

Legislation from the 83rd Session

During the regular legislative session in 2013, state lawmakers considered 774 bills that had the potential to affect the programs and activities of the Texas Commission on Environmental Quality.

Of those, about 114 bills were passed and became law. These measures required the agency to make rules, revise guidance documents, change operations or procedures, or take administrative actions.

In contrast to gaining new legislative duties, the TCEQ actually had to shed a few programs related to water utilities. Those programs and staff personnel shifted to the Public Utility Commission of Texas.

This chapter summarizes some of the key legislation resulting from the 83rd Legislature.

SB 1727 **Revisions to the Texas Emissions Reduction Plan**

Since its creation in 2001, the Texas Emissions Reduction Plan has distributed financial incentives to reduce emissions of on-road and nonroad vehicles and equipment. TERP has also provided grants for developing new emissions control technology and for other research and development.

Senate Bill 1727 revised some of the criteria for existing incentive programs and established new programs under TERP. The law also revised some funding-allocation formulas.

TERP grant applications are accepted at different times throughout the year, depending on available funds. For an overview of the various programs, see "Major Incentive Programs" in Chapter Two.

Existing TERP programs:

- **Diesel Emissions Reduction Incentive Program**

The DERI Program provides grants for replacement or upgrades of on-road and nonroad heavy-duty vehicles, equipment, and engines to reduce emissions of nitrogen oxides in areas designated as

nonattainment for federal air quality standards, as well as in other designated counties where air quality is a concern. SB 1727 removed the statutory limit on the maximum amount of grant funds that may be awarded per ton of NO_x reduced by a grant-funded project. The TCEQ may establish cost-effectiveness requirements for each grant round, as determined appropriate to best meet the program goals. Also the TCEQ may now fund projects to convert on-road and nonroad diesel engines to a dual-fuel configuration using diesel and natural gas.

- **Texas Clean Fleet Program**

The TCFP issues grants for replacement of larger fleets of medium-duty and heavy-duty diesel vehicles with vehicles powered by alternative fuels and hybrid vehicles. Changes to this program simplified the requirements on the percentage of costs that may be covered by a grant. Also the TCEQ may allow trucks (used in the transport of raw agricultural products) that are replaced under this program to operate a lesser percentage of annual mileage in designated counties than is required for other projects.

- **Texas Natural Gas Vehicle Grant Program**

The TNGVGP provides grants for the replacement or repower of heavy-duty vehicles with vehicles powered by compressed or liquefied natural gas. The areas of the state eligible for operation of vehicles funded under the TNGVGP were expanded as a result of revisions to the areas designated as part of the Clean Transportation Triangle. Under these changes, the TCEQ may allow trucks (used in the transport of raw agricultural products) that are replaced under this program to operate a lesser percentage of annual mileage in designated counties than is required for other projects.

- **Clean Transportation Triangle Program**

The CTT Program issues grants for infrastructure to support natural gas fueling in designated areas.

SB 1727 expanded the areas eligible under the CTT. The original areas included nonattainment areas and counties along the Interstate highways connecting Houston, Dallas, Fort Worth, and San Antonio. The expanded areas include other counties designated as affected counties under the DERI Program and the counties located within the triangular area formed by the previously designated Interstate highways. The maximum grant amount was raised to \$600,000.

- **Alternative Fueling Facilities Program**

The AFFP issues grants in nonattainment areas for infrastructure to support the use of a range of alternative fuels, including natural gas, liquefied petroleum gas, biodiesel, hydrogen, methanol (85 percent by volume), and electricity. The maximum grant amount was raised to \$600,000.

New TERP programs:

- **Light-Duty Motor Vehicle Purchase or Lease Incentive (LDPLI) Program**

The LDPLI was established in 2001 to provide rebates for the purchase or lease of a light-duty vehicle that met certain low-emission standards. However, funding was not fully established, so the program was never implemented. SB 1727 transferred implementation of LDPLI from the Comptroller of Public Accounts to the TCEQ. The law changed program criteria to provide grants up to \$2,500 for the purchase or lease of light-duty vehicles powered by compressed natural gas, liquefied petroleum gas, or electricity (including plug-in hybrid-electric vehicles). LDPLI is available statewide, and applications are being accepted on a first-come, first-served basis until June 26, 2015 (on purchases made on or after May 13, 2014).

- **Drayage Truck Incentive Program**

The DTIP was created to provide grants for replacement of drayage trucks operating at seaports and rail yards located in nonattainment areas. The vehicle being replaced must have an engine with a model year before 2007; the new vehicle must have an engine with a model year of 2010 or later.

In fiscal 2014, the commission adopted new and revised rules to implement all of these changes. Information on the various programs, as well as maps of the eligible areas, is available at <www.terpgrants.org>.

HB 788 **Permitting Greenhouse Gases**

The Legislature granted the TCEQ the authority to formulate rules authorizing major sources of emissions of greenhouse gases, in accordance with federal law. House Bill 788 also authorized the agency to impose fees for such emissions to cover the costs of including emissions of greenhouse gases in existing permitting programs.

Greenhouse gases, as described in HB 788, include carbon dioxide, methane, nitrous oxide, and certain other chemicals. The Environmental Protection Agency began regulating greenhouse gases in 2010.

The TCEQ conducted rulemaking to include emissions of greenhouse gases in the Federal Operating Permits program (also known as Title V) and the Prevention of Significant Deterioration (PSD) portion of the New Source Review permitting program. The rules took effect in April 2014. That same month, the agency submitted revisions to the State Implementation Plan to the EPA.

In June 2014, the U.S. Supreme Court issued an opinion that affected federal greenhouse gas permitting authority. Soon after, the TCEQ began evaluating the opinion rendered in *Utility Air Regulatory Group v. Environmental Protection Agency*.

HB 788 directs the TCEQ to repeal rules regulating greenhouse gases if authorization were to no longer be required under federal law. Once the full effect of the Supreme Court opinion has been determined, the TCEQ will conduct the appropriate rulemaking.

Updates on greenhouse gas permitting can be found at <www.tceq.texas.gov/goto/ghg>.

HB 1600 **Transfer of Water and Wastewater Utility Regulation to the PUC**

When the Legislature approved the sunset bill for the Public Utility Commission, extending the agency for another 10 years, it also assigned the PUC some new responsibilities.

On September 1, 2014, the TCEQ transferred its programs for regulating water and wastewater rates and certificates of convenience and necessity to the PUC. With those programs, the TCEQ also sent 20 full-time employee positions and authorized a cash transfer of approximately \$1.6 million to the PUC, mostly to support costs associated with those positions in fiscal 2015.

Meanwhile, the TCEQ continues to regulate public drinking-water systems, wastewater systems, and water districts to ensure safe drinking water and environmental protection.

The PUC inherited the powers, duties, functions, programs, and activities relating to the utility regulation of water and sewer service, including the issuance and transfer of certificates of convenience and necessity, the determination of rates, and the administration of hearings and proceedings involving those matters. Rulemaking will be required by the TCEQ to delete most of Title 30, Texas Administrative Code, Chapter 291, which applies to the now-transferred jurisdiction of water and wastewater utilities. For its part, the PUC adopted rules to enable the migration of substantive rules regulating water and sewer utilities from the TCEQ. All related pending applications, orders, and other matters were transferred to the PUC.

Additionally, all pending cases at the State Office of Administrative Hearings that related to the transfer were moved to the PUC. Likewise, all pending lawsuits against the TCEQ involving appeals of TCEQ decisions affected by the transfer became the PUC's responsibility. The TCEQ agreed to cooperate with the PUC and the Attorney General in working on appeals of TCEQ decisions.

Inter-Agency Work Group

House Bill 1600 required the TCEQ and the PUC to enter into a memorandum of understanding to identify in detail the powers and duties to be transferred and to establish a plan to execute the transfer.

Cooperation between the two state agencies involved sharing relevant information and supporting each agency's functions under these areas:

- meeting federal drinking water standards
- maintaining adequate supplies of water
- meeting established design criteria for wastewater-treatment plants
- demonstrating the economic feasibility of regionalization
- serving the needs of economically distressed areas

In preparation for the transfer, TCEQ personnel documented extensive business and information-technology processes and other processes affected by the move of the utilities and rates programs, including functions related to public water systems, water quality, and districts that remain with the TCEQ but are affected by the transfer. The TCEQ gave the PUC an inventory, including volume

and media type, of records associated with transferred programs in the TCEQ's Central File Room and archived at the State Library. All records associated with the transferred programs became records of the PUC. All other TCEQ records remain with the TCEQ.

The TCEQ and PUC each updated agency Web pages to supply information about the program changes, and coordinated comments and appearances at meetings and conferences attended by the regulated community and members of the public potentially affected by the transfer.

While the TCEQ had no contracts solely related to the programs transferred to the PUC, the agency does have a contract to assess and assist both public drinking water and wastewater systems in Texas to improve their financial, managerial, and technical capabilities (FMT). Contracting with skilled professionals, the TCEQ offers free FMT assistance to help public water and wastewater systems comply with regulations. The TCEQ and PUC entered into an inter-agency agreement regarding the wastewater and utility assessment and assistance portion of the current FMT contract. The PUC will provide FMT referrals to the TCEQ regarding wastewater and utility activities and will reimburse those activities and the TCEQ's proportional expenses for contract administration. The TCEQ will continue to directly manage the FMT contract and provide the contractor reports to the PUC. The inter-agency contract lasts for six months after the transfer effective date.

Utilities and Persons Affected by the Transfer

- investor-owned utilities
- water supply corporations
- city- and county-owned utilities
- wastewater utilities
- anyone interested in the policies, rates, and operations of a public or private water utility in Texas

Applications Affected by the Transfer

- applications for rate and tariff changes
- applications related to certificates of convenience and necessity

HB 2615 **Higher Penalties for Failing to Report Use of Surface Water**

When the TCEQ issues a water-right permit, the permit holder is required to submit an annual report on water use. The agency uses this information to help manage the state's water resources, which is especially critical during a drought.

House Bill 2615 applies to any water-right permit holder who fails to submit the required annual report by March 1 of each year or fails to comply with the TCEQ's request for data on water use after the deadline.

The executive director is authorized to establish deadlines for submitting monthly water-use data.

HB 2615 established a penalty of up to \$100 per day if a person holds a water-right permit of 5,000 acre feet or less per year, or \$500 per day if a person holds a water right for more than 5,000 acre feet per year.

The law also specifies instances in which water-right holders could seek exemptions to permit cancellation based on nonuse, including cases where adjustments or suspensions are made by the executive director and are due to drought conditions.

After the legislation became effective September 1, 2013, the TCEQ:

- Revised the agency website with HB 2615 requirements and penalty descriptions, including:
 - ◆ updated forms and instructions for reporting annual water use, and
 - ◆ an electronic reporting process capable of receiving e-mailed water-use data.
- Incorporated the revised penalty structure into its penalty policy.

General Appropriations Act, Rider 28 **Rio Grande Compact Commission**

In the legislative session, state lawmakers appropriated \$5 million for legal costs in the water dispute between Texas and New Mexico. The two states are involved in litigation over the equitable distribution of water from the Rio Grande Basin. The terms for dividing the water are contained in the Rio Grande Compact, signed in 1939 by Texas, New Mexico, and Colorado, and subsequently approved by Congress (see Chapter Two, "Rio Grande Compact").

Historically, water apportioned under the Rio Grande Compact resulted in 57 percent of the water supply below the Elephant Butte Reservoir being delivered to New Mexico, and 43 percent being delivered across the New Mexico–Texas state line for Texas.

In January 2014, Texas asked the U.S. Supreme Court to enforce the interstate compact and require New Mexico to abide by the obligations set forth in the agreement to share water from the Rio Grande. Texas maintains New Mexico has breached its delivery obligation, saying the illegal diversions of water in New Mexico have ongoing harmful effects on the amount of water available for Texas. Moreover, the City of El Paso relies on the allocation for about half of its water supply.

The Supreme Court accepted the lawsuit, and New Mexico has filed a motion to dismiss. Texas filed a response to the motion and is awaiting a decision.

Legal and technical experts have been retained to ensure the protection of Texas' water supplies. The state expects to spend the \$5 million appropriation during the 2014–15 biennium.

SB 347 **Low-Level Radioactive Waste**

The TCEQ shares authority over most of the radioactive material in the state with the Department of State Health Services (DSHS). Before 2013, both agencies deposited certain fees collected from licensees into the Perpetual Care Account. The proceeds were to be used to mitigate abandoned radioactive materials or similar risks to public health.

Senate Bill 347 directed that the fees collected by the TCEQ go into a newly created Environmental Radiation and Perpetual Care Account. This fund will be used to support the Texas Low-Level Radioactive Waste Disposal Compact Commission, which was created in 2011. The fund is also intended to mitigate immediate radiation risks

to public health and safety and the environment. The cap on both accounts was raised to \$100 million.

The law also required the TCEQ and the DSHS to update their memorandum of understanding in regard to each agency's role in the regulation and oversight of radioactive materials. SB 347 also imposed some requirements on the disposal in Texas of certain low-level radioactive waste from states outside of the Texas Compact.

In response, the TCEQ proposed rulemaking to memorialize the updated memorandum, which the DSHS ad-

opted earlier in 2014. The rulemaking would also update references in agency rules to reflect the new Environmental Radiation and Perpetual Care Account, and it would implement new requirements on imported waste from non-party states accepted for disposal at the Texas Compact disposal site in Andrews County. The rulemaking should be concluded by summer of 2015.

For more information on low-level radioactive waste disposal in Texas, see "Waste Management" in Chapter Two.