

# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

**To:** Commissioners' Work Session                      **Date:** July 5, 2011  
**From:** Diane Mazuca, Special Assistant  
          Executive Director's Office  
**Subject:** TCEQ Sunset Legislation & Implementation

On May 28, 2011, the TCEQ's Sunset legislation, HB 2694, was overwhelmingly approved by both the Texas House and Senate and has been signed by the Governor.

HB 2694 was the culmination of many months of work by the 82<sup>nd</sup> Legislature to put in statute the recommendations of the Sunset Advisory Commission (SSAC). These recommendations were based on the SSAC's comprehensive review of the TCEQ.

The extensive nature of HB 2694 will require changes in many areas of the agency. Changes to several current programs will be needed, including transfers involving the Railroad Commission and the now abolished Texas On-site Wastewater Treatment Research Council.

Potentially 11 separate rule packages will be developed to implement HB 2694. In addition to rulemaking, other activities, such as procedural and operational changes, will be needed to fulfill the requirements of HB 2694, as well as the management directives adopted by the SSAC.

Agency staff will communicate and work with the Legislature, regulated community and general public to implement HB 2694.

The following related documents are attached:

- list, by issue, of activities, rulemaking and others, to implement HB 2694 & SSAC management directives; and
- summary of the HB 2694.

Attachments

**IMPLEMENTATION**

**HB 2694, TCEQ SUNSET LEGISLATION**  
**&**  
**SSAC MANAGEMENT DIRECTIVES**

**Requires Rulemaking & Other Activities**

- Transfer of Surface Casing to RRC
- Public Interest Factors
- Compliance History
- Incentives
- Enforcement Policy
- PST
- Water District Financial Reporting
- MACT Permit Requirements
- Aquaculture Definition
- Water Curtailment
- Water Rate Notification
- Water Fee Repealer
- Low-Level Radioactive Waste Disposal Fee-Compact Commission
- TOWTRC Transfer
- Contested Case Hearing

**Requires Non-Rulemaking Activities**

- Prohibition on Accepting Campaign Contributions
- Negotiated Rulemaking & Alternative Dispute Resolution
- PST Remediation Contracts & Process
- Regulation of Dams Hazardous Classification Agreement Language Exemptions
- Public Education & Assistance
- Creation & General Responsibility of the Office of Public Interest Counsel
- OPIC Requirements
- Penalties
- SEPs
- Monthly Water Reporting
- Watermaster

- **Creation of the LLRW Disposal Compact Commission Account**
- **Electronic Copies of Rate Information**
- **Modify Agency's Mission Statement**
- **Exempt Low-Hazard Dams from Adhering to Hydrologic & Hydraulic Criteria**
- **Communicate Benefits of OSSF Research to the Public**
- **Form a Working Group to Consider Stakeholder Input When Issuing Competitive On-Site Sewage Research Grants**
- **Improve Agency's Website**

# **TCEQ SUNSET LEGISLATION - HB 2694 SUMMARY**

## Article 1

- Continues the Texas Commission on Environmental Quality for 12 years to 2023.
- Requires that TCEQ Commissioners resign their position if contributions are accepted for a campaign for an elected office.
- Provides for a process to develop PST remediation contracts to allow contractors currently cleaning up sites that have been eligible for reimbursement to continue their work.
- Provides direction to TCEQ to focus agency efforts on the most hazardous dams in the state.
- Allows agency to enter into agreements with dam owners regarding adequacy of dam or spillway, including timeline to comply.
- Exempts privately owned dams that impound less than 500 acre feet and are either low or significant hazard dams from dam safety regulations.

## Article 2

- Transfers, on September 1, 2011 the authority for making groundwater protection recommendations regarding oil and gas activities from TCEQ to the Railroad Commission (RRC).
- Authorizes RRC, not TCEQ to issue letters of determination associated with geologic storage of anthropogenic carbon dioxide (CO<sub>2</sub>).

## Article 3

- Requires the Executive Director to provide assistance and education to the public on environmental matters under the agency's jurisdiction.
- Focuses the Public Interest Counsel's (PIC) efforts on representing the public interest in matters before the Commission.
- Requires the commission to define, by rule, factors PIC will consider in representing the public interest.

## Article 4

- Requires changes to the current Compliance History program requirements.
- Requires the TCEQ to adopt a general enforcement policy by rule, including a deterrence to prevent economic benefit of noncompliance.
- Increases the maximum to \$25,000 for almost all penalties and \$5,000 for others, such as water rate penalties.
- Adds language to allow local governments to apply penalty money assessed by the commission toward the cost of compliance in the form of a Supplemental Environmental Project.
- Reinstates common carrier liability and provides affirmative defense conditions for common carriers of petroleum products.
- Expands the use of the PST remediation fee to remove underground or aboveground storage tanks if certain criteria are met.
- Reauthorizes the PST remediation fee at the current level with no expiration date.

- Increases the trigger to determine whether a water district can submit a financial report instead of an audit from \$100,000 to \$250,000 in gross receipts.
- Provides for a public hearing and submission of public comment on permit amendment applications submitted by electric generating facilities (EGFs) to solely comply with Maximum Achievable Control Technology (MACT).
- Provides specific timelines for agency to issue the MACT-related permit.

#### Article 5

- Requires water right holders to provide monthly water use reports to commission upon request during times of drought or emergency shortages of water or to respond to a complaint.
- Authorizes that in a “period of drought or other emergency shortage of water” the executive director may temporarily suspend a water right and adjust the diversion of water between water right holders based on 11.024 & 11.027, TWC.
- Directs the executive director to evaluate at least once every five years whether a watermaster should be appointed in water basins not covered under the jurisdiction of a watermaster. The results of the evaluation and subsequent recommendations would be reported to the commission.

#### Article 6

- Requires that the compact waste disposal fee must include funds to support the activities of the Low Level Radioactive Waste Disposal Compact Commission (TLLRWDC) and creates a dedicated TLLRWDC Account.
- Eliminates three existing water and wastewater utility application fees – rate changes, CCNs and sale, transfer or merger of a CCN.

#### Article 7

- Requires the agency, when provided an electronic copy of a water rate case, to make it available to the public at a reasonable cost and no cost to OPUC.

#### Article 8

- Abolishes Texas On-site Wastewater Treatment Research Council (TOWTRC) and transfers duties to TCEQ on September 1, 2011.

#### Article 9

- Allows e-mail to be used by public utilities and cities to send required notice of rate changes and for the public to send statement of intent.

#### Article 10

- Provides changes to Contested Case Hearings (CCH) process, including prohibiting a state agency from contesting the issuance of a permit or license by the commission under this subsection. Requires the ED to participate as a party in contested case hearings.
- Provides that for a SOAH hearing using pre-filed testimony, all discovery must be completed before the deadline for the submission of that testimony.