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# STRATEGIC PLAN

## FISCAL YEARS 2011–2015

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
SFR-035/11

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

# STRATEGIC PLAN

## FISCAL YEARS 2011–2015

Submitted to the
Governor's Office of Budget, Planning and Policy
and the Legislative Budget Board

July 2010


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# Part I

## Vision, Mission, and Goals

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RELEVANT STATEWIDE GOALS AND BENCHMARKS

AGENCY VISION AND MISSION

## Statewide Vision and Mission

The governor's philosophy of limited government and belief in fiscal discipline is reflected in the following critical priorities:

- Ensuring the economic competitiveness of our state by adhering to principles of fiscal discipline, setting clear budget priorities, living within our means, and limiting the growth of government.
- Investing in critical water, energy, and transportation infrastructure to meet the demands of our rapidly growing state.
- Ensuring excellence and accountability in public schools and institutions of higher education as we invest in the future of this state and ensure Texans are prepared to compete in the global marketplace.
- Defending Texans by safeguarding our neighborhoods and protecting our international border.
- Increasing transparency and efficiency at all levels of government to guard against waste, fraud, and abuse, ensuring that Texas taxpayers keep more of their hard-earned money to keep our economy and our families strong.

## The Mission of Texas State Government

Texas state government must be limited, efficient, and completely accountable. It should foster opportunity and economic prosperity, focus on critical priorities, and support the creation of strong family environments for our children. The stewards of the public trust must be men and women who administer state government in a fair, just, and responsible manner. To honor the public trust, state officials must seek new and innovative ways to meet state government priorities in a fiscally responsible manner. Aim high . . . we are not here to achieve inconsequential things!

## The Philosophy of Texas State Government

The task before all state public servants is to govern in a manner worthy of this great state. We are a great enterprise, and as an enterprise, we will promote the following core principles:

- First and foremost, Texas matters most. This is the overarching, guiding principle by which we will make decisions. Our state, and its future, is more important than party, politics, or individual recognition.
- Government should be limited in size and mission, but it must be highly effective in performing the tasks it undertakes.
- Decisions affecting individual Texans, in most instances, are best made by those individuals, their families, and the local government closest to their communities.
- Competition is the greatest incentive for achievement and excellence. It inspires ingenuity and requires individuals to set their sights high. Just as competition inspires excellence, a sense of personal responsibility drives individual citizens to do more for their future and the future of those they love.
- Public administration must be open and honest, pursuing the high road rather than the expedient course. We must be accountable to taxpayers for our actions.
- State government has a responsibility to safeguard taxpayer dollars by eliminating waste and abuse and providing efficient and honest government.

Finally, state government should be humble, recognizing that all its power and authority is granted to it by the people of Texas, and those who make decisions wielding the power of the state should exercise their authority cautiously and fairly.

# Relevant Statewide Goals and Benchmarks

## Natural Resources and Agriculture

The priority goal is to conserve and protect our state's natural resources (air, water, land, wildlife, and minerals) by:

- Providing leadership and policy guidance for state, federal, and local initiatives.
- Maintaining Texas' status as a leader in agriculture.
- Encouraging responsible, sustainable economic development.

## Benchmarks

- Percentage of nitrogen oxide and criteria pollutants reduced in the air.
- Percentage of water conservation through decreased water usage, increased water reuse, and brush control.
- Percentage of Texas waters that meet or exceed safe water quality standards.
- Percentage of polluted-site cleanups to protect the environment and public health.
- Percentage of regulatory permits processed while ensuring appropriate public input.
- Percentage of environmental violations tracked and reported.
- Percentage of implemented new technologies that provide efficient, effective, and value-added solutions for a balanced Texas ecosystem.
- Average time taken to respond to natural disasters such as wildfires and hurricanes.

# Agency Vision and Mission

## The Mission of the TCEQ

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.

## The Philosophy of the TCEQ

To accomplish our mission, we will:

- 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.
- Ensure meaningful public participation in the decision-making process.
- Promote and foster voluntary compliance with environmental laws and provide flexibility in achieving environmental goals.
- Hire, develop, and retain a high-quality, diverse workforce.

***EEO Commitment***

The TCEQ is an equal opportunity/affirmative action employer. The agency does not allow discrimination on the basis of race, color, religion, national origin, sex, disability, age, sexual orientation, or veteran status.

# Part II

## External and Internal Assessment

C H A P T E R 1

# Historical and Organizational Overview

## Overview of Agency Scope and Functions

In a state with diverse environmental challenges, the Texas Commission on Environmental Quality (TCEQ) implements a broad range of state and federal regulatory and cooperative activities.

## Statutory Authority

Many of the TCEQ's air, water, and waste regulatory and compliance activities are administered pursuant to state and federal law. The agency's water-rights activities are established under state law. Table 1 lists the major citations for the agency's authority under state law.

### Table 1. Statutory Citations for TCEQ Authority

| Statutory Citation and Chapter Title | Authority and Impact on Agency |
|---|---|
| Texas Water Code, Chapter 5<br>Texas Natural Resource Conservation Commission | This chapter defines the organizational structure of the commission, its duties, responsibilities, authority, and functions. The chapter also establishes the office of the executive director to manage the administrative affairs of the commission and establishes environmental permitting procedures and fees. |
| Texas Water Code, Chapter 7<br>Enforcement | This chapter sets forth the duties and obligations of the commission and the executive director to institute legal proceedings and to compel compliance with the relevant provisions of the Water Code and the Health and Safety Code, and rules, orders, permits, or other decisions of the commission. The chapter also authorizes the imposition of administrative, civil, and criminal penalties. |
| Texas Rev. Civ. Stat. Ann., art. 4447cc (Vernon's)<br>Environmental, Health, and Safety Audit Privilege Act | This article establishes audit privilege for regulated entities to encourage voluntary compliance with environmental and occupational health and safety laws. |
| Texas Water Code, Chapter 11<br>Water Rights | The State of Texas holds title to surface water in trust for the public. This chapter establishes a permitting system for the appropriation of surface water administered by the commission and provides for adjudication of claims by state district courts. |
| Texas Water Code, Chapter 12<br>Provisions Generally Applicable to Water Rights | This chapter addresses general powers and duties relating to water rights, federal projects and dam safety, oversight of districts, and disposition of fees. |

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## Table 1. Statutory Citations for TCEQ Authority (continued)

| Statutory Citation and Chapter Title | Authority and Impact on Agency |
|---|---|
| Texas Water Code, Chapter 13<br>Water Rates and Services | This chapter establishes a comprehensive system of regulating water and sewer utilities to ensure that rates, operations, and services are provided that are just and reasonable to consumers and utilities. |
| Texas Water Code,<br>Section 16.236<br>Construction of Levees | This section requires the commission to review levee projects and adopt rules. |
| Texas Water Code, Chapter 26<br>Water Quality Control | This chapter requires the commission to ensure that the quality of water in the state is maintained consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state, and to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems. The chapter authorizes the commission to establish permitting, management, and monitoring programs to support such protection and addresses the regulation of underground and above-ground storage tanks. |
| Texas Water Code, Chapter 27<br>Injection Wells | This chapter establishes a policy of the state to maintain the quality of its fresh water and establishes a permitting system for injection-well activities not authorized by a rule of the commission or subject to the jurisdiction of the Railroad Commission. |
| Texas Water Code, Chapter 28<br>Drilled or Mined Shafts | This chapter establishes permitting requirements for drilled or mined shafts. |
| Texas Water Code, Chapter 30<br>Regional Waste Disposal | This chapter gives the commission authority to exercise continuing supervision over regional plans for water quality management control, and abatement of pollution under the chapter. |
| Texas Water Code, Chapter 31<br>Subsurface Excavation | This chapter gives the commission authority to issue a permit to allow a person to drill, excavate, or otherwise construct a subsurface excavation. |

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## Table 1. Statutory Citations for TCEQ Authority (continued)

| Statutory Citation and Chapter Title | Authority and Impact on Agency |
|---|---|
| Texas Water Code, Chapter 32<br>Subsurface Area Drip Dispersal Systems | This chapter establishes permitting requirements for subsurface area drip dispersal systems. |
| Texas Water Code, Chapter 35<br>Groundwater Studies | This chapter requires the commission to evaluate and designate priority groundwater management areas. |
| Texas Water Code, Chapter 36<br>Groundwater Conservation Districts | This chapter authorizes the creation of groundwater conservation districts to provide for the conservation, preservation, protection, recharging, and prevention of waste in groundwater; and to control subsidence, consistent with the objectives of Texas Constitution Article XVI, Section 59. The chapter recognizes groundwater conservation districts as the state's preferred method of groundwater management. |
| Texas Water Code, Chapter 37<br>Occupational Licensing and Registration | This chapter requires the commission to adopt rules for licenses and registrations prescribed by Texas Water Code sections 26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code sections 341.033, 341.034, 361.027 and 366.071; and Texas Occupations Code Section 1903.251. |
| Texas Water Code, chapters 41 through 44, and 46<br>River Compacts | These chapters provide a means for Texas and bordering states to enter into interstate agreements governing boundary and shared-use waters (Rio Grande, Pecos River, Red River, Canadian River, and Sabine River). Such agreements must be ratified by Congress. |
| Texas Water Code, Chapter 49<br>Provisions Applicable to All Districts | This chapter describes the rights, duties, and obligations of districts created by the authority of Texas Constitution Article III, Section 52, or Article XVI, Section 59 (unless exempted by other law). Generally, the provisions define the agency's role in approving district bonds, appointing directors, approving certain fees, dissolving districts, and other district actions. |
| Texas Water Code, Chapter 51<br>Water Control and Improvement Districts | This chapter's provisions govern the creation and regulation of this type of district and outline the role and authority of the TCEQ in regard to such districts. |

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## Table 1. Statutory Citations for TCEQ Authority (continued)

| Statutory Citation and Chapter Title | Authority and Impact on Agency |
|---|---|
| Texas Water Code, Chapter 52 Underground Water Conservation Districts | This chapter's provisions govern the creation and regulation of this type of district and outline the role and authority of the TCEQ in regard to such districts. |
| Texas Water Code, Chapter 53 Fresh Water Supply Districts | This chapter's provisions govern the creation and regulation of this type of district and outline the role and authority of the TCEQ in regard to such districts. |
| Texas Water Code, Chapter 54 Municipal Utility Districts | This chapter's provisions govern the creation and regulation of this type of district and outline the role and authority of the TCEQ in regard to such districts. |
| Texas Water Code, Chapter 55 Water Improvement Districts | This chapter's provisions govern the creation and regulation of this type of district and outline the role and authority of the TCEQ in regard to such districts. |
| Texas Water Code, Chapter 56 Drainage Districts | This chapter's provisions govern the creation and regulation of this type of district and outline the role and authority of the TCEQ in regard to such districts. |
| Texas Water Code, Chapter 57 Levee Improvement Districts | This chapter's provisions govern the creation and regulation of this type of district and outline the role and authority of the TCEQ in regard to such districts. |
| Texas Water Code, Chapter 58 Irrigation Districts | This chapter's provisions govern the creation and regulation of this type of district and outline the role and authority of the TCEQ in regard to such districts. |
| Texas Water Code, Chapter 59 Regional Districts | This chapter's provisions govern the creation and regulation of this type of district and outline the role and authority of the TCEQ in regard to such districts. |
| Texas Water Code, Chapter 65 Special Utility Districts | This chapter's provisions govern the creation and regulation of this type of district and outline the role and authority of the TCEQ in regard to such districts. |
| Texas Water Code, Chapter 66 Storm water Control Districts | This chapter's provisions govern the creation and regulation of this type of district and outline the role and authority of the TCEQ in regard to such districts. |
| Texas Health and Safety Code, Chapter 341, Subchapter C Sanitary Standards of Drinking Water; Protection of Public Water Supplies and Bodies of Water | The purpose of this subchapter is to preserve the public health, safety, and welfare by requiring the commission to ensure that systems that supply public drinking water do so in adequate quantities, and are financially stable and technically sound. The subchapter prescribes a review and approval process to be applied prior to the construction and operation of a new public water system and establishes administrative, civil, and criminal penalties for noncompliance. |

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## Table 1. Statutory Citations for TCEQ Authority (continued)

| Statutory Citation and Chapter Title | Authority and Impact on Agency |
|---|---|
| Texas Health and Safety Code, Chapter 361<br>Solid Waste Disposal Act | The purpose of this chapter is to safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of solid waste. The chapter authorizes the commission to control all aspects of the management of municipal and industrial solid waste and hazardous waste, and establishes fees and a permitting system for the administration of this responsibility. The chapter includes provisions authorizing the investigation and remediation of sites contaminated by hazardous substances, as well as other remediation and recycling programs. |
| Texas Health and Safety Code, Chapter 363<br>Municipal Solid Waste | This chapter establishes a cooperative framework among federal, state, and local governments and private enterprise for reductions in the generation of solid waste and its proper management, including disposal and processing to extract usable materials or energy. Subchapter C creates the Municipal Solid Waste Management and Resource Recovery Advisory Council. |
| Texas Health and Safety Code, Chapter 364<br>County Solid Waste | This chapter authorizes a cooperative effort by counties, public agencies, and other authorities and individuals for the safe and economical collection, transportation, and disposal of solid waste to control pollution in the state. Section 364.012(f) prohibits the commission from granting an application for a permit to process or dispose of municipal or industrial solid waste where prohibited by ordinance (with one exception). |
| Texas Health and Safety Code, Chapter 365<br>Litter | The purpose of this chapter is to safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of litter and other solid waste. The chapter authorizes the commission to adopt rules and standards regarding the processing and treatment of litter and includes criminal penalties for violation of those rules, standards, or statutory provisions. |
| Texas Health and Safety Code, Chapter 366<br>On-Site Sewage Disposal Systems | This chapter requires that the commission regulate the construction, installation, alteration, repair, or extension of on-site sewage systems (OSSFs). The commission is authorized to enact fees, issue permits, and impose penalties in its efforts to eliminate and prevent health hazards in these systems. The commission is required to license or register persons who install and maintain OSSFs. |

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## Table 1. Statutory Citations for TCEQ Authority (continued)

| Statutory Citation and Chapter Title | Authority and Impact on Agency |
|---|---|
| Texas Health and Safety Code, Chapter 367<br>On-Site Wastewater Treatment Research Council | This chapter establishes the On-Site Wastewater Treatment Research Council and defines its role and authority. Section 367.010 directs the commission to collect a $10 fee on all on-site wastewater treatment permit applications and enforce the collection of the fee by certain local governments. The fee is deposited in the on-site wastewater treatment research account for grants and other expenditures under the chapter. |
| Texas Health and Safety Code, Chapter 369<br>Plastic Containers | This chapter requires that the appropriate symbol be placed on plastic containers to indicate the resin used to produce the container and provides for civil penalties. The commission is required to maintain a list of the appropriate symbols and may approve other symbols. |
| Texas Health and Safety Code, Chapter 370<br>Toxic Chemical Release Reporting | This chapter requires facilities that use toxic chemicals in excess of a threshold amount to submit a "toxic chemical release" form and accompanying fee to the agency. The purpose of the form is to inform the public and communities surrounding the facilities. |
| Texas Health and Safety Code, Chapter 371<br>Used Oil Collection, Management, and Recycling | This chapter authorizes the commission to adopt rules governing the registration and reporting requirements of used-oil handlers other than generators. The chapter also authorizes the commission to adopt rules and procedures necessary to implement the used-oil recycling program. and includes registration and reporting requirements for used-oil filter transportation, storage, and generation and requires the commission to adopt rules relating to financial responsibility. |
| Texas Health and Safety Code, Chapter 372<br>Plumbing Fixture Standards | This chapter requires the TCEQ to maintain a list of manufacturers for plumbing fixtures that meet the standards set out in the statute. |
| Texas Health and Safety Code, Chapter 374<br>Dry Cleaner Environmental Response | This chapter establishes an environmental regulation and remediation program for dry-cleaning facilities and dry-cleaning drop stations in Texas. Under the program, operating dry-cleaning facilities and drop stations pay registration and solvent fees into a fund that is then used by the commission to investigate and clean up eligible contaminated dry-cleaning sites. |

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## Table 1. Statutory Citations for TCEQ Authority (continued)

| Statutory Citation and Chapter Title | Authority and Impact on Agency |
|---|---|
| Texas Health and Safety Code, Chapter 375<br>Removal of Convenience Switches | This chapter establishes a convenience-switch recovery program under which the commission provides regulatory incentives as well as collects and reports on data received regarding the recovery of convenience switches. |
| Texas Health and Safety Code, Chapter 382<br>Texas Clean Air Act | This chapter is established to safeguard the state's air resources from pollution, consistent with the protection of public health, general welfare, and physical property, including the aesthetic enjoyment of air resources by the public and the maintenance of adequate visibility. The chapter establishes a comprehensive permitting system applicable to a variety of facilities that emit pollutants. |
| Texas Health and Safety Code, Chapter 384<br>Area Emission Reduction Credit Organizations (AERCO) | This chapter allows the establishment of organizations to promote the creation, trading, and tracking of emission-reduction credits in nonattainment areas. The commission has oversight authority to approve initial establishment, withdraw approval, dissolve or renew, and audit area emission-reduction credit organizations. |
| Texas Health and Safety Code, Chapter 386<br>Texas Emissions Reduction Plan (TERP) | This chapter establishes a number of program components aimed at reducing air emissions, including mobile source incentives and energy efficiency requirements. The primary responsibility of the TCEQ is to implement the Emissions Reductions Incentive Program by awarding grants for the installation of emission-control equipment. |
| Texas Health and Safety Code, Chapter 387<br>New Technology Research and Development Program (NTRD) | This chapter establishes grants to fund the development of new emission-reduction techniques, especially those that could eventually be commercially funded through the Texas Emissions Reduction Plan program. The TCEQ became responsible for this program in 2003. |
| Texas Health and Safety Code, Chapter 390<br>Clean School Bus Program | This chapter establishes a grant program, administered by the TCEQ, to reduce the exposure of schoolchildren to diesel exhaust in and around school buses through technology that reduces diesel emissions. |

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## Table 1. Statutory Citations for TCEQ Authority (continued)

| Statutory Citation and Chapter Title | Authority and Impact on Agency |
|---|---|
| Texas Health and Safety Code, Chapter 391 (SB 1759, 81st Legislature)<br>Texas Clean Fleet Program | This chapter establishes a grant program, administered by the TCEQ, to give incentives for replacement or repowering of fleet vehicles with alternative fuels. |
| Texas Health and Safety Code, Chapter 391 (HB 1796, 81st Legislature)<br>New Technology Implementation for Facilities and Stationary Sources | This chapter establishes a grant program, administered by the TCEQ, to give incentives for the implementation of emissions-reduction technologies for facilities and stationary sources. |
| Texas Health and Safety Code, Chapter 401<br>Radioactive Materials and Other Sources of Radiation | This chapter authorizes a program that will ensure the effective regulation of sources of radiation for protection of the occupational and public health and safety and the environment, and will promote the orderly regulation (in the state, among states, and between the federal government and the state) of sources of radiation to minimize regulatory duplication. The chapter establishes a licensing and registration system applicable to persons who manufacture, produce, transport, own, process, or dispose of a source of radiation not exempted by law. The TCEQ is responsible for the regulation of by-product material and the disposal of radioactive materials except naturally occurring radioactive material (NORM) waste, excluding oil and gas waste. |
| Texas Health and Safety Code, Section 753.008<br>Flammable Liquids | This section of Chapter 753 gives the TCEQ concurrent jurisdiction with the Texas State Board of Insurance regarding the inspection of initial installation and other administrative supervision of above-ground storage tanks. The TCEQ has the primary authority for inspection of initial installation of the tanks and is required to report all violations of the chapter in regard to such tanks to the state fire marshal for enforcement proceedings. |
| Texas Government Code, Section 2155.145<br>Certain Purchases by Texas Natural Resource Conservation Commission | This section delegates purchasing functions relating to Texas Health and Safety Code 361, Subchapters F and I. |

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## Table 1. Statutory Citations for TCEQ Authority (continued)

| Statutory Citation and Chapter Title | Authority and Impact on Agency |
|---|---|
| Texas Local Government Code, Section 212.0101<br>Additional Requirements: Use of Groundwater | This subsection requires the TCEQ, by rule, to establish the appropriate form and content of a certification to be attached to a plat application under the section as well as requirements for certain plats to be transmitted to the Texas Water Development Board and any applicable groundwater conservation district. |
| Texas Local Government Code, Section 232.0032<br>Additional Requirements: Use of Groundwater | This subsection requires that the TCEQ, by rule, shall establish the appropriate form and content of a certification to be attached to a plat application under the section as well as requirements for certain plats to be transmitted to the Texas Water Development Board and any applicable groundwater conservation district. |
| Texas Local Government Code, Chapter 375<br>Municipal Management Districts in General | This chapter creates management districts to promote and benefit commercial development and commercial areas throughout the state and outlines the role and authority of the TCEQ in their creation. |
| Texas Natural Resources Code, Chapter 40<br>Oil Spill Prevention and Response Act of 1991 | This chapter establishes the Texas General Land Office as the agency with primary response obligations for unauthorized oil spills, but includes provisions allowing other state agencies, such as the TCEQ, to carry out response and cleanup operations related to the unauthorized discharge of oil. Additionally, the TCEQ is a Natural Resource Trustee, and this section allows the Texas General Land Office, on behalf of the Natural Resource Trustees, to seek reimbursement from the federal oil-spill fund for damages to natural resources. |
| Texas Occupations Code, Chapter 1903<br>Irrigators | This chapter provides authority to license and regulate irrigators. |
| Texas Occupations Code, Chapter 1904<br>Water Treatment Specialists | This chapter provides authority to license and regulate water-treatment specialists. |
| Texas Tax Code Section 11.31<br>Tax Pollution Control Property | This section creates a tax exemption for pollution-control equipment. The TCEQ is required to determine the applicability of the exemption and to establish rules to make such determinations. |
| Texas Tax Code Section 26.045<br>Rollback Relief for Pollution Control Requirements | This section creates tax-rollback rate adjustments for pollution-control equipment. The TCEQ is required to determine the applicability of the adjustment and is required to establish rules to make such determinations. |

# Historical Perspective

The history of natural resource protection by the State of Texas is one of gradual evolution from protecting the right of access to natural resources (principally surface water) to a broader role in protecting public health and conserving natural resources for future generations of Texans.

## Major Events in TCEQ History

Natural resource programs were established in Texas at the turn of the 20th century, motivated initially by concerns over the management of water resources and water rights. In parallel with developments in the rest of the nation, and at the federal level, state natural resource efforts broadened in mid-century to include the protection of air and water resources, and later to the regulation of the generation of hazardous and nonhazardous waste.

During the 1990s, the Texas Legislature repositioned state agencies to make protecting natural resources more efficient by consolidating programs. This trend culminated in the creation of the Texas Natural Resource Conservation Commission in the fall of 1993 as a comprehensive environmental protection agency. Sunset legislation passed by the Texas Legislature in 2001 continued the agency until 2013 and changed its name to the Texas Commission on Environmental Quality. During the special session of the 81st Legislature (2009), legislation was adopted amending the 2013 date to 2011.

The major events in the history of the TCEQ are outlined below. Federal items of importance are in bold.

1905 ■ The Legislature authorizes the creation of the first drainage districts.

1913 ■ The Irrigation Act creates the Texas Board of Water Engineers to establish procedures for determining surface water rights.

1919 ■ The Legislature provides for the creation of freshwater supply districts.

1925 ■ The Legislature provides for the organization of water control and improvement districts.

1929 ■ The Legislature creates the first river authority (the Brazos River Authority).

1945 ■ Legislation authorizes the Texas Department of Health to enforce drinking-water standards for public water supply systems.

1949 ■ State legislation declares that groundwater is private property.

■ The Legislature creates underground water conservation districts.

1953 ■ The Legislature creates the Texas Water Pollution Control Advisory Council in the Department of Health as the first state body charged with dealing with pollution-related issues.

1956 ■ **The U.S. Congress passes the Water Pollution Control Act.**

■ Texas' first air quality initiative is established when the state Department of Health begins air sampling.

1957 ■ The Legislature creates the Texas Water Development Board to forecast water supply needs and fund water supply and conservation projects.

1959 ■ **The U.S. Congress passes the Atomic Energy Act.**

1961 ■ The Texas Pollution Control Act establishes the Texas Water Pollution Board and eliminates the Water Pollution Advisory Council, creating the state's first true pollution control agency.

■ A water-well drillers' advisory group is established.

■ The Injection Well Act is passed, authorizing the Texas Board of Water Engineers to regulate waste disposal (other than from the oil and gas industry) into the subsurface through injection wells.

1962 ■ The Texas Board of Water Engineers becomes the Texas Water Commission, with additional responsibilities for water conservation and pollution control.

■ The Texas Water Pollution Board adopts its first rules and regulations.

1963 ■ **The U.S. Congress enacts the Clean Air Act.**

1965 ■ The Texas Clean Air Act establishes the Texas Air Control Board in the Department of Health to monitor and regulate air pollution in the state.

■ The Texas Water Commission becomes the Texas Water Rights Commission, and functions not related to water rights are transferred to the Texas Water Development Board.

1967 ■ The Texas Water Quality Act establishes the Texas Water Quality Board (TWQB), assuming all functions of the Water Pollution Control Board. The TWQB adopts its first rules.

■ The Texas Air Control Board adopts its first air quality regulations.

1969 ■ Texas takes over most federal air-monitoring responsibilities in the state.

■ The Texas Solid Waste Disposal Act authorizes the TWQB to regulate industrial solid waste, and the Texas Department of Health to regulate municipal solid waste.

■ **A presidential order creates the U.S. Environmental Protection Agency (EPA).**

1970 ■ **The federal Clean Air Act is amended, requiring states to develop State Implementation Plans (SIPs).**

1971 ■ **The EPA adopts National Ambient Air Quality Standards (NAAQS).**

■ The Legislature first authorizes municipal utility districts.

■ The Texas Air Control Board establishes an air permits program.

1972 ■ **The U.S. Congress passes the Clean Water Act.**

■ The Texas Air Control Board submits its first SIP to the EPA. It also deploys the first continuous air-monitoring station.

1973 ■ The Legislature removes the Texas Air Control Board from the Department of Health, making it an independent state agency.

1974 ■ Texas et al. vs. the U.S. EPA challenges the EPA's plan for controlling ozone in Texas.

■ The Texas Air Control Board completes deployment of the first continuous monitoring network.

■ **The U.S. Congress passes the Safe Drinking Water Act.**

1976 ■ **The U.S. Congress passes the Resource Conservation and Recovery Act (RCRA) to govern the disposal of all types of solid and hazardous wastes.**

1977 ■ **The federal Clean Air Act and Clean Water Act are amended.**

■ The Legislature creates the Texas Department of Water Resources (TDWR) by combining the three existing water agencies. A six-member board is set up as a policy-making body for the new agency. The Texas Water Development Board (TWDB) is retained as the legislative and policy-making body. The Water Rights Commission is renamed the Texas Water Commission and sits as a quasi-judicial body that rules on permits. The Water Quality Board is abolished.

1979 ■ The Texas Air Control Board submits revisions of the SIP to the EPA.

1980 ■ **The U.S. Congress passes the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), better known as the Superfund bill, to provide funding for the cleanup of contaminated sites.**

■ **The U.S. Congress passes the Low-Level Radioactive Waste Act.**

■ The Texas Air Control Board submits to the EPA a plan to address lead pollution.

1982 ■ Texas receives authorization from the EPA for underground injection control.

1984 ■ **The U.S. Congress passes the Hazardous and Solid Waste Amendments to the RCRA.**

■ Texas receives final RCRA authorization from the EPA.

1985 ■ **The U.S. Congress passes amendments to the 1980 Low-Level Radioactive Waste Act.**

■ The Legislature dissolves the Department of Water Resources and transfers regulatory enforcement to the recreated Texas Water

Commission, and planning and finance responsibilities to the recreated Water Development Board.

■ The Legislature moves the Water Rates and Utilities Services Program from the Public Utility Commission of Texas to the newly created Texas Water Commission.

■ The Texas Air Control Board mobile sampling laboratory is first deployed.

1986 ■ **The U.S. Congress passes the Superfund Amendments and Reauthorization Act, reauthorizes CERCLA, and creates the Toxics Release Inventory.**

■ **The U.S. Congress amends the Safe Drinking Water Act.**

1987 ■ **The U.S. Congress passes the Water Quality Act.**

■ Texas establishes an EPA-approved state wellhead-protection program.

1989 ■ The Legislature expands and funds the Petroleum Storage Tank (PST) Program.

■ The Texas Radiation Control Act authorizes the Texas Department of Health to license the disposal of radioactive waste.

1990 ■ **The U.S. Congress adopts the Clean Air Act Amendments.**

■ **The U.S. Congress passes the Oil Pollution Act.**

1991 ■ The Texas Air Control Board is expanded to implement the 1990 federal Clean Air Act Amendments.

■ The Legislature, in special session, creates the Texas Natural Resource Conservation Commission (TNRCC) to be effective Sept. 1, 1993. Preparation begins for the consolidation of the Texas Water Commission and the Texas Air Control Board into the TNRCC.

1992 ■ The Texas Water Commission acquires responsibility for drinking water, municipal solid waste, and the licensing of radioactive substances from the Texas Department of Health.

■ The Water Well Drillers Board and the Board of Irrigators are merged into the Texas Water Commission.

1993 ■ The TNRCC begins operations, thereby consolidating for the first time regulatory programs for air, water, and waste.

■ The Legislature adopts House Bill (HB) 1920, which establishes the Tax Relief for Pollution Control Property Program, to be administered by the TNRCC.

1995 ■ **The EPA establishes the Environmental Performance Partnership Grant (PPG) Program.** The PPG provides federal funds to states to administer environmental programs such as Section 106 Surface Water, Section 105 Air, Public Drinking Water, Section 319 Nonpoint Source, and the Resource Conservation and Recovery Act (RCRA).

1997 ■ The Legislature transfers regulation of water-well drillers from the TNRCC to the Texas Department of Licensing and Regulation.

■ The Legislature returns oversight of uranium mining, processing, and by-product disposal to the Texas Department of Health.

■ The TNRCC concludes a Performance Partnership Agreement with the EPA, allowing limited flexibility in federally funded program organization and funding. The aim of the agreement is to allocate resources most appropriately throughout Texas on a regional basis.

■ The Legislature adopts Senate Bill (SB) 1, mandating water conservation planning for large water users and requiring development of drought contingency plans by public water suppliers.

1998 ■ The EPA delegates to Texas its portion of the National Pollutant Discharge Elimination System (NPDES) program.

1999 ■ The Legislature transfers the functions of the Texas Low-Level Radioactive Waste Disposal Authority to the TNRCC.

■ The Legislature adopts HB 801, which modifies the permitting process for permits administered by the agency for which public notice and opportunity for a hearing are required. The legislation requires early public

notice, encourages early public involvement, and requires substantive public comment and agency response. It also establishes criteria that would limit the scope of hearings by requiring referral of discrete issues that are in dispute and material to the decision of the commission. This process applies to permits issued by the agency under chapters 26 and 27 of the Texas Water Code and chapters 361 and 382 of the Health and Safety Code.

2001
- The agency is continued for 12 years under HB 2912, which includes a provision to change the TNRCC's name to the Texas Commission on Environmental Quality by Jan. 1, 2004.
- The Legislature transfers responsibility for environmental laboratory accreditation, and certification of residential water treatment specialists from the Texas Department of Health to the TNRCC.
- The Texas Environmental Health Institute is created by joint agreement between the TNRCC and the Texas Department of Health to identify health conditions related to living near a federal or state Superfund site.
- The Texas Emissions Reduction Plan (TERP) is established by the Legislature to be administered by the TNRCC, the Comptroller, the Public Utility Commission of Texas, and the Texas Council on Environmental Technology.

2002
- The agency formally changes its name on Sept. 1 from the Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality.

2003
- Under HB 1365, the Legislature provides a stable funding source for TERP program activities under the TCEQ and ends funding for TERP-related programs under the Comptroller and the Public Utility Commission of Texas.
- The Legislature establishes a program at the TCEQ to regulate and remediate dry-cleaning facilities with passage of HB 1366.
- Through HB 1567, the Legislature provides for the licensing of a facility for the disposal of low-level radioactive waste (LLRW) and establishes procedures for the agency to accept and assess license applications from businesses to dispose of LLRW.
- The Legislature passes HB 37, which transfers the technology research and development program within the TERP from the Texas Council on Environmental Technology to the TCEQ.
- The agency implements the Permit Time Frame Reduction project, designed to shorten the time it takes to review major uncontested permits.

2004
- The agency initiates the Environmental Monitoring and Response System, designed to improve the TCEQ's ability to measure environmental conditions in real time, notify the public of potential threats, and respond quickly and proactively.

2005
- The TCEQ undertakes comprehensive review and overhaul of the state's municipal solid waste regulations.
- The TCEQ begins a comprehensive review, including extensive public involvement, of the agency's enforcement process.
- The Legislature authorizes the Clean School Bus Program with passage of HB 3469.

2006
- The TCEQ reviews the extensive public comments on the agency's enforcement process. The commissioners adopt a number of significant revisions to the process, including a pilot field-citation program.
- The TCEQ adopts a major revision, streamlining, and improvement of state regulations on municipal solid waste.

2007
- The Legislature passes SB 1604, which transfers regulatory authority for commercial radioactive waste processing, uranium mining, and by-product disposal from the Department of State Health Services (DSHS, formerly Department of Health) to the TCEQ.

■ SB 1604 also addresses the process for TCEQ review of a pending application submitted to DSHS for a by-product disposal facility proposed for Andrews County.
■ In addition, SB 1604 addresses the TCEQ's underground injection control program for regulation of in situ uranium mining and requires the TCEQ to administer a new state fee for the disposal of radioactive wastes other than low-level radioactive waste.
■ SB 1436 transfers the responsibility for the National Floodplain Insurance Program from the TCEQ to the TWDB.
■ Passage of SB 12 extends the TERP through August 2013. It also expands the uses of TERP funds, including use by the Clean School Bus Program.
■ SB 12 also amends the Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) to enhance its availability and increase grant amounts for the purchase of new vehicles.
■ The Legislature extends the reimbursement program for leaking underground storage tanks from 2008 to 2012 and requires insurance companies to notify the TCEQ if the owner of a petroleum storage tank has cancelled or failed to renew insurance coverage.
■ The Legislature passes HB 2714, which requires computer manufacturers to establish recycling programs for computers of their own brand.
■ The Legislature passes SB 3 and HB 3 and HB 4, which amend various sections of the Texas Water Code and set out a new regulatory approach for ensuring that surface water meets the environmental flow needs of river, bay, and estuary systems.
■ The Legislature grants property owners the right to register and participate in the Dry Cleaner Remediation Fund and imposes additional fees and restrictions on the use of perchloroethylene.

■ HB 3732 establishes 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 adopts the Texas BART (best available retrofit technology) rule, requiring emission controls for certain industrial facilities emitting air pollutants that contribute to regional haze.
■ The Rio Grande Watermaster announces the receipt of more than 224,000 acre-feet of water from Mexico at the Amistad Reservoir near Del Rio, effectively eliminating Mexico's water debt to the United States.
■ The governor submits to the EPA his recommendation that all areas of Texas meet the revised 24-hour standard under NAAQS for fine particulate matter ($PM_{2.5}$).

2008

■ The TCEQ upgrades its electronic permitting system (ePermits) for submissions of applications for the storm water general permit. After the program upgrade, usage rose from 22 to 53 percent.
■ The TCEQ responds to the aftermath of Hurricane Ike and participates in a massive recovery effort.
■ **The EPA revises the 1997 eight-hour ozone NAAQS of 0.08 parts per million (ppm) by lowering the standard to 0.075 ppm.**
■ **The EPA proposes to lower the NAAQS standard for lead from the current 1.5 micrograms per cubic meter of ambient air.**
■ As required by the federal Clean Air Act for all the states, the governor must provide to the EPA the list of areas that the state believes are not meeting the federal ozone standard. To assist the governor with this, the commission makes recommendations as to which areas did not meet the revised ozone standard.

2009

■ **The governor submits to the EPA the list of areas in Texas that do not meet the 0.075 ppm eight-hour ozone standard.**

- HB 1796 extends TERP through 2019 and establishes the New Technology Implementation Program within TERP.
- SB 1759 establishes the Texas Clean Fleet Program within TERP.
- SB 361 requires water and sewer service providers to submit emergency preparedness plans to demonstrate their ability to provide emergency operations.
- HB 3547 gives additional enforcement authority to the TCEQ if an owner or operator of a dry-cleaning facility or drop station does not properly register as required under Texas statutes.

# Key Functions

The Texas Legislature created the agency Sept. 1, 1993, by consolidating the Texas Water Commission, the Texas Air Control Board, and environmental programs from the Texas Department of Health. The TCEQ is a complex institution, continually performing many diverse functions to meet its commitments and responsibilities under state and federal law. The agency's major responsibilities fall into the following categories:

## Operations

- *Permitting and Licensing Management*. Issuing, administering, renewing, and modifying permits, water rights, licenses, or certifications for organizations and individuals whose activities have some potential or actual environmental impact that must be formally authorized by the agency.
- *Public Assistance Management*. Responding to requests for information by external parties and conducting outreach with regard to agency obligations. Responding to complaints lodged by affected or interested parties, including addressing the cause of complaints and notifying the complainant of action taken.
- *Evaluation of Public Health Effects*. Assessing the impact on public health of toxic substance releases, transfers, and disposal.
- *Ambient Monitoring and Sampling, Laboratory Analysis*. Monitoring the current condition of a geographic area or natural resource often through sampling or surveys.
- *Technical Data Gathering, Management, and Analysis*. Providing scientific support for the design and implementation of specific strategies to address environmental improvements.
- *Compliance Inspections and Monitoring*. Monitoring the compliance of regulated entities through such activities as reviewing submitted reports and conducting site visits and inspections.
- *Release Identification and Reporting*. Identifying and reporting on activities, processes, emissions, and environmental impacts associated with the regulated community.
- *Violation and Enforcement Management*. Identifying, verifying, and tracking violations of regulations and initiating enforcement actions in response to violations.
- *Remediation Oversight*. Overseeing cleanups made by responsible parties, local authorities, and contractors, and ensuring that grants and funds authorized for cleanup reimbursements are disbursed appropriately.
- *Emergency Response*. Responding to environmental emergencies to coordinate evacuation, public-health protection, and spill cleanup.
- *Homeland Security*. Assisting in the planning, development, coordination, and implementation of initiatives to promote the governor's homeland security strategy, and to detect, deter, respond to and assist with recovery from disasters, both natural and human-caused.
- *Technical Assistance and Pollution Prevention*. Overseeing agency activities focused on helping a regulated facility achieve compliance, promote conservation, and reduce pollution voluntarily.
- *Air-Emissions Trading*. Tracking and verifying the trading of air-emissions credits to ensure that trading is done in compliance with the program charter.

## Administration

- *Strategic Planning*. Developing agency goals and objectives and planning the allocation of personnel and financial resources.
- *Development of Regulations, Policies, and Procedures*. Creating rules and policies to guide agency activities.
- *Program Management*. Planning, reporting, and tracking of program activities.
- *Budget Development*. Preparing, modifying, and reporting the agency budget.
- *Grant and Contract Administration*. Administering grants and contracts awarded to or by the agency.
- *Legal Support*. Analyzing and interpreting statutes and regulations, and representing the TCEQ in formal and informal settings.
- *Bankruptcy Administration*. Pursuing debtors who have filed for bankruptcy protection in federal courts to recover claims owed to the TCEQ.
- *Fund Administration, Accounting, Disbursements, and Payroll*. Managing funds limited to specific uses and processing payroll.
- *Revenue Estimation*. Forecasting and monitoring agency revenues and funding.
- *Purchasing and Asset Management*. Administering the purchase, location, use, and status of all agency assets.
- *Personnel Management, Recruitment, and Training*. Providing and supporting a skilled workforce for the agency.
- *Information-Resource Management*. Defining, designing, and maintaining agency information systems (automated or manual).
- *Records Management*. Managing physical document files (maps, microfiche, manual files, etc.).

# Agency Workforce

## Size and Composition

The TCEQ has an authorized workforce of 2,980.3 budgeted full-time equivalent (FTE) positions for fiscal year 2010. The average age of TCEQ employees is 45.08 years, which compares to the 44.96 years reported in the *Strategic Plan: Fiscal Years 2009–2013*. The average employee tenure as of Aug. 31, 2009, was 9.63 years, a very slight increase from the 9.16 years reported for fiscal 2008.

Officials/administrators, professionals, and administrative support make up more than 94 percent of the entire workforce. The remaining workforce consists predominantly of technical positions (Table 2).

### Table 2. TCEQ Workforce Categories and Average Tenure

| Job Category | TCEQ Workforce* FY 2009 | | Average Tenure (in years) |
|---|---|---|---|
| Official/ Administrator | 308 | 9.75% | 15.46 |
| Professional | 2,049 | 64.86% | 6.83 |
| Technical | 168 | 5.32% | 8.40 |
| Administrative Support | 634 | 20.07% | 7.71 |
| **Agency Total Workforce** | 3,159 | | |

** Actual head count, not FTEs; includes separations.*
*Data Source: Human Resources Information System, as of 8/31/09.*

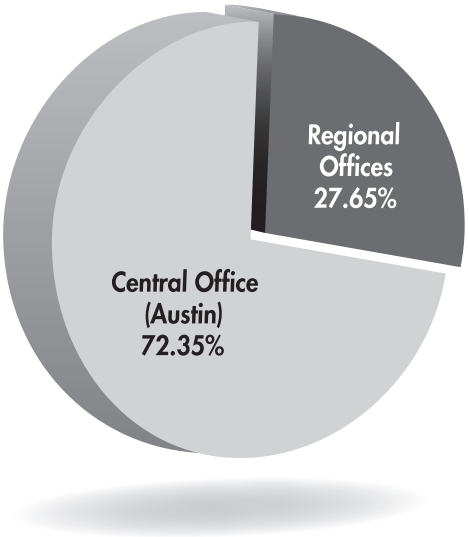
The TCEQ supplemented its workforce in fiscal 2009 with a total of 81 contracted staff in order to provide vital program support and to perform various information technology functions as a means for meeting agency goals and objectives. However, budgetary constraints continue to hamper the ability to obtain contract services.

## Location of Employees

The TCEQ employs staff in the Central Office located in Austin and in 16 regional offices throughout the state. As of Aug. 31, 2009, 809 employees–or 27.65 percent of the total workforce–were located in the regional offices (see Figure 1). In an effort to facilitate delivery of the agency's services at the point of contact and to increase

efficiencies, 109 (12.7%) of the regional employees were matrix-managed staff, who work in a regional office but are supervised from the Central Office.

### Figure 1. Location of TCEQ Employees, FY 2009




*Data Source: Human Resources Information System, as of 8/31/09.*

## Human Resources Policies and Procedures

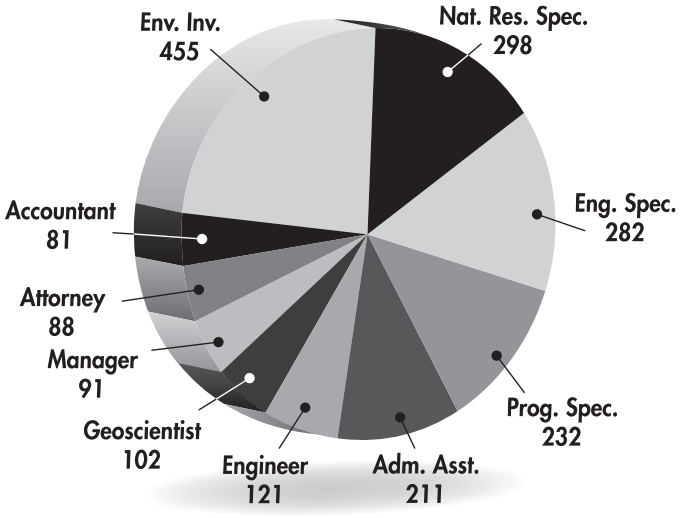
The Human Resources and Staff Development (HRSD) Division of the TCEQ administers the agency workforce through routine review and revision of human resources (HR) policies and procedures, ensuring compliance with state and federal laws on equal opportunity and fair labor practices, and offering policy guidance to employees. Legislative changes are incorporated into HR policies and standard operating procedures, as necessary, every two years. The next regular legislative session will begin Jan. 11, 2011.

## Frequently Used Job Classifications

The TCEQ uses a wide variety of job classifications to carry out its mission of protecting and preserving the Texas environment. The 10 most frequently used job classification series in fiscal 2009, as displayed in Figure 2, were:

- Environmental Investigator (455)
- Natural Resource Specialist (298)
- Engineering Specialist (282)
- Program Specialist (232)
- Administrative Assistant (211)
- Engineer (121)
- Geoscientist (102)
- Manager (91)
- Attorney (88)
- Accountant (81)

### Figure 2. Population at the TCEQ by Job Classification Series, FY 2009



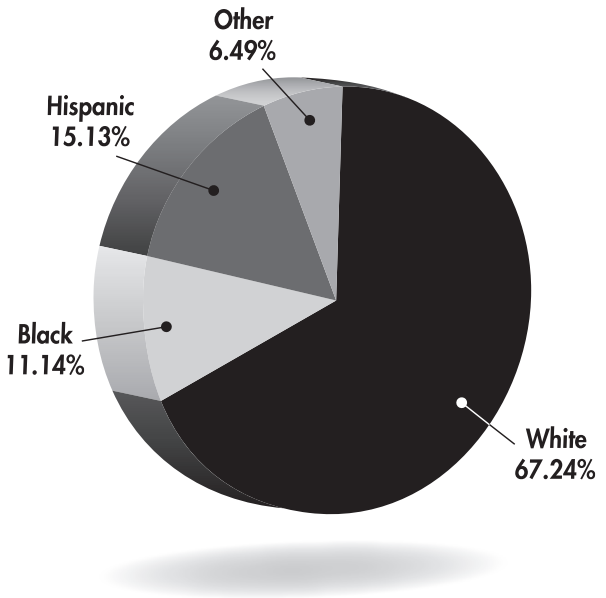

*Data Source: Human Resources Information System, as of 8/31/09.*

## Equal Employment

It is the policy of the TCEQ 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. In addition, all employees are provided equal employment opportunity training to increase their awareness of state and federal employment laws and regulations.

In fiscal 2009, Blacks and Hispanics represented more than 26 percent of the agency's workforce, with other ethnic groups constituting over 6 percent. See Figure 3 for the ethnicity of the TCEQ workforce in fiscal 2009.

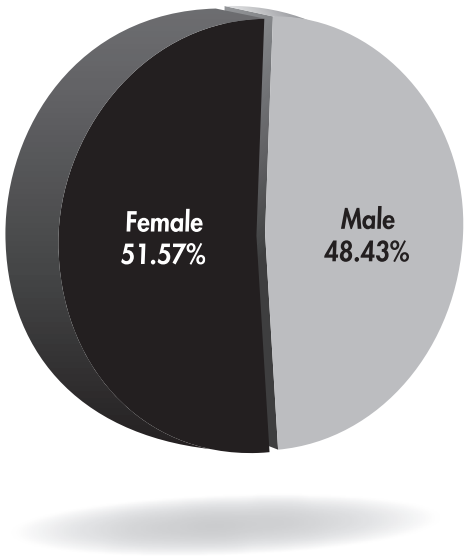
### Figure 3. Ethnicity of TCEQ Workforce, FY 2009




*Data Source: Human Resources Information System, as of 8/31/09.*

In fiscal 2009, the TCEQ workforce was 48.43 percent male and 51.57 percent female. These percentages indicate a change from the last reporting period of fiscal 2007 (males, 50.92%; females, 49.08%). The available State of Texas workforce for males is 54.78 percent; and for females, 45.22 percent. See Figure 4 for the gender of the TCEQ workforce in fiscal 2009.

### Figure 4. Gender of TCEQ Workforce, FY 2009




*Data Source: Human Resources Information System, as of 8/31/09.*

## Agency Workforce Compared to Available Statewide Civilian Workforce

Table 3 illustrates the agency's workforce as of Aug. 31, 2009, compared to the available statewide civilian workforce as reported in the *Equal Employment Opportunity and Minority Hiring Practices Report*, a publication of the Civil Rights Division of the Texas Workforce Commission. This table provides information by prescribed categories on Blacks, Hispanics, and females within the available Texas workforce (ATW) and the TCEQ workforce.

### Table 3. TCEQ Workforce Compared to Available Texas Workforce, 8/31/09

| EEOC Job Category | Black | | Hispanic | | Female | |
|---|---|---|---|---|---|---|
| | ATW | TCEQ | ATW | TCEQ | ATW | TCEQ |
| Official/Administrator | 6.6% | 5.52% | 14.2% | 13.64% | 37.3% | 37.34% |
| Professional | 8.3% | 9.08% | 13.4% | 12.79% | 53.2% | 44.36% |
| Technical | 12.4% | 8.33% | 20.2% | 16.07% | 53.8% | 35.71% |
| Administrative support | 11.2% | 21.29% | 24.1% | 23.19% | 64.7% | 85.96% |

*Data Source: Human Resources Information System, as of 8/31/09.*

Although minorities and females are generally well represented at the TCEQ, the agency continues to strive to have a workforce that mirrors the available statewide labor force.

## Recruitment and Retention

The purpose of the TCEQ recruitment and retention efforts is to identify, recruit, and retain a multitalented and culturally diverse workforce representative of the state's available labor force. The agency workforce is largely composed of staff in science, technology, engineering, computer science, administrative support, and other related fields.

The TCEQ is fortunate to have one of the lowest turnover rates among state agencies, with a turnover rate of only 7.9 percent in fiscal 2009, well below the statewide turnover of 14.4 percent. This low rate can be attributed not only to agency retention efforts but also to the current economic climate.

Retirements and competition for skilled applicants will present challenges to our goal of maintaining a diverse, well-qualified workforce. In an effort to address these indicators, the agency is emphasizing workforce and succession planning. This process involves building a viable talent pool that contributes to the current and future success of the agency, including the need for experienced employees to impart knowledge to their potential successors, as required by Section 2056.0021, Texas Government Code.

With over 1,000 TCEQ employees (over 34%) becoming eligible to retire by the end of fiscal 2015, the agency faces the possibility of a substantial loss of skill and institutional knowledge. This will be particularly critical in management, technical, and program area positions where the loss of the expertise, special skills, and knowledge of experienced staff could significantly affect the delivery of agency programs. Table 4 shows the number of retirements from the agency for fiscal years 2005 through 2009.

Potential changes to the State of Texas' retirement and benefit plan may also affect future retirement decisions, including recruiting efforts.

**Table 4. TCEQ Employee Retirements, FYs 2005–2009**

| Fiscal Year | Number of Retirees |
|---|---|
| 2005 | 67 |
| 2006 | 32 |
| 2007 | 52 |
| 2008 | 68 |
| 2009 | 55 |
| **Total** | **274** |

*Data Source: Human Resources Information System, as of 8/31/09.*

On a broad scale, the TCEQ is committed to developing its employees and promoting employee advancement and initiative through career ladders. Career ladders have been established for 24 occupational specialties, with approximately 82 percent of non-management employees on career ladders. The establishment of structured career progression reflects the agency's business needs and benefits the employees by providing them defined career advancement opportunities.

TCEQ continues preparing and developing the agency's future leaders with the Aspiring Leaders Program. This program provides selected in-house talent with access to training and development opportunities to help prepare them for eventual progression into management positions.

## Training

The TCEQ places a strong emphasis on enhancing the technical and professional skills of employees. Agency training needs are assessed annually through a survey administered by office training liaisons.

The agency seeks to use emerging technologies–such as computer-based training, Internet-based training, video teleconferencing, and webcasting–whenever feasible.

## Challenges and Opportunities

The TCEQ anticipates challenges as it proceeds to fulfill its mission and goals. Economic, environmen-

tal, and political trends indicate that the agency will experience program changes, process redesign initiatives, and technological advancements. New state and federal mandates, as well as internal initiatives, will be challenging in the face of budget and FTE constraints. Technical requirements are expanding and a comprehensive knowledge of agency procedures and federal regulations, as well as computing and analytical abilities, is critical.

With the potential for the loss of technical skills and institutional knowledge, the spotlight will be on workforce and succession planning as a mechanism for getting staff to assume important functions and leadership roles. In addition, the use of effective strategies will play a big role in preparing for skill gaps. Since the agency employs staff who are highly marketable in the private sector, recruitment and retention is often difficult. The agency will continue to work toward maintaining and retaining the workforce that is vital to meeting the mission, goals, and objectives of the TCEQ.

# Organizational Structure

## Recent Changes

When the TCEQ was first established, as the TNRCC (Texas Natural Resource Conservation Commission), the agency was organized according to the programs it regulates: air, water, and waste.

More than 10 years ago, in 1999, the agency moved from a programmatic organizational structure to a functional one. This change was made to establish greater uniformity in procedures and decision making, provide cross-training opportunities for staff in the various programs, and align planning and permitting activities. Over time, that consistency between the various permitting programs has been achieved and is now institutionalized.

During the last several years, however, the agency observed the need to change the structure again, moving it from an exclusively functional one toward one that incorporates elements of a programmatic structure.

While the move to a functional organizational structure had its benefits, it also generated challenges. One of the most significant challenges was the loss of specific staff with expertise in water policy.

Responding to these considerations, the agency began to make additional changes to its organizational structure. A couple of the more significant changes were transferring the Remediation Division to the Office of Compliance and Enforcement and establishing the Water Quality Planning Division in the Chief Engineer's Office.

The Water Quality Planning Division was established in order to take a comprehensive, coordinated approach to water quality planning, which involves a wide variety of activities–including, for example, identifying sources, addressing impairments, monitoring water quality, and reviewing efforts to restore wetlands. Previously, these functions had been fragmented in three different offices.

As these changes were implemented, the need for an Office of Water became increasingly apparent. Creation of this office would allow the TCEQ to maximize the availability of staff knowledgeable in the area of water resources as well as make the agency more accessible to a public that understands environmental concerns in program-specific terms. Establishing an Office of Water would also provide enhanced representation for this high-profile policy issue. The Office of Water was created in 2009, and includes the Water Quality Division, the Water Quality Planning Division, and the Water Supply Division.

## Current Organization

At the top of the operating structure of the TCEQ are the offices of the commissioners. The executive director reports to the commissioners, with several divisions lending direct support. The agency's primary environmental programs and administrative offices are represented by six major offices, all of which have broad responsibilities. Under each of those offices are divisions with clearly defined duties.

## Commissioners

Three full-time commissioners are appointed by the governor to establish overall agency direction and policy, and to make final determinations on contested permitting and enforcement matters. The following five offices report directly to the commissioners:

- General Counsel
- Chief Auditor
- Chief Clerk
- Public Assistance
- Public Interest Counsel

The commissioners are appointed for six-year terms with the advice and consent of the Texas Senate. A commissioner may not serve more than two six-year terms, and the terms are staggered so that a different member's term expires every two years. The governor also names the chairman of the commission.

Bryan W. Shaw, Ph.D., who serves as chairman, was appointed on Nov. 1, 2007. His term will expire on Aug. 31, 2013. Buddy Garcia of Austin was appointed on Jan. 25, 2007. His term expires Aug. 31, 2011. Carlos Rubinstein of Austin was appointed on Aug. 31, 2009. His term will expire on Aug. 31, 2015.

## Executive Director

The executive director, who is hired by the commissioners, is responsible for managing the agency's day-to-day operations. Major responsibilities include directing operations of approximately 2,900 employees in 17 statewide offices, implementing commission policies, making recommendations to the commissioners about contested permitting and enforcement matters, and approving uncontested permit applications and registrations.

The deputy executive director serves as the chief operating officer to assist the executive director in the administration of the agency. Five divisions report directly to the executive director:

- Agency Communications
- Budget and Planning
- Chief Financial Officer
- Intergovernmental Relations
- Small Business and Environmental Assistance

Six office clusters report to the executive director. Each office is headed by a deputy director. These deputies are responsible for administering the agency's regulatory and administrative programs.

- Office of Administrative Services
- Chief Engineer's Office
- Office of Compliance and Enforcement
- Office of Legal Services
- Office of Permitting and Registration
- Office of Water

## Office of Administrative Services

The Office of Administrative Services provides service and support to agency staff and external customers, supplying the essential administrative infrastructure required to maintain business operations. Services include:

- Financial administration and contracting with historically underutilized businesses.
- Human-resources management and staff development.
- Information-technology and document management.
- Management and support of assets, physical property, and the Historically Underutilized Business Program.

## Office of the Chief Engineer

The Chief Engineer's Office (CEO) advises agency management regarding technical and policy matters, and oversees air quality planning, which includes the development and implementation of statewide and regional plans, rules, strategies, and technical guidance to attain air quality standards.

The CEO has a broad range of specific responsibilities, including:

- Assess the status of air quality, and model outcomes of planning scenarios and compare them against real-world results.
- Assess the risks to human health from air pollution and from polluted sites, to guide their remediation.
- Implement plans to protect and restore air quality in cooperation with local, regional, state, and federal stakeholders.

- Track progress toward environmental goals and adapt plans as necessary.
- Advise the executive director and the deputy directors regarding uniform compliance with engineering standards, specifically regarding executive-level technical and policy matters.
- Review plans, processes, permits, and regulations for scientific accuracy and feasibility.

The CEO also coordinates activities with external organizations and internal offices to:

- develop strategies to implement new legislation, and
- review innovative technologies related to TCEQ regulatory compliance.

In addition, the CEO:

- represents the TCEQ with the Texas Board of Professional Engineers, and
- assists professional engineers within the TCEQ on matters such as licensing requirements and continuing education requirements.

## Office of Compliance and Enforcement

The Office of Compliance and Enforcement enforces compliance with the state's environmental laws, responds to emergencies and natural disasters that threaten human health and the environment, oversees dam safety and watermaster programs, and monitors air and water quality within Texas. In addition, the office oversees the operations of 16 regional and two special-project offices across the state.

## Office of Legal Services

The Office of Legal Services manages legal services for the agency in the areas of environmental law, enforcement litigation, and general agency operations. The office's mission is to provide legal counsel and support the executive director; the program areas; and, in conjunction with the Office of General Counsel and the Office of Public Interest Counsel, the commissioners. The office's goals are to ensure that commission decisions follow the law, and that rules developed by the agency comply with statutory authority and are applied consistently.

## Office of Permitting and Registration

The Office of Permitting and Registration is responsible for implementing the federal and state laws and regulations governing all aspects of permitting for the air and waste programs. The office also registers and manages the reporting requirements for certain facilities, and implements the petroleum storage tank reimbursement program.

## Office of Water

The Office of Water works toward clean and available water and is responsible for all aspects of planning, permitting, and monitoring to protect the state's water resources. The Office of Water is responsible for the implementation of the following major programs:

- Public Drinking Water
- Water Rights
- Districts and Utilities
- Groundwater Protection
- Texas Surface Water Quality Standards
- Nonpoint Source Program and Watershed Protection Plans
- Wastewater, Storm Water, and Concentrated Animal Feeding Operation Permitting
- Surface Water Quality Monitoring
- Clean Rivers Program
- Houston Lab
- Total Maximum Daily Loads and Implementation Plans
- Galveston Bay Estuary Program

CHAPTER 2

# Geographic Aspects

## Location of the Agency

The Texas Commission on Environmental Quality, headquartered in Austin, Texas, provides a diverse array of environmental regulatory services to protect public health and the environment through its 16 regional offices located throughout the state.

### Agency Headquarters

The TCEQ central office complex in Austin (12100 Park 35 Circle) includes five state-owned buildings and one leased building on approximately 30 acres of land. There are approximately 377,109 square feet of office and laboratory space in the five state-owned buildings. The sixth building, a leased facility, is 167,074 square feet. Located elsewhere in Austin are a leased warehouse of 10,964 square feet and an emissions testing facility of 2,000 square feet. The total space for the headquarters complex is 557,147 square feet. There are parking facilities for 2,095 vehicles.

The Texas Facilities Commission (TFC) is responsible for the management and maintenance of the five state-owned buildings and the parking lots at the TCEQ's agency headquarters. Management and maintenance of the leased building is the responsibility of the lessor.

### Regional Offices

The TCEQ maintains 16 regional offices at the following locations:

1. Amarillo
2. Lubbock
3. Abilene
4. Dallas–Fort Worth
5. Tyler
6. El Paso
7. Midland
8. San Angelo
9. Waco
10. Beaumont
11. Austin
12. Houston
13. San Antonio
14. Corpus Christi
15. Harlingen
16. Laredo

The total space occupied by the regional offices is 241,382 square feet. This includes the Galveston Bay Estuary Program office in Webster, a laboratory facility in Houston, a satellite office in Stephenville, and a small office space in Eagle Pass.

### Security

TFC is responsible for security for the state-owned buildings at Park 35 and for the leased building during normal business hours. After-hours, holiday, and weekend security for the leased building is the responsibility of the lessor. Security for the regional offices is the responsibility of the lessor, and TCEQ staff coordinates necessary improvements to enhance security.

### Accessibility

The TCEQ remains accessible to Texas citizens with the 16 regional offices geographically dispersed throughout the state. The Park 35 complex and regional offices comply with the Americans with Disabilities Act (ADA).

## Affected Populations

As the state's environmental agency, the TCEQ protects human and natural resources (air, water, land). Through this mission, and using the 16 regional offices, all of the state's population and businesses are affected either directly or indirectly by the agency's activities. The TCEQ does, however, have programs that specifically operate in border areas of the state, particularly in the Texas-Mexico Border area.

## Special Regions Served

The TCEQ has special programs that affect the Texas border region with Mexico and the Texas-Louisiana border region.

### Texas and Louisiana Border Area

The Caddo Lake watershed is a rich and unique ecosystem that straddles the Texas-Louisiana border. The

ecosystem is threatened by invasive aquatic vegetation and impacts related to water quality and hydrology.

In 2009, the Texas Legislature provided $120,000 in funding to aid in the fight against the aquatic plant giant salvinia in Caddo Lake. Also, a grant in the amount of $40,000 was provided to the Cypress Valley Navigation District (CVND) to support their efforts to control invasive aquatic vegetation, such as giant salvinia and water hyacinth, in Caddo Lake.

The Region D Water Planning Group of the Texas Water Plan has provided recommendations to control giant salvinia. These recommendations include dedicating available state funds to the task, using additional government resources when available, and developing legislation that will assist local and state officials in their efforts to eliminate or control the spread of existing infestations of the plant.

## Caddo Lake Watershed Protection Plan

With the goal of developing a watershed plan designed to restore and protect water quality and improve aquatic habitat, the Caddo Lake Watershed Steering Committee, in close cooperation with the TCEQ, has formed three workgroups to address and develop five major components of the Caddo Lake Watershed Protection Plan. These components, which were identified as a result of stakeholder input, are:

- Water Quality
- Water Quantity
- Aquatic and Riparian Habitat
- Floodplain Management
- Aquatic Vegetation

Over the past year, the framework for water quality modeling was set up (under contract), and the TCEQ tested sediment samples to assist in model calibration.

## Water Quality Standards for Caddo Lake, Toledo Bend Reservoir

The TCEQ publicly proposed new numerical criteria for nutrients for close to 100 reservoirs in Texas, in order to protect these water supply sources from excessive growth of aquatic vegetation. Similar criteria for Caddo Lake and Toledo Bend Reservoir are also needed, and the staff of the TCEQ and the Louisiana Department of Environmental Quality (LDEQ) are coordinating to develop joint criteria that are compatible with the water quality management programs of both states.

## Water Quality Monitoring

Both the LDEQ and the TCEQ coordinate water quality monitoring along the Sabine River and in Caddo Lake and Toledo Bend Reservoir. In addition, the TCEQ coordinates a continuous monitoring station in Caddo Lake that is operated by the Caddo Lake Institute and provides real-time, publicly available water quality data. The TCEQ regional office operates another station on Big Cypress Bayou, just upstream of Caddo Lake.

## Red River Nutrient Criteria Project

Texas has been participating in an ongoing joint study with several states to develop numerical nutrient criteria that could be used to assess and control excessive growth of aquatic vegetation in the Red River. As a downstream state on the Red River, Louisiana is a participant in this study, as are New Mexico, Arkansas, and Oklahoma. Under an EPA grant that's being coordinated by the University of Arkansas, data from the participating states has been consolidated in order to (1) assess existing nutrient conditions along the river and (2) evaluate nutrient criteria for possible addition to the individual states' water quality standards. The participating states are currently reviewing interim reports and analyses based on this shared data.

# Texas and Mexico Border Area

The Texas border region with Mexico presents unique characteristics compared to the rest of the state. What otherwise might be only "local" problems are often complicated by causes and effects that cross the international boundary. Texas communities in this region are located in an international watershed (the Rio Grande) and in international air basins, and this

interdependence requires the TCEQ to develop and maintain relationships with Mexican partners at every level to address problems effectively.

Since December 2008, the TCEQ has implemented a Border Initiative, which lists TCEQ programs in the border region, as well as accomplishments, and is updated quarterly. The Border Initiative can be found on the TCEQ's website at <www.tceq.state.tx.us/goto/border>.

## Economic and Social Issues

The border region economy is diverse, with agriculture and ranching, oil and gas production, trade and commerce, industry (particularly maquiladoras, Mexican assembly plants), and tourism playing key parts. The annual influx of "Winter Texans"–residents of Midwestern and Northern U.S. states who move to the Lower Rio Grande Valley and other parts of the region for the winter months–also plays a significant role in the economy.

The 2009 population of the 32 counties in the Texas border region, stretching from El Paso to Brownsville, was estimated to be just under 2.5 million. While the region contains some of the fastest-growing metropolitan areas in the United States–the population-growth rate of the Texas border region is twice that of Texas as a whole–poverty in some border communities is also among the highest in the nation.

Rapid industrial growth and population increases on the Mexican side of the border also affect Texas' border environment, with much of this growth due to economic factors that encourage many Mexicans to migrate to border cities in search of jobs. As of 2006, there were 1,173 maquiladoras in the four Mexican states bordering Texas, employing 670,000 people. Many Mexican workers are attracted to the border because of maquiladoras, the overall better economy of border states, and proximity to the United States.

## Infrastructure

Rapid population growth on both sides of the Rio Grande has meant increased demands on the capacity to treat drinking water, as well as on wastewater treatment and solid waste disposal. The ability to pay for this environmental infrastructure is fundamental to environmental quality and the well-being of residents. High poverty and unemployment levels create a low tax base, which in turn can worsen pollution, either because of inadequate infrastructure or reduced ability to operate and maintain existing infrastructure.

Colonias–unincorporated communities lacking one or all of the basic services–represent infrastructure challenges in the border region. The 2,000 economically distressed areas in the border area of Texas are home to about 400,000 residents. Most colonias are rural, often lacking paved roads, garbage pick-up, drainage, and water and wastewater services; a 2006 report by the Texas Secretary of State found that 167,000 colonia residents in the largest border counties still lacked water or sewer service or both.

The TCEQ carries out many activities in the Texas portion of the U.S. border region with Mexico. This area makes up 27 percent of Texas and is covered by all or parts of seven regional agency offices. This section discusses background, challenges, and planned activities for this region with regard to water resources, waste management, air quality, and natural resources.

## Water Resources

### Background

Water availability is critical in the border region of Texas and its neighboring states in Mexico, with annual rainfall varying between seven inches in El Paso–Ciudad Juárez and 25 inches in Brownsville-Matamoros.

Surface and groundwater supplies are essential for sustaining economic development. While two large international dams on the Rio Grande–Falcon and Amistad, built in 1954 and 1968, respectively–greatly improved the reliable supply of water for agricultural and domestic uses, groundwater continues to be important.

#### *Surface Water*

The Rio Grande is the principal river in the region, with major tributaries in both the United States and Mexico. It begins in the San Juan Mountains of southern Colorado and ends 2,000 miles later, at the Gulf

of Mexico. Another mountain source in Mexico's Sierra Madre range forms the Río Conchos tributary, which historically provided more than three-quarters of the flow to the "Big Bend" of the Rio Grande and beyond. For 1,254 miles after entering Texas from New Mexico, the Rio Grande is the international boundary between the two nations. It drains a land area more than twice the size of California, including parts of three U.S. and five Mexican states and 19 tribal and pueblo lands.

Two international agreements (1906 and 1944) apportioned the waters of the Rio Grande between Mexico and the United States, with the latter agreement creating the International Boundary and Water Commission (IBWC) to verify water distribution between the two nations. The TCEQ's Rio Grande Watermaster allocates U.S. waters to Texas water-right holders from Ft. Quitman in Hudspeth County to the Gulf of Mexico; upstream of Ft. Quitman, the Rio Grande Compact Commission ensures water deliveries to Texas for the El Paso area.

Elephant Butte Reservoir in New Mexico provides water for New Mexico users and for Texas users in El Paso and Hudspeth counties, as well as Mexico's allotted water under the 1906 agreement, normally 60,000 acre-feet a year. Most of this water is diverted, resulting in very little flow below Ft. Quitman, creating a "Forgotten River" stretch between El Paso and Presidio.

***Groundwater***

Groundwater is used in much of the border region. In the El Paso–Ciudad Juárez area, it provides most of the water that is destined for municipal use. Several aquifers are shared between Mexico and the United States, with perhaps the best known being the Hueco Bolsón, from which both El Paso and Ciudad Juárez pump water. Groundwater is also the water source for Del Rio, Texas.

## Challenges

***Surface Water***

Amistad and Falcon reservoirs on the Rio Grande are upstream of Del Rio and Roma, respectively. While valued for recreation and related economic development, their primary uses are water supply and flood control. At a combined storage capacity of 6.05 million acre-feet of water, 3.46 million acre-feet belong to the United States. During the 1995–2002 low-flow period in the Rio Grande basin, mainly due to decreased releases from reservoirs in Mexico, both reservoirs dropped to their lowest levels since the record drought of the 1950s.

As previously stated, the main source of water for the two reservoirs is Mexico's Río Conchos, the largest Rio Grande tributary. Beginning in the State of Durango, it drains much of Chihuahua before entering the Rio Grande at Ojinaga and Presidio, Texas. Under the 1944 Water Treaty, one-third of the water of the Conchos and five other Mexican tributaries belongs to the United States and shall "not be less, as an average amount in cycles of five consecutive years, than 350,000 acre-feet annually."

Starting with the five-year cycle that ended in 1997, Mexico incurred a 1.5 million acre-feet Rio Grande water debt for not providing water to the United States under the terms of the 1944 treaty. The water debt created bilateral problems for many years, reaching the highest levels of government in the two nations before eventually being resolved in 2007. The lack of a definition of the term "extraordinary drought" in the treaty added to the difficulties. Subsequent to the resolution of the "water debt," extreme flooding occurred in 2008 within the Rio Conchos basin, filling all Mexican reservoirs as well as Falcon and Amistad. Consequently, a new five-year water cycle began on March 1, 2009; Mexico is again falling behind on water deliveries.

***Groundwater***

The shared Hueco Bolsón aquifer from which both El Paso and Ciudad Juárez pump water is essentially not being recharged. In addition, the State of Chihuahua is pursuing increased use of the Mesilla Bolsón that it shares with New Mexico for municipal use in Ciudad Juárez, which relies entirely on groundwater for its water supply. El Paso uses a combination of groundwater and Rio Grande surface water for its water supply.

### Actions and Accomplishments

***Surface Water***

In October 2007, Mexico transferred Rio Grande reservoir water to the United States, ensuring the closure of a treaty cycle without a deficit for the first time in fifteen years; water levels in the combined Amistad-Falcon reservoir system were at their highest in more than a decade.

In addition, in September 2007, the 10 U.S.–Mexico governors agreed to define the term "extraordinary drought" for the Rio Grande basin as it was used in the 1944 Water Treaty, to facilitate the interpretation of treaty compliance in subsequent five-year accounting cycles. In September 2009, the TCEQ presented a draft definition of "extraordinary drought" at the XXVII Border Governors Conference in Monterrey, Nuevo León.

The TCEQ remains vigilant to ensure that Texas obtains its water under the 1944 treaty. For the first year of the current five-year cycle, which ended Feb. 28, 2010, Mexico had only delivered 189,000 acre-feet, which is 161,000 acre-feet short of the annual average. The TCEQ is holding meetings with the U.S. and Mexico sections of the IBWC to ensure that water deliveries from Mexico improve and to guard the interests of Texas water-rights holders.

***Groundwater***

Recent studies have characterized the quantity and quality of the different portions of the Hueco Bolsón in El Paso, showing that it could provide fresh water for nearly a century. While Mexico and the United States currently have no agreement on sharing underground aquifers, both countries are required by Minute 242 of the IBWC to "consult with each other prior to undertaking any new development of either the surface or the groundwater resources . . . in its own territory that might adversely affect the other country."

## Waste Management

### Background

***International Waste Issues***

Mexican law requires that waste generated by maquiladoras be returned to the country of origin, and under the La Paz Agreement the United States must accept it. The volume of MSW shipped from Mexico to Texas has varied widely in recent years, decreasing from 48,000 tons in fiscal 2004 to 4,200 tons in 2006, and then increasing somewhat to slightly more than 10,000 tons in each of fiscal years 2007 and 2008 (the latest years available). Data show that in calendar year 2009, 9,900 tons of hazardous waste and 3,000 tons of Class 1 nonhazardous waste (12,900 total tons) were shipped from Mexico to eight different facilities in Texas.

There have been concerns expressed in years past about whether there was a disproportionate number of facilities treating, storing, or disposing of hazardous and nonhazardous waste in the border region. As of August 2008, there was only one non-military facility treating hazardous waste and 28 MSW landfills in the 32 counties included in the border region.

***Domestic Waste Issues***

Councils of Governments (COGs) develop Regional Solid Waste Management Plans. The TCEQ publishes an annual report of MSW data. Five COGs cover the great majority of the border region's population.

### Challenges

***Border MSW Disposal***

Border COGs face common problems. Access to and affordability of proper MSW collection and disposal systems continues to pose problems, particularly in rural areas. Illegal dumping also often occurs in rural areas and colonias, where municipal solid waste collection and disposal is frequently unavailable, inadequate, or costly. Outdoor burning is common, creating risks to public health and environmental quality. Additionally, improper scrap-tire disposal is a frequent complaint among border communities.

### Actions and Accomplishments

***International Waste Issues***

Maquiladora waste currently does not present a problem for Texas capacity, but the TCEQ continues to track this issue. The EPA and its Mexican counterpart, SEMARNAT, are supposed to exchange reports

every six months on border hazardous waste disposal facilities, with the TCEQ providing input for these "Consultative Mechanism" reports. Unfortunately, SEMARNAT has not provided its required reports for several years, so the EPA is considering ending the one-sided exchange.

***MSW Disposal***

Solid waste planners use "years of capacity remaining" in area landfills for municipal solid waste as a benchmark. The most recent annual report on municipal solid waste in Texas establishes that the statewide average is 44 years of capacity remaining (as of Aug. 31, 2008), which is considered a very safe margin, allowing ample time to identify new capacity. However, the same report lists three of the five border-region COGs as below the average, at 12, 25, and 29 years of capacity remaining. The COG with only 12 years of average capacity in its area is the South Texas Development Council, comprising Webb, Zapata, Jim Hogg, and Starr counties. Since 2008 a new landfill has been approved in Zapata County, Starr County is arranging to ship some MSW to a landfill in Hidalgo County, and an application has been filed for a new landfill in Webb County.

Several measures have been taken to address problems such as illegal dumping. These measures include education and recycling programs, self-help programs, and the identification and proposal of projects to federal entities.

Although illegal dumping of scrap tires continues to be a statewide issue, many border residents complain that it is worse in the border area and that they have inadequate resources to dispose of the tires.

Recycling can reduce waste going to landfills. In the border region, the County of Zapata and the cities of Alpine, Eagle Pass, Edinburg, El Paso, Laredo, McAllen. Pharr, and San Benito all maintain recycling programs.

## Air Quality

### Background

Under the federal Clean Air Act, the EPA established standards for six criteria pollutants based on potential effects of ambient concentration levels of pollutants on public health. The EPA may designate a geographical area not in compliance with one of these standards as "nonattainment." In the Texas border region, the main air quality problems have been experienced in El Paso.

### Challenges

Throughout the 1990s and the early part of the first decade of the 2000s, El Paso was in nonattainment for three criteria pollutants: ozone, carbon monoxide, and particulate matter. El Paso shares its airshed with Ciudad Juárez, in Chihuahua, and parts of New Mexico. This means that air pollution generated in any one of these jurisdictions can affect the others, and cooperation is necessary in order to improve air quality. Cross-border collaboration and TCEQ activities have indeed resulted in improvements (see below), but the newest challenge is the current EPA consideration of stricter ozone standards.

### Actions and Accomplishments

The need to work with partners in Mexico and New Mexico was addressed through the creation in 1996 of the binational Joint Air Quality Advisory Committee for the Improvement of Air Quality in the El Paso–Ciudad Juárez–Doña Ana County Air Basin. The JAC, as it is known, is structured to include members from both federal governments, the two U.S. states and Chihuahua, and the three local governments, plus representatives of the private, academic, and nonprofit sectors.

The TCEQ provides administrative support to, and participates actively in, the JAC to improve air quality in the Paso del Norte region. The agency has consulted with the other JAC members on the development of emission-reduction programs in El Paso and has given advice to them with regard to policies and actions meriting consideration in the other jurisdictions. The activities carried out in El Paso have included a vehicle inspection and maintenance program and the use of seasonal fuels. These activities resulted in measured reductions of concentrations of the three pollutants in El Paso. In recent years, the EPA redesignated the area to the status of attainment for both

ozone and carbon monoxide, and actions are being taken to obtain redesignation for particulate matter.

Under stricter ozone standards announced by the EPA in 2008 (and which are currently under review for further tightening), however, El Paso could once again be designated as nonattainment.

## Natural Resources

### Background

The border region has two national parks and several other important recreational or protected areas in the border region. Guadalupe Mountains and Big Bend are the national parks. Big Bend and the Cañón de Santa Elena and Maderas del Carmen protected areas across the river in Mexico form a biosphere reserve. Two National Wildlife Refuges in the Lower Rio Grande Valley are well known for their bird-watching opportunities. Amistad National Recreation Area allows visitors to take advantage of excellent fishing. Texas also has 13 state parks or protected natural areas in the border region. The World Birding Center was created by the Texas Legislature in the Lower Rio Grande Valley to promote bird watching and eco-tourism.

### Challenges

A natural resource issue in the region is visibility degradation caused by haze in Big Bend and Guadalupe Mountains national parks. Panoramic views are considered critical for national parks and, acting under federal Clean Air Act directives, the EPA established rules aimed at identifying and ameliorating such problems. The haze is created by multiple sources of pollution, both within and outside of Texas. The EPA recognizes that these complex circumstances mean that many years will be required to show the "reasonable progress" called for by the regulations.

### Actions and Accomplishments

The TCEQ is working with the EPA, the National Park Service, and other U.S. states in a designated region to address this challenge. In December 2007, the commission proposed revisions to the Texas State Implementation Plan (SIP) for visibility protection in the two affected national parks and is awaiting EPA approval.

***Border 2012: Binational Border Environmental Program***

The U.S. and Mexican federal and border state agencies and U.S. border tribes jointly developed Border 2012, a binational program with a bottom-up collaborative approach. Inaugurated in April 2003, Border 2012 allows border residents to develop local environmental priorities by participating in Regional Work Groups (RWGs) along the U.S.–Mexico border. Two of the four RWGs include parts of Texas: the Texas–New Mexico–Chihuahua RWG and the Texas–Coahuila–Nuevo León–Tamaulipas (Four-State) RWG.

In 2005, the Four-State RWG was split into three geographic Task Forces (Amistad, Falcon, and Gulf) to better serve border communities. Local elected officials from both sides of the border serve as co-chairs. Accomplishments include disposal of 237,000 scrap tires by the Amistad Task Force; Nuevo Laredo's hazardous waste disposal program, which is being used as a model for other border Mexican cities in the Falcon Task Force; and ongoing development of a binational regional emergency response plan in the Gulf Task Force.

### Infrastructure

To increase water supplies, border communities have taken the lead in Texas in treating saline groundwater for public water supply. The TCEQ has worked with utilities in El Paso and the Lower Rio Grande Valley to permit drinking-water plants that treat brackish groundwater. The Southmost Regional Water Authority's desalination plant in Cameron County went online in 2004 and now produces 7.5 million gallons per day (mgd) of water, and in 2007 El Paso Water Utilities and Fort Bliss dedicated the world's largest inland desalination plant, with a 27.5 mgd capacity. In addition, the State of Texas is supporting the Brownsville Public Utility Board's pilot project to desalinate seawater to make it potable, with eventual plans for a 27-mgd plant.

Brownsville also has a long-standing plan for a channel dam to provide additional surface water from the Rio Grande. In 2007 the 10 U.S. and

Mexican border-state governors endorsed the channel dam, which is only awaiting Mexican federal approval for construction.

The Border Environment Cooperation Commission and the North American Development Bank, created under a NAFTA environmental side agreement between Mexico and the United States, continue to certify and fund projects in Mexico and Texas that will improve water and wastewater infrastructure for Texas residents. New wastewater plants in Matamoros and Reynosa will improve Rio Grande water quality.

While colonias have been in Texas for decades, it was not until 1989 that Texas enacted legislation to finance water and wastewater projects and halt proliferation of the colonias. State and federal agencies have provided hundreds of millions of dollars for the projects.

The TCEQ also participates with other agencies in work groups chaired by the Colonia Initiatives Coordinator of the Secretary of State to improve conditions in colonias, including the Senate Bill (SB) 99 (80th Legislature, Regular Session) work group to track infrastructure in border colonias.

C H A P T E R 3

# Organizational Aspects

## Capital Assets and Improvements

One of the most significant capital assets maintained by the agency–vital in a state as large as Texas–is vehicles.

### Vehicles

The TCEQ currently maintains a fleet of 390 vehicles–330 vehicles (85%) are in the field and 60 vehicles (15%) are in Austin. TCEQ field vehicles are used in the performance of core missions of the agency, as mandated by the Texas Legislature and the U.S. Environmental Protection Agency.

It is the policy of the agency to purchase factory equipped alternative fuel vehicles (AFV) and hybrid vehicles whenever possible. There are 88 vehicles in the fleet that have been converted to use liquid petroleum gas (LPG). These and other vehicles will eventually be replaced by gasoline-electric hybrids or those equipped to use gasoline/ethanol or E85 fuel. By the end of fiscal 2009, there were approximately 56 hybrids and 114 E85 vehicles in use by the agency.

Regional employees use vehicles in the following ways:

- Mission critical for inspections–includes investigations and regulation of sources of pollution throughout the state, and to respond to pollution complaints.
- Special use–involves vehicles in the Surface Water Quality Monitoring Program that are necessary to transport boats and other equipment as well as the transportation of generators and air-monitoring equipment to conduct air samplings throughout the state.
- Emergency response–includes carrying specialized tools and monitoring equipment that are required to be available 24 hours a day, 7 days a week.

The TCEQ has established a vehicle replacement schedule for vehicles in field service to maximize the efficient use of vehicles. This schedule requires vehicles in the field to be replaced if any of the following criteria apply: mileage over 100,000, age is over 6 years, unsafe to operate, or deemed uneconomical to repair and operate. As a result, the Field Operations Division typically needs to replace 33 to 35 vehicles per year.

In general, most vehicles should be replaced when they reach 6 years (72 months) of service or 100,000 miles, whichever comes first. However, there are circumstances in which vehicles are replaced sooner (such as excessive maintenance or repair costs), or later (such as budget limitations).

Table 5 details the specific replacement goals for different types of vehicles and vehicle uses.

If an agency vehicle meets the criteria in Table 5, the vehicle may be taken out of service and surplused, or transferred to the central office in Austin for continued local or campus-wide use. The surplus vehicles (except stolen or totaled vehicles) are then sold through the Texas Facilities Commission. All the funds generated from vehicle sales are returned to the agency to help purchase replacement vehicles.

**Table 5. Vehicle Replacement Goals**

| Vehicle Type | Purpose | Replacement Goals |
|---|---|---|
| Sedans and wagons | Staff or authorized passenger transport | 6 years or 100,000 miles |
| Light trucks | Basic transport, light hauling | 6 years or 100,000 miles |
| Passenger vans, SUVs | Staff or authorized passenger transport | 6 years or 100,000 miles |
| Cargo vans | Cargo hauling | 8 years or 100,000 miles |

# Facility Improvements

Any decision, expenditures, or budget requests for capital improvements are managed through the Texas Facilities Commission.

# Historically Underutilized Businesses (HUBs)

## Mission Statement

The Historically Underutilized Business (HUB) program of the TCEQ encourages the use of HUBs in procurements and contracts for commodities and services by promoting full and equal business opportunities for all businesses in Texas.

## Program Overview

The TCEQ administers the state-mandated HUB program, which promotes full and equal utilization of minority- and women-owned businesses in the procurement of goods and services.

### The TCEQ's HUB Policy

In accordance with HUB legislation, the TCEQ adopted the HUB rules as its own in May 1996. Additional guidance is provided in the TCEQ's Operating Policies and Procedures and Guide to Administrative Procedures (GAP) Manual, and in the Code of Federal Regulation.

### HUB Defined

A HUB is defined by the Texas Government Code, Chap. 2161, and 1 TAC 111.12 as a business (such as a corporation, sole proprietorship, partnership, joint venture, or a supplier contract between a HUB and a prime contractor/vendor) formed for the purpose of making a profit that meets all of the following criteria:

- The principal place of the business must be in Texas.
- At least 51 percent of the assets and at least 51 percent of all classes of the shares of stock or other equitable securities in the business must be owned by one or more persons whose business enterprises have been historically underutilized (economically disadvantaged), because of their identification as members of the following groups: African American, Hispanic American, Asian Pacific American, Native American, and American women.
- Individuals mentioned above must demonstrate active participation in the control, operation, and management of the business.
- The business must be directly involved in the manufacture or distribution of the contracted supplies or materials, or otherwise warehouse and ship the supplies or materials.

### HUB Program Staff

The TCEQ's HUB office is located in the Support Services Division of the Office of Administrative Services at the agency's central campus, in Austin. The HUB program employs three FTEs: a HUB coordinator, a HUB reporting specialist, and an administrative assistant. The HUB coordinator is responsible for coordinating all functions and activities related to the implementation of rules and regulations governing the HUB program. The HUB reporting specialist assists in HUB reporting activities to TCEQ management, as well as to the Texas Comptroller of Public Accounts, the U.S. Environmental Protection Agency, and the Legislative Budget Board.

## Goals, Objectives, and Strategies

The TCEQ is fully committed to increasing HUB participation in accordance with the goals specified in the State of Texas Disparity Study. The HUB program's fundamental objective is to assure that qualified minority- and women-owned businesses are well represented in agency procurement and contracting. The TCEQ will continue to enhance HUB participation through outreach and other measures, proactively working with staff across the agency to maximize HUB procurement and contracting opportunities. The agency will also continue working externally to identify, educate, and assist HUB vendors, contractors, and subcontractors.

The TCEQ's strives to meet or exceed the state's Annual Procurement Utilization Goals. The procurement goals are based on the agency's total expenditures and the percentage of purchases and subcontracts awarded directly and indirectly to HUBs within specific procurement categories. The agency's HUB performance goals and the previous two years' performance are shown in Table 6.

Following are new and ongoing goals, objectives, and strategies representative of the TCEQ's good-faith effort to realize its procurement goals.

## HUB Vendors

*Goal 1.* Increase the utilization of HUB-certified vendors.

*Objective 1.1.* Encourage HUB participation through internal and external outreach.

*Strategy 1.1.A.* Conduct educational programs on the agency's procurement processes and assist minority- and women-owned businesses in acquiring HUB certification.

*Strategy 1.1.B.* Divide requisitions and assess how bonding and insurance requirements would best further HUB opportunities.

*Strategy 1.1.C.* Facilitate Mentor-Protégé agreements to foster long-term relationships between contractors and HUBs.

*Strategy 1.1.D.* Conduct outreach activities that foster and improve relationships among HUB vendors, prime contractors, and purchasers.

## Purchasers and Key Decision Makers

*Goal 2.* Increase use of HUBs on the part of purchasers and key decision makers.

*Objective 2.1.* Encourage directors, purchasers, project managers, and other personnel responsible for procurement of goods and services to maximize use of HUBs.

*Strategy 2.1.* Educate agency staff on HUB statutes and rules through online avenues, teleconferencing, and classroom training.

## Policies and Procedures

*Goal 3.* Establish HUB-related procurement and contracting policies and practices that effectively maximize HUB utilization.

*Objective 3.1.* Ensure that ongoing good-faith efforts encourage inclusion of HUBs in all purchasing and procurement opportunities as applicable and as set forth by the Texas Administrative Code and adopted by the TCEQ.

*Strategy 3.1.A.* Review existing policies and procedures and amend as necessary in consultation with work groups.

*Strategy 3.1.B.* Evaluate and maximize, as feasible, each division's HUB participation performance.

# Financial Status and Outlook

The TCEQ is presented with a unique set of challenges because of its complex funding system, which primarily consists of fee revenue that is appropriated by the Legislature to the agency to support agency operations.

## Funding Sources and Uses

The TCEQ is funded primarily by fee revenues. The agency was appropriated $966 million for the

**Table 6. HUB Goals and TCEQ Performance**

| Category | TCEQ Performance | | Goals for 2011–2015 |
|---|---|---|---|
| | 2008 | 2009 | |
| Special Trades | 2.9% | 12.4% | 57.2% |
| Commodity Contracts | 33.0% | 31.4% | 12.6% |
| Other Services Contracts | 32.8% | 36.8% | 33.0% |
| Professional Services Contracts | 21.7% | 9.6% | 20.0% |

2010–11 biennium, of which $839 million (86.8%) was derived from dedicated fee revenues. The remainder of the appropriations consists of $80.1 million in federal funds, $29.5 million from General Revenue, and $17.4 million in interagency contracts and appropriated receipts.

The appropriations from dedicated fee revenues for the 2010–11 biennium consist of $234 million (27.9%) from the Texas Emissions Reduction Plan fund, $206 million (24.5%) from the Clean Air Account, $105.8 million (12.6%) from the Water Resources Management Account, $67.4 million (8.0%) from the Waste Management Account, $62.1 million (7.4%) from the Operating Permit Account, $61.6 million (7.3%) from the Hazardous and Solid Waste Remediation Account, $52.3 million (6.2%) from the Petroleum Storage Tank Remediation Account, and the remaining $49.8 million (5.9%) from other dedicated fee funds.

While the TCEQ is primarily a fee-funded agency, many of the fees and funds have use restrictions that limit the ability of the TCEQ and the Legislature to allocate funds to meet challenging environmental needs. Some flexibility nonetheless is provided by Rider 15 in the TCEQ's General Appropriations Act, which allows for the reallocation of 7 percent of identified funds for other uses.

## Funding Issues

In the next few years, the TCEQ is facing a number of unique financial challenges that have been created by both the economic condition of the state and the agency's own success at implementing programs.

The Low-Level Radioactive Waste Program is funded by three revenue sources: a disposal fee, an application fee, and interest revenue. The amount of 12.5 million was paid in two installments in 2004 and 2005 by Vermont for Texas to serve as the host state for a disposal facility pursuant to the Texas Low-Level Radioactive Waste Disposal Compact. Construction on a disposal facility in West Texas is expected to begin soon, but no disposal fees have been collected at this time. There is also interest generated from the account balance. But at this time, the total revenue is not sufficient to cover all program costs or to meet appropriation levels. If this trend continues, the program will have to utilize fund balance to cover annual appropriations, and this will cause the revenue generated from interest to decline each year. The agency will need to address both the revenue shortages and the program's appropriations.

The Low-Income Repair Assistance and Accelerated Vehicle Retirement Program (LIRAP) appropriation and program costs have increased dramatically over the past two biennia. Since the appropriation increase was not accompanied by a fee increase, the program has been funded from the fund balance of the Clean Air Account (0151). Considering the success of the programs (over 30,000 repairs or replacement in fiscal years 2008 and 2009), the agency could be legislatively mandated to continue to implement LIRAP at current appropriation levels. Unless additional fee revenue is collected, however, the program's costs would further reduce the fund balance of the Clean Air Account.

The Water Resource Management Account (0153) was facing a significant funding shortage in fiscal years 2008 and 2009, because program appropriations exceeded fee revenue. This required water programs to be supported by fund balance instead of by revenue collected. In previous years, the account was supported by both fee and General Revenue appropriations. This dual funding structure generated a large fund balance. In an effort to reduce the balance, lawmakers reduced General Revenue appropriations to the TCEQ. Due to economic conditions, the state was not able to appropriate enough General Revenue to cover the agency's water needs, and this required the TCEQ to adopt new rate structures through a rule proposal on July 7, 2009. Under the adopted rate structure, the account has the flexibility to increase fee revenue to cover appropriations and rebuild a fund balance.

The Petroleum Storage Tank Program has undergone two significant changes over the last two legislative sessions. The 80th Legislature enacted changes

to the Petroleum Product Bulk Delivery Fee, which was set to expire at the beginning of fiscal 2008, but was extended to Sept. 1, 2011, at a rate equal to one-third of the 2007 rate. The Petroleum Storage Tank (PST) Remediation program deadline for submitting reimbursement claims and placing sites into the State Lead Program was extended through March 1, 2012. The legislation also eliminated the requirement for tank registration fees beginning in fiscal 2008. These fees were deposited to the Waste Management Account (0549). The 81st Legislature reduced the PST appropriations by over $20 million for the biennium, reducing program functions and cleanup projects while reducing the impact on the fund balance from the fee-rate reduction.

The Texas Emissions Reduction Plan (TERP) Program (5071), the agency's largest revenue generator, is starting to feel the impact of the economy. In fiscal 2009, the amount of collected revenue was below the Biennial Revenue Estimate.(BRE) amounts for the first time. This decrease was due to revenue shortages in the Motor Vehicle Certificate of Title and Diesel Equipment Surcharge fees, which are affected by vehicle sales. These sales are down as a result of the state's current economic circumstances. In fiscal 2015, the program's revenue stream will be reduced by the expiration of the mobility fund transfer established under Senate Bill (SB) 12 of the 80th Legislature, which requires the Texas Department of Transportation to transfer title-fee revenues to TERP on a monthly basis.

The Operating Permit Account (5094) is facing a unique funding challenge, a victim of its own success. Program costs remain stable, and the air in Texas has been getting cleaner every year. One of the major reasons for cleaner air is that Title V permit holders have managed to reduce emissions by 5 percent annually. This reduction has led to lower revenue collections for the program. The fee rate is based on each permit holder reducing emissions annually, and the Consumer Price Index (CPI) is used to offset the impact of emission reductions on revenue collections. However, lower-than-expected CPI rates have led to a decline in revenue collections and this decline is expected to continue in future years.

The agency has several sources of revenue that are directly affected by economic conditions and that have led to reductions in fee collections for a number of programs. The Waste Management Account (0549) and the Hazardous Waste Remediation Account (0550) have been utilizing fund balance to cover appropriations over the past few years. Fees, such as the tipping fee, which are heavily affected by economic conditions, have not been collected at the level projected. The accounts have sufficient fund balance to maintain appropriations for a few years, but if the reduction in revenue collections continues, the agency will need to address shortages with a fee-rate adjustment.

Texas was required to implement Governmental Accounting Standards Board (GASB) Statement No. 49 in fiscal 2009. The statement requires governments to estimate and record the pollution remediation obligations for existing polluted sites and excludes pollution prevention activity. The TCEQ will need to develop internal software applications to implement GASB Statement No. 51, for the financial reporting of Intangible Assets. These requirements, along with future GASB statements, will require the TCEQ to examine its financial reporting processes.

The agency has some accounts that are performing above expectations. The Used Oil Recycling Account (0146), the Occupational Licensing Account (0468), and the Solid Waste Disposal Account (5000) are bringing in revenues above BRE estimates and appropriated totals. This has helped build fund balances in these accounts. Revenue collected in the Watermaster Administration Account (0158) has been consistently above the BRE, which has allowed the program to request additional appropriation authority, allowed under the rider during the past few years.

As the TCEQ continues to achieve its major goals, such as the reduction of air emissions and waste

generation, the amount of revenue it collects to fund agency operations consequently declines. In time, the agency will need more stable funding sources to support its ongoing operations.

## Economic and Population Forecast

Table 7 represents the population and economic forecast for Texas through fiscal 2015.

### Table 7. Economic and Population Forecast for Texas and the U.S., FYs 2008–2015, Winter 2009 Forecast

| CATEGORY | 2008 | 2009 | 2010* | 2011* | 2012* | 2013* | 2014* | 2015* |
|---|---|---|---|---|---|---|---|---|
| **TEXAS** | | | | | | | | |
| **Gross State Product** (2,000 dollars in billions) | $931.5 | $948.4 | $966.1 | $1,002.9 | $1,055.7 | $1,100.1 | $1,132.9 | $1,168.4 |
| **Annual percentage change** | 4.2 | 1.8 | 1.9 | 3.8 | 5.3 | 4.2 | 3.0 | 3.1 |
| **Personal Income** (current dollars in billions) | $931.2 | $960.4 | $1,000.4 | $1,064.1 | $1,138.3 | $1,216.5 | $1,293.6 | $1,372.1 |
| **Annual percentage change** | 7.1 | 3.1 | 4.2 | 6.4 | 7.0 | 6.9 | 6.3 | 6.1 |
| **Nonfarm Employment** (in thousands) | 10,538.0 | 10,537.3 | 10,637.6 | 10,889.4 | 11,218.1 | 11,553.1 | 11,834.5 | 12,084.8 |
| **Annual percentage change** | 2.4 | <(0.1) | 1.0 | 2.4 | 3.0 | 3.0 | 2.4 | 2.1 |
| **Unemployment Rate** (percentage) | 4.4 | 6.6 | 6.7 | 6.5 | 6.1 | 5.9 | 5.7 | 5.4 |
| **Texas Exports** (in billions) | $189.9 | $192.3 | $190.5 | $207.0 | $228.9 | $250.9 | $271.8 | $292.3 |
| **Resident Population** (in thousands) | 24,283.6 | 24,710.4 | 25,236.9 | 25,779.3 | 26,321.1 | 26,852.3 | 27,377.4 | 27,901.8 |
| **Annual percentage change** | 1.9 | 1.8 | 2.1 | 2.1 | 2.1 | 2.0 | 2.0 | 1.9 |
| **Resident Population 17 & under** (in thousands) | 6,440.6 | 6,510.8 | 6,584.7 | 6,663.9 | 6,750.9 | 6,845.3 | 6,941.2 | 7,042.5 |
| **Annual percentage change** | 1.1 | 1.1 | 1.1 | 1.2 | 1.3 | 1.4 | 1.4 | 1.5 |
| **Resident Population 65 & over** (in thousands) | 2,381.5 | 2,448.6 | 2,516.7 | 2,581.2 | 2,690.5 | 2,803.9 | 2,913.8 | 3,035.2 |
| **Annual percentage change** | 2.7 | 2.8 | 2.8 | 2.6 | 4.2 | 4.2 | 3.9 | 4.2 |
| **UNITED STATES** | | | | | | | | |
| **Gross Domestic Product** (2,000 dollars in billions) | $11,678.5 | $11,571.2 | $11,689.2 | $12,022.9 | $12,438.0 | $12,834.6 | $13,211.1 | $13,621.7 |
| **Annual percentage change** | 1.9 | (0.9) | 1.0 | 2.9 | 3.5 | 3.2 | 2.9 | 3.1 |
| **Consumer Price Index** (1982–84 = 100) | 214.4 | 213.7 | 217.0 | 223.7 | 229.3 | 234.7 | 240.2 | 244.9 |
| **Annual percentage change** | 4.4 | (0.3) | 1.5 | 3.1 | 2.5 | 2.4 | 2.3 | 2.0 |
| **Prime Interest Rate** (percentage) | 6.0 | 3.7 | 3.9 | 6.0 | 7.8 | 7.8 | 7.8 | 7.8 |

**Projected.* *Sources: Texas Comptroller of Public Accounts; Texas State Data Center.*

# Technological Developments

## Information Strategic Plan

From its inception, the TCEQ has recognized that information systems are vital to its ability to accomplish its mission. In 1998, the agency drafted its first Information Strategic Plan to guide the agency toward its vision of information systems that best support its mission. The plan provided both short- and long-term recommendations. The following are a few examples of the significant information-technology innovations that the agency has implemented based on recommendations in the original Information Strategic Plan:

- Creation of a formalized information technology governance structure, committees, and processes to promote the prioritization of information system development efforts at the agency level, rather than by individual business-area budgets, resources, and goals.
- Development of a Central Registry application and database that provides a single, standardized list of the facilities that the agency regulates and operators that the agency licenses. By consolidating numerous programmatic data silos, a more comprehensive view of facilities that includes permits (air, water, waste) and associated compliance and enforcement information was made available to staff and the public.

Since 1998, the Information Strategic Plan has been updated twice to reflect the changing business needs and priorities of the agency, as well as the constant evolution of information technologies. The most recent version of the TCEQ Information Strategic Plan was completed in early 2010 and identified the following four major IT goals for fiscal years 2012 to 2017. A series of strategies, projects, programs, and internal initiatives were also identified to achieve each of these respective goals.

- *Improve Internal and External Access to Information.* The TCEQ is planning to expand its Web-integrated enterprise information gateway with geospatial functionality and integration with an enterprise content management (ECM) system.
- *Enable Strategic Management of Information.* Adoption of IT best practices and security standards should drive consistent, efficient, and secure data and technology management throughout the agency. Enhanced governance processes will be promoted to support the adoption of a more agile service-oriented architecture and increased code reuse.
- *Support a High Performing Next-Generation Workforce.* Several internal strategies and initiatives will be implemented to foster an information-centered culture that emphasizes the importance of information as integral to the agency's mission.

## Interacting with the Public through the Web

The TCEQ migrated the public website into a new content management system in September 2009. The flexibility of the new system is allowing a renovation of website navigation and usability, beginning with directory restructuring, which should be accomplished by December 2010. The continuous process of improving content on the website includes making that content accessible to visitors and employees with disabilities, which is another ongoing effort of the agency.

The key goals for the public website are to increase public access to agency information and to increase online transactions between the TCEQ and the public, including the regulated communities. Toward that end, the agency has made several types of regulatory documents available on the public website, including all background documents supporting items on the commission's agenda, all permits and enforcement orders issued by the commission since 1995, and most types of permits that are issued by the executive director.

The TCEQ has assembled a one-stop shop at <www.tceq.state.tx.us/about/comments.html>, where visitors can submit comments electronically, both on proposed rules and on pending permit applications. In the future, the agency will introduce online viewing of comment letters, hearing requests, and public-meeting requests on contested permit applications. The agency

also plans to increase access points to its customer satisfaction survey and to introduce a calendar where the public can find and view upcoming events from a central portal.

In fiscal 2009, the agency integrated access to more of its permit information through its Central Registry application and added access points directly on the home page. Users can access information about a permit stored in different databases through a single query. The agency plans to continue this integration, which is a specific goal of its Information Strategic Plan. Also in fiscal 2009, the Texas Air Monitoring Information System (TAMISWeb) was introduced to the public. This system allows users to generate and download air quality reports. By the end of 2010, TAMISWeb will also make air quality information available through a Web-based geographic interface. In addition, we now provide the ability to find drilling logs from water wells in an area by clicking on a nearby point on a map. Expanding the use of geographic interfaces on the website is another agency goal.

The TCEQ offers online permit application and approval for some storm water permits and petroleum storage tank registrations, and most recently added online permitting for concentrated animal feeding operations. New features have been added to the online reporting of discharge monitoring data (NetDMR) available for facilities covered under the Texas Pollutant Discharge Elimination System. Online testing for occupational licenses has also been introduced. More transaction capabilities like these will be added in the coming years.

## Impact of Anticipated Technological Advances

We expect that technological advances will continue to provide new opportunities to improve service and our protection of the environment, but they will present challenges stemming from vast increases in the quantity of data that will be available and the greater ease with which our systems may be reached from outside.

- The cost-effectiveness of computer systems, data storage and retrieval systems, and communications networks will continue to increase rapidly.
- Sources of environmental data will improve in resolution and coverage.
- Public networks will increase in capability, and both individuals and organizations will become more sophisticated in their use.
- Mobile computing and communication devices will become more capable and more widely used.
- More citizens will be using Web-based social media, and more public dialog will be taking place in those contexts.
- Technical and legal systems for securing online transmissions will improve.

Taken together, these developments will mean that:

- We will have much more data available, and more powerful tools with which to analyze it and present the results. We will be able to improve our environmental decisions.
- We will be able to provide better service to the regulated community and the public, making interactions with our programs cheaper and quicker.
- We will need to continually adapt our information exchange practices to new environments, providing and accepting information in new ways.
- Our systems will be exposed to more attacks using increasingly sophisticated techniques. We will have to design hardware, software, and network configurations with security in mind.

## Degree of Agency Automation, Telecommunications, etc.

Essentially all agency environmental and regulatory programs are highly dependent on data systems.

- Regulatory programs require records identifying members of the regulated community, and recording their interactions with the agency.
- Environmental analyses require data on ambient conditions across the state, and the power to model and predict the outcomes of economic activity and regulatory programs.
- Most agency staff require access to data communications and information storage and retrieval, whether they directly execute agency

regulatory or environmental functions, or perform support functions.
- Most agency funding, apart from federal pass-through grants, is fee-based. Agency computer systems account for the fees owed and paid.

## Anticipated Need for Automation (either Purchased or Leased)

Agency information needs are being influenced heavily by pressures on how the agency conducts business. The TCEQ is facing pressures such as:

- The increased participation by external parties in agency policy development and decision making, and the need to be accountable to those parties for agency activities and decisions.
- The need to recognize the business environment by using more regulatory flexibility.
- The need to provide better customer service to the regulated community and the public while providing secure access to information.
- Budget and resource constraints in an era of growing agency responsibilities (growth in population, industry, and regulatory demands).
- Expectations that agency actions and decisions will be taken based on an understanding of risk to the environment and to public health.

These pressures create ever greater demands on the TCEQ to better manage and analyze information to support increasingly challenging decisions. Now, more than ever, the TCEQ needs information systems that:

- Provide a view of regulated entities from a multimedia perspective so that the TCEQ can improve its understanding and regulation of the regulated community, and improve its interactions with regulated entities.
- Enhance the TCEQ's understanding of environmental conditions and how the agency can affect them.
- Track how agency resources are being allocated and expended and help the TCEQ plan ahead for future expenditures.
- Enhance the TCEQ's understanding of the relationship between agency activities and compliance behavior, pollution prevented, and environmental improvements.

The TCEQ will continue to maintain information systems that:

- Integrate key facility information across regulatory program areas.
- Integrate key agency activity information across agency functions (e.g., compliance, permitting).
- Enable place-based analysis.
- Enhance understanding of environmental conditions.
- Provide staff with timely and ready access to the information needed to do their jobs successfully.
- Enhance the management of agency commitments and associated resource allocation.
- Provide both TCEQ staff and external parties an understanding of agency activities and results.

In additions to these items, the TCEQ will strive to plan and implement information systems or processes that:

- Expand permit development and management activities.
- Provide public access to TCEQ data and services.
- Enable data exchange using state and federal standards.
- Enable the use of mobile devices where opportunity exists.
- Enable better access to information through reporting systems.
- Enhance information security.

C H A P T E R 4

# Impact of Federal, State, and Legal Actions

## Federal Authority

The TCEQ has been authorized to fulfill the responsibility for executing most major federal environmental programs in Texas, as indicated in Table 8, below. A state is eligible for federal program authorization if it successfully enacts and executes environmental laws and regulations that are at least as strict as their federal counterparts, ensuring the protection of the state's natural resources.

In 1997, the TCEQ and the EPA adopted a Performance Partnership Agreement. Texas was one of the first state environmental agencies in the nation to enter into such an agreement with the EPA, which provides opportunities to adjust planning and funding priorities between major delegated federal programs according to the unique needs of the state.

Recent changes to federal regulations continue to have an affect on the TCEQ, its workload, and its responsibilities.

### Table 8. Major Federal Statutes for Which All or Partial Responsibility Is Authorized to the TCEQ

| | |
|---|---|
| 33 United States Code, Section 1251 et seq. Water Pollution Control Act (Clean Water Act) | The federal Water Pollution Control Act (also referred to as the Clean Water Act) has the congressional objective of restoring and maintaining the chemical, physical, and biological integrity of the water of the United States. The act creates the organizational framework for Texas' delegated National Pollution Discharge Elimination System program. |
| 33 United States Code, Section 2701 et seq. Oil Pollution Act of 1990 | The Oil Pollution Act provides for the federal and state Natural Resource Trustees to collect natural resource damages from responsible parties when there has been injury to, destruction of, or loss of natural resources as a result of a discharge of oil. These provisions also set forth the federal oil spill fund, which allows the federal and state Natural Resource Trustees to seek reimbursement from the fund for damages to natural resources. The TCEQ is one of three state Natural Resource Trustees. |
| 42 United States Code, Section 300f et seq. Safe Drinking Water Act | The Safe Drinking Water Act gives Texas authority to regulate its public water systems and ensure that the EPA's safe drinking water requirements are met in Texas. Additionally, sections 300h through 300h-8 apply to underground injection wells and allow a state to implement an underground injection control program that meets the minimum federal requirements. |
| 42 United States Code, Section 2011 et seq. Atomic Energy Act of 1954 | The Atomic Energy Act of 1954 authorizes the regulation of the uses of nuclear materials and facilities. The act requires the Nuclear Regulatory Commission to establish standards for the possession, use, handling, and disposal of nuclear materials and allows the NRC to enter into an agreement with a state to cede authority to the state to implement certain regulatory programs under the act, as long as the state maintains a regulatory program compatible with the NRC's requirements. Texas is an agreement state. |

*continued on next page*

## Table 8. Major Federal Statutes for Which All or Partial Responsibility Is Authorized to the TCEQ (continued)

| | |
|---|---|
| 42 United States Code, Section 2021b et seq. Low-Level Radioactive Waste Policy Act and Low-Level Radioactive Waste Policy Amendment Act | The Low-Level Radioactive Waste Policy Act and its subsequent amendment give the states responsibility for the disposal of low-level radioactive waste within their boundaries and authorizes them to enter into interstate compacts to create regional disposal facilities. |
| 42 United States Code, Section 6901 et seq. Solid Waste Disposal Act (Resource Conservation and Recovery Act) | The Resource Conservation and Recovery Act (RCRA) governs the management and disposal of solid wastes. Under the RCRA, the EPA has established federal standards for the generation, transportation, treatment, storage, and disposal of municipal solid wastes and hazardous solid wastes. The TCEQ is authorized to administer the program in Texas. |
| 42 United State Code, Section 7401 et seq. Air Pollution Prevention and Control Act (Clean Air Act) | The Clean Air Act establishes the federal program for air-pollution prevention and control. It provides for air quality standards and emissions limitations (e.g., air quality control regions, national ambient air quality standards [NAAQS], state implementation plans [SIPs], new-source performance standards, and emission standards for hazardous air pollutants); establishes programs for the prevention of significant deterioration and for nonattainment permits, emissions standards for moving vehicles (including engine and fuel standards), and acid deposition control; and establishes a federal operating permit program (Title V) and other programs not administered by the states (Title VI, Stratospheric Ozone Protection). The TCEQ administers the air permitting programs in Texas, i.e. Title V and New Source Review permits. |
| 42 United States Code, Section 9601 et seq. Comprehensive Environmental Response, Compensation, and Liability Act | The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) provides broad federal authority and requirements for coordination with the states for responding directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. Additionally, CERCLA establishes prohibitions and requirements concerning closed and abandoned hazardous waste sites, provides for the liability of persons responsible for releases of hazardous waste at these sites, establishes a fund for cleanup when no responsible party can be identified, and provides for the restoration of natural resources. |

## Administration

The EPA's Cross-Media Electronic Reporting Rule (CROMERR). Both existing and new electronic reporting systems require EPA approval under this rule. The regulation provides a framework for applying for and obtaining such approval. The TCEQ applied for and, in 2009, received approval for its electronic reporting systems.

## Air Quality

Federal initiatives to address the following issues have, or are expected to, affect the TCEQ's air quality permitting and compliance programs:

- Regulation of Greenhouse Gases. Proposed EPA rules would require mandatory reporting of greenhouse gas (GHG) emissions for the development of a GHG registry.

- New Ozone Standards. New standards finalized in March 2008 affect agency ambient air-monitoring requirements and require revisions to the state implementation plan to address newly designated nonattainment areas within the state.

## Groundwater Protection and Remediation

- Energy Policy Act of 2005. This federal act requires that states implement a number of significant changes to their approved underground storage tank (UST) programs. The act requires inspection of all UST facilities every three years (initial completion deadline: Aug. 8, 2011); secondary containment or manufacturer financial assurance for all new UST systems; delivery prohibition for ineligible USTs, with administrative penalties applicable to owners-operators and common carriers; and mandatory training for all UST facility operators (completion deadline: Aug. 8, 2012).

## Water Supply and Water Quality

- Proposed Dam Rehabilitation Grant program. This federal program would assist states with grants to rehabilitate publicly owned deficient dams.
- Proposed Clean Water Restoration Act. This federal act would restore protections to isolated wetlands and headwater streams that have been reduced as a result of U.S. Supreme Court decisions.
- Arsenic-Testing Methods for Drinking Water. The EPA changed references to analytical methods for arsenic testing in drinking water, and is updating its list of approved arsenic regulations to remove references to methods that are no longer approved. Once the final list of approved methods is issued by the EPA, the TCEQ may be required to incorporate the changes into its rules.

## EPA Pesticide General Permit [H2]

As a result of a court decision and mandate, the EPA is currently developing a draft general permit to authorize the discharge of pollutants to water in the United States from the application of pesticides in or near waters of the United States. The EPA's final general permit must be in place by April 2011. Because it is an agency of an NPDES-authorized state, the TCEQ will have to develop a general permit that authorizes the discharge of pollutants from the application of pesticides in or near water in the state by April 2011, as well. There are currently more than 70,000 registered pesticide applicators in the state.

The effect on the TCEQ will be determined by the requirements of the EPA-approved general permit. The TCEQ will develop the draft permit to meet the federal requirements, while also addressing the needs of those who will be regulated by the permit. To accomplish this, the TCEQ will keep the stakeholders and regulated community informed about the pending draft permit, encourage input and comments once the draft is proposed, and hold a stakeholder meeting to discuss the content and potential effects of the draft permit.

## Expansion of the EPA Storm Water Regulations

The EPA is currently seeking input on regulatory considerations that would likely expand the areas subject to storm water regulations and increase the regulatory requirements of state or local authorities. The TCEQ has regulatory authority over storm water discharges in the state and would be required by the agency's memorandum of understanding with the EPA to implement these new regulations, if adopted at the federal level. This regulatory action is being monitored and evaluated for the possible effects to the TCEQ and the regulated community in Texas.

In addition to this proposal, the EPA has adopted federal effluent guidelines to control the discharges from construction sites. The TCEQ will implement these requirements in any individual wastewater permit that authorizes construction storm water discharges that meet the applicability requirements. Also, the TCEQ will add these requirements in any general permit that authorizes construction storm water discharges as those permits are renewed.

# The 81st Legislature

## Budgetary Issues

The TCEQ will receive $1.01 billion for the 2010–11 biennium, which began Sept. 1, 2009. Of this, $964.2 million is appropriated under the Appropriations Act (SB 1) and $43.6 million is appropriated through a supplemental appropriations bill to fund the Texas Emissions Reduction Plan (TERP), the state Superfund program, and response to natural disasters.

Included in the $964.2 million appropriation is $33.2 million for exceptional items such as the implementation of the new federal ozone standard, enhancements to the agency's Dam Safety Program, increased cleanup activities in the state Superfund program, an increase in grant funds for air quality planning, and information-resource needs.

The Legislature also authorized an additional 66 full-time equivalent (FTE) positions for exceptional items and contingency riders, which include:

- 24 additional FTEs for enhancements to the Dam Safety Program
- 30 additional FTEs for implementation of the new ozone standard
- 2 additional FTEs to inspect a new low-level radioactive site

## Air Quality Issues

The significance and importance of the Texas Emissions Reduction Plan (TERP) in meeting federal ozone standards continues to be recognized by the Legislature through the passage of House Bill 1796, which expanded both the duration and scope of TERP. The TERP program is extended until 2019, with funds allocated as follows: 87.5 percent for Emissions Reduction Incentive Grants (ERIG) for the implementation of new technologies that reduce emissions from facilities and other stationary sources; 9.0 percent for new technology research and development; 2.0 percent for TERP administration; and 1.5 percent for Energy Systems Lab at the Texas Engineering Experiment Station (TEES).

This legislation also laid the groundwork for Texas to develop an offshore carbon dioxide storage repository in state-owned submerged land, which affects several agencies, including the TCEQ, the General Land Office, the University of Texas Bureau of Economic Geology, and the School Land Board. As an important part of the overall effort, the TCEQ will develop and adopt standards for monitoring, measuring, and verifying the permanent storage status of an offshore repository, ensuring that any standards adopted by the agency comply with EPA regulations. This legislation also requires a review of federal greenhouse gas reporting requirements.

## Water Resource Issues

New water supply and conservation will continue to be an important part of meeting the future water resource needs of Texans. These vital avenues will be augmented by water reuse. HB 1922 authorizes the introduction of recycled water to the system by multiple treatment plants and authorizes discharges from any permitted outfall. The legislation will enables the TCEQ, under certain conditions and at the request of the applicant, to authorize a wastewater treatment facility operated by an agency of a home-rule municipality with a population of one million or more to contribute treated domestic wastewater produced by the facility as reclaimed water to a reuse water system and to discharge reclaimed water contributed to a reuse water system at certain outfalls. The EPA approval will be critical to whether more of the unique water reuse options become part of the state's strategy for meeting future water needs.

## Water Utility Issues

In the aftermath of a natural disaster such as Hurricane Ike, the availability of drinking water and effective wastewater treatment is a concern.

SB 361 addresses that concern by requiring an affected utility to ensure the emergency operation of its water system during an extended power outage as soon as safe and practicable following the occurrence of a natural disaster. In addition, an affected

utility must adopt and submit to the TCEQ for review and approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations.

An affected utility is defined as a retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service to more than one customer in a county with a population of 3.3 million or more or in a county with a population of 400,000 or more adjacent to a county with a population of 3.3 million or more.

## Examples of Bills from the 81st Legislature Affecting the TCEQ

The following is a partial list of bills passed during the 81st Legislature that affect agency operations:

### House Bills

| | |
|---|---|
| HB 469 (King, P.) | Creates incentives for the development of clean-coal technology. Directs the Comptroller of Public Accounts to issue franchise tax credits of 10 percent of the total capital costs or $100 million per qualifying project, whichever is less. Only the first three completed qualifying projects would be eligible, and the credits may not be claimed until each project is fully operational. |
| HB 715 (King, P.) | Increases the monthly maximum number of emissions tests that is currently in place for the Dallas–Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) areas for vehicle emissions testing stations that petition the Texas Department of Public Safety (DPS) to provide only onboard diagnostic (OBD) testing. Currently, the OBD-only inspection stations are limited to 100 emission tests per month, or 1,200 a year. Under the new law, the number of inspections may not be restricted to fewer than 150 inspections per month. |
| HB 1433 (Lucio III) | Increases the statutory cap for the annual water quality fee for wastewater discharge permit holders and water-right users through permit or contract from $75,000 to $100,000, beginning on Sept. 1, 2009. The cap can be increased in subsequent years based on the CPI, up to a maximum of $150,000. |
| HB 1796 (Chisum) | Requires the General Land Office to contract with the University of Texas Bureau of Economic Geology (BEG) at the University of Texas at Austin to conduct a study of state-owned offshore submerged land to identify potential locations for a carbon dioxide repository. Requires the TCEQ to develop standards and rules for the offshore sequestration of carbon dioxide. Any standards adopted by the TCEQ would need to comply with requirements issued by the U.S. Environmental Protection Agency.<br>Requires the TCEQ to adopt standards for monitoring, measuring, and verifying the permanent storage status of the repository, and the BEG to serve as a scientific advisor. The BEG would perform the monitoring, measurement, and verification of the permanent status of carbon dioxide in the repository. |

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## House Bills (continued)

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| HB 1796 (Chisum) *(continued)* | Requires the TCEQ to establish and administer a New Technology Implementation Grant (NTIG) program to foster new technologies to reduce emissions from facilities and other stationary sources. This program will be part of the Texas Emission Reduction Plan (TERP). Initiatives eligible for the NTIG program could include advanced clean energy projects, new technology projects that reduce emissions of regulated pollutants from point sources that involve capital expenditures that exceed $500 million, and electricity storage projects related to renewable energy.<br>Extends the TERP program and all associated fees until Aug. 31, 2019. Also adds stationary engines to the list of items the TCEQ can fund through the TERP grant program. Exempts mobile generators used for natural gas recovery purposes from the requirement that at least 75 percent of the annual use of a TERP-funded project occur in nonattainment areas and affected counties for at least five years. This legislation also amended the allocation of TERP funds.<br>Requires the TCEQ, the Railroad Commission, and the Public Utilities Commission to participate in the development of federal greenhouse gas reporting requirements. Directs the TCEQ to establish an inventory of voluntary actions taken by businesses in the state and state agencies since Sept. 1, 2001, to reduce carbon dioxide emissions and to work with the EPA to give credit for early action under any federal rules that may be adopted for federal greenhouse gas regulations. |
| HB 1922 (Martinez Fischer) | Authorizes the introduction of recycled water to the system by multiple treatment plants and authorizes discharges from any permitted outfall. Enables the TCEQ, under certain conditions and at the request of the applicant, to authorize a wastewater treatment facility operated by an agency of a home-rule municipality with a population of one million or more to contribute treated domestic wastewater produced by the facility as reclaimed water to a reuse water system and to discharge reclaimed water contributed to a reuse water system at certain outfalls. |
| HB 3206 (Edwards) | Makes changes to the Tax Relief for Pollution Control Property Program as follows: (1) requires the TCEQ to uniformly apply the standards and methods for making determinations to all applications, including those applications filed under Subsection (k)–i.e., Tier IV applications–in current statute, and (2) requires the creation of a permanent advisory committee. |
| HB 3544 (Lucio III) | Authorizes the TCEQ to utilize electronic means of transmission for information issued or sent by the agency. Includes provisions from HB 3206 that make changes to the Tax Relief for Pollution Control Property Program. |
| HB 3547 (Elkins) | Provides the TCEQ authority to shut down unregistered dry-cleaning facilities and drop stations if they fail to correct a violation (regarding registration) within 30 days of receipt of a Notice of Violation. |

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## House Bills (continued)

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| HB 3765 (Paxton) | Provides that the TCEQ may use up to 10 percent of the fees collected on batteries under section 361.138 of the Health and Safety Code (deposited in the Hazardous and Solid Waste Remediation Fee Account #550) for lead-acid-battery-related programs. Funds from Account #550 can now be used to support innovative technologies in lead-acid-battery recycling. |
| HB 4583 (Pitts) | Includes the new Advanced Clean Energy Project Fund as a dedicated account. |
| HB 4586 (Pitts) | Provides a supplemental appropriation to state agencies and institutions of higher education for fiscal 2009.<br>Appropriations to the TCEQ include:<br>• $2 million from Account #550 for cleanup activities at Ballard Pits, a state Superfund site in Nueces County<br>• $37 million from TERP Account #4071 for the TERP program<br>• $4.6 million from General Revenue Account #001 for reimbursement of costs associated with natural disasters |

## Senate Bills

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| SB 1 (Ogden) | TCEQ Appropriations for fiscal years 2010 and 2011. Biennial appropriation of $964.2 million (does not include contingency riders). |
| SB 184 (Watson) | Requires the comptroller to provide the Legislature with a list of strategies for reducing greenhouse gas emissions by Dec. 31, 2010. The report is to include information on how those strategies may result in net savings for consumers or businesses or could be achieved without financial cost to consumers or businesses. Requires the TCEQ to participate on an interagency advisory committee. |
| SB 361 (Patrick) | Requires an affected utility district to adopt and submit for approval to the TCEQ an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations and to ensure the emergency operation of its water system during a power outage as soon as safe and practicable after a natural disaster. |
| SB 876 (Averitt) | Requires the TCEQ to perform annual soil sampling at concentrated animal feeding operations (CAFOs) in a major sole-source impairment zone (parts of the North Bosque Watershed). |

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## Senate Bills (continued)

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| SB 1387 (Seliger) | Provides a state-level regulatory framework for the sequestration and storage of carbon dioxide in geologic formations that may contain oil or gas. Gives the Railroad Commission (RRC) jurisdiction over the injection of carbon dioxide into wells that are or may be productive of oil or gas, as well as jurisdiction over storage in a salt-brine formation that exists above or below an oil or gas formation. Also requires that before the RCC may issue a permit under this section that the TCEQ must certify that underground freshwater supplies will not be injured by the permitted activity. Calls for the TCEQ, RRC, and University of Texas Bureau of Economic Geology (BEG) to conduct a study and report back to the Legislature on the appropriate agency to regulate the long-term storage of CO2 into geologic formations that are not producing oil or gas. Also calls on the Texas General Land Office (GLO) in conjunction with the TCEQ, the RRC, and the BEG to develop recommendations for managing geologic storage of CO2 on state-owned lands, including an assessment of storage capacity and new legal and regulatory frameworks that could be necessary based on the GLO recommendations. |
| SB 1693 (Ogden) | Amends current law to address issues related to poultry facility odors, response to complaints, air-contaminant prevention measures and the record of sale, purchase, transfer, or application of poultry. Adds a course of action for responding to poultry odor complaints, as well as for improving record retention for the sale, purchase, or transfer of poultry litter.<br>Includes provisions that allow the commission to delegate authority to the executive director for Administrative Orders and Penalties. Amends the statutory limit for TCEQ payments plans from 12 to 36 months. Makes technical corrections from SB 3 (80R) to the Clean Rivers Program. |
| SB 1757 (Watson) | Mandates a study by the TCEQ of methods for disposing of unused pharmaceuticals so that they do not enter a wastewater system. Directs the TCEQ to make recommendations on: the methods currently used in the state to safely handle and dispose of pharmaceuticals, medical sharps, and other potentially dangerous medical waste; alternative methods including methods used in other states; and the effects on public health and the environment of the various methods. |
| SB 1759 (Watson) | Requires the Texas Department of Transportation to develop and implement a system of registration to allow an owner of a commercial vehicle fleet to register the vehicles in the commercial fleet for an extended registration period of not less than one year or more than eight years. Also establishes a Texas Clean Fleet Program (CFP) to be administered by the TCEQ, funding it with 5 percent of the 87.5 percent of the Emission Reduction Incentives Grant funds within TERP. |
| SB 2445 (Uresti) | Allows for the expansion of areas covered by the prohibition against boat sewage disposal to include all inland waters of the state and coastal waters up to three nautical miles from shore. |

# Significant Court Cases

## Decided Cases

### Burlington Northern & Santa Fe Railway Co. v. United States et al.

***129 S.Ct. 1870 (2009)***

**Case Summary:** The U.S. Supreme Court held that under CERCLA, 42 USC sections 9601 et seq., the U.S. Environmental Protection Agency (EPA) cannot hold parties liable as "arrangers" when those parties are selling an unused, useful product and did not intend to dispose of it at the contaminated site. The court additionally held that liable parties at a multiparty federal Superfund site can defeat the application of joint and several liability if there exists a "reasonable basis" to apportion liability.

**Impact on the TCEQ:** While this case was not decided under the Texas Superfund law (THSC Chapter 361, subchapters F and I), the decision will likely affect TCEQ remediation functions because parties will analogize to this case even though CERCLA and the Texas Superfund law have significant differences in wording. Since the decision was issued, some parties potentially responsible for contamination at certain state Superfund sites have argued that this case relieves them of their liability to the state for cleanup of these sites, and on that basis have refused to fund or perform cleanups. It is possible that fewer parties will conduct voluntary cleanups for contaminated sites, and the TCEQ will expend more state resources for both cleanups and the pursuit of cost recovery via litigation and administrative settlements. Additionally, the TCEQ cost shares (10 percent) with the EPA on many federal Superfund sites and this case would directly affect the agency's ability to recover some of those costs under CERCLA.

### Massachusetts v. E.P.A.

***549 U.S. 497, 127 S.Ct. 1438 (2007)***

**Case Summary:** This case challenged the EPA's denial of a petition for rulemaking requesting that the EPA issue standards to regulate greenhouse gas emissions from motor vehicles pursuant to Section 202 of the federal Clean Air Act. Under Section 202, the EPA is required to prescribe standards applicable to emissions of any air pollutants from new motor vehicles and their engines if they cause or contribute to air pollution that may reasonably be anticipated to endanger the public health or welfare. The EPA denied the petition. The D.C. Circuit Court of Appeals upheld the EPA's contention that it lacked statutory authority to regulate greenhouse gas emissions from motor vehicles. The U.S. Supreme Court reversed and remanded to the D.C. Circuit Court, finding that greenhouse gases fit within the Clean Air Act's definition of "air pollutant" and that the EPA does have statutory authority to regulate greenhouse gas emissions from new motor vehicles. However, before the EPA can regulate such emissions under Section 202, it must first decide whether the air pollutant under consideration may reasonably be anticipated to endanger the public health or welfare and then whether emissions of an air pollutant from new motor vehicles or engines cause or contribute to air pollution. The court concluded that if the EPA makes such a finding of endangerment, the Clean Air Act requires the agency to regulate greenhouse gas emissions. The court did not, however, reach the question of whether the EPA must make an endangerment finding, only that it must base "its reasons for action or inaction in the statute."

**Impact on the TCEQ:** As a result of this decision, the EPA issued proposed Endangerment and Cause or Contribute findings for greenhouse gases under Section 202(a) on April 24, 2009, and final findings on Dec. 15, 2009, determining: (1) that the current and projected concentrations of the six well-mixed greenhouse gases–carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride–in the atmosphere threaten the public health and welfare of current and future generations, and (2) that the combined emissions of these well-mixed greenhouse gases from new motor vehicles and new motor-vehicle engines contribute to the greenhouse gas pollution that threatens public health and welfare. However, in the determination,

the EPA recognizes that only four of the six greenhouse gases are emitted by Section 202 sources. Additionally, on Sept. 28, 2009, the EPA issued a proposed rulemaking to establish light-duty vehicle greenhouse gas emission standards, jointly with the National Highway Traffic Safety Administration's proposed corporate average fuel economy (CAFE) standards (74 Fed. Reg. 49454). The EPA anticipates a final rule in March 2010. While this proposed federal rule to regulate greenhouse gases from motor vehicles does not have a direct effect on the TCEQ since states (except California) are preempted from regulating motor vehicles, there is an issue as to whether the regulation of greenhouse gases from motor vehicles would result in extending the applicability of greenhouse gas regulation to other programs of the federal Clean Air Act, including permitting. At issue is the interpretation of the phrase "subject to regulation under the Act," which has undergone extensive analysis by the EPA Environmental Appeals Board and is addressed in a memo from a former EPA administrator. Based on the memo (regarding the Prevention of Significant Deterioration [PSD] Program), EPA regulations that require actual control of greenhouse gas emissions (e.g., the light-duty vehicles rules) would fall within the meaning of "subject to regulation under the Act" and therefore extend regulation of greenhouse gases to the PSD and Title V permitting programs. To address the significant number of relatively small sources that would be implicated under this interpretation, on Oct. 27, 2009, the EPA proposed the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (74 Fed. Reg. 55292). This proposed rule focuses greenhouse gas regulation on larger facilities, "tailoring" the PSD and Title V permitting programs to limit which facilities would be required to obtain such permits under proposed new applicability thresholds for greenhouse gases as well as setting a PSD significance level for greenhouse gas emissions.

On Feb. 16, 2010, Texas–on behalf of the Governor, the Commissioner of Agriculture, the Commissioner of the General Land Office, the TCEQ, and the Chairman of the Public Utilities Commission–filed a petition with the EPA to reconsider its finding of endangerment. At the same time, a petition for review of the finding was also filed by Texas in the U.S. Court of Appeals for the D.C. Circuit. Several other organizations and states filed similar petitions in the U.S. Court of Appeals. In the petition for reconsideration, Texas argues that the EPA administrator relied on flawed and legally unsupportable methodology of non-EPA scientists in reaching her decision finding that greenhouse gases from motor vehicles endanger public health and welfare. Texas cited several e-mails and other statements from scientists indicating that the research on climate change was flawed and outcome driven. Texas requests the EPA to conduct its own scientific assessment. These actions are pending.

### South Coast Air Quality Management District v. E.P.A.
***472 F.3d 882 (D.C. Cir. 2006), amended by 489 F.3d 1245 (D.C. Cir. 2007), cert. denied, 128 S.Ct. 1065 (2008)***

**Case Summary:** This case challenged the EPA's final eight-hour ozone National Ambient Air Quality Standards (NAAQS) Phase I Implementation Rule. Phase I addressed classifications, anti-backsliding provisions, one-hour ozone revocation, and other requirements for mandatory and discretionary control measures for the eight-hour ozone NAAQS. The court issued an opinion on Dec. 22, 2006, vacating and remanding the Phase I Rule. The court upheld the revocation of the one-hour ozone standard, but rejected the EPA's classification of certain areas under Subpart 1 of the federal Clean Air Act. Additionally, the court found that the anti-backsliding provisions of the Clean Air Act require that new-source-review provisions that applied under the one-hour ozone standard continue to apply under the eight-hour standard; fees under Section 185 of the Clean Air Act must be enforced under the one-hour standard; contingency plans under the one-hour standard must remain in place; and motor-vehicle emission budgets for the one-hour standard must be retained under the eight-hour standard. Upon rehearing, this opinion was limited to a partial vacatur and remand on June 7, 2007. The U.S. Supreme Court denied a petition for further review on Jan. 14, 2008.

**Impact on the TCEQ:** The decision partially vacating and remanding the EPA final rule will potentially require the TCEQ to develop and submit revised plans for attainment and maintenance of the eight-hour ozone NAAQS once the EPA responds to the vacatur and remand with additional guidance or rulemaking. Additionally, since the Houston-Galveston-Brazoria area did not attain the one-hour ozone standard by its attainment date of Nov. 15, 2007, Section 185 of the Clean Air Act requires penalty fees to be paid by major sources of volatile organic compounds and nitrogen oxides in the Houston-Galveston-Brazoria area (referred to as Section 185 fees).

The EPA released guidance regarding the Clean Air Act, Section 185, penalty fee on Jan. 5, 2010, indicating that states can submit equivalent alternative programs for EPA review to fulfill the fee obligation; and that no fee obligation program is required if a state can demonstrate that the area is attaining either the 1-hour or 1997 8-hour ozone standard due to permanent and enforceable control measures. Since the EPA has not proposed or adopted rulemaking regarding assessing fees, it is not possible to quantify the impacts to the TCEQ regarding anti-backsliding issues at this time.

### New Jersey v. E.P.A.

***517 F.3d 574 (D.C. Cir. 2008), cert. dismissed, 129 S.Ct. 1313 (2009), and cert. denied, 129 S.Ct. 1308 (2009)***

**Case Summary:** This case challenged both the delisting of power plants as subject to the hazardous air pollutant program and the creation of the Clean Air Mercury Rule (CAMR) that established standards of performance for mercury emissions from coal-fired power plants and created a cap-and-trade program to reduce mercury emissions. The court issued an opinion vacating both the delisting rule (finding that removing coal- and oil-fired power plants from the list of source categories was improper) and the CAMR (finding that the EPA's justification for rulemaking was unfounded). Since this ruling, the EPA has decided to develop emissions standards for power plants pursuant to the federal Clean Air Act, Section 112. Accordingly, on Feb. 6, 2009, the Department of Justice, on behalf of the EPA, requested that the U.S. Supreme Court dismiss the EPA's petition for certiorari in this case, which was granted on Feb. 23, 2009. Additionally on Feb. 23, 2009, the Supreme Court denied the Utility Air Regulatory Group's request to review the D.C. Circuit Court decision.

**Impact on the TCEQ:** The vacatur of both the delisting rule and the CAMR will procedurally affect the process for air quality permit application and review for power plants in Texas related to mercury. Applicants will be required to submit for review a case-by-case demonstration of maximum achievable control technology for mercury until the EPA finalizes mercury regulations for power plants on a source-category basis. Additionally, since the CAMR was vacated, the TCEQ will not be implementing the rule in Texas.

### BCCA Appeal Group, Texas Association of Business, and Texas Oil and Gas Association v. US EPA

***Stephen L. Johnson as EPA Administrator, and Richard Greene as EPA Region VI Regional Administrator Cause No. 3-08CV1491-G (U.S. Dist. Court, Northern District of Texas, filed Aug. 25, 2008)***

**Case Summary:** Plaintiffs filed suit against the EPA regarding the EPA's failure to perform its non-discretionary duty under the federal Clean Air Act to act (or, in some cases, fully act) on more than 30 air permitting rules adopted from approximately August 1993 to March 2007 by the TCEQ and its predecessor agencies. The issue is whether the EPA will approve these rules submitted by the TCEQ to the EPA as revisions to the State Implementation Plan (SIP), as required by the Clean Air Act. The majority of the rules are related to New Source Review (NSR) permitting. The case was settled with the parties agreeing to a schedule for EPA action on the rules by Dec. 31, 2013. On Oct. 19, 2009, the court entered an Order granting a Joint Motion to Stay Case, entering the previously lodged Consent Decree, which memorialized the settlement between the parties.

**Impact on the TCEQ:** For rules approved as SIP revisions by the EPA, there will be no impact on

the TCEQ. Any rules that the EPA disapproves as a SIP revision will not be a part of the TCEQ's approved permitting programs and will not be federally enforceable. Any disapproval will require the TCEQ to conduct additional rulemaking and make changes in implementation of the NSR permitting program to conform with requirements of the Clean Air Act. In addition, certain disapprovals can lead to sanctions unless the TCEQ timely corrects the deficiencies, which affects the state by the loss of highway funding and grant money.

### Blue Skies Alliance v. Johnson
***2008 WL 344750 (5th Cir. 2008)***

**Case Summary:** This case challenged the EPA's failure to determine whether the Dallas–Fort Worth (DFW) area failed to attain the one-hour ozone standard. Several environmental groups–including the Blue Skies Alliance, Downwinders at Risk, Public Citizen, and the Sierra Club–filed a citizen suit against the EPA. The plaintiffs alleged that the EPA failed to fulfill its non-discretionary duties to (1) find that DFW did not achieve attainment by the deadline of Nov. 15, 1999. for serious areas; (2) reclassify the DFW area to "severe" status; (3) act to disapprove all pending SIP submissions, including rate-of-progress and attainment demonstrations; and (4) identify obligations to meet all SIP requirements within 12 months. The State of Texas was an intervener and the case was settled except for the remaining issue, raised by the plaintiffs, regarding the state's liability for attorneys' fees incurred in the filing and settlement of the case. The fee request was nonspecific; however, the amount ranged between $50,000 and $75,000. On Aug. 10, 2006, the district court awarded attorneys' fees against the TCEQ, which appealed to the 5th Circuit Court of Appeals. The 5th Circuit issued an unpublished opinion on Feb. 7, 2008, reversing the award of attorneys' fees to Blue Skies Alliance because that organization did not achieve success against the TCEQ on the merits of the underlying case against the EPA.

**Impact on the TCEQ:** The state will not pay attorneys' fees to plaintiffs in this case, and was also awarded its costs of appeal. Future decisions regarding intervention should still be made cautiously, to mitigate the potential for attorney's-fee awards.

### North Carolina v. E.P.A.
***531 F.3d 896 (D.C. Cir. 2008)***

**Case Summary:** This case remanded the EPA's final Clean Air Interstate Rule (CAIR) that established a regional cap-and-trade program for nitrogen oxides and sulfur dioxide from electric-generating units to reduce emissions in 28 eastern states (including Texas) and the District of Columbia.

**Impact on the TCEQ:** The decision remanding the CAIR will affect how Texas develops and submits plans for demonstrating how the state is addressing the transport of fine particulate matter (PM 2.5) and ozone pollution to other states.

### Texas Commission on Environmental Quality v. The City of Uncertain, Texas
***206 S.W.3d 97 (Tex. 2006)***

**Case Summary:** The executive director issued an amended certificate of adjudication to the City of Marshall without public notice to add industrial use to its municipal use for its authorized diversion of 16,000 acre-feet from Cypress Creek. The City of Uncertain and other persons appealed to the Travis County District Court, arguing that they were affected persons and notice and an opportunity for hearing should be provided. The City of Marshall and the commission argued that, based on Texas Water Code, Section 11.122(b), no notice was required because Marshall did not request to take more water, to take water at a faster diversion rate, or to change the location of the diversion point. The district court reversed in favor of the plaintiffs and the Austin Court of Appeals affirmed. The City of Marshall and the commission filed a petition for review with the Texas Supreme Court. The supreme court issued an opinion on June 9, 2006, affirming in part and reversing in part. The court held that the TCEQ must make a record of its rulings on notice, and must consider the public interest in making this determination. The court stated

that, without the record, it could not decide whether notice had to be issued for this case, and remanded to the agency for further proceedings consistent with the opinion. The parties subsequently settled the case, so the TCEQ did not have to decide the notice issue as to this specific case.

**Impact on the TCEQ:** In January 2008, the commission held a work session to determine how to proceed after the Texas Supreme Court's decision. The commission decided to hear all of the applications that have been affected by this opinion in order to approve or disapprove the ED's decision on notice. Several applications have been heard by the commission concerning notice, and several others are being placed on future TCEQ commissioner agendas.

### National Cotton Council of America v. E.P.A.

***553 F.3d 927 (6th Cir. 2009), cert. denied by CropLife America v. Baykeeper, __ S.Ct. __, 2010 WL 596546 (2010) and cert. denied by American Farm Bureau Federation v. Baykeeper, __ S.Ct. __, 2010 WL 596547 (2010)***

**Case Summary:** On Nov. 27, 2006, the EPA issued a final rule on Aquatic Pesticide Applications, concluding that pesticides applied in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) are exempt from the permitting requirements under the Clean Water Act (CWA). The FIFRA program regulates the labeling and sale of pesticides. The rule clarified two specific circumstances in which a permit was not required to apply pesticides to or around water: (1) the application of pesticides directly to water to control pests, and (2) the application of pesticides to control pests that are present over or near water, where a portion of the pesticides will unavoidably be deposited to the water to target the pest. Environmental and industry groups filed petitions for review in every federal circuit, including the 5th.

The case was assigned to the 6th Circuit Court of Appeals. On Jan. 7, 2009, the court held that the final rule was not a reasonable interpretation of the CWA and vacated the rule. The EPA had argued that the residue from the application of pesticides was not discharged from a point source, meaning the residue cannot be subject to the permitting program because by the time it becomes a pollutant it is no longer from a point source. The court disagreed and said the pesticides originate from an applicator, which is a point source, and therefore a permit is required. The 6th Circuit held that CWA permits are required for all applications of biological and chemical pesticides that leave a residue in water when such applications are made in or over, or near, U.S. waters. The EPA estimates that the ruling will affect approximately 365,000 applicators that perform 5.6 million pesticide applications annually. On April 9, 2009, the EPA chose not to seek rehearing on the case. Instead, it filed a motion to stay issuance of the court's mandate for two years to allow the EPA time to develop, propose, and issue a final National Pollutant Discharge Elimination System (NPDES) general permit for pesticide applications, for states to develop permits, and to reach out to and educate the regulated community. On Feb. 22, 2010, the U.S. Supreme Court denied certiorari in this case.

**Impact on the TCEQ:** Since the U.S. Supreme Court denied certiorari in this case, the EPA can require the TCEQ to regulate pesticides under its NPDES delegation at least for "navigable water" of the United States. Although the Texas Department of Agriculture (TDA) currently regulates the use, application, licensing, labeling, registration, storage, and disposal of pesticides in Texas, the TCEQ has authority to regulate discharges of pollutants from a point source into any water in the state. This authority includes the authority to regulate aquatic pesticides classified as point-source pollutants by the 6th Circuit in this case. Finally, although there is overlapping jurisdiction between the TCEQ and the TDA on pesticide use, the TCEQ can be expected to have a more direct regulatory role in pesticide regulation in the state.

### American Petroleum Institute v. Johnson

***541 F.Supp.2d 165 (D.D.C. 2008)***

**Case Summary:** The U.S. District Court for the District of Columbia vacated the EPA's definition of *navigable waters* in the Spill Prevention, Control, and Countermeasure regulations (SPCC Rule), 40 CFR 112.

The regulations require certain oil-processing facilities to prepare a plan to prevent oil spills and provide countermeasures to address discharges of oil into "navigable waters." When the EPA amended the SPCC Rule in 2002, it adopted a broad definition of "navigable waters" that included all waters that "could affect interstate or foreign commerce," tributaries to those waters, and adjacent wetlands.

**Impact on the TCEQ:** The case has potentially broader implications under the Clean Water Act (CWA), since the EPA's regulatory definition of "navigable waters" under sections 402 and 404 of the CWA is the same language as the definition in the now-vacated SPCC Rule.

### Coeur Alaska, Inc. v. Southeast Alaska Conservation Council

***129 S.Ct. 2458 (2009)***

**Case Summary:** The issue in this case was whether the U.S. Army Corps of Engineers had the authority to issue Section 404(b) permits for discharge of dredge or fill material into waterways without satisfying the effluent requirements of Section 301(e) and Section 306(e) of the Clean Water Act. A divided U.S. Supreme Court held that the Corps has the authority to issue permits for discharging dredge or fill material into a waterway without establishing effluent limits.

**Impact on the TCEQ:** The TCEQ is responsible for Section 401 certification reviews of Corps Section 404 permits. This decision will potentially affect the TCEQ's Section 401 water quality certifications, especially where the Corps' attempts to impose effluent limits are inconsistent with either state or EPA requirements.

### Entergy Corp. v. Riverkeeper, Inc.

***129 S.Ct. 1498 (2009)***

**Case Summary:** This case involves the EPA's Phase II regulations governing cooling-water intake structures at certain large existing facilities. The EPA sets national performance standards requiring most Phase II facilities to reduce "impingement mortality for [aquatic organisms] by 80 to 95 percent from the calculation baseline," and requiring a subset of facilities to reduce entrainment of such organisms by "60 to 90 percent from [that] baseline." However–

> [the] EPA expressly declined to mandate closed-cycle cooling systems, or equivalent reductions in impingement and entrainment, as it had done in its Phase I rules, in part because the cost of rendering existing facilities closed-cycle compliant would be nine times the estimated cost of compliance with the Phase II performance standards, and because other technologies could approach the performance of closed-cycle operation. The Phase II rules also permit site-specific variances from the national performance standards, provided that the permit-issuing authority imposes remedial measures that yield results as close as practicable to the applicable performance standards.

The court in this case determined that Section 316(b) of the Clean Water Act, which authorizes the EPA to regulate cooling-water intake structures at power plants, does not prohibit the EPA from engaging in cost-benefit analysis. The court held that the EPA permissibly relied on cost-benefit analysis in setting the national performance standards for cooling-water intake structures at power plants and in allowing for cost-benefit variances from the standards for existing power plants.

**Impact on the TCEQ:** The ruling in this case offers guidance regarding the use of cost-benefit analysis by environmental agencies such as the TCEQ. It suggests that agencies may consider the costs and benefits of various technologies in setting best-available-technology standards for minimizing adverse environmental impacts, unless the applicable statute explicitly instructs otherwise.

### Friends of the Earth, Inc. v. EPA et al.

***446 F.3d 140 (C.A.D.C. 2006)***

**Case Summary:** This case poses the question whether the word *daily*, as used in the Clean Water Act, is sufficiently pliant to mean a measure of time other than once per day. Specifically, the EPA took the position that Congress, in requiring the establishment of "total maximum daily loads" (TMDLs) to cap

effluent discharges of "suitable" pollutants into highly polluted waters, left room for the EPA to establish seasonal or annual loads for those same pollutants. The U.S. Court of Appeals for the District of Columbia held that "daily means daily, nothing else." The EPA has since produced a memorandum titled "Establishing TMDL 'Daily' Loads in Light of the Decision by the U.S. Court of Appeals for the D.C. Circuit in *Friends of the Earth, Inc. v. EPA, et al.,* No. 05-5015 (April 25, 2006) and Implications for NPDES Permits," to clarify the EPA's expectations in light of the court's decision.

**Impact on the TCEQ:** The TCEQ is responsible for the development and adoption of TMDLs in Texas and will need to ensure that future TMDLs meet all applicable requirements. The TCEQ is also the agency responsible for administering the National Pollutant Discharge Elimination System in Texas and for issuing Texas Pollutant Discharge Elimination System (TPDES) permits pursuant to that program, and thus will need to ensure that future permits meet the applicable TMDL requirements.

### Friends of the Everglades v. South Florida Water Management District
***570 F.3d 1210 (11th Cir. 2009)***

**Case Summary:** The issue was whether the transfer of water from one navigable body of water to another is a "discharge of a pollutant" within the meaning of the Clean Water Act, requiring an NPDES permit. While the case was still pending, the EPA promulgated its NPDES Water Transfers Rule, which directly addressed the question presented in the case. In promulgating that rule, the EPA explained that it wanted to clarify that water transfers are not subject to regulation under the NPDES permitting program. The rule defines water transfers as an activity that conveys or connects waters of the United States without subjecting the transferred water to intervening industrial, municipal, or commercial use [NPDES Water Transfers Rule, 73 Fed. Reg. 33,697–708 (June 13, 2008) [codified at 40 CFR 122.3(i)]. The Court of Appeals noted that the EPA's regulation was entitled to deference if it was a reasonable construction of an ambiguous statute. The court concluded that the statutory language was ambiguous and moved on to consider whether the EPA's regulation, which accepts the "unitary waters theory" that transferring pollutants between navigable waters is not an "addition . . . to navigable waters," was a permissible construction of that wording. The court concluded that the EPA's regulation adopting the "unitary waters theory" was reasonable, and therefore a permissible construction, and that unless the EPA rescinds or Congress overrides the regulation, the court must give effect to it.

**Impact on the TCEQ:** Based on current regulation, the agency will not be required to issue TPDES permits to persons who wish to move water from one stream to another.

### South Florida Water Management District v. Miccosukee Tribe of Indians
***541 U.S. 95, 124 S.Ct. 1537 (2004)***

**Case Summary:** The case involved the flood control and pumping operations of a water-management district within Florida's Everglades. The 11th Circuit Court of Appeals had affirmed the district court's ruling that the pumping station between two canals required an NPDES permit. The case was appealed to the U.S. Supreme Court and in 2003, the State of Texas filed an amicus brief supporting the South Florida Water Management District based on the premise that state law controls water-right allocations. The U.S. Supreme Court held that a point source as defined by the Clean Water Act would not be exempt from NPDES permit requirements, because it did not itself add pollutants. The supreme court remanded the case to the district court and invited the parties to address the "unitary water theory," which suggests that the discharge of unaltered water from one navigable water body to another would not require an NPDES permit because the definition of *navigable waters* includes all waters of the United States. The proceedings in this case were stayed pending appeal of the judgment in *Friends of the Everglades v. South Florida Water Management District* (a related action described above, involving

similar parties). The stay order was appealed, but the court ruled that it lacked jurisdiction to hear the appeal of the district court's stay order.

**Impact on the TCEQ:** The TCEQ is monitoring the *Friends of the Everglades* case to assess the impact of this issue on TPDES permitting.

### Natural Resources Defense Council v. U.S. E.P.A.
***542 F.3d 1235 (9th Cir. 2008)***

**Case Summary:** The issue in this case was whether the EPA has a "nondiscretionary duty" to promulgate effluent limitation guidelines (ELGs) (which could include numerical limits on the sediment in storm water runoff) and new-source performance standards (NSPSs) for storm water pollution discharges caused by the construction and development industry. The 9th Circuit held that the language of the Clean Water Act, when viewed in its entirety, makes it clear that the Congress intended the promulgation of ELGs and NSPSs to be mandatory once a point-source category was listed in a plan published in the *Federal Register*.

**Impact on the TCEQ:** This could potentially affect how the agency regulates storm water related to construction and development activities. Runoff from construction is currently regulated under the TCEQ's construction general permit. When the EPA adopts ELGs and NSPSs for construction storm water, the TCEQ may be required to update its rules and revise its construction general permit to be consistent with the EPA's standards.

### Northern Plains Resource Council v. Fidelity Exploration and Development Corp.
***325 F.3d 1155 (9th Cir. 2003)***

**Case Summary:** In this case, the 9th Circuit held that the discharge of unaltered groundwater into surface water required an NPDES permit, reasoning that, because the groundwater altered the quality of the receiving water, it was a pollutant. At issue was whether unaltered groundwater produced from the coalbed methane extraction process was a "pollutant" under the Clean Water Act, and, if so, whether Montana state law could exempt that water from the CWA's permitting requirements for discharge of a pollutant. The 9th Circuit concluded that the water was a pollutant subject to regulation under the CWA. Looking at the plain language of the statute, the court reasoned that the water was a pollutant because it was an industrial waste, even though it was unaltered groundwater, since *industrial waste* includes "any useless byproduct derived from the commercial production and sale of goods and services." The court also determined that the water was a "pollutant" under EPA regulations governing "produced water," even if extraction did not add any pollutants to the water. The court focused on the effect of the discharge on the receiving water, citing the CWA's "antidegradation policy," and found that discharge of the water caused pollution under the CWA because it altered the quality of the receiving water. The court explained that the CWA's requirement that the physical, biological, or chemical integrity of the water be a "man-induced" alteration refers to the effect of the discharge on the receiving water; it does not require that the discharged water itself be altered by humans. After concluding that the discharge of unaltered groundwater was subject to regulation under the CWA, the court concluded that neither the EPA nor the state of Montana had authority to exempt discharges otherwise subject to the CWA, because only Congress may amend the CWA to create exemptions from regulation.

**Impact on the TCEQ:** This case has the potential to affect the types of discharges that require authorization under a TPDES permit issued by the TCEQ. Although the RRC regulates discharges associated with oil, gas, and geothermal exploration and development in Texas, this opinion is broad enough to encompass discharges of unaltered groundwater into surface water. Parties whose operations involve infiltrated or extracted groundwater that will be discharged into waters of the state may need to obtain a TPDES permit if the discharge affects the chemical, physical, or biological integrity of the receiving waters. This could become an issue if the agency receives an application from a regulated entity, not subject to RRC jurisdiction, for a permit to discharge unaltered groundwater into surface water.

### Northwest Environmental Advocates v. U.S. E.P.A.
***537 F.3d 1006 (9th Cir. 2008)***

**Case Summary:** This case involved a challenge to a regulation promulgated by the EPA in 1973, which exempted certain marine discharges from the permitting scheme of the Clean Water Act, sections 301(a) and 402. The district court concluded that the EPA had exceeded its authority under the CWA in exempting these discharges from permitting requirements and vacated the rule. The 9th Circuit Court of Appeals affirmed the decision of the district court. In response to the court's decision, the EPA issued its 2008 Vessel General Permit (VGP), which regulates discharges incidental to the normal operation of vessels operating as means of transportation.

**Impact on the TCEQ:** There may be overlapping jurisdiction between the VGP and the TCEQ boat sewage disposal statute and rules. The VGP may have implications for vessels operating in state waters in the Gulf of Mexico. The 81st legislative session enacted SB 2445, which expanded the definition of "surface water in the state" for purposes of boat sewage disposal. The agency is currently undertaking rulemaking to implement SB 2445.

### The Piney Run Preservation Association v. County Commissioners of Carroll County, Md.
***523 F.3d 453 (4th Cir. 2008), cert. denied, 129 S.Ct. 258 (U.S. Oct. 6, 2008) (No. 08-96)***

**Case Summary:** The association filed suit alleging that county commissioners violated the Clean Water Act by discharging treated wastewater into a stream that exceeded the thermal limitation set forth in the county's NPDES permit. The 4th Circuit Court of Appeals held that, because the Maryland Department of the Environment was diligently pursuing an enforcement action against a county for violating the thermal limitation set forth in its NPDES permit for its wastewater treatment plant, the association was precluded from bringing a citizen suit against the county under the CWA. In its analysis of the arguments, the court noted that the CWA enforcement prosecutions will ordinarily be considered "diligent" if the judicial action "is capable of requiring compliance with [the CWA] and is in good faith calculated to do so," and further observed that there is a presumption of diligence arising from an agency enforcement action.

**Impact on the TCEQ:** The ability to file a citizen suit under the CWA where the TCEQ is diligently pursuing an enforcement action for the same violation is precluded by this case.

### Rapanos v. U.S.
***547 U.S. 715, 126 S.Ct. 2208 (2006)***

**Case Summary:** This case addressed the scope of the U.S. Army Corps of Engineers' authority to regulate navigable waters under Section 404 of the Clean Water Act (CWA). The case resulted in a plurality opinion, with two tests for determining whether certain waters are jurisdictional waters for purposes of Section 404(b) of the CWA. The plurality held that, due to the difficulty involved in drawing the line between wetlands and traditional navigable waters, "waters of the United States" includes those wetlands with a continuous surface connection to bodies that are "waters of the United States" in their own right. Justice Kennedy's concurring opinion set forth a "significant nexus" test, which states that if a water body substantially affects the physical, chemical, and biological integrity of the navigable water body, then it is jurisdictional.

**Impact on the TCEQ:** This holding addresses the scope of waters covered under the definition of *waters of the United States*. The TCEQ is the agency charged with implementing Texas' Surface Water Quality Standards, as required by the CWA. Texas wetlands play an important role in protecting surface water quality in Texas. Many of Texas' streams and associated wetlands are non-navigable and as such may not be federal jurisdictional water, depending on whether they are adjacent to jurisdictional wetlands. Corps of Engineers jurisdictional determinations for wetlands may affect the chemical, physical, and biological integrity of downstream navigable waters, and may require adjustments to TCEQ water quality planning. The TCEQ is responsible for conducting

Section 401 water quality certifications of the Corps Section 404 permits for discharge of dredged or fill material into waters of the United States, including wetlands. The purpose of these reviews is to determine whether a proposed discharge will comply with state water quality standards. The determination of whether certain waters are jurisdictional will determine which permits require these certifications.

### S.D. Warren Co. v. Maine Board of Environmental Protection
***547 U.S. 370 (2006)***

**Case Summary:** Under Section 401 of the federal Clean Water Act, companies must obtain state approval of any activity that may result in a discharge into navigable waters. In this case, the U.S. Supreme Court ruled that operation of a dam to produce hydroelectricity may result in a "discharge" into the navigable waters of the United States for purposes of Section 401 of the Clean Water Act, and accordingly a federal license for such a dam requires state certification that the dam will not violate water-protection laws.

**Impact on the TCEQ:** The TCEQ is the agency responsible for conducting Section 401 water quality certification reviews. This case requires the TCEQ to perform certification reviews for dam operations. Note that, under TCEQ rules, Section 401 certification may be waived.

### Waterkeeper Alliance, Inc. v. E.P.A.
***399 F.3d 486 (2d Cir. 2005)***

**Case Summary:** The case involved an environmental group's challenge to EPA rules regarding concentrated animal feeding operations (CAFOs). The 2nd Circuit vacated a portion of EPA rules that allowed a permitting authority to issue CAFO permits without reviewing the nutrient management plans (NMPs) and without including the NMP terms in the permit. Also, the 2nd Circuit found that the rules must expressly allow for a public meeting and for public input on the NMPs. In addition, the 2nd Circuit found that the Clean Water Act prevents the EPA from imposing on CAFOs the obligation to seek an NPDES permit or to demonstrate that there is no potential for discharge.

**Impact on the TCEQ:** Currently, all CAFO operations are required to have NMPs. TCEQ reviews the NMPs prior to issuing authorization under the CAFO general permit and for individual CAFO permits. In addition, the current general permit allows for a public meeting for new or expanding CAFOs if significant public interest exists, but not for existing CAFOs. The EPA promulgated revised regulations addressing the court's decisions in *Waterkeeper*, which became effective on Dec. 22, 2008. These regulations revised the NPDES permitting requirements (40 CFR 122) and Effluent Limitations Guidelines and Standards (40 CFR 412) for CAFOs. The executive director is proposing rules to address the outcome in the *Waterkeeper* case that would require (1) an NMP to be included in permit applications; (2) permitting authorities to review the NMPs and give the public an opportunity for meaningful review and comment; (3) incorporation of the terms of the NMP into the NPDES permit; and (4) establishment of a list of substantial changes to the terms of facilities' NMPs, thus triggering permit modification and public notice. The rules would change the provision that allowed CAFOs to use a 100-year, 24-hour containment structure to fulfill the "no discharge" requirement for new-source swine, veal-calf, and poultry operations. This was replaced with a requirement that the facility demonstrate through a rigorous modeling analysis that it has designed a containment system that will comply with the "no discharge" requirement. The agency is currently working with stakeholders to develop language for a proposed rule addressing a new-source performance standard for new swine, veal-calf, and poultry operations.

## Pending Cases

### Edwards Aquifer Authority v. Day
***274 S.W.3d 742 (Tex. App.–San Antonio 2008, writ granted)***

**Case Summary:** This case is an appeal of the denial of an application to the Edwards Aquifer Authority (EAA) to pump water for irrigation. The Days had

requested approximately 700 acre-feet of groundwater for irrigation. An administrative law judge recommended that a permit be issued for only 14 acre-feet of groundwater because the groundwater that was pumped from the well, to a ditch, and then sent into a lake before it was pumped out on the fields became state water not regulated by the EAA. The 14 acre-feet of groundwater that was allowed went from the well, to a ditch, straight to the fields. The EAA issued this ruling in a final order. The issues were whether the groundwater became state water when it entered the watercourse, and whether Day had a vested right in the groundwater that could be the subject of a "taking." In the trial court, both sides filed motions for summary judgment. The trial court granted the Days' motion and reversed and remanded to the EAA to issue permits in a larger amount (the amount to irrigate 150 acres of land), finding that the groundwater that went in the lake was still groundwater. The trial court did not grant the EAA's motion for summary judgment on the Days' "takings claims," in which it had argued that the Days did not have a vested right to the groundwater. The court of appeals held that the water became surface water when it entered the watercourse and that the Days did have a vested right to the groundwater under their land. The court remanded to the EAA to render judgment affirming the EAA's final order. Both parties filed a petition for review in the Texas Supreme Court in February 2009. Additionally, the State of Texas filed a Response to the Petition for Review on May 20, 2009, on the specific issue of the legal status of groundwater and when it is considered state surface water for the purpose of administering water rights. The case was argued in the Texas Supreme Court on Feb. 17, 2010.

**Impact on the TCEQ:** If the Texas Supreme Court reverses the court of appeals' ruling that the groundwater became surface water when it enters the watercourse, that outcome could affect the TCEQ. Current policy is that groundwater becomes surface water when it enters a watercourse, except for groundwater-based effluent being reused pursuant to the Texas Water Code.

### U.S. Bureau of Reclamation v. Elephant Butte Irrigation District

***No. CV 97-0803 (D.N.M. filed 1997)***

**Case Summary:** The U.S. Bureau of Reclamation sued the State of New Mexico, the Elephant Butte Irrigation District, El Paso County Water Improvement District No. 1, and the City of El Paso, claiming that the water in Elephant Butte Reservoir belongs to the bureau. The State of Texas moved to intervene. The federal district court dismissed the case and all counterclaims. The bureau and El Paso Water Improvement District No. 1 appealed, and the case was heard in November 2001. The 10th Circuit, in *United States v. City of Las Cruces* (2002), abated the bureau's suit and held that the states should have adjudicated this issue first before the federal court became involved. The TCEQ has completed adjudicating the Upper Rio Grande Basin. However, New Mexico's adjudication is ongoing.

**Impact on the TCEQ:** An agreement or court ruling that limits the State of Texas' ownership or right to regulate water in the bureau's reservoirs could make the state subject to federal administration of water rights in Elephant Butte.

### Southeast Region and Southwest Region v. Texas Commission on Environmental Quality

***No. D1-GN-08-004466 (353rd Dist. Ct. Travis County, Tex., filed Dec. 12, 2008)***

**Case Summary:** The petition challenges the TCEQ's final decision in the AquaTexas rate case. The petition alleges that the commission erred when it found that AquaTexas had adequately demonstrated that its water and wastewater systems were substantially similar within the meaning of Section 13.145 of the Texas Water Code (TWC).

**Impact on the TCEQ:** A reversal of the TCEQ's interpretation of TWC Section 13.145 could limit the ability of multisystem utilities to consolidate systems for rate making and could increase the number of rate applications filed with the TCEQ each year.

### Flagship Hotel, Ltd. v. City of Galveston

***No. D-1-GN-09-000651 (250th Dist. Ct., Travis County, Tex., filed March 12, 2009)***

**Case Summary:** Flagship appealed the commission's decision to dismiss its attempt to seek refund of payments made to the City of Galveston for water service. Flagship is an in-city customer of the Galveston municipally owned water system. The TCEQ has historically maintained that it has no jurisdiction to review billing disputes involving in-city customers of municipally owned utilities.

**Impact on the TCEQ:** A reversal of the TCEQ's dismissal by this court could result in a significant number of billing disputes filed with the TCEQ by in-city customers.

### NWEA v. Gutierrez

***No. 3:09-cv-17 (D. Or. filed Jan. 6, 2009)***

**Case Summary:** This case relates to Oregon's coastal nonpoint-source pollution-control plan under the Coastal Zone Act Reauthorization Amendments of 1990. On Dec. 19, 2008, the Northwest Environmental Advocates (NWEA) submitted to the National Oceanic and Atmospheric Administration (NOAA) and the EPA a notice of intent to sue if the agencies could not prove that they consulted under Section 7 of the Endangered Species Act when conditionally approving and fully funding Oregon's Coastal Nonpoint Pollution Control Program. On Jan. 6, 2009, the NWEA filed suit against NOAA and the EPA for, among other things: (1) not having the authority to conditionally approve Oregon's program and (2) failing to penalize Oregon for not developing an approved program by withholding funding under Section 306 of the Coastal Zone Management Act and Section 319 of the Clean Water Act. The CZMA is the enabling statute that encourages the protection, development, restoration, and enhancement of natural coastal resources, while the Coastal Zone Reauthorization Act reauthorizes the CZMA and adds a new requirement for states that have approved coastal-zone management programs to develop and implement coastal nonpoint control programs (CNPs).

**Impact on the TCEQ:** As a result of this lawsuit, the court could force NOAA and the EPA to formally disapprove Oregon's program and administer penalties. This lawsuit may affect the other 12 states with conditional approvals, including Texas. The court could also require NOAA and the EPA to undergo formal consultation on the Endangered Species Act for Oregon's CNP, which would set a precedent for all 34 other states with CNPs, including Texas.

### Kendall County Utility Company v. TCEQ

***No. D-1-GN-09-003254 (126th Dist. Ct., Travis County, Tex., filed Sept. 25, 2009)***

**Case Summary:** In 2009, the Kendall County Utility Company (Kendall County) sued the TCEQ, challenging the issuance of a TPDES permit to Lerin Hills. Lerin Hills had applied for a new TPDES permit in spring 2006. Kendall County and several persons contested the permit, and the TCEQ referred it to the State Office of Administrative Hearings (SOAH) for a contested case hearing. The administrative law judge recommended that the TCEQ deny the permit on the grounds that Lerin Hills had not proved that the discharge would satisfy the TCEQ's antidegradation policy. The TCEQ reversed the administrative law judge's findings and conclusion of law relating to surface water quality because the judge misapplied the TCEQ's policies and rules related to antidegradation. On appeal, Kendall County argues that the TCEQ erred by: (1) denying party status to several protestants; (2) failing to refer regionalization as an issue to SOAH; (3) deleting relevant findings of fact; (4) adding to or reversing the administrative law judge's conclusions of law; (5) changing the administrative law judge's ordering provisions; and (6) violating the Open Meetings Act, because the TCEQ's Explanation of Changes was not discussed in an open meeting.

**Impact on the TCEQ:** The outcome of this case may affect how the agency determines who is an "affected person" for purposes of referring a case to the SOAH for contested case proceeding. The TCEQ's interpretation and implementation of the antidegradation requirements in the Texas Surface Water Quality

Standards are being challenged in this case as well. Antidegradation review is central to water quality permitting at the TCEQ. Currently, the agency uses narrative criteria for nutrients such as phosphorus. In *Kendall County*, the protestants are urging the court to require the agency to use quantitative (numeric) criteria for nutrients. If the court agrees with their argument, it would affect the way the agency has historically implemented the Texas Surface Water Quality Standards.

### Hays Community Action Network and Barbara Stroud v TCEQ

***No. D-1-GN-09-001773 (201st Dist. Ct., Travis County, Tex.. filed June 3, 2009)***

**Case Summary:** In June 2009, the Hays Community Action Network (CAN) and Barbara Stroud sued the TCEQ, alleging that the commission should not have adopted the administrative law judge's proposal for decision on the application by Hays County WCID No. 1 for a wastewater permit and should not have issued the permit. Specifically, Hays CAN and Barbara Stroud (a downstream landowner) filed a petition for review alleging that (1) the commission made its decision to issue the permit as a result of an unlawful procedure by allowing the applicant to introduce previously undisclosed expert opinion evidence and calculations in support of the permit as modified by the non-unanimous settlement agreement; (2) the commission's decision to issue the permit is not supported by evidence in the record; (3) the commission made an error of law by allowing the applicant to introduce evidence of settlement negotiations; (4) the commission committed an error of law and procedure by failing to require the applicant to establish an important social or economic justification for degradation; and (5) the commission employed the incorrect aquatic-life use for the receiving water.

**Impact on the TCEQ:** The outcome of this case may affect how the agency interprets and implements the antidegradation requirements in the Texas Surface Water Quality Standards. The decision may also address the inclusion of a settlement agreement in a commission-issued permit.

### City of Aspermont v. Rolling Plains Groundwater Conservation Dist., 258 S.W. 3d 231

***(Tex. App.–Eastland 2008, writ requested)***

**Case Summary:** Rolling Plains filed suit against Aspermont after the city failed to file monthly reports and refused to pay export fees for the water that it transported out of the district. Rolling Plains sought to recover monetary damages in the form of fees and penalties for each day of violation as well as attorney's fees and costs. It also sought declaratory relief from the court to order that Aspermont was subject to and must comply with the water conservation rules and regulations. Aspermont filed a plea to the jurisdiction and urged sovereign immunity. The trial court denied the plea to the jurisdiction.

In the sole issue on appeal, Aspermont argued that the trial court erred in denying its plea to the jurisdiction and again urged its claim of sovereign immunity. Sovereign immunity bars a suit against the state or its political subdivisions unless immunity has been waived or the Legislature has expressly consented to the suit, which it may do by statute or resolution. Rolling Plains contended that immunity was waived by statute and by the regulatory nature of the case. In deciding the case, the court looked to the enabling statutes and subsequent legislation and found that there were no provisions in TWC Chapter 36 or in the enabling statutes for the groundwater conservation district that clearly and unambiguously waived the immunity of a municipality from suit for monetary damages. However, the court also found that the city was not immune from a suit that sought prospective relief in the form of a declaratory judgment, injunction, or mandamus relief that would force the city to comply with statutory regulations in the future. In so holding, the court reversed the trial court's order denying the plea to the jurisdiction regarding money damages for past-due fees, penalties, attorney's fees, and costs, but affirmed that portion of the order denying the plea to the jurisdiction as to the causes of action seeking a construction of the applicable legislation and a declaration that the city was subject to and must comply with the applicable rules and regulations.

**Impact on the TCEQ:** If the Texas Supreme Court decides to grant the writ for review of the Eastland court's decision, the outcome of that holding could affect the TCEQ's authority to seek administrative or civil penalties against municipalities, although the TCEQ would assert that its statutory authority to pursue enforcement is distinguishable.

### Sierra Club v. Texas Commission on Environmental Quality

***Travis County Court cases relating to low-level and by-product radioactive waste. Specifically, two separate petitions regarding the by-product license: (1) Cause No. D-1-GN-08-002299 (filed July 1, 2008); and (2) Cause No. D-1-GN-08-00302 (filed Aug. 20, 2008). There are four separate petitions filed regarding the low-level radioactive disposal license: (1) Cause No. D-1-GN-09-000660 (filed March 5, 2009); (2) Cause No. D-1-GN-09-000894 (filed March 26, 2009); (3) Cause No. D-1-GN-09-003492 (filed Oct. 9, 2009); and (4) Cause No. D-1-GN-09-004020 (filed Dec. 4, 2009).***

**Case Summary:** In regard to the by-product license, the Sierra Club filed petitions against the TCEQ following the approval of the application by Waste Control Specialists LLC for a radioactive material license authorizing disposal of by-product material. The Sierra Club claims that the TCEQ's denial of the Sierra Club members' requests for a contested case hearing and issuance of the new by-product radioactive material license was legal error. The judge issued an order in June 2009 upholding the TCEQ's decision to deny the Sierra Club's request for a contested case hearing, but the Sierra Club filed a motion to reconsider the judge's decision. The judge considered Sierra Club's motion and the TCEQ's pending special exceptions, Plea to the Jurisdiction, and Motion to Dismiss in July 2009. The TCEQ is awaiting the judge's decision.

In regard to the low-level radioactive (LLRW) disposal license, the Sierra Club filed these petitions against the TCEQ following the TCEQ's issuance of the LLRW disposal license. The executive director signed the license in September 2009 after satisfaction of the real property ownership demonstration required in the commission's January 2009 order. In general, all four petitions relate to more administrative procedural law, rather than substantive issues regarding radioactive materials, such as determinations of the "affected person" for standing, the denial of the Sierra Club's hearing request, and related issues and approval of the license authorizing disposal of low-level radioactive waste.

Specifically, the Sierra Club claims 22 legal errors, including: (1) determining that the Sierra Club is not an affected person entitled to a contested case hearing; (2) determining that the Sierra Club did not meet requirements for the hearing request of a group or association; (3) determining that the Sierra Club did not have a member who is an affected person; (4) determining that WCS met the requirements of Texas Health and Safety Code, Section 401, and 30 Texas Administrative Code, Chapter 336; and (5) issuing an order that lacks finality in that it conditionally grants the license and the license includes conditions that require resolution before construction of the facilities. The Sierra Club intends to consolidate the last suit with the other lawsuits previously filed.

**Impact on the TCEQ:** The outcome of these cases could affect how the TCEQ refers a case to the State Office of Administrative Hearings for a contested case proceeding. Specifically, the TCEQ's interpretation and implementation of the requirements for a contested case hearing and the issuance of radioactive materials licenses in Texas are being challenged. The agency used criteria found in the procedural rules in Chapter 5 of the Texas Water Code and Chapter 55 of Title 30 of the Texas Administrative Code, such as justiciable interest and the impact of the regulated activity on the requestor of the administrative hearing. The Sierra Club is countering with the definition of "person affected" in Chapter 401 of the Texas Health and Safety Code. If the court agrees with the Sierra Club argument, it would affect the way the TCEQ issues licenses and processes major amendments of radioactive material licenses.

# Part III

## Current Activities & Opportunities for Improvement

AIR QUALITY ISSUES

WATER QUALITY ISSUES

WASTE ISSUES

OTHER KEY ISSUES

# Air Quality Issues

The TCEQ develops measures to control air pollution and meet the requirements of the federal Clean Air Act (CAA). These efforts include a thorough stakeholder process that involves citizens and local, state, and federal entities. If the state fails to submit and implement a federally approvable State Implementation Plan (SIP), the U.S. Environmental Protection Agency (EPA) can apply sanctions, including emissions offsets for new or modified stationary sources and a disruption of federal highway funding. The EPA can also implement a Federal Implementation Plan that could contain federally initiated control measures.

## National Ambient Air Quality Standards (NAAQS)

Since the early 1970s, the EPA has delegated to Texas the responsibility to monitor for compliance with the National Ambient Air Quality Standards (NAAQS). The NAAQS were established to protect the public from exposure to harmful amounts of the following six air pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, respirable particulate matter, and sulfur dioxide. The EPA is required to review each criteria pollutant every five years to determine if the health-based standard is sufficient to protect public health. Because of the review timeline for the criteria pollutants, attaining the standards and developing the plans will continue to get more difficult in the future as standards are lowered. For Texas, this may be even more challenging because of the projected population growth, existing background levels, and pollution from other states and countries. According to the Texas Data Center and the Office of the State Demographer, the population of Texas will increase by 71.5 percent between 2000 and 2040, or from 20.9 million to 38.5 million. As standards are lowered, it will become even more difficult to reduce emissions because of background emissions that are already in existence and emissions that move into the state that are beyond our control. Attaining the ozone standard has been the biggest air quality challenge in Texas so far, and the future will offer additional challenges.

## Revisions to the NAAQS

### 1997 $PM_{2.5}$ Standard

On Oct. 8, 2009, the EPA sent a letter to the governor concerning violations of the annual $PM_{2.5}$ standard at the Clinton Drive monitor in Harris County for the design value years of 2006 through 2008. The preliminary design value for 2007 through 2009 is 14.1 micrograms per cubic meter (µg/$m^3$), below the standard of 15 µg/$m^3$. On Jan. 20, 2010, the TCEQ sent certified quality-assured 2009 data for the three Harris County monitors to the EPA, which all report arithmetic means below 13 µg/$m^3$. On Feb. 4, 2010, the governor submitted to the EPA a recommendation that Harris County remain designated as attainment for the 1997 annual $PM_{2.5}$ standard of 15 µg/$m^3$. On April 29, 2010, the EPA regional administrator signed a letter stating that he concurred with the governor's recommendation that Harris County remain in attainment for $PM_{2.5}$.

### 2006 Fine Particulate Matter ($PM_{2.5}$) Standard

On Dec. 18, 2006, the EPA revised the 24-hour $PM_{2.5}$ NAAQS to 35 micrograms per cubic meter. On Dec. 18, 2007, the governor submitted to the EPA his recommendation that all areas of Texas meet the revised standard. On Dec. 22, 2008, the EPA sent a letter to the governor confirming that all areas in Texas are in attainment for the 24-hour $PM_{2.5}$ standard.

### 2008 Lead Standard

On Oct. 15, 2008, the EPA lowered the NAAQS primary standard for lead from 1.5 to 0.15 micrograms of lead per cubic meter of ambient air. The secondary standard was revised to be identical in all respects to the primary standard. On Oct. 14, 2009, the governor sent the state's nonattainment area recommendation to the EPA. The state recommended nonattainment designation for an area of approximately 2.5 square miles, which is slightly larger than the existing lead maintenance area, in the vicinity of the Exide battery recycling facility in Frisco (Collin County), and designations of attainment/unclassifiable for the remaining

portions of the county and state. Final designations will be effective no later than January 2011 for areas with sufficient monitoring data and January 2012 for areas without sufficient monitoring data (areas currently without monitors that will require new source-oriented monitors). Attainment demonstration SIP revisions will be due to the EPA by June 2012 for areas with effective nonattainment designations of January 2011, and by June 2013 for areas with effective nonattainment designations of January 2012.

The 2008 lead standard also included a requirement for an expanded monitoring network. The rule requires states to operate monitors near sources that may contribute to or cause lead concentrations in ambient air to exceed the lead standard. At a minimum, there must be one source-oriented monitor near each lead source that emits 1.0 or more tons per year of lead, unless states can demonstrate that the source will not cause or contribute to a maximum concentration of lead in air in excess of 50 percent of the lead standard. States were required to have new monitors in place and operating by Jan. 1, 2010. The rule also requires states to install and operate non-source-oriented monitors by Jan. 1, 2011, in core-based statistical areas with populations equal to or greater than 500,000 people.

The TCEQ submitted comments on the proposed standard, stressing that there are multiple pathways for lead exposure, including food, consumer products, paint in old housing, and ambient air. Because there are multiple pathways, meeting a NAAQS for lead, no matter how low the standard is, cannot ensure protection of public health from lead toxicity. Instead, a NAAQS for lead is only one of a number of risk-reduction steps that must be taken to protect public health. The TCEQ encouraged the EPA to select a reasonable level that would not divert public-health resources from more effective efforts to reduce public exposure to the main sources of potential lead poisoning, which are paint in houses, consumer products, and contaminated soil.

On June 15, 2010, the EPA sent a letter to Texas Gov. Rick Perry notifying that the EPA intends to designate the portion of Collin County recommended by Texas as nonattainment for the 2008 NAAQS for lead. The EPA's letter is in response to the designation and boundary recommendation Texas submitted to the EPA on Oct. 14, 2009. The EPA's final designations are expected Oct. 15, 2010.

## 2010 Nitrogen Dioxide Standard

On Feb. 9, 2010, the EPA published the final rule in the *Federal Register* to strengthen the primary NAAQS for nitrogen dioxide ($NO_2$). The rule establishes a new one-hour $NO_2$ standard at 100 parts per billion (ppb). The new standard focuses on short-term exposures to $NO_2$, which are generally highest on or near major roadways. Currently, no area in Texas monitors above the 100 ppb standard. The EPA is retaining the current annual average $NO_2$ standard of 53 ppb. The EPA is changing the monitoring network to capture both peak $NO_2$ concentrations that occur near roadways and community-wide $NO_2$ concentrations. Approximately 126 new $NO_2$ monitoring sites will be placed near major roads in 102 urban areas nationwide. Approximately 8 new monitoring sites are anticipated in Texas. All new $NO_2$ monitors must begin operating no later than Jan. 1, 2013. In 2016 or 2017, once the expanded network of $NO_2$ monitors is fully deployed and three years of air quality data have been collected, the EPA intends to redesignate areas based on data from the new monitoring network.

## 2010 $SO_2$ Primary NAAQS

On June 2, 2010, the EPA strengthened the primary NAAQS for sulfur dioxide (SO2) for the first time since 1971, revoking the annual and 24-hour primary standards and adding a new one-hour standard of 75 ppb. The EPA anticipates that a one-hour standard better protects the public from exposure to high short-term concentrations.

The EPA is revoking the two existing primary standards–140 ppb average over 24 hours and 30 ppb average over one year–because they will not provide additional public-health protection to that given by the new standard. The secondary $SO_2$ standard of 500

ppb per three hours is not changed. The EPA is assessing the need for changes under a separate review.

In the final rule, the EPA is requiring fewer monitors than during the proposal, as the EPA plans to use a hybrid approach combining air quality modeling and monitoring to determine compliance with the new $SO_2$ health standard. The EPA thinks it is more technically efficient to use modeling as the principal means of assessing compliance for medium to larger sources and to rely more on monitoring for groups of smaller sources. It is unclear how many counties will be required to do modeling for designation purposes.

The final monitoring regulations require monitors to be placed in specific areas based on their population and emissions. The TCEQ estimates that five to 10 new monitoring sites will be needed to meet the EPA requirements for this rule. All newly sited $SO_2$ monitors must be operational by Jan. 1, 2013.

The EPA is also making changes to data-reporting requirements for $SO_2$. Texas will be required to report two data values for every hour of monitoring conducted, including the one-hour average $SO_2$ concentration; and the maximum five-minute block average $SO_2$ concentration for each hour.

### 2010 Ozone Standards

On Jan. 19, 2010, the EPA published in the *Federal Register* proposed revisions to the primary eight-hour ozone standard in the range of 0.060 to 0.070 parts per million (ppm). The EPA also proposed to establish a separate cumulative, seasonal secondary standard within a range of 7 to 15 ppm-hours. The EPA plans to issue final standards by Aug. 31, 2010. State recommendations on the attainment status of areas are due to the EPA by Jan. 7, 2011. The EPA will make final designations effective by August 2011 or, under a proposed alternative schedule for the secondary standard, issue designations by August 2012. SIP revisions would likely be due to the EPA by December 2013; SIP revision due dates under a proposed alternate schedule for the secondary standard are unknown at this time. The EPA has also proposed ozone monitoring requirements with this action. The proposal would require ozone monitoring for metropolitan statistical areas with a population between 50,000 and 350,000. In Texas, 10 additional areas would be included: Texarkana, Bryan–College Station, Abilene, Amarillo, Lubbock, Midland, Odessa, San Angelo, Sherman-Denison, and Wichita Falls. In a separate action also published Jan. 19, 2010, in the *Federal Register*, the EPA is extending by one year the deadline for promulgating initial area designations for the 2008 primary and secondary ozone standards of 0.075 ppm; the new deadline is March 12, 2011. If the EPA promulgates a 2010 eight-hour ozone standard, the 2008 standards would no longer apply. However, if the 2010 ozone standards process is not completed in a timely manner, the EPA will move forward to complete designations for the 2008 standards no later than March 12, 2011.

### 2011 Carbon Monoxide (CO) Standard

On March 2, 2010, the EPA published notice in the *Federal Register* of the Clean Air Scientific Advisory Committee (CASAC) carbon monoxide review panel meeting for March 22–23, 2010, and the CASAC teleconference on April 19, 2010. The EPA's proposed rule is scheduled for publication Oct. 28, 2010; the final rule is scheduled for May 13, 2011.

### 2012 Nitrogen Dioxide/Sulfur Dioxide Secondary Standards

Under a settlement agreement, the EPA is expected to propose revised secondary standards July 12, 2011, and to finalize them March 20, 2012.

### 2012 Particulate Matter Standard

The EPA is expected to propose a revised standard in December 2010 and to finalize it in October 2011.

## SIP Revisions: Attainment, Progress, and Maintenance Demonstrations

### Beaumont–Port Arthur Area

The Beaumont–Port Arthur (BPA) area is classified as a moderate nonattainment area under the 1997 eight-

hour ozone standard. Counties included are Hardin, Jefferson, and Orange. The BPA area monitored attainment of the 1997 eight-hour ozone standard according to data from 2005, 2006, and 2007, as well as data from 2007, 2008, and 2009. Based on those data, a redesignation request and maintenance plan SIP revision was submitted to the EPA in December 2008. The motor-vehicle emissions budget from that SIP revision became effective on April 16, 2010. On May 17, 2010, the EPA published notice in the *Federal Register* (75 FR 27514) proposing approval of the 2008 redesignation request and maintenance plan SIP revision, including a determination that the BPA area has attained the 1997 eight-hour ozone standard and has met all of the applicable 1997 eight-hour ozone requirements and one-hour anti-backsliding requirements for the purposes of redesignation. The EPA also proposed to make a determination that the EPA area is meeting the one-hour ozone standard. The 30-day comment period ended on June 16, 2010.

## Collin County 10-Year Maintenance Plan for the 1978 Lead Standard

The EPA designated a portion of Collin County as a lead nonattainment area on Nov. 6, 1991. The EPA approved the Collin County lead SIP on Nov. 29, 1994. On Aug. 31, 1999, the governor submitted to the EPA a request that Collin County be redesignated to attainment. The request included a maintenance plan demonstrating how the state would assure maintenance of the lead standard in Collin County for the next 10 years. The EPA redesignated the Collin County area to attainment effective Dec. 13, 1999. On Aug. 26, 2009, the commission adopted a SIP revision for the maintenance plan's second 10-year period, along with an agreed order with Exide Technologies in Frisco to make contingency measures for the second maintenance plan legally enforceable. The SIP revision has been submitted to the EPA. The 1978 lead standard is 1.5 micrograms of lead per cubic meter of ambient air. The EPA lowered the standard Oct. 15, 2008; however, the 1978 standard will remain in effect for Collin County until approximately January 2012.

## Dallas–Fort Worth Area

The Dallas–Fort Worth (DFW) 1997 eight-hour ozone standard nonattainment area, which consists of Collin, Dallas, Denton, Ellis, Kaufman, Johnson, Parker, Rockwall, and Tarrant counties, is currently classified as moderate. Moderate nonattainment areas under the 1997 eight-hour ozone standard were required to attain the standard by June 15, 2010, based on the area's 2009 design value.

On May 23, 2007, the TCEQ approved reasonable further progress (RFP) and attainment demonstration SIP revisions for the DFW 1997 eight-hour ozone nonattainment area. The RFP plan showed 15 percent emission reductions between 2002 and 2008 and included a motor-vehicle emissions budget for 2008. On Oct. 7, 2008, the EPA granted final approval to the RFP SIP revision. The attainment demonstration used a weight-of-evidence (WOE) argument in addition to the photochemical modeling to show attainment of the standard by the end of the 2009 ozone season. New control measures for $NO_X$ sources in and around the DFW area were included. The attainment demonstration also showed that the state met all reasonably available control measure and control technology requirements for the area, and included contingency measures if the area failed to attain the standard by its attainment deadline.

Following the TCEQ's adoption of the RFP and attainment demonstration SIP revisions, the EPA requested supplemental information on various programs and emissions from certain source categories. The EPA required the commission to show that the contingency measures would achieve 3 percent emissions reductions and could be implemented with minimal further action by the state if the area failed to attain the standard by its deadline, and required that the commission restrict the use of discrete emission reduction credits (DERCs). The TCEQ adopted a SIP revision for the contingency measure plan on Nov. 5, 2008, to address EPA concerns with the plan. Based on this SIP revision, the EPA granted final conditional approval of the attainment demonstration on Jan. 14, 2009. The TCEQ had also adopted a SIP revision to control DERC

usage on Dec. 10, 2008, but the EPA has not acted on this SIP revision. Final approval of the attainment demonstration is contingent upon the EPA approving the SIP revision to control DERC usage.

The commission has proposed and approved some additional changes to the 1997 eight-hour ozone attainment demonstration since the DERC SIP revision. On March 10, 2010, the TCEQ adopted a SIP revision to address several control technique guidelines (CTGs) issued by the EPA between 2006 and 2008, expand a specific exemption from $NO_X$ control requirements, demonstrate that the expansion of the exemption would not interfere with attainment, and revise the contingency plan to reflect the two rule changes included with the plan. On April 14, 2010, the commission proposed for public comment a SIP revision to convert the environmental speed-limit control measure for the area into a transportation control measure that would be implemented by the local transportation planning organization.

Although the area's attainment demonstration had been conditionally approved by the EPA, the area's 2009 design value was 86 part per billion (ppb), thereby exceeding the 1997 eight-hour ozone standard. As a result, the EPA is expected to issue a notice by January 2011 stating that the area failed to attain the standard by its deadline and reclassifying the area from moderate to serious, with a new attainment deadline of June 15, 2013. As a result of the area's failure to attain the standard by the moderate nonattainment area deadline, the two contingency measures contained in the attainment demonstration (volatile organic compound [VOC] rules for petroleum dry-cleaning facilities and for the degassing and cleaning of stationary and transport vessels) were implemented through publication of notice in the *Texas Register* on May 21, 2010.

Because of the anticipated reclassification to serious nonattainment, the TCEQ will be required to submit new RFP and attainment demonstration SIP revisions for the area. The RFP plan will have to show $NO_X$ and/or VOC reductions of 9 percent of the area's 2002 emissions inventory between 2009 and 2011, an additional 3 percent in 2012, and contingency measures if the area fails to meet the 2011 or 2012 milestones. The attainment demonstration will have to use photochemical modeling to demonstrate attainment of the 1997 eight-hour ozone standard by the end of the 2012 ozone season, show that all reasonably available control measures and reasonably available control technologies have been implemented and applied, and include updated motor-vehicle emissions budgets and a new contingency plan.

## Houston-Galveston-Brazoria Area

Currently, the Houston-Galveston-Brazoria (HGB) area is designated nonattainment for the 1997 eight-hour ozone NAAQS. The counties included in this nonattainment area are Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. The eight-hour ozone design value for 2007 through 2009 is 84 ppb, which is below the standard of 0.08 ppm (or 85 ppb).

The HGB area was originally classified moderate nonattainment for the 1997 eight-hour ozone standard with an attainment date of June 15, 2010. On June 15, 2007, two revisions to the Texas SIP for the HGB moderate nonattainment area for the 1997 eight-hour ozone standard and a letter from the governor were submitted to the EPA requesting that the area be reclassified to severe nonattainment. One SIP revision documented compliance with the 15 percent reasonable further progress (RFP) requirement through 2008. The second SIP revision was the first step in addressing the 1997 eight-hour ozone attainment demonstration requirements and included voluntary mobile source emission reduction commitments made by the Houston-Galveston Area Council and the TCEQ, and revisions to 30 Texas Administrative Code (TAC) 115 VOC rules, and 30 TAC 114 Texas Low Emission Diesel (TxLED) for Marine Fuels rules.

On Oct. 1, 2008, the EPA published the final rule in the *Federal Register* (72 FR 56983) to grant the governor's request to voluntarily reclassify the HGB area to a severe nonattainment area for the 1997 eight-hour

ozone standard effective Oct. 31, 2008. The EPA set April 15, 2010, as the date for the state to submit a revised SIP addressing the severe ozone nonattainment area requirements of the federal Clean Air Act (CAA). The HGB area's attainment date for the 1997 eight-hour ozone standard is as expeditiously as practicable but no later than June 15, 2019.

On March 10, 2010, the TCEQ adopted two revisions to the Texas SIP for the HGB severe nonattainment area for the 1997 eight-hour ozone standard. The HGB Attainment Demonstration SIP Revision for the 1997 Eight-Hour Ozone Standard includes a photochemical modeling analysis and a weight-of-evidence analysis to demonstrate attainment of the 1997 eight-hour ozone NAAQS by the June 15, 2019, deadline. As required by the EPA, this SIP revision also includes a motor-vehicle emissions budget, a reasonably available control technology (RACT) analysis for VOC and nitrogen oxides ($NO_X$), a reasonably available control measures (RACM) analysis, and a contingency plan. In addition, this SIP describes revisions to 30 TAC 101 and 115, also adopted on March 10, 2010, which include the Mass Emissions Cap and Trade (MECT) Program Cap Integrity, the HECT Program Cap Reduction and Allowance Reallocation (HECT: HRVOC Emissions Cap and Trade; HRVOC: Highly Reactive Volatile Organic Compounds), and the VOC Control Technique Guidelines (CTG) Update. In response to comments received, a 1997 eight-hour ozone standard mid-course review will be performed by the TCEQ and submitted to the EPA concurrently with the revised ozone standard SIP revision, which is scheduled to be submitted to the EPA in December 2013.

The HGB RFP SIP Revision for the 1997 Eight-Hour Ozone Standard, as required by the EPA, demonstrates that an 18 percent emissions-reduction requirement was met for the analysis period of 2002 through 2008 and an average of 3 percent per year emissions reduction was seen or is expected between each of the milestone years: 2008, 2011, 2014, 2017, and 2018. This SIP revision establishes baseline emission levels, calculates reduction targets, identifies control strategies to meet emission target levels, and tracks actual emission reductions against established emissions growth. This revision also includes a motor-vehicle emissions budget for each milestone year and a contingency plan.

The HGB area is subject to the requirements of the CAA Section 185 fee program because the HGB area is classified as severe for both the one-hour ozone NAAQS and the 1997 eight-hour ozone NAAQS and did not attain the one-hour ozone standard by Nov. 15, 2007, attainment date. In accordance with EPA guidance, the TCEQ is requesting the EPA to determine that a Section 185 fee program is not needed for the HGB one-hour nonattainment area because the latest (2007 through 2009) ambient monitoring data indicate attainment of the 1997 eight-hour ozone standard, and this attainment is due to permanent and enforceable emission reductions.

## El Paso Area

A suite of control strategies has been implemented in the El Paso area to reduce carbon monoxide (CO), ozone, and coarse particulate matter ($PM_{10}$). These efforts have improved air quality in the El Paso area. There have been no monitoring violations of CO in El Paso since 2001. On Aug. 4, 2008, the EPA approved Texas' request for redesignation to attainment and a maintenance plan for CO in the El Paso area.

In April 2004, the El Paso area–which was previously nonattainment for the one-hour ozone standard–was designated attainment for the 1997 eight-hour ozone standard. The EPA's Phase I Implementation Rule for the eight-hour ozone standard directed that areas designated as nonattainment for the one-hour ozone standard but as attainment for the eight-hour ozone standard must submit a maintenance plan. The TCEQ therefore adopted the El Paso area ozone maintenance plan on Jan. 11, 2006. The EPA approved the El Paso ozone maintenance plan effective March 16, 2009.

The El Paso area continues to monitor attainment of the 1997 eight-hour ozone standard. The El Paso

area would be in attainment for $PM_{10}$ if not for natural events, such as dust storms. The TCEQ developed a natural-events action plan (NEAP) to be able to flag exceedance days due to natural events, in order to allow the EPA to discard these days when determining the area's compliance with the $PM_{10}$ standard. In 2009, the EPA indicated that El Paso's 2006 through 2008 design value met the 24-hour $PM_{10}$ NAAQS. The TCEQ is researching elements of a $PM_{10}$ redesignation request and maintenance plan and expects to make a recommendation in 2010.

## Potential SIP Revisions

### Collin County Attainment Demonstration SIP for the 2008 Lead Standard

In a June 15, 2010, letter to Gov. Perry, the EPA proposed to adopt the state's recommended 2008 lead nonattainment designations and boundary for a portion of Collin County. The EPA will promulgate this designation by Oct. 15, 2010, effective by January 2011. The federal Clean Air Act requires any state containing an area designated as nonattainment for the lead NAAQS to submit an attainment demonstration within 18 months of the designation, or June 2012 for the expected Collin County nonattainment area.

### Potential New SIP Revisions for the 2010 Ozone Standards

Current ozone attainment areas that could be designated nonattainment under the proposed 2010 primary and/or secondary ozone standards include the following nine planning areas: Austin–Round Rock, Big Bend, Corpus Christi, El Paso, Lower Rio Grande Valley, Northeast Texas, San Antonio, Victoria, and Waco. Attainment and reasonable further progress demonstration SIP revisions would be due by December 2013. Under a proposed alternate schedule for the secondary standard, attainment and reasonable further progress demonstration SIP revisions for new nonattainment areas would be due at a date not yet determined.

## Other SIP Revisions

### Inspection and Maintenance (I/M) SIP

I/M programs help improve air quality by identifying high-emitting vehicles in need of repair (through visual inspection, emissions testing, and/or the downloading of fault codes from a vehicle's onboard computer). Vehicles must be repaired as a prerequisite to issuance of the vehicle safety and emissions certificate. Enhanced I/M programs were implemented on May 1, 2002, in Collin, Dallas, Denton, and Tarrant counties of the DFW area and Harris County of the HGB area. The programs were expanded to include Ellis, Johnson, Kaufman, Parker, and Rockwall counties of the DFW area and Brazoria, Fort Bend, Galveston, and Montgomery counties of the HGB area on May 1, 2003. Travis and Williamson Counties implemented an enhanced I/M program on Sept. 1, 2005, and El Paso County implemented its enhanced program on Jan. 1, 2007. Currently, over 7.5 million vehicles are inspected annually in the 17 counties of the DFW, HGB, Austin (Travis and Williamson counties), and El Paso (El Paso County) areas.

Pursuant to 40 Code of Federal Regulations (CFR) 51.372(b)(2), I/M SIP revisions are required for a new or revised NAAQS within one year after the effective date of designation and classification under the ozone NAAQS. The federal Clean Air Act requires I/M programs in moderate and above ozone nonattainment areas in any 1990 census-defined urbanized area with a population of 200,000 or more. In addition, areas within an ozone transport region are required to implement I/M programs in any metropolitan statistical area (MSA), or portion of an MSA, within the state or area with a population of 100,000 or more as defined by the federal Office of Management and Budget, regardless of the area's attainment classification.

### General Conformity SIP

The EPA revised its general conformity rule effective July 6, 2010. Pursuant to 40 CFR 51.851 and 93.151, in order to take full advantage of the revised rule, the

state's general conformity SIP and associated rule, 30 TAC 101.30, will have to be amended or repealed and approved by the EPA. The revised general conformity rule improves the process federal entities use to demonstrate that their actions will not contribute to a NAAQS violation, provides tools to encourage better communication and air quality planning between states and federal agencies, and encourages both the federal agencies and the states to take early actions to ensure projects will conform to the SIP. The intent of the federal general conformity requirement is to prevent the air quality impacts of federal actions from causing or contributing to a violation of the NAAQS or interfering with the purpose of the SIP.

## Transportation Conformity SIP

The EPA revised its transportation conformity rule effective April 23, 2010. Pursuant to 40 CFR 51.390, a state's transportation conformity SIP and associated rule, 30 TAC 114.260, no longer must be revised to incorporate every federal rule revision. However, in order to take advantage of this streamlining, a state like Texas that already has an approved transportation conformity SIP must revise its SIP accordingly and the EPA must approve the revision. The TCEQ adopted such a revision June 27, 2007, effective July 19, 2007. However, the EPA has not yet acted on this revision. It is expected that the EPA will issue a direct final approval of the 2007 state conformity SIP revision in time to avoid the additional SIP revision. The intent of the federal transportation conformity requirement is to prevent the air quality impacts of federally supported transportation plans, transportation improvement programs, and transportation projects from causing or contributing to a violation of the NAAQS or interfering with the purpose of the SIP.

## Transport SIP

Transport SIP revisions are required for a new or revised NAAQS within three years of the EPA promulgating a new standard. Transport SIP revisions must contain adequate provisions to address interstate transport of air pollution, pursuant to Section 110(a)(2)(D)(i) of the federal Clean Air Act (CAA). Revisions to the Texas SIP for ozone and $PM_{2.5}$ transport set forth how Texas meets CAA requirements. Texas' current transport SIP revision for the 1997 eight-hour ozone and $PM_{2.5}$ NAAQS documents that any emissions from Texas sources that may have contributed to nonattainment in another state have been mitigated through existing ozone control strategies. The transport SIP was submitted to the EPA on May 1, 2008, and is waiting EPA action. New transport SIP revisions will be required for the 2010 ozone standard as well as other NAAQS currently under revision by the EPA.

## Regional Haze and Best Available Retrofit Technology (BART)

The TCEQ adopted a regional haze SIP on Feb. 25, 2009, and submitted it to the EPA. The deadline for federal Class I areas to achieve natural background levels for visibility is 2064. SIP revisions for regional haze are required to be submitted to the EPA every five years until 2064.

Texas proposed its initial regional haze SIP in December 2007. The purpose of the regional haze SIP is to improve the worst 20 percent visibility days and cause no further degradation to the best 20 percent visibility days in identified federal Class I areas. Approximately 20 Class I areas were evaluated, including Big Bend and Guadalupe Mountains national parks in Texas, as well as other Class I areas in surrounding states. Modeling has identified haze pollutants in Texas as sulfur dioxide, nitrogen oxides, and particulate matter. Modeling indicates that the probable impact of Texas sources will be reduced due to the emissions reductions from existing controls. No additional controls have been proposed with the Texas regional haze SIP.

The state was required to complete a best available retrofit technology (BART) analysis on older industrial units in 26 industrial categories. The EPA finalized implementation guidance for the BART portion of the regional haze SIP in July 2005 and set the threshold to 0.5 deciviews; sources modeling at or over the threshold of visibility impairing emissions were considered subject to BART.

The commission adopted the Texas BART Rule in January 2007, requiring BART-eligible sources to model emissions. Completion of an engineering analysis with possible controls was further required if modeling reported impairment over the threshold. Over 125 industrial sources were evaluated. Of the 125 sources, approximately 30 sources were required to perform individual modeling, which was reviewed extensively by the TCEQ. Ultimately, no sources were required to do additional BART controls due to reductions from EPA consent decrees, shutdowns, permit changes, and the federal Clean Air Interstate Rule (CAIR). Adding some delays for the eastern states, CAIR was vacated in July 2008 and then reinstated in December 2008. CAIR is an important control measure for many states east of the Mississippi. The court reinstatement stipulated that the EPA replace CAIR in the near future.

## Eight-Hour Ozone Flex Program

The Eight-Hour Ozone Flex Program is implemented through an intergovernmental memorandum of agreement (MOA) between the TCEQ, the EPA, and local communities. The program is designed to allow local areas that attain both the one-hour ozone standard and 1997 eight-hour ozone standard to develop plans to voluntarily reduce emissions to help maintain their attainment status. Two areas in Texas have submitted plans to the EPA. The Corpus Christi Eight-Hour Ozone Flex Program MOA was approved by the TCEQ on June 13, 2007. The MOA was signed by the EPA on Oct. 23, 2007. The Austin–Round Rock Eight-Hour Ozone Flex Program MOA was approved by the commission on June 18, 2008. The MOA was signed by the EPA on Sept. 16, 2008.

## Reasonable Further Progress

The Clean Air Act [172(c)(2)] requires nonattainment plans to include provisions for reasonable further progress (RFP). RFP is annual incremental reductions in emissions of relevant air pollutants required for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date. For ozone, nonattainment areas with air quality classified as moderate or higher are required to submit RFP plans showing that ozone precursor emissions will be reduced in accordance with the guidelines set forth in 40 CFR 51.910. Generally, this requires nonattainment areas to reduce emissions by an average of 3 percent per year while accounting for emissions growth and non-creditable emissions reductions. RFP plans also set motor-vehicle emissions budgets for each milestone year of the plan.

Recently, the TCEQ has submitted RFP plans for the DFW and HGB 1997 eight-hour ozone nonattainment areas. In 2007, the TCEQ submitted RFP plans for the DFW and HGB areas under a moderate nonattainment classification. The DFW moderate nonattainment area RFP was approved by the EPA effective Dec. 8, 2008, and the HGB moderate nonattainment area RFP was approved by the EPA effective June 22, 2009. The HGB nonattainment area was reclassified to severe nonattainment in 2008. As a result, a new plan for the area was required by the EPA to meet severe nonattainment area RFP requirements. This plan was adopted by the commission on March 10, 2010, and submitted to the EPA on April 1, 2010. The DFW nonattainment area is expected to be reclassified to serious by the EPA by January 2011. A new plan for the area will be required by the EPA to meet serious nonattainment area RFP requirements by January 2012.

RFP plans will be required for all areas classified as moderate nonattainment and above for the 2010 eight-hour ozone standard by December 2013 and may be required for nonattainment areas for other NAAQS currently under revision by the EPA.

## Infrastructure SIP

Section 110(a) of the CAA requires that each state develop and submit an infrastructure SIP revision demonstrating how the state provides for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of the NAAQS. This SIP revision must address a number of basic requirements, including:

- ambient air quality monitoring and data systems
- programs for enforcement of control measures
- adequate authority and resources to implement the plan

On March 27, 2008, Texas was issued a finding of failure to submit its infrastructure SIP revision for the 1997 eight-hour ozone NAAQS. The finding started a two-year Federal Implementation Plan (FIP) clock, but not a two-year sanctions clock. The TCEQ submitted a letter on April 4, 2008, to the EPA to fulfill the state's infrastructure obligation for the 1997 eight-hour ozone and 1997 24-hour and annual PM2.5 standards. On Oct. 22, 2008, the EPA published a finding of completeness for Texas' PM2.5 submittal. In October 2009, the EPA requested the TCEQ to include the 2006 24-hour PM2.5 standard in the infrastructure SIP. On Nov. 23, 2009, the TCEQ submitted a letter to fulfill the infrastructure requirements for the 2006 24-hour PM2.5 standard. New infrastructure SIP revisions will be required for the 2010 ozone standard as well as other NAAQS currently under revision by the EPA.

## Air Quality Monitoring

The TCEQ has deployed unique air quality monitoring equipment in order to meet EPA and SIP requirements.

## GasFindIR Camera

GasFindIR camera technology offers a unique technological advancement in pollution detection capability and has proved to be highly effective in the detection of volatile organic compound (VOC) emissions. The camera is a handheld remote sensing device based on infrared thermographic principles, with the special capability of making hydrocarbon emissions visible under certain ambient conditions.

The TCEQ was one of the first state agencies in the country to use GasFindIR camera technology to monitor air quality. With the knowledge gained from the use of the camera, the TCEQ has improved emissions inventories and is enhancing regulations to address these emissions, focusing efforts on real air quality solutions with real results. This technology has proved to be highly effective in the detection of VOC emissions from leaks and previously unidentified or unrecognized sources, and has resulted in the reduction of VOC emissions by thousands of tons.

The TCEQ currently owns eight GasFindIR cameras which serve as screening tools to assist the agency in activities such as facility investigations, reconnaissance investigations, mobile monitoring, and special projects.

Below is a brief outline of how the GasFindIR is used by the TCEQ:

#### Office of Compliance and Enforcement

***Surveillance Using TCEQ Cameras***

- Screen to identify potential sources of contaminants in response to ambient or other monitoring results that indicate elevated concentrations.
- Screen to identify sites, or areas within a specific site, where a focused investigation may be conducted.
- Screen to identify potential sources of complaints.
- Screen areas to identify potential sampling or monitoring locations (mobile or fixed).
- Screen areas to identify possible safety concerns and minimize exposure to VOCs.
- Coordinate with the TCEQ's Small Business and Environmental Assistance Division for possible pollution prevention site assistance visits.

#### Chief Engineer's Office

***Contracting with Third-Party Vendor***

- Identify the potential for source control strategies or to assist in an assessment of existing strategies.
- Screen potential sources for SIP or rule considerations.
- Screen sources for emissions inventory issues.

The GasFindIR cameras are also used to augment and bolster existing compliance investigations at facilities required to control VOC emissions.

By incorporating the GasFindIR camera into monitoring activities over the past four and a half years, the TCEQ has significantly enhanced its capa-

bilities in the field, leading to many successes. This includes various collaborative efforts between TCEQ and the regulated community with contracted camera services (e.g., flyovers, "find and fix" programs, and the identification of undocumented large-scale emissions from upstream oil and gas facilities). Some additional examples of successes from activities that have employed agency cameras are: the Hurricane Rita response, the Freeport monitoring project, numerous regional-office mobile and area monitoring projects (including Barnett Shale oil and gas operations), the Citgo Refining monitoring project, the Connor Steel monitoring project, and the Helotes Fire monitoring project.

New rules addressing uses of the camera as a supplemental leak detection tool, and other incentives for the regulated community will be incorporated into agency operating procedures and training.

## Expansion of the Monitoring Network Due to Changing Air Quality Standards

In 1970, the federal Clean Air Act established the requirement that health-based National Ambient Air Quality Standards (NAAQS) be set and periodically updated to reflect new scientific information. The State of Texas is delegated the responsibility to monitor compliance in the state with the NAAQS. The TCEQ maintains an extensive network of air quality monitors to measure ambient air concentrations of the NAAQS pollutants: ozone, lead, carbon monoxide, sulfur dioxide, nitrogen dioxide, and respirable particulate matter ($PM_{2.5}$).

In recent years, the Environmental Protection Agency (EPA) has updated the NAAQS for several pollutants and new standards are expected to be in place for all NAAQS pollutants by 2012. The changes to these standards often include new requirements for air monitoring. Over the next several years, the TCEQ will be dedicating resources to the expansion of the monitoring network to meet these requirements. Highlights of the network expansion include:

- Ozone monitoring in urban areas with populations between 50,000 and 350,000. New ozone monitors will be added in Abilene, Amarillo, Bryan–College Station, Lubbock, Midland, Odessa, San Angelo, Sherman-Dennison, Texarkana, and Wichita Falls. (Ozone monitors are already in place in the Waco, Killeen, Tyler, and Longview areas.)
- Lead monitoring at airports and sources that emit between 0.5 and 1.0 tons per year. New monitors could be installed in up to 12 locations, depending on results from source-based emission reporting.
- Carbon monoxide and nitrogen dioxide monitoring near peak traffic areas in Austin, Dallas–Ft. Worth, El Paso, Houston, San Antonio, and South Texas.
- Sulfur dioxide monitoring in populous areas and near emission sources. As many as 13 to 19 new sulfur dioxide monitors could be installed around the state, depending on results from source-based emission reporting.
- Particulate matter monitoring, including special analyses to determine the chemical contents of the solids, will be enhanced at three sites; one each in Dallas–Ft. Worth, El Paso, and Houston.

Overall, these new requirements are expected to result in between 20 and 30 new monitoring locations and approximately 50 new monitoring instruments around the state by 2015.

## Texas Emissions Reduction Plan (TERP)

The Texas Emissions Reduction Plan (TERP) was established in 2001 under Senate Bill (SB) 5, 77th Texas Legislature. Included in the TERP are the Diesel Emissions Reduction Incentive Grants Program, the Texas Clean Fleet Program, the New Technology Implementation Grants Program and the New Technology Research and Development Program.

## Diesel Emissions Reduction Incentive Grants Program

The Diesel Emissions Reduction Incentive Grants (ERIG) Program is administered by the TCEQ. This program provides voluntary incentive grants to reduce

$NO_X$ from mobile sources, primarily diesel engines. The TERP program offers incentives for a variety of activities, such as replacement or repowering of old vehicles or equipment with newer and cleaner models, retrofitting engines with $NO_X$ emission-reduction technology, and providing infrastructure for idle reduction, electrification, and use of cleaner-burning fuels.

In 2003, the 78th Texas Legislature enacted House Bill (HB) 1365, which addressed revenue sources for the TERP, amended grant eligibility criteria, and authorized use of funding in all of the 41 counties making up the ozone nonattainment and near-nonattainment areas.

In 2005, the 79th Texas Legislature enacted HB 2481 and HB 3469. HB 2481 directed the agency to establish a process to issue at least a portion of the grants using a rebate grant approach. Under this approach, emission reductions and grant amounts would be predetermined for the types of projects included under the rebate program. A pilot rebate grant program was implemented in April 2006. HB 3469 established a new Clean School Bus Program to provide grants to school districts throughout the state to retrofit buses with systems that will reduce the emissions of particulate matter and other pollutants.

In 2007, the 80th Texas Legislature enacted SB 12 and HB 160. SB 12 made several changes to the program, including extending the program authorization until 2013 and increasing the maximum cost-effectiveness limits for projects funded under the TERP and other changes to make the program more effective. HB 160 added a new project category to allow funding for rail relocation and improvement projects at rail intersections in the nonattainment and near nonattainment areas. The Legislature also increased the appropriations to the TERP program by $64 million for the 2008–09 biennium and included funding for the Texas Clean School Bus Program.

In 2009, the 81st Texas Legislature enacted HB 1796, which included a definition of stationary engines and established alternative percentage-of-use requirements for non-road equipment used for natural gas recovery purposes. The new definition of stationary engines included gas turbine engines, making those types of engines eligible for funding. Also, non-road equipment used for natural gas recovery purposes was exempted from the requirement that grant-funded equipment be operated at least 75 percent of annual usage in TERP-eligible counties. This equipment must still be operated for a sufficient amount of use over the project life to achieve the $NO_X$ reductions needed to meet the cost-effectiveness requirements.

Through May 2010, a total of 7,223 projects had been funded. Those projects included 12,456 activities, including pass-through grants awarded by the Railroad Commission of Texas, the Texas General Land Office, the North Central Texas Council of Governments, and the Houston-Galveston Area Council under third-party grant contracts from the TERP program. Over $789 million in grant funding has been awarded for replacements and upgrades to approximately 12,500 vehicles and pieces of equipment. These projects are expected to reduce $NO_X$ emissions by more than 158,500 tons over the life of the projects.

## Texas Clean Fleet Program

In 2009, the 81st Texas Legislature enacted SB 1759, establishing the Texas Clean Fleet Program. The purpose of this program is to encourage entities operating a large fleet of vehicles in Texas, including at least 25 eligible diesel-powered vehicles, to replace the diesel vehicles with alternative-fuel or hybrid vehicles. Projects must result in at least a 25 percent reduction in $NO_X$ emissions or emissions of other pollutants, as established by the commission.

The eligible grant amounts are set according to the model year and emissions of the vehicle and engine being replaced. The alternative-fuel or hybrid vehicle being purchased must be certified to the current federal emissions standards.

Program rules were adopted by the commission on Feb. 24, 2010, and the first grant application period opened in April 2010.

## New Technology Research and Development Program

The New Technology Research and Development (NTRD) Program provides financial incentives to

promote the development and commercialization of technologies that reduce $NO_X$ emissions and may be funded under the TERP ERIG program. Grants awarded under the NTRD program are to be directed toward a balanced mix of:

- Retrofit and add-on technologies and other advanced technologies that reduce emissions from the existing stock of engines and vehicles targeted by the TERP, provided that the technologies do not significantly reduce the fuel economy of those engines and vehicles.
- Advanced technologies for new engines and vehicles that produce very low or zero $NO_X$ emissions, including stationary and mobile fuel cells.
- Advanced technologies for reducing $NO_X$ and other emissions from stationary sources.
- Field validation of innovative technologies that reduce $NO_X$ and other emissions and require demonstration of viability for full commercial acceptance.
- Technology projects that would allow qualifying fuels to be produced from energy resources in Texas.

In 2005, the 79th Texas Legislature enacted HB 2481, which transferred the administration of the NTRD program, beginning Sept. 1, 2006, to the Texas Environmental Research Consortium (TERC), a nonprofit organization based in Houston, with the funding for the program to be provided through a contract with the TCEQ. The TCEQ executed a contract with TERC to administer the NTRD program and provided TERC with $33.7 million in TERP funds to implement the NTRD program for the 2006–07 and 2008–09 biennia. TERC will continue to manage and monitor all grant contracts it issued using these funds.

In 2009, the 81st Texas Legislature enacted HB 1796, which returned administration of the NTRD program to the TCEQ and revised the eligible project categories. The TCEQ completed a fiscal 2010 grant solicitation and grants are expected to be awarded by August 2010. The TCEQ also continues to monitor the commercialization and disposition activities on 63 NTRD grant projects that were awarded a total of $20.4 million before the NTRD program was transferred to TERC.

## New Technology Implementation Grants Program

The New Technology Implementation Grants (NTIG) Program's primary objective is to offset the incremental cost of emission reductions from facilities and other stationary sources in the State of Texas. Projects that may be considered for a grant under the program include:

- Advanced clean energy projects (ACEP) for new or modified sources.
- New technology projects that reduce emissions of regulated pollutants from point sources and involve capital expenditures that exceed $500 million.
- Electricity storage projects related to renewable energy.

In 2009, the 81st Texas Legislature enacted HB 1796, which authorized the TCEQ to administer the NTIG Program. A stakeholder group was formed to assist in the establishment of the guidelines for the NTIG Program. The guidelines will be considered for adoption by the commission in June 2010 and, if the guidelines are approved, the TCEQ expects to open the first grant application period in July 2010.

## AirCheckTexas Drive a Clean Machine Program (formerly known as LIRAP)

In 2001, the 77th Texas Legislature, Regular Session, passed HB 2134 to assist low-income individuals with repairs, retrofits, or retirement of vehicles that failed emissions inspections. The TCEQ implemented the legislation by adopting requirements establishing income eligibility requirements at 200 percent of the federal poverty level and providing up to $600 in assistance for emissions-related repairs or $1,000 toward replacement assistance of a vehicle that failed the required emissions test.

In 2007, the 80th Texas Legislature, Regular Session, adopted SB 12, making changes that enhanced the vehicle retirement option of the program. Eligibility

requirements for vehicle retirement include: must be gasoline-powered and at least10 years old or have failed an emissions inspection within the last 30 days, must have been operated and registered in a participating county for the 12 months preceding the application, and must have passed the Texas Department of Public Safety safety inspection or safety and emissions inspection within 15 months of application. Also, its owner must meet certain income criteria (up to 300 percent of federal poverty level).

Under the AirCheckTexas Drive a Clean Machine (DACM) program, an eligible applicant may receive a voucher for $3,000 toward the purchase of a car, current model year or up to three model years old; $3,000 toward the purchase of a truck, current model year or up to two model years old; or $3,500 toward the purchase of a hybrid vehicle of the current or previous model year. The new vehicle must meet federal Tier 2, Bin 5, or cleaner, emissions standards; have a gross vehicle weight rating of less than 10,000 pounds; and have a total purchase cost that does not exceed $25,000. For the 2008–09 and 2010–11 biennia, the Texas Legislature appropriated $45 million for each fiscal year to fund the program.

The DACM program is administered through grant contracts with participating counties that can contract with another entity to administer the program. Participation in the program is voluntary. In the nine-county Dallas–Fort Worth area, the program is administered by the North Central Texas Council of Governments. In the five-county Houston-Galveston-Brazoria area, the program is administered by the Houston-Galveston Area Council. Travis and Williamson counties each administer their own program.

From Dec. 12, 2007, to Aug. 31, 2009, 25,748 vehicles were retired and 8,588 vehicles were repaired through the DACM program.

## Local Initiative Projects

The Local Initiative Projects (LIP) program was authorized by SB 12 and provided funding to counties participating in the LIRAP for local environmental projects designed to improve air quality. For the 2008–09 and 2010–11 biennia, the Texas Legislature appropriated $5 million for each fiscal year to fund the LIP program. These funds were made available to participating counties on a matching basis. Each participating county implemented a Clean Vehicle Fleet project that assisted local governments in retiring older, high-mileage vehicles and replacing them with new, cleaner vehicles. In addition, each area is planning to implement Clean Air Emissions Task Forces and Counterfeit Inspection Initiatives, both aimed at investigating and prosecuting entities and individuals creating, selling, or improperly issuing state inspection certificates.

## Federal Greenhouse Gas Regulations

Any federal greenhouse gas (GHG) legislation is anticipated to require rulemaking by the EPA, as well as legislation by the state and rulemaking by the TCEQ, depending on specifics. While the Texas Legislature has already given the TCEQ the authority to, by rule, "control air contaminants as necessary to protect against adverse effects related to . . . climatic changes, including global warming," this authority is constrained by the specific statutory language "consistent with applicable federal law," (THSC 382.0205). This law is consistent with the TCEQ's belief that regulation of GHGs is such an issue of global significance that it should be handled on a national or even international scale rather than at the state level.

In September 2009, the EPA finalized its Mandatory Greenhouse Gas Reporting Rule, requiring large stationary sources to annually report GHG emissions to the EPA. Sources were required to begin collecting GHG data in January 2010, with the first annual report due to the EPA by March 2011. In December 2009, the EPA also finalized the Endangerment and Cause or Contribute findings for greenhouse gases. In this action, the EPA determined that six key greenhouse gases constitute a threat to human health and welfare and that combined emissions of greenhouse gases from new motor vehicles and engines contribute to greenhouse gas pollution that threatens public health and welfare. The Endangerment and Cause or

Contribute findings are not regulations that control GHG emissions, but they provide a foundation under the existing CAA regulatory structure for the EPA to start regulating GHG emissions from motor vehicles. In April 2010, the EPA and National Highway Traffic Safety Administration finalized the Light-Duty Vehicle GHG Emissions and Corporate Average Fuel Economy Standards, establishing new standards for light-duty highway vehicles to reduce GHG emissions and improve fuel economy beginning with model year 2012 vehicles.

According to the EPA's interpretation of the CAA, this regulation of GHG emissions from motor vehicles will require regulation of GHG emissions from stationary sources under federal air permitting programs. The EPA finalized a rule in May 2010 that tailors the applicability thresholds of the federal air permitting programs for GHG emissions in order to shield the vast amount of small GHG sources that would fall under federal permit requirements at the current applicability thresholds. The EPA is using a phase-in approach to GHG permitting for large stationary sources beginning in 2011. The TCEQ fully expects that this final "tailoring rule" will require rulemaking to amend state rules implementing the federal permitting programs.

## Air Toxics

The TCEQ's extensive air-monitoring program provides information about the ambient levels of pollutants known as air toxics. Texas currently has the ability to monitor for approximately 150 air toxics, including volatile organic compounds (VOCs), carbonyls, and metals. In 2008, the TCEQ reviewed air toxics data from 75 stationary monitoring sites, which lead to over 7 million data points. In addition, the TCEQ also gathers considerable data with its mobile monitoring projects, which are typically conducted at the fence line of industrial facilities.

The TCEQ compares monitoring data to air-monitoring comparison values (AMCVs) and air quality standards to determine if the air quality poses a risk to human or vegetative health, or could cause odors. To improve the evaluation of these air toxics data, the TCEQ has revised the process for deriving AMCVs. The new process has been peer reviewed by international experts in the field of human health risk assessment and incorporates the latest scientific methods available. As of April 2010, AMCVs have been derived for 33 air toxics using this new process. Importantly, the AMCVs for some of these air toxics have also undergone independent, external peer review by subject experts and all the AMCVs have undergone public comment, which allows the development process to remain transparent and provides members of the general public, advocacy groups, industry, and academia the chance to be involved. These peer and public reviews provide the TCEQ and the public with a high level of confidence in the safety and integrity of the AMCVs and the methods for developing them. In fact, the evaluations of some of these air toxics, including 1,3-butadiene and chromium, have received recognition from other state and federal agencies and professionals in the scientific community as being the most appropriate values available. In fiscal years 2011–2015, the TCEQ plans to finalize approximately 40 new chemical assessments and AMCVs.

Using the most up-to-date information available, less than 7 percent of the state's monitors indicated a potential health or welfare concern by the end of 2008 (the last full year's worth of data). If long-term monitored concentrations of pollutants are above the long-term AMCV or if there are frequent exceedances of the short-term AMCV, the TCEQ puts the pollutant and the area of potential sources of the pollutant on the Air Pollutant Watch List (APWL). There are currently 11 areas in 10 counties on the APWL. The APWL is used to raise awareness and focus agency resources to reduce emissions of the specific chemicals of concern in those areas. An area's listing on the APWL results in more stringent permitting of local industry, prioritized investigative efforts on the part of TCEQ investigators and monitoring staff, and increased efforts to work with industry to address air quality concerns through pollution-control technology and, in some cases, increased monitoring and

notification. Efforts in APWL areas have been especially successful, as six areas and 12 pollutants have been removed from the APWL statewide since 2006. The TCEQ will continue to use the APWL to reduce emissions of air toxics throughout the state.

The APWL, however, is not the only way that the TCEQ addresses air quality concerns. The TCEQ has been involved with numerous scientific studies investigating human exposure to airborne toxic chemicals and the potential of these exposures to cause adverse health effects. For example, studies have been completed in Houston (addressing Houstonians' personal exposure to VOCs from both indoor and outdoor sources) and Midlothian (addressing citizen concern about possible exposure to metals from cement-kiln operations). The TCEQ, as part of the Texas Environmental Health Institute, also participates in research studies conducted in various parts of the state to address citizen concerns about the potential impact of environmental pollutants on their health from federal or state Superfund sites. These studies have been critically important: they have not only led to a greater understanding of air pollution and more knowledgeable decision making by the TCEQ, but they have also become an invaluable way to address community concerns, since many of these studies were originally requested by citizens. Similar residential exposure studies will continue into the fiscal years 2011–2015 time frame as funds are available.

Recently, the TCEQ has also expended extensive efforts in evaluating air quality in the hydrocarbon-producing geological formation of the Dallas–Fort Worth area known as the Barnett Shale; these efforts will continue into the fiscal years 2011–2015 time frame. Health effects evaluations of air-monitoring data collected during mobile monitoring, follow-up reconnaissance, and citizen odor complaint investigations are still being conducted to determine the potential for adverse health and welfare effects in this region.

In addition to the potential air quality issues in the Barnett Shale area, potential risk assessment issues involving formaldehyde could arise in fiscal years 2011–2015 as a result of monitoring research and initiatives the EPA is conducting. A preliminary review of the 2005 EPA National-Scale Air Toxics Assessment (NATA) indicated that the EPA was advocating the use of the 1992 California EPA unit risk factor, which is over 1,000 times more conservative than the risk factor used in the previous NATA. This change in unit risk factor led the EPA to the preliminary determination that 23 percent of the national risk from air pollutants now comes from formaldehyde, making it the largest contributor. By comparison, benzene accounted for only 18 percent of the total risk. During the process of the 2005 NATA review, the EPA also indicated that their draft review of formaldehyde would lead to an air concentration at the 1 in 100,000 risk level, which is 20 times lower than the California EPA air concentration at the same risk level (and 127 times lower than the AMCV); a change that would indicate that all seven monitors in Texas that measure formaldehyde, as well as all of the monitors in the entire country, had unacceptably high levels of formaldehyde in 2008. Although this draft value may change somewhat, it will likely become public and finalized in the fiscal years 2011–2015 time frame.

## Clean School Bus Program

The 79th Texas Legislature passed HB 3469, which authorized the TCEQ to establish and administer a program designed to improve the health of school children and bus drivers by reducing emissions of diesel exhaust from school buses. To meet these goals, the Legislature authorized the TCEQ to provide grants to Texas schools.

The General Appropriations Act, enacted by the 80th Texas Legislature, provided $3.75 million per fiscal year over the 2008–09 biennium for implementation of the Texas Clean School Bus Program established under Chapter 390, Texas Health and Safety Code. Additional funds for school buses have been acquired from the Texas Emissions Reduction Plan and federal grant programs. Fiscal 2010 funding of $7,447,834 for the Clean School Bus Program includes $5,482,540 in state funds and $1,965,294

in federal funds. Fiscal 2011 funding of $4,165.339 includes only state funds.

As of April 2010, the Clean School Bus Program has reimbursed $13,367,988 in funding to 128 school districts for upgrades that reduce emissions of harmful particulate matter (PM) on 4,882 school buses.

# Water Quality Issues

## Organizational Changes

Although the Texas Commission on Environmental Quality is a relatively mature agency, it is also a dynamic institution. The TCEQ's organizational structure is not static–adjustments are made in response to changed priorities and identified efficiencies. The TCEQ continually considers ways to improve how we provide our services.

When the TCEQ was first established, as the TNRCC (Texas Natural Resource Conservation Commission), the agency was organized according to the programs it regulates: air, water, and waste. In 1999, more than 10 years ago, the agency moved from a programmatic organizational structure to a functional one. This change was made to establish greater uniformity in procedures and decision making, provide cross-training opportunities for staff in the various programs, and align planning and permitting activities. Over time, that consistency between the various permitting programs has been achieved and is now institutionalized.

During the last several years, however, we have observed the need to change the structure again, moving it from an exclusively functional one toward one that incorporates elements of a programmatic structure. While the move to a functional organizational structure had its benefits, it also generated challenges. One of the most significant challenges was the loss of specific staff with expertise in water policy.

Responding to these considerations, we began to make additional changes to our organizational structure. A couple of the more significant changes were transferring the Remediation Division to the Office of Compliance and Enforcement and establishing the Water Quality Planning Division in the Chief Engineer's Office. The Water Quality Planning Division was established in order to take a comprehensive, coordinated approach to water quality planning, which involves a wide variety of activities–including, for example, identifying sources, addressing impairments, monitoring water quality, and reviewing efforts to restore wetlands. Previously, these functions had been fragmented in three different offices.

As these changes were implemented, the need for an Office of Water became increasingly apparent. We determined that creating such an office would allow the TCEQ to maximize the availability of staff knowledgeable in the area of water resources, as well as make the agency more accessible to a public that understands environmental concerns in program-specific terms. Establishing an Office of Water would also provide enhanced representation for this high-profile policy issue. The Office of Water was created in 2009, and includes the Water Quality Division, the Water Quality Planning Division, and the Water Supply Division.

## Groundwater Protection and Management

### State Groundwater Protection Strategy

Texas Water Code 26.405 requires the Texas Groundwater Protection Committee to develop and update a comprehensive groundwater protection strategy for the state that provides guidelines for the prevention of contamination and for the conservation of groundwater, and that also provides for the coordination of the groundwater protection activities of the agencies represented on the committee. The Texas Groundwater Protection Strategy was last updated in 2003, and is currently under review by the committee to be updated by the end of the calendar year. The TCEQ will be responsible for preparing and supporting efforts to implement this document, including a multi-agency, statewide Groundwater Monitoring Plan.

### Priority Groundwater Management Areas

The TCEQ is also responsible for delineating and designating priority groundwater management areas (PGMAs) and creating GCDs in response to landowner

petitions or through the PGMA process. TCEQ is currently tracking and pursuing GCD creation in the designated PGMAs. The TCEQ and the Texas Water Development Board (TWDB) will prepare and submit to the 82nd Texas Legislature a report on the creation of new GCDs, the status and result of actions in the PGMAs, GCD management planning. and agency-required interactions.

## Groundwater Management

Groundwater conservation districts (GCDs) are the state's preferred method of groundwater management, and each district is governed by a locally selected board of directors. The three primary GCD authorities include permitting water wells, developing a comprehensive management plan, and adopting the rules necessary to implement the management plan. These plans are dynamic and must be readopted and approved at least once every five years. The state's GCDs are currently working together through the similarly dynamic first round of the groundwater management area (GMA) planning process to develop "desired future conditions" for their groundwater resources. In this process, the districts in a GMA deliver their desired future conditions to the TWDB, which, in turn, provides estimates of "managed available groundwater" to the districts for inclusion in their groundwater management plans and to the regional water planning groups for inclusion in their plans. "Managed available groundwater," a new term relating to groundwater availability, refers to the maximum amount of water that is available from a particular groundwater source or aquifer, as determined by the TWDB.

The TCEQ is responsible for enforcing GCD management-plan adoption, approval, and implementation, and implementation of the GMA joint planning goals. The agency is actively monitoring and ensuring GCD compliance to meet management plan adoption and re-adoption requirements. With regard to GCD implementation of the first cycle of GMA planning, the TCEQ has rules in place to consider petitions that challenge a GCD's participation in the process or the adequacy or enforcement of a GCD's rules to achieve the GMA goals. It is anticipated that the first application of these rules may be exercised during fiscal years 2011 and 2012.

## Public Water Supply Supervision Program Implementation

The TCEQ retains primary enforcement authority (primacy) for the federal Safe Drinking Water Act (SDWA) by implementing the Public Water Supply Supervision (PWSS) Program. A key objective of the PWSS Program is to ensure that customers of public water systems are provided with water that meets the health-based drinking water quality standards, and that the public has complete access to information that the TCEQ gathers under the "right to know" elements of the SDWA. The TCEQ is developing accessible data-sharing tools that will allow customers of public water systems to see chemical and microbial sampling results for their system over the Internet. The TCEQ is also working on a data portal that will allow systems to submit monitoring reports electronically. The TCEQ is assisting public water systems to comply with ever-increasing National Primary Drinking Water Regulations that target protection from viral contamination of wells under the Ground Water Rule, protection from *Cryptosporidium* (a pathogen) in surface water under the Long Term 2 Enhanced Surface Water Treatment Rule, and carcinogenic disinfection byproducts under the Stage 2 Disinfectants and Disinfection Byproducts Rule. The TCEQ is providing guidance and templates to help systems understand these complex rules. As the EPA makes new rules for lead, copper, and coliform bacteria, the TCEQ will remain involved in the federal rulemaking process to ensure that Texans have their voices heard.

## Drought

Beginning in 2008 and continuing through 2009, large sections of the state experienced exceptional drought. Prolonged dry conditions strained water supplies for all uses. As the agency responsible for protecting senior and superior water rights and ensuring compliance with water-right authorizations, the TCEQ

addresses actual and potential drought issues through an agency-wide coordinated effort.

When the potential for drought conditions increases, a multi-disciplinary drought team convenes to ensure communication and coordination of drought issues affecting every program within the TCEQ. This team functions to determine the course of action necessary to respond to actual drought impacts and to potentially prevent critical drought issues from arising. Below are some examples of actions taken by the TCEQ through coordination of the drought:

- Mailout of notification letters alerting water-right holders of possible (or actual) curtailments or suspensions resulting from drought,
- Updates to the TCEQ drought Web page,
- Consultation with and monitoring of public water systems' implementation of drought contingency plans,
- Updates to delivery.gov for public e-mail distribution of drought information.
- Establishment of a drought hotline,
- Creation of publications for public outreach promoting water conservation measures,
- Coordination of media responses and press releases to address specific drought impacts and to promote water conservation,
- Coordination of emergency technical assistance in alleviating water crises by temporarily providing bulk water during drought-related water system outages.
- Participation with other state agencies on the Joint Information Center and Drought Preparedness Council.

An important agency resource during drought conditions is provided by the TCEQ Watermaster Offices. The Watermaster programs ensure compliance with water rights by monitoring stream flows, reservoir levels, and water use, and coordinating diversions in the basins under their jurisdictions.

The TCEQ has three Watermaster programs:

- The Rio Grande, which serves the Rio Grande River Basin and coordinates releases from the Amistad and Falcon reservoir system for approximately 1,500 water-right permits.
- The South Texas, which serves the Nueces, San Antonio, and Guadalupe River basins, as well as the adjacent coastal basins for approximately 1,200 water-right permits.
- The Concho River, which serves a portion of the Concho River segment of the Colorado River Basin for approximately 300 water-right permits.

The watermaster programs are responsible for allocating, monitoring, and controlling the use of surface water in the divisions under their jurisdictions. A total of twenty staff in the three programs are dedicated to monitoring stream flows and pumping operations on a daily basis. Staff also provide technical assistance to water users and interested parties by responding to water-right inquiries, helping water-right owners install stream flow markers when necessary, or providing information about the number of water rights authorized along a stream. This daily oversight allows the staff to anticipate problems, thus enabling local users to develop regional responses before surface water availability issues become severe. Since Watermaster staff are located in regional or field offices, they are able to closely coordinate with water-right holders.

With the exception of the Rio Grande Watermaster Program (RGWM), watermasters have the authority to allocate available surface water in accordance with the priority doctrine that states "first in time, first in right." Water rights under the RGWM jurisdiction are prioritized by type of use, with municipal use having the highest priority. With detailed knowledge of water-right permits in relation to each other, watermasters are equipped to negotiate surface water use to minimize negative impacts to all water-right holders they serve. The ability to directly manage available surface water on a daily basis reduces the potential for curtailments of non-municipal uses in the Rio Grande and for curtailments resulting from a priority call under the priority doctrine in the two other watermaster areas. The authority provided to a watermaster by the Texas Water Code allows them to manage the dynamic surface water resources in a way that protects senior and superior rights while balancing the needs of all water-right holders.

In the areas of the state outside the jurisdiction of a watermaster program, the TCEQ is still responsible for protection of senior and superior water rights. Agency actions in these areas are more reactionary than those that are in a watermaster program. Without the dedicated staff of a watermaster program, the TCEQ must shift field resources during critical drought periods in order to respond effectively to drought impacts. During the summer of 2009, the TCEQ executive director temporarily realigned agency resources by establishing a dedicated group of TCEQ regional investigators specifically trained to provide immediate response to water-right complaints and to conduct compliance investigations as a result of the drought.

Should drought conditions arise again in areas outside the coverage area of a watermaster program, the TCEQ anticipates reactivating a group of investigators dedicated to drought response. This temporary resource shift may not be necessary if additional watermaster programs are established within the state.

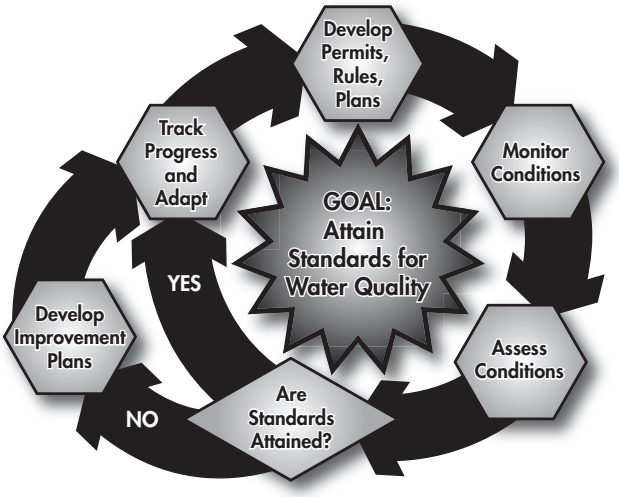
Protecting surface water rights is a critical issue in the State of Texas and, as a result, the TCEQ continues to monitor drought conditions statewide on a weekly basis. Experience gained from recent drought impacts allows the TCEQ to enhance its ability to respond more efficiently and effectively when water supplies are again drained by drought in the future.

## Water Quality Management

Water quality management includes the development of water quality standards, monitoring, assessment, permitting, and remedial activities. As Figure 5 shows, it is a cyclical process where all of the components are examined regularly and changed as needed, based on factors such as additional information, stakeholder input, the implementation of controls, or new federal requirements.

The Water Quality Planning Division (WQPD) will continue to establish priorities for water quality management by developing a process to plan, coordinate, and track actions taken to execute a watershed management strategy. The process integrates WQPD priorities and emphasizes annual internal and external planning coordination by the TCEQ and its partners at a basin and watershed level. A Web-based tool will be developed to document and track activities and successes.

**Figure 5. Watershed Action Planning Process**




## Water Quality Standards

The Texas Surface Water Quality Standards (30 Texas Administrative Code (TAC) 307) are the foundation for managing surface water quality by establishing water quality goals for the streams, rivers, reservoirs, and bays of Texas. The standards provide the basis for:

- Setting treatment levels for permitted wastewater discharges.
- Evaluating monitoring data to see if water quality is being maintained.
- Establishing water quality targets to set total maximum daily loads of pollutants.

Key activities include the following:

***Revisions to the Texas Surface Water Quality Standards***

The 2010 proposed revisions to the Water Quality Standards include numerical nutrient criteria for close to 100 reservoirs, numerous site-specific standards based on use-attainability analyses, revised toxic crite-

ria, and expanded categories of recreational uses and corresponding criteria. The TCEQ will continue to develop water quality goals for the state, conduct triennial reviews of water quality standards, and revise as needed. The TCEQ plans to publicly revise the water quality standards approximately every three years to:

- Incorporate better information on the effects of potential pollutants.
- Improve standards for specific water bodies based on new studies.
- Address changes in state and federal requirements.
- Improve the framework for water quality management.

The TCEQ is developing additional numerical nutrient criteria for consideration at the next revision of the water quality standards, tentatively scheduled for 2013.

***Use-Attainability Analyses for Aquatic Life and Recreational Uses and Criteria***

The TCEQ has established sampling plans, identified appropriate water bodies, and allocated future resources to coordinate, conduct, and review numerous site-specific standards based on use-attainability analyses. This process will improve the standards and water quality targets, and the results will be incorporated into the next revision of the water quality standards.

## Coordinated Monitoring Network

The TCEQ directs a surface water quality network involving 1,800 monitoring sites across the state, operated by various monitoring organizations. Developing and managing a comprehensive monitoring program that supports the various statewide and basin objectives requires intensive planning and coordination. The monitoring programs are evaluated annually to address new cooperative efforts and emerging priorities, and to ensure that the programs remain effective and viable. Key activities planned for the next five years include expanding the identification of local information available or needed to better define water quality issues, leveraging the resources and expertise of more water-monitoring programs to help maximize limited resources, and participating in the adaptive management process for developing various water quality strategies.

## Continuous Water Quality Monitoring

The TCEQ has developed a Continuous Water Quality Monitoring Network (CWQMN) to measure water quality with greater temporal resolution than is possible with the routine monitoring network. The TCEQ deploys CWQMN sites where there are data needs that can be met with continuous monitoring using available technology. CWQMN data can be appropriate for a variety of uses involving the characterization of baseline conditions, water resource management decisions, water quality trends, Total Maximum Daily Load implementation, public information, etc. The network included approximately 70 sites in fiscal 2010. Annual reviews of CWQM sites include evaluations of:

- data needs
- available monitoring technology
- available funding
- availability of operators
- site constraints

Sites may be added, deleted, or modified during each of the next five years. The TCEQ will also review existing procedures, practices, and instrumentation to improve data quality and data return from CWQMN sites. In addition, the TCEQ will work to identify long-term funding and dedicated staff for CWQMN during the five-year period.

## Integrated Report

The Integrated Report (also known as the Texas Water Quality Inventory and 303(d) List) summarizes the data collection activities of the agency and partner entities. This water quality report is submitted to the Environmental Protection Agency (EPA) in even-numbered years, as required by the Clean Water Act (CWA). Its purpose is to provide information on the condition of surface water quality throughout Texas as compared to the Texas Surface Water Quality Standards.

The report includes the identification of specific water bodies in need of remedial activities, changes to wastewater permits, or revisions to water quality standards. This information is also used to direct sampling resources and identify data needs for future assessments. Recent reports have been developed using advanced technological tools for receiving, compiling, analyzing, and reporting data. These tools will be further developed over the next five years to increase efficiencies and improve the overall process. The next report is scheduled to be submitted in June of 2010. In the next five years. reports will be submitted in both 2012 and 2014.

## Addressing Water Quality Impairments

The Integrated Report is the tool the agency uses to identify impairments. Once identified, the agency has four primary approaches that may be taken to address an impaired water body:

- use-attainability analysis
- special studies
- Watershed Protection Plans (WPPs)
- Total Maximum Daily Loads (TMDLs)

Work conducted under each of these approaches may be done by several entities. The TCEQ is the lead agency for point-source pollution and nonagricultural nonpoint-source pollution. The Texas State Soil and Water Conservation Board (TSSWCB) is the lead agency for nonpoint-source pollution resulting from agricultural and forestry operations. Frequent coordination occurs between the TSSWCB and the TCEQ programs to identify projects, coordinate resources, and avoid duplication of effort.

### Use-Attainability Analysis

A use-attainability analysis (UAA) is a scientific assessment of the physical, chemical, and biological characteristics of a water body. It is conducted to determine existing and attainable uses. UAAs are often used to re-evaluate designated or presumed uses when the existing standards appear to be inappropriate for water bodies that are listed as impaired. UAAs may be conducted by the TCEQ's Water Quality Planning Division. The TSSWCB conducts UAAs primarily in areas affected by agriculture and silviculture.

### Special Studies

Special studies can encompass a variety of projects that may be used to address impaired waters. These are typically conducted to gather additional information regarding the cause of a water body impairment in an area where unique or complex factors exist.

### Watershed Protection Plans(WPP)

WPPs are plans used to protect and/or restore water bodies by characterizing pollution sources, establishing water quality–based pollution-control targets, and identifying the programs and practices that will be used to achieve the targets. WPPs are conducted through the Nonpoint Source (NPS) Program, which in Texas is administered by both the TCEQ and TSSWCB. The TCEQ and TSSWCB provide NPS 319(h) grants to local stakeholder groups for the development of the WPPs. While the TCEQ and TSSWCB administer the program, the WPP document may be developed by a variety of local groups. such as river authorities, councils of governments, or stakeholder groups.

### Total Maximum Daily Loads

Where current control actions or pollution prevention strategies are not sufficient to attain water quality standards, the state takes action to restore some impaired segments through the Total Maximum Daily Load (TMDL) Program. A TMDL determines the maximum amount of a pollutant that a water body can receive and still maintain its identified uses. A TMDL allocates the load to regulated and unregulated sources in the watershed. TMDLs are conducted by the TMDL Program in the Water Quality Planning Division. Following the development of the TMDL, an Implementation Plan (I-Plan) is developed to identify the management measures necessary to achieve the pollutant reductions identified in the TMDL. Stakeholder involvement is essential in the development of both the TMDL and the I-Plan.

#### Coordination of Water Quality Studies

Staff of the TCEQ and other local, regional, state, and federal agencies will closely coordinate and plan the water quality sampling studies of each agency, in order to efficiently address multiple sampling goals, avoid duplication of efforts, and share information. We will continue to notify and seek input from external stakeholders regarding TCEQ water quality studies, in order to increase public awareness and to obtain local information on the characteristics of individual water bodies.

#### Bacteria Listings

Elevated bacteria concentrations that exceed the contact recreation standards continue to be the dominant water quality issue affecting water bodies. Over the next five years, newly identified bacteria-impaired water bodies will require a recreational use attainability analysis to establish the correct use under the proposed water quality standards. TCEQ programs will work together to complete these studies. Bacteria TMDLs have been conducted or completed in most urban areas of the state. Over the next five years, most new bacteria impairments in urban areas will be within existing TMDL watersheds. The TMDL Program will develop an expedited procedure to add these new impaired segments to the State Water Quality Management Plan. The majority of the new bacteria impairments will be in rural and agricultural areas where the TSSWCB has the primary responsibility. The TMDL Program will work with the TSSWCB regarding these impairments.

### Coastal Activities

The Coastal Nonpoint Pollution Control Program was established by the U.S. Congress in 1990 and is jointly administered by the National Oceanic and Atmospheric Administration and the EPA. The program establishes a set of management measures for states to use in controlling polluted runoff. The measures are designed to control runoff from six main sources: (1) forestry, (2) agriculture, (3) urban areas, (4) marinas, (5) hydromodification (shoreline and stream channel modification), and (6) wetlands and vegetated shorelines, or riparian areas. The State of Texas was granted conditional approval of this program in July of 2003. The TCEQ Nonpoint Source (NPS) Program aims to address the two remaining "outstanding conditions" in order to gain full approval of the program.

## Waste Issues

### PST Reimbursement Program Sunset

The TCEQ oversees the assessment and cleanup of leaking petroleum storage tanks (PSTs). Cleanups are conducted either through the Responsible Party's (RP) Lead Program or through the State Lead Program. Under the State Lead Program, the state conducts the cleanups in situations where the owner or operator cannot be found, is unwilling, or is unknown.

The Texas Legislature established the Petroleum Storage Tank Remediation (PSTR) fund in 1989, to help thousands of tank owners and operators to pay for the cleanups of releases. The fund is supported by a fee collected on the bulk delivery of fuel. To be eligible for reimbursement, releases had to be reported by Dec. 22, 1998. For releases reported after this date, cleanups are paid for by the owner's environmental liability insurance, their own funds, or other financial assurance mechanisms. To date, over $1 billion has been paid out in reimbursements from the PSTR fund.

The PSTR fund is also the primary funding source for cleanups conducted by the state. Another source of funding for cleanups conducted by the state is a federal grant that requires a 10 percent state match.

The bulk fee and the PST Reimbursement Program have been set for sunset several times; however, the sunset date has been extended each time. In 2007, the 80th Legislature passed HB 3554, which continued the bulk delivery fee until Aug. 31, 2011; eliminated the tank registration fee, which supported the regulatory components of the PST program; and extended the PST reimbursement program for four years. Eligible parties that cannot complete all corrective action by the Aug. 31, 2011, deadline can apply to have their site

placed in the PST State Lead Program no later than July 1, 2011. The reimbursement program will expire on Sept. 1, 2012.

Since the program began in 1987, there have been 25,798 reported releases (as of March 2010). Of those, cleanup has been completed at 23,361 sites, and corrective action is under way at 2,437 sites. Most of these cleanups have been paid for through the PSTR fund. As of March 2010, of the total 2,437 sites, 867 are eligible for reimbursement and 1,570 are ineligible. In addition, an average of 30 new releases are reported each month. New reported releases become part of the ineligible inventory of sites.

Based on current trends, it is expected that RPs for more than 400 reimbursement-eligible sites will request to have their sites placed in the State Lead Program by the July 1, 2011, deadline. It is estimated that by Sept. 1, 2012, the State Lead Program will be responsible for the cleanup at approximately 650 sites (this includes the transferred sites, the sites currently being managed in the program, and any new release that cannot be addressed by a viable RP). The PST State Lead yearly budget to manage between 200 and 260 sites has been $7 to $10 million. Based on these budget amounts, the program would need approximately $23 million to properly address all of these sites in fiscal 2012. As cleanups progress, cost projections through 2015 are between $15 and $20 million.

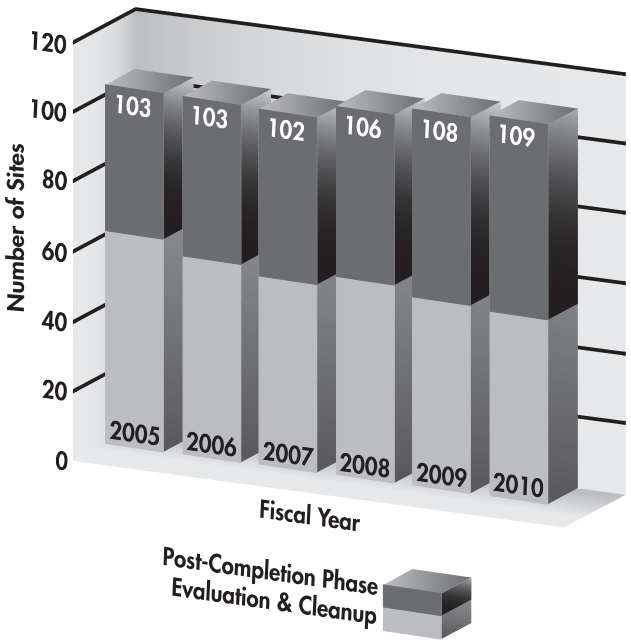
The funding necessary to meet the ongoing requirements of the PST State Lead Program will need to be addressed. Additionally, adequate funding will be needed to continue the PST regulatory program after the fee expires.

## Superfund Program

The Texas Superfund Program is responsible for assessment, evaluation, remediation, and post-completion activities at state and federal Superfund sites in Texas. The program includes the Superfund Site Discovery and Assessment Program (SSDAP) and the Preliminary Assessment/Site Inspection (PA/SI) Program, which identify and rank sites contaminated with hazardous substances for the state and federal Superfund programs, respectively. The Texas Superfund Program was created in 1985 by an amendment to the Solid Waste Disposal Act. Since then, 100 Superfund sites in Texas have been successfully remediated and no longer pose an imminent threat to public health and safety or the environment.

The number of Superfund sites in Texas remains fairly static, as is detailed in Figure 6, below. The Texas Superfund Program is currently addressing 109 active sites. These include 50 sites in the post-completion phase, during which the agency is responsible for the long-term and sometimes indefinite operation of remedies put in place during the remedial action. Post-completion activities may include maintenance of treatment systems and on-site waste containment, long-term groundwater monitoring, and general site security.

**Figure 6. Superfund Sites in Texas**




Of the 109 active Superfund sites in Texas, 52 are state sites and 57 are federal. It is anticipated that two additional state sites and one additional federal site will be proposed to the State Superfund Registry and the National Priorities List, respectively, by fiscal 2011.

The SSDAP assesses the eligibility of sites for the federal and state Superfund programs. Candidate sites are identified through referrals from internal and external groups, including the TCEQ's Enforcement and Water Quality divisions, TCEQ region offices, and the EPA. In fiscal 2009, the SSDAP completed assessments at 82 potential sites, 29 of which were designated PA/SI federal sites. In 2010, as of March, the SSDAP has completed assessments at 64 potential sites, two of which were designated PA/SI federal sites. In general, the number of potential Superfund sites to be assessed remains fairly static. However, in fiscal 2009, there was an increase in referrals and a Central Records audit performed by the TCEQ's Superfund Section identified additional sites to be assessed. Currently there are 947 potential Superfund sites awaiting assessment.

For fiscal 2010, the appropriated budget for the Texas Superfund Program was $13.2 million, with additional funds added to create a total budget of $15.9 million. Additionally, during the fiscal years 2009 and 2010, the Superfund Program has been awarded a total of $2.6 million in grant funding from the EPA and the Department of Energy for assessment, site inspection, and management assistance activities to support the Federal Superfund Program.

Budget constraints resulting from on-going immediate response actions addressing imminent threats to human health and the environment, as well as increasing cost-sharing obligations with the EPA at federal Superfund sites, have required that the agency allocate funds for large-scale cleanups, site discovery and assessment, and post-completion activities based on a prioritization scheme. Accordingly, remediation of lower-priority sites may be potentially delayed or phased over longer periods.

Additionally, the current economic climate has seen an increase in Superfund site cleanup costs and bankruptcy filings among known Remediation Division sites, resulting in an overall increase in the current and potential Superfund Program's liabilities. It is difficult to determine at this time how many sites in bankruptcy will be managed by the Superfund Section in the future. Moreover, as the program continues to discover and clean up contaminated sites, additional sites will need to move into the post-completion phase, which will reduce the amount of money that is available for discovery and cleanup.

# Other Key Issues

## Used Electronics Reuse and Recycling

For several years, under general statutory mandates to promote reuse and recycling, the TCEQ has facilitated the reuse and recycling of used electronics through online recycler-locator services and outreach. House Bill (HB) 2714, passed by the 80th Legislature, in 2007, required the TCEQ to help implement a computer-equipment recycling program in Texas based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and state government. On May 21, 2008, the commission adopted rules implementing the program.

Under this legislation, a computer equipment manufacturer that sells computer-equipment in or into Texas to individual consumers or to home businesses must:

- Label the computer equipment with its brand, or brands.
- Provide free collection and recycling options to consumers for computer equipment that has been used primarily for home or home-business purposes and is of the manufacturer's own brand.
- Submit a recovery plan notifying the TCEQ of the manufacturer's compliant collection program.
- Submit an annual report to the TCEQ for this program. The report must include:
  - The weight of the computer equipment collected, recycled, and reused during the preceding calendar year.
  - Verification that the computer equipment collected was recycled or reused in accordance with federal, state, and local laws.

As of Sept. 1, 2008, retailers cannot sell computer equipment in or into Texas unless the equipment is labeled with a brand and the brand's manufacturer is on the TCEQ's online list at <www.TexasRecyclesComputers.org>.

The TCEQ is carrying out its duties to:

- Educate consumers on computer equipment reuse and recycling.
- Provide online links to manufacturers and details on their programs.
- Report to the Legislature annually, beginning March 2011, on information compiled from manufacturers' annual reports.

## Tax Relief for Pollution Control Property Program

The Tax Relief for Pollution Control Property Program was created in 1993 by the Texas Legislature's passage of House Bill (HB) 1920, which added Section 11.31 to the Texas Tax Code. The program was then authorized by Texas voters with their approval of Proposition 2, which added section 1-1 to Article 8 of the Texas Constitution. The TCEQ is responsible for determining if an item qualifies as a pollution-control property.

If a property qualifies, then a positive-use determination is issued. A positive-use determination means that the TCEQ has decided that a particular property is used for pollution-control purposes and was purchased, installed, acquired, or constructed in order to meet or exceed a federal, state, or local environmental law, rule, or regulation. "Property" includes both real and personal, and can consist of devices, equipments, methods, or lands that are used for pollution control, i.e., to prevent, monitor, control, or reduce air, water, or land pollution.

### Current Activities

#### Application Review

The program's season for application review runs from January through June of each year. As of April 9, 2010, the program has approximately 340 applications under active review. During fiscal 2008, the program processed 1,106 applications. Positive-use determinations were issued for 842 applications, with a total listed dollar value of $2,056,322,382.

#### 30 TAC 17 Amendments

The program is working on amendments to 30 TAC, Chapter 17, "Tax Relief for Property Used for Environmental Protection." The amendments will adopt changes required by HB 3206 and HB 3544 along with other necessary changes. The package is currently under management review.

#### Tax Relief Advisory Committee

The commission created the permanent advisory committee on Jan. 27, 2010. The committee's first meeting was held on Feb. 25, 2010. Since then, the group has met every other week. Program staff provides administrative support for the committee.

## Data Center Consolidation

The 79th Texas Legislature passed HB 1516, which directed state agencies to take an enterprise approach to managing the state's investment in information and communications technology. While consolidation and transformation have been challenging, the TCEQ has been an active participant.

The TCEQ's goal in this process is to it meet its mission effectively and efficiently, minimizing financial and operational risk. The TCEQ will continue to work on logistical and financial concerns with the parties involved. In the meantime, the TCEQ has moved two servers to the Data Center, operated by the Texas Department of Information Resources (DIR), and the agency will continue to engage in the transformation effort in accordance with a schedule that is yet to be developed, and that will be agreed upon by the TCEQ, the Department of Information Resources, and IBM.

## Oil and Gas Production

The TCEQ is using innovative approaches to find "real world" solutions to accurately account for and effectively reduce emissions from oil and gas operations. The TCEQ has undertaken numerous projects that use

state-of-the-art technology to assess and address emissions from oil and gas operations. Recently, the TCEQ has begun in-depth ambient and source measurements to fully evaluate potential health effects and initiated an intensive special oil and gas emissions inventory. The special inventory data will be used for air quality planning, targeting investigations, modeling, and permitting evaluations.

There are numerous other TCEQ activities to assess and address emissions from oil and gas operations that have been completed or are ongoing, including: pollution prevention outreach, aerial surveys, ground-based monitoring, rapid response investigations, rule changes, special emissions inventories, source testing, and emissions factor evaluations. These initiatives have reduced emissions directly as well as indirectly, through improved agency policies, guidance for regulated entities, and enforcement when necessary. And they will continue to do so. Additional information about many of these activities and projects can be found at the following website: <www.tceq.state.tx.us/goto/barnettshale>.

## Emerging Issues Associated with Oil and Gas Operations

With enhanced drilling methods and increased demand for natural gas, exploration for oil and gas has begun to get closer to urban areas of Texas. With the increased production in urban areas, potential impacts to human health also increase. The Barnett Shale is a hydrocarbon-producing formation covering about 5,000 square miles and 23 counties in North Texas. A large portion of the producing shale is located in urban areas of North Texas, including Tarrant County. With this increased potential impact, the TCEQ's Dallas–Fort Worth (DFW) regional office has experienced a significant increase in complaints and requests for monitoring in both rural and urban areas. In October 2009, the DFW regional office received four Barnett Shale–related complaints. Each month, the complaints have steadily increased, with 35 complaints received in March 2010. From October 2009 to March 2010, a total of 123 complaints were received. As production continues to increase, it is anticipated that complaints will also continue to increase. With increasing demand for energy, it is also anticipated that there will be continued growth in exploration and production in other areas of the state.

### Issues

- Increased potential impacts to human health.
- Increased concern on the part of the public.
- Increased complaints regarding drilling, fracturing, production, and compression.

### Agency Actions

During fiscal 2010, a number of actions have been taken and planned to address issues related to oil and gas operations. These activities fall into five broad categories:

- Enhanced investigation protocols
- Increased monitoring
- Outreach
- Emissions inventory
- Rulemaking

***Enhanced Investigation Protocols***

Since December 2009, oil and gas complaints from the Barnett Shale area are being investigated within 12 hours of receipt. Standard equipment utilized in all investigations includes a GasFind IR camera, a handheld VOC monitoring device (Rae or TVA), and Summa canisters. From October 2009 to March 2010, 123 complaint investigations have been completed. Most complaints are regarding odor and concern about emissions from drilling, fracturing, and compressor stations.

***Increased Monitoring***

In 2007, the TCEQ conducted an aerial survey using the GasFindIR camera in the Dallas–Fort Worth area. Ten sites imaged during the survey were selected for follow-up investigations based on the apparent magnitude of the hydrocarbon plumes imaged. These 10 sites, along with additional sites in the DFW area, were surveyed again in April 2010. The DFW Region

staff is currently visiting 48 sites based on video taken during the flyover.

Mobile monitoring was conducted in August, October, November, and December 2009. Two locations had measured benzene emissions well above short-term exposure levels. The owners for these locations were contacted and the issues associated to these sites were addressed immediately. The two locations with high impacts were re-monitored in January 2010 and were found to be well below any threshold of concern. While not an immediate health concern, instantaneous measurements detected benzene above long-term cumulative exposure levels at an additional 19 monitoring locations. These 19 locations were re-monitored in March 2010. Those last results are still pending.

The TCEQ conducted additional ambient sampling at sites within the City of Fort Worth in April 2010 as a follow-up to sampling that was conducted in Fort Worth in December 2009.

The agency will be conducting a source and ambient sampling project in late spring to early summer, 2010. Source testing at the storage tanks will be conducted for a 24-hour period. At the same time that the source testing is being conducted, ambient 24-hour canister sampling will also be conducted.

- Ten to 15 storage-tank sites will be sampled.
- Various types of storage tanks will be sampled, including: two new wells less than two years old; two older wells greater than two years old; two "dry gas" wells; two "wet gas" wells; and varying condensate production–one site with four or more tanks, and one site with two tanks.

***Outreach***

In fiscal years 2008 and 2009, the TCEQ provided a total of 10 free workshops for oil and gas companies to offer strategies on how to improve efficiency and prevent pollution. In 2008, the workshops were held in Midland, Victoria, and Wichita Falls. In 2009, the workshops were held in Austin, Longview and Hebbronville. Total attendance was 435.

In fiscal 2010, the TCEQ conducted a compliance assistance and pollution prevention workshop in Arlington. The workshop reached environmental, health, and safety managers; production managers; field personnel; and engineers who work in the Barnett Shale area. Workshop topics included air permitting and emissions inventory requirements; as well as best practices and pollution prevention. The workshop had 91 attendees.

Additional workshops are being planned. The workshops will continue to build on past workshop themes, which highlighted the potential cost saving of installing vapor-recovery units. In addition, the new workshops will also focus on potential compliance issues associated with the increase in urban area drilling.

***Emissions Inventory***

In an effort to get a true picture of the oil and gas universe and to quantify emissions, the TCEQ began the first phase of a two-part emissions inventory in early April 2010. The first phase (physical inventory) was completed by June 2010. The second phase (emissions and modeling) should be completed by the end of calendar 2010.

***Rulemaking***

In fiscal 2010, the TCEQ initiated rule revisions for oil and gas production facilities. This rulemaking process will include revisions to 30 TAC 106.352 and proposal of a standard permit for oil and gas production sites. These revisions are necessary to ensure that the rules are updated for protectiveness and to improve regulatory oversight. The rule revisions are set for proposal in July 2010 and adoption in January 2011.

## Permit Streamlining Efforts

Since the inception of the Permit Time Frame Reduction project, in March 2002,, and the Project Time Frame Tracking initiative in 2007, the TCEQ has significantly reduced its permitting backlogs and reduced permit time frames. Most notably since March 2002, we have reduced the overall permitting backlog

from 1,150 permits to 500, which is approximately 1 percent of the total number of registrations and authorizations issued per year. Approximately 400 of the 500 backlogged permits are air permits and these are backlogged primarily due to the requirements for maintenance, start-up, and shutdown applications.

The streamlining measures behind this success include:

- Increasing the use of general permits, standard permits, and permits by rule. The continued use of these authorizations has significantly reduced the permit processing time frames by as much as 300 days in certain instances.
  - Agricultural standard permits approved in March 2010 allow applicants to obtain authorization in 45 days as compared to a case-by-case agricultural permit, which usually takes 165 days.
  - Revisions to chapters 305 and 335 approved in October 2009 allow certain waste operators to obtain authorization through a standard permit in 120 days, compared to the 450 days for a full permit.
  - The underground injection control general permit, issued in December 2009, authorizes the use of Class I injection wells to dispose of nonhazardous brine from desalination operations or nonhazardous drinking water treatment residuals and will expedite the processing of authorizations.
- Developing a computer program for online applications and recommendations for surface casing operations. This computer program will allow customers to file Depth of Usable Quality Groundwater applications online and will list completed recommendations on the Web.
- Reviewing the processing of radioactive materials and uranium licensing actions and underground injection control permits and authorizations to find efficiencies, remove unnecessary steps, and improve communication internally and with applicants. Due to this review, these processes are more transparent and more predictable.
- Establishing processing timelines and project time frame tracking for radioactive materials and uranium licensing as well as for underground injection control permitting and authorizations. Emphasis will continue to be placed on closing pending uranium-recovery actions.
- Establishing time frames for every major type of application that is processed by the agency.

The TCEQ continues to strive to identify and develop new and innovative ways to further streamline the permitting process while continuing to focus on issuing well-written permits that are protective of human health and the environment.

## Expanded E-Permitting

The agency will continue to further develop and refine electronic permitting options for applicants. Following are some of our planned and ongoing efforts:

- ePermits Phase II continued refinement of the programming structure, which allows business areas to build their own custom applications in the system with minimal programming expertise or intervention. This new capability went on-line in 2009. Phase III of the e-permitting initiative will focus on high-volume air permit by rule authorizations, and is expected to come on-line in early 2011. With the new e-permitting system, applicants can apply for a permit online and receive coverage within a matter of minutes.
- Both the construction storm water general permit and concentrated animal feeding operation general permit have fee incentives for applicants to use ePermits. The TCEQ is planning fee incentives for additional water quality and air applications.
- The Permit and Registration Information System (PARIS) project is being developed as a custom application that will replace aging system functionality for three regulatory registration and permitting programs: Industrial and Hazardous Waste (IHW), Petroleum Storage Tanks (PST), and Water Quality (WQ). Phase 1 of PARIS will implement the IHW registration

and billing functionality in fiscal years 2010 and 2011 and lay the foundation for the subsequent program area information integration. Phase 1 is currently in the design phase, with production deployment anticipated by the end of fiscal 2011. Phase 2 will address the WQ and PST programs; currently in the planning stages, Phase 2 should be in development in fiscal years 2012 and 2013.

- The ePay application is being modified to gain payment-card industry compliance by the end of fiscal 2010. TCEQ ePay was modified in March 2010 to integrate with a common checkout page and payment information collected on the TexasOnline pages. These changes will allow additional security and more seamless integration between TCEQ and the TexasOnline portal.

## Federal and State Changes to Texas Air Permitting

The EPA has issued four notices citing specific concerns with how Texas issues certain air permits. Three sets of rules that the EPA has objected to were adopted in the 1990s, and since that time the TCEQ has been awaiting the EPA's final review and approval or disapproval. The TCEQ will continue to work on resolving the EPA's concerns.

### Public Participation

These rules concern the manner in which the TCEQ notifies the public about New Source Review (NSR) permits and who in the public can request a hearing. The TCEQ submitted these rules to the EPA for review in October 1999. The response from the EPA came in November 2008. The EPA asserts that there is insufficient notice of draft permit for minor NSR permits and that the rules are missing specific notice requirements for major NSR permits. On June 2, 2010, the TCEQ adopted new rules to address the concerns.

### Qualified Facilities

These rules implement Senate Bill (SB) 1126, 74th Legislative Session (1995). This allows certain changes (at well-controlled facilities) as long as there is no net increase in allowable emissions at the site, and no new facilities are constructed. The TCEQ submitted these rules to the EPA for review in March 1996. The official response from the EPA came in September 2009. The EPA disapproved these rules on April 14, 2010, primarily because facilities are allowed to make modifications without formal review or notice.

The TCEQ is addressing this and other concerns through rule changes that will clarify how qualified facility changes relate to state minor NSR and federal NSR criteria. The rule will also clarify that a qualified facility change is not allowed if the facility is required to comply with federal requirements. Additionally, the rule will provide a mechanism for ensuring that any changes made at a qualified facility are encompassed by the facility's permit and made permanently enforceable. These revised rules were proposed on March 30, 2010, and are anticipated to be adopted in September 2010.

### Flexible Permits

This type of air authorization allows for emission limits for a site rather than for individual pieces of equipment. Flexible-permit holders have the ability to over-control some equipment while not adding additional controls to other equipment, as long as the total emissions are under the cap. The TCEQ submitted these rules to the EPA for review in November 1994. The response from the EPA came in September 2009. The EPA's concerns include practical enforceability, insufficient opportunity for public participation, and not conducting federal NSR. Statutory changes may be necessary if the TCEQ is required to initiate reissuance of these permits to comply with SIP-approved rules. Currently, the TCEQ is developing revised rules that are scheduled for proposal on June 16, 2010.

### New Source Review Reform

NSR reform rules were adopted in response to EPA rule changes. The TCEQ submitted these rules to the EPA for review in June 2005 and February 2006. In September 2009, the EPA responded with the following concerns:

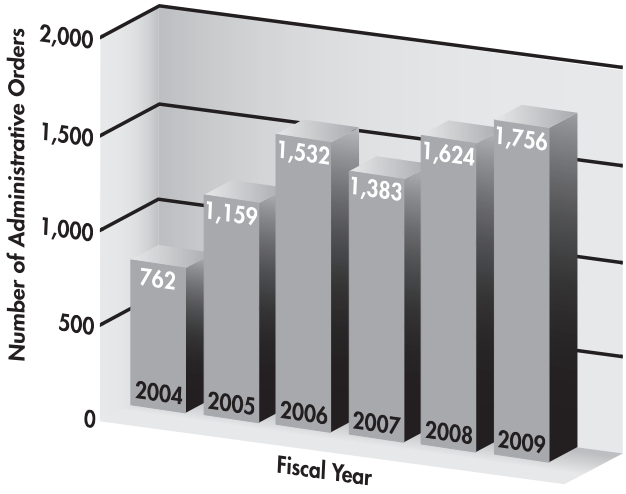
1. The TCEQ eliminated references to federal rules, which are an integral part of the federal permitting program.
2. The pollution control project portion of the EPA NSR Reform rule was struck down by a federal court.
3. Because of anti-backsliding concerns, the EPA's position is that the TCEQ's rules must address the applicability of 1-hour ozone standard requirements in permitting.
4. The plantwide applicability limit rules are missing some requirements. Currently, the TCEQ is developing revised rules that are scheduled for proposal on Aug. 11, 2010.

## Enforcement Initiatives

### Enforcement Administrative Orders

The TCEQ issued 1,756 administrative orders in fiscal 2009, which is the highest number of orders issued in the past six years (see Figure 7). A focused effort to clear a backlog of cases in both the Enforcement Division and the Litigation Division contributed to a large number of orders being issued in fiscal 2009. The backlog of enforcement cases decreased from 379 cases at the beginning of fiscal 2009 to 127 cases at the end of fiscal 2009.

**Figure 7. Total Number of Administrative Orders Issued by Fiscal Year**




### Field Citations

In fiscal 2009, 142 field citations were issued by the commission. The field-citation program was originally approved as a pilot on March 13, 2006. During the April 27, 2007, Commissioner's Work Session, the TCEQ's field-citation program was established as a permanent program.

The field-citation process is different from the traditional enforcement process. Under the field-citation program, when the TCEQ conducts an investigation at a facility, the investigator may cite certain clear-cut violations on a form and provide a penalty assessment to the regulated entity. The field citation is intended to promote a quick resolution for any field-citation-eligible violations that are documented during a TCEQ investigation, while offering a reduced penalty as compared to a penalty calculated through the traditional enforcement process.

Since the program's inception, and as of April 9, 2010, 550 field citations have been issued and 425 have been paid with the violations corrected. There are two separate Field Citation forms. There is one form for the PST program, which covers 10 violations. The other form covers eight violations, and includes storm water, occupational licensing, dry cleaners, on-site sewage facilities, and water rights.

## Environmental Flows

SB 3 (80th Legislative Session) created the current environmental flows process and established the Environmental Flows Advisory Group to oversee its implementation. To assist the advisory group with the implementation of certain provisions, the bill established an Environmental Flows Science Advisory Committee, which in part serves as an objective scientific body to advise and make recommendations to the advisory group on issues relating to the science of environmental flow protection and develop recommendations for direction, coordination, and consistency for the advisory group, the local bay and basin groups, and the TCEQ. The bill requires the TCEQ to adopt recommendations in the form of environmental flow standards to be used in the decision-making process

for new (and amended) water-right applications and to establish an amount of un-appropriated water, if available, to be set aside for the environment.

The TCEQ is responsible for coordinating with the advisory group, the Science Advisory Committee, and stakeholder committees; generating reports regarding the group's recommendations; providing administrative and technical assistance; and ultimately implementing the recommendations in the form of rules.

## Dam Safety Program

The Dam Safety Program monitors and regulates both private and public dams in Texas. The program inspects dams that pose a high or significant hazard at least once every five years and provides recommendations and reports to responsible parties (owners) to help them maintain safe facilities. The program ensures that these facilities are constructed, maintained, repaired, and removed safely. High- or significant-hazard dams are those where loss of life could occur if the dam should fail.

In April 2008, the State Auditor's Office published an audit report on the Dam Safety Program, recommending several changes, including rule revisions and adding additional resources.

On Jan. 1, 2009, new rules became effective (30 TAC 299, "Dams and Reservoirs"). This was the first dam rule change since May 1986. The rule revisions:

- Established requirements for emergency action plans, gate operating plans, and security plans, and better defined the responsibilities of the dam owner.
- Required new dams to meet certain design standards and existing dams to have additional nonstructural measures in place.
- Removed small and intermediate-size, low-hazard dams from the periodic inspection schedule, and established an inspection frequency of five years for high- and significant-hazard dams and large, low-hazard dams.
- Allowed inspections by the owner or the owner's representative in lieu of agency inspections.
- Changed the definition of "dam," thereby reducing the number of small, low-hazard dams under the jurisdiction of the agency.
- Updated existing criteria to make them more consistent with current engineering practices.

During the 81st Legislature, $2.5 million were appropriated for 24 additional staff over a two year period. As a result, there are now 29 technical staff members and one administrative staff person in the Dam Safety Section, Field Operations Support Division, with an additional 11 engineers and one administrative assistant to be hired in fiscal 2011. There are four technical staff located in three regional offices: Houston, Tyler, and Dallas–Fort Worth.

As of March 31, 2010, there are 7,172 state-regulated dams, with 989 high-hazard dams and 728 significant-hazard dams. The remaining are classified as low-hazard dams. The program will complete inspections on all high- and significant-hazard dams not later than Aug. 31, 2011. As of March 31, 2010, there are 1,717 dams in the high- and significant-hazard classifications. Of these, 1,384, or 80.6 percent, have been inspected.

The staff have increased the total number of assessments conducted. For fiscal 2009, the number was 679, up from 480 in fiscal 2008. The number of inspections has increased from 459 in fiscal 2008 to 514 in fiscal 2009. The number of emergency action plans reviewed has increased to 52 in fiscal 2009, up from 39 in fiscal 2008. Since January 2009, when new rules became effective, 171 emergency action plans have been received.

A new publication was completed in fiscal 2009, *Design and Construction Guidelines for Dams in Texas.* In addition, four workshops were conducted in fiscal 2009 (215 people registered) and two in fiscal 2010 (264 people registered). These workshops are conducted primarily to provide information regarding emergency action plans and maintenance of dams for dam owners and engineers; however, emergency personnel have also attended the workshops.

Approximately 50 percent of the dams inspected are either in fair or poor condition. None of the high- or significant-hazard dams that have been inspected

are in imminent danger of failing. However, the majority of owners are taking the inspection results seriously and are making repairs as funds are available. Costly items, such as major repairs and modifications, are being delayed until funds become available.

## Plans for FYs 2011–2015

It is anticipated that staff will complete the inspection commitment by August 2011, and thereafter conduct inspections in accordance with the frequencies specified in 30 TAC 299.42. In addition, emphasis will be placed on inspecting dams that were found to be in poor condition. The staff are also in the process of identifying dams that are not in the Dam Safety Inventory, as recommended in the State Auditor's Office report. As these dams are identified, they will be added to the inspection schedule if they are determined to be high- or significant-hazard dams.

The program will also continue to review emergency action plans as they are received. Additional workshops will be held to address maintenance, emergency action plans, and dam deficiencies.

# Part IV

## Strategic Planning Structure

GOALS, OBJECTIVES, AND STRATEGIES,
FISCAL YEARS 2012-2013

# Goals, Objectives, and Strategies, Fiscal Years 2012–2013

***At the time of this printing, these performance measures and definitions had not received formal approval from the Legislative Budget Board or the Governor's Office of Budget, Planning, and Policy.***

## Goal 01. Assessment, Planning, and Permitting

To protect public health and the environment by accurately assessing environmental conditions, by preventing or minimizing the level of contaminants released to the environment through regulation and permitting of facilities, individuals, or activities with potential to contribute to pollution levels.

### Goal 01, Objective 01

To decrease the amount of toxic chemicals released into the environment via air, water, and waste pollutants in Texas by at least 2 percent as measured by comparing the most recent Toxic Release Inventory (TRI) values to the previous reported TRI reporting-year values and reduce air, water, and waste pollutants through assessing the environment.

***Outcome Measures***

01-01.01 Annual percent of stationary and mobile source pollution reductions in nonattainment areas

01-01.02 Nitrogen oxides (NOx) emissions reduced through the Texas Emissions Reduction Plan (TERP)

01-01.03 Percent of Texans living where the air meets federal Air Quality Standards

01-01.04 Annual percent reduction in pollution from permitted wastewater facilities discharging to the waters of the state

01-01.05 Percent of Texas surface waters meeting or exceeding water quality standards

01-01.06 Annual percent of Solid Waste Diverted from Municipal Solid Waste Disposal Facilities

01-01.07 Annual percent decrease in the toxic releases in Texas

01-01.08 Annual percent decrease in the amount of municipal solid waste going into Texas landfills

01-01.09 Percent of TERP grants derived from New Technology Research and Development (NTRD) technologies

01-01.10 Percent of high- and significant-hazard dams inspected within the last five years

01-01.11 Number of acres of habitat created, restored, and protected through implementation of estuary action plans

#### 01-01-01. Air Quality Assessment and Planning

Reduce and prevent air pollution by monitoring and assessing air quality, developing and/or revising plans to address identified air quality problems, and assisting in the implementation of approaches to reduce motor-vehicle emissions.

***Output Measures***

01-01-01.01 Number of point source air quality assessments

01-01-01.02 Number of area source air quality assessments

01-01-01.03 Number of on-road mobile source air quality assessments

01-01-01.04 Number of non-road mobile source air quality assessments

01-01-01.05 Number of air monitors operated

01-01-01.06 Tons of NOx reduced through the Texas Emissions Reduction Plan

01-01-01.07 Number of vehicles replaced and/or repaired through LIRAP assistance

01-01-01.08 Number of New Technology grants approved to fund technologies to be submitted for verification or certification by the EPA or CARB

***Efficiency Measures***

01-01-01.01 Percent of data collected by TCEQ continuous and non-continuous air monitoring networks

01-01-01.02 Average cost per air quality assessment
01-01-01.03 Average cost of LIRAP vehicle emissions repairs/retrofits
01-01-01.04 Average cost/ton of NOx reduced through the Texas Emissions Reduction Plan

***Explanatory Measures***
01-01-01.01 Number of days ozone exceedances are recorded in Texas

### 01-01-02. Water Resource Assessment and Planning
Develop plans to ensure an adequate, affordable supply of clean water by monitoring and assessing water quality and availability.

***Output Measures***
01-01-02.01 Number of surface water assessments
01-01-02.02 Number of groundwater assessments
01-01-02.03 Number of dam safety assessments

***Efficiency Measures***
01-01-02.01 Average cost per dam safety assessment

***Explanatory Measures***
01-01-02.01 Percent of Texas' rivers, streams, wetlands and bays protected by site-specific water quality standards
01-01-02.02 Number of dams in the Texas Dam Inventory

### 01-01-03. Waste Management Assessment and Planning
Ensure the proper and safe disposal of pollutants by monitoring the generation, treatment, and storage of solid waste and assessing the capacity of waste disposal facilities; and by providing financial and technical assistance to municipal solid waste planning regions for the development and implementation of waste reduction plans.

***Output Measures***
01-01-03.01 Number of municipal solid waste facility capacity assessments

***Efficiency Measures***
01-01-03.01 Average number of hours spent per municipal solid waste facility capacity assessment

***Explanatory Measures***
01-01-03.01 Number of council of governments regions in the state with 10 or more years of disposal capacity

## Goal 01, Objective 02
To review and process 90 percent of air, water, and waste authorization applications within established time frames.

***Outcome Measures***
01-02.01 Percent of air quality permit applications reviewed within established time frames
01-02.02 Percent of water quality permit applications reviewed within established time frames
01-02.03 Percent of water rights permit applications reviewed within established time frames
01-02.04 Percent of waste management permit applications reviewed within established time frames

### 01-02-01. Air Quality Permitting
Perform complete and timely reviews of applications to release pollutants into the air.

***Output Measures***
01-02-01.01 Number of state and federal new-source review air quality permit applications reviewed
01-02-01.02 Number of federal air quality operating permits reviewed
01-02-01.03 Number of Emissions Banking and Trading transaction applications reviewed

***Explanatory Measures***
01-02-01.01 Number of state and federal air quality permits issued
01-02-01.02 Number of federal air quality permits issued

#### 01-02-02. Water Resource Permitting

Perform complete and timely reviews of applications to utilize the state's water resources or to discharge to the state's waterways.

***Output Measures***

01-02-02.01 Number of applications to address water quality impacts reviewed

01-02-02.02 Number of applications to address water rights impacts reviewed

01-02-02.03 Number of concentrated animal feeding operation (CAFO) authorizations reviewed

***Explanatory Measures***

01-02-02.01 Number of water quality permits issued

01-02-02.02 Number of water rights permits issued

#### 01-02-03. Waste Management and Permitting

Perform complete and timely reviews of applications relating to management and disposal of municipal and industrial solid and hazardous waste.

***Output Measures***

01-02-03.01 Number of new system waste evaluations conducted

01-02-03.02 Number of nonhazardous waste permit applications reviewed

01-02-03.03 Number of hazardous waste permit applications reviewed

***Explanatory Measures***

01-02-03.01 Number of nonhazardous waste permits issued

01-02-03.02 Number of hazardous waste permits issued

01-02-03.03 Number of corrective actions implemented by responsible parties for solid waste sites

#### 01-02-04. Occupational Licensing

Establish and maintain occupational certification programs to ensure compliance with statutes and regulations that protect public health and the environment.

***Output Measures***

01-02-04.01 Number of applications for occupational licensing

01-02-04.02 Number of examinations administered

01-02-04.03 Number of licenses and registrations issued

***Efficiency Measures***

01-02-04.01 Average annualized cost per license and registration

***Explanatory Measures***

01-02-04.01 Number of TCEQ licensed environmental professionals and registered companies

### Goal 01, Objective 03

To ensure the proper and safe recovery of source material and disposal of low-level radioactive waste.

#### 01-03-01. Low-Level Radioactive Waste Management

Ensure the proper and safe recovery of source material and disposal of low-level radioactive waste.

***Output Measures***

01-03-01.01 Number of radiological monitoring and verification samples of air, water, soil, and fauna collected

***Explanatory Measures***

01-03-01.01 Volume of low-level radioactive waste accepted by the State of Texas for disposal at the Texas Compact Waste Facility

01-03-01.02 Total annual amount of revenue deposited to the General Revenue Fund generated from the 5 Percent Gross Receipts Fee on the disposal of low-level radioactive waste and other radioactive substances

## Goal 02. Drinking Water and Water Utilities

To protect public health and the environment by assuring the delivery of safe drinking water to the citizens of Texas consistent with requirements in the Safe Drinking Water Act; by providing regulatory oversight

of water and sewer utilities; and by promoting regional water strategies.

## Goal 02, Objective 01

To supply 95 percent of Texans served by public drinking water systems with drinking water consistent with requirements in the Safe Drinking Water Act. To provide regulatory oversight of water and sewer utilities and to promote regional water strategies.

***Outcome Measures***

02-01.01 Percent of Texas population served by public water systems that meet drinking-water standards

02-01.02 Percent of Texas population served by public water systems protected by a program that prevents connection between potable and non-potable water sources

### 02-01-01. Safe Drinking Water

Ensure the delivery of safe drinking water to all citizens through monitoring and oversight of drinking-water sources consistent with the requirements of the Safe Drinking Water Act.

***Output Measures***

02-01-01.01 Number of public drinking water systems that meet primary drinking water standards

02-01-01.02 Number of drinking water samples collected

### 02-01-02. Water Utilities Oversight

Provide regulatory oversight of water and sewer utilities to ensure that charges to customers are necessary and cost-based; and to promote and ensure adequate customer service.

***Output Measures***

02-01-02.01 Number of utility rate reviews performed

02-01-02.02 Number of district applications processed

02-01-02.03 Number of certificates of convenience and necessity applications processed

# Goal 03. Enforcement and Compliance Assistance

To protect public health and the environment by administering enforcement and environmental assistance programs that promote compliance with environmental laws and regulations, voluntary efforts to prevent pollution, and offer incentives for demonstrated environmental performance while providing strict, sure, and just enforcement when environmental laws are violated.

## Goal 03, Objective 01

Through fiscal 2011, maintain at least 95 percent of all regulated facilities in compliance with state environmental laws and regulations, to respond appropriately to citizen inquiries and complaints and to achieve pollution prevention, resource conservation, and enhanced compliance.

***Outcome Measures***

03-01.01 Percent of inspected or investigated air sites in compliance

03-01.02 Percent of inspected or investigated water sites and facilities in compliance

03-01.03 Percent of inspected or investigated waste sites in compliance

03-01.04 Percent of identified noncompliant sites and facilities for which appropriate enforcement action is taken

03-01.05 Percent of investigated occupational licensees in compliance

03-01.06 Percent of administrative orders settled

03-01.07 Percent of administrative penalties collected

03-01.08 Tons of emissions and waste reduced and minimized as reported by the regulated community implementing pollution prevention, environmental management systems, and other innovative programs

03-01.09 Amount of financial savings achieved as reported by the regulated community implementing pollution prevention, environmental management systems, and other innovative programs

03-01.10 Tons of emissions and waste reduced and minimized in the Texas-Mexico border region as reported by the regulated community implementing pollution prevention, environmental management systems, and innovative programs

### 03-01-01. Field Inspections and Complaint Response

Promote compliance with environmental laws and regulations by conducting field inspections and responding to citizen complaints.

***Output Measures***

03-01-01.01 Number of inspections and investigations of air sites
03-01-01.02 Number of inspections and investigations of water rights sites
03-01-01.03 Number of inspections and investigations of water sites and facilities
03-01-01.04 Number of inspections and investigations of livestock and poultry operation sites
03-01-01.05 Number of inspections and investigations of waste sites
03-01-01.06 Number of spill cleanup inspections/investigations

***Efficiency Measures***

03-01-01.01 Average inspection and investigation cost of livestock and poultry operations
03-01-01.02 Average time (days) from air, water, or waste inspection to report completion

***Explanatory Measures***

03-01-01.01 Number of citizen complaints investigated
03-01-01.02 Number of emission events investigations

### 03-01-02. Enforcement and Compliance Support

Maximize voluntary compliance with environmental laws and regulations by providing educational outreach and assistance to businesses and units of local governments; and assure compliance with environmental laws and regulations by taking swift, sure, and just enforcement actions to address violation situations.

***Output Measures***

03-01-02.01 Number of environmental laboratories accredited
03-01-02.02 Number of small businesses and local governments assisted

***Efficiency Measures***

03-01-02.01 Average number of days to file an initial settlement offer

***Explanatory Measures***

03-01-02.01 Amount of administrative penalties paid in final orders issued
03-01-02.02 Amount required to be paid for supplemental environmental projects issued in administrative orders
03-01-02.03 Number of administrative enforcement orders issued

### 03-01-03. Pollution Prevention and Recycling

Enhance environmental performance, pollution prevention, recycling, and innovative programs through technical assistance, public education, and innovative programs implementation.

***Output Measures***

03-01-03.01 Number of on-site technical assistance visits, presentations, and workshops conducted on pollution prevention/waste minimization and voluntary program participation.
03-01-03.02 Number of entities participating in voluntary programs
03-01-03.03 Number of quarts of used oil diverted from potential improper disposal

***Efficiency Measures***

03-01-03.01 Average cost per on-site technical assistance visit

***Explanatory Measures***

03-01-03.01 Tons of hazardous waste reduced as a result of pollution prevention planning

03-01-03.02 Tons of waste collected by local and regional collection and cleanup events
03-01-03.03 Tons of agricultural waste chemicals collected by TCEQ-sponsored entities
03-01-03.04 Number of registered waste tire facilities and transporters

## Goal 04. Pollution Cleanup

To protect public health and the environment by identifying, assessing, and prioritizing contaminated sites, and by assuring timely and cost-effective cleanup based on good science and current risk factors.

### Goal 04, Objective 01

By fiscal 2013, identify, assess, and remediate nine additional Superfund sites and/or other sites contaminated by hazardous materials. To identify, assess, and remediate up to 91 percent of the known leaking petroleum storage tank sites.

***Outcome Measures***

04-01.01 Percent of leaking petroleum storage tank sites cleaned up
04-01.02 Total number of Superfund remedial actions completed
04-01.03 Percent of voluntary and brownfield cleanup properties made available for commercial/industrial redevelopment, community, or other economic reuse
04-01.04 Percent of industrial solid and municipal hazardous waste facilities cleaned up

#### 04-01-01. Storage Tank Administration and Cleanup

Regulate the installation and operation of underground storage tanks and administer a program to identify and remediate sites contaminated by leaking storage tanks. Provide prompt and sites appropriate reimbursement to contractors and owners for the cost of remediating contaminated by leaking storage tanks.

***Output Measures***

04-01-01.01 Number of petroleum storage tank self certifications processed
04-01-01.02 Number of emergency response actions at petroleum storage tank sites
04-01-01.03 Number of Petroleum Storage Tank Remediation Fund reimbursement applications processed
04-01-01.04 Number of petroleum storage tank cleanups completed

***Efficiency Measures***

04-01-01.01 Average time (days) to review and respond to remedial action plans
04-01-01.02 Average time (days) to review and respond to risk-based site assessments
04-01-01.03 Average time (days) to process Petroleum Storage Tank Remediation Fund claims

***Explanatory Measures***

04-01-01.01 Average cost per petroleum storage tank cleanup

#### 04-01-02. Hazardous Materials Cleanup

Aggressively pursue the investigation, design, and cleanup of federal and state Superfund sites, and facilitate voluntary cleanup activities at other sites and respond immediately to spills that threaten human health and the environment.

***Output Measures***

04-01-02.01 Number of Immediate Response Actions completed to protect human health and environment
04-01-02.02 Number of Superfund site assessments
04-01-02.03 Number of voluntary and brownfield cleanups completed
04-01-02.04 Number of Superfund sites in Texas undergoing evaluation and cleanup
04-01-02.05 Number of Superfund remedial actions completed
04-01-02.06 Number of Dry Cleaner Remediation Program (DCRP) site assessments initiated
04-01-02.07 Number of Dry Cleaner Remediation Program site cleanups completed

***Efficiency Measures***

04-01-02.01 Average time (days) to process Dry Cleaner Remediation Program applications

***Explanatory Measures***

04-01-02.01 Number of potential Superfund sites to be assessed

04-01-02.02 Number of federal Superfund sites

04-01-02.03 Number of state Superfund sites

04-01-02.04 Number of Dry Cleaner Remediation (DCRP) eligible sites

# Goal 05. Texas River Compacts

To ensure the delivery of Texas' equitable share of water.

## Goal 05, Objective 01

Ensure the delivery of 100 percent of Texas' equitable share of water as apportioned by the River Compacts.

***Outcome Measures***

05-01.01 The percentage received of Texas' equitable share of quality water annually as apportioned by the Canadian River Compact

05-01.02 The percentage received of Texas' equitable share of quality water annually as apportioned by the Pecos River Compact

05-01.03 The percentage received of Texas' equitable share of quality water annually as apportioned by the Red River Compact

05-01.04 The percentage received of Texas' equitable share of quality water annually as apportioned by the Rio Grande Compact

05-01.05 The percentage received of Texas' equitable share of quality water annually as apportioned by the Sabine River Compact

### 05-01-01. Canadian River Compact

Prepare and resolve the annual accounting of water stored by each compact state.

### 05-01-02. Pecos River Compact

Prepare and resolve the annual accounting of water deliveries to Texas by New Mexico as apportioned by the Pecos River Compact and the U.S. Supreme Court decree.

### 05-01-03. Red River Compact

Develop and implement an annual accounting system of quality water deliveries to each compact state.

### 05-01-04. Rio Grande Compact

Prepare and resolve the annual accounting of water deliveries to Texas by Colorado and New Mexico as apportioned by the Rio Grande Compact.

### 05-01-05. Sabine River Compact

Prepare and resolve the annual accounting of water diversions by Texas and Louisiana as apportioned by the Sabine River Compact.

# Part V

## Technology Resource Planning

TECHNOLOGY ASSESSMENT SUMMARY

TECHNOLOGY INITIATIVE ALIGNMENT

# Technology Assessment Summary

The Texas Department of Information Resources develops the State Strategic Plan for Information Resources. The current plan, Advancing Texas Technology, articulates four statewide technology goals. Below, we present some of the initiatives at the TCEQ that align with the statewide technology goals.

## Goal 1

### *Strengthen and expand the use of enterprise services and infrastructure*

*Describe agency plans to strengthen and/or expand its capabilities through the initiatives described in Statewide Technology Goal 1.*

- The agency has been evaluating Microsoft SharePoint as an internal collaboration tool, but would have to develop an administration capability in order to support it. There is a DIR contract offering for SharePoint, with the potential for providing a needed service with less administrative overhead.
- The agency has used the Texas Online payment system to collect fees from online customers for several years, and is continuing to add new payment types to this facility. The agency has recently moved the payment data-collection screens entirely to Texas Online to improve security and comply with payment card industry standards.

*Describe agency plans to strengthen and/or expand its capabilities through other initiatives that leverage enterprise or multi-agency services and infrastructure, including managed services, shared applications, internal consolidation efforts, and procurement strategies.*

- Along with the Environmental Protection Agency (EPA) Region 6, the Texas General Land Office, and the U.S. Coast Guard, the agency participates in a cooperative disaster response management system called Response Manager. Hosted by an EPA contractor, the system integrates data concerning an emergency situation collected by any of the responders, and makes it quickly available to all to guide further response planning.
- The agency routinely shares GIS data, including base map layers, aerial and satellite imagery, and other products with federal, state, and local entities. The Texas Geographic Information Council sets standards facilitating data exchanges and includes a voting TCEQ staff member.
- The agency participates in the National Environmental Information Exchange Network (NEIEN) with the EPA and other state and local environmental agencies. This is a web-services-based facility for transmitting environmental information using XML for standard definitions of the data structures transmitted.

## GOAL 2

### *Secure and Safeguard Technology Assets and Information*

*Provide an update on the agency's progress in implementing strategies to align with the State Enterprise Security Plan.*

- The TCEQ maintains a robust, multilayered security capability, including firewalls, an Intrusion Detection System (IDS), and applications for Web blocking and virus protection. We perform continual software upgrades and patches, and maintain current profiles for viruses and other malware. The agency will replace its IDS with a more up-to-date and far more capable intrusion detection and protection system (IDS/IPS) this year.
- DIR conducts external vulnerability assessments using Controlled Penetration Tests. The TCEQ has completed remediation of all vulnerabilities detected during the 2009 test, and with DIR is currently conducting the 2010 test.
- The TCEQ is currently planning several control measures intended to protect against deliberate cyber-attacks, including an encryption capabil-

ity to protect private information in case of a security breach, a series of tests of its ability to restore both data and system configurations from backups, and additional control policies for the new IDS/IPS mentioned above.

- The TCEQ maintains Information Security Operating Policies and Procedures, Information Security Officer Standard Operating Policies and Procedures, and security procedures in the Guide for Administrative Procedures. All are available for reference by agency staff on the internal network.
- Cybersecurity training is provided to all agency staff during agency orientation. Security awareness is routinely promoted in internal staff publications.
- Information Security Office staff keeps abreast of best security practices and other mandates by attending information security conferences, seminars, and training sessions. The staff is currently in the midst of DIR-sponsored training in computer security incident response.
- TCEQ Information Security Office staff, along with the agency's security and safety personnel, are currently planning to conduct a comprehensive agency risk assessment. The information security component of the risk assessment will use tools and services provided by DIR, including the ISAAC risk analysis tool.
- The TCEQ has implemented privacy protection procedures in our Information Security Operating Policies and Procedures. A new policy on protection of personally identifiable information has just been approved, and an encryption policy is under construction. The agency maintains wide use of shredders to ensure protection of hard-copy restricted personal information.
- Agency databases that may contain information marked confidential by submitters in the regulated community include appropriate controls on access to the information.

*Describe the agency's identity management strategies in place or planned.*

- The TCEQ identity management system is relatively simple and straightforward. New employees' credentials, such as driver's licenses, military service records, education records, and work history are validated through the initial hiring process to establish their identity. Once a new employee is on board, the immediate supervisor authorizes access to the agency network including e-mail, and to any additional resources the employee will need. Technical personnel assign a single ID that the employee will retain throughout their employment with the agency, and grant that ID access to the authorized resources. Thereafter, the proper association of access privileges to that person depends upon their maintaining the secrecy of their password. A minimum standard of password complexity is enforced, changes are forced periodically, and old passwords cannot be re-used.

## GOAL 3

### *Serve citizens anytime, anywhere*

*Describe the agency's plans to expand or enhance access to its services and promote citizen engagement through online services and emerging technologies.*

- The agency maintains a reporting service (239-DATA) offering on-request reports from agency databases.
- The agency has a number of data search and reporting tools available on its public website, with both text-based and map-based interfaces. The Central Registry search tool has recently been expanded by linking in additional permit-related datasets so that users no longer need to use other tools to find permit-related information. The recently updated Information Strategic Plan recommends major enhancements to this functionality, which are further detailed below in the "Technology Initiative Alignment," under the titles "Enterprise Information Gateway," "Enterprise Content Management System," and "Enterprise Geographic Information System."

- The agency is easing the exchange of information about the commission's regulatory process. The public website provides both access to the background material for items on the commission's agenda, and a means to comment on upcoming commission issues. Several types of decisions issued by the commission and by the executive director are also available online, and more are being added.

*Describe initiatives planned or in process that will facilitate access to agency information and public data.*

- The Publishing Section of the Agency Communications Division reviews new Web content to ensure conformance with set rules and standards, and to help maintain effective navigation and search facilities for the site. The section also performs periodic usability tests of specific Web content and applications to continuously improve navigation and usability.
- In addition, each office in the agency has a lead Internet developer that coordinates and assists with the efforts of Web developers in that office. These LIDs also compose the Internet Development Committee (a subcommittee of the IT Work Group), which is chaired by the publishing manager in the Agency Communications Division and plans and oversees development of both the public and employee websites.
- The agency has an accessibility policy, checklists and implementation plans, and an accessibility coordinator and the Accessibility Coordination Group (a subcommittee of the IT Work Group) to implement rules and guidelines to maintain and improve the accessibility of all electronic media, including the website.
- Agency-wide online training introducing accessibility concepts is in production, and is required of all employees. Additional classroom training on creating accessible documents has been provided, and online modules are under development.
- The agency's approach to meeting future open records and e-discovery requests is facilitated by the use of the PIR Collaboration System (PIRCS), an application that provides a central location in which public information requests can be tracked and discussed electronically among agency staff.

## GOAL 4

## *Pursue Excellence and Foster Innovation across the Enterprise*

*Describe agency plans to implement or enhance workplace productivity and to leverage collaboration tools.*

The agency has a pilot implementation of Microsoft SharePoint to support collaboration and resource management among information technology project managers. The agency is currently investigating alternatives for expanding that implementation to additional agency functions.

In addition, the agency is currently evaluating a proposal to implement enterprise content management to address multiple issues regarding records management, business process management, collaboration, and public information. As noted in the "Technology Initiative Alignment," below, the recently rewritten Information Strategic Plan recommends that the agency implement such a system as one of its major technology initiatives.

*Describe agency strategies to develop and deploy applications more efficiently (i.e., through Cloud Computing, Software as a Service, Application Toolkits, Legacy System Modernization).*

A Technical Architecture Committee functions as a standing subcommittee of the Information Technology Work Group and publishes both current and planned architecture guidance. The agency's primary software platforms for major new application systems include:

- Programming languages: Java, ColdFusion
- Database platforms: Oracle

The agency has long-range plans to move legacy applications from several other platforms, including:

- Ingres and Ingres 4GL (also known as Open Road)
- Paradox and similar desktop databases
- Lotus Notes

The agency has a long-standing strategy to use off-the-shelf applications and components insofar as possible to improve the quality and reduce the implementation schedule for new application systems.

As noted elsewhere in this report, the agency is investigating offerings of electronic mail and collaboration services offered as hosted services, with a view to decreasing the administrative support requirements of these applications.

*Describe agency strategies to enhance information asset management practices.*

- Chapter 7 of the TCEQ *Records Management Manual* outlines the agency's practices for electronic records management in compliance with TAC Chapter 13, 6.91 Definitions, 6.92 General, 6.93 Creation of Electronic State Records, and 6.94 Retention of Electronic State Records.
- The agency has policies and procedures in place for handling the records series in the central file room, but needs enhancements to its routine practices for managing other types of records. It has recently funded a new position, Records Management Coordinator, to focus on records management processes throughout the agency.
- The Enterprise Content Management proposal is another initiative intended to enhance the agency's information asset management.

*Describe agency practices or plans to enhance the use and sharing of information with agency business partners.*

- The agency offers electronic reporting functionality (called STEERS and NetDMR) for several data streams from the regulated community, and plans to continue adding more data streams to the STEERS service.
- The agency's node on the National Environmental Information Exchange Network (NEIEN) serves to exchange data with the EPA and other state environmental agencies.
- The agency provides a wealth of information about its rules and procedures, and a variety of forms and publications, for use by the regulated community in understanding the agency's requirements and in preparing permit and grant applications.

# Technology Initiative Alignment

The Technology Initiative Alignment is the strategic alignment of technology initiatives with agency business needs and priorities. Technology alignment with agency business needs is demonstrated by identifying technology initiatives, both current and planned, in the context of agency objectives. The following table identifies and describes agency technology initiatives as they relate to agency objectives.

## Table 9. Agency Technology Initiatives and Agency Objectives

### Enterprise E-Commerce

| | |
|---|---|
| Definition | An extensible system for exchanging information with the regulated community, including transactions such as permit applications and fees, and monitoring reports. The existing re-usable modules will be expanded upon. |
| Related Agency Objective | 01-01, 01-02, 01-03, 02-01, 03-01, 04-01 |
| Related Agency Strategy | All strategies under the listed objectives are supported. |

*continued on next page*

## Table 9. Agency Technology Initiatives and Agency Objectives (continued)

| | |
|---|---|
| Status | Current and Planned |
| Anticipated Benefits | Reduce costs and processing times for many types of interactions with the regulated community. Benefits would accrue both to the agency and to the participating regulated entities. |
| Innovation / Best Practice / Benchmarking | E-Government; agile development and code re-use. |

### Strengthen Emergency Response Capabilities

| | |
|---|---|
| Definition | Improve agency business continuity planning, and disseminate throughout the agency. Remove geographical barriers to access to agency systems and information. |
| Related Agency Objective | 01-01, 01-02, 01-03, 02-01, 03-01, 04-01 |
| Related Agency Strategy | All strategies under the listed objectives are supported. |
| Status | Current and Planned |
| Anticipated Benefits | Improve service to the public, the regulated community, and other emergency response organizations during natural disasters and industrial accidents. Improve the agency's ability to continue to provide services when disasters affect agency installations or personnel. |
| Innovation / Best Practice / Benchmarking | *Best practice:* Preparation is vital to minimizing damage and speeding recovery from disasters, no matter the source. |

### Enterprise Information Gateway/Integrated Web Reporting

| | |
|---|---|
| Definition | Integrated facility for access to agency data, built upon the current Integrated Web Reporting foundation, extended to all major information systems. With appropriate security controls, accessible both to internal and external users. |
| Related Agency Objective | 01-01, 01-02, 01-03, 02-01, 03-01, 04-01 |
| Related Agency Strategy | All strategies under the listed objectives are supported. |

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## Table 9. Agency Technology Initiatives and Agency Objectives (continued)

| | |
|---|---|
| Status | Current and Planned |
| Anticipated Benefits | Reduce duplication of agency data and data management activities. Speed regulatory and environmental decisions by providing a single reliable source for information. Meet the needs of many more external stakeholders for agency information. |
| Innovation / Best Practice / Benchmarking | *Best practice:* Integration of data from a variety of systems and activities to present a unified picture. |

### Enterprise Content Management System

| | |
|---|---|
| Definition | A comprehensive, indexed repository for agency documents, and an electronic pathway for agency business processes. It will be integrated with the Information Gateway and the Enterprise GIS. |
| Related Agency Objective | 01-01, 01-02, 01-03, 02-01, 03-01, 04-01 |
| Related Agency Strategy | All strategies under the listed objectives are supported. |
| Status | Planned |
| Anticipated Benefits | Reduce costs and environmental impact of paper-based agency processes. Improve the accuracy of agency information. Greatly improve the speed and reliability of access to agency information, including public-information requests. |
| Innovation / Best Practice / Benchmarking | *Best practice:* Document and workflow management. |

### Enterprise Geographic Information System

| | |
|---|---|
| Definition | A geographic, map-based interface to agency information, extended from current GIS systems. It will be integrated with the Information Gateway and the Content Management System. In addition to maps, it will provide database records and regulatory documents related to regions on the earth. |
| Related Agency Objective | 01-01, 01-02, 01-03, 02-01, 03-01, 04-01 |

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## Table 9. Agency Technology Initiatives and Agency Objectives (continued)

| | |
|---|---|
| Related Agency Strategy | All strategies under the listed objectives are supported. |
| Status | Current and Planned |
| Anticipated Benefits | Improve environmental planning and increase the effectiveness of regulation by relating many types of information that affect environmental decisions. Increase the value of agency data to state and local leadership, industry, and the public, by associating it with geographical regions. |
| Innovation / Best Practice / Benchmarking | *Best practice:* Well-designed maps are readily understood by non-specialists, and are able to integrate multiple types of information into a comprehensive picture. This makes them useful in communicating complex information, and in simplifying the search for information in multiple sources. |

# Appendices

APPENDIX A

# Agency Planning Process

The mission of the Texas Commission on Environmental Quality is 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.

In accordance with the TCEQ's mission, the agency has established five goals and seven quantifiable objectives for its strategic plan for fiscal years 2011–2015. These goals and objectives reflect the priorities and the environmental improvements that the agency expects to make within this time frame.

During the 81st Legislative Special Session, the review of the TCEQ by the Sunset Advisory Commission was moved up two years, from 2013 to 2011. This review has now begun and will be conducted over the next one and a half years. The overall purpose of the Sunset Advisory Commission's review is to: (1) assess the need to retain the agency, (2) look for potential duplication of programs within our and other state agencies, and (3) consider changes to improve the agency. At this time, no changes are anticipated for the five goals that were used for the 2010–11 biennium.

## Goals

Beginning with fiscal years 2012–2013, the five goals for the TCEQ are:

1. Assessment, planning, and permitting
   - Plan for air quality, water quality, and waste management by: developing the State Implementation Plan for attainment of the National Ambient Air Quality Standards, designing and implementing specific strategies to improve water quality, and analyzing solid waste generation and management in Texas.
   - Implement state and federal environmental regulatory laws by issuing permits and authorizations for: the control of air pollution; the safe operation of water and wastewater facilities; and the treatment, storage, and disposal of hazardous, industrial, and municipal waste and of low-level radioactive waste.
2. Drinking water and water utilities
   - Ensure that Texans served by public drinking water systems have drinking water that is consistent with the requirements in the Safe Drinking Water Act.
   - Set water rates and allocate surface water rights.
3. Enforcement and compliance assistance
   - Ensure compliance with state and federal environmental laws and regulations by: conducting inspections of regulated facilities, monitoring air and water quality, providing technical assistance, encouraging voluntary compliance, and taking formal enforcement action against suspected violators.
4. Pollution cleanup
   - Develop plans for the cleanup and eventual reclamation of contaminated industrial and abandoned hazardous waste sites, and for the restoration of air and water quality.
5. Texas River Compacts
   - Ensure that Texas receives its equitable share of water.

## Planning Objectives

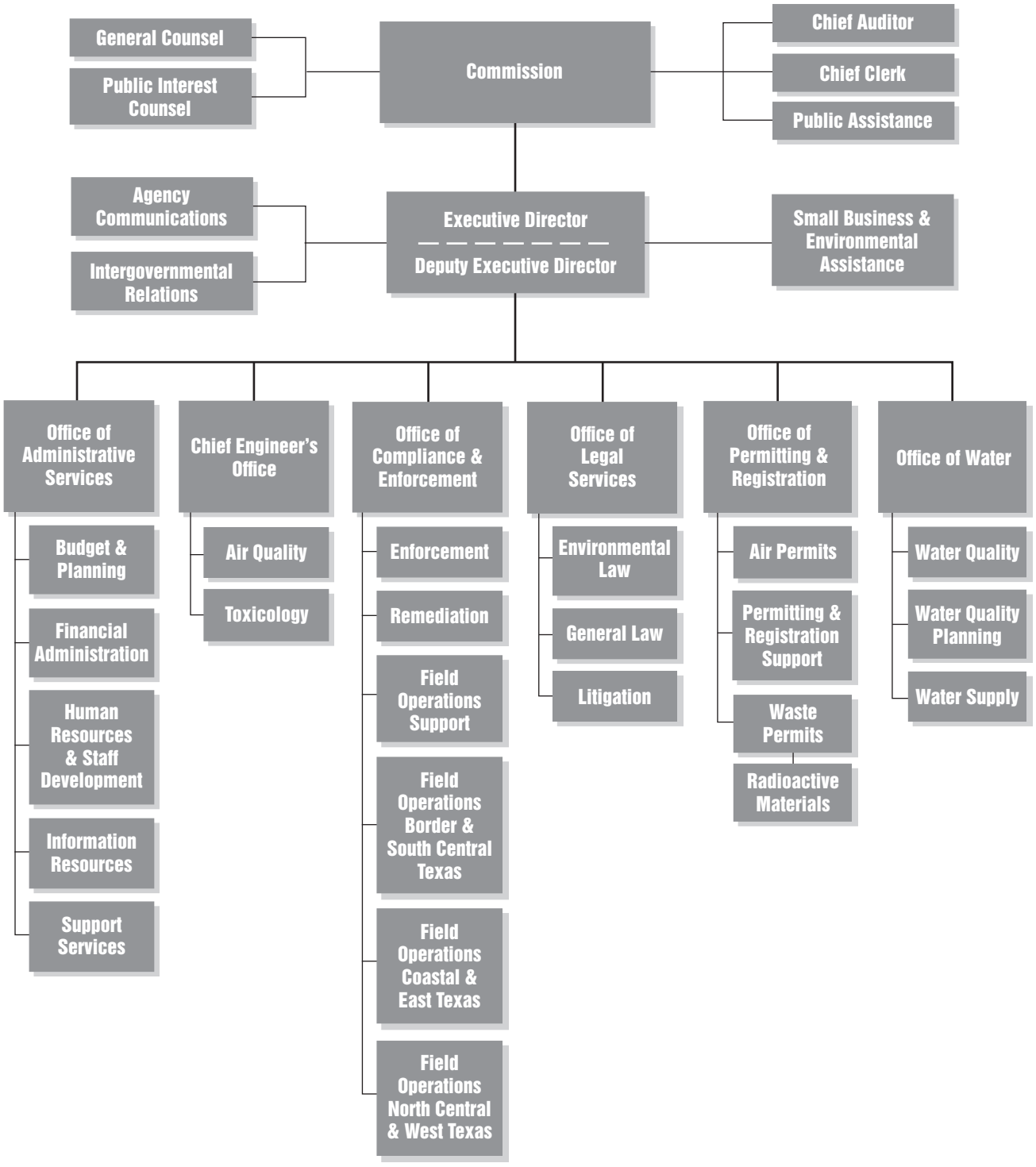
To achieve the mission and goals of the agency, the TCEQ has adopted seven planning objectives to protect the health and human welfare of our citizens, and to promote clean industrial and business development in Texas. The seven planning objectives are:

1. To decrease the amount of toxic chemicals released into the environment via air, water, and waste pollutants by at least 2 percent as measured by comparing the most recent Toxic Release Inventory (TRI) values to the previous reported TRI reporting-year values.
2. To review and process 90 percent of air, water, and waste authorization applications within the established time frames.

3. To ensure the proper and safe recovery of source material and disposal of low-level radioactive waste.
4. To supply 95 percent of Texans served by public drinking water systems with drinking water consistent with the requirements in the Safe Drinking Water Act. To provide regulatory oversight of water and sewer utilities and to promote regional water strategies.
5. Through fiscal 2013, to maintain at least 95 percent of all regulated facilities in compliance with state environmental laws and regulations; to respond appropriately to citizen inquiries and complaints; and to achieve pollution prevention, resource conservation, and enhanced compliance.
6. By fiscal 2013, to identify, assess, and remediate nine additional Superfund sites or other sites contaminated by hazardous materials, and up to 91 percent of the leaking petroleum storage tank sites.
7. To ensure the delivery of 100 percent of Texas' equitable share of water as apportioned by the river compacts.

The Strategic Plan is developed with the support of the TCEQ commissioners and executive management to ensure that agency policies address appropriate environmental protection and provide a cost-effective process to meet agency goals and objectives. Each agency office provides input into the external and internal assessment that is used to develop and maintain the goals, objectives, and strategies contained in this plan. Additionally, by improving and reporting on agency performance measures as accurately as possible, the TCEQ Strategic Plan is designed to communicate agency progress on efforts to ensure that all Texans are living in a safe environment.

# TCEQ Organizational Chart



A P P E N D I X C

# Outcome Projections, Fiscal Years 2011–2015

| Goal / Objective | Outcome Measures | Office | 2011 Targeted | 2012 Projected | 2013 Projected | 2014 Projected | 2015 Projected |
|---|---|---|---|---|---|---|---|
| 01-01.01 | Annual percent of stationary and mobile source pollution reductions in nonattainment areas | Chief Engineer | 6.00% | 3.00% | 3.00% | 3.00% | 3.00% |
| 01-01.02 | Nitrogen oxides (NOx) emissions reduced through the Texas Emissions Reduction Plan (TERP) | Chief Engineer | 70.8 tpd | 68.8 tpd | 71.7 tpd | 74.4 tpd | 71.6 tpd |
| 01-01.03 | Percent of Texans living where the air meets federal Air Quality Standards | Chief Engineer | 37% | 35% | 35% | 35% | 35% |
| 01-01.04 | Annual percent reduction in pollution from permitted wastewater facilities discharging to the waters of the state | Water | 0.1% | 0.1% | 0.1% | 0.1% | 0.1% |
| 01-01.05 | Percent of Texas surface waters meeting or exceeding water quality standards | Water | 65% | 59% | 59% | 59% | 59% |
| 01-01.06 | Annual percent of solid waste diverted from municipal solid waste disposal facilities | Permitting & Registration | 8.00% | 8.00% | 8.00% | 8.00% | 8.00% |
| 01-01.07 | Annual percent decrease in the toxic releases in Texas | Chief Engineer | 2% | 2% | 2% | 2% | 2% |
| 01-01.08 | Annual percent decrease in the amount of municipal sold waste going into landfills | Permitting & Registration | -2% | -2% | -2% | -2% | -2% |
| 01-01.09 | Percent of TERP grants derived from New Technology Research and Development (NTRD) technologies | Chief Engineer | 15% | 2% | 3% | 4% | 5% |
| 01-01.10 | Percent of high- and significant-hazard dams inspected within the last five years | Compliance & Enforcement | 85% | 100% | 100% | 100% | 100% |

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## Outcome Projections, Fiscal Years 2011–2015 (continued)

| Goal / Objective | Outcome Measures | Office | 2011 Targeted | 2012 Projected | 2013 Projected | 2014 Projected | 2015 Projected |
|---|---|---|---|---|---|---|---|
| 01-01.11 | Number of acres of habitat created, restored, and protected through implementation of estuary action plans | Water | 2,000 | 2,000 | 2,000 | 2,000 | 2,000 |
| 01-02.01 | Percent of air quality permit applications reviewed within established time frames | Permitting & Registration | 90% | 90% | 90% | 90% | 90% |
| 01-02.02 | Percent of water quality permit applications reviewed within established time frames | Water | 90% | 90% | 90% | 90% | 90% |
| 01-02.03 | Percent of water rights permit applications reviewed within established time frames | Water | 86% | 86% | 86% | 86% | 86% |
| 01-02.04 | Percent of waste management permit applications reviewed within established time frames | Permitting & Registration | 90% | 90% | 90% | 90% | 90% |
| 02-01.01 | Percentage of Texas population served by public water systems that meet drinking water standards | Water | 93.0% | 93.0% | 93.0% | 93.0% | 93.0% |
| 02-01.02 | Percent of Texas population served by public water systems protected by a program that prevents connection between potable and non-potable water sources | Water | 95% | 95% | 95% | 95% | 95% |
| 03-01.01 | Percent of inspected or investigated air sites in compliance | Compliance & Enforcement | 98% | 98% | 98% | 98% | 98% |
| 03-01.02 | Percent of inspected or investigated water sites and facilities in compliance | Compliance & Enforcement | 97% | 97% | 97% | 97% | 97% |
| 03-01.03 | Percent of inspected or investigated waste sites in compliance | Compliance & Enforcement | 97% | 97% | 97% | 97% | 97% |

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## Outcome Projections, Fiscal Years 2011–2015 (continued)

| Goal / Objective | Outcome Measures | Office | 2011 Targeted | 2012 Projected | 2013 Projected | 2014 Projected | 2015 Projected |
|---|---|---|---|---|---|---|---|
| 03-01.04 | Percent of identified noncompliant sites and facilities for which timely and appropriate enforcement action is taken | Compliance & Enforcement | 85% | 85% | 85% | 85% | 85% |
| 03-01.05 | Percent of investigated occupational licensees in compliance | Compliance & Enforcement | 82% | 82% | 82% | 82% | 82% |
| 03-01.06 | Percent of administrative orders settled | Compliance & Enforcement | 85% | 85% | 85% | 85% | 85% |
| 03-01.07 | Percent of administrative penalties collected | Compliance & Enforcement | 88% | 88% | 88% | 88% | 88% |
| 03-01.08 | Tons of emissions and waste reduced and minimized as reported by the regulated community implementing pollution prevention, environmental management systems, and innovative programs | Executive Director | 100,000 | 100,000 | 100,000 | 100,000 | 100,000 |
| 03-01.09 | Amount of financial savings achieved as reported by the regulated community implementing pollution prevention, environmental management systems, and innovative programs | Executive Director | $30 million | $30 million | $30 million | $30 million | $30 million |
| 03-01.10 | Tons of emissions and waste reduced and minimized in the Texas-Mexico border region as reported by the regulated community implementing pollution prevention, environmental management systems, and innovative programs | Executive Director | 1,000 | 1,000 | 1,000 | 1,000 | 1,000 |

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## Outcome Projections, Fiscal Years 2011–2015 (continued)

| Goal / Objective | Outcome Measures | Office | 2011 Targeted | 2012 Projected | 2013 Projected | 2014 Projected | 2015 Projected |
|---|---|---|---|---|---|---|---|
| 04-01.01 | Percent of leaking petroleum storage tank sites cleaned up | Compliance & Enforcement | 85% | 89% | 89% | 89% | 88% |
| 04-01.02 | Total number of Superfund remedial actions completed | Compliance & Enforcement | 109 | 112 | 115 | 118 | 121 |
| 04-01.03 | Percent of voluntary and brownfield cleanup properties made available for commercial/industrial redevelopment, community, or other economic reuse | Compliance & Enforcement | 67.0% | 68.0% | 69.0% | 69.0% | 69.00% |
| 04-01.04 | Percent of industrial solid and municipal hazardous waste facilities cleaned up | Compliance & Enforcement | 57% | 62% | 62% | 63% | 63% |
| 05-01.01 | The percentage received of Texas' equitable share of quality water annually as apportioned by the Canadian River Compact | Water | 100% | 100% | 100% | 100% | 100% |
| 05-01.02 | The percentage received of Texas' equitable share of quality water annually as apportioned by the Pecos River Compact | Water | 100% | 100% | 100% | 100% | 100% |
| 05-01.03 | The percentage received of Texas' equitable share of quality water annually as apportioned by the Red River Compact | Water | 100% | 100% | 100% | 100% | 100% |
| 05-01.04 | The percentage received of Texas' equitable share of quality water annually as apportioned by the Rio Grande Compact | Water | 100% | 100% | 100% | 100% | 100% |

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## Outcome Projections, Fiscal Years 2011–2015 (continued)

| Goal / Objective | Outcome Measures | Office | 2011 Targeted | 2012 Projected | 2013 Projected | 2014 Projected | 2015 Projected |
|---|---|---|---|---|---|---|---|
| 05-01.05 | The percentage received of Texas' equitable share of quality water annually as apportioned by the Sabine River Compact | Water | 100% | 100% | 100% | 100% | 100% |

# TCEQ Performance Measures and Definitions, Fiscal Year 2012

***At the time of this printing, these performance measures and definitions had not received formal approval from the Legislative Budget Board or the Governor's Office of Budget, Planning, and Policy.***

The State of Texas uses a set of organized procedures known as the Strategic Planning and Budgeting System, in which funding and other decisions are based upon what an agency is *accomplishing*, rather than just what it is doing. As an important element of the monitoring phase of budgeting, *performance measures* serve as specific targets that indicate the level of success attained in accomplishing agency goals.

## Performance Measures

There are four types of performance measures:

1. Outcome Measures. Used to assess the effectiveness of an agency's effectiveness in serving its customers and in achieving its mission and goals. An outcome measure is typically expressed as a percentage, rate, or ratio.
2. Output Measures. Used to count the services and goods produced by an agency. They are helpful in assessing agency workload and demand for services as well as agency efforts to address those demands. The number of people receiving a service and the number of services delivered are often used as measures of output.
3. Explanatory Measures. Reflect the agency's operating environment and explain factors that are relevant to the interpretation of other agency measures.
4. Efficiency Measures. Used to quantify costs, unit cost, or productivity associated with a given outcome or output.

## Measure Definitions

The definition of a performance measure follows a format prescribed by the Texas Legislative Budget Board. This format has eight components:

1. Short Definition. Provides a brief explanation of the measure, with enough detail to give a general understanding of the measure.
2. Purpose/Importance. Describes the intended purpose of the measure and its significance.
3. Source/Collection Data. Describes the source of the data or information and how it is collected.
4. Method of Calculation. Clearly specifies how the measure is calculated.
5. Data Limitations. Identifies any limitations and factors beyond the control of the agency that may affect reported performance.
6. Calculation Type. Specifies whether the information is cumulative or non-cumulative from quarter to quarter.
7. New Measure. Identifies whether the measure is new or has been significantly changed.
8. Desired Performance, Clarifies whether the optimal level of performance is higher, near, or lower than projections.

The following is a listing of the TCEQ's performance measures and their definitions for fiscal 2011.

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### Outcome 01-01.01 Annual percent of stationary and mobile source pollution reductions in nonattainment areas

**Short Definition:** This measure quantifies changes in criteria pollutants or precursors for criteria pollutants for which the area has failed to meet a national standard from sources within nonattainment areas.

**Purpose/Importance:** The measure reflects trends of criteria emissions in the nonattainment areas showing pollution changes in areas that have failed to meet national emission standards. These changes are potential indicators of strategies put in place to reduce emissions that will result in meeting attainment status.

**Source/Collection of Data:** The sources of data include the annual inventory of major stationary point sources and the inventory of minor point sources and mobile sources that occurs every three years.

**Method of Calculation:** This measure is calculated by subtracting emissions data totals of the most recent emissions inventory from the total emissions figures of the previous year, divided by a base year emissions according to pollutant type. This measure is calculated on a calendar year (Jan. 1 through Dec. 31) basis because data cannot be quality-assured in a timely manner so that it is available on a fiscal-year basis.

**Data Limitations:** The lack of consistency between the current methods of conducting emissions inventories for major stationary point and minor stationary point and mobile emissions results in the inability to compile detailed annual trend analyses.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Outcome 01-01.02 Nitrogen oxides ($NO_X$) emissions reduced through the Texas Emissions Reduction Plan (TERP)

**Short Definition:** This measure is intended to show the amount of $NO_X$ emissions reduced through implementation of the TERP incentive grants for cleaner on- and off-road diesel engines.

**Purpose/Importance:** The TERP program was established by the 77th Legislature (Senate Bill 5) to offset emission reductions required of construction equipment operation and required accelerated purchase of cleaner diesel engines by providing incentives purchase or retrofit of cleaner on- and off-road diesel engines.

**Source/Collection of Data:** Emissions reduced is the difference between emissions estimated for current equipment and emissions from new purchase or retrofit equipment as reported by grant recipients over the life of the projects.

**Method of Calculation:** Tons per year $NO_X$ reduced is generated by totaling the annual emissions reduction reported by each grant recipient and is expressed as tons per day reductions.

**Data Limitations:** None identified; grant recipients are required to report emissions reduced by the funded projects. These reductions will most likely occur in the Houston-Galveston and Dallas–Fort Worth areas. However, both the commission and the TERP advisory board can recommend going out beyond these two areas.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Outcome 01-01.03 Percent of Texans living where the air meets federal Air Quality Standards

**Short Definition:** Percent of Texans living where the air meets federal Air Quality Standards.

**Purpose/Importance:** This measure reflects compliance with federal Air Quality Standards.

**Source/Collection of Data:** Population in counties in metropolitan areas that exceed federal air quality standards.

**Method of Calculation:** The percentage of Texas population in areas meeting federal clean air standards is measured by identifying the population within the counties in which the federal standards are being exceeded and subtracting this population figure from the statewide total population figure. This number is then divided by the total population and multiplied by 100 to derive a percentage. Population for Texas and Texas counties are taken from the most recent yearly population estimates released by the Texas State Data Center. This measure is calculated on a calendar year (Jan. 1 through Dec. 31) basis because data cannot be quality-assured in a timely manner so that it is available on a fiscal-year basis.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Outcome 01-01.04 Annual percent reduction in pollution from permitted wastewater facilities discharging to the waters of the state

**Short Definition:** Annual percent reduction in pollution from permitted wastewater facilities discharging to the waters of the state.

**Purpose/Importance:** This measure reflects the reduction in the pollution load from all facilities discharging to the waters of the state.

**Source/Collection of Data:** Using a TCEQ database maintained by the Water Quality Division, staff will report the total permitted pounds per day of the Five Day Biochemical Oxygen Demand (BOD5) or the Five Day Carbonaceous Biochemical Oxygen Demand (CBOD5) and the total permitted flow for the month of June of each year.

**Method of Calculation:** The total permitted pollution load from all facilities discharging to the waters of the state will be divided by the total permitted discharge flow to the waters of the state. The permitted pollution load will be subtracted from the previous year's permitted pollution load divided by the previous year's permitted pollution load, and multiplied by 100 to determine the percent reduction from the previous year.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Outcome 01-01.05 Percent of Texas surface waters meeting or exceeding water quality standards

**Short Definition:** Percent of Texas surface water meeting or exceeding water quality standards.

**Purpose/Importance:** This is a measure of the agency's success in developing and implementing state water quality management programs. The Texas Surface Water Quality Standards establish goals for water quality in the surface waters of Texas. The extent to which water quality standards are attained is a direct environmental measure of water quality in Texas rivers, reservoirs, and estuaries.

**Source/Collection of Data:** The Surface Water Quality Information System Database has summary information on the water quality status for water bodies in Texas. This information was generated by comparing water sampling data collected by the agency and its cooperators with criteria established in the Texas Surface Water Quality Standards, Chapter 307 of Title 30 of the Texas Administrative Code. Standards attainment is generated from the Surface Water Quality Monitoring Assessment Database and is reported in the TCEQ's Texas Water Quality Inventory [305(b) Report] and the 303(d) List of impaired waters.

**Method of Calculation:** Summary totals reported in the Texas Water Quality Inventory express separately the percent of waters meeting water quality standards for rivers, reservoirs, and estuaries. For this calculation, the percent meeting or exceeding standards = "amount meeting" / "total amount assessed" times 100; where "total amount assessed" = "amount meeting" + "amount not meeting". The amount is expressed as miles for rivers, acres for reservoirs, and square miles for estuaries. The overall percent of waters meeting standards for the state is then calculated as (% of rivers meeting standards + % of reservoirs meeting standards + % of estuaries meeting standards) / 3.

**Data Limitations:** The Texas Water Quality Inventory is prepared in even years and staff is directed by the commission to submit a draft document to the EPA for approval. This draft document is posted on the agency website and used for reporting and planning purposes as the "commission-approved draft." Compliance with water quality standards is based on the most recent sampling typically for a period of five years. The assessment integrates natural variability in water quality and overall change in this measure, reflecting actual conditions, is relatively slow. Because the inventory is updated only every two years, this measure remains constant for two years.

**Calculation Type:** Non-cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

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## Outcome 01-01.06 Annual percent of solid waste diverted from municipal solid waste disposal facilities

**Short Definition:** The annual percent of solid waste diverted from municipal solid waste disposal facilities in the state.

**Purpose/Importance:** To provide a general indicator of the effectiveness of statewide solid waste diversion and planning efforts.

**Source/Collection of Data:** Waste diversion data is obtained from the annual reporting program for municipal solid waste landfills.

**Method of Calculation:** The percent diverted is determined by the formula: total amount diverted / (total amount diverted + total amount disposed) x 100.

**Data Limitations:** Economic factors and natural disasters are important but are not currently considered in the calculation. In addition, much of the waste disposal in the state is determined by volume estimates instead of through actual scale weight.

**Calculation Type:** Non-cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

### Outcome 01-01.07 Annual percent decrease in the toxic releases in Texas

**Short Definition:** Annual percent decrease in the toxic releases in Texas.

**Purpose/Importance:** This measure reflects industry efforts to make reductions in their toxic releases.

**Source/Collection of Data:** Using the adjusted data reported in the annual Toxic Release Inventory, the amount of toxic releases during the reporting period, to air, land, and water will be subtracted from the previous year's level, and this difference will be divided by the previous year's level and multiplied by 100 to calculate the percent reduction.

**Method of Calculation:** Using the adjusted data reported in the annual Toxic Release Inventory, the amount of toxic releases during the reporting period, to air, land, and water will be subtracted from the previous year's level, and this difference will be divided by the previous year's level and multiplied by 100 to calculate the percent reduction.

**Data Limitations:** Data depends on the timely retrieval of information from the Toxic Release Inventory maintained by the EPA.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Outcome 01-01.08 Annual percent decrease in the amount of municipal solid waste going into Texas landfills

**Short Definition:** Annual percent decrease in the amount of municipal solid waste going into Texas landfills.

**Purpose/Importance:** This measure reflects conservation efforts to reduce the amount of solid waste going into Texas landfills.

**Source/Collection of Data:** The percent decrease in the amount of municipal solid waste (MSW) going into Texas landfills will be computed by subtracting the amount in tons for the reporting period from the amount in tons for the previous year. This difference will then be divided by the amount in tons for the previous year and multiplied by 100 to determine the percent decrease. The disposal amount in tons is based on the most current set of complete data obtained through annual reports required for all permitted MSW facilities.

**Method of Calculation:** The percent decrease in the amount of municipal solid waste (MSW) going into Texas landfills will be computed by subtracting the amount in tons for the reporting period from the amount in tons for the previous year. This difference will then be divided by the amount in tons for the previous year and multiplied by 100 to determine the percent decrease. The disposal amount in tons is based on the most current set of complete data obtained through annual reports required for all permitted MSW facilities.

**Data Limitations:** Due to the continued growth in population in the state, there will more than likely not be a decrease in municipal solid waste going to landfills despite the best efforts to encourage recycling and reuse for some time to come.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Outcome 01-01.09 Percent of TERP grants derived from New Technology Research and Development (NTRD) technologies

**Short Definition:** This measure shows the percent of the total dollar amount of TERP grants that use technologies derived from grants of the NTRD program.

**Purpose/Importance:** The percent of dollar amount of TERP grants that use technologies derived from grants of the NTRD program will provide an account of the impact that the NTRD program has on the TERP, as it applies to getting cost-effective technologies to the marketplace.

**Source/Collection of Data:** The TCEQ database or the Texas Environmental Research Consortium (TERC) provides the number of grants awarded for each fiscal year.

**Method of Calculation:** The percent of the total dollar amount of TERP grants derived from NTRD technologies will be calculated by the number of dollars of TERP grants that use NTRD technologies awarded divided by the total number of dollars of TERP grants awarded.

**Data Limitations:** The number of grants awarded is limited by number and/or applicability of TERP eligible technologies verified or certified and the cost-effectiveness of those technologies when considered for the TERP program. Verification or certification by the EPA or CARB is solely the responsibility of the certifying agency. Neither the TCEQ nor TERC have control of the technology, or the process of verification or certification, once the technology is submitted.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Outcome 01-01.10 Percent of high-and significant-hazard dams inspected within the last five years

**Short Definition:** Percent of high- and significant-hazard dams that have had safety inspections performed within the last five years. Inspections include on-site investigations as well as in-house review of owner's engineer and contractor's inspection reports involving high- and significant-hazard dams.

**Propose/Importance:** The inspections are conducted to ensure the safe design, construction, maintenance, repair, and removal of dams in the state. The percent of inspections conducted on high- and significant-hazard dams allows a comparison of state performance to federal program recommendations of inspections every five years.

**Source/Collection:** Dam Safety Investigation staff enter investigation information into the Dam Safety Module, which interfaces with several TCEQ databases, including the Consolidated Compliance and Enforcement Data System (CCEDS).

**Method of Calculation:** Using information obtained by running queries of the data in CCEDS, performance is calculated using the following formula: (number of high- and significant-risk dams that have been inspected within the last five years / total number of high- and significant-risk dams) x 100.

**Data Limitations:** None.

**Calculation Type:** Non-cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

### Outcome 01-01.11 Number of acres of habitat created, restored, and protected through implementation of estuary action plans

**Short Definition:** Number of acres of habitat created, restored, and/or protected through implementation of Galveston Bay Estuary Program (GBEP) and Coastal Bend Bay Estuary Program (CBBEP) estuary action plans.

**Purpose/Importance:** Loss of habitat is one of the greatest threats facing the health of the Coastal Bend and Galveston Bay estuaries, designated by the EPA as estuaries of national significance. Habitat restoration and protection is critical for protecting significant fish and wildlife communities. Conservation areas, including wetlands, function to maintain water quality in the estuaries and surrounding tributaries. This measure must be reported by the estuary programs to the EPA and would be used in the future to express success of the Texas Coastal Management Program.

**Source/Collection of Data:** GBEP and CBBEP initiate and track habitat restoration projects within their established boundaries. These projects will be manually calculated for each program, added together, and reported by the Water Programs Section of the Chief Engineer's Office.

**Method of Calculation:** Annual measure is determined by computing the area of habitat restored, created, or protected using aerial photography. Habitat types include tidal flats, inter-tidal marsh, freshwater and forested wetland, bird nesting islands, riparian, oyster reefs, and submerged aquatic vegetation. The measure is expressed in acres, inclusive of both wetland and upland areas.

**Data Limitations:** Actual acreage gained is influenced by changes in cost of land, availability of dredge material, changes in fuel cost, weather, and partner monetary and in-kind contributions. Individual projections by the GBEP and CBBEP will consider differences in land cost in the two geographical areas.

**Calculation Type:** Non-cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

### Output 01-01-01.01 Number of point source air quality assessments

**Short Definition:** The number of industrial point source emissions inventories containing National Ambient Air Quality Standards (NAAQS) criteria and toxic pollutants that are evaluated and entered into the State of Texas Air Reporting System (STARS) database.

**Purpose/Importance:** The measure reflects the number of emissions inventories submitted from industrial point sources in Texas and entered into the STARS database. The emissions inventory data are used for planning activities such as State Implementation Plans and are submitted to the EPA as required in the federal Clean Air Act of 1990 and they are also used for permit modeling, emissions fee verification, and compliance and enforcement activities.

**Source/Collection of Data:** Data are collected through point source emissions inventories that are submitted annually to the commission by entities that are subject to the emissions inventory reporting requirements.

**Method of Calculation:** The count of sources is based on the number of emissions inventories that are quality assured and entered into the STARS or other electronic database during each quarter of the fiscal year.

**Data Limitations:** Data is affected by the number of nonattainment areas in the state or by the NAAQS levels; should the number of nonattainment areas or the level or number of NAAQS change, the number of emissions inventories reviewed and entered will also change.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Output 01-01-01.02 Number of area source air quality assessments

**Short Definition:** This assessment is based on the number of area source categories for which emissions are inventoried or calculated by county and entered into a database.

**Purpose/Importance:** The measure reflects the number of area source emissions inventories developed for each area source category and the affected counties in the State of Texas. The emissions inventory data are used for planning activities such as State Implementation Plans and are submitted to the EPA as required in the federal Clean Air Act of 1990.

**Source/Collection of Data:** Area sources are defined as a wide variety of sources that generate air pollution but are too small and too numerous to identify individually. The emissions inventory data used for this measure is developed for area source categories by making regional or county emissions estimates. The estimates are derived from either a "top down" approach that applies an EPA-approved emission factor to a generic activity indicator such as county total population or a "bottom up" approach that uses local area surveys or site inspection data for assessing processes and materials usage of individual categories. Each area source emissions inventory is quality assured and loaded into the Texas Air Reporting (TexAER) database system.

**Method of Calculation:** The number of assessments is calculated by multiplying the number of emissions inventories developed for an area source category by the number of counties with active sources.

**Data Limitations:** The variety in the level of work performed on any particular area source category limits its usefulness as an easily measured output measure.

**Calculation Type:** Cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

### Output 01-01-01.03 Number of on-road mobile source air quality assessments

**Short Definition:** This measure depicts the number of on-road mobile source or transportation related scenarios evaluated by the Air Quality Division. On-road mobile sources include vehicles used on roads for transportation of passengers or freight for which emissions are estimated in tons of emissions per year and tons per ozone season average weekday.

**Purpose/Importance:** On-road mobile sources in large urban areas constitute a very significant source of air emissions. In some ozone nonattainment areas they are considered the largest source of ozone-forming pollutants. Emissions from these sources are included in strategies associated with ozone nonattainment area State Implementation Plans. Assessments are also used to evaluate the impacts of different vehicle inspection/maintenance programs, roadway construction projects and transportation control measures.

**Source/Collection of Data:** Assessment counts are dependent on Air Quality Division staff reporting. Emission calculations/assessments are dependent upon the inputs to the MOBILE computer model used to develop emission factors, as well as the travel activity applied to emission factors to calculate emissions. Variables assessed in different travel scenarios include measured vehicle miles of travel, speeds, fleet composition, fuels, controls in place, and other information pertinent to the area of concern. Much of the travel-related data is provided by transportation planning agencies, both at the state and local level.

**Method of Calculation:** The EPA MOBILE computer model is the primary tool used to calculate mobile source emissions. A particular set of inputs to the model will constitute a specific scenario being modeled. Collecting the input data, setting up and running the model, and applying the vehicle activity to estimate emissions for

that scenario is considered as one assessment. The number of assessments reported is based on a quarterly summation of weekly staff counts of mobile scenarios run for each week.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 01-01-01.04 Number of non-road mobile source air quality assessments

**Short Definition:** This assessment is the number of non-road mobile source categories for which emissions inventories are developed by county and entered into a database by the Air Quality Division. Non-road mobile sources include mobile engines, mobile equipments, and vehicles used off road for construction, agriculture, transportation, recreation, and many other purposes. The emissions from these sources are expressed in tons per year and tons per ozone season average weekday.

**Purpose/Importance:** The measure reflects the number of non-road mobile source emission inventories developed for specific analysis years needed for State Implementation Plan (SIP) development and other analyses. The data is collected at the county level. Non-road mobile sources constitute a very significant source of air emissions. Emissions from these sources are included in strategies associated with nonattainment area State Implementation Plans.

**Source/Collection of Data:** Data used for this measure will come from the number of non-road source categories for which emissions estimates are developed.

**Method of Calculation:** The measure is accounted for by staff reporting the number of non-road source categories within each geographic area for which emissions are developed during the reporting period.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

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### Output 01-01-01.05 Number of air monitors operated

**Short Definition:** Number of air monitors operated.

**Purpose/Importance:** This measure provides an indication of the agency's ability to collect scientific data concerning the level of air pollutants to which Texas citizens are being exposed. The number of air monitors operated includes a count of the total number of individual monitors including ozone, nitrogen dioxide, carbon monoxide, sulfur dioxide, air toxics, lead, particulate matter of 10 microns or less, particulate matter of 2.5 microns or less, wind speed/direction, etc. A computerized file is maintained by the Field Operations Support Division, which provides information on all monitoring sites.

**Source/Collection of Data:** The manager of the Texas air monitoring networks maintains a computerized file of all air monitors operating at each monitoring site in the state. Deployment personnel provide a written record to the network manager each time they make any changes in equipment at any monitoring site. The manager then updates the computerized file to reflect the network changes.

**Method of Calculation:** The computerized file depicts a site description and a listing of the number of each type of monitor at each site. The file contains formulas that automatically recalculate each time an entry is

updated or added. The formulas sum the number of each type of monitor and then sum the totals for each type of monitor to derive a total number of air monitors in operation. Each quarter, the computerized file is printed in hard copy and the totals are calculated manually to verify the accuracy of the computerized file.

**Data Limitations:** This measure provides a reliable indication of the state's air pollution monitoring capability. The number of air monitors in operation across the state is limited by funding and staffing levels as well as by equipment failures.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 01-01-01.06 Tons of $NO_X$ reduced through the Texas Emissions Reduction Plan

**Short Definition:** This measure is intended to show the amount of $NO_X$ emissions projected to be reduced through projects funded by TERP incentive grants awarded each year. Note that the corresponding Outcome Measure (01-01.02) then shows the results of the projects as reported each year.

**Purpose/Importance:** The TERP program was established by the 77th Legislature (Senate Bill 5) to offset emission reductions required of construction equipment operation and required accelerated purchase of cleaner diesel engines by providing incentives for the purchase or retrofit of cleaner on- and off-road diesel engines.

**Source/Collection of Data:** The grant applications include information that is used to calculate the number of tons of $NO_X$ that will be reduced by that project.

**Method of Calculation:** The total tons projected to be reduced by each project are calculated using the methodologies established in the TCEQ's *Guidelines for Emissions Reduction Incentive Grants* (RG-388). The calculations are different for each type of projects.

**Data Limitations:** None identified; the calculations use data provided with the grant applications. The projected tons that will be reduced must be calculated in order to evaluate the project and make the grant award.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 01-01-01.07 Number of vehicles replaced and/or repaired through LIRAP assistance

**Short Definition:** Number of vehicle (units) repaired or replaced in the Low-Income Vehicle Repair. Retrofit. and Accelerated Retirement Assistance Program (LIRAP). The program is also known as Air Check Texas Drive a Clean Machine.

**Purpose/Importance:** This measure determines the number of vehicle repairs and replacements that have taken place in the program.

**Source/Collection of Data:** This measure is generated from quarterly reports gathered by each program county for each quarter.

**Method of Calculation:** The cumulative number of vehicle repairs and replacements in each participating county for each quarter.

**Data Limitations:** Quarterly reports submitted by each participating county are not due until 30 days after the end of each quarter. To meet the performance measure timeline established, data will be reported from electronic data available as of the close of the quarter from each participating county.

The data will then be updated, if necessary, based on the final quarterly reports submitted by the participating counties.

**Calculation Type:** Cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

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### Output 01-01-01.08 Number of New Technology grants approved to fund technologies to be submitted for verification or certification by the EPA or CARB

**Short Definition:** This measure shows the number of grants that are approved to fund technologies to be submitted for verification or certification testing with the EPA or CARB. This number indicates how many New Technology Research and Development (NTRD) grant derived technologies may be eligible for future funding in the TERP program.

**Purpose/Importance:** This measure shows the number of NTRD grants approved for funding that may lead to technologies eligible under the Texas Emissions Reduction Plan (TERP) grants program. Technologies are not eligible for TERP funding unless they have been verified or certified by the EPA or CARB.

**Source/Collection of Data:** The Texas Environmental Research Consortium (TERC) provides the number and type of NTRD grants awarded in a given quarter.

**Method of Calculation:** The sum of all NTRD grants awarded by TERC in a quarter that fund technologies to be submitted for verification or certification testing by the EPA or CARB.

**Data Limitations:** The number of grants awarded is limited by funding constraints and the size of the projects proposed by applicants. The NTRD program is implemented by TERC. The TCEQ has very little control over when requests for grant applications are conducted or awarded.

**Calculation Type:** Cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

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### Efficiency 01-01-01.01 Percent of data collected by the TCEQ continuous and non-continuous air monitoring networks

**Short Definition:** Percent of data collected by the TCEQ continuous and non-continuous air monitoring networks.

**Purpose/Importance:** The percent of valid data collected by the TCEQ continuous and non-continuous air monitoring networks allows a comparison of state performance to federal monitoring requirements.

**Source/Collection of Data:** Valid measurements are defined as measurements that meet federal monitoring criteria. Total possible measurements for continuous monitoring are defined as the number of samples that should theoretically be collected during the reporting period. Only TCEQ data will be reported in this measure, and the source of the data will be the TCEQ's automated data collections systems for continuous data and the TCEQ's non-continuous air monitoring databases for non-continuous data. The data will be reported during the quarter in which it is validated (for most data, this is the quarter after it is collected), and the sampling periods will be as follows, as required by federal regulations: January–March, April–June, July–September, and October–December.

**Method of Calculation:** The percentage of valid data collected for each pollutant will be determined by dividing the number of valid measurements by the total possible measurements, then multiplying by 100. The

percent of valid data collected by the networks will be determined by summing the percentages of valid data collected for all pollutants measured and dividing by the number of pollutants measured.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Efficiency 01-01-01.02 Average cost per air quality assessment

**Short Definition:** This measure accounts for the funds expended by the Air Quality Planning and Implementation Division on salaries and other operating expenses related to staff working on air quality assessments. divided by the number of assessments performed during the period.

**Purpose/Importance:** This measure reflects agency efforts to produce air quality assessments in an efficient manner. It also relates operating expenses to a combination of three output measures; point source assessments, area source assessments and mobiles source assessments.

**Source/Collection of Data:** Operating expense data is taken from USAS reports for Air Quality Planning and Implementation. The number of assessments for the period is compiled by staff in the Air Modeling and Data Analysis Section.

**Method of Calculation:** Using budgetary figures maintained by the Air Quality Planning and Implementation Division, this measure will be reported by: (1) identifying the total funds expended and encumbered through the reporting period of salaries and operating costs for staff performing air quality assessments; (2) collect and combine point, area, and mobile air quality assessment outputs; and (3) divide the total identified expenses by the total number of point source, area source, and mobile source air quality assessments conducted during the reporting period to derive an average cost per assessment.

**Data Limitations:** Since the outputs used to calculate this measure are not reported from a computer data file but are dependent on staff recording and reporting the number of assessments conducted, the reporting process is time consuming and subject to large variation. The resources expended on assessments vary widely between the different types of assessments, and the work load for mobile and area source assessments is highly dependent on customer demand.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Below projections.

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### Efficiency 01-01-01.03 Average cost of LIRAP vehicle emissions repairs/retrofits

**Short Definition:** Average cost of repairs/retrofits to cars participating in the Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) that fail the vehicle emissions portion of the Inspection and Maintenance test.

**Purpose/Importance:** This measure seeks to provide a better understanding of the amount of funds a county might expect to allocate for vehicle repairs or retrofits.

**Source/Collection of Data:** This measure will be generated from quarterly reports gathered by each program county.

**Method of Calculation:** An average cost of LIRAP repairs and retrofits will be calculated each fiscal year by averaging data collected from participating county quarterly reports. Participating counties report monies allocated to each repair station for repairs and retrofits.

**Data Limitations:** Data is limited by the accuracy and efficiency of data reporting conducted by each program county.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Below projections.

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### Efficiency 01-01-01.04 Average cost per ton of $NO_X$ reduced through the Texas Emissions Reduction Plan

**Short Definition:** This measure is intended to show the average cost per ton of $NO_X$ emissions projected to be reduced through projects funded by TERP incentive grants awarded each year.

**Purpose/Importance:** The TERP program was established by the 77th Legislature (Senate Bill 5) to offset emission reductions required of construction equipment operation and required accelerated purchase of cleaner diesel engines by providing incentives for the purchase or retrofit of cleaner on- and off-road diesel engines.

**Source/Collection of Data:** The grant applications include information that is used to calculate the number of tons of $NO_X$ that will be reduced by that project.

**Method of Calculation:** The total tons projected to be reduced by each project funded are divided by the incentive amount for that project. The total tons projected to be reduced by each project are calculated using the methodologies established in the TCEQ's *Guidelines for Emissions Reduction Incentive Grants* (RG-388). The calculations are different for each type of projects.

**Data Limitations:** None identified; the calculations use data provided with the grant applications. The projected tons that will be reduced must be calculated in order to evaluate the project and make the grant award. The total tons projected to be reduced by the projects funded each year will be divided by the total grant awards for that year.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Below projections.

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### Explanatory 01-01-01.01 Number of days ozone exceedances are recorded in Texas

**Short Definition:** The number of days that ozone standards are exceeded by more than one National Air Monitoring Site in any urban area.

**Purpose/Importance:** The measure reflects compliance with National Ambient Air Quality Standards.

**Source/Collection of Data:** This information is tracked using the TCEQ's air quality database.

**Method of Calculation:** The sum of days by urban area that the ozone standards are exceeded. Ozone exceedances will be monitored by the National Air Monitoring Site (NAMS) network. If more than one NAMS site in any urban area exceeds the standards on any given day, that day would only count once. The exceedances will be based on the NAAQS standard in place at the beginning of the fiscal year (to be updated as necessary) for ozone.

**Data Limitations:** The measure depends on which federal standard (8 hour or 1 hour) is in place. This work is performed as needed. There are no quotas for State Implementation Plan (SIP) modeling.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Below projections.

### Output 01-01-02.01 Number of surface water assessments

**Short Definition:** Number of surface water assessments includes a diverse assemblage of assessment types performed and reported by multiple divisions within the Office of Water.

**Purpose/Importance:** The measure attempts to quantify the surface water quality assessment activities of the agency. Assessment of water quality is essential to identification of affected water bodies, development of water quality standards, development of effluent standards for wastewater discharges and development of strategies for watershed restoration and implementation.

**Source/Collection:** Surface water assessments reported under this measure may be performed by TCEQ staff, contractors, or a combination of TCEQ staff and contractors. The Water Quality Division of the Office of Water (1) compiles and reports quarterly Water Quality Management Plan (WQMP) updates for new or amended projected effluent limitations, service area population. and designated management agencies' information for entities applying for the State Revolving Fund Loan, and proposed waste load allocations for new dischargers and revisions for Total Maximum Daily Load (TMDL) updates; and (2) conducts Receiving Water Assessments.

The Water Quality Planning Division of the Office of Water performs and reports: (1) Surface Water Quality Monitoring Special Studies, (2) CWA Sections 305(b) and 303(d) Integrated Report, including the Nonpoint Source Assessment, (3) Clean Rivers Program Assessments, (4) Clean Rivers Program Special Projects, (5) Water Quality Management Plans (6) CWA Section 319 Nonpoint Source Annual Report, (7) CWA Section 319 Nonpoint Source Management Program, (8) Estuary Program Assessments finalized by either the Galveston Bay Estuary Program or Coastal Bend Bays and Estuaries Program, (9) Use Attainability Analyses, and (10) TMDLs and TMDL I-Plans.

**Method of Calculation:** The assessments are tracked manually and reported by the Water Quality Division along with any required explanation of variance from the projected performance of that division. Each assessment unit/parameter pair counts as one output for TMDLs, I-Plans, and TMDL equivalents. Each water body counts as one output for use-attainability analyses.

**Data Limitations:** The individual assessments included in the measure range from assessments requiring as little as one week to as much as 10 years to complete. Certain assessments come due every year, every other year, every five years, or every 10 years. Some assessments are grant deliverables that occur only once, based on completion of the particular grant tasks. Other assessments, such as receiving water assessments and special studies, are performed as needed, based on permitting demands for documentation of stream conditions, stream standards, and reasonable uses. Use-attainability analyses are performed as needed on individual water bodies when the existing standards appear to be inappropriate for water bodies that are listed as impaired under the Clean Water Act 303(d). Depending upon the complexity of the Total Maximum Daily Load assessment, development may require less than a year to greater than five years. Within the fiscal year, the performance for the number of surface water assessments varies from quarter to quarter, based on demand and available resources. In general, water quality assessment activities are scheduled for completion later in the fiscal year.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Output 01-01-02.02 Number of groundwater assessments

**Short Definition:** Number of groundwater assessments. The reports completed evaluate environmental or programmatic data related to groundwater quality or quantity issues.

**Propose/Importance:** The measure attempts to quantify the groundwater assessment activities of the agency. Assessments range in complexity and effort from a basic data report compiling and analyzing the results of a field sampling trip to a major report evaluating the water resources, future demand and recommended management strategies for a multi-county area. Assessment of groundwater quality and quantity issues is essential to the protection and conservation of limited groundwater resources.

**Source/Collection:** The Water Supply Division (WSD) of the Office of Water performs and reports groundwater quality assessments, regional groundwater vulnerability assessments, groundwater management program assessments, and pesticides in groundwater assessments for a range of state and federal mandates.

**Method of Calculation:** The assessments will be tracked manually with completion recorded in an electronic database and reported to the Strategic Planning and Assessment Section by the respective division identified above along with any explanation of variance required. The number of assessments by Office and the total of all assessments are reported quarterly for the agency by the Strategic Planning and Assessment Section.

**Data Limitations:** The individual assessments included in the measure range from assessments requiring as little as one week to one year to complete. Certain assessments come due each year and some every other year. Some assessments address federal or state mandates that may vary little or greatly from one fiscal year to the next. Within the fiscal year, the performance for the number of assessments varies from quarter to quarter. A straight-line projection of performance cannot describe the assessment activities. As such, the distribution cannot be normalized over a given time frame.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Output 01-01-02.03 Number of dam safety assessments

**Short Definition:** Number of dam safety assessments conducted. Assessments include on-site investigations as well as in-house review of plans and specifications for dams, spillway adequacies, breach analyses, emergency action plans, engineering reports, water use permit applications involving dams, and water district creation reviews involving dams.

**Purpose/Importance:** The measure reflects the combined workload of the agency and the agency's contractor associated with ensuring the safety of dams in the state. Assessments are conducted to ensure the safe design, construction, maintenance, repair and removal of dams in the state.

**Source/Collection of Data:** Using the Dam Safety Module, which interfaces with several TCEQ databases, including CCEDS, this measure is the total number of dam safety and security assessments completed in the reporting period.

**Method of Calculation:** Query of agency database.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projection.

### Efficiency 01-01-02.01 Average cost per dam safety assessment

**Short Definition:** Average cost per dam safety assessment completed. Assessments include on-site safety and security investigations as well as in-house review of plans and specifications for dams, spillway adequacies, breach analyses, emergency action plans, engineering reports and water use permit applications involving dams, and water district creation reviews involving dams.

**Purpose/Importance:** Assessments are conducted to ensure the safe design, construction, maintenance, repair, and removal of dams in the state. The average cost measures how efficiently these assessments are conducted.

**Source/Collection of Data:** Investigators enter investigation information into the Dam Safety Module, which interfaces with several TCEQ databases, including CCEDS. Each reporting period, the Field Operations Support Division retrieves from the database the number of assessments completed. USAS expenditure figures for the Dam Safety Program are used to determine costs.

**Method of Calculation:** Database query retrieves the total number of assessments completed during the reporting period. Average cost per assessment is calculated by dividing total funds expended as reported in USAS for the Dam Safety Program by the total number of dam safety assessments conducted through the reporting period.

**Data Limitations:** Average cost figures may vary considerably due to the number and complexity of assessments performed.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Below projections.

### Explanatory 01-01-02.01 Percent of Texas' rivers, streams, wetlands, and bays protected by site-specific water quality standards

**Short Definition:** Percent of Texas' rivers, streams, wetlands, and bays protected by site-specific water quality standards

**Purpose/Importance:** The Texas Surface Water Quality Standards establish explicit numerical goals for water quality in the surface waters of Texas. The percentage of water bodies that have been assigned site-specific water quality standards is a measure of how well the standards have been tailored to individual water bodies and in the state. Using the Texas Water Quality Inventory, the percentage of state waters with designated site-specific standards is determined for each major water body type. These numbers are then averaged in order to develop a single statewide percentage. Calculated annually.

**Source/Collection of Data:** The TCEQ Texas Water Quality Inventory is used as a data source to provide the size of individual water bodies, and also to provide the total amount of each water body type in the state. The Water Quality Inventory is a publicly available document that is periodically reviewed and updated by the TCEQ. The Texas Surface Water Quality Standards, which are established as Chapter 307 in Title 30 of the Texas Administrative Code, are used to determine the list of water bodies that are assigned site-specific water quality standards.

**Method of Calculation:** For this measure, water body types are defined as rivers, reservoirs, estuaries, and wetlands. The amount of (area or length) of "classified" waters with site-specific standards is determined for each water body type from the Texas Water Quality Inventory [305(b) report]. The length of partially classified streams is calculated from the current Texas Surface Water Quality Standards and added to the total of rivers with site-specific standards. The length of partially classified streams is calculated by multiplying the number of partially

classified streams in Appendix D of the standards by the average length of these streams (8.0 miles). To determine the total amount of each water body type in the state (classified and unclassified), information in the current Texas Water Quality Inventory is used as a baseline, except for reservoirs. For reservoirs, the total amount is based on the 1994 water quality inventory, since this total is not reported in more recent inventories. Newly constructed major reservoirs are added to the base total when they are completed. The percent of waters with standards is calculated for each water body type = 100 x (the amount of classified and partially classified waters / the total amount of that water body type). Then the percentages of each water body type with site-specific standards are averaged to obtain a single statewide percentage.

**Data Limitations:** The designation of water bodies with site-specific standards is typically revised every three years. Therefore, the rate of change of this measure is relatively slow.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Explanatory 01-01-02.02 Number of dams in the Texas dam inventory

**Short Definition:** Number of dams in the Texas Dam Inventory.

**Purpose/Importance:** This measure reflects the number of dams in the state subject to dam safety assessments.

**Source/Collection of Data:** The Dam Safety Section in the Field Operations Support Division will use information from field inspections, aerial photography, and new water-rights permit applications to maintain and update an existing database of approximately 7,250 dams. The database will be updated weekly by the additional listing of new dams and updated changes in the attributes of existing dams.

**Method of Calculation:** A query of the data maintained in state databases is run to obtain the number of existing dams.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 01-01-03.01 Number of municipal solid waste facility capacity assessments

**Short Definition:** The number of annual capacity assessments for municipal solid waste landfills reviewed by the Waste Planning Team.

**Purpose/Importance:** To gather current and accurate landfill capacity data to assist in the development of regional solid waste management plans required by legislation (Chapter 363, Texas Health and Safety Code). This information is critical in determining whether sufficient disposal capacity exists to manage the quantity of municipal solid waste generated in the state.

**Source/Collection of Data:** Capacity assessment forms are sent annually to municipal solid waste landfills by the Waste Planning Team. The returned forms are reviewed for consistency with previously reported capacity data, as well as for consistency with related permit and fee data. Data is then entered into a computer database.

**Method of Calculation:** Capacity is reported in cubic yards, and landfill compaction rates in pounds per cubic yard, as based on actual field measurements or on allowable estimation methods. With this data, capacity is

then converted to tons. Landfill life expectancy in years is then projected by dividing the capacity in tons by the number of tons disposed of in landfills during the annual reporting period.

**Data Limitations:** The number of capacity assessments depends wholly on the number of permitted landfills in the state. This number may be affected by the issuance of new permits as well as facility closures. Therefore, there may be some variance from the projected number of assessments. A number of landfills report capacity and compaction estimates rather than the results of actual field measurements. In addition, projected landfill life expectancies assume no changes in reported landfill size, disposal amounts, and compaction rates. Further, not all waste disposal is determined by actual scale weight, with much of waste disposal in the state determined by volume estimates.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Efficiency 01-01-03.01 Average number of hours spent per municipal solid waste facility capacity assessment

**Short Definition:** Average number of hours spent per municipal solid waste facility capacity assessment.

**Purpose/Importance:** This measure reflects agency efforts to conduct municipal solid waste facility capacity assessments in an efficient manner.

**Source/Collection of Data:** The number of hours spent by the staff and management on gathering and evaluating municipal solid waste facility capacity assessments, evaluating the data, and preparing a statewide report on the data will be tracked. This is obtained by creating a Program Cost Account (PCA) code that is used strictly for purposes of tracking this efficiency measure. The total number of hours charged monthly to this PCA code will be acquired through USPS. Each quarter, the cumulative number of hours in the fiscal year charged to date to this PCA code will be divided by the total number of capacity assessments received in the fiscal year to date.

**Method of Calculation:** For the first quarter, the number of hours attributed to the PCA code created and strictly used for this project will be divided by the total number of capacity assessments received to date. The resulting hours per capacity assessment will be reported. For each of the following quarters, use cumulative values for the number of hours attributed to the PCA code and the number of reports received. By the fourth quarter, the efficiency on an annual basis has been determined.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** Yes.

**Desired Performance:** Below projections.

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### Explanatory 01-01-03.01 Number of council of government regions in the state with 10 years or more of disposal capacity

**Short Definition:** Of the 24 council of government (COG) regions in the state, the number with 10 years or more of projected municipal solid waste landfill capacity remaining.

**Purpose/Importance:** To identify those regions of the state with projected capacity to handle disposal needs for the next 10 years. Meeting this need may require more detailed solid waste management planning, possibly at the local level.

**Source/Collection of Data:** Capacity data is obtained through the annual reporting program for municipal solid waste landfills.

**Method of Calculation:** Capacity data entered into the program database is sorted geographically by COG region. Capacity is reported in cubic yards, and landfill compaction rates in pounds per cubic yard, as based on actual field measurements or on allowable estimation methods. With this data, capacity is then converted to tons. Landfill life expectancy in years for each COG region is then projected by dividing the capacity in tons by the number of tons disposed of in landfills during the annual reporting period. If results indicate a shortage of landfill capacity, staff reviews the anticipated capacity increases and/or disposal capacity utilized by a neighboring region. If analysis shows an actual shortage exists, the number is reported and planning is initiated.

**Data Limitations:** A number of landfills report capacity and compaction estimates rather than the results of actual field measurements. In addition, projected landfill life expectancies assume no changes in reported landfill size, disposal amounts, and compaction rates. Further, not all of total waste disposal is determined by actual scale weight, with much of waste disposal in the state determined by volume estimates.

**Calculation Type:** Non-cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

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### Outcome 01-02.01 Percent of air quality permit applications reviewed within established time frames

**Short Definition:** The percentage of total air quality permit applications reviewed within respective time frames for various application categories; the measure considers applications for both New Source Review (NSR) and Title V permits. Target time frames for NSR Applications: New Permits – 285 days; amendments – 315 days; new federal permits (such as, prevention of significant deterioration, nonattainment, 112(g), or 112(j)) and their major modifications – 365 days; permits-by-rule, standard permits without public notice, changes to qualified facilities, and relocations – 45 days; standard permits with public notice – 150 days; standard permits for concrete batch plant – 195 days; multiple plant permits, – 330 days; alterations and other changes, de minimis requests – 120 days; renewals – 270 days; maintenance, startup, shutdown (MSS) permits – 365 days. Target time frames for Title V Applications: Site Operating Permits (SOP) initial issuance, revisions, and renewals – 365 days; SOP voids and Operating Permit (OP) notifications – 60 days; General Operating Permits (GOP) initial issuances – 120 days; GOP revisions – 330 days; GOP renewals – 210 days; GOP voids – 60 days. Target time frames will not apply to applications for which a hearing has been requested.

**Purpose/Importance:** This measure indicates the extent to which the Air Permits Division (APD) reviews air quality permit applications within established time frames. The time frames are based on permitting history and an evaluation of reasonable workload for permit application reviewers.

**Source/Collection of Data:** The sources of data for this measure are APD's NSR and Title V Information Management Systems (IMS) databases. The data is retrieved by running the appropriate queries on the NSR and Title V Permits IMS databases.

**Method of Calculation:** The measure value is calculated by dividing the number of applications reviewed within the target time frame by the total number of applications reviewed. This procedure is conducted for all NSR and Title V application categories by queries on the NSR and Title V Permits IMS databases. The queries count each complete permit application and its respective number of days from the receipt date to the final action date. The processing times for each application are then compared to the respective target time frames, the

number of applications processed within the target time frames is counted, and this number is then divided by the total number of applications to determine the percent of applications reviewed within the target time frames. NSR applications are considered reviewed when the permit action is signed by the executive director (or designee), or when the application is considered void. Title V applications are considered reviewed when a grant letter or permit is signed by the executive director (or designee) of the TCEQ, or the date on which the executive director (or designee) takes action to deny or void the application, or when the applicant withdraws the application.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Outcome 01-02.02 Percent of water quality permit applications reviewed within established time frames

**Short Definition:** This measure includes non-contested wastewater permit applications. The percent of municipal and industrial wastewater permits reviewed within targeted time frames will be determined by dividing the number of applications reviewed within targeted time frames in that quarter by the total number of permits reviewed during that quarter and does not include contested permits or permits under additional review by the EPA. This information is tracked using databases administered in the wastewater permitting program. The targeted time frame for the review of municipal and industrial wastewater permits is established by statute, agency rules, or agency standard operating procedures.

**Purpose/Importance:** This measure indicates whether the agency is in compliance with established time frames for processing permit applications.

**Source/Collection of Data:** Staff enters all pertinent application information into the wastewater permitting databases as the application is processed. Staff queries this database and totals the number of completed reviews within the fiscal year. Staff then subtracts the permit issuance date from the application received date to determine the review time for all reviews completed within the fiscal year.

**Method of Calculation:** The number of reviews completed within established time frames are summed and divided by the total number of reviews completed within the fiscal year. Staff then reports the percent of wastewater permits reviewed within established time frames to Strategic Planning and Assessment.

**Data Limitations:** Applications are excluded from the count when suspended from processing in accordance with either agency rules or agency policy.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Outcome 01-02.03 Percent of water-rights permit applications reviewed within established time frames

**Short Definition:** This measure includes non-contested water-rights permit applications. The percent of water rights permit applications reviewed within targeted time frames will be determined by dividing the number of applications reviewed within the targeted time frame by the total number of permits issued in the fiscal year. This information is tracked using water-rights databases. The targeted time frame for the review of water rights permits is established by statute, agency rules or agency standard operating procedures.

**Purpose/Importance:** This measure indicates to what extent the Water Supply Division's staff is in compliance in processing permit applications within established time frames.

**Source/Collection of Data:** Staff enters all pertinent application information into the water-rights permitting databases as the application is processed. Staff queries this database and totals the number of completed reviews within the fiscal year. Staff then subtracts the completed date from the date of receipt to determine the review time for all reviews completed within the fiscal year.

**Method of Calculation:** The number of reviews completed within established time frames are summed and divided by the total number of reviews completed. Staff then reports the percent of water-rights permits reviewed within established time frames to Strategic Planning and Assessment.

**Data Limitations:** Applications are excluded from the count when suspended from processing in accordance with either agency rules or agency policy.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Outcome 01-02.04 Percent of waste management permit applications reviewed within established time frames

**Short Definition:** Percent of waste management permit applications reviewed within established time frames.

**Purpose/Importance:** This measure reports whether the agency is in compliance with established time frames for reviewing permit applications.

**Source/Collection of Data:** Using an automated tracking system maintained by the Office of Permitting, Remediation, and Registration, this measure will track the number of waste permit applications reviewed during the fiscal year and the number of waste permit applications that were reviewed within the prescribed agency time frames during the fiscal year. A reviewed application is defined as: transmittal of the final draft permit from the program to the Chief Clerk's Office (for those permit applications subject to notice requirements); completion of other final actions (for those permit applications not subject to notice requirements); or the return/withdrawal of the application to the applicant either at the applicant's request or as the result of administrative or technical deficiencies. The percent of waste permit applications reviewed will be derived by dividing the total number of waste permit applications reviewed within the target time frames by the total number of waste permit applications reviewed for the fiscal year. This process will be completed on the following waste permit applications: (1) new, renewals, major and minor amendments, and Class 1, Class 1ED, Class 2, or Class 3 modifications, and post closure orders for industrial nonhazardous solid waste facilities and hazardous waste treatment, storage, and disposal facilities, (2) regulatory flexibility orders for hazardous waste treatment, storage and disposal facilities and industrial nonhazardous waste facilities, (3) new, renewals, major and minor amendments, and minor modifications for UIC Class I Injection Well and Class III Injection Wells, (4) authorizations and new permits, renewals, major and minor amendments, and minor modifications for UIC Class V Injection Wells, (5) new, registrations, major and minor amendments, and notice and no-notice modifications for municipal solid waste, and (6) new, renewals, major and minor amendments for radioactive material licenses. Excluded are the delayed permit applications for interim status closures, protective filings for interim status units that will be permitted with renewals for the combustion strategy implementation.

**Method of Calculation:** Query agency databases for the number of applications reviewed and determine those reviewed within established time frames. Express as a percentage.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 01-02-01.01 Number of state and federal new source review air quality permit applications reviewed

**Short Definition:** The total number of new permits, permit amendments, permit alterations, and permit-by-rule applications reviewed under the Texas Clean Air Act and the federal NSR permitting programs (*see additional detail, next section).

**Purpose/Importance:** This measure quantifies the permitting workload of the Air Permits Division staff assigned to review state and federal new source review permit applications. *The count includes those applications that are withdrawn or denied, and which therefore do not result in permit approval or issuance. Application types in this count include General Permits, Standard Permits, Flexible Permits, and federal Prevention of Significant Deterioration (PSD) and Non-Attainment Area (NAA) permits.

**Source/Collection of Data:** The source of the data for this measure is the NSR Permits Information Management System (IMS) database. An entry for each project is created in the database when the project is received in the Air Permits Division. Application reviewers are responsible for tracking certain elements of their assigned projects' progress through the review process, and ensuring that these tracking elements are entered into the database by data-entry staff. Data entry for each project is closed at the time the project is approved, issued, denied, or withdrawn. Completion of the review process occurs when permits are signed by the executive director (or designee) of the TCEQ, or when the application is considered void.

**Method of Calculation:** The measure value is calculated as the sum of the total number of applications for new permits, permit amendments, permit alterations and permit-by-rule registrations reviewed by the Air Permits Division. The necessary data is retrieved by query of the NSR IMS.

**Data Limitations:** A potential limitation of data accuracy is the time lag between completion of a project and the entry of the completion tracking elements into the database. Generally, this time lag is less than one week.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 01-02-01.02 Number of federal air quality operating permits reviewed

**Short Definition:** The total number of applications for federal air quality operating permits reviewed under Title V of the Federal Clean Air Act (FCAA) (*see additional detail, next section).

**Purpose/Importance:** This measure quantifies the permitting workload of the Air Permits Division staff assigned to review federal operating permit applications. *This count includes those applications that are withdrawn, voided, or denied and which therefore do not result in permit authorization, approval, or issuance.

**Source/Collection of Data:** The source of the data for this measure is the Title V Information Manage-

ment System (IMS) database. An entry for each project is created in the database when the project is received in the Air Permits Division. Application reviewers are responsible for tracking certain elements of their assigned projects' progress through the review process, and ensuring that these tracking elements are entered into the database. Data entry for each project is closed when the project is approved, issued, denied, voided or withdrawn. Completion of the review process occurs when grant letters (GOP) and permits (SOP) are signed by the executive director (or designee) of the TCEQ, when the executive director (or designee) takes action to deny or void the application, or when the applicant withdraws the application.

**Method of Calculation:** The measure value is calculated as the sum of the total number of applications for federal air quality operating permits reviewed under Title V of the FCAA. The necessary data is retrieved by query of the Title V IMS.

**Data Limitations:** A potential limitation of data accuracy is the time lag between completion of a project element and the entry of the completed tracking elements into the database. Generally, this time lag is less than one week.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 01-02-01.03 Number of Emissions Banking and Trading transaction applications reviewed

**Short Definition:** The total number of Emissions Banking and Trading (EBT) transaction applications for the Emission Reduction Credits, Discrete Emission Reduction Credits, Mass Emission Cap and Trade, Emissions Banking and Trading of Allowances, and System Cap Trading programs reviewed by the Air Quality Division (*see additional detail, next section).

**Purpose/Importance:** This measure quantifies the EBT workload of the Air Quality Division staff assigned to review EBT applications. *This count includes those applications that are withdrawn or denied, and which therefore do not result in transaction approval or credit issuance. Application types include emission credit and discrete emission credit certifications, emission credit and discrete emission credit notices of intent to use, cap and trade level of activity certifications, cap and trade annual reports, and credit/allowance transfers.

**Source/Collection of Data:** The source of data for this measure is the Emission Banking and Trading information management system database. An entry for each project is created in the database when the project is received in the Air Quality Division. Application reviewers are responsible for tracking certain elements of their assigned projects' progress through the review process, and ensuring that these tracking elements are entered into the database by data-entry staff. Data entry for each project is closed at the time the project is approved, denied, withdrawn, or issued. The data is retrieved by running a query on the EBT database.

**Method of Calculation:** This measure is calculated as the sum of the total number of EBT transactions applications for the period of interest.

**Data Limitations:** A potential limitation to data accuracy is the time lag between completion of a project and the entry of the completion tracking elements into the database. Generally, this time lag is less than one week.

**Calculation Type:** Cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

### Explanatory 01-02-01.01 Number of state and federal air quality permits issued

**Short Definition:** The number of state and federal new source review (NSR) air quality permits that were actually issued or approved. For purposes of NSR permits, "issued" means the executive director (or designee) of the TCEQ has signed the permits.

**Purpose/Importance:** This measure quantifies those NSR air quality permits applications, reviewed under the Texas Clean Air Act and the federal NSR permitting programs, which resulted in issued or approved permits.

**Source/Collection of Data:** The source of data for this measure is the NSR Permits Information Management System (IMS) database. The data is retrieved by running a query on the NSR IMS.

**Method of Calculation:** The measure value is calculated as the sum of the state and federal NSR permits issued or approved during the reporting period.

**Data Limitations:** A potential limitation of the data is the time lag between completion of a project element and the entry of the tracking element into the database. Generally, this time lag is less than one week.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Explanatory 01-02-01.02 Number of federal air quality permits issued

**Short Definition:** The number of federal air quality operating permits reviewed under Title V of the Federal Clean Air Act (FCAA) that was actually issued. For purposes of operating permits, "issued" means EPA review has been completed, and the executive director (or designee) has signed the grant letters and/or permits.

**Purpose/Importance:** This measure quantifies those federal air quality operating permits applications, reviewed under Title V of the Federal Clean Air Act, which resulted in issued or approved permits.

**Source/Collection of Data:** The source of the data for this measure is the Title V Permits Information Management System (IMS) database. The data is retrieved by running a query on the Title V Permits IMS.

**Method of Calculation:** The measure value is calculated as the sum of the number of federal operating permits issued or approved during the reporting period.

**Data Limitations:** A potential limitation of the data is the time lag between completion of a project element and the entry of the tracking element into the database. Generally, this time lag is less than one week.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Output 01-02-02.01 Number of applications to address water quality impacts reviewed

**Short Definition:** Number of applications to address water quality impacts reviewed.

**Purpose/Importance:** This measure reflects agency workload with regard to the review of water quality permit applications.

**Source/Collection of Data:** The Wastewater Permitting Section will provide a number each reporting period that identifies the number of municipal and industrial wastewater permits it has drafted and filed with the chief clerk for public notice. Filing of draft permits with the chief clerk denotes completion of the program review process. This information is tracked on databases within the Wastewater Permitting Section. The total number of sewage sludge beneficial use registrations and permits, sewage sludge process and/or disposal permits, and water

treatment sludge land application registrations and/or disposal permits will be included. In addition, the total number of general permits Notice of Intent (NOI), No Exposure Certifications (NECs), and Erosivity Waivers processed will be included. The mailing of the confirmation letter to the applicant denotes the completion of the program review. This measure does not include authorizations by rule or pretreatment audits. In addition to the information provided by the Wastewater Permitting Section, this measure will include Edwards Aquifer (EA) protection plans reviewed and applications reviewed for on-site sewage facilities (OSSF) by the Field Operations Support Division (FOSD). This information will be based on EA plan reviews that are completed and entered into CCEDS during the reporting period and OSSF applications that are reviewed during the reporting period.

**Method of Calculation:** The Wastewater Permitting Section provides data from their database and the Field Operations Support Division provides their data to the Wastewater Permitting Section. These two numbers are added together to provide the number of applications reviewed.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

---

### Output 01-02-02.02 Number of applications to address water-rights impacts reviewed

**Short Definition:** This measure is the number of permitting action reviews completed and is calculated by totaling the number of water-rights applications, ownership transfers, temporary permits by Water Rights and regional staff, and water supply contracts processed and reviewed during the reporting period.

**Purpose/Importance:** This measure reflects agency workload with regard to the review of water rights permit applications.

**Source/Collection of Data:** Water Rights Permitting staff enter milestone information into databases. Staff queries these databases for application reviews completed this quarter and review monthly activity reports for ownership changes and supply contracts. The numbers reported by Water Rights Permitting do not include Region numbers. Field Operations Support Division provides data to the Water Supply Division.

**Method of Calculation:** Applications completed this quarter are summed together with ownership changes and contracts as reported in monthly activity reports.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 01-02-02.03 Number of concentrated animal feeding operation (CAFO) authorizations reviewed

**Short Definition:** Number of concentrated animal feeding operation (CAFO) authorizations reviewed.

**Purpose/Importance:** This measure reflects agency workload with regard to processing CAFO authorizations.

**Source/Collection of Data:** Using information maintained by the Water Quality Assessment Section, this measure will be reported at the end of each quarter by calculating the total number of concentrated animal feeding operation individual permits and Notices of Intent (NOIs) for coverage under the general permit reviewed/processed by the staff. Transmittal of reviewed applications from the program to the Chief Clerk's Office denotes

process completed by the program. The mailing of the confirmation letter to the applicant for NOIs submitted for coverage under the general permit denotes the completion of the program review.

**Method of Calculation:** Using information maintained on the TRACS database for individual permits and the ARTS database for NOIs, this measure will be reported at the end of each quarter by calculating the total number of concentrated animal feeding operation permits reviewed by the staff and the total number of confirmation letters mailed for coverage under the general permit. Transmittal of reviewed applications from the program to the Chief Clerk's Office denotes process completed by the program.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

---

### Explanatory 01-02-02.01 Number of water quality permits issued

**Short Definition:** This measure will report the total number of water quality permits approved by the executive director or by the commissioners.

**Purpose/Importance:** To report the number of TPDES, State, and Agricultural permits issued for the year.

**Source/Collection of Data:** This information is tracked in a database maintained by the Chief Clerk's Office.

**Method of Calculation:** This information is pulled from the database maintained in the Chief Clerk's Office and is supplied by a query to the database by the date the permit was signed.

**Data Limitations:** None Identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Explanatory 01-02-02.02 Number of water-rights permits issued

**Short Definition:** This measure will report the total number of water-rights permits approved by the executive director or by the commissioners.

**Purpose/Importance:** To report the number of water-rights permits issued for the year.

**Source/Collection of Data:** This information is tracked in a database maintained by the Water Rights Permitting and Availability Section.

**Method of Calculation:** This information is pulled from the database maintained in the Water Rights Permitting and Availability Section and is supplied by a query to the database by the date the permit was signed.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 01-02-03.01 Number of new system waste evaluations conducted

**Short Definition:** Audits conducted on generators' self-classification of their industrial waste.

**Purpose/Importance:** That wastes are correctly classified to ensure appropriate management, disposal, and fee assessment.

**Source/Collection of Data:** The data is collected through the waste stream notifications submitted by waste generators regulated by the TCEQ. In the case of out-of-state wastes written submissions from the generators is used. Waste streams are audited on a random basis or manually selected from the TRACS database when there is sufficient information to suspect the wastes were classified incorrectly.

**Method of Calculation:** On a monthly basis the total number of completed audits is maintained in a division Quattro Pro spreadsheet. On a quarterly basis the total is derived, reconciled against information from the TRACS database, and reported. Audits are considered complete when: (1) the auditee submits sufficient data for the TCEQ to review, and (2) the TCEQ has sufficient time to complete the review.

**Data Limitations:** Data could be affected by lack of response from generators or incorrect written submissions received from the generators.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

---

### Output 01-02-03.02 Number of nonhazardous waste permit applications reviewed

**Short Definition:** Number of nonhazardous waste permit applications reviewed. For the Municipal Solid Waste (MSW) Permit Section, includes the number of permit reviews for new, modified, or amended MSW storage, treatment, processing, and disposal facilities and renewed or amended commercial industrial nonhazardous waste landfill (CINWL) facilities.

**Purpose/Importance:** This measure quantifies the number of reviews conducted to ensure proposed facilities meet design and operational requirements and are protective of human health and the environment.

**Source/Collection of Data:** Information regarding the status of individual MSW or CINWL permit applications is maintained in a database maintained by the Office of Permitting and Registration, MSW Permits Section. Date of review of a permit is entered into the database by a TCEQ staff member when a permit application is deemed technically complete. Using an agency database maintained by the Office of Permitting and Registration, this measure will calculate the total of (1) the number of final draft permits for new, modified, and/or amended municipal solid waste storage, treatment, and disposal facilities, (2) the number of final draft permits for new, renewed, and/or amended commercial industrial nonhazardous waste landfill facilities, (3) the number of technical completions prepared for municipal solid waste and commercial industrial nonhazardous waste landfills, (4) the number of municipal solid waste and commercial industrial nonhazardous waste landfill applications denied and withdrawn by the commission, and (5) the number of new and modified MSW registrations.

**Method of Calculation:** Totals are calculated by adding the numbers for each category together.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 01-02-03.03 Number of hazardous waste permit applications reviewed

**Short Definition:** Number of permits, orders, licenses, and authorizations reviewed, denied, or withdrawn. Includes all permitting and authorization actions for hazardous waste facilities and industrial nonhazardous waste storage and processing facilities (new, renewed, major and minor amendments, modifications (Class 1, Class 1 with prior approval of the executive director (Class 1 ED), Class 2, Class 3), post closure care orders and regula-

tory flexibility orders ; Class I, Class III, and Class V Underground Injection Control (UIC) wells (new, renewed, major and minor amendments, minor modifications, and regulatory flexibility orders), and radioactive material disposal facilities (new, renewed, and major and minor amendments).

**Purpose/Importance:** This measure quantifies the number of environmentally protective authorizations recommended by the TCEQ staff.

**Source/Collection of Data:** Using an agency database maintained by the Office of Permitting and Registration, this measure will calculate the total of (1) the number of final draft permits/orders for new, renewals, major and minor amendments, Class 1ED, 2, 3 modifications, regulatory flexibility orders, and post closure care orders for hazardous and industrial waste storage, treatment and disposal facilities, (2) the number of Class 1 modifications for hazardous and industrial waste storage, treatment, and disposal facilities and (3) the number of final draft permits for new, renewed, amended and modified underground injection control wells, (4) the number of new and amended authorizations for underground injection control wells and (5) the number of applications returned and/or withdrawn. A reviewed application is defined as: transmittal of the final draft permit, order or license from the program to the Chief Clerk's Office, the return/withdrawal of the application to the applicant either by the applicant's request or as the result of administrative or technical deficiencies, or the transmittal of an authorization or modification letter to the applicant. Data maintained in the database includes the facility name, identification number, date application is received, and date reviewed, or returned/withdrawn prior to final draft permit, or date of authorization or modification letter. Data is entered after the action has occurred. A reviewed application is defined as an application received and the transmittal of the final draft permit from the program to the Office of Chief Clerk or transmittal to the company of an authorization, modification letter or rejection letter.

**Method of Calculation:** Totals are calculated by adding the number of completed items together.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

---

### Explanatory 01-02-03.01 Number of nonhazardous waste permits issued

**Short Definition:** Number of nonhazardous waste permits issued.

**Purpose/Importance:** This measure reflects agency workload with regard to the number of permits issued. This measure quantifies the number of permits issued for facilities that are protective of human health and the environment.

**Source/Collection of Data:** Using an agency database maintained by the Office of Permitting and Registration, this measure will be reported by calculating the number of permits and registrations issued for municipal facilities and commercial industrial nonhazardous waste landfill facilities in the fiscal year. A permit issued is one that has been signed by either the executive director (or designated representative) or by the commission. Date of issuance of a permit is entered into the database by the TCEQ staff member when a copy of the issued permit is received by the Municipal Solid Waste Permit Section from the Chief Clerk's Office.

**Method of Calculation:** Query agency databases for reported performance. Totals are calculated by adding the number of issued permits together.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Explanatory 01-02-03.02 Number of hazardous waste permits issued

**Short Definition:** Number of hazardous waste permits or orders; industrial nonhazardous waste storage and processing permits or orders; UIC permits, orders, and authorizations; and radioactive material licenses issued.

**Purpose/Importance:** This measure reflects agency workload with regard to the number of permits/orders/authorizations/licenses issued.

**Source/Collection of Data:** Using an agency database maintained by the Office of Permitting and Registration, this measure will be reported by calculating, the number of permits, orders, authorizations, and licenses issued for hazardous waste facilities, industrial non-hazardous storage and processing waste facilities, UIC Class I injection wells, UIC Class III injection wells, UIC Class V injection wells and low-level radioactive waste facilities. A permit, order, authorization or license issued is one that has been signed by either the executive director (or designated representative) or by the commission.

**Method of Calculation:** Query agency database for reported performance. Totals are calculated by adding the number of issued permits together.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Explanatory 01-02-03.03 Number of corrective actions implemented by responsible parties for solid waste sites

**Short Definition:** Number of corrective actions at nonhazardous solid waste landfills.

**Purpose/Importance:** This measure reflects the number of corrective actions being performed by responsible parties to remediate releases from municipal solid waste and commercial industrial nonhazardous waste landfills.

**Source/Collection of Data:** Using an agency tracking system and manual record reviews maintained by the Office of Permitting and Registration, this measure will be reported by calculating the number of municipal solid waste and commercial industrial nonhazardous waste landfill facility corrective action plans received and reviewed by staff, then implemented by responsible parties in accordance with their approved plans during the reporting period. This includes all corrective action activities (including groundwater and landfill gas remediation) at permitted municipal solid waste and commercial industrial nonhazardous waste landfill facilities. A corrective action is considered complete upon issuance of a letter by the agency to the responsible party indicating approval of corrective action activities.

**Method of Calculation:** Query agency database and verify results with appropriate project managers.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

### Output 01-02-04.01 Number of applications for occupational licensing

**Short Definition:** The number of individual applications for environmental professional licensure and registration that are received by the agency and are entered into the Consolidated Compliance and Enforcement Data System (CCEDS), and either issued a license, a deficiency letter, or a failure letter during the reporting period.

**Purpose/Importance:** This measure indicates the number of new and renewal applications received. It is a primary measure of workload and it indicates the number of potential licensed or registered professionals or companies.

**Source/Collection of Data:** The Permitting and Registration Support Division staff scans or manually enters data into the CCEDS for the applications received during this period.

**Method of Calculation:** This measure is calculated by running a query of CCEDS of all applications for environmental professional licensure and registration received by the agency during the reporting period.

**Data Limitations:** Receiving some applications at the central office may be dependent on the designated agents submitting them timely.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 01-02-04.02 Number of examinations processed

**Short Definition:** The number of individual examinations received by the agency and entered into the Consolidated Compliance and Enforcement Data System (CCEDS) for processing.

**Purpose/Importance:** This measure indicates the number of exams administered to applicants who are potential licensees.

**Source/Collection of Data:** The Permitting and Registration Support Division staff scans or enters exam information into the Consolidated Compliance and Enforcement Data System (CCEDS) after examinations are administered by the commission's designated agents, the Permitting and Registration Support Division, and Field Operations Support Division staff.

**Method of Calculation:** This measure is calculated by running a query of CCEDS for all examinations processed during the reporting period.

**Data Limitations:** Receiving the examinations at the central office for processing is dependent on the designated agents submitting it timely.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

---

### Output 01-02-04.03 Number of licenses and registrations issued

**Short Definition:** The number of new, newly upgraded, or renewed licenses and registrations issued to individuals and companies during the reporting period.

**Purpose/Importance:** This measure indicates the number of licenses that were issued or renewed for individuals and companies who have met licensing or registration requirements.

**Source/Collection of Data:** The Permitting and Registration Support Division staff generates certificates and licenses for qualified applicants and maintains this information in the Consolidated Compliance and Enforcement Data System (CCEDS).

**Method of Calculation:** This measure is calculated by running a query of the CCEDS database for new, newly upgraded, or renewed licenses and registrations issued to individuals and companies during the reporting period.

**Data Limitations:** Licensed individuals and companies may have change of addresses that go unreported to the agency. This may result in the loss of the license or registration due to failure to renew.

**Calculation Type:** Cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

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### Efficiency 01-02-04.01 Average annualized cost per license and registration

**Short Definition:** The average annualized cost per license and registration.

**Purpose/Importance:** Reflects average annualized cost for the licensing program per number of active licenses and registrations maintained by the agency.

**Source/Collection of Data:** The Operator Licensing Section adjusted annual budget is obtained from USAS. The licensing and registration data is maintained in the Consolidated Compliance and Enforcement Data System (CCEDS).

**Method of Calculation:** This measure is calculated by dividing the Operator Licensing Section total annual salary budget by the total number of licensees/registrants in force by the agency at the end of the reporting period.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Below projections.

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### Explanatory 01-02-04.01 Number of TCEQ licensed environmental professionals and registered companies

**Short Definition:** The total number of environmental professional licenses and registrations currently registered with the agency.

**Purpose/Importance:** This measure presents the order of magnitude of the TCEQ licensing programs. It provides basic information for workload evaluation.

**Source/Collection of Data:** The Permitting and Registration Support Division maintains this information in the Consolidated Compliance and Enforcement Data System.

**Method of Calculation:** This measure is calculated by querying CCEDS for all active licenses and registrations.

**Data Limitations:** None.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 01-03-01.01 Number of radiological monitoring and verification samples of air, water, soil, and fauna collected

**Short Definition:** The number of radiological monitoring and verification samples of air, water, soil/sediment, and flora collected to address and evaluate an immediate threat to human health and safety and the environment

**Purpose/Importance:** This measure provides an indication of the number of actual sample taken by the agency to be analyzed for early warning of the migration of radiological constituents from regulated activities to protect human health and safety and the environment.

**Source/Collection of Data:** This measure will use an agency database to track all samples taken by staff during inspections, confirmatory surveys, reclamation confirmations, and any other environmental monitoring and sampling events.

**Method of Calculation:** Using an agency database maintained by the Radioactive Materials Division and at the end of each quarter, the database is used to arrive at a total number of samples taken during that quarter. The total for each quarter is added to the total for any previous quarters during that fiscal year to come up with a cumulative total of samples taken during that fiscal year.

**Data Limitations:** None known at this time.

**Calculation Type:** Cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

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### Explanatory 01-03-01.01 Total annual amount of revenue deposited to the General Revenue Fund generated from the 5 Percent Gross Receipts Fee on the disposal of low-level radioactive waste and other radioactive substances

**Short Definition:** The total annual amount of revenue received by the TCEQ and deposited into the General Revenue Fund generated from the 5 Percent Gross Receipts Fee on the disposal of low-level radioactive and other radioactive substances at any Texas disposal facility.

**Purpose/Importance:** This measure provides an indication of the gross receipts of private, commercial operations that are accepting radioactive substances, and specifically low-level radioactive waste, from others for permanent disposal within the boundaries of the State of Texas.

**Source/Collection of Data:** This measure will use an agency database to track all revenue received by TCEQ and deposited into the General Revenue Fund generated from the 5 Percent Gross Receipts Fee on the disposal of low-level radioactive and other radioactive substances at any Texas disposal facility.

**Method of Calculation:** Using an agency database maintained by the Radioactive Materials Division and information from the Revenues Section of the Financial Administration Division, and at the end of each quarter, the database is used to arrive at a total of deposits made during that quarter. The total for each quarter is added to the total for any previous quarters during that fiscal year to come up with a cumulative total deposited during that fiscal year.

**Data Limitations:** None known at this time.

**Calculation Type:** Cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

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### Explanatory 01-03-01.02 Volume of low-level radioactive waste accepted by the State of Texas for disposal at the Texas Compact Waste Facility

**Short Definition:** The total volume of low-level radioactive waste accepted by the State of Texas for disposal at the Texas Compact Waste Facility.

**Purpose/Importance:** This measure provides an indication of the total volume of low-level radioactive waste in shipments arriving at the Compact Waste Disposal Facility, taken title of that waste by the TCEQ on behalf of the State of Texas and subsequently permanently disposed in the state-owned facility.

**Source/Collection of Data:** This measure will use an agency database to track all received.

**Method of Calculation:** Using an agency database maintained by the Radioactive Materials Division and at the end of each quarter, the database is used to arrive at a total volume accepted by the State of Texas for disposal at the Texas Compact Waste Facility during that quarter. The total volume for each quarter is added to the total for any previous quarters during that fiscal year to come up with a cumulative total volume taken during that fiscal year.

**Data Limitations:** None known at this time.

**Calculation Type:** Cumulative.

**New Measure:** Yes.

**Desired Performance:** Below projections.

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### Outcome 02-01.01 Percent of Texas population served by public water systems that meet drinking water standards

**Short Definition:** This measure will report the total Texas residential population of all public water systems (PWSs) that have not had maximum contaminant level (MCL) violations, lead action level, or treatment technique violations.

**Purpose/Importance:** Measures the success of our performance outputs and all regulatory activities conducted by the TCEQ to protect the public health of Texans receiving water from a public drinking water system. This measure reflects the percent of the population in Texas served by drinking water systems that meet drinking water standards.

**Source/Collection of Data:** Population information is gathered during each Comprehensive Compliance Investigation (CCI) survey of a Public Water System (PWS) conducted by field staff. Violation data is obtained from the review of chemical and microbiological data that is submitted to the TCEQ from certified laboratories after samples are collected by PWS personnel or by contract sample collectors. Chemical and microbiological data are kept in the TCEQ Central Records. Population data is kept in a Water Utilities Data System (WUD), while violation data is kept in the Safe Drinking Water Information System.

**Method of Calculation:** Using the public water supply (PWS ) inventory and the violation databases, the measures will report the total Texas residential population of all PWSs that have not had Maximum Contaminant Level (MCL) violations as described by the Drinking Water Standards. This population figure is divided by the total population served by all water systems, and multiplied by 100 to derive a percentage. (Total state population served by public water systems is defined from data projected by the Comptroller's Office and census data.)

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Outcome 02-01.02 Percent of Texas population served by public water systems protected by a program that prevents connection between potable and non-potable water sources

**Short Definition:** Percent of Texas population served by public water systems protected by a program that prevents connection between potable and non-potable water sources.

**Purpose/Importance:** To indicate what percentage of the population is served by public water systems that have viable cross-connection control programs. Having a viable cross-connection control program protects the public water system from contamination caused by siphonage or backflow of pollutants into the system as a result of low or inadequate pressure.

**Source/Collection of Data:** Data collected from cross-connection control program questionnaires that were mailed to all public water systems in the State of Texas, sanitary surveys completed by TCEQ regional staff, and on-site visits by central office staff to survey public water systems that did not respond to the mailed surveys.

**Method of Calculation:** Using public water supply databases, the total of the Texas residential population served by community water systems that have implemented a program that prevents connection between potable and non-potable water sources will be divided by the total residential population served by community public water systems, all of which are required by agency rule to have such a program to prevent connection between potable and non-potable water. This measure will track the compliance rates of such systems with this rule.

**Data Limitations:** Data is limited by the information provided by the public water systems in the returned cross-connection questionnaires. Data is also limited by the accuracy of the reported population of the State of Texas.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Output 02-01-01.01 Number of public drinking water systems that meet primary drinking water standards

**Short Definition:** Number of public drinking water systems that meet drinking water standards.

**Purpose/Importance:** Measures the success of our performance outputs and all regulatory activities conducted by the TCEQ to protect the public health of Texans receiving water from a public drinking water system. This measure will report the total number of all public water systems that have not had maximum contaminant level (MCL), lead action level, or treatment technique violations.

**Source/Collection of Data:** Public water system information is gathered during each Comprehensive Compliance Investigation (CCI) of a public water system (PWS) conducted by field staff. Violation data is obtained from the review of chemical and microbiological data that is submitted to the TCEQ from certified laboratories after samples are collected by PWS personnel or by contract sample collectors. CCI reports as well as chemical and microbiological data are kept in the Central Records facility. Public water system data is kept in the Water Utilities Data System (WUD) and the Safe Drinking Water Information System.

**Method of Calculation:** Using the PWS inventory and the violation databases, the measures will report the number of PWSs that have not had maximum contaminant level, lead action level, or Treatment Technique MCL violations as described by the Drinking Water Standards.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Output 02-01-01.02 Number of drinking water samples collected

**Short Definition:** Number of drinking water samples collected.

**Purpose/Importance:** Chemical samples are collected from public water systems (PWSs) to assure safe drinking water and protect public health. Samples must be collected in order to be analyzed.

**Source/Collection of Data:** Chemical samples are collected by PWS personnel or contract sample collectors and the numbers are reported to the Public Drinking Water (PDW) Section's Drinking Water Quality (DWQ) Team on a monthly basis. Original data are kept in the Central Records facility located in Building F, first floor. It is also maintained electronically. Chemical data is kept in database tables. Each reporting period, Regions submit the number of samples collected to the Field Operations Support Division (FOSD). The FOSD provides the data to the Water Supply Division.

**Method of Calculation:** The number of chemical samples is set by the requirements of the Drinking Water Standards, and the anticipated number is maintained in the DWQ Team database, following team standard operating procedures. Chemical samples collected from PWSs are reported from two sources. The number of samples collected by the PDW contractor is tracked by the chemical sample schedule coordinator on the DWQ Team and reported on the Public Drinking Water Section Monthly Activity Report, while samples collected by TCEQ regional investigators will be reported as totals reported by the regions. The numbers are totaled on a monthly basis.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 02-01-02.01 Number of utility rate reviews performed

**Short Definition:** Number of utility rate reviews performed.

**Purpose/Importance:** This measure reflects the number of requests from utilities for rate changes reviewed and audits of investor-owned utility rates.

**Source/Collection of Data:** Using the agency's Water Utilities Database (WUD) system, this measure will report on the number of all utility rate appeals, and applications reviewed that receive either administrative approval, are referred to the commission for action, or are dismissed or withdrawn.

**Method of Calculation:** Using the agency's WUD system, the number of rate reviews performed each quarter are summed and reported to Strategic Planning and Assessment.

**Data Limitations:** The number of rate applications and appeals received is related to the economic conditions in the state.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 02-01-02.02 Number of district applications processed

**Short Definition:** Number of district applications processed.

**Purpose/Importance:** This measure reflects the number of major and minor district applications reviewed.

**Source/Collection of Data:** Using the agency's Water Utilities Database (WUD) system, this measure will report on the number of all district applications reviewed that receive either administrative approval, are referred to the commission for action, or are dismissed or withdrawn.

**Method of Calculation:** Using the agency's WUD system, the number of district applications reviewed each quarter are summed and reported to Strategic Planning and Assessment.

**Data Limitations:** The number of district applications received is related to the economy and development activity in the state.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 02-01-02.03 Number of Certificate of Convenience and Necessity applications processed

**Short Definition:** Number of Certificate of Convenience and Necessity applications processed.

**Purpose/Importance:** This measure reflects the number of water or sewer service area Certificate of Convenience and Necessity applications reviewed.

**Source/Collection of Data:** Using the agency's Water Utilities Database (WUD) system, this measure will report on the total number of Certificate of Convenience and Necessity applications reviewed that receive either administrative approval, are referred to the commission for action, or are dismissed or withdrawn.

**Method of Calculation:** Using the agency's WUD system, the number of Certificate of Convenience and Necessity applications reviewed each quarter are summed and reported to Strategic Planning and Assessment.

**Data Limitations:** This activity is related to the economy and development activity in the state.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Outcome 03-01.01 Percent of inspected or investigated air sites in compliance

**Short Definition:** Percent of inspected or investigated air sites in compliance.

**Purpose/Importance:** The measure reflects inspection/investigation activity as regulated entities are inspected/investigated to assure compliance with rules, regulations, and statutes designed to protect human health and the environment. Measuring compliance rates of sites following inspections/investigations allows the agency to determine if regulatory assistance, inspection/investigation, and enforcement programs are effective. Lower compliance rates may indicate a need for increased assistance to the regulated community to ensure that they understand their responsibilities.

**Source/Collection of Data:** This information is tracked using CCEDS. An enforcement action is defined as issuance of an order, compliance agreement, or referral to an appropriate agency or division (EPA, OAG, or Remediation or Field Operations divisions for Superfund, voluntary cleanup, or emergency removal action).

**Method of Calculation:** The percent of inspected or investigated air sites in compliance is derived by calculating the total number of sites inspected/investigated for compliance with air rules, regulations, and statutes minus the total number of air cases screened and approved for enforcement action, dividing this difference by the total number of sites inspected/investigated for compliance with air rules, regulations, statutes, multiplied by 100.

**Data Limitations:** The agency can encourage compliance through regulatory assistance and ensuring that a strong and fair enforcement program exists, however, the TCEQ cannot control the will or financial status of the regulated community regarding their ability to comply.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Outcome 03-01.02 Percent of inspected or investigated water sites and facilities in compliance

**Short Definition:** Percent of inspected or investigated water sites and facilities in compliance.

**Purpose/Importance:** This measure reflects inspection/investigation activity as regulated entities are investigated to assure compliance with rules, regulations, and statutes designed to protect human health and the environment. Measuring compliance rates following inspections/investigations allows the agency to determine if regulatory assistance, inspection/investigation, and enforcement programs are effective. Lower compliance rates may indicate a need for increased assistance to the regulated community to ensure that they understand their responsibilities.

**Source/Collection of Data:** The enforcement and inspection/investigation information is tracked using CCEDS, and the number of wastewater and water supply facilities is tracked using the Water Utilities Database, TRACS, and the Federal Permit Compliance System. The total number of cases screened and approved for enforcement action does not include occupational certification program activities. An enforcement action is defined as issuance of an order, compliance agreement, or referral to an appropriate agency or division (EPA, OAG, or Remediation or Field Operations divisions for Superfund, voluntary cleanup, or emergency removal action).

**Method of Calculation:** The percent of inspected or investigated water sites and facilities in compliance is derived by taking the total number of facilities inspected/investigated for compliance with water rules/regulations/statutes, including water-rights sites, wastewater treatment facilities, public water supply systems, sludge/septage transporters, beneficial use sites, and livestock and poultry operations; plus the number of wastewater and water supply facilities required to self report and/or conduct chemical analyses; minus the total number of water cases (for the categories described above) screened and approved for enforcement action; and dividing this difference by the total number of facilities inspected/investigated or evaluated for compliance with water rules/regulations/statutes, including self reporting requirements (as described above); multiplied by 100.

**Data Limitations:** The agency can encourage compliance through regulatory assistance and ensuring that a strong and fair enforcement program exists, however, the TCEQ cannot control the will or financial status of the regulated community regarding their ability to comply.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Outcome 03-01.03 Percent of inspected or investigated waste sites in compliance

**Short Definition:** Percent of inspected or investigated waste sites in compliance.

**Purpose/Importance:** The measure reflects inspection/investigation activity as regulated entities are inspected/investigated to assure compliance with rules, regulations, and statutes designed to protect human health and the environment. Measuring compliance rates following inspections/investigations allows the agency to determine if regulatory assistance, inspection/investigation, and enforcement programs are effective. Lower compliance rates may indicate a need for increased assistance to the regulated community to ensure that they understand their responsibilities.

**Source/Collection of Data:** This information is tracked using CCEDS. An enforcement action is defined as issuance of an order, compliance agreement, or referral to an appropriate agency or division (EPA, OAG, or Remediation or Field Operations divisions for Superfund, voluntary cleanup, or emergency removal action).

**Method of Calculation:** The percent of inspected or investigated waste sites in compliance is derived by calculating the total number of facilities inspected/investigated for compliance with waste rules/regulations/

statutes minus the total number of cases screened and approved for enforcement action, dividing this difference by the total number of facilities inspected/investigated for compliance with waste rules/regulations/statutes, multiplied by 100. Waste sites include industrial and hazardous waste, municipal solid waste, petroleum storage tank, underground injection control, and radioactive waste sites.

**Data Limitations:** The agency can encourage compliance through regulatory assistance and ensuring that a strong and fair enforcement program exists, however, the TCEQ cannot control the will or financial status of the regulated community regarding their ability to comply.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Outcome 03-01.04 Percent of identified noncompliant sites and facilities for which timely and appropriate enforcement action is taken

**Short Definition:** Percent of identified noncompliant sites and facilities for which appropriate action is taken.

**Purpose/Importance:** This measure compares enforcement actions that the agency takes during a fiscal year and determines whether they have been taken within appropriate time frames. Timeliness of enforcement processes is important to ensure that the regulated entity returns to compliance as soon as possible.

**Source/Collection of Data:** Using CCEDS, the Enforcement Division will determine the total number of formal enforcement actions taken during the reporting period and will evaluate whether or not the actions were completed timely. Formal actions include issuance of an order, compliance agreement, or referral to an appropriate agency or division (EPA, OAG, or Remediation or Field Operations divisions for Superfund, voluntary cleanup, or emergency removal action), as determined according to agency guidelines. Each of these actions taken will be evaluated to determine whether or not the action was completed within internal agency time frames in order to determine whether appropriate action was taken, using the date of screening as the start date and the date of the order, compliance agreement, or referral as the end date.

**Method of Calculation:** The percentage will be calculated by taking the total number of cases with actions taken within appropriate time frames against noncompliant facilities divided by the total number of cases with formal action taken, multiplied by 100 to derive a percentage.

**Data Limitations:** Time frames for completion of enforcement actions involve processes that cannot be solely controlled by the TCEQ. The respondents in these cases can create delays in processing the orders and compliance agreements if they request hearings or if the technical requirements are complex, requiring extensive negotiation.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Outcome 03-01.05 Percent of investigated occupational licensees in compliance

**Short Definition:** Percent of inspected or investigated licensees in compliance.

**Purpose/Importance:** The measure reflects inspection/investigation activity as occupational certification licensees are inspected/investigated to assure compliance with rules, regulations, and statutes designed to protect human health and the environment. Measuring compliance rates following investigations allows the agency to determine if regulatory assistance, investigation, and enforcement programs are effective. Lower compliance rates may indicate a need for increased assistance to the regulated community to ensure that they understand their responsibilities.

**Source/Collection of Data:** This information is tracked using CCEDS. An enforcement action is defined as issuance of an order, compliance agreement, or referral to the OAG.

**Method of Calculation:** The percent of inspected licensees in compliance is derived by calculating the total number of licensees inspected/investigated by the Field Operations Support Division and the regional offices plus the number of complaints investigated requiring no additional investigation (Total Investigations) minus the total number of occupational certification cases screened and approved for enforcement action, dividing this difference by the number of Total Investigations (as defined above), multiplied by 100.

**Data Limitations:** The agency can encourage compliance through regulatory assistance and ensuring that a strong and fair enforcement program exists, however, the TCEQ cannot control the will or financial status of licensees regarding their ability to comply.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Outcome 03-01.06 Percent of administrative orders settled

**Short Definition:** Percent of administrative orders settled by the Enforcement Division.

**Purpose/Importance:** Reflects agency effectiveness in quick settlement of enforcement matters.

**Source/Collection of Data:** This information will be derived from CCEDS.

**Method of Calculation:** Using computerized searches, the percent of administrative orders settled by the Enforcement Division will be calculated by determining the total number of administrative orders issued during the fiscal year and the number of those orders that contain a "settlement achieved by Enforcement Division" date in the database. The number of orders settled by the Enforcement Division will then be divided by the total number of orders issued for the fiscal year and then will be multiplied by 100.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

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### Outcome 03-01.07 Percent of administrative penalties collected

**Short Definition:** Percent of administrative penalties collected.

**Purpose/Importance:** Reflects how much penalties are collected.

**Source/Collection of Data:** This measure will be calculated using databases maintained by the Financial Administration Division.

**Method of Calculation:** Using databases maintained by the Financial Administration Division, this measure will be reported by dividing the total amount of administrative penalty invoices outstanding at the end of the fiscal year by the total amount of administrative penalties invoiced and due for the fiscal year. This calculation x 100 will yield the percent of administrative penalties not collected during the fiscal year. Subtracting this calculation from 100 percent provides the percent of administrative penalties collected during the fiscal year.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** N/A.

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### Outcome 03-01.08 Tons of emissions and waste reduced and minimized as reported by the regulated community implementing pollution prevention, environmental management systems, and other innovative programs

**Short Definition:** Tons of reductions in air emissions, discharges to water, wastes, material use, water use, and energy use as reported by the regulated community participating in pollution prevention, environmental management systems, and innovative programs.

**Purpose/Importance:** This measure provides an indication of the Pollution Prevention and Education Section's ability to encourage the regulated community to implement pollution prevention and waste minimization practices and technologies. The measure provides a measurable indicator of emissions and waste reduced and minimized in Texas as a result of pollution prevention/waste minimization and environmental management system implementation efforts. It also serves as an indicator of water and energy conservation, materials use reduction, and other efforts in Texas.

**Source/Collection of Data:** Environmental performance reporting data submitted by the regulated community are documented for entities participating in the Clean Texas Resource Exchange Network for Eliminating Waste (RENEW) and site assistance visits. Data is collected from participating entities through required performance reporting and voluntary surveys, and reduction information is collected by Pollution Prevention and Education staff, and all entered into program databases, and compiled in a spreadsheet.

**Method of Calculation:** Tons of hazardous waste, nonhazardous waste, air emissions, and discharges to water reduced and tons of RENEW materials transferred during the reporting period are calculated and compared to the previous year's levels. Material-use, water-use, energy-use, and land-use data will also be collected. Each reporting facility's reductions totals are then summed to calculate total tons reduced.

**Data Limitations:** Reduction information is provided by businesses through required performance reporting and voluntary surveys. Tons of emissions and waste prevented/minimized is based on the previous year's data. Expanding facilities must often rely on estimates to determine a reduction number during periods of increased production.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Outcome 03-01.09 Amount of financial savings achieved as reported by the regulated community implementing pollution prevention, environmental management systems, and other innovative programs

**Short Definition:** Dollar amount of savings voluntarily reported by the regulated community resulting from reduced purchases of raw materials, avoided disposal costs, and reduced compliance costs through the Pollution Prevention and Education Section's technical assistance activities.

**Purpose/Importance:** This measure provides an indication of the Pollution Prevention and Education Section's ability to encourage the regulated community to implement pollution prevention and waste minimization practices, innovative programs, and environmental cost accounting practices. The measure provides a measurable indicator of the financial savings achieved through pollution prevention, waste minimization, and innovative programs.

**Source/Collection of Data:** Implemented projects and cost savings information is documented for facilities that have participated in pollution prevention and environmental management site assistance visits, Clean Texas Resource Exchange Network for Eliminating Waste (RENEW), and other innovative programs. Data is collected from participating entities through required performance reporting and voluntary surveys, and reduction information is collected by Pollution Prevention and Education staff, and all entered into program databases, and compiled in a spreadsheet.

**Method of Calculation:** Dollar savings is voluntarily calculated by the regulated entity for each facility and documented on a survey instrument provided by the commission to show the financial savings during the reporting period and compared to the previous year's level. Each reporting facility's financial saving are then summed to calculate statewide savings.

**Data Limitations:** Financial information is provided by the regulated community on a voluntary basis through an annual survey based on the previous year's data. The regulated entity relies on both documented costs savings and estimates based on environmental cost accounting principles to measure environmental compliance costs.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Outcome 03-01.10 Tons of emissions and waste reduced and minimized in the Texas-Mexico border region as reported by the regulated community implementing pollution prevention, environmental management systems, and innovative programs

**Short Definition:** Tons of air emissions, discharges to water, and wastes reduced and minimized and material-use, water-use, and energy-use reductions as reported by the regulated community participating in pollution prevention, environmental management systems, and innovative programs.

**Purpose/Importance:** This measure provides an indication of the Pollution Prevention and Education Section's ability to encourage the regulated community along the Texas-Mexico border region to implement pollution prevention and waste minimization practices and technologies. The measure provides a measurable indicator of emissions and waste reduced and minimized in Texas as a result of pollution prevention/waste minimization and environmental management system implementation efforts. It also serves as an indicator of water and energy conservation, materials-use reduction, and other efforts in Texas.

**Source/Collection of Data:** Implemented projects and emissions and waste reduction information are documented for facilities that have participated in pollution prevention and environmental management site assistance visits, Resource Exchange Network for Eliminating Waste (RENEW), and other innovative programs. Data is collected from participating entities through required performance reporting and voluntary surveys, and reduction information is collected by Pollution Prevention and Education staff, and all entered into program databases, and compiled in a spreadsheet.

**Method of Calculation:** Tons of hazardous waste, nonhazardous waste, air emissions, and discharges to water reduced and tons of RENEW materials transferred during the reporting period are calculated and compared to the previous year's levels. Material-use, water-use, energy-use, and land-use data will also be collected. Each reporting facility's reductions totals are then summed to calculate total tons reduced.

**Data Limitations:** Reduction information is provided by the regulated community through required performance reporting and voluntary surveys. Tons of emissions and waste prevented/minimized is based on the previous year's data. Expanding facilities must often rely on estimates to determine a reduction number during periods of increased production.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 03-01-01.01 Number of inspections and investigations of air sites

**Short Definition:** Number of inspections and investigations completed at regulated air sites.

**Purpose/Importance:** Regulated entities are investigated to assure compliance with rules, regulations, and statutes designed to protect human health and the environment.

**Source/Collection of Data:** Using the Consolidated Compliance and Enforcement Data System (CCEDS), this measure is calculated by adding the total number of inspections/investigations completed for air entities during the reporting period. An inspection/investigation is considered complete when the investigation has been conducted, a report has been written, management has approved, and manager's approval date has been reflected in the database. An inspection/investigation is defined as the evaluation of a regulated entity against a standard and includes all (initial and follow up) compliance inspections, file reviews, site assessments and agent evaluations. Site is defined as a geographic location or place where regulatory activities of interest to the agency occur or have occurred. Investigations are conducted to ensure compliance of regulated entities with rules, regulations and statutes designed to protect human health and the environment. An approved risk-based investigation strategy is used to assist in the selection of facilities for investigation. Number does not include citizen complaint investigations or emissions events investigations.

**Method of Calculation:** Each reporting period, the Field Operations Support Division retrieves from the database the number of investigations completed in the field offices as well as those completed by city and or county local programs for certain air related activities. An investigation is considered complete when the investigation has been conducted, a report has been written, management has approved, and the manager's approval date has been reflected in the database.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Output 03-01-01.02 Number of inspections and investigations of water-rights sites

**Short Definition:** Number of inspections/investigations completed at regulated water-rights sites.

**Purpose/Importance:** The measure reflects agency efforts to divide the water of the streams and regulate the controlling works of reservoirs in accordance with the adjudicated water rights.

**Source/Collection of Data:** Using a manual count of records maintained by the Watermaster Program, this measure is the total number of watermaster diversion site inspections or investigations performed as a result of a request to divert water.

**Method of Calculation:** Each reporting period, the Field Operations Support Division retrieves from the database the number completed by the watermasters.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Output 03-01-01.03 Number of inspections and investigations of water sites and facilities

**Short Definition:** Number of inspections and investigations completed at regulated water sites and facilities.

**Purpose/Importance:** Regulated entities are investigated to assure compliance with rules, regulations, and statutes designed to protect human health and the environment.

**Source/Collection of Data:** Using the Consolidated Compliance and Enforcement Data System (CCEDS), this measure is calculated by adding the total number of inspections/investigations completed for water entities during the reporting period. An inspection/investigation is considered complete when the investigation has been conducted, a report has been written, management has approved, and manager's approval date has been reflected in the database. Inspection/investigation is defined as the evaluation of a regulated entity against a standard and includes all (initial and follow-up) compliance inspections, file reviews, site assessments, and agent evaluations. Water entities include, but are not limited to, domestic and industrial wastewater treatment plants, public water supply systems, sludge/septage transporters, beneficial use sites, on-site sewage facility (OSSF) sites, compliance review audits of OSSF authorized agents, and municipal utility districts. Site is defined as a geographic location or place where regulatory activities of interest to the agency occur or have occurred. This measure includes OSSF installation and follow-up investigations. Inspections/investigations are conducted to ensure compliance of regulated entities with rules, regulations, and statutes designed to protect human health and the environment. An approved risk-based investigation strategy is used to assist in the selection of facilities for investigation. Number does not include citizen complaint investigations or investigations of livestock and poultry operations.

**Method of Calculation:** Each reporting period, the FOSD retrieves from the database the number of investigations completed in the regional offices for certain activities. An investigation is considered complete when the investigation has been conducted, a report has been written, management has approved, and the manager's approval date has been reflected in the database. Municipal Utility District construction inspections are reported by the following regional offices directly to the FOSD: Austin, Houston, and Dallas–Ft. Worth. The MUD construction inspections are added to the number of water sites investigations retrieved from CCEDS each month.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Output 03-01-01.04 Number of inspections and investigations of livestock and poultry operation sites

**Short Definition:** Number of inspections and investigations at livestock and poultry operation sites completed.

**Purpose/Importance:** Regulated entities are investigated to assure compliance with rules, regulations, and statutes designed to protect human health and the environment.

**Source/Collection of Data:** Using the Consolidated Compliance and Enforcement Data System (CCEDS), this measure is calculated by adding the total number of inspections/investigations completed at livestock and poultry operations during the reporting period. An inspection/investigation is considered complete when the investigation has been conducted, a report has been written, management has approved, and manager's approval date has been reflected in the database. Investigation is defined as the evaluation of a regulated entity against a standard and includes all (initial and follow up) compliance inspections, file reviews, site assessments and agent evaluations. Site is defined as a geographic location or place where regulatory activities of interest to the agency occur or have occurred. Investigations are conducted to ensure compliance of regulated entities with rules, regulations and statutes designed to protect human health and the environment. An approved risk-based investigation strategy is used to assist in the selection of facilities for investigation. This definition formerly included investigations in the dairy outreach areas only. It now includes livestock and poultry investigations statewide. Number does not include citizen complaint investigations.

**Method of Calculation:** Each reporting period, the Field Operations Support Division retrieves from the database the number of investigations completed. An investigation is considered complete when the investigation has been conducted, a report has been written, management has approved, and the manager's approval date has been reflected in the database.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Output 03-01-01.05 Number of inspections and investigations of waste sites

**Short Definition:** Number of inspections and investigations completed at waste sites.

**Purpose/Importance:** Regulated entities are investigated to assure compliance with rules, regulations, and statutes designed to protect human health and the environment.

**Source/Collection of Data:** Using the Consolidated Compliance and Enforcement Data System (CCEDS), this measure is calculated by adding the total number of inspections/investigations completed of regulated municipal solid waste (MSW), industrial and hazardous waste (IHW), petroleum storage tank (PST) and state II vapor recovery entities during the reporting period. An inspection/investigation is considered complete when the investigation has been conducted, a report has been written, management has approved, and manager's approval date has been reflected in the database. Investigation is defined as the evaluation of a regulated entity against a standard and includes all (initial and follow up) compliance inspections, file reviews, site assessments and agent evaluations. MSW includes, but is not limited to investigations of generators, storage sites, transporters and processors of waste tire entities and used oil/used oil filter facilities. IHW includes, but is not limited to, investigations of generators, treatment/storage, land disposal, boilers and industrial furnaces (BIF), underground injection control (UIC), Department of Defense/Department of Energy and border warehouses. Site is defined as a geographic location or place where regulatory activities of interest to the agency occur or have occurred. Inves-

tigations are conducted to ensure compliance of regulated entities with rules, regulations, and statutes designed to protect human health and the environment. An approved risk-based investigation strategy is used to assist in the selection of facilities for investigation. Number does not include citizen complaints investigations.

**Method of Calculation:** Each reporting period, the Field Operations Support Division retrieves from the database the number of investigations completed in the field offices as well as those completed by Office of Compliance and Enforcement staff and city and/or county local programs for certain activities. An investigation is considered complete when the investigation has been conducted, a report has been written, management has approved, and the manager's approval date has been reflected in the database.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 03-01-01.06 Number of spill cleanup inspections/investigations

**Short Definition:** Number of spill cleanup inspections/investigations.

**Purpose/Importance:** Regulated entities are investigated to assure compliance with rules, regulations, and statutes designed to protect human health and the environment.

**Source/Collection of Data:** Using the Consolidated Compliance and enforcement Data System (CCEDS), this measure is calculated by adding the total number of initial, on-site spill incident inspections/investigations conducted. An inspection/investigation is defined as the evaluation of a regulated entity against a standard. Inspections/investigations are conducted to ensure compliance of regulated entities with rules, regulations, and statutes designed to protect human health and the environment.

**Method of Calculation:** During each reporting period, the Field Operations Support Division retrieves from CCEDS the number of initial, on-site spill investigations conducted.

**Data Limitations:** The TCEQ has no control over the number of spills that occur.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Below projections.

---

### Efficiency 03-01-01.01 Average inspection and investigation cost of livestock and poultry operations

**Short Definition:** The average cost per inspection/investigation of livestock and poultry operations.

**Purpose/Importance:** This measure reflects how efficiently the agency conducts investigations of livestock and poultry operations in the state. Regulated entities are investigated to assure compliance with rules, regulations and statutes designed to protect human health and the environment.

**Source/Collection of Data:** Using USAS expenditure figures and activity reports maintained by the Field Operations Support Division, this measure will be reported by calculating the total funds expended during the reporting period for TCEQ monitoring of livestock and poultry operations, divided by the number of inspections/investigations, other compliance inspections and complaint investigations for livestock and poultry operations completed during the reporting period.

**Method of Calculation:** Query of database for number of inspections/investigations divided into the amount of funds expended during the reporting period.

**Data Limitations:** None identified.
**Calculation Type:** Non-cumulative.
**New Measure:** No.
**Desired Performance:** Below projections.

---

### Efficiency 03-01-01.02 Average time (days) from air, water, or waste inspection to report completion

**Short Definition:** Average time to complete an inspection/investigation of air, water, or waste sites.

**Purpose/Importance:** The measure reflects how efficiently the agency completes investigations of air, water, or waste sites. An inspection/investigation is considered complete when the investigation has been conducted, a report has been written, management has approved, and manager's approval date has been reflected in the database. Inspection/investigation is defined as the evaluation of a regulated entity against a standard.

**Source/Collection of Data:** All inspection/investigation and report completion data is entered into program databases.

**Method of Calculation:** This measure is derived by calculating the total number of calendar days between date of investigation and date of completion divided by the total number of completed investigations reported during the reporting period.

**Data Limitations:** None identified.
**Calculation Type:** Non-cumulative.
**New Measure:** Yes.
**Desired Performance:** Below projections.

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### Explanatory 03-01-01.01 Number of citizen complaints investigated

**Short Definition:** Number of citizen complaints investigated.

**Purpose/Importance:** Regulated entities are investigated to assure compliance with rules, regulations, and statutes designed to protect human health and the environment.

**Source/Collection of Data:** Using the Consolidated Compliance and Enforcement Data System (CCEDS), this measure is calculated by adding the total number of citizen complaints investigated.

**Method of Calculation:** Each reporting period, Field Operations Support Division retrieves from CCEDS the number of complaints investigated by the regional offices as well as those investigated by city and/or county local programs for certain activities. A complaint is considered investigated when the investigation has been conducted, a report has been written, management has approved, and the manager's approval date has been reflected in the database.

**Data Limitations:** None identified.
**Calculation Type:** Non-cumulative.
**New Measure:** No.
**Desired Performance:** Above projections.

### Explanatory 03-01-01.02 Number of emission events investigations

**Short Definition:** Number of emissions events investigations.

**Purpose/Importance:** Regulated entities are investigated to assure compliance with rules, regulations, and statutes designed to protect human health and the environment. An emissions event is any breakdown, excursion, maintenance, startup, or shutdown of a process or operation resulting in unauthorized emissions of air contaminants. Potential violations are identified through investigations of reports and records of these emissions. Investigations may include either: an onsite investigation conducted immediately following a major emissions event; a scheduled onsite investigation covering emissions events at the site from the most recent 12-month period; and an in-house investigation of an emissions event.

**Source/Collection of Data:** Using the Consolidated Compliance and Enforcement Data System (CCEDS), this measure is calculated by adding the total number of emissions events investigations. An inspection/investigation is defined as the evaluation of a regulated entity against a standard. Inspections/investigations are conducted to ensure compliance of regulated entities with rules, regulations, and statutes designed to protect human health and the environment.

**Method of Calculation:** During each reporting period, the Field Operations Support Division retrieves from the database the number emissions events investigations conducted.

**Data Limitations:** The TCEQ has no control over the number of emissions events that occur.

**Calculation Type:** Cumulative.

**New Measure:** Yes.

**Desired Performance:** Below projections.

### Output 03-01-02.01 Number of environmental laboratories accredited

**Short Definition:** Number of environmental laboratories accredited according to Texas Water Code Section 5.801, et seq.

**Purpose/Importance:** The measure reflects the number of environmental laboratories accredited according to standards adopted by the National Environmental Laboratory Accreditation Conference.

**Source/Collection of Data:** Each accreditation is documented by a certificate prepared by the Compliance Support Division.

**Method of Calculation:** Accreditation information is compiled from primary records maintained by division staff.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

### Output 03-01-02.02 Number of small businesses and local governments assisted

**Short Definition:** The number of small businesses and local governments assisted includes the following types of direct assistance: answers to hotline inquiries regarding permit and regulatory applicability, site assistance visits, notification of rule changes, outreach activities, industry specific workshops, dispute resolution assistance to small businesses to resolve complaints against the agency, and government-sponsored conferences.

**Purpose/Importance:** This measure provides an indication of the responsiveness of Small Business and Local Government Assistance (SBLGA) staff to small business and local government inquiries. This measure also indicates proactive activities provided by SBLGA staff to assist small businesses and local governments.

**Source/Collection of Data:** The data is collected using an electronic tracking and reporting system maintained by SBLGA staff.

**Method of Calculation:** A total number is obtained by adding the types of assistance provided to small businesses and local governments as indicated in the above definition.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

---

### Efficiency 03-01-02.01 Average number of days to file the initial settlement offer

**Short Definition:** Average number of days to file the initial settlement offer through either mailing a proposed order or filing an Executive Director's Preliminary Report and Petition (EDPRP).

**Purpose/Importance:** Reflects agency efficiency in filing notices notifying violators of the violations alleged and penalties sought.

**Source/Collection of Data:** This information will be derived from the Enforcement Database.

**Method of Calculation:** Using computerized searches, the average number of days to file an initial settlement offer will be calculated as the sum of the number of days from assignment of the Enforcement Action Referral (EAR) to the mailing date of the initial proposed order or the filing date of the initial Executive Director's Preliminary Report and Petition (EDPRP) on a case, divided by the total number of draft orders or EDPRPs. EDPRPs for failed expedited orders will not be counted since the initial proposed orders will already have been counted in this category.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** Yes.

**Desired Performance:** Below projections.

---

### Explanatory 03-01-02.01 Amount of administrative penalties paid in final orders issued

**Short Definition:** Amount of administrative penalties required to be paid in final administrative orders issued.

**Purpose/Importance:** Reflects penalties required to be paid. *Note:* This is not the amount that is paid to the TCEQ, but rather the amount that the orders require to be paid; some may have payment schedules and some may be default orders.

**Source/Collection of Data:** Using the Enforcement Database, this measure will be reported at the end of the fiscal year by calculating the total penalty amounts required to be paid in final administrative orders issued.

**Method of Calculation:** This measure will be derived by calculating the total penalty amounts required to be paid in final administrative orders issued.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** N/A.

### Explanatory 03-01-02.02 Amount required to be paid for supplemental environmental projects issued in administrative orders

**Short Definition:** Amount required to be paid for supplemental environmental projects issued in administrative orders.

**Purpose/Importance:** Reflects money required to be paid or projects required to be conducted in addition to penalty amounts paid in enforcement orders. The supplemental environmental projects are normally designed to benefit the communities or the environment where the violations occurred.

**Source/Collection of Data:** Using the Enforcement Database, this measure will be reported at the end of the fiscal year for the total dollar amount specified in the Administrative Orders that must be spent on supplemental environmental projects approved by the agency.

**Method of Calculation:** This measure will be reported at the end of the fiscal year for the total dollar amount specified in the Administrative Orders that must be spent on supplemental environmental projects approved by the agency.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** N/A.

### Explanatory 03-01-02.03 Number of administrative enforcement orders issued

**Short Definition:** Number of administrative enforcement orders issued

**Purpose/Importance:** Reflects agency enforcement efforts.

**Source/Collection of Data:** Using the Enforcement Database, this measure will be derived by calculating the number of administrative orders issued.

**Method of Calculation:** This measure will be derived by calculating the number of administrative orders issued during the reporting period.

**Data Limitations:** The agency has very limited control over the number of administrative enforcement orders that need to be issued in a given year. This number is determined by the number of violations committed by the regulated community. In addition, finalization of enforcement orders cannot be solely controlled by the TCEQ. Due process of law allows all respondents for enforcement orders the opportunity for hearing. The timing for the hearing is then the decision of the administrative law judge at the State Office of Administrative Hearings. In addition, delays can occur when the technical requirements necessary to achieve compliance are complex, requiring extensive negotiations.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Below projections.

### Output 03-01-03.01 Number of on-site technical assistance visits, presentations, and workshops conducted on pollution prevention/waste minimization and voluntary program participation

**Short Definition:** Total number of pollution prevention/waste minimization and environmental management systems on-site technical assistance visits, workshops, and presentations conducted by Pollution Prevention and Education staff for the promotion of pollution prevention/waste minimization and voluntary program participation.

**Purpose/Importance:** This measure provides an indication of Pollution Prevention and Education staff's ability to conduct outreach and information dissemination of pollution prevention and environmental management systems information to Texas businesses and organizations.

**Source/Collection of Data:** Site visits, workshops, and presentations are tracked by Pollution Prevention and Education staff, who include workshop and presentation information in the section's Events database. This information is then pulled from the database and compiled in a spreadsheet.

**Method of Calculation:** The number of site visits, workshops, and presentations conducted during each quarter are summed. Fiscal-year totals are calculated by adding quarterly totals.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

---

### Output 03-01-03.02 Number of entities participating in voluntary programs

**Short Definition:** Number of entities participating in a voluntary program that provides incentives to an entity in return for benefits to the environment that exceeds benefits that would result from minimum compliance with applicable legal requirements.

**Purpose/Importance:** This measure reflects the agency workload associated with commission programs authorized under the Texas Water Code, Subchapter Q, Performance Based Regulation.

**Source/Collection of Data:** This measure will be reported by calculating the number of participants in the agency's Clean Texas Program, Pollution Prevention Site Assistance Visit Program, and other programs authorized as innovative by the executive director. This information is maintained by the Small Business and Environmental Assistance Division in program databases. The measure counts members participating in authorized voluntary programs during the reporting period.

**Method of Calculation:** Query of database.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

---

### Output 03-01-03.03 Number of quarts of used oil diverted from improper disposal

**Short Definition:** Number of quarts of used oil collected for processing instead of potential disposal in a landfill or release to land or water

**Purpose/Importance:** This number indicates the amount of used oil that, if not collected by the registered collection centers, could otherwise be delivered to landfills or improperly disposed of, potentially causing harm to human health and the environment. The number is a quantitative measurement of pollution prevention. This number represents the total volume of used oil, expressed in quarts, that was reported to the agency by Used Oil Collection Centers. The Collection Centers collect and prepare the oil for recycling before reuse or resale to the public. The reports are due Jan. 25 of each year for the previous year's activity.

**Source/Collection of Data:** This number is obtained from the quantities of oil reported on TCEQ Form 0567, *Annual Reporting Form for Used Oil Collection Centers*, from the box titled "Used Oil Collected." Since the report

is due on Jan. 25 of each year for the previous year's activity, a majority of the reporting data is reflected in the second and third quarter reports.

**Method of Calculation:** Performance data is obtained from the total quantities of oil reported on TCEQ Form 0567, *Annual Reporting Form for Used Oil Collection Centers*, from the box titled "Used Oil Collected."

**Data Limitations:** Collection centers have both mandatory and voluntary reporting requirements. They must report the used oil they receive from others. They can also voluntarily report the used oil they generate and recycle. Because of this voluntary element, as well as the impacts of economic and business conditions, there may be a wide range in this measure from year to year. TCEQ staff continues to work with the collection centers to ensure that reported values are accurate and representative of actual oil collected.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

---

### Efficiency 03-01-03.01 Average cost per on-site technical assistance visit

**Short Definition:** The average cost of each technical site assistance visit performed by Pollution Prevention and Environmental Management staff.

**Purpose/Importance:** This measure provides an indication of staff's ability to provide pollution prevention assistance and training in a cost-effective, efficient manner.

**Source/Collection of Data:** Use USAS expenditure figures for travel costs and reported time maintained by the Small Business and Environmental Assistance Division to calculate the total funds expended and encumbered through the reporting period for on-site technical assistance visits. This is then divided by the total number of on-site visits to determine an average cost per visit for the reporting period.

**Method of Calculation:** This measure will be calculated by totaling funds expended and encumbered through the reporting period and dividing by the number of visits conducted through the period.

**Data Limitations:** Average cost per site visit may not necessarily be an indicator of staff efficiency. Certain areas in Texas are more expensive to visit; travel to those locations incurs more costs than visits to other locations even when staff efficiency is high. Additionally, time spent preparing for visits and following up after visits is not captured.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Below projections.

---

### Explanatory 03-01-03.01 Tons of hazardous waste reduced as a result of pollution prevention planning

**Short Definition:** This measure indicates the level of hazardous waste reduction by Texas facilities and provides information regarding the agency's efforts to reduce toxics released in Texas.

**Purpose/Importance:** This information is not measured by any other program at the TCEQ and provides information that is independent of economic factors such as production.

**Source/Collection of Data:** The source of the data is the information provided by facilities on the annual progress report required by the Waste Reduction Policy Act (WRPA). This information is maintained in a Paradox database.

**Method of Calculation:** The measure is calculated by adding up the source reduction number from all facilities reporting.

**Data Limitations:** Data is dependent upon accurate and timely reporting by facilities. In addition, the data reported reflects actual values from the prior year. For example, data reported in September 2000 will represent data received from industry in July 2000, which is for their calendar year 1999.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

---

### Explanatory 03-01-03.02 Tons of waste collected by local and regional collection and cleanup events

**Short Definition:** The tons of waste collected through household hazardous waste collection events and cleanup events, including river and lake and rural cleanups, coordinated, sponsored, or assisted by the TCEQ.

**Purpose/Importance:** This measure provides data on how much household hazardous waste and litter was collected and properly disposed of in Texas, thus reducing the impact on the environment.

**Source/Collection of Data:** Reports from collection events. This data reports results of collection events as submitted by entities holding events. Staff maintains the data in a spreadsheet database.

**Method of Calculation:** Summation of all reports submitted for related events in Texas.

**Data Limitations:** Data quality is limited to quality of reports submitted to the agency.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

---

### Explanatory 03-01-03.03 Tons of agricultural waste chemicals collected by TCEQ-sponsored entities

**Short Definition:** The tons of agricultural waste chemicals collected by agency contractors. The contractor(s) will report to the agency the amount of all agricultural waste chemicals weighed and measured at each collection.

**Purpose/Importance:** This measure provides data on the quantity of agricultural waste chemicals collected and properly disposed of in Texas, thus reducing the impact on the environment.

**Source/Collection of Data:** The contractor(s) will report to the agency the amount of all agricultural waste chemicals weighed and measured at each collection. Staff maintains the data in a spreadsheet database.

**Method of Calculation:** Summation of weights of wastes collected at events reported by contractors.

**Data Limitations:** None.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

---

### Explanatory 03-01-03.04 Number of registered waste tire facilities and transporters

**Short Definition:** Number of registered waste tire facilities and transporters.

**Purpose/Importance:** The number depicts the quantity of regulated facilities involved in scrap tire management, who have complied with the agency's rules and provide reports on tire management and recycling. The number can also indicate any trends in scrap tire management, such as increase or decrease in number of facilities from year to year.

**Source/Collection of Data:** The number is obtained from either the Tires Management System (TMS) or a Paradox file from TMS. This number represents the universe of facilities that either transport, store, process, recycle or burn for energy recovery, scrap tires.

**Method of Calculation: The** TCEQ Dallas–Ft. Worth Region registers and maintains data on these facilities. The number is a sum total of all entries in the database.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Outcome 04-01.01 Percent of leaking petroleum storage tank sites cleaned up

**Short Definition:** The percentage of leaking petroleum storage tank sites at which no further corrective action is required, compared to the total population of known leaking petroleum storage tank sites.

**Purpose/Importance:** This measure provides an indication of the agency's efforts to clean up leaking petroleum. storage tank sites relative to the total population of known leaking petroleum storage tank sites.

Source/Collection of Data: This measure uses an agency database maintained by the Remediation Division.

**Method of Calculation:** Using an agency database maintained by the Remediation Division, the number of leaking petroleum storage tank sites issued "no further action" letters is divided by the total number of reported leaking petroleum storage tank sites, multiplied by 100 to derive a percentage.

**Data Limitations:** Most "no further action" letters are issued upon a written request from responsible parties and the agency does not control when these requests are submitted. Therefore, the percentage reported may represent fewer sites than would otherwise actually qualify for "no further action" status.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

---

### Outcome 04-01.02 Total number of Superfund remedial actions completed

**Short Definition:** The number of state and federal Superfund sites with completed remedial actions since program inception.

**Purpose/Importance:** This measure reflects long-term agency efforts to clean up Superfund sites.

**Source/Collection of Data:** Using an automated agency system maintained by the Remediation Division, the total number of state and federal Superfund sites since program inception attaining completion of the remedial action is calculated.

**Method of Calculation:** The total combined number of state and federal Superfund sites with completed remedial actions since program inception. The remedial action is considered complete when a site is deleted from the Sate Registry or National Priorities List, upon the completion of construction, or upon documentation that no further action is needed.

**Data Limitations:** The agency has limited control over the federal Superfund program listings, progression of federal site cleanups, and deletions from the list. The progression of sites through the federal Superfund program is directly related to federal funding issues, scheduling, and the final approval of submittals, which are

reviewed by the U.S. Environmental Protection Agency. Department of Defense and Department of Energy funding issues that are beyond the TCEQ's control also affect the progress of Superfund sites that are federal facilities.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Outcome 04-01.03 Percent of voluntary and brownfield cleanup properties made available for commercial/industrial redevelopment, community, or other economic reuse

**Short Definition:** The percentage of voluntary and brownfield properties/sites returned to a productive use within a community.

**Purpose/Importance:** This percentage provides a measure of the overall efficiency of the VCP to meet the goals of applicants in receiving certificates of completion. The percentage derived is indicative of the trend of the willingness of site owners/operators and prospective purchasers to voluntarily address their contaminated sites through the VCP and the adequacy of the VCP in meeting the review deadlines necessary for completing property transactions.

**Source/Collection of Data:** From information collected in a database, adding the total number of certificates of completion issued since the inception of the program and the total number of VCP applications submitted by site owners/operators and prospective purchasers since the inception of the program.

**Method of Calculation:** The percentage is obtained by dividing the total number of VCP certificates of completion issued since the inception of the program by the total number of VCP applications received since the inception of the program, multiplied by 100.

**Data Limitations:** The TCEQ has no control over the number of site owners/operators and prospective purchasers who voluntarily enter the VCP since their choice controls the number of sites that enter the VCP and the completion of the tasks necessary for issuance of a certificate of completion.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Outcome 04-01.04 Percent of industrial solid and municipal hazardous waste facilities cleaned up

**Short Definition:** Percent of industrial solid and municipal hazardous waste facilities cleaned up.

**Purpose/Importance:** This measure tracks the achievement of final cleanup goals at industrial solid waste and municipal hazardous waste facilities. It evaluates the reduction of the number of contaminated facilities across the state, and is a measure of protection of human health and the environment.

**Source/Collection of Data:** The data source is correspondence sent out from the Industrial and Hazardous Waste Corrective Action Program. Correspondence and the facility status are logged in a database maintained by the Office of Permitting and Registration.

**Method of Calculation:** The number of facilities with no further action in the Industrial and Hazardous Waste Corrective Action Program is divided by the total number of reported facilities in the program, and then multiplied by 100. The percentage is reported annually, at the end of the fiscal year.

**Data Limitations:** This measure involves review and approval of documents required by agency orders, permits, and compliance plans, as well as self-implemented cleanup allowed by the regulations. The agency does

not have control over the number of cleanup projects, number of documents submitted, or the types or quality of documentation submitted to pursue self-implemented cleanups.

**Calculation Type:** Non-cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

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### Output 04-01-01.01 Number of petroleum storage tank self-certifications processed

**Short Definition:** Number of petroleum storage self-certifications processed.

**Purpose/Importance:** The measure reflects agency workload in processing PST self-certifications.

**Source/Collection of Data:** Using an automated agency system (TRACS and PDOX files) maintained by the Permitting and Remediation Support Division, this measure will track the number of owner/operator self-certifications processed in Texas each year.

**Method of Calculation:** The automated agency systems will be queried for the number of self certifications processed.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

---

### Output 04-01-01.02 Number of emergency response actions at petroleum storage tank sites

**Short Definition:** The number of leaking petroleum storage tank sites to which a state lead contractor is dispatched to address an immediate threat to human health/safety (i.e., an explosion or fire hazard, vapor impacts to buildings, or surface water impacts).

**Purpose/Importance:** This measure provides an indication of the number of leaking petroleum storage tank sites that have an emergency situation requiring action by the agency to protect human health/safety.

**Source/Collection of Data:** Using an agency database maintained by the Remediation Division, the number of leaking petroleum storage tank sites to which a state lead contractor is dispatched to address an emergency situation is tracked.

**Method of Calculation:** At the end of each quarter the database is used to arrive at a total number of sites to which a state lead contractor was dispatched to address an emergency situation during that quarter. The total for each quarter is added to the total for any previous quarters during that fiscal year to come up with a cumulative total of sites addressed during that fiscal year.

**Data Limitations:** Because most leaking petroleum storage tank emergency situations are reported by fire marshals, communities and/or the agency's regional offices, the number of sites that will require emergency response actions is unpredictable.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Below projections.

### Output 04-01-01.03 Number of Petroleum Storage Tank Remediation Fund reimbursement applications processed

**Short Definition:** Number of Petroleum Storage Tank Remediation Fund reimbursement applications processed.

**Purpose/Importance:** This measure reflects agency workload in processing applications for reimbursements for petroleum storage tank remediation.

**Source/Collection of Data:** Using an automated agency system and manual computations conducted by the Remediation Division, this measure will report the number of Petroleum Storage Tank Remediation Fund reimbursement applications processed. Staff enter new and protested applications into the reimbursement process database. As applications are processed, staff update the database to indicate where the application is in the review process. When the application processing is complete a fund payment report is mailed to the applicant. For the reporting period, the number of fund payment reports mailed are calculated from the database and reported.

**Method of Calculation:** Automated agency systems maintained by the Remediation Division will be queried to obtain the number of fund payment reports mailed.

**Data Limitations:** None identified.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Output 04-01-01.04 Number of petroleum storage tank cleanups completed

**Short Definition:** The number of leaking petroleum storage tank sites at which no further corrective action is required.

**Purpose/Importance:** This measure provides an indication of the agency's efforts to clean up leaking petroleum storage tank sites during the reporting period.

**Source/Collection of Data:** This measure uses an agency database maintained by the Remediation Division.

**Method of Calculation:** Using an agency database maintained by the Remediation Division, the number of leaking petroleum storage tank sites issued "no further action" letters during the reporting period is calculated.

**Data Limitations:** Most "no further action" letters are issued upon a written request from responsible parties and the agency does not control when these requests are submitted. Therefore, since the number of these letters issued during a reporting period is primarily determined by the number submitted by the responsible parties, the reported number may represent fewer sites than would otherwise actually qualify for "no further action" status.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Efficiency 04-01-01.01 Average time (days) to review and respond to remedial action plans

**Short Definition:** This measure provides the average number of days for the agency to review and respond to remedial action plans over the reporting period.

**Purpose/Importance:** House Bill 2587, 74th Legislature, 1995, mandates that agency review and response time for remedial action plans not exceed 30 days.

**Source/Collection of Data:** This measure uses an agency database maintained by the Remediation Division.

**Method of Calculation:** Using an agency database maintained by the Remediation Division, the number of remedial action plans received is tracked, the number of days to review and respond to each plan is recorded, and the average review/response time is calculated for the reporting period.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Below projections.

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### Efficiency 04-01-01.02 Average time (days) to review and respond to risk-based site assessments

**Short Definition:** This measure provides the average number of days for the agency to review and respond to risk-based site assessment reports over the reporting period.

**Purpose/Importance:** House Bill 2587, 74th Legislature, 1995 mandates that agency review and response time for risk-based site assessment reports not exceed 30 days.

**Source/Collection of Data:** This measure uses an agency database maintained by the Remediation Division.

**Method of Calculation:** Using an agency database maintained by the Remediation Division, the number of risk-based site assessment reports received is tracked, the number of days to review and respond to each report is recorded, and the average review/response time is calculated for the reporting period.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Below projections.

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### Efficiency 04-01-01.03 Average time (days) to process Petroleum Storage Tank Remediation Fund claims

**Short Definition:** The average number of days it takes to process Petroleum Storage Tank Remediation Fund reimbursement claims.

**Purpose/Importance:** This measure reflects how efficiently and quickly the agency processes claims for reimbursements from the Petroleum Storage Tank Remediation Fund.

**Source/Collection of Data:** Using manual calculations and automated information maintained by the Remediation Division, this measure will report the sum of the time from receipt of all applications to the mailing of the Fund Payment Report, divided by the number of Fund Payments Reports mailed. Staff enters new applications including the date received into the reimbursement process database. As applications are processed, staff updates the database to indicate where the application is in the review process. When the application processing is complete a fund payment report is mailed to the applicant.

**Method of Calculation:** Using manual calculations and automated information maintained by the Remediation Division, this measure will report the sum of the time from receipt of all applications to the mailing of the Fund Payment Report, divided by the number of Fund Payments Reports mailed. The number of days to complete the processing of an application is determined by calculating the number of days between the application received date and the date the fund payment report is mailed, for each application. To determine the average time to process applications, the sum of the number of days required to process the applications is divided by the number of applications processed during the reporting period.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Below projections.

### Explanatory 04-01-01.01 Average cost per petroleum storage tank cleanup

**Short Definition:** Average cost for cleanup of petroleum storage tank sites.

**Purpose/Importance:** This measure reflects the average amount of reimbursement for each petroleum storage tank site.

**Source/Collection of Data:** This measure will be calculated by reporting on the average amount of reimbursement for each petroleum storage tank site in the cleanup process by dividing the total amount paid in reimbursements for petroleum storage tank cleanups by the total number of reimbursements processed. This information is maintained on a Remediation Division database. Staff enters new applications including the requested amount into the reimbursement process database. As applications are processed, staff updates the database to indicate where the application is in the review process. When the application processing is complete a fund payment report is mailed to the applicant. The amount paid to the applicant is listed in the database.

**Method of Calculation:** A Remediation Division database will be queried for and the total amount paid in reimbursements for petroleum storage tank cleanups will be divided by the total number of reimbursements processed. To determine the average cost to cleanup a petroleum storage tank site, a calculation is performed on the database to determine the amount paid on each storage tank site. The average is calculated by dividing the sum of the amounts paid on each site by the number of sites on which a payment was made.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Below projections.

### Output 04-01-02.01 Number of Immediate Response Actions completed to protect human health and the environment

**Short Definition:** The number of immediate response actions completed to protect human health and the environment.

**Purpose/Importance:** This measure reflects the number of immediate response actions completed by the Remediation Division in an effort to protect human health and the environment and prevent sites from progressing into the Superfund program.

**Source/Collection of Data:** Using an agency database maintained by the Remediation Division, this measure will report the total number of incidents where immediate response actions were completed to protect human health and the environment.

**Method of Calculation:** At the end of a reporting quarter, a program database query will report the number of immediate response actions completed for that quarter. The immediate response action may be completed at the conclusion of field work (e.g. soil excavation); when the site is proposed to the State Registry or National Priorities List (e.g. for private water well filtration system operation); or when the state participates in cost sharing of a complete response action by a federal agency. Additionally, the fiscal-year cumulative total will be reported each quarter in the year-to-date performance.

**Data Limitations:** Potential factors affecting this measure may be property access, lack of sites requiring response actions, budgetary or funding constraints, an incident may be determined not to be time critical, magnitude of required response activities, and community involvement.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Below projections.

### Output 04-01-02.02 Number of Superfund site assessments

**Short Definition:** The number of potential Superfund sites that have undergone an eligibility assessment for either the state or federal Superfund program.

**Purpose/Importance:** This measure provides an indication of the Remediation Division efforts to prioritize and assess sites under Superfund program eligibility criteria during the reporting period.

**Source/Collection of Data:** Using an agency database maintained by the Remediation Division, the number of Superfund program eligibility assessments completed are tracked by completion date.

**Method of Calculation:** At the end of each quarter, a database query is conducted to arrive at a total number of Superfund program eligibility assessments completed during that quarter. The total for each quarter is added to the total for any previous quarters during that fiscal year to determine a cumulative total of eligibility assessments completed during that fiscal year.

**Data Limitations:** Eligibility assessments are conducted on sites referred to the Site Discovery and Assessment Program by various entities (consisting of but not limited to the U.S. Environmental Protection Agency, the TCEQ Enforcement and Field Operations Emergency Response Programs, the State Attorney General's Office, and bankruptcy courts). The number of eligibility assessments that are completed each fiscal year is dependent on the number and complexity of referrals received by the program. Time critical factors may require the diversion of staff resources to immediate response actions rather than assessment activities.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Output 04-01-02.03 Number of voluntary and brownfield cleanups completed

**Short Definition:** The number of voluntary cleanup and brownfield sites that have completed necessary response actions through either the removal or control of contamination to levels that are protective of human health and the environment.

**Purpose/Importance:** Upon completion of response action(s), a certificate of completion is given to the applicant that states that all nonresponsible parties are released from all liability to the state for any past contamination. This liability protection provides significant incentives for both site owners/operators and prospective purchasers to voluntarily bring contaminated sites into the Voluntary Cleanup Program (VCP) and complete necessary cleanups.

**Source/Collection of Data:** Site owners/operators or prospective purchasers voluntarily submit an application and an agreement to the VCP for program eligibility evaluation. The applicant's goals for site cleanup, including their schedule for conducting necessary site investigation and cleanup are reviewed by VCP staff. Upon completion of site cleanup, VCP staff approve a final report based upon the applicant's meeting all of the necessary regulatory standards for the site. Once it has been determined that the site is protective of human health and the environment, a certificate of completion is issued to the applicant. The number of certificates of completion issued each quarter is reported in this performance measure.

**Method of Calculation:** The Voluntary Cleanup Program database is queried for the quarterly and cumulative totals of completion certifications issued for the fiscal year.

**Data Limitations:** The TCEQ has no control over the number of site owners/operators and prospective purchasers who voluntarily enter the VCP since their choice controls the number of sites that enter the VCP and the completion of the tasks necessary for issuance of a certificate of completion.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Output 04-01-02.04 Number of Superfund sites in Texas undergoing evaluation and cleanup

**Short Definition:** The combined number of Superfund sites in Texas that are undergoing evaluation and cleanup activities in the state and federal Superfund process.

**Purpose/Importance:** Reflects the combined number of state and federal Superfund sites in Texas that are undergoing remedial investigation, feasibility study, remedial design, or remedial action activities and progressing toward completion of the remedial action and delisting from the Texas Registry and the National Priorities List.

**Source/Collection of Data:** Using an automated agency system maintained by the Remediation Division of the Office of Compliance and Enforcement, data will be collected to reflect the combined number of state and federal Superfund sites in Texas that are undergoing evaluation and cleanup.

**Method of Calculation:** Database query.

**Data Limitations:** The agency has limited control over the federal Superfund program listings, progression of federal site cleanups, and deletions from the list. The progression of sites through the federal Superfund program is directly related to federal funding issues, scheduling, and the final approval of submittals, which are reviewed by the U.S. Environmental Protection Agency. Department of Defense and Department of Energy funding issues that are beyond the TCEQ's control also affect the progress of Superfund sites that are federal facilities. Additionally, the agency cannot accurately predict how many federal sites will be discovered and added to the program during any given year. Since Superfund sites are abandoned or inactive sites, each site is unique and has inherent unknowns (i.e., the nature and extent of the contamination problems) to be investigated before a remedy can be formulated.

**Calculation Type:** Non-cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

### Output 04-01-02.05 Number of Superfund remedial actions completed

**Short Definition:** The combined number of state and federal Superfund sites that completed remedial actions during a reporting period.

**Purpose/Importance:** Reflects the combined number of state and federal Superfund sites in a reporting period no longer posing an unacceptable risk to human health or the environment due to the completion of remedial actions.

**Source/Collection of Data:** Using an automated agency system maintained by the Remediation Division of the Office of Compliance and Enforcement, the Remediation Division calculates the combined number of state and federal Superfund sites attaining remedial action completion status in a reporting period.

**Method of Calculation:** A program database query will report the number of state and federal Superfund sites that completed remedial actions for that quarter. The fiscal year cumulative total will be reported each quarter in the year-to-date performance. The remedial action is considered complete when a site is deleted from the State Registry or National Priorities List, upon the completion of construction, or upon documentation that no further action is needed. Completion of remedial action does not include post-completion care of the remedy such as maintenance of treatment systems and on-site waste containment, long-term groundwater monitoring, or maintenance of site security.

**Data Limitations:** The agency has limited control over the federal Superfund program listings, progression of federal site cleanups, and deletions from the list. The progression of sites through the federal Superfund program is directly related to federal funding issues, scheduling, and the final approval of submittals, which are

reviewed by the U.S. Environmental Protection Agency. Department of Defense and Department of Energy funding issues that are beyond the TCEQ's control also affect the progress of Superfund sites that are federal facilities. Since Superfund sites are abandoned or inactive sites, each site is unique and has inherent unknowns that may delay attainment of the projected remedial action completion date.

**Calculation Type:** Cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Output 04-01-02.06 Number of Dry Cleaner Remediation Program (DCRP) site assessments initiated

**Short Definition:** The number of Dry Cleaner Remediation Program site assessments initiated. Site assessments are considered initiated upon the issuance of the first work order on the site.

**Purpose/Importance:** This measure provides an indication of the agency's efforts to clean up known dry cleaning facilities contaminated by dry cleaner solvents.

**Source/Collection of Data:** The Dry Cleaner Remediation Program database, maintained by the Remediation Division, will contain DCRP site data, including site assessment data.

**Method of Calculation:** The total number of site assessments initiated by the Dry Cleaner Remediation Program will be determined from the program's database. Quarterly and year-to-date totals will be generated for specific time periods as required by reporting schedules.

**Data Limitations:** The TCEQ has no control over the number of eligible dry cleaner sites applying to the Dry Cleaner Remediation Program, since their choice controls the number of sites that enter the DCRP and the completion of tasks necessary to initiate site assessments.

**Calculation Type:** Cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

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### Efficiency 04-01-02.01 Average time (days) to process Dry Cleaner Remediation Program applications

**Short Definition:** House Bill 1366, 78th Legislature, 2003, mandates that the agency's review and ranking of Dry Cleaner Remediation Program applications shall not exceed 90 days.

**Purpose/Importance:** This measure provides the average number of days for the agency to process Dry Cleaner Remediation Program applications.

**Source\Collection of Data:** This measure will utilize the Dry Cleaner Remediation Program database maintained by the Remediation Division.

**Method of Calculation:** Using the Dry Cleaner Remediation Program database, the number of program applications received is tracked, the number of days to review and rank each application is recorded, and the average review and ranking time is calculated for the reporting period.

**Data Limitations:** This is a new program and no historical information exists to aid in formulating performance projections. Limitations are unknown at this time.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Below projections.

### Explanatory 04-01-02.01 Number of potential Superfund sites to be assessed

**Short Definition:** The number of potential Superfund sites that have not undergone an eligibility assessment for either the state or federal Superfund program.

**Purpose/Importance:** At fiscal-year-end, this measure provides an indication of the number of known sites that are to be prioritized and assessed for Superfund eligibility in the subsequent fiscal year(s).

**Source/Collection of Data:** A program database query is conducted by the Remediation Division to determine the total number of known sites that have not undergone an eligibility assessment under Superfund program eligibility criteria.

**Method of Calculation:** At the end of each fiscal year, a program database is queried to determine the total number of site assessments that were completed during the fiscal year. This number is subtracted from the total number of known sites in the program database at the end of the fiscal year to determine the number of sites that have not undergone an eligibility assessment for either the state or federal Superfund program.

**Data Limitations:** Eligibility assessments are conducted on sites referred to us the Remediation Division by various entities (consisting of but not limited to the U.S. Environmental Protection Agency, the TCEQ Enforcement and Field Operations Emergency Response Programs, and the State Attorney General's Office, and bankruptcy courts). The number of eligibility assessments that are to be conducted each fiscal year is dependent on the number of referrals received by the program.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Explanatory 04-01-02.02 Number of federal Superfund sites

**Short Definition:** Number of federal Superfund sites.

**Purpose/Importance:** Reflects the number of federal Superfund sites.

**Source/Collection of Data:** Using an automated agency system maintained by the Remediation Division of the Office of Compliance and Enforcement, data will be collected to reflect the number of federal Superfund sites for which Hazard Ranking System scores have been determined and have been proposed for the National Priorities List (NPL) since program inception.

**Method of Calculation:** Database query.

**Data Limitations:** None identified.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

### Explanatory 04-01-02.03 Number of state Superfund sites

**Short Definition:** Number of state Superfund sites.

**Purpose/Importance:** Reflects the number of state Superfund sites.

**Source/Collection of Data:** Using an automated agency system maintained by the Remediation Division of the Office of Compliance and Enforcement, data will be collected to reflect the number of state Superfund sites for which Hazard Ranking System scores have been determined and have been proposed for the State Registry since program inception.

**Method of Calculation:** Database query.
**Data Limitations:** None identified.
**Calculation Type:** Non-cumulative.
**New Measure:** No.
**Desired Performance:** Above projections.

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### Explanatory 04-01-02.04 Number of Dry Cleaner Remediation Program (DCRP) eligible sites

**Short Definition:** The number of Dry Cleaner Remediation Program sites that have been ranked, prioritized, and evaluated for corrective action.

**Purpose/Importance:** This measure provides an indication of the agency's efforts to clean up known dry cleaning facilities contaminated by dry cleaner solvents.

**Source/Collection of Data:** The Dry Cleaner Remediation Program database, maintained by the Remediation Division, will contain DCRP site data.

**Method of Calculation:** The total number of eligible Dry Cleaner Remediation Program sites prioritized and added to the DCRP database. Quarterly and year-to-date totals will be generated for specific time periods as required by reporting schedules.

**Data Limitations:** The TCEQ has no control over the number of eligible dry cleaner sites applying to the Dry Cleaner Remediation Program, since their choice controls the number of sites that enter the DCRP.

**Calculation Type:** Cumulative.

**New Measure:** Yes.

**Desired Performance:** Above projections.

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### Outcome 05-01.01 The percentage received of Texas' equitable share of quality water annually as apportioned by the Canadian River Compact

**Short Definition:** The interstate Canadian River Commission will complete an annual accounting of water stored in each State to determine compact compliance. The accounting of water stored in Texas' reservoirs will be used to determine the percent entitlement of water Texas receives. Texas stores approximately 350,000 acre-feet annually. The accounting will be completed during the third quarter of the following fiscal year and will be for the previous calendar year.

**Purpose/Importance:** Measure is intended to show the extent to which Texas is receiving its share of waters as apportioned by the compact, and serves as an indicator of New Mexico's compliance with the terms of the compact. Continued performance of less than target could indicate that New Mexico has not met its delivery obligation for that year and Texas did not receive its equitable share. Performance of less than target could result in Texas initiating legal proceedings/action, and can serve as an indicator of increased resource needs to rectify any under-delivery. Occasional intermittent performance of less than target could be the result of lower than normal precipitation conditions. Precipitation conditions will need to be monitored to determine if a compact violation has occurred.

**Source/Collection of Data:** Annual reports of water storage as presented to the Canadian River Commission at its annual meeting.

**Method of Calculation:** Measure is calculated by dividing the actual amount of water stored in Texas' reservoirs (primarily Lake Meredith and Palo Duro Reservoir) by 350,000 acre-feet and converting to a percentage.

The 350,000 acre-feet is the normal amount of water Texas has in storage during average runoff years and with New Mexico complying with the compact.

**Data Limitations:** The accounting is for the previous calendar year, therefore information reported in a given year indicates actual performance for the prior calendar year.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Outcome 05-01.02 The percentage received of Texas' equitable share of quality water annually as apportioned by the Pecos River Compact

**Short Definition:** Using the water accounting report of the Pecos River Master and approved by the U.S. Supreme Court, water delivered to Texas will be computed. The water received, including any current credits of past over-deliveries of water, will be divided by the actual amount of water New Mexico is required to deliver under the terms of the compact, as determined by the water accounting report. The accounting of water delivered to Texas is computed during the fourth quarter and will be for the previous calendar.

**Purpose/Importance:** Measure is intended to show the extent to which Texas is receiving it's share of waters as apportioned by the compact, and serves as an indicator of New Mexico's compliance with compact terms. Performance of less than 100 percent in any given year indicates that New Mexico has not met its delivery obligation for that year and that Texas did not receive its equitable share. Performance of less than 100 percent could result in Texas initiating legal proceedings/action, and can also serve as an indicator of increased resource needs to rectify under-delivery.

**Source/Collection of Data:** Annual water accounting report prepared by the Pecos River Master and approved by the U.S. Supreme Court.

**Method of Calculation:** Measure is calculated by dividing the actual amount of water received by Texas, including any current credits of past over-deliveries of water (as determined by the annual accounting), by the amount of water New Mexico was required to deliver (as determined by the annual accounting) and converting to a percentage.

**Data Limitations:** Accounting of water is conducted by the River Master and Supreme Court during the fourth quarter. The accounting is for the previous calendar year, therefore information reported in a given year indicates actual performance for the prior year.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Outcome 05-01.03 The percentage received of Texas' equitable share of quality water annually as apportioned by the Red River Compact

**Short Definition:** Using the reports of the engineering and legal committees of the interstate commission, water shortages to Texas' users will be evaluated. If no shortages exist, Texas has received 100 percent of it's equitable share. As used in this measure, "equitable share" is defined as lack of water shortages.

**Purpose/Importance:** Measure is intended to show whether Texas' users of the Red River have experienced any water shortages. Because the quantity of water of the Red River is plentiful and is usually not an issue,

a formal accounting of water deliveries to each state has not yet been initiated by the commission. Due to these factors, at this time it is more meaningful to assess whether needs of Texas' users of the Red River are being met, rather than whether each state is meeting it's delivery obligation (as in the measures for the Pecos and Rio Grande). Performance of less than 100 percent in any given year indicates that shortages have been experienced and will serve as an indicator that rules for more reaches must be developed and more formal accounting procedures must be implemented.

**Source/Collection of Data:** Reports prepared by the engineering and legal committees of the interstate commission.

**Method of Calculation:** Measure is calculated by determining if there have been any water shortages to Texas' users. Engineer advisors from each state meet annually to discuss water use related to the compact and to identify any shortages.

**Data Limitations:** The Red River Compact Commission has not initiated formal accounting of water deliveries to each state, therefore "water shortages" is used as a proxy for determining whether Texas has received it's equitable share of waters under the terms of the compact. To date, there have been no water shortages and performance has been 100 percent. If shortages occur, and once the commission approves rules for the basinwide accounting, a formal water accounting will commence. Reports used in calculating this measure will be completed after the commission's annual meeting, usually in the third quarter. Reporting will be on an annual basis for the previous calendar year.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Outcome 05-01.04 The percentage received of Texas' equitable share of quality water annually as apportioned by the Rio Grande Compact

**Short Definition:** Using the water accounting report prepared by the engineer advisors and approved by the commission, water delivered to Texas will be computed. The water delivered, including any current credits or debits of past over/under-deliveries allowable under the compact, will be divided by the actual amount of water Colorado and New Mexico are required to deliver under the terms of the compact, as determined by the water accounting report. The accounting of water delivered to Texas is computed during the third quarter and will be for the previous calendar year.

**Purpose/Importance:** Measure is intended to show the extent to which Texas is receiving its share of waters as apportioned by the compact, and serves as an indicator of Colorado's and New Mexico's compliance with compact terms. Performance of less than target in any given year may indicate that the compact signatories have not met their delivery obligation for that year and that Texas did not receive it's equitable share. Performance of less than target could result in Texas initiating legal proceedings/action, and can also serve as an indicator of increased resource needs to rectify underdelivery.

**Source/Collection of Data:** Annual water accounting report prepared by the engineer advisors and approved by the commission.

**Method of Calculation:** Measure is calculated by dividing the actual amount of water received by Texas, including any current credits or debits of past over/under-deliveries allowable under the compact (as determined by the annual accounting), by the amount of water the signatory states were required to deliver (as determined by the annual accounting), and converting to a percentage.

**Data Limitations:** Accounting of water is conducted at the annual meeting (3rd quarter) of the commission. The accounting is for the previous calendar year, therefore information reported in a given year indicates actual performance for the prior year.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

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### Outcome 05-01.05 The percentage received of Texas' equitable share of quality water annually as apportioned by the Sabine River Compact

**Short Definition:** Using the water accounting of water diversions published in the annual report of the Sabine River Compact Administration, the acre-feet of water diverted by Texas will be compared to the historical average for the last five years.

**Purpose/Importance:** Measure shows whether Texas is receiving it's equitable share of quality water from the Sabine River. As used in this measure "equitable share" means that Texas water use, did not exceed the maximum allowed under the compact (i.e., that sufficient water was available to meet the water needs of Texas users). Water quantity on the Sabine is plentiful. Texas and Louisiana may each use 50 percent of the waters, however, to date neither state uses the full amount to which it is entitled. This measure can also serve to indicate whether diversions are increasing over prior years (indicated when percentage reported exceeds 100 percent), and indirectly, whether the amount of excess water available is diminishing. A sustained increase in water diversions may indicate the need for formal accounting procedures.

**Source/Collection of Data:** Annual report of the Sabine River Compact Administration.

**Method of Calculation:** Measure is calculated by dividing the actual amount of water diversion by the historical average of diversions for the last five years.

**Data Limitations:** The Sabine River Compact Commission has not initiated formal accounting of water deliveries to each state. As a result, amount of water diverted is one of the few indicators (or proxies) available for use in calculating "Percent received of Texas' equitable share." The commission does not control water usage (diversions). Reporting will be on an annual basis for the previous calendar year.

**Calculation Type:** Non-cumulative.

**New Measure:** No.

**Desired Performance:** Above projections.

# TCEQ Workforce Plan, Fiscal Years 2011–2015

***This document is also provided separately to the State Auditor's Office.***

## Overview of the Texas Commission on Environmental Quality

The Legislature created the agency Sept. 1, 1993, by consolidating the Texas Water Commission, the Texas Air Control Board, and environmental programs from the Texas Department of Health. The agency's major responsibilities fall into the following categories:

### Operations

- *Permitting and Licensing Management*. Issuing, administering, renewing and modifying permits, water rights, licenses, or certifications for organizations and individuals whose activities have some potential or actual environmental impact that must be formally authorized by the agency.
- *Public Assistance Management*. Responding to requests for information by external parties and conducting outreach with regard to agency obligations. Responding to complaints lodged by affected or interested parties, including addressing the cause of complaints and notifying the complainant of action taken.
- *Evaluation of Public Health Effects*. Assessing the impact on public health of toxic substance releases, transfers, and disposal.
- *Ambient Monitoring and Sampling, Laboratory Analysis*. Monitoring the current condition of a geographic area or natural resource, often through sampling or surveys.
- *Technical Data Gathering, Management and Analysis*. Providing scientific support for the design and implementation of specific strategies to address environmental improvements.
- *Compliance Inspections and Monitoring*. Monitoring the compliance of regulated entities through such activities as reviewing submitted reports and conducting site visits and inspections.
- *Release Identification and Reporting*. Identifying and reporting activities, processes, emissions, and environmental impacts associated with the regulated community.
- *Violation and Enforcement Management*. Identifying, verifying, and tracking violations of regulations, and initiating enforcement actions in response to violations.
- *Remediation Oversight*. Overseeing cleanups made by responsible parties, local authorities, and contractors, and ensuring that grants and funds authorized for cleanup reimbursements are disbursed appropriately.
- *Emergency Response*. Responding to environmental emergencies to coordinate evacuation, public-health protection, and spill cleanup.
- *Homeland Security*. Assisting in the planning, development, coordination, and implementation of initiatives to promote the governor's homeland security strategy, and to detect, deter, and respond to disasters, both natural and human-caused, and assist with recovery efforts.
- *Technical Assistance and Pollution Prevention*. Overseeing agency activities focused on helping a regulated facility achieve compliance, promote conservation, and reduce pollution voluntarily.
- *Air-Emissions Trading*. Tracking and verifying the trading of air emissions credits to ensure that trading is done in compliance with the program charter.

### Administration

- *Strategic Planning*. Developing agency goals and objectives and planning the allocation of personnel and financial resources.

- *Development of Regulations, Policies, and Procedures.* Creating rules and policies to guide agency activities.
- *Program Management.* Planning, reporting, and tracking program activities.
- *Budget Development.* Preparing, modifying, and reporting the agency budget.
- *Grant and Contract Administration.* Administering grants and contracts awarded to or by the agency.
- *Legal Support.* Analyzing and interpreting statutes and regulations, and representing the TCEQ in formal and informal settings.
- *Bankruptcy Administration.* Pursuing debtors who have filed for bankruptcy protection in federal courts to recover claims owed to the TCEQ.
- *Fund Administration, Accounting, Disbursements, and Payroll.* Managing funds limited to specific uses and processing payroll.
- *Revenue Estimation.* Forecasting and monitoring agency revenues and funding.
- *Purchasing and Asset Management.* Administering the purchase, location, use, and status of all agency assets.
- *Personnel Management, Recruitment, and Training.* Providing and supporting a skilled workforce for the agency.
- *Information-Resource Management.* Defining, designing, and maintaining agency information systems (automated or manual).
- *Records Management.* Managing physical document files (maps, microfiche, manual files, etc.).

# Agency Mission, and Goals and Objectives

## Agency 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.

## Goals and Objectives

The agency's goals and objectives fall into the following categories:

### Assessment, Planning, and Permitting

- Plan for air quality, water quality, and waste management by: developing the State Implementation Plan for attainment of the National Ambient Air Quality Standards, designing and implementing specific strategies to improve water quality, and analyzing solid waste generation and management in Texas.
- Implement state and federal environmental regulatory laws by issuing permits and authorizations for: the control of air pollution; the safe operation of water and wastewater facilities; and the treatment, storage, and disposal of hazardous, industrial, and municipal waste and of low-level radioactive waste.

### Drinking Water and Water Utilities

- Ensure that Texans served by public drinking water systems have drinking water that is consistent with the requirements in the Safe Drinking Water Act.
- Set water rates and allocate surface water rights.

### Enforcement and Compliance Assistance

- Ensure compliance with state and federal environmental laws and regulations by: conducting inspections of regulated facilities, monitoring air and water quality, providing technical assistance, encouraging voluntary compliance, and taking formal enforcement action against suspected violators.

### Pollution Cleanup

- Develop plans for the cleanup and eventual reclamation of contaminated industrial and abandoned hazardous waste sites, and for the restoration of air and water quality.

### Texas River Compacts

- Ensure that Texas receives its equitable share of water.

## Funding Issues

The TCEQ is facing a number of unique financial challenges in the next few years that have been created by both the economic condition of the state and the agency's own success at implementing programs.

The Low-Level Radioactive Waste Program is funded by three revenue sources: a disposal fee, an application fee, and interest revenue. A $12 million disposal fee was paid in two installments in 2004 and 2005 by Vermont, Texas' sole partner in the Texas Low-Level Radioactive Waste Disposal Compact. Construction on a disposal facility in West Texas is expected to begin soon, but no disposal fees have been collected at this time. There is also interest generated from the account balance. But at this time, the total revenue is not sufficient to cover all program costs or to meet appropriation levels. If this trend continues, the program will have to utilize fund balance to cover annual appropriations, and this will cause the revenue generated from interest to decline each year. The agency will need to address both the revenue shortages and the program's appropriations.

The Low-Income Repair Assistance and Accelerated Vehicle Retirement Program (LIRAP) appropriation and program costs have increased dramatically over the past two biennia. Since the appropriation increase was not accompanied by a fee increase, the program has been funded from the fund balance of the Clean Air Account (0151). Considering the success of the programs (over 30,000 repairs or replacement in fiscal years 2008 and 2009), the agency could be legislatively mandated to continue to implement LIRAP at current appropriation levels. Unless additional fee revenue is collected, however, the program's costs would further reduce the fund balance of the Clean Air Account.

The Water Resource Management Account (0153) was facing a significant funding shortage in fiscal years 2008 and 2009, because program appropriations exceeded fee revenue. This required water programs to be supported by fund balance instead of by revenue collected. In previous years, the account was supported by both fee and General Revenue appropriations. This dual funding structure generated a large fund balance. In an effort to reduce the balance, lawmakers reduced General Revenue appropriations to the TCEQ. Due to economic conditions, the state was not able to appropriate enough General Revenue to cover the agency's water needs, and this required the TCEQ to adopt new rate structures through a rule proposal on July 7, 2009. Under the adopted rate structure, the account has the flexibility to increase fee revenue to cover appropriations and rebuild a fund balance.

The Petroleum Storage Tank Program has undergone two significant changes over the last two legislative sessions. The 80th Legislature enacted changes to the Petroleum Product Bulk Delivery Fee, which was set to expire at the beginning of fiscal 2008, but was extended to Sept. 1, 2011, at a rate equal to one-third of the 2007 rate. The Petroleum Storage Tank (PST) Remediation program deadline for submitting reimbursement claims and placing sites into the State Lead Program was extended through March 1, 2012. The legislation also eliminated the requirement for tank registration fees beginning in fiscal 2008. These fees were deposited to the Waste Management Account (0549). The 81st Legislature reduced the PST appropriations by over $20 million for the biennium, reducing program functions and cleanup projects while reducing the impact on the fund balance from the fee-rate reduction.

The Texas Emissions Reduction Plan (TERP) Program (5071), the agency's largest revenue generator, is starting to feel the impact of the economy. In fiscal 2009, the amount of collected revenue was below the Biennial Revenue Estimate.(BRE) amounts for the first time. This decrease was due to revenue shortages in the Motor Vehicle Certificate of Title and Diesel Equipment Surcharge fees, which are affected by vehicle sales. These sales are down as a result of the state's current economic circumstances. In fiscal 2015, the program's revenue stream will be reduced by the expiration of the mobility fund transfer established un-

der Senate Bill (SB) 12 of the 80th Legislature, which requires the Texas Department of Transportation to transfer title-fee revenues to TERP on a monthly basis.

The Operating Permit Account (5094) is facing a unique funding challenge, a victim of its own success. Program costs remain stable, and the air in Texas has been getting cleaner every year. One of the major reasons for cleaner air is that Title V permit holders have managed to reduce emissions by 5 percent annually. This reduction has led to lower revenue collections for the program. The fee rate is based on each permit holder reducing emissions annually, and the Consumer Price Index (CPI) is used to offset the impact of emission reductions on revenue collections. However, lower-than-expected CPI rates have led to a decline in revenue collections and this decline is expected to continue in future years.

### Anticipated Changes to Mission, Goals, and Strategies

During the 81st Legislative Special Session, the review of the TCEQ by the Sunset Advisory Commission was moved up two years, from 2013 to 2011. This review has now begun and will be conducted over the next one and a half years. The overall purpose of the Sunset Advisory Commission's review is to: (1) assess the need to retain the agency, (2) look for potential duplication of programs within our and other state agencies, and (3) consider changes to improve the agency.

### Agency Structure

The TCEQ carries out its mission under the direction of three full-time commissioners, who are appointed by the Governor. The commissioners are appointed for six-year terms with the consent of the Senate, and provide oversight to the seven offices of the agency. The offices are each responsible for performing unique functions within the agency, and each office has its own workforce needs and considerations.

## Key Factors Facing the Agency

The TCEQ expects challenges as it proceeds to fulfill its mission and goals. Economic, environmental, and political developments indicate that the agency will experience program changes, process redesign initiatives, and technological advancements. New state and federal mandates will be demanding in light of budget and FTE constraints. With technical requirements expanding, a comprehensive knowledge of agency procedures and federal regulations, as well as computing and analytical abilities, will be critical. Retirements and competition for experienced applicants, particularly those in highly skilled, hard-to-fill occupations, will present problems with regard to our efforts to maintain a diverse, well-qualified workforce.

### Retirement and Attrition

The departure of employees due to retirement is, and will continue to be, a critical issue facing the TCEQ. This loss of organizational experience, knowledge, and expertise in key management and senior-level professional positions poses a critical workforce dilemma that is prevalent throughout the agency, as well as the state. This potential institutional-knowledge deficit affects the level of succession planning that needs to be implemented by the TCEQ in order for staff to be able to assume important functions and leadership roles. In addition to succession planning for key positions, a greater focus on internal organizational development and training will be required. Training and mentoring emerged as the primary strategy identified by agency offices to address skill gaps due to retirements, with hiring methods ranking second.

Table E.1. depicts the projected increases in the number of employees eligible to retire from fiscal 2010 through fiscal 2015. The TCEQ estimates that approximately 1,007 employees will become eligible to retire by 2015. Retirement of over 34 percent of the agency's workforce could significantly affect the agency's ability to deliver programs and accomplish its mission.

In addition to FTE constraints, competition for qualified job applicants and changing job roles remain high on the list of issues as agency management strives to respond to the loss of employee skills.

### Table E.1. Projection of TCEQ Employees Eligible for Retirement, FYs 2010–2015

| Fiscal Year | Projected Retirements | Percent of Total Agency FTEs (2,926) |
|---|---|---|
| 2010 | 462 | 15.8 |
| 2011 | 561 | 19.1 |
| 2012 | 663 | 22.7 |
| 2013 | 779 | 26.6 |
| 2014 | 916 | 31.3 |
| 2015 | 1,007 | 34.4 |

## New and Changing Requirements and Initiatives

New federal and state requirements, as well as internal initiatives, will continue to have an agency-wide impact. Offices may be required to change and modify, eliminate, or add programs, processes, and procedures.

Among other expected program changes, mandates, and initiatives are the following:

- Increased workload due to changing National Ambient Air Quality Standards (NAAQS) for the six criteria pollutants bring new and unique technical and policy issues for resolution.
- State implementation plan (SIP) revision requirements are increasing with newly defined mandates. SIP revision development is becoming more complex and the technical requirements are expanding. Developing and coordinating SIP revisions requires intimate knowledge of agency procedures and federal regulations as well as computing and analytical abilities.
- Workload for the Tax Relief for Property Used for Environmental Protection (Prop 2) program will also increase with expanded state and federal regulations for environmental protection.
- Proposed revisions to the primary and secondary ozone standards may increase the number of areas within the state that are substantially out of compliance. This will have a direct impact on workload, as each of these new nonattainment areas will require SIP development.
- The Implementation Grants Section will continue to increase its workload due to the additional 1,500 to 2,000 contracts that enter into the monitoring portion of the program each biennium. These contracts are added to the over 5,000 contracts that are currently being monitored by the program.
- Challenges continue in the areas of responses to citizen complaints, investigations to determine compliance with applicable air and water regulations, and education of regulated entities. The agency will continue to deploy monitoring stations as required by state or federal guidelines or in response to citizen concerns and protection of human health.
- Implementation of the environmental lab accreditation program continues. Laboratory inspections will increase in complexity as the standards for accreditation change. This will result in additional training requirements and may result in more time spent on inspections.
- The agency continues to refine processes and procedures with respect to disaster response, including hurricane preparedness activities. The TCEQ is assisting public water systems in the preparation of emergency plans that will allow them to provide safe drinking water during the recovery phase following the occurrence of natural disasters.
- The agency is legislatively mandated to adopt recommendations pertaining to the environmental flows process and to coordinate with the advisory groups and stakeholder committees. This will lead to the completion of an instream flow study in priority basins that has been mandated to be completed by 2016.
- The TCEQ has changed the way Texas addresses water quality impairments. Major revisions are under way to the Texas Surface Water Quality Standards and tracking progress for programmatic goals for improving water quality will be a focus.
- Texas Water Code 5.274(b) provides that the Office of Public Interest Counsel may obtain

and use outside technical support to carry out its functions under this code. Use of outside technical assistance would greatly enhance the effectiveness of the Public Interest Counsel. However, the office has not been able to hire the technical support permitted by the act due to budgetary constraints.

- The agency is handling increasing news-media contacts, due to the changing nature of online media outlets. Most news organizations maintain websites that are updated 24 hours a day, which means around-the-clock media contacts with the agency.
- The agency continues to promote waste reduction and recycling programs, with ongoing implementation of the computer-recycling program and, potentially, other legislative mandates related to electronics recycling.
- The agency is adapting processes and workloads in response to mandated statewide financial system initiatives, e.g., the Enterprise Resource Program that the comptroller is required to implement.
- The agency continues to strive to effectively communicate technical and complex environmental quality and natural resource issues of the agency to the state's leadership, elected officials, and stakeholders.
- The agency continues to develop effective working relationships with new members of the state Legislature during a time of significant turnover in officeholders, while also providing timely and accurate analysis of legislation affecting the agency.

## Information and Technology

To maintain and enhance the agency's level of service, respond to increasing customer demands and expectations, and implement legislative changes, the TCEQ must prepare for a number of activities that will be required in the area of information technology. They include:

- Training additional staff on applicable technology in the areas of environmental and compliance monitoring to secure real-time data to respond to an increased demand for information.
- Providing more accessible data-sharing tools and expanding the use of the Internet for reporting and providing information and "real time" and customized data (both internally and externally) and for receiving authorizations. New regulatory programs will routinely require IT components to be developed and supported. In order to implement the flow of electronic information between the regulated community and the public, business processes must be analyzed and documented. Program areas will need to develop proficiency in design and analysis in order to facilitate implementation. The challenge will be to ensure that staff is capable of building and using these tools effectively and efficiently.
- Continuing to develop e-Permitting for use in the Texas Pollutant Discharge Elimination System Program.
- Continuing to coordinate with other agency IT and project management resources to ensure that resources are applied to appropriate agency priorities. Current IT project management, software development, and administration resources, have the knowledge, skill sets, and practices to sustain only the highest-priority agency business needs.
- Implementing targeted upgrades of various dated infrastructure applications. There are knowledge, resource, and training gaps within the workforce that will inhibit the agency's ability to manage these upgrades simultaneously.
- Overseeing and managing the contract-for-services and data-center-transformation. If the transformation continues on the current schedule, there will be a resource shortfall to manage the complete conversion.
- Maintaining and improving online access and navigation (both internal and external) to more information through increasing and varied access points, such as mobile devices and social media.

- Providing increased digital content for use on TCEQ websites: training, public education, and other informational content. The agency will have to produce content in HD (high definition) as SD (standard definition) fades away.

Budgetary constraints affect all aspects of work within the agency. Training resources are not sufficient to maintain an adaptive workforce in the quickly evolving information technology environment. Another area of concern is travel as it relates to specialized training and the costs associated with the gathering, handling, management, and reporting of data. Additionally, ensuring that agency salaries keep up with cost-of-living increases and are competitive with other government agencies that have similar positions (i.e. cities, counties, EPA) remains a challenge.

# Current Workforce Profile (Supply Analysis)

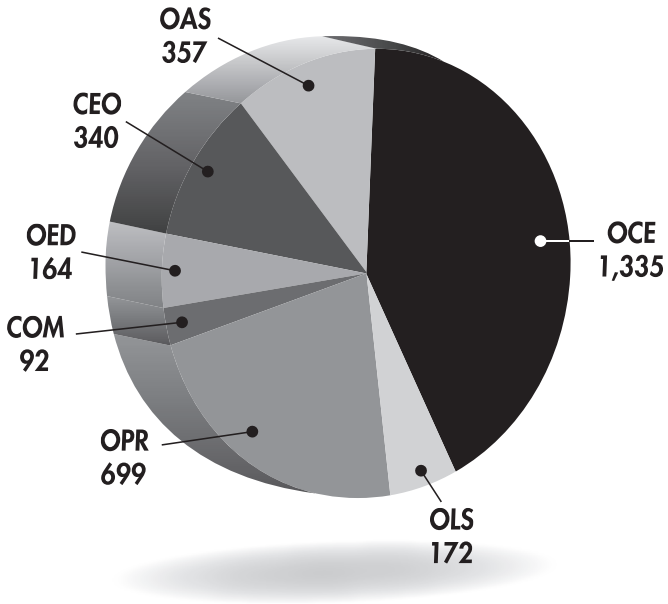
In fiscal 2009, the TCEQ employed a cumulative total of 3,159 employees, which includes 233 separated employees. The following chart (Figure E.1) summarizes the agency workforce by office.* The totals indicate an actual head count of employees, not full-time equivalents (FTEs), and do not include contractors or temporary personnel.

## Location of Employees

As of Aug. 31, 2009, 809 employees–or 27.65 percent of the total workforce–were located throughout the 16 regional offices (see Figure E.2). In an effort to facilitate delivery of the agency's services at the point of contact and to increase efficiencies, 103 (12.7%) of the regional employees were matrix-managed staff who worked in regional offices, but were supervised from the Central Office.

** In FY 2010, the TCEQ restructured the Offices to focus on water issues; the Office of Water was created, effective 12/1/09.*

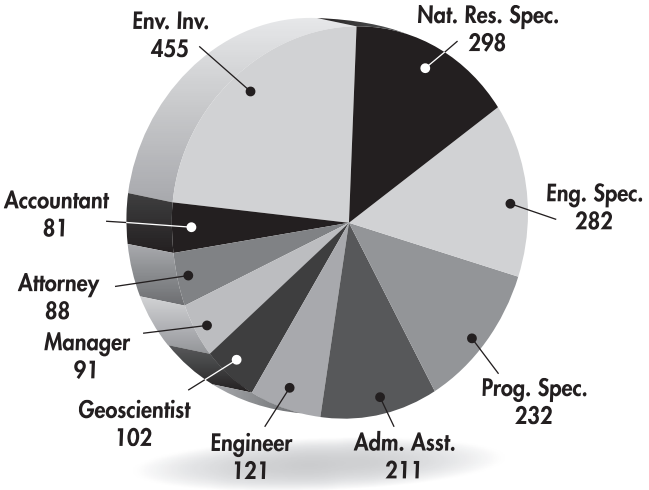
**Figure E.1. TCEQ Workforce by Office, FY 2009**




| LEGEND | |
|---|---|
| COM | Office of the Commissioners |
| OED | Office of the Executive Director |
| CEO | Chief Engineer's Office |
| OLS | Office of Legal Services |
| OCE | Office of Compliance and Enforcement |
| OAS | Office of Administrative Services |
| OPR | Office of Permitting and Registration |

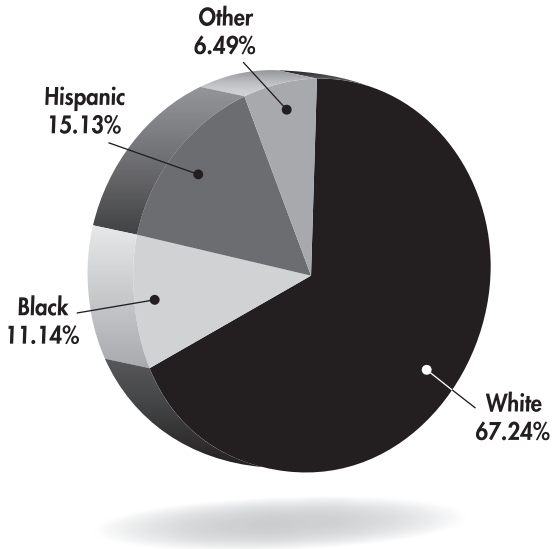
*Data Source: Human Resources Information System, as of 8/31/09. Data includes separations.*

**Figure E.2. Location of TCEQ Employees, FY 2009**




*Data Source: Human Resources Information System, as of 8/31/09.*

**Figure E.3. Ethnicity of TCEQ Workforce, FY 2009**



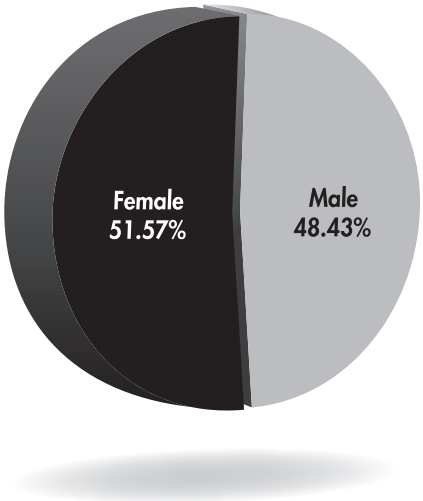

*Data Source: Human Resources Information System, as of 8/31/09.*

## Workforce Demographics

Figures E.3 and E.4 depict the agency's workforce during fiscal 2009. Blacks and Hispanics constitute over 26 percent of the agency's workforce, with other ethnic groups representing over 6 percent. Of the total available Texas labor force, Blacks are 10.91 percent and Hispanics are 33.62 percent. This reveals an under-utilization of more than 18 percent.

In fiscal 2009, the TCEQ workforce was 48.43 percent male and 51.57 percent female. These percentages indicate a change from the last reporting period, of fiscal 2007 (males, 50.92%; females, 49.08%). The available Texas labor force for males is 54.78 percent; for females, 45.22 percent.

**Figure E.4. Gender of TCEQ Workforce, FY 2009**




*Data Source: Human Resources Information System, as of 8/31/09.*

## The TCEQ Workforce Compared to the Available Texas Civilian Workforce

The TCEQ workforce comprises four employee job categories, as established by the Equal Employment Opportunity Commission (EEOC). These categories are: Official/Administrator, Professional, Technical, and Administrative Support.

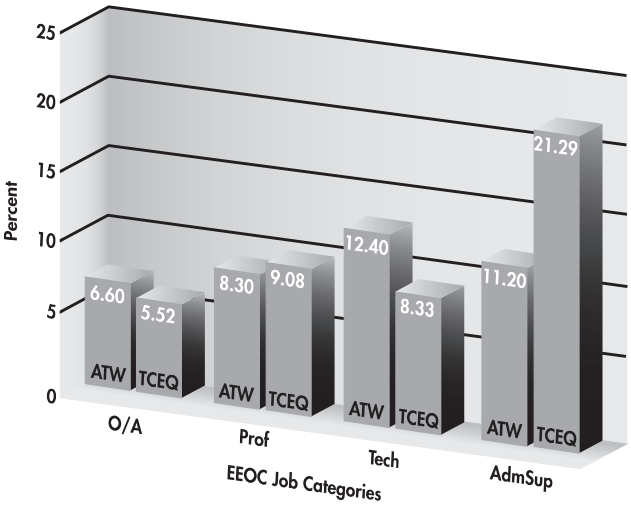
## Table E.2. TCEQ Workforce Compared to Available Texas Workforce, 8/31/09

| EEOC Job Category | Black | | Hispanic | | Female | |
|---|---|---|---|---|---|---|
| | ATW | TCEQ | ATW | TCEQ | ATW | TCEQ |
| Official/Administrator | 6.6% | 5.52% | 14.2% | 13.64% | 37.3% | 37.34% |
| Professional | 8.3% | 9.08% | 13.4% | 12.79% | 53.2% | 44.36% |
| Technical | 12.4% | 8.33% | 20.2% | 16.07% | 53.8% | 35.71% |
| Administrative Support | 11.2% | 21.29% | 24.1% | 23.19% | 64.7% | 85.96% |

*Data Source: Human Resources Information System, as of 8/31/09.*

Table E.2 and figures E.5, E.6, and E.7 compare the agency's workforce as of Aug. 31, 2009, to the available statewide civilian workforce as reported in the *Equal Employment Opportunity and Minority Hiring Practices Report,* a publication (January 2009) of the Civil Rights Division of the Texas Workforce Commission This table reflects the percentages of Blacks, Hispanics, and females within the available Texas workforce (ATW) and the TCEQ workforce.

### Figure E.5. TCEQ Black Workforce Compared to Available Texas Black Workforce, FY 2009



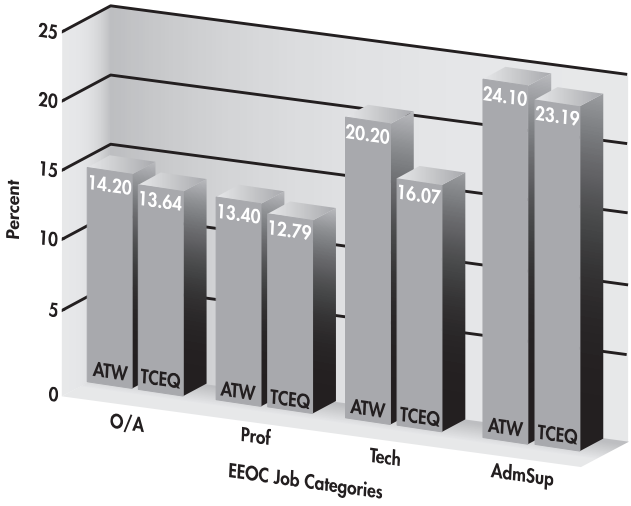

*Data Source: Human Resources Information System, as of 8/31/09.*

Although minorities and females are generally well represented at the TCEQ, the agency continues to strive to employ a labor force that mirrors the available statewide workforce.

## Workforce Qualifications

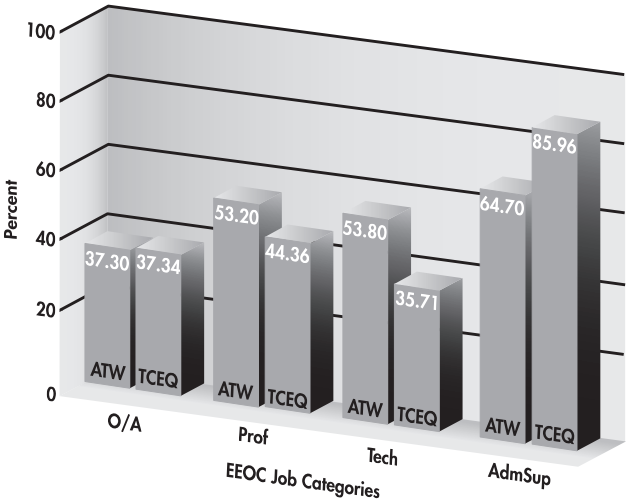
The TCEQ employs a highly qualified workforce performing complex and diverse duties in a variety

### Figure E.6. TCEQ Hispanic Workforce Compared to Available Texas Hispanic Workforce, FY 2009




*Data Source: Human Resources Information System, as of 8/31/09.*

### Figure E.7. TCEQ Female Workforce Compared to Available Texas Female Workforce, FY 2009

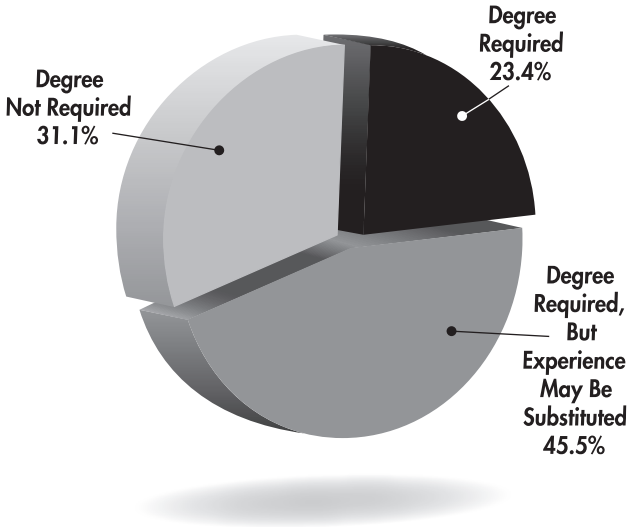



*Data Source: Human Resources Information System, as of 8/31/09.*

of program areas. Strong employee competencies are critical to meet ongoing program objectives and goals.

Of the agency's staff, over 23 percent are in positions requiring a degree (see Figure E.8). Another 45 percent are in positions requiring either a degree or experience in the subject area. The remaining employees. who are in positions not requiring a degree, constitute over 31 percent of the agency's workforce.

**Figure E.8. Education Requirements of TCEQ Employees**

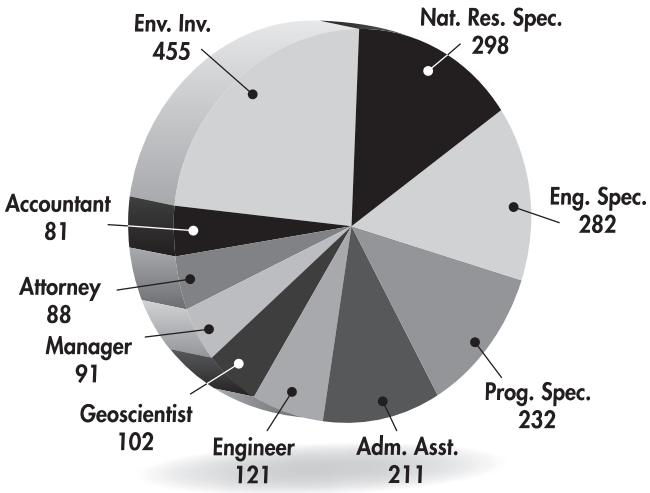



*Data Source: Human Resources Information System, as of 8/31/09.*

## Workforce Profile by Job Classification

Although almost 75 percent of the agency's employees are categorized as Officials/Administrators and Professionals, the work fulfilled by TCEQ employees is diverse, requiring the use of over 300 job classifications and sub-specifications. Figure E.9 shows the number of employees working in the job classification series (including sub-classifications) most commonly used by the TCEQ during fiscal 2009: Environmental Investigator, Natural Resources Specialist, Engineering Specialist, Program Specialist, Administrative Assistant, Engineer, Geoscientist, Manager, Attorney, and Accountant.

**Figure E.9. Population at the TCEQ by Job Classification Series, FY 2009**




*Data Source: Human Resources Information System, as of 8/31/09.*

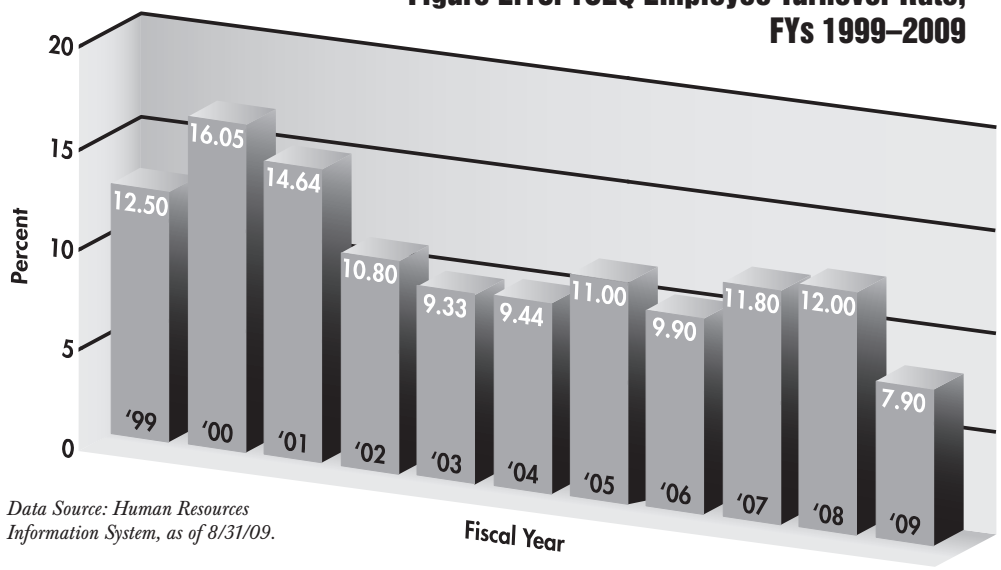
By the end of the fourth quarter of fiscal 2009, the TCEQ supplemented its workforce with 81 contracted staff to provide vital program support and perform various information technology functions as a means of meeting agency goals and objectives. However, budgetary constraints continue to hamper the ability to obtain contract services.

## Employee Turnover

Although the agency's turnover rate has fluctuated over the past 10 years (see Figure E.10), it consistently remains below the statewide rate. For example, in fiscal 2009, the statewide turnover rate was 14.4 percent, in comparison to the TCEQ's rate of 7.9 percent. This was the lowest rate experienced in the past 10 years, which can be attributed to the agency's retention efforts as well as to the current economic climate.

While the TCEQ has been very fortunate to retain a high-level workforce, continual changes to the state's retirement and benefit plans may affect future retirement decisions as well as recruiting efforts.

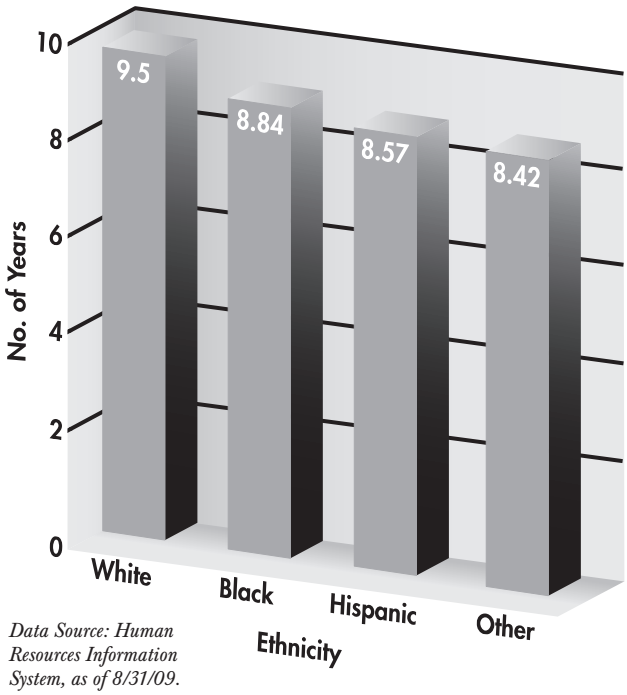
**Figure E.10. TCEQ Employee Turnover Rate, FYs 1999–2009**




*Data Source: Human Resources Information System, as of 8/31/09.*

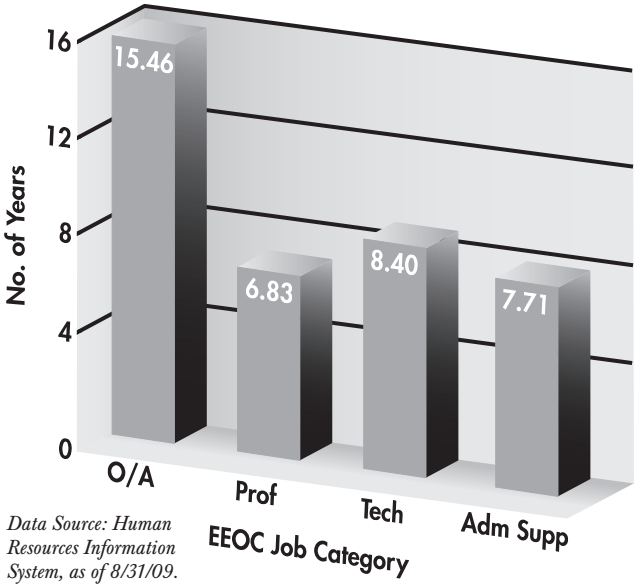
See figures E.11 and E.12 for additional information about the tenure of the TCEQ workforce, which remains relatively similar as previously reported.

**Figure E.11. TCEQ Employee Tenure by Race**




*Data Source: Human Resources Information System, as of 8/31/09.*

**Figure E.12. TCEQ Employee Tenure by EEOC Job Category**




*Data Source: Human Resources Information System, as of 8/31/09.*

# Future Workforce Profile (Demand Analysis)

The TCEQ carries out its mission through broad and diverse activities. These activities require that employ-

ees demonstrate a high level of proficiency in a variety of critical skills. Table E.3 is a listing of sets of critical "skill clusters" that have been identified as the skill sets necessary to accomplish the agency's mission.

The agency continues to emphasize and support workforce and succession planning. This process involves building a viable talent pool that contributes to the current and future success of the agency, including

## Table E.3. Critical Workforce Skill Clusters within the TCEQ Offices

| | |
|---|---|
| **Problem Solving**<br>Analysis<br>Critical thinking<br>Decision making<br>Innovation | **Project Management**<br>Organizing<br>Planning<br>Managing multiple priorities<br>Quality analysis and process improvement<br>Coordination |
| **Information Management**<br>Database development, management, and integration<br>Software proficiency<br>Web development and maintenance<br>Computer-assisted tools<br>Graphic design<br>Electronic reporting | **Communication**<br>Written – composition and editing<br>Verbal – public speaking and presentation<br>Interpersonal sensitivity<br>Translating technical information into layperson's terms<br>Teamwork<br>Marketing and public relations<br>Customer service |
| **Technical Knowledge**<br>*(may be unique to a certain program area)*<br>Agency policies, procedures, and programs<br>Local, state, and federal laws, rules, and regulations<br>Specialized technical knowledge<br>Policy analysis and development<br>Statistical analysis<br>Regulation analysis and development<br>Technical analysis<br>Research<br>Litigation<br>Auditing<br>Inventory management | **Management/Leadership**<br>People skills<br>Performance management<br>Strategic planning<br>Conducting training<br>Mentoring<br>Meeting planning/facilitation<br>Contract management<br>Grant management<br>Financial management<br>Delegation |
| | **Administrative/Support**<br>Word processing<br>Tracking and record keeping<br>Mail processing |

the need for experienced employees to mentor and impart knowledge to their potential successors. Such initiatives will enable the agency to both develop and retain skilled employees.

In the previous plan, the TCEQ expected to have difficulty with qualified labor pools. However, the economic downturn has yielded a larger response of qualified applicants than anticipated.

The agency strives to compete in the marketplace for certain disciplines, such as science and engineering. While certain occupations will continue to be hard-to-fill due to the smaller population of the workforce, predominant occupations at the TCEQ have faster-than-average job growth, as identified by the Office of Occupational Statistics and Employment Projections of the Bureau of Labor Statistics. These occupations require high levels of education and skills, while also demanding higher wages. Environmental engineers, scientists, and hydrologists, as well as geoscientists, will experience increased growth over the next five to 10 years. This will also drive the demand for skill sets in the area of energy, environmental protection, and land and water management.

The requirement to comply with increasingly complex environmental laws and regulations, as well as the increased demands on environmental resources caused by population growth and development, will also raise the necessity for these professions, as well as that of environmental law attorney.

Network and computer system analysts and administrators, software engineers, and database administrators maintain a high profile as fast-growing occupations in Texas and elsewhere.

The agency will continue to take measures to maintain a visible presence in attracting a viable workforce. Current employees will also be provided opportunities for education, training, and varied types of work experience. The TCEQ is committed to developing employees and promoting advancement and initiative.

## Gap Analysis

Each office within the TCEQ analyzed the anticipated need for each skill set and the risk associated with the skill becoming unavailable over the next five years. Skills that are "at risk" are indicated in Table E.4, prioritized by "low," "medium," or "high," reserving the "high" designation for those gaps that will require action to address them. According to this assessment, the offices identified significant gaps in the following workforce skills: Information Management, Technical Knowledge, Project Management, Communication, and Management/Leadership.

### Table E.4. Critical Skills Checklist and Gap Analysis

| LEGEND | |
|---|---|
| COM – Office of the Commissioners | OCE – Office of Compliance and Enforcement |
| OED – Office of the Executive Director | OAS – Office of Administrative Services |
| CEO – Chief Engineer's Office | OPR – Office of Permitting and Registration |
| OLS – Office of Legal Services | OW – Office of Water |

| Skill Category | Skill | COM | OED | CEO | OLS | OCE | OAS | OPR | OW |
|---|---|---|---|---|---|---|---|---|---|
| **Problem solving** | Analysis | | | Med | | | | | |
| | Critical thinking | | | | | | | Med | |
| | Decision making | | | | | | | Med | |
| | Innovation | | | | | | | Med | |
| | Other: | | | | | | | | |

*continued on next page*

## Table E.4. Critical Skills Checklist and Gap Analysis (continued)

| Skill Category | Skill | COM | OED | CEO | OLS | OCE | OAS | OPR | OW |
|---|---|---|---|---|---|---|---|---|---|
| **Information management** | Database development, management, and integration | | | | | | | High | High |
| | Software proficiency | | | Med | | | High | High | High |
| | Web development and maintenance | | | | | | High | Med | High |
| | Computer-assisted tools | Med | | Med | | | | High | Med |
| | Graphic design | | | | | | | | |
| | Electronic reporting | Low | | Med | | | | High | High |
| | Other: Physical Resources: i.e., scanners, laptops, desktop computers, PDF writers, projectors, adequate software licenses | | | | | | | | High |
| **Technical knowledge (may be unique to certain program areas)** | Agency policies, procedures, and programs | Med | | High | | High | | | |
| | Local, state, and federal laws, rules, and regulations | Med | | Med | | High | | Med | |
| | Specialized technical knowledge | Med | | High | | High | High | High | High |
| | Policy analysis and development | Med | | High | | High | | | |
| | Statistical analysis | | | Med | | | | | Med |
| | Regulation analysis and development | Low | | High | | High | | Med | |
| | Technical analysis | Med | | Med | | High | | Med | |
| | Research | Low | | | | | | | |
| | Litigation | | | | | | | | |
| | Auditing | | | | | | | | |
| | Inventory management | | | | | | | | |
| | Other: GIS, GeoDatabase | | | | | | | | Med |

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## Table E.4. Critical Skills Checklist and Gap Analysis (continued)

| Skill Category | Skill | COM | OED | CEO | OLS | OCE | OAS | OPR | OW |
|---|---|---|---|---|---|---|---|---|---|
| **Project management** | Organizing | | | | | | High | | |
| | Planning | | | | | | High | | |
| | Managing multiple priorities | | | | | | High | Med | |
| | Quality analysis and process improvement | | | | | | High | High | |
| | Coordination | | | | | | High | | |
| **Communication** | Written: composition and editing | | | | | High | | Med | |
| | Verbal: public speaking and presentation | | | | | Med | | | |
| | Interpersonal sensitivity | | | | | | | | |
| | Translating technical information into layperson's terms | | | | | | High | | |
| | Teamwork | | | | | | | | |
| | Marketing/public relations | | | Med | | | | | |
| | Customer service | | | | | | | | |
| | Other: Public participation | | | Med | | | | | |
| | Other: Publications | | | Med | | | | | |
| | Other: Business process documentation and knowledge transfer | | | | | | | High | |
| | Other: Spanish-speaking staff for hearing questions and other customer-service issues | | | | | | | | Med |

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**Table E.4. Critical Skills Checklist and Gap Analysis (continued)**

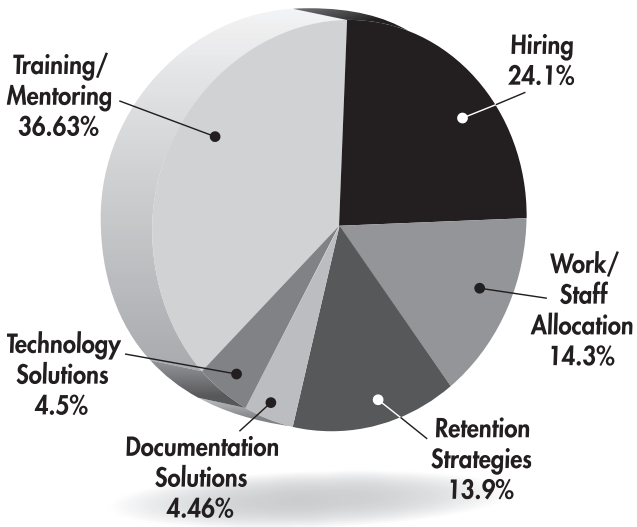
| Skill Category | Skill | COM | OED | CEO | OLS | OCE | OAS | OPR | OW |
|---|---|---|---|---|---|---|---|---|---|
| **Management / Leadership** | People skills | | | | | | | | |
| | Performance management | Med | | Med | | | | | |
| | Strategic planning | Med | | | | | | | |
| | Conducting training | | | | | Med | | | |
| | Mentoring | | | Med | | High | | Med | |
| | Meeting planning/ facilitation | Med | | | | | | | Med |
| | Contract management | Med | | Med | | | | | |
| | Grant management | | | Med | | High | | | |
| | Financial management | | | Med | | High | | | |
| | Delegation | Med | | | | | | | |
| | Other: | | | | | | | | |
| **Administrative Support** | Word processing | | | | | | | | |
| | Tracking / record keeping | | | | | | | | |
| | Mail processing | | | | | | | | |
| | Other: | | | | | | | | |
| **Other skills** | Other: | | | | | | | | |

# Strategy Development

The TCEQ anticipates implementing key strategies, which are discussed in the following sections, to address expected skill gaps. Figure E.13 displays the strategies that were identified by agency offices.

As in past assessments, Training/Mentoring will be the primary focus to ensure that the TCEQ aligns appropriate personnel with the necessary skill sets to fulfill the agency's core functions. The use of strategies as indicated below reflects awareness among hiring supervisors that there is a critical need to continue developing current staff skills while also hiring a future workforce with the critical skills needed.

**Figure E.13. Strategies to Address Skill Gaps**



Additional strategies mentioned by agency offices include:

- Develop viable options to recruit, obtain access to, contract with, or train staff in critical-needs areas.
- Reallocate positions as the needs occur.
- Recruit for licensed and degreed candidates for certain vacancies and establish career ladders as appropriate.
- Attend EPA-developed training, if available; contract with external vendors.
- Continue refinements of standards and documentation of processes and procedures for core functions.
- Utilize internship programs.

## Training and Mentoring

It is evident that job-shadowing, on-the-job training, and cross-training will continue to be the primary focus in the development and enhancement of critical workforce skills. This will allow less-tenured staff to work with senior subject-matter experts to assist in developing and sharpening specific skills. Staff should also be afforded the opportunity to attend training that promotes personal and professional development.

The TCEQ will continue developing future leaders with the continuance of the Aspiring Leaders Program. This program provides developmental and promotional opportunities for in-house talent to rise in management positions that support the agency's long-term objective for a team with a strong institutional-knowledge base.

## Hiring

Offices will pursue hiring above the entry level for jobs that are hard to fill due to the competitive market base. In addition, the continuance of internship programs has proven to be a successful avenue in hiring employees exposed and interested in the environment.

The TCEQ has a commitment to employing a well-qualified and diverse workforce. The recruitment program maintains a strong focus on diversity. Recruitment events are regularly planned to target qualified ethnic minority and female candidates.

The TCEQ will continue to analyze hiring practices and determine opportunities for enhanced workforce diversity through increased usage of the Express-Hire Program at diversity-focused events and predominantly minority colleges and universities.

There will also be certain occupations at the TCEQ in great demand, such as environmental investigators and geoscientists, with limited availability, due to their potential earning capacity in the private sector. Some agency program areas rely heavily on hiring recent college graduates; however, only a few academic programs exist that produce qualified graduates.

While the TCEQ experienced a larger volume of applicants in 2009 and 2010 for certain jobs, and a reduction in turnover due to the instability of the current job market in the private sector, we cannot depend on this applicant volume as a long-term strategy in addressing recruitment and hiring issues. During more robust economic times, recruitment and retention of governmental workers is a greater challenge and could become an issue as economic conditions improve.

## Retention Strategies

Retention of qualified staff is essential. Offices plan to retain individuals who possess essential skills by providing opportunities for increased responsibility (promotions) and salary enhancements to reward exceptional performance. The TCEQ will also continue to provide development opportunities for employees to focus on critical skills, competencies, and technical requirements needed by the agency. Developing employees to maintain business continuity despite losses in technical expertise, institutional knowledge, and management experience is vital.

Other retention strategies will include the continued use of recognition and administrative-leave awards, flextime or other alternative work-hour schedules, and tele-working options to support a more flexible and mobile workforce.

## Work and Staff Allocation Changes

Managers continue to review workforce needs and available skill sets to ensure that adequate staff are

assigned to meet the business needs of the agency. Offices indicate that the strategies most utilized in this area will be to assign backups to every position, while also including these backup responsibilities in their performance plan, and to involve entry- and journey-level positions in senior decision making. Managers pursue process redesign as a means to improve efficiencies and reduce the risk associated with a potential loss of specialized skill sets.

## Documentation and Technology Solutions

Managers understand the need for documenting processes and procedures to ensure that tools are available for training purposes and continuity of operations. Technological solutions will continue to allow the agency to reallocate its human resources.