

Nominee wants tougher pollution panel

Environmental appointee criticizes state's handling of Creedmoor waste case

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DATE: May 10, 2004

PUBLICATION: Austin American-Statesman (TX)

SECTION: Metro/State

Even as state senators emphatically challenged Texas environmental commission nominee Larry Soward to explain the documented enforcement lapses by the agency he's been tapped to help lead, no lawmaker came close to questioning Soward's independence or integrity. "He's always been a straight shooter on every (state) agency he's been in," Sen. Gonzalo Barrientos, D-Austin, said after hearing Soward's answers to some of the most pointed questions of his confirmation hearing last week.

The hearing centered on what Soward will do to improve the agency's efficiency and the enforcement of pollution rules. Barrientos and Sen. Mike Jackson, R-LaPorte, wanted answers about one case in particular.

Why, they asked, hasn't the environmental commission penalized Penske Truck Leasing Co. more than six years after state inspectors determined that the company was responsible for improperly sending hazardous waste to a Creedmoor municipal waste landfill? And, more important, how is it possible that the commission hasn't required Penske, or the material's original owner, Zenith Electronics Corp., to properly dispose of the lead-laden waste?

Soward, appointed by Gov. Rick Perry last fall as one of three members of the Texas Commission on Environmental Quality, lived up to his reputation for not mincing words during his 26 years at various state agencies.

"It's unexplainable, inexcusable and unacceptable that a situation would go that period of time with that amount of unresponsiveness and indecisiveness," said Soward, an Austin lawyer who in the mid-1980s was executive director of the Texas Water Commission.

"It could have been, I believe, very readily, very reasonably, and very effectively dealt with many years ago."

Soward has already shown himself to be independent on other high-profile issues at the commission, on which he's been serving through a recess appointment. When state appellate courts ruled that the agency was not following its own regulations about including sufficiently detailed operating requirements in landfill permits, agency officials, with the blessing of the prior commission, started drafting rules deleting requirements for those details.

In March, Soward joined commission Chairman Kathleen White in rejecting that change, which critics said would have made it more difficult for the enforcement staff to hold bad landfills accountable.

Last week Soward said the commission should take action now to resolve the Creedmoor case, in which the landfill operator, Texas Disposal Systems, has sued Penske and Zenith Electronics Corp. to require proper disposal and recover its expenses for storing the waste and keeping the lead from polluting groundwater.

Soward's answers appeared to satisfy the senators on the nominations committee, who unanimously recommended approval of his appointment to a six-year term overseeing an agency with 3,039 employees. His nomination will go to the full Senate as soon as today.

"I hope the agency follows your good guidance there," said Barrientos, who in an April 30 letter had expressed dismay about the agency management's continued resistance to acting.

"You know in the area which I represent," Barrientos told Soward, "there has been a persistent opinion that the commission does a poor job of enforcement and (is) generally too friendly with industry."

Texas Disposal case

The recent interest shown by Soward and other commissioners in the Texas Disposal case may have already had an impact.

After Texas Disposal owner Bob Gregory publicly chastised the agency in newspaper articles last month, agency officials said in an April 27 letter to Barrientos that they planned to investigate Texas Disposal and to spend \$50,000 to retest and possibly reclassify the 1,600 tons of waste as nonhazardous.

On Thursday afternoon, two days after Soward's hearing, Texas Disposal officials met with top commission staff members to review the case's history.

Gregory said he believed the agency officials were receptive to evidence, including agency reports from 1997-98, that he thinks shows his landfill -- which received the governor's award for environmental excellence in 2002 -- did nothing wrong.

The confirmation hearing and its scrutiny of agency performance comes five months after the state auditor issued a report critical of the agency's enforcement process for failing to deter polluters.

Shortly before the audit was publicly released, the agency's then-executive director, Margaret Hoffman, launched a comprehensive review of those programs and rules that is still being done.

'Different thinking'

Soward pledged last week to work to improve the agency's efficiency and effectiveness, and he believes that will require nothing less than a change of culture at the agency.

"We need to have different thinking . . . a change of attitude," he said. "We cannot take years to adopt rules; we cannot take years to issue permits; we cannot take years to enforce the law and our regulations."

The commission is launching a search for an executive director to run the day-to-day operations. Both Soward and White have signaled that they want to be more involved in major staff policy decisions than some past commissioners, who focused on adopting rules and approving the staff's enforcement recommendations.

Industry and environmental groups have welcomed Soward's appointment based on his knowledge of environmental law and regulations and a reputation for being even-handed.

During his tenure at the water commission, a predecessor of the current environmental commission, the agency instituted stricter water pollution rules and took action to reduce sewage discharge violations by several large cities, including Austin, Dallas and Houston.

"The environmental community would say this agency is less environmentally protective, more industry friendly, than it was under Soward when he was there in the mid-1980s," Austin environmental lawyer Rick Lowerre said at the time of Soward's appointment.

Business leaders also have expressed support for more consistent enforcement because failing to sufficiently punish and deter chronic polluters gives them an economic advantage over responsible businesses that try to comply with pollution laws.

Healthy waterways

Soward left the water commission in 1987 after locking horns with then-Commissioner Ralph Roming, who contended that Soward had failed to consult the commissioners on significant actions such as intervening in a federal water rights hearing on behalf of the Guadalupe-Blanco River Authority.

The authority was challenging a requirement that it discharge additional water for recreation, fish and wildlife downstream.

During the confirmation hearing, however, Soward said he believes maintaining adequate water levels in the state's rivers, which also assure the health of the coastal estuaries dependent on the inflow of fresh water, is critical to preserving the environmental quality that fosters the state's economic growth. The water needs of cities and industry must be balanced with the water needs of healthy waterways, he said.

"Maintaining bays and estuaries and fresh water inflows is just as important as pollution control," Soward said.

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