

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners' Agenda **Date:** October 22, 2008

From: Andy Saenz, Director
Agency Communications Division

Subject: *Biennial Report to the 81st Legislature, FY2007-FY2008*

Issue Consideration for approving the publication of the agency's *Biennial Report to the 81st Legislature, FY 2007 - FY 2008*

Background and Current Practice The TCEQ commissioners are required to issue a biennial report to the Legislature prior to each regular legislative session (Texas Water Code, Section 5.178). By statute, the required delivery date is December 1 of each even-numbered year.

The Agency Communications Division has prepared a 66-page report highlighting various activities and programs of the TCEQ, based on the 2007 and 2008 fiscal years. Included are four other reports also required by statute. An agencywide review of all the material was conducted in September.

The biennial report begins with a statement from the three commissioners, which is presented for approval.

The report will be printed in November, and copies will be delivered to the legislative leadership on or before December 1. Other members of the Legislature will be notified by letter that the report is available for ordering or viewing on the agency Web site.

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: LaDonna Castanuela
Chief Clerk

Date: Oct. 8, 2008

From: Andy Saenz and Jorjanna Price
Agency Communications Division

Subject: *Biennial Report to the 81st Legislature, FY2007-FY2008*

Here is the draft review book for the *Biennial Report*—eight copies. We will also send you a PDF of the draft report.

This is the backup material for Docket No. 2008-1608-MIS on the agenda meeting scheduled for Oct. 22, 2008.

Please note that executive management has just begun its review of the draft report. As part of our standard process, following agencywide review the draft book is distributed to the commissioners and executive director. Their review period lasts one week.

Therefore, we expect to supplement this draft with material resulting from their input, which will include the commissioners' statement in front of the book.

TEXAS

DRAFT

Biennial Report

to the 81st Legislature
FY2007 - FY2008

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



DRAFT

Biennial Report

to the 81st Legislature
FY2007 - FY2008



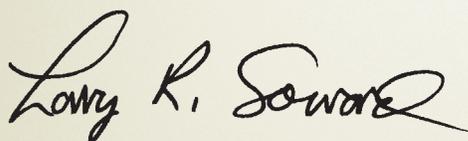
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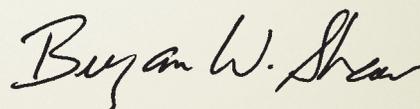
From the Commission

DRAFT

(text to come)


Buddy Garcia, *Chairman*


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Bryan W. Shaw, *Commissioner*

DRAFT



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How to order this report

To obtain copies, call 512-239-0028 and request publication SFR-057/08. Or view the report online at

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Agency Mission and Philosophy

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Mission

The Texas Commission on Environmental Quality strives to protect our state's human and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste.

Philosophy

To accomplish our mission, we

- Base decisions on the law, common sense, good science, and fiscal responsibility.
- Ensure that regulations are necessary, effective, and current.
- Apply regulations clearly and consistently.
- Ensure consistent, just, and timely enforcement when environmental laws are violated.
- Promote and foster voluntary compliance with environmental laws and provide flexibility in achieving environmental goals.
- Hire, develop, and retain a high-quality, diverse workforce.

Report Status

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The TCEQ's *Biennial Report to the Legislature* is published every December before a regular legislative session, as required by the Texas Water Code, Section 5.178. This submission to the 81st Legislature contains other information and reports that are required by statute:

- [Agency research efforts](#), page 17. This information was last published in December 2006 in the *Biennial Report to the 80th Legislature* (SFR-057/06).
- [Waste exchange results \(RENEW\)](#), page 31. This information was last published in the *Biennial Report to the 80th Legislature*.
- [Assessment of complaints received](#), page 43. This report was last published in the *Biennial Report to the 80th Legislature*.
- [Permit time-frame reduction process](#), page 51. This report was last published in the *Biennial Report to the 80th Legislature*.

Reports that were once issued as separate appendixes to the *Biennial Report* are no longer required. Those covered the topics of needs assessment for commercial management capacity of hazardous waste, used oil, pollution prevention, and low-emission vehicles and alternative fuel use.

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Chapter 1



CHAPTER ONE

Innovations and Accomplishments

On a daily basis, the Texas Commission on Environmental Quality undertakes a myriad of duties to fulfill its role as the state's leading environmental agency. Its major responsibilities fall under the broad categories of air and water quality, and waste management.

In carrying out these endeavors, the agency is regarded as an innovator in developing programs that enhance environmental protection and data reporting. Among the environmental agencies around the country, the TCEQ has been recognized for initiative and creativity—trying something new, or taking an established practice and making it work better.

This chapter highlights some of the projects that have earned the TCEQ the reputation of being first among its peers.

Incentives Aim to Lower Diesel Emissions

Since 2002, the Texas Emissions Reduction Plan (TERP) has been awarding grants and rebates to obtain voluntary reductions in nitrogen oxide (NO_x) emissions in older heavy-duty vehicles and equipment.



Because NO_x is a leading contributor to the formation of ground-level ozone, lowering these emissions is key to achieving compliance with the federal Clean Air Act.

The TERP has been focused largely on the ozone nonattainment areas of Dallas-Fort Worth and Houston, but funding has also been awarded to projects in San Antonio, Beaumont-Port Arthur, Austin, Corpus Christi, and Tyler-Longview-Marshall. To be eligible, the projects must be diesel powered.

In all, the agency has issued \$541.5 million under the TERP, for a total of 3,407 projects, or 7,875 individu-

al vehicles and pieces of equipment. That represents an overall reduction of an estimated 126,963 tons of NO_x since 2002. On a daily basis, the reduction has been 57.09 tons of NO_x.

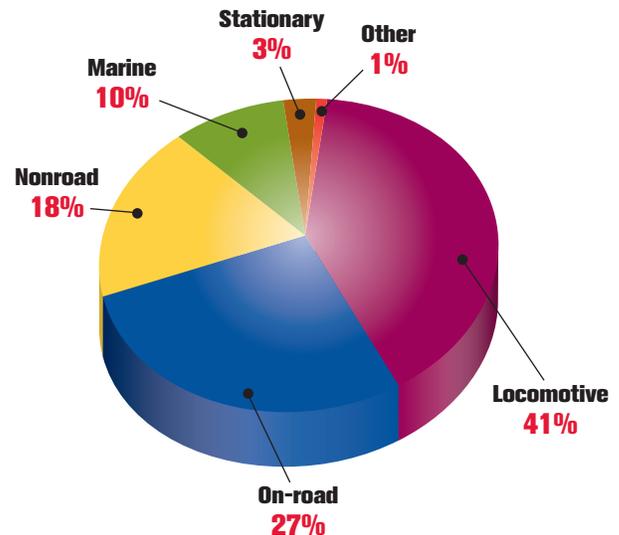
TERP projects have included:

- Purchase or lease of new, lower-emission equipment
- Replacement of old vehicles and equipment with newer, more efficient models
- Retrofits and add-ons that reduce emissions from vehicles, equipment, and stationary sources
- Infrastructure to support electrification, qualifying fuels, or reduced idling time
- Rail relocation and improvement

TERP Grants

2002 to August 2008

Over the life of the Texas Emissions Reduction Plan, grants and rebates have funded an overall reduction of 126,963 tons of nitrogen oxides (NO_x), a component of ozone. These NO_x reductions were from the following emission sources.



Drive Cleaner

AirCheckTexas saw a major expansion with the debut of Drive a Clean Machine, a program that helps motorists in certain counties re-



place older, polluting vehicles.

As many as 1.9 million households in 16 eligible

counties have been in the running for vouchers to help replace their older cars or trucks. The program targets the areas of Houston, Dallas-Fort Worth, and Austin, all of which conduct annual tests of vehicle emissions.

Backed by a \$90 million appropriation for the biennium, Drive a Clean Machine was formed to remove older, heavy-polluting vehicles from the road. Driving a new car, or a qualifying used car, is better for air quality than driving a vehicle that is 10 years or older. Today's new, low-emission vehicles can be up to 98 percent cleaner than those produced a decade ago. A list of qualifying vehicles is available at www.driveacleanmachine.org.

When the AirCheckTexas Drive a Clean Machine program went public in December 2007, the public response was so great that local program administrators had to add telephone lines and hire additional staff. Telephone calls to the program hotline topped 250,000 in all, and more than 43,000 applications were received.

Funding went so fast that in May 2008 the Houston-Galveston Area Council stopped issuing vouchers and placed applicants on a waiting list until new funds became available in fiscal 2009. The North Central Texas Council of Governments also temporarily suspended applications. Travis and Williamson counties continued to accept applications.

By August 2008, the program had removed and scrapped about 14,000 older, polluting vehicles in the participating counties. With the state-funded incentives, total removal could top 30,000 by September 2009.

Motorists must fit within income guidelines to qualify for vouchers. The vouchers provide:

- \$3,000 for a car, current model year or up to three model years old
- \$3,000 for a truck, current model year or up to two model years old
- \$3,500 for a hybrid vehicle of the current or previous model year

Qualifying replacement vehicles are listed at www.driveacleanmachine.org.

AirCheckTexas also offers funding assistance for helping eligible drivers to repair vehicles that fail emissions tests (see Chapter 2).

Participating Counties

Dallas-Fort Worth: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant

Houston-Galveston: Brazoria, Fort Bend, Galveston, Harris, and Montgomery

Austin: Travis and Williamson

2008 Net Income Requirements

Under Drive a Clean Machine, income eligibility for households is set at three times the federal poverty level. Income levels are updated each February.

Household Size	Maximum Net Income (Per Year)
1	\$31,200
2	\$42,000
3	\$52,800
4	\$63,600
5	\$74,400
6	\$85,200
7	\$96,000
8	\$106,800

School Districts Curb Emissions

More than 36,000 school buses carry about 1.3 million public school students on a typical day in Texas. More than a third of the buses have been in operation 10 years or longer. The majority of these older school buses lack the most advanced emissions-reduction technology available. Without this equipment, potentially harmful emissions could enter the school bus cabin.

Diesel exhaust contains tiny pollutants, or particulate matter, that can cycle into the bus through the crankshaft or from the tailpipe. Exposure to diesel exhaust is known to aggravate asthma, allergies, and other respiratory problems. Long-term exposure may lead to more serious health problems.

The Environmental Protection Agency (EPA) increased emissions standards for new diesel engines, but the standards do not apply to older diesel engines. Therefore, one of the best ways to reduce

emissions from older engines is with retrofits using the latest technology.

The Legislature created a program to improve children's health by reducing diesel exhaust emissions from school buses. Under the Texas Clean School Bus Program, the TCEQ is authorized to provide grants for eligible projects to offset the incremental costs of emission-reducing projects.

Although issuing grants for retrofits is the primary objective, the program includes other approaches to reducing school bus emissions. One is development of a clearinghouse for all Texas activities related to cleaning up school bus emissions. The clearinghouse will include information on public and private grant opportunities, voluntary emissions-reduction strategies for school bus fleets (such as idling), and technical details on bus emissions.

In fiscal 2008, the Texas Clean School Bus Program began providing grants that allow school districts to purchase and install emissions-reduction devices. The program designed a streamlined process, from application through reimbursement, to make it user-friendly for school districts. In addition, informational materials and www.texascleanschoolbus.org were created to help stakeholders and school districts learn about the program and educate others.

An enthusiastic response from around the state resulted in the issuance of \$4.5 million in grants to 50 school districts. More than 2,500 school buses received retrofitted devices in time for the 2008-2009 school year.

The agency planned to award about another \$8 million in the fall of 2009, based on a second round of applications that began in August. School districts and charter schools in Texas are eligible, and all sizes of diesel-powered buses receive consideration. Grant recipients must verify that the retrofits were made.

To get the word out about the program and the application process, the TCEQ has worked closely with public and private groups statewide, including councils of governments, Environmental Defense, and the Texas Parent Teacher Association.

Take Care of Texas

The TCEQ has a large number of regulatory and technical assistance programs that deal with municipalities, industry, and businesses.

But one outreach program speaks directly to individual responsibilities.

The Take Care of Texas campaign urges Texans to take some simple steps that can go a long way toward improving the environment and keeping the state clean.



The statewide campaign, which kicked off in the spring of 2007, strives to involve families in lifestyle changes that help improve air and water quality, conserve water and energy, and reduce waste. In the process, households can also save money.

The agency established www.TakeCareofTexas.org, which offers materials ranging from general information about environmental programs to specific, step-by-step instructions that address common environmental problems. The site also includes kids' games and suggested activities with environmental themes.

In other marketing efforts, the TCEQ joined with the H-E-B grocery chain to display the Take Care of Texas message on reusable grocery bags. Stores sold about 1.4 million of the 99-cent totes, which reduced the use of plastic and paper bags. And Take Care of Texas messages were distributed weekly by the Texas State Radio Network to 127 stations statewide. The public service announcements, called the "Take Care of Texas Minute," were aired in English and Spanish.

Take Care of Texas recommendations offer practical, money-saving suggestions. For example:

Change the lighting: Choose compact fluorescent light bulbs, which use 67 percent less energy than incandescent bulbs and last up to 10 times longer.

Upgrade the HVAC: Select a properly sized Energy Star cooling and heating system to reduce home energy consumption and help improve air quality.

Cook efficiently: Reduce energy consumption by making sure that pots and pans are not smaller than the stove's burners. (A 6-inch pot on an 8-inch burner wastes more than 40 percent of the burner's heat.)

Load it up: Wash full laundry loads, instead of partial ones, and save more than 3,400 gallons of water each year, on average. Using cold water instead of hot or warm water nets more than \$30 annually.

Watch the temp: Choose an Energy Star water heater for maximum efficiency and set the thermostat to 120 degrees.

Maintain the car or truck: Properly maintain the vehicle—change the oil, check tire pressure, and replace the filters—to reduce emissions and improve gas mileage.

Broad-based Air Monitoring Operations

To effectively monitor air quality, the TCEQ employs a vast monitoring network. In fact, the TCEQ collects data from the largest state-run monitoring network in the country. Fenceline monitoring of industrial plants is also a part of this comprehensive operation.

The network has grown over the years as a result of changes in federal air quality standards and the

increasing proximity between pollution sources and growing communities.

Fixed-site monitoring. The TCEQ and its air network partners operate air quality monitors in 57 counties. Of these counties, 39 host ozone monitors, primarily in and around urban areas.

Using some of the best technology available, the monitoring network—representing both public and private ownership—encompasses 217 stations. (A single station can contain up to 15 instruments, and a single instrument can collect data on as many as 100 pollutants.) More than 200 million data points are collected each year from the network.

This broad network includes not only state-owned sites, but also stations funded by Harris County and Galveston County; the cities of Houston, Dallas, Fort Worth, El Paso, San Antonio, and Victoria; and councils of governments based in Austin, San Antonio, Corpus Christi, Southeast Texas, and East Texas. The network also includes industry-sponsored stations (whose data is hosted by the TCEQ), established as part of self-monitoring initiatives, voluntary agreements, court orders, and Supplemental Environmental Projects resulting from enforcement actions.

The main network components of fixed-site monitors are:

- Continuous-monitoring stations that take 5-minute average measurements of ozone, NO_x, carbon monoxide, and other compounds, in addition to several weather features.
- Automated gas chromatographs, owned by the TCEQ and by industry, that tie into agency computers. This equipment separates and identifies 48 to 65 compounds, producing hourly readings.
- Stations, mostly along the Gulf Coast and in urban areas, that take canister samples for volatile organic compounds (VOCs). The 24-hour samples are collected every sixth day for the laboratory analysis of more than 100 air toxics and ozone precursors.
- Non-continuous PM_{2.5} filter samplers and automated continuous PM_{2.5} monitors that measure for microscopic particulate matter, such as soot, smoke, and dust.

Mobile monitoring. While the fixed-site monitoring network can detect ongoing pollutant levels of potential concern, of equal importance is the task of finding which emission sources are primarily responsible for the emissions. Van-based mobile monitoring stations monitor air quality upwind and downwind of specific industrial facilities. This focuses attention on potential sources during permitting, inspections, enforcement, and voluntary emission reduction efforts.

Mobile monitoring also allows the TCEQ to gather some air quality monitoring data in areas that do not have a fixed monitoring station, which is valuable in evaluating air quality in relation to complaints or concerns regarding such pollutants as particulate matter, VOCs, and sulfur compounds.

Staff is working to improve the monitoring capability in terms of VOC identification and the transmission and loading of monitoring data, including sampling locations, into the Leading Environmental Analysis and Display System. Streaming data into the LEADS will allow quicker access to air quality data and verification of where the data was collected in relation to on-site meteorological conditions and potential emission sources.

Targeting Industrial Pollution

Harris County and its neighboring counties are home to eight petroleum refineries, three of which are listed among the 10 largest in the United States. Also, more than 150 chemical facilities in the area provide products for the domestic and international markets.

Even with widespread growth, the region continues to make improvements in air quality. With state regulations and enforcement activity, NO_x emissions have fallen 57 percent and VOCs by 38 percent since 2000. This represents a total reduction of 675 tons per day of these smog-forming pollutants.

To track industrial emissions in the Houston area, the TCEQ targets specific toxic air pollutants—for example, benzene, a well-documented carcinogen that is an essential part of products such as gasoline, packaging, and compact disks. For this purpose, the agency has assembled an array of advanced monitoring tools.

Infrared cameras. With the technology of the GasFindIR camera, which was developed for the military, TCEQ investigators can view emission plumes invisible to the naked eye. Of the agency's six cameras, two are assigned to the Houston regional office. The infrared cameras have been dispatched on aerial surveys of industrial sites and are used in on-site inspections. Also, TCEQ investigators ride on U.S. Coast Guard vessels to conduct infrared-camera observations of facilities along the Houston Ship Channel. The TCEQ was the first state agency in the country to use this tool for monitoring air quality.

High-tech vans. The TCEQ deploys up to eight mobile monitoring vans to conduct monitoring for different pollutant types, sampling upwind and downwind of specific facilities to identify pollution sources. This practice is helpful when there is no stationary monitor nearby or when a stationary monitor has identified key pollutants in a highly industrialized area. Agency vans drive outside a company's fence line, with monitors positioned according to the wind direction, to pinpoint sources of elevated emissions.

Differential absorption lidar (DIAL). This imported mobile monitoring unit combines infrared and ultraviolet laser technology to scan industrial facilities and measure industrial emissions from sources such as storage tanks, flares, and cooling towers. Following a five-week trial in the Houston area, the

TCEQ began reviewing DIAL monitoring data in 2007 to determine whether conventional calculation methods used to estimate emissions result in the underrepresentation of some sources that are difficult to monitor. The trial period represented the first time DIAL equipment had been used in the United States. A final report is expected in fiscal 2009.

The TCEQ and partners in local government and industry jointly operate a network of 65 stationary monitors, some of which calculate hourly averages of pollutants day and night. The innovative system includes monitors capable of triggering e-mail alerts when concentrations spike, so that the TCEQ and its partners can quickly look for the emissions source.

In another development, the Coast Guard is helping to pinpoint emissions from vessels traveling through the ship channel. The TCEQ hosts data from an industry-sponsored monitor—an automated gas chromatograph—at the Lynchburg Ferry. Using real-time data, the monitor issues an alert when elevated benzene concentrations are detected. The Coast Guard checks wind direction and provides a radar picture of the tugboats and towboats that were nearby at the time of the concentration spike.

The state does not have the authority to regulate marine vessels in transit, but the TCEQ’s pollution prevention team contacts tug, tow, and barge owners to find out what the barge was carrying and its travel route. With this information, the agency may be able to determine whether barges carrying benzene products are contributing to spikes in benzene levels.

Continuous Water Quality Monitoring

Seven years after its first installation, the TCEQ’s Continuous Water Quality Monitoring Network has expanded to 60 sites. Day and night, the automated equipment accomplishes its tasks in or near rivers, streams, reservoirs, and bayous. A variety of equipment measures basic conditions like dissolved oxygen, temperature, pH, and water levels. At select sites, certain nutrients, such as phosphorus, are monitored several times a day by automated chemistry labs.

Every 15 minutes, the autonomous monitors collect data on these environmental conditions in places as diverse as Caddo Lake in East Texas and the Pecos River in the Chihuahuan Desert. The data is transmitted to TCEQ computers and posted at www.texaswaterdata.org.

With the many advances in continuous monitoring over the years, the TCEQ has become a pioneer in the use of long-distance continuous monitoring and reporting of water quality. Most states still rely on the traditional method of collecting data for laboratory analysis—sending staff to manually take water quality measurements with a variety of instruments. But at high-priority water segments, TCEQ staff wanted more

frequent data on changing conditions in certain water bodies. Experiments led to the deployment of solar panels, satellite telemetry, data-acquisition electronics, and meteorological sensors.

The TCEQ is now pushing the network to even higher levels by documenting water quality trends, tracking cleanup of water bodies, prioritizing field investigations, and providing water quality data to local governments. The agency even plans to demonstrate that automated monitors can make timely management decisions—that is, use water quality data to take independent actions, such as closing a valve, initiating monitoring, or turning on pumps to prevent water contamination.

Expansion of the Continuous Water Quality Monitoring Network

Fiscal Year	Number of Monitors
2008	60
2007	51
2006	31
2005	22
2004	11
2003	8
2002	4

The monitoring network is called on every day to guide decisions on how to better protect certain segments of rivers or lakes, as seen by the following.

Brazos River Basin. The TCEQ has seven continuous water quality monitors in the six-county area comprising much of the North Bosque-Leon watersheds, northwest of Waco. The monitors are part of the agency’s cutting-edge Environmental Monitoring and Response System (EMRS), which is focusing on potential pollution sources at the “microwatershed” level. The streambeds in these microwatersheds are normally dry and run only after significant rainstorms. By monitoring areas of just 1,000 to 1,500 acres, which have a limited number of potential sources for contamination, the agency can better monitor the runoff and target potential field investigations. (See North Bosque Cleanup,” page 21.)

Lower Rio Grande. Under an international treaty, both Texas and Mexico get allotments from the Rio Grande each year. Water taken by Mexico below the Falcon Reservoir dam eventually drains back to the Rio Grande upstream from the Anzalduas Reservoir, near Mission. The TCEQ continuously monitors the quality of reservoir water near the El Morillo drain, where water

draining off Mexican agricultural fields returns to the Rio Grande. These agricultural return flows sometimes have high concentrations of total dissolved solids (salts). When TCEQ monitors detect high saline levels, the agency requests that the International Boundary Water Commission (IBWC) release more water from Falcon Reservoir to freshen the water in the Anzalduas Reservoir. If the IBWC confirms that Mexico failed to properly operate the drain to divert the salty return flows, the water released by the IBWC comes out of Mexico's allotment.

San Antonio River Basin. The TCEQ often gets a helping hand in building and maintaining complex monitoring systems. One partner is the San Antonio River Basin Monitoring Network, which generates real-time water quality data at six sites. This network, with 15 participants from the public and private sectors, also produces information about baseline conditions so that long-term water quality trends can be monitored during urban development. The voluntary partnership has saved the state almost \$500,000 in equipment, installation, monitoring, and maintenance costs.

Citations in the Field

With field citations, the TCEQ can more quickly handle enforcement of certain clear-cut environmental violations. Seventeen violations are now eligible for this expedited procedure.

The use of field citations began in March 2006 after an agencywide review of the enforcement process suggested that the agency and the regulated community could benefit from quicker resolutions, when feasible.

Violators have 30 days to pay the fine and 45 days to correct the problem. Otherwise, the reduced penalty will be withdrawn, and the case will be sent through the standard enforcement process. Under standard procedures, enforcement is usually initiated 30 to 60 days from the investigation date. But with field citations, the entire process can be wrapped up in 60 days or less.

A regulated entity can be offered only one field citation per violation in a five-year period. The commissioners must approve each citation and penalty.

A high number of field citations have been issued for petroleum storage tank (PST) violations, primarily at

retail gasoline stations. The storm water program also sees many field citations, primarily violations of the multi-sector general permit and construction permit. Field citations also address failure to obtain water rights permits, occupational licenses, on-site sewage facility permits, and dry cleaning registrations.

Processing Permits

Since the inception of the Permit Time-Frame Reduction Project in 2002, the TCEQ has made significant progress toward its goal of improving permitting efficiencies and reducing the backlog of permit applications. Most notably, the agency reduced the overall backlog of uncontested permits—from 1,150 to 109—over the last six years.

A backlog occurs when a permit exceeds its targeted "time frame," the amount of time required to complete all the steps in processing the application.

Staff continues to build on this success by implementing a new program called Project Time-Frame Tracking. This initiative focuses not only on permits but includes nonpermitting functions such as water system plans and specification reviews, water district bond reviews, Superfund cleanups, corrective actions, and voluntary cleanup.

For a full report, see Appendix B.

Late Payments Come Due

The TCEQ's get-tough stance on delinquent fees and penalties has helped boost the agency's overall collection rate.

A new collections protocol was enacted in September 2006, after the Commission agreed that the agency would no longer issue, amend, or renew permits, registrations, or certifications for any person or entity with overdue penalties or fees. This requirement also applies to anyone seeking to obtain or renew an occupational license.

The agency's collection rate in fiscal 2006 was just under 97.9 percent of the \$137 million invoiced.

But with the new policy in effect in fiscal 2007, the collection rate was 98.1 percent of the \$139 million in invoices issued that year. In fiscal 2008, the collection rate was 98.2 percent of the \$140 million in invoices issued.

Under the delinquent fee and penalty protocol, the agency will not declare an application to be administratively complete if the applicant is delinquent in any payments. Nor will the agency complete the processing of an application, even if it had been ruled administratively complete before staff knew about the late payments. The protocol allows certain exceptions, such as with applicants who agree to a TCEQ-approved payment plan or are engaged in bankruptcy proceedings.

Field Citations Enforcement Program

Fiscal Year	Number of Citations Issued	Penalties Assessed
2006 (March to August)	64	\$109,725
2007	140	\$192,895
2008	143	\$111,752

So far, the biggest impact of the policy has been to speed up collections, improves the agency's ability to fund its programs.

In fiscal 2006, the agency referred 3,635 accounts, for a total of \$1.5 million in late payments. But in fiscal 2007, 3,588 accounts were referred to the collection agency, representing a total of \$870,000 in overdue payments, and 3,418 accounts were referred in fiscal 2008, representing a total of \$1.1 million in overdue payments.

eServices Expand

The TCEQ has continued to expand its menu of electronic services that are available to the regulated community and the general public.

Prior to Commission meetings, for instance, the agenda and back-up materials for each agenda item are now posted on the agency Web site 19 days before the meeting—on the same day that the printed materials are available to anyone who visits the Office of the Chief Clerk. This gives Internet users easy access to the full agenda and to all background materials (except for oversized documents) that commissioners use in their deliberations.

The public can follow these proceedings in real time through www.TexasAdmin.com or find archived meetings for the last six months. Webcasts are also provided for meetings of several agency advisory groups. The Webcast link is on the agency's newly designed home page.

To better serve the public, the TCEQ redesigned the home page and upper-level navigation pages of its Web site. The redesign improved the site's usability and appearance. The year-long project included extensive testing—involving more than 100 customers from both the regulated community and the general public—to arrive at a design that would meet the needs of the many audiences the agency serves.

In another feature, individuals can search the TCEQ Web site for orders pertaining to permit applications that have completed the administrative hearings process, as well as for enforcement orders, resolutions, and other orders issued by the Commission. They can also register online for TCEQ seminars and workshops.

The expansion of online government offers greater efficiencies to companies, municipalities, and individuals conducting business with the agency. The TCEQ began moving some of its permitting and reporting functions to the Internet in 2002 with the creation of



the State of Texas Environmental Electronic Reporting System (STEERS). Since then, each year has bought new online features.

Here are the main categories of the TCEQ's online services:

ePermits. This automated system allows for not only the submittal of forms but also the issuance of authorizations and permits. The estimated time for filling out a form, paying the application fee, and printing the permit authorization is less than 30 minutes. Through STEERS, regulated entities have been able to submit electronic applications for coverage under two storm water general permits. Recent advances have created a more modernized ePermits system, which works with the agency's Central Registry to instantly assign customer and regulated-entity numbers along with the permit numbers. This gives the TCEQ the flexibility to add applications with minimal modifications. The first phase covered the general permits for storm water discharges related to industrial and construction activities. Since implementation of electronic processing for the two general permit types in February 2008, almost half of the 15,275 incoming applications were submitted and processed through ePermits. The TCEQ is developing e-permitting for additional types of applications. By the end of 2009, the agency expects to have online applications for concentrated animal feeding operations.

eReporting. Online reporting services allow regulated entities to electronically fulfill requirements related to air emissions and maintenance events, industrial and hazardous waste, self-certification of underground petroleum storage tanks, and annual submissions of air emissions inventory data. Another category of online reporting is the discharge monitoring reports (DMR) for facilities covered under the Texas Pollutant Discharge Elimination System permit. In 2006, Texas became the first state to establish a paperless DMR system for the secure submission of compliance reports. The TCEQ has been working on a new DMR system, NetDMR, which will be compatible with EPA's new database for water quality permit and compliance information. This is expected to be completed by August 2009.

ePay. This online payment application uses www.texasonline.com to provide a secure environment for financial transactions. Users may pay many fees and assessments with a credit card or electronic check. Since becoming available in 2004, the system has handled about \$11.7 million in revenue associated with TCEQ fees and assessments. It now processes more than 2,000 transactions a month.

eLicenses. With this service, renewing TCEQ occupational licenses and registrations is easily accomplished online. The site contains applications to renew both individual licenses and company registrations.

Chapter 2



CHAPTER TWO

Agency Activities

The Texas Commission on Environmental Quality has a range of responsibilities as broad as the state itself, all keyed to various aspects of environmental protection.

This role of environmental oversight is conducted in the agency’s Austin headquarters and in its 16 regional offices. Staff duties for some 2,900 employees cover a wide spectrum, from investigating an odor nuisance complaint in a small Panhandle town to conducting fence-line air quality monitoring at a large petrochemical plant on the Gulf Coast. A typical work day will find employees conducting field investigations, evaluating permit applications, holding a pollution prevention seminar, and evaluating a Superfund site.

This chapter examines some of the major programs under way at the TCEQ to address the agency’s goals of protecting human health and the state’s natural resources.

Enforcement

Environmental Compliance

The TCEQ enforcement process begins when a violation is discovered during an inspection at the regulated entity’s location, through a review of records at agency offices, or as a result of a complaint from the public that is subsequently verified as a violation. Enforcement actions may also be triggered after submission of citizen-collected evidence.

In a typical year, an estimated 93,000 regulated entities will be investigated for compliance with environmental laws.

When environmental laws are violated, the agency has the authority in administrative cases to levy penalties up to the statutory maximum per day, per violation. The statutory maximums range from \$500 to \$10,000. Civil judicial cases carry penalties of up to \$25,000 per day, per violation, in some programs.

In fiscal 2007, the TCEQ issued 1,383 administrative

orders, which produced payments of \$8.2 million in fines and almost \$1.9 million for Supplemental Environmental Projects, or SEPs (see next section).

In fiscal 2008, the TCEQ issued 1,624 administrative orders, which produced payments of \$10.1 million in fines and \$4.6 million for SEPs.

The TCEQ can also refer cases to the state Attorney General. In fiscal 2007, the AG’s office obtained 33 judicial orders in cases referred by the TCEQ or in which the TCEQ was a party. These orders resulted in \$1.8 million in civil penalties and another \$86,000 directed to SEPs.

In fiscal 2008, the AG’s office obtained 22 judicial orders, which resulted in \$1 million in civil penalties and \$100,000 directed to SEPs.

Other enforcement statistics can be found in the agency’s annual enforcement report, which is posted at www.tceq.state.tx.us/goto/enforcement.

In response to stakeholder input, the TCEQ has made concerted efforts to expedite the processing of enforcement cases. Over the last two years, there has been a 20 percent reduction in the number of cases considered backlogged. By the end of August 2008, only 378 cases were still backlogged.

Backlogged cases refer to administrative orders having pending initial settlement offers and 180 days have passed since the most recent screening, or having proposed settlement offers, but not approved, and 550 days have passed since the most recent screening.

While staff worked to reduce the backlog and to process new cases, the average number of days from initiation of an enforcement action to completion (with an effective order) increased 6 percent to 240 days.

TCEQ Enforcement Orders

Fiscal Year	Number of Orders	Penalties Paid	Orders With SEPs	SEP Funds
2007	1,383	\$8.2 million	149	\$1.9 million
2008	1,624	\$10.1 million	297	\$4.6 million

As described in Chapter 1, more information about enforcement cases is available online. Orders that have been approved by the Commission and have become effective are now on the agency's Web site, as are pending orders that have not yet been presented to the commissioners.

Supplemental Environmental Projects

When the TCEQ finds a violation of environmental laws, the agency and the regulated entity often enter into an administrative order, which regularly includes the assessment of a monetary penalty. The penalties collected do not stay with the agency, but instead go to general revenue.

An option under state law, however, gives violators a chance to direct some of the penalty dollars to local improvement projects. By negotiating an agreement to perform or support a Supplemental Environmental Project (SEP)—in return for an offset of the administrative penalty—the violator can do something beneficial for the community in which the environmental offense occurred. Such a project must reduce or prevent pollution, enhance the environment, or raise public awareness of environmental concerns.

In fiscal 2007, 149 enforcement cases concluded with violators directing a portion of their penalties—totaling almost \$1.9 million—to local projects designed to improve air quality, water quality, or waste management. In fiscal 2008, there were 297 SEPs, for a total of almost \$4.6 million.

In both years, the number of participants was the highest since the SEP program began in 1991.

To increase participation, the agency drew up a list of pre-approved SEPs, which consist of projects that have already received general approval from the Commission. The list includes nonprofits that sponsor activities such as cleaning up illegal dumpsites, providing first-time adequate water or sewer service for low-income families, retrofitting or replacing school buses with cleaner emission technologies, removing hazards from bays and beaches, and improving nesting conditions for colonial water birds. Many municipalities and governmental organizations are also listed with projects such as maintaining air quality networks and insulating homes for low-income households.

Regulated entities may draw up their own SEPs as long as the project is environmentally beneficial and the result of a settlement (not an activity already scheduled before the violation occurred). Also, the SEP should go beyond what is already required by state and federal environmental laws, and cannot be used to remediate the violation or any environmental harm caused by the violation, or to correct any illegal activity that led to the enforcement action.

Compliance History

Since 2002, the agency has rated the compliance history of every owner or operator of a facility that is regulated under certain state environmental laws.

A uniform evaluation standard has been used to assign a rating to each of the 429,000 entities regulated by the TCEQ. The ratings take into consideration prior enforcement orders, court judgments, consent decrees, criminal convictions, and notices of violation, as well as investigation reports, notices, and disclosures submitted in accordance with the Texas Environmental, Health, and Safety Audit Privilege Act. Agency-approved Environmental Management Systems are also taken into account.

An entity's classification comes into play when the agency considers matters regarding not only enforcement but also permit actions, the use of unannounced inspections, and participation in innovative programs.

Each September, regulated entities are classified or reclassified. (The ratings database can be found at www11.tceq.state.tx.us/oce/ch. Ratings below 0.10 receive a classification of "high," which means that those entities have an "above-average compliance record" with environmental regulations. Ratings from 0.10 to 45.00 merit "average," for having "generally complied." And ratings of 45.01 or more result in a "poor" classification, because these entities "performed below average."

An "average by default" classification means there was no compliance information on that entity for the last five years.

Compliance History Designations September 2008

Classifications are updated each September to reflect the previous five years.

Entity Classification	Number	Percent
High	15,578	9%
Average by default	136,019	80%
Average	17,642	10%
Poor	1,104	1%
TOTAL	170,343	100%

Dam Safety

Texas has 7,603 dams that are regulated by the TCEQ. Of these, an estimated 1,650 are classified as high- and significant-hazard dams. While dam owners are ultimately responsible for the safety of the structures, the TCEQ's Dam Safety Program has oversight of the construction, maintenance, and repair of dams.

In a May 2008 audit report, the State Auditor's Office concluded that the TCEQ had not been fulfilling its statutory mandate in dam safety by failing to perform timely inspections of all high- and significant-hazard dams or to ensure that the deficiencies identified in inspection reports were corrected. The report contained a number of recommendations to upgrade the program.

At the same time, the State Auditor did recognize that the TCEQ Dam Safety Program has been actively working on improvements during the last four years. Staffing was up to eight employees (and two contractors) by the end of August 2008, with plans to add five more by October and to request funding for additional inspectors.

The staff performs safety inspections of existing dams, reviews plans for dam construction and major rehabilitation work, makes periodic inspections of construction work, and approves emergency action plans.

In the last two years, the program issued inspection reports on 430 dams, and staff held nine educational workshops around the state, giving presentations to more than 500 dam owners/operators and engineers.

In July 2008, the TCEQ proposed revising its dam safety rules to provide additional guidance to owners of existing dams and the owners and engineers of proposed dams. The changes will also allow the agency to increase its oversight of high- and significant-hazard dams.

Accredited Laboratories

Starting July 1, 2008, the TCEQ only accepts regulatory data from labs accredited according to standards set by the National Environmental Laboratory Accreditation Program (NELAP) or from labs that are exempt from accreditation, such as in-house labs.

The mandate originated with legislation passed after the TCEQ sunset review. Laboratories were allowed a three-year phase-in, ending in mid-2008, to become accredited.

The new accreditation program places environmental laboratories analyzing air, water, and waste under the same type of scrutiny that previously applied only to labs analyzing drinking water.

All labs accredited by the TCEQ are now held to the same quality control and quality assurance standards. The analytical data produced by these facilities is used in TCEQ decisions relating to permits, authorizations, compliance actions, enforcement actions, and corrective actions, as well as in characterizations and assessments of environmental processes or conditions.

Leading up to the July 2008 application deadline, the TCEQ conducted an outreach and educational program through letters, postcards, articles in trade association publications, and conference presenta-

tions. The agency held 11 workshops, drawing more than 400 attendees.

TCEQ laboratory accreditations are now recognized by other states using NELAP standards and by some states that do not operate accreditation programs of their own.

Through August 2008, the TCEQ had issued accreditation certificates to 248 labs. That included commercial labs (in-state and out of state) and government labs, including the TCEQ's own air and water labs.

Occupational Licensing

Revised rules for occupational licenses and registrations took effect in early 2008. The changes affected all 10 occupations that are licensed by the TCEQ (see table).

Among the chief revisions are:

- Licenses and registrations are now valid for three years, instead of two. This change makes for more efficient operations at the agency.
- Fees bump up slightly—\$2 per year—to pay for online renewals. Eligible licensees who have completed their continuing education can renew their licenses through Texas Online at www.tceq.state.tx.us/goto/renew. Electronic renewals take only a matter of days rather than weeks.

Both of these provisions apply to licenses or registrations that expired on or after Jan. 1, 2008.

The Compliance Support Division issues occupational licenses to qualified individuals in 10 environmental professions. There are more than 50,000 active licenses statewide.

TCEQ Licensing Programs	Active Licenses
Backflow Prevention Assembly Testers	4,694
Customer Service Inspectors	1,748
Landscape Irrigators	6,230
Leaking Petroleum Storage Tank Corrective Action Specialists and Project Managers	1,366
Municipal Solid Waste Facility Supervisors	1,200
On-Site Sewage Facility Installers, Designated Representatives, Site Evaluators, Maintenance Providers, and Apprentices	7,359
Underground Storage Tank Contractors and Supervisors	1,433
Public Water System Operators and Operations Companies	14,808
Water Treatment Specialists	581
Wastewater System Operators and Operations Companies	10,807
Total	50,226

Complaints Received

The TCEQ receives hundreds of environmental complaints each year, mainly through its 16 regional offices. Staff investigates each complaint and makes a report available to the complainant and the public.

The agency is required by statute to prepare an annual compilation that includes analyses of complaints by environmental media (air, waste, and water), priority classification, region, Commission response, enforcement action, and trends. The analysis also assesses the impact of changes in complaint-handling policies and procedures approved by the Commission.

An analysis of the complaints received in the last two years can be found in Appendix A.

Air Quality

Ozone Standard to Get Tougher

The federal Clean Air Act requires the Environmental Protection Agency (EPA) to review the standard for each criteria pollutant every five years to ensure that the standard provides the required level of health and environmental protection.

In the spring of 2008, the EPA announced a shift in the existing 8-hour standard for ground-level ozone to a more stringent level of 0.075 parts per million (ppm). In announcing the change, the EPA cited new scientific evidence about ozone and its effects on public health and the environment.

The current 8-hour standard, announced in 1997, calls for communities to have a three-year average of 0.08 ppm or less over an 8-hour period.

But under the tougher standard of 0.075 ppm, Texas will likely see substantial change in its air quality designations, as the number of counties monitoring over the standard grows. The TCEQ will review criteria for a total of 45 counties before making recommendations to the governor's office.

All states have until March 12, 2009, to make their designation recommendations to the EPA. These recommendations will be based on monitoring data over a three-year period. EPA's default approach will be to include the entire metropolitan statistical area.

Attainment deadlines for the strengthened ozone standard are expected to range from 2013 to 2030, depending on the severity of the ozone exceedances in each nonattainment area. For now, the 1997 8-hour ozone standard of 0.08 ppm remains in place.

In the summer of 2008, the TCEQ held public briefings on the 0.075 ppm standard in these locations and asked for community comments: Austin, Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, Houston-Galveston-Brazoria, San Antonio, and Tyler-Longview-Marshall.

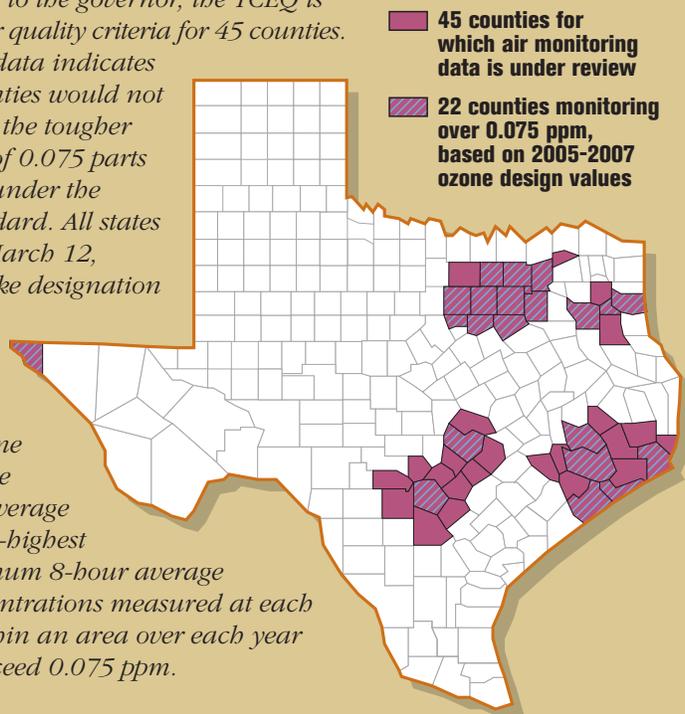
As the TCEQ develops proposals to deal with ozone issues, the revisions will be submitted to the EPA in the form of the State Implementation Plan (SIP), which is a blueprint for dealing with air quality issues—region by region.

Ground-level ozone, a component of smog, is not emitted directly into the air but forms through a reaction of nitrogen oxides (NO_x) and volatile organic compounds (VOCs) in the presence of sunlight. The major sources of NO_x and VOCs are industrial facilities, electric utilities, car and truck exhaust, gasoline vapors, and chemical solvents.

Air Quality Map in Flux

Prior to recommending nonattainment designations to the governor, the TCEQ is reviewing air quality criteria for 45 counties. Monitoring data indicates that 22 counties would not comply with the tougher ozone level of 0.075 parts per million under the 8-hour standard. All states have until March 12, 2009, to make designation recommendations to the EPA.

Under the new ozone standard, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.075 ppm.



Types of Sources

Emissions that affect air quality can be characterized by their sources.

Point sources: industrial facilities such as refineries and cement kilns

Area sources: industrial fuel use, surface coating, and painting

On-road mobile sources: cars and trucks

Nonroad mobile sources: construction equipment and engines such as locomotives

Houston-Galveston-Brazoria

Mobile sources (on-road and nonroad) make up 62 percent of the nitrogen oxide (NO_x) emissions for the eight-county nonattainment area in and around Houston. Point and area sources contribute the remaining 38 percent, based on a 2005 modeling emissions inventory. While the state has jurisdiction over point and area source emissions, it must rely on the federal government to help reduce emissions from mobile sources.

This urban area had been classified as “moderate” nonattainment of the 1997 8-hour ozone standard, with an attainment date of June 15, 2010.

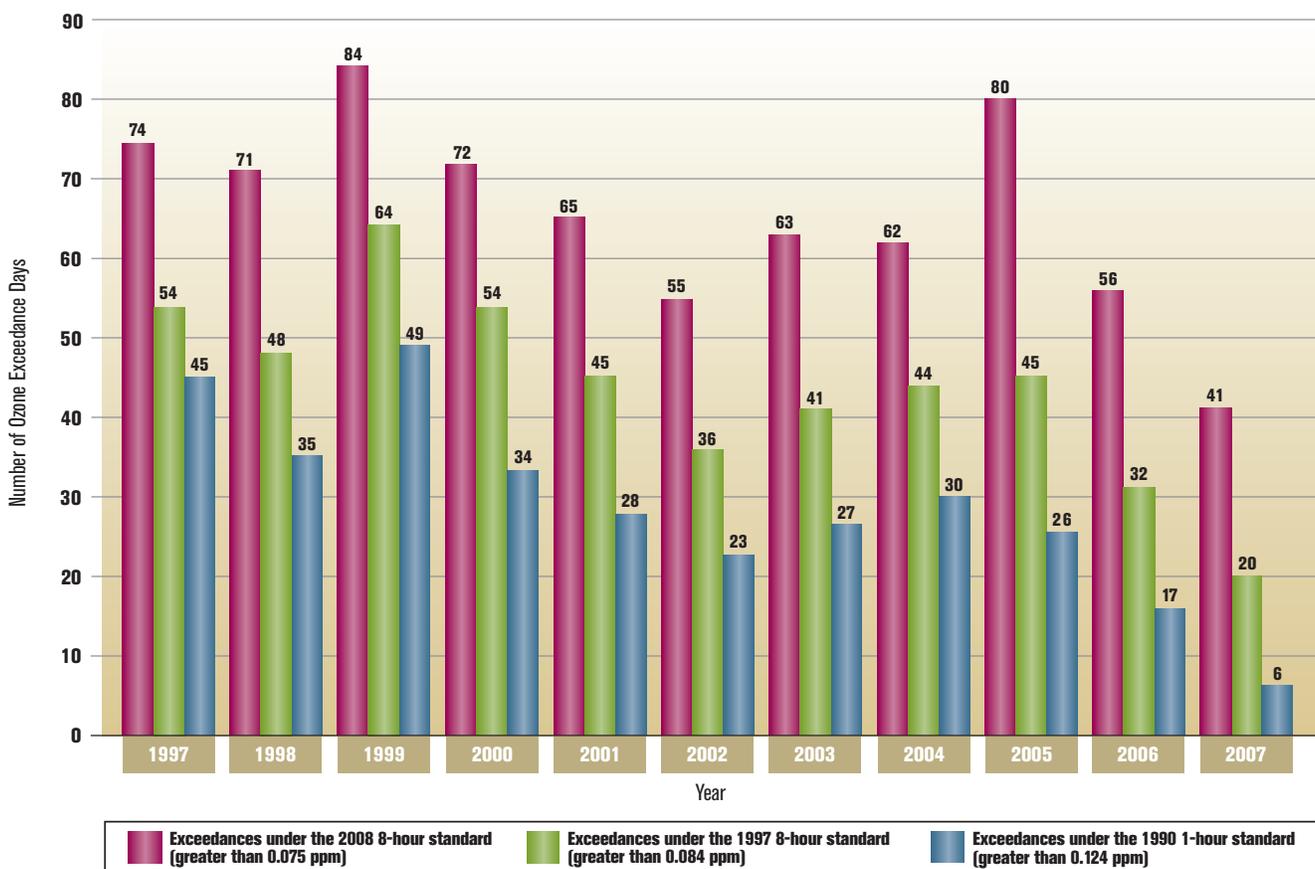
In June 2007, the TCEQ sent SIP revisions to the EPA, along with Governor Rick Perry’s request that Houston’s ozone designation be reclassified as “severe,” with an attainment date that is “as expeditious as practicable” but no later than June 15, 2019.

In September 2008, the EPA granted the request to voluntarily reclassify the Houston area as “severe,” and gave the state until April 15, 2010, to submit a revised SIP addressing the new requirements under the federal Clean Air Act. Attainment for the 1997 8-hour ozone standard is to be accomplished “as expeditiously as practicable but no later than June 15, 2019.”

One SIP revision documented compliance with EPA’s reasonable-further-progress requirement to cut emissions by 15 percent from the inventory baseline, from 2002 to 2008. Another revision was submitted as the first step in addressing the 8-hour ozone attainment demonstration requirements, including commitments for voluntary mobile source emission reductions by the Houston-Galveston Area Council, rules on storage and

Ozone Exceedance Days

Houston-Galveston-Brazoria Area, 1997-2007



degassing operations, and Texas Low Emission Diesel (TxLED) rules for marine fuels.

Meanwhile, the TCEQ is developing three principal components for the 8-hour attainment demonstration: a photochemical modeling demonstration, control strategy development, and the stakeholder process. Further, development of a new reasonable-further-progress demonstration will be completed along with the attainment demonstration.

Identifying control measures that are reasonable, as well as technologically and economically feasible, presents a challenge for the TCEQ, considering the magnitude of emission reductions already achieved under the 1990 1-hour ozone standard. Meeting the ozone standard in the Houston area is also complicated due to unique meteorological conditions along the Gulf Coast and the complex chemistry of ozone formation.

Control strategies include requirements for point sources to reduce NO_x emissions by an average of 80 percent, and an annual cap-and-trade program to reduce emissions of highly reactive volatile organic compounds (VOCs) from process vents, flares, and cooling-tower heat exchangers.

Dallas-Fort Worth

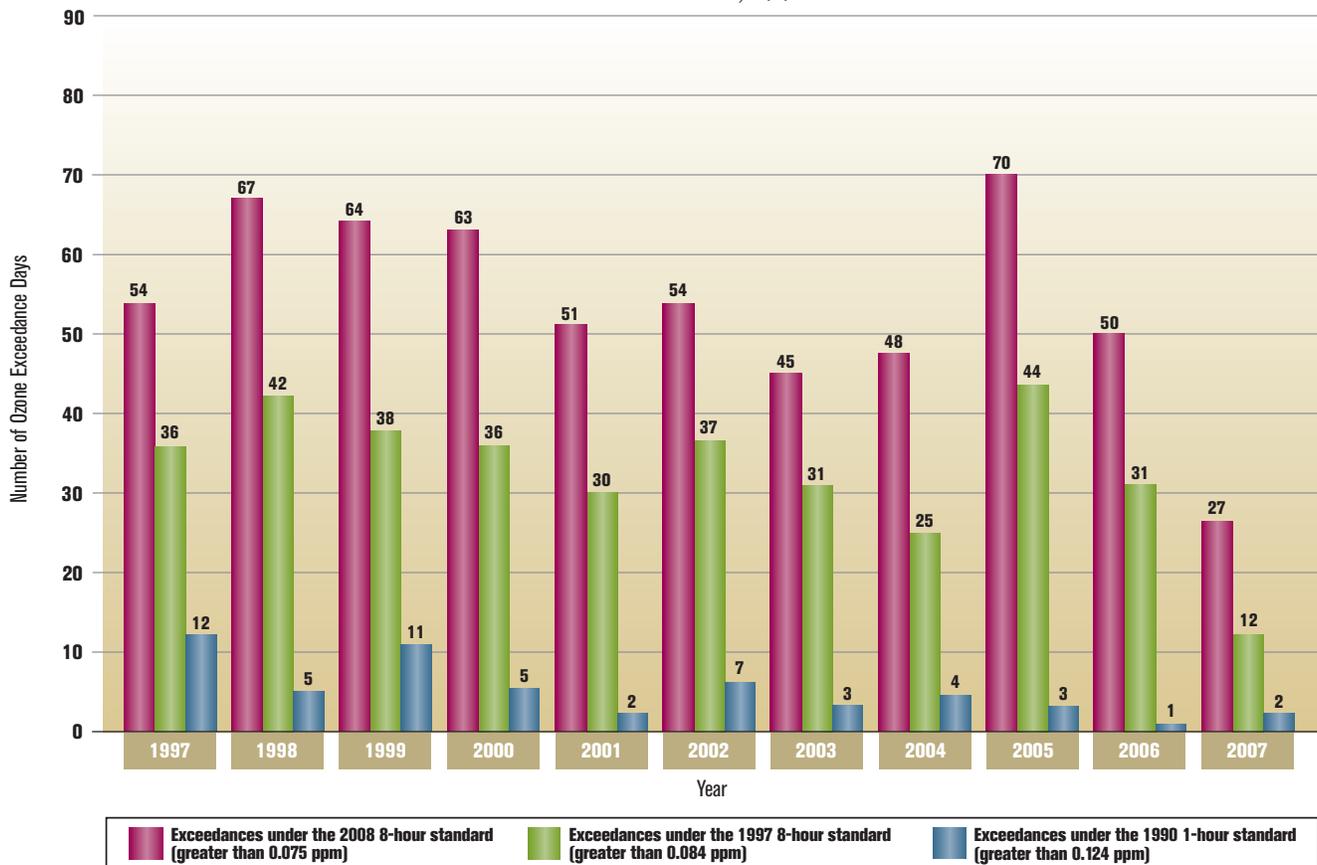
In the nine-county nonattainment area of Dallas-Fort Worth, about 73 percent of NO_x emissions are emitted from on-road and nonroad mobile sources that remain under federal jurisdiction. However, the state has initiated substantial NO_x reductions through regulation of point and area source emissions, which make up the remaining 27 percent of NO_x emission sources.

In July 2008, the EPA proposed conditional approval of a SIP revision that demonstrates Dallas-Fort Worth's attainment of the 1997 8-hour ozone standard by June 15, 2010. The stringent control measures to reduce NO_x emissions, together with strategies from previous air quality plans, provide for reducing total ozone precursors by about 409 tons per day.

Control strategies adopted by the TCEQ include strict air pollution rules requiring NO_x reductions from power plants; major industrial, commercial, and institutional (ICI) sources; minor ICI sources; and cement kilns. Rules also require NO_x reductions from stationary rich-burn, gas-fired internal combustion engines in 33 attainment counties east and southeast of the nine-county area.

Ozone Exceedance Days

Dallas-Fort Worth Area, 1997-2007



The EPA's review of public comments and final action on the SIP proposal is expected by 2009. EPA's final approval is conditioned on regulatory action to limit the use of pollution credits in the nine-county area and is contingent upon adoption of a statutorily required contingency plan.

When the EPA proposed conditional approval for the SIP revision, it also proposed a determination that the area had attained the former 1-hour ozone standard, based on 2004-2006 data.

The EPA also proposed approval actions on regulations for cement kilns and other stationary sources. The reasonable-further-progress revision of the SIP, which demonstrates a 15 percent total reduction in NO_x and VOC emissions from 2002 to 2008, was submitted to the EPA in mid-2007, along with the Dallas-Fort Worth attainment demonstration and accompanying rules.

Beaumont-Port Arthur

In 2004, the TCEQ adopted an attainment demonstration for both the 1-hour and the 8-hour ozone standards in the three-county Beaumont-Port Arthur area. The EPA revoked the 1-hour standard the following year. However, control strategies applied under the 1-hour standard remain in place, and in 2005 the Commission adopted a revised 8-hour attainment demonstration for the SIP.

The EPA set a deadline of June 15, 2007, for the area to attain the 8-hour standard or face reclassification to "moderate" nonattainment. The area did not monitor attainment of the 8-hour standard by the deadline (based on data from 2004 to 2006), so the EPA proceeded with the reclassification of "moderate" nonattainment.

However, subsequent data for 2005 to 2007 indicated that Beaumont-Port Arthur is monitoring attainment. As a result, the TCEQ in mid-2008 proposed a redesignation request and maintenance plan SIP revision for the area. The SIP revision is due to the EPA by January 2009.

El Paso

After implementing air quality programs for 15 years, El Paso achieved major reductions in the previously high levels of ozone, carbon monoxide (CO), and particulate matter (PM₁₀).

El Paso has been monitoring attainment of the 1-hour ozone standard since 2001. The TCEQ did not officially request redesignation to attainment because the 1-hour ozone standard was replaced by the more restrictive 8-hour ozone standard. The EPA announced in 2004 that El Paso would be classified as in attainment of the 8-hour standard.

In 2007, the Commission adopted a request seeking attainment status for El Paso for CO. At the same time, the Commission adopted maintenance plans for 8-hour ozone and CO to ensure that the area stays in attainment of those standards. EPA's approval is all that remains for the redesignation of CO attainment to become official.

El Paso's success can be credited to a number of control strategies, including vehicle inspection and maintenance, low Reid vapor pressure gasoline (summer) and oxygenated fuels (winter), Stage I and II vapor recovery system requirements for gasoline-handling facilities, and restrictions on industrial and wood burning.

In addition, the TCEQ upgraded the vehicle inspection and maintenance program, effective January 2007, to better identify high-polluting vehicles.

Analysis of monitoring data shows that El Paso would be in attainment of the PM₁₀ standard if not for natural events, such as dust storms. So the TCEQ developed a natural-events action plan to flag exceedance days that occur due to natural events. Flagging allows the EPA to discard those days when determining the area's compliance with the PM₁₀ standard. The Commission adopted the natural-events action plan in February 2007, placing the state in a better position to seek El Paso's redesignation to attainment for PM₁₀ and to develop a viable maintenance plan.

Looking ahead to the revised 8-hour ozone standard of 0.075 ppm, El Paso will be in nonattainment, according to preliminary data.

Early Action Compacts

Three areas of Texas reached an important milestone in December 2007 by meeting their air quality goals. The areas of San Antonio, Austin-Round Rock, and Northeast Texas had voluntarily implemented a variety of clean-air strategies to comply with the 1997 8-hour ozone standard.

The voluntary agreement with the TCEQ was called an Early Action Compact (EAC). When an urban area agreed to an EAC, it retained the ability to design and implement its own action plan for improving air quality.

The EAC concept was conceived in Texas and approved by the EPA. San Antonio was the first to participate, followed by Austin-Round Rock and Northeast Texas (Longview-Marshall-Tyler). At the time, the 8-hour ozone standard was soon to take effect, and all three areas were monitoring exceedances.

Because of the San Antonio area's participation in the EAC, it was designated nonattainment-deferred by the EPA for the 8-hour ozone standard. The counties of Bexar, Comal, and Guadalupe had a date for

reaching attainment; if the date were missed, the more stringent nonattainment requirements would take effect. Neighboring Wilson County also agreed to take part in the EAC.

From 2004 to 2007, each EAC area filed six-month progress reports detailing the latest monitoring results and the status of their clean-air programs. By the end of 2007, preliminary data showed each area to be in attainment with the 1997 ozone standard.

The voluntary local programs that achieved results included the Alamo Clean Air Partnership in San Antonio, which encouraged voluntary emission reduction measures in the business and government sectors; Travis and Williamson counties' participation in the state's annual vehicle inspection and maintenance program; and Longview, Marshall, and Tyler's joining the Department of Energy's Clean Cities Program, which helps municipalities reduce emissions from on-road vehicles.

More ESLs Updated

TCEQ toxicologists have continued working to update health screening values for several air pollutants that are closely tracked by air quality monitors and/or frequently permitted by the agency. Among these are toxic air pollutants such as benzene and other chemicals of concern. At sufficiently high doses, these pollutants are known or suspected to cause cancer or other serious health problems.

The toxicology project is part of an ambitious re-examination of the agency's "effects screening levels," or ESLs. ESLs are chemical-specific air concentration limits established to protect the health and welfare of the general public.

The TCEQ completed new guidelines for developing ESLs in 2006, and adopted an excess cancer risk level of 1 in 100,000, which represents the midpoint in EPA's acceptable excess risk range of 1 in 10,000 to 1 in 1,000,000.

The levels developed under the new guidelines are for air pollutants that are not regulated by federal ambient air quality standards but play a leading role when the agency evaluates air monitoring data and sets emission limits in air permits. The development of ESLs under new guidelines incorporates the highest scientific standards, public comment, and non-TCEQ scientific peer review.

By the end of fiscal 2008, toxicologists had finalized ESLs for 18 chemicals, including benzene, 1,3-butadiene, and formaldehyde. Once published, the new ESLs take effect immediately. An updated published list of more than 4,600 ESL values used in the air permitting process was also made available in fiscal 2008.

ESL development is ongoing; the published list is updated about every six months.

Air Pollutant Watch List

The agency relies on ESLs and state regulatory standards to designate areas for the Air Pollutant Watch List and to set enforceable industrial air permit limits.

When an air quality monitor measures trends that exceed applicable health-based ambient air comparison values, the TCEQ places the immediate area on the Watch List for stricter inspections, monitoring, enforcement, and permitting reviews.

If monitored levels fail to decline, the agency takes additional steps, such as aggressive use of state-of-the-art monitoring equipment, to find and implement controls on previously underestimated or unknown emissions.

The Watch List shows 14 locations in which specific pollutants have been measured at levels that could cause adverse short-term or long-term health problems or nuisance odor conditions. Of the 14, five are in Harris, Galveston, and Brazoria counties. The remaining sites are in the counties of Bastrop, Bowie, Cass, Dallas, El Paso, Jasper, Jefferson, and Nueces.

CAMR and CAIR

In 2005, the EPA issued two new rules that were designed to significantly reduce emissions for new and existing electric generating units.

The Clean Air Mercury Rule (CAMR) would permanently cap and reduce mercury emissions from new and existing coal-fired power plants for the first time. This rule promised to make the United States the first country to regulate mercury emissions from electric generating utilities. The TCEQ approved rulemaking to implement the CAMR trading program for mercury in 2006.

The other measure, the Clean Air Interstate Rule (CAIR), was intended to help states with nonattainment areas for ozone and particulate matter of less than 2.5 microns (PM_{2.5}) to control NO_x and sulfur dioxide (SO₂) emissions from new and existing electric generating utilities. The TCEQ approved rulemaking to implement the CAIR trading program for NO_x and SO₂ in 2006 and incorporated the provisions of Texas House Bill 2481, passed in 2005.

Both programs were overturned in 2008. A federal appellate court vacated CAMR and, in a later decision, vacated CAIR. As of early September 2008, the EPA was reviewing both court decisions, which are subject to appeal to the U.S. Supreme Court.

Fuel Requirements

In another strategy to lower levels of NO_x and VOCs from mobile sources, either the TCEQ or the EPA has requirements in place to use various fuel mixtures in different parts of the state, as follows:

- Reformulated gasoline year-round in the eight-county Houston-Galveston-Brazoria area and the four-county Dallas-Fort Worth area (a federal requirement).
- Low Reid vapor pressure gasoline—May 1 to October 1—in 95 counties in East and Central Texas.
- Low Reid vapor pressure gasoline—May 1 to September 15—in the three-county Beaumont-Port Arthur area (a federal requirement).
- Low Reid vapor pressure gasoline—May 1 to September 16—in El Paso County.
- Oxygenated gasoline—October 1 to March 31—in El Paso (to lower carbon monoxide).
- Low-emission diesel fuel year-round in 110 counties in East and Central Texas, including Houston-Galveston, Dallas-Fort Worth, and Beaumont-Port Arthur.

The Texas Low Emission Diesel (TxLED) rule applies to diesel fuel producers, importers, common carriers, distributors, transporters, bulk-terminal operators, and retailers. The goal is to lower the emissions of NO_x and other pollutants from diesel-powered motor vehicles and nonroad equipment in the eastern portion of the state.

Diesel fuel produced for delivery and ultimate sale—for both highway and non-highway use—in the affected counties must contain less than 10 percent by volume of aromatic hydrocarbons and have a cetane number of 48 or greater. Compliance alternatives are allowed, such as TCEQ-approved alternative diesel-fuel formulations, California Air Resource Board-certified alternative diesel-fuel formulations, and TCEQ-approved alternative emission reduction plans. Compliance for producers and importers was required on October 31, 2005; for bulk plant distribution facilities, December 15, 2005; for retail fuel dispensing outlets, wholesale bulk purchasers, and consumer facilities, January 31, 2006.

In addition, the TxLED rule applies to marine distillate fuels used in the Houston-Galveston-Brazoria ozone nonattainment area. Compliance for producers and importers of marine distillate fuels was required on October 1, 2007; for bulk plant distribution facilities, November 15, 2007; and for retail fuel dispensing outlets, wholesale bulk purchasers, and consumer facilities, January 1, 2008.

As of August 2008, 102 producers and importers had registered to supply TxLED to counties in East and Central Texas.

Major Incentive Programs

Two of the TCEQ's most important programs for reducing emissions that contribute to ozone are voluntary, and the incentives offered by both are in high demand.

As stated in Chapter 1, the Texas Emissions Reduction Plan (TERP) provides financial incentives to own-

ers and operators of heavy-duty diesel vehicles and equipment for projects that will lower NO_x emissions.

TERP grants and activities during the last two years are detailed in a separate report, *The Texas Emissions Reduction Plan: Biennial Report to the Texas Legislature* (SFR-079/08).

Also, with the expansion of vouchers, AirCheckTexas Drive a Clean Machine is expediting the removal of older, high-emitting cars and trucks in 16 urban counties, as discussed in Chapter 1. Since December 2007, the program has replaced almost 15,000 older, polluting vehicles with newer, cleaner vehicles.

For income-eligible motorists, the program continues to assist with the repair of vehicles that fail the annual emissions test. By issuing vouchers of up to \$600, AirCheckTexas helped pay for correcting emission problems on about 9,800 vehicles in the last two years.

Operated by the Texas Department of Public Safety in conjunction with the TCEQ, the repair program relies on privately owned inspection stations to test gasoline-powered cars and trucks that are 2 to 24 years old. (Passing both the emissions and safety portions of the annual inspection is required for issuance of a state inspection sticker.)

More details on AirCheckTexas are available in Chapter 3.

Environmental Research and Development

The TCEQ continues to support some of the leading air quality research in the country. Most recently, the agency worked to take the findings of the Texas Air Quality Study II (TexAQS II), which was conducted in 2005 and 2006, and incorporate them into designing effective control strategies.

To this end, the TCEQ supported a team of researchers to create a coherent summary of the preliminary findings of the field study, so that these findings could play an immediate role in air quality planning. This summary—or synthesis—was created by a consensus of the participants in the TexAQS II study. The cost was about \$211,500 spanning the 2006 and 2007 fiscal years.

The Rapid Science Synthesis Team included 52 of the scientists who participated in the TexAQS II, and focused on conclusions that could be supported by their data. Their first report was issued in October 2006, only 16 days after the field study ended. The final report was issued in August 2007. Typically, the results of a field study are not available for months or years after a study's completion due to the pace of scientific publishing. But with these preliminary results assembled so quickly, the TCEQ was able to use them in air quality modeling, which forms the basis for designing control strategies.

Researchers addressed questions relevant to the eastern half of the state, such as “what are the processes that lead to ozone formation and accumulation in Houston, Dallas, and the eastern half of Texas” and “what role does the transport of ozone and its precursors from distant sources play during high ozone days?”

Some preliminary findings from the TexAQS II are:

- The highest ozone concentrations observed in Houston are still linked to emissions from the petrochemical industry (as was the case in the TexAQS I 2000 field study).
- The efficiency of ozone formation, however, has decreased since 2000, as have maximum ozone concentrations. Ozone production efficiency is the ratio between the amount of ozone produced and the amount of NO_x reacted. The new findings determined that it now takes more NO_x to make the same amount of ozone; hence, the decrease in efficiency of ozone formation.
- Ozone plumes from urban areas—including Houston, Beaumont, and Dallas-Fort Worth—strongly affect the amount of ozone observed in the rural areas of the eastern half of the state.
- On average, about 50-60 parts per billion of ozone was transported from Houston into eastern Texas on a typical day during August to October 2006. (The new 8-hour ozone standard will be 0.075 ppm.)
- Emissions of ozone precursors have decreased in Houston since 2000. NO_x emissions from industrial point sources have fallen dramatically—down by 30 percent to 80 percent. The emissions of ethane, a highly reactive volatile organic compound, were down by about 40 percent.
- NO_x emissions from shipping can rival power-plant emissions in magnitude in the Houston region.
- Emissions of highly reactive VOCs continue to be substantially under-reported in some industrial areas.
- Nitryl chloride (ClNO₂) is formed at night, according to observations, when NO_x emissions and sea salt aerosol are both present. The presence of ClNO₂ can lead to earlier and more rapid ozone production in the Houston region.

To take advantage of these findings, the TCEQ has collaborated with scientists from the National Oceanic and Atmospheric Administration, Texas A&M University, the University of Houston, Rice University, and the University of Texas, as well as ENVIRON, the University of Colorado, the University of Alabama at Huntsville, and other institutions to improve the scientific tools used to develop air quality plans. These new techniques will allow TCEQ technical staff to perform computer simulations of air pollution episodes with greater accuracy. By

leveraging the TexAQS II findings into the air quality planning process, the TCEQ can ensure its planning is consistent with the current state of the science.

A number of air quality projects have been conducted through the TCEQ's funding of the Texas Environmental Research Consortium (TERC), which was created in 2002 to improve ozone science and air quality modeling in the Houston-Galveston area. TCEQ funding, which began in 2004, has reached a total of about \$14.2 million. That includes \$2.2 million in fiscal 2007 and \$3.5 million in fiscal 2008.

TERC projects have included:

- Model-improvement studies
- Emissions-inventory improvements for VOCs and NO_x through innovative methodologies
- TexAQS II data collection and analysis
- Houston Exposure to Air Toxics Study

Expanding on research performed two years earlier, the TCEQ in 2007 funded aerial surveys of industrial and oil and gas sites along the Gulf Coast and in North Central Texas.

These surveys were conducted with the GasFindIR camera, a specialized passive infrared camera capable of imaging hydrocarbon plumes. While this project did identify some industrial sources with visible plumes, the number of sources and magnitude of the emission plumes appeared to have decreased significantly since 2005. When potentially significant emissions were identified at some upstream oil and gas sites in the Houston and Dallas-Fort Worth areas, the TCEQ pursued follow-up investigations and outreach. The aerial surveys cost \$185,000.

In another project, the TCEQ continued to advance the science of determining emissions from industrial sources by performing a five-week emissions monitoring study in 2007 in the Texas City area.

This project marked the first time that a U.S. regulatory agency used differential absorption lidar (DIAL) remote sensing technology to measure emissions from individual industrial sources. The study focused on gathering data from industrial sources that are difficult to measure using conventional sampling techniques. The resulting scientific data will help guide future research efforts and could result in additional control measures, refined emissions models for common sources, and improved emissions inventories. The DIAL study cost \$583,000, which included a \$200,000 EPA grant.

Water Quality

Addressing Surface Water

Every two years, the TCEQ assesses water quality to determine which water bodies meet the standards for their designated uses, such as contact recreation, support of

aquatic life, or drinking water supply. The assessment is published on the TCEQ Web site as the Texas Water Quality Inventory and Clean Water Act 303(d) List.

The inventory evaluates conditions during the assessment period and identifies the status of the state's surface waters in relation to the Texas Surface Water Quality Standards. The 303(d) List identifies waters that do not regularly attain one or more of the standards and may require action by the agency to restore water quality.

Because of its large number of river miles, Texas can assess only a portion of its surface water bodies. The most important river segments and those considered to be at highest risk for pollution are assessed regularly.

For the 2008 statewide assessment, water quality data was collected at 3,470 sites, half of which are routinely visited several times a year. That assessment identified 386 water bodies with a total of 516 impairments (any single water body can have impairments for more than one standard).

Overall, water quality in the state remains good, with most water bodies meeting their standards.

The TCEQ continues to expand its network of continuous water quality monitoring sites on priority water bodies (see Chapter 1). At these 60 sites, remote instruments measure basic water quality conditions every 15 minutes. Several sites also monitor nutrient concentrations every six hours.

The data is used for a number of purposes, such as characterizing baseline conditions; identifying water quality trends; assessing pollution events; characterizing conditions leading to harmful algal blooms; and developing monitoring technology, applications, and methodology.

Restoring Water Quality

The Total Maximum Daily Load (TMDL) Program is one of the agency's primary means of improving the quality of impaired surface waters. It works closely with the Wastewater Permitting and Nonpoint Source programs, as well as other governmental agencies and regional stakeholders during development and implementation of TMDLs.

A TMDL is like a budget for pollution—it estimates the amount of a pollutant that a water body can assimilate daily and still remain clean enough to meet water quality standards. The budget, or load, is divided among the sources of pollution in the watershed. Then an implementation plan to reduce pollutant loads is developed.

A TMDL sets the target for reaching attainment. Fully restoring water quality is a long-term project that can take several years.

Since 1998, the TCEQ has been developing TMDLs to improve the quality of impaired water bodies on

the 303(d) List, which identifies surface waters that do not meet one or more quality standards. In all, the program has adopted 101 TMDLs for 60 water bodies in the state.

As of August 2008, the TMDL program had restored water quality to attain standards for 21 impairments to surface waters. Overall, the program restored fishing uses, conditions for aquatic life, and proper salinity to 323 stream miles; made water suitable as a source of drinking water for 3,958 reservoir acres; and restored conditions for aquatic life in 12 estuary square miles.

From August 2006 to August 2008, the Commission adopted 11 TMDL reports (37 impairments) for the following projects: the Colorado River Below E.V. Spence Reservoir (salinity), Gilleland Creek (bacteria), the Guadalupe River Above Canyon Lake (bacteria), the Lower San Antonio River (bacteria), Nueces Bay (zinc in oyster tissue), Oso Bay (bacteria), Orange County Watersheds (bacteria, dissolved oxygen, and pH), Petronila Creek Above Tidal (salinity), the Upper San Antonio River (bacteria), Upper Oyster Creek (bacteria), and Upper Gulf Coast Oyster Waters (commercial oyster harvesting).

In the same period, the Commission approved seven implementation plans for 11 other TMDL projects. In all, these plans aim to restore 162 stream miles, 22,260 lake acres, and 29 square miles of estuary for support of a healthy aquatic community, the safety of fish consumption and oyster harvesting for commercial use, and general water quality.

Bacteria TMDLs. Bacteria from human and animal wastes can indicate the presence of disease-causing microorganisms that pose a threat to public health. People who swim or wade in waterways with high concentrations of bacteria might be at risk of contacting gastrointestinal illnesses. High bacteria concentrations can also affect the safety of oyster harvesting and consumption.

Of the 515 impairments listed for surface waters in Texas, about half are for bacteria impairments to recreational uses. A TMDL is under way or is scheduled for about 40 percent of the bacteria impairments.

For the remainder, the TCEQ must collect additional data to determine whether a TMDL or a revision to the standards is needed. However, the agency also intends to propose revisions to the contact recreation use and criteria in the water quality standards to more accurately describe the use of the state's water bodies and the associated risk of bacteria to human health. This could affect the scheduling of some bacteria TMDLs. If the EPA approves the revised standards, some of the bacteria impairments might be removed from the 303(d) List.

Identification of bacteria sources is critical for the success of plans to reduce bacteria in impaired waterways. Bacterial source tracking methods are used to identify the origins of pathogens in ambient surface waters.

Environmental Progress through TMDL Implementation Plans

As of August 2008, the TCEQ had approved TMDL implementation plans for the following streams, reservoirs, and estuaries. Each project is identified by water body, basin and segment number of the impaired water body, the designated use that has been affected, and the geographic extent of the impairment.

Implementation Plan	Basin & Segment(s)	Use Affected	Year Begun	Status	Area of Impairment
Aquilla Reservoir: atrazine	Brazos River; 1253	Source for drinking water	2002	Goals met	3,943 lake acres
Arroyo Colorado: legacy pollutants and organics	Nueces-Rio Grande Coastal; 2202, 2202A	Safety of fish consumption	2001	Under way	504 stream miles; 333 lake acres
Clear Creek: chlordane	San Jacinto-Brazos Coastal; 1101, 1102	Safety of fish consumption	2001	Goals met	42 stream miles
Clear Creek: dissolved solids	San Jacinto-Brazos Coastal; 1102	General (not tied to a specific use)	2006	Under way	60 stream miles
Clear Creek: volatile organic compounds	San Jacinto-Brazos Coastal; 1101, 1102	Safety of fish consumption	2001	Goals met	84 stream miles
Colorado River below E.V. Spence Reservoir: dissolved solids	Colorado River; 1426	General (not tied to a specific use)	2007	Under way	56 stream miles
Dallas and Tarrant county waterways: legacy pollutants	Trinity River; 0805, 0841, 0841A	Safety of fish consumption	2001	Under way	18,970 lake acres; 127 stream miles
E.V. Spence Reservoir: dissolved solids	Colorado River; 1411	General (not tied to a specific use)	2001	Under way	29,000 lake acres
Fort Worth waterways: legacy pollutants	Trinity River; 0806, 0806A, 0806B, 0829, 0829A	Safety of fish consumption	2001	Under way; some goals met	101 lake acres; 47 stream miles
Houston Ship Channel: nickel	San Jacinto River and Bays; 1001, 1005, 1006, 1007, 1013, 1014, 1016, 1017, 2426, 2427, 2428, 2429, 2430, 2430, 2436	Support of aquatic life	2001	Goals met	164 stream miles; 12 bay square miles
Lake Austin: low dissolved oxygen	Colorado River; 1403	Support of aquatic life	2001	Under way	1,830 lake acres
Lake O' the Pines: low dissolved oxygen	Cypress Creek; 0409	Support of aquatic life	2006	Under way	18,700 lake acres
Lake Worth: PCBs	Trinity River; 0807	Safety of fish consumption	2006	Under way	3,560 lake acres
Lower Sabinal River: nitrate-nitrogen	Nueces River; 2110	Source for drinking water	2006	Under way	27 stream miles
North Bosque River: soluble reactive phosphorus	Brazos River; 1226, 1255	General (not tied to a specific use)	2002	Under way	121 stream miles
Nueces Bay: zinc in oyster tissues	Bays and estuaries; 2482	Safety of commercial oyster harvesting	2007	Under way	73 estuary square miles
Petronila Creek above Tidal: dissolved solids	Nueces-Rio Grande Coastal; 2204	General (not tied to a specific use)	2007	Under way	44 stream miles

Note: Legacy pollutants are chemicals that persist in the environment long after their use has been banned or severely restricted.

Bacteria-source tracking can identify broad source categories, such as human, domestic animals, or wildlife, that might be contributing to an impairment. This source information can then be used in association with land use data to develop implementation strategies.

Because of the complexity of bacteria TMDLs and the number of people and facilities they could affect, the TCEQ and the Texas State Soil and Water Conservation Board (TSSWCB) formed a task force in 2006 to agree on methods, best practices, models, source-tracking methods, and research. The task force included experts from state universities and research organizations.

The result was a draft report, which was accepted by the Commission in June 2007. The recommendations, which are being implemented, suggested the following three-tier approach to fully identify sources: (1) involve stakeholders, and collect and analyze existing geographic and water quality data; (2) collect additional data, conduct library-independent research on bacteria sources, and produce more complex models of water quality scenarios; and (3) implement more extensive targeted monitoring, conduct library-dependent source analysis, and develop a detailed hydrologic water-quality model for the watershed.

Based on the task force recommendations, TCEQ and TSSWCB staff are updating the state's guide for developing TMDLs, which will be published in fiscal 2009.

Mercury impairments. Texas has 17 water bodies that are impaired due to mercury in fish tissue. Reducing mercury pollution is not readily accomplished through a standard TMDL process because much of the mercury is airborne and originates outside the state. The TCEQ has formed an advisory group to develop recommendations for addressing these impairments.

Bay and Estuary Programs

Plans for comprehensive conservation management of Galveston Bay and the Coastal Bend bays were established in the 1990s, and included a broad-based group of stakeholders and bay user groups. Two different organizations implement these plans.

The Galveston Bay Estuary Program (GBEP) is managed by TCEQ staff, while the Coastal Bend Bays and Estuaries Program (CBBEP) is managed by a non-profit entity established for that purpose. The TCEQ funds both programs.

The GBEP provides ecosystem-based management that strives to balance economic and human needs with available natural resources in Galveston Bay and its watershed. Toward this goal, the program fosters cross-jurisdictional coordination among federal, state, and local agencies and groups, and cultivates diverse, public-private partnerships to implement projects and build public stewardship.

Priorities include conserving wetlands and other valuable coastal habitats, addressing nonpoint sources of pollution, managing invasive species, and protecting public health by monitoring the consumption safety of bay seafood.

The GBEP completed 30 projects in the last two years, leveraging more than \$16 million in private, local, and federal partner contributions. These projects included three major habitat conservation projects to protect and restore 6,300 acres of wetlands and important coastal habitats. Staff also coordinated several stakeholder-based watershed protection planning efforts to help address impaired and threatened water bodies; and completed two risk assessments, notably a baywide seafood safety consumption risk assessment in conjunction with the Texas Department of State Health Services that extended a consumption advisory for speckled trout to include the entire Galveston Bay system.

The program is active in public outreach, giving presentations to civic groups, nonprofit organizations, schools, and governmental organizations and holding a State of the Bay symposium every two years.

In the last two years, the CBBEP implemented 50 projects, including habitat restoration and protection in areas totaling 1,600 acres, and secured more than \$5 million in additional funds to leverage TCEQ funding. Based in the Corpus Christi area, the program has built many partnerships with local governments and state and federal agencies.

The CBBEP continues to focus on impaired water bodies and TMDL projects—specifically Oso Bay, Oso Creek, and Copano Bay—and is investigating an area of low dissolved oxygen in Corpus Christi Bay. Working with the Port of Corpus Christi Authority and the Army Corps of Engineers, the CBBEP was able to direct the beneficial use of dredge material to expand an important colonial waterbird rookery island.

North Bosque Cleanup

The TCEQ is meeting most of its goals in the North Bosque River watershed as various cleanup strategies are being implemented.

High levels of nutrients there have contributed to an overabundance of algae and other aquatic plants. Excessive growth of algae can lead to taste and odor problems in drinking water and to low dissolved oxygen, which can kill fish. The primary targeted pollutant has been phosphorus, a nutrient found in animal waste and in discharges from wastewater treatment plants.

The North Bosque River empties into Lake Waco, which is the main source of drinking water for about 200,000 people in and around Waco. The upper half of the watershed is a hub of commercial dairy operations with an estimated 55,000 dairy cows.

In 2001, the TCEQ developed a total maximum daily load (TMDL) project for each segment of the North Bosque River to ultimately lower phosphorus levels. An implementation plan, containing both regulatory and voluntary measures, mapped out a plan of action, as follows:

- Stephenville and Clifton upgraded their wastewater treatment plants, reducing the concentration of phosphorus in wastewater effluent that empties into the river.
- A compost program met its goal of removing at least half the solid cattle manure from dairy CAFOs (concentrated animal feeding operations with 200 or more head of cattle). Incentives were offered for companies to turn cow manure into compost, which was then sold to landscapers. About 650,000 tons of dairy manure was collected from the North Bosque watershed from 2002 to 2006, when the incentives expired. Of that amount, 329,000 tons was exported in the form of compost, representing the removal of 740 tons of phosphorus. Even without the incentives, five of the nine original facilities are still composting and removing manure from the watershed.
- The TCEQ expanded its Environmental Monitoring Response System, which performs continuous water quality monitoring, to include seven locations in the watershed. The EMRS alerts regional staff when phosphorus concentrations rise to a designated level, requiring immediate investigation. The EMRS also began targeting “microwatersheds” so that investigators have smaller areas to check when alerts are issued (see Continuous Water Quality Monitoring, page 5).
- The TCEQ boosted enforcement and efforts to ensure compliance. The agency’s Stephenville office now conducts annual inspections of each CAFO and is available seven days a week to respond to pollution complaints.
- The TCEQ developed rules requiring individual permits for CAFOs in the watershed. These require comprehensive nutrient management plans, which range from feed management to land application of animal waste, and include enhanced inspection, testing, and recordkeeping. Dairy CAFOs must have larger retention control structures to capture rainfall from their production areas. The CAFOs also must satisfy certain education requirements to ensure that operators and staffers are trained in dairy waste management.

Meanwhile, the agency and its partners monitor water quality every two weeks to obtain information before and after pollution-reduction measures are put in place. Also, the TCEQ hired researchers to refine the TMDL models used to simulate conditions in the river. The model refinement involves reviewing conditions in

the watershed to determine whether existing cleanup plans are satisfactory.

The TCEQ is now working with stakeholders on the first TMDL project for the adjoining Leon River watershed, which exhibits similar water quality problems.

Edwards Aquifer Protection Program

As a karst aquifer, the Edwards Aquifer is one of the most permeable and productive groundwater systems in the United States. The aquifer crosses eight counties in south central Texas, serving as the primary source of drinking water for about 1.7 million people. This replenishable structure also supplies water for segments such as farming and ranching, manufacturing, steam electric power generation, mining, and recreation.

The aquifer’s pure spring water also supports a unique ecosystem of aquatic life, including a number of threatened and endangered species.

Because of the unusual nature of the aquifer’s geology and biology, and its role as a primary water source, the TCEQ requires a water pollution abatement plan for any regulated activity proposed within the recharge, contributing, or transition zones. Regulated activities include construction, clearing, excavation, or anything that alters the surface or possibly contaminates the aquifer and its surface streams. Best management practices must be used during and after construction to treat storm water in the regulated areas.

Legislation in 2007 authorized higher fees for the review of water pollution abatement plans, which the TCEQ implemented in May 2008. In place of the previous \$5,000 cap, fees for building in sensitive areas over the aquifer may go as high as \$10,000, depending on the project size.

Each fiscal year, the TCEQ receives about 700 plans for review, which is conducted by staff in the Austin and San Antonio offices. To keep pace with the development along the Interstate Highway 35 corridor, the agency increased the number of investigators assigned to Edwards Aquifer activities from 10 to 17. In addition, the agency goal for staff technical review of each aquifer protection plan was reduced from 90 to 60 days. To expedite the review, the TCEQ requires that all plans be administratively complete before staff begins reviewing the technical requirements.

With tremendous economic growth in the aquifer region comes greater potential for significant enforcement violations. This led the TCEQ to raise the penalties for any regulated activities that begin before the agency grants authorization. Such penalties can be increased for disregarding state laws protecting the aquifer.

Streamlining aquifer protection was aided in September 2007 when the TCEQ and the U.S. Fish and Wildlife Service published the second installment of

their agreement to eliminate duplicate approval requirements for activities in the aquifer region. The federal agency agreed that the voluntary use of additional enhanced measures in the TCEQ's Edwards Aquifer Protection Program can protect water quality and provide safeguards for karst cave dwelling invertebrate species that are listed as endangered or threatened. This additional agreement complements the prior agreement between the TCEQ and Fish and Wildlife, published in 2005 with the intent to protect aquatic species.

Drinking Water Standards

For more than a decade, the EPA has been instituting major changes that require public water systems to remove disease-causing microorganisms from surface waters, reduce arsenic and radionuclides from groundwater aquifers, and enact stricter controls regarding the chemical by-products created when chlorine is used to disinfect water. These new standards have been integrated into rules by the TCEQ and passed on to public water systems.

Of the 6,807 public water systems in Texas, about 4,672 are community water systems, mostly operated by cities. The remainder are noncommunity water systems—such as those at schools, churches, factories, businesses, rest stops, and state parks.

The number of public water systems meeting the state's drinking water standards totals 6,291. These systems serve about 96 percent of Texans.

All public water systems are required to monitor the levels of contaminants present in the treated water and to verify that each contaminant does not exceed its maximum contaminant level (MCL) established by the EPA. Based on EPA's risk assessments, the MCL is the highest level at which a contaminant is considered acceptable in drinking water for the protection of public health.

In all, the EPA has set standards for 102 contaminants in the major categories of microorganisms, disinfection by-products, disinfectants, organic and inorganic chemicals, and radionuclides. The microorganism that is of most importance is coliform bacteria, particularly fecal coliform. For Texas, the most common chemicals of concern are disinfection by-products, arsenic, fluoride, and nitrate.

In early 2008, the TCEQ adopted the requirements of the federal Long-Term Stage 2 Enhanced Surface Water Treatment Rule, which addresses *Cryptosporidium* removal and inactivation in surface water, and the Groundwater Rule, which addresses viruses in groundwater.

At the same time, the Commission also adopted the federal Stage 2 Disinfectants and Disinfection By-products Rule. Disinfection by-products are potentially carcinogenic chemicals formed when a disinfectant such as chlorine reacts with naturally occurring organic

carbon. About 125 systems in Texas are out of compliance with Stage 1 of the Disinfection By-products Rule, and the TCEQ estimates that perhaps twice this number will have difficulty complying with the Stage 2 rule.

New federal rules also apply to arsenic, an element that dissolves from rocks into water supplies. Citing studies that link long-term arsenic exposure to cancer, the EPA established a standard of 10 parts per billion, which replaced the old standard of 50 ppb. About 99 water systems in Texas continue to have difficulty complying with the arsenic standard, which took effect in 2006.

Implementing new regulations has been difficult and often costly, especially for smaller systems. The TCEQ has been proactive by alerting water systems to the new rules and their impact on water systems. The agency also manages an expense-reimbursement grant that reimburses costs for operator licenses and training at systems serving fewer than 3,300 people.

To deal with the new federal regulations, the TCEQ has turned to outsourcing. More than 41,000 water samples are analyzed each year just for chemical compliance. Most of the chemical samples are collected by contractors, then submitted to a certified laboratory. The analytical results are sent to the TCEQ and the public water systems.

The agency also hires university students to help with customer service and data review.

For educational purposes, the TCEQ holds a free annual symposium in Austin on public drinking water. The conference draws about 900 attendees.

If a public system's drinking water has levels of contaminants that exceed the regulatory MCLs or treatment technique requirements, the system must notify its customers. Community public water systems are required to provide consumers with an annual report on the quality of their drinking water. These Consumer Confidence Reports (CCRs) offer basic information, such as the type and source of water used by the local system, and an update of the system's compliance status with drinking water regulations. The EPA has determined that failure to deliver any CCR is a significant instance of noncompliance, subject to fines and penalties. About 180 community systems are projected to receive enforcement actions because of this determination alone in calendar 2008.

Drinking Water Violations

	FY 2007	FY 2008
Enforcement Orders	152	210
Fines	\$347,453	\$435,083
Contributions to Supplemental Environmental Projects	\$32,777	\$190,897

If a public system fails to have its water tested or fails to report test results correctly to the TCEQ, this constitutes a monitoring or reporting violation. When a public water system has significant or repeated violations of state regulations, the case is referred to the TCEQ's enforcement program.

Utility Services

Public water systems are required to submit engineering plans and specifications for new water systems or for improvements to existing systems. The plans must be reviewed by the TCEQ before construction can begin. In fiscal 2007 and 2008, the agency performed compliance reviews of 3,957 engineering plans for public water systems.

Investor-owned utilities and water supply corporations are also required to obtain certificates of convenience and necessity (CCNs) before providing service. A CCN is a TCEQ authorization that allows a retail public utility to furnish adequate retail water or sewer utility service to a specified geographic area. Investor-owned utilities must also have an approved tariff that includes a rate schedule, service rules, an extension policy, and a drought contingency plan.

The TCEQ has original jurisdiction over the rates and services of investor-owned utilities, and has appellate jurisdiction over the rates of water supply corporations, water districts, and out-of-city customers.

In the last two years, the TCEQ completed reviews of 298 CCN-related applications and 116 rate-related applications.

The agency strives to ensure that all water and sewer utility systems have the capability to operate successfully. The TCEQ contracts with the Texas Rural Water Association (TRWA) to assist utilities with financial, managerial, and technical expertise. An estimated 458 utilities were referred for this assistance. The TCEQ also contracts with the Bureau of Economic Geology at the University of Texas to provide a higher level of assistance to certain water systems experiencing compliance problems.

To further maximize resources, the agency encourages water and sewer systems to regionalize. The consolidation of two or more systems can lead to better utility service and lower rates. The TCEQ and the TRWA conducted 28 consolidation regionalization assessments to encourage consolidations and mergers of water and sewer utility systems.

With this certification, utilities are eligible for tax-exempt status for utility-system construction and improvements. There have been 356 utilities certified as regional providers.

The TCEQ also has jurisdiction over the creation of, and bond reviews for, water districts—such as municip-

pal utility districts, water control and improvement districts, and fresh water supply districts.

The agency reviews creations of general law water districts and bond applications for water districts to fund water, sewer, and drainage projects. In the last two years, the TCEQ reviewed about 635 major and 950 minor water district applications, which included more than \$1.74 billion in water district infrastructure improvements.

Storm Water Program

The Texas Pollutant Discharge Elimination System (TPDES) was created in 1998 when the EPA transferred authority of the National Pollutant Discharge Elimination System for water quality permits in the state to Texas. This included storm water permits.

As the permitting authority, the TCEQ has renewed the federal permits as they expired and developed new storm water permits to conform to updated federal and state requirements. A permittee can obtain authorization for storm water discharges through an individual or general permit.

The TCEQ receives thousands of applications a year for coverage under TPDES storm water general permits. With the growing workload, the agency has applied e-Permitting (see page 7) to some of these permitting and reporting functions, and has outsourced the management of incoming paper Notices of Intent (NOIs), Notices of Termination (NOTs), and No Exposure Certifications (NEC).

Permits are issued under the categories of industrial, construction, and municipalities.

Industry. The Multi-Sector General Permit, developed in 2001, regulates storm water discharges from industrial facilities. The permit groups similar industrial activities into sectors, with requirements specific to each of 29 sectors. Facilities must develop and implement a storm water pollution-prevention plan, conduct regular monitoring, and use best management practices to reduce the discharge of pollutants in storm water. The permit also contains limitations for certain discharges—specific pollutants and concentrations that cannot be exceeded. The TCEQ receives about 140 NOIs and NOTs a month for industrial facilities. This general permit was renewed and amended in August 2006.

Construction. The Construction General Permit was developed in 2003 for storm water runoff associated with construction activities, which includes clearing, grading, or excavating land at building projects such as homes, schools, roads, and businesses. The size of a construction project determines the level of regulation. Construction disturbing five or more acres is labeled a "large" activity, while construction disturbing one to five acres is termed "small." Smaller projects are also regulated if they are a part of a larger common plan of development that is more than one acre in size.

Construction operators at large sites are required to apply for coverage under the general permit by filing an NOI. Operators at small sites must meet permit requirements but are not required to submit an NOI. The TCEQ receives about 800 NOIs and 650 NOTs a month for large construction activities. This general permit was re-issued in February 2008.

Municipal. The TCEQ also regulates discharges from municipal separate storm sewer systems, or MS4s. This category applies to a citywide system of ditches, curbs, gutters, and storm sewers that collect runoff. It also includes other publicly owned systems, such as drainage from state roadways.

The TCEQ is responsible for renewing previously issued individual federal permits for discharges from medium and large MS4s. These systems are operated by cities and other public entities, such as the Texas Department of Transportation, in areas in which the 1990 census recorded 100,000 people or more. Thirty-three municipalities and other public entities fall into this category.

In August 2007, the TCEQ issued a general permit regulating small MS4s (populations of less than 100,000 in 1990) in urbanized areas. This permit requires a regulated MS4 operator to develop and implement a storm water management program that includes minimum plan requirements for public education and public participation, as well as minimum control measures for illicit discharge detection and elimination, construction storm water runoff control, post-construction storm water management, and pollution prevention/good house-keeping. There are 418 small cities, districts, and other public entities that have submitted NOIs for authorization or waivers under this general permit.

Storm Water Permits

Activity	Number Affected		Applications Received (monthly average)	
	FY 2007	FY 2008	FY 2007	FY 2008
Industrial (facilities)	9,267	10,986	842*	160*
Construction (large sites)	22,177	13,500**	900**	1,225**
MS4s (public entities)	NA	418	NA	418***

* The multi-sector general permit was renewed in 2007, and all active industrial facilities were required to submit an NOI or NEC. Fiscal 2008 numbers reflect only new facilities, transfers of operational control, and previously unpermitted facilities.

** The construction general permit was renewed in February 2008. All active large construction sites were required to submit an NOI or a waiver. Fiscal 2007 numbers reflect only new facilities, transfers of operational control, and previously unpermitted facilities.

*** MS4 applications and waivers were due in February 2008 for coverage until August 2011. The TCEQ expects to receive few applications until this permit is renewed in 2011.

Water Availability

International Treaty

Water availability is critical in the border region of Texas and its neighboring Mexican states. It is essential for supporting a growing population and sustaining economic development.

For 1,254 miles, the Rio Grande serves as the international boundary. The river has major tributaries in both the United States and Mexico.

International agreements reached in 1906 and 1944 apportioned the waters of the Rio Grande between Mexico and the U.S. and created the International Boundary and Water Commission to verify water distribution between the two countries. The TCEQ's Rio Grande watermaster allocates U.S. waters to Texas water-right holders from Fort Quitman in Hudspeth County to the Gulf of Mexico; upstream, the Rio Grande Compact Commission ensures water for Texas in the El Paso area.

Two large international dams—Falcon and Amistad—are upstream of Del Rio and Roma, respectively. While valued for recreation and related economic development, their primary uses are as water supply and for flood control. The two dams have a combined reservoir storage capacity of about 6 million acre-feet of water; a little more than half belongs to the U.S.

During the regional drought from 1995 to 2002, both reservoirs dropped to their lowest levels since the 1950s. Many farmers and communities in the border region attributed their water woes to fewer releases from reservoirs in Mexico.

The main source for the Falcon and Amistad reservoirs is Mexico's Río Conchos, the tributary that drains much of Chihuahua before entering the Rio Grande at Ojinaga and Presidio. Under the 1944 treaty, one-third of the water of the Conchos and five other Mexican tributaries (not less than 350,000 acre-feet annually) is to be provided to the U.S., delivered as average amounts in five-year cycles.

Starting with the five-year cycle that ended in 1997, Mexico incurred a water debt of 1.5 million acre-feet by not providing water to the U.S. in accordance with the treaty. The water debt created bilateral problems for many years, with deliberations reaching the highest levels of government in both countries. Adding to the difficulties was the fact that the 1944 treaty does not clearly define "extraordinary drought," which Mexico was claiming as the reason for delaying the water transfers.

In October 2007, Mexico finally transferred Rio Grande reservoir water to the U.S., ensuring closure of a treaty cycle without a deficit—for the first time in 15 years. At the time, the combined water levels in the Amistad-Falcon reservoir systems were the highest in more than a decade.

In addition, the 10 U.S.-Mexico governors agreed in 2007 to define the term “extraordinary drought” for the Rio Grande basin, which will aid treaty compliance in future five-year accounting cycles. The Border Governors Conference is working on the definition, which will be shared with federal agencies of both countries.

Dealing with Drought

The punishing effects of the 2006 statewide drought had an impact on the following year. Even though many regions received generous rainfall in 2007, a total of 288 public water systems had water restrictions on the books—many carried over from 2006.

In 2008, rain deficits continued to plague the southern half of Texas and reduce flows in many major rivers. In June, the TCEQ suspended temporary-use water rights to state surface water in South Texas and the Hill Country. The Edwards Aquifer Authority called for 20 percent cutbacks on monthly water pumping for much of Central Texas, including San Antonio. By summer’s end, the conditions had eased.

The recurrence of moderate to extreme dry spells is the reason the TCEQ reviews drought-contingency plans every five years. Water suppliers must show that they are prepared to reduce peak demand and extend supplies in times of hardship.

The current review got under way in May 2005, when some 1,200 drought-contingency plans were due. Of the plans submitted by retail and wholesale providers, fewer than 40 remained administratively incomplete by August 2008. Rejected plans must be revised and resubmitted. Utilities failing to comply could face enforcement penalties.

The next round of reviews begins in May 2009, which is a year early. The deadline was moved to coincide with regional water planning activities at the Texas Water Development Board.

Water Rights

Water flowing in Texas creeks, rivers, lakes, and bays is state water. The right to use it may be acquired through appropriation via the permitting processes established in state law.

Each permit application is reviewed by the TCEQ for administrative and technical requirements to evaluate the proposed project’s likely impact on matters such as other water rights, fish and wildlife habitat, conservation, water availability, and public welfare.

In fiscal 2007 and 2008, the agency processed 1,089 water-rights actions, including new permits and amendments, water supply contracts, and ownership transfers.

As more surface water rights are issued, available water supplies diminish. As a result, some cities are turning to indirect reuse of water as a source of supply. With indirect reuse, a city takes effluent that has been discharged into a stream, rediverts the wastewater, and reuses it for some purpose, such as irrigation.

This type of project requires a bed-and-banks permit. In the last two years, the TCEQ issued six bed-and-banks permits for indirect reuse. An example is the Tarrant Regional Water District, which rediverts and reuses 195,000 acre-feet a year from the Trinity River.

In a related matter, the TCEQ has participated for several years in instream flow studies in select river basins. The data is used to improve the scientific basis for special conditions placed in water-right permits to maintain instream uses and habitats.

The current focus is on the new, stakeholder-driven process to establish instream flow and freshwater inflow standards for each basin. (See Chapter 3 for more information on environmental flows.)

Groundwater Management

Almost 60 percent of the water used in Texas comes from groundwater. The state’s preferred method of managing this resource is through groundwater conservation districts (GCDs).

GCDs are authorized to adopt rules and permit water wells as part of their overall charge to manage and

Drought Planning Comes into Play

The TCEQ maintains a database to record the annual number of public water systems enacting drought contingency plans. By August 31, 2008, 80 systems had activated mandatory water restrictions, while 33 relied on voluntary measures, for a total of 113 systems.	Year	Number of Systems Activating Drought Plans
	1996	352
	1997	1
	1998	317
	1999	57
	2000	252
	2001	144
	2002	51
	2003	64
	2004	61
2005	49	
2006	284	
2007	288	
2008	113 <i>(as of August 31)</i>	

protect the groundwater in their jurisdiction by providing for conservation, recharge, and waste prevention. Most GCDs are created by special acts of the Legislature, but two other avenues exist: Landowners may petition the TCEQ to create a GCD, or may petition an existing GCD to add property.

In fiscal 2007 and 2008, Texas gained seven GCDs—encompassing 11 counties. This raised the statewide total to 93 GCDs, covering all or part of 145 counties. An additional four legislatively created GCDs (each a single county) had not been confirmed by voters by August 2008.

GCDs are created within priority groundwater management areas (PGMAs). The TCEQ issues the PGMA designation when an area is experiencing critical groundwater problems or is expected to do so within 25 years. These problems include shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, or contamination of groundwater supplies.

Once an area is designated a PGMA, landowners have two years to get a GCD created. Otherwise, the TCEQ is required to create a GCD or to recommend that the area be added to an existing district.

The agency completed two PGMA update studies. After an evaluation of the Trinity and Woodbine aquifers in North Central Texas, the Executive Director recommended a PGMA designation for the counties of Collin, Cooke, Dallas, Denton, Ellis, Fannin, Grayson, Hood, Johnson, Montague, Parker, Tarrant, and Wise. GCDs were subsequently created in five of the 13 counties. For the remaining counties, the Executive Director further recommended an eight-county, fee-funded GCD.

After an evaluation of the portion of the Trinity Aquifer in Central Texas, the Executive Director recommended a PGMA designation for the counties of Bosque, Coryell, Hill, McLennan, and Somervell, and that a regional GCD, funded by a combination fee and ad valorem tax, be created for the five-county area.

The State Office of Administrative Hearings (SOAH) recommended approval of both PGMAs. SOAH's recommendations will be considered by the Commission.

The Executive Director also initiated GCD creation within two PGMAs that were designated in 1990: parts of the Dallam County PGMA and parts of Comal and Travis counties in the Hill Country PGMA.

Waste Management

Low-Level Radioactive Waste Disposal

The TCEQ has been engaged in a license application review to determine whether a proposed low-level radioactive waste disposal facility can be sited and operated in a manner that is safe to the public, facility

workers, and the environment. Filed in 2004 by Waste Control Specialists, LLC, of Dallas, the application seeks authorization to construct and operate a low-level radioactive waste disposal facility in Andrews County in West Texas.

The TCEQ set in motion a series of application reviews and analyses to determine whether the proposed facility meets the complex and stringent environmental, safety, and public health standards established by law and agency rules. Under state and federal laws, the licensed Texas disposal facility is proposed to accept commercial low-level radioactive waste generated in Texas and Vermont, both members of a waste disposal compact.

A license issued by the TCEQ may also approve the operation of a separate, adjacent facility that accepts low-level radioactive waste and mixed waste (waste that contains both a hazardous and a radioactive constituent) from federal facilities.

Waste envisioned for the Texas “compact” facility generally includes discarded paper, plastic, glass, and metals that have been contaminated by or contain radionuclides. These materials are commonly generated by nuclear power plants, diagnostic and therapeutic nuclear medical facilities, industry, universities, and government. Waste sent to the proposed adjacent federal facility could include contaminated soil and debris from federal facilities engaged in nuclear weapons research and production.

Neither disposal facility would be licensed to accept high-level radioactive wastes, such as spent nuclear fuel rods or weapons-grade plutonium.

After the application was determined to be administratively complete in February 2005, a public meeting was held in Andrews County to discuss the application. The agency's technical review began in May of that year.

The following year, the applicant asked to extend the submission of application revisions to May 31, 2007, to fully respond to outstanding technical issues. The Executive Director granted an extension to May 1, 2007, subject to any legislative direction on the period for completing the review.

In August 2008, the agency filed a preliminary license decision, a draft license, and an environmental assessment with the Office of the Chief Clerk, summarizing staff conclusions of its technical review of the application. A notice was mailed to the applicant, landowners, and other interested parties. The following month, TCEQ staff held a public meeting in Andrews on the draft license and assessment.

The public notice of a proposed draft license allows affected parties to request a contested case hearing by the State Office of Administrative Hearings. The issue of whether to grant the license will then go before the Commission.

Superfund Program

Superfund is the name given to the federal program that enables state and federal environmental agencies to take care of properties contaminated by hazardous substances. Under the program, the EPA has the legal power and resources to clean up sites where contamination poses the greatest threat to human health and the environment.

Texas either takes the lead or supports the EPA in the cleanup of sites in the state that are on the National Priorities List (NPL), which is EPA's ranking of the most serious Superfund sites.

In addition, Texas has a state Superfund program to deal with sites that are ineligible for the federal program. This program is the state's safety net for dealing with contaminated sites. The TCEQ uses state funds for cleanup operations at sites on the state Superfund registry if no responsible parties can or will perform the cleanup. The TCEQ also takes legal steps to recover the money spent.

After a site is proposed for the state Superfund program, the responsible party or the TCEQ proceeds with a remedial investigation, during which the agency collects information to determine the extent and nature of the contamination. A feasibility study follows to identify possible cleanup remedies. A public meeting is held locally to explain the proposed remedy and to take comments. After reviewing the public comments, the TCEQ selects a remedial action.

Projects entering the Superfund program are prioritized by risk, with the most hazardous placed at the top of the list. Locating the responsible parties and resolving legal matters, such as access to the site, consumes time and resources. It can take several years for sites to be fully investigated and cleaned up, though the TCEQ will expedite its response when necessary.

In fiscal 2007, Texas had a total of 98 sites in the state and federal Superfund programs, including sites

proposed for the state and federal Superfund registries in Bexar, Ector, Nacogdoches, and Shelby counties.

In fiscal 2008, additional sites were proposed in the counties of Ector, Harris, Hidalgo, Hunt, and Midland. At the same time, two completed sites were deleted from the state and federal registries, leaving a total of 101 sites. Cleanup at two federal NPL sites and at two state registry sites was completed in 2008.

Petroleum Storage Tanks

The contamination of groundwater and soil due to leaking petroleum storage tanks (PSTs) is an environmental problem known statewide. The TCEQ oversees PST cleanups and reimburses eligible parties who have met all statutory deadlines for reimbursement.

Since the program began in 1987, the TCEQ has received reports of more than 25,000 leaking PST sites—primarily at gasoline stations. Of these, cleanup had been completed at 22,401 sites by the end of fiscal 2008, and corrective action was under way at another 2,968 sites.

Of the total reported PST releases, about one-third have affected groundwater.

Often, leaking PSTs are discovered when a tank owner or operator upgrades or removes tanks, when an adjacent property owner is affected, or when the tank leak-detection system signals a problem. Sometimes leaks are detected during construction or utility maintenance. Most tank systems that begin leaking do so because they have corroded, were installed incorrectly, or were damaged during construction or repairs. Contamination can also result from repeated spills when vehicles are overfilled with fuel.

Tank owners and operators are required to clean up releases from leaking PSTs, beginning with a site assessment, which may include drilling monitoring wells and taking soil and groundwater samples. The TCEQ oversees the remediation until cleanup is completed.

The PST Remediation Fund has paid for the vast majority of PST cleanups, with expenditures topping \$1 billion. Revenue comes from a fee on the delivery of petroleum products removed from bulk storage facilities.

Under state law, leaking tanks discovered and reported after December 23, 1998, are not covered under the remediation fund. These subsequent cleanups are paid for by the owners' environmental liability insurance or other financial assurance mechanism, or from their own funds.

To avoid releases, tank owners and operators are required to properly operate and monitor their storage tank systems, install leak-detection equipment and corrosion protection, and take spill and overfill prevention measures. This applies to active and inactive PSTs.

The PST State Lead Program continues to clean up sites at which the responsible party is unknown, or is

State and Federal Superfund Projects

The number of Superfund projects in Texas changes from year to year as projects are completed and new ones are added. Operations and maintenance can be long term.

Stages of Remediation	FY 2007	FY 2008
New (proposed) sites	4	5
Evaluations/Cleanup	48	49
Cleanup completed	5	4
Operations/Maintenance	41	43
Total	98	101

unwilling or financially unable to do the work. State and federal funds are used to pay for the corrective actions. State statutes allow cost recovery from the current owner or any previous responsible owner.

The reimbursement program, which was extended in 2007, will not be available after September 1, 2011.

Leading up to that sunset deadline, several milestones must be met for a responsible party to remain eligible. The agency requires implementation of a corrective action plan or groundwater monitoring to demonstrate progress toward site closure. Eligible parties not completing all corrective actions by the deadline can apply to have their sites placed in the State Lead Program.

After the reimbursement program expires, the PST regulatory program will continue.

PST releases reported on or after September 1, 2003, are subject to the Texas Risk Reduction Program, which represents a different set of assessment and cleanup standards.

Voluntary Cleanups

The Texas Voluntary Cleanup Program (VCP) provides incentives for pollution cleanup by releasing future property owners from liability once a piece of property is satisfactorily cleaned of contamination.

Since 1995, the program has provided regulatory oversight and guidance to more than 2,000 applicants and has issued more than 1,300 certificates of completion for residential, commercial, and industrial properties.

In the last two years, the program received 238 applications and issued 214 certificates. Recipients of the certificates report that it helps with property sales, including land transactions that would not have otherwise occurred for fear of environmental liability.

Sites addressed under the Texas VCP range from the small, such as corner dry cleaners, to the large, such as at the mixed use development in Austin at the former Mueller Airport and the redevelopment of a former Montgomery Ward complex in Fort Worth.

The key is the liability release afforded to future property owners once the certificate is issued. The certificate insulates future owners from potential changes in environmental conditions, such as the discovery of previously unknown contamination or even future changes in cleanup levels. Most importantly, the certificate provides finality relating to environmental issues. If new contamination were to be discovered related to previous site activities, the former property owners would be sought to perform any required cleanup.

The VCP is funded by an initial \$1,000 application fee paid by each applicant. Costs beyond the initial fee are invoiced to the applicant on a monthly basis.

The TCEQ also implements the law providing liability protection to property owners whose land has been affected by contamination that migrated to their property from off-site.

The Innocent Owner/Operator Program (IOP) relieves the eligible owner or operator from performing soil and groundwater investigation or cleanup on their property. The “innocent owner certificate” is generally sought by landowners seeking to sell property.

The demonstration of innocence requires evidence of contamination on the property, verification that the contamination resulted from an off-site source, and confirmation that the applicant has not contributed to the contamination. Since 1997, the TCEQ has processed more than 600 of these applications and issued more than 400 certificates.

Dry Cleaners

The TCEQ is responsible for collecting fees for a remediation fund designed to help pay for the cleanup of contaminated dry cleaner sites. The fees come from the annual registration of facilities and drop stations, as well as from the sale of perchloroethylene and other dry cleaning solvents.

By the end of fiscal 2008, the agency had registered 1,652 dry cleaning facilities and 1,581 drop stations. In addition, there were 191 registered property owners and 30 distributors of dry cleaning solvents. About \$33 million was collected for the remediation fund.

The agency received 162 applications for ranking. Of these, 139 applications had been ranked and prioritized for corrective action. The ranking system determines scores for facilities based on factors that could affect human health or the environment.

Legislation in 2007 established registration requirements for property owners and preceding property owners who wish to claim benefits from the remediation fund, and authorized a lien against property owners and preceding property owners who fail to pay registration fees due during corrective action.

Also, the use of perchloroethylene is now prohibited at sites where the agency has completed corrective action.

Municipal Solid Waste Management

Texas has growing demands on its waste disposal facilities. That is why it is important to evaluate the statewide outlook for landfill capacity in the coming decades. The TCEQ’s responsibility also involves working to reduce the overall amount of waste generated.

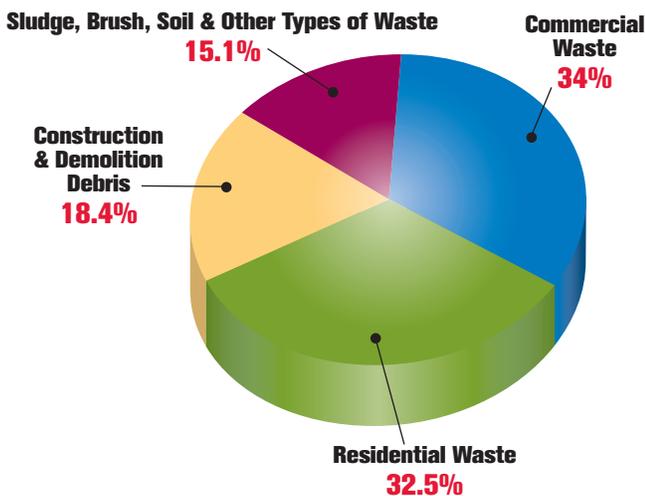
In fiscal 2007 (the latest year for which data is available), Texans disposed of 33.2 million tons of municipal solid waste, an increase of about 9 percent over the previous year.

Using EPA's definition of municipal solid waste, which excludes construction and demolition debris and treatment-plant sludge, the per capita landfill disposal rate in Texas was almost 7.6 pounds per day. (Before 2004, TCEQ reports used a definition of solid waste that included construction and demolition debris and municipal sludge. Excluding these types allows for consistent comparisons with other states and the EPA.)

Of the municipal waste delivered to landfills in 2007, the greatest volume was in commercial waste, with 11.3 million tons; followed by residential waste, 10.8 tons; and construction and demolition debris, 6.1 tons. Sludge, brush, soil, and other types of waste constituted the remaining 5 tons. The increase in commercial waste stemmed, in large part, from the Trinity River Corridor Project in Dallas County. The large urban development project generated 800,000 cubic yards of construction and demolition debris by the time hauling concluded in early 2007.

Municipal Waste Disposal

In 2007, Texas had 188 landfills actively accepting waste, collecting a total of 33.2 tons for the year.



By the end of fiscal 2007, municipal solid waste capacity in the state stood overall at about 1.4 billion tons, representing about 42 years of disposal capacity. The resulting net increase from the statewide 2005 capacity was about 185.7 million tons (roughly 550 million cubic yards). These landfill expansions indicate a trend toward more regional landfills serving larger areas.

Texas had 249 municipal solid waste landfills, which included 216 that were open, or holding permits. Of that group, 188 were actively accepting waste. Nine active landfills received permit amendments to expand.

Most parts of the state—as defined by the regional boundaries of the 24 councils of governments (COGs)—appear to have adequate disposal capacity for the coming decades. However, capacity by region

can vary substantially, with some lagging far behind the statewide average of 42 years. The Brazos Valley COG, for example, has less than 10 years of disposal capacity. Facilities in this region have filed new or amended municipal solid waste permits that will expand capacity.

To address solid waste issues, particularly in critical areas, the TCEQ manages a statewide planning program to ensure adequate landfill space for the state. Regional plans, developed by the COGs to assess landfill capacity, are updated every two years.

To help the COGs, the TCEQ issues grants, which are funded by municipal solid waste disposal fees paid to the state. For the grant period of 2006 to 2007, about \$14.7 million in grants funded 495 local and regional projects. These projects included collection stations in underserved areas, recycling and organic waste management projects, education programs, and programs to enforce illegal dumping laws. Project priority is established using the regional plans.

Environmental Assistance

Voluntary Programs

The TCEQ uses technical assistance, education, and voluntary programs to encourage actions that result in environmental improvements. In recent years, the Small Business and Environmental Assistance Division has taken many of these programs in a new direction to better focus on agency priorities and to more closely align with agency regulatory systems.

Following are some examples:

- Shifting the focus of pollution prevention toward site assistance visits, which helps companies identify ways to reduce environmental risks and save money.
- Encouraging Texans, through the Take Care of Texas campaign, to take personal responsibility for the environment (see Chapter 1).
- Increasing technical assistance resources for small businesses.
- Aligning the focus of the agricultural waste collections and pollution-prevention efforts with areas having impaired water bodies.
- Revising the Clean Texas program to generate more meaningful participation. This leadership and recognition program encourages members to focus on environmental issues important to their communities.

The agency also concentrated technical assistance, education, and voluntary pollution-prevention programs in the Houston Ship Channel area. These outreach efforts included helping companies identify ways to reduce benzene emissions through innovative technologies and changes in operational practices. In workshops geared to the oil and gas industry, the agency met with repre-

sentatives to discuss how to lower VOC emissions and to demonstrate specific pollution-prevention technology.

The TCEQ assisted local governments in implementing environmental management systems, which improve environmental performance. Through a contract funded by the EPA, 11 cities received individualized coaching and subsequently applied for membership in Clean Texas.

The agency held 61 workshops to inform small businesses and local governments about changes to storm water permits and waste recordkeeping rules.

More than 500 small businesses and local governments took advantage of the Compliance Commitment Program, which allows small businesses and local governments to achieve compliance voluntarily and without fear of enforcement. More than a quarter achieved 100 percent compliance.

For larger entities, the TCEQ offered technical advice on innovative approaches for improving environmental performance, primarily through pollution-prevention planning, site assistance visits, and Clean Texas.

These efforts produced a number of achievements the last two years. Among them:

- Pollution-prevention planning helped reduce hazardous waste by almost 1.2 tons and toxic chemicals by about 116,000 tons.
- A total of 63 site assistance visits were conducted. Participating sites reported a combined savings of almost \$3.6 million and an overall reduction of 67,247 tons in wastes or emissions.
- The number of Clean Texas members with environmental management systems grew to 24. As a result of environmental improvements, Clean Texas members reported eliminating a total of 500,039 tons of emissions and waste and saving more than \$61 million.

Renewing Old and Surplus Materials

Texas established the Resource Exchange Network for Eliminating Waste (RENEW) in 1988 to promote the reuse or recycling of industrial waste.

The materials-exchange network has assisted in the trading of millions of pounds of materials, including plastic, wood, and laboratory chemicals. These exchanges divert materials from landfills and help participants reduce waste disposal costs and receive money for their surplus materials.

In 2007, the EPA funded the expansion of RENEW as a resource for its Region 6, which includes Texas, Arkansas, Louisiana, Oklahoma, and New Mexico. Intro-

ducing the TCEQ's RENEW Web tool to Texas' neighbors broadened the reach of the waste exchange network.

The expansion gives industries, businesses, and governmental entities throughout Region 6 a central site for selling surplus materials, by-products, and wastes to users who will reclaim or reuse them.

Hosted by the Southwest Network for Zero Waste (a collaborative project of the EPA, the University of Texas at Arlington, and regional environmental agencies), RENEW is a free, easy-to-use service. The listings are grouped under "Materials Available" for anyone offering raw materials to other facilities and "Materials Wanted" for anyone looking to find raw materials.

Through www.renewtx.org, these entities list and promote information on materials-exchange opportunities at a national and regional level. The Web site also allows users to report on successful exchanges as a result of the program.

Over the life of RENEW, an estimated 483,000 tons of materials have been exchanged, representing a total savings of more than \$20 million in disposal costs. In just the last two years, a total of 25,000 tons of materials was exchanged through RENEW.

Here are some recent RENEW exchanges:

- A catalyst regeneration facility transferred 37,000 pounds of isodecyl alcohol to a plastics manufacturer for use in its production process. The company saved \$1,850 in disposal costs and earned revenues of \$10,000 by selling the material rather than disposing of it.
- A chemical manufacturing plant transferred 9,000 tons of an oil by-product to a fuel-blender and distributor. The chemical company earned \$1 million in revenues for sale of the by-product, which would otherwise be stored at the facility and eventually go to a waste management facility. The by-product is blended with other liquid hydrocarbons by the distributor and sold as fuel.
- Another chemical manufacturer sold 1.9 million pounds of sulfuric acid waste. To dispose of this material, the manufacturer would have had to meet waste requirements to neutralize the acid through treatment. Instead, the acid was sold to a company that reused it in ferrous sulfate production. This saved \$120,000 in disposal costs and earned \$76,800 from the sale of the material.

RENEW Transactions

Fiscal Year	Number of Exchanges	Materials Exchanged	Savings in Disposal Costs	Earnings from Sales
2007	18	11,000 tons	\$2.1 million	\$1.6 million
2008	9	14,000 tons	\$2.2 million	\$1.4 million
TOTAL	27	25,000 tons	\$4.3 million	\$3.0 million

Chapter 3



CHAPTER THREE

Legislation from the 80th Regular Session

During the regular legislative session in 2007, lawmakers considered more than 1,200 bills that had the potential to affect the Texas Commission on Environmental Quality. Of that, 345 bills were passed and signed into law.

At the organizational level, the TCEQ gained additional oversight of activities associated with the disposal of radioactive substances. With this expanded authority, the agency received 11 staff positions from the Radiation Safety Licensing Branch of the Texas Department of State Health Services.

Legislation also moved the National Flood Insurance Program from the TCEQ to the Texas Water Development Board.

The new laws triggered a variety of activity at the TCEQ: writing new rules, making operational or procedural changes, revising guidance documents, or taking internal administrative actions. Some of the newly enacted laws are summarized in this chapter.

SB 3, House Bills 3 & 4 Water Package

As the state grows, the TCEQ is faced with ensuring the maintenance of the biological soundness of the state's rivers, lakes, bays, and estuaries, while balancing all other interests, including providing adequate water for public health and welfare.

Recognizing the need for more certainty in water management and environmental flow protection, lawmakers passed Senate Bill 3 and House Bills 3 and 4, which amend various sections of the Texas Water Code and set out a new regulatory approach for providing surface water to meet the environmental flow needs of river, bay, and estuary systems.

The measures created the environmental flows standards process and established the Environmental Flows Advisory Group to oversee implementation. The panel of nine elected and appointed officials includes TCEQ Commissioner Bryan Shaw, Ph.D.

To assist the advisory group, the bill established an Environmental Flows Science Advisory Committee to serve as an objective, scientific panel that makes

recommendations on issues relating to the science of environmental flow protection. The science advisors will also help provide overall direction, coordination, and consistency.

The Environmental Flows Advisory Group met in July and August 2008, and named the members of the science advisory committee, which met in August. The advisory group also named the members of stakeholder committees for the Trinity and San Jacinto rivers and Galveston Bay, and for the Sabine and Neches rivers and Sabine Lake bay basin and bay area. Five more stakeholder committees had yet to be formed by the end of fiscal 2008.

Under the legislation, the TCEQ will eventually adopt recommendations in the form of environmental flows standards for use in the decision-making process for new (and amended) water-right applications. The Commission will also establish an amount of unappropriated water, if available, to be set aside for the environment. The TCEQ will first need to receive the recommendations of the science and stakeholder committees in each basin to determine the flow regime.

The TCEQ, the Texas Water Development Board, and the Texas Parks and Wildlife Department are coordinating with the advisory group, the science advisers, and stakeholder committees. Staff will provide technical assistance and generate reports based on the groups' recommendations.

SB 12, HB 160 Funding for Emissions Reductions

The Texas Emissions Reduction Plan (TERP) received a major infusion of funding. The Legislature's appropriation of \$337.8 million was an increase of almost \$81 million over the previous biennium.

In fiscal 2007, the TCEQ received about 1,682 applications, totaling \$193.3 million in sought-after funding for 1,963 vehicles, locomotives, marine vessels, pieces of equipment, and on-site infrastructure facilities. The agency issued grants totaling \$131.2 million.

From the most recent application period for emissions reduction incentive grants (mid-January to mid-April 2008), an additional 1,107 eligible applications were selected for funding, totaling \$140.8 million, with an estimated reduction of 10.57 tons of NOx emissions.

The TERP emissions reduction incentive grants offset the incremental costs associated with reducing emissions of nitrogen oxides (NOx) from high-emitting internal combustion engines. NOx is one of the primary components of ground-level ozone.

Rebate grants are available but only for diesel on-road and off-road replacement and repower projects (a portion of these funds are reserved for small businesses). Applications for rebates are reviewed and processed on a first-come, first-served basis.

As mentioned in Chapter 1, TERP funds are available to individuals, businesses, nonprofits, school districts, and government agencies that own and operate heavy-duty vehicles or equipment in the eligible areas. The areas eligible to submit incentive grant and rebate applications are Dallas-Fort Worth, Houston-Galveston-Brazoria, Beaumont-Port Arthur, San Antonio, Austin, and Tyler-Longview.

HB 160 added a category for infrastructure projects. In certain counties, TERP funds can go toward rail relocation or toward improvements at major rail intersections to reduce idling by locomotives.

The primary revenue source for the TERP is the vehicle title transfer fee and a 2 percent fee on sales and leases of diesel equipment.

TERP grants and activities are detailed in a separate report, *The Texas Emissions Reduction Plan: Biennial Report to the Texas Legislature* (SFR-079/08).

SB 12 Incentives to Retire or Repair High-Polluting Vehicles

The Legislature created a program in 2001 to assist eligible individuals with repairs, retrofits, or retirement of vehicles that fail emissions inspections. This program was offered to counties that chose to take part in annual vehicle emissions testing.

Initially, the program was known as the Low-Income Vehicle Repair, Retrofit, and Accelerated Vehicle Retirement Program, or LIRAP. With recent improvements and expansions, it evolved into AirCheckTexas Drive a Clean Machine. This program encompasses two types of vouchers: one for buying newer, cleaner vehicles, and another for repairing vehicles that fail the state emissions test.

For the 2008-2009 biennium, lawmakers appropriated \$45 million a year for the Drive a Clean Machine program, which is administered through grant contracts with each of 16 participating counties.

SB 12 provided greater opportunities for retiring older vehicles and replacing them with newer models. As discussed in Chapter 1, an eligible vehicle must be at least 10 years old or have failed an emissions test, be gasoline-powered, and be registered in the participating county at least 12 months. It must have passed the state safety and emissions inspection within 15 months of the application. The new vehicle cannot cost more than \$25,000. It must meet or exceed federal Tier 2, Bin 5 specifications and have a gross vehicle weight rating of less than 10,000 pounds.

The vehicle owner must meet financial eligibility requirements (up to 300 percent of federal poverty level). The same income requirements apply to anyone applying for a voucher of \$30 to \$600 for emissions-related repairs.

Vehicle Emissions Testing

Seventeen counties participate in vehicle emissions testing as part of the annual state vehicle safety inspection program. All registered gasoline-powered vehicles, 2 to 24 years old, must be tested. (El Paso County conducts yearly emissions tests as part of its air quality program, but does not participate in the replacement or repair assistance program.) The passing rate of emissions tests was 94.2 percent in 2008. By comparison, the passing rate was 90.2 percent when the program started in 2002.

	FY 2007	FY 2008*
Number of Vehicles Tested	7 million	7.2 million
Passing Rate	93.9%	94.2%
Failure Rate	6.1%	5.8%
Number of Stations	4,006	4,105
Number of Inspectors	15,935	16,072
Recognized Emission Repair Facilities	561	527

*Data based on program administrators' weekly reports, as of August 28, 2008.

Note: The following counties participate in annual emissions testing: Brazoria, Fort Bend, Galveston, Harris, and Montgomery in the Houston area; Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant in the Dallas-Fort Worth area; Travis and Williamson in the Austin area; and El Paso.

Cost of Replacements and Repairs

AirCheckTexas Drive a Clean Machine allows maximum amounts of \$3,000 for a replacement car, current model year to three model years old; \$3,000 for a truck, current model year to two model years old; \$3,500 for a hybrid vehicle of current or previous model year. The repair arm of AirCheckTexas will issue vouchers for up to \$600 to motorists who meet eligibility requirements and whose vehicles failed the annual emissions test.

	FY 2007	FY 2008
Number of Vehicle Replacements	218	14,863
Total Replacement Cost	\$216,910	\$44.6 million
Average Replacement Cost	\$995	\$3,002
Number of Vehicles Repaired	6,885	2,995
Total Repair Cost	\$3.4 million	\$1.5 million
Average Repair Cost	\$495	\$504

SB 1604, HB 3838 Radioactive By-product Materials and Uranium Mining

Radioactive by-product material is typically produced by uranium mining or other uranium processing. It can also come from the processing of thorium. By definition, by-product material represents tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes.

SB 1604 affected by-product material and *in situ* uranium mining. Previously, the Department of State Health Services (DSHS) had responsibility for the regulation and oversight of commercial radioactive waste processing and storage, source material recovery (uranium mining licensing), and by-product material disposal, while the TCEQ regulated all other radioactive waste disposal.

SB 1604 transferred certain regulatory responsibilities for by-product materials and uranium mining from

the DSHS to the TCEQ. The TCEQ now regulates by-product material processing, storage, and disposal, and specifically regulates the surface and subsurface of uranium mining operations. The bill also addressed the TCEQ's Underground Injection Control Program for regulation of wells associated with *in situ* uranium mining. The TCEQ was required to establish a new state fee for the disposal of radioactive wastes.

Many of the licensing actions inherited by the TCEQ had been pending at the DSHS for years. The TCEQ has begun evaluating the applications and developing a strategy for reviewing these applications and completing the licensing actions according to statutory priority.

SB 1604 also addressed the process for the TCEQ's continued review of a pending application submitted by Waste Control Specialists to the DSHS for a by-product material disposal facility proposed in Andrews County. The TCEQ's technical review was completed by the statutory deadline of October 1, 2007. The by-product material disposal facility license was issued by the Commission in May 2008.

HB 3838 addressed the period between uranium exploration, which is regulated by the Railroad Commission of Texas, and the permitting of injection wells for *in situ* uranium mining, which is regulated by the TCEQ.

The TCEQ is required to register exploration wells that have been permitted by the Railroad Commission and are used in the development of information that the TCEQ requires for area permit applications.

HB 2654 Disposal of Brine, Residuals

With the state moving to expand water supplies by developing large-scale desalination projects, the Legislature authorized the TCEQ to create a general permit for the injection of nonhazardous desalination brine or drinking water residuals.

As a result, the agency approved rules that allow issuance of a general permit for Class I wells injecting nonhazardous desalination concentrate (brine) or nonhazardous water treatment residuals from public water systems. The rules also authorize the use of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals as an injection fluid for enhanced recovery purposes without requiring a TCEQ permit.

The creation of a single statewide general permit is expected to help deal with the issue of disposal of nonhazardous desalination concentrate, as well as nonhazardous residuals from drinking water treatment. Typical residuals might include trace amounts of arsenic and radionuclides.

The use of injection wells under the state's federally authorized Underground Injection Control program is

an option for managing these constituents. But agency rules had required an individual permit for each Class I well. The new general permit, which is expected to be implemented in 2009, will expedite authorizations for wells used for the purposes spelled out in the new rules.

HB 1254 Electronic Reporting

The TCEQ has an electronic permitting system that allows applicants to file permit applications, pay associated fees, and print out their permit authorizations in quick order. Now the agency has more leverage to encourage online transactions.

HB 1254 authorized the agency to adjust fees as necessary to encourage electronic reporting and use of the agency's electronic document receiving system.

In early 2008, the TCEQ upgraded its electronic permitting system (ePermits) for submittal of storm water general permit authorizations. Before, only about 22 percent of storm water forms were submitted electronically. After the program upgrade, usage rose to 53 percent.

Both monetary and non-monetary incentives have helped call attention to ePermits. Electronic applicants for the multi-sector and construction storm water general permits pay a reduced fee for their Notice of Intent, and they receive immediate permit coverage, rather than waiting the usual seven days.

HB 2714 Computer Recycling

In September 2008, Texas rolled out its first statewide computer recycling program. The program provides for the collection, reuse, and/or recycling of computer equipment that was used primarily for personal or home business purposes.

Manufacturers selling their products in Texas are required now to take back their own brands of desktops, laptops, monitors, keyboards, and mouse devices—at no cost to consumers at the time of recycling.

Retailers, including those on the Internet, may only sell the computer brands for which the manufacturers are listed at www.TexasRecyclesComputers.org.

The new program addresses a trend in which millions of personal computers become obsolete each year. The proliferation of used electronics generates concerns over proper disposal, because the equipment contains potentially hazardous or toxic substances.

The recycling program emphasizes the fact that the best way to reduce the environmental impact of used computer equipment is to reuse it or recycle it.

To implement the program, the TCEQ compiled a list of computer manufacturers that agreed to comply with the program requirements. The agency also created the recycling Web page to inform consumers on how and where to return used equipment. The site links to computer manufacturers' pages and to information on computer reuse.

HB 3732 Clean Energy Projects

To help implement ultraclean energy projects for the state, legislation established incentives such as property tax exemptions and expedited permit processing for the use of clean coal, biomass, petroleum coke, solid waste, or new liquid fuel technology in generating electricity.

The TCEQ responded by crafting definitions for advanced clean energy projects and federally qualified clean coal technology. The agency also approved air permit requirements for both categories. No eligible permit applications had been received, as of Aug. 31, 2008.

When those permits are sought, the TCEQ must complete the technical review within nine months of declaring the application administratively complete, and it must issue a final order within nine months of the technical review being concluded. Each of those deadlines can be extended by three months, if necessary.

As required, the TCEQ adopted rules to include 18 energy-saving and emission-reducing categories, addressing the expansion of equipment eligible for property tax abatement. This list of facilities, devices, or methods that control air, water, or land pollution must be reviewed every three years.

Other Bills of Note

- **HB 1526:** Relating to incentives for and the use of leak detection technologies for air contaminants.
- **HB 1656:** Relating to the regulation by municipalities of irrigation systems and irrigators.
- **HB 3098:** Relating to fees set by the TCEQ in connection with plans that are subject to review and approval under the Edward's Aquifer rules.
- **HB 3220:** Relating to the environmental regulation and remediation of dry cleaning facilities.
- **SB 1037:** Relating to the prevention of surface water or groundwater pollution from certain evaporation pits.



Chapter 4



CHAPTER FOUR

Agency Resources

The Texas Commission on Environmental Quality has more than 2,900 full-time employees, about a quarter of whom work outside of the Austin headquarters. The agency has 16 regional offices, as well as three special project offices.

These field offices give the TCEQ a statewide presence, enabling staff to communicate firsthand with municipalities, businesses and industry, and community groups in all quarters of Texas.

The TCEQ's budgetary needs are based on the demands of state and federal laws concerned with protecting human health and the environment. Its operating budget totaled \$480.7 million in fiscal 2007 and \$564.8 million in fiscal 2008. Most of the annual revenue is generated by fees.

In fiscal 2007, the TCEQ began posting its quarterly expenditures at www.tceq.state.tx.us/about/expend.html. The data is reported in broad categories, such as salaries, travel, utilities, and maintenance. The Web page also links to an expenditure database, called "Where the Money Goes," on the state Comptroller's Web site. These online postings are in response to the Legislature's call for greater accountability in state government.

Workforce

The overall size of the TCEQ workforce remains fairly consistent. In fiscal 2007, the agency was authorized to have 2,938 full-time equivalent (FTE) positions. Of these, 2,842 were filled, including 29 contractor positions, as of August 31, 2007. In fiscal 2008, the authorized FTE cap was 2,942. Of these, 2,905 were filled, including 48 contractor positions, as of August 31, 2008.

At the agency, professionals represented 64.5 percent of the workforce; technical and administrative support staff made up almost 26 percent; and officials and administrators (managers) filled 9.5 percent of positions.

It is the TCEQ's policy to provide equal employment opportunities to all employees and qualified applicants, regardless of race, color, national origin, sex, sexual orientation, age, disability, or veteran status.

The agency is committed to recruiting, selecting, and retaining a multitalented, culturally diverse workforce that is representative of the state's available labor force. TCEQ staff is composed largely of professionals trained in science, technology, engineering, computer science, and other related fields.

All employees are provided training on equal employment practices to make them aware of state and federal employment laws and regulations.

With regards to race and ethnicity, the agency workforce composition was about 67 percent white, 15 percent Hispanic, 12 percent black, and 6 percent other (including Asian, Pacific Islander, American Indian, and Alaskan Native).

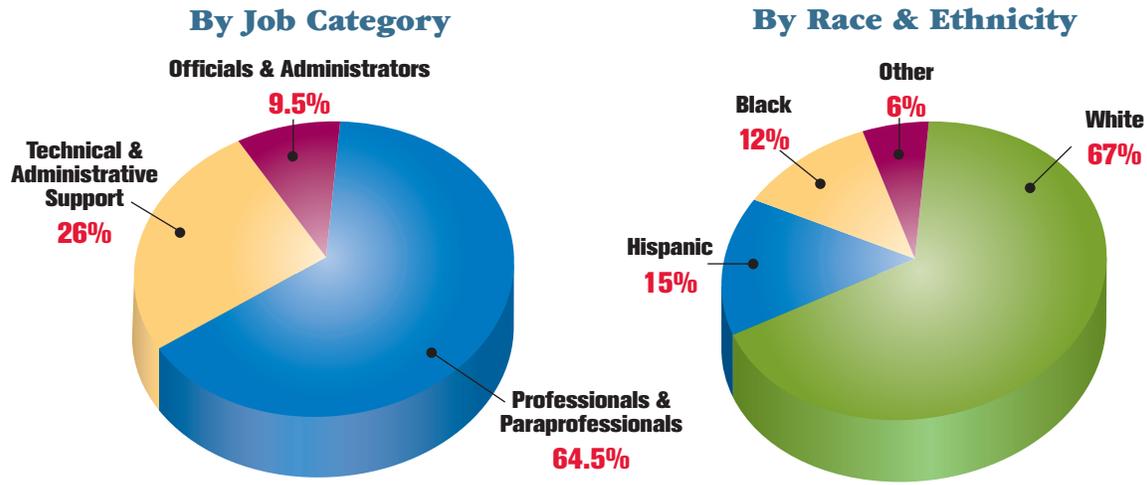
In terms of gender, women for the first time were in the majority at the TCEQ: female employees represented 50.1 percent; males, 49.9 percent.

Since 1999, the Legislature has required each state agency to analyze its workforce by ethnicity and gender. The TCEQ compares its workforce to the state civilian workforce, using data provided by the Civil Rights Division of the Texas Workforce Commission. The TWC's report on equal-employment opportunity hiring practices, which is published at the start of each legislative session, uses data sets based on the percentage of blacks, Hispanics, and females—by job category—with in the civilian labor force in Texas.

Based on these comparisons, the TCEQ minority workforce in fiscal 2008 was comparable with the available black labor force in top management (officials and administrators/managers) and exceeded the black labor percentages in the categories of professionals and administrative support. The TCEQ workforce was slightly below the available Hispanic labor force in administrative support, while the agency's female workforce exceeded the available female labor force.

While the TCEQ continues to make strides in mirroring the available statewide workforce, its recruitment and retention efforts continue by emphasizing employee recognition, professional development, and workforce and succession planning. The agency also uses hiring programs, such as Express Hire at recruit-

TCEQ Workforce FY 2008: FTE Cap of 2,942



ment events and Transitions Hiring for entry-level positions. In addition, the agency recruits at colleges and universities. See www.tceq.state.tx.us/goto/employment for more information.

In the coming years, TCEQ officials anticipate several challenges as the agency strives to fulfill its mission and goals. In fiscal 2008, staff turnover was 12.5 percent. Historically, the agency's turnover has been below the overall average for full- and part-time classified employees at state agencies. However, upcoming retirements and intensified competition for qualified applicants could present problems in maintaining a diverse, well-qualified workforce.

Finances

In fiscal 2007, the agency's approved operating budget was \$480.7 million. Of that, \$409.8 million came from dedicated fee revenue; \$45.7 million from federal funds; and \$5 million from general revenue, including earned federal funds. Other sources provided the remaining \$20.2 million.

In fiscal 2008, the approved operating budget totaled \$564.8 million. Of that, \$499.7 million came from dedicated fee revenue; \$43.1 million from federal funds; and \$10.3 million from general revenue. Other sources provided the remaining \$11.7 million.

The operating budget rose in fiscal 2008 primarily due to funding increases for the Texas Emissions Reduction Plan (Account 5071) and the vehicle repair assistance and replacement program (Account 0151).

The amount of general revenue funds appropriated for the 2008-2009 biennium saw a slight in-

crease. But that increase was offset by continued use of the fund balance for the agency's Water Resource Management Account, which supports the agency's water programs and water-related activities. The total appropriation from this account was \$90.2 million for the 2008-2009 biennium.

The TCEQ collects more than 100 separate fees. Each of the following fees generated revenue in excess of \$30 million a year:

Texas Emissions Reduction Plan (\$201.7 million in FY 2007, \$195.9 million in FY 2008). Fees are assessed on the sale, registration, and inspection of vehicles. The TERP draws from five separate fees, surcharges, and interest collected by the Texas Department of Public Safety (DPS) and the Comptroller of Public Accounts. In fiscal 2005, the TCEQ was appropriated its entire share of the revenue deposited to the fund; however, beginning in fiscal 2006, the agency's collections have been limited by appropriations.

Petroleum product delivery fee (\$75.1 million in FY 2007, \$33.0 million in FY 2008). The fee is assessed on the bulk delivery of petroleum products. It is collected by the state Comptroller and deposited to the Petroleum Storage Tank Remediation Account. The statutory-set fee rate was reduced beginning in fiscal 2008.

Air emissions fee (\$35.5 million in FY 2007, \$33.8 million in FY 2008). The fee is authorized to recover the costs of developing and administering the Title V Operating Permit Program.

Solid waste disposal fee (\$42.6 million in FY 2007, \$41.3 million in FY 2008). The fee is assessed on the operators of municipal solid waste facilities for disposing of solid waste.

Motor vehicle safety inspection fee (\$34.5 million in FY 2007, \$34.8 million in FY 2008). The fee is assessed per vehicle on the sale of state safety inspection stickers at inspection stations, auto dealers, and other service providers. The fee is collected by the DPS and deposited to the Clean Air Account.

Pass-through funds accounted for 53 percent of the agency’s operating budget in fiscal 2007; 57 percent in fiscal 2008. Pass-through funds are used primarily for grants, contracts, and reimbursements in the agency’s programs for petroleum storage tanks, Superfund clean-ups, and municipal solid waste. The water and air programs also pass dollars on to local and regional units of government, but the amounts are not as significant.

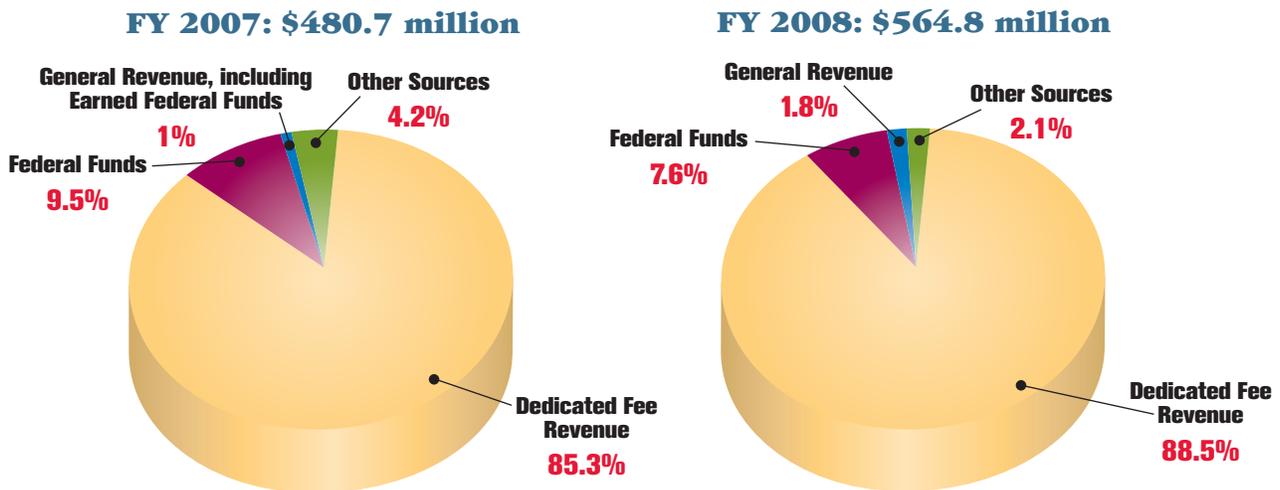
Funds other than pass-through are the monies devoted to agency day-to-day operations. Salaries accounted for about 32 percent of the fiscal 2007 operating budget; 28 percent in fiscal 2008. The remaining operating funds were consumed each year by other expenses, such as supplies, utilities, rent, travel, training, and capital.

Fee Revisions

As a result of legislation passed in 2007, a number of minor changes were made to the TCEQ’s fees and funding structure. Those changes stemmed from the following:

- SB 1604 transferred the regulation and licensing of commercial processing and storage of radioactive substances to the TCEQ from Texas Department of State Health Services.
- SB 12 revised the Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (also known as AirCheckTexas) and the Texas Emission Reduction Plan, with increased funding for both.
- SB 2000 created a grant program to reduce nitrogen oxide emissions from stationary compressor engines.
- HB 1956 and HB 3554 extended petroleum storage tank remediation to 2011 and gave the TCEQ shut down authority for operations that lack financial assurance.
- HB 3220 revised the dry cleaner remediation program.

Annual Operating Budgets



Appendix A



APPENDIX A

Assessment of Complaints Received

The Texas Commission on Environmental Quality receives thousands of complaints each year from Texans concerned about various environmental matters.

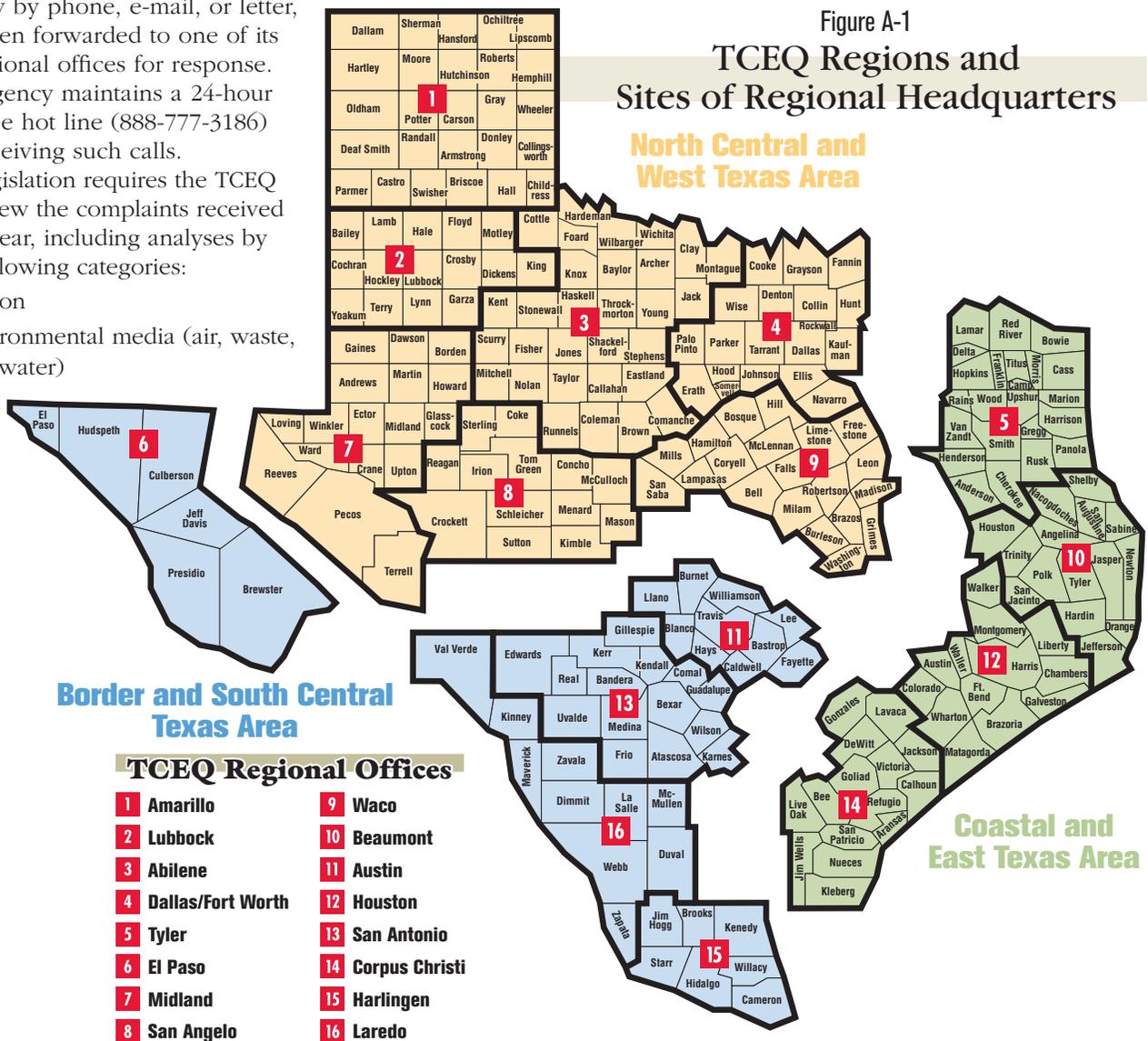
In these communications, the complainant relates a situation or event in which a possible environmental, health, or regulatory violation has occurred. Typically, complaints are submitted to the agency by phone, e-mail, or letter, and then forwarded to one of its 16 regional offices for response. The agency maintains a 24-hour toll-free hot line (888-777-3186) for receiving such calls.

Legislation requires the TCEQ to review the complaints received each year, including analyses by the following categories:

- Region
- Environmental media (air, waste, and water)

- Priority classification
- Enforcement action
- Commission response
- Trends by complaint type

The agency is also required to assess the impact of any changes made in the Commission's complaint policy. All of these requirements are contained in



Article 1, Section 1.17, of House Bill 2912, 77th Legislature, which amended Section 5.1773, Chapter 5, of the Texas Water Code. In addition, legislation amended Section 5.178 of the Water Code to require that a summary of these analyses be published biennially.

Complaint Data Collection and Reporting

After an environmental complaint is received by the Field Operations Division, the data related to the initial complaint is recorded in the Consolidated Compliance and Enforcement Data System (CCEDS). Regional managers then assign the complaint to an investigator, who is responsible for investigating the complaint and entering all resulting data into the CCEDS. Review, approval, and closure of the investigation is performed by management and entered directly into the data system.

All of the data summarized herein was extracted from the CCEDS. This report reflects activity that occurred in the agency's 16 regions during fiscal 2007 (September 1, 2006, to August 31, 2007) and fiscal 2008 (September 1, 2007, to August 31, 2008). The data is presented in a series of charts (Figures A-2 to A-9).

Complaints by Region

In fiscal 2007, the TCEQ regions received a total of 6,973 complaints; in fiscal 2008, the total was 6,838. Figures A-2 and A-3 show the complaints received annually by each TCEQ region.

The data shows that the number of complaints received varies generally according to regional population. For example, almost 40 percent of all the complaints were received from the two largest metropolitan areas, Dallas-Fort Worth and Houston (21 percent and 18 percent, respectively).

As explained in the December 2006 report, the air complaints received from Houston are no longer entered into the CCEDS. On September 1, 2005 (the beginning of fiscal 2006), the TCEQ discontinued its contract with the city of Houston to conduct routine air quality investigations inside the city limits.

The TCEQ continued to get air complaints from other parts of Harris County, as well as the other counties in Region 12. The agency received water and waste-related complaints from all of Region 12.

For this reporting period, the complaints received from Region 12 in all environmental media totaled about 2,400. By comparison, about 2,900 were

Figure A-2
Complaints by Region
FY 2007

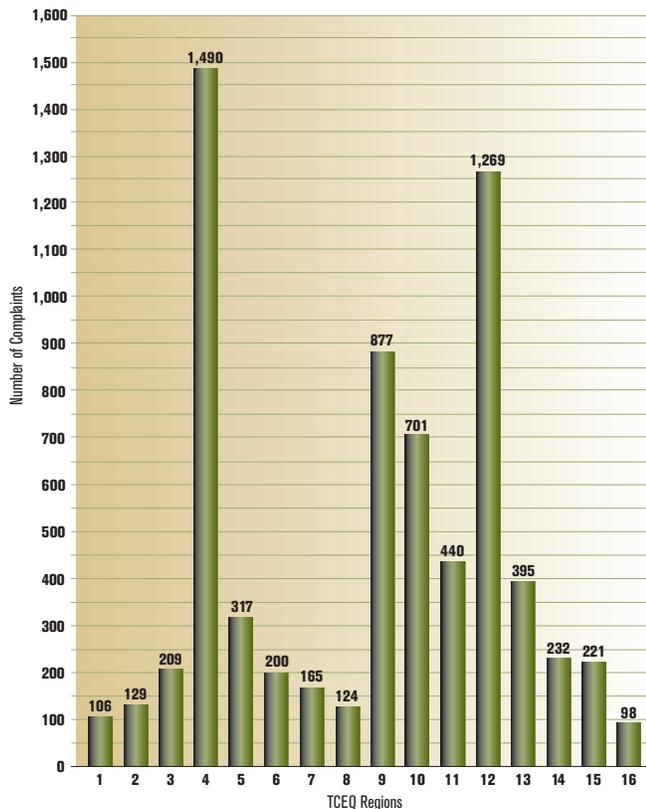
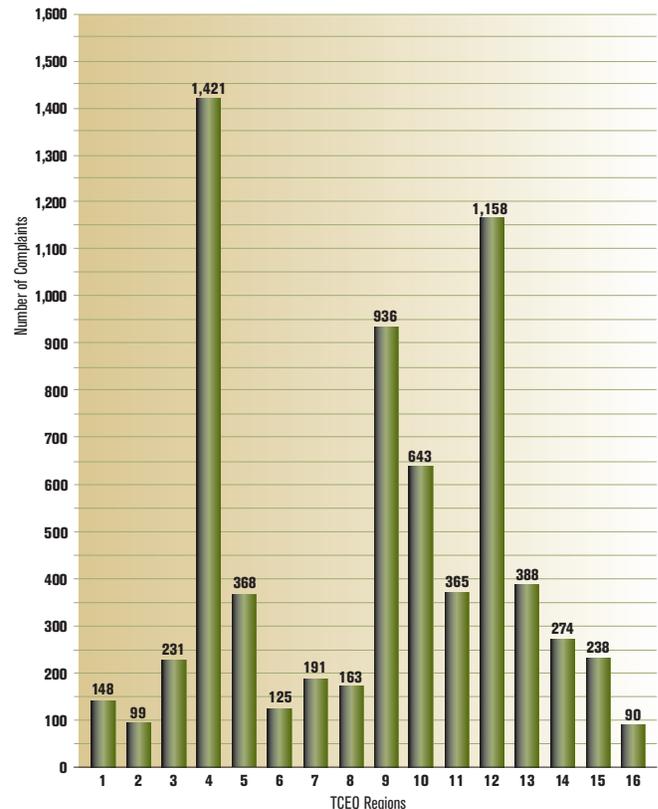


Figure A-3
Complaints by Region
FY 2008



received in the reporting period of FYs 2005-2006, and 4,000 in FYs 2003-2004.

Despite the drop-off in Houston, complaints from other regions have increased. So the statewide total for this report—13,811 complaints received—exceeded the total in the last report—13,716.

Complaints Received by Environmental Media (Air, Waste, and Water)

Total complaints received can be analyzed by environmental media (air, waste, and water) on a statewide basis and by regions. By media, water complaints represent the largest number of complaints received, as seen in Figure A-4.

Historically, air complaints have constituted the largest portion of total complaints received statewide. In fact, since reporting of complaints received began with fiscal 2003, this was the first time that the agency received more complaints related to water

Note: Some complaints are assigned to more than one medium, and some are not assigned to any. Therefore, totals vary from total complaints received.

Figure A-4
Complaints by Media Type, Statewide

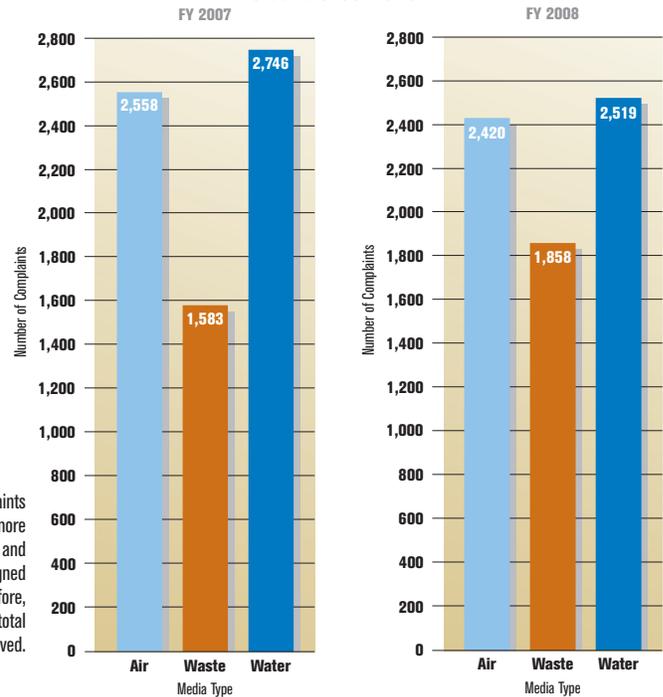


Figure A-5
Complaints by Region & Media Type
FY 2007

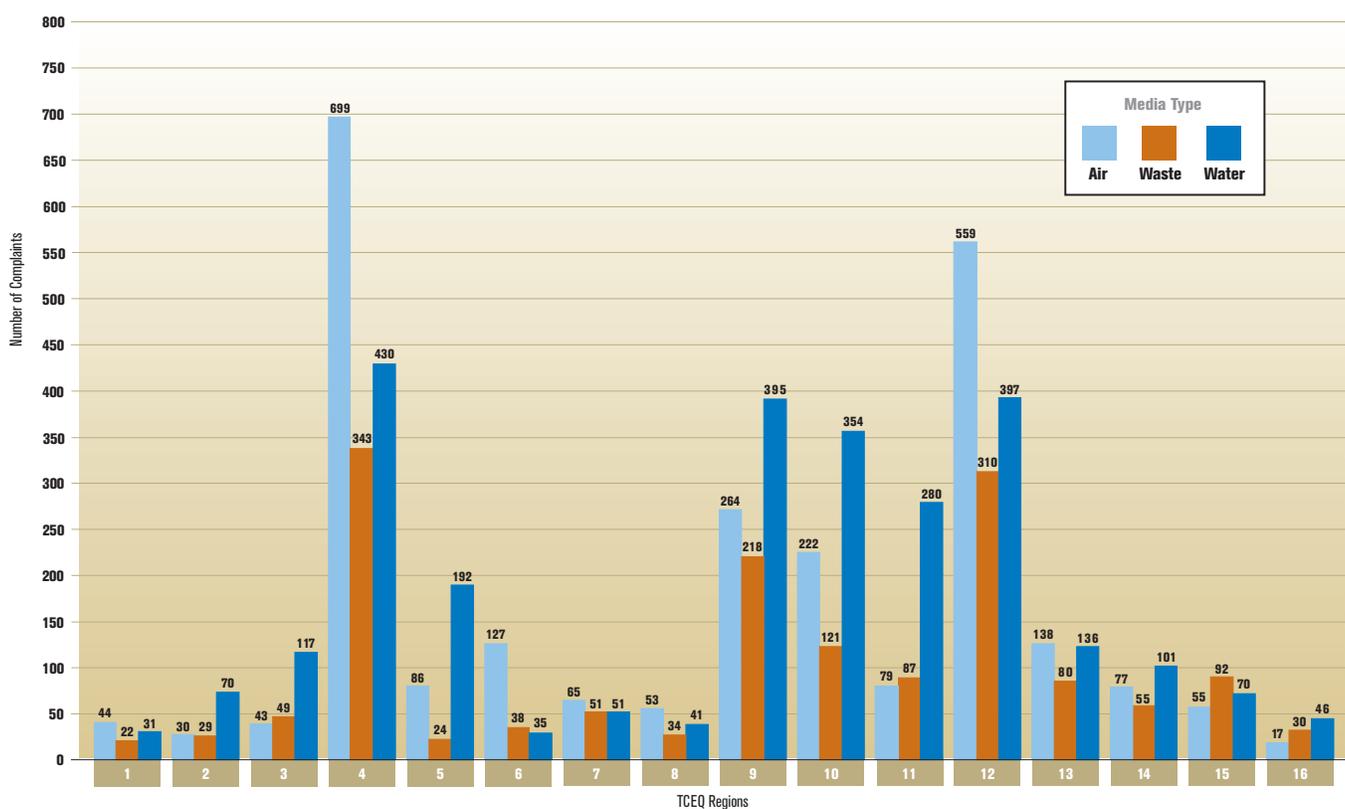
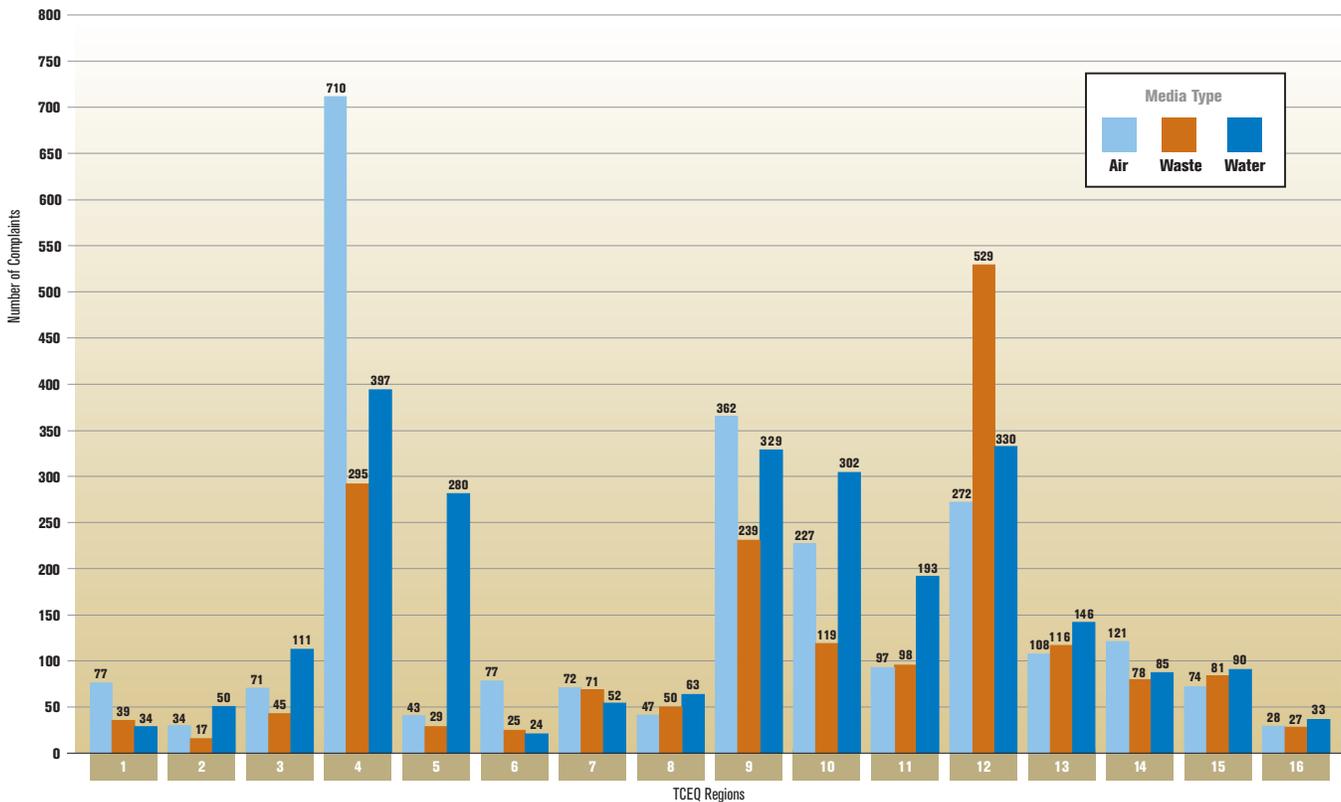


Figure A-6
Complaints by Region & Media Type
FY 2008



than to air. The data reflects an apparent increase in the interest and concerns that Texans have regarding their water quality and water resources.

This trend is demonstrated in Figures A-5 and A-6, which show the distribution of complaints received by media and by region.

Water complaints in fiscal 2007 outnumbered air complaints in nine of the 16 regions; in fiscal 2008, in 10 regions. By comparison, water complaints in fiscal 2005 outnumbered air complaints in only seven regions; in fiscal 2006, eight regions.

For the current reporting period, air complaints continued to be the leading category in the heavily populated and industrialized regions of Dallas-Fort Worth and Houston.

The data also shows an increase in waste program complaints. In FYs 2007-2008, waste complaints totaled 3,441, topping the previous two-year total of 2,865.

Complaints Received by Priority Level

Complaints received in regional offices are prioritized in the following categories, based on their relative

threat to public health, safety, or the environment. Each priority level has a prescribed response time. The priority levels are:

Other specified time frame. This classification is for special projects that occur as on-demand events. Response time is based on management's evaluation of the project and the overall staff workload.

Immediate response required. Response time is as soon as possible, but no later than 24 hours from receipt.

Respond within one calendar day. As soon as possible, but no later than one calendar day from receipt.

Respond within five calendar days. As soon as possible, but no later than five calendar days from receipt.

Respond within 14 calendar days. As soon as possible, but no later than 14 calendar days from receipt.

Respond within 30 calendar days. As soon as possible, but no later than 30 calendar days from receipt.

Respond within 45 calendar days. As soon as possible, but no later than 45 calendar days from receipt.

Respond within 60 calendar days. As soon as possible, but no later than 60 calendar days from receipt.

Refer or Do not respond. This classification is for complaints that, due to jurisdictional issues, are referred to other entities for investigation, or for complaints that the TCEQ does not routinely investigate

but needs to track for special projects, as determined by management.

For this report, the distribution of complaints is shown by priority classification statewide (Figure A-7). More than 80 percent of the complaints received during the last two years were classified as requiring investigation in 30 calendar days or less. About 15 percent of the complaints received were classified for referral or no response (most of these were referred to another governmental entity for evaluation). The remaining complaints were prioritized for investigation within either 45 or 60 days.

Figure A-7
Complaints by Priority, Statewide

FY 2007		FY 2008	
Priority	Number of Complaints	Priority	Number of Complaints
Other	44	Other	38
Immediate	107	Immediate	126
1 day	314	1 day	269
5 days	220	5 days	199
14 days	1,473	14 days	1,233
30 days	3,747	30 days	3,910
45 days	70	45 days	79
60 days	81	60 days	81
Refer	1,127	Refer	1,071

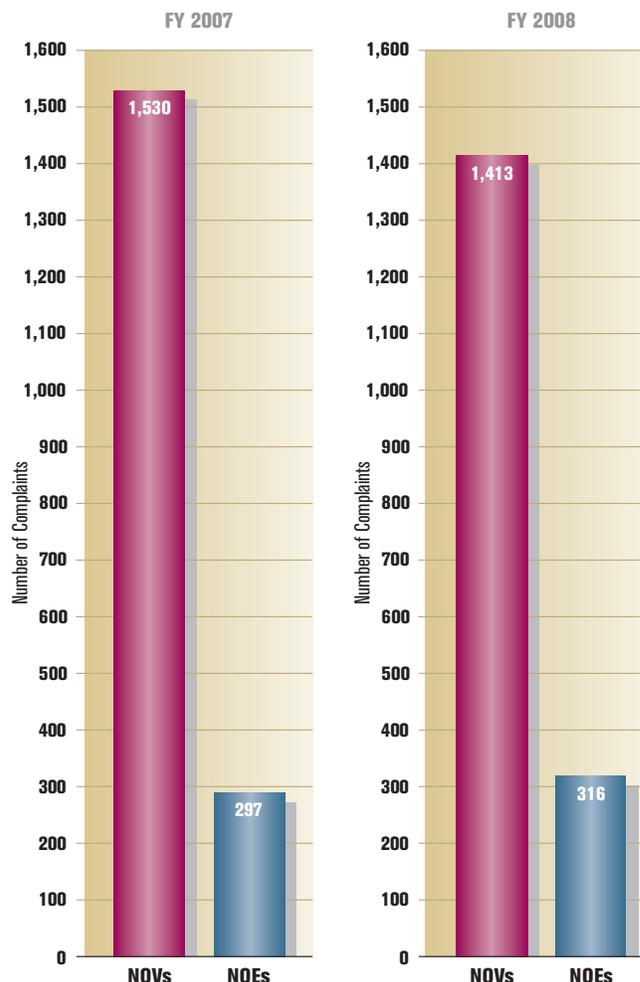
Notes: This is the only table that includes complaints received at the Austin headquarters; therefore, totals are higher. For an explanation of priority levels, see page 46.

Complaints that Trigger Enforcement Action

All complaints received are investigated according to priority levels, as described above. Subsequent action depends on the outcome of the investigation. For about 75 percent of the complaints received, no specific enforcement action is necessary. But in some cases, the agency must take enforcement action in the form of a Notice of Violation or a Notice of Enforcement.

Issuance of a Notice of Violation (NOV) indicates that TCEQ rules have been violated, but that the viola-

Figure A-8
Complaints Resulting in NOVs & NOEs, Statewide



tion is not considered serious enough to require an enforcement order and that the case is expected to be resolved quickly within a timeframe specified by the investigating regional office.

A Notice of Enforcement (NOE) occurs when a substantial violation of TCEQ rules has been documented and some formal action is required. Often, an NOE leads to the assessment of administrative penalties.

In fiscal 2007, the agency issued 1,530 NOVs and 297 NOEs as a result of complaint investigations; in fiscal 2008, the totals were 1,413 NOVs and 316 NOEs (Figure A-8).

Of the total complaints received, the percentage leading to NOVs and NOEs has been steadily rising: FYs 2003-2004, 19.7 percent; FYs 2005-2006, 23.3 percent; and FYs 2007-2008, 25.7 percent.

Complaints Investigated by Program Type

Another analysis is by the type of investigation conducted to address each complaint—the program type. In the CCEDS, air complaints are not subdivided by program type, but waste and water media each have several sub-categories of programs.

Waste program types include emergency response, petroleum storage tanks (including Stage II vapor recovery), industrial and hazardous waste, and municipal solid waste.

Figure A-9

Complaint Investigations by Program Type

Program Type	FY 2007	FY 2008
Animal Feeding Operations	79	69
Air	2,007	1,974
Edwards Aquifer	36	38
Emergency Response	14	18
Industrial/Hazardous Waste	203	219
Municipal Solid Waste	637	823
On-Site Sewage Facilities	256	165
Petroleum Storage Tanks	158	203
Public Water Supply	401	412
Water Quality	1,001	849
Water Rights	51	49
No Program Assigned	198	184
Total	5,041	5,003

Water program types include animal feeding operations, the Edwards Aquifer in Central Texas, on-site sewage facilities, public water supply, water rights, and water quality. Water quality also comprises several program sub-types (sludge transporters, beneficial use, storm water, and municipal and industrial wastewater treatment and pre-treatment), but these sub-types are not listed separately in this analysis.

Figure A-9 shows the number of complaint investigations that were conducted in each program type. In fiscal 2007, there were 5,041 complaint investigations conducted in response to the 6,973 complaints received. Another 1,127 complaints were prioritized for referral or no agency response (as indicated in figure

A-7). The remaining 805 complaints were investigated in conjunction with other complaints, which explains why there were fewer complaint investigations than the complaints received.

In fiscal 2008, there were 5,003 investigations conducted in response to 6,838 complaints received. Another 1,071 complaints were prioritized for referral or no response. The remaining 764 complaints were investigated in conjunction with other complaints.

In fiscal 2007, air complaint investigations represented 40 percent of the total complaint investigations; water complaint investigations, 36 percent; and waste investigations, 20 percent. In fiscal 2008, air investigations were 39 percent of the total; water investigations, 32 percent, and waste investigations, 25 percent.

Typically, a small portion of complaint investigations (about 4 percent) are not assigned to a specific program area.

Conclusions

The complaint data for the fiscal years of 2007 and 2008 are generally typical of complaints received and investigated in previous years, with minor variations within some analysis categories.

The most significant change was an apparent trend of increased complaints in the water and waste programs. The increase seems to reflect greater interest among communities in water and waste issues. This is likely due to a combination of factors—drought, for one, as well as the continued growth in population and economic development in suburban areas where air quality may not be as significant a concern. Also, there may well be a general increase in environmental awareness across the state.

As in the 2006 report, this reporting period shows that about 80 percent of the complaints received were classified as requiring investigation within 30 days of receipt.

Consistent with the TCEQ's goal of achieving voluntary compliance with its rules, about 75 percent of the complaints were resolved with no Commission enforcement action. This was a slight reduction from the previous reporting period, in which 80 percent of the complaints were resolved with no enforcement action. This is not viewed as a trend, but simply as a random variation.

Finally, the analysis of complaint investigations by program type reflects the fact that the TCEQ places a high priority on investigating all citizen complaints. All complaints received are addressed either by investigation (individually or as joint investigations of multiple complaints), or by referral to the appropriate entity with jurisdiction over that complaint subject matter.



Appendix B



APPENDIX B

Permit Time-Frame Reduction and Tracking

The Texas Commission on Environmental Quality is charged with issuing permits and other authorizations for the control of air pollution, the management of hazardous and nonhazardous waste, and the safe operation of water and wastewater utilities.

The Texas Government Code, Section 2005.007, requires the TCEQ to report every two years on its permit application system, showing the periods adopted for processing each type of permit issued and any changes enacted since the last report.

The biennial update also includes a statement of the minimum, maximum, and median time periods for processing each type of permit—from the date a request is received to the final permitting decision. Finally, the report describes specific actions taken to simplify and improve the entire permitting process, including application and paperwork requirements.

Permit Time-Frame Tracking

One of the agency’s primary goals is to issue well-written permits that are protective of human health and the environment, and to do so in the most efficient manner possible. Each year, the TCEQ receives more than 8,000 applications for various types of permits. In addition, staff handles more than 40,000 requests for other registrations and authorizations, including those for water utilities, water districts, petroleum storage tanks, storage and disposal of radioactive waste, waste handling and transportation, storm water management, and permit-by-rule authorizations.

In 2002, the TCEQ implemented the Permit Time-Frame Reduction (PTR) initiative to improve efficiencies in the permitting process and to reduce the permit “time frame”—the amount of time required to complete all the steps in the permitting process. Since then, the agency has realized substantial progress, most notably reducing the permit backlog from 1,150 to 109.

The TCEQ plans to build on that success with implementation of the Project Time-Frame Tracking (PTT) initiative. This program focuses not only on permit processing time frames, but also establishes time-frame

goals. The initiative is being implemented incrementally, as follows:

Phase I (began September 2007)

- Water District Regular Bond Applications
- Water District Expedited Escrow Releases and Surplus Fund Requests
- Water District Expedited Creation Applications
- Water System Engineering Plan Reviews
- Water System Plan Exceptions
- Water System Alternative Capacity Requests

Phase II (began September 2008)

- Superfund Projects
- Voluntary Cleanup Program Certifications

Phase III (due to begin December 2008)

- Corrective Action Plans
- Dry Cleaner Site Remediations
- Petroleum Storage Tank Site Remediations

Full implementation of these measures will help eliminate backlogs and ensure that key business functions are completed within reasonable time frames. These improvements will also help streamline the processes for water utilities and remediation activities.

Performance Measures

In addition to permit processing time-frame goals, the TCEQ also maintains established performance measures for each permitting program. For fiscal 2008, the performance measure in each program area was to review 90 percent of all permit applications within the established time frames.

Two categories have been created for tracking the permit time frames:

Priority 1. These projects require agency action before applicants may begin operations. This category includes uncontested applications for new permits and for amendments to existing permits for new operations.

Figure B-1
Air Permits (Uncontested)
Permit Time-Frame Reductions
 (as of September 1, 2008; based on rolling 12-month averages)

Priority 1				
Application Type	Average Processing Time (days)	Total under Review	Target Maximum	Number under Review Exceeding Target
New source review (NSR) permit, new	200	170	240	25
NSR permit, amendment	216	531	270	76
NSR permit, new - federal timeline	189	11	330	5
NSR permit, amendment - federal timeline	410	8	330	4
Federal NSR (<i>prevention of significant deterioration, nonattainment, 112g</i>), new and major modification	364	80	330	25
Permit by rule	27	259	45	5
Standard permit (<i>without notice</i>), SB 1126, and relocation	32	51	45	6
Concrete batch plant standard permit (<i>with notice</i>)	61	38	150	0
Priority 2				
Site operating permit (SOP), new	292	59	330	1
SOP, renewal	311	178	330	18
SOP, revision	203	172	330	8
NSR permit, alteration and other changes	78	185	120	39
NSR permit, renewal	327	163	270	47
General operating permit (GOP), new	101	10	120	0
GOP, renewal	153	105	210	3
GOP, revision	127	78	330	10

Definitions (for Figures B-1 through B-4)

Average Processing Time: the average length of time it took to process the specified application type during the 12 months preceding the reported month.

Total under Review: the total number of applications received but not yet completed (issued, denied, returned, withdrawn, etc.).

Target Maximum: the time-frame goal set by the agency for completing applications in each project type.

Number under Review Exceeding Target: the number of uncompleted applications that have a processing time in excess of the target maximum.

Figure B-2
Waste Permits (Uncontested)
Permit Time-Frame Reductions

(as of September 1, 2008; based on rolling 12-month averages)

Priority 1				
Application Type	Average Processing Time (days)	Total under Review	Target Maximum	Number under Review Exceeding Target
Industrial and hazardous waste (IHW), new permit	760	7	450	2
IHW Class 3 permit, modification	357	20	450	1
IHW permit, major amendment	425	4	450	1
IHW combustion permit, new	0	0	540	0
IHW combustion Class 3 permit, modification	0	0	540	0
IHW combustion permit, major amendment	0	0	540	0
Underground injection control (UIC) permit, new	0	12	390	1
UIC permit, major amendment	353	8	390	0
Municipal solid waste (MSW) permit, new	954	11	360	1
Registered transfer stations	0	2	230	0
Registered gas recovery	0	0	230	0
Priority 2				
MSW permit, major amendment	431	13	360	0
IHW permit, renewal	638	14	450	1
IHW permit, combustion renewal	623	0	540	0
UIC permit, renewal	451	8	390	0
Registered liquid waste processors	294	0	230	0

Priority 2. These projects allow the permit applicants to continue operating while the agency processes the request. This category includes uncontested applications for renewals of existing permits and for amendments to existing permits that involve activities already permitted.

The agency also has established processing time-frame goals for each type of permit. These goals, or “target maximums,” vary by program area and by environmental media.

Figures B-1 through B-3 show the status of Priority 1 and Priority 2 projects—at the end of fiscal 2008—in the categories of air permits, waste permits, and water quality permits. Table B-4 shows Priority 1 projects for water supply permits (this category has no Priority 2). Excluded from the data are projects that were contested

or that involved significant review or approval outside of the TCEQ, such as at another agency.

For fiscal 2008, about 81 percent of all Priority 1 permits were issued within the agency’s performance goals, as were 80 percent of all Priority 2 permits.

The performance measures for 2008 were slightly below the goals due to an influx of new permit applications that followed a change in the state and federal requirements for issuing permits for planned maintenance start-up and shutdown emissions from refineries, chemical plants, carbon black plants, electric utilities, and oil and gas facilities. Also, a number of water quality discharge permits were delayed to address concerns raised by the Environmental Protection Agency over water quality standards.

Figure B-3
Water Quality Permits (Uncontested)
Permit Time-Frame Reductions

(as of September 1, 2008; based on rolling 12-month averages)

Priority 1				
Application Type	Average Processing Time (days)	Total under Review	Target Maximum	Number under Review Exceeding Target
Wastewater permit, new (major facility)	0	0	330	0
Wastewater permit, major amendment (major facility)	443	45	330	5
Wastewater permit, concentrated animal feeding operation (CAFO)/sludge, new (minor facility)	301	84	330	6
Wastewater permit, CAFO/sludge, major amendment (minor facility)	313	79	300	7
CAFO, registration	0	0	0	0
Sludge, registration and permit	137	3	270	0
Priority 2				
Wastewater permit, renewals (major facility)	367	79	330	7
Wastewater permit, CAFO/sludge, renewal (minor facility)	225	293	300	15

Greater Efficiencies

In recent years, the agency has identified a number of streamlining measures to improve efficiencies in the permitting process and to reduce paperwork requirements. Some of those measures are described below.

Expand online permitting options for applicants. The TCEQ continues to create streamlined permitting options for applicants. The first stage of the new e-permitting system allowed storm water general permit applicants to apply for and receive an authorization within a matter of minutes. The feature took effect in February 2008 and was enhanced a month later to handle the high volume of construction storm water general permit renewals. The second stage, expected to come online in the spring or summer of 2009, will focus on general permit authorizations for concentrated animal feeding operations (CAFOs). This new, online option will allow CAFO customers to submit complex applications with attachments. In addition, an online information system was created to allow the public to check the status of specific general permits or applications, or to identify authorizations within certain geographic locations or those held by a specific customer.

Expand the options for more standardized permitting through the use of general permits, standard permits, and permits by rule. General permits are available for qualified water and wastewater discharges. Since 2002, the TCEQ has increased the types of general permits from three to 10. The agency has also authorized about 35,580 active facilities, with most permit coverage provided within seven days of receipt of the Notice of Intent. The agency also increased the use of standard permits in the air program. In 2002, the TCEQ had three standard air permits, with an average processing time of 56 days per application. In fiscal 2006, there were eight standard permits, with an average processing time of 30 days (these permits did not require public notice). In fiscal 2008, there were 13 standard permits, only four of which require public notice. Of the standard permits that do not require public notice, the average processing time is about 30 days. In 2002, 36 permit-by-rule authorizations required registration, with an average processing time of 67 days. Through changes in rule and operating procedures, the agency eliminated the registration process for five of these permits, which shortened the processing time to 30 days.

Figure B-4
Water Supply Permits (Uncontested)
Permit Time-Frame Reductions

(as of September 1, 2008)

Priority 1				
Application Type	Average Processing Time (days)	Total under Review	Target Maximum	Number under Review Exceeding Target
Water rights permit, new	146	25	300	4
Water rights permit, amendment with notice	196	49	300	23
Water rights permit, amendment without notice	112	10	180	0
Water district application, expedited bond	61	47	60	16
Water district application, regular bond	165	113	180	31
Water district application, expedited bond escrow release and surplus request	36	10	60	2
Water district application, regular, minor	78	82	120	16
Water district application, expedited creation	77	5	120	0
Water district application, regular creation and conversion	286	21	180	5
Certificate of convenience and necessity (CCN), new or amendment	248	60	180	13
CCN transfer	358	85	365	8
Water system engineering plan reviews	33	113	60	0
Exceptions	82	108	100	0
Alternative capacity requirement	84	14	90	0

Develop an electronic payment system in coordination with the Texas Online Web site so that TCEQ customers can pay any invoiced fee and most permit application fees online. During FYs 2007-2008, the agency's e-pay system processed about 42,000 fee payments and collected a total of \$8.3 million in fees.

Maintain an expedited permitting process for all economic development projects. In addition to the standard permit processing time-frame goals, the TCEQ maintains an expedited permitting process for economic development projects. TCEQ staff meets each week with the Governor's Office of Economic Development and Tourism to prioritize economic development projects. During fiscal 2008, the TCEQ tracked and issued 32 permits for major economic development projects. The average time frame for economic development permits was only 180 days; by comparison, the average time frame for issuance of a routine permit was at least 330 days.

Identify and develop streamlining measures that will keep Texas at the forefront of the global economy. TCEQ staff worked closely with the energy and petrochemical cluster groups of the Governor's Competitiveness Council (GCC) to develop recommendations that help Texas maintain a competitive advantage in these two economic sectors. Some of the GCC's recommendations were:

- Remove inefficient government processes that hinder business growth.
- Streamline permitting processes and improve coordination across agencies to ensure consistency and efficiency.
- Offer end-to-end permitting options through the use of the state business portal at **www.texasonline.com**.

The GCC's final report was presented to Governor Rick Perry for consideration in August 2008. The TCEQ is in the process of implementing additional streamlining measures for its business processes.

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