

**Transcript from the May 4, 2004 Texas Senate Nominations Committee Hearing
Pertaining to the Confirmation of Mr. Larry Soward, as a Commissioner of the
Texas Commission on Environmental Quality**

Senator Lindsay- Ok Texas Commission on Environmental Quality, Larry Soward

Senator Lindsay- Ok Senator Barrientos I think that Mr. Soward is your constituent.

Senator Barrientos- Mr. Chairman, thank you members Larry Soward is a Texan originally I believe from Carrollton. He came here to the University of Texas to obtain both his undergraduate degree and his law degree. And soon after that began his career with the state of Texas. He was a hearings examiner, general counsel and then executive director of the Texas Water Commission. And that was a predecessor to the agency, which brought him here today. So he served his state, our state through out his career and Deputy Director of the PUC, counsel and deputy commissioner of the Department of Agriculture, Deputy Land Commissioner and Chief Clerk for the General Land Office, and Executive Assistant in the Lieutenant Governor's, most recently in the Lieutenant Governor's Office. So he is presently serving in his current position on the Commission on Environmental Quality, started last fall with them. So with that Larry Soward thanks for serving the people of Texas for a good number of years.

Larry Soward- Thank you Sir.

Senator Barrientos- And I commend him to you members.

Senator Lindsay- Thanks Larry do you have an opening statement that you would like to make?

Larry Soward- Yes, Mr. Chairman very briefly. Good afternoon Mr. Chairman and Senators and thank you Senator Barrientos for the introduction. As Senator Barrientos indicated even though I am the newest Commissioner at the TCEQ I am not new to the agency. As he indicated, over 28 years ago, right out of law school, I started with what was then called the Texas Water Quality Board, which is one of the many predecessor agencies to the TCEQ. And I spent over twelve years with that agency having the privilege and honor to serve in a number of capacities, as the Senator enumerated, culminating in being the Executive Director of that agency. And I dreamed of one day being able to return to that agency as one of its Commissioners. And this past October, Governor Perry made that professional dream come true. And I am deeply humbled and truly honored that he has given me the opportunity to continue my service to the state of Texas and the people of Texas through this appointment. The TCEQ is and certainly will be at the forefront of almost every major issue facing Texas today and in the future. People, businesses, and industries will come to Texas and make Texas their home in large part because of the great quality of life that we enjoy here in this great state. Our abundant human and natural resources and our environment are integral features of strong economic development and they must be protected and fostered if Texas economy is to stay strong and growing. Economic development and growth can and must be balanced

with protection of our environment and conservation of our natural resources. At TCEQ we have the challenge, and the responsibility, and the opportunity to achieve the appropriate balance between economic development and growth and protection of our environment and our natural resources. The TCEQ mission statement says that we will strive to protect our state's human and natural resources consistent with sustainable economic development. Senators I want us to do better than strive. I want us to accomplish that goal and to succeed in that goal. And I stand before you today unequivocally committed to insuring that we do just that. In my six months at the TCEQ I have seen many opportunities for improvement. I will readily admit that we need to and we can and we must do better on many fronts. If Texas is going to remain competitive in the national and indeed the global market place, the TCEQ must streamline its processes. We must more effectively and efficiently utilize our funding and our staffing resources and we must insure that all our processes and programs are timely, fair, reasonable and effective. 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. We must be decisive, effective, and responsive. The Texas environment deserves nothing less. The people of Texas deserve nothing less. Let me conclude by saying that I am totally committed to facing and meeting all the challenges placed before us at the TCEQ during my tenure as commissioner, and aggressively and meaningfully pursuing every opportunity for improvement and positive change. I want to thank you for giving me the opportunity to appear before you today and I will be happy to answer any questions that you might have for me.

Senator Lindsay- Do you want to start again?

Senator Barreintos- OK. (Laughs)

Senator Lindsay- Senator Barrientos.

Senator Barrientos- Members just, please, three areas briefly I can make. Mr. Soward, with regards to the last statement on doing the job. You know in the area, which I represent, there has been persistent opinion that the commission does a poor job of enforcement and generally to friendly with the industry. There is an example that has been in the news lately, about six years ago that accident on IH35 that generated hazardous waste is subject to a lawsuit and I am not an attorney so if I am asking certain questions I am sure you will not let me delve any more into that.

Larry Soward- Sure.

Senator Barrientos- In 1997 TCEQ asked one of the parties to confirm the proper disposal of hazardous waste generated at the scene. My understanding is that the agency never followed up. Indeed since that time the agency has identified failures on the part of the waste generators, violations in state law, but there has been no enforcement. Why not? It looks like that this was an instance where the agency punted to the obligation or its obligations to private parties or the court systems. What can you tell me about avoiding that kind of situation in the future?

Larry Soward-Commissioners excuse me, Senator, the facts that you have outlined, even though very general indicate a situation which I will be very candid with you and I think you know me to be a very candid, no nonsense person. Its unexplainable, inexcusable and unacceptable that a situation would go that period of time with that amount of unresponsiveness and indecisiveness when it could have been, I believe, very readily, very reasonably, and very effectively dealt with many years ago. I can't answer for what might have been the thinking, the mind set prior to my arriving on the scene but I will tell you I believe there is a very straight forward, reasonable, and effective approach to dealing not only with that issue, but similar issues and that's what I am committed to do and behalf of the agency and that is what the agency needs to commit to do in all such situations. We are there to protect the human health of our citizens and the environment of this state and we need to do that effectively, responsibly, and timely and taking years to act on some of these things does not accomplish that.

Senator Barrientos- I hope the agency follows your good guidance there.

Senator Barrientos- In the area of early action compacts you know that here in Central Texas the business environmental political communities in the five county area worked hard to produce that compact.

Larry Soward- Yes Sir.

Senator Barrientos- Now that we are aware of the concerns that you have with enforceability and the resources required to adequately fund and enforce clean air programs. I would like to know what you think can be done to insure the effort is a success?

Larry Soward- Senator, I think that the major thing that we need to concentrate on now is to continue discussions and dialogue and thinking with all the parties involved now that it's officially at the commission and the commissioners are involved. Where we have questions or where we have issues about how some of the particular control measures are being proposed by, for example the Central Texas EAC, whether issues or questions about how we might enforce those and who might enforce them. It is incumbent upon the agency, the commissioners and all the principals involved from the local levels to continue to discuss how best to approach that. I think there are some issues that when we do sit down, we will be able to readily agree that there is an approach and an effective way to implement them that will accomplish what we need to accomplish. There are some other areas where I think we need to seriously look at some alternatives and perhaps some other options that we might pursue. But I, I believe that we are still at the very stage where theses issues can be discussed and can be resolved and I believe on a consensus basis. And when I say a consensus basis with the agency at the table as one of those consensus partners.

Senator Barrientos- Finally, regarding landfills. I know that the agency started a comprehensive review of the administrative rules governing the operation of solid waste

landfills. Now my constituents have requested that TCEQ ask for input before they begin work on changes of those rules rather than publishing a post draft rules and then taking public comment. Please consider that request and communicate it to the rest of the commissioners.

Larry Soward- Yes, Sir Senator. I think that, this commission has already taken that step in a number of major issues that we have undertaken in rule making. I think that you are likely to see that as the trend rather than the exception. And that is getting the stakeholders and the parties in interest involved up front at the earliest possible time as we move through a process to try to achieve consensus resolution of issues where we can. But most importantly make sure that we've got all the issues at the table in the process so that we can make the most informed decision we can at the end.

Senator Barrientos- Members that is all the questions that I have. This young man has been in state government as long as I have and as has always been a straight shooter on every agency he's been in. Thank you.

Senator Lindsay- If he has been there as long as you have you can't call him a young man. (Laughing)

Senator Barrientos- Why do you think I called him a young man? (Laughing)

Larry Soward- Senator we started right out of high school. (Laughing)

Senator Lindsay- Senator Deuell

Senator Deuell- Thank you Mr. Chairman, good to see you again. We talked yesterday. I wanted to share a part of our conversation yesterday with some ideas we talked about. There are a lot of really small towns out there in Texas with limited budgets. And they've gotten into trouble sometimes through incompetence and sometimes through purposeful dodging of the rules and sometimes through no fault of their own. And the commissioner and I have talked about setting up, at least in Senate District 2, some meetings so that local officials can meet with representatives of TCEQ, perhaps even the commissioner, we have a big a state. To let them know that its not the old joke about I'm from the government I am here to help you but really implement some training. And to help these communities improve their water supply and not get into trouble with fines when they have a small budget to begin with, so I just wanted to share that with the committee. The other specific question I had in terms of our lakes and our water supply, we have heard a lot of testimony on the Senate Select Water Committee. Obviously you can ruin a lake by putting the wrong chemicals in it. You can also ruin a lake by taking too much water out of that lake. It can ruin it irreversibly, so I wanted your comments on that. Do you think its, that's a valid concept and do you feel that the recreational use of a lake is important as the use for industry or water? Just kind of where you are with that particular concept?

Larry Soward- Yes Senator, and I want to comment back after I answer your question on the first item you brought up. But let me say that I think that all the issues that you just raised with regards to looking at the protection of our water resources whether they are rivers or whether they are lakes or whether they are our bays and estuaries. You have got to look at all those components not only discharges of pollutants into those, but maintaining the levels, for example, the coastal Senators know maintaining the bays and the estuaries and the freshwater inflows into those are just as vitally important in many respects as preventing pollution from getting into those. And I think that's true for our inland lakes as well. And yes, the recreational aspect, the aesthetic aspect, just the natural resource aspect of our rivers and lakes have got to be looked at as well. Those are all the very complex and dynamic but exciting issues that face this agency when we are dealing with a lot of applications or enforcement issues or other issues when it comes to our watercourses. The whole has got to be part of the consideration. Let me quickly follow up on something that you said about the small cities and small businesses. To the other Senators, we do have a very active and aggressive small business and local government assistance program. And it's their job to work with small businesses and local governments especially small local governments to make sure that they are aware of what is expected of them. When they get into a situation where they need help or to work their way out of a problem, our staff is there. We have staff in the central office we also have staff out in our regional office. What I committed to Senator Deuell and I'll make the commitment to the other Senators is if we can help by coming to a town hall meeting, a district wide meeting, or whatever is beneficial to you and your constituents to help educate those small businesses and those small local governments to what really is expected of them and how best to go about that. We're committed to do that and if it takes me and I certainly can't volunteer for my other Commissioners, but I know that they are very dedicated in the same respects, coming out and showing the local governments and the small businesses the commitment from the agency. I'll be happy to do it. Our statistics show that over 75% of our enforcement problems center around small businesses and local, small local governments. So if we can get to that group, and get aware and get cooperation and assistance and get effectiveness we are gonna go a long way to meeting a lot of our problems. So I stand ready and I think the entire agency stands ready to help in any way we can and if you are, or want us to work with you to set up something, we will be there.

Senator Deuell- I know you can't comment on any particular cases and I don't want you to do that, but I've seen some municipalities poorly served by some engineering firms. In other words the engineering firms gave them bad advice and got them into trouble when, I suppose they have the means of litigation to maybe rectify some of that, but I think that they would have rather just have had it done right to begin with. Does the agency have any preferred list of engineering firms or is there any regulations of these engineering firms? It's like physicians, patients, if they are a licensed practicing physicians people feel they should be able to trust them. We have some regulation there. Is there any way, is it proper, do you see any legislation that we could develop to were we could maybe have a list or some sort of thing to protect the municipalities from an incompetent firm?

Larry Soward- Well I will tell you that certainly there is a licensing agency in the state, the Board of Professional Engineers and there may be some other agencies that I think that are appropriate for licensing and enforcement of malpractice or any other problems associated with licensing.

Senator Deuell- I have a medical license to practice medicine. And I can legally from that point of view, I can do anything to anyone that will hold still for me.

Larry Soward- Right.

Senator Deuell- But, I am not competent to do brain surgery. And what I think and I don't know all the ends and outs of engineering firms and I am not trying to gig engineering firms,

Larry Soward- Sure.

Senator Deuell- but I think, but also I have board certification in family practice and I just I don't know if we need something to look in to some of these firms to see you know engineering, civil engineering is broad field.

Larry Soward- OK.

Senator Deuell- and maybe there aren't firms that are really competent to be dealing with this. It is devastating, as you well know, to these small towns when they get a 15,000, 20,000-dollar fine. Its not that you shouldn't do that, but I try to impress upon the cities that there are some bad cities out there that are purposely doing this, but you have to do your job. But again I see that as problem somewhere that maybe we need to address is to be able to give these cities a list or something of firms that have worked with this area before.

Larry Soward- I think the agency probably can at appropriate times, and on request, provide input as to firms that have regularly and routinely appeared before the agency in certain issues whether its water, wastewater, or air. I would never want the agency in a position of making referrals to any firms because I think that, number 1, gets us into trouble real quick. But it should, we should be more of an information source and not a business referral source. I think there are ways, Senator, that we can do that on a very practical basis and still keep it very fair and ethical.

Senator Deuell- The last question and its international water, but there is a very, very large area in the Gulf of Mexico that is essentially dead, phosphates, and I am sure you are familiar with it. Is TCEQ doing anything, working with other states or the federal government to work with that area to lessen that area, to at least decrease its growth that you know of?

Larry Soward- Well very generally to answer that to the extent we can of course. We work closely with NOAA, which is National Oceanic and Atmospheric Administration I

think that is what they are still called. The Coast Guard, any other state that might be appropriate to address certainly the Gulf Coast issues that's very specific one I can't tell you exactly what all we are doing, Senator, but I do know that we have a very active roll and involvement with not only other states, but our federal counterparts along the Gulf to making sure that you know we address these same type of issues.

Senator Deuell- Well thank you for your previous service and I appreciate your willingness to go onto this commission.

Larry Soward- Thank you Senator.

Senator Deuell- Look forward to working with you. Thank you Mr. Chairman.

Senator Lindsay- Other Questions. Senator Jackson.

Senator Jackson- How are you, Larry, how are you doing today?

Larry Soward- I am doing great Senator thank you.

Senator Jackson- Just wanted to ask some questions about the agency itself. How many employees does the agency have?

Larry Soward- Senator, we have, let me answer it as agencies normally answer it because of the Legislature tells us this in the FTE world 3, 039.

Senator Jackson- Ok. Is that down from two years ago?

Larry Soward- I believe it maybe, either real close to the same Senator or up a fraction I have the 2004 FTE count and it's 3,038. So we are up one but I don't know what 2003 is.

Senator Jackson- You may have had to cut some last year but the Legislature may have given you some more.

Larry Soward- We got a few FTE's back when some programs were either increased or shifted over.

Senator Jackson- OK.

Larry Soward- We are the second largest environmental agency in the world.

Senator Jackson- Now say that again.

Larry Soward- We are the second largest environmental agency in the world.

Senator Jackson- Next to?

Larry Soward- Environmental Protection Agency of the federal government.

Senator Jackson- How many employees do they have?

Larry Soward- Senator I am not sure.

Senator Jackson- Maybe we could be the biggest. Should we go for it?

Larry Soward- I don't think that we need to be the biggest.

Senator Jackson- Along those lines, how does the process work for setting the agenda or the calendar for the commission and when they, what issue they take up at what time? Who does that, or is it a who or what process do you go through? How does it?

Larry Soward- Let me answer it this way, when we have contested cases. Cases that have gone to the state office administrative hearings and go through a hearing and they, the ALJ writes a proposal for decision. When those come back to the agency because of notice requirements we look, we being like the chief clerk's office and the general counsel's office of the commission, look at the required notice time frame once that PFD, proposal for decision, comes in the door. And what agenda will be closest out in the future to give that amount of notice. So that process is done primarily through the chief clerk's office and the general counsel's office. For the basically uncontested matters or the rules that come to the commission or any other type matter. They are kind of pulled together in a pool and we look at what timing is necessarily involved and allocate out the workload per agenda. We meet at least two agenda meetings a month. And if there is not a time restriction on something when would be taken up, we budget it out over the coming agendas. But it a process that is primarily handled through the chief clerk's office, the general counsel's office with some over sight by the commissioner's offices.

Senator Jackson- Kind of like making sausage?

Larry Soward- It's a little bit like the legislative process. (Laughing)

Senator Jackson-And it just really baffles me that, about this deal that I read about in the newspaper and I don't know if that is in Senator Barrientos's district or who's, on the landfill.

Larry Soward- Yes that's what he was alluding to.

Senator Jackson- It goes back seven years.

Larry Soward- seven years.

Senator Jackson- and the court just had to no, I guess the judge after an article was written claimed a mistrial or something and said this ought to be solved by the state

agency and it's a state agency issue anyways, I guess, and now it is going to back into the commission is that.

Larry Soward- Well I

Senator Jackson- I wonder who is going to schedule that? Will it be the same person that did it before working on the schedule again?

Larry Soward- First of all senator I don't think it's actually left the court. They have actually scheduled a new trial for September to begin.

Senator Jackson- Oh they have?

Larry Soward- but,

Senator Jackson- I was unaware of that.

Larry Soward- but I as I answered to Senator Barrientos question I think the agency can and should get involved now, and resolve this issue as best we can. And I think and I think there is ways to do that and no I don't think the same persons that normally and routinely schedule our agenda matters would be involved in this. This case has the attention of the three commissioners and I have already committed to do everything that I can to get this done to get this addressed as best we can outside the courthouse if we can. And that's what I believe could have been done in the past it has not been but it can be now.

Senator Lindsay- So you have full authority to make a decision on where that waste material could go, excuse me?

Larry Soward- Well my, I am sure my lawyers if they were sitting behind me would be tapping on my shoulder, but I, Senator, I believe we do. (Silence) I think we had it seven years ago.

Senator Jackson- Well that's good. Huh we as legislators, I know huh John, I mean Senator Barrientos you were here back in the late 80's and probably, Chuy, early 90's when we combined the air quality board, the water commission, and who ever else we could pick up to roll up and make this agency. Do you think and I guess I have some concerns that this agency has become so large and cumbersome that huh we have things like we have issues like this that happened you are unable to take care of your business in a timely manner because there's, it has just become so huge. The second largest environmental agency in the world as you said. huh Do you think that we should look at huh at maybe disassembling somewhat some of all the duties that we it seems huh every session add to your scope huh that we ought to look at saying enough is enough and maybe back some things out of there where it can be managed more properly? I think about it as all of the issues in the state as large as Texas that have to come before three commissioners. Do we need more commissioners or maybe we should back this out, you

have been looking at this thing for a long time and seen it before it was, it was huh in the entity form that it is now. Can you give me any insight on that?

Larry Soward- Senator I think its incumbent upon the agency now and in the future that when the Legislature looks at a new program or an expanded program coming to the agency that the agency gives you all of the facts as to what our abilities are, both staffing resources lies and funding resources lies. What priorities might need to be looked at if we were to take on a new program at what expense and what cost? I think that we need to be more of a partner with you saying here's that cost benefit of adding this program or expanding an existing program. Too often agency's sit back, write zero fiscal notes, take on a program and then it becomes part of a problem. And I think our agency needs to be very open and up front with the Legislature when you do consider adding a program or expanding. Are we too big? I don't know yet Senator. I mean it's a huge agency. It's a huge bureaucracy. I would suggest to you though that what we really need to look at is internal. We, its almost a culture change Senator. We need to have a different thinking in the agency. I talked in my statement about being responsive, about being effective and about being meaningful. I believe in, through my years of experience managing agencies, that the size doesn't matter and necessarily the scope of jurisdiction doesn't matter if you have the mindset and the management and the leadership to make it work. And I think that's what I would like to see this agency have the opportunity to do under the three of our leaderships. Can the three of us handle it. After an extensive six months on the job I think the answer is yes, but it takes leadership and dedication from the top to the bottom. And a real direction, and I think that we can do that. Now if I get into this further and it looks like we are too big, certainly most of you know me enough to know that I am very conservative. I think you can do more with less, Senator Eltife, I'll come to you and tell you that, but I really think that we can do what we need to be doing and we can do it effectively and timely and responsively, but it's got to be with a change of attitude and a change of culture.

Senator Jackson- Do you think that the agency levies unfunded mandates to cities and too?

Larry Soward- Honest answer, Yes. There are many of times that when we impose rules and regulations on entities, cities, businesses, especially cities. We impose requirements that do cost money and there is no money flowing with that mandate so to speak. I am not sure there's always options around that, but yes that happens.

Senator Jackson- What about I guess philosophy wise, when the largest environmental agency in the world mandates, unfunded mandates down to our state. We have to deal with that as well, I guess, but I hear one on the horizon that's coming, that deals with mercury. We don't have any rules to take care of that or to address that. Would the commission be responsible for having employees of the agency come up with rules that dealt with that? How does that work? Will the commission say do you have a rule making group or a panel in your agency and you say hey we need rules on this so ya'll sit around this table and come up with rules?

Larry Soward- We have a very extensive process for developing rules. But yes we would if the federal government through the EPA adopted let's say air emissions limits on mercury. And then said to the states you must implement some plan to make sure the state of Texas complies with this limit. It would be incumbent upon our agency to develop appropriate control measures to do just that. And that would more often than not be done through rules, it could also be done through permitting limits for different specific industries, but it could also be done through rules. And it would be our agency. There is a process for the development of that. Like Senator Barrientos mentioned on municipal solid waste, a process in which the public, the stakeholders, entities, business, environmental, citizens alike have a part into that process and we are trying to do that more up front than at the end. Yes it would be a process in which this agency would adopt regulations to impose whatever the federal government imposed on all of the states.

Senator Jackson- Ok, and you as a commissioner would have to vote on those?

Larry Soward- I would have to vote on those rules or those regulations.

Senator Jackson- And would it be your general philosophy to have rules in Texas more stringent than federal rules?

Larry Soward- That is not my routine philosophy Senator. And I don't want to be like a supreme court justice here. There may be instances in which the best interest of Texas and the Texas environment and the Texas business and the Texas public would cause this commission to impose something that might be more stringent than the federal government. But it would have to be very unique to the Texas interest as far as my philosophy is concerned.

Senator Jackson- That would be mine too.

Senator Jackson- I read in the paper that your executive director resigned?

Larry Soward- Yes Sir.

Senator Jackson- Or turned in a resignation.

Larry Soward- Yes Sir.

Senator Jackson- Whose job is it to pick out a new executive director?

Larry Soward-The three commissioners.

Senator Jackson- Do you have somebody, do you have rulemaking to go by before you can?

Larry Soward- No Sir.

Senator Jackson- You don't need to make a rule?

Larry Soward- We don't need to make rules for that.

Senator Jackson- Ok so you just ask for applications.

Larry Soward- What we have discussed doing is that we are going to in the coming days and weeks post the position both internally and externally see who is out there that would be interested and qualified. And go through a very deliberate judicious process of interviewing and hopefully selecting the best candidate we can to fill that spot. It is an extremely important position, extremely controversial, extremely stressful huh and it's an important decision for not only the agency but for everyone. So we are going to go through a very deliberative process and think that we can have that accomplished by about the fall.

Senator Jackson- Well I appreciate your testimony here today and I am going to be watching very, very close and be expecting to be communicating with you after you have a little bit more time in the agency to discuss some of the merits and what I would call I guess demerits of the size of this agency and looking forward to work with you

Larry Soward- Thank you Sir.

Senator Hinojosa (Chuy)- Mr. Chairman? Just a general observation. Why is it that Senator Jackson and Senator Barrientos say they are going to ask one or two questions, and then ask 15 questions just like a lawyer and they are not lawyers? (Laughter)

Senator Lindsay- Ok, are there any other questions? Is there a motion? Senator Hinojosa moves that Larry Soward be accepted by this committee and be forwarded to the full Senate for the Texas Commission on Environmental Quality? Please call the roll.

Lindsay- Yes

Deuell- Yes

Barrientos- Aye

Eltife- Yes

Hinojosa- Aye

Jackson- Aye

Seliger-

Six Ayes

Senator Lindsay- Ok that will be done then. Senator Seliger asks to be shown voting aye on, what did he miss, Commissioner Soward, Ok, any opposition? Hearing none, Ok, you can go.