 325,851 gallons.

APPROPRIATION DOCTRINE (APPROPRIATIVE RIGHTS). A statutory concept of water rights that originally granted anyone needing water the right to take it, but that has since been modified by the following:

1. Doctrine of Priority. First one in time to use the water has priority to continue use.
2. Doctrine of Relation. First one to begin (not complete) construction of an apparatus or a system to convey water has the right to water use.
3. Modification [of Doctrine of Relation] as to Due Diligence. Watercourse construction must be carried on with due diligence (determined on a case-to-case basis . If not, rights date from time of use.
4. Beneficial Use as related to Limit on Quantity. This concerns storing water for future use; each case is determined individually. See BENEFICIAL USE below.
5. Notice. There must be a public registration of claims and rights already acquired.

AQUIFER. A geologic formation, group of formations, or part of a formation that is water-bearing in sufficient quantity to provide a usable supply.

BASE FLOW. The sustained low flow in a stream supplied by ground water discharge.

BENEFICIAL USE. A precept that permits use of as much water as is economically necessary for a purpose if reasonable intelligence and diligence is exercised in its application and if the purpose is a lawful one.

DIFFUSED SURFACE WATER. Water that occurs in a natural state in places on the earth's surface other than in a watercourse, lake or pond.

GROUND WATER (PERCOLATING WATERS). Subsurface water from which wells and springs are fed. Often called underground water.

RIPARIAN DOCTRINE (RIPARIAN RIGHTS). Common law doctrine of water rights that states that one who owns land on the bank of a natural watercourse has a right to use the water, although he may not diminish the quantity if the stream flows past other riparian owners downstream. In 1962 the Texas Supreme Court declared that riparian rights no longer include using water for irrigation purposes unless this right is specifically granted.

SUBTERRANEAN STREAM. Water that flows beneath the surface of the ground in a well-defined bed with an ascertainable channel.

SURFACE WATER. Water that flows over or rests upon the surface of the ground.

WATERCOURSE. Identifiable natural stream having a definite natural channel and originating from a definite source of supply. Subclassified as follows:

(continued)

Definitions pertaining to Texas Water Legislation (continued)

1. Ordinary or normal flow. Judicially defined as a flow below the line which the stream reaches and maintains for a sufficient length of time to become characteristic when its waters are in their ordinary normal and usual conditions.

2. Underflow. Water in the sand, soil, and gravel immediately below the bed of an open stream.

3. Storm and flood water. The collected diffused surface water from recent precipitation.

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## CHRONOLOGY OF TEXAS WATER LAW DEVELOPMENT

1823--Mexican decree recognized, right of riparian owner to use water for domestic and irrigation purposes.

1840--Republic of Texas adopted English common law of riparian right.

1852--Administrative control over water distribution systems within a county was given to appropriate county commissioners court.

1871--Private Corporations Act permitted the organization of canal companies for the purpose of irrigation.

1875
1876--Public lands were donated to canal companies authorized to construct canals.

1889--Irrigation Act declared that unappropriated waters of every river or natural stream within the arid regions of the state where irrigation was necessary for agricultural purposes were the property of the public and subject to appropriation. A system of registration and filing was set forth in the act.

1895--Irrigation Act was rewritten and reenacted with same provisions.

1904--Constitutional amendment was passed permitting creation of special districts, including water districts.

1913--Irrigation Act extended prior appropriation system of 1889 and 1895 Acts to entire state. It created a Board of Water Engineers with original jurisdiction over all applications to appropriate water. Name changed in 1962 and 1965 (see those years).

1917--Irrigation Act of 1913 was revised and amended. In 1921 the provision authorizing the Texas Board of Water Engineers to adjudicate water rights was declared unconstitutional, but the remainder of the provisions, which were drawn from the 1913 Act, remained in force.

1917--Conservation amendment was adopted stating that the conservation and development of all natural resources of the state were public rights and duties and authorizing the Legislature to pass all laws appropriate for this purpose.

1929--First conservation and reclamation district was created by the State: the Brazos River Conservation and Reclamation District, since renamed the Brazos River Authority.

1931--Wagstaff Act declared that the Board of Water Engineers was to use a list of preferences, based on the concept of beneficial use, as a guide in granting water permits. The list is as follows, in order of preference: 1) domestic and municipal uses, including water for sustaining both human and domestic animal life; 2) water used in processes designed to convert materials of a lower order of value, including water necessary for the development of electric power by means other than hydroelectric; 3) irrigation; 4) mining and recovery of minerals; 5) hydroelectric power; 6) navigation; 7) recreation and pleasure.

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Cronology of Texas Water Law Development (continued)

1931--Proviso was added to Irrigation Act, stating that all appropriations of water for any purpose other than domestic and municipal purposes "shall be granted subject to the right of any city, town or municipality to make further appropriations of said water thereafter without the necessity of condemnation or paying therefore for domestic and municipal purposes."

1939--State Soil Conservation Act authorized establishment of districts for the purpose of conserving the states' soil resources.

1955--A statute was enacted requiring the order or act creating a water district to be filed with the Board of Water Engineers (now the Texas Water Rights Commission).

1955--Railroad Commission was authorized to make and enforce regulations to protect the surface and underground waters from the excape of oilfield waste and brine. The commission may require a bond to ensure that all wells drilled will be plugged in accordance with rules and regulations when the wells are abandoned.

1957--Constitutional amendment created the Texas Water Development Board, which was directed to initiate and administer a program of loan assistance to local political subdivisions for the purpose of encouraging the development of the state's water resources.

1961--Legislature created the State Water Pollution Control Board to maintain the quality of the waters of the state consistent with the public health and public enjoyment thereof, the protection of wildlife, the operation of existing industries, and the economic development of the state.

1962--Texas Board of Water Engineers was renamed Texas Water Commission.

1962--Constitutional amendment broadened the powers of the Texas Water Development Board, authorizing it to purchase conservation storage facilities in reservoirs on Texas streams, together with any system or works necessary for the filtration treatment or transportation of water by federal or local governmental agencies. The goal of optimum development of water resources was further spelled out in a 1966 constitutional amendment.

1964--Governor John Connally directed that a study be made concerning the development and management of water resources for the whole state.

1965--Texas Water Commission became Texas Water Rights Commission, with the administration of water rights, including the issuance of permits, as its primary function.

1965--Texas Water Development Board assumed all planning and development functions previously vested in the Water Commission.

1965--Texas Water Development Board was given authority to evaluate applications for disposal of municipal and industrial wastes by subsurface injections.

1967--Water Right Adjudication Act was passed facilitating administrative adjudication of claims by the Texas Water Rights Commission.

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Chronology of Texas Water Law Development (continued)

1967--Texas Water Quality Act assigned specific functions in support of the Texas Water Quality Board to the State Department of Health the Railroad Commission, the Texas Parks and Wildlife Department, and the Texas Water Development Board. A local government is empowered to implement and enforce Board policies and directions within its jurisdiction. The Board is to "establish policies and procedures for the purpose of securing close cooperation in the work of the agencies of the State with respect to water quality control functions carried on by such agencies." Implicit in this duty is the responsibility of the Board to be informed on all aspects of water quality and the control and abatement of pollution; to assist in resolving questions as to the respective authority and duties of governmental agencies vested with water quality control functions; and to strive for coordination of effort among such agencies, to the end that the public can be authoritatively advised on water quality matters, duplication of activities can be minimized, and the State policy for water quality can be effectuated.

1967--Water Pollution Control Board was superseded by the Texas Water Quality Board.

Basic Source Material:

Texas Water Development Board, Laws and Programs Pertaining to Water and Related Land Resources, December 1968, Report 89.

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Northwest Texas High Plains to the Rio Grande and the Balcones Escarpment. These 24 million acres lying between the Rio Grande at Del Rio and the Colorado River at Austin are known as the Edwards Plateau. The land is rolling to mountainous, with woodlands in the eastern part, grassy prairies in the west, and a great deal of brushy growth in the central and eastern parts. This limestone-based area is characterized by a large number of perennially flowing streams, which originate in its interior and flow across the Balcones Escarpment.

## Trans-Pecos Texas

The triangular "panhandle" of Texas west of the Pecos River, bounded on the north by New Mexico, is distinctive in its physical and economic conditions and contains all of Texas' true mountains. With as little as eight inches of annual rainfall, long hot summers, and usually cloudless skies to encourage evaporation, this 18-million acre area produces only drouth-resistant vegetation without irrigation. About 20 years ago great quantities of ground water were discovered in the Pecos Valley-Stockton Plateau, bringing irrigation of cotton, alfalfa, and other crops.

Lying just west of the Guadalupe Range and extending to the Hueco Mountains a short distance east of El Paso is the Diablo Plateau or basin, which has no outlet to the sea. The runoff from the scant rain that falls drains into a series of salt lakes that lie just west of the Guadalupe Mountains. These lakes are entirely dry during periods of low rainfall, exposing bottoms of solid salt.

The Upper Rio Grande (El Paso) Valley is a narrow strip of land running down the river from El Paso for a distance of 75 miles or more. Cotton is the chief product of the valley.

Source: Texas Almanac, 1970-1971.

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## STATE AGENCIES INVOLVED IN LAND AND WATER USE

I. State administrative agencies

A. Concerned exclusively with water (3)
1. Texas Water Rights Commission
2. Texas Water Development Board
3. Texas Water Quality Board

B. Engaged in various phases of water resource program (5)
1. Texas General Land Office
2. Texas State Soil and Water Conservation Board
3. Texas State Department of Health
4. Texas Parks and Wildlife Department
5. Railroad Commission of Texas

C. Coordinating state agencies in water resource development (15) (the Planning Agencies Council for Texas - PACT)
1. Air Control Board
2. Coordinating Board, Texas College and University System
3. Texas Education Agency
4. Texas Employment Commission
5. Texas State Department of Health
6. Texas Industrial Commission
7. Texas Department of Mental Health and Mental Retardation
8. Texas Parks and Wildlife Department
9. Railroad Commission of Texas
10. Texas State Soil and Water Conservation Board
11. Texas Water Development Board
12. Texas Water Quality Board
13. Texas Water Rights Commission
14. Texas Department of Public Welfare
15. Texas Highway Department

II. River authorities (11)

A. Brazos River
B. Clear Creek
C. Colorado River-Upper
D. Colorado River-Lower
E. Guadalupe-Blanco River
F. Guadalupe River
G. Neches Valley-Lower
H. Red River of Texas
I. Sabine River
J. San Antonio River
K. San Jacinto River

(continued)

State Agencies involved in Land and Water Use (continued)

III. Water districts

A. General law types (13)

1. Water control and improvement
2. Water improvement
3. Water control and preservation
4. Water power control
5. Water supply
6. Fresh water supply
7. Underground water conservation
8. Municipal water
9. Irrigation
10. Levee improvement
11. Drainage
12. Navigation
13. Conservation and reclamation

B. Special water districts (over 400)

C. Soil and water conservation districts (184 as of Feb. 1968)

IV. Interstate compact commissions (4)

A. Canadian River Compact
B. Pecos River Compact
C. Rio Grande River Compact
D. Sabine River Compact

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## RELATIONSHIPS OF VARIOUS TEXAS STATE AGENCIES INVOLVED IN LAND AND WATER USE

GENERAL LAND OFFICE: This agency administers the leasing and use of public school lands. It is also authorized to lease state-owned submerged areas on the Gulf Coast for industrial use.

PLANNING AGENCIES COUNCIL OF TEXAS: This is a new agency and operates out of the Governor's office. All agencies operating in the fields of conservation and development of natural resources are represented on the Council. It is a planning agency with the eventual task of developing a statewide master plan. It also keeps the agencies informed on what the others are doing.

STATE SOIL CONSERVATION BOARD: This agency has general supervision over soil conservation districts, which cover most of Texas. It is also the state agency that passes on proposals for watershed flood protection under Public Law 566. The State Soil Conservation Board has a small planning staff that supplements the staff of the U.S. Soil Conservation Service in the planning of watershed programs.

TEXAS AIR CONTROL BOARD: This agency has a nine-member board made up of the heads of the State Health Department, Texas Animal Health Commission, and the Texas Industrial Commission, plus six citizens named by the governor from specialized fields, such as industrial management, industrial medicine, cities, industrial engineering, and the public at large. This board has the authority to adopt rules and regulations designed to keep the air clean and to investigate complaints of air pollution.

TEXAS HIGHWAY DEPARTMENT: In its job of building and maintaining highways, this agency does much planning as well as construction. It is now engaged in making long-range transportation plans for the 21 major population centers in Texas.

TEXAS PARKS AND WILDLIFE COMMISSION: This agency is concerned with water pollution as it affects fish and wildlife, and it operates conservation programs in these fields. It also administers all state parks.

TEXAS RAILROAD COMMISSION: This agency governs the disposal of waste accompanying the production of oil and gas; it is engaged in a program to prevent contamination of fresh water supplies from oilfield brine.

TEXAS STATE DEPARTMENT OF HEALTH: This agency is concerned with air and water contamination as it affects public health and with solid-waste disposal. It is also the state's agency for administering the small-city and regional planning grants of the Dept. of Housing and Urban Development.

TEXAS WATER DEVELOPMENT BOARD: This agency is responsible for the state's water planning and development. It developed The Texas Water Plan. This agency administers the $200-million Water Development Bond Fund, which may be used to make loans to local units of government for water supply facilities or to buy storage space in local or federal reservoirs. The Board also conducts a year-round program of basic research into water problems, in cooperation with the U.S. Geological Survey and local water agencies.

TEXAS WATER POLLUTION CONTROL BOARD: This agency is composed of representatives

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of the Water Development Board, the Railroad Commission, the Parks and Wildlife Department, and the Health Department, plus representatives from agriculture, industry, and the public at large. The Board investigates complaints of water pollution and issues permits for the discharge of waste into or near fresh or salt water supplies of the state. It also coordinates the work of its member agencies.

TEXAS WATER RIGHTS COMMISSION: This three-member commission passes on applications for permits to build reservoirs and to use surface water. It also delineates underground water reservoirs preliminary to the creation of underground water conservation districts by residents of such ground water areas. It has the responsibility of policing its permits to see that construction plans are carried out, and it may cancel water-use permits for failure to use them. It also has the authority to create water control and improvement districts, to pass on the engineering soundness of the plans for these, and to inspect the construction work to see that the plans are followed. The Commission holds hearings and comments, on behalf of the State, on federal water projects suggested for Texas.

TEXAS WATER WELL DRILLERS BOARD: This agency licenses water well drillers and adopts rules to prevent water pollution.

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## TEXAS GEOGRAPHY

There is no such thing as Texas weather. Brownsville has had no measurable snow in 73 years, but Vega in the panhandle averages 24 inches of snow yearly; rainfall of 56 inches near the Louisiana border contrasts with less than 8 inches yearly in El Paso.

Geologically, Texas is a crossroads where four major physiographic subdivisions of North America come together: the Gulf Coastal Forested Plains, the Great Western Lower Plains, the Great Western High Plains, and the Rocky Mountain Region, which are subdivided according to the region's physical characteristics.

### Texas Coastal Plains

The Texas Coastal Plains are the westward extension of the coastal plain extending from the Atlantic to beyond the Rio Grande. The western limit of the coastal plains in Texas is the line of the Balcones Fault and Escarpment, which extends eastward from a point on the Rio Grande near Del Rio to the northwestern part of Bexar County. There it turns northeastward, intersecting the Colorado River immediately above Austin. North of Travis County the subterranean fault and surface line of hills become less distinct, with the fault breaking into several irregularly parallel lines that extend all the way to the Red River. The northern extension of the Balcones fault line is appromimately along the western margin of the Blackland Belt and is usually accepted as the boundary between lowland and upland Texas.

The Pine Belt, or Piney Woods, extends into Texas from the east 75 to 125 miles and from the Red River to within 25 miles of the Gulf Coast, covering some 16 million acres. This area receives from 40 to 60 inches of rain yearly; it is drained by many rivers, creeks, and bayous. There are some hardwood timbers among the pines; this area is the source of practically all of Texas' commercial timber production. The soils and climate are adaptable to production of a variety of fruit and vegetable crops. The development of pastures planted with improved grasses has increased cattle raising.

The main Post Oak Belt, bounded by the Pine Belt on the east, Blacklands on the west, and the Coastal Prairies on the south, covers approximately 10 million acres in East Central Texas. This is a secondary forest region, and has slightly less rainfall than the Pine Belt. Principal trees here are post oak, blackjack oak, and elm. The principal industries are diversified farming and livestock raising.

The Blackland Belt stretches from the Rio Grande to the Red River, lying just below the line of the Balcones Fault, varying in width from 15 to 70 miles, and covering about 11 million acres. In its native state it was largely a grassy plain, but it was developed rapidly as a farming region till the 1930's and was the principal cotton-producing area of Texas.

The Coastal Prairies extend westward along the coast from the Sabine River to the lower Rio Grande Valley, reaching inland 30 to 60 miles, covering about 10 million acres. The soil here is highly alluvial. The eastern half is covered with a heavy growth of grass; the western half, in more arid areas, is covered with short grass. The grass here supports the densest cattle population in Texas. Rice, grown under irrigation, is a major crop. Cotton and truck crops are also grown on the Coastal Prairie.

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The deep alluvial soils and distinctive economy cause the Lower Rio Grande Valley to be classified as a subregion of the Gulf Coastal Plains. Texas' greatest citrus-winter-vegetable area is here. Much of the acreage is irrigated from the Rio Grande, although dry-land farming is also practiced.

The Rio Grande Plain, or South Texas Plain, consisting of some 20 million acres of subtropical dryland vegetation, lies south of San Antonio between the Rio Grande and the Gulf Coast. While there is some dry-land farming, farmers in the Winter Garden area, centering in Dimmit and Zavala counties north of Laredo, irrigate from wells and springs to produce vegetables in late winter and early spring. The rainfall is generally between 20 and 25 inches annually. The hot summers bring heavy evaporation, so that cultivation without irrigation is limited.

## North Central (or Rolling) Plains

The North Central Plains of Texas are an extension of the Great Lower Plains that extend northward to the Canadian Border. The North Central Plains of Texas extend from the Blackland Belt on the east to the Cap Rock Escarpment on the west. From north to south they extend from the Red River to the Colorado.

The West Texas Rolling Plains (or prairies), a region of approximately 24 million acres of alternating woodlands and prairies, rise from east to west in altitude from 750 to 2,500 feet at the base of the Cap Rock Escarpment. Annual rainfall varies from about 30 inches on the east to 20 on the west. This area still has a large cattle-raising industry with many of the state's largest ranches. However, there is much level cultivable land.

Near the eastern edge of the North Central Plains is the Cross Timbers and Prairies region, which runs south from the Red River to the Colorado River and the Edwards Plateau. Here are approximately 16.5 million acres of alternating woodlands and prairies. It is a lime-stone-based area, usually treeless except along the numerous streams, and is adapted primarily to livestock raising and staple crop growing.

## Staked Plains or Great Plains

The Great High Plains that lie east of the Rocky Mountains extend into Northwest Texas and are known here as the Llano Estacado, Staked Plains, or High Plains. The Cap Rock Escarpment, an outstanding natural boundary line, is the dividing line between the High Plains and the lower Rolling Plains of West Texas. The Cap Rock Escarpment was formed by surface erosion. The High Plains, some 20 million treeless acres, rise gradually from about 2,700 feet on the east to more than 4,000 feet in spots along the New Mexican border. Because the level surface and porous soils, the relatively light rainfall flows into the numerous "playa" lakes or sinks into the ground to feed the great underground aquifer that is the source of water for the countless wells that irrigate the surface of the plains. Chiefly because of climate and the resultant agriculture, subdivisions are called the North Plains and South Plains. The North Plains, from Hale County north, have primarily wheat and grain sorghum farming. The South Plains, also a leading grain sorghum region, lead Texas in cotton production. Irrigation, centered around Lubbock and Plainview, waters much of the crop acreage.

Geographers usually consider that the Great Plains continue south-eastward from the



(continued)

Basic Goals (continued)

channel improvements and levees where necessary.

(14) Coordinate hurricane protection projects along the Gulf Coast with other actions in order to minimize the adverse effects of those projects.

(15) Support projects to provide drainage where feasible for land reclamation and where necessary for maintenance of agricultural productivity.

(16) Alleviate degradation of the state's fresh water resources from sources of naturally poor quality water, such as saline springs.

(17) Provide regional systems for the collection, treatment, and disposal of municipal sewage and industrial wastes that will be necessary to maintain the quality of the state's waters at requisite levels.

(18) Take other necessary measures for quality protection and management.

(19) Preserve and protect river reaches and springs of great scenic beauty or scientific value.

(20) Preserve and protect sites and natural phenomena of historic and archeological importance.

(21) Provide additional water-associated recreational opportunities.

(22) Integrate feasible navigation projects on Texas streams with other water development objectives, and provide necessary water requirements for navigation purposes.

(23) Provide for expanded upstream watershed programs for erosion control and land treatment, and additional floodwater-retarding structures and channel improvements.

(24) Generate electrical energy for pumping to the extent that energy cannot be made available from other sources at requisite prices.

(25) Develop hydroelectric power where feasible.

(26) Protect and enhance fish and wildlife resources to the maximum feasible extent.

(27) Provide increased financial assistance to qualified local agencies for necessary water facilities.

Basic source material: The Texas Water Plan, 1968.

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CONSENSUS QUESTIONS

Deadline December 15, 1970

1. Should Texas develop additional sources of water? If so, how? If not, why not?

2. Upon what uses should a Texas water plan be based--agricultural irrigation, recreation, hydro-electric power, municipal needs, industrial needs, coastal seafood production, navigation, etc?

3. Where should the responsibility and implementation lie for water planning for Texas?
Should a Texas water plan be a part of a state ecological master plan? Explain.

4. Who should pay for whatever water plan is adopted for Texas?
How should a water plan be financed--local, state, and federal tax money; revenue bonds, user fees, etc?

5. Are there any objections to the importation of out-of-state water?

Please comment on your own regional needs.

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## Governmental Recommendations

Some of the recommendations made by the TWD board are as follows:

To the Governor and the Texas Legislature:

1) Adopt a plan for financing under joint federal, state, and local financing.

2) Amend the Texas Water Development Fund Act to eliminate termination of investments in 1982 and remove present limitations concerning investments and maximum interest rate of 4%.

3) Empower the board with fuller authority to act in specific areas such as partnerships, contracts, or cooperative agreements with other governmental agencies.

4) Amend Article 7470 so it is less restrictive concerning beneficial uses of water.

5) Provide additional funds for various water projects, such as sewage collections and treatment systems, recreation, enhancement of fish and wildlife resources, etc.

6) Provide funds to local areas affected by an influx of workers during construction of new water facilities.

7) Authorize creation of master water districts.

8) Establish and fund a program to designate and preserve river reaches and springs of historic, oceanic, and scientific value.

To the President and the United States Congress:

1) Continue to fund the feasibility studies now being conducted on importation of surplus water from the Mississippi.

2) Pass legislation that would be necessary to implement the Texas Water Plan and related projects.

3) Amend provisions on acreage limitations so that economically productive farming units can be developed or sustained.

4) Establish policy for the protection of coastal bays and estuaries.

To Local Interests:

1) Take steps to form master districts covering the areas which desire to be supplied water for irrigation and other purposes under the Texas Water Plan.

2) Examine the desirability of forming regional organizations to minimize the cost of treating and distributing water.

3) Get local and regional authorization where necessary to participate in the TWP with federal and state agencies.

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Governmental Recommendations (continued)

4) Undertake immediately studies of the amounts and timing of supplemental water that will be needed, of the optimum timing for these supplements, and of the necessary legal and financial arrangements to be required for repayment.

5) Cooperate with federal and state agencies in planning for the TWP, collecting basic data and preparing feasibility reports.

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## ALTERNATIVES TO THE IMPORTATION OF WATER UNDER THE TEXAS WATER PLAN

The Texas Water Plan states categorically that the state's future water needs can be met only if water is imported from out-of-state sources. Critics of the Plan say that there are alternatives to importing water which should be considered. There is no one alternative to importing water from the Mississippi River that will provide an equal amount of water to the western regions of Texas. But a workable solution to the state's water problems--quality, availability, cost--will probably of necessity involve some or possibly all of the suggested alternatives listed below, whether or not water is imported.

### More Effective Water Management

1) Reclamation and recycling of water--the most obvious alternative. Research is needed as to less expensive means of accomplishing recycling.

2) Desalinization of brackish and sea water. If a less expensive desalting process could be developed, then the "alkali" waters in some areas of West Texas could be used for agriculture.

3) Conservation and salvage of existing water supplies.

4) Reduction of waste in agricultural, industrial, and home use of water.

5) Reduction of evapotranspiration (the natural process by which water is lost from a land area by the combined action of evaporation from free surfaces and transpiration by plants. In some areas of the western United States, the evapotranspiration rate is greater than the average annual rainfall.

6) Underground storage. (The evaporation rate of underground storage is significantly lower than the evaporation rate of surface storage.)

7) Eradication and control of phreatophytes (woody plants with long roots, such as saltcedar, cottonwood, and willow, that require large amounts of water), with substitution of plants that require less water but also provide adequate cover for wildlife.

8) More efficient use of local water through improved canals, pipework, etc.

9) Reuse of "tail" water. As water leaves a field, it can be contained in ponds for reuse.

10) Use of playas (the flat bottoms of desert basins having interior drainage that become shallow lakes after a rain) as holding ponds for water, which will be pumped back for use in irrigation.

11) Use of holding lakes to capture excess runoff during Texas "gully washers." By capturing rainfall where it falls, it can be stored for future use.

12) Flood-plain management. Leave flood plains undeveloped and limit construction to areas above the flood line. Where there is already construction relocate it.

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Alternative to the Importation of Water under Texas Water Plan (continued)

13) Elimination of errors in stream-flow estimates for more efficient use of water.

14) Reconstruction of restroom facilities in public parks to eliminate pollution of water resources. (At the Water Quality Board hearing in San Antonio in December 1969, the citizens of Uvalde claimed that the outhouses in Garner State Park polluted the Edwards Underground Aquifer more than all of the septic tanks in use in the area at the time.)

15) Use of natural fertilizers and biological insect control to reduce the pollution of Texas water. The screw-worm-control program is an excellent example of such a program. (See Newsweek, June 8, 1970, p. 107, for article on biological insect control.)

16) Terracing in semi-arid areas for effective use of land and water.

17) The dam controversy. Clair F. Achenbach suggests using a series of dams in West Texas to store runoff water: small dams in small streams, arroyas, and dry stream beds, to be paid for by individual landowners; secondary dams farther downstream; and large dams every ten miles on the major rivers. Banks of all streams and lakes should be protected by trees and vegetation to maintain a natural balance of nature. Edward Fritz, on the other hand, opposes further use of large dams because they will affect the normal flow of water into the Gulf, thus threatening the bay fishing industries. Fritz also proposes protection of river banks through plant and tree growth. Both men are Dallas attorneys involved in conservation.

## Technological Possibilities

18) Weather modification to augment rainfall. Cloud seeding is the only method currently known, but others could be developed.

19) Search for unconventional solutions to water management.

20) Development of means of reducing water requirement for crops (such as developing strains that thrive on less water) and establishment of better methods c water application (such as reducing the evaporation rate in irrigation).

21) Development of sources of power generation other than water or fossil fuels, and reduction of line-loss of power, for increased efficiency.

22) Investigation of causes of natural climatic changes and fluctuations.

23) Practical plans for periods of low water flow or drought.

24) Exploration of management of snow melt.

25) Examination of industrial use of water for cooling, to see if other methods (such as air cooling or refrigeration) could diminish industrial water needs.

26) Refinement of water analysis and planning methods at all levels of government.

27) Consideration of implementing only the Coastal-Division portion of the Texas Water Plan. The cost of water imported to the Valley would be less than half the

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cost of water imported to the High Plains via the proposed Trans-Texas canal system, and less water per acre would be needed for irrigation because of the Valley's lower rate of evaporation.

28) Development of crops that can be grown with brackish, substandard, or salty water. (The Israelis have developed such crops for land close to the ocean.)

29) Use of coastal-sand "greenhouses" to increase agricultural production. Plastic greenhouses that use water desalinated by diesel power produce plants that require one-tenth the normal amount of water, mature rapidly, and have greater yields. In these greenhouses, it costs about 10 cents a pound to produce vegetables.

30) Use of aquiculture (systematic development of fish and oyster "farms") in coastal water for high quality protein production. (Aquiculture is already in use in parts of the Orient.)

31) Determination of the effects of air pollution on weather (temperature inversions, etc.), which could possibly affect rainfall in various regions.

## Economic and Social Solutions

32) Changes in land use, including finding uses for desert areas other than agriculture based on irrigation.

33) Curtailment of water irrigation use in arid and semi-arid regions as the human need for water in these regions increases.

34) Containment of economic growth. Keep economic growth within the limits of in-state water supply, using technology and conservation.

35) Curbing of the influx of population to areas of critical water supply.

36) Relocation of families from low-water-availability areas to high-water-availability areas.

37) Stabilization of population growth, so that the earth's supply of fresh water remains adequate for human needs.

38) Redistribution of national income (area income, not personal income), so that no area suffers loss of income from growth because of water limits, water availability at present being a major contributor to the economic health of a region.

39) Public education for water conservation in all areas (home, agriculture, and industry).

40) Setting of water priorities (natural setting vs. reservoirs, recreational use vs. aesthetics, etc.).

41) Encouragement of city growth away from natural aquifers. (An example of poor planning in this regard is the location of the medical school and the site of the four-year state college in San Antonio, which have encouraged city growth

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over the Edwards Aquifer, thereby threatening the city water supply with pollution.)

42) Political cooperation between regions, states, and nations concerning water use, sharing, and quality.

43) Use of means other than water-based ones to promote economic growth for an area--i.e., tourism, non-water-consuming industries (electronics, aerospace), education, governmental services, health services. Provide balanced programs that promote non-agricultural growth.

44) Economic incentives to encourage water conservation, such as a discount to domestic customers who install water-saving devices in their homes.

45) Shifting of farmers' goals from per-acre yield to per-acre-foot-of-water yield, to promote efficient water use, to prevent canal evaporation loss, over-watering, etc.

46) Elimination of soil bank restrictions. Utilize fully those fertile areas where water is readily available, rather than import water to arid areas.

47) Restoration of West Texas grasslands. Instead of importing water to promote agriculture, restore the grasslands and use them for grazing livestock.

48) Examination of the validity of promoting the family farm concept. At present, family farms get water at the cheapest rates but use much water for irrigation.

49) Reduction in home use of water. Production of washers and dishwashers that require less water than current models. Extended use of desert lawns or rock gardens in landscaping, to reduce need for watering. (It is estimated that lawn watering accounts for 60 per cent of the water used in the home.) Watering of lawns to be done at night, when less water is lost through evaporation.

50) Reduction of the "cultural" lag in water resources between technological advances and legislation/social change.

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Basic Source Material for Alternatives:

National Academy of Sciences, Committee on Water of the National Research Council. "Water and Choice in the Colorado Basin: An Example of Alternatives in Water Management." Washington, D.C. 1968. Publication #1689.

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Leon W. Hill, Regional Director, Region 5, Bureau of Reclamation. "Before the 13th Annual Water for Texas Conference, Texas A & M. November, 1968."

Mrs. Walter E. Caine, Former Texas Water Resources Chairman. "Western States Water Conference, February, 1969." League of Women Voters of Texas.

League of Women Voters of the United States. "Western Water: Challenges and Choices." February, 1969.

Edward C. Fritz, Chairman, Texas Committee on Natural Resources (505 North Evray, Dallas, Texas). Statement before the Committee on Appropriations, Public Works Committee. ND (sometime in 1969).

"California Voter." April, 1969.

Clair F. Achenbach. "Water for West Texas." Davis Building, Dallas, Texas 75202.

Edward C. Fritz. "We Need a Moratorium on Dams."

Dr. M. P. Shannon, "Some Facts and Speculations about the Texas Water Plan." Department of Zoology, University of Texas, Austin, Texas 78712.

Bernard Goldberg. Notes for a speech presented to the Gulf Coast Regional League of Women Voters, July 23, 1969.

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# ENVIRONMENTAL QUALITY
# STATE RELATED MATERIALS
# LEADERS GUIDE

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LEAGUE OF WOMEN VOTERS
OF TEXAS

October 1970

LWV of Texas
December 1975
State Board

TO: State Board
FROM: Becky Moon
RE: Statement on Behalf of LWV-T & LWV-Houston:
House of Representative Committee on Judicial Affairs 12/6/75

My name is Becky Moon. I am Air Quality Chairman for the League of Women Voters of Texas. The following comments are made on behalf of the League of Women Voters of Texas and the League of Women Voters of Houston.

We commend the Committee on Judicial Affairs on this effort to gather information concerning the enforcement of state environmental protection laws. The enforcement of these laws is particularly vital to those citizens of Texas that live in polluted areas of this state, such as Houston. Houston is the fastest growing metropolitan area in the country today. It is an enormous sprawling urban center with boundless zest and a vigorous economy. The management of air and water quality problems will determine whether this area will be a healthy place to live in the future or whether Houstonians will be going to the banks with their gas masks on,a prophecy which was departed to me not long ago by a prominent citizen of Houston.

This committee has asked that we focus on "Houston's pollution control experience." The present status of Houston's air quality is indicative of what has been done. Houston has been designated as an Air Quality Maintenance Area for photochemical oxidants and particulates by the Environmental Protection Agency. 52% of the monitoring stations in Houston reported violations of the federal ambient air quality standard for particulates in 1974. We are violating the standard, which was set to protect health, yet new industrial sources emitting particulates are continually being given construction permits. When we think of other pollutants we find that the maximum 24 hour average recorded value for sulfur dioxide has consistently increased over the years approaching the allowable 24 hour average at several ship channel stations. As this area converts from natural gas to coal and oil, in response to the energy situation, the sulfur dioxide problem will become critical unless air quality maintenance planning and strict enforcement is implemented.

Health effects of pollution are uppermost in the minds of citizens faced with lung cancer rates which rank among the highest in the nation. According to the Health, Education, and Welfare publication, Vital Statistics of the U.S., lung cancer rates in this area rose 260% between 1952 and 1972.

The mass media has provided interested citizens with a picture of enforcement activities of the Texas Water Quality Board. Historically, this board has demonstrated a reluctance to take legal action against violators of the Texas Water Quality Act. The seven members-none of whom are elected to their position-and who devote a relatively small percentage of their time to the work of the Texas Water Quality Board-have prevented the Attorney General from enforcing the laws designed to protect Texans from the hazards of water pollution. A recent report entitled, The Enforcement of the Texas Water Quality Act by the Texas Water Quality Board, delineates this problem. The present status of water quality is reflected in compliance rates. A comparison of present compliance rates to 1972 rates shows insignificant improvement. Indeed, some river segments have shown a decrease in compliance rates. Numerically, 62% or 300 water pollution sources are substantially non-compliant with the terms of

their permits 50% or more of the time. The Texas Water Quality Board has brought legal actions against only 27 of these major sources of water pollution. No action has been initiated on 100 major sources of water pollution.

The mass media has also provided interested citizens with a picture of enforcement activities of the Texas Air Control Board. We believe that the Texas Air Control Board has done a responsible job in Region VII which includes Houston. Enforcement activity involving industries with significant violations have resulted in approximately 45 lawsuits. How is one to discover what has not been done? In my capacity as air quality chairman, I have never come across a list delineating the number of suits recommended by various regional offices of the Texas Air Control Board which were never acted upon. I urge this committee to request this list as well as the reasons that the various suits were never acted upon.

Most of the Texas Air Control Board suits were initiated under the authority of the Executive Director, Charles Barden. This past May, the Texas Air Control Board, composed of nine governor appointees, decided that the Executive Director must obtain board approval before initiating any pollution suit. A flow chart of the steps necessary in developing an air pollution suit delineates the long process. An excessively long process such as this allows for increased possibility of abuse of discretion by individuals which are in no way accountable to the electorate. At a functional level, the Attorney General is not involved in close negotiations in a day to day relationship with representatives of industry. In his independent role he is better able to evaluate a case based solely on the merits of the evidence.

To safeguard enforcement of environmental laws the Attorney General by virtue of his elected position and the duties therein should hold the ultimate responsibility for the enforcement of environmental laws as well. The Attorney General, if given this power, is not usurping the rights which have been vested in the Texas Air Control Board and the Texas Water Quality Board but rather amplifying their enforcement powers. Enforcement of laws derived for the protection of the health and welfare is vital to the residents of Texas. This enforcement power would provide a system of checks and balances, a vital element in the democratic form of government.

Based on the above reasons, the League of Women Voters of Texas and the League of Women Voters of Houston urge the committee to report favorably on this piece of legislation. The creation of an administrative check and balance will provide more adequate protection of the health and welfare of the citizens of Houston and Texas.

ENVIRONMENTAL QUALITY: Evaluation of measures to achieve and maintain a physical environment beneficial to life, with emphasis on the relationship of population growth and development. Support of national policies and procedures which promote comprehensive long-range planning for conservation and development of water resources and improvement of water quality.

Hoy, estudiamos la cualidad de la aire.
(Today, we are studying air quality.)

NATIONAL LEVEL: We have the June National Board Report, League water files, magazines, books, and news articles about this world problem.

A Leaders' Guide, consensus questions, and a Facts and Issues have been received from the National office.

An Air Pollution Leadership Workshop and EQ Conference (cooperative effort of L.W.V.U.S. Education Fund and National Air Pollution Control Administration was held August 4-7th at Airlie House near Washington, D.C. Mrs. Jack Wackerbarth ably represented Texas. Her report is included here.

STATE LEVEL: Materials included are:

Texas Today

1. Some Thoughts to Consider and Possible Answers.
2. Enabling Legislation



(continued)

Environmental Quality - Mrs. Irwin Brand (continued)

3. A Point of View
4. NAPCA Air Quality Control Regions & Status Report
5. More Information and More Bibliography
6. As Others See the Role of the LWV

Texas Tomorrow

1. Information -- coming later
2. Questions to Provoke Thought
3. More Quotes to Provoke Thought

LOCAL LEVEL: Questions, questions, and questions to raise more QUESTIONS!

EQ is not only affected by the three levels of government--it stretches out horizontally as well. On "this island, Earth," separating the physical environment beneficial to life into individual subject areas is becoming increasingly difficult.

We have studied water in the past on the national level and are doing so now on the state level. Leagues all over the nation began concentrating on air pollution this year.

You will want to start reading about and gathering data on environmental problems--you can't help but do so as we are surrounded by ecological discussions.

WATER ⇄ AIR ⇄ SOLID WASTE ⇄ CHEMICAL ADDITIVES ⇄ NOISE ⇄ ETC.

(How about PAPER? Now is the time to interest a friend or several friends in League membership since you'll need to pass along at least part of your reading materials to someone!)

TEXAS TODAY

1. Some Thoughts to Consider

The Texas Air Control Board has ruled against open burning. This may have created another problem. What do we do with trash? And--there are the disposal problems created by man-made fabrics or "durable" goods which just don't rot--returning their substance to the Good Earth. What about those 50,000 abandoned automobiles removed from the streets of New York in 1968? How will the air be affected if high towers are erected to dissipate thermal pollution so that the temperature of the river and ocean waters is not raised? Or perhaps we should be considering some way to use thermal wastes productively.

We do have many questions to answer and so often each answer only brings up a new question.

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Possible Answers

2. Enabling Legislation

The first Clean Air Act of Texas was passed in 1965. It was amended in 1967 and again in 1969.

The law provides for the establishment of the Texas Air Control Board as "the principal authority in the state in matters relative to the quality of the air resources in the state and for setting standards, criteria, levels and emission limits for air content and pollution control." The Texas Air Control Board is given authority to adopt regulations which provide specific guidelines for industry. municipalities, and the general public in planning corrective or preventive actions to control air pollution.

THE TEXAS AIR CONTROL BOARD (We'll be studying this board under the Texas Executive item as well.)

Board membership, Qualifications, and Administration

All nine members of the TACB are appointed by the governor to serve for six years. Their terms are staggered.

NOTE: Three new members are expected to be appointed in September 1971.)

Board member qualifications are as follows: an engineer; a physician; a manager of a private manufacturing or industrial concern for 10 years; an individual with at least 10 years experience in the field of city government; an agricultural engineer; and four other persons appointed from the general public.

The Executive Secretary must be an employee of the State Department of Health and is the Board's Administrator.

(NOTE: As an employee of the State Department of Health, Mr. Charles Barden, Executive Secretary and Administrator for the TACB, is required to perform many functions in addition to his TACB duties.)

Purpose

The purpose of the TACB is to safeguard the air resources of the state from pollution by controlling or abating air pollution and emissions of air contaminants consistent with the protection of health, general welfare and physical property of the people, including the esthetic enjoyment of the air resources by the people and the maintenance of adequate visibility.

(NOTE: The "Purpose" paragraph was amended in 1969 and indicated a change of viewpoint. In 1967, it read "operation of existing industries and the economic development of the state 'rather than' esthetic enjoyment of the air resources by the people and the maintenance of adequate visibility.")

Powers and Duties

The Board is charged with the following responsibilities:

1. To control air pollution by all practical and feasible methods.



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2. To prepare a comprehensive plan of the air resources of the state.

The Board must consider the following factors when making orders:

1. Protection of the health and physical property of the people.
2. The social and economic value of the source.
3. The question of priority and location in the area involved.
4. The technical and economic factors involved.

The Board is permitted to do the following:

1. Require polluters to furnish information necessary to develop an inventory of the emissions of air contaminants of the state.
2. Enter any public or private property, except homes, to inspect and investigate pollution sources.
3. Require polluters to monitor their emissions and furnish their records to the Board.
4. File suits to compel compliance with the Air Control Regulations.
5. Make regulations to control air pollution. The changing or making of regulations must be done in public hearings.
6. Regulate pollution outside the property of the polluter--not within that property.
7. Grant variances to give time to comply.
8. Order a plant to either close down or reduce emissions immediately if it can be shown that there is a danger to human health or safety.
9. Designate air quality control regions.

Two limitations have been placed on the TACB. The Board can have no say about the quality of air within private buildings and no authority in matters subject to the jurisdiction of the Texas Radiation Control Agency or over any place licensed by the Atomic Energy Commission.

The Texas Air Control Board has set regulations controlling air pollution from smoke and suspended particulates, outdoor burning, sulfur compounds, motor vehicles, and toxic materials.

These establish ambient air* standards, or goals, which describe the level of air quality necessary to prevent adverse affects of air pollution.

The regulations also contain emission standards which establish definite limits on the various emissions to the atmosphere.

(NOTE: Be sure that your members understand the difference between ambient air standards and emission standards and why the ambient air standards in an air control region would remain the same while the emission standards could vary.)

Regulation I: Control of Air Pollution from smoke; visible emissions and suspended particulate matter.

Smoke density is controlled and must be less than Ringelmann No. 2 or its equivalent except for certain circumstances. The Ringelmann method of determining air pollution, named after a Frenchman who invented the system, places smokestack emissions in five graduated

*Ambient air is outdoor air; more specifically, the troposphere (the air around us).

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categories. Prepared charts simulate various smoke densities by presenting different percentages of black. A Ringelmann No. 1 is equivalent to 20% black; No. 2 is 40% black; and a No. 5 is 100% black. The chart is used comparitively for measuring the opacity of smoke coming from stacks or other sources.

Established ambient air standards for suspended particulates vary from 125 micrograms to 200 micrograms of suspended particulates per cubic meter of air depending upon the land use designation. Emission limits at the property line vary from 100 micrograms to 175 micrograms of suspended particulates per cubic meter of air.

Regulation II: Control of Air Pollution from outdoor burning.

The outdoor burning of waste material or other combustible material is prohibited. There are exceptions, i.e., burning for forest or marsh lands management, burning for game management, land clearing and right-of-way maintenance, fires for fire-fighting training, garbage burning for cities of less than 5,000 population, etc.

Permissible burning is controlled in the regulation by specific provisions which must be met before burning takes place.

Regulation III: Control of Air Pollution from sulfur compounds.

Only three sulfur compounds are regulated at present: sulfur dioxide, sulfuric acid and hydrogen sulfide. Others may be added in the future.

Ambient air standards permit an average of:

0.2 parts per million sulfur dioxide/ 24 hours
20 micrograms of sulfuric acid/ cubic meter of air/ 24 hours
0.08 parts per million hydrogen sulfide/ 30 minutes.

Regulation IV: Control of Air Pollution from motor vehicles.

The regulation supplements the federal rule requiring the use and maintenance of control devices for exhaust and crankcase emissions starting with 1968 model automobiles.

Regulation V: Control of Air Pollution from toxic materials.

At present this regulation covers fluoride and beryllium. It will be supplemented by additional toxic substances emission regulation.

Ambient air quality standards are:

1 part per billion inorganic fluoride/ 30 days
0.01 micrograms beryllium/ cubic meter of air/ 24 hours

STATUS OF LOCAL ORDINANCES ON AIR POLLUTION UNDER THIS ACT:

An incorporated city or town may enact and enforce any air pollution control ordinance as long as it is consistent with the provisions of the Act and the rules, regulations

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or orders of the Board.

The following was quoted in the La Marque Air Control Board Information Bulletin:

"The basic intent of the law is not to prosecute violators, but to achieve compliance to established standards. Air pollution control law, then, takes into account 1) the technical nature of pollution, and 2) the fact that actual control is achieved only by cooperation among the community, industires, and citizens."

PROCEDURAL QUESTIONS

1. The hearing in Dallas was conducted by just one examiner. Is this general practice? Why?

The Act states under Section 3.16 Delegation of Hearing Powers, (a) The Board may delegate the authority to hold hearings called by the Board to (1) one or more members; (2) the executive secretary; (3) one or more employees of the Board; or (4) with the concurrence of the state commissioner of health; one or more employees of the State Department of Health.

The entire verbal exchange at such a hearing is taped. Those presenting testimony are supposed to submit 15 copies of written testimony prior to the hearing. All testimony must be entered into the record of the hearing in such a way that the public is aware of it even if it is not given orally.

The Report of the Committee for the Study of Land Use and Environmental Control to the Sixty-First Legislature (January 1969) page 42, speaks to the last question. "It is noted that the Texas Air Control Board is authorized to establish a hearing examiner system to perform the evidence taking function of the Board, thus freeing them to devote more time at their meetings to policy development and over-all direction of the Board's activities. As the Committee has found in connection with the hearing examiner system used by the Texas Water Quality Board, considerable benefit is derived by the agency from the holding of hearings on matters falling within the agency's purview. This is particularly so when the hearing can be held in the area in which the subject of the hearing is located, and further serves to educate and inform a larger portion of the citizenry than is possible if all of the business is conducted before the full Board sitting at Austin. The Committee was gratified to learn that the groundwork is being laid for the institution of a hearing examiner system for the Board, and that, in fact, several hearings have been held by the agency in various parts of the state."

2. What about variances?

The Act, in Section 3.21, provides that the Board may grant individual variance beyond the limitations prescribed "whenever it is found, upon presentation of adequate proof, that compliance with any provision of this Act, or any rule or regulation of the Board, will result in an arbitrary and unreasonable taking of property, or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people."

In determining under what conditions and to what extent a variance may be granted, "the Board shall give due recognition to the progress which the person requesting

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the variance has made in controlling or preventing air pollution."

The Act, as amended in 1969, specifies a number of conditions based on the intent and purpose of the Act, namely to protect health and property. The holder of a variance shall comply to the abatement of emissions of air contaminates over a stated period of time, shall submit periodic reports on progress if required to do so by the Board, and shall comply to the specified character and level of emissions which may be made under the variance. After a public hearing, the Board may require the holder of a variance to conform to new or additional conditions.

The Act spells out that any person seeking a variance has to file a petition for such. The Board must notify local officials not less than 20 days before the date of consideration.

Failure of the Board to take action within 120 days after receipt of a petition for variance indicates a denial.

The Report of the Committee for the Study of Land Use and Environmental Control to the Sixty-First Legislature (January 1969) page 42, has this to say. "one of the principal and most useful administrative tools available to the Board in administering the State's air pollution control program is the variance. A person who has a legitimate basis for extending this time to correct an emission problem may petition the Board for a variance, so that he may continue to operate while he takes steps to provide necessary control measures. After careful review of the petition and after notice to and receipt of comments from local officials in the affected area, the Board determines whether or not the variance shall be granted. A variance is actually a compliance order specifying the method by and the time within which a party making emissions in excess of the limits required by the Act or the regulations of the Board must bring his operation into compliance. In this sense, it is an administrative enforcement method."

3. How does the Board receive complaints?

Under Procedural Rules adopted by the Board, any person may write to the Executive Secretary giving location or source of the condition or violation, name and address of the party controlling location or source, if known, and sufficient facts to acquaint the Executive Secretary with the condition. The written report "shall also be signed by the reporting party." In cases of emergency the report may be verbal but should promptly be submitted in writing.

The Executive Secretary informs the Board of all reports submitted and the disposition thereof. In addition, the Executive Secretary may cause investigations of all reports and any other matters within the jurisdiction of the Board.

4. What does the Board do to process complaints?

If an investigation discloses a violation, the Board can file a formal complaint on the violator and may order a public hearing to be held.

If the violation relates to a variance granted by the Board, the Board may revoke the variance for good cause shown, after a public hearing, in the event the holder failed to comply with the terms and conditions of the variance.

The Board may initiate proceedings to revoke or amend a variance because of



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