

TCEQ Legislative Recommendations: 85th Session

Office	Division	Title	Priority Level	Notes	IGR
Office of Water	Water Availability	"Changes of ownership - New Property Code, §§ 4.001 and 4.002, amended Texas Water Code Subsection 11.040(a), and repeal of Texas Water Code Subsection 11.040(b)"	High		IJ
Office of Water	Water Quality	"Water Quality Initiative"	High		IJ
Office of Waste	Remediation	"Amending MSD Certificate Notification from TCEQ"	Medium		FF
Office of Administrative Services	Chief Financial Officer	"Abolish Used Oil Account"	High		IA

Updated - 9/2/16





TCEQ Draft Legislative Recommendations 85th Legislative Session

Office: Office of Water

Division: Water Availability

Staff Contact(s): Joe Nicosia, Water Rights Compliance Assurance Team Leader

Legal Contact: Dinniah Tadema

Descriptive Title: Changes of Ownership – New Property Code, §§4.001 and 4.002, amended Texas Water Code Subsection 11.040(a), and repeal of Texas Water Code Subsection 11.040(b)

Summary (brief explanation of the proposal):

Currently, Texas Water Code, Chapter 11, Section 11.040 states that a permanent water right is an easement, and conveys with the land associated with the easement. Other portions of the Water Code indirectly require that current ownership information be maintained by TCEQ, and TCEQ has adopted rules requiring that ownership information be provided to the agency in a timely manner. The Water Code does not contain any specific language to identify responsibility for providing this information to the TCEQ, consequently, agency rules do not identify responsibility for whether the buyer or the seller of the water right is responsible for reporting change in ownership information. The Property Code is silent regarding the conveyance of a water right.

Priority (high, medium, or low):

High

Rationale (why is the proposal needed, what specific problem does it address, and how):

The agency has experienced some difficulty in following changes in ownership due to the current conveyance process, and is currently spending significant resources to correct the problem within existing statutory authority. Current water right ownership information is critically important for the administration and enforcement of Water Rights and Watermaster programs. It would benefit the state for the conveyance of a water right to be identified at the time of a property transaction, for the chain of title from the water right owner of record to the buyer to be substantiated, and for the completed chain of title and the written instruments regarding the conveyance of the water right be substantiated and filed with the TCEQ at the time of the property transaction.

Statutory citation (section(s) to be amended or added):

New Property Code, Chapter 4, Texas Water Rights

Amendment of Texas Water Code, Section 11.040, Permanent Water Right

Affected parties (who is affected by or interested in the proposal):

Current and future water right holders

Sensitivity (how are parties affected and what reactions are anticipated):

Water rights transfers will be specifically stated within each land and water right transaction. Owners of water rights will be aware of the associated water right, and the transfer will be clearly understood for future title searches and land transaction. The reaction is anticipated to be favorable because better documentation will alleviate the complexity of water rights transactions, leading to a chain of title that clearly outlines how the water right factors into property transactions.

Agency impact (describe program and fiscal effects on TCEQ, federal program delegation):

Significant outreach is anticipated to take place in order to educate the public and the real estate industry. For these reasons, the effective date for this statutory change is recommended to be September 1, 2018.

The suggested statutory change would require agency rulemaking to clarify portions of 30 TAC 295 and 297 that affect water rights change of ownerships. The amended rules would provide sufficient detail for new water right owners to comply with the statutory change. These details could include implementation guidance for conveyances to include the apportionment of the authorization in the water right, for demonstration of a complete chain of title, and for uncommon situations where complete chain of title records may no longer be available.

The proposed language that follows clarifies that it is the responsibility of the purchaser of a permanent water right to ensure that the appropriate documents are submitted to the TCEQ within 30 day of the execution of the sale.

CHAPTER 4. TEXAS WATER RIGHTS

SUBCHAPTER A. APPLICABILITY

Sec. 4.001. DEFINITIONS; APPLICATION OF CHAPTER.

(a) In this chapter:

- (1) "Water right" has the meaning found in Texas Water Code, Section 11.001(5).
- (2) "Commission" means the Texas Commission on Environmental Quality or predecessor agencies.
- (3) "Owner" means a person whose name has been reported to, and recorded by the Commission as the "Owner of Record."

- (4) “Acquisition of a water right” means the receipt of a water right through purchase, inheritance, gift, community property settlement, purchase of appurtenant land, or other conveyance.
- (5) “Acquired a water right” or “acquiring a water right” refers to the “acquisition of a water right” in subsection (4) above.
- (b) This chapter applies to all persons who have acquired a water right issued by the Commission.
- (c) This chapter supplements other chapters in this title, and each chapter shall be followed to the extent applicable.

Sec. 4.002. TRANSFER OR PURCHASE OF WATER RIGHT.

- (a) An owner of a water right who conveys the water right through sale of land to which the water right is appurtenant shall also specifically convey the water right in the conveyance document(s) to identify the new owner.
- (b) An owner of a water right who reserves the water right, and does not convey the water right through the sale of land to which the water right is appurtenant, shall specifically reserve the water right in the conveyance instrument(s), and provide copies of the conveyance instrument(s) to the Commission on or before the 30th day after the date the conveyance instrument is executed to substantiate that no transfer of the water right has occurred
- (c) On or before the 30th day after the date the conveyance instrument is executed, a person acquiring a water right from an owner of record shall provide:
 - (1) documentation required by the Commission to substantiate that the transfer is executed by the owner or the owner's legal agent and
 - (2) copies of the written instrument(s) specifically conveying a water right to the clerk in the county where the water right is issued for the purpose of being recorded as a conveyance.
- (d) A person acquiring the water right from a party other than the owner whose name has been reported to the Commission, as in the case of the purchase of property where the transfer of ownership of the water right was not properly recorded previously, shall provide:
 - (1) Complete chain of title documentation required by the Commission to substantiate that the transfer has passed through successive title(s) from the owner or the owner's legal agent, and has not been reserved and
 - (2) copies of the chain of title documentation to the clerk in the county where the water right is issued for the purpose of being recorded as a conveyance.
- (e) The Commission may refuse to process an ownership transfer for if the requirements of this chapter are not met.

Sec.11.040. PERMANENT WATER RIGHT.

- (a) A permanent water right is an easement and passes with the title to land in accordance with Texas Property Code Chapter 4. .
- ~~(b) A written instrument conveying a permanent water right may be recorded in the same manner as any other instrument relating to a conveyance of land.~~
- (eb) The owner of a permanent water right is entitled to use water according to the terms of his contract. If there is no contract, the owner is entitled to use water at a just, reasonable, and nondiscriminatory price.

History (has this or any similar proposal been pursued before and outcome):

Not to our knowledge

Other comments:

This change would reduce the amount of resources required by the agency to address water rights change of ownerships; reduce confusion for current and prospective water rights owners; and reduce the potential for lawsuits that the agency may be a party to. Follow-up education on the sale of water rights during land transactions will be required for real-estate professionals and the general public.

Approval:

Deputy Director

Date





JK

TCEQ Draft Legislative Recommendations 85th Legislative Session

Office: Water

Division: Water Quality

Staff Contact(s): David Galindo

Legal Contact: Todd Galiga

Descriptive Title: Water Quality Initiative

Summary (brief explanation of the proposal):

Repeal TWC Section 26.0285 which requires permits within the same watershed/segment to contain the same expiration date, to the extent practicable. Also amend TWC Section 26.0135(d) which cross references Section 26.0285.

Amend or Repeal TWC 26.0405 which is the Harris County On-Site General Permit statute.

Priority (high, medium, or low):

High

Rationale (why is the proposal needed, what specific problem does it address, and how):

TWC Section 26.0285 states that its purpose is to "require comprehensive evaluation of the combined effects of permitted discharges on water quality within the watershed and to facilitate the receipt of information from the public and other entities affected by those discharges." This statute pre-dated the Total Maximum Daily Load (TMDL) program. This program monitors and assesses the status (e.g., compliance with the Texas Surface Water Quality Standards (TSWQS)) of all waterbodies in the state and implements pollution control projects to protect or restore these waterbodies when not in compliance with TSWQS. When a waterbody is identified as impaired, the TMDL program conducts a comprehensive evaluation of the sources of the impairment and develops an abatement plan. Development of the abatement plan involves significant stakeholder input, including the public, dischargers within the watershed, and other entities affected by the abatement plan. Once completed, requirements of the abatement plan can be included in discharge permits via staff initiated amendments. Therefore, simultaneous expiration of the permits is not necessary to achieve the purpose of the statute. This statute routinely results in issuance of permits for shorter durations (two to three years) instead of the five years that is allowed by federal EPA regulations. Short cycling these permits results in unnecessary resource impacts to the regulated community and TCEQ.

TCEQ has issued the five year Harris County On-Site General Permit and renewed it for two five year terms without having a single entity apply for coverage under the general permit. Additionally, Harris County declined to enter into the contract with TCEQ to fulfill their requirements under this program citing a lack of enforcement authority required by the statute. Other counties in the state may soon meet the population threshold specified in the statute. This will require development of additional general permits that may not be utilized. Renewal of a

general permit typically takes 18 months to complete. Development of a new general permit may take 2-3 years, depending on complexity.

If the TWC is amended, the applicability criteria should be revised so that additional counties are not impacted by the statute and revise the statutory language to clarify that TCEQ will not be required to renew the general permit unless and until Harris County obtains the authority required by the statute.

Statutory citation (section(s) to be amended or added):

TCEQ Sections 26.0285, 26.0135(d) and 26.0405.

Affected parties (who is affected by or interested in the proposal):

TCEQ, Harris County and regulated entities with wastewater discharge permits.

Sensitivity (how are parties affected and what reactions are anticipated):

Regulated entities are likely to view the repeal of the expiration of wastewater discharge permits by watershed favorably. Environmental groups and the general public may not contest this action as they will retain the opportunity to be involved in the TMDL programs activities and in the permitting process.

Discussion with Harris County during the last general permit renewal indicated they may have some future use for this permit, however, Harris County declined to enter into the contract with TCEQ to fulfill their requirements under this program.

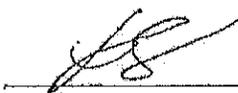
Agency impact (describe program and fiscal effects on TCEQ, federal program delegation):

The TPDES permitting process will be more efficient and staff resources will be freed up.

History (has this or any similar proposal been pursued before and outcome):

Other comments:

Approval:



Deputy Director



Date



TCEQ Draft Legislative Recommendations 85th Legislative Session

Office: Office of Waste

Division: Remediation Division

Staff Contact(s): Richard Scharlach

Legal Contact: Barbara J. Watson

Descriptive Title: Amending MSD Certificate Notification from TCEQ

Summary (brief explanation of the proposal):

The Texas Legislature passed HB 3152 in 2003, authorizing the Texas Commission on Environmental Quality (TCEQ) to certify municipal setting designations (MSDs) for eligible properties with underlying groundwater contamination. The purpose of the legislation was to allow a person to limit the scope of or eliminate the need for investigation of or response actions addressing contaminant impacts to groundwater that has been restricted from use as potable water by ordinance or restrictive covenant.

Texas Health & Safety Code § 361.805(a) requires that, on or before submitting an MSD application to the TCEQ, applicants must provide notice to: 1) each municipality in which the property for which the designation is sought is located; 2) each municipality with a boundary located within ½-mile from the property for which the designation is sought; 3) each municipality that owns or operates a groundwater supply well located within five miles from the property for which the designation is sought; 4) each owner of a private water well registered with the commission that is located within five miles from the property for which the designation is sought; and 5) each retail public utility that owns or operates a groundwater supply well located within five miles from the property for which the designation is sought. The notice must include information regarding the purpose, eligibility, and process for the MSD certification being sought. The statute allows for a 60-day comment period. Historically, very few comments have been submitted from private well owners as a result of the notice regarding an MSD application.

Once the MSD is certified, the current MSD statute requires the TCEQ to issue a copy of the MSD certificate to: 1) the MSD applicant; 2) municipalities, retail public utilities, and private water well owners entitled to notice under Texas Health & Safety Code § 361.805(a); and 3) each person who submitted comments on the application or requested a copy of the MSD application during the review period. The Remediation Division proposes amendments to the statute to limit the distribution of copies of the MSD certificate to applicants, municipalities and retail public utilities described by Texas Health & Safety Code § 361.805(a), any private water well owners located within the property boundary of the MSD, and persons who have submitted comments regarding the MSD application or who requested a copy during the review period. The Remediation Division also proposes amendments to

provide that the TCEQ will publish a copy of the MSD certificate on its website and that the notice that MSD applicants mail pursuant Texas Health & Safety Code § 361.805 include a statement that a copy of the MSD certificate will be available on the commission's website after issuance of the certificate.

Priority (high, medium, or low):

Medium

Rationale (why is the proposal needed, what specific problem does it address, and how):

In addition to providing the applicant a copy of the MSD certificate, the TCEQ currently provides copies of the certificate to municipalities, retail public utilities, and private water well owners entitled to notice under Texas Health & Safety Code § 361.805(a), as well as to each person who submitted comments on the application or requested a copy during the review period. The number of certificates has generally increased each year, requiring additional TCEQ resources to comply with the statutory requirements. For example, the number of private well owners requiring copies of the MSD certificate can range from 35 to over 800. This action would streamline the process and address the agency's resource needs and result in a cost savings for the agency.

Statutory citation (section(s) to be amended or added):

Texas Health and Safety Code § 361.807 would be amended as follows:

(a) If the executive director determines that an applicant has complied with Section 361.8065 and submitted a complete application, the executive director shall publish a copy of the municipal setting designation certificate on the commission's website and issue a copy of the ~~municipal setting designation~~ certificate to:

(1) the applicant for the municipal setting designation;

(2) each municipality and retail public utility, ~~and private well owner~~ described by Section 361.805(a);

(3) each owner of a private water well registered with the commission that is located within the property boundary of the municipal setting designation; and

~~(3)~~(4) each person who submitted comments on the application for the municipal setting designation and anyone else who requested a copy during the review period.

Texas Health and Safety Code § 361.805(b) would be amended as follows:

(b) The notice must include, at a minimum:

(1) the purpose of the municipal setting designation;

(2) the eligibility criteria for a municipal setting designation;

(3) the location and description of the property for which the designation is sought;

(4) a statement that a municipality described by Subsection (a)(1) or retail public utility described by Subsection (a)(3) may provide written comments on any information relevant to the executive director's consideration of the municipal setting designation;

(5) a statement that the executive director will certify or deny the application or request additional information from the applicant not later than 90 days after receiving the application;

(6) the type of contamination on the property for which the designation is sought;

(7) identification of the party responsible for the contamination of the property, if known;

and

(8) if the property for which the municipal setting designation is sought is located in a municipality that has a population of two million or more and the applicant intends to comply with the requirements of Section 361.8065 for issuance of a municipal setting designation certificate under Section 361.807 by complying with the requirements of Section 361.8065(c), a statement that a municipality described by Subsection (a)(1)(B) or (C) of this section or a public utility described by Subsection (a)(3) of this section has 120 days from the date of receipt of the notice required by this section to pass a resolution opposing the application for a municipal setting designation; and

(9) a statement that, after issuance, the municipal setting designation certificate will be available for review on the commission's website.

Affected parties (who is affected by or interested in the proposal):

- Registered private well owners

Sensitivity (how are parties affected and what reactions are anticipated):

Copies of the MSD certificate would be published on the commission's website and issued to any registered private water well owner who provided comments or who owns a well that is located within the property boundary of the MSD. Registered private well owners within five miles of the MSD are entitled to notice by the MSD applicant and have the opportunity to submit comments regarding the MSD application. The TCEQ verifies that adequate notice has been provided.

Agency impact (describe program and fiscal effects on TCEQ, federal program delegation):

The proposed amendment would result in cost and resource savings for the agency with no negative effects to human health and the environment.

History (has this or any similar proposal been pursued before and outcome):

No.

Other comments:

Approval:

Deputy Director

Date



TCEQ Draft Legislative Recommendations 85th Legislative Session

Office: OAS

Division: CFO

Staff Contact(s): Liz Day

Legal Contact: Todd Galiga

Descriptive Title: Expand use of the Used Oil Fee/Merge Used Oil Recycling Account into WRMA

Summary (brief explanation of the proposal):

The Used Oil Account 146 was created in 1991 by the 72nd Legislature and consists of a fee on the sale of automotive oil. This account was established for public education, grants, and registration of used oil collectors, transporters, marketers and recyclers. The purpose was to prevent pollution of water resources from the dumping of used oil.

The fund balance as of 8/31/15 was \$17.8 million. The fee generates approximately \$2 million per year and only \$0.5 million is appropriated, so the fund balance grows by \$1.5 million annually.

This recommendation is that the Used Oil Recycling Account be merged into the Water Resource Management Account 153 and that the fee on sale of automotive oil that is dedicated to this account, the fund balance, and any appropriations, be transferred to the Water Resource Management Account to protect water resources of the state to support the TCEQ's used oil registration program and other water protection related regulatory programs.

Priority (high, medium, or low):

High

Rationale (why is the proposal needed, what specific problem does it address, and how):

The Water Resource Management Account 153 is significantly underfunded, especially as the amount of General Revenue appropriated to water programs has decreased over the years. Transferring the existing fund balance and future collections of the fee to account 153 would provide water account balance support and stabilize funding for TCEQ's current water programs. This is not a new fee proposal, as the fee is already in existence and being assessed. Additionally, the automotive oil sales regulatory fee would continue to support the TCEQ's regulatory programs that protect the water resources of the state. This is beneficial to individual, existing TCEQ fee payers, as well as the general public. As Texas' population grows, it is imperative to achieve revenue reliability to ensure the protection of Texas' water resources.



Statutory citation (section(s) to be amended or added):

Texas Water Code 5.701

Health & Safety Code 371.061 and 371.062

Affected parties (who is affected by or interested in the proposal):

Account 153 fee payers

General public

Sensitivity (how are parties affected and what reactions are anticipated):

Account 153 fee payers might welcome the additional fund balance and fee to support water programs. There would be no additional impact on the public, as the fee is currently assessed and is not new.

Agency impact (describe program and fiscal effects on TCEQ, federal program delegation):

This could limit the amount of and timing for future water fee increases. This would help to stabilize Fund 153 and further the shared purpose of the Used Oil Recycling Fee and other water fees that go into the WRMA for the purpose of protecting the state's water resources by funding the agency's water programs.

History (has this or any similar proposal been pursued before and outcome):

A similar recommendation was discussed internally and with legislative staff during the 84th Legislative Session, but was not actively pursued.

Other comments:

Approval:

Deputy Director

Date

