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## Lineup of Legislation

A number of bills passed in the regular legislative session will have an impact on environmental programs.

### The TCEQ's playbook grows with new responsibilities, laws to implement

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The Legislature added new duties to the TCEQ's role of overseeing air and water quality and waste management. The agency has already begun analyzing new laws and preparing for rule making. About 120 bills that passed during the regular session affect the agency.

The legislation that will attract a great deal of attention is the measure restoring funding to the Texas Emissions Reduction Plan, which is critical to bringing the state into compliance with federal air quality standards. With a new appropriation, TERP projects will expand rapidly.

Below are other highlights of environmental bills passed by the 78th Legislature.

### Air Quality

**Emissions testing (SB 1159).** This air quality measure allows areas in Texas participating in early action compacts to initiate programs to curb vehicle emissions. The early action compact is a voluntary plan designed to bring a metropolitan area into compliance with the new federal 8-hour ozone standard. Participating areas may ask the state to approve a local emissions testing program for cars and trucks. The Austin, San Antonio, and Tyler-Longview-Marshall areas are eligible to initiate the program.

With emissions testing, which is already in place in 14 counties in the Houston and Dallas areas, cars and trucks are examined during annual safety inspections for excess emissions or problems with emissions control equipment. Vehicles failing the test are required to undergo repairs.

**Aggregate facilities (HB 1287, HB 555, SB 1272).** Several bills addressed the location and operating standards of aggregate facilities, such as concrete crushers and concrete batch plants. These operations are associated with construction or demolition projects and can emit a considerable amount of dust. The legislation addresses which aspects of concrete crushing may take place within one-quarter mile of a school, residence, or place of worship-- and how the distance will be determined.

Concrete batch plants will be exempted from the contested case hearings process when built to enhanced operating standards that reduce air emissions. A public meeting will be required to take testimony from the neighboring public. Facilities not meeting the enhanced standards remain subject to contested case hearings.

### Waste Management

**Low-level (HB 1567, HB 1678).** One of the most significant environmental measures authorizes the TCEQ to issue one license under which two adjoining facilities could accept low-level radioactive waste for disposal. One licensed site could receive waste from commercial generators in Texas, Vermont, and Maine, and a separate facility could accept waste from federal facilities, primarily the Department of Energy.

While Texas is responsible for managing the low-level radioactive waste generated within its own borders, it entered a federal compact in 1998, agreeing to provide a disposal facility for the other two states. Maine, however, is in the process of withdrawing from the compact, effective in 2004.



The TCEQ and 12 other state agencies are assigned to the new Critical Infrastructure Protection Council to advise the governor on homeland security issues.

Low-level radioactive waste is a byproduct of medical, research, and industrial activities, as well as nuclear power plant operations.

The TCEQ previously reviewed a licensing proposal for a low-level radioactive waste disposal site. In 1998, the commissioners denied a license to a public agency seeking to operate a facility near Sierra Blanca, southeast of El Paso.

Legislation passed in 2003 marks the first time Texas has opened the door to the possibility of a privately licensed disposal site. The measure also allows, for the first time, the acceptance of low-level radioactive waste from federal facilities.

Under the terms of the law, any private company can submit a license application to the TCEQ, which is subject to several different reviews. Only one private company may be selected to receive a low-level radioactive waste disposal license, which could be located in West Texas. The firm would manage and operate both the commercial and federal waste facilities under the one license. The state would retain title to the waste accepted from commercial generators, and the federal government would retain title to the federal waste.

The legislation limits the volume of waste accepted at the federal waste portion of the disposal site to 3 million cubic yards. After five years of site operations, capacity could grow to 6 million cubic yards. There is no statutory limit on the volume of compact waste that can be disposed of.

In recent years, the Legislature transferred the responsibilities of the Texas Low-Level Radioactive Waste Disposal Authority to the TCEQ. The TCEQ shares regulatory authority for radioactive materials with the state Department of Health and Railroad Commission.

**Solid waste (HB 1791, HB 1765).** Solid waste practices will undergo legislative changes. While the state has allowed grease collected from commercial grease traps to be applied to compost, facilities doing so will be required to obtain a permit from the TCEQ.

Also, the TCEQ will begin requiring financial assurance for the collection, transportation, or processing of grit trap waste and grease trap waste as a condition for receiving a permit. This financial security addresses the potential for accidents that could pose a risk to the public.

**Recycling (SB 585, HB 1823).** Based on legislation passed in 2001, the TCEQ created first-time regulations for recycling center operations that require those not in compliance to be cleaned up or closed. The 2003 Legislature expanded the use of the state municipal solid waste superfund to pay for the cleanup or closure of an unauthorized recycling site when a responsible party is unable to pay. The TCEQ, which is responsible for overseeing unauthorized recycling sites, can use contractors to remediate or close the facility.

The TCEQ also will be moving to ensure that the owner or operator of a recycling facility, including those that do composting or mulching, has sufficient financial assurance. This step will put recycling facilities on par with other solid waste processing and disposal facilities, which were already required to post financial assurance.

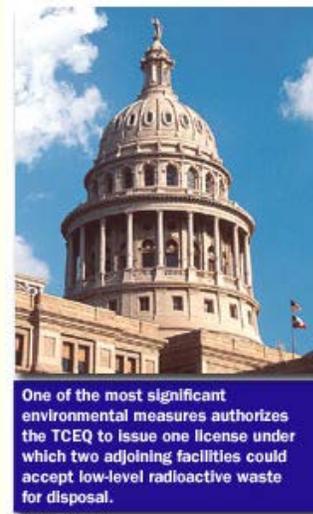
**Sludge (HB 2546).** In response to safety and health concerns about Class B sludge, legislation requires a permit holder for the land application of sewage sludge to submit detailed quarterly reports, stating such information as the source, quality, and quantity of the sludge and identifying crops grown on the site. Each year, the permit holder has to report how risks to water quality were minimized. All permit applicants, with the exception of political subdivisions, must submit proof of insurance against commercial liability and environmental impairment. These policies must be maintained for the term of the permit.

## Water Concerns

**Inflows (SB 1639).** The TCEQ was named to a newly created commission to study water for environmental flows. The 15-member commission will hold public hearings on the public policy implications of balancing the growing demands for water resources with the flow requirements of rivers and bay and estuary systems. The panel will issue a report by December 2004.

**Conservation (HB 2660, HB 2663).** The agency can require certain surface water right holders to include 5- and 10-year target goals for water savings in their water conservation plans, which are due by May 2005. This requirement comes on the heels of a survey of 500 municipal water suppliers, which showed that a significant number do not have water conservation goals. Many respondents said they did not have a conservation plan or could not find it.

The same deadline--May 2005--was established for wholesale and retail public water suppliers and irrigation districts to establish goals for reducing water use in their drought contingency plans. The TCEQ and the Texas Water Development Board will jointly develop best management practices to be used by water suppliers during times of water shortages.



## Other Measures

**Enforcement (SB 1265).** In the case of potential criminal prosecutions under environmental laws, local and state agencies are now required to coordinate efforts. Local peace officers must notify the TCEQ and receive approval before proceeding with a criminal case. The agency evaluates the written referral, determines whether an environmental violation exists, and decides what actions should be taken. The TCEQ may conclude that administrative or civil remedies would be more appropriate. These new procedures apply to cases in which the potential defendant holds a permit issued by the TCEQ or is employed by a permit holder.

**Homeland security (HB 9).** The TCEQ and 12 other state agencies are assigned to the new Critical Infrastructure Protection Council to advise the governor on homeland security issues. The council will help the governor prepare a strategy for protecting critical infrastructure throughout the state and for implementing homeland security measures through state and local agencies.

As with other agencies affected by homeland security concerns, the TCEQ will further analyze its procedures for sharing information with the public and the need for safeguards to protect information related to security.

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