Chapter 3

CHAPTER THREE

Legislation from the 80th Session

During the regular legislative session in 2007, lawmakers considered more than 1,200 bills that had the potential to affect the Texas Commission on Environmental Quality. Of that, 345 bills were passed and signed into law.

At the organizational level, the TCEQ gained additional oversight of activities associated with the disposal of radioactive substances. With this expanded authority, the agency received 11 staff positions from the Radiation Safety Licensing Branch of the Texas Department of State Health Services.

Legislation also moved the National Flood Insurance Program from the TCEQ to the Texas Water Development Board.

The new laws triggered a variety of activity at the TCEQ: writing new rules, making operational or procedural changes, revising guidance documents, or taking internal administrative actions. Some of the newly enacted laws are summarized in this chapter.

SB 3, HBs 3 & 4
Water Package

As the state grows, the TCEQ is faced with ensuring the maintenance of the biological soundness of the state's rivers, lakes, bays, and estuaries, while balancing all other interests, including providing adequate water for public health and welfare.

Recognizing the need for more certainty in water management and environmental flow protection, lawmakers passed Senate Bill 3 and House Bills 3 and 4, which amend various sections of the Texas Water Code and set out a new regulatory approach for providing surface water to meet the environmental flow needs of river, bay, and estuary systems.

The measures created the environmental flows standards process and established the Environmental Flows Advisory Group to oversee implementation. The panel of nine elected and appointed officials includes TCEQ Commissioner Bryan Shaw, Ph.D.

To assist the advisory group, the bill established an Environmental Flows Science Advisory Committee to serve as an objective, scientific panel that makes recommendations on issues relating to the science of environmental flow protection. The science advisers will also help provide overall direction, coordination, and consistency for the project.

The Environmental Flows Advisory Group met in July and August 2008, and named the members of the science advisory committee, which met in August. The advisory group also named the members of stakeholder committees for the Trinity and San Jacinto rivers and Galveston Bay, and for the Sabine and Neches rivers and Sabine Lake bay basin and bay area. Five more stakeholder committees had yet to be formed by the end of fiscal 2008.

Under the legislation, the TCEQ will eventually adopt recommendations in the form of environmental flows standards for use in the decision-making process for new (and amended) water-rights applications. The Commission will also establish an amount of unappropriated water, if available, to be set aside for the environment. The TCEQ will first need to receive the recommendations of the science and stakeholder committees in each basin to determine the flow regime.

The TCEQ, the Texas Water Development Board, and the Texas Parks and Wildlife Department are coordinating with the advisory group, the science advisers, and stakeholder committees. Staff will provide technical assistance and generate reports based on the groups' recommendations.

SB 12, HB 160
Funding for Emissions Reductions

The Texas Emissions Reduction Plan (TERP) received a major infusion of funding. The Legislature's appropriation of $337.8 million was an increase of almost $81 million over the previous biennium.

The TERP emissions reduction incentive grants offset the incremental costs associated with reducing emissions of nitrogen oxides (NO_x) from high-emitting internal combustion engines. NO_x is one of the primary components of ground-level ozone.

In fiscal 2007, the TCEQ received about 1,682 applications, totaling $193.3 million in sought-after funding for 1,963 vehicles, locomotives, marine vessels, pieces of equipment, and on-site infrastructure facilities. The agency issued grants totaling $131.2 million.

From the most recent application period for emissions reduction incentive grants (mid-January to mid-April 2008), an additional 1,107 eligible applications were selected for funding, totaling $140.8 million, with an estimated reduction of 10.57 tons of NO_x emissions.

Rebate grants are available but only for diesel on-road and off-road replacement and repower projects (a portion of these funds is reserved for small businesses). Applications for rebates are reviewed and processed on a first-come, first-served basis.

As mentioned in Chapter 1, TERP funds are available to individuals, businesses, nonprofits, school districts, and government agencies that own and operate heavy-duty vehicles or equipment in the eligible areas. The areas eligible to submit incentive grant and rebate applications are Dallas-Fort Worth, Houston-Galveston-Brazoria, Beaumont-Port Arthur, San Antonio, Austin, and Tyler-Longview.

HB 160 added a category for infrastructure projects. In certain counties, TERP funds can go toward rail relocation or toward improvements at major rail intersections to reduce idling by locomotives.

The primary revenue source for the TERP is the vehicle title transfer fee and a 2 percent fee on sales and leases of diesel equipment.

TERP grants and activities are detailed in a separate report, *The Texas Emissions Reduction Plan: Biennial Report to the Texas Legislature* (SFR-079/08).

SB 12
Incentives to Retire or Repair High-Polluting Vehicles

The Legislature created a program in 2001 to assist eligible individuals with repairs, retrofits, or retirement of vehicles that fail emissions inspections. This program was offered to counties that chose to take part in annual vehicle emissions testing.

Initially, the program was known as the Low-Income Vehicle Repair, Retrofit, and Accelerated Vehicle Retirement Program, or LIRAP. With recent improvements and expansions, it evolved into AirCheckTexas Drive a Clean Machine. This program encompasses two types of vouchers: one for buying newer, cleaner vehicles, and another for repairing vehicles that fail the state emissions test.

For the 2008-2009 biennium, lawmakers appropriated $45 million a year for the Drive a Clean Machine program, which is administered through grant contracts with each of 16 participating counties.

SB 12 provided greater opportunities for retiring older vehicles and replacing them with newer models. As discussed in Chapter 1, an eligible vehicle must be at least 10 years old or have failed an emissions test, be gasoline-powered, and be registered in the participating county at least 12 months. It must have passed the state safety and emissions inspection within 15 months of the application. The new vehicle cannot cost more than $25,000. It must meet or exceed federal Tier 2, Bin 5, specifications and have a gross vehicle weight rating of less than 10,000 pounds.

The vehicle owner must meet financial eligibility requirements (up to 300 percent of the federal poverty level). The same income requirements apply to anyone applying for a voucher of $30 to $600 for emissions-related repairs.

Vehicle Emissions Testing

Seventeen counties participate in vehicle emissions testing as part of the annual state vehicle safety inspection program. All registered gasoline-powered vehicles, 2 to 24 years old, must be tested. (El Paso County conducts yearly emissions tests as part of its air quality program, but does not participate in the replacement or repair assistance program.) The passing rate of emissions tests was 94.2 percent in 2008. By comparison, the passing rate was 90.2 percent when the program started in 2002.

	FY 2007	FY 2008*
Number of Vehicles Tested	7 million	7.2 million
Passing Rate	93.9%	94.2%
Failure Rate	6.1%	5.8%
Number of Stations	4,006	4,105
Number of Inspectors	15,935	16,072
Recognized Emission Repair Facilities	561	527

*Data based on program administrators' weekly reports, as of August 28, 2008.

Note: The following counties participate in annual emissions testing: Brazoria, Fort Bend, Galveston, Harris, and Montgomery in the Houston area; Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant in the Dallas-Fort Worth area; Travis and Williamson in the Austin area; and El Paso.

Cost of Replacements and Repairs

AirCheckTexas Drive a Clean Machine allows maximum amounts of $3,000 for a replacement car, current model year to three model years old; $3,000 for a truck, current model year to two model years old; or $3,500 for a hybrid vehicle of current or previous model year. The repair arm of AirCheckTexas will issue vouchers for up to $600 to motorists who meet eligibility requirements and whose vehicles failed the annual emissions test.

	FY 2007	FY 2008
Number of Vehicle Replacements	218	14,863
Total Replacement Cost	$216,910	$44.6 million
Average Replacement Cost	$995	$3,002
Number of Vehicles Repaired	6,885	2,995
Total Repair Cost	$3.4 million	$1.5 million
Average Repair Cost	$495	$504

SB 1604, HB 3838
Radioactive By-product Materials and Uranium Mining

Radioactive by-product material is typically produced by uranium mining or other uranium processing. It can also come from the processing of thorium. By definition, by-product material represents tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes.

SB 1604 affected by-product material and *in situ* uranium mining. Previously, the Department of State Health Services (DSHS) had responsibility for the regulation and oversight of commercial radioactive waste processing and storage, source material recovery (uranium mining licensing), and by-product material disposal, while the TCEQ regulated all other radioactive waste disposal.

SB 1604 transferred certain regulatory responsibilities for by-product materials and uranium mining from the DSHS to the TCEQ. The TCEQ now regulates by-product material processing, storage, and disposal, and specifically regulates the surface and subsurface of uranium mining operations. The bill also addressed the TCEQ's Underground Injection Control Program for regulation of wells associated with *in situ* uranium mining. The TCEQ was required to establish a new state fee for the disposal of radioactive wastes.

Many of the licensing actions inherited by the TCEQ had been pending at the DSHS for years. The TCEQ has begun evaluating the applications and developing a strategy for reviewing these applications and completing the licensing actions according to statutory priority.

SB 1604 also addressed the process for the TCEQ's continued review of a pending application submitted by Waste Control Specialists to the DSHS for a by-product material disposal facility proposed in Andrews County. The TCEQ's technical review was completed by the statutory deadline of October 1, 2007. The by-product material disposal facility license was issued by the Commission in May 2008.

HB 3838 addressed the period between uranium exploration, which is regulated by the Railroad Commission of Texas, and the permitting of injection wells for *in situ* uranium mining, which is regulated by the TCEQ.

The TCEQ is required to register exploration wells that have been permitted by the Railroad Commission and are used in the development of information that the TCEQ requires for area permit applications.

HB 2654
Disposal of Brine, Residuals

With the state moving to expand water supplies by developing large-scale desalination projects, the Legislature authorized the TCEQ to create a general permit for the injection of nonhazardous desalination brine or drinking water residuals.

As a result, the agency approved rules that allow issuance of a general permit for Class I wells injecting nonhazardous desalination concentrate (brine) or nonhazardous water treatment residuals from public water systems. The rules also authorize the use of nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals as an injection fluid for enhanced recovery purposes without requiring a TCEQ permit.

The creation of a single statewide general permit is expected to help deal with the issue of disposal of nonhazardous desalination concentrate, as well as nonhazardous residuals from drinking water treatment. Typical residuals might include trace amounts of arsenic and radionuclides.

The use of injection wells under the state's federally authorized Underground Injection Control program is

an option for managing these constituents. But agency rules had required an individual permit for each Class I well. The new general permit, which is expected to be implemented in 2009, will expedite authorizations for wells used for the purposes spelled out in the new rules.

HB 1254
Electronic Reporting

The TCEQ has an electronic permitting system that allows applicants to file permit applications, pay associated fees, and print out their permit authorizations in quick order. Now the agency has more leverage to encourage online transactions.

HB 1254 authorized the agency to adjust fees as necessary to encourage electronic reporting and use of the agency's electronic document receiving system.

In early 2008, the TCEQ upgraded its electronic permitting system (ePermits) for submittal of storm water general permit authorizations. Before, only about 22 percent of storm water forms were submitted electronically. After the program upgrade, usage rose to 53 percent.

Both monetary and non-monetary incentives have helped call attention to ePermits. Electronic applicants for the multi-sector and construction storm water general permits pay a reduced fee for their Notice of Intent, and they receive immediate permit coverage, rather than waiting the usual seven days.

HB 2714
Computer Recycling

In September 2008, Texas rolled out its first statewide computer recycling program. The program provides for the collection, reuse, and/or recycling of computer equipment that was used primarily for personal or home business purposes.

Manufacturers selling their products in Texas are required now to take back their own brands of desktops, laptops, monitors, keyboards, and mouse devices—at no cost to consumers at the time of recycling.

Retailers, including those on the Internet, may only sell the computer brands for which the manufacturers are listed at **www.texasrecyclescomputers.org**.

The new program addresses a trend in which millions of personal computers become obsolete each year. The proliferation of used electronics generates concerns over proper disposal, because the equipment contains potentially hazardous or toxic substances.

The recycling program emphasizes the fact that the best way to reduce the environmental impact of used computer equipment is to reuse it or recycle it.

To implement the program, the TCEQ compiled a list of computer manufacturers that agreed to comply with the program requirements. The agency also created the computer recycling Web page to inform consumers on how and where to return used equipment. The site links to computer manufacturers' pages and to information on computer reuse.

HB 3732
Clean Energy Projects

To help implement ultraclean energy projects for the state, legislation established 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 responded by crafting definitions for advanced clean energy projects and federally qualified clean coal technology. The agency also approved air permit requirements for both categories. No eligible permit applications had been received by August 31, 2008.

When those permits are sought, the TCEQ must complete the technical review within nine months of declaring the application administratively complete, and it must issue a final order within nine months of the technical review being concluded. Each of those deadlines can be extended by three months, if necessary.

As required, the TCEQ adopted rules to include 18 energy-saving and emission-reducing categories, addressing the expansion of equipment eligible for property tax abatement. This list of facilities, devices, or methods that control air, water, or land pollution must be reviewed every three years.

Other Bills of Note

- **HB 1526:** Relating to incentives for and the use of leak detection technologies for air contaminants.
- **HB 1656:** Relating to the regulation by municipalities of irrigation systems and irrigators.
- **HB 3098:** Relating to fees set by the TCEQ in connection with plans that are subject to review and approval under the Edward's Aquifer rules.
- **HB 3220:** Relating to the environmental regulation and remediation of dry cleaning facilities.
- **SB 1037:** Relating to the prevention of surface water or groundwater pollution from certain evaporation pits.