
APPENDIX 2:
TEXAS REGULATORY FRAMEWORK FOR GALVESTON BAY

This appendix describes the duties and powers of Texas agencies that affect the environment of Galveston Bay. Because it is customary to refer to the various codes rather than to specific statutes, this appendix is organized differently from Appendix 1. Agencies are listed in alphabetical order; included in each discussion are references to the relevant codes. Texas statutes are organized in several different topical codes, such as Natural Resources or Water. Rules and regulations are codified in the Texas Administrative Code (TAC). Substantial portions of both statutes and TAC are included in the computerized information system that supplements this report. Some references to the codes are included here as guides to further information.

As noted in the introduction, several agencies are or will soon be reorganized. Although the functions of the agencies will not change, the divisions within which they are performed may change.

Attorney General's Office

The Attorney General's Office is the legal arm of Texas government. The Environmental Protection Division of the Attorney General's Office represents state environmental and natural resource agencies in court cases. Attorneys process citizen complaints and handle cases handed over from agencies for violation of agency statutes and regulations. The division prosecutes violators of laws including the Texas Open Beaches Act, Texas Clean Air Act, Texas Water Quality Act, Solid Waste Disposal Act (TX Health and Safety Code, §361.001 et seq.), and the Radiation Control Act. In addition, the division defends statutes and regulations against legal challenges and provides legal counsel to client agencies.

Texas Air Control Board

The Texas Air Control Board (TACB) is responsible for air quality and pollution control under the Texas Clean Air Act. The federal Clean Air Act (CAA) requires each state to develop a Statewide Implementation Plan (SIP) which details how the state will meet the National Ambient Air Quality Standards (NAAQS). Texas has developed a plan that complements the regulatory program under the Texas Clean Air Act. Under the CAA, geographical areas are classified as attainment or non-attainment areas depending upon whether such areas meet the National Ambient Air Quality Standards. Brazoria, Galveston, and Harris Counties have been designated as non-attainment areas for ozone.

A permit must be acquired, prior to construction, from the TACB for any facility likely to emit pollutants (TX Health and Safety Code, §382.051 et seq.). An operating permit must be obtained within 60 days of beginning construction of the facility. Operating permits must

be reviewed every 15 years by the TACB which may grant continuances for operation at that time. The TACB maintains a Monitoring Program, which is responsible for monitoring through air sample analysis and the Enforcement and Field Operations program which is responsible for ensuring compliance with the provisions of the Texas Clean Air Act.

General Land Office

The General Land Office is the state agency responsible for management and use of state-owned public lands. This includes submerged lands extending 10.3 miles into the Gulf of Mexico. The agency has the authority to issue permits for use of submerged lands as preserves, refuges, or recreational areas.

Through the Dune Protection Act, GLO has the authority to identify critical dune areas that are essential to the protection of state-owned lands, shores and submerged lands (TX Nat Res Code §63.001 *et seq.*, 31 TAC 15.43(a)). GLO must notify the Commissioner's Court of every county where a dune area is located (31 TAC 15.43(b)). GLO has developed regulations governing critical dune areas with guidelines that apply to removal of dune material, pipeline placement, private construction and other artificial construction in and around the critical area (31 TAC 15.44(1)-(10)). GLO also coordinates the Adopt-A-Beach Program which was recently expanded to include the entire coast.

The General Land Office has authority to protect the state's wetlands through the Coastal Wetland Acquisition Act (TX Nat Res Code §33.231-33.238; 31 TAC 15.51-15.54). GLO is to certify and rank coastal wetlands and inform the Texas Parks and Wildlife Department of priorities for state acquisition of certified wetlands. GLO also is responsible for implementing the Texas Coastal Preserve Program.

GLO administers the Deepwater Port Procedures Act (TX Civ Stat Art 5415). Under legislation passed in 1991, the General Land Office has become the lead agency for coping with oil spills in state waters. GLO issues permits for activities including exploration of oil and gas, channel dredging, and construction of piers, docks, and wharves. The Commissioner of the General Land Office oversees and manages leases for oil and gas wells (TX Nat Res Code §§52.321-325, 53.161-163; 31 TAC ch 9). A permit for oil and gas and mineral exploration is required from the GLO for any activities involving soil sampling or geophysical survey techniques (TX Nat Res Code §52.322(a)). GLO has authority to regulate oil and gas and certain minerals including coal, lignite, sulphur, salt and potash exploration activity on public school lands. (TX Nat Res Code §§52.321-52.325, 53.161-163). GLO regulates geophysical exploration within tidewater limits as defined in the Administrative Code. (TX Nat Res Code §§52.321-52.325; 31 TAC 9.1-9.12). Exploration must be authorized by a permit and must follow operational standards governing the use of explosives, pollution prevention, and protection of marine life (31 TAC 9.5, 9.7, 9.8).

The Land Office Commissioner may grant miscellaneous easements and surface leases in coastal public lands for activities not mentioned or authorized under chapter 33.

Miscellaneous easements are grants for rights of way for such uses as telephone, telegraph, electric transmission, and power lines; oil and gas pipelines; sulfur lines, irrigation canals and laterals, and pipelines connecting onshore storage facilities with offshore facilities of deepwater ports. The Commissioner may also issue surface leases on coastal public lands for such projects as oil and gas drilling and production platforms, electrical substations, pumping stations, loading racks, and tank farms (TX Nat Res Code §51.001). GLO also participates with the Army Corps of Engineers in reviewing permits under Section 404 of the Clean Water Act.

The School Land Board manages public lands dedicated to the Permanent School Fund by the Texas Constitution or other state law, a majority of which is located along the coast as submerged tracts (TX Nat Res Code §§52.321(3), 53.161(4)). The School Land Board sets dates for lease and sale of surveyed lands and determines the price for both surveyed and unsurveyed lands (TX Nat Res Code sec 32.061). Its activities are administered through the General Land Office. GLO has established a program for leasing lands to organizations such as the Audobon Society for coastal bird sanctuaries, and it works with the Texas Parks and Wildlife Department to designate and manage coastal preserves.

The School Land Board may lease state land and all unsold surveyed and unsurveyed public school land to any person for the production of oil and natural gas (TX Nat Res Code §52.011). Other activities covered by easements or leases issued by the School Land Board include floating piers, wharves, docks, jetties, groins, levees, breakwaters, fences, posts, cabins, walls, shelters, landfills, excavations, canals, channels, and roads. The School Land Board also is in charge of the administration, implementation, and enforcement of the Coastal Public Lands Management Act (TX Nat Res Code §33.001-33.176).

Railroad Commission

The Railroad Commission (RRC), a three-member elected body, is responsible for the prevention of pollution of surface and subsurface water caused by activities related to the exploration, development and production of oil and gas. The RRC is organized into twelve districts. Galveston Bay is in District 3.

The Commission issues permits for waste discharges under §26.131(b) of the Water Code and §91.101(4) of the Natural Resources Code. The Oil and Gas Division regulates nearly all phases of the oil and gas production process, and handles permitting and enforcement duties for discharges of wastes associated with such operations. Statewide Rule 8 (16 TAC 3.8) on Water Protection is the most significant rule protecting the waters of the State from pollution associated with oil and gas operations. The rule contains provisions which expressly prohibit the pollution of offshore waters and adjacent estuarine zones (16 TAC 3.8(8)(e)). This section also applies to operations conducted on inland fresh waters of the state. The same provisions prohibit pollution which may threaten aquatic life, and require discharges which may affect such life to be treated to remove constituents which may be harmful to aquatic life or injurious to life or property.

The Commission has adopted the following additional rules related to the protection of surface and subsurface waters in the state: Rule 9 (16 TAC 3.9) on Disposal Wells; Rule 13 (16 TAC 3.13) on Casing, Cementing, Drilling and Completing Wells; Rule 14 on Plugging of Wells (16 TAC 3.14); Rule 46 on Fluid Injection into Productive Reservoirs (16 TAC 3.46); and Rule 74 on Underground Hydrocarbon Storage (16 TAC 3.71).

The RRC has developed Rule 77 (16 TAC 3.75), which will become effective if EPA approves the Commission's NPDES program proposal. Both federal NPDES permits and Railroad Commission permits are currently required for the discharge of oil and gas wastes. §26.131 of the Water Code requires that permitted discharges under the jurisdiction of the Railroad Commission must meet the Texas Water Commission's water quality standards. The Railroad Commission monitors discharges through quarterly reports submitted to the District office in Houston and inspections are normally made at least once annually. Like the Texas Water Commission, the RRC can assess administrative penalties of up to \$10,000 per day, or work with the AG's Office to seek civil or criminal penalties.

Recently passed legislation (Senate Bill 1103-1991) provides an additional tool to combat pollution associated with oil and gas operations. The bill establishes an oilfield cleanup fund with a \$6 million floor and a \$10 million ceiling. The fund will be created through the collection of fees and penalties, and will be used to plug abandoned wells and clean up wastes which are causing or likely to cause water pollution. Approximately 7,000 wells in need of plugging have already been identified as possible environmental threats, and between 40,000 and 50,000 wells are known to be producing less than three barrels a day.

Texas Department of Agriculture

Among other duties, the Texas Department of Agriculture regulates the use, distribution, and disposal of pesticides within the state to safeguard human health and the environment. The authority for administering the FIFRA program delegated to TDA by EPA is carried out through the Pesticide Program. This program is responsible for state registration of pesticides; establishing specific use criteria for high-risk pesticides; licensing private, commercial, and non-commercial applicators; monitoring health and environmental impacts in areas of pesticide use; and enforcing federal and state pesticide laws. Under the Pest Management Program, TDA controls destructive plant pests and diseases. TDA has an Endangered Species Coordinator who helps to ensure that emergency exemptions and special local needs registrations for pesticides are evaluated for potential effects on endangered species; on this subject, TDA thus serves in an advisory capacity to the Texas Parks and Wildlife Agency analogous to the way in which EPA advises the U.S. Fish and Wildlife Service.

The Producer Relations Division of TDA also includes staff with specializations in sustainable agriculture and a more general form of low-resource use agriculture called agricultural systems. Staff in these programs work with farmers to develop methods of farming and ranching that preserve or even enhance habitat, and reduce runoff and erosion,

limit use of pesticides (including herbicides) when appropriate. The aquaculture program in the Intergovernmental Relations Division assists producers in raising fish and aquatic species. TDA has also worked with federal and state soil conservation officers to develop Best Management Practices for pesticide use.

Texas Department of Health

The Texas Department of Health (TDH) administers programs to protect and promote public health. The Associate Commissioner for Environmental and Consumer Health Protection oversees five bureaus, two of which are directly relevant to Galveston Bay: the Bureau of Consumer Health Protection and the Bureau of Solid Waste Management.

The Shellfish Sanitation Control Division is one of four divisions within the Bureau of Consumer Health Protection. The Shellfish Sanitation Control Division's primary activity is to survey, classify, and monitor coastal waters to reduce the risk to public health from contaminated shellfish under §436 of the Texas Health and Safety Code. The Texas Parks and Wildlife Department is responsible for enforcement of violations under this section. Although the Division maintains the authority to monitor aquatic life for contaminants which may affect human health, it does not presently have the staff or budget required for the task. Currently, the only monitoring of aquatic life other than shellfish takes place on a very limited basis in Lavaca Bay. The Division is also responsible for licensing and monitoring shellfish processing plants.

The Bureau of Solid Waste Management oversees storage, collection, handling, transportation, processing, and disposal of non-hazardous municipal solid waste under the authority of the Solid Waste Disposal Act (Health and Safety Code §361.001 et seq.). TDH also has jurisdiction when municipal and industrial solid wastes are collected together unless Class I industrial waste is included. Class I industrial waste falls under the jurisdiction of the Texas Water Commission.

The Bureau of Solid Waste Management consists of three divisions: Surveillance and Enforcement, Permits and Registration, and Plans and Programs. The Permits and Registration Division reviews and processes permits for municipal solid waste facilities in accordance with department regulations (25 TAC 325 et seq.). Every municipal waste facility must be permitted by TDH; the permits are generally issued for the life of the site (25 TAC 325.53). The Surveillance and Enforcement Division is responsible for periodic monitoring and inspection of disposal sites to ensure compliance with department standards. It is the department's policy to inspect sites serving more than 5,000 people at least once every three months and smaller sites annually. Such inspections may vary with the history, size and potential environmental impact of the site (25 TAC 325.221). TDH may take enforcement measures for noncompliance which include notification letters of noncompliance, permit revocation, administrative penalties, and referral to the Texas Attorney General.

The Plans and Programs Division is responsible for planning, rulemaking, and the

development of regional and local solid waste management plans. The Houston-Galveston Area Council has developed a regional plan entitled the "Action Guide for Solid Waste Management in the H-GAC Region, 1985-2000," which has been approved and adopted by the TDH.

Texas Department of Highways and Public Transportation

The Bridge Division of TDHPT controls all phases of bridge and drainage structure construction. The agency is also responsible for ferry service in Galveston Bay from Galveston Island to Point Bolivar. The agency is in charge of the administration of the Coastal Waterway Act of 1975, making the agency the non-federal sponsor of the Gulf Intracoastal Waterway.

Texas Department of Public Safety

The Director of the Department of Public Safety (DPS) also serves as the Director of the Governor's Division of Emergency Management. The Division of Emergency Management provides leadership for State Comprehensive Emergency Management Program and coordinates relief and recovery operations for local governments in the event of natural and manmade disasters. It also serves as coordinator for state activities under federal EPCRA (SARA Title III). The division is involved in coordination and training with local governments through the District Disaster Committee in the regional Department of Public Safety offices and assists local governments with the development of a local Emergency Management Plan.

Texas Parks and Wildlife Department

The Texas Parks and Wildlife Department has as its mission to preserve, conserve, and protect the state's natural resources and maximize man's opportunities to enjoy them.

The director of TPWD has the authority to issue permits for taking bed and bottom materials from the state's waters if no other state permit is required and to consider whether the operation under the proposed permit will damage oysters, fish-inhabited waters, islands, bars, channels, rivers, creeks, or bayous used for navigation. The TPWD can also make recommendations to the GLO concerning geological, geophysical, and other surveys and investigations within coastal public lands (Natural Resources Code, ch 31).

The Wildlife Division manages public hunting areas, acquires land for endangered species, performs research and management, leasing, and development. The Wildlife division protects wildlife resources by regulating hunting activities and investigating wildlife development.

The Fisheries Division conserves, protects, and manages statewide finfish and shellfish resources, operates stocking programs, and protects marine life, habitat, and environment

by controlling aquatic habitation and promoting greater consumption of underutilized fish species. This division protects fish and their habitat by regulating both sport and commercial fishing, supervising fish hatchery and development operations, and controlling noxious vegetation. (31 TAC ch. 57). The division also permits leasing, transplanting, and harvesting of oysters. It is responsible for protecting state-owned fish and wildlife from harm due to navigation, water development, and municipal, industrial, or land development projects (31 TAC ch. 57).

The Resource Protection Division protects fish, wildlife, plant, and mineral resources, investigates pollution that causes loss of fish and wildlife resources and provides information on the protection of fish and wildlife. The division also reviews TWC and RRC permits for wastewater discharge and hazardous waste disposal and works with the Army Corps of Engineers in regulating development of wetland areas and dredge disposal in the bay by reviewing requests for dredging permits and evaluating environmental impacts of proposed projects. It works with the U.S. Fish and Wildlife Service on endangered species protection and oversees such state endangered species protection programs as exist. In addition, the division may designate estuarine nursery areas and "scientific areas," and shares responsibility with the GLO for the Coastal Preserves Program.

At its option, TPWD may be a party to hearings before the TWC on applications for permits to store, take, or divert water (TX Water Code §11.147(f)). TPWD is specifically authorized to share responsibility with other agencies for studying Texas bays and estuaries to determine the need for fresh water inflow to maintain environmental quality (TX Water Code Ann. §§11.1491, 16.058 Vernon 1988). Through the Texas Natural Heritage Program, TPWD keeps data on the state's sensitive and unique plant and animal life (Fuller, p 82). TPWD has also signed a Memorandum of Agreement with the General Land Office to coordinate the designation and management of coastal preserves.

The Park Division is involved in the construction, management and maintenance of all facilities within the park system including Galveston Island State Park located on Galveston Island (TX Parks and Wildlife Code Ann. §12.001(a)).

The Law Enforcement Division enforces game, fish, and safety laws, especially bag and fishing limits. In addition, state game wardens routinely patrol and investigate water pollution, and illegal taking of state-owned sand, shell, or gravel. They enforce the Public Beaches and Antiquities sections of the Natural Resources Code, the Endangered Species Act, and the Protected Non-game Species Act. The division is specifically charged with upholding water quality and engaging in water pollution enforcement activities (31 TAC ch. 55). TPWD is responsible for upholding water quality; it is authorized to enforce the Texas Water Quality Act. TPWD seeks to enforce prohibitions against unauthorized discharges of waste into or adjacent to waters of the state and TWC rules, orders, or permits regulating discharges when such violations affect the aquatic life or wildlife of the state (Tx Water Code Ann §§26.124(b), 26.129 Vernon). If TPWD personnel discover a violation of the TWQA, they are authorized to request that a permit be revised and may bring suit under

terms of the TWQA (31 TAC 55.4).

Under the federal Emergency Wetlands Recovery Act, TPWD is required to complete a Wetlands Priority Conservation Plan in order to receive Land and Water Conservation Funds. The plan includes guidelines for management, policy, acquisition information, funding, education guidelines, and status and trends in wetlands management. TPWD published this plan as an addendum to the Texas Outdoor Recreation Plan.

Texas Sea Grant

The Texas Sea Grant represents the Texas portion of the federal Sea Grant program, analogous to the Land Grant program in bringing to bear expertise from diverse disciplines on problems relating to the ocean. Sea Grant College programs are established in existing universities; the Texas Sea Grant is at Texas A&M. The program is funded two-thirds by federal money and one-third with matching state funds, which in the case of Texas are appropriated by the Legislature, several counties and cities, foundations, and other colleges and universities. Texas Sea Grant projects comprise research related to coastal management and the ocean, including mariculture, oil spills, ocean dumping, impacts of deepwater ports, marine education, and ecological studies including fisheries, marine chemistry, water quality, and related topics. Projects of special interest to Galveston Bay for 1991-92 include modeling salinity intrusion and toxic materials in the bay; other projects of a more general nature, especially concerning fisheries, are also directly relevant to the bay.

Texas State Soil and Water Conservation Board

The Texas State Soil and Water Conservation Board was established by the Texas Legislature to administer the Texas Soil Conservation Law (Tex. Ag. Code 201). State Board Members are elected by soil and water conservation district directors in each of five geographical divisions of the state. The Board is charged with coordinating the district program for the state and makes technical assistance funds available to districts through a grant program. Local soil and water conservation districts in turn provide technical assistance to farmers to reduce soil erosion and improve land use. In 1985, the legislature added prevention of agricultural nonpoint source pollution to the duties of the SWCB. Under Texas Agricultural and Silvicultural Nonpoint Source Management Program, the SWCB works to reduce pollution and sedimentation in water bodies that are mostly unaffected by urban or industrial pollution. The Board has also established a Nonpoint Source Coordinating Committee. In the Galveston Bay area, projects reduce erosion that may overload the estuary. See the discussion of local districts in Appendix 3 for a fuller description of projects.

Texas Water Commission

The Texas Water Commission (TWC) is the primary state agency having responsibility for protecting surface and groundwater quality. The TWC was significantly reorganized early

in 1992, with changes continuing to be effected at this writing.

TWC is organized into four major offices: Administration, Legal Services and Compliance, Waste Management and Pollution Cleanup, and Water Resource Management. In addition, several smaller offices, including the General Counsel, Hearings Examiner, Public Interest Counsel, Ombudsman, Internal Audit, and Chief Clerk, are subsidiaries to the office of the three commissioners. Finally, the Pollution Prevention and Conservation program is an offshoot of the office of the Executive Director.

Many of the TWC functions most relevant to Galveston Bay lie in the new Office of Water Resources Management, which itself is organized into four divisions: Water Policy, Standards and Assessments, Water Utilities, and Watershed Management. The accompanying diagram illustrates the organization as of March, 1992.

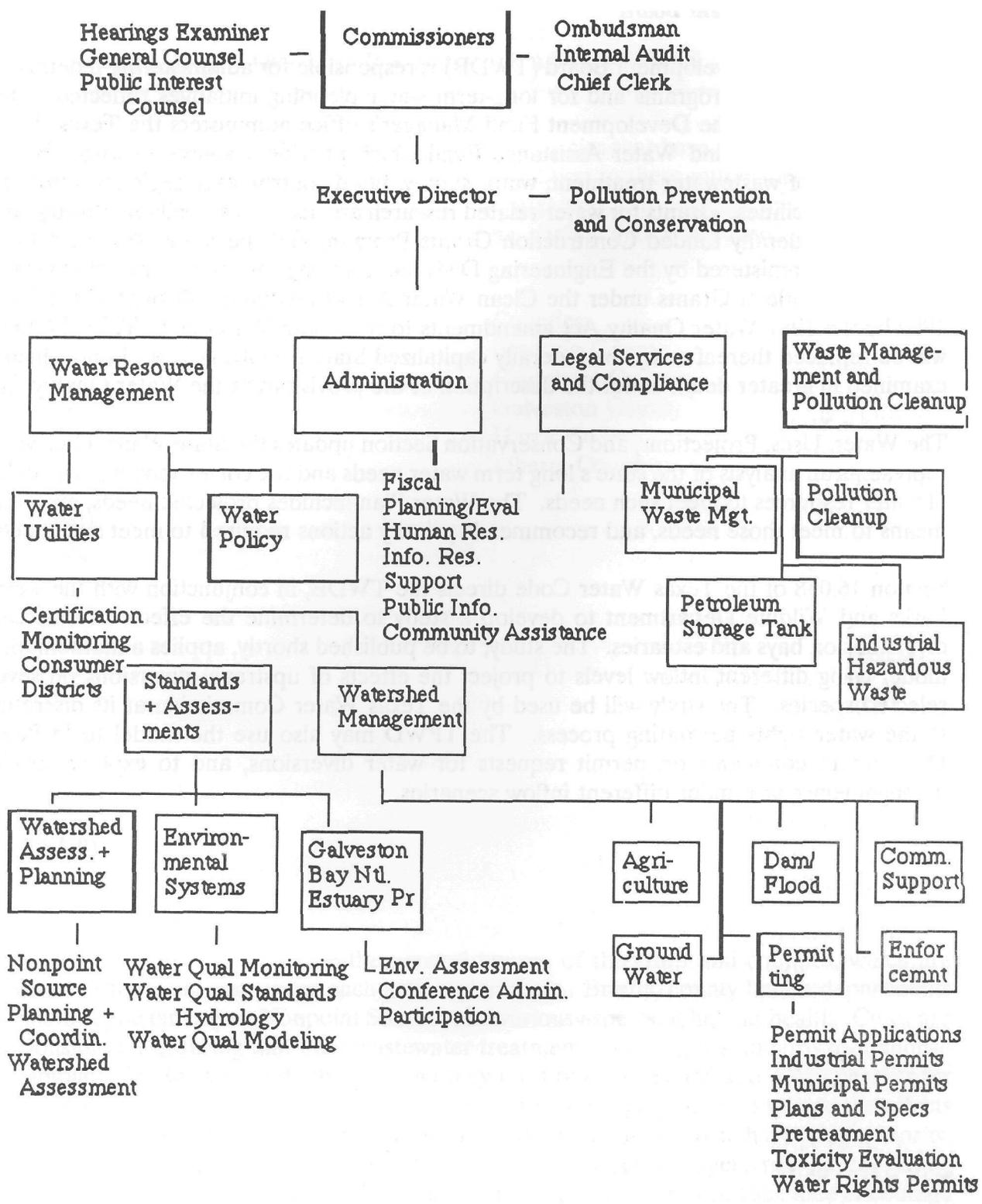
The Water Quality Standards Team in the Environmental Systems Section of the Standards and Assessment Division is responsible for promulgating the State of Texas Surface Water Quality Standards, which consist of general and numerical criteria to protect water quality based on specific use criteria for each classified water body in the state. Assessments of specific use criteria are made (contact recreation, quality of aquatic habitat, etc.) and discharge treatment levels are established depending on the use criteria.

Necessary treatment levels are then mandated through discharge permits coordinated by the Permitting Section in the Watershed Management Division. Presently, applicants seeking discharge permits must obtain both a state and federal discharge permit. The TWC is actively seeking EPA delegation of the National Pollutant Discharge Elimination System (NPDES), and the process of dual permitting will be eliminated upon such delegation. The Permitting Section is divided into several teams: industrial permits, municipal permits, an applications team that coordinates with EPA and performs administrative oversight, a plans and specifications, pretreatment, and water rights. The Section is also responsible for reviewing Corps of Engineer permits under Section 401 of the Clean Water Act to certify that discharges permitted by the Corps will not violate state water quality standards.

The Industrial and Hazardous Waste Division of the Office of Waste Management and Pollution Cleanup coordinates state municipal and industrial hazardous waste, and nonhazardous industrial waste activities in the state. Its permits group handles permitting responsibilities for the storage, processing, and disposal of industrial solid waste, while the enforcement group and corrective action groups ensure compliance and followup. The Pollution Cleanup Section ranks abandoned hazardous waste sites for consideration by the EPA to be included on the Superfund National Priorities List under the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. This section also administers a state program to clean up those sites not qualifying for the Priorities List. The section is responsible for emergency response to hazardous waste spills in the state. The predecessor section had been responsible for responding to oil spills, but this responsibility was transferred to the General Land Office in the 72nd Texas

Legislative Section pursuant to the Oil Spill Prevention and Response Act of 1991.

The Field Operations Section in the Office of Legal Services and Compliance maintains fourteen field offices throughout the state which conduct inspections of industrial and municipal wastewater treatment facilities and facilities that generate, process, or dispose of industrial solid waste and hazardous waste. Field offices are also responsible for the Stream Monitoring Program, which performs ambient monitoring of coastal and other surface waters. The District 7 Office, which operates the Division's analytical laboratory, is located in Houston.



Selected Components of Texas Water Commission Organization
March 1992

Texas Water Development Board

The Texas Water Development Board (TWDB) is responsible for administering federal and state water finance programs and for long-term water planning initiatives reflected in the State Water Plan. The Development Fund Manager's office administers the Texas Water Development Fund and Water Assistance Fund which provide a source of loans for the construction of wastewater treatment, water supply, flood control, and regional water and wastewater facilities. Grants for water-related research are also made available through this fund. The federally funded Construction Grants Program and the State Revolving Loan Funds are administered by the Engineering Division. Funding for the Construction Grants Program by Title II Grants under the Clean Water Act was extended through Fiscal Year 1990 by the 1987 Water Quality Act amendments to the Clean Water Act. Title II Grants will be replaced thereafter by the federally capitalized State Revolving Loan Fund which is examined in greater detail under the description of the provisions of the Water Quality Act.

The Water, Uses, Projections, and Conservation Section updates the State Water Plan which represents an analysis of the state's long term water needs and the corresponding availability of water resources to meet such needs. The Water Plan includes projected needs, evaluates means to meet those needs, and recommends priority actions required to meet such needs.

Section 16.058 of the Texas Water Code directs the TWDB, in conjunction with the Texas Parks and Wildlife Department to develop a study to determine the effects of upstream diversions on bays and estuaries. The study, to be published shortly, applies a mathematical model using different inflow levels to project the effects of upstream diversions on seven selected species. The study will be used by the Texas Water Commission at its discretion in the water rights permitting process. The TPWD may also use the model to facilitate Department comments on permit requests for water diversions, and to explore species management goals under different inflow scenarios.