CHAPTER THREE

Legislation from the 84th Session

During the regular legislative session in 2015, state lawmakers considered 638 bills that had the potential to affect the programs and activities of the Texas Commission on Environmental Quality.

Of those, about 174 bills were passed and became law. The new laws triggered a variety of activities at the TCEQ: new rules, operational or procedural changes, revised guidance documents, or internal administrative actions. Some of the newly enacted laws are summarized in this chapter.

HB 655
Aquifer Storage and Recovery Projects

House Bill 655, by Rep. Lyle Larson, amended the Texas Water Code to add requirements for aquifer storage and recovery projects, which inject water into subsurface geologic units, where it is stored for future recovery and beneficial use. The bill directs the TCEQ to adopt standards for such projects, including standards for well design and operation, the quality of injected water, public notice, reporting, and injection and recovery of appropriated water.

In addition, the bill directs the TCEQ to define the term "native groundwater" as "groundwater naturally occurring in a geologic formation." Rules for bill implementation were adopted on April 27, 2016, and became effective on May 19, 2016.

HB 2230
Disposal of Nonhazardous Brine

HB 2230, introduced by Rep. Lyle Larson, gives the TCEQ the ability to authorize an injection well that is used for oil and gas waste disposal permitted by the Railroad Commission of Texas to be used for the disposal of nonhazardous brine generated by a desalination operation or nonhazardous drinking-water-treatment residuals. A Class II injection well operator under the jurisdiction of the RRC, in good standing with the RRC and operating a Class II well in active status, can seek authorization with the TCEQ to operate the Class II well as a Class V injection well. HB 2230 took effect on Sept. 1, 2015. Proposed rules for bill implementation were approved for publication on July 6, 2016 and are anticipated to be adopted on Dec. 7, 2016.

SB 394
Local Government Supplemental Environmental Projects

Senate Bill 394, adds language to the Texas Water Code that

(1) requires the TCEQ to approve a compliance Supplemental Environmental Project (SEP) for a local government if the local government has not previously committed a violation at the same site with the same underlying cause in the preceding five years, as documented in a commission order, and did not agree to perform the project before the date that the commission initiated the enforcement action, and

(2) exempts such a local government from the financial assessment required by Texas Water Code Section 7.067(a-2) to prevent regulated entities from systematically avoiding compliance through the use of compliance SEPs.

SB 394 took effect June 19, 2015. Several activities were completed in order to implement SB 394. The application form for a compliance SEP was revised. A document entitled "Verification for Compliance SEP to Proceed" was created to ensure that enforcement coordinators and litigation attorneys assigned to enforcement cases involving local governments review all commission orders for the site for the preceding five years. In addition, standard operating procedure (SOP) was revised to ensure that the SEP staff determines whether the local-government respondent has previously agreed to perform the project before the TCEQ initiated the enforcement action. These operational changes were necessary in order to determine whether

a local government meets the statutory conditions and is therefore automatically authorized to perform a compliance SEP without a financial assessment. The SEP guidance document (publication GI-352) was also revised to reflect the changes caused by the passage of SB 394. In addition, SEP personnel conducted a presentation for Office of Compliance and Enforcement staff regarding the operational changes caused by SB 394. Furthermore, the sections of the SEP SOP that were revised to reflect the changes caused by the passage of SB 394 have been provided to OCE staff and the entire SEP SOP has been made available to all agency personnel on the agency's intranet.

HB 2031 and HB 4097
Rule Project No. 2015-029-295-OW
Marine Seawater Desalination

HB 2031, introduced by Rep. Eddie Lucio III, relates to the diversion, treatment, and use of marine seawater from the Gulf of Mexico, conveyance of treated marine seawater, and the discharge of treated marine seawater and waste resulting from desalination. This bill creates Chapter 18, Texas Water Code, to address marine seawater desalination projects.

The bill prohibits the diversion of marine seawater and the discharge of waste resulting from its desalination in a bay or estuary under the expedited permit process as allowed by the new Chapter 18. A person has the option to use existing law to seek a permit to divert or discharge in a bay or estuary.

HB 4097, introduced by Rep. Todd Hunter, relates to seawater-desalination projects for marine seawater from the Gulf of Mexico or other seawater from a bay or arm of the Gulf of Mexico. This bill creates Sections 11.1405 and 26.0272 and amends Sections 27.021 and 27.025, Texas Water Code, to address desalination for industrial purposes.

The bill requires the Public Utilities Commission and the Electricity Reliability Council of Texas (ERCOT) to study seawater-desalination projects. Additionally, the TCEQ will adopt rules to expedite permitting for the diversion of seawater.

The rulemaking to implement HB 2031 and HB 4097 amends Title 30, Texas Administrative Code Chapters 39, 295, and 297. It also creates a new Chapter 318 in the commission's rules.

Chapter 39 establishes an expedited public notice process for treated marine seawater discharges and off-shore discharges from the marine seawater desalination project.

Chapter 295 establishes the requirements for a water-right application to divert marine seawater or seawater and a water-right application to convey treated marine seawater in the bed and banks of a watercourse. It also establishes the requirements for notice of a water-right application to divert marine seawater or seawater and for notice of a water-right application to convey treated marine seawater in the bed and banks of a watercourse.

Chapter 297 establishes the approval criteria for a water-right application to divert marine seawater and seawater and a water-right application to convey treated marine seawater in the bed and banks of a watercourse.

Chapter 318 establishes an expedited permitting process for discharges of treated marine seawater and off-shore discharges.

The proposed rule was approved by the commission for publication and public hearing on May 11, 2016, and was published in the May 27, 2016, issue of the *Texas Register*. The agency held a rulemaking public hearing on June 21, 2016, in Austin at the TCEQ's headquarters.

The agency anticipates that these rules will be adopted at the Oct. 19, 2016, commission agenda meeting and will be effective on Nov. 16, 2016.

SB 709
Contested-Case-Hearing Process

SB 709, introduced by Sen. Troy Fraser, makes several changes to the current contested-case-hearing process for permit applications related to air quality; water quality; municipal, industrial, and hazardous waste; and underground injection control. The legislation amends the affected-person determination process, places a timeline on the State Office of Administrative Hearings, and overhauls the permitting process for all parties involved.

The effective date of the legislation was Sept. 1, 2015, with rulemaking required by Jan. 1, 2016. Implementation of the bill included:

- Creating a new, additional notification to legislators of draft permits, together with changes to procedures for the permitting programs to ensure timely notification without delay of application processing.
- Making updates to the Commissioners' Integrated Database for applications subject to SB 709. The database tracks the procedural process for applications and contains comments and filings submitted on those applications.

- Revising various notice templates and the transmittal memo for the executive director's responses to comments, and changing the procedures for the Office of Chief Clerk for mailing responses to comments and compiling and certifying the administrative record for filing with the State Office of Administrative Hearings.
- Conducting outreach to the public regarding the changes in the law, including revising information on public participation (on the web and in print) disseminated by the Environmental Assistance Division, and ensuring that notice of administratively complete applications for all permits and licenses is available on the TCEQ's website.
- Adopting rules on Dec. 9, 2015, effective Dec. 31, 2015.

HB 942
Tier II Chemical Reporting

HB 942, by Rep. Kyle Kacal, transferred the Tier II Chemical Reporting Program from the Texas Department of State Health Services to the TCEQ. The TCEQ received 13 full-time employees on Sept. 1, 2015—11 transfers from DSHS and two new positions. The TCEQ is instituting a new system that chemical reporters can use to report their chemical storage online through the Tier II report. The TCEQ is also investigating facilities to ensure that those reports are submitted as required. In addition, the TCEQ has launched a grant program to assist Local Emergency Planning Committees in fulfilling the requirements of the Emergency Planning and Community Right to Know Act.

SB 20, General Appropriations Act Art. IX, Sec. 7.12
Contract Administration and Ethics

SB 20, by Sen. Jane Nelson, sought to improve the transparency and administration of state agency contracting. The bill also required agencies to adopt certain ethics procedures. To implement the bill, the TCEQ has made all new contracts available to the public on the agency's website, revised contract management and ethics policies, extended contract document retention periods, updated and published a Contract Management Handbook, and revised procedures for conflict of interest disclosures by executive management and staff involved in procurements. The TCEQ's rule for enhanced contract monitoring has been published and is scheduled for adoption by the commission on Nov. 16, 2016. Additionally, in accordance with related new provisions in the General Appropriations Act, the TCEQ also reports certain contracts to the Legislative Budget Board.