



Texas politicians knew agency hid the amount of radiation in drinking water

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HOUSTON— Newly-released **e-mails** from the Texas Commission on Environmental Quality show the agency's top commissioners directed staff to continue lowering radiation test results, in defiance of federal EPA rules.

The e-mails and documents, released under order from the Texas Attorney General to KHOU-TV, also show the agency was attempting to help water systems get out of formally violating federal limits for radiation in drinking water. Without a formal violation, the water systems did not have to inform their residents of the increased health risk.

"It's a conspiracy at the TCEQ of the highest order," said Tom Smith, of the government watchdog group Public Citizen. "The documents have indicted the management of this commission in a massive cover-up to convince people that our water is safe to drink when it's not."

Smith is talking about what happened to residents who live in communities served by utilities like Harris County Municipal Utility District 105. For years, tests performed by the Texas Department of State Health Services showed the utility provided water that exceeded the EPA legal limit for exposure to alpha radiation.

However, the TCEQ would consistently subtract off each test's margin of error from those results, making the actual testing results appear lower than they actually

were. In MUD 105's case, the utility was able to avoid violations for nearly 20 years, thanks to the TCEQ subtractions.

On **Dec. 7, 2000, the EPA** said in the federal register that states should not add or subtract the margin of error, also called the counting error, from test results.

In an **e-mail from Oct. 30, 2007**, a TCEQ drinking water team leader began questioning a senior director about if it would be appropriate for the state agency to stop subtracting the counting error from test results to comply with all federal regulations.

She was told, "I believe there may been some EPA guidance on not subtracting, but can't remember back that far for sure. This has been the practice in Texas since day one of radionuclide monitoring. This option was thoroughly discussed with the commissioners and the (executive director) staff when the reg was being adopted. We were directed to maintain the current methodology for subtracting the counting error at that time."

Three years earlier, the same TCEQ director presented **written testimony on behalf of the TCEQ** to the Texas Water Advisory Council. The testimony notes that the TCEQ was aware of the new rules the EPA published on Dec. 7, 2000, saying the federal agency had "issued guidance for calculating radionuclide levels for compliance."

However, the TCEQ also told the Council: "Under existing TCEQ policy, calculation of the violation accounts for the reporting error of each radionuclide analysis. Maintaining this calculation procedure will eliminate approximately 35 violations."

As a result, the subtracting method continued and residents of MUD 105, like Brenda Haynes, were never sent a required notice of violation. That notice would have informed them about the excessive alpha radiation in their water.

Alpha radiation is emitted from radionuclides such as uranium and radium. While health scientists have said it poses little danger if someone is externally exposed to it, the experts maintain that ingesting even the smallest amount of the particles can cause damage to DNA, and in rare cases, cause cancer.

Haynes came down with thyroid cancer while living in the MUD 105 district and continued drinking the water even after she was diagnosed. Although she will never know for certain if the water had any connection with her illness, Haynes and

her husband are angry that they never were given appropriate notice about the added risks she was taking into her body while sick.

“We were put at more risk than what we thought,” said Ian Haynes, who added he and his wife would have been making different choices about what they consumed had they been warned.

The Texas Water Advisory Council, which reviewed and discussed the **TCEQ testimony** at a meeting on June 7, 2004, was comprised of some of the highest ranking public officials in Texas. Minutes from the TWAC’s annual report reveal that the members present that day to hear about TCEQ’s plan included then-chair of the TCEQ Commission Kathleen Hartnett White, then-Agriculture Commissioner Susan Combs, General Land Office Commissioner Jerry Patterson, Sen. Robert Duncan, and other lawmakers and state leaders.

The I-Team sought comment from Sen. Duncan, then the chair of the Council, but he did not return KHOU-TV’s phone calls.

A spokesperson for Commissioner Patterson wrote KHOU-TV to say, “I’ve checked with Commissioner Patterson and sent him the report and he doesn’t remember “squat” about that committee,” wrote press secretary Jim Suydam. “He won’t be calling you.”

Commissioner Combs has since left her position in the Department of Agriculture and become the state’s comptroller. She also declined to speak personally with KHOU in regards to this meeting.

However a spokesperson sent the following to KHOU on her behalf:

“Comptroller Combs hasn’t been the Agricultural Commissioner for 4.5 years. Susan’s role on the advisory council back then was to represent rural Texas, primarily on water issues (drought, water rights). SB 2 which established the water advisory council was to look (at) water issues facing the state, it had no regulatory authority. The state experienced severe droughts in 1998, 2000 and 2004-2006. The issue you are talking about was handled by the TCEQ.”

However, a review of a **meeting summary from the June 7, 2004 Texas Water Advisory Council** shows Combs asked several questions during the meeting, including a number of questions about issues involving TCEQ’s implementation of the new EPA rules on radionuclides.

The meeting summary says that “Commissioner Combs stated small towns are going broke,” and further says, “Commissioner Combs asked **what would the feds do if the state didn’t enforce.**” The minutes indicate that someone at the meeting said there would be federal enforcement and loss of primacy.

At the same meeting, the summary says that the EPA had already warned that if Texas didn’t implement the rules, the EPA might take over the regulation of Texas water systems. The notes say that as a result “Texas will lose \$66 million if delegation of the drinking water program is lost.”

But despite the EPA’s warning in June of 2004 of potential loss of primacy, by December, **the Texas Water Advisory Council issued its annual report** to the then-speaker of the House, the lieutenant governor, and Gov. Rick Perry, saying: “However, this result (the loss of primacy) is unlikely. Of the 49 states with primary enforcement responsibility to administer their drinking water programs (Wyoming is not a primacy state), EPA has never withdrawn primacy status from any of them because the federal agency views both withdrawing primacy and withdrawing funding as options of last resort.”

Under federal law Texas and other states are only allowed to enforce EPA rules, according to the Safe Drinking Water Act, if the EPA determines the state has adopted drinking water standards that are “no less stringent” than the federal rules.

After the annual report of the TWAC was delivered to the Speaker, Lieutenant Governor, and the Governor, the TCEQ continued their policy of subtracting the margin of error from the result of each water-radiation test, until an EPA audit caught them doing so in 2008. The state has since complied with the EPA regulation.

Then Chair of the TCEQ Commission Kathleen Hartnett White, who also sat on the Texas Water Advisory Council, says the decision to continue the subtraction was a good one.

“As memory serves me, that made incredibly good sense,” she told KHOU.

White says she and the scientists with the Texas Radiation Advisory Board disagreed with the science that the EPA based its new rules on. She says the new rules were too protective and would end up costing small communities tens of millions of dollars to comply.

“We did not believe the science of health effects justified EPA setting the standard where they did,” said White. She added, “I have far more trust in the vigor of the science that TCEQ assess, than I do EPA.”

In response to questions about why the TCEQ did not simply file a lawsuit against the EPA and challenge the federal rules openly in court, White said that in federal court, “Legal challenges, because of law and not because of science, are almost impossible to win.”

Lt. Governor David Dewhurst did not respond to written questions related to this story. The only comment from his office came from a spokesperson who wrote: “Just FYI—I’m told by our legislative staff that Texas Water Advisory Council was created in 2001, but was repealed in 2007. Evidently, the statutes creating the council made it clear that that it was an advisory board only, so they made no decisions.”

A spokesperson for Governor Perry said the governor expects the TCEQ and all state agencies to follow all the laws that are on the books, which the spokesperson said the TCEQ began doing after that 2008 audit by the EPA.

The governor’s spokesperson did not respond to written questions from KHOU asking if the governor supported the TCEQ’s decision in 2004 to continue with the subtraction in order to help 35 water systems stay out of trouble.

The EPA was contacted for comment and at press time has yet to provide any response.

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