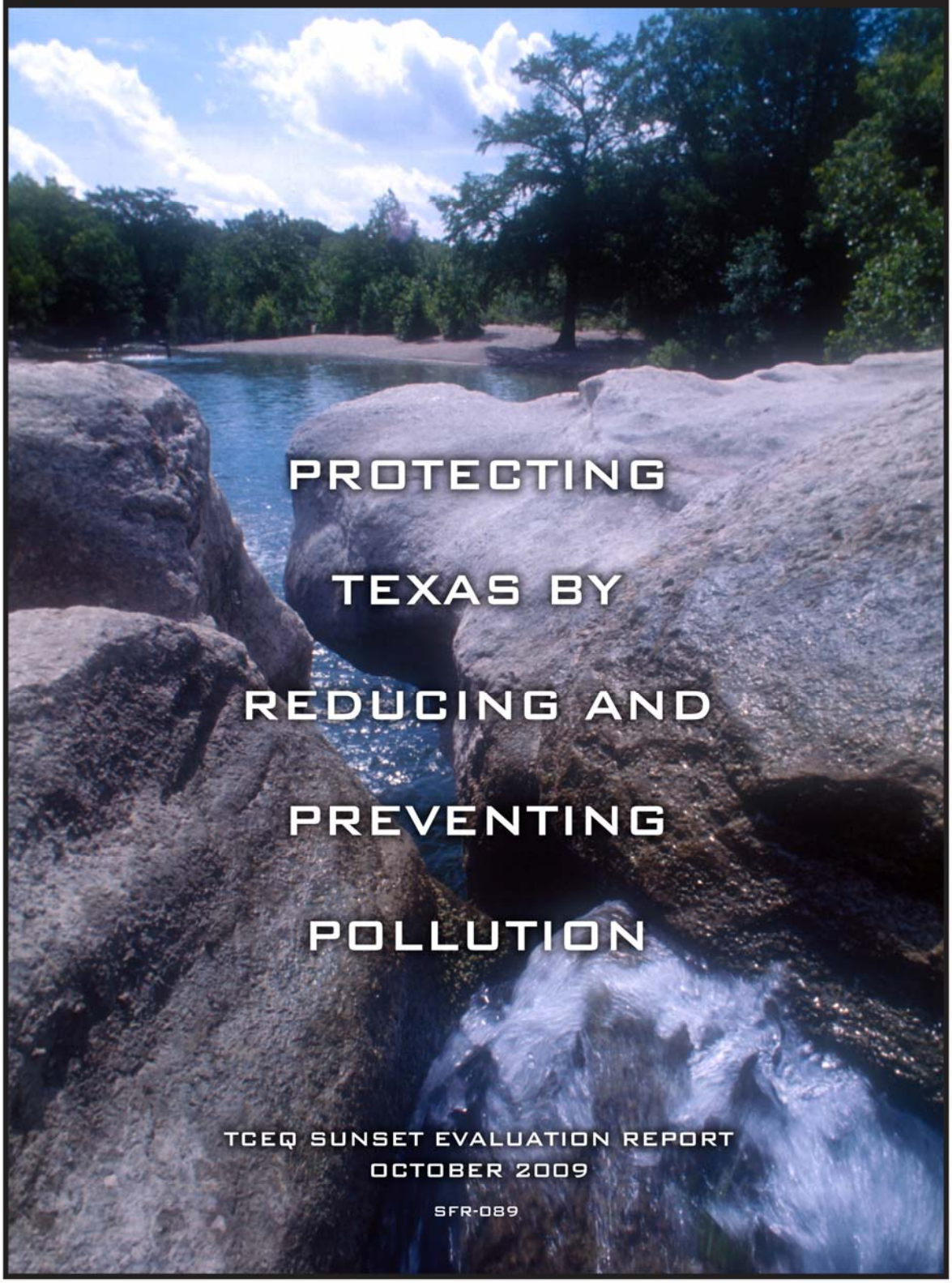
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



PROTECTING TEXAS BY REDUCING AND PREVENTING POLLUTION

TCEQ SUNSET EVALUATION REPORT
OCTOBER 2009

SFR-089

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Bryan W. Shaw, Ph.D., Chairman
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

SELF-EVALUATION REPORT

I. AGENCY CONTACT INFORMATION

Texas Commission on Environmental Quality Exhibit 1: Agency Contacts				
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II. KEY FUNCTIONS AND PERFORMANCE

Provide the following information about the overall operations of your agency. More detailed information about individual programs will be requested in a later section.

A. Provide an overview of your agency's mission, objectives, and key functions.

Mission Statement
According to its mission statement, "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 safe management of waste."

Objectives
The TCEQ has broad objectives and goals for the protection of the state's natural resources, set out in a number of state and federal laws, as well as by the formal delegation of federal laws and programs and intergovernmental agreements. The agency's objectives include the following:

- Establish mechanisms for the public to participate in the agency's decision making process and to access information.

- Issuance of permits and other authorizations for the control of air, hazardous, radioactive, and municipal solid waste generation, and for the safe operation of water and wastewater utilities.

- Inspection of facilities that require TCEQ authorization to ensure compliance with applicable requirements.

- Pursuing appropriate and speedy enforcement to ensure an expedited return to compliance when violations are found.

- Remediation of contamination from hazardous and non-hazardous waste and from leaking underground storage tanks.

- Assuring adequate waste disposal in Texas.

- Responding to the public's complaints and environmental concerns within the agency's jurisdiction.

- Granting and reviewing surface water rights.

- Cooperation with federal, state and local agencies in enforcing state and federal environmental laws.

- Providing education, training and technical assistance to the regulated community to promote high rates of compliance with state and federal environmental laws and regulations, and voluntary efforts to conserve, reduce, reuse, and recycle materials.

- Issuance of occupational certificates to certain environmental professionals.

Key Functions

The TCEQ is a complex institution, continually performing many functions to meet its commitments and responsibilities under state and federal law. The following list gives the agency's chief functions.

Program Operation

- *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 for 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 of 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.

- *Administration of Air-Emissions Trading.* Tracking and verifying the trading of air emissions credits to ensure that trading is done in compliance with the program charter.

Program 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.

Agency Administration

- *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 work force for the agency.

- *Information-Resource Management.* Defining, designing, and maintaining agency information systems (automated or manual).

- *Records Management.* Managing physical documents files (maps, microfiche, manual files etc.).

B. Do each of your key functions continue to serve a clear and ongoing objective? Explain why each of these functions is still needed. What harm would come from no longer performing these functions?

Yes, each of the key functions performed by the TCEQ is designed to protect the state's air, water and land resources, and the public health. The TCEQ has the primary responsibility for:

- assigning and guaranteeing surface water rights;
- preserve water quality and conserve water quantity;
- ensuring the safety of drinking-water supplies;
- controlling air emissions by industry and motor vehicles;
- assessing capacity and ensuring proper disposal of industrial and municipal solid waste;
- permitting the safe handling and disposal of hazardous and low level nuclear waste;
- preventing pollution through the encouragement of recycling; and
- pursuing the cleanup of hazardous waste sites and leaks from underground storage tanks and other petroleum product leaks.

Taken together, these key functions represent a comprehensive program of managing and protecting the environment and the public health in Texas. Failure to continue performing these functions would result in the inevitable degradation of the state's natural resources, the backsliding of compliance with the federal programs delegated to the state, and the endangerment to public health by a number of contaminants currently regulated by the TCEQ.

C. What evidence can your agency provide to show your overall effectiveness and efficiency in meeting your objectives?

The statutory functions assigned to the TCEQ by the state and federal governments are designed to protect the state's air, water and land resources and the public health. Most, if not all of these federally delegated programs require regular and continuing oversight to ensure their efficient and effective operation and administration and compliance with applicable laws and regulations.

The TCEQ has been delegated the responsibility for implementing most major federal environmental programs in Texas through several longstanding agreements. The most fundamental of these is the Performance Partnership Agreement (PPA) with the Environmental Protection Agency (EPA). Texas is eligible for major program delegation because it successfully enacts and executes environmental laws and regulations that are at least as stringent as its federal counterparts, ensuring the protection of the state's natural resources. Associated with each federally delegated program are semi-annual or quarterly meetings with the EPA to review, discuss and judge the overall effectiveness and efficiency of program implementation related to agency objectives.

In 1997, the TNRCC (predecessor agency to the TCEQ) and the EPA adopted a PPA. Texas' was one of the first state environmental agencies in the nation to enter into such an agreement with the EPA. This agreement allows for review of program implementation and operation, and adjustment of planning and funding priorities between major delegated federal programs according to the unique needs of the state. This was particularly important in Texas, which has many distinct natural regions, urban and rural areas, and widely differing environmental management needs.

To further ensure that its federally delegated programs are operated efficiently and effectively, and in a manner to meet program objectives, the EPA, in May 2005, implemented the State Review Framework (SRF). The SRF's primary objective is a highly detailed review of the agency's performance as it relates to its investigation, enforcement, and data collection functions. The review commended TCEQ on the quality and quantity of its inspection and enforcement activities.

For state environmental programs, the following processes and reports reflect the agency's efforts to determine overall effectiveness and efficiency in meeting its objectives.

A number of years ago, the agency determined it was necessary to incorporate in its rulemaking process stakeholder meetings to obtain input on rules undergoing revision, ensuring a broad spectrum of input.

Another avenue is the public discussion opportunity during commissioners' work sessions and agenda meetings. The commissioners set aside a period of time during each work session to hear the public's opinions, issues or complaints. This allows the commission to investigate and ameliorate problems, ensuring efficiency.

Additionally, the TCEQ develops its *Annual Enforcement Report*, mandated by the legislature, on a variety of inspection- and enforcement-related data. The report also includes information on emission events and complaints the agency has received and responded to, as well as a comparison between data for each of the preceding five years. As a result, this report recognizes and highlights the agency's success in meeting its objectives through data and documentation.

Two other mechanisms are the reporting of quarterly Legislative Budget Board performance

measures and annual EPA commitments. These mechanisms both track the agency's success in meeting performance numbers and give justification when those numbers vary by ±5% or more.

The Customer Service Survey is another source of feedback. An annual report based on information mined from the survey data gives the TCEQ both positive and negative comments upon which to base agency organizational and operational changes and decisions. Further, this process gives the agency a benchmark to determine if its objectives respond to the needs of the pubic and regulated community.

Finally, the TCEQ's performance-evaluation system serves as an internal check and balance for its executive management team that ensures that agency objectives receive appropriate emphasis in program administration. The TCEQ strives to be an objective and goal-driven agency and constantly seeks more efficient and effective mechanisms to achieve its objectives. Annually it reviews objectives and develops new or modified goals to challenge its management team to do more, go further, and set the bar higher through a performance-evaluation system that emphasizes and rewards creative thinking as a basis for determination of staff excellence and promotion.

D. Does your agency's enabling law continue to correctly reflect your mission, objectives, and approach to performing your functions? Have you recommended changes to the Legislature in the past to improve your agency's operations? If so, explain. Were the changes adopted?

Yes, the enabling law does continue to reflect the TCEQ's mission, objectives and approach in which it performs its functions. During the 79th, 80th and 81st legislative sessions, the TCEQ identified statutory changes that would improve program operation and its ability to function more efficiently and effectively. Following is a list, by session, of legislative recommendations proposed by the TCEQ. Also included is a short explanation of each proposed change, and whether or not the legislation was adopted.

79th Legislature

Discontinue the Texas Recycling Development Board and transfer its duties jointly to the governor's office, the TCEQ, and the Texas Building and Procurement Commission (TBPC). Amend Texas Health and Safety Code (THSC) Section 361.423 to establish joint coordination of recycling activities by the TCEQ and the TBPC with the agencies maintaining those functions and activities. Eliminate the Texas Recycling Market Development Board.
HB 2466—Passed.

Discontinue the Texas Clean Fleet Program. Eliminate the Texas Clean Fleet Program by repealing THSC Chapter 382, and the following chapters of the Texas Transportation Code: Chapter 451, Subchapter G; Chapter 452, Subchapter F; Chapter 453, Subchapter F; and Chapter 457, Subchapter E. Transit-fleet vehicles would then follow the cleaner federal guidelines known as Tier II standards.
SB 1032—Passed.

Clarify certain public meeting requirements for solid waste facilities, including those that apply to authorizations by registration. Amend THSC Chapter 361 to change certain requirements for holding public meetings on solid waste permit applications and other authorizations to grant TCEQ the authority to hold a public meeting in cases where public interest has been expressed or where a meeting has been specifically requested by state elected officials. Clarify that a public meeting is distinct from a contested case hearing. Eliminate arbitrary time limits for public meetings to ensure that the meetings are scheduled at times when TCEQ personnel have had adequate opportunity to review the technical merits of an application and can answer to interested persons' concerns.
Included in HB 1609—Passed.

Repeal restrictions on enforcement violation payment plans. Amend Texas Water Code (TWC) Section 7.052 to allow the agency the discretion to establish an installment payment plan for regulated entities after a contested case hearing.
SB 739—Passed.

Authorization for public works projects during emergencies. Amend TWC Section 5.515 to allow the commission to issue emergency orders to authorize facilities to temporarily locate and repair or reconstruct public-works projects that have been damaged or destroyed due to acts of nature or emergencies.
HB 2949—Passed.

80th Legislature

Clarify the Clean Air Interstate Rule. Amend THSC Section 382.0173 to change the number of control periods from seven to nine by shifting the allocation update from 2016 to 2018.
SB 1672—Passed.

Dispose of Desalination Concentrate and Drinking Water Treatment Residuals— Amend TWC Sections 27.014, 27.021, 27.023, 27.0511 and THSC Section 361.086 to remove impediments to the use of certain types of injection wells and expedite the authorizations for the use of injection wells for the disposal of desalination concentrate and drinking water treatment residuals.
HB 2654—Passed.

Increase Fees and Scope of Activities with the Edwards Aquifer Protection Program. Amend TWC Section 26.0461 to increase fees for Edwards Aquifer Protection Plans and to broaden the scope of activities that can be funded with those fees.
HB 3098—Passed.

Provide Incentive for Electronic Permit Submissions. Amend TWC Section 5.128 to allow the agency to adjust fees to give incentives for using the agency's e-permitting system.
HB 1254—Passed.

Revise the Permit Renewal Timeframe. Amend THSC Section 382.055 to allow permits to be renewed in conjunction with an amendment that requires public notice.
SB 1673—Passed.

Transfer Dam and Levee Safety and Flood Insurance Programs. Amend TWC Sections 12.052, 16.236, and 16.311–16.324 to transfer the National Flood Insurance Program to the Texas Water Development Board.
SB 1436—Passed.

Require Notice for Cancellation or Termination of Petroleum Underground Storage Tank (UST) Financial Assurance. Add new TWC Section 26.3521 requiring financial-assurance providers to notify the commission when a petroleum UST owner-operator cancels coverage or when the provider terminates coverage.
HB 1956—Passed.

Authorize Shutdown for Petroleum Underground Storage Tanks. Amend TWC Section 26.3475 to grant the TCEQ the authority to issue shutdown orders for UST facilities that do not have adequate financial assurance.
HB 1956—Passed.

Set Interim Rates and Recovery of Rate-Case Expenses. Amend TWC Sections 13.043, 13.185 and 13.187 to allow the executive director to set interim rates and to prohibit the recovery of rate-case expenses associated with contested rate cases.
Similar to HB 33 and SB 726—Did not pass.

81st Legislature

Amend Multiple Sections of the Texas Water Code.

- Change TWC Section 5.1175 that limits the length of payment plans for civil or administrative penalties for small business from a maximum of 12 months to 36 months.
- Revise TWC Section 7.002 to allow the commission to delegate authority to the executive director for administrative orders and penalties.
- Revise TWC Section 26.0135(h) with regard to the Clean Rivers Program to remove the annual limit on recovery cost that was removed in HB 2912, 77th Legislature, the TCEQ Sunset bill, but was inadvertently restored by SB 3, 80th Legislature.

SB 1693—Passed.

Authorize Shutdown of Certain Unregistered Dry-Cleaning Facilities—Amend THSC Chapter 374 to give the agency shutdown authority for unregistered dry-cleaning facilities and drop stations if they fail to correct a violation of the THSC Section 374.102 (regarding registration) within 30 days of receipt of a notice of violation.
HB 3827—Passed.

Clarify the New Technology Research and Development Program (NTRD)—Amend THSC Chapters 386 and 387 to (1) remove the requirement for grant funding for a diesel test center, (2) expand who could manage NTRD, (3) redirect the NTRD's focus to more economically feasible technologies and to include stationary sources, and (4) remove the

restriction that air quality research be conducted only in the Houston and Dallas–Fort Worth areas.
Included in HB 1796—Passed.

Expand e-Notice within the TCEQ—Amend TWC Section 5.028 to authorize the TCEQ to use electronic transmission for information it issues.
HB 3544—Passed.

Amend Multiple Sections of the Texas Water Code.

- Revise TWC Chapters 49 and 54 to allow the commission or the executive director to approve uncontested district dissolution and conversion applications without holding a public hearing.
- Revise TWC Section 13.248 to allow the commission or the executive director to approve uncontested service-area agreements or contracts without a public hearing.
- Revise TWC Section 13.242(c) to also exempt small sewer utilities with a potential of less than 15 connections as is currently provided for small water utilities.
- Remove a portion of TWC Section 13.187(f) which requires rate hearings for public utilities located in Harris County to be held in Harris County.
- Revise TWC Section 13.187, to give the executive director the authority to suspend, escrow or set interim rates for utility rate cases as well as extend the period for which the executive director can suspend rates (currently 150 days).

HB 3550 and SB 1836—Did not pass.

Authorize Certain Functions for the Dam Safety Program—Amend TWC Chapters 11 and 12 to (1) allow the TCEQ to assess administrative penalties up to $10,000/day, as recommended in *Peer Review Report* and *State Auditor's Office (SAO) Audit Report,* and (2) allow the agency to regulate the operation of dams in the State.
HB 2535—Did not pass.

Require Common Carrier Liability—Amend TWC Section 7.156 to create a criminal penalty for any person who physically delivers a regulated substance into an underground storage tank regulated under TWC Chapter 26 which has not been issued a valid, current registration and certificate of compliance. Necessary to comply with requirements contained in the Federal Energy Act of 2005.
HB 3827—Did not pass.

Extend Renewal Period—Amend TWC Section 37.006 to increase the grace period for license renewal from 30 to 60 days and rescind the late-renewal fee.
HB 2698—Did not pass.

E. Do any of your agency's functions overlap or duplicate those of another state or federal agency? Explain if, and why, each of your key functions is most appropriately placed within your agency. How do you ensure against duplication with other related agencies?

Several TCEQ functions have the potential to overlap with and duplicate other state and federal agencies. Since many of these functions have overlapped for a number of years, the TCEQ and its sister state and federal agencies have made an effort, over time, to avoid

duplication through the development of Memorandums of Agreement (MOAs), Memorandums of Understanding (MOUs), Letters of Agreement (LOAs), or informal agreements. Through the development of these documens the TCEQ takes care to ensure that the functions or jurisdictions outlined in the document are related to key functions of the agency such as protection of the environment and public health. Following is a list of functions that have the potential to overlap with another agency's functions, the agency with which the overlap occurs, and how the overlap issue has been addressed. In many cases, the overlap occurs because federally delegated programs are split between two or more agencies in Texas. In some cases, the Texas Legislature, recognizing an overlap, directed the affected agencies to develop an MOA or MOU. While the list is a fairly complete representation of the type and variety of documents the agency has developed over the years to address jurisdictional issues, it is by no means comprehensive. Additional MOAs and MOUs are discussed in several agency program Section VII documents in response to Question (i).

State

National Pollutant Discharge Elimination System (NPDES)—TCEQ and RRC

In 1998, the EPA delegated to the TCEQ partial authority to administer the federal NPDES program. Upon delegation, the TCEQ renamed the system the Texas Pollutant Discharge Elimination System. Through the TPDES, the TCEQ has federal regulatory authority over discharges of pollutants to Texas surface water. However, certain functions related to administration of the program are regulated by the Texas Railroad Commission (RRC), including discharges associated with oil, gas, and geothermal exploration and development.

The TCEQ and RRC entered into an MOU to reflect the regulatory jurisdictions of each agency for specific types of wastes. The original MOU became effective January 1, 1982. It was revised effective December 1, 1987, to reflect legislative clarification of the RRC's jurisdiction over oil and gas wastes and the TCEQ's jurisdiction over industrial and hazardous wastes. The most current amendment to the MOU became effective August 25, 2003.

For those facilities, activities, or types of wastes not specifically addressed in the MOU, the TCEQ and RRC have agreed to enter discussions over which agency should have jurisdiction.

Resource Conservation and Recovery Act (RCRA)—TCEQ and RRC

The EPA delegated to the TCEQ partial authority over the federal RCRA program in 1982. As outlined in the MOU between the RRC and the TCEQ as amended in 2003, the TCEQ has jurisdiction over hazardous waste, that is, "waste, substance or material that results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants." The MOU explaining the jurisdictional split of the respective agencies as defined in Texas statute is in Title 16,Texas Administrative. Code (TAC), Chapter 3.

Disposal of Naturally Occurring Radioactive Material (NORM)—TCEQ and RRC

As outlined in the MOU between the RRC and TCEQ, as amended in 2003, the RRC has jurisdiction over the disposal of NORM waste that is generated in connection with the exploration, development, or production of oil or gas. Also, NORM that is generated in connection with geothermal exploration, development, or production of solution brine mining activities is under the RRC's jurisdiction. The management and disposal of all other NORM waste is under TCEQ jurisdiction. The MOU explaining the jurisdictional split of the respective agencies as defined in Texas statute is found in Title 16 TAC Chapter 3.

Surface Casing—TCEQ and RRC

Within the TCEQ's Surface Casing Program, the agency has jurisdiction to review hydrologic data and electrical logs to determine depths of freshwater and the base of the usable-quality water. The TCEQ portion of the program recommends which hydrologic zones should be protected and the depth at which to set the surface casing for proposed drilling projects. The RRC reviews the TCEQ recommendations, accepting or modifying them. This program is not specifically addressed in the existing MOU between the TCEQ and the RRC.

Oil and Gas Waste Injection Wells—TCEQ and RRC

The TCEQ has the authority and jurisdiction to review RRC filed applications for oil and gas waste injection wells and supply advisory letters containing conclusions and recommendations regarding the protection of freshwater. The RRC has jurisdiction and authority to permit oil and gas waste injection wells.

Oil and Gas Exploration and Drilling—TCEQ and RRC

The Texas Clean Air Act, Chapter 382 of the Texas Health and Safety Code, gives the TCEQ the authority to control the quality of the state's air and to regulate the construction of and emissions from facilities as defined in statute. The RRC has primary regulatory jurisdiction over the operations of the oil and natural gas industries, pipeline transporters, the natural gas and hazardous liquid pipeline industry, natural gas utilities, the liquefied-petroleum-gas industry, and coal and uranium surface mining operations. Facilities regulated by the RRC that emit air contaminants are also subject to TCEQ jurisdiction. The TCEQ and the RRC have jurisdiction to regulate oil and gas processing and gathering plants, as well as oil and gas producing sites.

Surface Water Spills—TCEQ and RRC

Under Chapter 26 of the TWC, the TCEQ has jurisdiction over discharges of waste (spills) into or adjacent to water in the state, other than discharges regulated by the RRC. Because the TWC clearly splits the jurisdiction over spills, the TCEQ and the RRC have developed a MOU to clearly delineate the jurisdictional boundaries. As a result, the TCEQ and RRC have worked well together despite overlapping jurisdictions since the MOA was originally drafted in January 1982.

Motor Vehicle Inspection and Maintenance Program—TCEQ and DPS

In December 1999 a MOU between TCEQ and the Texas Department of Public Safety (DPS) became effective as the formal mechanism for coordinating inspection and maintenance (I/M) program planning, implementation, oversight, evaluation, and areas of primary responsibility. The TCEQ has the authority to make rules related to emissions reduction credits awarded by the EPA, computer modeling of the emissions-reduction credits available to the Texas I/M program, data collection efforts required by 40 CFR Part 51 or the Texas I/M State Implementation Plan, and other responsibilities identified in the agreement. The DPS has the authority to make rules for the implementation and operation of the I/M program.

Point and Nonpoint Source Pollution—TCEQ and TSSWCB

In August 1997, the TNRCC, predecessor agency to the TCEQ, and the Texas State Soil and Water Conservation Board (TSSWCB) were directed to develop a MOU that sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint pollution programs.

Aquaculture—TCEQ and TPWD and TDA

In June 1997, the TNRCC, the Texas Parks and Wildlife Department (TPWD), and the Texas Department of Agriculture (TDA) identified a need for an MOU to ensure that regulation of aquaculture is conducted in a manner that is both collaborative and responsible. It was determined that the TCEQ, the TPWD and the TDA were concerned about issues relating to the raising of non-native aquatic species and the potential for these species to escape into natural ecosystems, including the introduction of disease through these species, as well as the quality and effect of wastewater discharges from aquaculture facilities on receiving waters of Texas. The MOU seeks to establish an interagency review procedure for applications requesting authorization to discharge wastewater from aquaculture facilities.

Drinking Water State Revolving Fund (DWSRF) - TCEQ and TWDB

In July 1997, the TNRCC and the Texas Water Development Board (TWDB) entered into a MOU to outline that the TWDB will obtain TCEQ's assistance in performing the financial, managerial and technical capability assessments for applicants who are expected to apply for funding from the DWSRF. To further facilitate this fund, the TCEQ will provide to TWDB its database of Public Water Supply operators to create mailing lists about the program and funding cycles. Both agencies participate on a standing coordination team to ensure issues affecting the DWSRF Program are addressed in a timely manner.

National Flood Insurance Program (NFIP)—TCEQ, TDMHMR , TDCJ, TPWD, TA&MU, TLRWDA, and GSC

In January 1998, the TNRCC developed several MOUs with the Texas Department of Mental Health and Mental Retardation (TDMHMR), Texas Department of Criminal Justice (TDCJ), Texas Parks and Wildlife Department (TPWD), Texas A&M University System

(TA&MU), Texas Low-Level Radioactive Waste Disposal Authority (TLRWDA), and General Services Commission (GSC). The purpose of the MOUs was to coordinate program responsibilities and define the procedural mechanisms necessary to implement minimum program regulations under the National Floodplain Insurance Program and to implement the Texas State Floodplain Management Plan for State Agencies.

Radiation-Control Functions—TCEQ and DSHS

In November 1998, the TNRCC and the Texas Department of Health (TDH), predecessor agency to the Texas Department of State Health Services (DSHS), entered into an MOU regarding radiation control and mutual cooperation. The MOU lays out the transfer of licensing authority for the recovery and processing of source material and disposal of by-products from the TCEQ to the DSHS.

Transportation Planning— TCEQ and TxDOT

In May 2002, the TNRCC and the Texas Department of Transportation (TxDOT) developed an MOU that addresses transportation planning issues, specifically including processing of documents required by the National Environmental Policy Act. The MOU outlines the facilitation for that coordination and establishes periods for the review of documents coordinated between the agencies on road projects that could have environmental impacts.

Adoption by Reference—TCEQ and AG

In September 1999, the TNRCC and the Attorney General (AG) of Texas developed an MOU containing the TCEQ's and the AG's interpretation concerning intervention in the civil enforcement process under the Texas Solid Waste Disposal Act. This MOU is a revised version of the original MOU effective October 9, 1993.

Asbestos Demolition and Renovation—TCEQ and DSHS

In September 1999, the TNRCC and the TDH were directed to develop a MOU that outlined the agreement of the TCEQ to inspect asbestos disposal sites under its jurisdiction for conformance with federal requirements and to provide copies of the inspection and enforcement documentation to the TDH. This MOU was developed because the 73rd Legislature, in 1993, transferred the responsibility for emissions related to asbestos demolition and renovation activities to the TDH.

Health Care Related Facilities—TCEQ and DSHS

In September 1999, the TNRCC and the TDH developed an MOU to clarify their authorities regarding special waste from health care related facilities. The agencies agreed that special expertise resides in each agency related to its area of authority and responsibility. The agencies further agreed to inform each other should the need arise to amend or modify rules. Additionally the TCEQ is directed to notify the TDH of the failure of any approved treatment technologies, equipment and processes, and the resulting enforcement. Finally, the MOU specifies that the DSHS will provide TCEQ with a listing of approved alternative technologies and a listing of waste categories associated with the approved alternative

technology.

Texas Risk Reduction Rules—TCEQ and Natural Resource Trustees

In April 2001, the TNRCC and the Natural Resource Trustees, consisting of the TPWD, the Texas General Land Office (GLO), the National Oceanic and Atmospheric Administration, and the U.S. Department of the Interior entered into an MOU to facilitate the interaction between all agencies in regard to ecological risk assessments and ecological services analyses. In addition, the MOU outlines that the TCEQ has the primary responsibility for implementing the laws of the state related to conservation of natural resources and the protection of the environment.

Natural-Gas Pipelines that Cross the Border—TCEQ, RRC, THC, GLO, PUC, and Office of the Secretary of State

In October 2001, the TNRCC, the RRC, the Texas Historical Commission, the GLO, the Texas Public Utilities Commission (PUC), and the Office of the Secretary of State entered into an MOU regarding the permitting of natural gas pipelines that cross the border between Texas and Mexico. The MOU clarifies that, with respect to the building of natural gas pipelines that cross the border, the energy needs of the citizens of Texas and Mexico can be more efficiently met if permitting is organized in a manner that reduces the number of agency contacts a potential permittee must make, and assures that the permittee secures all appropriate permits. Specifically relating to the TCEQ, the MOU states that the agency is responsible for the issuing of permits to withdraw United States water from the Rio Grande for hydrostatic testing and for the permitting of operations that emit air contaminants.

Abandoned and Deteriorated Wells—TCEQ and TDLR

In March 2005, the TCEQ and the Texas Department of Licensing and Regulation (TDLR) developed an MOU regarding the coordination efforts between the TDLR and the TCEQ field offices and groundwater conservation districts concerning the investigation for referral of complaints regarding abandoned and deteriorated wells.

Food Preparation and Sales—TCEQ and DSHS

The TCEQ has the responsibility to approve permits and inspect the source and quality of water used for all food preparation and sales. This includes large operations such as food-canning facilities and retail food establishments such as restaurants and convenience stores. However, the jurisdiction is split between TCEQ and the DSHS because the permitting and inspection of actual operations (including food preparation, manufacturing, and processing) falls under the responsibility of the DSHS. The delineation of the duties and responsibilities associated with the differing jurisdictions is outlined and addressed through an informal agreement between the two agencies.

Retail Fueling Facilities—TCEQ and TDA

The TCEQ and TDA perform separate functions as a result of separate jurisdictions at retail

fueling facilities throughout Texas. The TDA conducts inspections for calibration and accuracy of fuel dispensers at the same retail fueling facilities that TCEQ inspects for compliance with state and federal regulations on petroleum storage tanks. Beginning in September 2001, the TCEQ and the TDA entered into an MOA to facilitate the exchange of information regarding certifications of compliance obtained during the separate inspections conducted at the retail fueling facilities. Due to the large number of such facilities within the state, this process allows the agencies to exchange information about individual compliance rates.

Poultry Facilities—TCEQ and TSSWCB

In 2001, the Texas Legislature passed a bill requiring all poultry operations that were not regulated under a TCEQ permit to get a Water Quality Management Plan (WQMP) certified by the TSSWCB. A WQMP describes the management of waste at a poultry operation. The passage of this legislation effectively split the jurisdiction and management responsibilities of poultry facilities in Texas between the TCEQ and the TSSWCB. Currently, approximately 94 percent of all poultry facilities in Texas operate under a WQMP.

To effectively manage the split in functions and responsibility, the TCEQ refers odor complaints from poultry operations to the TSSWCB according to a letter of agreement between the TCEQ and the TSSWCB dated August 24, 2007.

During the 81st legislative session, SB 1693 was adopted due to concerns regarding the jurisdictions of the TCEQ and the TSSWCB. As a result, the LOA will be amended to ensure consistency with the legislation. After September 1, 2009, the TSSWCB will be the first responder to odor complaints only if no other odor complaints concerning that particular farm have been received. In effect, the TSSWCB will only investigate new farms and farms that have never had a previous odor complaint. All other poultry odor complaints will be investigated by the TCEQ within the time frames established in SB 1693.

Texas Environmental Health Institute—TCEQ and DSHS

In 2001, in response to citizen concerns about the potential impact of environmental pollutants on their health, the Texas Legislature passed legislation establishing the Texas Environmental Health Institute (TEHI) as a joint venture between the TDH and the TNRCC.

In December, 2001, an MOA was entered into between the TNRCC and the TDH under the Interagency Cooperation Act, Texas Government Code Chapter 771 to describe the tasks to be performed and the duties and responsibilities of each of the agencies in enabling the institute to accomplish its purposes. The institute was established within the Environmental Epidemiology Division of the DSHS.

Toxic Substances Coordinating Committee (TSCC)—TCEQ and Multiple Agencies

The TSCC was created in 1987 by adoption of SB 537 during the 70th Legislative Session to coordinate communication among member agencies concerning each agency's jurisdiction, responsibilities, and efforts to regulate toxic substances and harmful physical agents. Participating agencies include the TCEQ, DSHS, TPWD, TDA, DPS, GLO, and

RRC.

Engineering Reviews and Analyses—TCEQ and TWDB

In June 2001, the TWDB and the TCEQ developed an LOA to delineate the jurisdiction of duties related to review of plans and specifications for water facilities funded by the TWDB. The LOA states that the TWDB will coordinate the review and processing of plans and specifications for water facilities financed by the TWDB. This will be accomplished in a manner that will satisfy TCEQ's requirements. Conversely, the TCEQ will accept the TWDB's review of plans and specifications in lieu of its own review for water facilities that involve the construction of, or improvements to, surface water treatment facilities and public water supply wells.

Spills Resulting in Fish Kills—TCEQ and TPWD

The TCEQ and Texas Parks and Wildlife Department (TPWD) work as partners to protect and respond to any type of pollution that affects fish, wildlife, and the environment of the State of Texas. While the TCEQ's primary responsibilities lie with the protection of the environment and public health, the TPWD is the agency with the primary responsibility for protecting Texas fish and wildlife, including investigating fish kills and any type of pollution that may cause loss of fish and wildlife resources and habitats. The coordination of activities between the TCEQ and TPWD is by informal agreement.

Federal

Natural Resource Protection—TCEQ and Natural Resource Trustees

In 1995, the TNRCC and the other Natural Resource Trustees (the TPWD, GLO, NOAA, and the U.S. Department of the Interior), entered into an MOA to recognize their common interests and responsibilities as designated natural resource trustees including their coordination and cooperation in the initiation and conducting of assessments of damage to natural resources, settlement negotiations, and development and support of claims for litigation for injuries to natural resources resulting from discharges of oil or releases of hazardous substances, and the application of any natural-resource damages recovered through those mechanisms toward the restoration, rehabilitation, replacement, or acquisition of equivalent natural resources.

Clean Air Act (CAA)—TCEQ and EPA

In 1971, the Texas Air Control Board (TACB) established the air permits program. In 1972, the TACB submitted the first version of the State Implementation Plan (SIP) to the EPA. The CAA requires states to develop a SIP and related permitting program. These two documents delineate jurisdictional boundaries as well as the interaction, oversight and responsibilities between the EPA and various predecessor agencies to the TCEQ. Over time, Texas, through its environmental agencies, has sought and received the authority to administer new and additional parts of the CAA or has submitted revisions to the SIP.

Safe Drinking Water Act (SDWA)—TCEQ and EPA

In 1978, the Texas Department of Water Resources (TDWR), another predecessor agency to the TCEQ, received primacy from EPA for administering the SDWA. The MOA related to SDWA defines the agency's duties and responsibilities related to all functions delegated to the State of Texas. The MOA also delineates the EPA's ongoing oversight responsibilities and TCEQ management and operation. Since the original primacy date, predecessor agencies to the TCEQ have sought and received authority over additional parts of the SDWA.

Underground Injection Control (UIC)—TCEQ and EPA

In 1982, the TDWR received primary authorization for the UIC Program. The program MOA delineates the duties and responsibilities related to delegated functions and outlines the EPA's management and oversight expectations. Further, the MOA defines the agencies' jurisdictional working relationship and lays out processes for discussion and dispute resolution.

Resource Conservation and Recovery Act—TCEQ and EPA

In 1984, the TDWR received final authority for duties related to the RCRA. The MOA defines the agency's duties and responsibilities related to all functions delegated to the State of Texas in the initial program shift from EPA oversight and implementation to agency management and operations. Further, the MOA delineates the jurisdictional division over undelegated portions of the RCRA. Since the original authorization date, predecessor agencies to the TCEQ have sought and received delegation of authority over additional parts of the RCRA.

National Pollutant Discharge Elimination System (NPDES) – TCEQ and EPA

In 1998, the TNRCC assumed authority to administer the NPDES program. Upon delegation, the TCEQ renamed the program the Texas Pollutant Discharge Elimination System (TPDES) Program. Through delegation of TPDES, the TCEQ received federal regulatory authority over discharges of pollutants to Texas surface water. However, as mentioned previously, certain functions related to administration of the program are regulated by the RRC. These functions are delineated in the RRC MOA and deal with discharges associated with oil, gas, and geothermal exploration and development activities. The EPA MOA also defines the working relationship between the TCEQ and the EPA, as well as the agency's duties and responsibilities, and the EPA's oversight authority.

Dam Safety—TCEQ and NRCS

The Natural Resources Conservation Service (NRCS) is a federal agency that provides dam safety services, primarily technical assistance, on approximately 2,000 dams in Texas that were funded and built by NRCS or the Soil Conservation Service (a predecessor) to local sponsoring organizations. These dams, owned by the local sponsoring organizations, are maintained by the NRCS but are under TCEQ Dam Safety Program jurisdiction. To avoid overlap or duplication of functions, or conflict with the NRCS assisted dams, the Dam Safety Program enters into an interagency contract annually with NRCS that enables NRCS to inspect the high- and significant-hazard dams under its management.

Coastal Water Spills— TCEQ and U.S. Coast Guard

In May 2001, the TNRCC the U.S. Coast Guard (USCG) signed an MOA delineating the assignment of functions between them as they relate to coastal and marine discharges or releases of hazardous substances requiring a rapid, efficient, and coordinated response and cleanup by various agencies and from businesses to minimize any imminent or substantial danger to the environment or public health.

F. In general, how do other states carry out similar functions?

In general, most other states maintain environmental agencies with similar powers and responsibilities, many by enforcing delegated federal programs with a base of federal funding. Organization varies from state to state, although the creation of the TCEQ several years ago followed a national trend toward the consolidation of state environmental agencies. Some agencies have additional responsibilities for maintenance of state lands, management of state parks and natural areas, and management of game resources. Some have responsibility for maintaining legislatively established ratios of farmland, open space, and land devoted to various uses. Most state environmental agencies are organized along the lines of air, water, solid waste and hazardous waste, which reflect the organization of federal programs delegated to the states.

G. What key obstacles impair your agency's ability to achieve its objectives?

The TCEQ faces a variety of challenges and obstacles that impair its ability to achieve its objectives. These include:

- The continued development by the federal government of new and expanded mandates. Some of these changes are of questionable benefit to the environment and the state is not always given additional or sufficient resources.

- The ongoing negotiations with federal agencies, such as the EPA, to secure flexibility for the state to manage the federally delegated programs.

- The capacity to educate the public about the complexity of securing environmental improvements within various limitations, including limits on resources, as well as the potential need for lifestyle changes.

- The increasing demands on the state's limited natural resources due to growth in its population and its economy.

- The ability to gather, manage, maintain and properly use the ever growing amount of data collected by the agency that serves as a tool in making make science based decisions.

- The lack of a broad-based fee to support the agency's water programs.

- The options for developing and effectively implementing enforcement related processes, as well as an appropriate penalty policy, that will achieve faster compliance.

- The need to address land use issues and the resulting competition between local and state needs and benefits.

- The availability of sufficient resources to secure and retain a highly advanced and educated work force.

- Responding to ever changing demands and priorities on the organization structure of the agency to ensure that it continues to operate in an effective and efficient manner.

H. Discuss any changes that could impact your agency's key functions in the future (e.g., changes in federal law or outstanding court cases).

Federal Legislation, Statutes, and Regulations

Proposed Legislation Concerning Regulation of Greenhouse Gases

Summary: The American Clean Energy and Security Act of 2009 (H.R. 2454) passed the House on June 26, 2009. The legislation creates an economy-wide cap and trade program for greenhouse gases (GHG). It designates carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons (HFCs) from a chemical manufacturing process at an industrial stationary source, perfluorocarbons, and nitrogen trifluoride as GHGs. It also emphasizes increased energy efficiency and low-carbon energy consumption.
Impact on the TCEQ: Any final 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 Section 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. The EPA has also proposed a rule that would require mandatory reporting of GHG emissions for the development of a GHG registry. The EPA plans to use such data for policy decisions in this area and any final rule is anticipated to impact the future regulation of GHGs. *See* 74 *Federal Register* 16448 (April 10, 2009).

Proposed Dam-Rehabilitation Grant Program

Summary: On March 26, 2009, U.S. Representative Salazar filed H.R. 1770, known as the Dam Rehabilitation and Repair Act of 2009. The bill creates a program to assist states with grants to rehabilitate publicly owned deficient dams. The bill is currently pending.
Impact on the TCEQ: If the bill passes, Texas could apply for funding to assist with the repair or replacement of dams that do not meet state safety and security standards.

Proposed Clean Water Restoration Act

Summary: Representative Oberstar introduced the 2007 Clean Water Restoration Act (CWRA) with the intent of returning jurisdiction to the coverage prior to the court decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (*SWANCC*), 531 U.S. 159 (2001). A companion bill was introduced in the U.S. Senate by Senator Feingold. Neither bill made it through committee. On April 2, 2009, Senator Feingold and 23 cosponsors reintroduced the 2009 Clean Water Restoration Act (S. 787). According to Senator Feingold's press release, the bill aims to restore the protections to isolated wetlands and headwater streams that have been reduced as a result of the United States Supreme Court decisions in *SWANCC* and *Rapanos vs. United States*, 547 U.S. 715 (2006).

Impact on the TCEQ: To facilitate EPA's delegation of NPDES permitting, the Texas statutory definition of water in the state was modified in the 1990s to include wetlands upon delegation (TWC Code Section 26.001). Discharge permits and water quality certifications (Clean Water Act Section 401) of U.S. Army Corps of Engineers Section 404 permits are reviewed in accordance with the Texas Water Quality Standards, which are based on the statutory definition of surface water in the state. Accordingly, Texas law grants the authority necessary to protect its water quality.

Federal Energy Policy Act of 2005 (Public Law 109-058, August 8, 2005)

Summary: The Act (more specifically, Title XV, Subtitle B, the Underground Storage Tank Compliance Act of 2005, which contains amendments to Subtitle I of the federal Solid Waste Disposal Act) requires that states implement a number of significant changes to their approved underground storage tank (UST) programs. The Act requires mandatory recurring inspection of all UST facilities every three years (initial completion deadline August 8, 2011); secondary containment or manufacturer financial assurance for all new UST systems (deadline Feb. 8, 2007); 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 August 8, 2012).

Impact on the TCEQ: The TCEQ will need additional inspectors to adequately perform the numerous recurring inspections of all UST facilities every three years. The TCEQ met the financial assurance requirement with a rule change in January 2009. The TCEQ is still assessing options for addressing the delivery prohibition and is investigating the mandatory training requirement by communicating with accrediting organizations and training providers.

Electronic Reporting

Summary: The EPA published a final regulation (70 *Federal Register* 59848, October 13, 2005) establishing a framework by which it will accept electronic reports from regulated entities. The Cross-Media Electronic Reporting Regulation (CROMERR) could apply to any document submissions required by or permitted under any EPA or authorized program governed by EPA regulations in 40 CFR if it is submitted electronically.

Impact on the TCEQ: Under CROMERR, both new and existing electronic reporting systems require EPA approval. 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.

Changes to Definition of "Solid Waste" Under RCRA Regulations

Summary: In October of 2008, the EPA issued a new final rule that creates exclusions from the definition of *solid waste* to streamline regulation of hazardous secondary materials to encourage beneficial recycling and help conserve resources. The final rule was effective on December 29, 2008. *Solid waste* is defined in 40 CFR Part 261. As explained at 73 *Federal Register* 64668 (October 30, 2008), the EPA promulgated the regulations in response to seven decisions by the U.S. Court of Appeals for the D.C. Circuit (1987–2000), which, taken together, gave the EPA additional direction regarding the proper regulatory definition of *solid waste* for purposes of Subtitle C of the RCRA. The EPA explains that a second purpose for the changes is to clarify the RCRA concept of "legitimate recycling," which is a key component of the EPA's approach to recycling hazardous secondary materials.

Impact on the TCEQ: This change will affect hazardous waste permits, legal services, and enforcement as the agency verifies how the rules apply in the field and addresses any sham recycling. The Industrial and Hazardous Waste Permits Program proposes to adopt the exclusions during the 2009–10 RCRA Cluster rulemaking.

Coal-Ash Regulation

Summary: The EPA is considering several options to regulate coal combustion by-products (CCBs) after a large spill in Tennessee. EPA Administrator Lisa Jackson issued an information request letter dated March 9, 2009, citing Section 104(c) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as authority to review and assess the stability of coal-ash impoundments and units. EPA is considering regulating CCBs under Subtitle C of the RCRA (relating to hazardous waste) or Subtitle D (relating to municipal solid waste) and is also evaluating whether to require closure of all active surface impoundments managing CCBs.

Impact on the TCEQ: A change in the federal regulation of CCBs could have a substantial impact on the management of CCBs in Texas and on the workload of the TCEQ. Texas currently regulates the management and disposal of CCBs, just as it regulates all by-product wastes from industrial facilities. Coal combustion wastes in Texas have not exhibited the characteristics of a hazardous waste, based on analytical testing required by TCEQ industrial waste regulations. Coal ash is typically classified as a Class 2 or 3 non-hazardous waste, which means it could be disposed of in a municipal landfill. However, most CCBs are disposed of on the site of the power plant generator in accordance with THSC Section 361.090. TCEQ intends to formally comment to EPA that Texas believes CCBs should be regulated under Subtitle D, rather than Subtitle C, of the RCRA, if the EPA proceeds with rulemaking.

2008 Eight-Hour Ozone Standard

Summary: Effective May 27, 2008, the EPA promulgated a new eight-hour ozone National Ambient Air Quality Standard (NAAQS). The EPA is expected to designate areas as in attainment, in nonattainment, or unclassifiable for the 2008 eight-hour ozone NAAQS in March 2010.

Impact on the TCEQ: This change will require states, including Texas, to submit revisions to their state implementation plans (SIP) by 2011 to demonstrate attainment and maintenance of the new standard.

Changes to References to Arsenic-Testing Methods for Drinking Water
Summary: The EPA published a final regulation in June 2009, which changed references to analytical methods for arsenic testing, removing references to methods that are no longer approved. The EPA is updating its list of approved arsenic methods and revising and deleting verbiage in its regulations to remove references to methods no longer approved.
Impact on the TCEQ: Once the final list of approved methods is issued by the EPA, the TCEQ may be required to incorporate the changes into the agency's rules.

Court Cases (Decided)

***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 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 verbiage. Since the decision was issued, some parties potentially responsible for contamination at state Superfund sites have argued that this case relieves them of their liability to the state for cleanup of certain sites, and those parties have refused to fund or perform cleanups on that basis. 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 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 United States Supreme Court reversed and remanded to the D.C. Circuit Court, finding that greenhouse gases fit within the Federal 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.
Impact on the TCEQ: Though action by the EPA to regulate greenhouse gases from motor vehicles would have little impact on the TCEQ—since states (except California) are preempted from regulating motor vehicles—if the EPA were to finalize broader regulations

in the future relating to greenhouse gas emissions, then the TCEQ would potentially be required to implement the new regulations. Before the EPA may issue standards addressing emissions of greenhouse gases from new motor vehicles or engines under Section 202, it must first decide whether the air pollutant under consideration may reasonably be anticipated to endanger the public health or welfare. Then it must decide whether emissions of an air pollutant from new motor vehicles or engines cause or contribute to said air pollution. The EPA issued its proposed endangerment findings and "cause or contribute" determination on April 24, 2009 (74 *Federal Register* 18886); comments were due June 23, 2009. EPA made the finding with respect to six greenhouse gases that it has determined together constitute the root of the climate change problem: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. However, in the determination, the EPA recognizes that only four of the six greenhouse gases are emitted by Section 202 sources.

Examples of Post-*Massachusetts* Cases: In continued nationwide challenges to coal-fired power plants, environmental groups have used the *Massachusetts* opinion to support claims that carbon dioxide should be regulated through air quality permitting. None of the following cases have direct precedential effect on Texas but they are indicative of how the issue is unfolding nationally and may affect TCEQ in the future.

- ***In re Deseret Power Electric Cooperative*, PSD Permit No. PSD-OU-0002-4.00, PSD Appeal No. 07-03 (November 13, 2008)**
  In the *Deseret* application, the EPA Environmental Appeals Board (EAB) found that the record developed during the permitting process did not support the EPA region's reason for not including a best available control technology (BACT) limit for carbon dioxide. Under the EPA's Prevention of Significant Deterioration program, new and certain modified facilities in areas designated as in attainment or unclassifiable must undergo a BACT review for each regulated pollutant the facility has the potential to emit in a significant amount. The EAB remanded the matter to the EPA region to develop an adequate record on its reconsideration of whether to include a BACT limit for carbon dioxide. The decision does not require the installation of BACT to limit carbon dioxide.

- ***In re Northern Michigan University Ripley Heating Plant*, PSD Permit No. 60-07; PSD Appeal No. 08-02 (February 18, 2009)**
  The EPA Environmental Appeals Board remanded the permit for, inter alia, analysis of whether carbon dioxide emissions should include BACT limitations.

- ***Longleaf Energy Associates, LLC v. Friends of the Chattahoochee, Inc.*, 2009 WL 1929192, (Ga.App. 2009)**
  In the application of Longleaf Energy Associates, LLC, the Georgia Court of Appeals reversed the Fulton County Superior Court findings that, inter alia, the Georgia State Implementation Plan "required the EPD [Environmental Protection Division of the Georgia Department of Natural Resources] to control the power plant's CO_2 emissions using BACT," and concluded that *Massachusetts v. EPA* did not mandate the superior court's ruling, the EPA had not issued any findings pursuant to its proposed endangerment finding, and the EPA had not "exercised its authority pursuant to

Massachusetts v. EPA to regulate CO_2 emissions."

- ***Appalachian Voices, et al. v. State Air Pollution Control Board, et al.*, Case No. CL08-3530, Circuit Court of the City of Richmond, letter ruling, (August 10, 2009)**
  On the appeal of the issuance of a Prevention of Significant Deterioration permit by the Virginia State Air Pollution Control Board, the Circuit Court of the City of Richmond concluded that no state or federal regulations have been established for carbon dioxide, and therefore there was no authority to claim best available control technology was required for carbon dioxide.

***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 EPA's final eight-hour ozone National Ambient Air Quality Standards (NAAQS) Phase I Implementation Rule regarding implementation of the eight-hour ozone NAAQS. Phase I addressed classifications, anti-backsliding requirements, 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 December 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 FCAA 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 FCAA 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 January 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. Finally, since the Houston-Galveston-Brazoria area did not attain the one-hour ozone standard by its attainment date of November 15, 2007, Section 185 of the Federal 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).

***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 the delisting of 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, EPA has decided

to develop emissions standards for power plants pursuant to the Federal Clean Air Act, Section 112. Accordingly, on February 6, 2009, the Department of Justice, on behalf of the EPA, requested that the U.S. Supreme Court dismiss EPA's petition for certiorari in this case, which was granted on February 23, 2009. Additionally on February 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.

***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 Sierra Club filed a citizen suit against the EPA. The plaintiffs alleged that the EPA failed to fulfill its nondiscretionary duties to (1) find that DFW did not achieve attainment by the deadline of November 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 August 10, 2006, the District Court awarded attorneys' fees against the TCEQ, which appealed to the Fifth Circuit Court of Appeals. The Fifth Circuit issued an unpublished opinion on February 7, 2008, reversing the award of attorneys' fees to Blue Skies Alliance because that organization did not achieve success against 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 nitrogen oxides and sulfur dioxide from electric-generating unites 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)**

Case Summary: On November 27, 2006, the EPA issued a Final Aquatic Pesticides Rule 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 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, (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 Fifth. The case was assigned to the Sixth Circuit Court of Appeals. On January 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 Sixth 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 NPDES general permit for pesticide applications, for states to develop permits, and to reach out to and educate the regulated community.
Impact on the TCEQ: Since Texas is an NPDES delegated state, the outcome of the case may require the TCEQ to regulate pesticide application under the Texas program. Currently the Texas Department of Agriculture has authority for pesticide use and application in Texas and issues licenses to private and commercial applicators.

***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 Section 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 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 C.F.R. Section 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 verbiage. 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. However, it is anticipated that this case will be appealed to the U.S. Supreme Court.

***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 Eleventh 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 United States 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 Ninth 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 currently regulates storm water related to construction and development activities. Runoffs from construction are currently regulated under the TCEQ's construction general permit. When the EPA adopts ELGs and NSPS for construction storm water, 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 Ninth 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 coal bed 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 Ninth 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 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 Ninth 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: The impact of this case and the EPA VGP will be considered in the rulemaking to implement SB 2445 (81st legislative session) relating to boat-sewage

disposal and designation of no-discharge zones. The VGP may have implications for vessels operating in state waters in the Gulf of Mexico.

***The Piney Run Ass'n v. The County Com'rs 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 which exceeded the thermal limitation set forth in the county's NPDES permit. The Fourth 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. 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 U.S, 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.

Examples of Post-*Rapanos* Interpretations: With the exception of the first two cases below and the referenced EPA guidance, none of the following have direct precedential

effect on Texas but they are indicative of how the issue is being addressed on a national level.

- ***United States v. Lucas,* 516 F.3d 316 (5th Cir. 2008)**
  The court used Justice Kennedy's "significant nexus" test from *Rapanos* as the standard for determining whether the wetlands were jurisdictional, but did not opine on which *Rapanos* test was controlling.

- ***United States v. Chevron Pipe Line Co.*, 437 F. Supp. 2d 605 (N.D. Tex. June 28, 2006)**
  The district court explained that because Justice Kennedy failed to elaborate on the "significant nexus" required in *Rapanos*, the court had to look to the prior reasoning in the Fifth Circuit. The court observed that the Fifth Circuit had interpreted "the waters of the United States" narrowly under the Oil Pollution Act, and explained that, without any clear direction on determining a significant nexus, the district court would do exactly as Chief Justice Roberts declared and "feel [its] way on a case-by-case basis." The district court then held that, as a matter of law in the Fifth Circuit, the connection of generally dry channels and creek beds will not suffice to create a "significant nexus" to navigable water simply because one feeds into the next during rare times of actual flow.

- ***Northern California River Watch v. City of Healdsburg*, 496 F.3d 993 (9th Cir. 2007)**
  The court concluded that the controlling opinion in *Rapanos* is that of Justice Kennedy—to qualify as a navigable water under the CWA, the body of water itself need not be continuously flowing, but that there must be a "significant nexus" to a waterway that is in fact navigable.

- ***San Francisco Baykeeper v. Cargill Salt Div.*, 481 F.3d 700 (9th Cir. 2007)**
  The court reasoned that, under the controlling regulations, the only areas that are defined as waters of the United States by reason of adjacency to other such waters are "wetlands," and found improper the lower court's finding that the pond at issue in the case was a jurisdictional water because the same characteristics that justified protection of adjacent wetlands applied to adjacent ponds.

- ***United States. v. Cundiff,* 555 F.3d 200 (6th Cir. 2009)**
  The court determined that jurisdiction over certain wetlands was proper under each of the primary *Rapanos* opinions and therefore did not decide which test controls in all future cases.

- ***United States v. Gerke Excavating, Inc.*, 464 F.3d 723, 724–25 (7th Cir. 2006)**
  The court noted that, when a majority of the United States Supreme Court agrees only on the outcome of a case and not on the grounds for that outcome, lower-court judges are to follow the narrowest ground to which a majority of the justices would have assented if forced to choose, observing that in *Rapanos* the narrowest ground was Justice Kennedy's "significant nexus" test.

- ***United States v. Johnson*, 467 F.3d 56 (1st Cir. 2006)**

The Court of Appeals held that the United States could assert jurisdiction over the sites at issue in the case by meeting either the standard set forth by Justice Kennedy in *Rapanos* or by meeting the standard set forth by the plurality in the same case.

- ***United States v. Moses,* 496 F.3d 984 (9th Cir. 2007)**
  The issue in this case was whether an intermittently running creek (water flowing for two months per year) was a jurisdictional wetland for purposes of Section 404(b) dredge and fill permitting. The Ninth Circuit reviewed the plurality opinion, Kennedy's concurring opinion, and the dissent in *Rapanos*, and determined that seasonally intermittent streams can be "waters of the United States."

- ***United States. v. Robison,* 505 F.3d 1208 (11th Cir. 2007)**
  Concluded that Justice Kennedy's "significant nexus" test provides the governing rule in *Rapanos*.

EPA Guidance
On June 5, 2007, the EPA and the Corps issued guidance clarifying CWA jurisdiction following the decision in *Rapanos*. The EPA and the Corps jointly reviewed the comments received about the guidance and released a revised version on December 2, 2008. According to this guidance, when there is no majority opinion in a U.S. Supreme Court case, controlling legal principles may be derived from those principles espoused by five or more justices, and thus regulatory jurisdiction under the CWA exists over a water body if either the plurality's or Justice Kennedy's standard is satisfied. The guidance sets forth criteria to be used to determine which waters will be considered jurisdictional.

***S.D. Warren Co. v. Maine Bd. 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 confined animal-feeding operations (CAFOs). The Second 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 Second Circuit found that the rules must expressly allow for a public meeting and for public input on the NMPs. In addition, the Second Circuit found that the Clean Water Act prevents the EPA from imposing on CAFOs the obligation to seek an NPDES permit or to demonstrate 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 December 22, 2008. These regulations revised the NPDES permitting requirements (40 CFR Part 122) and Effluent Limitations Guidelines and Standards (40 CFR Part 412) for CAFOs. The executive director is proposing rules to address the outcome in the *Waterkeeper'*s 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 the voluntary superior performance new source performance standard for new swine, veal-calf, and poultry operations.

Court Cases (Pending)

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

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.

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, 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 the El Paso Water Improvement District No. 1 appealed, and the case was heard in November of 2001. The Tenth 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 December 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.

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 January 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 December 19, 2008, the Northwest Environmental Advocates 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 January 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 which 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 that 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 will 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.

***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 permitting 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 will affect how the agency determines who is an "affected person" for purposes of referring a case to the State Office of Administrative Hearings for contested case proceeding. Additionally, the TCEQ's interpretation and implementation of the anti-degradation requirements in the Texas Surface Water Quality Standards are being challenged in this case as well. Anti-degradation review is central to - water quality permitting at the TCEQ. Currently, the agency uses narrative criteria for nutrients such as phosphorus. In *Hays CAN*, the protestants are urging the court to require the agency to use quantitative (numeric) criteria for nutrients. If the court agrees with the argument, it would affect the way the agency has historically implemented the Texas Surface Water Quality Standards.

***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.

***State of Texas v. Michael Joseph Rhine*, 255 S.W.3d 745, (Tex.App.–Fort Worth 2008, pet. granted)**

Case Summary: This case is a constitutional challenge to a provision of the Texas Water Code that creates criminal penalties for violating TCEQ rules adopted under the Texas Clean Air Act. The challenge alleged that this provision of the TWC is void as a result of the legislature's unconstitutional delegation of its authority to an executive-branch agency in violation under the Texas Constitution's nondelegation doctrine. The trial court found that the provision was void as an unconstitutional delegation of authority and the state appealed. The Fort Worth Court of Appeals held that the TCEQ is a public entity for purposes of the nondelegation doctrine; the legislature could not practically and efficiently have exercised the powers delegated to the TCEQ to control outdoor burning of waste and combustible materials; and the statute included adequate limitations and guidelines such that it was not an unconstitutional delegation of power. The Court of Criminal Appeals granted a petition for discretionary review and oral arguments were heard in February of 2009. On September 23, 2009 the Court of Criminal Appeals affirmed the judgment of the Court of Appeals and remanded the case to the trial court for further proceedings. The

Court held that the legislature declared a policy and set standards and limitations on the authority delegated to the TCEQ that are capable of reasonable application, provide guidance, and limit discretion, it has not unconstitutionally delegated to the TCEQ authority more "properly attached to" the legislature and, therefore, there is no violation of the separation of powers principle of Art. II, Section I, of the Texas Constitution. Mr. Rhine may still appeal the ruling to the U.S. Supreme Court.

Impact on the TCEQ: If the provision is found to be an unconstitutional delegation of the legislature's authority, the TCEQ would be unable to obtain criminal prosecution for an intentional or knowing violation of TCEQ rules adopted under the Texas Clean Air Act. Additionally there are other criminal statutes in the Texas Water Code which also create criminal penalties for intentional or knowing violations of TCEQ rules adopted under legislative authority. These statutes may also face similar constitutional challenges.

I. What are your agency's biggest opportunities for improvement in the future?

The TCEQ has several opportunities to improve on its ability to constructively engage with the public, elected and appointed officials, and the regulated community. These opportunities will be driven by such challenges as addressing the needs of a growing population and increasing scrutiny from the federal government, while maintaining both environmental protection and economic prosperity.

These challenges are not faced by Texans alone. National and even international concerns will add further demands for effective environmental management. The answers to these challenges will be found in proactive, innovative responses and creative solutions by the TCEQ and its partners. The TCEQ will face these challenges and others by building on the environmental successes already achieved in Texas.

Building Relationships and Partnerships

The need to address ever changing federal laws and regulations presents the TCEQ with the opportunity to work in partnership with the federal government on the goal of improving Texas' environment.

The agency has worked over many years with various authorities across the state in developing required federal clean-air plans and these relations will continue as the need for revisions to those plans are needed. These partnerships are especially relevant in light of the EPA's questioning the state's implementation of components of the federal Clean Air Act.

There will be more demand for the state's water resources. Pressure on the state's water supply is further intensified by an ongoing drought and driving need to ensure sufficient resources and authority to manage limited resources. The agency has worked to maintain a safe and adequate drinking water supply. The state's growing water needs will facilitate the TCEQ's effort to actively engage in discussions with citizens, regulated entities, sister state agencies and the legislature about the future direction of the state's water policy.

TCEQ is encouraged by the public's interest in the environment and will draw on this interest to educate citizens about how potential lifestyle changes involving conservation and

practical alternatives can improve the environment. For example, turning off unneeded lights or switching to energy-efficient bulbs, using rainwater to irrigate landscapes, and proper disposal of electronic waste can protect the environment.

The TCEQ will also take the opportunity to build on its successes with Mexico (including Mexican border states) to address joint environmental problems and find common solutions.

Technologies

Mobile emissions across the state, as well as ever changing federal clean air standards, represent additional challenges today and into the future. Existing state programs have decreased the ozone levels in many communities while other programs have reduced emissions of nitrogen oxides from older heavy-duty vehicles and equipment by over 100,000 tons since 2002. In a world of increasing emissions, the challenge to meet federal clean-air standards represents an opportunity for the TCEQ to advance the use of emerging technologies in emission reductions and controls so that the state's air quality can continue to improve.

There will also be more rigorous scrutiny of how TCEQ maintains the quality of the state's water. The population of the state is expected to double by 2050. With more people come more regulated entities and both bring the possibility of additional pollutants entering the state's waterways. Existing programs have demonstrated a reduction in pollutant loading to Texas streams as measured by a reduction in biochemical oxygen demand. However, the demand for clean, usable water will require the TCEQ to engage in discussions with its stakeholders regarding water policy. Additionally, the challenge to keep the state's water clean and usable affords the TCEQ the opportunity to aggressively promote the use of emerging water-related technologies.

Monitoring

Increasing the use of monitoring technologies will position the agency to make determinations based on the most current scientific data derived from the most advanced tools available. For example, Harris County and the surrounding area is one of the most heavily monitored areas in the state and indeed the nation. Information from all these monitors indicates where progress has been made and where more work is needed.

Information Technology

In response to the public's interest in the environment, and the demand for ever increasing amounts of information, the TCEQ will use emerging information technologies to communicate dynamically with interested parties.

Agency Staffing

While meeting the external challenges of the environment, the TCEQ must also answer an internal challenge: maintaining and deploying its professional and highly technically skilled workforce in a manner that most effectively and efficiently meets the needs of the state. Additionally, the TCEQ will need to ensure it has adequate resources to maintain and build upon the need for personnel across the state.

By retaining skilled professionals in Austin and around the state, TCEQ ensures that it has

the appropriate professional and technical staff to thoughtfully, consistently, and timely respond to a complex array of issues. However, staffing challenges also provide an opportunity to continually evaluate the use of agency resources to determine the best combination of personnel to address the needs of both the public and the regulated community.

As shown, the TCEQ faces many challenges over the coming years. However, by building on current policies that have afforded environmental benefits, the agency has positioned itself to offer the best possible protection of the state's human and natural resources consistent with sustainable economic development.

J. In the following chart, provide information regarding your agency's key performance measures included in your appropriations bill pattern, including outcome, input, efficiency, and explanatory measures. See Example 2 or click here to link directly to the example.

Texas Commission on Environmental Quality
Exhibit 2: Key Performance Measures — Fiscal Year 2008

Key Performance Measures	FY 2008 Target	FY 2008 Actual Performance	FY 2008 % of Annual Target
GOAL A: Assessment, Planning and Permitting			
OUTCOMES:			
Annual percentage of stationary and mobile source pollution reductions in non-attainment areas	6%	3%	50%
Nitrogen oxides (NO_x) emissions reduced through the Texas Emissions Reduction Plan (TERP)	70	18.50	26.43%
Annual percentage reduction in pollution from permitted wastewater facilities discharging to the waters of the state	0.10%	0.36%	360%
Percentage of Texas surface waters meeting or exceeding water quality standards	67%	64.30%	95.97%
Annual percentage reduction in disposal of municipal solid waste (MSW) per capita	–0.02%	–7%	35,000%
Annual percentage decrease in the toxic releases in Texas	2%	3%	150%
Percentage of scheduled licensing activities complete	100%	90%	90%
A.1.1 Strategy: Air Quality Assessment and Planning			
OUTPUTS:			
Number of point source air quality assessments	2,000	1,965	98.25%
Number of area source air quality assessments	2,500	2,577	103.08%
Number of mobile source air quality assessments	1,250	1,268	101.44%
Tons of NO_x reduced through TERP	28,611	18,218	63.67%
Number of new technology grant proposals reviewed	62	74	119.35%

Number of vehicles repaired or replaced through LIRAP assistance	15,000	18,492	123.28%
EFFICIENCIES:			
Average cost of LIRAP vehicle emissions repairs and retrofits	$525	$504.61	96.12%
Average cost/ton of NO_x reduced through TERP	$5,000	$7,816	156.32%
Average number of days to review a grant proposal	1	1.50	150%
A.1.2 Strategy: Water Assessment and Planning **OUTPUT:**			
Number of surface water assessments	67	65	97.01%
Number of groundwater assessments	60	59	98.33%
A.1.3 Strategy: Waste Assessment and Planning **OUTPUT:**			
Number of MSW facility capacity assessments	250	246	98.40%
EFFICIENCIES:			
Average cost per MSW facility capacity assessment	$35	$32.30	92.29%
A.2.1 Strategy: Air Quality Permitting **OUTPUT:**			
Number of state and federal new-source-review air quality permit applications reviewed	5,800	4,744	81.79%
Number of federal air quality operating permits reviewed	1,100	868	78.91%
A.2.2 Strategy: Water Resource Permitting **OUTPUT:**			
Number of applications to address water quality impacts reviewed	18,158	20,221	111.36%
Number of CAFO authorizations reviewed	90	123	136.67%
A.2.3 Strategy: Waste Management and Permitting **OUTPUT:**			
Number of non–hazardous waste permit applications reviewed	236	232	98.31%
Number of hazardous waste permit applications reviewed	160	198	123.75%
A.2.4 Strategy: Occupational Licensing **OUTPUT:**			
Number of examinations administered	10,500	11,681	111.25%
GOAL B: Drinking Water and Water Utilities **OUTCOMES:**			
Percentage of Texas population served by public water systems which meet drinking water standards	94%	96%	102.13%
B.1.1 Strategy: Safe Drinking Water **OUTPUT:**			
Number of public drinking water systems which meet primary drinking water standards	6,200	6,341	102.27%
Number of drinking water samples collected	36,051	46,657	129.42%
B.1.2 Strategy: Water Utilities Oversight **OUTPUT:**			
Number of utility rate reviews performed	100	97	97%
GOAL C: Enforcement and Compliance Support			

OUTCOME:			
Percentage of inspected or investigated air sites in compliance	98%	94.70%	96.63%
Percent of inspected or investigated water sites and facilities in compliance	97%	99.30%	102.37%
Percentage of inspected or investigated waste sites in compliance	97%	93.70%	96.60%
Percentage of identified noncompliant sites and facilities for which timely and appropriate enforcement action is taken	85%	82.90%	97.53%
Percentage of administrative penalties collected	88%	87.40%	99.32%
C.1.1 Strategy: Field Inspections and Complaints **OUTPUTS:**			
Number of inspections and investigations of air sites	13,000	11,280	86.77%
Number of inspections and investigations of water rights sites	34,000	36,446	107.19%
Number of inspections and investigations of water sites and facilities	8,500	8,705	102.41%
Number of inspections and investigations of livestock and poultry operation sites	700	628	89.71%
Number of inspections and investigations of waste sites	7,358	8,511	115.67%
C.1.2 Strategy: Enforcement and Compliance Support **OUTPUTS:**			
Number of environmental laboratories accredited	300	248	82.67%
Number of small business and local governments assisted	54,000	108,623	201.15%
GOAL D: Pollution Cleanup **OUTCOME:**			
Percentage of leaking petroleum storage tank sites cleaned up	88%	90%	102.27%
Percentage of Superfund sites cleaned up	57%	63.57%	111.53%
Percent of voluntary and brownfield cleanup properties made available for commercial or industrial redevelopment, community, or other economic reuse	65%	67.20%	103.38%
D.1.1 Strategy: Storage Tank Administration and Cleanup **OUTPUTS:**			
Number of Petroleum Storage Tank Reimbursement Fund applications processed	3,500	2,673	76.37%
D.1.2 Strategy: Hazardous Materials Cleanup **OUTPUTS:**			
Number of voluntary and brownfield cleanups completed	80	109	136.25%
Number of Superfund sites in Texas undergoing evaluation and cleanup	67	48	71.64%
Number of Superfund cleanups completed	4	4	100%
Number of Dry Cleaner Remediation program applications received	30	31	103.33%
GOAL E: River Compact Commissions **OUTCOMES:**			

Percentage received of Texas' equitable share of quality water annually as apportioned by the Canadian River Compact	100%	35%	35%
Percentage received of Texas' equitable share of quality water annually as apportioned by the Pecos River Compact	100%	217%	217%
Percentage received of Texas' equitable share of quality water annually as apportioned by the Red River Compact	100%	100%	100%
Percentage received of Texas' equitable share of quality water annually as apportioned by Rio Grande Compact	100%	94%	94%
Percentage received of Texas' equitable share of quality water annually as apportioned by the Sabine River Compact	100%	98%	98%

III. HISTORY AND MAJOR EVENTS

Provide a timeline of your agency's history and key events, including:

- **the date your agency was established;**
- **the original purpose and responsibilities of your agency;**
- **major changes in responsibilities or statutory authority;**
- **changes to your policymaking body's name or composition;**
- **significant changes in state/federal legislation, mandates, or funding;**
- **significant state/federal litigation that specifically affects your agency's operations; and**
- **key changes in your agency's organization (e.g., a major reorganization of the agency's divisions or program areas).**

See **History and Major Events Examples** or **click here to link directly to an example**.

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 non-hazardous 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 creates freshwater supply districts.

1925

- The legislature organizes 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

- **Congress enacts the federal 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.

- 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

- **Congress passes the federal 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.

- **Congress passes the Safe Drinking Water Act.**

1976

- **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

- **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.**

- **Congress passes the Federal 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 EPA for underground injection control.

1984

- **Congress passes the Hazardous and Solid Waste Amendments to the RCRA.**

- Texas receives final RCRA authorization from EPA.

1985

- **Congress passes amendments to the 1980 Federal 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

- **Congress passes the Superfund Amendments and Reauthorization Act, reauthorizes CERCLA, and creates the Toxics Release Inventory.**

- **Congress amends the Safe Drinking Water Act.**

1987

- **Congress passes the federal Water Quality Act of 1987.**

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

1989

- The legislature expands and funds Petroleum Storage Tank (PST) Program.

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

1990

- **Congress adopts the federal Clean Air Act Amendments of 1990.**

- **Congress passes the Federal Oil Pollution Act.**

1991

- The Texas Air Control Board is expanded to implement the 1990 Amendments to the Federal Clean Air Act.

- The legislature, in special session, creates the Texas Natural Resource Conservation Commission (TNRCC), to be effective September 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 HB 1920, which establishes the Tax Relief for Pollution Control Equipment 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 Non-point Source, and 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 oversight 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 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 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. This legislation 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 (TCEQ) by January 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 September 1 from the TNRCC to the TCEQ.

2003

- Under HB 1365 the Texas 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 Texas Legislature establishes a program to regulate and remediate dry cleaning facilities at the TCEQ with passage of HB 1366.

- Through HB 1567, the legislature provides for the licensing of a facility for 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 Texas Legislature, in the third called session, 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.

- TCEQ personnel are directed by the commissioners to begin a comprehensive review, including extensive public involvement, of the agency's enforcement process.

- The Texas 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 which began on March 13, 2006.

- On March 1, 2006, the TCEQ adopts a major revision, streamlining, and improvement of state regulations on municipal solid waste.

2007

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

- 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 that 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 surface water to meet 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.

- On December 18, 2007, 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

- In early 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 percent to 53 percent.

- The TCEQ responds to the aftermath of Hurricane Ike and participates in a massive recovery effort.

- **On March 12, 2008, the EPA revises the 1997 eight-hour ozone NAAQS of 0.08 parts per million (ppm) by lowering the standard to 0.075 ppm.**

- **On May 20, 2008, the EPA proposes to lower the NAAQS standard for lead from the current 1.5 micrograms of lead per cubic meter of ambient air.**

- As required by the Federal Clean Air Act, the governor of each state provides to EPA the list of areas that the state believes are not meeting the federal ozone standard. To assist the governor in providing that list the commission makes recommendations to the governor in December on what areas in Texas did not meet the revised ozone standard.

2009

- **In March 2009, the governor submits to 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.

IV. POLICYMAKING STRUCTURE

A. Complete the following chart providing information on your policymaking body members.

Texas Commission on Environmental Quality Exhibit 3: Policymaking Body			
Member Name	**Term/ Appointment Dates/ Appointed by _____** (e.g., Governor, Lt. Governor, Speaker)	**Qualification** (e.g., public member, industry representative)	**City**
Commissioner Buddy Garcia	Appointed on Jan. 25, 2007, by Governor Perry. Term expires Aug. 31, 2011.	Former advisor to Governor Rick Perry and Senator Eddie Lucio specializing in environmental, coastal, and border issues Former Deputy Secretary of State B.A. in Political Science, Texas State University	Austin, Texas
Commissioner Bryan W. Shaw, Ph.D. - Chairman	Appointed on Nov. 1, 2007, by Governor Perry. Term expires Aug. 31, 2013.	Associate Professor, Biological and Agricultural Engineering Department, Texas A&M University (TAMU) Ph.D., University of Illinois, Urbana-Champaign B.A. and M.S. in Agricultural Engineering, TAMU	Bryan, Texas
Commissioner Carlos Rubinstein	Appointed on Aug. 31, 2009, by Governor Perry. Term expires Aug. 31, 2015.	Former City Manager for City of Brownsville, Texas Former Deputy Executive Director of TCEQ Serves on the Governmental Advisory Committee that provides advice to the EPA Administrator on NAFTA Bachelor of Science in Biology and Chemistry, University of Texas - Pan American	Austin, Texas

B. Describe the primary role and responsibilities of your policymaking body.

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. Consistent with the agency's philosophy, the commissioners:

- 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; and
- hire, develop, and retain a high-quality, diverse workforce.

C. How is the chair selected?

The chair is selected by the governor, as set forth in Section 5.058 of the Texas Water Code.

D. List any special circumstances or unique features about your policymaking body or its responsibilities.

The commission has jurisdiction and responsibilities over a variety of issues within the air, water, and waste programs. The commissioners are the ultimate decision makers on policy directions taken by the agency and contested matters requiring resolution. Because of the large breadth of subject matters the commission regulates, the working knowledge exhibited and exercised by the commissioners is necessarily unique and invaluable.

Chapter 5, Subchapter C, of the Texas Water Code contains the specific criteria that a person must meet for appointment as a commissioner.

E. In general, how often does your policymaking body meet? How many times did it meet in FY 2008? In FY 2009?

In general, the commission meets every two weeks in open session. On occasion, the commission may also meet three times during a four-week period. During FY 08, the commission met in Agenda 26 times and in Work Session 5 times. During FY 09, the commission met in Agenda 23 times, which included one emergency Agenda. No Work Sessions were held in FY 09.

Additionally, the commission can schedule Work Sessions to work on and discuss policy or other agency matters.

F. What type of training do members of your agency's policymaking body receive?

The nature and content of the required commissioner training is set forth in Section 5.0535 of the Texas Water Code. This broad spectrum of subject matter training is provided to each newly appointed commissioner by knowledgeable staff from various programs across the agency. In addition to oral training, detailed written materials on all aspects of commission operations are developed and provided to each newly appointed commissioner.

Each commissioner also completes training on ethics, and on statute-specific responsibilities and procedures, including the Open Meetings Act, the Public Information Act, and the Administrative Procedures Act.

G. Does your agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, describe these policies.

The agency maintains detailed delegation documents, setting forth the specific functions delegated from the commission to the executive director. Decision-making authorities that fall within the purview of the executive director are also set out in rules on a case-specific basis. The statutory authorities underlying the respective roles are found in Texas Water Code, Sections 5.113, 5.122, and 5.221.

TCEQ's Employee Ethics Policy, OPP 12.08, advises all employees of potential conflicts of interest, how to avoid them, and requires disclosure of actual and potential conflicts. The policy clearly defines "interested persons" (i.e., those who have business before and with the commission and/or the agency) and when interactions with these groups may cause conflicts of interest to arise. Employees are also advised that violations of the ethics policy subject the employee to disciplinary action, up to and including termination from employment. In addition to the policy, TCEQ trains all staff at initial hire and biennially thereafter on the ethics policy, as well as the fraud, waste and abuse policy, OPP 3.10. Our internal ethics webpage contains training materials, answers to frequently asked questions, other information about ethics, and links to reporting potential fraud, waste or abuse. Employees can also submit questions to the Ethics Advisor directly.

Disclosure is also required to avoid even the appearance of a conflict of interest. For example, disclosure of a family relationship with an interested person is required. Additionally, all employees seeking outside employment are required to seek approval from their Division Director and are subject to review for any ethics concerns by the General Law Division Director. Annually, the agency reviews an average of 78 outside employment requests.

TCEQ's Employee Ethics Policy also advises employees of the potential conflicts of interest that continue after leaving TCEQ's employment and provides notice of the applicable "revolving door" statutes. In accordance with Government Code Section 572.054, former commissioners and executive directors are prohibited from communicating with the

commission either on behalf of a client or with the intent to influence for a period of two years, and former employees who earned salaries in pay groups B9 and above are prohibited from representing any person or receiving compensation for rendering service to anyone regarding a particular matter in which the employee participated while at the TCEQ. There are also specific "revolving door"-like provisions that apply specifically to TCEQ permits and require the agency to deny an application pertaining to any permit that a former employee worked on as part of his agency duties and then also worked on for his new employer.

TCEQ periodically receives gifts from outside entities, an average of 15 per fiscal year quarter, most often in the form of reimbursement of travel expenses primarily from other governmental entities or professional associations, and not from regulated entites or other "interested persons." Every 90 days, in accordance with Government Code Chapter 575, the commissioners acknowledge the acceptance of these gifts during an open agenda meeting.

H. What information is regularly presented to your policymaking body to keep them informed of your agency's performance?

The executive director provides a variety of information to the commissioners, both formally and informally, on a wide variety of matters pertaining to the agency's performance. Such matters include reports on enforcement efforts and penalty/fee collections, legislative implementation efforts, staffing and personnel information, and performance and operational requirements mandated under state or federal law. The commission also considers and approves the agency's annual operating budget and the agency audit plans developed by the chief auditor. Other agency operating processes and protocols are brought before the commission for approval within varying contexts, including rule promulgations.

I. How does your policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of your agency?

- Advisory Committees, Work Groups, and Task Forces, as contemplated through Texas Water Code, Section 5.107 – The commission solicits and considers the recommendations of various advisory committees in formulating agency policies and operation protocols.

- Stakeholder Groups – In connection with the development of agency policy developed through rulemaking, guidance documents, or otherwise, the commission routinely seeks the early and meaningful involvement of stakeholder groups representing varied interests to ensure maximum discourse among interested persons.

- Rulemaking and Rule Petitions – Rulemaking includes a comment period during which the agency receives both written and oral comments. All written and oral comments timely received are vetted, considered, and responded to in writing by the executive

director's staff. The comments are often addressed through changes to the rules being promulgated. Additionally, agency rules provide a petition process through which a person may request that the commission initiate a rulemaking to address an issue of particular concern. The commission considers each rule petition during an open session. Agency rules implementing the rulemaking and petition process are set forth in Title 30 of the Texas Administrative Code, Chapter 20.

- Notice and Comment Periods – Permitting applications and enforcement matters undergo robust public notice processes and comment periods. Timely comments received by the agency are considered by the commission in the decision-making process, and are responded to in writing by the agency. Agency rules implementing the public comment criteria are set forth in Title 30 of the Texas Administrative Code, Chapter 55.

- Contested Case Hearing Process – Many matters that require agency action are subject to the opportunity for a contested case hearing at the State Office of Administrative Hearings (SOAH) prior to final decisions. SOAH receives cases referred by the commissioners and executive director staff, after which an administrative law judge renders a recommendation for the commissioners' deliberation. Applicants may also request a direct referral to SOAH for a contested case hearing if certain criteria are met. The contested case hearing process affords affected persons the opportunity to present evidence in support of a position on the contested matter. The information generated from the contested case hearing process is a critical component in the commission's ultimate case-specific decisions. Agency rules implementing the protocols for contested case hearings are found in Title 30 of the Texas Administrative Code, Chapters 55 and 80.

- Appellate Review of Executive Director Actions – Agency rules provide a regulatory vehicle whereby a person can seek commission review of various executive director actions. The Motion to Overturn process, implemented mainly through Title 30 of the Texas Administrative Code, Chapter 50, includes opportunities for the submission of written briefings, and oral arguments on a case-specific basis before the commission.

- Open Commission Meetings – As contemplated in statute and agency rules, including Title 30 of the Texas Administrative Code, Chapters 10, 50, and 55, the commission meets regularly in open session to consider a variety of contested and uncontested matters, including permitting, enforcement, and rulemaking items. These open meetings include opportunities for the public to address the commission and present information and positions for commission consideration during the decision-making process.

- Public Meetings – The agency regularly conducts public meetings across the state on permitting and rulemaking matters, in order to provide the public with an opportunity to obtain information, provide comment, and fully participate in the decision-making process exercised by the commission.

J. If your policymaking body uses subcommittees or advisory committees to carry out its duties, fill in the following chart. See Exhibit 4 Example or click here to link directly to the example.

Texas Commission on Environmental Quality Exhibit 4: Subcommittees and Advisory Committees			
Name of Subcommittee or Advisory Committee	**Size/Composition/How are members appointed?**	**Purpose/Duties**	**Legal Basis for Committee**
Pollution Prevention Advisory Committee	Composed of nine members with a representation of environmental groups, public interest groups, and the regulated community. Members are appointed by the commission.	Advises the commission and interagency coordination council on efforts to promote waste reduction and minimization, educate citizens about hazardous waste, provide assistance to local governments on waste management strategies, and implement waste management technologies.	Texas Health and Safety Code Section 361.0215
Municipal Solid Waste Management and Resource Recovery Advisory Council	Composed of eighteen members including representatives from local governments, industry, and environmental groups, as well as other professionals with solid waste experience. Members are appointed by the commission.	The council:(1) reviews and evaluates the effect of state policies and programs on municipal solid waste (MSW) management; (2) makes recommendations to the executive director and the commission on matters relating to MSW management; (3) recommends legislation to the commission to encourage efficient management of MSW; (4) recommends policies to the commission for the use, allocation, or distribution of the planning funds, including the priorities for the use of the funds, the applications for financial assurance, and the criteria for financial assistance; and (5) recommends to the executive director special studies and projects to further the effectiveness of MSW management and resource recovery.	Texas Health and Safety Code, Chapter 363, Subchapter C (Sections 363.041–363.046)

Dry Cleaner Remediation Program Advisory Committee	Five members composed of three representatives of the dry cleaning industry, one public representative of urban areas, and one public representative of rural areas. Members are appointed by the executive director.	The advisory committee: (1) reviews and comments on the methodology used by the commission to rank dry cleaner remediation sites under Texas Health and Safety Code (THSC) Section 374.154; (2) reviews and comments on the report the commission prepares each biennium under THSC Section 374.056 (related to the status and use of the fund and the status of sites undergoing cleanup); (3) assists in the ongoing development of rules to implement, administer, and enforce THSC, Chapter 374.	Texas Health and Safety Code Section 374.004
Texas Emissions Reduction Plan Advisory Board	Composed of fifteen members and seven ex officio members. The fifteen members are appointed as follows: (1) five members by the governor to represent various specified industries, regional transportation, and a certain non-profit organization; (2) five members by the lieutenant governor to represent various specified industries and the environmental community; and (3) five members by the speaker of the House to represent various specified industries and consumer groups. The seven ex officio members are: (1) a member of the Senate, appointed by the lieutenant governor; (2) the presiding officer of the House standing committee having primary jurisdiction over matters related to environmental regulation; (3) a representative of the commission, designated by the executive director; (4) a representative of the General Land Office (GLO), designated by the commissioner of the GLO; (5) a representative of the comptroller's office, designated by the comptroller; (6) a representative of the Railroad Commission, designated by the presiding officer of the agency; and (7) a representative of the U.S. Environmental Protection Agency's Region 6 Office, designated by the EPA Region 6 administrator.	The board reviews the emissions reduction plan and recommends to the commission any changes to revenue sources or financial incentives, or any needed legislative, regulatory, or budgetary changes.	Texas Health and Safety Code Section 386.058

Texas Radiation Advisory Board	Composed of 18 members from varying areas of representation and experience pertinent to radiation control (expressly set forth in statute), including three members representing the public. Members are appointed by the governor.	Reviews and evaluates state radiation policies and programs; makes recommendations and furnishes technical advice to the Department of State Health Services, the TCEQ, the Railroad Commission, and other state agencies relating to the development, use, and regulation of sources of radiation; and reviews proposed rules and guidelines.	Texas Health and Safety Code Sections 401.015–401.019
Pollution Control Property Permanent Advisory Committee	Consists of an unspecified number of representatives of industry, appraisal districts, taxing units, and environmental groups, as well as members who are not representatives of the aforementioned entities but have substantial technical expertise in pollution control technology and environmental engineering. Members are appointed by the commission.	To advise the commission regarding the implementation of Section 11.31 of the Texas Tax Code, regarding pollution control devices.	Texas Tax Code Section 11.31(n) (HB 3544, 81st Legislative Session)
Small Business Compliance Advisory Panel	Composed of seven members: (1) two members appointed by the governor who are not owners or representatives of owners of small business stationary sources, to represent the public; (2) two members appointed by the speaker of the House who are owners or representatives of owners of small business stationary sources; (3) two members appointed by the lieutenant governor who are owners or representatives of owners of small business stationary sources; and (4) one member appointed by the chairman of the TCEQ to represent the commission.	Created as part of the Small Business Compliance Assistance Program pursuant to Texas Water Code Section 5.135. The panel is required to give advisory opinions on the effectiveness of the program; review the information that the program provides to small businesses to ensure that it is understandable to non-experts; report to the EPA administrator as to the program's compliance with three federal laws; and distribute opinions, reports, and information developed by the panel.	Texas Water Code Section 5.135(c)

Environmental Flows Advisory Group*	Composed of nine members: (1) three appointed by the governor (one from the TCEQ, one from the Water Development Board, and one from Parks and Wildlife); (2) three members of the Senate, appointed by the lieutenant governor; and (3) three members of the House of Representatives, appointed by the speaker of the House.	Conducts public hearings and studies public policy implications to balance the demands on the water resources of the state resulting from a growing population and the requirements of the riverine, bay, and estuary systems, including granting permits for instream flows dedicated to environmental needs or bay and estuary inflows, use of the Texas Water Trust, and any other issues the Environmental Flows Advisory Group determines to have importance and relevance to the protection of environmental flows.	Texas Water Code Section 11.0236
Environmental Flows Science Advisory Committee	Consists of at least five but not more than nine members with expertise in a variety of disciplines pertinent to the evaluation of environmental flows. Appointed by the Environmental Flows Advisory Group.	Serves as an objective scientific body to advise and make recommendations to the Environmental Flows Advisory Group on issues relating to the science of environmental flow protection and develop recommendations to help provide overall direction, coordination, and consistency relating to: (1) environmental flow methodologies for bay and estuary studies and instream flow studies; (2) environmental flow programs at the commission, the Parks and Wildlife Department, and the Water Development Board; and (3) the work of the basin and bay expert science teams described in Texas Water Code Section 11.02362.	Texas Water Code Section 11.02361

Watermaster Advisory Committee	Consists of a minimum of nine members but no more than fifteen, who are holders of water rights or representatives of holders of water rights in that watermaster division. Members are appointed by the executive director, who shall consider geographic representation, amount of water rights held, different types of holders and users, as well as experience and knowledge in water management practices.	Makes recommendations to the executive director regarding activities of benefit to the water right holders in the administration and distribution of water to holders of water rights; reviews and comments on the annual budget of watermaster operations; and performs other duties as requested by the executive director with regard to the watermaster operations or as requested by holders of water rights in a water division that the committee deems of benefit to the administration of water rights.	Texas Water Code Sections 11.3261 & 11.552
Texas Groundwater Protection Committee	Composed of ten members (executive directors and commissioners of different agencies) expressly appointed by statute.	An interagency committee for the coordination of state agency actions for the protection of groundwater quality in Texas. The committee: (1) coordinates groundwater protection activities of the agencies represented on the committee; (2) develops and updates a comprehensive groundwater protection strategy for the state; (3) studies and recommends to the legislature groundwater protection programs for each area in which groundwater is not protected by current regulation; (4) files with the governor, lieutenant governor, and speaker of the House a report of the committee's activities and any recommendations for legislation for groundwater protection; and, (5) publishes the joint groundwater monitoring and contamination report.	Texas Water Code Sections 26.403–26.405

* See Texas Water Code Section 11.02362(b) and (c), which sets forth a prioritized list of river basins and bay systems and a corresponding schedule for the Environmental Flows Advisory Group to appoint the Basin and Bay Area Stakeholders Committees (BBASCs). The BBASCs, in turn, appoint the Basin and Bay Expert Science Teams as required by Texas Water Code Section 11.02362(i).

V. FUNDING

A. Provide a brief description of your agency's funding.

The commission was appropriated approximately $554.5 million in FY 08. This appropriation includes: 2% in General Revenue; 89% in General Revenue Dedicated (fees); 8% in Federal Funds; and 1% in other funding sources.

B. List all riders that significantly impact your agency's budget.

HB 1, 80th Legislative Session, Article VI

Rider 5. Local Air Pollution Grants Allocation. The agency is appropriated $2.8 million each year of the biennium, out of Clean Air Account No. 0151 in Strategy A.1.1, Air Quality Assessment and Planning, to fund grants or cooperative agreements with eligible local air pollution programs.

Rider 8. Air Quality Planning. Approximately $5.1 million is appropriated each fiscal year out of Clean Air Account No. 0151 in Strategy A.1.1, Air Quality Assessment and Planning, for air quality planning activities to reduce ozone and other federally designated criteria pollutants. Eligible cities include Austin, Corpus Christi, Longview-Tyler-Marshall, San Antonio, and Victoria.

Rider 11. Petroleum Storage Tank Administration. Not more than $7.7 million each fiscal year may be transferred from Petroleum Storage Tank Remediation (PSTR) Account No. 0655, in Strategy D.1.1, Storage Tank Administration and Cleanup, to Waste Management Account No. 0549 for necessary administrative expenses associated with the PSTR and the groundwater protection cleanup program.

In addition, the TCEQ is exempt from the provisions of Article IX related to the inclusion of temporary or contract workers associated with Strategy D.1.1 in the calculation of the number of FTEs by a state agency.

Rider 14. Refinement and Enhancement of Modeling to Demonstrate Attainment with the Clean Air Act. The agency is appropriated $1.5 million out of Clean Air Account No. 0151 in Strategy A.1.1, Air Quality Assessment and Planning, in FY 08 for research to obtain the data and information to refine and enhance any model used to demonstrate attainment with the National Ambient Air Quality Standard (NAAQS) for ozone and other pollutants under the Federal Clean Air Act.

Rider 16. Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP). The agency is appropriated $45 million out of Clean Air Account No. 0151 in Strategy A.1.1, Air Quality Assessment and Planning, in each fiscal year of the 2008-09 biennium to fund the Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP).

In addition, $5 million are appropriated each fiscal year for county-implemented local-initiative projects to reduce air emissions, including but not limited to the following: AirCheckTexas Repair and Replacement Assistance Program; development and implementation of remote emissions-sensing systems, the TCEQ Smoking Vehicle Program and the enhancement of transportation system improvements, and coordination with local law enforcement to reduce counterfeit inspection stickers.

Rider 24. Unexpended Balance Authority within the Biennium. Any unexpended balances on August 31, 2008, are appropriated for the same purposes for the fiscal year beginning on September 1, 2008.

Rider 26. Low-Level Radioactive Waste Disposal. Approximately $1 million are appropriated in Strategy A.3.1, Low-Level Radioactive Waste Management, in each fiscal year of the biennium out of Low Level Waste Account No. 088 for costs incurred in the review and evaluation of applications received for a license to operate a low-level radioactive waste disposal site.

Rider 28. Texas Emissions Reduction Plan (TERP): Grants and Administration. Approximately $166.9 million in FY 08 and $170.9 million in FY 09 are appropriated out of Texas Emissions Reduction Plan Account No. 5071 in Strategy A.1.1, Air Quality Assessment and Planning, to be used for the Diesel Emissions Reduction Programs, Clean School Bus Initiative, and New Technology Research Development Program.

C. Show your agency's expenditures by strategy. See Exhibit 5 Example or click here to link directly to the example.

Texas Commission on Environmental Quality Exhibit 5: Expenditures by Strategy — Fiscal Year 2008 (Actual)		
Goal/Strategy	**Total Amount**	**Contract Expenditures Included in Total Amount**
A.1.1. - Air Quality Assessment and Planning	$145,234,237	$11,274,147
A.1.2. - Water Resource Assessment and Planning	$31,854,001	$7,418,234
A.1.3. - Waste Management Assessment and Planning	$13,402,241	$298,747
A.2.1. - Air Quality Permitting	$13,139,671	$1,184,890
A.2.2. - Water Resource Permitting	$12,720,481	$1,827,691
A.2.3. - Waste Management and Permitting	$9,999,315	$1,273,116
A.2.4. - Occupational Licensing	$3,306,233	$1,456,707
A.3.1. - Low Level Radioactive Waste Management	$1,070,299	$173,165
Goal A – Assessment, Planning, and Permitting Total	**$230,726,478**	**$24,906,697**
B.1.1. - Safe Drinking Water	$10,116,881	$6,486,861

B.1.2. - Water Utilities Oversight	$4,834,652	$1,720,323
Goal B – Drinking Water and Water Utilities Total	**$14,951,533**	**$8,207,184**
C.1.1. - Field Inspections and Complaint Response	$35,220,365	$3,187,531
C.1.2. - Enforcement and Compliance Support	$11,446,611	$889,989
C.1.3. - Pollution Prevention and Recycling	$5,722,764	$1,412,525
Goal C – Enforcement and Compliance Support Total	**$52,389,740**	**$5,490,045**
D.1.1. - Storage Tank Administration and Cleanup	$49,207,011	$14,346,652
D.1.2. - Hazardous Materials Cleanup	$29,703,486	$18,159,867
Goal D – Pollution Cleanup Total	**$78,910,497**	**$32,506,519**
E.1.1. - Canadian River Compact	$14,086	$0
E.1.2. - Pecos River Compact	$121,696	$3,337
E.1.3. - Red River Compact	$29,597	$1,800
E.1.4. - Rio Grande River Compact	$139,564	$347
E.1.5. - Sabine River Compact	$56,598	$0
Goal E – River Compact Commissions Total	**$361,541**	**$5,484**
F.1.1. - Central Administration	$18,722,106	$1,430,538
F.1.2. - Information Resources	$13,649,316	$4,955,451
F.1.3. - Other Support Services	$10,196,326	$1,436,100
Goal F – Indirect Administration Total	**$42,567,748**	**$7,822,089**
GRAND TOTAL:	**$419,907,537**	**$78,938,018**

D. Show your agency's objects of expense for each category of expense listed for your agency in the General Appropriations Act FY 2009-2010. See Exhibit 6 Example or click here to link directly to the example. Add columns and rows as necessary.

Texas Commission on Environmental Quality Exhibit 6: Objects of Expense by Program or Function — Fiscal Year 2009			
Object-of-Expense	**Commissioner Office**	**Executive Office**	**Office of Administrative Services**
1001 - Salaries and Wages	$5,063,754	$7,912,108	$16,672,491
1002 - Other Personnel Costs	$172,806	$372,822	$785,615
2001 – Professional Fees and Services	$947,697	$1,150,907	$15,639,965
2002 – Fuels and Lubricants	$0	$0	$67,124
2003 – Consumable Supplies	$8,690	$31,250	$517,891
2004 – Utilities	$8,320	$23,299	$1,351,989
2005 – Travel	$77,576	$178,308	$33,941
2006 – Rent Building	$100	$92,300	$2,889,546
2007 – Rent - Machine and Other	$20,224	$215,399	$715,123
2009 – Other Operating Expense	$95,016	$10,787,351	$7,277,131
4000 - Grants	$0	$998,729	$0
5000 – Capital Expenditures	$0	$0	$1,276,315
TOTAL	**$6,394,183**	**$21,762,473**	**$47,227,131**

Texas Commission on Environmental Quality Exhibit 6: Objects of Expense by Program or Function — Fiscal Year 2009			
Object-of-Expense	**Office of Compliance and Enforcement**	**Office of Legal Services**	**Office of Permitting and Registration**
1001 - Salaries and Wages	$62,076,618	$8,698,397	$34,358,621
1002 - Other Personnel Costs	$2,993,212	$390,837	$1,618,993
2001 - Professional Fees and Services	$47,195,302	$293,666	$11,916,909
2002 - Fuels and Lubricants	$596,365	$15,500	$1,300
2003 - Consumable Supplies	$371,593	$7,374	$61,650
2004 - Utilities	$864,230	$6,689	$40,647
2005 - Travel	$1,160,883	$44,649	$281,304
2006 - Rent Building	$2,051,130	$317	$4,698
2007 - Rent - Machine and Other	$284,203	$14,701	$15,877
2009 - Other Operating Expenses	$31,269,677	$223,737	$1,410,500
4000 - Grants	$2,481,093	$316,517	$11,149,709

5000 - Capital Expenditures	$2,637,433	$46,457	$128,028
TOTAL	**$153,981,739**	**$10,058,841**	**$60,988,236**

Texas Commission on Environmental Quality Exhibit 6: Objects of Expense by Program or Function — Fiscal Year 2009			
Object-of-Expense	**Chief Engineer's Office**	**Program**	**Program**
1001 - Salaries and Wages	$15,818,883		
1002 - Other Personnel Costs	$624,862		
2001 - Professional Fees and Services	$13,242,825		
2002 - Fuels and Lubricants	$16,525		
2003 - Consumable Supplies	$109,306		
2004 - Utilities	$136,104		
2005 - Travel	$204,425		
2006 - Rent Building	$376,599		
2007 - Rent - Machine and Other	$44,822		
2009 - Other Operating Expense	$250,103,267		
3001 - Client Services	$0		
4000 - Grants	$82,917,850		
5000 - Capital Expenditures	$510,854		
TOTAL	**$364,106,322**		

Note: $4.09 million not reflected in the table above is reserved for contingencies and/or unforeseen events.

E. Show your agency's sources of revenue. Include all local, state, and federal appropriations, all professional and operating fees, and all other sources of revenue collected by the agency, including taxes and fines. See Exhibit 7 Example or click here to link directly to the example.

Texas Commission on Environmental Quality Exhibit 7: Sources of Revenue — Fiscal Year 2008 (Actual)	
Source	**Amount**
General Revenue	$10,393,363
General Revenue Dedicated (Fees)	$493,702,649
Federal Funds	$43,018,614
Interagency Contracts	$6,270,698
Appropriated Receipts	$1,145,348
TOTAL	**$554,530,672**

F. If you receive funds from multiple federal programs, show the types of federal funding sources. See Exhibit 8 Example or click here to link directly to the example.

Texas Commission on Environmental Quality Exhibit 8: Federal Funds — Fiscal Year 2008 (Actual)				
Type of Fund	**State/Federal Match Ratio**	**State Share**	**Federal Share**	**Total Funding**
12.113 - State Memorandum of Agreement Program for the Reimbursement of Technical Services Agreement	0%/100%	$0	$441,767	$441,767
66.034 - Surveys, Studies, Research, Investigations, Demonstrations, and Special Purpose Activities Relating to the Clean Air Act	0%/100%	$0	$2,031,404	$2,031,404
66.419 - Water Pollution Control State, Interstate, and Tribal Program Support	0%/100%	$0	$6,361,098	$6,361,098
66.454 - Water Quality Management Planning	0%/100%	$0	$494,098	$494,098
66.456 - National Estuary Program	50%/50%	$266,310	$266,310	$532,620
66.460 - Nonpoint Source Implementation	40%/60%	$393,199	$4,159,891	$4,553,090
66.471 - State Grants to Reimburse Operators of Small Water Systems for Training and Certification Costs	0%/100%	$0	$1,697,870	$1,697,870

66.474 - Water Protection Grants to States	0%/100%	$0	$804,843	$804,843
66.605 - Performance Partnership Grants – Groundwater	0%/100%	$0	$383,739	$383,739
66.605 - Performance Partnership Grants - FIFRA	15%/85%	$9,421	$53,382	$62,803
66.605 - Performance Partnership Grants – Public Drinking Water, RCRA, UST, and Injection Control	25%/75%	$3,245,318	$9,287,771	$12,533,089
66.605 - Performance Partnership Grants – Non-Point Source, Air Quality, Special Border, U.S.-Mexico Border, Air Special Projects	40%/60%	$3,337,378	$5,568,187	$8,905,565
66.605 - Performance Partnership Grants – Surface Water	41%/59%	$2,130,070	$3,074,340	$5,204,410
66.608 - Environmental Information Exchange Network Grant Program and Related Assistance	0%/100%	$0	$593,975	$593,975
66.708 - Pollution Prevention Grants Program	0%/100%	$0	$74,305	$74,305
66.708 - Pollution Prevention Grants Program	50%/50%	$72,737	$72,737	$145,474
66.717 - Source Reduction Assistance	80%/20%	$32,352	$8,088	$40,440
66.802 - Superfund State, Political Subdivision, and Indian Tribe Site-Specific Cooperative Agreements	0%/100%	$0	$988,326	$988,326
66.805 - Leaking Underground Storage Tank Trust Fund Corrective Action Program	10%/90%	$212,624	$1,913,656	$2,126,280
66.809 - Superfund State and Indian Tribe Core Program Cooperative Agreements	10%/90%	$16,695	$150,246	$166,941
66.817 - State and Tribal Response Program Grants	0%/100%	$0	$154,464	$154,464
81.502 - Miscellaneous	0%/100%	$0	$248,398	$248,398
97.023 - Community Assistance Program State Support Services Element (CAP-SSSE)	25%/100%	$0	$10,516	$10,516
97.041 - National Dam Safety Program	0%/100%	$0	$228,231	$228,231
97.091 - Homeland Security Biowatch Program	0%/100%	$0	$2,095,555	$2,095,555
	TOTAL	**$9,716,104**	**$41,163,197**	**$50,879,301**

Note: State Share, in some cases, is provided by other entities, such as local governments, which is not represented in these figures.

G. If applicable, provide detailed information on fees collected by your agency. See Exhibit 9 Example or click here to link directly to the example.

Texas Commission on Environmental Quality
Exhibit 9: Fee Revenue — Fiscal Year 2008

Fee Description/ Program/ Statutory Citation	Current Fee/ Statutory maximum	Number of persons or entities paying fee	Fee Revenue	Where Fee Revenue is Deposited (e.g., General Revenue Fund)
Water Quality Act Violations (Admin Penalties)- Water Code 7.051, 7.052; 30 TAC 12.3	$2,500/day-$10,000/day	1,799	$2,922,711	General Revenue Fund - 0001
Waste Disposal Act Violations (Admin Penalties)- Water Code 7.051, 7.052; 30 TAC 12.3	$2,500/day-$10,000/day	2,410	$1,720,880	General Revenue Fund - 0001
Clean Air Act Violations (Admin Penalties)- Water Code 7.051, 7.052; 30 TAC 12.3	$2,500/day-$10,000/day	690	$6,454,660	General Revenue Fund - 0001
Closed Landfill Development Application- Health and Safety Code 361.532(c); 30 TAC 330.59(h)(2) (Subsection B)	$2,500 initial application	1	$2,500	General Revenue Fund - 0001
Quarry Water Violation- Water Code 26.556	$2,500 to $25,000 for discharge violation; not less than $100 for other violations	Varies based on case/ judgment	$0	General Revenue Fund - 0001
Recovered Costs, Quarries- Water Code 26.558	Cost Recovery	Varies based on case/ judgment	$0	General Revenue Fund - 0001
Class I, II, III Water Treatment Specialist License- Health and Safety Code 341.034(e); 30 TAC 30.30 (Subsection A)	$111 for Three Year License	264	$27,944	General Revenue Fund - 0001
Wastewater Treatment Research Council Fee (WTR)- Health and Safety Code 367.010	$10/application for an on-site septic facility	Collected by Counties (33,460 payments received)	$391,931	General Revenue Fund - 0001

Tier I Pollution Control Property Application Fee- Tax Code 11.31; 30 TAC 17.20	$150/application	430	$197,050	General Revenue Fund - 0001
Tier II Pollution Control Property Application Fee- Tax Code 11.31; 30 TAC 17.20	$1,000/application	37	$45,200	General Revenue Fund - 0001
Tier III Pollution Control Property Application Fee- Tax Code 11.31; 30 TAC 17.20	$2,500/application	8	$18,700	General Revenue Fund - 0001
Tier IV Pollution Control Property Application Fee- Tax Code 11.31; 30 TAC 17.20	$500/application	44	$22,000	General Revenue Fund - 0001
Water Pollution Control Abatement Program Fee- Water Code 26.177(e)	Statutory triggers not met to date, so not program or fee collection	0	$0	General Revenue Fund - 0001
Compact Waste Disposal Facility License- Health and Safety Code 401.229	$500,000 or more per application	1	$778,808	Low Level Radioactive Waste Account - 0088
Low Level Radioactive Waste Disposal Fees- Health and Safety Code 401.250 and 403.006	$12,500,000 or more per application	Not assessed at this time	$0	Low Level Radioactive Waste Account - 0088
Used Oil Registration Fee- Health and Safety Code 371.024, 371.026 and 371.062	Authorized but not currently assessed	Not assessed at this time	$0	Used Oil Recycling Account - 0146
Automotive Oil Sales Fee- Health and Safety Code 371.062 (i)	$.01/quart or $.04/gallon	Collected by Comptroller	$1,396,337	Used Oil Recycling Account - 0146
Motor Vehicle Safety Inspection Fee- Health and Safety Code 382.0622	$2.00/sticker sold by DPS to inspection stations	Collected by DPS	$34,772,060	Clean Air Account - 0151
Air Inspection Fees- Health and Safety Code 382.062; 30 TAC 101.24 (f) (Subsection A)	$75K max; 2003 rule rates range from $840 to $25,090 based on manufacturing type and amount of emission; 2003 rates are adj. annually by consumer price index (CPI)	2,102	$8,981,654	Clean Air Account - 0151
Fuel Oil Surcharge Fee- Health and Safety Code 382.0145; 30 TAC 101.26 (Subsection A)	$0.20/million BTU on fuel oil used between April 15th and Oct 15th	Not assessed at this time	$0	Clean Air Account - 0151

Air Temporary/Emergency Order- Water Code 5.515; 30 TAC 35.30 (Subsection C)	$500 per order plus cost of required notice	Not assessed at this time	$0	Clean Air Account - 0151
Motor Vehicle Emissions Inspection Fee- Health and Safety Code 382.202(e); 30 TAC 114.53 (Subsection C; Division 1)	$0.50/vehicle (20% x $2.50 sticker fee	Collected by DPS	$3,648,012	Clean Air Account - 0151
Auto Emission Inspection, On-board Diagnostic- Health and Safety Code 382.209(a) and (b), 382.302(c); 30 TAC 114.53 (Subsection C; Division 1)	$6.00 to TCEQ for PBD test on '96 or newer cars; $8.50 total in $6 OBD + $2.50 I/M	Collected by DPS	$32,859,468	Clean Air Account - 0151
Emission Reduction Incentive donation; HB 2914 (Reliant Money)- Health and Safety Code 382.051866	Donation Program	0	$0	Clean Air Account - 0151
Air Permit Fees - Health and Safety Code 382.062; 30 TAC 116.141(Sub B; Div 4) and 750 (Sub G)	0.30% of capital cost or $32 dollars per ton under flexible permit; $900 Min, $75k Max (statute says not less than $25 or more than $75k)	696	$3,429,148	Clean Air Account - 0151
Air Permit Renewal Fees - Health and Safety Code 382.062; 30 TAC 116.313 (Subsection D)	$600-$10,000 based on emission tonnage; issued for 5 years	265	$733,009	Clean Air Account - 0151
Air Permit Amendment Fee - Health and Safety Code 382.062; 30 TAC 116.141 (Subsection B; Division 4)	0.30% of capital cost; $900 Min, $75k cap by statute	698	$3,046,729	Clean Air Account - 0151
Permit by Rule (PBR) Fee - Health and Safety Code 382.062; 30 TAC 106.50 (Subsection B)	$100 for small businesses, cities, and ISDs less than 10K; $450 all others	2,708	$984,759	Clean Air Account - 0151
General Permits Storm Water (Multi-sector, Ms4, and Construction)- Water Code 26.040, 26.021, 26.029; 30 TAC 205 (Subsection A)	$100 Application $100-200 annual Water Quality Fee and $225-325 Construction fee (Please See link for GP permits http://www.tceq.state.tx.us/permitting/water_quality/wastewater/general/index.html)	21,400	$3,483,903	Water Resource Management Account - 0153

General Permit Wastewater Live Stock Manure Compost Operation – Water Code 26.040: 30 TAC 205 (Subsection A)	$100 Application $100 Annual Water Quality Fee (Please See link for GP permits http://www.tceq.state.tx.us/permitting/water_quality/wastewater/general/index.html)	894	$784,695	Water Resource Management Account - 0153
Consolidated Water Quality Fee - Water Code 26.0291 and 26.0135(h): 30 TAC 21.3	$400 - $75k depending on volume, pollutants, toxicity, etc. (2010 Rates $620 - $100k)	3,512	$18,354,302	Water Resource Management Account - 0153
Water Use Assessment Fee – Water Code 26.0135(h): 30 TAC 21.3(c)	For consumptive use, $0.22 < 20,000 per acre-foot< $.08; for non-consumptive use $0.021 < 20,000 per acre-foot< $.0021; Hydro $0.04 < 20,000 per acre-foot< $.004 (2010 Rates $.0385 for consumptive and $0.021 non-consumptive per acre foot)	155	$410,311	Water Resource Management Account - 0153
Boat Sewage Disposal Device Cert.- Water Code 26.044: 30 TAC 321.7 and 321.12 (Subsection A)	$15 fee for marine sanitation device; $35 for initial certification of pump out facility	1,318	$20,285	Water Resource Management Account - 0153
Water Utility Regulatory Assessment Fee - Water Code 5.701(n): 30 TAC 291.76 (Subsection D)	0.5% to 1% of utility companies' retail water svc charges	2,166	$6,112,389	Water Resource Management Account - 0153
Water Utility Bond Issue Application Fee - Water Code 5.701(f): 30 TAC 293.43 (Subsection E)	$500 plus cost of notice	226	$112,600	Water Resource Management Account - 0153
Water Utility Bond Issue Proceeds Fee - Water Code 5.701(f): 30 TAC 293.45 (Subsection E)	0.25% of bond issue principal	177	$2,446,516	Water Resource Management Account - 0153
Public Health Service Fee - Health and Safety Code 341.041: 30 TAC 290.51(a) (Subsection E)	$75 minimum, 25-100 connections $150, and formula for all connection over 100 (='C(0.70) x $7.4) (2010 rates $100 minimum; $175 25-161 connection; $2.15 per connection over 161)	6,791	$4,174,226	Water Resource Management Account - 0153

Edwards Aquifer Development Application Fee (San Antonio Region) - Water Code 26.0461(d): 30 TAC 213.14 (Subsection A)	$650 - $10,000 based on acreage, sewage system, linear feet of pipe, etc	335	$764,174	Water Resource Management Account - 0153
Edwards Aquifer Development Application Fee (Austin Region) - Water Code 26.0461(d): 30 TAC 213.14 (Subsection A)	$650 - $10,000 based on acreage, sewage system, linear feet of pipe, etc	359	$733,279	Water Resource Management Account - 0153
Edwards Aquifer Development Plans and Amendments - Water Code 26.0461: 30 TAC 213.14 (Subsection A)	$100 - $6,500 based on acreage, sewage system, linear feet of pipe, etc	Not Assessed at this time	$0	Water Resource Management Account - 0153
Application for Certificate of Public Convenience and Necessity (CCN) - Water Code 13.4522(a): 30 TAC 291.7 (Subsection A)	$100/application	31	$3,500	Water Resource Management Account - 0153
Sale, Transfer or Merger of Cert of Public Convenience and Necessity (STM) - Water Code 13.4522(b): 30 TAC 291.7 (Subsection A)	$50 - $500 based on # of water or sewer connections	59	$8,500	Water Resource Management Account - 0153
Rate Change Application Fee - Water Code 13.4521(a): 30 TAC 291.7 (Subsection A)	$50 - $500 based on # of water or sewer connections	132	$23,200	Water Resource Management Account - 0153
Water Use Permit Application Fee – Water Code 5.701(c): 30 TAC 295.132 (Subsection I)	$100-$2,000/ application based on acre feet	307	$129,038	Water Resource Management Account - 0153
Water District Creation Application Fee - Water Code 5.701(e): 30 TAC 293.11 (Subsection B)	$700 plus cost of notice	36	$23,800	Water Resource Management Account - 0153
Temporary or Emergency Water Use Permits - Water Code 11.138(g): 30 TAC 295.132, and 134 (Subsection B)	$100 - $250, based on # acre-feet, plus notice, max $500 (statute)	272	$27,387	Water Resource Management Account - 0153
Misc. Water District Application Fees - Water Code 5.701(b): 30 TAC 293.80 (Subsection G)	$100 plus cost of notice	382	$39,000	Water Resource Management Account - 0153

Water Use Permit (Construction Delay) - Water Code 11.145: 30 TAC 295.132, and 134 (Subsection B)	Varies based on # acre-feet, plus cost of notice, $1,000 max	1	$1,503	Water Resource Management Account - 0153
Water Quality Permit Application Fee - Water Code 5.701: 30 TAC 305.53 (Subsection C)	$100 - $2,000	999	$840,830	Water Resource Management Account - 0153
Water Use Max Use Fee - Water Code 5.701: 30 TAC 305.53 (Subsection C)	$100 - $2,000	Not assessed at this time	$0	Water Resource Management Account - 0153
Water rate appeals Filing, application, petition, recording fees - Water Code 5.701(b) and 11.041 (b)	$100 application + $25 deposit	1	$125	Water Resource Management Account - 0153
Disposal waste, injection, or gas well fee - Water Code 27.014: 30 TAC 305.53 (Subsection C)	Application fee, $100 non-hazardous and $2,000 hazardous	30	$22,730	Water Resource Management Account - 0153
General Permit Water Discharge (Concrete Production, Aqua Culture, Petroleum Bulk Station and Terminals, Hydrostatic Test Water, Petroleum Fuel or Substance, and CAFO) - Water Code 26.040: 30 TAC 205.6 (Subsection A)	$100- 300 Application $100- 800 annual fee depending on permit type (Please See link for GP permits http://www.tceq.state.tx.us/permitting/water_quality/wastewater/general/index.html)	18,069	$3,483,442	Water Resource Management Account - 0153
Municipal Waste Permit - Water Code 5.701: 30 TAC 330.59(h)(1) (Subsection B)	$100 application + $50 notice	219	$21,900	Water Resource Management Account - 0153
Water Saving Performance Stds. (aka Plumbing fixture inspection) Fee - Health and Safety Code 372.002(d): 30 TAC 290.255 (Subsection G) (expired 9/1/2009)	$50 initial, $25 annual	125	$38,928	Water Resource Management Account - 0153

Surface Casing Expedited Letters - Water Code 5.701(r): 30 TAC 339.3	$75 fee per request	13,344	$1,320,225	Water Resource Management Account - 0153
On-Site Sewage Disposal System Permit (Wastewater Treatment Inspection) - Health and Safety Code 366.058: 30 TAC 285.21 (Subsection C)	$200 for single family dwelling, $400 for other	1,049	$242,923	Water Resource Management Account - 0153
On-Site Wastewater Charge-back Permit - Health and Safety Code 366.059: 30 TAC 285.14 (Subsection B)	not to exceed $500	Assessed only when state takes back program from county; has never happened	$0	Water Resource Management Account - 0153
South Texas Watermaster Assessment - Water Code 11.329: 30 TAC 304.62(b) (Subsection G)	0.13312 per acre ft. irrigation, 0.1664 an acre ft. municipal (Rates change annually)	877	$510,752	Watermasters Administration Account - 0158
Rio Grande Watermaster Assessment - Water Code 11.329: 30 TAC 303.72(b) (Subsection H)	0.2246 per acre ft. irrigation, 0.2807 an acre ft. municipal (Rates change annually)	763	$632,160	Watermasters Administration Account - 0158
Concho River Watermaster Assessment - Water Code 11.329: 30 TAC 304.62(b) (Subsection G)	0.43616 per acre ft. irrigation, 0.5452 an acre ft. municipal (Rates change annually)	250	$157,259	Watermasters Administration Account - 0158
Solid Waste Technician Training Fee - Water Code 37.003 and Health and Safety Code 361.027: 30 TAC 30.28 (Subsection A)	Classroom (existing material), association meeting, and conferences training $10 per hour, minimum $50; Classroom (new material), technology based, and correspondence training $25 per hour, minimum $100; Association meeting review single $100 and multiple $400 chapters	534	$55,767	Occupation Licensing Account - 0468
Waterworks Operator Certification Fee - Health and Safety Code 341.034(a) and (b): 30 TAC 30.30 (Subsection A)	$111 new or renewal	6,636	$683,967	Occupation Licensing Account - 0468

Occupational Training Approval - Water Code 37.003 and 37.009: 30 TAC 30.28 (Subsection A)	Classroom (existing material), association meeting, and conferences training $10 per hour, minimum $50; Classroom (new material), technology based, and correspondence training $25 per hour, minimum $100; Association meeting review single $100 and multiple $400 chapters	70	$8,412	Occupation Licensing Account - 0468
Petroleum Storage Tank Corrective Action Specialist Fee - Water Code 37.003 and 26.3573: 30 TAC 30.190 and 30.192 (Subsection E)	$232 new or renewal	138	$27,083	Occupation Licensing Account – 0468
Petroleum Storage Tank Project Manager Fee - Water Code 37.003 and 26.3573: 30 TAC 30.30 (Subsection A)	$111 new or renewal	46	$4,036	Occupation Licensing Account – 0468
Underground Storage Tank Contractors License Fee - Water Code 37.003 and 26.452: 30 TAC 30.315 and 30.317 (Subsection I)	$232 new or renewal	120	$25,933	Occupation Licensing Account – 0468
Underground Storage Tank Installers License Fee - Water Code 37.003 and 26.456: 30 TAC 30.30 (Subsection A)	$111 new or renewal	255	$24,059	Occupation Licensing Account – 0468
Residential Water Certification Fee - Water Code 37.003 and Health and Safety Code 341.034: 30 TAC 30.30 (Subsection A)	An application fee of $111 charged to register for the test for certification. The license is valid for three years and then the license must be renewed.	Varies depending on the number of licenses issued and the number renewed	$400	Occupation Licensing Account – 0468
Backflow Prevention Assembly Tester Licenses - Water Code 37.003 and Health and Safety Code 341.034: 30 TAC 30.30 (Subsection A)	$111 new or renewal	2,584	$278,315	Occupation Licensing Account – 0468

Customer Service Inspector License - Water Code 37.003 and Health and Safety Code 341.034(d): 30 TAC 30.30 (Subsection A)	$111 new or renewal	1,034	$111,637	Occupation Licensing Account - 0468
Aerobic System (OSSF) Maintenance Provider - Water Code 37.003 and Health and Safety Code 366.0515: 30 TAC 30.30 (Subsection A)	$111 new or renewal	677	$70,987	Occupation Licensing Account – 0468
Board of Irrigators Fee (IRR) - Water Code 37.003 and Occupations Code 1903.251: 30 TAC 30.30 (Subsection A)	$111 new or renewal, both irrigators and installers	3,403	$332,401	Occupation Licensing Account – 0468
Wastewater Operator Certification Fee - Water Code 37.003 and 26.0301(c): 30 TAC 30.30 (Subsection A)	$111 new or renewal	5,093	$529,178	Occupation Licensing Account – 0468
On-Site Septic Installers Certification Fee - Water Code 37.003 and Health and Safety Code 366.071: 30 TAC 30.30 (Subsection A)	$111 new or renewal	3,023	$280,901	Occupation Licensing Account – 0468
Radioactive Disposal Site License Fees - Health and Safety Code 401.301: 30 TAC 336.105 (Subsection B)	Sub F and K: $50,000 app, $25,000 annual; Sub G: $10,000 app, $8,400 annual; Sub L: $463,096 or $322,677 or $325,910 or $374,729 based on mining type app, $60,929.50 annual; Sub M $3,850 or $39,959 or $94,661 or $273,800 app and annual based of waste class	32	$743,250	Waste Management Account – 0549
Toxic Chemical Release Reporting Fee - Health and Safety Code 370.008	$25/release report form, $250 max	1,420	$123,711	Waste Management Account – 0549
Hazardous Waste Facility Fee (HWF) - Health and Safety Code 361.135: 30 TAC 335.324 (Subsection J)	$2,500-$25,000 annually based on capacity	187	$1,779,677	Waste Management Account – 0549

Hazardous Waste Generation Fee (HWG) - Health and Safety Code 361.134: 30 TAC 335.323 (Subsection J)	$100 for 1 to 50 tons; $2.00/ton if total more than 50 tons; $50,000 max	1,634	$2,729,803	Waste Management Account – 0549
Non-Hazardous Waste Facility Fee (NWF) - Health and Safety Code 361.135: 30 TAC 335.324 (Subsection J)	$500-$5,000 annually based on capacity	52	$123,423	Waste Management Account – 0549
Non-Hazardous Waste Generation Fee (NWG) - Health and Safety Code 361.134: 30 TAC 335.323 (Subsection J)	$50 for 1 to 100 tons; $0.50/ton if total more than 100 tons; $10,000 max	1,596	$979,273	Waste Management Account – 0549
Hazardous Waste Permit Application Fee - Health and Safety Code 361.137: 30 TAC 305.53 (Subsection C)	$2,000- $50,000	323	$110,626	Waste Management Account – 0549
Municipal Setting Designation Application - Health and Safety Code 361.804(b)	$1,000 per application	33	$33,000	Waste Management Account – 0549
Sludge Class B Land Application Permits - Health and Safety Code 361.121: 30 TAC 312.9 (Subsection A)	$1,000 to $5,000 depending on volume	27	$40,000	Waste Management Account - 0549
Underground Storage Tank Registration Fee (UST) - Water Code 26.358(f): 30 TAC 334.21 (Subsection B) (eliminated 9/1/2007)	$50/tank	3,514	$160,533	Waste Management Account - 0549
Aboveground Storage Tank Registration Fee (AST) - Water Code 26.358(f): 30 TAC 334.128 (Subsection F)	$25/tank	1,191	$63,256	Waste Management Account - 0549
Voluntary Clean Up Program Fee (VCP) - Health and Safety Code 361.604	$1,000 application fee	1,310	$728,954	Waste Management Account - 0549
Radioactive By-Product Fees - Health and Safety Code 401.2625 and 401.412 (b,)(c), (d), and (f)	$60,929 annual licensing fee	Not implemented until 2009	$0	Waste Management Account - 0549

Class 1 Commercial Waste Management Fee (25% of commercial goes to counties) - Health and Safety Code 361.136 (b) (1) (B), (b)(2): 30 TAC 335.325(j)(2) (Subsection J)	$3.20-$7.50/ton based on source and method of disposal	315	$1,126,499	Waste Management Account - 0549
Hazardous Waste Management Fee - Health and Safety Code 361.136 (b) (1) (A), (d): 30 TAC 335.325 (j)(1) (Subsection J)	$1.00-$37.50/ton based on source and method of disposal	724	$5,260,792	Waste Management Account - 0549
Lead-Acid Battery Fee (collected by the Comptroller for TCEQ) - Health and Safety Code 361.138(b)	$2.00 on each retail sale of battery <12 volts; $3.00 on battery 12+ volts	Collected by the Comptroller (est. 8,263 payees)	$16,262,380	Hazardous and Solid Waste Remediation Account - 0550
Innocent Landowner Program Fee (ILP) - Health and Safety Code 361.753(b): 30 TAC 333.35 (b)(E)(3) (Subsection B)	$1,000 initial application	278	$136,283	Hazardous and Solid Waste Remediation Account - 0550
Hazardous Waste Management Fee - Health and Safety Code 361.136 (b) (1) (A), (d): 30 TAC 335.325 (j)(1)(Subsection J)	$1.00-$37.50/ton based on source and method of disposal	724	$5,260,792	Hazardous and Solid Waste Remediation Account - 0550
Class 1 Commercial Waste Management Fee (25% of commercial goes to counties) - Health and Safety Code 361.136 (b) (1) (B), (b)(2): 30 TAC 335.325(j)(2) (Subsection J)	$3.20-$7.50/ton based on source, commercial status, and method of disposal	316	$1,126,499	Hazardous and Solid Waste Remediation Account - 0550
Petroleum Storage Delivery Fee - Water Code 26.3574(b)	Delivery fee rates: $3.75< 2,500 gallons; $7.50 for 2,500- 5,000 gallons; $11.75 for 5,000- 8,000 gallons; $15 for 8,000- 10,000 gallons; $7.50 for every 5,000 gallons above 10,000.	Collected by the Comptroller	$33,003,417	Petroleum Storage Tank Remediation Account - 0665
Environmental Lab Accreditation - Water Code 5.803: 30 TAC 25.30 (Subsection B)	$500 primary, $250 secondary + $75-$300 fee per media type	307	$434,639	Environmental Testing Lab Accreditation Account - 5065

Safe Drinking Water Lab Certification - Water Code 5.803: 30 TAC 25.70 (Subsection C)	$500 primary, $250 secondary + $75-$300 fee per media type (subset of environmental lab as of 7/1/2008)	66	$9,205	Environmental Testing Lab Accreditation Account - 5065
TERP Fees Motor Vehicle Sales and Use - Health and Safety Code 386.251; Tax Code 152.0215	2.5% on diesel vehicles made before 1997 and 1% on vehicles since 1997 based total consideration	Collected by the Comptroller	$13,002,024	Texas Emission Reduction Plan Account - 5071
TERP Motor Vehicle Certified Titles - TERP - Health and Safety Code 386.251; Transportation Code 501.138	$15 fee for attainment and $20 fee for non-attainment	Collected by TxDOT	$104,640,757	Texas Emission Reduction Plan Account - 5071
TERP Motor Vehicle Registration - TERP - Health and Safety Code 386.251; Transportation Code 502.1675	10% of the total registration fees due	Collected by the Comptroller	$9,995,293	Texas Emission Reduction Plan Account - 5071
TERP Motor Vehicle Inspection- Health and Safety Code 386.251; Transportation Code 548.5055	$10 per inspection	Collected by DPS	$5,223,190	Texas Emission Reduction Plan Account - 5071
TERP Diesel Equipment Surcharge - Health and Safety Code 386.251; Tax Code 151.0515	The fee is 2% of sale or rental price	Collected by the Comptroller	$45,908,944	Texas Emission Reduction Plan Account - 5071
Dry Cleaning Facility Registration - Health and Safety Code 374.102	Facility: $250/yr if < $150k annual receipts or nonparticipating, otherwise $2,500/yr; Drop Stations $250 if < $150k, $750 if > $150k, $125 if nonparticipating	8,084	$3,292,234	Dry Cleaning Facility Release Fund - 5093
Dry Cleaning Penalties - Health and Safety Code 374.252 and Water Code 7.0525	$1,000 - $10,000 for violation; $5- $50/day for expired permit	356	$102,496	Dry Cleaning Facility Release Fund - 5093
Dry Cleaning Solvent Fees - Health and Safety Code 374.103	$20/gal on perchloroethylene ("perc"); $3/gal on other solvents	91	$2,503,377	Dry Cleaning Facility Release Fund - 5093
Dry Cleaning Deductible - Health and Safety Code 374.203	$5,000 deductible toward corrective action costs	2	$980	Dry Cleaning Facility Release Fund - 5093

Air Emissions Fees - Health and Safety Code 382.0621: 30 TAC 101.27(f) (Subsection A)	Based on formula (Rate per ton = $25.00 X (1 - CO) X (1 + {(CPI - 122.15)/122.15}); 4,000 ton cap; CO= tons of carbon monoxide	1,747	$32,857,392	Operating Permit Fees Account - 5094
Air Emissions Upset and Maintenance - Health and Safety Code 382.0215: 30 TAC 101.27 (Subsection A)	Based on formula (Rate per ton = $25.00 X (1 - CO) X (1 + {(CPI - 122.15)/122.15}); 4,000 ton cap; CO= tons of carbon monoxide	1	$916,396	Operating Permit Fees Account - 5094
Sludge Hauler Registration Fee (WMS) - Health and Safety Code 361.013(c): 30 TAC 312.9 (c) (Subsection A)	$100-$500/year based on volume hauling	1,363	$439,152	50% Waste Management Acct 0549 and 50% Solid Waste Disposal Fee Acct 5000
Sludge Beneficial Land Use Fee - Health and Safety Code 361.013(a): 30 TAC 312.9(b)(2) (Subsection A)	$.75/dry ton for beneficial use, $100 minimum	137	$91,863	50% Waste Management Acct 0549 and 50% Solid Waste Disposal Fee Acct 5000
Sludge Hauler Sticker Fee (WSS) - Health and Safety Code 361.013(a): 30 TAC 312.142 (Subsection G)	$10/motor transport vehicle	1,289	$27,300	50% Waste Management Acct 0549 and 50% Solid Waste Disposal Fee Acct 5000
Sludge Beneficial Land Use Permit Fee - Health and Safety Code 361.013(a): 30 TAC 312.9(g)(4) (Subsection A)	$100-$500 based on quantity	9	$500	50% Waste Management Acct 0549 and 50% Solid Waste Disposal Fee Acct 5000
Sludge Surface Disposal Permit Fee - Health and Safety Code 361.013(a): 30 TAC 312.9(b)(4) (Subsection A)	$1.25/ton, $100 minimum	4	$67,140	50% Waste Management Acct 0549 and 50% Solid Waste Disposal Fee Acct 5000
Solid Waste Medical Waste Transport Fee - Health and Safety Code 361.013(a): 30 TAC 330.1211 (L) (Subsection Y)	$100-$500 based on weight	36	$12,850	50% Waste Management Acct 0549 and 50% Solid Waste Disposal Fee Acct 5000
Solid Waste Disposal Permit Fees - Health and Safety Code 361.013(a): 30 TAC 305.59 (Subsection C)	$100 application fee and $50 per notice	21	$4,150	50% Waste Management Acct 0549 and 50% Solid Waste Disposal Fee Acct 5000

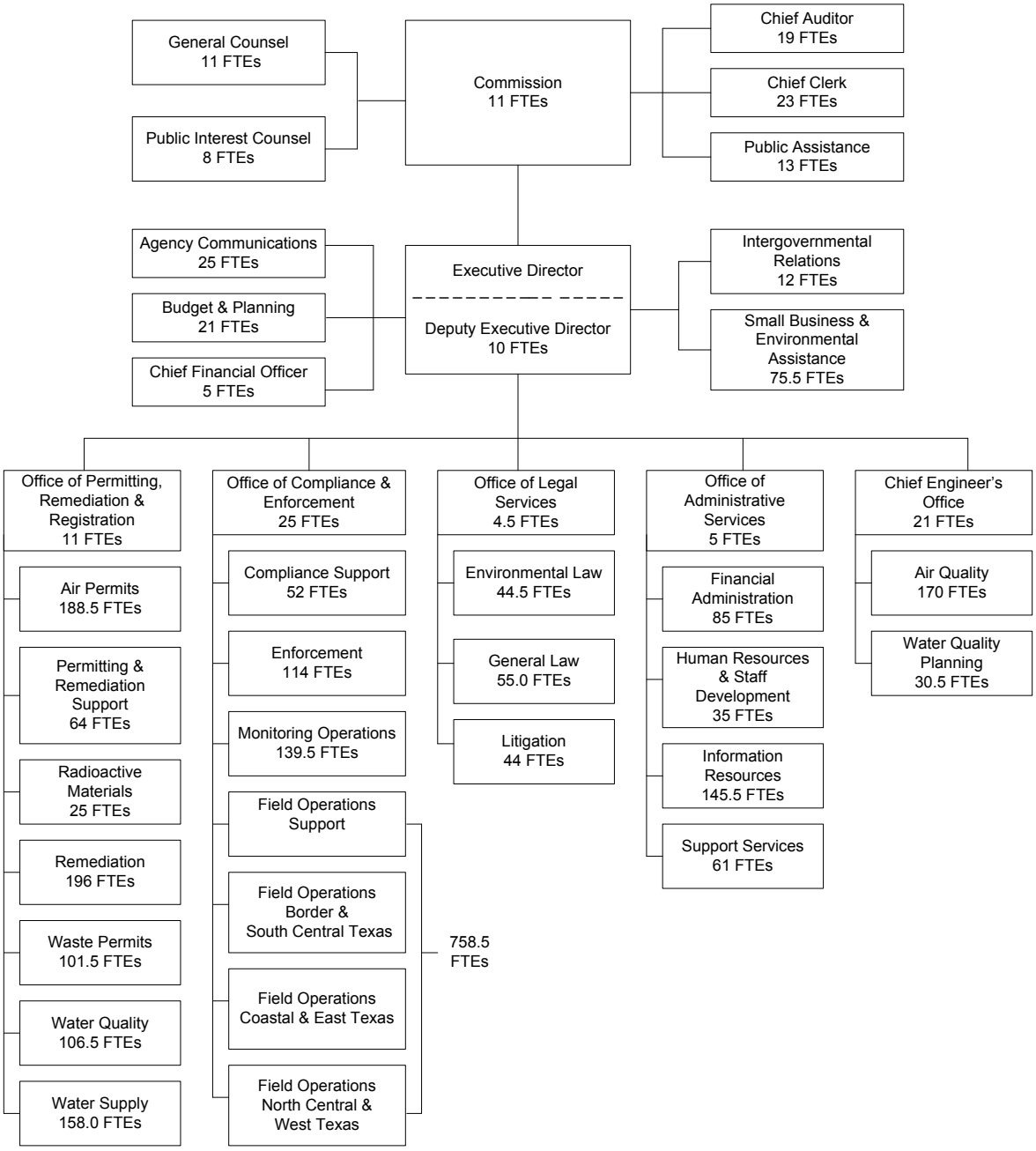
Solid Waste Disposal Fee (SWD) - Health and Safety Code 361.013(a): 30 TAC 330.673 (Subsection P)	$1.25/ton by weight. By volume, $.40/cu.yd. compacted,$.25/cu.yd. un-compacted	244	$41,333,520	50% Waste Management Acct 0549 and 50% Solid Waste Disposal Fee Acct 5000

VI. ORGANIZATION

A. Provide an organizational chart that includes major programs and divisions, and shows the number of FTEs in each program or division.

TCEQ Organizational Chart

Actual FTEs as of August 31, 2008



B. If applicable, fill in the chart below listing field or regional offices. See Exhibit 10 Example or click here to link directly to the example.

Texas Commission on Environmental Quality Exhibit 10: FTEs by Location — Fiscal Year 2008			
Headquarters, Region, or Field Office	**Location**	**Number of Budgeted FTEs, FY 2008**	**Number of Actual FTEs as of August 31, 2008**
Austin Headquarters	Austin	2,089.0	2,042.0
Region 1 – Amarillo	Amarillo	31.0	31.0
Region 2 – Lubbock	Lubbock	23.0	23.0
Region 3 – Abilene	Abilene	24.0	24.0
Region 4 – Dallas/Fort Worth	Fort Worth	103.0	103.0
Region 5 – Tyler	Tyler	55.0	54.0
Region 6 – El Paso	El Paso	25.0	24.0
Region 7 – Midland	Midland	22.0	19.0
Region 8 – San Angelo	San Angelo	16.0	16.0
Region 9 – Waco	Waco	35.0	35.0
Region 10 – Beaumont	Beaumont	68.0	67.0
Region 11 – Austin	Austin	36.0	36.0
Region 12 – Houston	Houston	245.0	237.0
Region 13 – San Antonio	San Antonio	66.0	64.0
Region 14 – Corpus Christi	Corpus Christi	55.0	55.0
Region 15 - Harlingen	Harlingen	38.0	33.0
Region 16 - Laredo	Laredo	11.0	11.0
	TOTAL	**2,942.0**	**2,874.0**

C. What are your agency's FTE caps for fiscal years 2008-2011?

2008 – 2,942.3
2009 – 2,935.3
2010 – 2,980.3
2011 – 3,001.3

D. How many temporary or contract employees did your agency have as of August 31, 2008?

Contractors on 8/31/2008 – 48 which equated to 14.6 FTEs of which 3.4 FTEs affects the FTE Cap.

E. List each of your agency's key programs or functions, along with expenditures and FTEs by program. See Exhibit 11 Example or click here to link directly to the example.

Texas Commission on Environmental Quality
Exhibit 11: List of Program FTEs and Expenditures — Fiscal Year 2008

Program	FTEs as of August 31, 2008	Actual Expenditures
Small Business and Environmental Assistance (SBEA) and Border Affairs	75.5	$10,836,738
Air Quality Planning	113.0	$17,397,896
Texas Emissions Reduction Plan (TERP)	34.0	$48,985,008
Low Income Vehicle Repair Assistance Program (LIRAP) / Drive a Clean Machine (DACM)	7.0	$49,871,256
Toxicology	14.0	$1,248,575
TMDL	13.5	$6,073,070
Air Permits	188.5	$10,427,835
Waste Permits	126.5	$18,702,081
Water Quality	106.5	$6,915,288
Public Drinking Water	44.5	$7,237,122
Utilities and Districts	53.0	$5,524,978
Enforcement	114.00	$5,554,611
Field Operations	790.5	$50,754,422
Monitoring Operations	87.0	$12,856,576

Permitting and Registration Support	64.0	$3,578,588
Occupational Licensing	20.0	$2,685,126
Groundwater Planning and Assessment	10.0	$783,074
Water Rights Permitting and Availability	35.0	$2,371,797
Remediation/Superfund	74.5	$18,036,815
Remediation/PST and Dry Cleaners	61.5	$46,810,780
Remediation/VCP and Corrective Action	59.5	$3,191,717
TOTAL	**2,092.0**	**$329,843,353**

VII. GUIDE TO AGENCY PROGRAMS

Introduction

Since its establishment in 1993 as a consolidated state environmental agency addressing air, water and waste activities, the agency has strived to ensure that its organization is structured to provide the best opportunity to efficiently and effectively fulfill its mission.

Organizational Structure

Although the Texas Commission on Environmental Quality (TCEQ) is a relatively mature agency, it is also a dynamic institution, open to making adjustments in its organizational structure in response to changed priorities and identified efficiencies. The agency does not view its organizational structure as set in stone; rather it is aware of the need to continually fine-tune functions to improve services.

When first established, the agency was organized along the programs it regulates: air; water; and waste. In 1999 the agency moved from a programmatic organizational structure to a functional one based on permitting, planning, regulation, compliance and enforcement. The change was made with the expectation that this structure would provide greater uniformity in procedures and decision making, present cross-training opportunities for staff in the various programs, and align planning and permitting activities. Over time, consistency between the various permitting programs has been achieved and is now institutionalized.

Since the change to a functional organization, modifications have been made in response to the agency's experiences with the new structure and its ongoing effort to increase efficiencies, effectiveness and expertise. For instance, in some cases staff and managers have become "generalists" and not experts of a program, only experts on the process.

Based on the experience gained as the functional organizational structure has been put into place, management has observed the need to make changes that move its structure from being completely functional to one that incorporates elements of a programmatic organizational structure.

Below is a discussion of some of the most recent changes made in response to this observation.

- *The Water Quality Planning Division* has been created under the Chief Engineer's Office (CEO) to bring together several water quality planning and assessment programs to more efficiently facilitate the work of each program.
- *The Remediation Division* has moved from the Office of Permitting and Registration (OPR) to the Office of Compliance and Enforcement (OCE), to facilitate the interaction between the Remediation, Enforcement and Field Operations Divisions in cleaning up and resolving contaminated sites across the state.
- *The Operator Licensing Program* has moved from the OCE to the OPR to more logically align licensing and registration functions.
- *The Radioactive Materials Division* has moved to the Waste Permits Division in an effort to consolidate waste permitting activities.

- *The Monitoring Operations Division* has moved to Field Operations Support to unify monitoring, to enhance emergency response and to merge data collection and lab activities.
- *The Tax Relief for Pollution Control Property* (Proposition 2) has moved from the Small Business and Environmental Assistance Division to the CEO to utilize the technical expertise in that office.
- *The OCE* has instituted three Area Directors to oversee field operations across Texas. This realignment was accomplished to focus greater attention on unique areas of the state that have related sets of challenges.

These changes, as well as others to follow, are being implemented in recognition that while there were gains in moving from a programmatic centered organizational structure, there have also been some challenges. One of the most significant challenges has been the loss of staff with expertise in specific and significant issue areas.

Consideration is also being given to the following as the agency determines changes to its current organization structure:

- maximizing the availability of staff knowledgeable in certain priority program areas;
- making the agency more accessible to a public that understands environmental concerns in program-specific terms;
- coordinating with the Environmental Protection Agency (EPA) and other local government entities that are often aligned along program areas;
- ensuring that data, which is often collected by media, can be retrieved and utilized more effectively;
- providing enhanced representation for high profile issues within a particular media (air vs. water); and
- capitalizing on changes in the workforce and advanced information technologies.

Staff Re-alignment

As management continues to evaluate the efficiency of the agency's organizational structure, attention is also being given to re-locating certain programs from the central office, to the agency's regional offices. The agency's remediation program is a prime example of a program that would benefit from moving to the field.

These possible changes would be a long-term project and would not be done to simply reduce staff in the central office. Rather, it is based on the recognition that certain agency programs can be more effectively implemented in regional offices across the state. In addition, this movement to the field will allow for the regulator to be in closer physical proximity to those being regulated. With advancements in information technologies, efficient communication between central and regional staff can now be provided to ensure consistency in agency operations.

Recent Initiatives

The TCEQ has undertaken several initiatives in the past few years to improve agency performance: a comprehensive review of the agency's enforcement processes; a permit timeframe review aimed at streamlining permit processes; a move toward more access

through a variety of electronic reporting, information and comment processes; the development of a rapid response capability following natural and man-made disasters; the development of a network of statewide air and water monitoring stations that provide real time environmental data to aid compliance and improve planning; and a continuing effort to strengthen services provided through the agency's regional offices.

Many of these initiatives are described in Section XII, Agency Comments, of this report, which includes a discussion of major administrative innovations undertaken by the TCEQ to eliminate duplication in programs, increase operating efficiency and address agency performance.

A Note about Documents Included in Section VII

By necessity, any description of the agency, no matter how comprehensive, represents a "snapshot" of the TCEQ's history at a single moment in time. For purposes of this report it has been necessary to reflect as the agency was at the end of FY 08. This date was selected because it was a point at which a variety of data useful for the evaluation of the agency had been collected, quality assured, and reported. This data supports the narrative information on the accompanying 35 selected programs, which represent the agency's core activities.

Shorter narratives are also provided in Section VII to describe support functions of the agency and programs associated with the offices of the commissioners and executive director. Each program is described as it appeared on August 31, 2008; unless otherwise noted.

A Note about Performance Measures

The TCEQ reports a large number and variety of performance measures quarterly and annually to the Legislative Budget Board. Some measures are the result of combined totals reported from two or more programs. This report does not disaggregate this data among individual program profiles, but instead reports the totals via the program most closely associated with the appropriate performance measure. Key performance measures are reported in their aggregate form in Section II of this report.

A Note about Staffing Numbers

Some Full Time Equivalent (FTE) totals may vary as they are reported in different sections of this document. These variations may occur both between and within programs. Variations occur because of the realignment of some of the programs noted in this report during FY 08. Other variations may appear because several TCEQ programs make use of project teams that contribute all or part of their efforts to multiple programs and projects. Total FTE counts reported in Sections V and VI are based on the final figures for the 2008 fiscal year.

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

Narrative Description

The Office of the Commissioners
Bryan W. Shaw, Ph.D., Chairman
Buddy Garcia, Commissioner
Carlos Rubinstein, Commissioner

11 FTEs

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. They 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.

The TCEQ commissioners have adopted a mission statement and philosophy that embody their vision of how this agency should conduct its business, and have issued a Resolution Concerning Public Participation at the TCEQ.

General Counsel

11 FTEs

The general counsel (GC) is the chief adviser on law and ethics for the commissioners. In addition to managing the administrative affairs of the commissioners office, the general counsel provides legal assistance to the commissioners in their review of permits, proposed enforcement actions, rules, and other matters.

Alternative Dispute Resolution (ADR) activities are also the responsibility of the GC. The ADR staff assists permit applicants and persons opposed to the applications in resolving their differences informally, if possible, to avoid the time and expense of a contested public evidentiary hearing. ADR procedures are voluntary, and those participating in an ADR do not forfeit their right to a hearing if the ADR does not result in a settlement. Between FY 05 and FY 09, ADR handled 137 contested cases, including 66 fully settled cases and 71 partially settled cases.

Chief Auditor

19 FTEs

The Chief Auditor's Office (CAO) provides assurance and advisory services that help the commissioners and management meet agency goals and objectives. The CAO provides independent and objective information, analyses, and recommendations to assist

management in effecting constructive change, managing business risk, and improving the compliance and accountability of the regulated community and business partners. To provide a full range of audit services to the agency, during the past year, the CAO reorganized into three teams: Internal Audit, External Audit, and Information Technology Audit. Since FY 05, the CAO has completed 93 audits of all types.

Chief Clerk

23 FTEs

The Office of the Chief Clerk (OCC) issues required notices of applications, public hearings, and public meetings. The OCC also prepares the commission agendas, transmits final decision documents to applicants and other parties, and maintains the official records of pending commission proceedings. The OCC also maintains those pages of the TCEQ's Web site pertaining to notice searches, OCC database searches, commissioners' Agendas and Work Sessions and the executive director's agendas.

Public Assistance

13 FTEs

The Office of Public Assistance (OPA) answers questions about pending TCEQ permits, explains the permitting process and opportunities for public participation, and conducts public meetings around the state on permit applications. The office includes an Environmental Equity Program that helps minority and low-income communities work toward solutions to problems with industries and facilities near their homes. OPA is responsible for distributing the TCEQ Customer Satisfaction Survey, which encourages customers' feedback on their experiences with the agency. Every two years, OPA summarizes the most recent biennium's survey responses in a Report on Customer Service to the Legislative Budget Board. The director is the agency's customer service representative, and OPA is the point of contact for all complaints against the agency. OPA has conducted a total of 385 meetings with 18,476 attendees in the past five fiscal years. These include public meetings, notice and comment hearings, and informational meetings on permitting matters, as well as rule hearings and stakeholder meetings. The majority of meetings are in regard to permitting actions.

Public Interest Counsel

8 FTEs

The Office of Public Interest Counsel was created by the legislature to ensure that the public's interest is represented in issues considered by the commission. The office does not formally represent individuals at commission proceedings. However, citizens who have questions about the legal aspects of dealing with the TCEQ, its hearing process, and its rules can obtain help from this office. Assistance is available to anyone who is affected by a

particular permit application or other agency authorization. The staff of the Public Interest Counsel also assists people who have questions about enforcement proceedings.

Office of the Executive Director
Mark R. Vickery, P.G., Executive Director
Zak Covar, Deputy Executive Director

10 FTEs

The executive director, who is hired by the commissioners, is responsible for managing the agency's day-to-day operations. Major responsibilities include directing the operations of over 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.

The agency has five office clusters that report to the executive director. Each office is led 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

In addition, five divisions report directly to the executive director:

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

Agency Communications

25 FTEs

The Agency Communications Division works to continuously improve and streamline the delivery of print and Web information to the public and within the agency. This division coordinates the agency response to all media inquiries, prepares and distributes agency news releases, and coordinates news conferences. The division also includes the agency

library, and a publishing staff that coordinates, produces, and distributes regulatory and general informational materials, both print and Web.

Budget and Planning

21 FTEs

The Budget and Planning Division is responsible for developing and monitoring the agency's annual operating budget. Staff prepares, submits, and monitors all of the agency's federal grant applications and work plans, centralizing grants management in support of TCEQ programs. The division also develops and submits the agency's strategic plan, biennial legislative appropriations request, and quarterly performance reports to the governor and the legislature. In addition, its staff conducts special analyses to monitor the achievement of agency goals and priorities.

Chief Financial Officer

5 FTEs

The Chief Financial Officer's office oversees all budgeting and financial issues in the agency. This includes the development of the agency's strategic plan, biennial appropriations request, the annual operating budget, and quarterly performance reports to the legislature and the governor. On fiscal matters, this office is the point of contact for the TCEQ's oversight agencies. The office is involved in bill implementation and preparing fiscal notes that have revenue requirements and it monitors revenue and expenditures, estimates revenue collections, and provides fiscal analysis and reporting.

Intergovernmental Relations

12 FTEs

The Intergovernmental Relations Division (IGR) coordinates the agency response to congressional and state legislative inquiries and constituent issues, legislative initiatives, and interim committee studies affecting the agency. It coordinates the agency's testimony and participation during legislative sessions and ensures that the legislature is informed of the TCEQ's initiatives and activities. It manages the agency's comments on national policy issues.

The IGR also serves as a clearinghouse for border affairs information for the TCEQ. The Border Affairs staff involved in these activities supports the agency's mission in the border region with Mexico and represents the agency in national environmental work with Mexico. These ongoing projects, some which require collaboration with other state, federal, or even binational agencies, include:

- The Border Initiative. This is an agency umbrella plan that encompasses all agency work with Mexico and in the border region.
- The Border Governors Conference (BGC). The staff supports commissioners in their roles as Texas representatives on the Environment and Water Work Tables of the BGC.
- Border 2012. This is a binational environmental program—led by the EPA and its Mexican counterpart, SEMARNAT—with the ten border states as active partners.
- The Border Environment Cooperation Commission and the North American Development Bank. These are two NAFTA-created environmental agencies
- The Joint Advisory Committee for the Improvement of Air Quality in the Ciudad Juárez, Chihuahua – El Paso, Texas – Doña Ana County, New Mexico, Air Basin (JAC). The JAC develops and implements recommendations to address binational air quality problems.
- The International Boundary and Water Commission (IBWC), U.S. and Mexico. Staff works with the IBWC on water allocation and sanitation issues affecting Texas, as well as disaster response due to potential flooding.
- TCEQ Border Grant. Staff manages this grant, which supports the TCEQ's border programs, including equipment to measure visibility and regional haze in Big Bend and Guadalupe Mountain national parks.
- Colonias Coordination. The Border Affairs manager represents the agency in the Border Initiatives Committee, which is chaired by the colonias coordinator in the office of the Texas Secretary of State.
- The Good Neighbor Environmental Board. The Border Affairs manager is a member of this EPA advisory board to the president and the Congress.

Small Business and Environmental Assistance

75.5 FTEs

The Small Business and Environmental Assistance Division (SBEA) helps Texans prevent pollution, conserve resources, and achieve compliance with regulations; educates customers; and promotes conservation of natural resources through partnerships in Texas and along its border with Mexico. The division offers services to a variety of customers, including small businesses and local governments, industries and manufacturers, agricultural operations, students and academia, and anyone interested in environmental stewardship. Detailed information about this program is included in a separate document for agency programs.

The Office of Legal Services
Stephanie Bergeron Perdue, Deputy Director

4.5 FTEs

The Office of Legal Services (OLS) consists of three divisions under the oversight of the deputy director. The three OLS divisions are (1) the General Law Division, (2) the Environmental Law Division, and (3) the Litigation Division.

The deputy director's direct reports also include the agency's bankruptcy program. The bankruptcy program, in coordination with the Texas Office of the Attorney General (OAG), pursues debtors in federal bankruptcy court for environmental obligations and recovery of financial liabilities owed to the TCEQ.

The mission of the OLS is to provide legal counsel and support to the executive director (ED), the agency program areas, and, in conjunction with the Office of General Counsel (OGC) and the Office of Public Interest Counsel, to the commissioners. Generally, the responsibilities of the office are to:

- provide legal counsel to clients;
- represent the ED in administrative cases;
- conduct legal research and issue legal opinions;
- coordinate with the Environmental Protection Agency (EPA) and the OAG;
- monitor legislative, regulatory, and judicial developments; and
- manage the rulemaking process for the agency.

General Law Division

55 FTEs

The General Law Division (GLD) provides legal counsel to the agency on issues related to personnel and employment law, ethics, contracts, public information processing and distribution, management of rulemaking projects, and records retention. The division director serves as the agency's ethics advisor. The GLD also provides the OLS with administrative support (paralegals and legal secretaries).

GLD attorneys provide legal counsel to the agency by providing:

- advice on personnel and employment law issues, ethics, and TCEQ operating policy matters;
- training to agency staff on ethics and equal employment law issues;
- investigations of internal complaints of discrimination and retaliation;

- referral, coordination, and assistance to the OAG in state and federal court litigation;
- legal support regarding agency contracts and grants, memoranda of agreements, intellectual property, real property transactions, homeland security, and miscellaneous issues;
- legal support for disputes that arise during the course of contract performance; and
- coordination as well as preparation of responses to public information requests for the OLS.

The Texas Register/Paralegal Section of the GLD coordinates the administrative aspects of rulemaking documents and the rulemaking process by working with internal customers, such as rulemaking teams throughout the agency, as well as with external customers, such as the Texas Register, located in the Secretary of State's Office. The staff frequently provides assistance to both internal and external customers with rulemaking inquiries and public information act requests. The staff is also responsible for ensuring that statutory requirements for public participation in the agency's rulemaking process are met.

Environmental Law Division

44.5 FTEs

The Environmental Law Division (ELD) provides legal support to the Office of Permitting and Registration and the Chief Engineer's Office. The ELD is composed of four sections divided generally by media: (1) Air, (2) Industrial Hazardous Waste and Municipal Solid Waste, (3) Water Quality, and (4) Water Rights and Water Utilities. The ELD provides legal counsel to the agency by providing:

- legal assistance in permitting matters, including participation in public meetings and drafting of the Response to Comments and Response to Hearing Requests;
- representation of the ED in certain contested permit cases, including all contested water utility and water rights permit cases, by coordinating discovery and prefiled testimony, preparing witnesses, drafting closing arguments and exceptions to the Proposal for Decision and representing the ED at Agenda;
- interpretation of federal and state environmental statutes and rules;
- legal analysis on issues related to federal program delegation, including rulemaking to implement federal changes and obtaining certification from the OAG for delegated programs;
- referral, coordination, and assistance to the OAG in state and federal court litigation, including appeals of commission actions;
- legal support for rulemaking projects, including drafting the regulatory impact analysis and the takings impact analysis and reviewing the preamble and proposed and adopted rules;
- legal support for the development of the State Implementation Plan (SIP), including revisions to the SIP and rulemaking;

- legal assistance on the Edwards Aquifer Rules and Water Pollution and Abatement Plans;
- legal support on the development of Total Maximum Daily Loads;
- legal assistance on radioactive waste issues, including related applications and licenses;
- legal support to the Operator Licensing program, including representing the ED in revocation proceedings;
- review of all district bond orders;
- emergency orders for ED approval and presentation of the matter at Agenda for the commission to affirm, modify, or set aside;
- assistance in drafting of proposed legislation and legal analysis of introduced legislation; and
- response to requests for OAG opinions in accordance with the Public Information Act for ELD-related matters, including program documents.

Litigation Division

44 FTEs

The Litigation Division (LD) provides legal representation primarily to the Enforcement and Remediation divisions of the Office of Compliance and Enforcement (OCE). It also includes the Environmental Crimes Unit.

The legal support provided by LD falls into two primary areas: (1) enforcement and (2) remediation. The work of the enforcement attorneys in support of the Enforcement Division includes negotiating agreed orders and compliance agreements; processing default orders; and conducting contested administrative enforcement actions. The type of enforcement case referred to the LD is one in which the respondent is uncooperative, uncommunicative, and/or unwilling to reach an agreement or one in which the respondent wants to participate in a contested case hearing. The enforcement attorneys also supply legal advice to the Field Operations Division staff of the OCE and participate as speakers during basic investigator training on topics such as citizen collected evidence and expert witness testimony. The remediation attorneys in the LD provide legal advice to staff in the Remediation Division of the OCE regarding a variety of programs, including voluntary cleanup, dry cleaning, petroleum storage tanks, natural resource damages, and state and federal Superfund.

The attorneys in LD also:

- refer cases to the OAG to pursue civil penalties and injunctive relief and act as the liaison between the OAG and the agency;
- provide advice for and implementation of the Supplemental Environmental Project (SEP) program, including drafting custom SEPs;
- provide legal advice to agency personnel about the Audit Privilege Act;

- review and research Notice of Intent to Sue letters under Citizen Suit provisions of the federal Clean Water Act and Resource Conservation and Recovery Act;
- prepare emergency orders for appointment of temporary managers and of water utilities and refer the utility to the OAG to place the utility into receivership;
- assist in drafting proposed legislation and provide analysis of introduced legislation;
- provide legal support for rulemaking projects, including drafting the regulatory impact analysis and the takings impact analysis and reviewing the preamble and proposed and adopted rules; and
- respond to requests for OAG opinions in accordance with the Public Information Act for LD–related matters, including program documents.

In coordination with a federal, state, and local task force, the Environmental Crimes Unit of the LD investigates and assists in the prosecution of environmental crimes by screening cases, investigating environmental crimes, helping execute search warrants, testifying, and assisting in the prosecution of environmental crimes.

Office of Administrative Services
Dorca Zaragoza-Stone, Deputy Director

5 FTEs

The Deputy of the Office of Administrative Services consists of four divisions, under the oversight of the deputy director, that provide core, agency-wide administrative services. These divisions are Financial Administration, Human Resources and Staff Development, Information Resources, and Support Services.

Financial Administration

85 FTEs

The Financial Administration Division is responsible for managing the agency's finances, ensuring the integrity of the accounting records, and maintaining adequate internal controls to safeguard the agency's financial assets. The Financial Reporting Section is responsible for the maintenance of the agency's financial systems; preparation of the indirect cost rate proposal; billing and collection of federal grants; and providing financial information, including the agency's annual financial report, to management and oversight entities. The Revenue Section is responsible for the billing and collection of fees due to the agency and for managing and maintaining financial assurance documents in accordance with federal and state regulations. The Payment Processing Section is responsible for the audit and processing of payment vouchers; processing the agency's payroll according to state and federal guidelines; and oversight of the agency's timekeeping system to ensure compliance with state and federal rules and agency policy.

Human Resources and Staff Development

35 FTEs

Human Resources and Staff Development (HRSD) supports the agency by assisting in recruiting, hiring, developing and retaining a diverse, competent workforce. The division is responsible for agency recruitment and staffing services, including the administration of internship and volunteer programs. HRSD oversees job classification and employee compensation, ensuring compliance with the State Classification Plan, Fair Labor Standards Act, and Equal Pay practices. The division also provides services for staff and management development, which includes administering the performance management system, as well as the acquisition and delivery of general work skills, technical training, and agency policy training, and the coordination of the agency's leadership development program. HRSD provides services related to employee benefits, leave, and workers' compensation. Additionally, it facilitates employee relations and coordinates wellness and other employee programs. Further, the division undertakes the agency's succession and workforce planning processes and produces reports for management decision making.

Information Resources

145.5 FTEs

The Information Resources Division (IRD) is responsible for the provision of information technology (IT) and other services across the agency. IRD provides IT customer support, and manages maintenance of the agency's physical IT infrastructure through oversight of a contract with the state data center. It works with programs across the agency, providing technical leadership in software development, enhancement services for enterprise information systems, and IT project management and business analysis services. IRD develops IT budgets, plans, and reports for agency management and other oversight agencies. The division also administers the agency's central records system through a contract with a commercial records management firm, and coordinates the agency's response to public information requests.

Support Services

61 FTEs

The Support Services Division houses the agency's procurement and contracts section and its Historically Underutilized Business (HUB) program, as well as miscellaneous standard support services. The Procurement and Contracts Section issues bid solicitations, receives vendor responses, assists in the contractor selection process, and issues purchase orders or contracts. HUB staff monitor and evaluate the agency's HUB performance, and take steps to ensure that the agency makes a good-faith effort to meet its HUB goals. The HUB program ensures good-faith efforts through various avenues, including the evaluation of procurement and contract documents for potential HUB opportunities, outreach activities such as participation in vendor forums, fostering of mentor-protégé agreements, and direct assistance to agency programs working to meet HUB goals. The Business Services Section manages the agency's physical assets and inventory, its fleet program, central supplies, and mail delivery. The Telecommunications and Staff Services Section oversees the Texas Facilities Commission's delivery of facilities and security services, manages the agency's risk program, and provides copy and telephone-related services.

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

Complete this section for **each** agency program (or each agency function, activity, or service if more appropriate). Copy and paste the questions as many times as needed to discuss each program, activity, or function. Contact Sunset staff with any questions about applying this section to your agency.

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Small Business and Environmental Assistance
Location/Division	1st Floor / Building F / Small Business and Environmental Assistance / Office of the Executive Director
Contact Name	Brian Christian
Actual Expenditures, FY 2008	$9,563,841
Number of FTEs as of August 31, 2008	72.5

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Small Business and Environmental Assistance Division (SBEA) provides confidential compliance assistance on air, water, and waste regulations to small businesses and small local governments; works with regulated entities to implement pollution prevention and innovative environmental programs; offers technical assistance for recycling; and educates the public and the regulated community on rules and environmental issues. The SBEA's major activities are described below.

Small Business and Local Government Assistance (SBLGA). Federal and state laws require the TCEQ to provide compliance assistance to small businesses. The commission also offers that service to small local governments. It is confidential, except when there is an imminent threat to the environment. By keeping assistance confidential, and separate from enforcement, the agency encourages entities to seek assistance and achieve compliance. The SBEA offers compliance assistance through:

- direct on-site assistance;
- a toll-free hot line answered by its staff;
- active participation on agency rule, standard permit, and general permit teams;
- regulatory guidance development; and
- advisory committees.

Pollution Prevention. The SBEA implements multiple statutory programs that help prevent pollution and reduce releases into the environment. Major pollution prevention programs include:

- on-site technical assistance to help regulated entities of any size implement operational/process changes, reduce raw-material usage, or deploy new technologies that avoid creating waste or emissions, including along the Texas-Mexico Border;

- the Waste Reduction Policy Act (federal H.R. 5835, Title VI, Pollution Prevention Act of 1990 and Texas Health and Safety Code, Subchapter Q, Sections 361.501 – 361.510, Waste Reduction Policy Act of 1991), which requires hazardous-waste generators and all that report on Form R for the EPA's Toxics Release Inventory to develop pollution prevention plans and annually report their progress;

- programs to collect hazardous household waste and agricultural waste;

- the Pollution Prevention Advisory Committee, which advises the commission on pollution prevention and recycling programs;

- the Resource Exchange Network for Eliminating Waste, or RENEW, program, which establishes an exchange to market wastes for recycling, reuse, or composting;

- the Clean Texas Program, which encourages regulated entities to develop and implement environmental management systems that help achieve compliance and pollution prevention at their sites;

- the Take Care of Texas Program, which encourages the public to reduce its environmental impact; and

- the Texas Clean School Bus Program, which makes grants to school districts and charter schools to cover installation costs of retrofit technologies that reduce particulate emissions inside bus cabins.

Recycling. Several state statutes require the TCEQ to implement programs to encourage recycling, including:

- the Computer Equipment Recycling Program, which requires computer manufacturers in Texas to take back for proper management their own computer equipment with SBEA tracking implementation, assisting manufacturers and retailers, and reporting to the legislature;

- the Recycling Market Development Implementation Program, which requires the TCEQ to work with other state agencies on recycling efforts; and

- technical assistance on both understanding recycling regulations and establishing a recycling business.

Education. The SBEA is the agency's primary educational program, both for the public and the regulated community. The division oversees the Seminar Account, which recovers costs associated with agency seminars and workshops. The division also implements the Teaching Environmental Sciences program for educators.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

The SBEA programs support the following performance measures (all figures are for FY 08):

Output 03-01-02.02 (Key): number of small businesses and local governments assisted

- 201 percent of annual target

Output 03-01-03.01: Number of On-site Technical Assistance Visits, Audits, Presentations, and Workshops on Pollution Prevention and Waste Minimization and Environmental Management Systems Conducted

- 97 percent of annual target

Output 03-01-03.02: number of entities participating in voluntary programs

- 51 percent of annual target

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

- 252 percent of annual target

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

- 113 percent of annual target

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 other innovative programs

- 0.10 percent of annual target

Efficiency 03-01-03.01: average cost per on-site technical-assistance visit

- 84 percent of annual target

Explanatory 03-01-03.01: tons of hazardous waste reduced as a result of pollution prevention planning

- 22 percent of annual target

Explanatory 03-01-03.02: tons of waste collected by local and regional collection and cleanup events

- 168 percent of annual target

Explanatory 03-01-03.03: tons of agricultural waste chemicals collected under TCEQ sponsorship

- 106 percent of annual target

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The SBEA was created in 1999 by merging multiple assistance programs. The SBEA is composed of the former Office of Pollution Prevention and Recycling, the Small Business Assistance Program, and the Local Government Assistance Program. At the same time, the agency deployed more assistance resources to the TCEQ regional offices. The SBEA is located in the Executive Director's Office. Consolidation resulted in greater efficiency and uniformity in the delivery of assistance. The original intent of the functions has not changed.

Section 507 of the 1990 Federal Clean Air Act Amendments require all states to implement a program to help small businesses comply with all facets of the Act, employ an ombudsman to represent small-business interests before the state environmental regulatory agency, and convene a Compliance Advisory Panel (CAP) comprised of individuals that advise the agency on the concerns and interests of small businesses. The state analog to that statute is Texas Water Code, Section 5.135, which goes further to require that compliance assistance be provided across *all* environmental media (not only air). Hence the multimedia approach of the compliance program.

Congress also passed a comprehensive pollution prevention statute in 1990, which was codified in 42 CFR 133 (Pollution Prevention). At the state level, pollution prevention, recycling, and educational activities are driven by multiple statutes found in Texas Health and Safety Code, Chapter 361 and Texas Water Code Chapter 5.

Effective September 1, 2009, SBEA assumed responsibility for the Texas Small Water System Training Program from the Compliance Support Division. The program is funded by an EPA grant and trains operators of small water systems. The program makes up part of the compliance-assistance function of the division.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

For compliance-assistance purposes, a small business is defined as a regulated business with 100 or fewer employees statewide, and a small local government is defined as a city with a population of 50,000 or fewer, a county with 100,000 people or fewer, or a school district with a student population of 100,000 or fewer. SBEA does not use any monetary threshold for defining these entities. Assistance is available based solely on size. Most businesses and governments served are very small—for example, businesses with fewer than 20 employees. The compliance assistance program provides direct assistance to approximately 7,000 businesses and governments per year; 60 percent are first-time callers.

Pollution prevention and recycling assistance are given regardless of business or local-government size.

The division also serves schools and the general public. Educational materials are made available via the TCEQ Web site.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The division is administered by a director, who oversees administrative functions (e.g. the budget). The division is further divided into two sections led by two managers:

- Small Business and Local Government Assistance (SBLGA), which covers the compliance assistance functions described in the SBLGA portion of Question B; and

- Pollution Prevention and Education (PPE), which provides the other services also noted in the sections on pollution prevention, recycling, and education in Question B.

The division has employees located both in the central office and the regions. SBLGA has at least one staff member in 15 of the 16 regional offices. More populous regions, such as Houston, have multiple SBLGA personnel. The PPE staff is primarily located in the central office, though the section also has two employees in Houston and another in Dallas.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Actual expenditures in FY 08 totaled $9,563,841, from the following funds:

Account	Name	Amount
0151	Clean Air Account	$877,517
0153	Water Resource Management Account	$320,331
0549	Waste Management Account	$1,940,746
0550	Hazardous and Solid Waste Remediation Fee	$1,122,932
5094	Operating Permit Fees	$142,757
0001	General Revenue	$58,473
0146	Used Oil Recycling Account	$8,696
5071	Emission Reduction Plan	$4,081,636
0555	Federal Funds	$1,010,753

SBEA receives funding from the following budget strategies:

A.1.1—Air Quality Assessment and Planning
A.1.2—Water Assessment and Planning
A.1.3—Waste Assessment and Planning
A.2.1—Air Quality Permitting
A.2.3—Waste Management and Permitting
B.1.1—Safe Drinking Water
C.1.1—Field Inspections and Complaints
C.1.2—Enforcement and Compliance Support
C.1.3—Pollution Prevention Recycling
D.1.2—Hazardous Materials Cleanup
F.1.1—Central Administration

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

The EPA is also required to have a small business assistance program and ombudsman (Section 507, 1990 Federal Clean Air Act Amendments). The EPA counterpart is known as the asbestos and small business ombudsman, located in the Small Business Program. The program has some similarities to its state counterparts, but important differences as well.

The program is similar in that there is an ombudsman, a national-level CAP, and a compliance-assistance hot line. The program also advocates on behalf of small businesses within the EPA. The national program also helps disseminate information among all of the state programs for small-business assistance.

The program is different in that it serves more as a clearinghouse of information to state programs and less as a direct compliance-assistance unit (though it does have its hot line). Direct on-the-ground assistance, and the degree to which it is performed, is left to the states. Further, the guidance documents it creates are based solely on federal rules.

The EPA's Office of Pollution Prevention and Toxics manages programs under the Toxic Substances Control Act and the Pollution Prevention Act of 1990. The Pollution Prevention Act establishes a national policy encouraging source reduction and waste minimization, and the EPA program finds ways to accomplish those ends. The program is similar to Texas' in that it provides tools and technical assistance to help states and businesses prevent pollution. The state program differs in that it requires pollution prevention planning and reporting.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Because of the different natures and products of the programs, there is no duplication of effort. Coordination is achieved through participation in regular conference calls with the EPA and other state programs. The state has also participated in national conferences with the EPA and other programs as resources have allowed. All states also have to report their activities annually. Additionally, the TCEQ is active in the EPA Region 6 Pollution Prevention Roundtable, which ensures adequate coordination. There are no inter-agency agreements or contracts.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The division assists local units of government with compliance assistance and technical matters on recycling and innovative programs through contacts to state associations and one on one. Additionally, the division receives notifications of proposed local events to collect hazardous household waste for conformance with TCEQ rules.

Additionally, the Texas Department of Agriculture has a Rural Affairs program that helps develop small businesses in rural communities. Its mission is distinct from the TCEQ's, and its scope is broader in that it covers multiple facets of small-business operations (e.g. business-plan development). SBEA periodically assists Rural Affairs with information on complying with environmental rules.

At the federal level, SBEA works with the EPA's small-business ombudsman and its Pollution Prevention Program. Further, SBEA has extensive experience with administering EPA grants.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**

- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

The SBEA follows all agency procedures to ensure accountability for funding and performance. Contracts are assigned to a single manager who must adhere to agency policies and procedures. The contract manager maintains regular contact with contractors to ensure conformance with work plans.

In FY 08, SBEA's contract expenditures totaled $1,386,763.10. Twelve contracts supported the following activities:

- mail-house service for large-volume mailouts from the division;
- temporary staffing to help cover calls to the compliance-assistance hot line;
- training for local governments on implementing environmental management systems;
- testing the use of compost to preserve water and water quality;
- developing public awareness and education programs, including public service announcements;
- coordinating lake and river cleanup programs in communities across Texas;
- supporting and measuring the success of the Texas Department of Transportation's Drive Clean Across Texas Program;
- researching energy policy, including policy on renewables; and
- compliance audits for small businesses and small local governments.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Air Modeling and Data Analysis
Location/Division	4th Floor / Building F / Air Modeling and Data Analysis Section / Air Quality Division / Chief Engineer's Office
Contact Name	David Brymer
Actual Expenditures, FY 2008	$10,696,742
Number of FTEs as of August 31, 2008	31

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Air Modeling and Data Analysis function provides technical and scientific support for the assessment of air quality in relation to standards and rules established by the Environmental Protection Agency (EPA) under the federal Clean Air Act (FCAA). Major activities in support of the objective include:

- photochemical modeling for ozone to predict outcomes for air quality planning;
- development of meteorological fields for use in photochemical modeling;
- development of air pollutant and source category emissions inventories (point, mobile, non-road mobile, area and biogenic), for use in photochemical modeling;
- analyses of trends in air quality to evaluate ambient pollutant concentrations and meteorological data to help predict progress toward meeting federal air quality standards and to assess the causes of high pollutant and ozone concentrations; and
- performing advanced scientific and data analyses to address new federal mandates and emerging air quality issues to include regional haze, fine particulate matter, lead, etc.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Program effectiveness is evidenced by EPA approval of revisions to the State Implementation Plan (SIP) and photochemical modeling protocols used to develop and revise the SIP. In recent years the EPA has approved SIP revisions for the Dallas–Fort Worth, Houston-Galveston-Brazoria, and Beaumont–Port Arthur (BPA) areas. Each

revision included extensive technical support (modeling, data analysis, and corroborative technical evaluations).

The effectiveness of the modeling, analyses, and air quality research has contributed to the overall improvement in ambient air quality in Texas, particularly in the positive trends in ozone in the urban areas of the state.

Others:
LBB Output Measure 01-01-01.03, Number of Mobile Source Air Quality Assessments: For FY 08, this performance met 101.44 percent of projections, or 1,268 quality assessments.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

1995

- The Texas Legislature includes in the Texas Natural Resource Conservation Commission Appropriations Bill rider funds to support an air quality program designed to keep areas of the state in attainment of the ozone standard. The program was known as the Near-Nonattainment Area Program and initially included the areas of Austin, San Antonio, Corpus Christi and Tyler-Longview.

2000

- A major air quality study along the eastern half of the state designed to research ground-level ozone and fine particle air pollution in the Houston region and the eastern half of Texas. The data were used to develop better assessment tolls and more efficient and cost-effective strategies to manage air quality. The state joined forces with more than 40 public, private, and academic institutions. An additional field study was conducted during 2005 and 2006 with many of the same partners.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Program activities have the most impact on citizens who live in areas of the state that do not meet the federal ambient air quality standards.

Program functions can affect citizens and businesses in many areas of the state. Photochemical modeling and data analysis results support the development of SIP revisions and air quality rules that affect individuals, business, and industry. While current ozone SIP processes focus primarily with three nonattainment areas—Dallas–Fort Worth, Houston-Galveston-Brazoria, and Beaumont–Port Arthur—the modeling and analyses include a broader area of the state.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The EPA establishes schedules for SIP submission as part of its rule-implementation process following adoption of revisions to National Ambient Air Quality Standards. The technical support is developed in advance of the deadline for SIP submission and generally begins three years before a SIP revision is due to be submitted to the EPA.

Review of air quality data is ongoing. The photochemical modeling inputs are determined by the TCEQ technical staff in consultation with EPA personnel and input from stakeholder groups, as required under EPA modeling guidance documents.

Refer to the flowchart *Air Modeling and Data Analysis Section* following Question O.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0151	Clean Air Account	$6,122,665
0555	Federal Funds	$416,189
5071	Emission Reduction Plan	$3,576,007
5094	Operating Permit Fees	$581,881

Strategy—A.1.1—Air Quality Assessment and Planning

Rider 8	Appropriation: Air Quality Planning
Rider 14	Appropriation: Refinement and Enhancement of Modeling to Demonstrate Attainment with Clean Air Act
Rider 19	Appropriation Limited to Revenue Collection: Automobile Emission Inspection Fee
Rider 28	Texas Emissions Reduction Program Grants and Administration

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

The Rider 8 Program, administered through the TCEQ, funds local governmental organizations. Recipients include the Alamo Area Council of Governments, the Capital Area Council of Governments, the Northeast Texas Council of Governments, and the cities of Corpus Christi and Victoria.

Similarities. These organizations fund projects such as emissions-inventory development, monitoring, or photochemical modeling that feeds into the photochemical modeling and data analysis used for SIP development and revisions for nonattainment areas.

Differences. The work done by these authorities is not required for SIP development, but complements efforts to achieve a more comprehensive data set and analyses.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The activities of regional and local government agencies under Rider 8 are performed through grant contracts. Work plans carried out through those contracts are negotiated with the Air Quality Division technical staff and management.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Modeling, data, and scientific-support projects are carried out through contracts with councils of governments including the ones mentioned above but also with the North Central Texas Council of Governments and Houston-Galveston Area Council.

The Air Modeling and Data Analysis Program works with the EPA as required to reach agreement on technical components included in the SIP. This is known as the *modeling protocol*. The function must also address issues and comments raised by the EPA during the SIP comment period, prior to adoption by the TCEQ and submission of the revised SIP by the governor to the EPA.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

- Expenditures: $6,177,437

- Number of contracts: 14

Some of the general purposes of the contracts overall include:

- deployment of specialized monitoring platforms;

- analyses of the data collected during the field studies;

- supplemental photochemical modeling support for the Dallas–Fort Worth SIP revision;

- investigative studies to improve the understanding of the complex nature of ozone formation along the Texas Gulf coast;

- development of emissions inventories and growth projections used in the overall photochemical modeling process;

- development of enhancements to the emission inventory processors, meteorological inputs and chemical mechanisms;

- collection of satellite data used to develop improved biogenic emission inventories; and

- collaborations with local governments on air quality programs designed to keep areas in attainment of the ozone air quality standard.

Methods used to ensure accountability for funding and performance include a defined and consistent process for developing, implementing, and tracking projects, which includes project prioritization in alignment with required work and with agency priorities, development of a detailed scope of work to describe the work to be performed as well as deliverables and due dates, and review of all invoices to be consistent with contract dates, deliverables, work performed, and allowable expenses.

Current contracting problems include a need for more timely invoicing by vendors conducting work and the changing of the contracting comptroller object code by the comptroller.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

While air quality research has not been a specific mandate, such research has been a key component in the development of state implementation plans and regulations and control strategies during the past decade. For example, air quality research results demonstrated the important role of a class of volatile organic compounds in ozone formation. Consequently, the agency adopted rules to reduce these compounds—a more effective strategy in addressing industrial pollution. One of the TCEQ's philosophies in carrying out the missions is "to base decisions on … good science." Air quality research supports the

drive for good and sound science. The state devoted significant resources to two field studies: the Texas Air Quality Study 2000, conducted June through September 2000, and Texas Air Quality Study II, during the summers of 2005 and 2006.

Both these studies have had major impacts in improving the modeling of ozone formation and on how pollution reduction strategies have been developed for the state, particularly in support of air quality improvement efforts in the Houston-Galveston-Brazoria region.

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

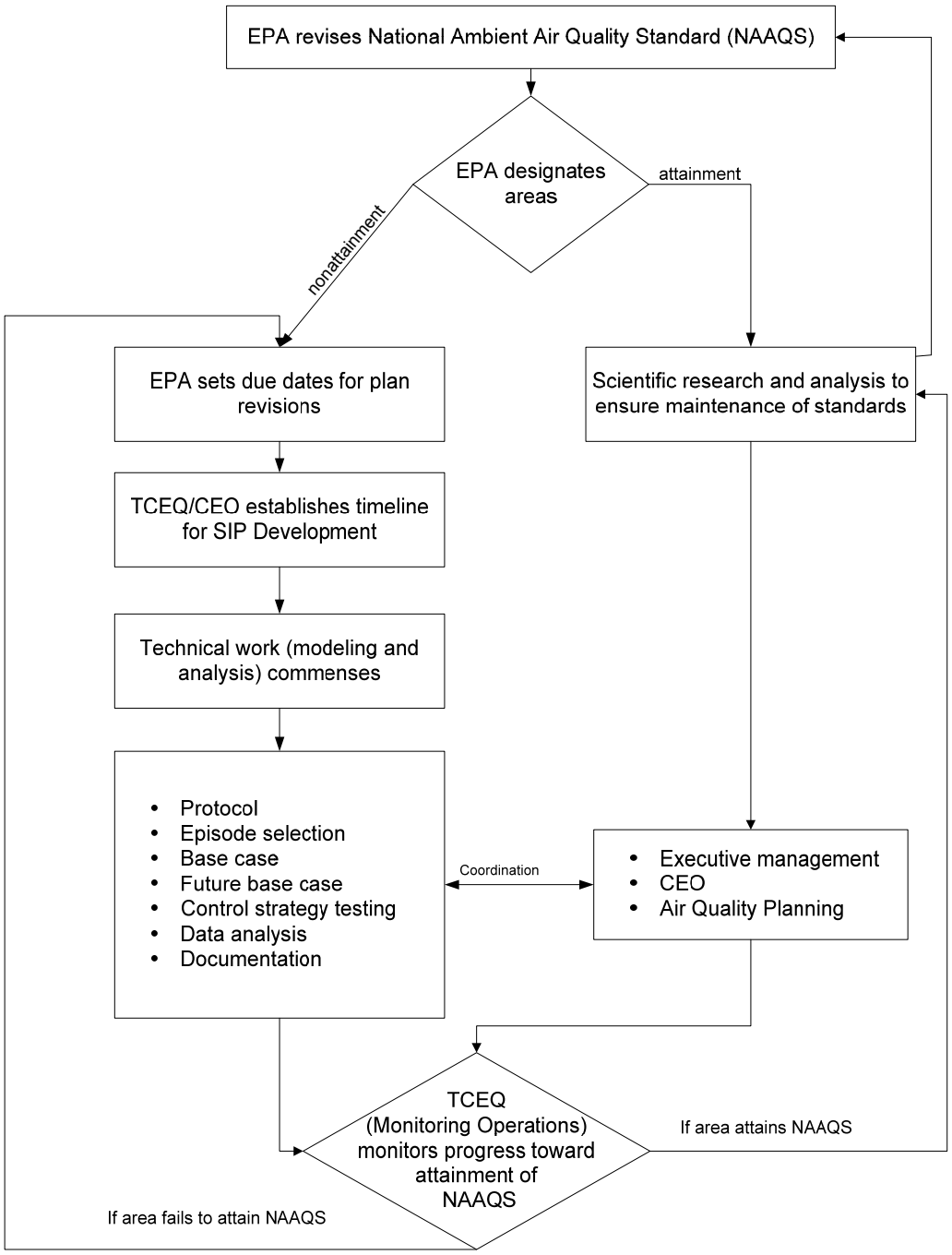
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

Air Modeling and Data Analysis Section



VII. GUIDE TO AGENCY PROGRAMS – CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Emissions Assessment
Location/Division	4th Floor / Building F / Emissions Assessment Section / Air Quality Division / Chief Engineer's Office
Contact Name	David Brymer
Actual Expenditures, FY 2008	$3,047,253
Number of FTEs as of August 31, 2008	43

B. What is the objective of this program or function? Describe the major activities performed under this program.

Emissions Assessment is responsible for the administration of four non-regulatory programs: the Point Source Emissions Inventory (EI); the Area Source EI; Air Emissions and Inspection Fees; and Toxics Release Inventory (TRI).

Point Source EI Program

This program develops an inventory of any criteria air pollutant subject to the National Ambient Air Quality Standards (NAAQS) and any other regulated air pollutants emitted by stationary point sources such as refineries, chemical manufacturing plants, and electric generation plants located in Texas.

The statewide point source EI is submitted to the Environmental Protection Agency (EPA) for inclusion in the annual National Emissions Inventory (NEI). The EI Program supplies data for a variety of air quality planning tasks, including establishing baseline emission levels, calculating emission-reduction targets, development of control strategies for achieving required emission reductions, and tracking actual emission reductions against the established emissions growth and control budgets. The EI Program is also a critical input into air quality simulation models used for revisions to the State Implementation Plan (SIP).

Area Source EI Program

This program develops a statewide EI for those sources not included in the point source and mobile source EI that are below point source reporting thresholds and too numerous to inventory individually.

A periodic emissions inventory (PEI) of statewide area source emissions is developed every three years by compiling EI data for each area source category. The statewide area source PEI is extracted from the area source EI database and submitted to the EPA so it can be included in the periodic NEI.

The EI Program provides data for a variety of air quality planning tasks, including calculating emission reduction targets and control strategy development for achieving required emission reductions. This program is also a critical input into air quality simulation models used for revisions to the SIP.

Air Emissions and Inspection Fees Program

This program assesses emissions fees to cover the direct and indirect costs for administering the federal operating permit program and to assess inspection fees to cover the costs for other TCEQ air programs. The revenue from these fees is deposited either to the Clean Air Account #151 or Operating Permits Fee #5094.

TRI Program

The TRI Program collects toxic chemical release forms, reviews toxic release data, and assesses a fee based on the number of toxic chemical release forms submitted by the owner or operator of a regulated entity subject to the TRI reporting requirements. Federal law requires certain industries that manufacture, process, or use toxic chemicals above certain thresholds to report annually to both the EPA and state the toxic releases, discharges, waste generation, and disposal occurring at their sites.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Point Source EI Program

LBB Key Output Measure (01-01-01.01). Number of Point Source Air Quality Assessments

According to this FY 08 measure, the Point Source EI Program assessed 1,965 point source emissions inventories. The program contributed to a three percent reduction in emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) from point, area, on-road mobile, and non-road mobile sources in the ozone nonattainment areas.

In FY 08, the finalized 2006 statewide point source EI was submitted to the EPA for inclusion in the annual NEI in compliance with the federal Consolidated Emissions Reporting Requirements.

Area Source EI Program

LBB Key Output Measure (01-01-01-02). Number of Area Source Air Quality Assessments.

The program assessed 2,577 area source emissions inventories. The program contributed to a three percent reduction in emissions of VOCs and NO_x from point, area, on-road mobile, and non-road mobile sources in the ozone nonattainment areas.

In FY 08, the area source EI was under development for inclusion in the 2008 Point Source Emissions Inventory (PSEI) in compliance with the federal Consolidated Emissions Reporting Requirements.

Air Emissions and Inspection Fees Program

The owners or operators of 3,521 regulated entities were identified and notified of having the potential obligation to pay either the air emissions fee and/or inspection fee. Based on the fees data for FY 08, 1,385 regulated entities were assessed an emissions fee; 1,806 regulated entities were assessed an inspection fee; and 330 regulated entities demonstrated that they were not subject to the fees.

During the reconciliation of the self-reported fee basis information and the regulated entity's point source emissions inventory, Air Emissions and Inspection Fees staff identified 128 regulated entities that incorrectly self-reported their emissions for the basis of the emissions fee at a rate lower than their actual emissions on their point source emissions inventory. As a result, fees were assessed on an additional 20,191 tons of air emissions.

TRI Program

LBB Outcome Measure 01-01-07. Annual Percent Decreases of Toxic Releases in Texas

The program reported a three percent FY 08 reduction in releases of toxics in the state.

In FY 08, 1,490 regulated entities in Texas met the TRI reporting requirements and submitted a total of 7,936 toxic chemical release forms.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Air Emissions and Inspection Fees Program

Fee rules were revised in October 2002 and, beginning in FY 03, assessment of the emissions and inspection fees changed from self-reporting fees to a billing system, in accordance with a previous Sunset recommendation. During the revision of the fee rules, program personnel determined that the emissions fee rate per ton needed adjustment in anticipation that insufficient funds would be collected to cover the cost for administering the federal operating permit program. Additionally, the inspection-fee rates had not been adjusted for 10 years. Therefore, by rule, the emissions fee rate per ton is adjusted annually by the rate of change of the Consumer Price Index (CPI) to coincide with the method identified in the federal rules. The inspection-fee rates are also annually adjusted by rule proportionally to the rate of change of the CPI.

TRI Program

- The TRI Program was created in 1986 by the federal Emergency Planning and Community Right-to-Know Act as Title III of the Superfund Amendment and Reauthorization Act. Section 313 of Title III requires certain industries that manufacture, process, or use toxic chemicals above certain thresholds to annually report the toxic releases, discharges, waste generation, and disposal that occurred at their site on toxic-chemical-release forms to the EPA and to supply a copy of the forms to the state.

1988

- First TRI issued.

1991

- The EPA issued rules to roughly double the number of chemicals that are required to be reported in the TRI to approximately 650 following passage of the federal Pollution Prevention Act in 1990.

1999

- The EPA published a final rule on October 29, 1999, reclassifying certain chemicals and chemical categories as persistent bio-accumulative toxics (PBTs) on the TRI list and lowered reporting threshold for these PBTs.

1998

- Seven new industry sectors were added to expand coverage significantly beyond the original covered industries.

2001

- On January 17, 2001, the EPA published a final rule reclassifying lead as a PBT and lowered its threshold.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Point Source EI Program

The owner or operator of a source located in Texas or on waters that extend 25 miles from the shoreline meeting certain criteria is required to submit emissions inventories and/or related data. In FY 08, the emissions inventory data for 1,965 point sources were received, reviewed, and entered into the point source EI database to develop a statewide point source EI.

Area Source EI Program

The owner or operator of an area source located in Texas or on waters that extend 25 miles from the shoreline is subject to the special emissions inventories and is required to submit an emissions inventory when specifically requested by the TCEQ.

Air Emissions and Inspection Fees Program

The owner or operator of a regulated entity is assessed an emissions fee if the entity meets certain criteria. For FY 08, 1,921 regulated entities were subject to this assessment.

In addition, inspection fees apply to regulated entities that operate plants, facilities, or processes under 78 standard industrial classification (SIC) codes as described in the inspection fee schedule in 30 Texas Administrative Code (TAC) Section 101.24. For FY 08, 2,421 regulated entities were subject to this assessment because they met one or more SIC categories as described in the inspection-fee schedule.

TRI Program
Owners or operators of regulated entities meeting certain criteria are subject to the TRI reporting requirements. In FY 08, 1,490 owners or operators of regulated entities located in Texas met the TRI reporting requirements and reported their toxic chemical releases that occurred in calendar year 2007.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Point Source EI Program
Refer to the flowchart *Emissions Inventory Process* following Question O.

The owner or operator of a point source must determine if the source meets the requirements for submitting a point source EI. If one must be submitted, the point source EI along with documentation supporting the reported emissions is due annually by March 31 or 90 days from agency request. Point source EI personnel are responsible for reviewing the EI data and documenting their findings in accordance with the program's review guidance and protocol. Program personnel assure the quality of all emissions data in accordance with the EPA-approved Quality Assurance Project Plan. The EI data are stored and maintained in the point source EI database. The owner or operator of a point source is afforded an opportunity to approve or dispute emissions stored in the point source EI database. The statewide point source EI is extracted from the database, formatted, and submitted to the EPA for inclusion in the NEI. The point source EI is also extracted and used in air quality simulation models that support SIP revisions.

Area Source EI Program
Refer to the flowchart *Emissions Inventory Process* following Question O.

Area source categories needing EI development or improvement are identified. Due to the large volume of area source data inventoried, contractors are regularly used to assist in developing program data, potential control factors, and the emissions factors for the identified area sources. Area Source EI Program personnel develop an EI for each identified area source category by applying the respective program data, control factors, and emissions factors. Program personnel assure the quality of all emissions data in accordance with the EPA-approved Quality Assurance Project Plan. The area source EI is loaded and maintained in its own database.

Air Emissions and Inspection Fees Program
The owner or operator of a regulated entity is responsible for determining if that entity is subject to the assessment of an emissions fee or inspection fee each fiscal year. If the owner or operator has determined that his or her site is subject to either fee, he or she must self-report the basis for any such fee.

Air Emissions and Inspection Fees personnel review the self-reported fee basis and reconcile that information with the regulated entity's permits and/or point source emissions

inventories to determine the appropriate fee type and amount. A regulated entity subject to both an emissions fee and inspection fee is only required to pay the higher of the two.

Since these are billed fees, the program staff forwards data on the fees to the TCEQ Financial Administration Division to generate and mail invoices, collect the fees, and assess late fees and penalties.

TRI Program

Owners or operators of regulated entities are responsible for determining the applicability of the TRI reporting requirements. If the owner or operator determines an entity is subject to the requirements, the toxic chemical release forms for each applicable toxic chemical released in a calendar year are submitted annually by July 1 of the following year to both the EPA and the state's TRI Program.

Upon receipt of the toxic chemical release forms, the program staff performs the following for each regulated entity:

- tracking the number of toxic chemical release forms submitted;
- reconciling the type of release and the amount of toxic chemical released in the current reporting year with the previous reporting year to identify any significant changes or potential TRI reporting issues;
- filing the toxic chemical release forms;
- determining the toxic chemical release fee owed; and
- generating the customer and invoice text files for the TRI reporting year.

Program personnel develop TRI trends, review the Texas TRI data, and provide compliance training and technical assistance specific to the industry in Texas.

The toxic chemical release fee is a billed fee invoiced by the TCEQ Financial Administration Division, which also collects the fees and assesses any late fees and penalties.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0151	Clean Air Account	$1,126,442
0555	Federal Funds	$300,115
5094	Operating Permit Fees	$1,620,696

Strategy— A.1.1—Air Quality Assessment and Planning

Rider 14—Modeling to Demonstrate Attainment with Clean Air Act
Rider 19— Appropriations Limited to Revenue Collection: Automobile Emission Inspection Fee

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

Point Source EI Program
No other program collects and assesses annual point source criteria and hazardous air pollutant emissions data as well as information characterizing process equipment, abatement devices, and emissions points in accordance with federal Consolidated Emissions Reporting Requirements.

However, the EPA's Acid Rain Program collects hourly emissions data of three specific pollutants (sulfur dioxide, nitrogen oxides, and carbon dioxide) quarterly from a subset of point sources (electric-generating facilities) subject to Title IV of the Clean Air Act.

The Federal Acid Rain Program primarily differs from the TCEQ's program as follows:

- reporting timeframe (hourly versus annual emissions reporting);
- pollutant scope (three specified pollutants versus criteria and hazardous air pollutants); and
- source applicability (electric generating facilities versus any source meeting point source reporting thresholds specified in 30 TAC Section 101.10).

Area Source EI Program
The EPA develops emissions inventories for area source categories using default program data and EPA-approved emissions factors. The TCEQ develops the area source EI using state-specific program data and submits it to the EPA to replace the EPA area source EI developed with default data. EPA area source emissions inventories typically rely on population as a program surrogate, whereas TCEQ-developed program data (e.g., amount of gasoline sold in an area, employment by industry type, and acres of cropland) are obtained via targeted surveys, research, and investigations and incorporated into the area source EI.

Local municipalities and the councils of governments may develop emissions inventories specific to their geographical area that are then submitted to the TCEQ. The local municipalities and councils of governments include, but are not limited to, the Corpus Christi Metropolitan Planning Organization, Victoria Metropolitan Planning Organization, El Paso Metropolitan Planning Organization, Capitol Area Planning Council, Alamo Area Council of Governments, East Texas Council of Governments, Houston-Galveston Area Council, and North Central Texas Council of Governments. These locally developed area source inventories usually refine specific source category estimates for their geographical areas to be included in the agency's area source inventory. Therefore, the locally

developed inventories are not as broad or comprehensive in scope as the agency-developed statewide area source EI.

Air Emissions and Inspection Fees Program
None. The State of Texas has been delegated the federal operating permitting program and collects emissions fees that are sufficient to cover the direct and indirect costs for administering the program in Texas.

TRI Program
The EPA administers the TRI Program at the national level. Both the EPA and the TCEQ TRI programs give technical assistance to regulated industries and the general public. However, TCEQ personnel may be more familiar with industries located in Texas and can supply greater state-relevant technical assistance. The TCEQ TRI Program develops trends and performs in-depth analyses specific to Texas, while the EPA focuses on toxic-chemical releases at the national level. The state's TRI Program assesses a fee on releases of toxic chemicals; the EPA does not assess any TRI fees.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Point Source EI Program
The federal Acid Rain Program collects hourly emissions data for specific pollutants from a subset of point sources. The limited scope of pollutant data collected as well as the hourly basis on which emissions are collected circumscribes duplication between the two programs. The TCEQ uses the Acid Rain Program data as part of quality-assurance measures for emissions of sulfur dioxide and nitrogen oxides from electric-generating facilities, although Acid Rain Program emissions can vary slightly from emissions reported to the point source EI due to differing calculation methods.

Area Source EI Program
Local area source emissions inventories developed by local municipalities and councils of governments are incorporated through a coordinated process into the statewide area source point source PEI. The statewide area source PEI is submitted to replace the EPA developed national area source EI data.

For quality assurance, program personnel review the EPA-developed area source EI for Texas and submit state-specific data to replace the EPA default data. In certain cases, default EPA data not typically representative of the state's industrial, agricultural, or population profiles (for example: snowmobiles) are removed from the EPA-developed area source EI. The EPA typically accepts these changes made by the TCEQ.

TRI Program
The EPA administers the TRI Program; and is therefore responsible for its compliance and enforcement duties. Also, the EPA is responsible for maintaining and storing the TRI data in

a national database and for making the TRI data readily available to the public. The EPA also ensures that state TRI programs are aware of the latest TRI guidance and reporting requirements by coordinating annual meetings and monthly teleconferences.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Point Source EI Program and Area Source EI Program

Both of these EI programs work with the EPA's Emissions Inventory Program, which develops the guidance and instruction for the state's EI Program to follow when preparing and submitting their annual statewide point source emissions inventory.

Area Source EI Program

The Area Source EI Program works with the EPA's Emissions Inventory Program. The EPA Emissions Inventory Program develops the guidance and instruction for the state's EI Program to follow when preparing and submitting its periodic statewide area source emissions inventory.

Air Emissions and Inspection Fees Program

The Air Emissions and Inspection Fees Program works with the EPA's Operating Permits Program. The EPA Operating Permits Program ensures that the states' Title V programs are being administered in accordance with the federal requirements. The state's fee program has to demonstrate to the EPA that sufficient emissions fees are collected to cover the direct and indirect costs associated with administering the Title V Program.

TRI Program

The state's TRI Program assists the EPA by attending numerous public outreach events to provide technical assistance to those subject to the TRI reporting requirements.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

- Expenditures: $720,034
- Number of contracts: 7

Contract activities included:

- Development of the Web-based emissions inventory reporting system within the State of Texas Air Reporting System.

- Remote-sensing-technology options for estimating emissions.

- Evaluation of the upstream oil- and gas-storage tank flash-emissions model and data analysis of the TCEQ 2007 Differential Absorption Lidar (DIAL) Study.

- Membership in the Data Consortium was used to obtain economic data used with area source through Global Insight and the Economy.com factor data set.

- Assisting area source EI development for the following source categories: stage I and II gasoline dispensing; minor stationary point sources; architectural coatings; and auto refinishing.

- Data exchange between the state and federal TRI programs.

- Temporary staffing for emissions inventory review and data entry.

The methods used to ensure accountability for all emissions-assessment programs' contracts for funding and performance include having a defined and consistent process for developing, implementing, and tracking projects, including project prioritization in alignment with required work and alignment with agency priorities, development of a detailed scope of the work to be performed and define deliverables and due dates, and review of all invoices for consistency with contract dates, deliverables, work performed, and allowable expenses.

Current contracting problems for all of the Emissions Assessment Programs include a need for more timely invoicing by vendors conducting work and the comptroller's change to the contracting object code.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

<u>Point Source EI Program</u>
In FY 08, 2,049 industrial point source emissions inventories were submitted. 1,804 EI questionnaires were on paper and 245 were electronic. EI data for approximately 65,000 emission sources were received, resulting in approximately 500,000 emissions records to be reviewed and updated in the point source EI database.

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

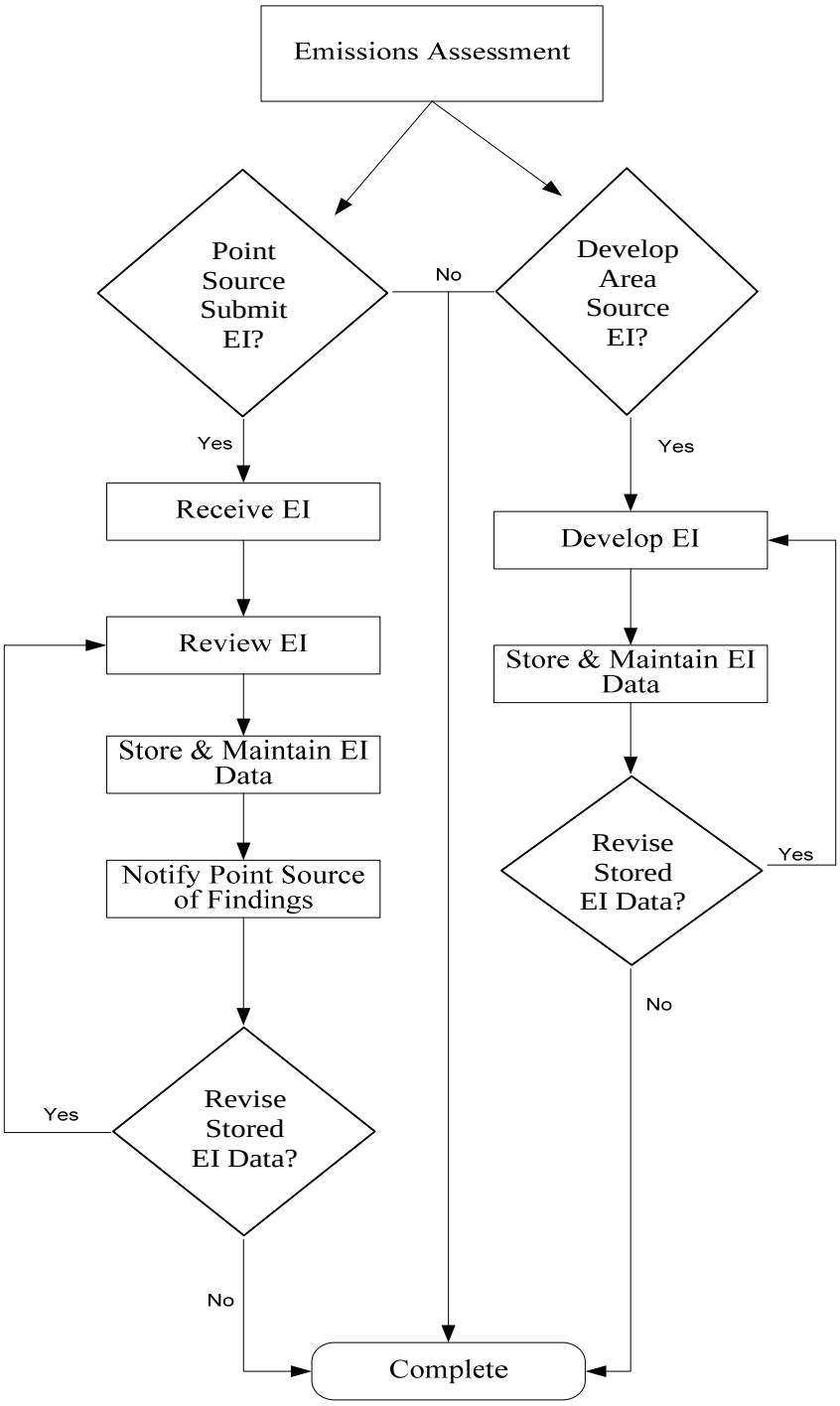
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

Emissions Inventory Process



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Implementation Grants
Location/Division	4th Floor / Building F / Implementation Grants Section / Air Quality Division / Chief Engineer's Office
Contact Name	David Brymer
Actual Expenditures, FY 2008	$49,049,908
Number of FTEs as of August 31, 2008	34

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Implementation Grants Section of the Texas Commission on Environmental Quality (TCEQ) administers incentive programs under the Texas Emissions Reduction Plan (TERP).

A primary purpose of the TERP is to reduce emissions of nitrogen oxides (NO_x) through voluntary financial incentive programs. The TERP incentive programs are a tool to help reduce the amount of NO_x emitted from on-road vehicles, non-road equipment, locomotives, marine vessels, and qualifying stationary engines operated in designated areas. The emissions reductions achieved under TERP help the state improve air quality, particularly in those areas that exceed, or are close to exceeding, the National Ambient Air Quality Standards.

The financial incentive programs administered by the Implementation Grants Section as of August 31, 2008, are listed and explained briefly below.

- **Emissions Reduction Incentive Grants Program.** The program provides grants to cover some or all of the costs for projects in one or more of the state's 41 counties (see table *Counties in Texas eligible for the TERP Program* following Question O) designated as being in nonattainment or near-nonattainment for ground-level ozone. Eligible projects include:

  - the purchase of reduced-emission vehicles and equipment;
  - replacement of older vehicles or equipment with newer, cleaner models;
  - repower (replacement) of older engines with newer, cleaner models;
  - installation of retrofit technologies that will result in a reduction in NO_x emissions;

- on-vehicle infrastructure to reduce idling;
- on-site infrastructure for alternative fuels, electrification, and idle reduction;
- purchase and use of qualifying fuels that reduce NO_x emissions; and
- relocation of rail lines at intersections.

For a project to be eligible, it must reduce NO_x emissions by at least 25 percent over a baseline set by the TCEQ.

- **Rebate Grants Program.** Under Health and Safety Code Section 386.17, the TCEQ implements a rebate grants program for faster, simpler application and approval for a limited number of grants. This program is a subset of the larger Emissions Reduction Incentive Grants Program and has the same eligibility requirements. However, the rebate grants are based on a pre-determined grant amount and are approved through an expedited application review and contracting process. To date, the TCEQ has made this program available for the replacement or repower of diesel-powered on-road vehicles and certain types of non-road equipment.

- **Third-Party Grants Program.** The TCEQ may issue grants to third parties to pass funds through to subgrants, consistent with the overall TERP requirements. To date, the TCEQ has limited the third-party grants to governmental authorities. Consideration of issuing a third-party grant is based on whether the grant would add value to the program and help to better meet TERP goals.

- **Small Business Grants Program.** This program targets small businesses and other entities that own and operate no more than two vehicles or pieces of equipment. The TCEQ is directed to set aside funds to enable the eligible entities greater opportunities to participate in the incentive programs. Because of the similar goals of this program and the rebate grants program, the TCEQ has incorporated the set-asides for this program in the rebate grants program.

- **New Technology Research and Development (NTRD) Program**. The Implementation Grants Section also administers funding for the New Technology Research and Development (NTRD) Program established under Health and Safety Code Chapter 387. The NTRD Program funds research and development for new technologies and engines to reduce emissions of NO_x. There are two contracts administered under this program. The objective of the NTRD Program is to promote the development and commercialization of technologies that will support projects that can be funded under the TERP incentive programs. In 2005, the legislature transferred responsibility for the implementation and administration of the NTRD Program from the TCEQ to the Texas Environmental Research Consortium (TERC), a nonprofit organization located near Houston, Texas. The TCEQ's role has been to contract with TERC to fund the program.

- **University of Houston Diesel Emissions Testing Center.** In 2007, under NTRD Program provisions, the legislature directed the TCEQ to assist the University of Houston with funding to establish and operate a diesel-emissions testing center. The TCEQ's role is to contract with the University and fund and oversee eligible expenses.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

The key performance measures for the incentive grants and the results reported in FY 08 are listed below.

LBB Outcome Measure 01-01-02: Nitrogen Oxides (NO_x) Emissions Reduced Through the Texas Emissions Reduction Plan (TERP).

This measure reports the tons per day of NO_x emissions reduced by projects funded to date, as reported by the grant recipients on semiannual usage reports.

Projected	Actual	Percent of Projection
70 tons per day	18.50 tons per day	26.42

The actual reported performance was less than projected. Approximately 55 percent of the projects funded through FY 08 had not yet phased into the reporting stage due to the time it took some of the larger and more complex projects to complete the purchases and begin using the grant-funded vehicles and equipment. Of the projects reporting their vehicle or equipment usage through FY 08, the projects were achieving over 90 percent of the usage and emissions reduction targets.

LBB Output Measure 01-01-05: Tons of Nitrogen Oxides (NO_x) Reduced Through the Texas Emissions Reduction Plan.

While Outcome Measure 02 reports the actual tons per day of NO_x reduced based on reports by the grant recipients, Output Measure 05 reports the tons of NO_x projected to be reduced by the projects funded during the reporting period.

Projected	Actual	Percent of Projection
28,611 tons	18,218.43 tons	63.68

The original projections were based on an average cost per ton for the projects of $5,000. Subsequent to the projections for the FY 08 - FY 09 biennium, the commission increased the maximum cost per ton limits from $5,000 to $10,000 for projects other than those involving marine vessels and locomotives. This action was taken partly in response to the legislature increasing the statutory cost per ton limits. This change to the cost per ton limits resulted in a higher overall average cost per ton for projects funded in FY 08 and fewer tons projected to be achieved by those funded projects.

LBB Efficiency Measure 01-01-01.04: Average Cost Per Ton of NO_x Reduced Through the Texas Emissions Reduction Plan.

This measure reports the average cost for each ton of NO_x projected to be reduced by the projects funded during FY 08.

Projected	Actual	Percent of Projection
$5,000	$7,816	156.32

As noted above, the commissioners increased the maximum cost per ton limits for the TERP projects. This change resulted in an increase to the average cost per ton for projects funded in FY 08.

In addition to the key performance measure information for FY 08, the projects awarded funding through FY 08 totaled approximately $713 million, resulting in an expected reduction of 151,000 tons of NO_x.

The key performance measures for the NTRD Program and the results reported in FY 08 are listed below.

LBB Output Measure 01-01-01.06: Number of New Technology Grant Proposals Reviewed.

This measure reports the number of NTRD grant proposals reviewed by TERC that identify and evaluate new technologies to improve air quality and to facilitate the deployment of those technologies.

Projected	Actual	Percent of Projection
62	74	119.35

The TERC issued four rounds of grant proposals during FY 08, including a comprehensive request soliciting eligible technologies. This request for applications significantly increased the number of applications reviewed in FY 08.

LBB Efficiency Measure 01-01-01.05: Average Number of Days to Review a Grant Proposal

This measure reports the average number of days that TERC staff took to review a grant proposal.

Projected	Actual	Percent of Projection
1	1.5	150.00

Staff changes at TERC in the fourth quarter of FY 08 at the same time that one of the grant rounds closed resulted in longer review times for that grant round.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The agency history section lists the key changes and updates for the incentive grants program through FY 08, except for one additional change to the NTRD Program. In 2005, HB 2481 directed the TCEQ to contract with a non-profit organization based in Houston for administration of the NTRD Program, transferring administration of the program from the TCEQ to the TERC.

In addition, the 81st Texas Legislature enacted several significant changes and additions to the program, to be implemented in FY 10.

- HB 1796 transferred responsibility for administration of the NTRD Program from the TERC back to the TCEQ.

- The bill also established the New Technology Implementation Grants (NTIG) Program. The NTIG Program will provide funding to assist the implementation of new technologies to reduce emissions from facilities and other stationary sources in Texas.

- SB 1759 established a new Texas Clean Fleet Program (CFP) to be administered by the TCEQ. The CFP will provide grants for the replacement of diesel-powered vehicles with alternative-fueled vehicles, including hybrid-electric vehicles.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Emissions Reduction Incentive Grants are available for owners of eligible vehicles, equipment, marine vessels, and locomotives operated in the 41 eligible counties designated as nonattainment or near-nonattainment for ground-level ozone. Applicants may be any person or entity, including private and governmental entities that own and operate the eligible vehicles and equipment in the designated counties.

The Rebate Grants are limited to replacement or repower of vehicles and non-road equipment. The TCEQ has further limited this program to no more than 10 grants per entity per grant round. The Small Business Grants Program has included set-asides of $5 million each grant round specifically for entities that qualify as a small business. This set-aside has been included under the Rebate Grants Program.

Third-party grants have been limited to governmental authorities. Through FY 08, the program has funded one or more third-party grants to the Texas Railroad Commission, the Texas General Land Office, and the North Central Texas Council of Governments. In FY 09, the Houston-Galveston Area Council was also awarded a third-party grant.

The Implementation Grants Section monitors the use of the grant-funded vehicles and equipment over the commitment period to achieve the emissions reductions, generally lasting from five to seven years. In FY 05 the program was monitoring the performance of 244 entities. By the end of FY 08, the number of entities and projects monitored was 1,336. By the end of FY 09, this number increased to approximately 2,000, with over 5,000 individual vehicles and pieces of equipment being tracked and monitored. The number of entities and projects being tracked will increase with each subsequent grant round.

The NO_x emissions reductions in each area will help reduce levels of ground-level ozone, enhancing the health and well-being of residents. As a strategy in the State Implementation Plan (SIP), the program helps to meet the SIP goals and bring areas into attainment of federal Clean Air Act requirements for ground-level ozone.

The NTRD Program is available for any entity that owns or controls an emissions reduction technology and wishes to develop and test that technology.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The Implementation Grants Section is responsible for the complete life cycle of the implementation grants, including:

- developing program rules and guidelines for adoption by the commissioners;
- developing all application, contract, and program administration forms and documents;
- conducting outreach and education to promote the program and to advise applicants on how to participate;
- receiving, tracking and reviewing grant applications for administrative and technical eligibility;
- pre-application monitoring and on-site reviewing to confirm vehicle and equipment condition and use;
- administering grant selection and approval processes;
- preparing and processing for approval of all grant contracts (legal staff and the TCEQ's procurements and contracting staff review and approve contract shell documents);
- receiving and processing of reimbursement requests from grant recipients (approved requests are sent to the TCEQ's fiscal personnel for entry into the comptroller's payment system);

- managing contracts, amendments, changes, close-outs, and grantee performance evaluations;

- long-term monitoring and tracking usage;

- periodic on-site monitoring, administering a monitoring contract, and coordinating with TCEQ's external audit staff for more detailed audits of grant recipients;

- enforcing grant conditions, including invoicing for return of grant funds for grantees that do not meet the requirements and coordinating with Legal staff for grantees that must be referred to the Attorney General for civil action or the District Attorney for criminal (fraud) action; and

- tracking of all contract and program data and information in a TERP database.

Refer to flowchart *Incentive Grants Section – Major Steps in the Incentive Grants Program FY 2008* following Question O.

The NTRD Program includes a more limited set of activities to administer the contracts with the TERC and the University of Houston. Those functions include contract development and execution, contract monitoring, payment and fiscal processing, progress reporting, and general contract oversight.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0151	Clean Air Account	$66,449
0555	Federal Funds	$262
5071	Emission Reduction Plan	$48,983,197

Strategy—A.1.1—Air Quality Assessment and Planning

Rider 28, Texas Emissions Reduction Program Grants and Administration.

H. Identify any programs, internal or external to your agency, that provides identical or similar services or functions. Describe the similarities and differences.

Federal Congestion Mitigation and Air Quality (CMAQ) grants from the Federal Highways Administration may be used for projects similar to the types of projects funded under the TERP. The state's regional metropolitan transportation planning organizations may receive these funds to pass-through to local governments. In areas where a planning organization does not use these funds, the Texas Department of Transportation may fund local and

regional CMAQ projects. The Houston-Galveston Area Council and the North Central Texas Council of Governments have awarded local pass-through grants using CMAQ funds for projects similar to those funded under TERP. The eligibility requirements and the limits on cost per ton of NO_x reduced for the CMAQ Program may differ from the TCEQ's incentive grants.

The Environmental Protection Agency also administers federal grants under the Diesel Emissions Reduction Act for projects similar to the TCEQ's incentive grants. However, these projects are not limited to specific areas and may be used to address other pollutants, in addition to NO_x. Enhanced funding for this program was included in the federal stimulus funding package.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The TCEQ's grant applications include a section for applicants to inform the agency if they would be receiving funding under another grant program for the same project. The TCEQ would then coordinate with the applicant to confirm the source of funds and the requirements for use of the emissions reductions. Because of the different eligibility requirements and the timing of the grants, there have not been instances where the TCEQ has had to consider projects with joint funding.

The TCEQ and the Texas Department of Agriculture (TDA) entered into a Memorandum of Agreement in FY 09 whereby the TDA committed to help promote the incentive programs to the agricultural sector. The TCEQ, in turn, agreed to ensure that projects involving non-road equipment used for agricultural purposes would receive up to a certain amount of funding, to be determined each grant round. In FY 09, the TCEQ established a funding level of $5 million to go specifically to projects involving agricultural equipment.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The program works with federal and regional governmental entities, including:

- Local, state, and federal governmental authorities—these entities are eligible to apply for a grant;

- Texas Railroad Commission—third-party grant to award subgrants for projects involving propane vehicles and equipment;

- Texas General Land Office—third-party grant to award subgrants for projects involving natural gas vehicles and equipment;

- North Central Texas Council of Governments—third-party grant to fund a regional subgrants program; and

- Houston-Galveston Area Council—third-party grant to fund a regional subgrant program.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

Contracts, other than the incentive-grant contracts, administered by the program in FY 08 are discussed below.

- **Contracted expenditures from FY 08 (not including incentive grants):** $14,132,942.

- **Five contracts account for these expenditures:**

- two for compliance monitoring;

- two for research; and

- one for outreach.

- **Methods to ensure accountability for funding and performance:** The program has a separate fiscal unit to review reimbursement and payment requests. All payment requests are also reviewed by contract managers. The contracts have scopes of work describing performance expectations and reporting requirements to explain results to date and how the funds have been used. Payment requests are then routed to the agency's Financial Administration Division for additional review, entry into the agency's and comptroller's systems, and payment by the comptroller.

- **Contracting problems:** The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

Revise Health and Safety Code, Section 386.105(a), Calculation of Cost-Effectiveness. The current provisions require the TCEQ to use an annualized factor to account for the time value of money when performing calculations to ensure that projects do not exceed a

cost-effectiveness of $15,000 per ton of NO_x reduced. The TCEQ recommends amending this section to require that the cost-effectiveness be determined using a simple cost-per-ton calculation, dividing the total tons of NO_x projected to be reduced by the grant amount.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

As noted above in Question D, the Implementation Grants Program will have added responsibilities beginning in FY 10. These new programs are due to be implemented by early calendar year 2010.

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

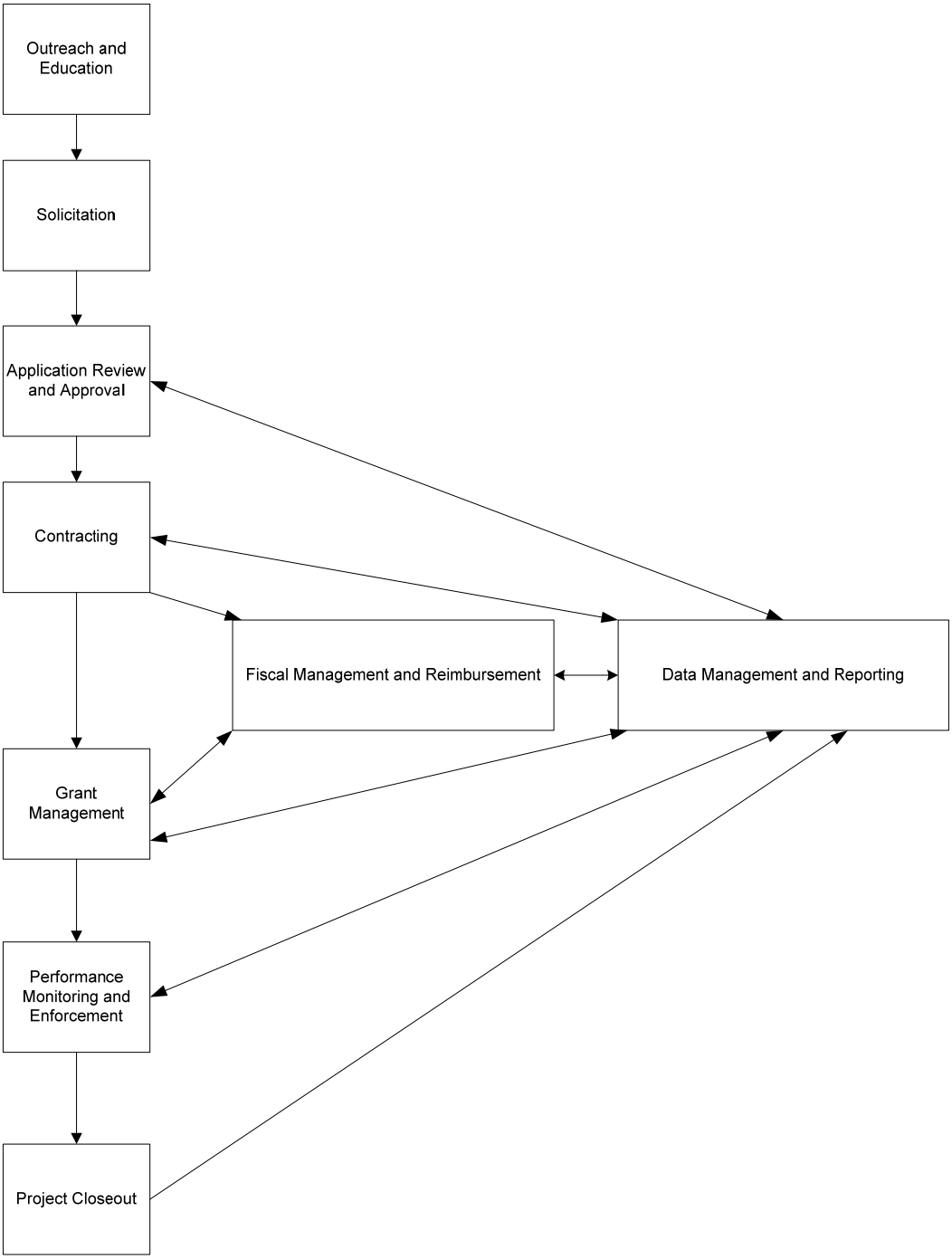
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

Incentive Grants Section
Major Steps in the Incentive Grants Process
FY 2008



Counties in Texas Eligible for the TERP Program

Bastrop	Fort Bend	Hunt	Rusk
Bexar	Galveston	Jefferson	San Patricio
Brazoria	Gregg	Johnson	Smith
Caldwell	Guadalupe	Kaufman	Tarrant
Chambers	Hardin	Liberty	Travis
Collin	Harris	Montgomery	Upshur
Comal	Harrison	Nueces	Victoria
Dallas	Hays	Orange	Waller
Denton	Henderson	Parker	Williamson
Ellis	Hood	Rockwall	Wilson
El Paso			

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Non-Point Source and Coastal Programs (Galveston Bay Estuary Program and Coastal Bend Bays and Estuary Program)
Location/Division	4th Floor / Building F / Planning and Implementation Section / Water Quality Planning Division / Chief Engineer's Office
Contact Name	Kelly Keel
Actual Expenditures, FY 2008	$5,420,234
Number of FTEs as of August 31, 2008	16.5

B. What is the objective of this program or function? Describe the major activities performed under this program.

Nonpoint Source Program

The objective of the TCEQ Nonpoint Source (NPS) Program is to facilitate the implementation of programs and practices for managing nonpoint sources of pollution necessary to meet water quality goals. Non-point sources are pollutants entering watersheds from many sources that are difficult to pinpoint, such as storm drains. The TCEQ NPS Program supports the development and implementation of watershed-based plans to restore waters that have been impaired by nonpoint source pollution and protect unimpaired waters.

The Environmental Protection Agency (EPA) distributes funds appropriated by Congress annually to the TCEQ under Section 319(h) of the federal Clean Water Act (FCWA). The TCEQ administers federal funds for projects that assist the state in implementing the *State of Texas Nonpoint Source (NPS) Management Plan*.

The TCEQ's grant program is implemented under TWC Section 5.124 and 30 TAC Section 14.8(b) related to Partnership Grants and FCWA Section 319.

The state prepares and submits applications for grants annually and reports annually to the EPA concerning progress in meeting the schedule of milestones and reductions in nonpoint source pollutant loading and improvements in water (as available).

Galveston Bay Estuary Program

The Galveston Bay Estuary Program (GBEP) is a non-regulatory program of the TCEQ that functions as a partnership of local governments, business and industry, conservation organizations, bay users, and resource agencies. GBEP's purpose is to implement the federally approved Texas Comprehensive Conservation and Management Plan (CCMP)

developed to provide interdisciplinary, ecosystem-based management for Galveston Bay, an estuary of national significance. To carry out this purpose, GBEP:

- Coordinates the development and implementation of multi-partner habitat and water quality conservation projects that lever public and private resources, minimize duplication, and maximize resources for priority issues identified by the partnership.

- Provides grants and assistance to Houston Galveston–area communities and organizations to implement habitat, water quality, and species conservation projects, and to conduct research that informs adaptive management and ensures science-based decision making.

Coastal Bend Bays and Estuary Program

The Coastal Bend Bays and Estuaries Program (CBBEP) is based in Corpus Christi and is a local nonprofit 501(c)(3) organization established in 1999. The CBBEP project area encompasses the 12 counties of the Coastal Bend Council of Governments extending from the land cut in the Laguna Madre, through the Corpus Christi Bay system, and north to the Aransas National Wildlife Refuge. The mission of the CBBEP is to protect and restore the health and productivity of the bays and estuaries while supporting continued economic growth and public use of the bays into the future.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Nonpoint Source Program

Since 2005, the TCEQ NPS Program has funded 59 projects under the Section 319 grant program. The projects have resulted in water quality improvements in Texas water bodies.

- Water quality has improved in Aquilla Reservoir and Lake Como to the point that they have been de-listed from the state's Section 303(d) list (of impaired water bodies) due to the implementation of NPS management measures.

- Water quality improvements have also been documented in E.V. Spence Reservoir. Recent water quality data show a 22 percent decrease in chloride concentrations, a 37 percent decrease in sulfate concentrations, and a 36 percent decrease in concentrations of total dissolved solids.

Success is also measured through NPS pollutant load reductions. In 2008, pollutant load reductions from NPS projects included:

- City of Denton—Demonstration of Best Management Practices (BMPs) were constructed at three locations in the Hickory Creek Watershed. The combined yearly estimates of pollutants that will be removed are: sediment – 61 tons, phosphorus – 27 tons, and nitrogen – 173 tons.

- Falcon Reservoir—A total of 22 Water Quality Management Plans (WQMPs) were developed within the watershed protecting 22,952 acres from sediment loss. BMPs reduced loads of sediment by 8,882 tons, phosphorus by 79,735 lbs, and nitrogen by 883,376 lbs.

- Arroyo Colorado—A total of 123 WQMPs have been developed in the watershed protecting over 6,400 acres. BMPs installed in FY 08 reduced loads of sediment by 132 tons, phosphorus by 126 lbs, and nitrogen by 172 lbs.

Galveston Bay Estuary Program
Successes realized by GBEP since its inception:

- GBEP created, protected, and restored 15,000 acres of wetlands and other vital coastal habitats.

- GBEP helped to establish the Virginia Point Peninsula Preserve, protecting 1,500 acres of valuable coastal habitat, as well as important historical and cultural resources.

- The Brays Bayou wetland in Houston consistently removes nearly 99 percent of the bacteria in the storm water inflow during dry-weather flows. This 3.5-acre multi-purpose storm water treatment wetland was funded by GBEP to demonstrate the effectiveness of creating wetlands as a BMP for treating storm water. The constructed wetland also serves as an outdoor learning center for nearby schools.

- As part of species protection and management activities initiated in the CCMP, GBEP conserved three priority bird species—the endangered brown pelican, threatened reddish egret and white-faced ibis with the shoreline protection and habitat restoration of North Deer Island in west Galveston Bay.

- GBEP developed the first comprehensive bay-wide assessment of Galveston Bay seafood in 1997 to determine if the seafood was safe for public consumption. Continuing assessments give the information needed to update state-certified seafood advisories for the Galveston Bay complex.

- The program has leveraged over $59 million in federal and partner contributions to implement projects. This equates to a 10-year annual average ratio of over $5 of contributions for every $1 of base funding.

- GBEP awarded 161 grants to local partners to support habitat conservation, water quality planning and improvement, water resource planning, and community enhancement projects.

Coastal Bend Bays and Estuary Program
Successes realized by the CBBEP since its inception:

- Restoration, to date, of over 2,600 acres of Matagorda Island marsh.

- Creation, protection, and restoration of 8,843 acres of wetlands and other vital coastal habitats since 2005.

- Initiation of efforts to acquire important wetlands and adjacent wildlife habitat in the Nueces Delta Preserve and current ownership of over 5,000 acres of land along the Nueces River.

- Leverage of over $25.6 million in federal and partner contributions to implement projects since 2005. This equates to a four-year annual average ratio of over $8.50 of contributions to every $1 of base funding.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Nonpoint Source Program

In 1990, Congress passed the Federal Coastal Zone Act Reauthorization Amendments (FCZARA) to address the NPS pollution problem in coastal waters. Section 6217 of FCZARA requires states to develop coastal nonpoint pollution-control programs. Texas was granted conditional approval of its program in July 2003. The TCEQ and partner agencies are continuing to work toward full approval.

In FY 00, Congress doubled Section 319 federal funding nationwide from $100 million to $200 million for restoration of high-priority watersheds. In FY 01, EPA recognized the need to increasingly focus Section 319 grant dollars on implementing nonpoint source Total Maximum Daily Loads (TMDLs), or the nonpoint source components of mixed-source TMDLs. The guidelines published for FY 04 and future years continue focusing $100 million of annual Section 319 federal funds on the development and implementation of watershed-based plans to achieve NPS TMDLs.

Galveston Bay Estuary Program

In 1987, during reauthorization of the Clean Water Act, Congress established the National Estuaries Program to promote long-term planning and comprehensive regional management of nationally significant estuaries threatened by pollution, development and overuse. GBEP was established in 1989 to address Galveston Bay.

The Galveston Bay Plan was completed and approved by the governor and the EPA administrator in 1995.

In 1999, the Texas Legislature passed the Texas Estuaries Act, which designated the TCEQ as the entity responsible for implementing Texas' CCMP.

Coastal Bend Bays and Estuary Program

The Coastal Bend Bays Program began as a federal and state agency effort during the planning phase. However, participants wanted to localize and take ownership of the program as it moved from development to implementation. The change resulted in the

creation of a nonprofit organization led by a local board of directors. The nonprofit is partially funded with general revenue through the TCEQ.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Nonpoint Source Program

Through working partnerships with state, interstate, regional, and local authorities; private-sector and citizen groups; and federal agencies, the NPS Program affects many entities. Program funding supports watershed planning and implementation, grants management, education and outreach, and monitoring. Section 319 grants are available to state agencies or political subdivisions of the State of Texas, including cities, counties, school districts, state universities, and special districts.

Galveston Bay Estuary Program

GBEP serves as a forum for coordination and peer review between federal and state agencies, local governments, commercial and recreational fishermen, industry, environmental groups, and citizens.

Coastal Bend Bays and Estuary Program

The CBBEP is a non-regulatory, voluntary partnership with industry, environmental groups, bay users, local governments, and resource managers to improve the health of the bay system within the 12-county program area. Participating organizations can include cities, counties, school districts, state universities, and private, for profit, and nonprofit organizations.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Nonpoint Source Program

Implementation of the Texas NPS Management Program involves partnerships among other organizations, specifically the Texas State Soil and Water Conservation Board (TSSWCB), which jointly administers the Program. The EPA awards USCWA Section 319 grant funding through a six-step process: (1) the EPA issues a brief annual guidance; (2) states submit draft grant applications, including a draft work plan; (3) the EPA reviews state draft applications and comments in writing; (4) states submit final work plans and grant applications to the EPA; (5) the EPA awards grants to states; and (6) states obligate funds as expeditiously as possible. Additional funding awarded under Section 604(b) of the Clean Water Act is passed primarily to councils of governments for NPS projects. The current Texas NPS Management Program was developed in 2005 and will be updated in 2010. Texas reports annually to its stakeholders, Congress and the EPA on progress; The TCEQ and TSSWCB alternate the responsibility for preparing this annual report.

Galveston Bay Estuary Program

GBEP is administered by the TCEQ and is advised by the Galveston Bay Council (GBC), a 41-member coordinating council. GBEP is funded by appropriations from Congress through the EPA and from the Texas Legislature through the TCEQ. Implementation of its CCMP is carried out through collaborative efforts with numerous local governments, businesses, conservation organizations, and state and federal agencies, enabling GBEP to lever additional funds to implement on-the-ground habitat and water quality protection.

The GBC meets quarterly to discuss CCMP implementation by member organizations and give feedback. The GBC also makes recommendations to TCEQ regarding projects in the GBEP annual work plan. GBEP projects are developed through subcommittees composed of federal and state agencies, local governments, businesses, and not-for-profit organizations with specific expertise. Project ideas are refined and vetted by subcommittee members and submitted to the GBC for approval. Potential partners and funding are identified during project development. Outgoing grants are issued to implement projects in the work plan. Each is carried out by the grantee and guided by a project team.

Coastal Bend Bays and Estuary Program

The CBBEP is a local nonprofit organization with a board of directors comprised of representatives of local government from within the program area, industry, the Coastal Bend Bays Foundation, and the Bays Council, an advisory committee that includes the Texas Parks and Wildlife Department, Texas General Land Office, and Nueces River Authority. Implementation teams function as a subgroup to the Bays Council and make recommendations to the council regarding annual work plans.

The TCEQ liaison with the CBBEP is in the Corpus Christi regional office. A combination of local governments, private industry, and the TCEQ and EPA agencies supply additional program funding.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0555	Federal Funds	$3,271,863
0001	General Revenue	$1,939,271
0153	Water Resource Management Account	$209,100

Strategy—A.1.2—Waste Assessment and Planning

H. Identify any programs, internal or external to your agency, that provides identical or similar services or functions. Describe the similarities and differences.

Nonpoint Source Program
The Texas NPS Program is jointly administered by the TCEQ and the TSSWCB. The TCEQ is designated by law as the lead state agency for water quality protection in Texas. The TSSWCB plays an important role as the lead agency in the state for the management of agricultural and silvicultural NPS runoff. The TSSWCB administers the NPS Program for agricultural and silvicultural NPS management; the TCEQ, for all other nonpoint sources.

Galveston Bay Estuary Program and Coastal Bend Bays and Estuary Program
The two estuary programs in Texas serve different geographical areas: GBEP, the upper Texas coast (specifically the Galveston Bay area), and the CBBEP, the lower Texas coast (specifically the Coastal Bend bay and estuaries area). GBEP is a non-regulatory program of the TCEQ; the CBBEP, a local nonprofit organization. No other programs coordinate interdisciplinary resource and bay management in Texas.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Nonpoint Source Program
A Memorandum of Understanding between the TCEQ and the TSSWCB sets out the responsibilities of the two agencies with respect to the NPS Program and facilitates cooperation between them in achieving its goals.

Galveston Bay Estuary Program
GBEP serves the Galveston Bay area, including the five counties surrounding the bay complex: Harris, Galveston, Chambers, Brazoria and Liberty. Coordination and communication are achieved through representation on the Galveston Bay Council and its subcommittees.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Nonpoint Source Program
Implementation of the Texas NPS Program involves partnerships among many organizations, e.g., cities, counties, river authorities, and other state agencies, such as the TSSWCB. At the federal level the EPA oversees the program and guides its implementation.

Galveston Bay Estuary Program
Through the GBC, GBEP works with federal and state agencies with bay-management responsibilities; local governments and communities in Harris, Galveston, Brazoria, Chambers and Liberty counties; industry and business; environmental groups; and commercial and recreational fishermen.

Coastal Bend Bays and Estuary Program

The CBBEP is a non-regulatory, voluntary partnership effort working with industry, environmental groups, bay users, local governments, and resource managers to improve the health of the bay system. In addition, local government authorities may also sit on the board of directors, the Bays Council, and any of the five implementation teams. The project area includes the 12 counties of the region known as the Texas Coastal Bend: Aransas, Bee, Brooks, Duvall, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, Refugio, and San Patricio.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

FY 08 contract expenditures: $3,914,953
NPS Program: $2,315,504
GBEP: $755,567
CBBEP: $843,881
Number of contracts: 56

- The NPS Program receives grant funds from the EPA for projects that support the development and implementation of watershed-based plans to restore impaired waters and protect unimpaired waters. GBEP and CBBEP award contracts to implement their respective plans.

- Contract-monitoring activities include obtaining supporting documentation for planned contracts; holding post-award conferences; reviewing contract requirements; using checklists to review work products, progress reports, subcontracts, invoices, receipts, time sheets and travel logs; assessing risk and performing on-site monitoring of work and financial records; conducting annual contractor evaluations; following up to ensure corrective actions are taken as appropriate; and following standard operating procedures.

- The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	State Implementation Plan Development
Location/Division	4th Floor / Building F / Implementation Grants Section / Air Quality Division / Chief Engineer's Office
Contact Name	David Brymer
Actual Expenditures, FY 2008	$1,076,348
Number of FTEs as of August 31, 2008	14

B. What is the objective of this program or function? Describe the major activities performed under this program.

The State Implementation Plan (SIP) Program coordinates plan revisions required by the Federal Clean Air Act (FCAA) showing how Texas will meet the National Ambient Air Quality Standards (NAAQS) for the six criteria pollutants (carbon monoxide, ozone, sulfur dioxide, nitrogen dioxide, particulate matter, and lead) and other FCAA requirements. The SIP Program works with modeling, data analysis, emissions inventory, legal, and rule-writing staff on plan development. Program personnel are the project managers for SIP development and coordinate with other agency programs to incorporate the various subprojects that comprise a SIP revision.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

The SIP Program has met all of the Environmental Protection Agency's (EPA's) deadlines for submitting NAAQS SIP revisions. Texas submitted the first approvable 1997 ozone attainment demonstration in the nation, for the Dallas–Fort Worth area.

No key performance measures are associated with the SIP program. However, the following table outlines how the design values for the 1997 eight-hour ozone standard are trending downward. Decreasing ozone levels show that SIP revisions and associated rules are improving air quality. The design value for attainment of the 1997 eight-hour ozone standard is 85 parts per billion.

1997 Eight-Hour Ozone Design Values in Parts per Billion

Area	2000	2001	2002	2003	2004	2005	2006	2007	2008
HGB	112	110	107	102	101	103	103	96	91
BPA	87	89	90	91	92	88	85	83	81
DFW	102	101	99	100	98	95	96	95	91
TLM	102	95	88	82	83	84	85	84	78
AUS	89	88	85	84	85	82	82	80	77
SAN	86	82	86	89	91	86	87	82	78
CC	83	81	81	80	80	75	72	70	71
VIC	81	79	76	78	79	76	72	69	66
ELP	79	75	81	79	78	76	78	79	78

HGB——Houston-Galveston-Brazoria
BPA——Beaumont–Port Arthur
DFW——Dallas–Fort Worth
TLM——Tyler-Longview-Marshall
AUS——Austin–Round Rock
SAN——San Antonio
CC——Corpus Christi
VIC——Victoria
ELP——El Paso

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

None

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The SIP Program's goal is to assess air quality in Texas as it relates to the standards and rules established by the EPA under the FCAA. The program develops three types of SIP revisions: area, regional, and statewide. Following is a breakdown of populations in Texas that are affected:

Texas population: 24,326,974
Texas population with SIP revisions specific to an = area: 17,390,631
Percentage of Texas population represented in SIP Program Areas: 71.5 percent

Following is a breakdown, by population, of each county for the 1997 ozone-standard nonattainment or near nonattainment areas in Texas that have SIP revisions in place:

Dallas–Fort Worth Nonattainment Area

Collin County	762,010
Dallas County	2,412,827
Denton County	636,557
Ellis County	148,186
Johnson County	153,630
Kaufman County	100,527
Parker County	111,776
Rockwall County	77,633
Tarrant County	1,750,091
Total	6,153,237

Houston-Galveston-Brazoria Nonattainment Area

Brazoria County	301,044
Chambers County	29,356
Fort Bend County	532,141
Galveston County	288,239
Harris County	3,984,349
Liberty County	75,333
Montgomery County	429,953
Waller County	35,995
Total	5,676,410

Beaumont–Port Arthur Nonattainment Area

Hardin County	52,143
Jefferson County	243,090
Orange County	83,022
Total	378,255

Austin–Round Rock Area

Bastrop County	73,491
Caldwell County	36,899
Hays County	149,476
Travis County	998,543
Williamson County	394,193
Total	1,652,602

San Antonio Area

Bexar County	1,622,899
Comal County	109,635
Guadalupe County	117,172
Wilson County	40,398
Total	1,890,104

Northeast Texas Area

Gregg County	117,528
Harrison County	63,594
Smith County	201,277
Upshur County	38,331
Total	420,730

Corpus Christi Area

Nueces County	322,077
San Patricio County	68,399
Total	390,476

El Paso Area

El Paso County	742,062

Victoria Area

Victoria County	86,755

(Population information is from the U.S. Census Bureau at <www.census.gov/popest/counties/CO-EST2008-01.html>. Estimates are for July 1, 2008.)

The SIP Program is also required under the FCAA to develop a plan to improve visibility in national parks and wilderness areas, such as Big Bend and the Guadalupe Mountains, affecting 362,512 and 163,709 recreational visitors respectively in 2008. The 9,331 residents in Brewster County and 2,431 in Culberson County (total: 11,762) will benefit as well.

(Park population information is from the National Park Service at <www.nature.nps.gov/stats/viewReport.cfm>.)

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Each state has one SIP that is continually revised to establish control strategies and target dates for reducing emissions that are necessary to attain and maintain the NAAQS set by the EPA for each criteria pollutant.

The SIP describes the steps the state will take to monitor air quality, determine compliance with the NAAQS, and reduce air pollution in the regions that do not meet a particular NAAQS. The SIP also addresses other requirements specified by the FCAA, such as

enforcement programs, preconstruction permitting, etc.

SIP revisions are required when:

- the NAAQS for one of the six criteria pollutants is revised;
- the state submits a request for redesignation when an area attains the NAAQS;
- an area does not attain the standard during the federally specified time frame;
- an area is reclassified (e.g., an ozone nonattainment area is reclassified from a moderate nonattainment area to a serious nonattainment area); or
- new or revised rules are adopted by the EPA that change or add requirements (e.g., the Clean Air Interstate Rule, Clean Air Mercury Rule, and New Source Review reform).

Depending on the complexity of the issues, the development of a SIP revision may require up to four years. The FCAA specifies deadlines for submitting SIP revisions, and provides for sanctions if the deadlines are not met. The EPA generally allows states 12–18 months to correct a failure to submit, after which the federal government is obligated to withhold highway money and require increased emission offsets from companies that want to build new or modify existing facilities. These deadlines may also be modified, clarified, or revised by additional federal legislation and rulemaking or court action, which then changes the time lines for states to complete work associated with SIP revisions.

Please see the flowchart *State Implementation Plan* following Question O.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0151	Clean Air Account	$788,757
0555	Federal Funds	$98,935
5094	Operating Permit Fees	$188,656

Strategy—A.1.1—Air Quality Assessment and Planning

Rider 14 Appropriation: Refinement and Enhancement of Modeling to Demonstrate Attainment with Clean Air Act
Rider 16 Appropriation: Low Income Repair and Replacement Program
Rider 19 Appropriations Limited to Revenue Collection: Automobile Emission Inspections

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

No programs either internal or external to the TCEQ provide identical or similar services or functions of the SIP Program.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not Applicable

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The SIP Program works with the EPA, local governments, metropolitan planning organizations, councils of governments, and stakeholders including industry and environmental groups to develop SIP revisions.

For the Regional Haze SIP, the TCEQ also worked with three groups of Federal Land Managers: the National Park Service, the United States Fish and Wildlife Service, and the United States Forest Service.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

- Expenditures—$270,643

- Four contracts to conduct studies related to highly reactive volatile organic compounds, $PM_{2.5}$, PM_{10}, and regional haze.

Methods used for ensuring accountability for funding and performance include a defined and consistent process for developing, implementing, and tracking projects, including:

- project prioritization in alignment with required work and alignment with agency priorities;

- development of a detailed scope of work to be performed as well as deliverables and due dates; and

- review of all invoices for consistency with contract dates, deliverables, work performed, and allowable expenses.

Current contracting problems include timeliness of invoicing by vendors and the changing of the contracting object code by the comptroller.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

Not Applicable

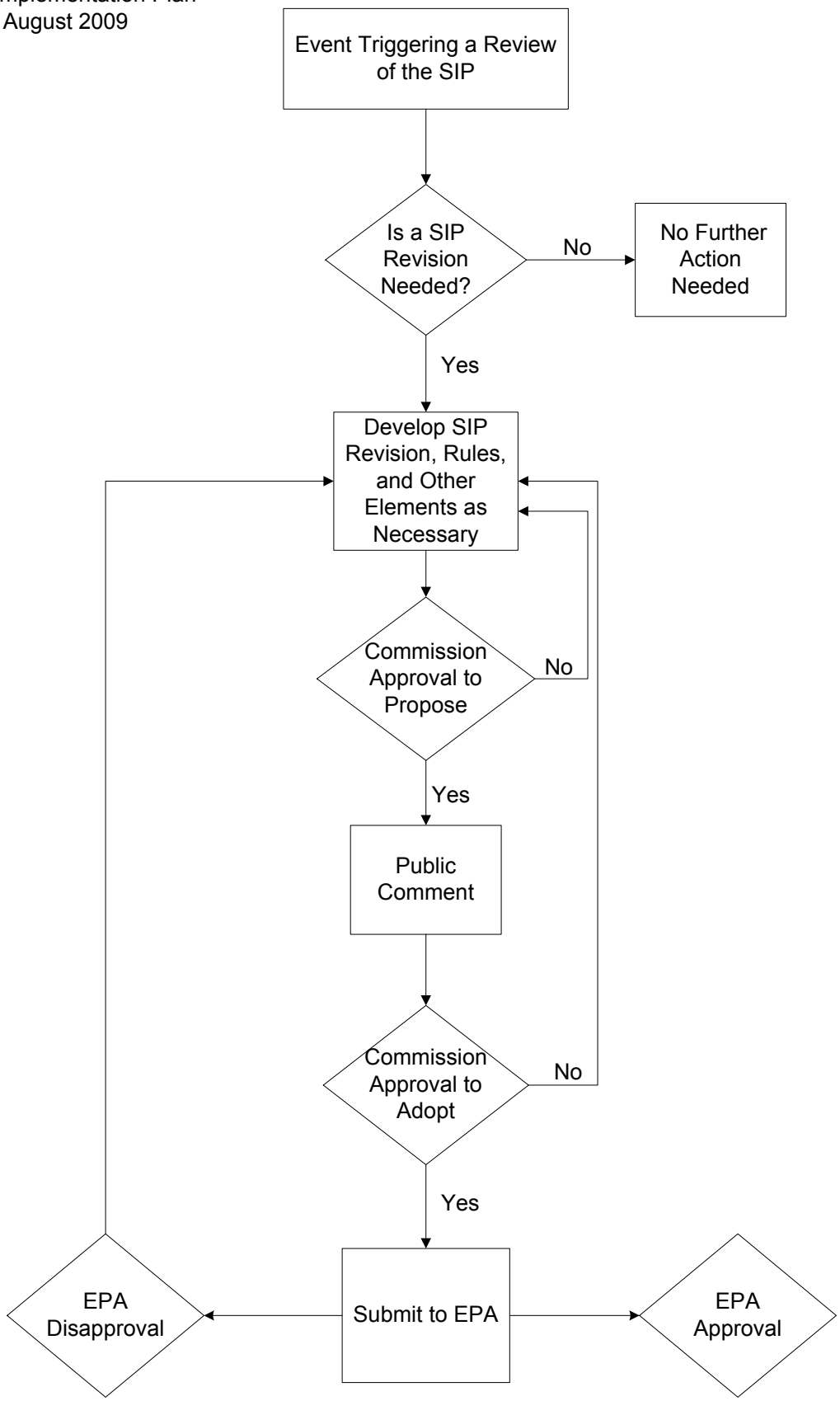
N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable


Event Triggering a Review of the SIP
Is a SIP Revision Needed?
No
No Further Action Needed
Yes
Develop SIP Revision, Rules, and Other Elements as Necessary
Commission Approval to Propose
No
Yes
Public Comment
Commission Approval to Adopt
No
Yes
EPA Disapproval
Submit to EPA
EPA Approval

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A.Provide the following information at the beginning of each program description.

Name of Program or Function	Stationary and Mobile Source
Location/Division	4th Floor / Building F / Air Quality Planning Section / Air Quality Division / Chief Engineer's Office
Contact Name	David Brymer
Actual Expenditures, FY 08	$52,156,278
Number of FTEs as of August 31, 2008	32

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Stationary and Mobile Source Programs include a number of activities that perform diverse functions in support of the Texas State Implementation Plan (SIP) for air quality. Two areas that predominately focus on stationary sources are Control Strategy Development and Emissions Banking and Trading. Areas that focus on mobile sources include Mobile Emissions Control, MobileEmissions Reduction Grants, Conformity, and Mobile Emissions Inventory.

Control Strategy Development

The Control Strategy Development activity evaluates pollution control strategies and technologies to identify and develop feasible control measures for stationary sources, to help areas of the state attain the National Ambient Air Quality Standards (NAAQS).

Emissions Banking and Trading

The Emissions Banking and Trading Programs are market-based strategies used to address air quality issues throughout Texas. These programs were designed to provide flexibility in complying with the Texas Clean Air Act (TCAA) and the Federal Clean Air Act (FCAA), while also providing incentives to reduce emissions from stationary, area, and mobile sources through the trading of emission reductions within a market-based framework. The TCEQ currently maintains and administers seven different emissions banking and trading programs across the state, each targeting specific criteria pollutants or air quality issues.

Mobile Emissions Controls

The mobile emissions control activities improve air quality through inspection of vehicle emissions control equipment, reducing evaporative emissions from vehicle refueling and

reducing nitrogen oxides (NO_X) and other ozone-forming emissions from diesel fuels. Other activities include the coordination of local mobile emission reduction efforts; such as idling restrictions, transportation control measures, and voluntary mobile emission reduction strategies. Refer to flowchart *Mobile Source Programs* following Question O.

Mobile Emissions Reduction Grants

Mobile emissions reduction grants, such as the AirCheckTexas Drive a Clean Machine Program, improve air quality through incentivizing the replacement of older, high-emitting vehicles by providing financial assistance to eligible owners of vehicles that have failed an emissions test or have a qualifying gasoline powered vehicle that is 10 years old or older.

Conformity

Conformity ensures that federally funded actions and transportation projects will not cause or aggravate a violation of the NAAQS, or delay timely attainment of standards.

Mobile Emissions Inventory

The mobile emissions inventory activity develops emissions inventories and assesses the effectiveness of on-road and non-road control strategies.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

A number of the stationary and mobile source projects are authorized as emissions reduction credits as part of the SIP.

Control Strategy Development

While the Control Strategy Development activity does not have specific performance measure requirements, the control strategies and rules developed by the program have resulted in significant reductions in pollution to help improve air quality in Texas nonattainment areas. Any rules developed by the activity that will be included in the SIP must be approvable by the U.S. Environmental Protection Agency (EPA). See the SIP Program discussion for additional information regarding air quality improvement.

Emissions Banking and Trading

LBB Output Measure 01-02-01.03 – Total Number of Transaction Applications. The total number of transaction applications reviewed for FY 08 was 1,429, approximately 43 percent more than the projected estimate of 1,000 applications.

Mobile Emissions Control

Federal regulations (40 Code of Federal Regulations, Section 51.353) require the inspection and maintenance (I/M) program to perform a program evaluation every two years. The evaluation continues to show that I/M is a vital component of the overall strategies to improve air quality.

Mobile Emissions Reduction Grants

LBB Key Output Measure 01-01-01.07 – Number of Vehicles Repaired/Replaced through LIRAP. For FY 08, 18,492 vehicles were repaired or replaced through Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), or 123 percent of projections.

LBB Efficiency Measure 01-01-01.03 – Average Cost for LIRAP Repairs. The average cost of each LIRAP repair was $504.61 in FY 08, or 96 percent of projections.

Mobile Emissions Inventory

LBB Key Outcome Measure 01-01-01.03 – Number of Mobile Source Air Quality Assessments. The number of mobile source assessments conducted in FY 08 was 1,268, or 101 percent of projections.

LBB Key Output Measure 01-01-01.02 – Number of Area Source Air Quality Assessments. In FY 08, 2,577 area and non-road mobile source emission assessments were completed, or 103 percent of projections.

LBB Outcome Measure 01-01.01 – Emission Reductions in Ozone Nonattainment Areas. A three percent reduction of volatile organic compounds (VOC) and NO_X emissions from point, area, on-road mobile, and non-road mobile sources in the ozone nonattainment areas was achieved in FY 08. This was half the projected reduction of six percent. The addition of a new source category (oil and gas exploration and drilling rig engines, particularly in the Dallas–Ft. Worth area) in the area source emissions inventory resulted in an increase in areas source emissions inventory that offset the reductions from the point, on-road mobile, and non-road mobile sources.

In FY 09, a new output performance measure was added to separately track the number of non-road mobile source assessments.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Mobile Emissions Inventory

The Consolidated Emissions Reporting Rule (CERR) expanded the inventory reporting requirement to encompass the whole state, and added additional pollutants in June of 2002. The Air Emissions Reporting Requirements (AERR) replaces the CERR beginning with the 2009 reporting year. Inventories will now run on a 12 month cycle instead of 18 months.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Control Strategy Development

Rules developed by the activity can affect a wide range of industrial, commercial, institutional, and utility sources. Some rules are only applicable in specified nonattainment areas, such as the Houston-Galveston-Brazoria (HGB) ozone nonattainment area, while other rules apply to larger regions or even statewide. Additional information regarding the

nonattainment areas in Texas is provided in the SIP Program discussion.

Emissions Banking and Trading

The emissions banking activity is available to a wide range of stationary and mobile sources across the state. As of July 2009, there were 569 separate companies or regulated entities that participated in one or more of the emissions banking programs.

Mobile Emissions Control

The vehicle I/M program affects motorists who own gasoline-powered vehicles (excluding motorcycles) that are 2–24 years old and registered and primarily operated in one of the 17 affected counties. The affected counties are Brazoria, Collin, Dallas, Denton, El Paso, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Montgomery, Parker, Rockwall, Tarrant, Travis, and Williamson.

- The Regional Low Reid Vapor Pressure (RVP) Gasoline Program affects fuel producers, importers, suppliers, and retail gasoline-dispensing facilities in the 95 central and eastern Texas counties. Refer to attachment *Counties Participating in Certain Fuel Programs* following Question O for list of counties.
- The El Paso Oxygenated and Low RVP Gasoline Program affects fuel producers, importers, suppliers, and retail gasoline-dispensing facilities in El Paso County.
- The Texas Low-Emission Diesel Fuel (TxLED) Program affects diesel fuel producers, importers, common carriers, distributors, transporters, bulk terminal operators, and retailers. The program covers 110 counties in the central and eastern half of Texas. Refer to attachment *Counties Participating in Certain Fuel Programs* following Question O for list of counties.
- The Stage II Vapor Recovery program affects gasoline-dispensing facilities in: Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller counties**.** The program staff answer questions as they come up, but actual implementation is handled through the TCEQ's Office of Compliance and Enforcement, which has the necessary authority.
- The Idling Program affects local governments that have signed a Memorandum of Agreement (MOA) with the TCEQ to implement idling restrictions on motor vehicle owners and operators in the local jurisdictions covered by an MOA.

Mobile Emissions Reduction Grants

The grant program is available in counties that conduct annual vehicle emissions testing and elect to participate. The program is currently implemented in the counties of Brazoria, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Montgomery, Parker, Rockwall, Tarrant, Travis, and Williamson Counties.

For the AirCheckTexas Drive a Clean Machine Program, an applicant's vehicle must meet certain criteria and their income must be at or below 300 percent of the federal poverty level to be eligible. The program provides eligible owners with vouchers in the amounts of up to $3,000 for a car or truck or up to $3,500 if a hybrid vehicle is purchased. The replacement car must be the current model or up to three model years old. A replacement truck must be a current model and up to two model years old. A hybrid vehicle must be the current model year or preceding model year. All replacement vehicles must meet Federal

Tier 2 Bin 5 emissions standards or cleaner. The program also provides for up to $600 in repair assistance for eligible motorists whose vehicles have failed an emissions test.

Conformity

Conformity requirements apply to federally funded project sponsors and transportation planners in nonattainment and maintenance counties: Hardin, Jefferson, and Orange; Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant; El Paso; and Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller.

Mobile Emissions Inventory

The mobile emissions inventory activity works with the TCEQ's SIP program, air modeling group, local planning groups, councils of governments (COGs), the Texas Department of Transportation (TxDOT), the EPA, and the Federal Highway Administration (FHWA) to provide mobile source emissions inventories for both on-road and non-road mobile sources.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Timelines associated with work in the stationary and mobile source programs are driven by deadlines established by the EPA under the FCAA. These programs work in conjunction with the SIP program to establish project timelines that will ensure federal requirements are met.

Control Strategy Development Program

This program is administered under the same general process as the SIP Program (see SIP Program flowchart for more information). Any rules developed by the program must conform to agency and the Texas Secretary of State's Office rulemaking guidelines, requirements, and timelines.

Emissions Banking and Trading Program

An overview of the emissions banking transaction process can be seen on the flowchart *Process Flow Diagram*: *Emissions Banking and Trading Project* following Question O.

Mobile Emissions Control Programs

The I/M Program is administered as part of the Texas Department of Public Safety (DPS) vehicle safety inspection program. To obtain a safety sticker in one of the affected counties, a subject vehicle must pass the prescribed emissions tests in addition to meeting the vehicle safety inspection requirements. If a motorist's vehicle is not in compliance, enforcement is through citations issued by law enforcement agencies and registration denial of the subject vehicle.

The Idling Program is administered through MOAs between the TCEQ and local governments. The local government adopts a resolution or ordinance incorporating the TCEQ idling rule into an MOA. The MOA is then signed by the appropriate local official and the TCEQ. Enforcement occurs at the local level.

Mobile Emissions Reduction Grants

The grants are administered via contracts with counties in the ozone nonattainment and maintenance areas. For AirCheckTexas Drive a Clean Machine, the counties in the Dallas-Fort Worth (DFW) area subcontract with the North Central Texas Council of Governments and the HGB area counties subcontract with the Houston-Galveston Area Council to administer the program. Travis and Williamson counties each administer their own program.

Conformity

Conformity links transportation planning with air quality planning, and must be conducted for transportation at least once every four years and before certain non-transportation projects may move forward. This process is led by the local transportation planning group and includes consultation and agreement by related local, state, and federal agencies.

Mobile Emissions Inventory

Agency staff works with Texas Metropolitan Planning Organizations (MPOs) and other Texas mobile source stakeholders, such as airports and construction groups, to develop mobile inventories and assure compliance with transportation conformity requirements.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0151	Clean Air Account	$51,096,189
0555	Federal Funds	$180,232
0666	Appropriated Receipts	$588,938
5094	Operating Permit Fees	$290,919

Strategy—A.1.1—Air Quality Assessment and Planning

Rider 14 Appropriation: Refinement and Enhancement of Modeling to Demonstrate Attainment with Clean Air Act
Rider 16 Appropriation: Low Income Vehicle Repair and Replacement Program
Rider 19 Appropriations Limited to Revenue Collection: Automobile Emission Inspection Fee

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

Emissions Banking and Trading

The Emissions Banking and Trading activity performs some limited functions associated with the federally administered Clean Air Interstate Rule (CAIR) Program; however, these functions are distinct from the functions handled at the federal level.

Mobile Emissions Control Programs

As required by Chapter 382, Subchapter G, of the Texas Health and Safety Code, the I/M program is administered by both the TCEQ and the DPS.

Mobile Emissions Reduction Grants

The federal government began the Car Allowance Rebate System (CARS) Program in July 2009. Financial incentives are given to replace old vehicles with more fuel efficient ones. The CARS program offers credits from $3,500 to $4,500 toward the new vehicle purchase, which cannot exceed $45,000. This program ended in late August 2009.

TCEQ's Drive a Clean Machine Program limits the cost of the newer vehicle to $25,000 or less and offers vouchers up to $3,500 for Tier 2 Bin 5 vehicles. This program requires applicants to meet income requirements, whereas the CARS program has no income requirements. The Drive a Clean Machine Program also allows applicants to purchase used vehicles.

Conformity

Interagency consultation on transportation conformity brings together local, state, and federal air quality and transportation stakeholders in nonattainment and maintenance areas, where all partners serve the same function yet bring particular expertise:

- Metropolitan Planning Organizations (MPOs) develop transportation plans, programs, and projects; participate in the development of SIP revisions; and conduct conformity determinations and associated regional emissions analyses.
- The Texas Department of Transportation (TxDOT) develops transportation plans, programs, and projects; participates in the development of the SIP; and reviews and approves transportation conformity determinations.
- The FHWA, the Federal Transit Administration, and the EPA develop and implement the federal transportation rule and guidance, and reviews and approves transportation conformity determinations.
- The TCEQ promulgates the transportation conformity SIP and associated rule, participates in interagency consultation, and supports agency management with respect to requirements and the consequences of deficiencies.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Emissions Banking and Trading

The functions performed by this activity for the federal CAIR Program are distinct from those functions managed at the federal level and are stipulated in the CAIR regulations to

avoid duplication or conflict between the state and federal functions.

Mobile Emissions Control
To ensure there is no conflict or duplication of duties in implementing the I/M program, the TCEQ and the DPS initiated an MOU dated December 13, 1996, and updated it on January 22, 1997.

Mobile Emissions Reduction Grants
The federal CARS program is distinct and separate from the TCEQ's AirCheckTexas Drive a Clean Machine Program and has different eligibility requirements.

Conformity
Where a nonattainment or maintenance area is outside the boundary of an MPO, there is an MOA with interagency partners to establish responsibilities for transportation conformity. Such an agreement is in place among the DFW nonattainment area transportation conformity interagency partners.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Control Strategy Development
Staff conducting this activity periodically meet with EPA representatives, typically from the EPA Region 6 office in Dallas. EPA Region 6 is responsible for reviewing and approving control measures and rules that are included in the Texas SIP. TCEQ and EPA staff occasionally have discussions to help ensure that control measures will be approvable by the EPA.

Emissions Banking and Trading
The Emissions Banking and Trading activity administers specific functions for the federally mandated CAIR program and the remaining functions are administered by the EPA. The Emissions Banking and Trading activity is responsible for reviewing emission allowance applications submitted by the companies subject to CAIR, determining the emissions allowances for each company, and then submitting the allowance information to the EPA. This activity also works with the EPA as needed to ensure that the programs will be federally approved.

Mobile Emissions Control
As any law enforcement agency may issue a citation for an expired vehicle safety sticker, these agencies are assisting in providing enforcement of the I/M program. In addition, the TCEQ works with COGs and local law enforcement task forces by providing data and access to various reports and computer programs to assist in identifying potential fraud in the I/M program.

As the fuel-related components of this program are approved under Texas' SIP, the EPA has the authority to enforce action for noncompliance.

The Idling Program is implemented by having governmental entities sign an idling MOA with the TCEQ. The following cities have signed MOAs: Arlington, Austin, Benbrook, Bastrop, Celina, Colleyville, Dallas, Elgin, Euless, Georgetown, Hurst, Hutto, Lockhart, Luling, Keene, Lake Worth, Lancaster, Little Elm, Mabank, McKinney, Mesquite, North Richland Hills, Pecan Hill, Round Rock, Rowlett, San Marcos, University Park, and Westlake. Counties that have signed an idling MOA with the TCEQ are Bastrop, Caldwell, Hays, Travis, and Williamson.

Mobile Emissions Reduction Grants

Counties in the ozone nonattainment and maintenance areas administer this program. The counties are responsible for ensuring that the funds are appropriately spent, the program requirements are followed, and reports, such as financial status and quarterly reports, are submitted to the TCEQ. Counties in the DFW and HGB areas subcontract with the council of governments to administer the program.

Conformity

MPOs develop transportation plans, programs, and projects; participate in development of the agency's SIP; participate in the interagency consultation process; and conduct conformity determinations and associated regional emissions analyses. The TxDOT develops transportation plans, programs, and projects; participates in the development of the TCEQ's SIP; participates in interagency consultation; and reviews and approves transportation conformity determinations. The FHWA, the Federal Transit Administration, and the EPA develop and implement the federal transportation rule and guidance, participate in the interagency consultation process, and review and approve transportation conformity determinations. The TCEQ promulgates the transportation conformity SIP and associated rule, participates in interagency consultation, and supports agency management with respect to requirements and the consequences of deficiencies.

Mobile Emissions Inventory

When developing inventories, TCEQ staff work with the following government units: EPA, Office of Transportation, Air Quality; EPA, Region 6; North Central Texas COG; Houston-Galveston Area Council; Capital Area Planning COG; Alamo Area COG; Rio Grande Area COG; Coastal Bend COG; East Texas COG; North East Texas Air Care; South East Texas Regional Planning Commission; Central Texas Clean Air Coalition; TxDOT; Texas Transportation Institute; and FHWA.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

- Expenditures: $1,096,924
- Number of contracts: 8

- General purposes of the contracts include:
  - Mobile Source emissions inventory improvements
  - Emissions inventory modeling maintenance
  - I/M program evaluation
  - Drive A Clean Machine Program database development
- The methods used to ensure accountability for funding and performance includes having a defined and consistent process for developing, implementing, and tracking each contract. This process includes: project prioritization in alignment with required work and agency priorities; development of a detailed scope of work to describe the work to be performed as well as deliverables and due dates; review of all invoices to be consistent with contract dates, deliverables, and work performed; and allowable expenses.
- Current contracting problems include timely invoicing by vendors conducting work and changes in the comptroller's contractor object code.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

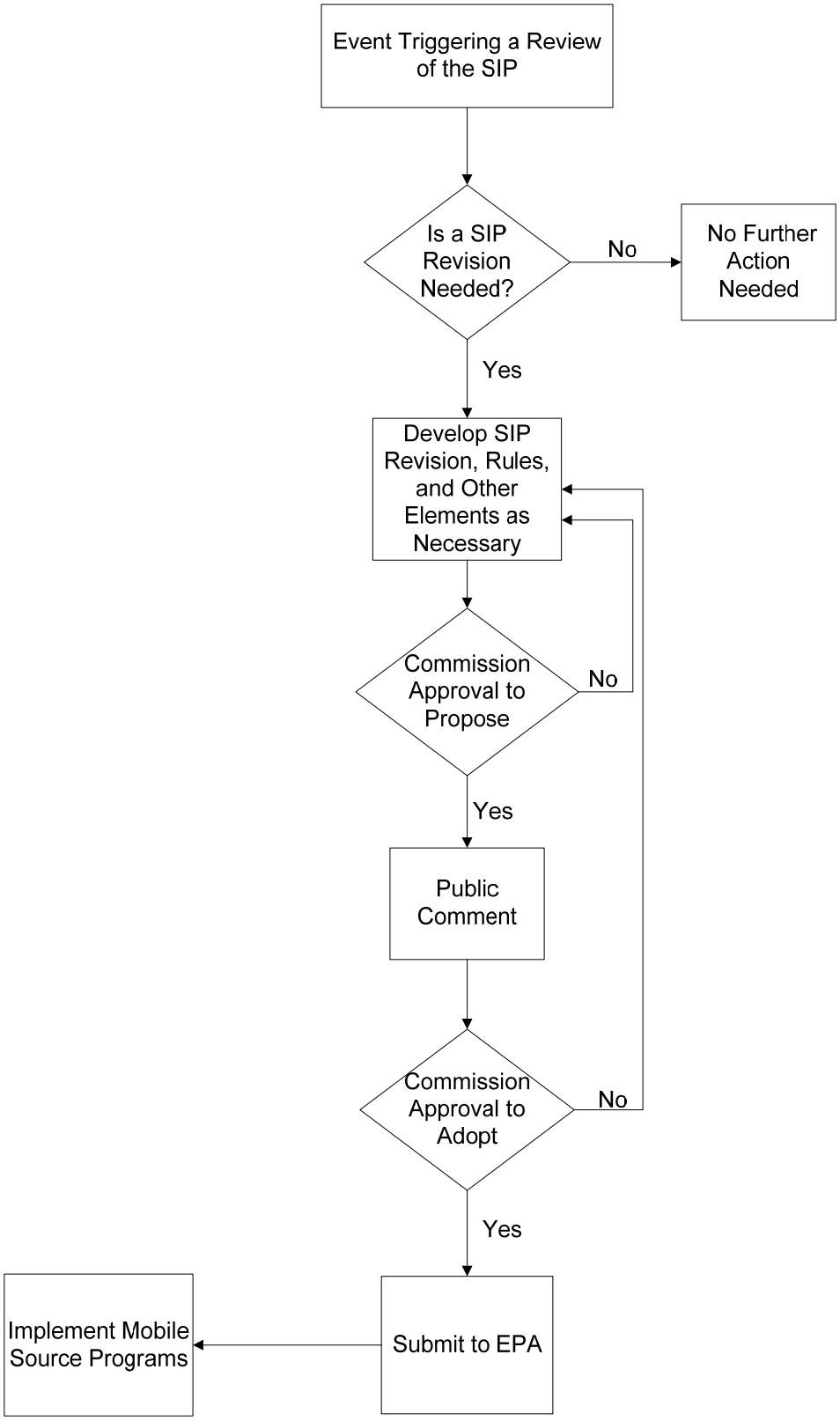
Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

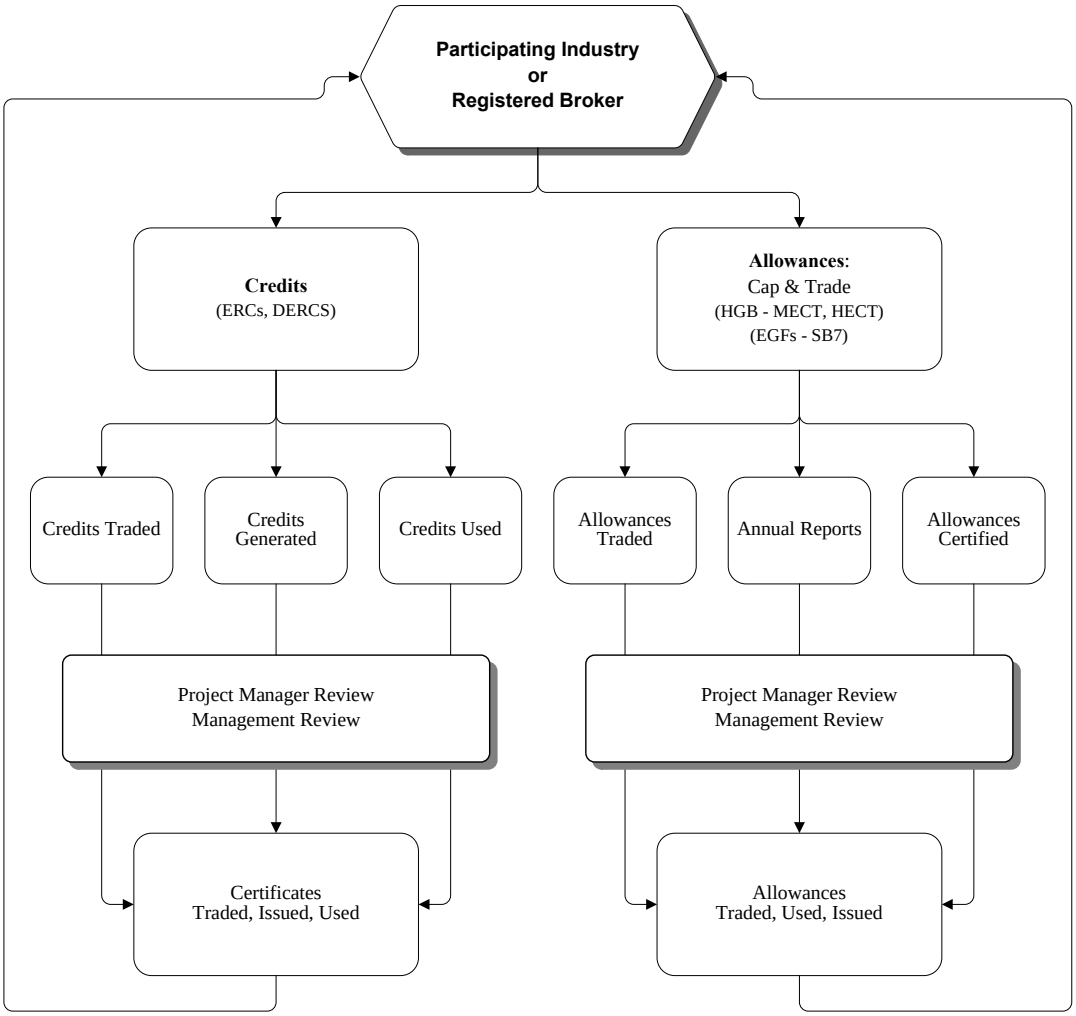
Mobile Source Programs

August 2009



Process Flow Diagram:
Emissions Banking and Trading Project

Economic Incentive Programs for Compliance Flexibility



Acronym	Definition
DERC	Discrete Emission Reduction Credit
EGF	Electric Generating Facilities
ERC	Emission Reduction Credit
HECT	Highly Reactive Volatile Organic Compound Emissions Cap and Trade
MECT	Mass Emissions Cap and Trade
HECT	Highly Reactive Volatile Organic Compound Emissions Cap and Trade
SB7	Senate Bill 7, Emissions Banking and Trading of Allowances*

*Senate Bill 7, 76th Texas Legislature, 1999 Regular Session, Texas Utility Code §39.264

Attachment
Counties Participating in Certain Fuel Programs

RVP Gasoline Program – Participating Counties

The Regional Low Reid Vapor Pressure (RVP) Gasoline program affects fuel producers, importers, suppliers, and retail gasoline-dispensing facilities in the 95 central and eastern Texas counties. The counties are: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Judge Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood.

TxLED Diesel Program – Participating Counties

The Texas Low-Emission Diesel Fuel (TxLED) program affects diesel fuel producers, importers, common carriers, distributors, transporters, bulk terminal operators, and retailers. The program covers 110 counties in the central and eastern half of Texas, including the Beaumont-Port Arthur, Dallas-Fort Worth, and HGB ozone nonattainment areas. The counties are: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Karnes, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Polk, Rains, Red River, Refugio, Robertson, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood.

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Tax Relief for Pollution Control Property
Location/Division	4th Floor / Building F / Chief Engineer's Office
Contact Name	Susana Hildebrand, P.E.
Actual Expenditures, FY 2008	$232,891
Number of FTEs as of August 31, 2008	3

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Tax Relief for Pollution Control Property Program was created in 1993 to provide relief, through property tax exemptions, to individuals, companies, and political subdivisions that make capital investments to meet or exceed environmental regulations. Pollution control property includes pollution control equipment, pollution prevention technology, or changes to processes or methods that meet or exceed existing environmental standards.

The TCEQ is delegated the responsibility for determining whether property meets the requirements for receiving a tax exemption under Texas Tax Code Section 11.31. The program evaluates applications to determine if the property was installed to meet or exceed an adopted environmental regulation, if the use of the property provides an environmental benefit at the site, and if the equipment is used to prevent, monitor, or control air, water or land pollution.

Once reviewed, the property receives a "use" determination. A *positive* use determination means the equipment is partially or wholly for pollution control or prevention. A *negative* determination is issued if the property is not pollution-control property. After a positive determination, the applicant forwards it to the local appraisal district to receive a property-tax exemption.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

The first tax relief application was received on November 21, 1994. Since then, the program has processed 12,618 applications. The total listed property value is $25.2 billion dollars. By rule, until February 7, 2008, the staff had 90 days (not counting response time for deficiencies) to complete the review of an application, and 97 percent of the applications were reviewed within that time frame. Effective February 7, 2008, reviews must now be completed within 63 days; 96 percent have been reviewed within the new time frame. Since

January 1994, the average annual number of applications received is 901; average total listed property value, reviewed annually, is $1.7 billion.

Also since January 1994, the average dollar value listed on an application is approximately $2 million. The highest listed dollar value was $444 million; the lowest, $600. Positive use determinations have been issued for approximately 97 percent of the applications processed. Negative determinations have been issued for one percent of the applications and two percent have been withdrawn by the applicant or returned to the applicant by the program for failure to provide requested information.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The Tax Relief Program was created in 1993 by the Texas Legislature's passage of HB 1920, which added Section 11.31 of the Texas Tax Code. In November 1993, Texas voters approved Proposition 2 which added Section 1-l to Article VIII of the Texas Constitution. Administrative rules were adopted as 30 Texas Administrative Code (TAC) Chapter 277 and later moved to Chapter 17.

In 2001, HB 3121 amended Section 11.31 by creating an appeals process and requiring the TCEQ to adopt by rule an application review process. The appeals process was adopted as Section 17.25. The application review process was adopted as the Decision Flow Chart (Section 17.15) and the Cost Analysis Procedure (Section 17.17).

In 2007, HB 3732 amended Section 11.31 by adding three new subsections: (k), requiring the adoption of 18 categories of potential pollution-control property; (l), requiring review of the list in (k) at least once every three years; and (m), establishing a 30-day review for applications containing property in one of the categories in (k). The Subsection (k) list was joined with the previous predetermined equipment list and adopted into Section 17.14 as the Equipment and Categories List.

In 2009, HB 3206 and HB 3544 amended Section 11.31 by adding two new subsections. New Subsection (g-1) requires that applications containing equipment adopted under Subsection 11.31(k) be reviewed using the methods and standards adopted under Subsection 11.31(g). New Subsection (n) requires the establishment of a permanent advisory committee which is charged with advising the commission on the implementation of Section 11.31.

The services and functions of the program have not changed since its creation, though it was transferred from the TCEQ's Small Business and Environmental Assistance Division to the Chief Engineer's Office on December 1, 2008. Its purpose is still to determine whether property is used to meet or exceed environmental regulations.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

All businesses and individuals in Texas that have capital expenditures for pollution-control equipment may participate in the program. Historically the primary customers for this program have been industries and other businesses, with the largest number of applications from chemical plants, gasoline service stations, electric utilities, and oil refineries. Over half the applications have been filed by facilities with 2,000 or more employees; 14 percent for facilities with 100 or fewer employees. The TCEQ has received applications from approximately 1,394 individual companies. Twenty-two percent of applications have been for facilities located in Harris County, representing 26 percent of the total dollar value. The following table gives the five counties with the largest number of filings.

Tax Relief Applications—Top Five Counties				
County	**No. of Applications Received**	**% of Total Applications Received**	**Listed Dollar Value**	**% of Listed Dollar Value of Total Applications**
Harris	2838	22%	$6,572,211,945	26%
Dallas	663	5%	203,053,288	1%
Jefferson	543	4%	1,977,199,517	8%
Tarrant	502	4%	378,680,324	2%
El Paso	377	3%	394,347,563	2%
Five-County Total	4923	39%	9,525,492,637	38%

The majority of the applications have been for property constructed or installed to meet sections of the Texas Clean Air Act. The second most common medium cited has been water, primarily for modifications to wastewater treatment facilities, installation of secondary containment devices, or construction or installation of equipment to implement a facility's storm water segregation plan.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Refer to the flowchart *Steps for Obtaining a Use Determination* following Question O.

The application process consists of three parts:

1. Data entry and administrative review of the application. The administrative review ensures the application is complete. Once an application has been declared administratively complete, the appropriate appraisal district is notified of its receipt.

2. Technical review. All portions of the application are reviewed to ensure that it meets the technical requirements as stated in the rules. Next, the technical-review document is

printed and forwarded for peer review and management approval.

3. Sending the final determination to the applicant and a copy to the appropriate appraisal district.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0001	General Revenue	$232,891

Strategy—C.1.3—Pollution Prevention Recycling

Rider 6. Fee Revenue: Pollution Control Equipment Exemption
Funding is generated by application fees deposited to the General Revenue Fund.

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

There are no programs, internal or external to the TCEQ, that review property in Texas to determine if it qualifies as pollution-control property for exemption from property tax.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not Applicable

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The program is required to notify the appropriate appraisal district that an application has been filed and send the district a copy of the final determination.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

None

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

A better understanding of this program may be gained by reviewing the program Technical Guidelines Manual online at:

<www.tceq.state.tx.us/assets/public/assistance/prop2/forms/program_information.pdf>

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

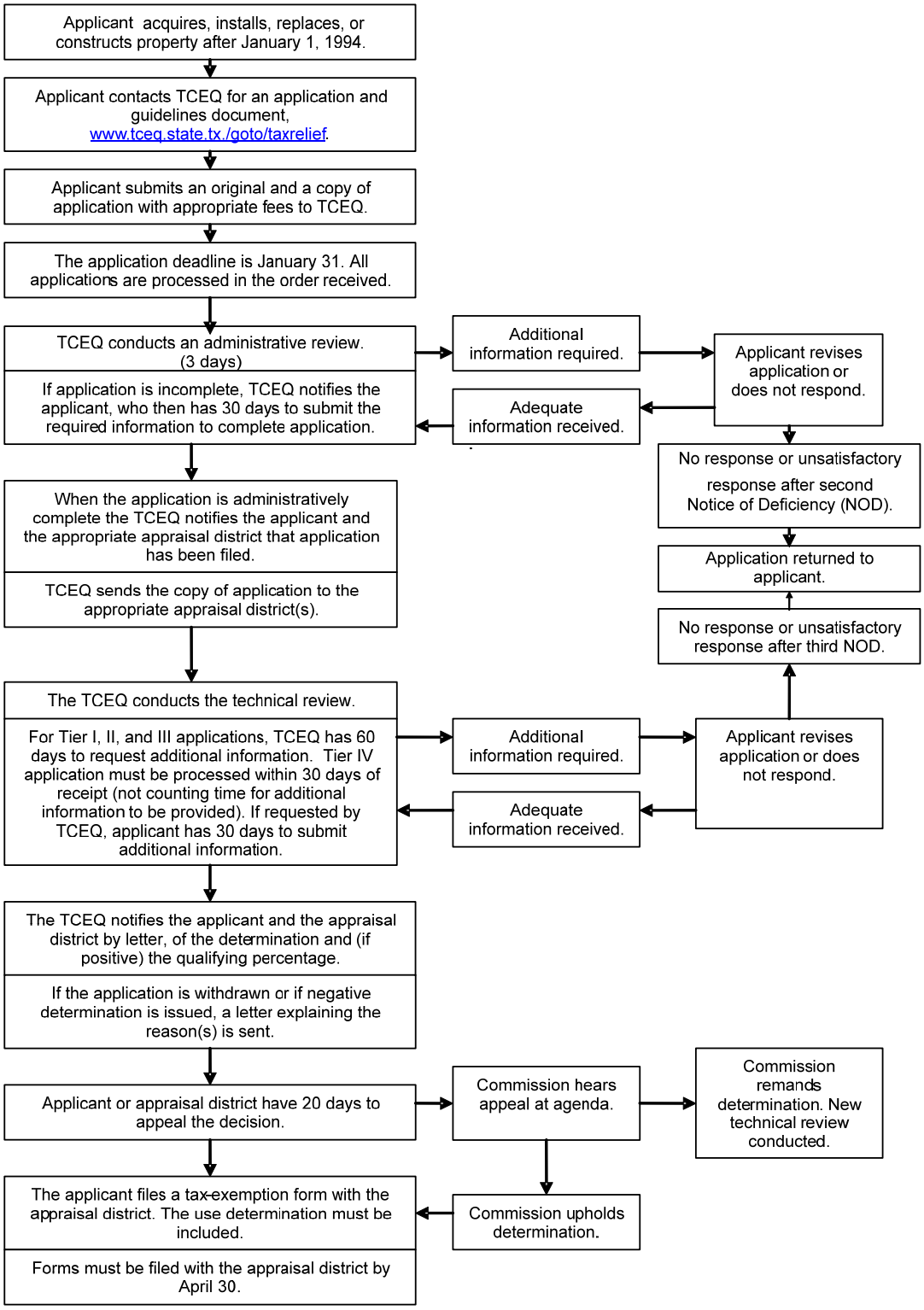
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

STEPS FOR OBTAINING A USE DETERMINATION



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Total Maximum Daily Load
Location/Division	4th Floor / Building F / Water Quality Planning Division / Chief Engineer's Office
Contact Name	Kelly Keel
Actual Expenditures, FY 2008	$6,073,070
Number of FTEs as of August 31, 2008	13.5

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Total Maximum Daily Load (TMDL) Program is authorized under Section 303(d) of the federal Clean Water Act of 1972, its amendments (U.S. Code 1987), and the implementing regulations.

The TMDL Program works to improve water quality in impaired streams, lakes, and bays by:

- developing TMDLs to determine necessary pollutant reductions;
- developing implementation plans (I-Plans) or watershed action plans, in cooperation with the implementing organizations, to meet pollutant reduction goals; and
- preparing use-attainability analyses (UAAs) to determine how water bodies are used.

Federal regulations require the state to develop a TMDL for impairments in a particular water body. The TMDLs are created for specific parameters and specific uses where a segment is impaired. A water body segment is impaired if the standard established for an indicator parameter is not met for a specific use. A water body segment is a portion of a water body. Segments are further divided for purposes of assessment and restoration into assessment units. Five general categories of use are defined under the Texas surface water quality standards: aquatic life, contact recreation, public water supply, fish consumption, and general. For example, if a stream did not meet the contact-recreation use standard because of high concentrations of indicator bacteria and the aquatic-life use standard due to low concentrations of dissolved oxygen, two TMDLs would be required—one for bacteria and another for dissolved oxygen. From 1998 through 2008, the EPA's implementing guidance required one TMDL for each impairment in each segment. Since the beginning of federal FY 09, the EPA has modified its implementing guidance to require one TMDL for each impairment in each assessment unit. Waters that do not attain one or

more standards for their use are identified in category 5a of the state's Section 303(d) list. The Surface Water Quality Monitoring Program (SWQM) monitors and evaluates the physical, chemical, and biological characteristics of aquatic systems and produces the Section 303(d) list biennially.

A TMDL estimates the amount of a pollutant that a water body can assimilate daily and continue to meet water quality standards. The load is divided among the sources of pollution in the watershed. An I-Plan describes how the pollutant reductions described in the TMDL will be achieved. It identifies the actions that will be taken to restore water quality conditions and establishes the means by which these actions will be tracked, evaluated, and reported. A UAA is a structured scientific assessment of the factors affecting the attainment of the use, which may include physical, chemical, biological and economic factors.

The TMDL Program is also responsible for coordinating with permits regarding the implementation of TMDLs. This coordination includes reviewing wastewater permits issued in TMDL watersheds to ensure that the permits comply with the requirements in the TMDL; revision of load allocations of existing TMDLs to adapt to changes in land use and population; and providing updates to the Water Quality Management Plan (WQMP).

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

LBB Output Measure 01-01-02.01 Number of Surface Water Assessments Completed.
In FY 08, the TMDLs and I-Plans contributed to the 65 surface water assessments completed, or 97 percent of the annual projection was attained. These TMDLs and I-Plans are designed to restore support of healthy aquatic communities, swimming and other forms of contact recreation, the safety of fish consumption and oyster harvesting for commercial use, and general water quality.

TMDLs Adopted
In FY 08, the Commission adopted 30 TMDLs for 66 assessment units and four I-Plans for TMDLs in 25 assessment units.

TMDL Restorations
From its inception through August 2008, the TCEQ TMDL Program restored water quality in 72,827 lake acres, 986 stream miles, and 73 estuary square miles. In 2008 ongoing restoration was under way for 72,827 lake acres, 986 stream miles, and 73 estuary square miles.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

In 1998, the TMDL Program began as a separate unit of the TCEQ's Water Quality

Management Division in what was then the Office of Water Resource Management.

Prior to 2002, the TMDL Program was responsible for addressing all impairments on the Section 303(d) list—impairments requiring TMDLs, as well as impairments that required a review of their standards, and for which more data were needed before determining a course of action.

By 2005 the TMDL Program was assigned solely to develop TMDLs and I-Plans. The Surface Water Quality Monitoring Program and the Surface Water Quality Standards Program addressed segments for which more data was needed or for which the standards needed review.

In 2008, with the TCEQ's creation of the Water Quality Planning Division in the Chief Engineer's Office, the TMDL Program became responsible for assisting the Water Quality Standards Group with determining the appropriateness of current standards by conducting UAAs, as well as for developing TMDLs and I-Plans.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The TMDL Program is developing or implementing TMDLs in 130 of the 254 Texas counties. The individuals and organizations that use a water resource, or contribute or control pollution to it, are stakeholders in the TMDL Program. Although not an exhaustive list of possible stakeholders, the following categories give some examples of the kinds of groups and people who may become involved in protecting and restoring water resources:

- *Wastewater dischargers*—municipal and industrial.

- *Public*——individuals; civic groups such as those representing environmental, consumer, recreational, and community interests; schools, universities, and private landowners.

- *Agriculture and aquaculture*——corporate and individual farmers, ranchers, and producers; subsistence and commercial harvesters of fish and shellfish; agricultural groups and organizations.

- *Business*—commercial and industrial firms; utilities; business groups and trade associations.
- *Government*—city, county, regional, state, federal, and international governmental agencies, tribes, utility districts, and river authorities.

There are no eligibility requirements for participation in the TMDL projects and project development meetings are open to anyone. The TMDL Program is inclusive of the public and of cooperating local, regional, state, and federal organizations, both governmental and nongovernmental.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The federal mandate for state TMDL programs is contained in the Clean Water Act of 1972 and its amendments (U.S. Code 1987). Section 303(d)(1)(C) of the Clean Water Act and the EPA's implementing regulations issued in 1992, and contained in Title 40, Code of Federal Regulations, Part 130 (40 CFR 130), currently govern the states' TMDL programs. Under 40 CFR 130, states must identify waters where effluent limitations alone are not sufficient to meet water quality standards. Every two years, the identified water bodies are compiled in a record called the "303(d) list," after its implementing legislation. Public participation in the development of TMDLs is mandated in federal regulations [40 CFR 130.7(a)], which also require that the state's process for involving the public in TMDLs be described in the state's "continuing planning process." Texas Water Code 5.107, relating to Advisory Committees, authorizes the commission to create and consult with advisory committee members. All adopted TMDLs are included in the state's Water Quality Management Plan-WQMP (40 CFR 130). When revising the TMDLs through the WQMP, the TCEQ follows the public participation requirements of 40 CFR 25, as well as applicable state law found in Texas Water Code Chapter 26.

The total pollutant load to a water body is derived from determining the amount of loading from point, nonpoint, and natural sources. The TMDL distributes portions of the water body's assimilative capacity to various pollution sources—including natural background sources and a margin of safety—to ensure that water quality standards are met. The following activities occur during the development of a TMDL, shown in the flowchart *Technical approach to developing TMDLs* following Question O.

- Collect and review all the data currently available about the causes and sources of the pollutant of concern. This step is usually referred to as a "historical data review."

- Analyze the available data to determine whether there is sufficient information to begin developing the TMDL or if more data are necessary.

- Identify additional data needed and develop a plan to gather them.

- Gather additional data as needed through monitoring, surveying possible sources, and other means.

- Analyze the complete data set to determine how to allocate the pollutant load among its sources and the amount by which loading must be reduced to attain standards.

- Draft the TMDL for public comment.

The TMDL approval process, shown in the flowchart *Process for TMDL development and*

approval following Question O, includes the following steps:

- Public notice;
- Response to public comment;
- Consideration by the commission, and as appropriate by the Texas State Soil and Water Conservation Board (TSSWCB); and
- Submission to the EPA for approval.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0555	Federal Funds	$3,953,628
0001	General Revenue	$2,080,992
0153	Water Resource Management Account	$38,450

Strategy—A.1.2—Water Assessment and Planning

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

In Texas, two agencies, the TCEQ and the TSSWCB, have primary responsibility for developing TMDLs. The TCEQ is the State's lead agency for addressing pollution from all sources, except nonpoint sources from agriculture and silviculture (forest management). The TSSWCB is the lead agency for preventing and abating agricultural and silvicultural nonpoint source pollution.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The TCEQ and the TSSWCB work closely on many TMDL projects. Accordingly, a Memorandum of Agreement (MOA) has been executed describing how the two agencies will cooperate in their mandated tasks to manage water quality. The MOA sets forth the cooperating responsibility and authority regarding development of TMDLs.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The EPA gives guidance for the TMDL Program and issues grants for assessing water quality and implementing protection and restoration plans.

River authorities, councils of governments, soil and water conservation districts, county and city governments, and the regional offices of state agencies all play key roles in organizing and advertising regional forums for public participation in TMDL projects. The program works closely with these organizations to develop strategies for conducting TMDL projects and to enlist their help in engaging the public in the affected watershed. In addition, these organizations often have environmental divisions responsible for regional management of environmental quality.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

- Total expenditures: $5,184,560.

- Number of contracts: 48 for scientific and technical services as well as for grants to implement projects.

- The development of TMDLs and I-Plans includes sampling of water bodies, development of models, evaluation and analysis of scientific data, and public outreach and education. Through contracting, the TMDL Program is able to conduct more projects in a set period of time. Activities such as sampling and public outreach and education are time intensive. In addition, contracts are necessary to obtain specialized expertise, such as modeling, that is not available within the program.

- Contract monitoring activities include obtaining supporting documentation for planned contracts; holding post-award conferences; reviewing contract requirements; using checklists to review work products, progress reports, subcontracts, invoices, receipts, time sheets and travel logs; assessing risk and performing on-site monitoring of work and financial records; conducting annual contractor evaluations; following up to ensure that corrective actions have been taken when necessary; and following standard operating procedures.

- The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

During the 81st Legislative Session, HB 3891 revised Section 12.011 of the Parks and Wildlife Code by adding subsections (c) and (d). These subsections require within a specified timeframe, a written response by an agency with statewide jurisdiction to each recommendation or comment made under Section 12.0011, Subsection (b) of the Parks and Wildlife Code. As the state agency responsible for protecting the state's fish and wildlife resources, the Texas Parks and Wildlife Department (TPWD) is often a stakeholder in the TMDL process. The TPWD provides information, formal and informal comments, and recommendations and assistance to the TCEQ. However, the requirement to respond in writing could limit the productive exchange of information and ideas.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

Texas surface waters are monitored routinely by the Surface Water Quality Monitoring Team in cooperation with partners across the state. As required by the Clean Water Act, the data are analyzed every two years to assess the water bodies for compliance with the Texas Surface Water Quality Standards (30 TAC 307.1–10). Water bodies not meeting the quality standards are placed on the list of impaired water bodies known as the 303(d) list. The water bodies on the list are addressed in three ways. A use attainability analysis may be conducted to determine if the correct use is designated for a given water body, additional data may be gathered to confirm the impaired status of the water body, or a TMDL project may be conducted. The TMDL project will develop a watershed plan to improve water quality and establish general limits for sources of pollutants causing the impairment. Through these three methods, sometimes in combination, a water body may be removed from the 303(d) list.

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

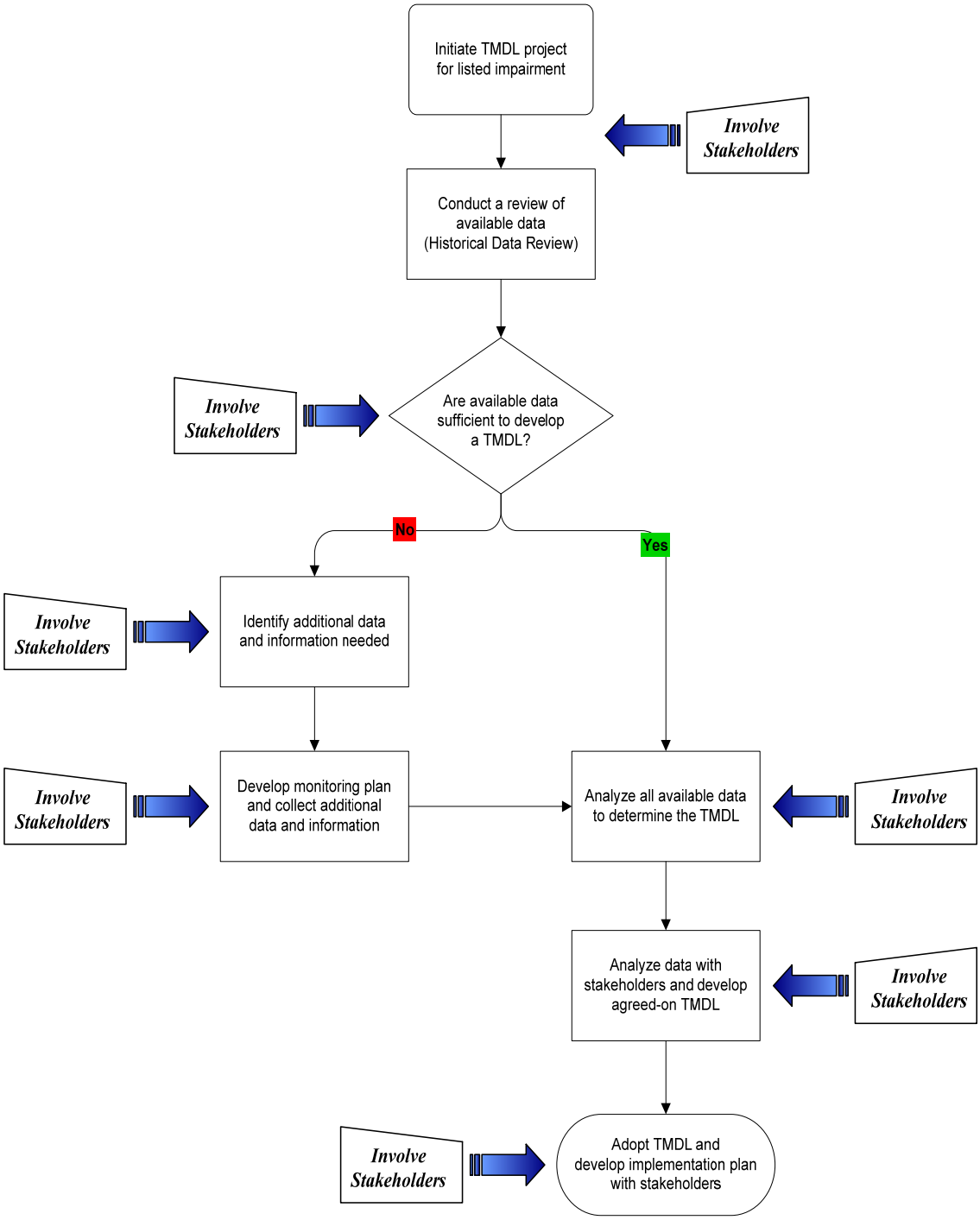
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

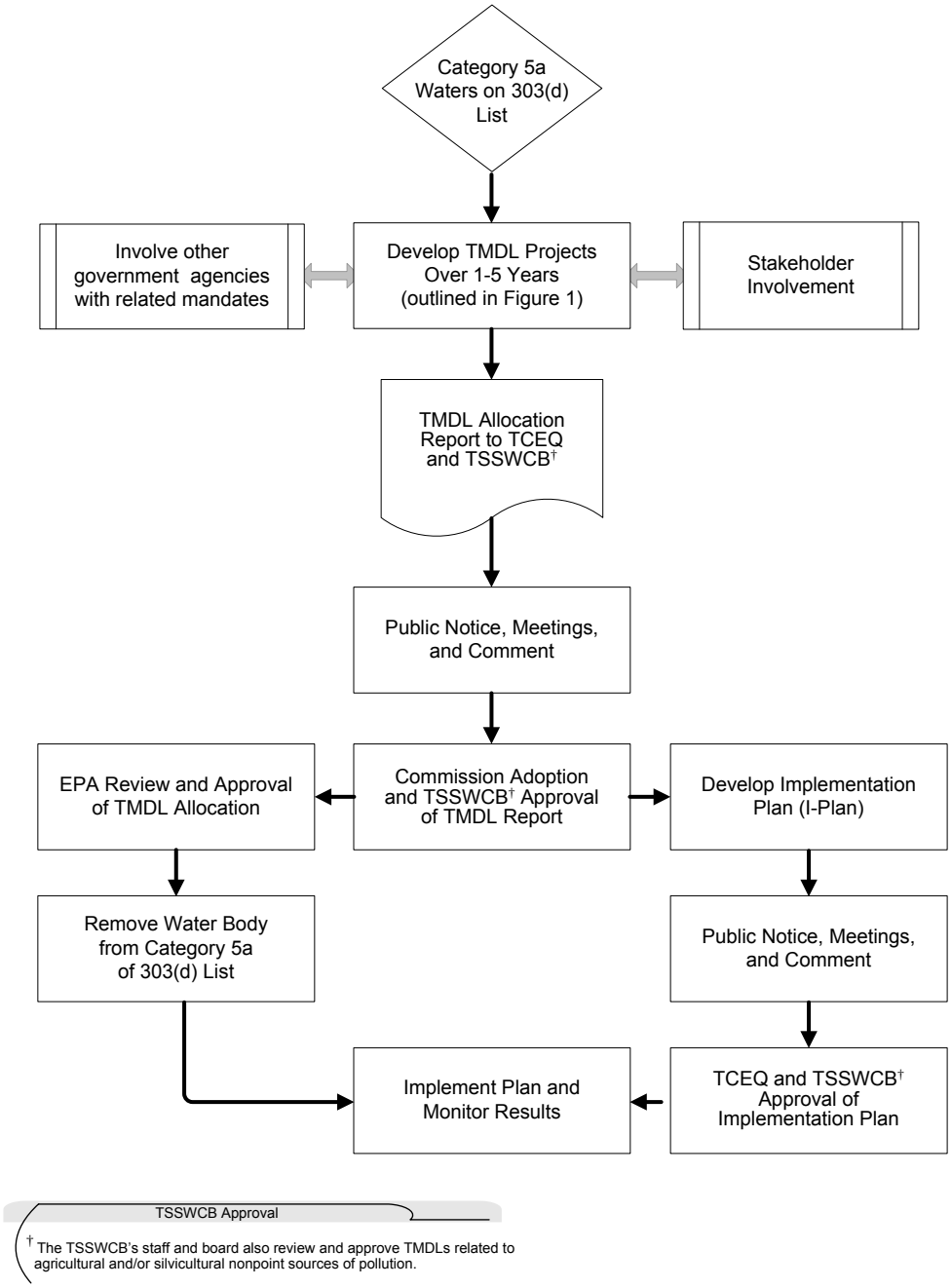
O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

Technical approach to developing TMDLs



Process for TMDL development and approval



† The TSSWCB's staff and board also review and approve TMDLs related to agricultural and/or silvicultural nonpoint sources of pollution.

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Toxicology
Location/Division	4th Floor / Building F / Toxicology Division / Chief Engineer's Office
Contact Name	Michael Honeycutt, Ph.D.
Actual Expenditures, FY 2008	$1,248,575
Number of FTEs as of August 31, 2008	14

B. What is the objective of this program or function? Describe the major activities performed under this program.

The objective of the Toxicology Division (TD) is to support all Texas Commission on Environmental Quality (TCEQ) offices and programs with respect to toxicology, risk assessment, and health effects. The TD helps the TCEQ make scientifically sound decisions and focus agency resources by applying toxicological principles when evaluating environmental data, issuing authorizations, developing environmental regulations, and making policy decisions. An important role of the TD is to help further consistency between programs by coordinating all agency activities that assess risks to human health. The TD toxicologists identify chemical hazards, evaluate potential exposures, assess human health risks, and communicate risk to the general public and stakeholders.

A critical role of the TD is to support human health and toxicology outside the agency by answering questions and responding to inquiries from the public, the media, regulated entities, stakeholders, legislators, and other government agencies regarding the activities and functions of the TCEQ.

Significant activities of the TD include:

- Development, peer review, and publication of *Guidelines to Develop Effects Screening Levels, Reference Values, and Unit Risk Factors* (2006).

- Developing effects screening levels (ESLs), reference values (ReVs), and unit risk factors (URFs) used in health effects reviews of air permitting, evaluation of air monitoring data, and in the Texas Risk Reduction Program (TRRP) rule.

- Improving air quality by conducting health effects reviews of air permit applications, amendments, and other authorizations. The TD gives timely support to the Air Permits Division and to the public regarding air permits.

- Improving air quality by evaluating the health protectiveness of air monitoring data. The TD evaluates data collected by the regional offices, the ambient air monitoring network, during mobile monitoring trips, and from industry-sponsored air monitors to determine whether there is any potential for adverse effects on health and welfare from exposure to the measured air pollutants.

- Improving air quality by maintaining the Air Pollutant Watch List (APWL). The TD has developed and adopted the process and procedure for identifying pollutants and areas for the APWL. The procedure for adding pollutants and areas, directing agency resources toward resolving problem pollutants and areas, and for removing pollutants and areas from the APWL has been formalized. In addition, the process has been made more transparent with opportunities for public input and notifications sent to local elected officials and state legislators when an APWL change is contemplated. The APWL has also been made more accessible on the internet.

- Ensuring the health protectiveness of remediation activities by reviewing portions of remediation risk assessments relating to health effects and assisting the Remediation Division in developing protective concentration levels.

- Representing the agency at public meetings, hearings, and testifying at legislative hearings.

- Assisting the regional offices with evaluations relating to health effects of air, soil, groundwater, surface water, and sediment data.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

No specific performance measures or key measures are associated with the TD. However, it is highly regarded and respected both within and outside the TCEQ. Inquiries from the public, legislators, the media, other agencies, and staff are responded to promptly, usually in less than 24 hours. In a typical year, TD personnel attend anywhere from 20 to 40 public meetings on air permits, remediation projects, or at the request of legislators, management, local agencies, or citizen organizations. The TD accomplishments in specific areas are discussed further below.

Air Permit Reviews. The TD completed 135 air permit reviews for the air permits division and responded to over 500 requests for interim ESLs for chemicals not on the current ESL list and added those to the list during FY 08. Also in FY 08, the TD responded to approximately 200 technical inquiries regarding preliminary ESL reviews.

Air Monitoring Reviews. The TD completed 53 reviews of air monitoring data collected by the regional offices in FY 08. In addition the TD completed annual reviews of ambient monitoring data in six regions of the state and reviews of nine mobile monitoring trips. The regional reviews are focused on site-specific issues and chemicals, the annual reviews

summarize all the ambient data available for an entire TCEQ region, and the mobile monitoring reviews focus on specific areas of concern with multiple potential sources of air pollutants.

APWL Areas and Chemicals. Although no new areas or chemicals were added to the APWL and none were removed in FY 08 significant progress has occurred over the past several years in addressing air quality issues in APWL areas. As a result of a significant focus of agency resources, the TD has been able to remove four areas from the APWL since 2004 and several chemicals from two other APWL areas. As of July 2009, there were 12 active APWL areas in the entire state. Combined, the 12 APWL areas cover nearly 225 sq mi. However, APWL areas account for less than 0.1 percent of the total surface area of Texas (nearly 270,000 sq mi).

Final ESLs. The TD finalized approximately 20 development support documents (DSDs) for ESLs in FY 08 for high-priority chemicals and their isomers. Each DSD was proposed, went through a public comment period, and was finalized. The DSD for 1,3-butadiene went through a formal independent peer review and the DSD for formaldehyde went through an external technical review prior to finalization.

Remediation Documents. The TD reviewed at least 30 documents and several data sets for the Remediation Division in FY 08. The TD participated in at least nine public meetings or meetings with elected officials and at least five other meetings with members of the public concerning remediation sites in FY 08.

TRRP Toxicity Factors. The TD developed oral toxicity factors for about 10 chemicals and inhalation toxicity factors for about 10 chemicals in FY 08 that were incorporated into the 2009 TRRP tables.

Groundwater Contamination (HB 3030). The TD addressed 39 groundwater contamination sites in FY 08 with letters sent to adjacent landowners and follow-up human-health support via phone calls, e-mails, and occasionally public meetings.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

In general, the TD has added functions and gained in importance at the agency since its inception as part of the Texas Air Control Board.

- **2003:** A reorganization at the TCEQ changed the Toxicology and Risk Assessment Section (TARA) to the Toxicology Section (TS). In addition, the section was moved from the Office of Permitting, Remediation, and Registration to the newly created Chief Engineer's Office.

- **2009:** The TS became the TD. The move from a section to a division reflects the increased responsibilities and importance placed on the functions of the TD, both internally and externally to the agency.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Air. Indirectly, the ESLs developed by the TD affect regulated air permit holders and impact compliance and enforcement decisions related to air monitoring. Health-based toxicity values are used to evaluate air quality and affects citizens and industries in APWL areas.

APWL. The addition and removal of areas and chemicals to the APWL directly affect industries and local communities by drawing agency attention to these areas. Additional attention may lead to cooperative agreements with industry to make changes, additional monitoring, more stringent air permit requirements, and compliance and enforcement investigations. Based on figures from the 2000 census, nearly 11,000 people are estimated to live within the boundaries of the 12 APWL areas. However, the current APWL areas include less than 0.06 percent of the nearly 21 million people in Texas in 2000.

Soil and Water. The toxicity factors provided to the Remediation Division affect the calculation of protective concentration levels (PCLs) in soil and water for the TRRP rule and affect remedial decisions. These toxicity factors and PCLs are also used by the regional offices to prioritize contamination issues and make decisions about local issues and other central office programs to quickly determine whether human health issues may exist at sites.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The TD functions as a team under the division director to respond to all internal and TCEQ-related external requests for toxicology and human health assistance. The TD is part of the CEO, and all TD personnel are located at the central TCEQ office. Each support function of the TD is administered a little differently, depending on the internal program that is supported, or the external stakeholder that is supported. Refer to the flowchart *Toxicology Division Functions* following Question O.

External Support

Citizen Calls

Citizen questions, calls, and e-mails about human health and toxicology are answered daily by toxicology personnel. If an answer is not immediately available to a question or concern, every attempt is made to find the answer within 24 hours.

Legislative Requests

The TD serves a critical role in reviewing legislative issues during the session each biennium, in addition to special legislative requests at any time. A goal of the TD is to

provide prompt, accurate, scientifically sound responses on human health and toxicology issues.

Media Responses
The TD is often called upon to answer media inquiries on human health and toxicology issues. The division works with Media Relations as appropriate to ensure prompt, accurate, and state-of-the-science responses to the media.

Other Government Assistance
The TD routinely works with local municipal and county environmental agencies (i.e., City of Houston and Harris County), other state agencies (i.e., Department of State Health Services and the Railroad Commission), and federal agencies (i.e., the Environmental Protection Agency (EPA) and the Agency for Toxic Substances and Disease Registry) to provide the latest scientifically based health and toxicology information.

Advocacy and Other Groups
The TD works with advocacy and industry groups to explain the scientific basis of TCEQ positions on human health and toxicology issues. In addition and as appropriate, the TD collaborates with citizen advocacy groups, industry groups, and semi-government organizations like the Mickey Leland National Urban Air Toxics Research Center.

Academic Research and Peer Review
The TD communicates with experts on human health, toxicology, and epidemiology at universities in Texas and elsewhere to supply and obtain the latest relevant information. The TD participates in some agency sponsored research, and serves as technical adviser on non agency sponsored research. In FY 08 the TD was involved in several air quality research projects and used outside peer review for its DSD activities.

Internal Support

Air Permits
The TD reviews air permit applications, amendments, and renewals to determine whether the predicted air concentrations resulting from emissions are protective of human health and welfare, odor, and vegetative effects.

Air Monitoring
The TD reviews air monitoring data collected by various ambient monitoring networks in the state, in addition to data collected by mobile monitoring trips and the regional offices. Annual interoffice memoranda that evaluate the available monitoring data in each region are prepared for each Regional Director. Mobile monitoring data are evaluated by the TD via interoffice memoranda, and interoffice memoranda or e-mail reviews of regionally collected data are prepared by the TD.

Effects Screening Levels
The TD develops ESLs, ReVs and URFs, which are used to evaluate air permits and air monitoring data. These values are also incorporated into the TRRP rule for the remediation division.

Air Pollutant Watch List
The TD uses air monitoring data, emissions estimates, health and odor complaints, and compliance investigations to make recommendations on areas of the state that need additional TCEQ resources to address particular air contaminants. This information forms the basis for the administration of the APWL.

Groundwater Contamination—HB 3030 (78th Legislative Session)
When groundwater contamination is discovered by the TCEQ, the TD is responsible for notifying adjacent well owners of the detected contaminant, the levels measured, and whether there are potential health concerns from using the water. There are legislatively mandated timelines and actions required of the TCEQ to provide notice to landowners.

Water Contamination
The TD supports the TCEQ with answers to human-health and toxicology questions about contaminants in public drinking water, private drinking water, and surface water.

Waste
The TD supports the Waste Permits Division by helping to evaluate human health concerns with exposure to contaminated waste and reuse of materials for applications other than for which they were originally intended.

Remediation Risk Assessments
The TD provides support to the Remediation Division by technically reviewing assessments of human health risk and evaluating data on chemicals in soil, sediment, groundwater, and air for remediation sites.

Texas Risk Reduction Program Rule
The TD helped write the TRRP rule and continues to give technical support and guidance on toxicology and human health issues related to the rule. Each year the division updates the toxicity factors used to calculate risk-based exposure levels for ingestion, inhalation, and dermal contact with soil, sediment, groundwater and air, and protective concentration levels for soil, sediment, and groundwater.

Regional Office Support
The TD routinely answers human health and toxicology questions from the regional offices regarding soil, sediment, groundwater, surface water, and air exposures. The TD staff support may include conference calls with regulated entities, citizens, and other personnel, and participation in public meetings.

Enforcement Support
The TD supports enforcement efforts by the TCEQ by providing technical information on human health and toxicology issues.

Office of Legal Services
The TD supports the Office of Legal Services by providing expert testimony or technical information on human health and toxicology issues, including participation in public hearings.

Executive and Commissioner Requests
The TD is routinely called upon by the Office of the Executive Director, and individually by the commissioners, to answer questions, brief them on topics, attend public meetings, or assist them in responding to human-health and toxicology issues as they arise.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0151	Clean Air Account	$424,737
0153	Water Resource Management Account	$412,700
0549	Waste Management Account	$102,199
0555	Federal Funds	$175,248
5094	Operating Permit Fees	$133,691

Strategies
A.1.1—Air Quality Assessment and Planning
A.1.2—Water Assessment and Planning
A.1.3—Waste Assessment and Planning
A.2.3—Waste Management and Permitting

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

No other internal TCEQ programs duplicate the efforts of the TD, although several complement it. Water programs that must consider human health include the Public Drinking Water Program and the Water Quality Assessment Program. In addition, the ecological risk assessment program in the Remediation Division has some similar functions to the TD; however, its focus is ecological health.

The state agency that has functions that are most similar to the TCEQ is the Department of State Health Services (DSHS). The DSHS has an Environmental and Injury Epidemiology and Toxicology Unit that uses principles of epidemiology, toxicology, and surveillance to identify populations at risk, to develop evidence-based actions, and to protect and promote the health of the people of Texas. This unit has specific legislatively mandated functions

that are different than those of the TCEQ TD. Some of the DSHS unit's functions include operating the Texas poison center network; running the environmental and occupational epidemiology program; conducting epidemiology and health studies; maintaining the Emergency Medical Services (EMS) and trauma registry; evaluating diabetes epidemiology; conducting several surveillance programs (asbestosis, silicosis, blood lead, hazardous substance emergency events, pesticide exposure); and running the fluoridation program.

There are toxicologists at other state agencies including the Railroad Commission who deal specifically with remediation issues that are under their regulatory authority and the Agriculture Department that deal exclusively with pesticide registration, application, and releases. The Department of Public Safety has emergency-response capability for hazardous waste spills and releases but does not hire its own toxicologists. In addition, the Department of Transportation works on mobile source issues and environmental impact statements, but does not specifically hire toxicologists.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The TD has regular communication with the DSHS on cross-jurisdictional issues, for public meetings, and for coordinated responses to citizen questions on health effects and toxicology. For example, groundwater contamination may be discovered in a private well as a result of remediation activities. The well owner may call with specific questions about health concerns related to drinking the water, or using it for showering or gardening. The TD would respond. The well owner may then ask about a particular form of cancer that seems to be occurring at higher rates than normal in his or her family or neighborhood. Those questions would be answered by the DSHS in coordination with the family's physician. In addition to site-by-site responses to citizens, the two agencies participate in several joint public health efforts.

Texas Environmental Health Institute (TEHI)

In 2001, in response to citizen concerns about the potential impact of environmental pollutants on their health, the Texas Legislature passed legislation establishing the Texas Environmental Health Institute as a joint venture between the Texas Department of Health—predecessor to the DSHS—and the Texas Natural Resources Conservation Commission (TNRCC), predecessor agency to the TCEQ. Texas Health and Safety Code, Section 19.01, directed the TCEQ to enter into an agreement with the DSHS to jointly establish the institute to examine ways to identify, treat, manage, prevent, and reduce health problems associated with environmental contamination.

On December 6, 2001, the TNRCC and the Texas Department of Health entered into an Interagency Memorandum of Agreement pursuant to the Interagency Cooperation Act, Texas Government Code, Chapter 771. The purpose of the agreement was to establish the institute and to describe the tasks to be performed and the duties and responsibilities of each of the agencies in enabling the institute to accomplish its purposes. The Institute was

established within the Environmental Epidemiology Division (currently the Environmental and Injury Epidemiology and Toxicology Unit) within the DSHS. The TD is the TCEQ program that represents TCEQ for the institute and represents TCEQ interests on research projects.

Toxic Substances Coordinating Committee

The Toxic Substances Coordinating Committee (TSCC) was created in 1987 by SB 537 (70th Texas Legislature), Section 2(h) of the Health Risk Assessment Act. The TSCC's purpose is to coordinate communication among member agencies concerning each agency's efforts to regulate toxic substances and harmful physical agents. Participating agencies, in addition to the TCEQ and DSHS include the Parks and Wildlife Department, the Department of Agriculture, the Department of Public Safety, the General Land Commission, and the Railroad Commission. The mission of the TSCC is to protect and promote the health and environment of Texas through the prevention and control of adverse health and environmental effects related to toxic substances and harmful agents. This mission is accomplished through interagency coordination of regulation development, risk assessments, cooperative studies, information dissemination, and public education efforts. The TD is the TCEQ program that serves on the TSCC, meeting quarterly.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Environmental Protection Agency (EPA) Region 6

EPA Region 6 has toxicologists and risk assessors who work with the TD on Federal Superfund remediation sites. The TD gets information from many EPA programs and offices to make decisions on human-health and toxicology issues. In addition, the TD gives technical advice and guidance to federal agencies on such issues.

City and County Environmental and Health Departments

The TD communicates and coordinates with local government agencies that deal with human health and toxicology. The TD gives support in interpreting data, evaluating humanhealth risks and hazards, and responding to environmental issues.

In addition, the TD has participated in research projects with various governmental organizations, either as an active participant or an adviser.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

- The TD had $191,742 in encumbrances and expenditures in FY 08.

- The TD had six contracts in FY 08.

- These TD contracts allow the TCEQ to do more in a shorter time and to offer specialized toxicological services outside of the agency that are not normally performed by the TD. These services include peer reviews of ESLs, specialized carcinogenic modeling and interpretation, physiologically based pharmacokinetic modeling and interpretation, and biomonitoring studies.

- The TD uses standard methods to ensure accountability for funding and performance including invoice checklists, route slips, contractor evaluations, and TCEQ standard operating procedures.

- The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

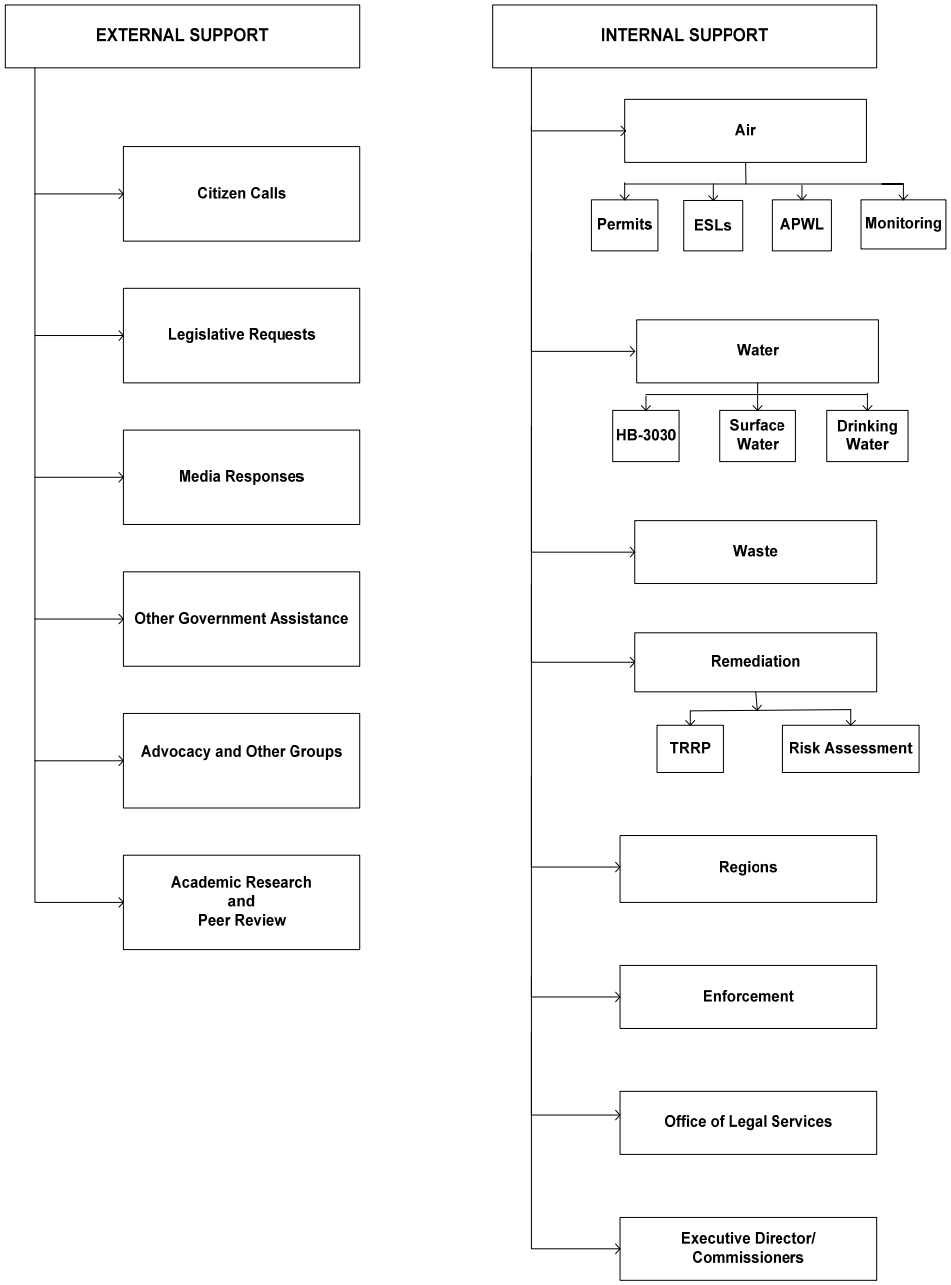
N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

TOXICOLOGY DIVISION FUNCTIONS



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Water Quality Planning
Location/Division	4th Floor / Building F / Monitoring and Assessment Section and the Houston Lab Section / Water Quality Planning Division / Chief Engineer's Office
Contact Name	Kelly Keel
Actual Expenditures, FY 2008	$11,552,921
Number of FTEs as of August 31, 2008	43

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Water Quality Planning Division (WQPD) is responsible for developing and assessing instream water quality standards and providing quality assured surface water data for agency programs that promote the protection, restoration, and use of surface water in Texas. These functions are implemented by the following programs:

Surface Water Quality Monitoring (SWQM) Program. The SWQM Program, established in 1967 by the Texas Water Quality Board, encompasses the full range of activities required to obtain, assess, and report water quality. The SWQM, with the assistance of the Clean Rivers Program, facilitates the collection of data for an integrated evaluation of physical, chemical, and biological characteristics of aquatic ecosystems in relation to human health concerns, ecological conditions, and designated uses as defined in the Texas Water Quality Standards. The result of these activities culminates in the development and submission of the Integrated Report to the Environmental Protection Agency (EPA) on April 1 of even-numbered years as required by the Clean Water Act (CWA). The purpose of this report is to provide information on the condition of surface water quality throughout Texas. The report includes the identification of specific water bodies in need of additional remedial activities with the goal of restoring water quality. The most recent report was submitted and approved by the EPA in 2008.

Clean Rivers Program (CRP). The CRP provides water quality monitoring and assessment, and public outreach. The CRP is a collaboration of 15 partner agencies (i.e., river authorities and other governmental entities) and the TCEQ. It provides a framework and forum for managing water quality issues within a river basin, both locally and regionally, by coordinating the efforts of diverse organizations. The CRP partner agencies collect samples at over 1,300 sites per year, resulting in more than 250,000 water quality

measurements. These data from the CRP partners account for 60–70 percent of the data available in the TCEQ's Surface Water Quality Monitoring Information Systems (SWQMIS) database, used by the TCEQ for the assessment of surface waters as required by Section 305(b) of the Clean Water Act. In addition to coordination with the partner agencies, CRP staff quality-assure the data submitted and provide assistance in the study of water quality issues.

Water Quality Standards Team. The Texas Surface Water Quality Standards Team develops water quality goals for the state as set forth in 30 Texas Administrative Code (TAC), Chapter 307. Water quality standards are the basis for establishing discharge limits in wastewater and storm water discharge permits, setting instream water quality goals for Total Maximum Daily Loads (TMDLs), and providing water quality targets to assess water quality. The water quality standards are publicly revised at least every three years to incorporate new information on potential pollutants and additional data about water quality conditions in specific water bodies, and to address new state and federal regulatory requirements. The TCEQ is currently revising the Texas Surface Water Quality Standards.

Data Management and Analysis (DM&A) Team. The purpose of the DM&A Team is to ensure that agency decisions related to ambient surface water quality are based on data of known quality. The DM&A Team coordinates and assists with the data management activities of all surface water programs and external data providers, including contracted entities, the river authorities of the state, and numerous field collectors in the 16 regional TCEQ offices. The DM&A Team also manages procedures for submitting, tracking, maintaining, and reporting data; verifies and validates the data from individual programs against data quality objectives; provides guidance and training; responds to requests for data from both the public and other agency staff; and supports and maintains the statewide database of ambient surface water quality data, which receives an average of 300,000 results records per year.

Houston Laboratory. The Houston Laboratory is the agency's principal water analysis laboratory and is accredited under the National Environmental Laboratory Accreditation Program (NELAP). The laboratory provides quality-assured analytical data to support regulatory, enforcement, and monitoring activities as well as special projects.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Strategic Plan Performance Measures

LBB Outcome Measure 01-01.05. Percent of Texas surface waters meeting or exceeding water quality standards (calculated annually). This is a measure of the agency's success in developing and implementing state water quality management programs. The performance attained for this measure in 2008 was 96 percent.

LBB Output Measure 01-01-02.01. Number of surface water assessments (calculated quarterly). This includes a diverse assemblage of assessment types performed and reported by multiple divisions within the agency. The performance attained for this measure in 2008 was 97 percent.

LBB Explanatory Measure 01-01-02.01. Percent of Texas rivers, streams, wetlands, and bays protected by site-specific water quality standards (calculated annually). The Texas Surface Water Quality Standards establish explicit numerical goals for water quality in the surface waters of Texas. The performance attained for this measure in 2008 was 99 percent.

Houston Laboratory. The Houston Laboratory analyzes approximately 6,000 environmental samples annually, which translates to roughly 80,000 individual measurements reported. These are accompanied by almost as many measurements of quality control standards. The laboratory has national accreditation for 134 analytes in air, water, and waste.

D.Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

On September 1, 2008, a number of agency programs responsible for water quality planning were brought together under the Water Quality Planning Division within the Chief Engineer's Office. Prior to that time, the following programs were split between the Office of Permitting and Registration and the Office of Compliance and Enforcement. These programs have closely related activities and the current organizational structure facilitates the type of coordination needed to effectively and efficiently manage these programs. In addition, this organizational structure provides one point of contact for the public regarding questions or issues related to water quality planning.

Surface Water Quality Monitoring Program (SWQM). Historically, the SWQM Program collected chemical, physical, and biological data necessary to evaluate water quality conditions throughout Texas and provided additional support to the development of water quality standards. In 2003, the TCEQ enhanced these efforts through the development of a network of continuous water quality monitoring stations. Currently, 77 stations are operated by TCEQ staff, cooperators, and contractors. Data from these stations support a variety of efforts, which include monitoring the effectiveness of pollution control measures, water quality standards development, watershed protection plans, and the TCEQ Border Initiative.

Clean Rivers Program. In 1991, the Texas Legislature passed the Texas Clean Rivers Act in response to growing concerns that water resource issues were not being addressed in a holistic manner. The legislation requires that assessments for each river basin in Texas be conducted using an approach that integrates management of water quality within a river basin or watershed.

Water Quality Standards Team. The Federal Water Pollution Control Act, Section 303 (commonly referred to as the Clean Water Act, 1972, 33 United States Code 1313(c)), requires all states to adopt water quality standards for surface water. Texas has had Texas Surface Water Quality Standards since at least 1967. Published revisions of the Texas Surface Water Quality Standards have occurred in 1967, 1973, 1976, 1981, 1984, 1988, 1991, 1993, 1995, 1997, and 2000. Diverse sources have shaped standards development, including cities, industries, environmental interests, and the EPA, which has approval authority over state water quality standards. Initially, site-specific standards were set for individual water bodies in the state relatively quickly, and in some cases there was limited data to establish uses and criteria. Many of the subsequent changes in the Texas Surface Water Quality Standards have involved revisions to the initial standards based on additional data and evaluations.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Surface Water Quality Monitoring Program. The TCEQ collects environmental data to evaluate the effectiveness of specific programs—including but not limited to CWA Sections 319 (NPS control), 314 (Clean Lakes), 303(d) (TMDLs), and 402 (Texas Pollutant Discharge Elimination System [TPDES] permits, water quality standards modifications, and wastewater discharge loading allocations)—and generally to determine the success of management measures. Many users of water (e.g., recreational, municipal wastewater, public drinking water) are affected by the Integrated Report that the program submits to the EPA on April 1 of even-numbered years. The CWA Section 303(d) list affects regulated wastewater permit holders and more specifically can affect permit limits. Health and environmental-based values are used to evaluate water quality and the results regarding public water supplies and fish consumption are of interest to many citizens of the state.

Clean Rivers Program. For the CRP, stakeholders include any individual or entity that has a vested interest in a basin's waters, such as the public, non-governmental organizations, industry, government, and others.

Regionally, stakeholders have the opportunity to participate in the CRP as Steering Committee members. Each of the 15 CRP partner agencies involved in managing the CRP in their basins maintains a Steering Committee. These Steering Committee Meetings provide a framework and forum for managing water quality issues within a river basin, both locally and regionally, by coordinating the efforts of diverse organizations.

Water Quality Standards Team. The Texas Surface Water Quality Standards Team establishes explicit water quality goals throughout the state. Water quality standards are the basis for establishing discharge limits in wastewater and storm water discharge permits, setting instream water quality goals for TMDLs, and providing water quality targets to assess water quality.

The Texas Surface Water Quality Standards affect all citizens of the state. They can also directly affect permitted wastewater discharges in Texas including cities, counties, state agencies, water districts, utility districts, investor-owned utilities, river authorities, mobile home parks, recreational vehicle parks, hotels, motels, industries, campgrounds, or any other business with an industrial and domestic wastewater treatment facility.

The Water Quality Standards Team has a well-recognized statewide advisory group process, and stakeholders and the public have the opportunity to participate in the revision process. Surface Water Quality Standards Advisory Workgroup meetings are held during the revision process. This workgroup is a balanced group of representatives from regulated entities and from environmental, consumer, and professional organizations and the public.

Data Management and Analysis Team. The DM&A Team coordinates data management and data reporting activities between the SWQM Program (including the Continuous Water Quality Monitoring Network), the Clean Rivers Program, the Non-Point Source Program, the Standards Work Group, the Total Maximum Daily Load Program, the TCEQ Houston Laboratory, the Lower Colorado River Authority Environmental Laboratory, and other data providers. The DM&A Team manages data that has been collected and/or submitted by 143 entities over a period of 41 years. The data housed in the statewide database is often needed and requested by other TCEQ programs and external customers, including academia, media, advocacy groups, citizens, consultants, other state agencies, and local governmental entities. These data requests are turned around quickly, usually in less than a day.

Houston Laboratory. The Houston Laboratory is primarily a support service within the TCEQ. As such, the laboratory interacts directly with field personnel and program managers. The laboratory additionally provides measurement data for various water quality monitoring projects for external customers such as the EPA and the United States Geological Service (USGS). The laboratory regularly receives samples used for evidentiary purposes in enforcement cases, requests for expedited service, and custom report development. The Houston Laboratory is accredited under the National Environmental Laboratory Accreditation Conference (NELAC) standard; the TCEQ is required by law (30 TAC, Chapter 25) to use a NELAC accredited laboratory for environmental laboratory data used in rule making and enforcement decisions.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

On September 1, 2008, an agency reorganization brought the water quality planning programs described in this document into two separate sections within the Water Quality Planning Division of the Chief Engineer's Office. The first four programs described below are in the Monitoring and Assessment Section. The Houston Laboratory is a separate section. These programs all operate under the general auspices of a Quality Management Plan that describes organizational structures, documents and records, hardware and

software, corrective action, and water quality improvement.

Surface Water Quality Monitoring Program. Primary statutory authority for this program is provided under Section 26.127 of the Texas Water Code (TWC). The SWQM Program is significantly driven by guidance in Sections 104(b), 106, 205(j), 303(d), 305(b), 314, 319, and 604(b) of the Federal Clean Water Act (CWA) of 1987. The program follows guidelines and monitoring priorities set forth by the EPA. The EPA requires the TCEQ to develop and maintain a monitoring strategy. The Texas Surface Water Quality Monitoring and Assessment Strategy outlines how Texas will address these priorities. The SWQM activities require coordination and additional support from the TCEQ's regional offices throughout the state.

Clean Rivers Program (CRP). Primary statutory authority for this program is provided under TWC Section 26.0135. The procedures for implementing the CRP can be found in 30 TAC Chapter 220. The TCEQ CRP staff developed a guidance document that outlines the tasks necessary to meet the intent and requirements of the legislation. Each regional partner agency implements the CRP guidance based on the unique circumstances that are present in that basin. There is a minimum expectation set forth in the CRP guidance, but based on a number of factors, there is a certain amount of individuality in the focus and implementation of the program in each basin. Other tasks have been incorporated into the guidance that help provide information for other TCEQ water programs, as well. The CRP guidance is updated every two years by the staff that administers the program.

Water Quality Standards Team. The Federal Water Pollution Control Act, Section 303 (commonly referred to as the Clean Water Act, 1972, 33 United States Code, 1313(c)), requires all states to adopt water quality standards for surface water. The TWC, Section 26.023, provides the TCEQ with the authority to make rules setting Texas Surface Water Quality Standards for all waters of the state. The Federal Clean Water Act requires states to review and, if appropriate, revise the Texas Surface Water Quality Standards at least every three years. The TWC stipulates that the state may amend the standards from time to time. Amendments to the Texas Surface Water Quality Standards rule are proposed under TWC Section 5.103, which authorizes the TCEQ to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state.

Three documents created and maintained by different TCEQ programs explain how the Texas Surface Water Quality Standards are implemented in those program areas. The procedures to implement the Texas Surface Water Quality Standards provide guidance on how Texas Surface Water Quality Standards are implemented in the Texas Pollutant Discharge Elimination System Program. The document is maintained by the TCEQ's Water Quality Division in the Office of Permitting and Registration. This document is revised in conjunction with the Texas Surface Water Quality Standards revisions. The Guidance for Assessing and Reporting Surface Water Quality in Texas explains how the Surface Water Quality Monitoring Program assesses water bodies to determine if they meet water quality standards. This guidance document is maintained and revised by the SWQM Program in the Remediation Division of the Office of Compliance and Enforcement. The Guidance for Conducting Ecological Risk Assessments at Remediation Sites in Texas is maintained by

the Texas Risk Reduction Program. In addition, 30 TAC Chapter 279 contains State 401 Water Quality Certification rules.

Data Management and Analysis Team. The DM&A Team establishes guidance and manages procedures for submitting, tracking, maintaining, and reporting water quality data. These procedures are documented in the Data Management Reference Guide. This document is revised annually, or as necessary. The program staff is responsible for ensuring that agency staff understand and follow the guidance by providing training and data validation. This team also ensures continued support and maintenance of the SWQMIS.

Houston Laboratory. All processes and procedures used by the laboratory are governed by Quality Assurance Project Plans (QAPPs) as well as the laboratory's NELAC-based quality system. Environmental samples submitted to the laboratory are logged into a computerized Laboratory Information Management System (LIMS) for internal tracking, record keeping, and customer data management and administration. Each sample is subjected to a battery of tests depending upon the requested analyses, and the resulting measurement data are validated and subsequently compiled into a final report of analysis for release to the customer. Most customers receive an Electronic Data Deliverable. The laboratory's performance measures include a turnaround time goal of 28 days from sample receipt to data release.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0001	General Revenue	$198,942
0153	Water Resource Management Account	$8,317,392
0550	Hazardous & Solid Waste Remediation Fee	$44,318
0555	Federal Funds	$2,911,980
0151	Clean Air Account	$80,289

Strategies
A.1.1—Air Quality Assessment and Planning
A.1.2—Water Assessment and Planning
C.1.1—Field Inspections and Complaints

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

Surface Water Quality Monitoring Program. The SWQM Program, in cooperation with the CRP, oversees monitoring at over 1,800 sites with 59 monitoring entities to support

TCEQ water quality management decisions. The SWQM Program also develops and maintains SWQM procedures for field collection, sample handling, and analysis used by entities reporting surface water quality data to the TCEQ. The SWQM Program administers these procedures throughout the state by providing training and quality assurance oversight to agency staff and program cooperators. The cooperative effort between the TCEQ SWQM Program and the CRP prevents duplication of monitoring efforts and leverages resources to maximize dollars spent on water quality data.

The TCEQ SWQM Program, Texas Parks and Wildlife Department (TPWD), and the Department of State Health Services (DSHS) jointly administer a fish tissue analysis program based on risk analyses. The DSHS uses the information for issuing fish advisories. This same information is also incorporated into the CWA Section 303(d) List.

The TCEQ SWQM Program also works closely with the TPWD to develop biological monitoring protocols to evaluate the health of instream biological communities.

Houston Laboratory. Routine chemical tests could be performed at the DSHS and at the Lower Colorado River Authority (LCRA), or by commercial laboratories such as Accutest or Talem, Inc. Although commercial laboratory contracts provide access to specialized capabilities, operating an analytical services laboratory within the TCEQ offers several key advantages.

- Eliminates the potential conflict of interest through direct control over laboratory operations.
- Provides control over the selection of third-party suppliers.
- Ensures a level of client confidentiality.
- Maintains expertise in the testing of environmental samples.
- Makes customized services more readily available. Provides priority service without additional cost.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Surface Water Quality Monitoring Program. Every year, the entities providing surface water quality data to the TCEQ (e.g., CRP partners, TCEQ regional offices, TPWD, USGS) meet in the individual river basins to discuss their proposed monitoring plans for the following year. These meetings are a substantial effort due to both the large number of surface water quality monitoring stations where data are collected as well as the number of entities involved. The SWQM Program plans the coordinated monitoring meetings, which

are designed to minimize duplication of effort, support data sharing, outline quality assurance expectations, provide a regional water quality forum, and assist in setting priorities related to water bodies on the Section 303(d) List.

Clean Rivers Program. In an effort to help the TCEQ coordinate the statewide monitoring efforts described above, every year the CRP partners host and facilitate all the regional coordinated monitoring meetings for the TCEQ. The entities providing surface water quality data to the TCEQ (e.g., CRP partners, TCEQ regional offices, TPWD, USGS) meet to discuss their proposed monitoring plans. By providing a documented, consistent framework for collection and analysis, more comparable data of known quality are available to the state for better decision making.

Water Quality Standards Team. The Texas Surface Water Quality Standards Program and other agency programs—such as SWQM, CRP, TMDL, and Non-Point Source—meet regularly to plan and coordinate water quality studies to avoid duplication of efforts and to maximize the benefit to all agency programs. The water quality planning programs regularly notify and seek input from external stakeholders regarding their studies, not only to avoid duplication of effort, but to inform them of the TCEQ's activities and to get local information relevant to individual activities.

Houston Laboratory. The Houston Laboratory is a special support unit within the WQPD that generates measurement data on environmental samples submitted to the lab by program personnel. Laboratory capacity is designed to accommodate the most routine analyses; the TCEQ contracts some lab work with commercial or state laboratories, as appropriate, because of holding times or specialized service. For example, the TCEQ's fish tissue analyses are performed by the DSHS. Sample collection is performed according to planned schedules to ensure that no sample point is investigated more frequently or by more personnel than prescribed in the schedule. The Coordinated Monitoring Schedule is used by the SWQM Program.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Surface Water Quality Monitoring Program. To implement the statewide monitoring and assessment program, the SWQM Program staff must coordinate with TCEQ regional offices; CRP partners; and local, state, and federal monitoring agencies. Much of the funding to support these activities comes from EPA grants that support Clean Water Act monitoring and assessment activities. The TCEQ submits the Integrated Report to the EPA for approval.

Clean Rivers Program. To implement the CRP, the TCEQ contracts with 12 river authorities, a water district, one council of governments, and one federal agency. The CRP partners coordinate with the local, regional, and federal units of governments as stakeholders in that area of interest.

Water Quality Standards Team. The EPA Region 6 is responsible for the review and approval of the Texas Surface Water Quality Standards. The U.S. Fish and Wildlife Service reviews the Texas Surface Water Quality Standards and provides an opinion to the EPA with regard to federally endangered or threatened aquatic or aquatic-dependent species. The Water Quality Standards Team interacts with local, regional, and federal units of government through the Surface Water Quality Standards Advisory Workgroup and the Texas Surface Water Quality Standards revision.

Data Management and Analysis Team (DM&A). The DM&A Team works with the data providers to receive and load data to the statewide database. These data providers include various city governments, river authorities, TPWD, Texas State Soil and Water Conservation Board (TSSWCB), and the USGS.

The DM&A Team also works closely with the EPA to provide data to that agency's data warehouse using web services technology and shared data standards.

Houston Laboratory. Some sample analysis is conducted for the EPA. The Houston Laboratory maintains a Revocable License Agreement with EPA Region 6 under which sample analyses are provided in exchange for new and replacement laboratory equipment.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

Water Quality Planning Division:
$6,669,148, Contracts Total
$1,092,373, Surface Water Quality Monitoring Program
$4,498,390, Clean Rivers Program
$708,613, Data Management and Analysis Team
$369,772, Water Quality Standards Team

32 Contracts:
13 Surface Water Quality Monitoring Program
15 Clean Rivers Program
2 Data Management and Analysis Team
2 Water Quality Standards Team

Contract Summaries

The Surface Water Quality Monitoring Program maintains contracts with entities such as other state agencies, river authorities, and universities to perform a variety of monitoring projects related to the goals and objectives outlined in *The Texas Surface Water Quality*

Monitoring and Assessment Strategy, including technical support and cooperation to monitor and assess water quality.

The CRP partners implement the CRP in their designated basin(s) as required by TWC Section 26.0135. The partner agencies conduct water quality monitoring under contract and approved quality assurance project plans, and provide the resulting data to the TCEQ to support water quality decision making. In addition, the partners develop water quality assessment reports and conduct public outreach activities to aid in improving water quality in their basin(s).

The DM&A Team maintains contracts for the development, support, and maintenance of the statewide database—the SWQMIS. This system enables the proper management and long-term storage of the data and supports the agency's efforts to accurately assess and report on surface water quality as required under the federal Clean Water Act.

The general purpose of the Water Quality Standards contracts is to collect information and data that can be used in the development of water quality standards.

Contract monitoring activities include: obtaining supporting documentation for planned contracts; holding post-award conferences; reviewing contract requirements; using checklists to review work products, progress reports, subcontracts, invoices, receipts, time sheets, and travel logs; assessing risk and performing on-site monitoring of work and financial records; conducting annual contractor evaluations; following up to ensure corrective actions are taken when necessary; adhering to the TCEQ Guide to Administrative Procedures; and implementing the practices of the State of Texas Contract Management Guide.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Air Permits
Location/Division	3rd Floor / Building C / Air Permits Division / Office of Permitting and Registration
Contact Name	Steve Hagle, P.E.
Actual Expenditures, FY 2008	$10,427,835
Number of FTEs as of August 31, 2008	188.5

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Texas Clean Air Act (TCAA), Texas Health and Safety Code, Chapter 382, governs all air quality permitting in the state and implements provisions of the Federal Clean Air Act (FCAA). The TCAA requires authorization for all air contaminants in addition to authorization of federally regulated pollutants.

The main objective of the Air Permits Division is to review and authorize air applications and registrations for facilities that, when operational, would emit contaminants into the air. The division meets its objective through two air permitting programs: New Source Review (NSR) Permits and Title V Federal Operating Permits (FOP). The NSR Permits Program has a major and a minor component. The term "major" is used to determine the applicability of federal (or major) NSR and Title V and is based on a stationary source's annual potential to emit a federally regulated pollutant. The state's "minor" NSR program applies to all facilities that emit pollutants at levels less than a major source.

The NSR Permit Program requires stationary sources of air pollution to obtain authorization before construction or alteration of a facility. For "major" NSR facilities, the authorization types include a Prevention of Significant Deterioration (PSD) permit and a Nonattainment (NA) permit. Several types of "minor" NSR authorizations are available, and a source's facilities may be able to qualify for more than one type under the NSR permits program.

Title V refers to the section of the FCAA that requires this type of permit. The Title V FOP Program requires major sources and certain federally identified minor sources to obtain a permit that consolidates all applicable air requirements in a single document. A Title V permit grants a source permission to operate.

NSR Permits Program

The NSR Permits Program requires stationary sources of air pollution to obtain permits

before construction begins. The NSR is also referred to as *construction permitting* or *preconstruction permitting*. Under the TCAA, the NSR program addresses all contaminants emitted from a facility including those pollutants for which there is a national ambient air quality standard (NAAQS) and precursors to the formation of identified pollutants, if applicable.

Primary NSR Authorization Types

Before work begins, a person who plans to construct a new facility or to modify an existing facility must satisfy the criteria of a streamlined authorization for a *de minimis* facility or source, a permit by rule, or a standard permit or obtain a case-by-case permit (minor NSR permit or federal NSR PSD or NA permit).

- *De Minimis Facilities/Sources.* De minimis emissions are so small that a registration, authorization, or certification before construction is not required. To qualify, emissions must meet the conditions specified by commission rule.

- *Permit-by-Rule (PBR) Claims and Registrations.* Permits by rule are for facilities with insignificant emissions of air contaminants that produce more than *de minimis* emissions but less than other permitting options. Some PBRs require registration. Facilities must meet all conditions specified by commission rules for PBR requirements. There is no case-by-case review for PBRs. A PBR can never be used to authorize emissions that must undergo PSD or NA review. The public participates in rule development and adoption.

- *Standard Permit (SP) Claims and Registrations.* If an applicant cannot claim a PBR for a facility, the facility may qualify for a SP. Standard permits are tailored to industry type. Facilities must meet all conditions specified by the SP. There is no case-by-case review for SPs. An SP can never be used to authorize emissions that must undergo PSD or NA review. The public participates in the SP adoption process.

- *New Construction or Modification Permit.* Applicants with facilities that do not qualify for PBRs or SPs can submit an NSR permit application. New construction and modifications to extant facilities are also known as *case-by-case permits* for major or minor sources. Applicants can negotiate a best available control technology (BACT) and emission limit, which is not allowed for PBRs and SPs. An applicant must demonstrate compliance with all applicable rules and regulations and acceptability of off-property health impacts due to permitted emissions. The public participates in the permitting process and has the opportunity to request meetings and hearings on individual applications. A minor NSR construction permit must be renewed every 10 years.

- *PSD Permit.* A PSD permit is a federal NSR permit required if an applicant wants to locate in an area that meets NAAQS and permitted emissions would exceed federal significant emission levels for regulated pollutants. Applicants must identify control technologies and demonstrate compliance with all applicable rules and regulations; and acceptable off-property impacts due to permitted emissions. The public participates in the permitting process and has the opportunity to request meetings and hearings. A PSD

permit does not expire but can be modified. If a PSD permit is required, the authorization is separate, based on federal requirements, and PSD, NA, and minor NSR permit authorizations can exist at the same time.

- *Nonattainment Permit.* An NA permit is a federal NSR permit required if an applicant wants to locate a source of emissions to an area that does not meet NAAQS and permitted emissions would exceed federal significant emission levels for that area. Unlike PSD permits, NA permits require enhanced control technologies and emission reductions to offset the proposed emissions increases. The public participates in the permitting process and has the opportunity to request meetings and hearings. An NA permit does not expire but can be modified. If an NA permit is required, the authorization is separate, based on federal requirements, and NA, PSD, and minor NSR permit authorizations can exist at the same time.

Other NSR Authorization Types

- *112(g) Permit.* A 112(g) permit is a federal NSR construction or modification permit that establishes federally enforceable case-by-case maximum achievable control technology (MACT) emission limitations and controls for hazardous air pollutants (HAPs) at a major source. Under FCAA 112(g), relating to HAPs, the division must determine MACT standards for major sources of HAPs for which a standard has not been promulgated or has been vacated by the courts.

- *Plant-wide Applicability Limit (PAL) Permit.* Major source permit applicants have the option of establishing a federal PAL for all facilities at a site or a stand alone process. The site-wide emission caps provide facilities with greater flexibility to modernize operations without triggering federal NSR. A PAL must be renewed every 10 years.

- *Flexible Permit.* A flexible permit is a minor NSR construction or modification permit that covers emissions from many facilities. This type of authorization allows an owner or operator more flexibility in managing operations by staying under an overall emissions cap or individual emission limitation. Owners or operators are allowed to structure flexible permits to best serve their needs while assuring BACT equivalent controls and acceptable impacts.

- *Maintenance, Startup, Shutdown Permit (MSS).* An MSS permit is a construction or modification permit for major or minor NSR that establishes emission limitations for planned MSS sources or activities.

- *Permit Amendment.* After a permit is issued, the permit holder may need to change the manner in which the facility is operated. An amendment consists of a change in method of control, change in character of emissions, or increase in actual or allowable emissions. Amendments go through the same review process as an NSR permit for a new facility, which may include public participation if the emissions increases exceed the de minimis criteria defined by commission rule and change in character.

- *Changes to a Qualified Facility.* The 74th Texas Legislature passed SB 1126 which gave qualified facilities the flexibility to make physical and operational changes without a permit. All facilities involved must be qualified at the time of the change. A facility is qualified if it had a permit or amendment issued within 120 months before the change occurred or it is exempted from permitting requirements, or has controls that are at least as effective as best available control technology. There can be no net increases or new contaminants, and SB 1126 cannot be used to authorize new facilities. SB 1126 authorization requires notification, documentation, and recordkeeping.

Title V Federal Operating Permit Program

The Title V Program requires major sources and certain minor sources to obtain a permit that consolidates all applicable air requirements in a single document. A Title V permit grants a source permission to operate. There are two types of operating permits:

- *General Operating Permit (GOP).* The GOP is a streamlined Title V authorization that is designed to cover numerous similar sources. An owner or operator can apply for an authorization to operate under a GOP. The GOP is similar to an NSR SP as it contains uniform conditions that apply to all sources in a defined class. Applicants cannot claim a GOP if they are subject to NSR case-by-case construction or modification permits. The public participates in GOP adoption.

- *Site Operating Permit (SOP).* The SOP documents all requirements that apply at a site, or an area for large sites. The public participates in the process and is notified through public notice in newspapers and sign postings, and has the opportunity to request meetings and petition the Environmental Protection Agency (EPA). Applicants must certify compliance with the SOP annually.

Other Title V Authorization Types

- Permit Revisions and Renewals. After initial permit issuance, changes at a site or in applicable requirements may result in the need to revise the Title V permit. Changes at a site may include addition or removal of emission sources, operational changes, or changes to existing monitoring, reporting, recordkeeping, and testing requirements identified in the permit. The public participates in the process and is notified through public announcement at the TCEQ Web site or public notice in newspapers and sign postings, and has the opportunity to request meetings. Also, the public can petition the EPA for significant revisions and renewals.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Number	Type	FY 08 Performance Measure	Percent of Annual Target
01-02.01	Outcome	Percent of air quality permit applications reviewed	98.89

		within established time frames	
01-02-01.01	Output	Number of state and federal new source review air quality permit applications reviewed (key)	81.79
01-02-01.02	Output	Number of federal air quality operating permits reviewed (key)	78.91
01-02-01.01	Explanatory	Number of state and federal air quality permits issued	74.70
01-02-01.02	Explanatory	Number of federal air quality permits issued	74.11

The variances in the performance measures listed above are attributable to state and federal regulatory rule changes and rules vacated by federal court that extended the time needed to review and issue air permits.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The following history highlights significant actions that have directly affected the Air Permits Division.

2001

- The 77th Legislature made the permitting of grandfathered facilities mandatory as part of the agency's sunset review in HB 2912. Facilities that were not modified since August 31, 1971 were previously "grandfathered" from the requirement to obtain a permit.

2006

- The commission adopted rules that remove, over a seven-year period, the ability for regulated entities to claim an affirmative defense for planned maintenance, startup, and shutdown activities. While the rule did not require authorization, it resulted in increased requests to permit planned maintenance, startup, and shutdown emissions.

2007

- The D.C. Circuit Court of Appeals issued a final ruling on the court's December 2006 decision on the rule to implement the eight-hour ozone NAAQS. This ruling restores NSR applicability thresholds and emission offsets pursuant to classifications previously in effect for areas designated in nonattainment for the one-hour ozone standards.

2008

- The D.C. Circuit Court of Appeals restored electric utility steam generating units to the list of regulated source categories subject to MACT standards and invalidated the EPA's Clean Air Mercury Rule.

- Since 1992, when the EPA approved Texas' major clean air permitting plan, the state has submitted more than 30 regulatory changes. The Business Coalition for Clean Air (BCCA) Appeal Group, Texas Association of Business (TAB), and Texas Oil and Gas Association (TxOGA) sued the EPA seeking deadlines for it to act on the state's proposed changes to its previously approved plan. Although the EPA approved the original and many updates to the Texas NSR permitting program, EPA has not approved significant

portions of various subsequent air permitting rules submitted to the EPA since 1993 as revisions to the State Implementation Plan (SIP).

2009

- The BCCA, TAB, TxOGA, and EPA agreed to a schedule whereby the EPA shall sign for publication in the *Federal Register* notices of final rulemaking to approve or disapprove, in whole or in part, key SIP revisions.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Air Permitting Program affects any organization or person that plans to construct a new facility or modify an existing facility that emits air contaminants into the air, including the public; universities; city and county governments; small businesses; manufacturers; industries; semiconductor plants; power plants; refineries; chemical plants; mechanical, construction, and agricultural activities; etc. The Air Permits Division does not track specific affected persons or organizations but does track permit authorizations by major- or minor-source categories. There are approximately:

- 52,000 active NSR permits and authorizations at 28,000 sites; and

- 500 general operating permits and 1100 site operating permits at 1,400 Title V sites.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The Air Permits Division functions under a division director and is part of the Office of Permitting and Registration. All Air Permits personnel, except for five in Corpus Christi, San Antonio, and Houston, are located in the central office.

Business Program Section (BPS). The BPS supports air permitting by conducting the air-permit initial administrative review. Key tasks: updating the central registry and division database, checking fee and delinquent-fee applicability, requesting site review, confirming administrative completeness of applications, and development and distribution of public-notice packages. In addition, the BPS assists with document processing, permit distribution, human resources, and financial management.

Technical Program Support Section (TPSS). The TPSS supports air permitting by maintaining information management systems and databases; developing templates, forms, and word-processing macros; developing rules; evaluating or conducting air dispersion modeling; and acting as liaison with internal agency staff and external government, regulated, and public entities.

Technical Review. Once it is deemed administratively complete, an application is transferred to one of the five permitting sections for the technical review to determine whether the operations of a proposed facility will comply with all applicable federal and state rules and regulations and not adversely impact public health or welfare.

During the technical review process, the permit reviewer:

- checks compliance history and regional site review comments;
- identifies sources;
- reviews emission characterization;
- quantifies emissions;
- determines federal applicability;
- determines BACT;
- determines the applicability of federal and state regulatory limits;
- evaluates impacts on the public health and welfare; and
- drafts the permit.

In addition, the technical review includes, as applicable:

- first-public-notice verification;
- second-public-notice preparation and verification;
- meetings with the public; and
- response to comments from public notices, meetings, and hearings.

Rule Registrations Section (R&RS). This section conducts the technical review for PBRs and SPs. Reviewers must ensure that each PBR claim meets all of the general conditions and specific conditions of the PBR or that the facility meets the general and specific conditions of the SP. The reviewer checks that the registrant has included necessary emission calculations.

The R&RS also conducts the technical review for Title V general operating permits. The process for granting an authorization to operate is streamlined since these authorizations are not subject to individual public notice and the permit requirements are predetermined. The permit reviewer must determine if the application meets the qualification criteria, verify site-wide and unit-specific requirements, and ensure that the application has proper certification.

NSR Permits Sections (Chemical, Combustion and Coatings, and Mechanical, Agricultural and Construction). These sections conduct the technical review for NSR case-by-case permits. This type of review is more complicated than one of the streamlined permit authorizations. In addition to new construction and modification to existing facilities, other activities requiring NSR authorization include changes in application representations and renewal of existing authorizations. The NSR Permits Sections also conduct the technical review for major sources or major modifications. These reviews are similar to a minor NSR case-by-case permit review but can be more complex.

PSD Permits. PSD permitting applies to major sources and major modifications in attainment areas. A permit reviewer determines applicability of federal regulatory limits;

evaluates BACT; and evaluates impacts through an air quality analysis to demonstrate that permitted emissions will not cause or contribute to an exceedance of an NAAQS or PSD increment concentration. The effects to visibility, soil and vegetation, and any adverse impacts to Class I areas must also be determined. The permit reviewer also develops the preliminary determination summary of key portions of the technical review, part of the second public notice package.

NA Permits. Nonattainment permitting applies to major sources and major modifications in nonattainment areas. The permit reviewer determines applicability of federal limits based on the specific nonattainment county designation; evaluates lowest achievable emission rate controls, which are usually more stringent than BACT; and oversees the acquisition of emission reductions to offset the proposed emissions increases.

Operating Permits Section (OPS). The OPS conducts the technical review for Title V site operating permits. Permit reviewers evaluate Title V applications and develop permits that codify all applicable state and federal requirements for all of the emission units at a permitted site or area. The SOP includes all applicable requirements including emissions limits and monitoring, record keeping, and reporting. The permit also requires that the source report compliance status with respect to permit conditions to the TCEQ. The permit reviewer also develops the statement of basis, a document that explains the terms of the permit and is part of the public notice package. In addition, the technical review includes public notice verification and response to comments as applicable.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
5094	Operating Permit Fees	$6,344,085
0151	Clean Air Account	$4,035,669
0555	Federal Funds	$48,081

Strategy—A.2.1—Air Quality Permitting

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

No internal or external programs provide identical or similar services or functions.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not Applicable

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

EPA Region 6 Multimedia Planning and Permitting Division, Air Programs. The Air Permits Division implements the federal NSR Permit and Title V federal operating permit programs.

Local Programs. The Air Permits Division coordinates with local city and county programs during the permitting process.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

Expended - $210,661

Contracts - 7

Temporary staff services and engineering interns were obtained to support the division's permitting processes, allowing the full-time staff to focus on complex and highly advanced permit projects.

The division monitored work weekly and vendors met expectations. The division reconciled contract costs monthly and reported quarterly to its director. All funds were spent appropriately.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

Proposed statutory changes are unknown at this time but may be required for the commission to satisfy the EPA's concerns related to the NSR and Title V Operating Permit Programs and obtain approval of the SIP (indicated in the last bullet of Question D, above).

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

The division issues permits and authorizations that meet the requirements of the Texas

Clean Air Act. The EPA approved the division's NSR air permitting program and the division issues "federal" permits (for prevention of significant deterioration and nonattainment) on the EPA's behalf. In addition, the EPA has approved the division's Title V program.

Air quality permits are legally binding documents that include enforceable conditions with which the owner or operator must comply. Some permit conditions are general to all types of facilities; some are developed for specific facilities. Overall, the permit conditions establish limits on the types and amounts of air pollution allowed, operating requirements for pollution control devices or pollution prevention activities, and monitoring and record-keeping requirements. Several flowcharts, *Abbreviated Process Flow,* showing the highest volume permit reviews are included following Question O.

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not applicable, please see Field Operations Question O for complaint-related data related to this program.

Abbreviated Process Flow
New Source Review (NSR) Case-by-Case Application
New Construction and Modification

Application Received

↓

Administrative Review

Update Central Registry/Division Database
Confirm Permit Status
Check Fee and Delinquent Fee Applicability
Request Site Review
Confirm Application Administratively Complete
Develop and Distribute Public Notice Package
Transfer Application to NSR Permitting Section

↓

Technical Review

Check Compliance History and Review Regional Site Input
Identify Sources, Review Emission Characterization and Quantify Emissions
Determine Federal Applicability
Evaluate Control Technology and Impacts
Determine Applicability of Federal/State Regulatory Limits
Resolve Technical Deficiencies
Respond to Comments (From Public Notice/Meeting Non Contested/Non Federal)
Draft Permit (Conditions and Emission Rates)
Request Region/Local Program Comments
Modify Draft Permit
Confirm Application Technically Complete
Develop Public Notice Package (New/Modified Federal Applications)
Conduct Public Meeting as Applicable
Respond to Comments (From Public Notice/Meeting)

↓

If Non Contested

Issue Permit

↓

If Contested → Send Permit to Commission Agenda
Hearing Denied →Issue Permit
Hearing Granted →Refer to State Office Administrative Hearings
→ Back For Commission Decision
Commission: Issues, Modifies, Denies, Remands Permit

Abbreviated Process Flow
New Source Review (NSR)
Permit by Rule/Standard Permit/General Operating Permit
Registration

Registration Received

↓

Administrative Review

Update Central Registry/Division Database

Confirm Permit Status

Check Fee and Delinquent Fee Applicability

Request Site Review

Confirm Registration Administratively Complete

Transfer Registration to NSR Permitting Section

↓

Technical Review

Check Compliance History

Review Regional Site Review

Review Emission Characterization

Quantify Emissions

Certify for Federal Applicability

Determine Applicability of Federal/State Regulatory Limits

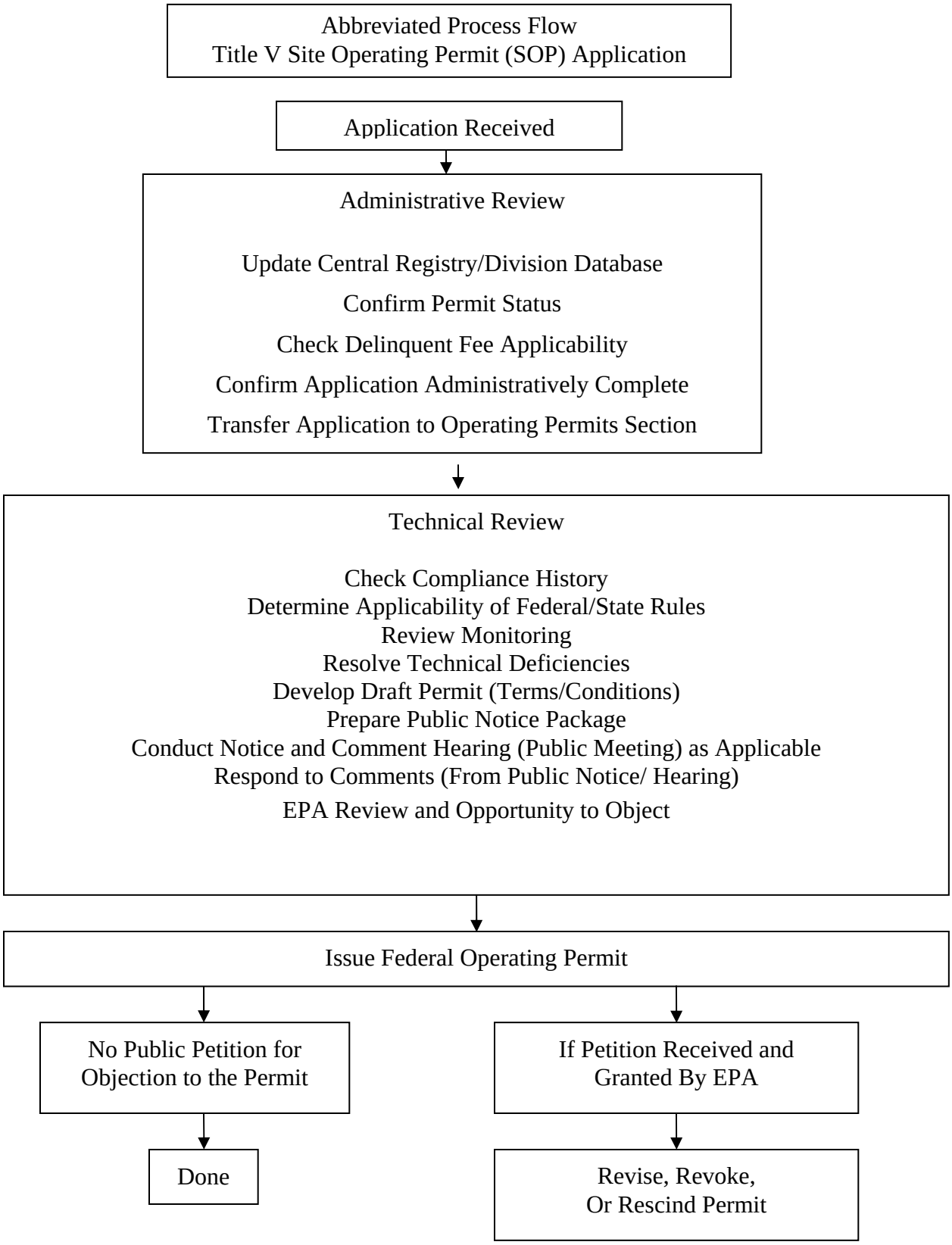
Resolve Technical Deficiencies

Confirm Application Technically Complete

Draft Authorization Letter

↓

Confirm Registration


Abbreviated Process Flow
Title V Site Operating Permit (SOP) Application
Application Received
Administrative Review
Update Central Registry/Division Database
Confirm Permit Status
Check Delinquent Fee Applicability
Confirm Application Administratively Complete
Transfer Application to Operating Permits Section
Technical Review
Check Compliance History
Determine Applicability of Federal/State Rules
Review Monitoring
Resolve Technical Deficiencies
Develop Draft Permit (Terms/Conditions)
Prepare Public Notice Package
Conduct Notice and Comment Hearing (Public Meeting) as Applicable
Respond to Comments (From Public Notice/ Hearing)
EPA Review and Opportunity to Object
Issue Federal Operating Permit
No Public Petition for Objection to the Permit
Done
If Petition Received and Granted By EPA
Revise, Revoke, Or Rescind Permit

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Groundwater Planning and Assessment
Location/Division	3rd Floor / Building F / Water Rights Permitting and Availability Section / Water Supply Division / Office of Permitting and Registration
Contact Name	Todd Chenoweth
Actual Expenditures, FY 2008	$783,074
Number of FTEs as of August 31, 2008	10

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Groundwater Planning and Assessment Program supports the Texas Groundwater Protection Committee (TGPC), an interagency committee charged with developing and updating a comprehensive groundwater protection strategy, studying and making legislative recommendations to improve groundwater protection, reporting to the legislature on its activities, and publishing an annual report on groundwater monitoring and contamination. The program supports the TGPC through program and monitoring coordination, water quality assessment, public participation and outreach, and special projects.

The program also coordinates and supports the state management plan for prevention of pesticide contamination of groundwater, the TCEQ's Edwards Aquifer Protection Program, and the TCEQ's program to notify private well owners of potential groundwater contamination.

As part of the Edwards Aquifer Protection Program under 30 Texas Administrative Code (TAC) Chapter 213, the agency gives technical assistance and offers support for geographic information systems. The program works closely with the Edwards Aquifer Protection Program administered by the Austin and San Antonio regional offices, Field Operations Division, Office of Compliance and Enforcement.

The Groundwater Planning and Assessment Program also supports groundwater management functions for TCEQ by:

- processing, review, and facilitation of landowner petitions for groundwater conservation district (GCD) creation;

- evaluating legislation that creates new or modifies existing GCDs and providing water development policy impact statements to state leadership processing and coordination of limited oversight of GCDs relating to groundwater management plans and

joint district planning in common groundwater management areas;

- GCD management plan noncompliance review and compliance enforcement referrals;

- evaluating and designating as appropriate Priority Groundwater Management Areas (PGMAs) and creating GCDs in PGMAs subject to landowner and local government actions;

- educational and technical assistance upon request;

- maintaining records of state well reports; and

- establishing the form and content of groundwater availability certifications.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

FY 08 Output Measure 01-01-02.02	Percent of Annual Target
Number of Groundwater Assessments (Key)	98.33

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

1949

- The legislature authorizes the petition process for the designation of under ground water reservoirs and the creation of underground water conservation districts.

1959

- Legislative efforts to protect the Edwards Aquifer from contamination begin. The Groundwater Planning and Assessment Program is responsible for field mapping and other technical services to support these and subsequent efforts.

1975

- The EPA designates the Edwards Aquifer as the first sole-source aquifer in the country. The Groundwater Planning and Assessment Program begins receiving funding through Section 106 of the Clean Water Act to coordinate sole source aquifer activities with the EPA and to support state efforts to protect the aquifer from contamination.

1985

- The legislature establishes the critical area process.

1989

- The legislature requires GCDs to develop comprehensive management plans.

- The legislature creates the Texas Groundwater Protection Committee and established the state's groundwater protection policy and goal.

1995

- The legislature codifies sections specific to management areas and critical areas into Texas Water Code, Chapter 35 and sections specific to GCDs into Texas Water Code, Chapter 36.

1997

- The legislature adopts SB 1, which includes new processes for landowner petitions to create GCDs and GCD management plan adoption and state agency roles related to the plans, and replaces the critical area process with the PGMA process.

1999

- The legislature requires the TCEQ to adopt rules that establish the appropriate form and content of a groundwater availability certification to be attached to a municipal or county plat application.

2001

- The legislature adopts SB 2, which streamlines GCD creation and PGMA processes and clarifies TCEQ authority.

2005

- The legislature requires joint GCD planning in groundwater management areas.

2008

- The agency position for the executive director's designated chairman for the TGPC and designated representative to the Edwards Aquifer Recovery Implementation Program is transferred from the Chief Engineer's Office to the Water Supply Division in the Office of Permitting and Registration.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Approximately 57 percent of all water used by Texans is groundwater found in nine major, 21 minor, and several additional undifferentiated local aquifers. Approximately 79 percent of groundwater is used for irrigation, with the remainder used for municipal, rural, and domestic consumption; livestock; electric utilities; and industry. Approximately 36 percent of municipal water and virtually all of the rural water in Texas comes from groundwater.

The GCDs are the state's preferred method of groundwater management, allowing for the conservation, preservation, protection, recharge, and prevention of waste of the

groundwater resources within their jurisdictions. The GCD's primary authority is threefold: permitting water wells, developing a comprehensive management plan, and adopting the necessary rules to implement the management plan. As of July 2009, 95 established (confirmed) GCDs and five unconfirmed GCDs have been created. The 95 established GCDs cover all or part of 151 of the state's 254 counties.

A Priority Groundwater Management Area (PGMA) is an area designated and delineated by the TCEQ that is experiencing, or is expected to experience within the next 25 years, critical water problems including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies. To date, the TCEQ has designated seven PGMAs that include all or part of 35 counties. The designation of the PGMAs has encouraged local initiative to establish 18 GCDs to address groundwater management in most of the designated areas. For all or part of 10 counties in the designated PGMAs, GCDs need to be created, whether initiated locally or by the TCEQ. Refer to the flowchart *PGMA designation and GCD creation process* following Question O.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

State law designates the TCEQ as the lead agency of the TGPC, and the executive director as the TGPC's chairman. The executive director has designated a member of the Water Supply Division staff as his designated representative to the TGPC, also administering the routine functions of the committee. The TCEQ personnel also serve in support roles and chair subcommittees, reporting to, and coordinating with, the executive director's designated representative.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0001	General Revenue	$33,374
0153	Water Resource Management Account	$267,797
0555	Federal Funds	$377,638
0777	Interagency Contracts	$104,265

Strategy—A.1.2— Water Assessment and Planning

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

Not Applicable

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The TCEQ, through its administration of most of the State's environmental and water quality regulatory programs, is primarily responsible for protecting groundwater quality. In addition, groundwater quality regulatory programs exist at: the Texas Railroad Commission (RRC) (oil and gas production and surface mining); the Texas Department of Agriculture (TDA) (pesticide use); the Department of State Health Services (DSHS) (water resource protection); the Texas State Soil and Water Conservation Board (TSSWCB) (agricultural and silviculture nonpoint source pollution); and the Texas Department of License and Regulation (TDLR) (water well construction).

The TGPC was created to bridge gaps between existing state groundwater programs and to optimize water quality protection by improving coordination among agencies involved in groundwater activities. The TGPC is composed of members from the TCEQ (chairman), Texas Water Development Board (TWDB) (vice chairman), RRC, DSHS, TDA, TSSWCB, Texas Alliance of Groundwater Districts, Texas AgriLife Extension Service, University of Texas Austin Bureau of Economic Geology, and Texas Department of Licensing and Regulation.

A Memorandum of Agreement (MOA) regarding state agency groundwater management program responsibilities and coordination was signed in April 2001 by the TCEQ and the TWDB and updated and amended in August 2007. The PGMA evaluations conducted by the program involve the TWDB, Texas Parks and Wildlife Department, and TDA, and the PGMA hearings are conducted by the State Office of Administrative Hearings. The program also coordinates intermittently with the State Auditor's Office (SAO) on issues relating to GCD management plan implementation reviews performed by the SAO.

The Water Supply Division also supports the activities of the Edwards Aquifer Recovery Implementation Program (EARIP) created in SB 3, 80th Legislature (2005), through representing the agency on the Steering Committee, the Recharge Facilities Feasibility Subcommittee and the Implementation Agreement Work Group. The TCEQ has signed an MOA governing participation in the EARIP process, and has agreed to the Steering Committee's operational rules.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Federal
The program is partially supported by federal grants and coordinates with EPA Region 6 to implement groundwater protection programs.

The program confers with and coordinates with the United States Fish and Wildlife Services Southwest Region on the Edwards Aquifer Recovery Implementation Plan.

The program coordinates with and uses some groundwater quality analyses data from the United States Geological Survey Texas Water Science Center.

State
The program coordinates groundwater protection and management with the following state agencies or authorities:

- Department of State Health Services
- Texas Railroad Commission
- State Auditor's Office
- State Office of Administrative Hearings
- Texas AgriLife Extension Service
- Texas Alliance of Groundwater Districts
- Texas Department of Agriculture
- Texas Department of Licensing and Regulation
- Texas Groundwater Protection Committee
- Texas Parks and Wildlife Department
- Texas State Soil and Water Conservation Board
- Texas Water Development Board
- University of Texas Bureau of Economic Geology

Regional, Local
The program confers with and coordinates with the Edwards Aquifer Authority and other stakeholders on the Edwards Aquifer Recovery Implementation Plan.

During PGMA designation and GCD creation, the program notifies and uses input from the following stakeholder groups:

- Counties,
- Municipalities,
- GCDs,
- regional water planning groups,
- river authorities,
- public water suppliers, and
- water-supply districts.

The program uses laboratory services provided by the Lower Colorado River Authority.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**

- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

Total FY 08 contract expenditures for the four administered contracts were $210,102. The contracts provide support for ongoing groundwater assessment, protection, and management functions and projects. Important objectives and deliverables of these contracts include:

- digitization of unique state well reports for public access for groundwater assessment, protection, and management uses;
- evaluation of arsenic in groundwater to provide critical information to public water supply systems;
- establishment of basic standards used to produce analytical data as requested by the TCEQ for remedial and compliance analysis of water samples in accordance with established testing standards for federally funded programs; and
- facilitation of educational programs and publications on drinking water for domestic and private water-well owners.

The TCEQ standard requirements for interagency contracts apply. The performing party of the contract is required to adhere to all applicable standards, principals, and guidelines detailed in Office of Management and Budget circulars A-21 and A-110, including those related to financial monitoring, auditing and record keeping. Contracts are subject to the receipt and availability of funds appropriated to or secured by the TCEQ. This funding is in place before the contract is executed through TCEQ budgeting and planning; accountability for funding is with the TCEQ budget staff and the contract manager. Performance is ensured via standard project management practices, including initiation, planning, execution, control and closure. Performance under the scope of work is assessed though a schedule and a set of deliverables and projects are not considered complete and accepted unless discrepancies are resolved.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

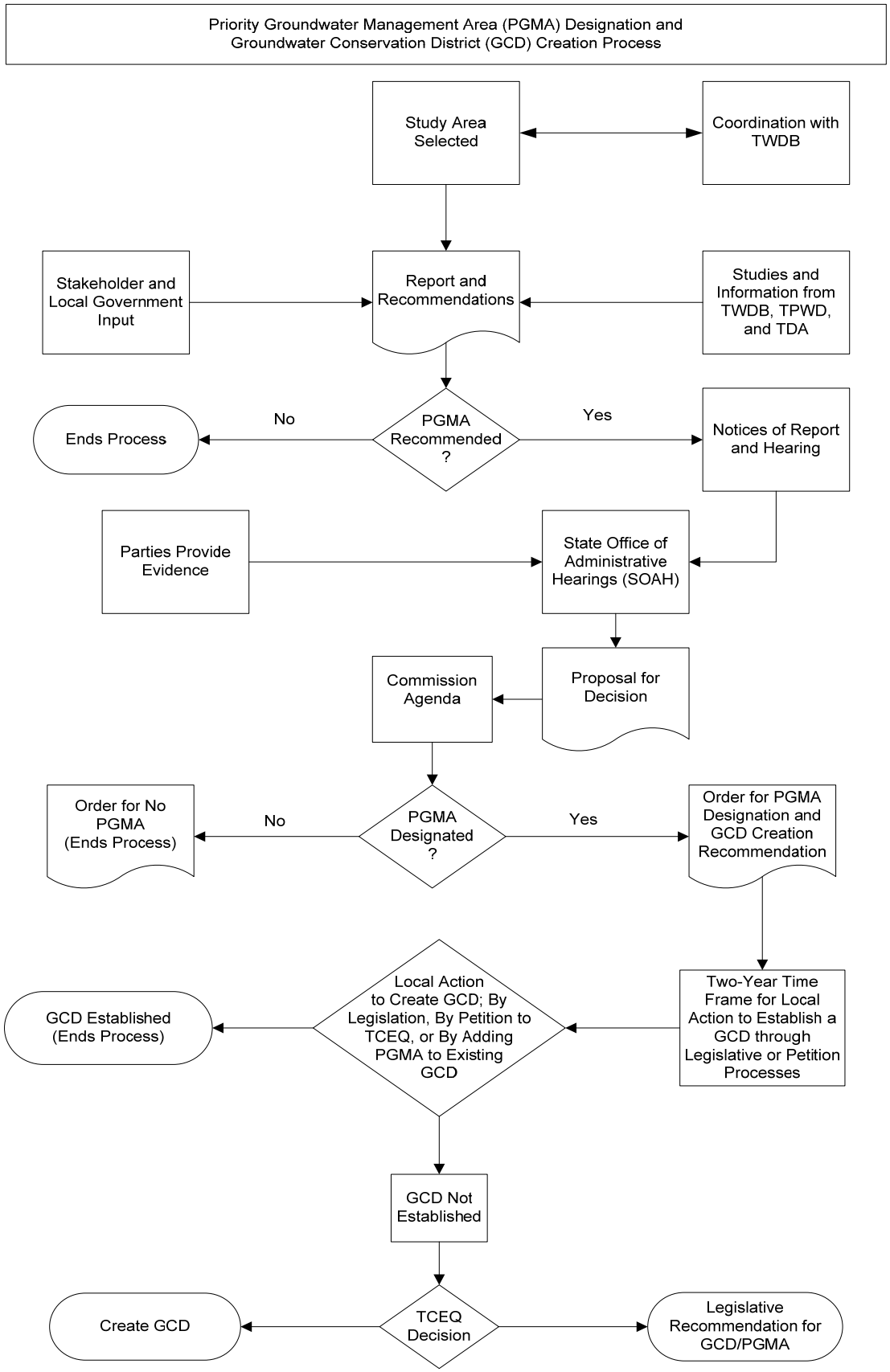
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Texas Commission on Environmental Quality
Groundwater Planning and Assessment
Exhibit 12: Information on Complaints Against Regulated Persons or Entities
Fiscal Years 2007 and 2008

Please see Field Operations Question O for additional complaint data related to this program.	**FY 2007**	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	89	93
Total number of entities inspected	Not applicable	Not applicable
Total number of complaints received from the public	1	1
Total number of complaints initiated by agency	3	4
Number of complaints pending from prior years	7	9
Number of complaints found to be non-jurisdictional	1	0
Number of jurisdictional complaints found to be without merit	Not applicable	Not applicable
Number of complaints resolved	2	9
Average number of days for complaint resolution	Not applicable	Not applicable
Complaints resulting in disciplinary action:	1	0
administrative penalty	Not applicable	Not applicable
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
other	1	0


Priority Groundwater Management Area (PGMA) Designation and Groundwater Conservation District (GCD) Creation Process
Study Area Selected
Coordination with TWDB
Stakeholder and Local Government Input
Report and Recommendations
Studies and Information from TWDB, TPWD, and TDA
Ends Process
No
PGMA Recommended ?
Yes
Notices of Report and Hearing
Parties Provide Evidence
State Office of Administrative Hearings (SOAH)
Commission Agenda
Proposal for Decision
Order for No PGMA (Ends Process)
No
PGMA Designated ?
Yes
Order for PGMA Designation and GCD Creation Recommendation
GCD Established (Ends Process)
Local Action to Create GCD; By Legislation, By Petition to TCEQ, or By Adding PGMA to Existing GCD
Two-Year Time Frame for Local Action to Establish a GCD through Legislative or Petition Processes
GCD Not Established
Create GCD
TCEQ Decision
Legislative Recommendation for GCD/PGMA

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Industrial and Hazardous Waste Permits
Location/Division	5th Floor / Building F / Industrial and Hazardous Waste Permits Section / Waste Permits Division / Office of Permitting and Registration
Contact Name	Earl Lott
Actual Expenditures, FY 2008	$2,474,702
Number of FTEs as of August 31, 2008	37

B. What is the objective of this program or function? Describe the major activities performed under this program.

The objective of the Industrial and Hazardous Waste (IHW) Permits Section is to protect human health and the environment by responsibly managing and administering waste-related programs. This objective is achieved by ensuring that requirements are met for the permitting of hazardous waste treatment, storage, and disposal facilities and off-site industrial non-hazardous waste storage and treatment facilities.

The IHW Permits Section is responsible for reviewing permit applications for storage, processing or disposal of hazardous and non-hazardous waste from those generators and waste-management facilities required to obtain permits. The section also reviews applications to modify existing permits and documents required as a condition of an IHW permit and reviews notifications of certain types of industrial solid-waste management.

The Surface Casing Program reports to the Manager of the IHW Permits Section. The program's function is to make recommendations regarding groundwater protection to the Texas Railroad Commission (RRC) and the oil and gas industries. Its groundwater protection recommendations indicate the depths of any freshwater zone and the base of the usable-quality water. This information is used by the RRC in its drilling permits, and by industry in the design of surface casings for oil and gas wells, cathodic protection wells, and boreholes for seismic exploration.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

The section is responsible for the permitting of hazardous and non-hazardous waste treatment, storage, and disposal facilities. It also audits non-hazardous industrial solid-waste streams to ensure that those wastes have been correctly classified by the generators.

Number	Type	FY 08 Performance Measure	Percentage of Annual Target
01-02-03.01	Outcome	Number of new system waste evaluations conducted	100.70
01-02-03.03	Output	Number of hazardous waste permit applications reviewed (key)	123.75
01-02-03.02	Explanatory	Number of hazardous waste permits issued	103.13

The Surface Casing Program issued 25,655 recommendation letters in FY 08. While there are no statutory time lines, internal goals are four days for processing expedited requests and 10 days for routine requests. Over 95 percent of applications were processed within 10 working days of being administratively complete.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

IHW Permits

1997

- Texas adopts the EPA's Combustion Strategy for hazardous-waste-combustion facilities, which includes conducting risk assessments on emissions from hazardous-waste combustors.

- Texas imposes risk assessments and/or screens on all combustion facilities permitted under the Resource Conservation and Recovery Act (RCRA) as part of the Combustion Strategy.

2003

- Texas Implements Risk Screening Procedures for hazardous-waste-combustion facilities permitted under the RCRA.

2007

- Texas adopts Maximum Achievable Control Technology (MACT) regulations (40 CFR Part 63, Subpart EEE) as amended through October 25, 2006.

Surface Casing

1955

- The Surface Casing Program is formalized as part of the Texas Board of Water Engineers.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

IHW Permits
Currently, over 190 facilities in Texas have industrial or hazardous waste permits. Nearly all are industrial—such as petroleum refineries, chemical manufacturers, military bases—or are commercial waste-management facilities.

Certain facilities are required to submit notifications of their waste management activities in lieu of applying for a permit. IHW Permits reviews these notifications for on-site disposal of non-hazardous waste. Examples of industrial waste generators who may be eligible for on-site disposal include facilities such as power plants, commercial agricultural facilities, and aluminum mills.

Surface Casing
The Surface Casing Program recommendations regarding groundwater protection affect the oil and gas industry, including seismic exploration, oil and gas well drilling, and cathodic protection for oil and gas wells as well as pipelines.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The IHW Section resides within the Waste Permits Division of the Office of Permitting and Registration. The section's technical staff consists of engineers, geoscientists, and chemists.

IHW Permits
The function of the IHW Permits Section is to review permit applications for the management of industrial solid waste and hazardous waste.

Applications are first reviewed for administrative completeness to ensure they contain all of the required information. Next is a technical review to ensure that the application meets requirements and any permit issued protects human health and the environment. Deficiencies noted during the administrative and technical reviews are transmitted to the applicant by letter.

When the application is considered technically complete, an initial draft permit (IDP) is prepared. After receipt and consideration of comments on the IDP, a final draft permit is prepared. Notice is published in a newspaper and mailed after the application is administratively complete and after the FDP is prepared.

If no comments on the application are received, the executive director will issue the permit. The executive director must respond to any public comment received. If no request for a public hearing is received, the permit will be issued. If a public hearing is requested, the commissioners will determine whether it will take place.

Surface Casing

The Surface Casing Program reviews applications for seismic exploration, oil- and gas-well drilling, and cathodic protection for oil and gas wells as well as pipelines, and makes recommendations for groundwater protection. Applications are processed within four working days of receipt for expedited processing and within 10 working days for standard processing. After the applications are reviewed for administrative completeness, the well is located in a geographical information system database. The geological data are then reviewed and a groundwater protection recommendation letter is prepared and sent to the applicant. Texas statute requires the recommendation letter to be based on original geological work and sealed by a TCEQ geoscientist.

Refer to the flowchart *IHW Permits Section Application Review Process* following Question O for more detail on the IHW permit application review process.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0153	Water Resource Management Account	$532,029
0549	Waste Management Account	$862,045
0001	General Revenue	$64,195
0555	Federal Funds	$1,016,433

Strategies:
A.2.3—Waste Management and Permitting
A.2.2—Water Resource Permitting
A.1.2—Water Assessment and Planning

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

Not Applicable

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not Applicable

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

IHW Permits

- EPA Region 6—Under the RCRA Grant Commitments, the TCEQ commits to processing a targeted number of permit applications established by EPA each fiscal year.

- EPA Region 6—Coordinates review of MACT EEE Comprehensive Performance Test Plans and results of Comprehensive Performance Tests for combustion facilities.

- Redevelopment authorities, the Department of Defense, EPA Region 6 and Base Realignment and Closure—Works with these authorities and with TCEQ Remediation personnel to achieve the maximum productive reuse of former military properties.

Surface Casing

- Acts as an adviser to the RRC concerning groundwater protection. The program reviews hydrologic data and electrical logs to determine depths of freshwater and the base of usable-quality water. The program recommends which hydrologic zones should be protected and the depth at which to set the surface casing for proposed drilling projects. The RRC reviews the TCEQ recommendations and, after accepting or modifying them, makes the final decision on the drilling permit.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

$125,882.27 with the University of Texas at Austin.

University of Texas at Austin

Purpose—Personnel with the Bureau of Economic Geology (BEG) develop spatial and tabular data, served over the Internet (ArcIMS), for a number of counties each year (for Denton, Tarrant and Johnson counties in FY 08) that allows oil and gas operators, TCEQ personnel, or other users to determine probable surface casing requirements.

Accountability—BEG supplies scanned copies of well logs to TCEQ annually and copies are spot checked.

Problems— monthly billing from BEG/UT lags significantly.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

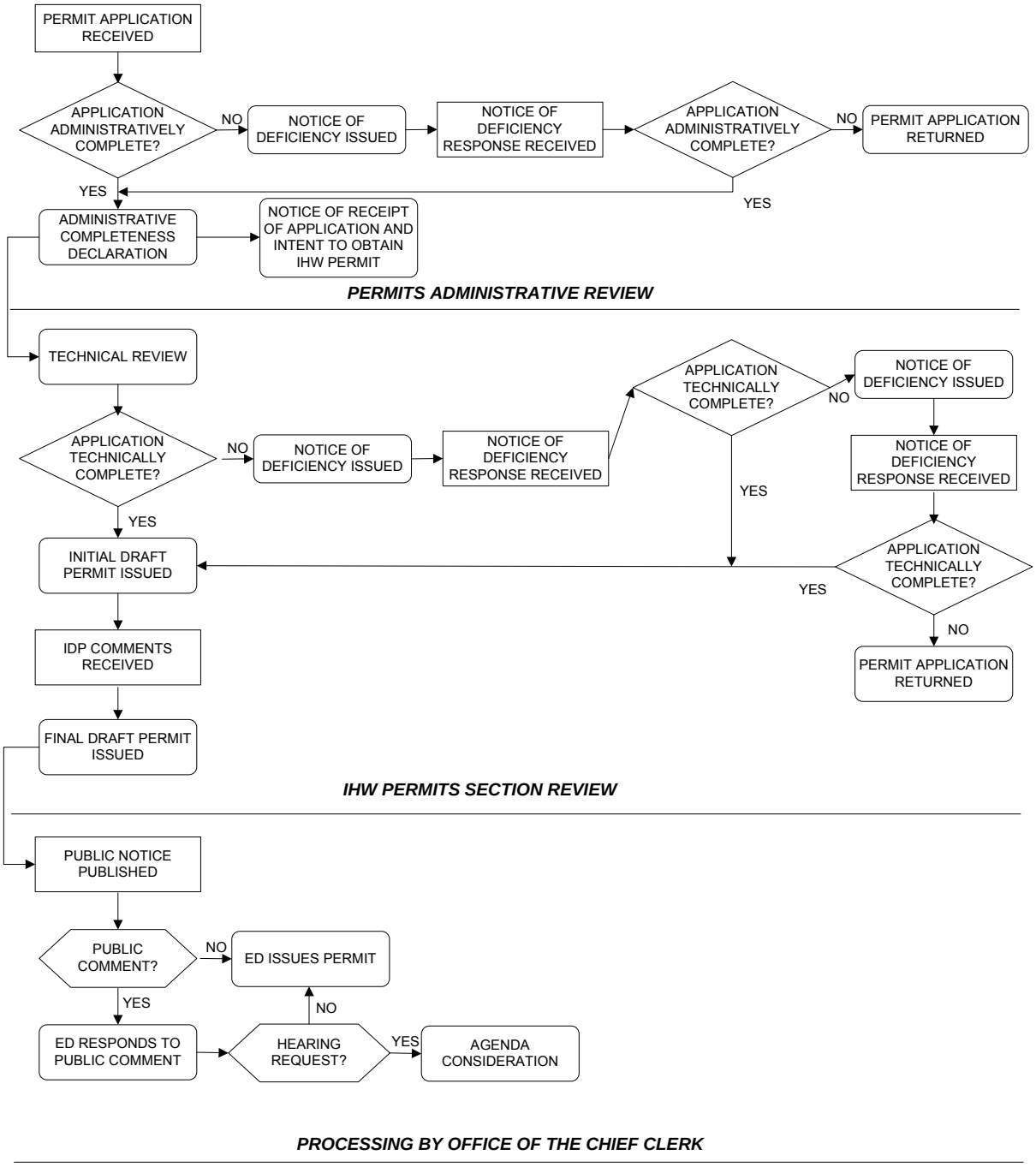
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not applicable, please see Field Operations Question O for complaint-related data related to this program.

IHW PERMITS SECTION APPLICATION REVIEW PROCESS



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Municipal Solid Waste Permitting
Location/Division	5th Floor / Building F / Municipal Solid Waste Permits Section / Waste Permits Division / Office of Permitting and Registration
Contact Name	Earl Lott
Actual Expenditures, FY 2008	$13,136,299 ($10,986,324 pass-through grants to COGs)
Number of FTEs as of August 31, 2008	37.5

B. What is the objective of this program or function? Describe the major activities performed under this program.

The objective of the Municipal Solid Waste (MSW) Permitting Program is to protect human health and the environment through regulation of the handling, storage, processing, and disposal of municipal solid waste. The program also promotes and encourages recycling by authorizing this activity through a more streamlined mechanism than a permit.

The program is responsible for reviewing applications for handling, storing, processing, and disposing of municipal solid waste. It also reviews applications to modify or amend existing permits and registrations and other required documents.

Regional Solid Waste Grant Program (RSWGP)

- The RSWGP's objective is to pass through appropriated funds to the 24 councils of governments (COGs) throughout Texas.

- COGs use the funds to maintain an inventory of closed MSW landfills, conduct regional coordination and planning activities, maintain a regional solid waste management plan, and administer pass-through grant programs to fund regional and local MSW projects.

Biennially, the MSW Program:

- *allocates the Regional Solid Waste Grant funds to the state's 24 COGs based on a formula that takes into account population, area, solid-waste-fee generation, and public-health needs,*

- *enters into a contract with each COG for use of the funds, and*

- *reviews and approves each COG's funding plan and application.*

Annually, the MSW Program:

- *reviews and approves proposed implementation projects,*
- *reviews quarterly financial status reports,*
- *conducts site visits,*
- *reviews and approves budget amendments,*
- *reviews and approves implementation project amendments,*
- *provides technical assistance to COGs and recipients of RSWGP funds, and*
- *trains COG solid-waste and financial coordinators.*

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

The program implements its objectives through issuing of permits, registrations, and other authorizations. To receive an authorization, potential operators of an MSW facility must demonstrate competence and adherence to the rules.

Number	Type	FY 08 Performance Measure	Percent of Annual Target
01-02-03.02	output	Number of non-hazardous waste permit applications reviewed (key)	98.31
01-02-03.01	explanatory	Number of non-hazardous waste permits issued	98.31
01-02-03.03	explanatory	Number of corrective actions implemented by responsible parties for solid waste sites	100
01-01-03.01	output	Number of MSW facility capacity assessments (key)	98.4
01-01-03.01	efficiency	Average cost per MSW facility capacity assessment (key)	92.3
01-01-03.01	explanatory	Number of councils of governments in the state with 10 or more years of disposal capacity	100

Regional Solid Waste Grant Program

- Annual Reports and Reports of Follow-up Results - These data are submitted by each of the 24 COGs detailing the cumulative results of funded projects. Data for the results report are formatted, published, and presented to the legislature as the Regional Council of Government and Municipal Solid Waste Program Report.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Not Applicable

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The MSW Permitting Program affects the MSW management industry and local governments. Any person requesting authorization to handle, process, or dispose of municipal solid waste must demonstrate competency to perform the regulated activity. The public may be affected by the manner in which the solid waste is managed. The program manages 272 permits for landfills, and 58 permits and 112 registrations for processing facilities. Other types of facilities are authorized via notifications to the program, which serve as written commitments to comply with relevant regulatory standards.

Regional Solid Waste Grant Program

- RSWGP funds are specifically designated for the 24 COGs, which set aside a portion of their funds for pass-through grants to local governments, school districts, and special districts. Refer to the table *Municipal Solid Waste Regional Planning Grant Program- FY 08 Grant Allocation* following Question O.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The MSW Permits Section is in the Waste Permits Division within the Office of Permitting and Registration. Refer to flowcharts *MSW Registration Application Process* and *MSW Permit Application Process* following Question O.

The program processes applications for handling, storing, processing, and disposing municipal solid waste using established procedures. Applications are first reviewed for administrative completeness to ensure they contain all of the required information. Second, a technical review is conducted to ensure that the design and operation of the facility meet requirements and protect human health and the environment. Any deficiencies noted during review are transmitted to the applicant through a letter.

The application is posted on a publicly accessible web site and signage is posted at the facility's proposed location. Depending on the type of application, notice is published in a newspaper and/or mailed to the list of entities in 30 TAC, Chapter 39, Section 39.413. Following technical review a draft permit/registration is prepared. If no requests for a public hearing are received, the permit will be sent forward for issuance.

Facilities seeking authorization for activities such as recycling clean wood through mulching and composting or source separation of construction and demolition debris or household recyclables are required to submit a notice of intent for authorization to operate. Following review and approval of the notice of intent, the recycling activity is authorized by letter.

The RSWGP is administered by a team leader and three planners. In administering the program, its staff reviews each of the 24 COGs' funding plans and grant applications and determines whether each conforms to its Regional Solid Waste Management Plan (RSWMP) and the RSWGP contract. Throughout the year, program personnel review a variety of documents submitted by each COG, including (1) implementation project plans, (2) its quarterly financial status report, (3) budget amendments, and (4) feasibility studies. These documents are reviewed to ensure compliance with the RSWMP, the RSWGP contract, the Uniform Grant Management Standards, and TCEQ rules. Program personnel give technical assistance to COGs and recipients of the RSWGP funds and train COG solid-waste and financial coordinators. Additionally, program personnel monitor COG performance through desk audits of financial and project data, site-visits, and on-site audits.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0549	Waste Management Account	$2,144,386
5000	Solid Waste Disposal Fee	$10,986,324 (COGs)
0001	General Revenue	$5,589

Strategies:
A.1.3—Waste Assessment and Planning
A.2.3—Waste Management and Permitting

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

Not Applicable

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not Applicable

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Regional Solid Waste Grant Program

The TCEQ works directly with COGs in the administration of the RSWGP. COGs were created under Local Government Code Chapter 391 to deal with the problems and planning needs that require regional attention.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

None

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

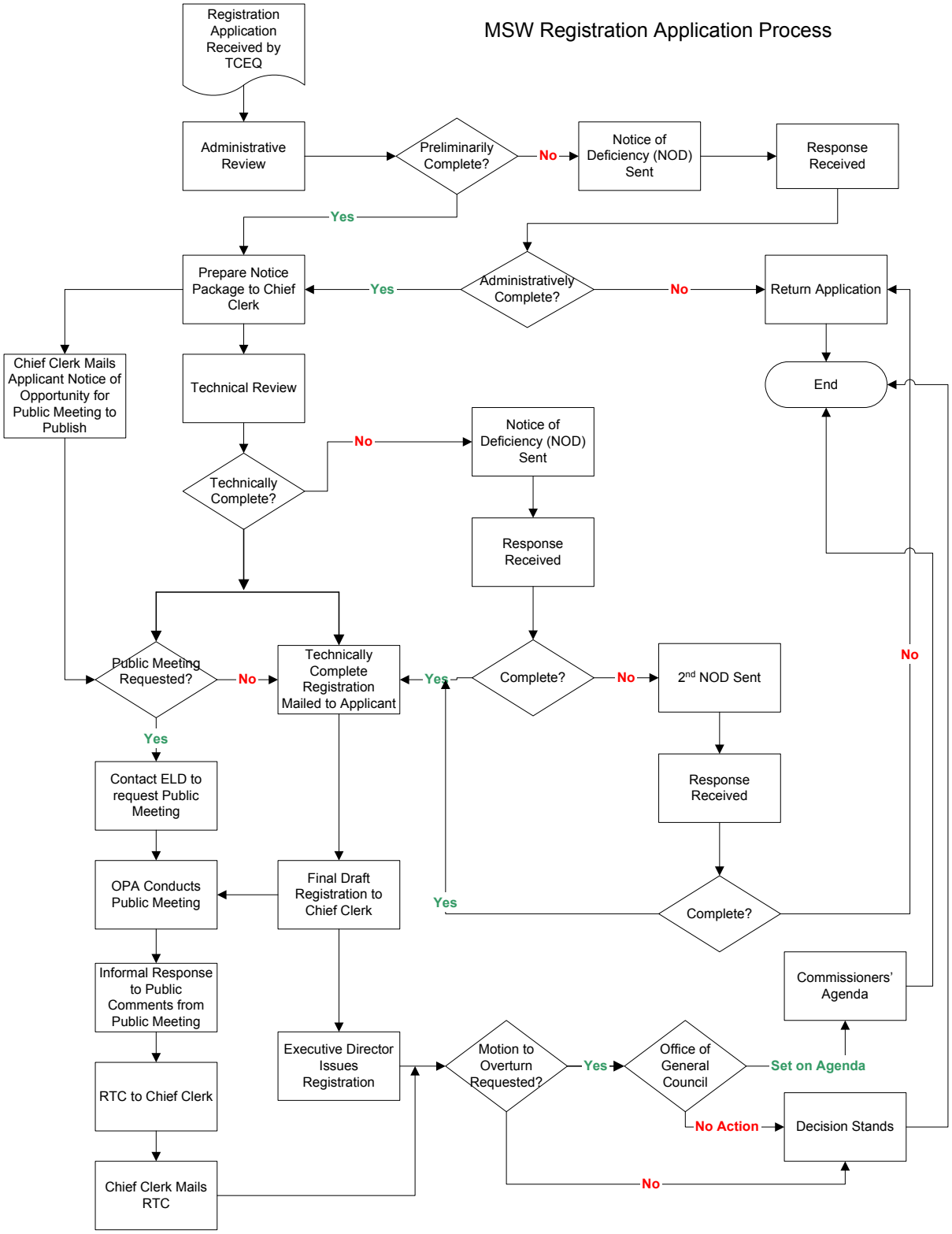
N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

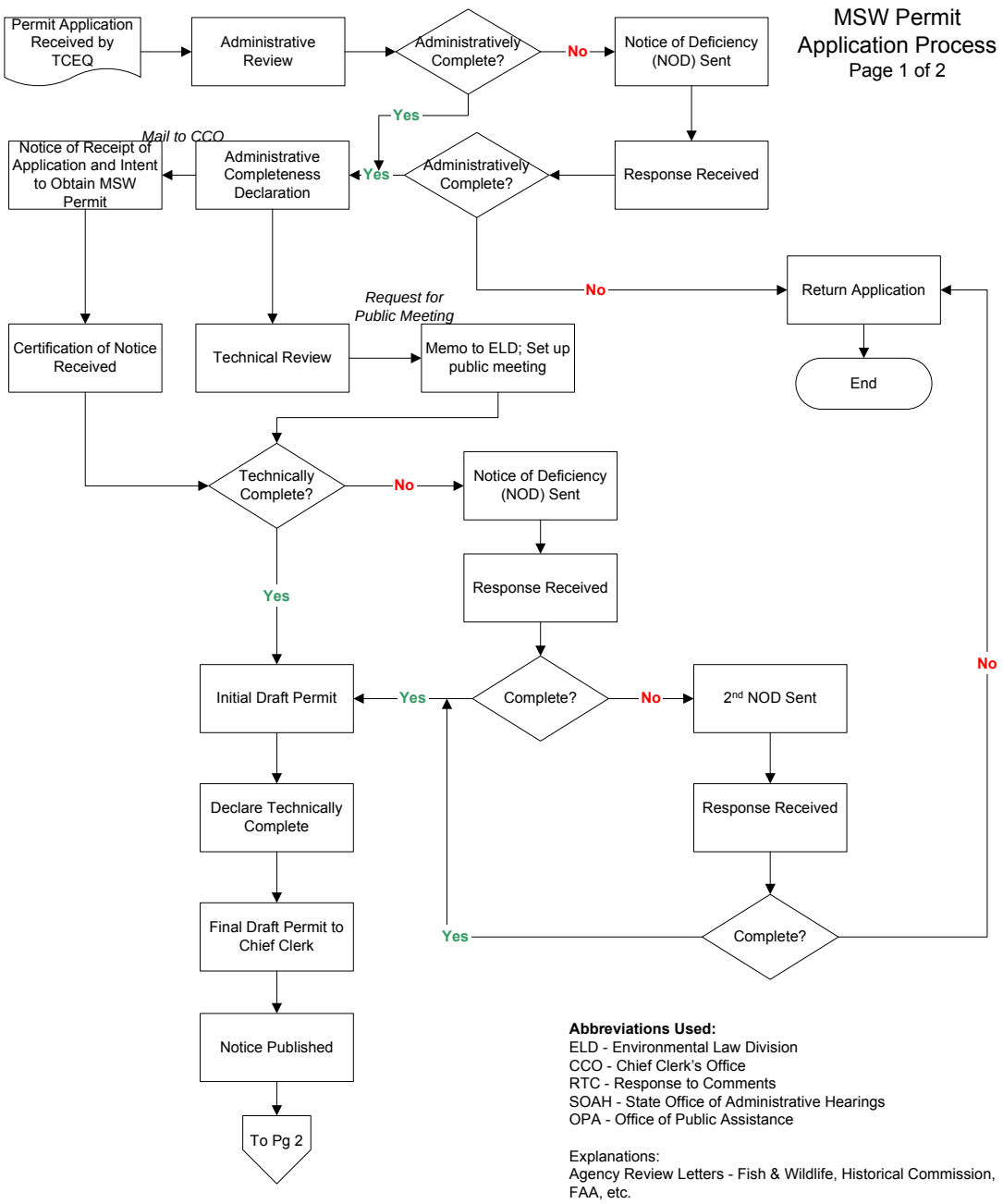
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

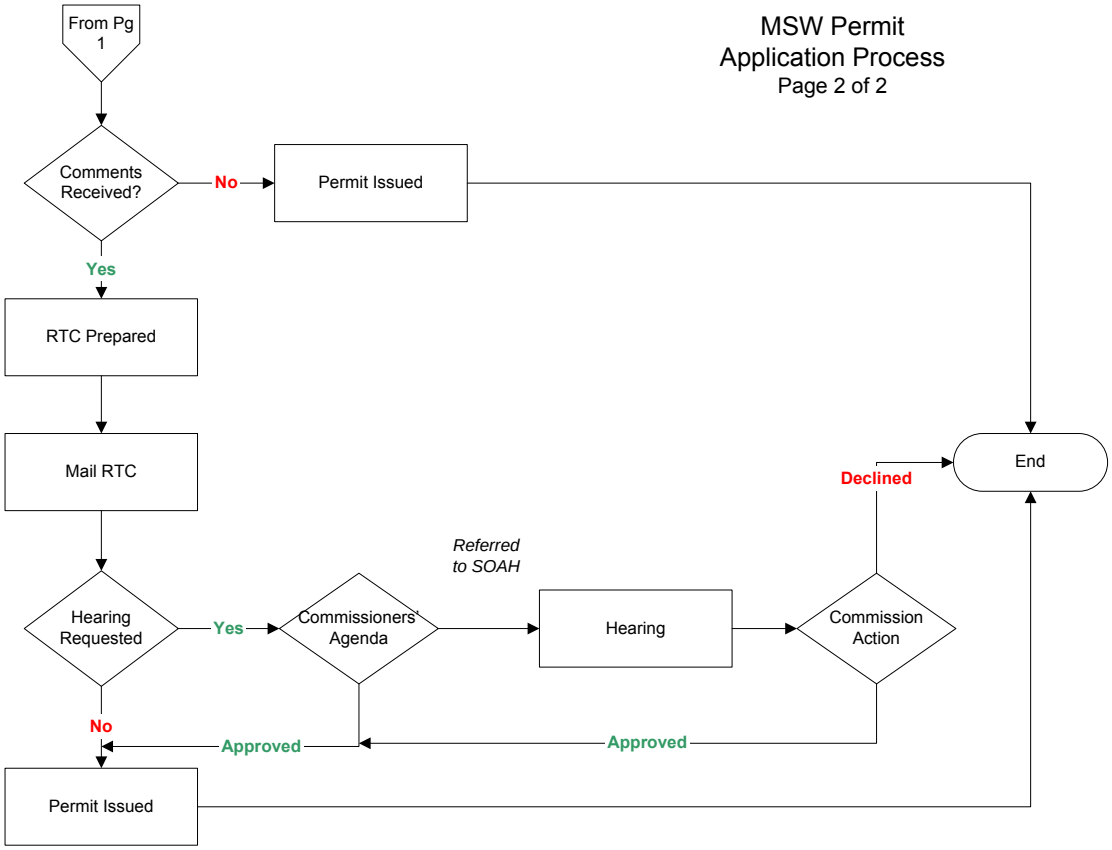
Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not applicable, please see Field Operations Question O for complaint-related data related to this program.


MSW Registration Application Process
Registration Application Received by TCEQ
Administrative Review
Preliminarily Complete?
No
Notice of Deficiency (NOD) Sent
Response Received
Yes
Prepare Notice Package to Chief Clerk
Yes
Administratively Complete?
No
Return Application
Chief Clerk Mails Applicant Notice of Opportunity for Public Meeting to Publish
Technical Review
End
No
Notice of Deficiency (NOD) Sent
Technically Complete?
Response Received
Public Meeting Requested?
No
Technically Complete Registration Mailed to Applicant
Yes
Complete?
No
2nd NOD Sent
No
Yes
Contact ELD to request Public Meeting
Response Received
OPA Conducts Public Meeting
Final Draft Registration to Chief Clerk
Yes
Complete?
Informal Response to Public Comments from Public Meeting
Commissioners' Agenda
Executive Director Issues Registration
Motion to Overturn Requested?
Yes
Office of General Council
Set on Agenda
RTC to Chief Clerk
No Action
Decision Stands
Chief Clerk Mails RTC
No


MSW Permit Application Process
Page 1 of 2
Permit Application Received by TCEQ
Administrative Review
Administratively Complete?
No
Notice of Deficiency (NOD) Sent
Response Received
Yes
Administratively Complete?
Yes
Administrative Completeness Declaration
Mail to CCO
Notice of Receipt of Application and Intent to Obtain MSW Permit
No
Return Application
End
Request for Public Meeting
Memo to ELD; Set up public meeting
Technical Review
Certification of Notice Received
Technically Complete?
No
Notice of Deficiency (NOD) Sent
Response Received
Yes
Complete?
No
2nd NOD Sent
Response Received
Complete?
No
Yes
Initial Draft Permit
Yes
Declare Technically Complete
Final Draft Permit to Chief Clerk
Notice Published
To Pg 2
Abbreviations Used:
ELD - Environmental Law Division
CCO - Chief Clerk's Office
RTC - Response to Comments
SOAH - State Office of Administrative Hearings
OPA - Office of Public Assistance
Explanations:
Agency Review Letters - Fish & Wildlife, Historical Commission, FAA, etc.


MSW Permit
Application Process
Page 2 of 2
From Pg 1
Comments Received?
No
Permit Issued
Yes
RTC Prepared
Mail RTC
Hearing Requested
Yes
Commissioners' Agenda
Referred to SOAH
Hearing
Commission Action
Declined
End
No
Approved
Approved
Permit Issued

Municipal Solid Waste Regional Planning Grant Program	
FY 08 Grant Allocation	
Council of Governments	**FY 2008**
Alamo Area Council of Governments	$882,010.00
Ark-Tex Council of Governments	178,847.00
Brazos Valley Council of Governments	170,000.00
Capital Area Council of Governments	664,530.00
Central Texas Council of Governments	181,935.00
Coastal Bend Council of Governments	326,352.00
Concho Valley Council of Governments	170,000.00
Deep East Texas Council of Governments	226,198.00
East Texas Council of Governments	374,070.00
Golden Crescent Regional Planning Commission	170,000.00
Heart of Texas Council of Governments	209,484.00
Houston-Galveston Area Council	2,120,920.00
Lower Rio Grande Valley Development Council	407,095.00
Middle Rio Grande Development Council	170,000.00
Nortex Regional Planning Commission	181,041.00
North Central Texas Council of Governments	2,410,208.00
Panhandle Regional Planning Commission	384,780.00
Permian Basin Regional Planning Commission	318,683.00
Rio Grande Council of Governments	371,124.00
South East Texas Regional Planning Commission	183,347.00
South Plains Association of Governments	262,942.00
South Texas Development Council	170,000.00
Texoma Council of Governments	170,000.00
West Central Texas Council of Governments	282,758.00
	$10,986,324.00

Note: each Council of Government spends everything it receives.

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Occupational Licensing
Location/Division	1st Floor / Building D / Operating Licensing Section / Permitting and Registration Support Division / Office of Permitting and Registration
Contact Name	Kelly Zrubek
Actual Expenditures, FY 2008	$2,685,126
Number of FTEs as of August 31, 2008	20

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Occupational Licensing Program protects the public's health, safety, and economic welfare by ensuring that environmental professionals are qualified and competent, and adhere to established professional standards.

The program licenses individuals engaged in environmental occupations. Regulation in the form of licensing is necessary to ensure qualified individuals and entities are performing safe and effective operations and to prevent adverse impacts on human health and the environment.

The program:

- issues occupational licenses and registrations for environmental occupations;
- reviews applications for licenses to verify education and work experience and completion of required training;
- issues deficiency letters to applicants who do not meet the education or work experience requirements;
- administers and grades licensing examinations;
- analyzes exams and sends a letter informing applicants who fail the exam;
- establishes standards to train and certify visible emissions evaluators;
- reviews and approves training courses relating to the operation and maintenance of Stage II vapor recovery systems;
- reviews and approves training courses and training providers for all licensing programs;
- develops licensing examinations; and
- maintains license and registration records.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

During FY 08 the program:

- received 24,798 license and registration applications;
- administered 12,015 examinations for licenses; and,
- issued and/or renewed 22,014 licenses and registrations.

Number	Type	FY 08 Performance Measure	Percent of Annual Target
01-02-04.01	output	Number of applications for occupational licensing	103.41
01-02-04.02	output	Number of examinations administered *(key)*	111.25
01-02-04.03	output	Number of licenses and registrations issued	95.71
01-02-04.01	efficiency	Average annualized cost per license and registration	102.78

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

2001

- The 77th regular legislative session passed HB 3111 which added Chapter 37 to the Texas Water Code, consolidating administrative requirements and establishing uniform procedures for the occupational and registration programs administered by the TCEQ.

2009

- On July 1, 2009 the occupational licensing and training approval functions of the Compliance Support Division were transferred from the Office of Compliance and Enforcement to the Permitting and Registration Support Division in the Office of Permitting and Registration.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The program regulates more than 50,000 individuals and entities.

Table 1. Individuals and Entities Affected by TCEQ Occupation Licensing, FY08

Type of License	Number of Licenses
Backflow prevention assembly testers	4,745
Customer-service inspectors	1,774
Landscape irrigation (irrigators, inspectors, technicians)	6,262
Leaking petroleum storage tanks (corrective-action project managers and specialists)	1,374

Municipal solid waste facility supervisors	1,207
On-site sewage facilities, such as septic tanks (apprentices, designated representatives, installers, maintenance providers, maintenance technicians, site evaluators)	7,390
Public water system operators and operating companies	14,883
Stage II vapor recovery evaluator training and certification *(this activity certifies training providers not individuals)*	62
Underground storage tank on-site supervisors and contractors	1,437
Visible emissions evaluator training and certification *(this activity certifies training providers not individuals)*	2
Wastewater operators and operating companies	10,833
Water treatment specialists	595
Total Number of Licensees	**50,564**

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Refer to flowcharts *New Occupational License Application Process, New Occupational License Exam Process, License Renewal Application Process, Occupational Licensing Training Material Approval Process* following Question O.

The program is administered in accordance with the statutory requirements of:

- Texas Water Code, Chapters 26 and 37;
- Texas Health and Safety Code, Chapters 341 and 361;
- Texas Occupations Code, Chapters 1903 and 1904; and
- 30 TAC, Chapter 30, Subchapters A–L.

Table 2 lists the types of licenses the Occupational Licensing Program is responsible for and the applicable statutory authority.

Table 2. Occupational Licensing Program—Statutory Authority	
Texas Water Code	
Title 2. Water Administration	
Subtitle F. Occupational Licensing and Registration	
Chapter 37. Occupational Licensing and Registration	
Licensing Program	**Statutory Authority**
Backflow prevention assembly testers	Texas Health and Safety Code Section 341.033
Customer service inspectors	Texas Health and Safety Code Section 341.034

Landscape irrigation (irrigators, inspectors, technicians)	Texas Occupations Code Section 1903.251
Leaking petroleum storage tanks (corrective action project managers and specialists)	Texas Water Code Section 26.3573(j)
Municipal solid waste facility supervisors	Texas Health and Safety Code, Section 361.027; Federal Safe Drinking Water Act Amendments of 1996, Sections 1419(A), 1452
On-site sewage facilities, such as septic tanks (apprentices, designated representatives, installers, maintenance providers, maintenance technicians, site evaluators)	Texas Health & Safety Code, Section 366.071
Public water system operators and operating companies	Texas Health and Safety Code Section 341.034; Federal Safe Drinking Water Act Amendments of 1996, Sections 1419(A), 1452
Stage II vapor recovery representatives	Texas Water Code Sections 5.103 and 5.105; Texas Health and Safety Code Section 382.017
Underground storage tank on-site supervisor licensing and contractor registration	Texas Water Code Sections 26.342–45, 26.451–54
Visible emissions evaluator training and certification	40 CFR 60, Appendix A: Method 9—Visual Determination of Opacity of Emissions from Stationary Sources
Wastewater operator and operating companies	Texas Water Code Section 26.0301
Water treatment specialists	Texas Occupations Code Section 1904.051

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0468	Occupational Licensing Account	$1,022,970
0555	Federal Funds	$1,662,156

Strategy—A.2.4—Occupational Licensing

Rider 9—Appropriations Limited to Revenue Collection: Occupational Licensing

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

The Texas Department of Licensing and Regulation (TDLR) and the Texas State Board of Plumbing Examiners (TSBPE) also issue occupational licenses. The TCEQ, TDLR, and TSBPE all issue occupational licenses; however, the licenses are all different in nature and there is no overlap of jurisdiction.

Not all TCEQ licensing and training processes can be standardized under an umbrella licensing authority, like the TDLR, because of the unique training and specialization

oversight required for environmental occupational licenses as well as the federal primacy designation of related TCEQ programs. The TCEQ can perform public outreach and supply consumer information by alignment of occupational licensing and program area functions within the agency.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

TCEQ coordinates with TDLR and TSBPE to ensure that administrative requirements and procedures for the occupational and registration programs are administered in a uniform manner consistent with the Sunset Occupational Licensing Model, issued November 20, 2007.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The TCEQ approves training that providers use to educate professionals who engage in activities regulated by the TCEQ.

- *Cities:* Amarillo, Arlington, Austin, Dallas, Fort Worth, Frisco, Grand Prairie, Houston, Irving, Odessa, San Antonio, Texarkana, Waco

- *River Authorities:* Brazos River Authority, Guadalupe-Blanco River Authority, Lower Colorado River Authority, Trinity River Authority

- *Municipal Utility Districts:* Tarrant County MUD No. 1

- *Council of Governments:* North Central Texas Council of Governments

- *Higher Education:* Amarillo College, Austin Community College, Brookhaven College, El Paso Community College, Houston Community College, Dallas County Community College, Tarrant County Community College, Texas A&M University (Texas Engineering Extension Service)

The TCEQ has a Memorandum of Agreement with the North Central Texas Council of Governments that allows regional staff from the TCEQ's Dallas–Fort Worth Office to use council facilities to administer licensing exams monthly.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**

- **a short description of any current contracting problems.**

Amount	Number of Contracts	General Purpose
$70,857.43	2	Professional-Temporary Services

Program management routinely meet with contracted personnel to review progress and give direction and input on significant issues.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

The TCEQ does not have the authority to consider extenuating circumstances regarding the grace period for renewing expired occupational licenses and registrations it administers. The TCEQ has received requests to extend the deadline because of a death in the family, for medical reasons, and for other extenuating circumstances. This limitation has led to a number of customer complaints. Amend Texas Water Code Section 37.006 to extend the grace period from 30 to 60 days and repeal the current limit on renewal fees for expired licenses.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

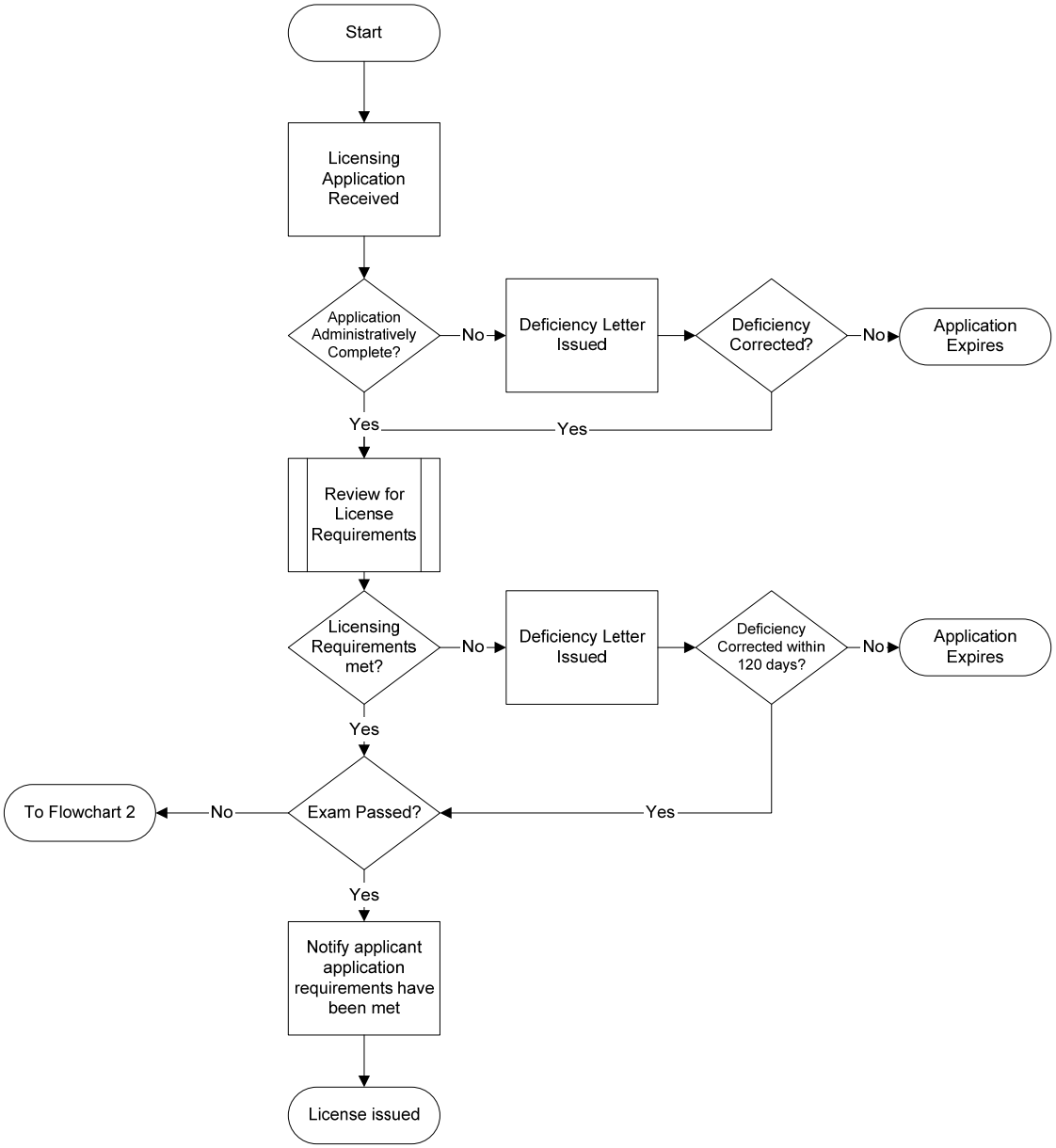
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

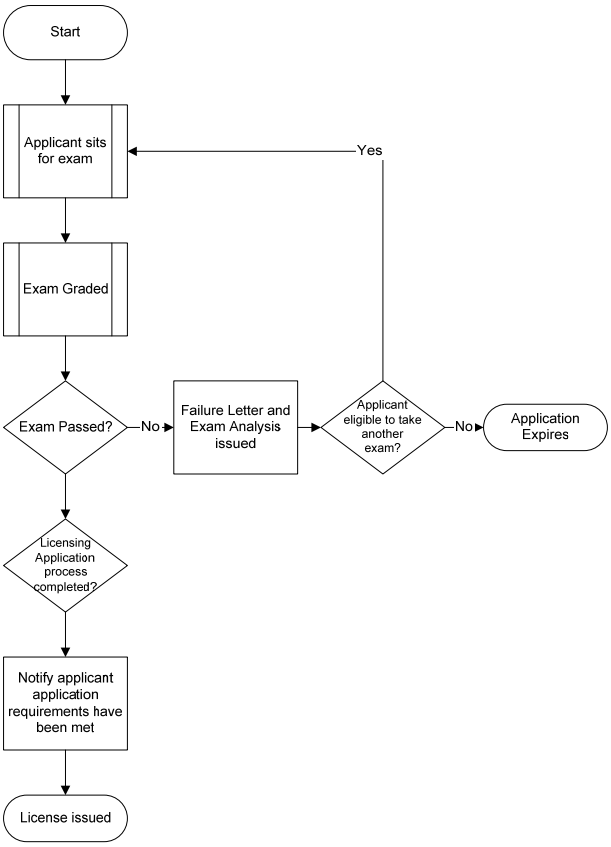
O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Texas Commission on Environmental Quality Occupational Licensing Program Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	49,637	50,564
Total number of regulated entities	Not applicable	Not applicable
Total number of entities inspected	Not applicable	Not applicable
Total number of complaints received from the public	6	0
Total number of complaints initiated by agency	1	0
Number of complaints pending from prior years	0	0
Number of complaints found to be non-jurisdictional	0	0
Number of jurisdictional complaints found to be without merit	0	0
Number of complaints resolved	7	0
Average number of days for complaint resolution	60	Not applicable
Complaints resulting in disciplinary action:	1	0
administrative penalty	Not applicable	Not applicable
Reprimand	0	0
Probation	1	0
Suspension	0	0
Revocation	0	0
Other	0	0

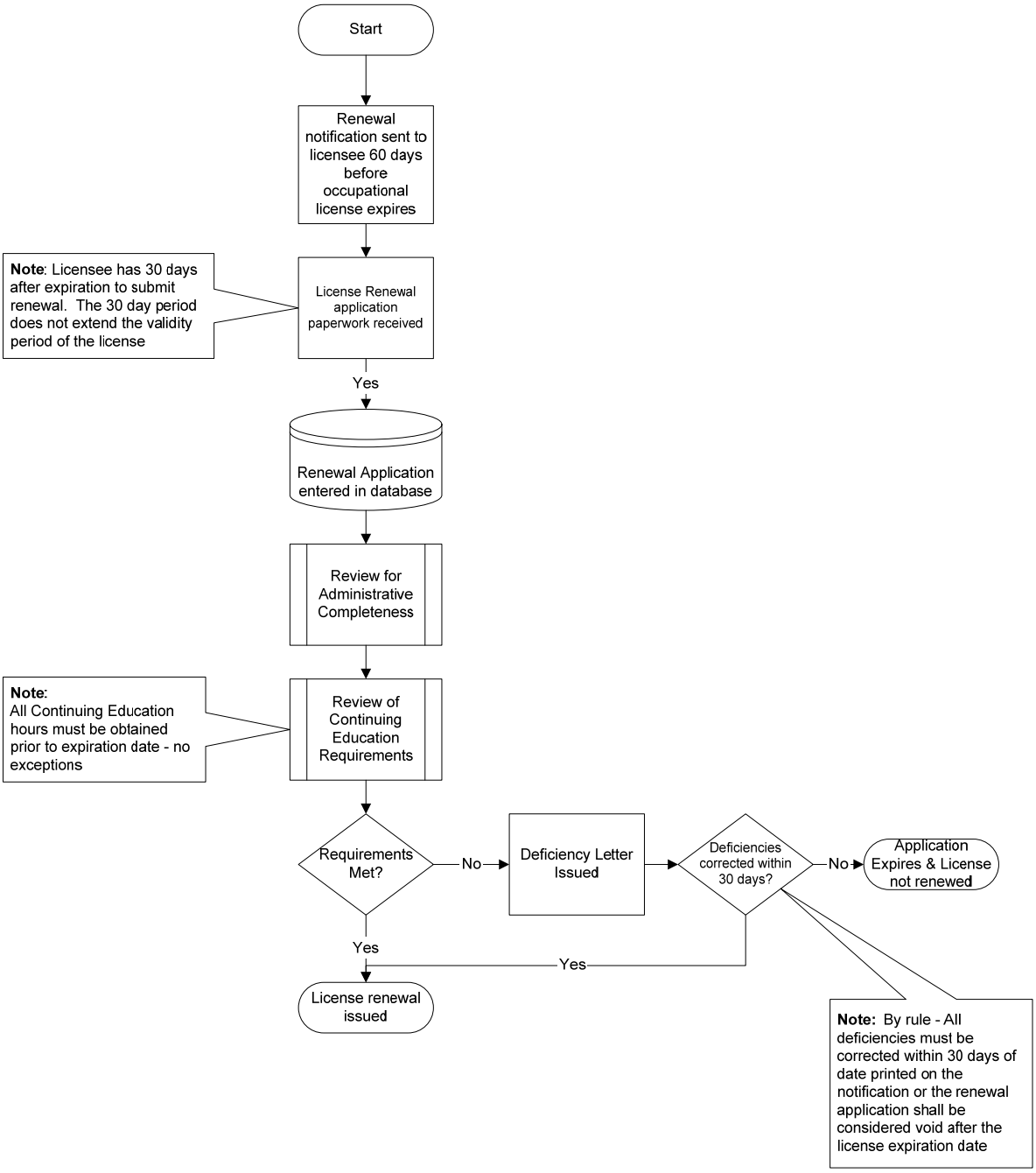
New Occupational License Application Process



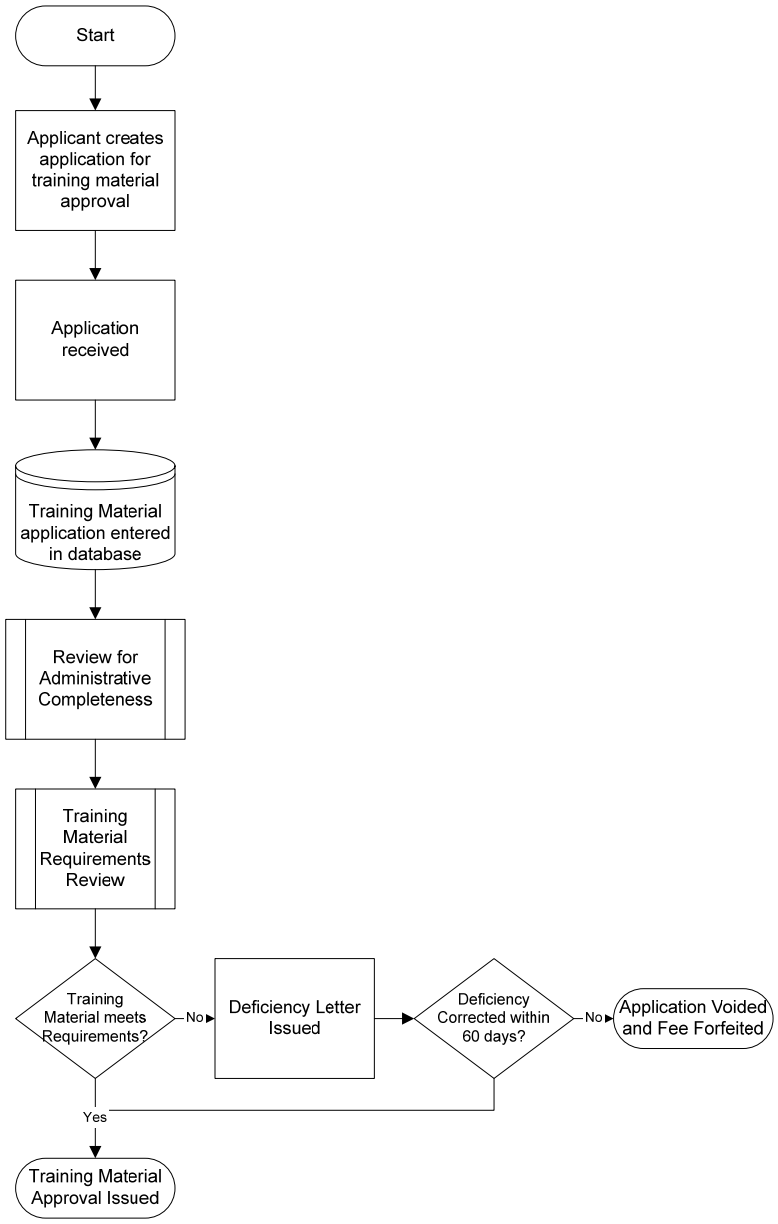
New Occupational License Exam Process



License Renewal Application Process



Occupational Licensing Training Material Approval Process



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Permitting and Registration Support
Location/Division	1st Floor / Building D / Permitting and Registration Support Division / Office of Permitting and Registration
Contact Name	Kelly Zrubek
Actual Expenditures, FY 2008	$3,578,588
Number of FTEs as of August 31, 2008	64

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Permitting and Registration Support (PRS) Program performs a wide variety of duties involving regulation, data quality management, information technology, organization, and administrative support for various programs within the TCEQ.

The program performs the following tasks:

- registering and authorizing petroleum storage tanks (PSTs), dry cleaners, industrial and hazardous waste (IHW), used oil, sludge transporters, medical waste, and enclosed containers;
- managing the agency's Central Registry application;
- analyzing business area processes and document requirements;
- designing and developing IT solutions and providing technical liaison support; and
- serving as the Office of Permitting and Registration's representative and voting member on the Information Technology Work Group and other major technical agency committees.

Petroleum Storage Tanks

The program has a PST Registration Team that maintains registration and construction notification information for underground and aboveground petroleum storage tanks. The team also processes state mandated self-certifications and proof of financial assurance, which result in the issuance of a delivery certificate that authorizes the facility to receive deliveries of product into underground storage tanks (USTs).

Dry Cleaners
The program registers and collects registration and solvent fees from distributors of dry cleaning solvents, dry cleaner facilities, drop stations, and current and former property owners. The fees are paid into the Dry Cleaner Remediation Fund, which is used to administer the registration of facilities and clean up contaminated sites.

IHW Registration and Reporting
The program maintains IHW registration and reporting information for generators and transporters. The Environmental Protection Agency (EPA) has authorized the program to assign EPA ID numbers and submit information on handlers twice a week to the EPA. The program tracks annual waste summaries from IHW generators and is responsible for compiling and submitting a biennial report to EPA Region 6.

Used Oil
The program maintains registration and reporting information for used oil collection centers, and handlers of used oil and used oil filters.

Sludge Transporter
The program maintains sludge transporter registration and reporting information for transporters of liquid wastes.

Enclosed Containers
The program maintains enclosed container permit by rule and reporting information for both stationary compactors and special collection routes.

Medical Waste
The program maintains registration by rule and reporting information for transporters, self-transporters, and mobile on-site treaters of medical waste.

The program also provides technical assistance and outreach for the IHW Registration and Reporting, used oil, sludge transporter, enclosed container, and medical waste regulated communities.

Central Registry
The program's Central Registry Team is responsible for operations related to the agency's Central Registry—a single centralized area for the TCEQ to record common information about its regulated community, such as company names, addresses, and telephone numbers.

Process Automation
The Process Automation Team (PAT) assists in process analysis, requirements documentation, data model design, and design and development of information technology solutions. The PAT supports major TCEQ applications such as the State of Texas Environmental Electronic Reporting System (STEERS), the Authorization and Remediation Tracking System (ARTS), the Internal Data Application (IDA), and the agency electronic payment application (ePay), as well as numerous other technology and data publication

applications.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Performance Measures

Number	Type	FY 08 Performance Measure	Percent of Annual Target
03-01-03.02	output	Number of quarts of used oil diverted from landfills and processed (in millions)	129.94
04-01-01.01	output	Number of petroleum storage tank self-certifications processed	91.62

Used oil collection varies with economic and business conditions. Collection centers voluntarily report the amount of used oil they generate and recycle. In FY 08, they voluntarily reported 21.4 million quarts of used oil, which pushed performance above projections for the fiscal year.

Self-certifications processed during FY 08 fell below the projected numbers as a result of a new requirement to file proof of financial assurance with the annual self-certification that resulted in the return of many submissions and a delay in processing forms.

Petroleum Storage Tanks

Since its inception, the program has registered 37,538 tank owners at 69,941 facilities with 167,660 underground and 28,734 aboveground storage tanks.

Approximately 32,000 amendments were processed in FY 08. On average, 17,000 self-certifications with proof of financial assurance are processed annually. Construction notification is required for any new tank being placed in service and for upgrades and repairs; in FY 08 the TCEQ received 1,979 construction notifications. In addition, the program responded to 21,038 phone calls from the regulated community and interested parties.

Dry Cleaners

The number of registrations for FY 08 was 3,301. In addition, the program responded to 5,578 phone calls from the regulated community and interested parties.

IHW Registration and Reporting

The program processes waste summary reports annually, allowing registrants to submit their reports via U.S. mail or through STEERS. In calendar year 2008, the program processed 4,067 annual waste summaries. The regulated community has an efficiency option of updating notices of registrations via STEERS.

Used Oil
The program processes renewals biennially and reports annually. The program regulates approximately 2,268 used oil collection centers and approximately 405 handlers of used oil and oil filters.

Sludge Transporter
The program regulates 1,323 sludge transporters. The program accepts initial applications, updates to notices of registration, notification requests to temporarily store sludge waste, and cancellation requests.

Enclosed Containers
The program has 19 active permits by rule.

Medical Waste
The program has 41 active registrations by rule.

Central Registry
There are 399,541 regulated entities and 278,588 customer records in the TCEQ's Central Registry. The TCEQ has 246 Central Registry users including regulatory program and field operations personnel with the ability to edit and update information.

Process Automation

- **STEERS:** There are 9,963 STEERS users reporting data for nine program areas. The total number of STEERS submissions through August 2009 is 336,700.

- **ARTS:** There are 115,457 permits and registrations in ARTS.

- **ePay:** From its inception in September 2004 through August 2009 there have been 51,986 transactions using ePay.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Petroleum Storage Tanks
1986

- The Texas Water Commission is designated to receive and process UST registrations.

1987

- SB 779 authorizes the Texas Water Commission to develop and administer a comprehensive underground storage tank regulatory program.

1989

- HB 1588 authorizes limited regulation of aboveground storage tanks; establishes the Petroleum Storage Tank Remediation Fund providing financial assistance to owners and

operators of leaking petroleum storage tanks; imposes a bulk delivery fee to finance the program; and establishes a registration program for contractors who perform corrective action.

1995

- Texas receives EPA approval to allow the state program to operate in lieu of the federal regulatory program.

1998

- Eligibility ends for owners and operators to report a release and receive reimbursement for cleanup under 30 TAC Chapter 334, Subchapter H.

1999

- HB 2815 requires owners and operators of certain regulated underground storage tanks to certify compliance with applicable TCEQ rules to receive deliveries of product.

2007

- HB 3554 extends the PST Reimbursement Program for eligible Leaking Petroleum Storage Tank (LPST) sites through August 2012.

Dry Cleaners

2003

- The Dry Cleaner Program is created by HB 1366 and codified in Texas Health and Safety Code Chapter 374. This law establishes new environmental standards for dry cleaners and a remediation fund to assist with the assessment and remediation of contamination caused by dry cleaning solvents.

2005

- HB 2376 authorizes removal of the five-year ownership requirement for landowner eligibility for the remediation program, revises the fee structures, extends the deadline for opting out of the Dry Cleaner Facility Release Fund, and limits the applicability of some performance standards.
- SB 444 extends the deadline for opting out of the Dry Cleaner Facility Release Fund to February 28, 2006, and credits some dry cleaners that opted out for previously paid fees.

2007

- HB 3220 creates registration requirements for current and former property owners who wish to claim benefits from the Dry Cleaner Remediation Fund; allows liens against property for past due registration fees and cleanup costs that occurred while fees were in arrears; and, prohibits the use of perchloroethylene at sites where the commission has completed cleanup.

IHW Registration and Reporting
1990

- Texas receives final authorization to administer the federal Resource Conservation and Recovery Act program, including registration requirements.

Used Oil
1994

- Used oil filters are banned from landfill disposal by TCEQ rule; the ban is subsequently added to the Texas Health and Safety Code in 1995.

1997

- The EPA delegates the used oil program to the TCEQ. Since then the program remains largely unchanged, except that its emphasis has shifted from education more toward regulation.

1999

- TCEQ authority regarding used oil filters is clarified in HB 2619.

Medical Waste
1989

- The Texas Department of Health promulgates medical waste regulations, including registration requirements.

1992

- The Municipal Solid Waste Program is transferred from the Texas Department of Health to the Texas Water Commission, including registration of medical waste transporters and permitting of medical waste management facilities.

Process Automation
1999

- The TCEQ Information Strategic Plan (ISP) is created.

2003

- The original Process Automation Team is reorganized to better support the Office of Permitting and Registration through one centralized team.

2005

- The Registration and Reporting Team is brought into the Permit and Registration Support Division to streamline registrations and authorizations.

2007

- ISP revision further improves management of information at the TCEQ, including better tracking of registration and permit management, greater public access to TCEQ data and services, and greater access to information through electronic reporting systems and enhanced information security.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Petroleum Storage Tank
The program affects owners and operators of regulated storage tanks, as well as current and former owners of property where a release has occurred. The program serves the public and facilities that store regulated petroleum products and hazardous substances. Included in TCEQ's registrations are 167,660 underground tanks and 28,734 aboveground tanks at 69,941 facilities. Generally, application to, or registration with, the program is the only requirement for receiving services.

Dry Cleaners
The program serves 1,923 owners who have registered 3,301 dry cleaning facilities and drop stations with the TCEQ; 178 current or former property owners have registered, representing 190 sites where a release from a facility has or may have occurred.

IHW Registration and Reporting
The program serves all facilities, public and private, that manage industrial or hazardous waste, whether permitted or exempt. Approximately 6,000 facilities are registered.

Used Oil
The program serves persons or companies that collect, process, and dispose of regulated used oil and used oil filters. Approximately 405 handlers of used oil or used oil filters and 2,268 used oil collection centers are regulated and served by this program.

Sludge Transporters
The program serves persons or companies that transport sludge waste. There are approximately 1,323 active registrants in the Sludge Transporter Program.

Enclosed Containers
The program serves persons or companies that compact or transport waste in enclosed containers. There are four active permits by rule for special collection routes and 15 active permits by rule for stationary compactors.

Medical Waste
The program serves persons or companies that transport regulated medical waste from homes or offices to disposal facilities. The program serves four regulated on-site treaters of medical waste in vehicles, nine medical-waste self-transporters and 25 medical waste transporters.

Central Registry and Process Automation
These two teams benefit all external TCEQ customers, as well as internal management and staff by continually improving access to data collected and managed by the TCEQ.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

In FY 08, the program was comprised of an Administration unit and two sections; the Process Automation / Central Registry Section and the Registration and Reporting Section. Refer to flowcharts *Petroleum Storage Tanks Overview, Dry Cleaning Overview, IHW Overview, Medical Waste Transport Overview, Used Oil Overview, Enclosed Containers Overview and Sludge Overview* showing processes found following Question O.

Petroleum Storage Tanks
The PST Program is administered by two separate offices within the TCEQ: Petroleum Storage Tank Registration in the Office of Permitting and Registration, and LPST and PST Technical Standards in the Office of Compliance and Enforcement.

Dry Cleaners
The Dry Cleaner Program is administered in separate offices. The Dry Cleaner Registration Team is in the Office of Permitting and Registration and the Dry Cleaner Remediation Program is in the Office of Compliance and Enforcement. The Dry Cleaner Registration Team administers the registration of facilities, drop stations, distributors, and property owners.

IHW Registration and Reporting
The IHW registration process begins when a form is received from an organization that is planning to manage industrial or hazardous waste. A registration number is assigned and a notice of registration is prepared, which lists all waste management units and waste that is generated and sent to the facility.

Used Oil, Sludge Transporters, Enclosed Containers, Medical Waste
A registration form is received from the applicant and a registration number or a permit by rule ID number is assigned upon completion of the review of the applications. The applicant is notified.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0146	Used Oil Recycling Account	$259,300
0151	Clean Air Account	$189,362
0153	Water Resource Management Account	$561,666
0549	Waste Management Account	$1,194,414
0550	Hazardous and Solid Waste Remediation Fee	$510,724
0555	Federal Funds	$178,096

0655	Petroleum Storage Tank Remediation	$456,339
5093	Dry Cleaning Facility Release	$219,816
0001	General Revenue	$8,871

Strategies:
A.1.3—Waste Assessment and Planning
A.2.1—Air Quality Permitting
B.1.1—Safe Drinking Water
B.1.2—Water Utilities Oversight
D.1.2—Hazardous Materials Cleanup
A.2.3—Waste Management and Permitting
D.1.1—Storage Tank Administration and Cleanup

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

Petroleum Storage Tanks
The EPA has determined that TCEQ's state rules are no less stringent than the federal rules and has granted Texas state program approval.

Process Automation
The Information Resources Division (IRD) within the TCEQ Office of Administrative Services provides services similar to those provided by the PAT, which has specialized business knowledge and experience required for the IT demands of the Office of Permitting and Registration.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Petroleum Storage Tanks
The EPA's Office of Underground Storage Tanks has delegated, through a Memorandum of Agreement, to the State of Texas the responsibility for implementing the Subtitle I Underground Storage Tank Program under the Resource Conservation and Recovery Act. The EPA serves as an information resource and supports the state with grants from the Leaking Underground Storage Tank Trust Fund.

Process Automation
The PAT coordinates with the IRD to ensure that requirements and procedures for IT projects are administered in an uniform manner consistent with standards of the Department of Information Resources Statewide Project Delivery Program. The PAT and IRD developers work together to leverage resources on projects when possible.

To ensure no duplication of efforts, all new IT initiatives must undergo Information Technology Work Group approval.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

A local, state, or federal unit of government may interact with the program when the unit's activities are subject to registration or reporting requirements under one of the activities the program administers.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

None

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

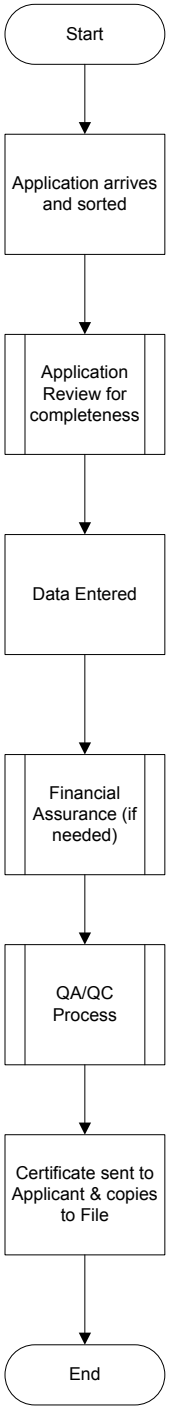
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

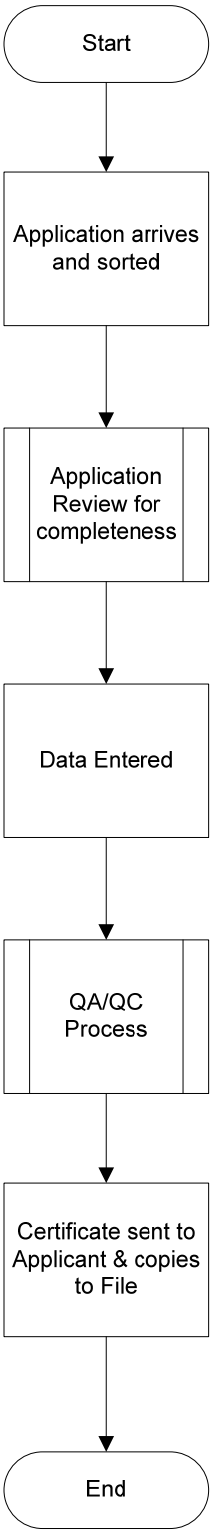
O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not applicable, please see Field Operations Question O for complaint-related data for this program.

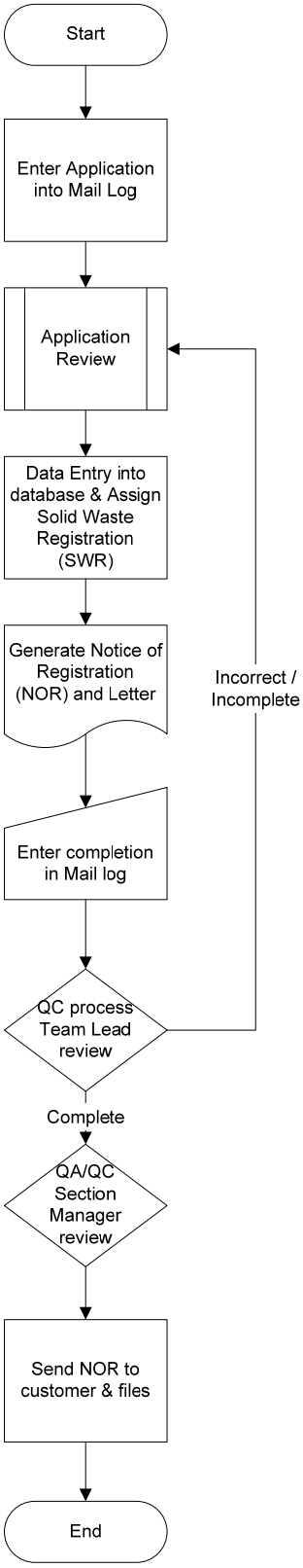
Petroleum Storage Tanks Overview



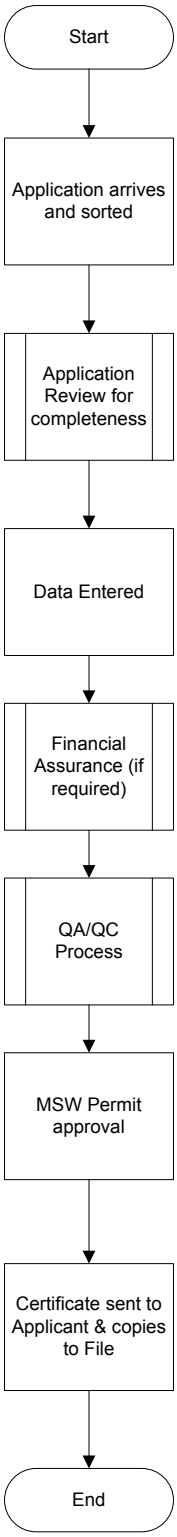
Dry Cleaning Overview



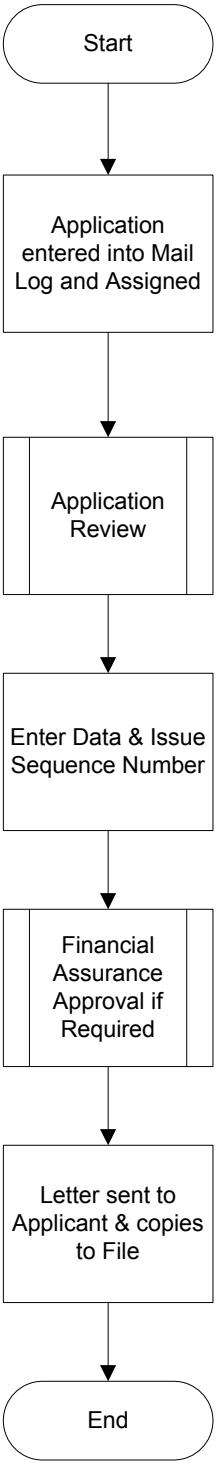
IHW Overview



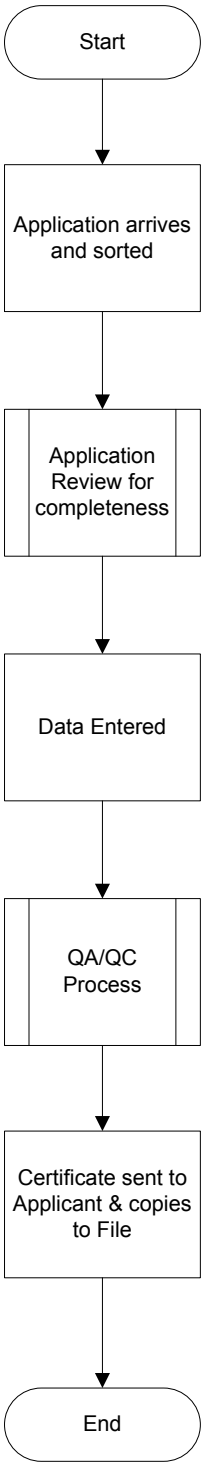
Medical Waste Transport Overview



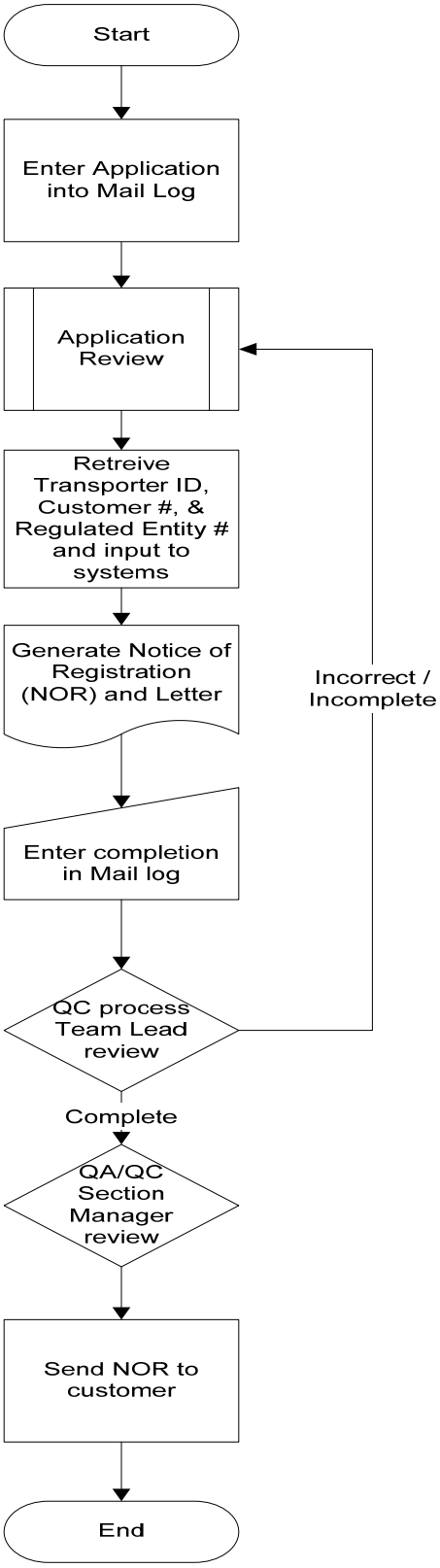
Used Oil Overview



Enclosed Containers Overview



Sludge Overview



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Public Drinking Water
Location/Division	3rd Floor / Building F / Public Drinking Water Section / Water Supply Division / Office of Permitting and Registration
Contact Name	Todd Chenoweth
Actual Expenditures, FY 2008	$7,237,122
Number of FTEs as of August 31, 2008	44.5

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Public Drinking Water (PDW) Section administers the requirements of the Environmental Protection Agency's (EPA) federal Safe Drinking Water Act (SDWA). This includes:

- ensuring that public water systems (PWSs) supply safe and healthy drinking water to Texans;
- determining PWS compliance with applicable federal chemical and microbial drinking water standards;
- maintaining the inventory of PWSs in Texas;
- implementing the Texas Source Water Assessment and Protection Program, which includes an assessment of potential contamination of water sources;
- evaluating innovative and non-standard treatment technologies for PWSs;
- technical assistance for backflow prevention and cross-connection control;
- overseeing the Texas Optimization Program, which sets individual and combined filter-monitoring requirements for turbidity, specifically requirements for third-party comprehensive performance evaluations; and
- ensuring that all community PWSs send their customers an annual report of drinking-water quality called a *consumer confidence report*.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

FY 2008 Outcome Measures for Strategy Code 02-01-01:	% of Annual Target
Percent of Texas population served by PWSs which meet drinking water standards (*key*) (Outcome 01)	102.13
Percent of Texas PWSs protected by a source water protection program (Outcome 02)	101.05
Percent of Texas population served by PWSs protected by a program which prevents connection between potable and non-potable water sources (Outcome 03)	96.02

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

2002

- The Water Sector Homeland Security Program was federally initiated via the Bioterrorism Act of 2002, which specifically denoted the responsibilities of the EPA and the water sector.

2004

- The PDW Section used funds from a counterterrorism grant to support the statewide coordination of public drinking-water security.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The PDW Section ensures that the approximately 6,800 PWSs in Texas (estimated to serve 92 percent of Texans) follow the requirements of the SDWA. The remaining eight percent of the population is served by private sources that do not meet the regulatory definition of a PWS.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The PDW Section achieves its required functions and deliverables through activities which include:

- determining compliance for various chemical or microbial contaminants and collecting chemical samples for regulated contaminants (refer to flowchart *Public Drinking Water Compliance Determination* following Question O);

- maintaining inventory data for PWSs in order to forward those data to the EPA;

- reviewing and approving or disapproving requests from PWSs to operate some innovative treatment that is not explicitly covered in 30 TAC Chapter 290, Subchapter D, through an exception (refer to flowchart *Exceptions and Alternate Capacity Requirement* following Question O);

- overseeing the Total Coliform Rule and Disinfectant Level Quarterly Operating Report Program to ensure safe drinking water;

- maintaining a program of cross-connection control to ensure that contaminants do not enter a PWS distribution system through a connection of a contaminant source and the system's pipes; and

- implementing the Texas Source Water Assessment and Protection Program. This includes assessing potential contamination of water sources and using those results to develop best management practices for PWSs.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0153	Water Resource Management Account	$1,407,023
0555	Federal Funds	$3,933,945
0777	Interagency Contracts	$1,885,122
0001	General Revenue	$11,032

Strategy—B.1.1—Safe Drinking Water

Rider 35–Brush Control Study

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

The PDW Section, as well as other programs within the TCEQ, coordinates with the following agencies regarding drought-related issues (and with a representative of groundwater-management interests appointed by the governor):

- Governor's Division of Emergency Management
- Texas Water Development Board

- Texas Parks and Wildlife Department
- Texas Department of Agriculture
- Texas AgriLife Extension Service
- State Soil and Water Conservation Board
- Texas Department of Housing and Community Affairs
- Texas Department of Rural Affairs
- Texas Forest Service
- Texas Department of Transportation
- Texas Department of State Health Services
- Office of the State Climatologist of Texas
- Governor's Division of Economic Development and Tourism

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

To avoid duplication of effort on drought issues, the PDW Section participates on the Drought Preparedness Council, which meets monthly to discuss current drought issues. The council prepares a report which is distributed through the Governor's Division of Emergency Management.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

- EPA Region 6: The EPA Region 6 is responsible for the routine evaluation and support of the TCEQ's SDWA primacy program. Additionally, EPA and TCEQ are both support agencies for the National Response Framework.

- U.S. Department of Homeland Security (DHS): The PDW staff interacts with the DHS at exercises and drills for emergency response and recovery.

- Texas Water Development Board (TWDB): The TWDB and the PDW Section and the Utilities and Districts Section entered into a Memorandum of Agreement for information exchange and interagency assistance related to the State Revolving Fund. Additionally, the TCEQ coordinates with the Texas Natural Resources Information System of the TWDB to obtain images for mapping projects.

- Texas Parks and Wildlife Department (TPWD), Texas Department of Criminal Justice (TDCJ), Texas Department of Transportation (TxDOT): The TPWD, TDCJ, and TxDOT all own and operate public water systems. The PDW Section and all three agencies interact because of their ownership of those systems.

- Texas Department of Rural Affairs (TDRA): The PDW Section and the TDRA interact because public water systems use Community Development Block Grant funding for improvements.

- Texas Department of State Health Services (DSHS): The TCEQ and the DSHS interact via regulatory coordination of companies producing beverages and foods using their own sources of water.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

Total contract expenditures were $4,881,524 for FY 08. The 14 contracts were for:

1. Administration of an Internet-based system for rapid response to an emergency.
2. Collecting on the locations of critical facility infrastructure for future disaster response.
3. A baseline-data and chemical study in each major metropolitan area of the state.
4. Improvement of digital map resolution for planning and emergency response.
5. Security and emergency-response programs for smaller water systems.
6. Hiring interns and contract employees for projects related to drinking water.
7. Collecting compliance samples for PWSs.
8. Bottles and instructions for PWS sampling.
9. Data acquisition for the annual report.
10. Analyzing samples for special investigations.
11. Source Water Assessment and Protection Program augmentation, update, and support.
12. Assessments of source water protection and outreach to designated PWSs.

13. Microparticulate analysis to determine groundwater under the influence of surface water.

14. Logistics for the annual Public Drinking Water Conference.

The TCEQ's standard requirements for interagency contracts apply. The performing party of the contract is required to adhere to all applicable standards, principles, and guidelines detailed in Office of Management and Budget circulars A-21 and A-110, including those related to financial monitoring, auditing, and record keeping. Contracts are subject to the receipt and availability of funds appropriated by the legislature to the TCEQ. This funding is in place before the contract is executed through TCEQ budgeting and planning process; accountability for funding is with the TCEQ budget staff and the contract manager. Performance is ensured via standard project-management practices including initiation, planning, execution, control and closure. Performance under the scope of work is assessed though a schedule and a set of deliverables, and projects are not considered complete nor accepted unless discrepancies are resolved.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

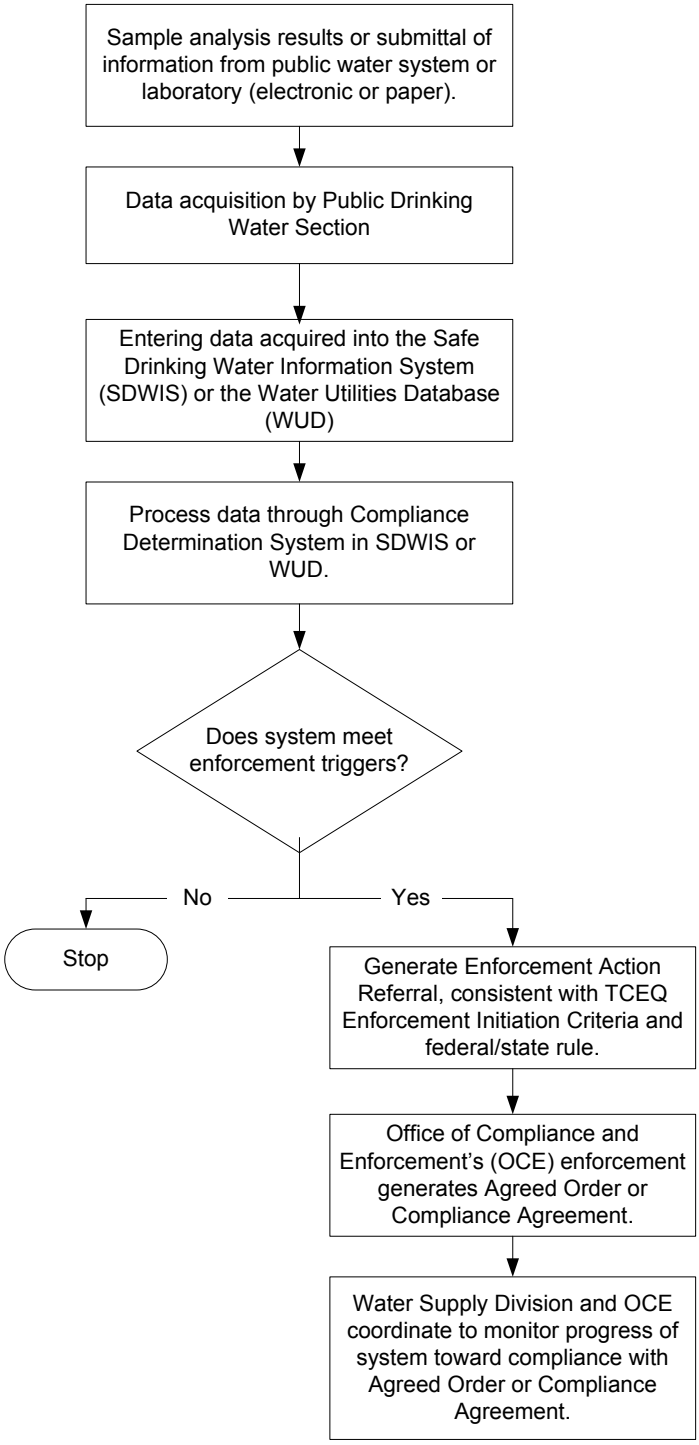
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

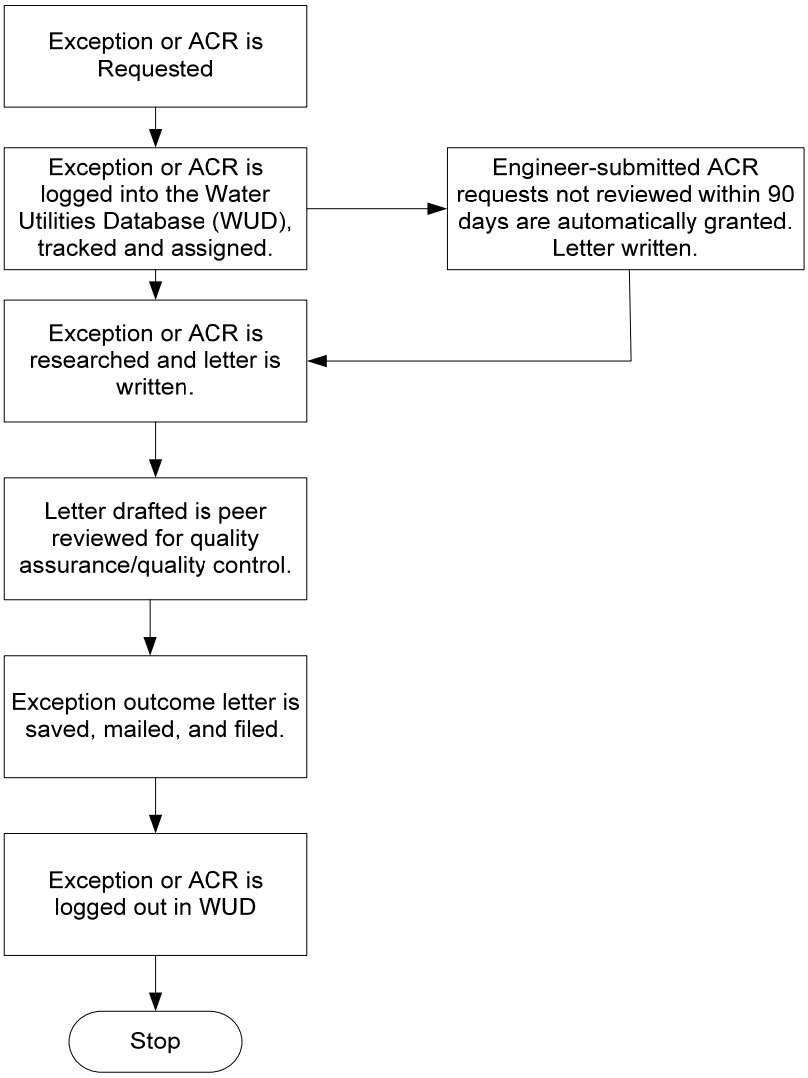
O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Texas Commission on Environmental Quality Public Drinking Water Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
Please see Field Operations Question O for additional complaint data related to this program.	**FY 2007**	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	6,720	6,761
Total number of entities inspected	Not applicable	Not applicable
Total number of complaints received from the public	Not applicable	Not applicable
Total number of complaints initiated by agency	Not applicable	Not applicable
Number of complaints pending from prior years	Not applicable	Not applicable
Number of complaints found to be non-jurisdictional	Not applicable	Not applicable
Number of jurisdictional complaints found to be without merit	Not applicable	Not applicable
Number of complaints resolved	Not applicable	Not applicable
Average number of days for complaint resolution	Not applicable	Not applicable
Complaints resulting in disciplinary action:	Not applicable	Not applicable
administrative penalty	Not applicable	Not applicable
Reprimand	Not applicable	Not applicable
Probation	Not applicable	Not applicable
Suspension	Not applicable	Not applicable
Revocation	Not applicable	Not applicable
Other	Not applicable	Not applicable

Public Drinking Water Compliance Determination



Exceptions and Alternate Capacity Requirement (ACR)



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Radioactive Materials Licensing and Permitting (including Underground Injection Control)
Location/Division	1st Floor / Building F / Radioactive Materials Division / Waste Permits Division / Office of Permitting and Registration
Contact Name	Susan Jablonski
Actual Expenditures, FY 2008	$2,389,175
Number of FTEs as of August 31, 2008	32.5

B. What is the objective of this program or function? Describe the major activities performed under this program.

The objective of the Radioactive Materials Licensing and Permitting Program is to protect the public and workers from unnecessary radiation exposure and to protect the environment from contamination resulting from the possession, storage, or disposal of radioactive materials.

The major activities performed under the Radioactive Materials Program are regulation, compliance and enforcement, and radioactive-material licensing of facilities storing, processing, or disposing of:

- uranium ore (including mining, extraction, and separation of ore);
- by-product material waste;
- low-level radioactive waste;
- non-oil- and -gas naturally occurring radioactive material; and/or
- radioactive waste generated from federal government activities.

Additionally, the program oversees the reclamation of historic burial sites for radioactive materials and other contaminated sites, including former uranium mines.

The objective of the Underground Injection Control (UIC) Program is to protect underground sources of drinking water (USDW) through permitting of underground injection of fluids. Regulation of wells used for underground injection must maintain the quality of fresh water to the extent consistent with public health and welfare and the operation of existing industries. The UIC Team is responsible for permitting of Class I, III, and V injection wells. Through permit issuance, the UIC Team regulates siting, construction, operation, maintenance, monitoring, and closure of the following classes of injection wells:

- Class I wells, which inject hazardous and non-hazardous wastewater below

USDWs;

- Class III wells, which inject fluids for recovery of minerals (e.g., uranium, sulfur, and sodium sulfate); and
- Class V (miscellaneous) wells, mostly shallow wells and primarily used in cleaning up groundwater contamination.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

The Radioactive Materials Program's effectiveness is shown by the absence of unnecessary radiation exposure and contamination of workers, the public, and the environment resulting from the possession, storage, and disposal of radioactive materials, accomplished through its work on the following:

- initial license applications processed: 2
- license amendments processed: 6
- license applications in progress: 2
- license amendments in progress: 6
- communications with licensees (sent and received): 191
- meetings with all applicants and licensees: 70
- inspections: 13

The program's performance measure (01-03-01) demonstrates that, at the end of FY 08, the licensing related to low-level radioactive waste licensing for the applicant Waste Control Specialists, LLC, had attained 90 percent of its annual performance target. The 10 percent shortfall resulted from a request from the applicant for an extension.

The UIC Program's effectiveness is shown by the absence of contamination in underground sources of drinking water, accomplished through its work on the following:

- UIC permits reviewed: 93.
- UIC permits issued: 68.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

1954

- Congress passes the Atomic Energy Act regulating radioactive material.

1959

- Congress enacts Section 274 of the Atomic Energy Act allowing states to enter into agreements to regulate radioactive material.

1963

- Governor Daniel signs an agreement making Texas an "Agreement State" under the authority of the U.S. Nuclear Regulatory Commission (NRC).

1980

- Congress passes the Low-Level Radioactive Waste Policy Act making individual states responsible for waste generated in their borders.

1982

- Governor Clements signs an amendment to the agreement with the NRC.

1985

- Congress passes the Low-Level Radioactive Waste Policy Amendment Act to encourage groups of states to form compacts to site regional disposal facilities.

1988

- Pursuant to the Hazardous and Solid Waste Amendments (1984), the EPA adopts more stringent requirements for injection of hazardous waste at 40 CFR 146, Subpart G, and 40 CFR 148.

1989

- The Texas Water Commission adopts rule amendments to ensure equivalence with the new EPA requirements for injection of hazardous waste.

1998

- The EPA adopts regulations banning certain types of Class V injection wells.

2001

- The Texas Natural Resource Conservation Commission amends rules to ensure equivalence with new EPA requirements for Class V injection wells.

2008

- Governor Perry appoints six people to the Texas Low-Level Radioactive Waste Disposal Compact Commission, which becomes active. Governor Douglas of Vermont follows by naming two people to serve.

2009

- The Radioactive Materials Program's inspection function is transferred to the TCEQ Office of Compliance and Enforcement—Homeland Security.

- The Radioactive Materials Division is moved under the Waste Permits Division and the UIC Team is moved from the Industrial and Hazardous Waste Section to the Radioactive Materials Division.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Radioactive Materials Program affects:

- approximately 250 workers at regulated radioactive-material facilities
- approximately 1,000,000 people living within 10 miles of a regulated facility
- approximately 23,500 acres of land where facilities are located
- 14 radioactive-material licensees
- 4 applicants

The Underground Injection Control Program affects:

- 106 Class I wells among 51 industrial facilities
- 7 permitted sites for Class III injection wells
- 36,000 Class V injection wells

The licensees, permittees, and applicants are qualified through licensing and permitting. Specific education, knowledge, and experience are required for designation of a radiation safety officer, who is the responsible person under a radioactive-materials license.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The Radioactive Materials and Underground Injection Control Programs accomplish their objectives through the licensing or permitting and regulatory oversight of *in situ* uranium recovery, radioactive waste processing and storage, low-level radioactive waste disposal, by-product material disposal, disposal of naturally-occurring radioactive waste materials that are not related to oil and gas production, and UIC wells. The main licensing and permitting processes are illustrated in the flowcharts *Radioactive Materials Division License Review Process* and *Underground Injection Control Program Application Review Process* following Question O.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0001	General Revenue	$606,579
0088	Low Level Radioactive Waste	$968,139
0549	Waste Management Account	$732,156
0555	Federal Funds	$82,301

Strategies:
A.3.1—Radioactive Materials Management
A.2.3—Waste Management and Permitting

Rider: 26 – Appropriation in Excess of the Biennial Revenue Estimate: Low-Level Radioactive Waste Disposal

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

- Texas Department of State Health Services: licensing for possession, use (including industrial, medical, and academic), and transportation of radioactive material.

- Texas Railroad Commission: permitting for the disposal of oil and gas naturally occurring radioactive material.

- Nuclear Regulatory Commission: radioactive-materials licensing and decommissioning of nuclear facilities; inspection and enforcement of NRC licensees.

- TCEQ Office of Compliance and Enforcement: regulatory inspection and ensuring compliance of regulated facilities in Texas for programs other than Radioactive Materials.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The Radioactive Materials Licensing and Permitting Division coordinates activities:

- Through Memoranda of Understanding and through the rulemaking process with the Texas Department of State Health Services and Texas Railroad Commission to delineate jurisdiction and coordination in the regulation and licensing for radioactive materials.

- Through an agreement between the Texas Governor and Nuclear Regulatory Commission to regulate the possession, storage, and disposal of radioactive materials and source-material recovery in Texas.

- Through regularly scheduled meetings and coordination with Field Operations Division inspectors and their supervisors on compliance and enforcement for radioactive-materials licensing.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Federal

- Nuclear Regulatory Commission: The Radioactive Materials Licensing and Permitting Division is an Agreement State Program with NRC federal oversight through concurrence on licensing and rulemaking, compatibility reviews, and an NRC Integrated Materials Performance Evaluation every four years.

- Federal Emergency Management Agency (FEMA): The Radioactive Materials Licensing and Permitting Division co-operates with FEMA to respond to emergencies at nuclear power plants.

- Homeland Security: The Radioactive Materials Licensing and Permitting Division works with Homeland Security to ensure that licensees are following Homeland Security protocol for handling certain radioactive materials that could be used malevolently.

State

- Texas Radiation Advisory Board (TRAB): The Radioactive Materials Licensing and Permitting Division reports to TRAB at each of its quarterly meetings and is available to answer questions about the program.

- Edwards Aquifer Authority and various municipal and county governments: The Radioactive Materials Licensing and Permitting Division staff reviewers of applications for authorizations of Class V injection well coordinate with these authorities as needed.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

- Total contract expenditures: $257,859.42

- Two interagency contracts: University of Texas and Texas A&M University

- Contracts are for regulatory support involving specific expertise in complex scientific, geologic, socioeconomic, financial, and engineering licensing matters, as well as expert testimony as needed to support the agency.

- The TCEQ program manager, with respect to the work requested under each contract, reviews invoices and submits a summary report of the services provided to ensure that the deliverables in the work orders were met in a timely manner. A contract specialist maintains a spreadsheet of each contract, reconciles with the Uniform Statewide Accounting System each invoice submitted for payment, and reconciles with the Texpenditure database.

- The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

The Radioactive Materials Licensing and Permitting Division has captured attention nationally and internationally. In May 2008, the commission issued a license for by-product disposal to Waste Control Specialists, LLC (WCS) and, in January 2009, approved an order concerning WCS's application for disposal of low-level radioactive waste. Once the license is issued, the WCS location will be the first site for disposal of class A, B, and C low-level radioactive waste built in the United States in more than 30 years. It will be built under the auspices of the Low-Level Radioactive Waste Policy Act, enacted in 1980 (and amended in 1985) to promote regional facilities for disposal of low-level radioactive waste.

The Radioactive Materials Licensing and Permitting Division facilitate extensive public interest in the form of electronic and telephone inquiries and through outreach, including public and stakeholder meetings and public presentations. The program had the lead on 20 public information requests and produced timely responses requiring 152 work hours in FY 08.

Due to the radioactive nature of the materials and waste regulated, The Radioactive Materials Licensing and Permitting Division has unique financial-assurance requirements including funds held for third-party facility closure, decommissioning, institutional control and custodial care, and potential necessary corrective action that may require intervention after a radioactive material license is terminated. The UIC Program also requires financial assurance for the plugging and abandonment of wells under its jurisdiction.

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

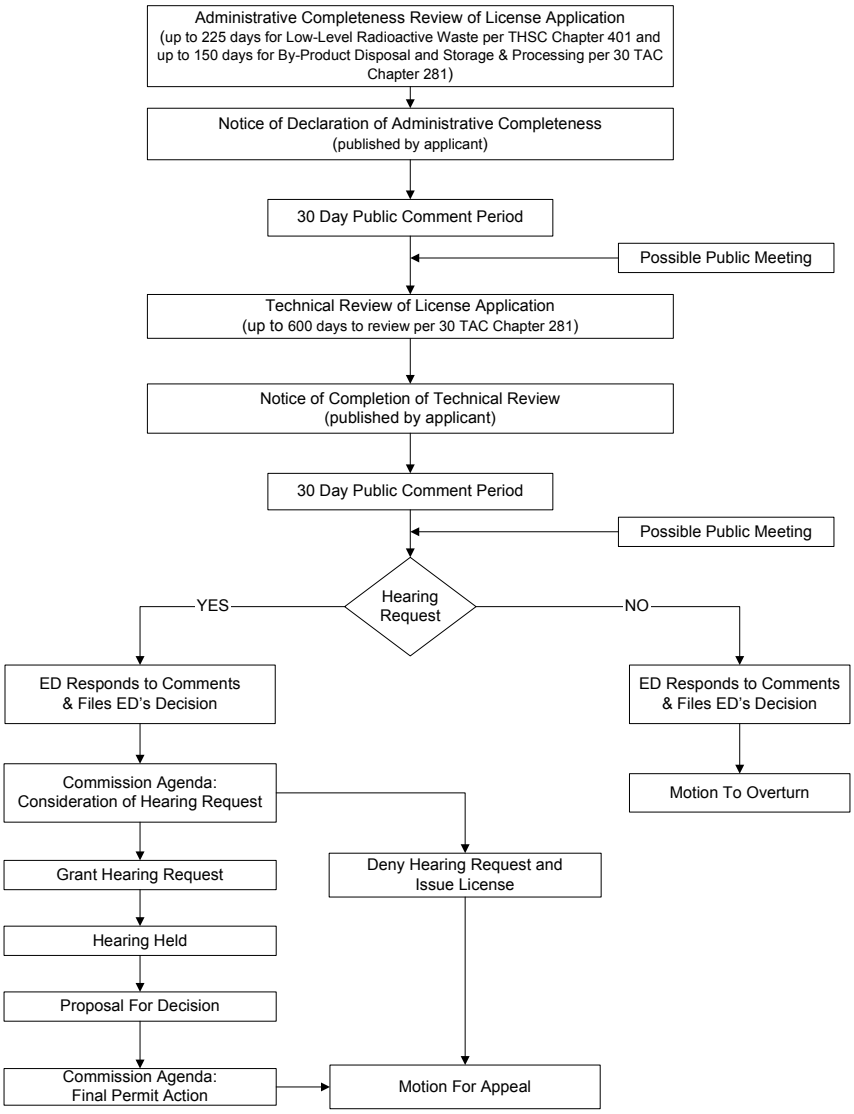
Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

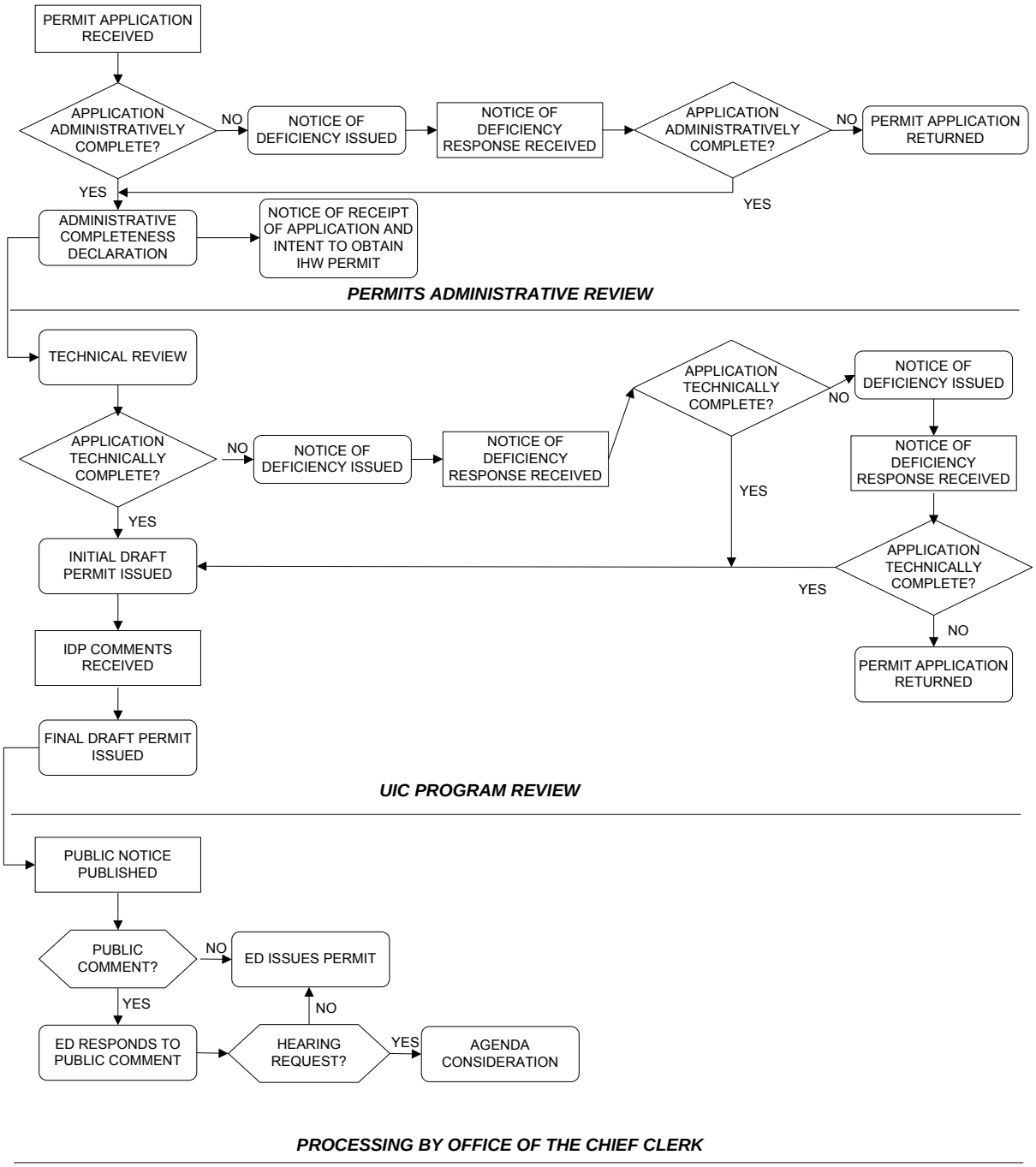
Texas Commission on Environmental Quality Radioactive Materials Licensing and Permitting (including Underground Injection Control) Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	0
Total number of regulated entities	Not applicable	15
Total number of entities inspected	Not applicable	13
Total number of complaints received from the public	Not applicable	0
Total number of complaints initiated by agency	Not applicable	13
Number of complaints pending from prior years	Not applicable	0
Number of complaints found to be non-jurisdictional	Not applicable	0
Number of jurisdictional complaints found to be without merit	Not applicable	Not applicable
Number of complaints resolved	Not applicable	13
Average number of days for complaint resolution	Not applicable	>30
Complaints resulting in disciplinary action:	Not applicable	0
administrative penalty	Not applicable	0
Reprimand	Not applicable	0
Probation	Not applicable	0
Suspension	Not applicable	0
Revocation	Not applicable	0
Other	Not applicable	0

Radioactive Materials Division
License Review Process

(initial issuance, renewal, and major amendment applications received after January 1, 2007)



Underground Injection Control (UIC) Program
Application Review Process



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	River Compact Commissions
Location/Division	3rd Floor / Building F / Water Supply Division / Office of Permitting and Registration
Contact Name	Herman R. Settemeyer
Actual Expenditures, FY 2008	$361,541
Number of FTEs as of August 31, 2008	7

B. What is the objective of this program or function? Describe the major activities performed under this program.

The River Compact Commissions' objectives are to ensure that the State of Texas receives and maximizes 100 percent of its equitable share of the interstate waters of the Canadian, Pecos, Red, Sabine Rivers and the Rio Grande and their tributaries as allocated by the appropriate interstate compact.

In addition, the River Compact Commissions develop programs to increase the quantity and improve the quality of the water available in Texas.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

To meet the Texas River Compact Commissions' objectives, accounting of interstate water deliveries under each compact is completed annually. Texas' share under each compact and the share the state received in FY 08 are summarized below.

Number	Type	FY 08 Performance Measure	Percent of Annual Target
05-01.01	outcome	Percentage Received of Texas' equitable share of quality water annually as Apportioned by the Canadian River Compact (key)	35
05-01.02	outcome	Percentage Received of Texas' equitable share of quality water annually as apportioned by the Pecos River Compact (key)	217
05-01.03	outcome	Percentage Received of Texas' equitable share of quality water annually as apportioned by the Red River Compact (key)	100
05-01.04	outcome	Percentage Received of Texas' equitable share of quality water annually as apportioned by the Rio Grande Compact (key)	94

05-01.05	outcome	Percentage Received of Texas' equitable share of quality water annually as apportioned by the Canadian River Compact (key)	98

All states were in compliance with the Compacts in FY 08, although severe drought prevented the Canadian River Compact and Rio Grande Compacts from achieving their goals.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

1939

- Rio Grande Compact signed March 18.

1949

- Pecos River Compact signed December 3.

1950

- Canadian River Compact signed December 6.

1953

- Sabine River Compact signed January 26.

1978

- Red River Compact signed May 12.

1991

- The 72nd legislature repealed Texas Water Code, Sections 41.0031, 42.0031, 43.0031, 44.0031, and 46.0031—regarding the Rio Grande and Pecos, Canadian, Sabine, and Red River Compacts, respectively—which had made the River Compact Commissions subject to the Texas Sunset Act.

2005

- The 79th legislature transferred the commissions, historically separate state agencies, to the TCEQ.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The primary function of the River Compact Commissions is to ensure that the State of Texas receives its equitable share of the interstate waters of the Canadian, Pecos, Red, Rio Grande, and Sabine Rivers and their tributaries as allocated by the appropriate interstate Compact. Water users within the five river basins under compacts rely on them to ensure that water is available for use.

Basin	Total Number of Water Rights	Total Permitted Diversion (acre feet)
Canadian River	39	164,788.52
Pecos River	50	502,385.35
Red River	277	896,022.84
Rio Grande (without Pecos)	847	6,427,666.63
Sabine River	192	1,888,985.64

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Commissioners are appointed by the governor. Each river compact commission has either one or two appointed commissioners, who typically reside and have an office within the river basins they serve.

The TCEQ's Executive Director serves, by statute, as the Texas commissioner for the Red River Compact.

The Texas Water Code provides that the TCEQ will cooperate with the commissioners in the performance of their duties and furnish any information they need. The TCEQ funds, houses, and gives technical support (through its Water Supply Division) to the river compact's commissioners.

The Office of the Attorney General gives legal assistance to the River Compact Commissions.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0001	General Revenue	$361,541

Strategies:
E.1.1—Canadian River Compact
E.1.2—Pecos River Compact
E.1.3—Red River Compact
E.1.4—Rio Grande River Compact
E.1.5—Sabine River Compact

Rider 21, Administrative Cost for the Texas River Compact Commission

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

Not Applicable

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Not Applicable

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Each of the interstate river compact commissions includes:

- a non-voting federal chairman appointed by the President of the United States, and
- one or two voting members from each affected state: *Canadian River*—New Mexico, Texas, Oklahoma; *Pecos River*—Texas, New Mexico; *Red River*—Oklahoma, Texas, Arkansas, Louisiana; *Rio Grande*—Colorado, New Mexico, Texas; and *Sabine River*—Texas, Louisiana.

In addition to the members, the River Compact Commissions work closely with other federal agencies to ensure that water operations and deliveries comply with the established compacts, such as:

- Department of Interior, Bureau of Reclamation,
- Army Corps of Engineers,
- Fish and Wildlife Service, and
- Geological Survey.

Commissioners in Texas and the TCEQ also work closely with state, regional, and local agencies such as: the Texas Parks and Wildlife Department; river authorities; counties; municipalities; and water districts.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

None

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

The State of Texas has entered into five interstate water compacts involving the Canadian, Pecos, Red, and Sabine Rivers and the Rio Grande. Each compact is recognized under both state and federal law as an agreement dividing the waters in these rivers and their tributaries among states.

Each Compact is administered by an Interstate Commission. Each Interstate Commission consists of one or two members appointed to represent each state as prescribed by each Compact and a federal commissioner appointed by the President of the United States.

In Texas, Texas Water Code Chapters 41, 42, 43, 44, and 46 provide for the administration of each of the five river compact commissions by the Texas River Compact Commission, which also represents the state on each of the interstate commissions and protects Texas' rights under each individual compact. River Compact Commissioners are appointed by the governor and must be confirmed by the Texas Senate, except for the TCEQ's Executive Director, who by statute serves on the Red River Compact Commission.

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Utilities and Districts
Location/Division	3rd Floor / Building F / Utilities and Districts Section / Water Supply Division / Office of Permitting and Registration
Contact Name	Todd Chenoweth
Actual Expenditures, FY 2008	$5,524,978
Number of FTEs as of August 31, 2008	53

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Utilities and Districts Section (UDS) has jurisdiction over the service areas, rates, and financial activities of water and sewer utilities. UDS has original jurisdiction over investor-owned utilities. It also has some appellate jurisdiction over rates, service areas and financial activities of political subdivisions (municipalities, water districts and counties), water supply corporations (WSCs) and entities that submeter or allocate water and wastewater bills. The UDS programs that accompany this jurisdiction assure customers receive continuous and adequate water and wastewater services at just and reasonable costs.

The UDS reviews applications for:

- Certificates of Convenience and Necessity (CCNs), which delineate water and sewer service areas;
- certain water and wastewater utility rate changes;
- creations of water districts; and
- review of water-district financing for water, wastewater, and drainage improvements.

The UDS also:

- reviews engineering plans for public system improvements;
- oversees the TCEQ's portion of the grant set-asides program of the Drinking Water State Revolving Fund under the Safe Drinking Water Act;

- administers a program to help water systems develop and maintain financial, managerial and technical capacity; and

- receives and resolves consumer complaints about water service and rates.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Number	FY 08 Performance Measure	Percent of Annual Target
02-01-02.01	Utility rate reviews performed (key)	97.00
02-01-01.02	District applications processed	134.36
02-01-01.03	CCN applications processed	99.56

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

1989

- As a result of an economic downturn and the bankruptcy of a number of water districts, the TCEQ adopted feasibility rules to establish criteria for bond application approval.

1996

- Congress reauthorized the Safe Drinking Water Act, creating the Drinking Water State Revolving Fund and the capacity-development program.

2005

- The Texas Legislature revised the criteria for granting CCNs to include impacts on landowners and added a process for certain landowners to be released from CCN areas.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Utilities and Districts Program affects those businesses and authorities that provide retail water and wastewater utility services and their retail customers.

Retail Public Utilities in Texas				
Retail Public Utility Type	**Utilities**	**Water Customers**	**Water CCNs**	**Sewer CCNs**
Cities	1,444	7,474,195	593	489
Water Districts	862	2,159,842	155	92
Water Supply Corp.	847	621,172	789	58
Private or Investor Owned	785	214,063	634	146
Totals	3,938	10,469,272	2,171	785

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

For water and sewer CCN, rate and district creation applications, an application is submitted to TCEQ and public notice given. If the application is uncontested and meets rule criteria, the application can be approved. If the application is contested by a valid protester or the TCEQ's executive director, the matter is referred to the State Office of Administrative Hearings. Refer to the flowchart *Utilities and Districts Application Process* following Question O.

District bond applications, minor district applications, and engineering plans are technically reviewed and approved by the executive director.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0001	General Revenue	$79,500
0153	Water Resource Management Account	$2,232,543
0555	Federal Funds	$1,434
0777	Interagency Contracts	$3,211,501

Strategies:
B.1.2—Water Utilities Oversight
B.1.1—Safe Drinking Water

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

The Texas Water Development Board (TWDB) reviews some minor engineering plans for public water systems and water district bond applications for infrastructure projects that are funded by the TWDB. The TCEQ reviews major public water system plans including wells and surface water treatment plants that are not subject to TWDB review.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The TCEQ has a Letter of Agreement with the TWDB that describes how responsibilities for reviewing engineering plans are coordinated between the two agencies.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The UDS works with:

- local and regional governments that operate water or sewer utilities and are involved in UDS's utility or district application processes;

- the EPA and the TWDB on the Drinking Water State Revolving Fund;

- the Drinking Water Advisory Work Group to meet and coordinate with program stakeholders; and

- the Secretary of State's Border Infrastructure Group and the Office of Community and Rural Affairs Infrastructure Group to coordinate water and wastewater projects with other state and federal regulatory and funding agencies.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

The UDS had contracted expenditures of $2,760,620 in FY 08 for seven contracts. The UDS contracts:

- supplied financial, managerial and technical assistance and training for water systems and utilities,

- conducted high-level engineering and financial-compliance feasibility studies and water quality studies,

- produced digitized maps of water and sewer districts,

- conducted legislatively mandated evaluations of the Bexar Metropolitan Water District, and

- supported programs with application processing and plan review.

TCEQ standard requirements for interagency contracts apply. The performing party of the contract is required to adhere to all applicable standards, principles, and guidelines detailed in Office of Management and Budget circulars A-21 and A-110 including those related to

financial monitoring, auditing, and record keeping. Contracts are subject to the receipt and availability of funds appropriated by the Texas Legislature to the TCEQ. This funding is in place before the contract is executed through TCEQ budgeting and planning processes; accountability for funding is with the TCEQ budget staff and the contract manager. Performance is ensured via standard project-management practices, including initiation, planning, execution, control and closure. Performance under the scope of work is assessed though a schedule and a set of deliverables and projects are not considered complete and accepted unless discrepancies are resolved.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

- Allow the executive director to approve uncontested service area agreements or contracts under Texas Water Code (TWC) Section 13.248; water district dissolutions under TWC Section 49.231; and water-district conversion requests under TWC Section 54.030. Currently these uncontested items must go to the commission for approval.

- Remove the requirement in TWC Section 13.187(f), that rate hearings must be held in the local area if more than half the customers reside in a county with a population of more than 2.5 million (i.e., Harris County). This will save staff and travel resources.

- Allow a permit exemption for small sewer utilities with a potential of less than 15 connections as is currently provided for small water utilities. TWC Section 13.242(c) currently allows a water utility with a potential of less than 15 connections to be exempt from having a CCN; however, a retail sewer provider serving one or more connections must have a CCN.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

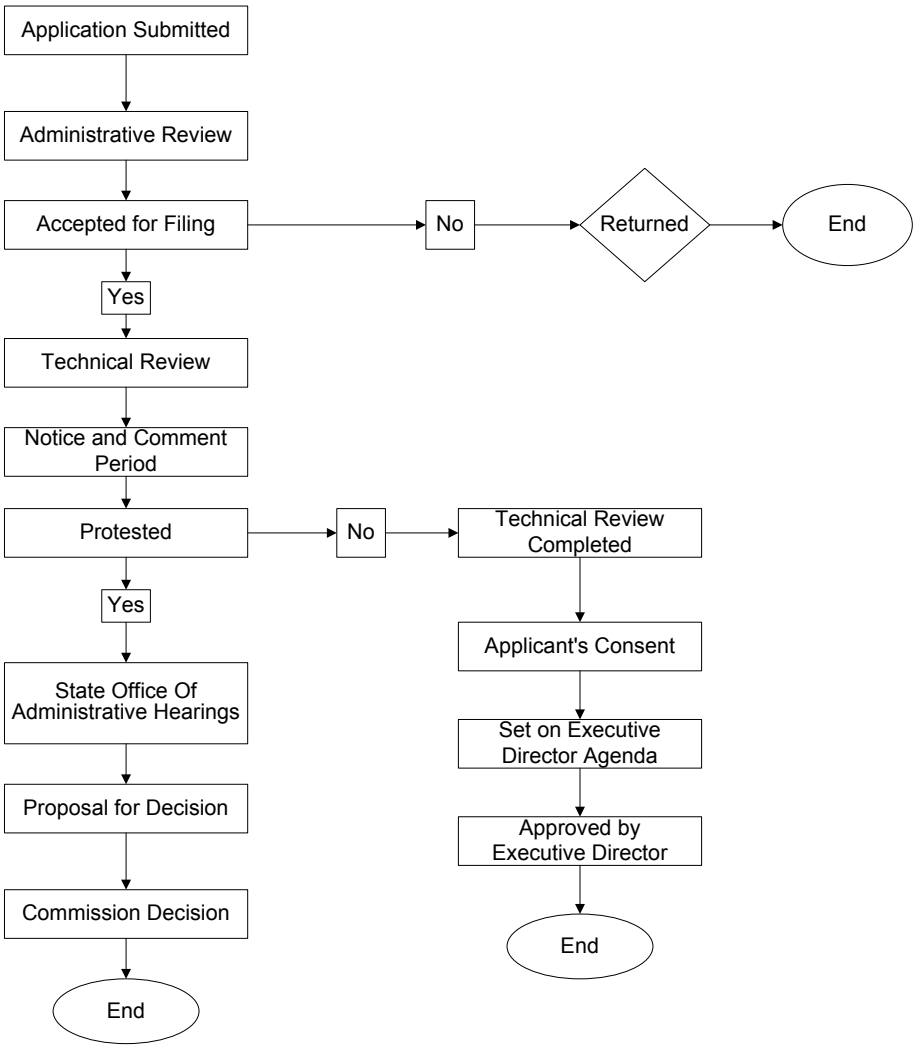
N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Texas Commission on Environmental Quality Utilities and Districts Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
Please see Field Operations Question O for additional complaint data related to this program.	**FY 2007**	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	9,019	9,633
Total number of entities inspected	Not applicable	Not applicable
Total number of complaints received from the public	1,377	1,711
Total number of complaints initiated by agency	Not applicable	Not applicable
Number of complaints pending from prior years	Not applicable	Not applicable
Number of complaints found to be non-jurisdictional	Not applicable	Not applicable
Number of jurisdictional complaints found to be without merit	Not applicable	Not applicable
Number of complaints resolved	1,377	1,711
Average number of days for complaint resolution	17	9
Complaints resulting in disciplinary action:	0	0
administrative penalty	Not applicable	Not applicable
Reprimand	Not applicable	Not applicable
Probation	Not applicable	Not applicable
Suspension	Not applicable	Not applicable
Revocation	Not applicable	Not applicable
Other	Not applicable	Not applicable

Utilities and Districts Application Process



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Wastewater Permitting
Location/Division	2nd Floor / Building F / Wastewater Permitting Section / Water Quality Division / Office of Permitting and Registration
Contact Name	Charles Maguire
Actual Expenditures, FY 2008	$3,574,959
Number of FTEs as of August 31, 2008	50.5

B. What is the objective of this program or function? Describe the major activities performed under this program.

Texas Water Code (TWC), Section 26.121 requires issuance of wastewater permits or other authorizations to persons discharging "sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state." This includes storm water discharges from industrial and municipal facilities. The objective of the Wastewater Permitting Program is to protect the quality of the surface water and groundwater in Texas by regulating the types and amounts of pollutants introduced into those waters.

The Environmental Protection Agency (EPA) delegated the issuance of National Pollutant Discharge Elimination System (NPDES) permits to the TCEQ. The Wastewater Permitting Program issues Texas Pollutant Discharge Elimination System (TPDES) permits and Texas Land Application Permit (TLAP) authorizations. A TPDES permit is issued to facilities that discharge directly to surface water such as streams, rivers, lakes, reservoirs, bays, and estuaries. A TLAP is issued to facilities that do not discharge to surface water but rather discharge wastewater via irrigation or land application of manure or sludge.

The Wastewater Permitting Program issues these authorizations under two general categories: individual authorizations and authorizations under a statewide general permit.

- *Individual authorizations* are issued following a detailed technical review of an application submitted by an individual entity. The authorization is site-specific to the regulated activity, the wastes and volumes generated, and the location.

- *General permits* are developed for similar types of activities and can be issued for statewide or regional use. Once the program has issued a general permit individual entities may seek authorization to operate under the terms and conditions of the general permit.

Other teams that do not issue permits or authorizations but assist in protecting water quality are the Storm Water and Pretreatment Team's Pretreatment Program and the Wastewater Permitting Section Engineering Review, all located within the Wastewater Permitting Program.

- *Engineering review* addresses completed plans and specifications for domestic wastewater treatment facilities and collection systems required to be submitted to the TCEQ under TWC, Section 26.034(b).

- *Pretreatment* ensures that large cities and other municipalities have the tools to regulate industrial discharges into their collection and treatment systems, preventing pass through of pollutants and interference with the treatment plant. Pretreatment staff members also perform annual audits of authorized pretreatment programs, review and approve new developing pretreatment programs, and process modifications to previously approved programs. The pretreatment staff approves notices of violations that potentially escalate to formal enforcement.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Number	Type	FY 08 Performance Measure	% of Annual Target
01-02-02.01	output	Number of applications to address water quality impacts applications review *(key)*	111.36*
01-02-02.02	outcome	Percent of water quality permit applications reviewed within established time frames	93.33
01-02-02.04	outcome	Annual percent reduction in pollution from permitted wastewater facilities discharging to waters of the state *(key)*	360

**Note:* This measure is shared with other programs within the agency. The number reported here represents the combined total for all agency participants in this measure.

Performance under this measure was slightly below projected performance as a result of EPA Region 6 objections to TPDES permits. In FY 08, EPA Region 6 and the TCEQ resolved those objections.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

2000

- The Wastewater Permitting Program issued the industrial multi-sector general permit for storm water.

2003

- 30 TAC Chapter 312, Sludge Use, Disposal, and Transportation, changed the authorization for land applying Class B sludge from a registration to an individual permit based on adopted legislation.

2004

- The TCEQ implemented an electronic permit application system, ePermits, to accept and streamline storm water general permit applications.

2006

- 30 TAC Chapter 311, Subchapter H became effective in August. TWC Sections 26.551–26.562 required the rulemaking to protect, through permitting, the John Graves Scenic Riverway of the Brazos River from runoff and sedimentation due to quarry operations.

2007

- The Wastewater Permitting Program issued the municipal separate-storm-sewer-system general permit for small cities (MS4 Phase II).

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Wastewater Permitting Program regulates any individual or organization that discharges waste into or adjacent to waters in the state, including commercial and industrial facilities; construction sites; state, federal, and local government; and small businesses.

The following authorizations issued by the program are active:

- individual TPDES domestic permits: 2119
- individual TLAP domestic permits: 471
- individual TPDES industrial permits: 625
- individual TLAP industrial permits: 122
- individual Class B sewage sludge land application permits: 71
- septage and water-treatment-plant-sludge land-application registrations: 107
- individual permits for large municipal separate storm sewer systems: 26
- small and medium municipal separate-storm-sewer-system authorizations under general permit: 114
- individual industrial storm water permits: 99
- individual industrial wastewater-reuse authorizations: 114
- individual domestic wastewater-reuse authorizations: 285
- industrial wastewater activities authorized under various general permits: 791
- industrial storm water authorization under general permit: 11,261
- construction storm water authorization under general permit: 10,628

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Refer to flowcharts *Work Flow-Individual Permit and General Permit Development Process* following Question O that depict the program's functions.

The Wastewater Permitting Program developed the following time frames for processing authorizations, from date of application receipt until final issuance, including issuance of public notice. They do not include the time necessary for a contested case hearing if one is conducted:

- permits: 300–330 days
- registrations: 270 days
- plans and specifications review: summary review, 30 days; full review, 120 days
- reclaimed-water authorizations: 60 days
- pretreatment: audit reports, 60 days; program modifications, 120–300 days

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0555	Federal Funds	$1,025,382
0153	Water Resource Management Account	$2,549,577

Strategy—A.2.2—Waste Resource Permitting

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

The following groups have permitting functions similar to those of this program.

While issuing permits for wastewater discharges from aquaculture facilities falls under the responsibility of the Wastewater Permitting Program, aquaculture facilities may also require exotic-species permits from the Texas Parks and Wildlife Department (TPWD) and operating licenses from the Texas Department of Agriculture (TDA). The TPWD permit is specific to exotic-species issues; the TDA license relates to overall operation of the facility, whereas the TCEQ issues permits specific to wastewater discharge.

The Railroad Commission of Texas (RRC) is responsible for regulating discharges from all crude-oil exploration and recovery operations and all natural gas operations. The TCEQ has authority to regulate discharges from petroleum refining. The RRC does not have

delegated NPDES authority from the EPA; therefore companies and other organizations under RRC jurisdiction must obtain NPDES authorizations from the EPA.

The Wastewater Permitting Program oversees on-site-sewage-facility systems with waste of greater than 5,000 gallons per day and any processors of wastewater that are not domestic. However, the TCEQ's Field Operations Division investigates on-site small domestic systems that do not discharge to surface waters and are less than 5,000 gallons of waste per day.

The Texas Water Development Board (TWDB) reviews and approves domestic wastewater plans and specifications for recipients of TWDB grant funding. Any variances to design criteria in 30 TAC Chapter 217 requested by permittees are coordinated with the Wastewater Permitting Program.

The TCEQ's Edwards Aquifer Protection Program (Field Operations Division) reviews and approves Water Pollution Abatement Plans for storm water construction in the Edwards Aquifer recharge and contributing zones. These plans include some of the elements required under the Storm Water Construction General Permit.

Consistent with TWC, Section 26.034(d), and 30 TAC Section 217.8, the TCEQ has authorized multiple cities in Texas to approve plans and specifications for domestic wastewater collection systems within their jurisdiction.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

30 TAC Section 7.103 - The MOU with the TPWD and the TDA relates to aquaculture operations. The TCEQ is the permitting authority for aquaculture and coordinates permitting efforts with the TPWD (related to disease and invasive and exotic species) and the TDA (related to TDA licensing requirements). Annual coordination meetings are held among the three agencies.

30 TAC Section 7.117 - The MOU with the RRC gives guidance on jurisdictional responsibilities relating to oil and gas operations.

The TCEQ has entered into a contract with Harris County for the administration of the county's on-site general permit (TXG530000). The TCEQ is responsible for developing, issuing, and reissuing the general permit; Harris County, for administering it.

The program issues approval letters to cities that have applied for the authority to review collection-system plans within their jurisdiction. Approved cities are identified at the TCEQ's Web site; outreach to the engineering community prevents duplication and conflict.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The permitting process involves municipalities, municipal utility districts, water control and improvement districts, river authorities, counties, state agencies, federal agencies, and other governmental authorities that commonly require permits to treat and discharge wastewater.

The Water Quality Division hosts quarterly Water Quality Advisory Work Group meetings to ensure that stakeholders (including units of government) are informed of current issues and receive input on various issues.

The EPA, not the TCEQ, issues NPDES permits to any wastewater discharge from Indian tribal lands.

The TCEQ has entered into a Memorandum of Agreement (MOA) with EPA Region 6 that outlines both agencies' responsibilities for administering the TPDES program. Quarterly and annual reporting is required under the MOA. Annual program manager meetings are held among all Region 6 states, and the EPA audits the TPDES program every two years.

Under the TPDES program, notification of TPWD, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Texas Historical Commission is required to ensure proper agency coordination. Notice is given to each agency on pending permit applications to ensure review of and comment on proposed permit applications.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

The Wastewater Permitting Program had four contracts with universities for student interns, for a total expenditure of $834,479 in FY 08.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

TWC, Section 26.0285, requires TCEQ-issued permits for the discharge of waste within a single watershed or region to bear the same expiration date to enable a comprehensive evaluation of the combined effects of multiple discharges within the same watershed or

region. Prior to adoption of TWC, Section 26.0285, the TCEQ's practice was to issue permits for a term of five years, consistent with federal requirements. To ensure compliance with this statute the TCEQ routinely issues permits for terms significantly less than the five years allowed under federal requirements, which significantly increases resources required from both the agency and the regulated community. The program recommends eliminating TWC, Section 26.0285.

TWC, Section 26.0191, allows the commission to issue emergency orders consistent with TWC, Section 5.509. TWC, Section 5.509(a)(2)(D), requires the commission to make a finding that a discharge under the authority of an emergency order will not present a significant hazard to uses of the receiving water. By the time the information has been collected for review by the executive director, the discharges necessitating the request for an emergency order usually have already occurred. We recommend deleting TCEQ's authority to issue an emergency order in this situation.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

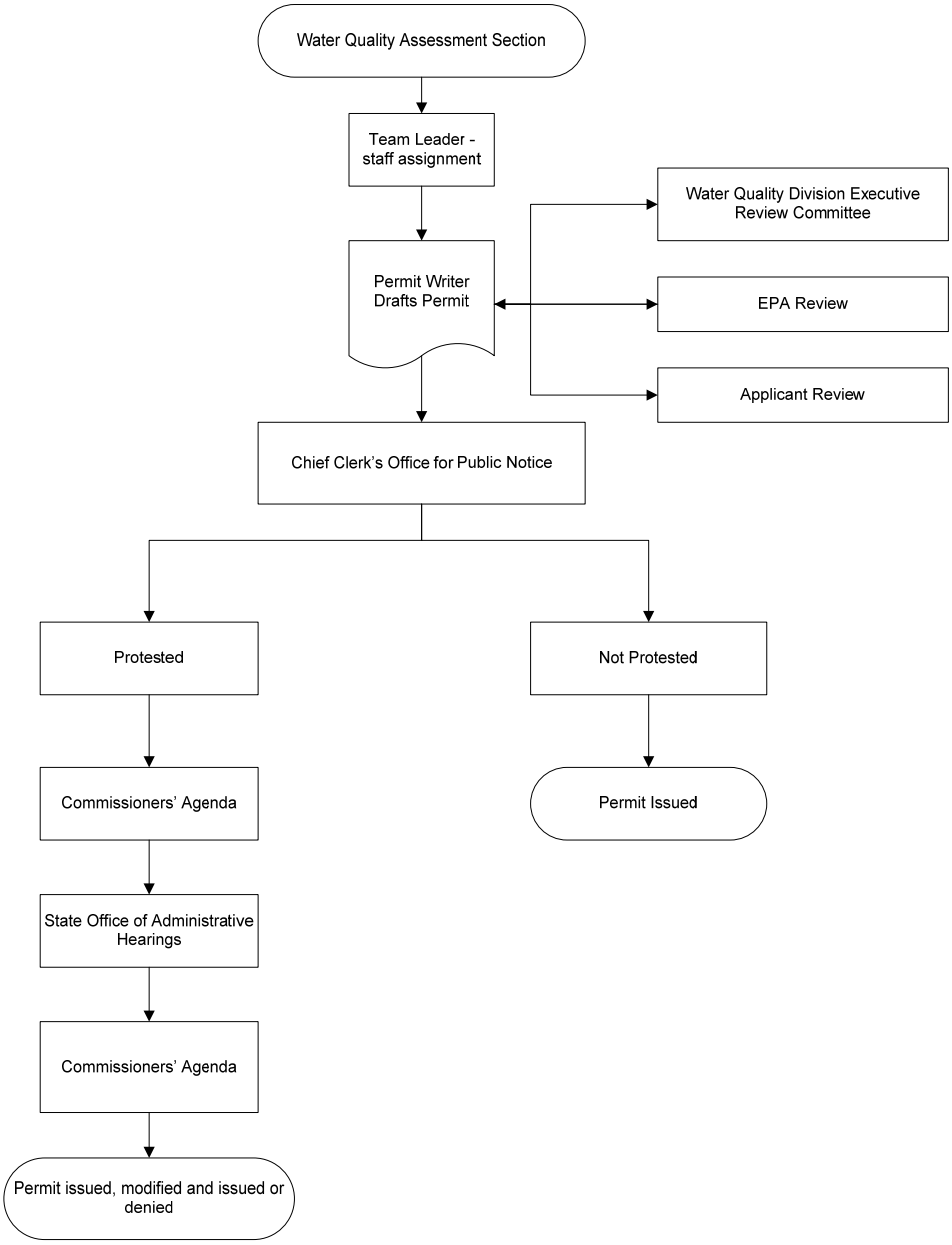
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

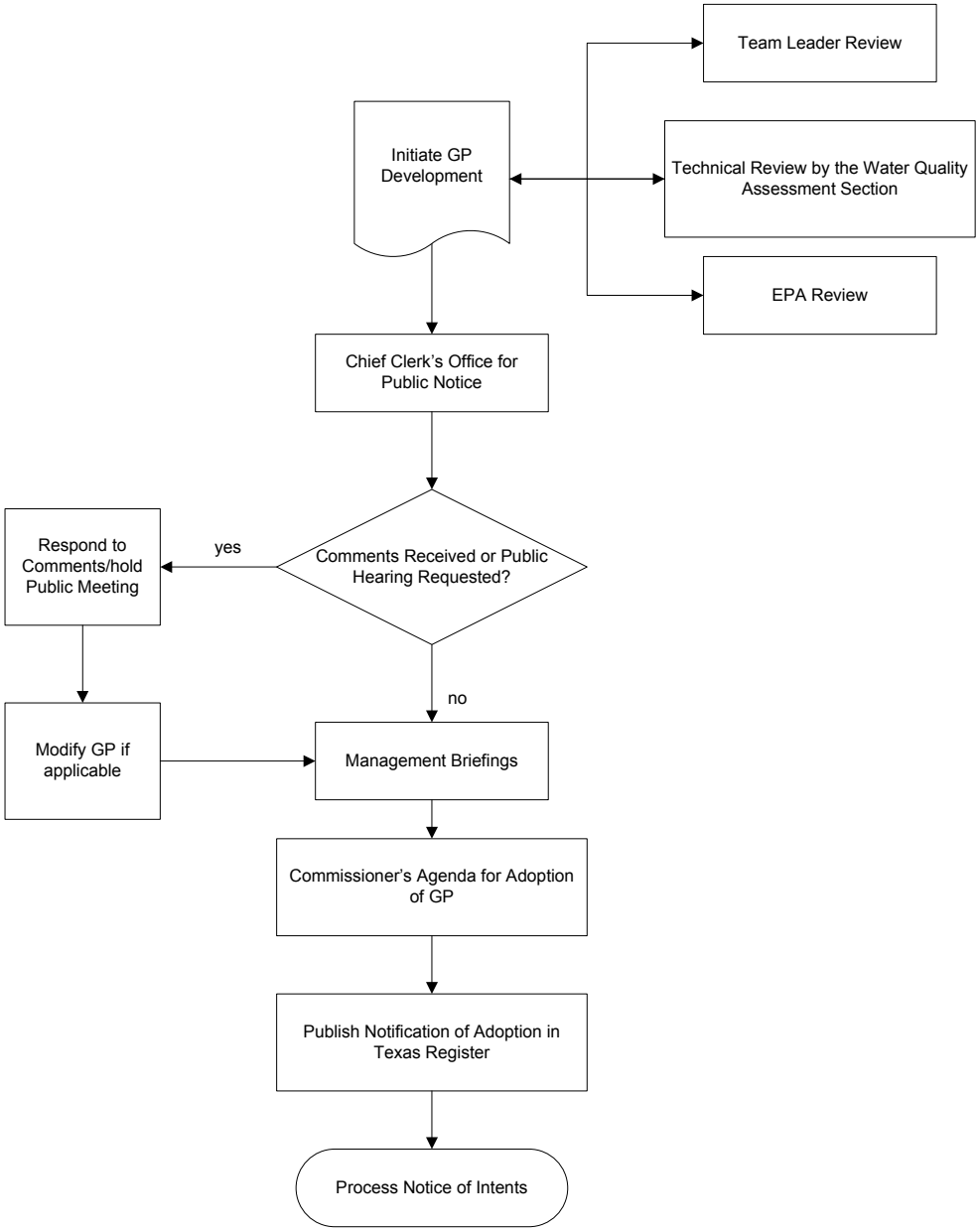
O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Texas Commission on Environmental Quality Wastewater Permitting Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	Not applicable	Not applicable
Total number of entities inspected	14	Not applicable
Total number of complaints received from the public	Not applicable	Not applicable
Total number of complaints initiated by agency	14	Not applicable
Number of complaints pending from prior years	6	Not applicable
Number of complaints found to be non-jurisdictional	Not applicable	Not applicable
Number of jurisdictional complaints found to be without merit	Not applicable	Not applicable
Number of complaints resolved	16	Not applicable
Average number of days for complaint resolution	240	Not applicable
Complaints resulting in disciplinary action:	14	Not applicable
administrative penalty	Not applicable	Not applicable
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other: Notice of Violation	14	Not applicable

Work Flow-Individual Permit



General Permit (GP) Development Process



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Water Quality Assessment
Location/Division	2nd Floor / Building F / Water Quality Assessment Section / Water Quality Division / Office of Permitting and Registration
Contact Name	Charles Maguire
Actual Expenditures, FY 2008	$2,486,894
Number of FTEs as of August 31, 2008	38

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Water Quality Assessment (WQA) Program is responsible for:

- developing technical recommendations related to dissolved oxygen in water;
- defining water quality uses and appropriate in-stream criteria for the streams, rivers, lakes, reservoirs, and estuaries in the state;
- developing critical conditions for scientifically based Texas Pollutant Discharge Elimination System (TPDES) wastewater discharge permit limits for the protection of surface waters consistent with the Texas Surface Water Quality Standards;
- maintaining and updating quarterly the State Water Quality Management Plan (WQMP);
- conducting technical reviews and providing geological and agronomic recommendations to be incorporated into Texas Land Application Permits (TLAPs) to protect groundwater from potential contamination due to waste and wastewater discharges;
- conducting Clean Water Act (CWA) Section 401 State Water Quality Certifications for the United States Army Corps of Engineers (USACOE) and for CWA Section 404 permits regarding the discharge of dredged or fill material into U.S. waters; and
- writing permits for concentrated animal-feeding operations (CAFOs), including hog farms, cattle feedlots, egg farms, and dairies.

The WQA Program meets its objectives by:

- numerical modeling to develop permit limits for dissolved-oxygen standards for the protection of water quality;

- analyzing the potential of wastewater to mix with surface waters;

- maintaining precise digital information of wastewater discharge locations;

- evaluating proposed TPDES wastewater discharges to ensure that water quality standards are properly assigned and maintained in receiving waters, and

- administering the Whole Effluent Toxicity program to ensure protection of surface water from in-stream toxicity due to wastewater discharges.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Number	Type	FY 08 Performance Measure	% of Annual Target
01-01-02.01	output	Number of surface water assessments (*key*)	97*
01-02-02.03	output	Number of CAFO authorizations reviewed (*key*)	137

*This measure is shared measure with other programs in the agency. The number reported here represents the combined total for all agency participants in this measure.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

2000

- A Memorandum of Agreement (MOA) takes effect, outlining the TCEQ's state certification of the USACOE Federal CWA Section 404 dredge and fill permits.

2004

- The TCEQ issues its first CAFO General Permit, TXG920000.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The WQA Program affects any person, business, or other organization required to obtain a permit to discharge industrial or domestic wastewater into or adjacent to waters in the state. At this time, this includes approximately 2,300 active domestic-discharge and 1,000 active industrial-discharge facilities. Also included are 740 regulated CAFO facilities.

Persons affected by CWA Section 401 Water Quality Certification requirements include commercial navigation, transportation, retail or residential land development; private

property developers; local, state, and federal infrastructure projects; and, any other CWA Section 404 permit applicant.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The WQA Program has an established deadline of 30 days for reviewing permit applications, performing any necessary analyses, and conveying specific permit provision information to the Wastewater Permitting Program.

The CWA 401 State certification program is administered in partnership with the USACOE, with which the agency has an MOA outlining the associated processes and deadlines.

CAFO individual permits have agency-set deadlines of 300–330 days from receipt to issuance. General permits have notices of intent to be issued within 180 days. There are two CAFO permit writers in regional offices.

Refer to the flowcharts *Wastewater Permit Work Flow for Discharge Applications, Wastewater Permit Work Flow Texas Land Application Permits, WQMP Update Process, 401 State Water Quality Certification Work Flow, CAFO Individual Permit Process Work Flow, and CAFO General Permit Notice of Intent Work Flow* following Question O.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0153	Water Resource Management Account	$1,556,829
0555	Federal Funds	$906,103
0001	General Revenue	$23,962

Strategies:
A.1.2—Water Assessment and Planning
A.2.2—Water Resource Permitting

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

The Standards Development Team of the Water Quality Planning Division in the Chief Engineer's Office is responsible for the development of the Texas Surface Water Quality Standards.

The TCEQ coordinates with the Texas Water Development Board (TWDB) regarding potential infrastructure funding projects. The wastewater-discharge proposals contained in those projects undergo technical review so that any aspects that may be difficult to permit can be resolved prior to finalization.

If a reservoir-development project is seeking a new water-rights permit, the CWA Section 401 program coordinates closely with the TCEQ's Water Supply Division regarding mitigation-sequence requirements.

The Texas State Soil and Water Conservation Board administers a voluntary program in which Animal Feeding Operations (AFOs), smaller facilities that are not defined or designated as CAFOs, can obtain a water quality management plan. This plan assists these smaller, unpermitted facilities in complying with TCEQ requirements for AFOs.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The WQA Program's Standards Implementation Team works closely with the Chief Engineer's Office Standards Development Team and meets frequently to discuss issues applicable to both program areas. Standard operating procedures have been developed to coordinate receiving-water assessments, variances, and site-specific studies between the program areas.

Implementation of the MOA between the USACOE and TCEQ allows the two agencies to avoid redundancy on a single project.

The TCEQ participates in regularly scheduled Joint Evaluation Meetings (JEMs) between the U.S. Fish and Wildlife Service, National Marine Fisheries Service, the EPA, the Texas Parks and Wildlife Department (TPWD), the General Land Office, the applicant and the USACOE. The JEMs may be scheduled as part of a pre-application process or to resolve comments submitted during the public-notice process. These meetings serve as a forum for all programs to identify and discuss concerns and to seek consensual resolutions.

The CAFO Team is the lead program for coordinating the Agriculture Stakeholder Group, a voluntary group of participants, open to the public, that meets several times a year to discuss issues related to implementation of and compliance with agriculture rules and regulations. The work group currently has representation from consulting firms, agricultural industry, engineering firms, environmental organizations and government bodies including the Natural Resource Conservation Service, the Texas State Soil and Water Conservation Board, the TPWD, the EPA, and the City of Waco.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The WQA Program, through permitting, deals with municipalities, municipal utility districts, water control and improvement districts, river authorities, counties, state agencies, federal agencies and other government authorities that commonly require permits to carry out their responsibilities and permitting requirements.

The Water Quality Division (WQD) hosts quarterly Water Quality Advisory Work Group meetings, allowing stakeholders to be informed of current issues and the WQD to receive their input.

EPA Region 6, through delegation of the National Pollutant Discharge Elimination System program, has oversight regarding effluent limits in TPDES permits. Coordination and communication with the EPA regarding permit limitations is a requirement for efficient and timely permit issuance.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

Effective September 1, 2008, the TCEQ underwent an internal reorganization that divided the responsibilities of the then Standards Team. As a result, contracts which became the responsibility of the Water Quality Planning Division of the Chief Engineer's Office will be reported by that Division. Only those contracts in which the responsibility for oversight remained with the WQD, Office of Permitting and Registration, are reported below.

For FY 08, the WQA Program had three contracts with universities: two for interns and one for development of a regional guidebook. A fourth contract was with the U.S. Geological Survey for a study related to the Barton Springs segment of the Edwards Aquifer.

Expenditures for the four contracts totaled $84,534.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

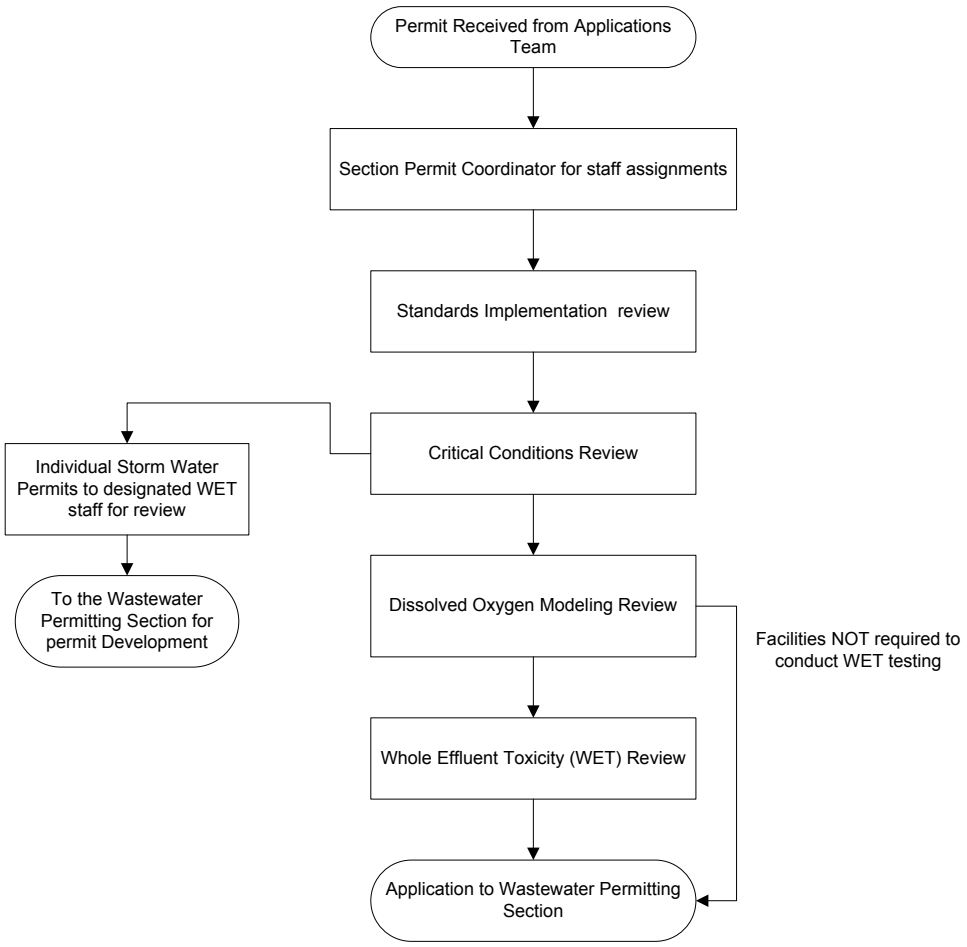
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

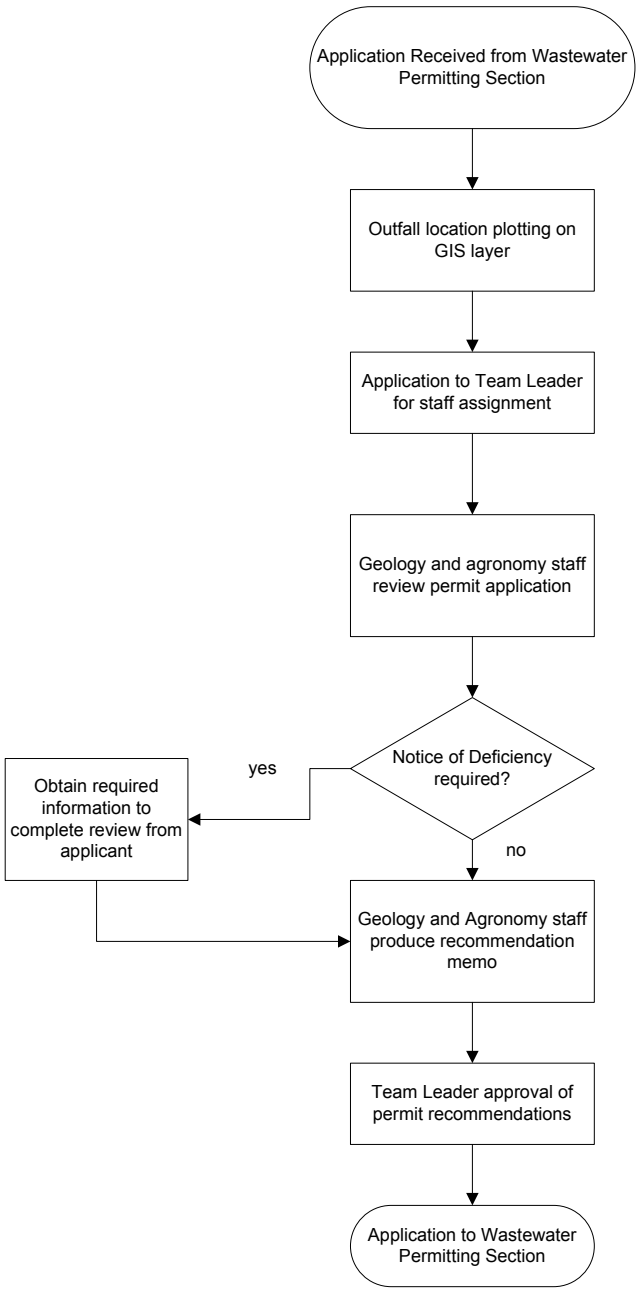
O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Texas Commission n Environmental Quality Water Quality Assessment Section Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
Please see Field Operations Question O for additional complaint data related to this program.	**FY 2007**	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	Not applicable	Not applicable
Total number of entities inspected	Not applicable	Not applicable
Total number of complaints received from the public	Not applicable	Not applicable
Total number of complaints initiated by agency	1	0
Number of complaints pending from prior years	3	3
Number of complaints found to be non-jurisdictional	Not applicable	Not applicable
Number of jurisdictional complaints found to be without merit	Not applicable	Not applicable
Number of complaints resolved	1	0
Average number of days for complaint resolution	1	Not applicable
Complaints resulting in disciplinary action:	1	0
administrative penalty	Not applicable	Not applicable
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other: Notice of Violation	1	0

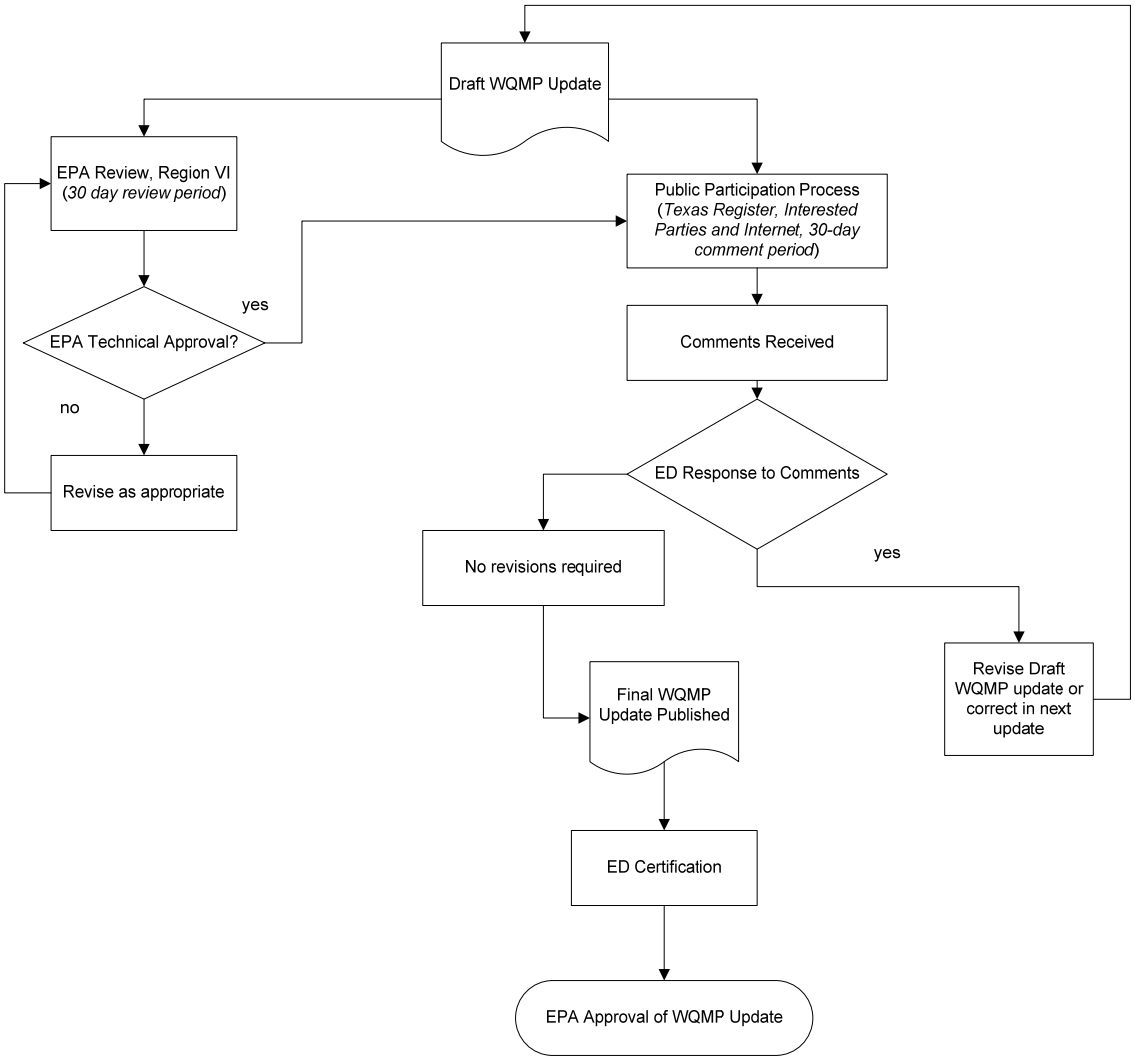
Wastewater Permit Work Flow for Discharge Applications



Wastewater Permit Work Flow Texas Land Application Permits

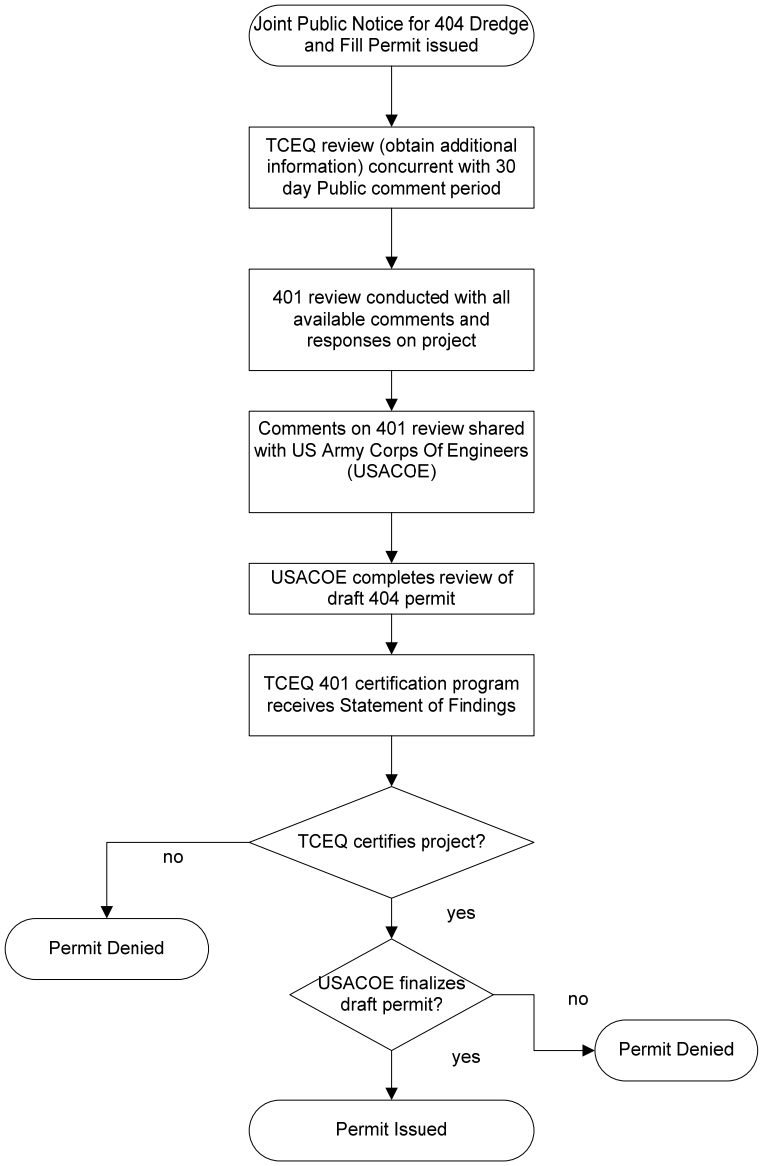


Water Quality Management Plan (WQMP) Update Process Flowchart

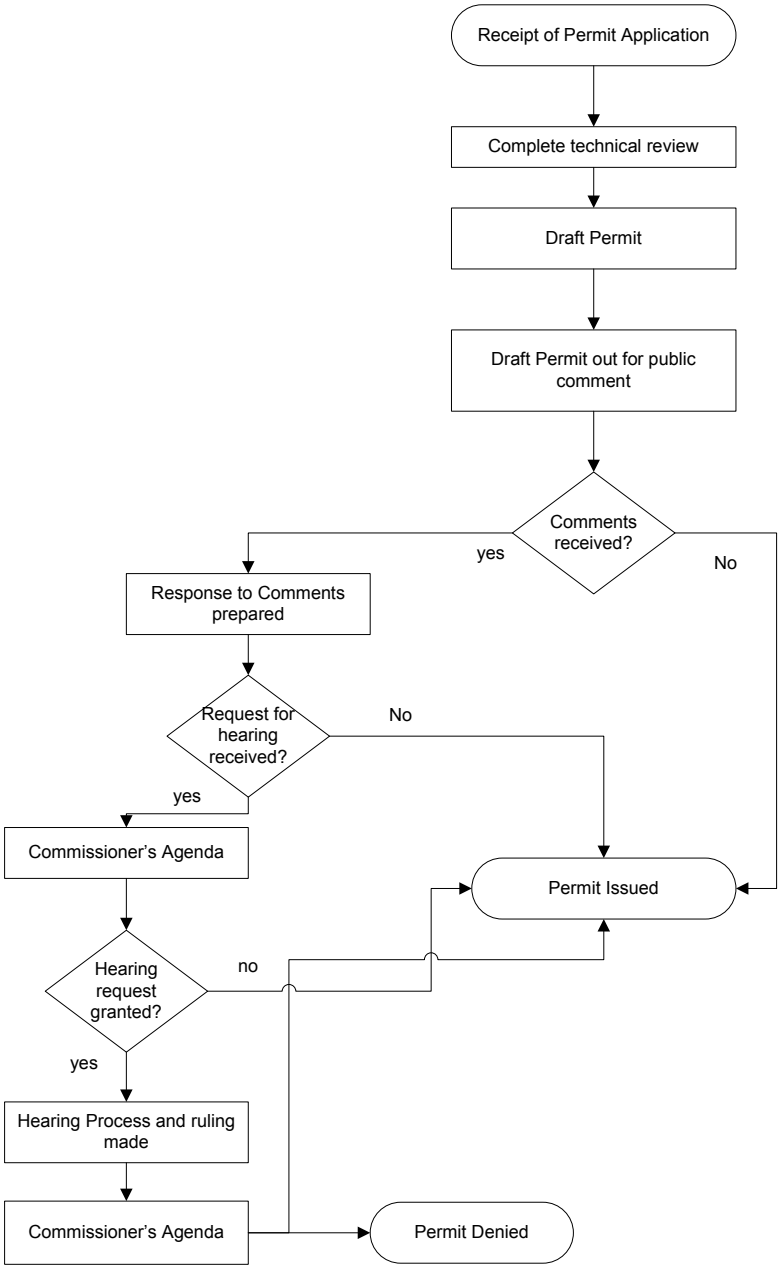


NOTE: Requests for Commission review may occur after ED certification, at which time the WQMP Update will be reviewed by the Commission

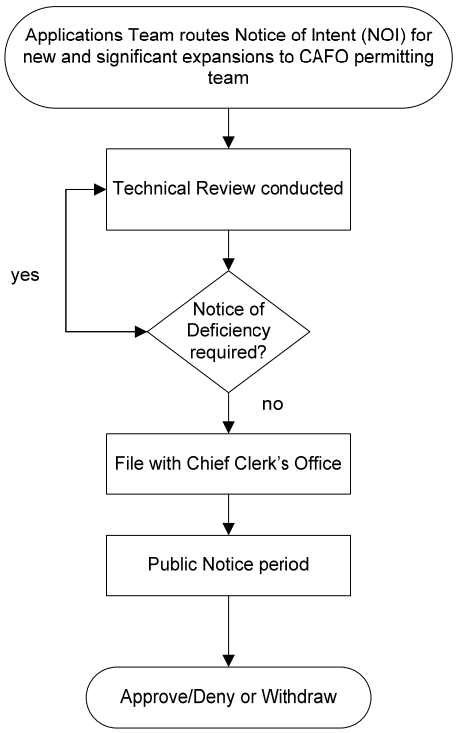
401 State Water Quality Certification Work Flow



CAFO Individual Permit Process Work Flow



CAFO General Permit Notice of Intent Work Flow



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Water Rights Permitting and Availability
Location/Division	3rd Floor / Building F / Water Rights Permitting and Availability Section / Water Supply Division / Office of Permitting and Registration
Contact Name	Todd Chenoweth
Actual Expenditures, FY 2008	$2,371,797
Number of FTEs as of August 31, 2008	35

B. What is the objective of this program or function? Describe the major activities performed under this program.

Under Texas Water Code (TWC) Section 11.021, water in the "rivers, streams, underflow, lakes and the arms of Texas' portion of the Gulf of Mexico" is considered state water. Use of this water is acquired through an appropriation obtained via the permitting process established in TWC Chapter 11. Water rights are granted on a "first come, first served" basis. There is a limited amount of water in any stream that can be permitted for use.

The Water Rights Permitting and Availability (WRPA) Section coordinates the issuance, renewal and modification of water rights permits, which number about 6,200 in the state. Approximately 500 applications, ownership changes, and water supply contracts are processed annually. In FY 08, approximately 130 of these were applications for new water rights or amendments to existing water rights. The remaining 270 applications were for water supply contracts and ownership changes.

Applications are reviewed for administrative and technical requirements and technical analyses are conducted to evaluate effects on other water rights, instream uses, bays and estuaries, water quality, conservation, and the public welfare. This analysis also determines water availability. The WRPA Section functions as a single point of contact within the agency for water rights permit applications, coordinating with other legal and technical authorities that may review and comment on the application.

In addition, water conservation and drought contingency plans are reviewed every five years for those required by Texas law to submit such plans. The WRPA Section also administers the state plumbing fixtures program and maintains a list of fixtures approved for sale and use in the State of Texas.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

LBB Number	Type	FY 08 Performance Measure	Percent of Annual Target
01-02.03	Outcome	Percent of water-rights applications reviewed within the established time frame	112.65
01-02-02.02	Output	Number of applications to address water rights impacts reviewed	106.72 *

*This measure is shared with other programs within the agency. The number reported here is the combined total for all agency participants in this measure.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

2001

- The 77th Legislature adopted SB 2 which required the TCEQ, the Texas Water Development Board (TWDB), and the Texas Parks and Wildlife Department (TPWD) to establish and maintain a program to collect instream flow data and to conduct studies to determine instream flow conditions in the state's rivers and streams necessary to support a sound ecological environment.

2007

- The 80th Legislature adopted SB 3 which created a basin-by-basin process for developing recommendations to meet instream needs as well as freshwater inflows to affected bays and estuaries. The legislation requires the TCEQ to adopt environmental flow standards via rulemaking. The bill also creates a 23-member Water Conservation Advisory Council to monitor the development and implementation of water conservation strategies.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Applicants for new water rights may be private individuals, businesses, or governmental bodies. Permitted water right holders include municipalities, industrial users, mining operations, farmers and ranchers, and river authorities, which typically wholesale water to other users. Approximately 70 percent of state water rights are permitted for irrigation. Municipal and industrial water use each account for approximately eight percent of the total number of permitted water rights. Other uses could also include recreational, instream flow, mining, etc.

Permitted water right holders may apply to amend their existing water rights, contract for sale of the water to another party or purchase additional water from another water right

holder, or sell their water right, in which case a change of ownership is filed with the executive director.

For water conservation and drought contingency plans, affected persons and organizations include water right holders, retail and wholesale public water suppliers, and irrigation districts.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The general application process is summarized in the flowchart *Water Rights Permitting Application Process* following Question O. More specifically, the process progresses as follows.

- Applications are submitted and assigned to a project manager, who distributes the applications to technical teams—conservation, instream uses, hydrology, and dam safety—for administrative review.

- If additional information is required, a request for information (RFI) is sent to the applicant. If the applicant does not respond, the application is returned.

- If the applicant supplies the information requested in the RFI, the application is administratively complete, appropriate notice is sent to affected parties, and the technical review begins.

- The technical reviews develop recommendations regarding denial or issuance of the permit based on state law. The technical reviews may also recommend special conditions to protect other water right holders, instream uses, water quality, and freshwater inflows to the bays and estuaries, or include conservation recommendations.

- Once the notice comment period is finished and all technical reviews are complete, a draft permit is generated, then sent to the appropriate TCEQ regional office and to anyone who protested the application or requested to review the draft permit.

- If the protestants wish to proceed, the application is scheduled for a Commission Agenda, where a decision is made to either issue the permit or send the application to the State Office of Administrative Hearings (SOAH).

- If the application is not protested, the permit is issued by the executive director.

- If the application is sent to SOAH, a hearing is conducted and a recommendation is issued. The commission reviews that recommendation and has the authority to decide whether to deny, grant, or modify the application.

For reviews of water conservation and drought contingency plans mandated by SB 1, 75th legislative session, TCEQ rules require that entities submit these plans by a specific date every five years. The plans are subject to an administrative review in accordance with the statute.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0001	General Revenue	$386,955
0153	Water Resource Management Account	$1,683,644
0555	Federal Funds	$171,533
0777	Interagency Contracts	$129,665

Strategy—A.2.2—Water Resource Permitting

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

The Texas Instream Flow Program was established in 2001 by SB 2 which directed the TCEQ, the TPWD, and the TWDB to establish and continuously maintain a program for collecting and evaluating data on instream flow.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

- The TCEQ entered into a Memorandum of Agreement (MOA) with TWDB and TPWD relating to an operating agreement for instream flow studies mandated by SB 2. The MOA establishes a tri-agency coordinating committee to provide overall policy direction to the instream flow program and develop a programmatic work plan, identifying the priority study areas, assigning agency responsibilities for conducting the studies, and setting time frames.

- The WRPA Section established a Water Rights Advisory Work Group (WRAWG), a voluntary group of participants that meets quarterly to discuss issues related to water rights permitting. The meetings are open to the public. The WRAWG currently has representation from municipal, industrial, mining, and irrigation users; river authorities; engineering and law firms; environmental organizations; and governmental bodies. WRAWG meetings are webcast through the TCEQ's site. Archived meeting webcasts are also available.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

- TPWD: A participant with the TCEQ in SB 2 instream flow studies and on the Water Conservation Advisory Council. The TPWD may also choose to become a party in contested case applications.

- TWDB: Also a participant with the TCEQ in SB 2 instream flow studies and on the Water Conservation Advisory Council. The TWDB also reviews water conservation plans in support of loan applications.

- The WRPA Section, as well as personnel from the TWDB and the TPWD, coordinates with the Environmental Flows Advisory Group, the Science Advisory Committee (SAC), the Basin and Bay Area Stakeholder Committees (BBASCs) and the Bay Basin Expert Science Teams (BBESTs) to give technical assistance and generate reports based on the groups' recommendations. The Environmental Flows Advisory Group, SAC, BBASCs, and BBESTs were established by SB 3, 80th Legislative Session, 2007. The Environmental Flows Advisory Group oversees implementation of the environmental flows process and is assisted by the SAC acting as an independent scientific group. Stakeholder groups (BBASCs) for each bay and basin area identified in the statute are appointed by the Environmental Flows Advisory Group and, in turn, also appoint their own science advisory committees (BBESTs).

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

The WPRA Section administered eight contracts in FY 08, with expenditures totaling $563,628. These include a transfer of $10,800 of Federal Emergency Management Agency (FEMA) grant funds to the TWDB, as part of the transfer of the Floodplain Management Program to that state agency. The FY 06 FEMA grant ended on September 30, 2007, so one month's funds were transferred.

The purposes of the WRPA Section contracts are support for ongoing updates and maintenance of the Water Availability Modeling (WAM) system and to obtain methods and techniques to enhance the WRPA's ability to perform technical evaluations for impacts on instream uses and bays and estuaries. Contract deliverables include:

- Developing a graphical interface tool for geographic information system (GIS) display of WAM outputs for spatial analysis and investigation of a method to determine reservoir capacity for small reservoirs across the state.

- Developing enhancements to the existing WAM.

- Reviewing and suggesting revisions to the current desktop methodology (Lyons' method) used by the TCEQ to establish environmental flows in Texas rivers and streams.

- Developing a GIS for environmental data.

- Building a comprehensive, geospatially explicit database of occurrence for all freshwater fishes of Texas.

- Evaluating temporal changes in harmonic mean daily streamflow in Texas.

- Compiling and organizing existing information on the hydrology, biology and physical habitat, physical processes and water quality of the Trinity River Basin.

TCEQ standard requirements for interagency contracts apply. The performing party is required to adhere to all applicable standards, principles, and guidelines detailed in Office of Management and Budget circulars A-21 and A-110, including those related to financial monitoring, auditing, and record keeping. Contracts are subject to the receipt and availability of funds appropriated to or secured by the TCEQ. This funding is in place before the contract is executed through TCEQ budgeting and planning; accountability for funding is with the TCEQ budget staff and the contract manager.

Performance under each contract is ensured via standard project management practices, including initiation, planning, execution, control and closure. Performance under the scope of work is assessed though a schedule and a set of deliverables, and projects are not considered complete nor accepted unless discrepancies are resolved.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

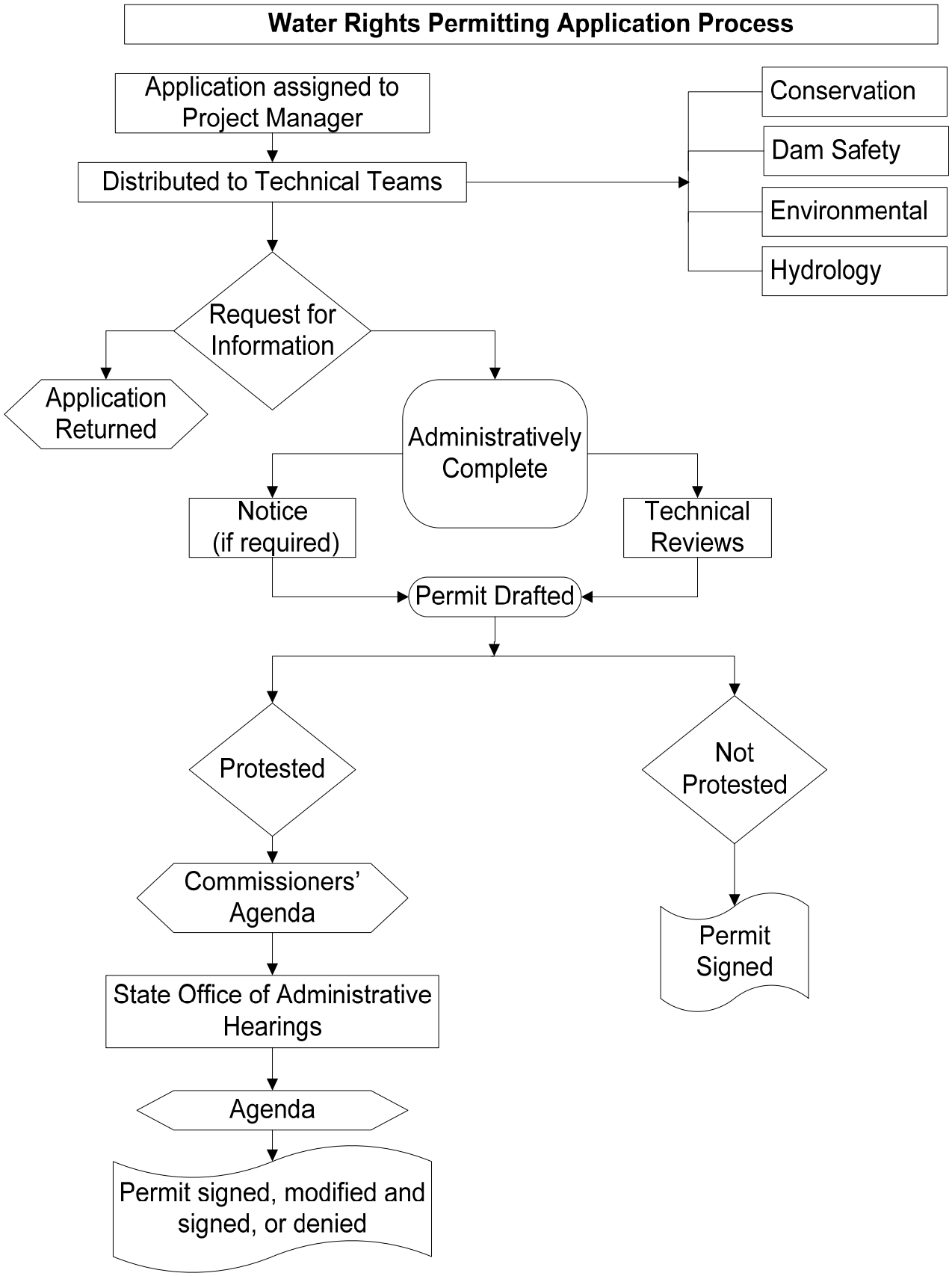
N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not applicable, please see Field Operations Question O for complaint-related data related to this program.


Water Rights Permitting Application Process
Application assigned to Project Manager
Distributed to Technical Teams
Conservation
Dam Safety
Environmental
Hydrology
Request for Information
Application Returned
Administratively Complete
Notice (if required)
Technical Reviews
Permit Drafted
Protested
Not Protested
Commissioners' Agenda
Permit Signed
State Office of Administrative Hearings
Agenda
Permit signed, modified and signed, or denied

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Dam Safety
Location/Division	3rd Floor / Building A / Dam Safety Section / Field Operations Support Division / Office of Compliance and Enforcement
Contact Name	David Bower
Actual Expenditures, FY 2008	$796,855
Number of FTEs as of August 31, 2008	8

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Dam Safety Program monitors and regulates both private and public dams in Texas. The program periodically inspects dams that pose a high or significant hazard 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 that could have loss of life if the dam should fail.

The major activities performed by the program are:

- review of construction plans and specifications for new dams that require a water right permit and review of dam modifications;
- review of water-right permit applications for projects with a dam and lake to address dam safety issues;
- review of owners' and contractors' inspection reports;
- inspections of existing dams, new dams under construction, modifications to existing dams, and dam security;
- hydrologic and hydraulic reviews of dams; and
- review of emergency action plans;

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

The effectiveness and efficiency of the Dam Safety Program are shown by the following:

The program reports to the Legislative Budget Board on the number of dam safety assessments completed. This output measure (01-01-02.03) increased from 451 in FY 07 to 480 in FY 08. The FY 08 annual target was met at 112 percent.

The number of inspections of high and significant hazard dams has increased from 227 in FY 06 to 459 inspections in FY 08. The number emergency action plans reviews increased from 29 in FY 06 to 39 in FY 08.

The number of reviews of owners' engineering reports has remained nearly constant with 35 in FY 07 and 36 in FY 08.

All dam owners receive a copy of the inspection report following an inspection, attached to a letter requiring the owner to respond by a specific date with a plan of action and time line for correcting any deficiencies documented during the inspection. This inspection follow-up process was implemented in FY 04. Initially, there was no response; currently, the response rate is approximately at 50 percent. This improvement is attributed to the significant outreach activities undertaken by the program.

The program has increased its presence across the state by performing more inspections, conducting dam-owner workshops, and making new publications available. These activities have been effective in increasing requests for inspections, electronic communications, telephone calls, written correspondence, and requests for presentations to discuss the program.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

1914

- The Texas Dam Safety Program began with members of the Board of Water Engineers making construction inspections.

1968

- The modern version of the program began with the first inspections of existing dams in September 1969.

1977

- Phase I of the National Dam Safety Program was funded (PL 92-367), which led to significant changes in standards used in the evaluations of dams.

1981

- Federal funding for the Dam Safety Program ended.

1986

- Texas' first comprehensive set of dam-safety rules was adopted.

1998

- The TNRCC's Executive Director Task Force on Dam Safety published its final report, which was confirmed by the House Natural Resources Subcommittee on Dam Safety. Numerous recommendations were made, including updating the applicable rules.

2003

- At the TCEQ's request, the Association of State Dam Safety Officials performed a peer review of the Dam Safety Program. The report recommended that new rules be developed and the program be revitalized.

2008

- The TCEQ approved new dam-safety rules that became effective on January 1, 2009.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The program affects all owners of dams and engineering firms that work on dam-related projects. In FY 08, there were 7,504 dams in the TCEQ's program database, but that number was reduced in January 2009 as a result of the rule changes. Of the currently regulated dams, 851 are high-hazard dams; 804 are significant-hazard dams.

The following table breaks down of the types of dam owners with the total number of dams for those owners. Each dam could have more than one owner.

Individuals	2,708
Private owners	2,093
Soil and water conservation districts	1,818
Local governments (cities and counties)	724
Water districts	351
Federal agencies	112
River authorities	77
Public utilities	77
State agencies	48

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Organizationally, the program currently is part of the Office of Compliance and Enforcement. Its staff is located at the TCEQ central office as well as in regional offices in Houston and Tyler.

In addition to the activities described above in Question B, Dam Safety personnel manage contracts, communicate with dam owners and engineers before inspections, conduct exit interviews to discuss preliminary findings, conduct dam owners' workshops, make presentations to owner associations and engineering societies, and develop owner-education materials, such as:

Dam Removal Guidelines
Guidelines for Operation and Maintenance of Dams in Texas
Hydrologic and Hydraulic Guidelines for Dams in Texas
Guidelines for Developing Emergency Action Plans for Dams in Texas
Forms for dam inspections and for reporting suspicious incidents

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0001	General Revenue	$473,719
0153	Water Resource Management Account	$100,000
0555	Federal Funds	$223,136

Strategy—A.1.2— Water Assessment and Planning

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

No other state programs in Texas, internal or external, perform dam-safety services or functions.

The Natural Resources Conservation Service (NRCS), a federal agency, offers dam-safety services—primarily technical assistance— to local sponsoring organizations on dams that were funded and built by NRCS or the predecessor agency (the U.S. Soil Conservation Service). These dams are owned by the local sponsoring organizations and are under Dam Safety Program jurisdiction. The NRCS does not have the same functions as the Dam Safety Program.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

To avoid duplication or conflict with the NRCS-assisted projects, the Dam Safety Program has an interagency contract with the NRCS that provides for the NRCS to inspect the high- and significant-hazard NRCS-assisted project dams. The NRCS submits the reports to the Dam Safety Program, which forwards the letters and reports to the dam owners.

To avoid duplication of effort on inspections by dam owners, the rules now allow the dam owner's engineering inspection reports to be counted as proof of inspection, and the program does not reinspect. The owner's inspection reports are reviewed by the Dam Safety Program and appropriate recommendations are made to the dam owner(s).

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The units of government that interrelate with the Dam Safety Program include:

Local governments	Own dams; also involved with emergency actions
River authorities	Own dams
Water districts	Own dams
Soil and water conservation districts	Own dams
State agencies	Own dams

Federal Agencies	
U.S. Fish and Wildlife Service	Owns dams
U.S. Forest Service	Owns dams
NRCS	With the Dam Safety Program has an interagency contract for inspection of dams
Corps of Engineers	Dams funded and built by the COE are exempt from state jurisdiction
Bureau of Reclamation	Dams funded and built by the BOR are exempt from state jurisdiction
International Boundary and Water Commission	Dams funded and built by the IBWC are exempt from state jurisdiction

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

The program had total contract expenditures of $393,250 in FY 08. Three contracts were developed for outsourcing inspections. Monitoring and evaluating contracts to ensure accountability for results is an integral part of every activity that receives state and federal funds. Monitoring and evaluation are conducted by the assigned contract manager. No contract is signed unless it includes baseline data from which progress can be measured. In addition, every contract specifies regular benchmarks for evaluating progress and suggested corrective actions to be implemented when necessary. Fiscal monitoring includes careful review of expenses and supporting documents to ensure that all expenses are substantiated, reported properly, and in compliance with established agency guidelines.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

Amend Texas Water Code Section 12.052 to authorize the TCEQ to assess administrative penalties for violations of dam-safety rules and regulations.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

Since December 2003, several significant activities have been initiated to improve the program and to reassert it as a positive presence in Texas:

- Rehiring the former Dam Safety Program supervisor, with over 30 years of direct experience, to oversee operations and direct activities.

- Developing a training plan and program for new staff. Training includes courses on safety evaluation of existing dams and for dam operators presented by the Bureau of Reclamation, hydrologic and hydraulic courses, a geotechnical course, GIS-GPS courses, a course on erosion and sedimentation control, Risk Assessment training, and Engineering-in-training (EIT) refresher training for becoming a professional engineer.

- Determining which Texas dams are critical infrastructures.

- Reestablishing a presence for the program by increasing the numbers of inspections, contacting owners about inspections, sending reports to owners with a request for response, reviewing owner and consultant inspection reports, and responding to owner questions.

- Conducting workshops for over 800 owners and engineers.

- Publishing guidelines for owners and engineers

In April 2008, the State Auditor's Office published an audit report on the Dam Safety Program recommending several changes. The program is on task to implement all of the recommendations.

New rules added requirements for emergency action plans, operation and maintenance plans, and inspection frequency, and changed the definition of dams.

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Texas Commission on Environmental Quality Dam Safety Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	7,504	7,504
Total number of entities inspected	297	501
Total number of complaints received from the public	3	9
Total number of complaints initiated by agency *(scheduled investigations)*	294	492
Number of complaints pending from prior years	0	0
Number of complaints found to be non-jurisdictional	1	1
Number of jurisdictional complaints found to be without merit	Not applicable	Not applicable
Number of complaints resolved	296	500
Average number of days for complaint resolution	95	105
Complaints resulting in disciplinary action:	4	0
Administrative penalty	Not applicable	Not applicable
Reprimand	Not applicable	Not applicable
Probation	Not applicable	Not applicable
Suspension	Not applicable	Not applicable
Revocation	Not applicable	Not applicable
Other	4	0

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Enforcement
Location/Division	1st Floor / Building C / Enforcement Division / Office of Compliance and Enforcement
Contact Name	Bryan Sinclair
Actual Expenditures, FY 2008	$4,860,152
Number of FTEs as of August 31, 2008	96

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Enforcement Program protects human health and the environment by enforcing TCEQ rules, regulations, and permits and by deterring future noncompliance. The program develops enforcement cases in accordance with state statutes and agency rules consistent with the TCEQ's philosophy that enforcement, when necessary, must be swift, sure, and just. For each case, the program drafts proposed enforcement orders that include appropriate penalties and ordering provisions for the commission's consideration and approval.

In addition, the program is also responsible for the following activities:

- administering third-party Supplemental Environmental Projects (SEPs);
- reviewing and responding to notices and disclosures submitted pursuant to the Texas Environmental, Health, and Safety Audit Privilege Act;
- processing compliance-history appeals; and
- sending periodic update letters to complainants until a complaint-initiated enforcement case is resolved.

When environmental laws are violated, the agency has the authority to levy penalties up to the statutory maximum per day, per violation. The statutory maxima range from $500 to $10,000, depending on program violation.

In FY 08, the TCEQ issued 1,624 administrative orders, which produced $16,907,912 in administrative penalties and $4.6 million for SEPs. The TCEQ also refers cases to the Texas Office of the Attorney General which, in FY 08, obtained 22 judicial orders for the TCEQ, which resulted in $1 million in civil penalties and $100,000 for SEPs.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

#	LBB Number	Type	FY 08 Performance Measure	Percent of Annual Target
1	03-01.07	Outcome	Percent of administrative penalties collected (key)	99.32
2	03-01-02.01	Efficiency	Average number of days to file an initial settlement offer	82.86
3	03-01-02.03	Explanatory	Number of administrative orders issued	162.40

Variance explanation for #2 - The projected performance to file an initial settlement offer is 70 days. On average, the program filed the initial settlement offer in 58 days. For this type of measure, performance below the target reflects positively on the agency's efforts to expedite cases.

The program has seen an increase in effective orders. In FY 07, the TCEQ issued 1,383 orders; in FY 08, 1,624 orders were issued. The increase is due to streamlining that made the program more efficient.

Approximately 1,300 (about 80 percent) of the orders the program issues annually are assigned to its order compliance tracking team for compliance monitoring and tracking. During the year after confirming compliance, the team closes approximately a proportional number of cases.

The program is required by statute to report monthly to the commission at a public meeting and to produce an annual report to the governor, lieutenant governor, and speaker of the Texas House of Representatives.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

1993

- Environmental enforcement was separated into seven enforcement programs: air, water quality, petroleum storage tanks, municipal solid waste, industrial solid waste, occupational license, and public water supply, each with its own penalty policy and general enforcement process. The air program had two additional policies: a small-business minor-source policy and a no-penalty policy.

1995

- The TNRCC, predecessor agency to the TCEQ, consolidated all enforcement functions into a single division. At the same time, the TNRCC's Office of Legal Services formed the Litigation Division to work with the Enforcement Program on cases that do not settle through the Enforcement Program's expedited process.

1997

- The TNRCC adopted its first penalty policy. The commission rescinded the small-business minor-source policy and the no-penalty policy.
- A guide to enforcement initiation criteria was developed to promote consistency in how violations are addressed through either formal enforcement (i.e., an order and penalty) or a notice of violation.

1998

- The State Auditor's Office (SAO) and TNRCC Internal Audit, jointly reviewed agency compliance and enforcement processes.

1999

- The EPA and TNRCC jointly signed a multi-media/multi-year enforcement memorandum of understanding setting forth the roles and responsibilities for the TNRCC's enforcement of major air sources, wastewater facilities, public water supplies, facilities with underground injection controls, and Resource Conservation and Recovery Act (RCRA) facilities.

2000

- The commission considered a revised penalty policy and criteria for use of findings orders and instructed the staff to publish the policies for public comment.
- The EPA Region VI and the TCEQ signed a protocol for the coordination of joint enforcement activities.

2002

- The commission considered and adopted a revised penalty policy.

2003

- The SAO published an audit report titled, *The Texas Commission on Environmental Quality's Enforcement and Permitting Functions for Selected Programs*.
- The TCEQ's executive director announced the agency would undertake a comprehensive review of its enforcement functions called the Enforcement Process Review.

2005

- The TCEQ issued its final report on the Enforcement Process Review, which included specific recommendations for consideration by the executive director and commissioners. Many of those recommendations were adopted and implemented. A list is available at the TCEQ public Web site.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The program develops orders and assesses penalties for regulated entities with violations that trigger a formal enforcement action (pursuant to the enforcement initiation criteria). The effective orders and assessed penalties for the affected regulated entities are sorted by program below.

Program	No. of FY 08 Orders	Assessed Penalties
Agriculture	41	$168,180
Air	381	$8,818,323
Dry Cleaners	60	$80,090
Industrial and Hazardous Waste	21	$469,239
Municipal Solid Waste	69	$492,659
Occupational Certification	59	$42,928
Petroleum Storage Tanks	246	$1,728,690
Pubic Water Supply	193	$447,570
Water Quality	435	$3,569,687
Multi-media (combining two or more of above)	119	$1,090,546
FY 08 Total	**1,624**	**$16,907,912**

Most referrals received by the program are received from the TCEQ's Field Operations Division. Other TCEQ programs and the Texas Water Development Board also refer violations to the Enforcement Program for development of an order and penalty assessment.

The program's order compliance tracking (OCT) team ensures each commission-issued order requiring corrective action is tracked until compliance is achieved. The table below describes the percentage of regulated entities with an order being tracked for corrective action completion:

Type of Regulated Entity	Percent
Water Quality	26.3
Air Quality	20.8
Public Water Supply	28.1
Petroleum Storage Tanks	6.1
Municipal Solid Waste	5.2
Industrial and Hazardous Waste	3.0
Operators and Licenses	2.6
Dry Cleaners	1.2
Other	0.2
Multi-media	6.5

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The TCEQ enforcement process begins when one or more violations meet the enforcement initiation criteria and a notice of enforcement is issued to the responsible party. Before an enforcement referral is received, an investigation report and enforcement action referral (EAR) are entered and approved in the TCEQ's Consolidated Compliance and Enforcement Data System (CCEDS). Refer to the flowchart *The Enforcement Process* following Question O for the processes that take place once an EAR is received.

After evaluating each violation, enforcement coordinators recommend an administrative penalty to the commission according to a policy that incorporates the statutory maxima designated for each regulatory program in Texas Water Code (TWC) Chapter 7 and Health and Safety Code Chapters 341 and 371.

Once the commissioners approve an order, the OCT team actively tracks each order for timely compliance and penalty payment. The OCT team also monitors compliance for court orders and compliance agreements.

Enforcement Program personnel are located in the central office and in several region offices across the state.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0001	General Revenue	$208,429
0151	Clean Air Account	$928,443
0153	Water Resource Management Account	$1,120,986
0549	Waste Management Account	$887,282
0555	Federal Funds	$865,053
0655	Petroleum Storage Tank Remediation	$526,209
5094	Operating Permit Fees	$323,750

Strategies:
A.1.3—Waste Assessment and Planning
C.1.1—Field Inspections and Complaints
C.1.2—Enforcement and Compliance Support
D.1.1—Storage Tank Administration and Cleanup

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

The TCEQ's Litigation Division has a similar enforcement function. Its attorneys work in partnership with the Enforcement Program when the program is unable to reach settlement

with a responsible party or in instances where a direct referral to the Litigation Division is deemed appropriate. Additionally, the Environmental Crimes Unit within the Litigation Division investigates and assists in the prosecution of environmental crimes, in coordination with a task force comprised of federal, state, and local agencies.

The following external programs offer similar services and functions but the distinction with TCEQ Enforcement Program functions is that they pursue their enforcement through a civil or criminal process.

- Texas cities and counties are able to enforce environmental violations through civil and criminal processes.

- The Office of the Attorney General (OAG) partners with the Enforcement Program to handle referrals from the TCEQ and pursues civil suits when the administrative process has been unsuccessful or is inappropriate for the nature of the violation.

- The EPA Region VI has a similar enforcement function to the TCEQ's.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The TCEQ's Enforcement Program and Litigation Division are the only areas that develop orders and assess penalties for the commissioners' approval. Duplication and conflict are prevented by an established process whereby only the program makes referrals to the division and each is tracked in CCEDS. Once the Litigation Division receives a referral from the program, communication and negotiations are closely coordinated between the assigned enforcement coordinator and the Litigation Division's staff attorney.

The TCEQ has an agreement with the EPA called the Joint Enforcement Cooperation Protocol to coordinate activities on a voluntary basis to avoid duplication or conflict.

When a local jurisdiction files a civil suit, TCEQ becomes a party to that case pursuant to TWC Section 7.353. Likewise, when a local jurisdiction files a criminal case it must coordinate with the TCEQ pursuant to TWC Section 7.203.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The TCEQ Enforcement Program works in partnership with the OAG. When the TCEQ refers violations to the OAG, a lawsuit is filed against a responsible party on behalf of the State of Texas. The TCEQ completes OAG referrals for: violations that need immediate corrective action, egregious violations, cases where the TCEQ is a party, and when conditions specified in TWC Section 7.105 exist.

When a local jurisdiction files a civil suit, the TCEQ becomes a party to that case pursuant to TWC Section 7.353. Likewise, when a local jurisdiction files a criminal case, it must coordinate with the TCEQ pursuant to TWC Section 7.203.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

In FY 08, the Enforcement Program had one contract in the amount of $1,110 with LexisNexis. This contracted service was used to research contact information (mailing addresses, phone numbers) for responsible parties.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

1) Revising TWC Section 5.753(a) could address concerns about the TCEQ's calculation of compliance history. The current compliance history rule has been widely criticized by the regulated community and environmental organizations. Those opposed to the current rule assert that:

- The current compliance equation is too complex and does not measure true performance;
- Some regulated entities (e.g., small entities) seem to be disproportionately impacted under the compliance history calculation; and
- In terms of compliance history ranking, it is unfair to uniformly rank TCEQ's significantly diverse regulated universe. The current rule should be revised such that only similar industries/businesses are ranked relative to each other.

2) Revise TWC Section 5.753(b) to differentiate between administrative orders with a penalty and corrective action orders without an administrative penalty in the components of compliance history.

3) Revise TWC Section 7.067(a) to broaden the use of SEP funding.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

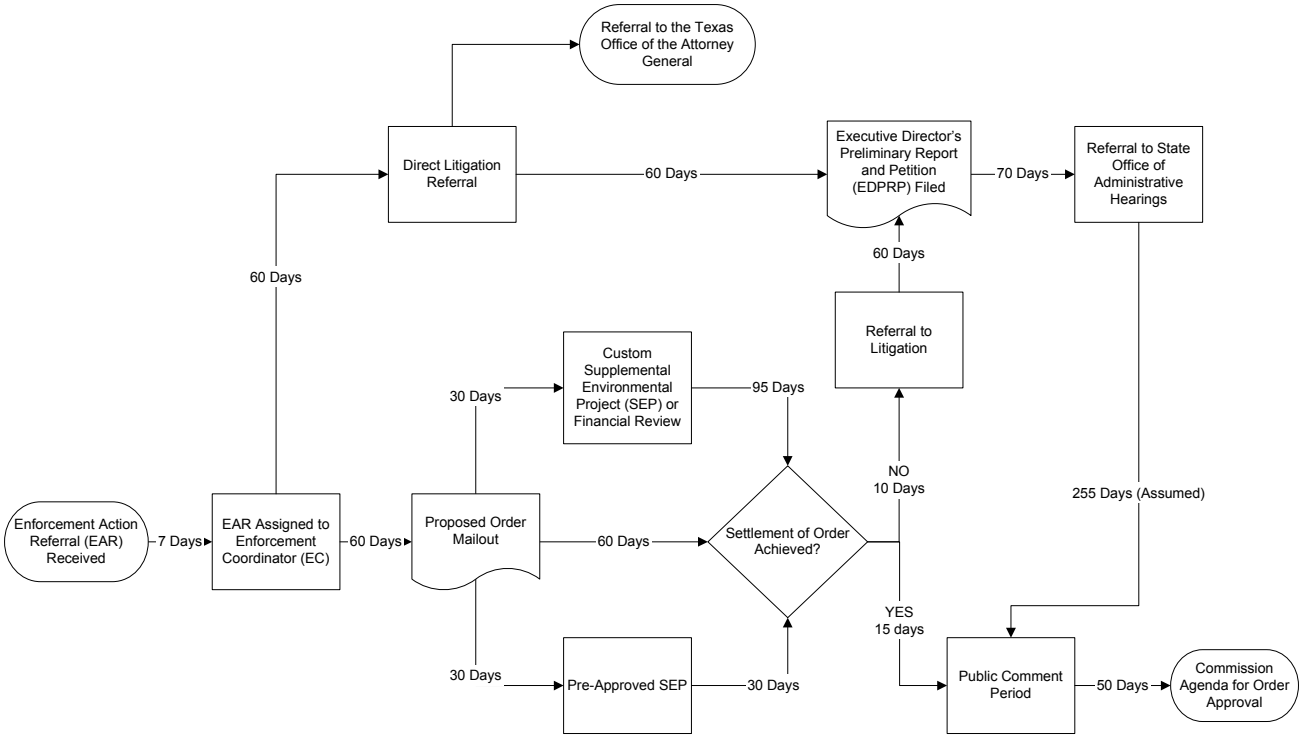
N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable



The Enforcement Process
and Timeline 7/30/09

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Environmental Testing Laboratory Accreditation
Location/Division	3rd Floor / Building A / Field Operations Support Division / Office of Compliance and Enforcement
Contact Name	David Bower
Actual Expenditures, FY 2008	$692,791
Number of FTEs as of August 31, 2008	11

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Environmental Testing Laboratory Accreditation Program ensures that laboratories provide analytical data of known and usable quality and safeguards the public health and the environment against compromising laboratory practices.

The components of accreditation include on-site assessments of laboratories, semiannual proficiency testing, adherence to recognized quality-assurance and quality-control standards and minimum qualifications for the personnel performing environmental tests and key managers. In addition, the TCEQ collects fees from laboratories, issues accreditation certificates to laboratories, and maintains extensive records regarding laboratories and their accreditations.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

From the TCEQ's Performance Measures Report to the Legislative Budget Board, a key output measure (strategy code 03-01-02.01) is the number of environmental laboratories accredited by the TCEQ. That annual target was met at 82.67 percent, or 248 certifications, because the number of applications received was lower than the projection of 300. Additional applications are still in process.

The TCEQ issues accreditations to environmental laboratories after determining that each is capable of performing analytical tests correctly and meets the standards of the National Environmental Laboratory Accreditation Program.

No single laboratory performs all types of environmental analyses; therefore, the TCEQ issues accreditations for over 72,000 separate fields, encompassing most environmental

laboratory analyses. Each field is a unique combination of matrix, analytical method, and parameter.

The effectiveness of the program is also demonstrated by actions the TCEQ has taken regarding deficient laboratories. The TCEQ has denied accreditation to three laboratories after determining they were unable to meet minimum performance and analytical standards.

On-site inspections of all initial applicants for accreditation and biennial re-inspections verify that laboratory operations meet standards for accreditation or identify items and activities that did not, for which timely and effective corrective actions must be completed before the TCEQ will accredit.

The program requires laboratories to undergo semiannual proficiency testing. This testing gives the TCEQ an objective demonstration that a laboratory can achieve correct results when performing analytical tests. A laboratory's accreditation is not issued or renewed unless it demonstrates it can successfully analyze proficiency samples.

Annually, the agency's quality-assurance staff and management carry out a comprehensive assessment of the accreditation program. The assessment and review determine, among other things, the program's compliance with national accreditation requirements, the adequacy of the program's structure and processes, and the effectiveness of program operations.

The TCEQ successfully completed an assessment by the U.S. Environmental Protection Agency and other accrediting states before its accreditation program was approved initially in 2005, and again in 2009.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

2001

- The Sunset Advisory Commission recommended, and HB 2912 (77th Legislature) required, the TCEQ to administer a voluntary laboratory-accreditation program that is consistent with the National Environmental Laboratory Accreditation Program (Texas Water Code Section 5.801). The agency has done so.

2005

- The TCEQ's accreditation program received approval from the EPA and other accrediting states.

2008

- *Requirements concerning the use of accredited laboratories became effective on July 1, 2008 (Texas Water Code Section 5.134).*

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The TCEQ's Environmental Testing Laboratory Accreditation Program affects all environmental laboratories supplying analytical data for agency decisions, directly to the TCEQ, or indirectly through regulated entities. These laboratories include commercial, governmental, and certain in-house environmental laboratories operated by regulated entities. Regulated laboratories must meet accreditation requirements and pay associated fees.

The program also affects multiple parts of the TCEQ and the public, because the TCEQ relies on analytical data to assess risks to public health and the environment and to determine how best to allocate resources for environmental protection.

Also, the program affects regulated entities that rely on laboratories for the analysis of environmental samples. A breakdown of the affected regulated entities through August 2008 appears in the table below.

	Texas Laboratories	Non-Texas Laboratories
Primary Accreditations	166	4
Secondary (Reciprocal) Accreditations	2	71
Primary and Secondary Accreditations	0	5
Subtotals	168	80
Grand Total	248	

A primary accreditation is an accreditation issued by an agency that directly ensures that a laboratory conforms to accreditation standards. For example, an agency issuing primary accreditation inspects laboratories before issuing an accreditation, and periodically thereafter. A secondary accreditation is an accreditation issued by an agency on the basis of another agency's primary accreditation, e.g., reciprocal recognition. The TCEQ is an agency with primary accreditation.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The TCEQ's Environmental Testing Laboratory Accreditation Program is in the Office of Compliance and Enforcement in the Field Operations Support Division. It is administered and operates according to requirements and timeframes contained in the *2003 National Environmental Laboratory Accreditation Conference (NELAC) Standard* and the agency's laboratory accreditation procedures <www.tceq.state.tx.us/goto/lab>.

These procedures address, among other things, receipt and processing of applications for accreditation, planning and conducting inspections, confidential business information,

complaints, and sanctions (denial, suspension, and revocation). The procedures also address internal controls, such as inspector training and qualifications, standards of conduct, annual audits, annual management reviews, and recordkeeping.

Refer to the flowchart *Laboratory Accreditation* following Question O.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The TCEQ's laboratory accreditation program is funded from fees, federal grants, and other state sources.

Account	Name	Amount
0151	Clean Air Account	$83,953
0153	Water Resource Management Account	$24,480
0468	Occupational Licensing Account	$20,351
0549	Waste Management Account	$1,375
5065	Environmental Trust Lab Accreditation	$304,726
5094	Operating Permit Fees	$1,223
0655	Petroleum Storage Tank Remediation	$128
0777	Interagency Contracts	$153,217
0555	Federal Funds	$103,338

Strategies:
A.2.3—Waste Management and Permitting
A.1.1—Air Quality Assessment and Planning
B.1.1—Safe Drinking Water
C.1.1—Field Inspections and Complaints
C.1.2—Enforcement and Compliance Support
A.2.4—Occupational Licensing

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

Twelve agencies located in 11 other states issue the same type of accreditations as the TCEQ's Environmental Testing Laboratory Accreditation Program. The TCEQ's Public Drinking Water (PDW) Program performs laboratory approvals as well. The PDW Program approves (not accredits) laboratories that analyze parameters associated with process control. Unlike the laboratory approvals, accreditations apply to analyses related to agency decisions on items such as permit compliance.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The standards for accreditation include requirements that preclude duplication or conflict among accrediting states. For example, non-federal laboratories must apply for primary accreditation in their home state unless that state has no accreditation program or does not offer the types of accreditations the laboratories need.

In addition, accreditations issued by one state must be accepted by other accrediting states. Other accrediting states must issue secondary (or reciprocal) accreditations to laboratories holding primary accreditations from another state. The other states may not impose any inspection, testing, or quality control requirements on laboratories applying for secondary accreditation and must issue secondary accreditations within 30 days.

The TCEQ has made operational arrangements that prevent duplication and conflict between the accreditation program and the PDW Program's laboratory approvals. Parameters differ between accreditation and approval.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The TCEQ's Environmental Testing Laboratory Accreditation Program accredits all laboratories operated by units of local government or federal agencies that analyze environmental samples for compliance with the Safe Drinking Water Act and report to the TCEQ.

The program accredits laboratories operated by units of local government, regional governments, or federal agencies, that are required under TCEQ rules (30 TAC Section 25.6) to be accredited or, though not required to be accredited, voluntarily choose to be.

The program is reviewed by EPA Region 6 every three years to assess conformance to requirements associated with enforcement (primacy) delegation under the Safe Drinking Water Act.

The Environmental Testing Laboratory Accreditation Program is also reviewed by a team representing other accrediting states on a triennial basis to assess, among other things, conformance to national accreditation standards and determine whether to continue recognition of accreditations issued by the TCEQ.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

The program spent $126,165 on four contracts for inspections, temporary clerical staff, and a record-keeping system.

Accountability and performance are ensured by open procurement, fiscal monitoring, contract specifications, and monitoring of deliverables. The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

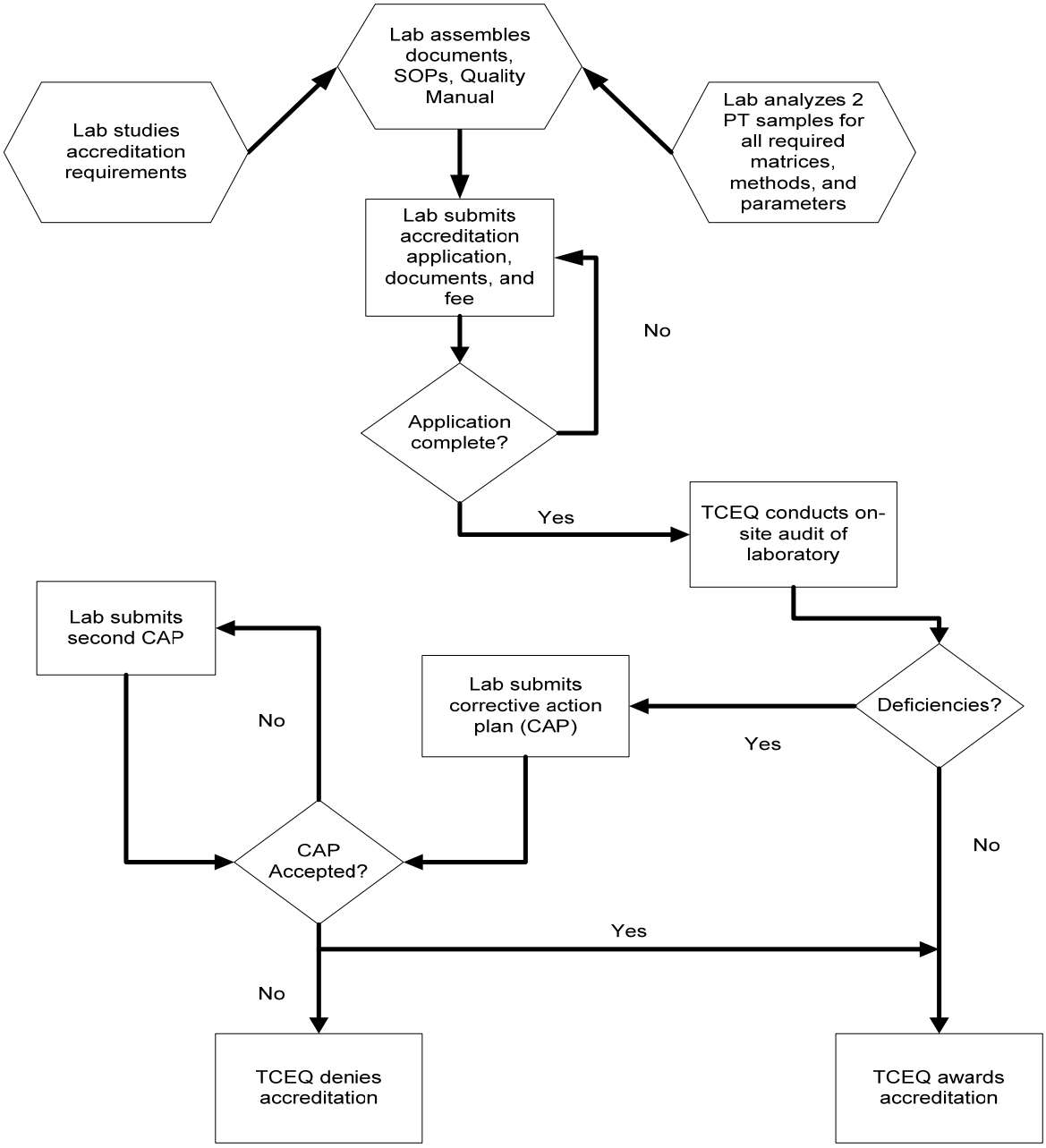
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Texas Commission on Environmental Quality Environmental Testing Laboratory Accreditation Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	Fiscal 2007	**Fiscal 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	76	248
Total number of entities inspected	17	35
Total number of complaints received from the public	0	0
Total number of complaints initiated by agency	17	35
Number of complaints pending from prior years	0	0
Number of complaints found to be non-jurisdictional	0	0
Number of jurisdictional complaints found to be without merit	0	0
Number of complaints resolved	0	0
Average number of days for complaint resolution	0	0
Complaints resulting in disciplinary action:	0	0
administrative penalty	Not applicable	Not applicable
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	0	0
revocation	0	0
other	0	0

LABORATORY ACCREDITATION



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Field Operations
Location/Division	3rd Floor / Building C / Office of Compliance and Enforcement
Contact Name	Ramiro Garcia
Actual Expenditures, FY 2008	$49,264,776
Number of FTEs as of August 31, 2008	771.5

B. What is the objective of this program or function? Describe the major activities performed under this program.

The TCEQ's Field Operations Program consists of 16 regional offices and two satellite offices located throughout the state and the Field Operations Support Division (FOSD) located in the TCEQ's central office. The regional offices are divided into three areas: Border and South Central Texas; Coastal and East Texas; and North Central and West Texas. The areas are managed by three area directors who ensure that the regions are functioning pursuant to established policies and procedures.

The major activities performed by the TCEQ regional offices include:

- conducting investigations at regulated entities across the state to determine compliance with applicable air, water, and waste rules and regulations;

- investigating environmental complaints based on information from Texas residents, organizations, or other concerned parties;

- addressing violations documented during investigations through written notices of violation (NOVs) or development of formal enforcement referrals;

- monitoring the quality of ambient air, surface water (rivers, lakes, and bays), and public drinking water;

- overseeing and ensuring compliance with water rights regulations and allocating the limited water resources in certain designated areas of the state when drought conditions exist;

- administering the Rio Grande, South Texas, and Concho watermaster programs;

- approving pollution abatement plans to ensure protection of underground water supplies (aquifers) in certain areas of the state; and

- responding to emergencies including natural disasters statewide as needed.

The FOSD supports the regional offices through the following functions:

- Development, coordination and implementation of statewide region support including annual investigation work plans, investigator training events, special initiatives, the field citation program; responding to complaints, data and Web-page maintenance, and public information requests.

- Coordination with, and reporting to, the EPA and the Legislative Budget Board.

- Provide multi-media program guidance and technical assistance to agency staff, the regulated community and the public. Programs include: Public Water Supply; Air Quality; Water Quality; Petroleum Storage Tanks; Concentrated Animal Feeding Operations; Industrial and Hazardous Waste; Municipal Solid Waste; Pretreatment; Sludge; Stage II; Edwards Aquifer; Watermaster; Water Rights; Storm Water; Landscape Irrigation; On-Site Sewage Facilities (OSSFs); and Quality Assurance.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

During FY 08, Field Operations staff conducted 62,454 on-site investigations. Based on these investigations, 9,289 NOVs were issued. All the NOVs alleged violations of TCEQ air, water and waste regulations.

#	LBB Number	Type	FY 08 Key Performance Measure	Percent of Annual Target
1	03-01-01.03	output	Number of inspections and investigations of water sites and facilities	102.41
2	03-01-01.05	output	Number of inspections and investigations of waste sites	115.67
3	03-01-01.01	output	Number of inspections and investigations of air sites	86.77
4	03-01-01.02	output	Number of inspections and investigations of water rights sites	107.19
5	03-01-01.04	output	Number of inspections and investigations of livestock and poultry operation sites	89.71
6	03-01.02	outcome	Percent of inspected or investigated water sites and facilities in compliance	102.37
7	03-01.03	outcome	Percent of inspected or investigated waste sites in compliance	96.60
8	03-01.01	outcome	Percent of inspected or investigated air sites in compliance	96.63
9	03-01.04	outcome	Percent of identified non-compliant sites and facilities for which appropriate action is taken	97.53

Variance Explanations:

#3 - This performance measure was below projections due to an increased number of (on-demand) emissions event investigations which demanded the reallocation of resources from other air investigation commitments.

#5 - This performance measure was below projections due to staff turnover.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

2006

- A reorganization of the Field Operations Division (FOD) took place identifying four areas of the state: North Central Texas; Coastal Texas; Border Texas; and West Texas. Four area directors took the place of one FOD director due to the challenge of one director overseeing 16 TCEQ regions and the central office Field Operations staff.

2008

- The areas were consolidated into three: North Central and West Texas; Coastal and East Texas; and Border and South Central Texas.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Each year, the program is responsible for investigating a significant portion of the TCEQ's regulated community. In FY 08, more than 340,000 regulated entities were identified in the TCEQ's central data system, including public and private facilities and individuals, all of which affect, or have the potential to affect, the environment. The program is a multimedia program and interacts at some level with almost every entity actively participating in a TCEQ regulatory process. Question O provides a breakdown of the investigations by program.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The primary function of the program is to conduct investigations to ensure that regulated entities comply with applicable environmental rules and regulations through NOVs and formal enforcement referrals (refer to flowchart *Investigation Process Flow* following Question O).

Work Plan Development

In preparation for each fiscal year, Field Operations regional and central-office personnel develop a work plan to determine the number and types of investigations to be conducted statewide. This plan is primarily a risk-based ranking of all regulated entities in Texas. Field Operations' risk-based investigation strategy (RBIS) is a tool to assist in selecting specific regulated entities to investigate. RBIS allows resources to be focused on entities that pose the greatest risk to the environment and human health. Plan development also considers Legislative Budget Board requirements, EPA obligations, available resources, historical issues, and other factors as necessary.

Conducting Investigations

Field Operations investigators conduct scheduled investigations (planned activities based on RBIS) and on-demand investigations (unplanned activities such as complaints, emissions events, and emergency-response actions). These investigations are further divided into three categories:

- *Compliance Investigation*—compliance evaluation using established investigation protocol.
- *Agent Evaluation*—evaluation of the performance of a regulated entity that administers a program over which TCEQ has jurisdiction.
- *Site Assessment*—characterization of site conditions related to an authorization approval or established standard, or to aid in the establishment of a standard.

A Field Operations investigation generally requires pre-investigation activities, including reviewing the background file, determining of applicable requirements, gathering relevant checklists and publications, and contacting the regulated entity to schedule the investigation, if necessary. Advance notification is not given for certain investigations, such as complaints and enforcement follow-up investigations. The actual investigation includes an entrance interview, review of site records, investigator observations, sampling (if appropriate), and an exit interview. Post-investigation activities include assessment of the information gathered, compliance determinations, assessment of the need for additional site visits or information, an enforcement determination, and documentation of the investigation in writing and in the agency data system.

Ensuring Compliance through NOVs and Formal Enforcement Referrals

If noncompliances (also called *violations*) are documented during an investigation, the Field Operations investigator and supervisor are responsible for initiating enforcement action based on the TCEQ's enforcement-initiation criteria (EIC), approved by the executive director to ensure consistent handling of air, water and waste violations documented by TCEQ investigators. Noncompliances are addressed with an NOV (informal enforcement) or with a notice of enforcement or NOE (formal enforcement), depending on the significance and pattern of noncompliance. An NOE is the beginning of the TCEQ's formal enforcement process, which results in an order issued and penalty approved by the TCEQ commissioners.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0001	General Revenue	$948,981
0088	Low Level Radioactive Waste	$154
0146	Used Oil Recycling Account	$270,636
0151	Clean Air Account	$4,992,302
0153	Water Resource Management Account	$12,181,510
0158	Watermaster Administration	$1,155,966
0468	Occupational Licensing Account	$325,958
0549	Waste Management Account	$8,346,849
0550	Hazardous and Solid Waste Remediation Fee	$1,819,244
0555	Federal Funds	$6,482,468
0655	Petroleum Storage Tank Remediation	$894,260
0777	Interagency Contracts	$2,037,998
5065	Environmental Trust Lab Accreditation	$40,896
5094	Operating Permit Fees	$9,767,554

Strategies:
A.1.1—Air Quality Assessment and Planning
A.1.2—Water Assessment and Planning
A.1.3—Waste Assessment and Planning
A.2.1—Air Quality Permitting
A.2.2—Water Resource Permitting
A.2.3—Waste Management and Permitting
A.2.4—Occupational Licensing
A.3.1—Radioactive Materials Management
B.1.1—Safe Drinking Water
C.1.1—Field Inspections and Complaints
C.1.2—Enforcement and Compliance Support
D.1.1—Storage Tank Administration and Cleanup

H. Identify any programs, internal or external to your agency, that provides identical or similar services or functions. Describe the similarities and differences.

Spill response is handled by the General Land Office (GLO), the Texas Railroad Commission (RRC), the Parks and Wildlife Department (TPWD), and the TCEQ. Each agency has jurisdiction over spills according to the source of the spill, the material spilled, the quantity spilled, and the location of the spill. For example, the GLO has jurisdiction over coastal oil spills greater than 240 barrels; the RRC, over all spills from activities associated with the exploration, development, or production of oil, gas, and geothermal resources,

including coastal spills of 240 barrels or less of crude oil. The TPWD interacts with the TCEQ when spills occur that destroy wildlife and/or habitat. The TCEQ has jurisdiction over all other solid waste spills, which encompass hazardous, nonhazardous, industrial and municipal solid wastes.

OSSF Program: Certain local governmental authorities (e.g., counties, cities, river authorities, health districts, and water districts) are authorized by the TCEQ to regulate and manage OSSF programs within their jurisdiction, performing the same functions as the TCEQ except for licensing and imposing administrative penalties.

Surface water quality monitoring: Many programs both internal and external to the TCEQ involve monitoring the quality of surface water in Texas to evaluate physical, chemical, and biological characteristics of aquatic systems. At the TCEQ, surface water quality monitoring (SWQM) data are collected into a single system and used to establish the Texas Surface Water Quality Standards and other policies that ensure good water quality and promote the restoration and appropriate uses of surface water in Texas. The SWQM data are also used by local governments and state agencies. Within the TCEQ, regional (Field Operations Division) and central office (Water Quality Planning Division) staff routinely collect SWQM data. The Clean Rivers Program in the Water Quality Planning Division also coordinates and contracts with external programs such as river authorities, municipal water authorities and councils of governments to collect SWQM data which is provided to the TCEQ's SWQM data system.

Federal: The EPA is authorized to conduct investigations at the same facilities that the TCEQ regulates.

Local governments have statutory authority to conduct investigations regarding environmental requirements.

Texas Railroad Commission: The TCEQ has jurisdiction over hazardous and nonhazardous industrial and municipal solid wastes, except for wastes resulting from activities associated with the exploration, development, or production of oil or gas or geothermal resources (including transportation of crude oil or natural gas by pipeline). Those wastes are under the jurisdiction of the RRC. The TCEQ and the RRC share jurisdiction under the Clean Air Act for oil and gas exploration and production facilities, except for oil refineries, which are only under TCEQ jurisdiction. The RRC retains authority over storm water activities involving unrefined oil and gas, while the TCEQ has authority over refined products and can require storm water permits. The TCEQ also regulates the disposal of septage generated at oil and gas sites.

Texas Department of Agriculture: The TDA conducts investigations for calibration and accuracy of gasoline dispensers at the same gasoline service stations where the TCEQ regulates the control of volatile organic compounds and underground petroleum storage tanks.

Texas State Soil and Water Conservation Board: The TSSWCB conducts evaluations of animal feeding operations, which are not point source dischargers and are below the threshold number of animals that would require a TCEQ permit. The TCEQ conducts compliance investigations of permitted concentrated animal feeding operations and complaint investigations of animal feeding operations that are not already under the authority of the TSSWCB.

Texas Pollutant Discharge Elimination System (TPDES) discharge-monitoring reports: The Compliance Monitoring Team within the TCEQ's Enforcement Division conducts records reviews of effluent discharge monitoring data. Field Operations staff review this same self-reported data as part of an on-site investigation less frequently.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Spill response: Memorandums of Understanding (MOUs) between the GLO, RRC, TPWD and TCEQ, as well as the State of Texas Oil and Hazardous Substances Spill Contingency Plan, specify each agency's jurisdiction and role.

OSSF Program: At the request of a local governmental authority, the TCEQ may delegate administration and enforcement of OSSF rules. Such a delegation prohibits the TCEQ from taking independent action on specific cases in the jurisdiction of that authority, and provide for an annual audit or review of the local program to ensure that it is managed in accordance with statutes and rules. For any area where such delegation has not occurred, the TCEQ enforces the OSSF rules.

Surface water quality monitoring: The TCEQ's SWQM Program coordinates all SWQM activities in the state during the annual planning and development of a coordinated monitoring schedule when organizations such as river and municipal water authorities supply data to the TCEQ's SWQM Program, meet to discuss the monitoring needs in the state, and negotiate sampling schedules that ensure appropriate coverage. Such a schedule has been in place for at least the past 10 years, and its development has been modified to ensure the objectives of the SWQM Program and agency are met. The TCEQ's Clean Rivers Program works with external participants through contracts, planning and oversight, and quality assurance to include the data from external sampling into the TCEQ's coordinated monitoring schedule and data systems.

Federal: The TCEQ and EPA have specific Memorandums of Agreement and Understanding which define how the agencies will coordinate activities so that duplication of effort is minimized. The TCEQ also participates in a performance partnership grant with EPA which identifies the number of facilities that the TCEQ will inspect. The TCEQ and EPA hold regular joint discussions and meetings to provide updates on investigation issues and enforcement case status.

Local governments: The TCEQ coordinates informally and formally (by contract) with local governments and other authorities that perform investigations to prevent duplication of effort.

Texas Railroad Commission: Texas Health and Safety Code Chapter 361, Subchapter A, defines the jurisdictional boundaries for waste regulation. The TCEQ and RRC have two Memorandums of Understanding (for water and waste) that outline the duties of each agency.

Texas Department of Agriculture: For facilities with petroleum storage tanks, the TCEQ and TDA have negotiated an MOU that defines how each agency will assist the other in verifying proper certifications of compliance and calibration.

Texas State Soil and Water Conservation Board: An MOU outlines the authority of both agencies over agricultural and silvicultural point and non-point source pollution programs. The TSSWCB conducts evaluations of animal feeding operations which are not point source dischargers and are below the threshold number of animals that would require a TCEQ permit.

TPDES discharge monitoring reports: Screening of self-reported effluent data for formal enforcement is conducted exclusively by the TPDES Compliance Monitoring Team for all TPDES facilities. This function is specified in the TCEQ's EIC. Furthermore, an interagency agreement (dated May 13, 2003), states that TCEQ Field Operations investigators are not expected to apply the EPA enforcement referral criteria or the TCEQ impaired segment referral criteria to self-reported effluent data that they review as part of an investigation of a TPDES facility.

There are additional MOAs and/or MOUs in place to ensure that the Field Operations program avoids duplication with other state agencies. These additional listings of MOUs and/or MOAs are discussed in Section II in response to Question E.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The program works with local, regional, or federal units of government as outlined in Question H and Question I listed above.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

The program had 37 contract expenditures for a total of $3,710,943 in FY 08. In protecting the public health, the TCEQ engages outside contractors for assistance with abatement and disposal of hazardous materials such as lead paint, medical waste and asbestos. Outside contractors are also hired to test potable and non-potable water and indoor and outdoor air quality. Contractors are usually preselected to perform rapid response remediation in a catastrophic event.

Monitoring and evaluation to ensure accountability for contract services—integral to every activity for which state and federal funds are used—are conducted by the assigned contract manager. No contract is signed unless it includes baseline data from which progress can be measured. In addition, every contract specifies regular benchmarks for evaluating progress, and suggested corrective actions to keep the program on track. All evaluations, as well as the terms of the contract, are subject to open record requests. Fiscal monitoring includes careful review of expenses and supporting documents to ensure that all are substantiated, reported properly, and in compliance with established agency guidelines.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

Texas Water Code (TWC), Section 11.031 requires that each person who has a water use permit or has impounded, diverted, or otherwise used state water must file an annual written report to the TCEQ or pay a specified penalty. The TCEQ would be assisted by revising this statute to require permit holders to not only submit annual reports but also maintain monthly reports. More frequent and current records would allow the TCEQ to make timely compliance determinations and more-readily address unauthorized/excess water usage if necessary. In addition, the current statutory penalties for failure to submit a report may not be sufficient to encourage compliance with the requirement. The TCEQ believes that explicit administrative penalty authority would ensure efficient and timely resolution of reporting violations.

The TWC, Section 11.1272 allows the commission to require wholesale and retail public water suppliers and irrigation districts to develop drought contingency plans (DCPs) during periods of water shortages and drought. However, the statute is silent as to agency authority to mandate DCP implementation. The DCP requires ever more stringent water conservation measures as drought conditions worsen. Without statutory authority allowing the TCEQ to mandate DCP implementation, conservation efforts are often too late to prevent service interruptions resulting from diminished supplies.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, investigations or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

For all eleven programs described below, the following descriptions apply:

- "Total number of complaints initiated by agency" is what the TCEQ considers scheduled investigations.

- "Number of complaints resolved" are the average number of days for complaint resolution, and "complaints resulting in disciplinary action" include the TCEQ's scheduled investigations and complaint investigations.

Texas Commission on Environmental Quality Field Operations—Agriculture Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	2,115	2,175
Total number of entities inspected	923	857
Total number of complaints received from the public	108	80
Total number of complaints initiated by agency	844	788
Number of complaints pending from prior years	3	2
Number of complaints found to be non-jurisdictional	8	3
Number of jurisdictional complaints found to be without merit	91	71
Number of complaints resolved	794	692
Average number of days for complaint resolution	345	377
Complaints resulting in disciplinary action:	220	268
administrative penalty	$63,100	$168,180
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other: Agreed Order Notice of Violation Compliance Agreements	 9 211 0	 41 227 0

Texas Commission on Environmental Quality Field Operations—Air Quality Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	77,428	79,655
Total number of entities inspected	11,419	11,727
Total number of complaints received from the public	2,637	2,481
Total number of complaints initiated by agency	9,412	9,753
Number of complaints pending from prior years	65	78
Number of complaints found to be non-jurisdictional	135	81
Number of jurisdictional complaints found to be without merit	2,311	2,258
Number of complaints resolved	10,453	10,599
Average number of days for complaint resolution	440	293
Complaints resulting in disciplinary action:	1,578	1,790
administrative penalty	$5,240,329	$8,818,323
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other: Agreed Order Notice of Violation Compliance Agreements	 260 1,316 2	 381 1,408 1

Texas Commission on Environmental Quality Field Operations—Dry Cleaners Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	4,959	5,103
Total number of entities inspected	182	119
Total number of complaints received from the public	Included in IHW	Included in IHW
Total number of complaints initiated by agency	182	119
Number of complaints pending from prior years	0	0
Number of complaints found to be non-jurisdictional	0	0
Number of jurisdictional complaints found to be without merit	0	0
Number of complaints resolved	77	46
Average number of days for complaint resolution	39	328
Complaints resulting in disciplinary action:	260	80
administrative penalty	$278,567	$80,090
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other:		
Agreed Order	223	60
Notice of Violation	37	20
Compliance Agreements	0	0

Texas Commission on Environmental Quality Field Operations—Industrial Hazardous Waste Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	55,030	55,476
Total number of entities inspected	1,781	2,134
Total number of complaints received from the public	324	372
Total number of complaints initiated by agency	1,578	1,915
Number of complaints pending from prior years	9	14
Number of complaints found to be non-jurisdictional	65	73
Number of jurisdictional complaints found to be without merit	235	257
Number of complaints resolved	1,457	1,808
Average number of days for complaint resolution	436	392
Complaints resulting in disciplinary action:	471	533
administrative penalty	$473,429	$469,239
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other:		
Agreed Order	22	21
Notice of Violation	448	511
Compliance Agreements	1	1

Texas Commission on Environmental Quality Field Operations—Municipal Solid Waste Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	5,153	5,531
Total number of entities inspected	1,277	1,393
Total number of complaints received from the public	1,102	1,334
Total number of complaints initiated by agency	640	570
Number of complaints pending from prior years	37	39
Number of complaints found to be non-jurisdictional	304	293
Number of jurisdictional complaints found to be without merit	707	937
Number of complaints resolved	992	1,290
Average number of days for complaint resolution	481	334
Complaints resulting in disciplinary action:	418	573
administrative penalty	$323,596	$492,659
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other:		
Agreed Order	44	69
Notice of Violation	374	502
Compliance Agreements	0	2

Texas Commission on Environmental Quality Field Operations—On-Site Sewage Facilities Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	7,235	8,225
Total number of entities inspected	2,549	2,485
Total number of complaints received from the public	389	283
Total number of complaints initiated by agency	2,293	2,322
Number of complaints pending from prior years	13	3
Number of complaints found to be non-jurisdictional	85	85
Number of jurisdictional complaints found to be without merit	281	168
Number of complaints resolved	2,377	2,235
Average number of days for complaint resolution	221	291
Complaints resulting in disciplinary action:	226	174
administrative penalty	$1,338	$9,856
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other:		
Agreed Order	2	4
Notice of Violation	224	170
Compliance Agreements	0	0

Texas Commission on Environmental Quality Field Operations—Petroleum Storage Tank Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	71,452	72,142
Total number of entities inspected	5,809	5,077
Total number of complaints received from the public	206	219
Total number of complaints initiated by agency	5,651	4,874
Number of complaints pending from prior years	17	9
Number of complaints found to be non-jurisdictional	10	8
Number of jurisdictional complaints found to be without merit	189	206
Number of complaints resolved	4,652	3,620
Average number of days for complaint resolution	422	699
Complaints resulting in disciplinary action:	2,946	1,845
administrative penalty	$1,529,408	$1,728,690
Reprimand	Not applicable	Not applicable
Probation	Not applicable	Not applicable
Suspension	Not applicable	Not applicable
Revocation	Not applicable	Not applicable
Other:		
Agreed Order	276	246
Notice of Violation	2,670	1,599
Compliance Agreements	0	0

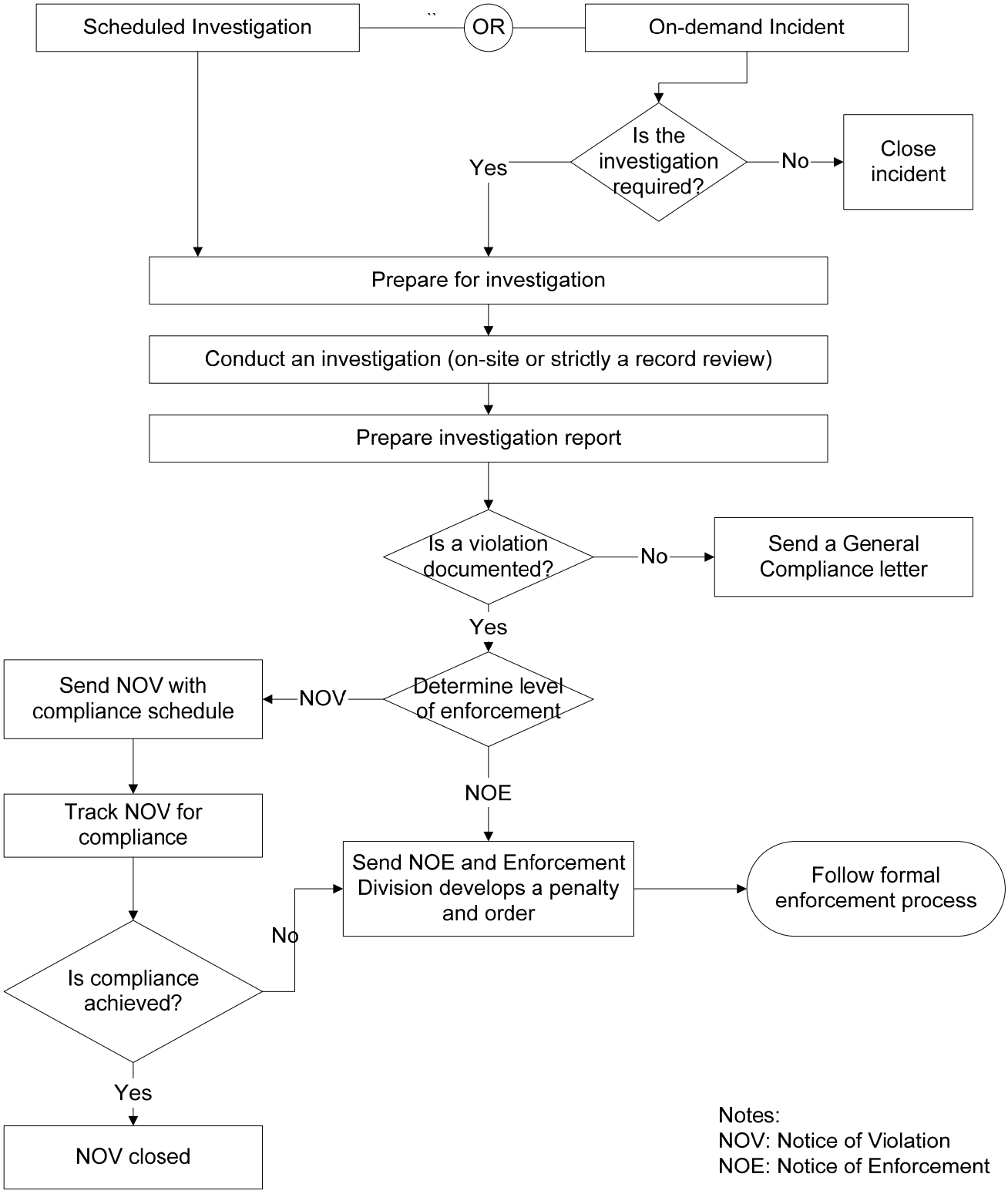
Texas Commission on Environmental Quality Field Operations—Public Water Supply Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	10,950	11,124
Total number of entities inspected	6,967	6,784
Total number of complaints received from the public	603	682
Total number of complaints initiated by agency	6,566	6,372
Number of complaints pending from prior years	19	21
Number of complaints found to be non-jurisdictional	84	132
Number of jurisdictional complaints found to be without merit	420	460
Number of complaints resolved	5,976	5,633
Average number of days for complaint resolution	423	343
Complaints resulting in disciplinary action:	2,453	2,558
administrative penalty	$402,769	$438,967
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other:		
Agreed Order	150	186
Notice of Violation	2,263	2,256
Compliance Agreements	40	116

Texas Commission on Environmental Quality Field Operations—Water Quality (domestic and industrial waste water treatment plants, storm water, and sludge) Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	72,946	88,078
Total number of entities inspected	41,371	40,730
Total number of complaints received from the public	2,012	1,815
Total number of complaints initiated by agency	40,370	39,881
Number of complaints pending from prior years	51	62
Number of complaints found to be non-jurisdictional	333	334
Number of jurisdictional complaints found to be without merit	1,471	1,303
Number of complaints resolved	39,871	39,093
Average number of days for complaint resolution	400	274
Complaints resulting in disciplinary action	2,394	2,693
administrative penalty	$2,015,455	$3,308,896
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other:		
Agreed Order	210	405
Notice of Violation	2,163	2,238
Compliance Agreements	21	50

Texas Commission on Environmental Quality Field Operations—Edwards Aquifer Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	6,416	6,789
Total number of entities inspected	914	929
Total number of complaints received from the public	Included in WQ	Included in WQ
Total number of complaints initiated by agency	878	891
Number of complaints pending from prior years	0	0
Number of complaints found to be non-jurisdictional	0	0
Number of jurisdictional complaints found to be without merit	0	0
Number of complaints resolved	893	856
Average number of days for complaint resolution	450	356
Complaints resulting in disciplinary action:	67	111
administrative penalty	$270,700	$250,935
Reprimand	Not applicable	Not applicable
Probation	Not applicable	Not applicable
Suspension	Not applicable	Not applicable
Revocation	Not applicable	Not applicable
Other:		
Agreed Order	14	26
Notice of Violation	53	85
Compliance Agreements	0	0

Texas Commission on Environmental Quality Field Operations—Water Rights Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	12,799	13,034
Total number of entities inspected	34,735	36,633
Total number of complaints received from the public	187	257
Total number of complaints initiated by agency	34,593	36,558
Number of complaints pending from prior years	2	3
Number of complaints found to be non-jurisdictional	3	1
Number of jurisdictional complaints found to be without merit	52	56
Number of complaints resolved	171	241
Average number of days for complaint resolution	535	249
Complaints resulting in disciplinary action:	13	13
administrative penalty	$8,050	$8,603
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other:		
Agreed Order	2	7
Notice of Violation	11	6
Compliance Agreements	0	0

INVESTIGATION PROCESS FLOW



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Homeland Security
Location/Division	3rd Floor / Building C / Office of Compliance and Enforcement
Contact Name	Kelly Cook
Actual Expenditures, FY 2008	$2,910,940
Number of FTEs as of August 31, 2008	11

B. What is the objective of this program or function? Describe the major activities performed under this program.

The TCEQ's Homeland Security Program assists in the planning, development, coordination, and implementation of initiatives to promote the governor's homeland security strategy, and to detect, deter, respond to, and recover from disasters, both natural and human-caused. These initiatives include notifying and coordinating with many of those responsible for the state's critical infrastructure entities, including producers and purchasers of public drinking water, high-risk dams, refineries, petrochemical facilities, and wastewater treatment facilities.

As a member of the Texas Homeland Security Council, the TCEQ assists in planning, coordination, and communication for homeland security preparedness. The TCEQ's homeland security coordinator is on call 24 hours a day to facilitate requests for assistance from the Governor's Office of Homeland Security (GOHS) and the Texas Division of Emergency Management (TDEM), and to notify TCEQ executive management of significant statewide incidents.

The Homeland Security Program coordinates with all TCEQ program areas and the GOHS and TDEM on issues and activities related to all hazards, including homeland security and emergency management. The program's focus is not the day-to-day operation of the programs and the entities the TCEQ regulates, but rather aspects of detecting and preventing threats, responding to disasters or incidents that affect the public and the regulated community, and recovering from their effects.

TCEQ's homeland security responsibilities are described in Texas' Homeland Security Strategic Plan, with its emergency management responsibilities described in more detail in Part III, the State of Texas Emergency Management Plan and its annexes. The plan was developed to fulfill requirements in Government Code, Sections 418 and 420.

TCEQ's Homeland Security Program oversees the TCEQ Strike Team and the BioWatch Program. The TCEQ Strike Team is a key component of the agency's ability to respond rapidly to emergencies, assess the extent of public exposure to hazardous materials, and maintain an interoperable communication platform. The BioWatch Program is a federal initiative that facilitates early detection of selected bioterrorism agents to enable the earliest possible response to an attack. TCEQ is a partner and federal-grant recipient in this project, responsible for developing and operating air monitoring networks in populated areas in Texas.

The TCEQ supports the Texas Department of State Health Services (DSHS) under the Radiological Emergency Management Annex of the State Emergency Management Plan. TCEQ personnel assist the DSHS with field monitoring, site closure, personnel safety, and equipment calibration. In addition, the Homeland Security Program includes field activities related to radioactive materials where health physicists perform investigations and inspections of construction, operation, security, and closure at regulated facilities.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Through the program's efforts, the TCEQ strives to attain and improve its readiness for all emergencies. Notable demonstrations include:

Response to Hurricane Dolly

Hurricane Dolly made landfall on the Cameron-Willacy County line on July 23, 2008, and caused extensive flooding and damage to public water systems. The TCEQ responded to alleviate the threat to human health and the environment related to flooding and wind damage. The TCEQ Homeland Security Program coordinated the following actions in connection with this event:

- restored services for public water supplies and wastewater-treatment plants;
- pumped to remove floodwater;
- oversaw debris management and supplying guidance for burning vegetative materials;
- assessed the state of landfills;
- made daily status and activity reports to and provided TCEQ staffing for the State Operations Center and daily internal-coordination conference calls;
- secured all TCEQ capital assets and regional offices in the hurricane strike zone and provided operational and logistical support for the response effort;
- activated TCEQ emergency-response contractors; and

- inspected state and federal Superfund sites in the impact zone.

Pollution Removal, Matagorda Island, Aransas National Wildlife Refuge
In February 2008, the TCEQ's Strike Team worked with the U.S. Coast Guard to identify and remove 393 drums and containers with hazardous materials that threatened the public and wildlife in the Aransas National Wildlife Refuge.

TCEQ Strike Team's Portable Radio Interoperability System
In FY 08, the TCEQ Strike Team received and made operational its Field Portable Radio Interoperability System, which enables communications between response organizations using different radios and different frequencies during an emergency response.

Intelligence Gathering
The program has made notable improvements in assisting the Texas government's intelligence gathering about all hazards. These improvements include: integrating TCEQ investigator observations when reporting significant incidents (such as a spill causing a highway shutdown, or a refinery explosion); reporting suspicious activities to the Texas Intelligence Center and TDEM; and representing the TCEQ to law-enforcement intelligence-gathering associations

BioWatch Program
The TCEQ has achieved an excellent rate of data return with the operation of its air monitoring network. Air samples are collected every day, with minimal interruptions, reaching a completion rate greater than 98 percent statewide. The BioWatch air sampling network is focused solely on the detection of pathogenic organisms, while the Monitoring Operations air sampling network is focused on general air quality.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The TCEQ's Homeland Security Program was established as part of a statewide, response to the attacks of September 11, 2001. Since then, significant expansion of emergency and disaster-management preparation, response, and recovery has occurred at the state and national levels, which included the TCEQ increasing its staffing for homeland security activities. The number of program personnel grew to include one full-time homeland security coordinator in 2003, with several more technical employees added in 2004.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Agency programs: The program affects all other agency programs; all have roles and responsibilities in preparing for and responding to widespread disasters. Also, a representative from each TCEQ office and other critical TCEQ personnel are required to

undergo National Incident Management System training to ensure that TCEQ employees expected to respond to a disaster understand the specific processes to follow.

Public and regulated facilities: The TCEQ Homeland Security Program reestablishes continuity of operations after a disaster, ensuring restoration of services at critical infrastructure facilities that the agency regulates. BioWatch monitoring is designed to protect approximately 70 percent of the state's urban residents by identifying possible biological attacks.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Most of the agency's homeland security efforts are not within its day-to-day regulatory responsibilities; rather, they address state goals, strategies, and objectives to prepare, prevent, minimize the effects of, and respond to and recover from disasters and emergencies, whether natural or human-caused. TCEQ homeland security efforts focus on coordinating related efforts across agency programs. (Refer to flowchart *TCEQ Homeland Security Process* following Question O.)

Program duties include coordinating homeland security issues across all program areas of the agency, as well as coordinating with state-level homeland security officials. The homeland security coordinator is the primary contact for issues communicated to the agency by the GOHS and the TDEM and other state members of the Emergency Management Council.

The program oversees the Strike Team and the BioWatch Program, with personnel and financial management located in other agency programs.

TCEQ Homeland Security Coalition

This coalition is made up of TCEQ management and personnel from each TCEQ Office, in addition to other agency employees with knowledge of issues relating to critical infrastructure. The coalition, led by the homeland security coordinator, meets regularly to address homeland security issues confronting the TCEQ, such as information security, staff identification, preparation, planning for disasters, and border security.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0151	Clean Air Account	$193,572
0153	Water Resource Management Account	$39,792
0550	Hazardous and Solid Waste Remediation Fee	$513,559

0555	Federal Funds	$2,098,090
0146	Used Oil Recycling Account	$37,861
0549	Waste Management Account	$28,066

Strategies:
A.1.1—Air Quality Assessment and Planning
A.1.2—Water Assessment and Planning
A.1.3—Waste Assessment and Planning
A.2.1—Air Quality Permitting
C.1.1—Field Inspections and Complaints
C.1.2—Enforcement and Compliance Support

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

None

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Intergovernmental committees on which TCEQ Homeland Security participates include the State of Texas Emergency Management Council and the State of Texas Homeland Security Council.

Texas' emergency-management plan defines the primary and support functions of all state agencies that are members of the Emergency Management Council.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The program coordinates with state, local, regional, and federal units of government for emergency and disaster preparedness, response, and recovery. Coordination with law-enforcement organizations is primarily for information and intelligence gathering and sharing.

State
Governor's Office of Homeland Security, Division of Emergency Management
State of Texas Emergency Management Council
Local, Regional
Federal Bureau of Investigation — Local Homeland Security Programs
Law-enforcement organizations
Federal

EPA
Department of Defense
Federal Emergency Management Agency (FEMA)
Department of Homeland Security (also for BioWatch grant)
Army Corps of Engineers
International Boundary and Water Commission

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

Contract expenditures for the Homeland Security Program's BioWatch Program in FY 08 were $1,906,913. BioWatch-related contracts included one private contract ($192,497) and six local-government contracts ($1,714,416). The BioWatch Program is funded by a grant from the U.S. Department of Homeland Security and fulfills its grant obligations by contracting for operations of the monitoring sites.

To assure accountability, the Monitoring Operations internal auditor and the TCEQ Chief Auditor's Office also audit the BioWatch contracts annually. The BioWatch Program ensures contracts with homeland security sensitive information are protected by coordinating information maintained across agency programs. Guidance for these activities is found in the agency's *Procedures for Homeland Security Procurements and Contracts, Funding, Encumbrance, and Posting*.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

Significant activities led by the TCEQ Homeland Security Program occurred in FY 09:

Hurricane Ike Response

- Conducted response operations seven days a week for more than six weeks.

- Participated in Texas Task Force Ike and deployment of the TCEQ's Strike Team Mobile Command Post.

- Formed a unified command in three operational areas, with other state and federal partners, to assess and collect hazardous materials.

- Monitored and assisted to restore services at approximately 1,400 public water supplies and over 700 wastewater treatment plants in 10 counties, and tracked over 1,200 “boil water” notices.

- Oversaw appropriate disposal, authorized the burning of vegetative materials, established a debris-management hotline, and authorized and monitored 170 storm-debris management sites.

- Assessed 28 landfills in the hurricane impact zone.

- Developed and implemented a comprehensive plan to address potentially contaminated soils.

- Controlled and removed hazardous materials.

- Conducted air quality monitoring downwind of debris burning sites and hazardous materials containers.

- Coordinated regulatory flexibility and guidance to affected regulated entities.

- Secured TCEQ capital assets and regional offices in the strike zone, prepared a response and relief staff, and activated TCEQ emergency-response contractors.

- Supervised TCEQ personnel at the State Operations Center, which was activated 24 hours for 22 days and gave daily center reports and conference calls for internal coordination.

- Inspected 41 state and federal Superfund sites in the Ike impact zone.

Presidio Flood

The Rio Grande flooding at Presidio and downstream caused a levee failure near Presidio that threatened a school and other parts of the city including more than 500 houses. The TCEQ worked with the State Operations Center and city and county officials to minimize the effects of the flooding by controlling additional releases from dams along the waterway.

H1N1 Influenza Pandemic

Preparations made by the program for an influenza pandemic enabled the agency to react efficiently to the pandemic that began in spring 2009. The TCEQ activated its influenza pandemic plan and its Pandemic Response Team to address employee concerns and ensure continuity of operations. Respirators and antiviral medications had been stockpiled in preparation for a pandemic.

Re-Entry Task Force

TCEQ has fully implemented the TDEM's new four-pronged Hurricane Re-Entry Task Force concept, as well as giving strategic support to the task force.

Joint Terrorism Task Force

The TCEQ Homeland Security Program has been asked to join the Federal Bureau of Investigation's (FBI) Austin Joint Terrorism Task Force (JTTF). The JTTF is responsible for all domestic and international terrorism issues as well as preventing and investigating acts of terrorism and prosecuting terrorists. The program will represent the TCEQ, review terrorism-related environmental documents, and receive and disseminate intelligence about critical infrastructure facilities under the TCEQ's regulatory authority.

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

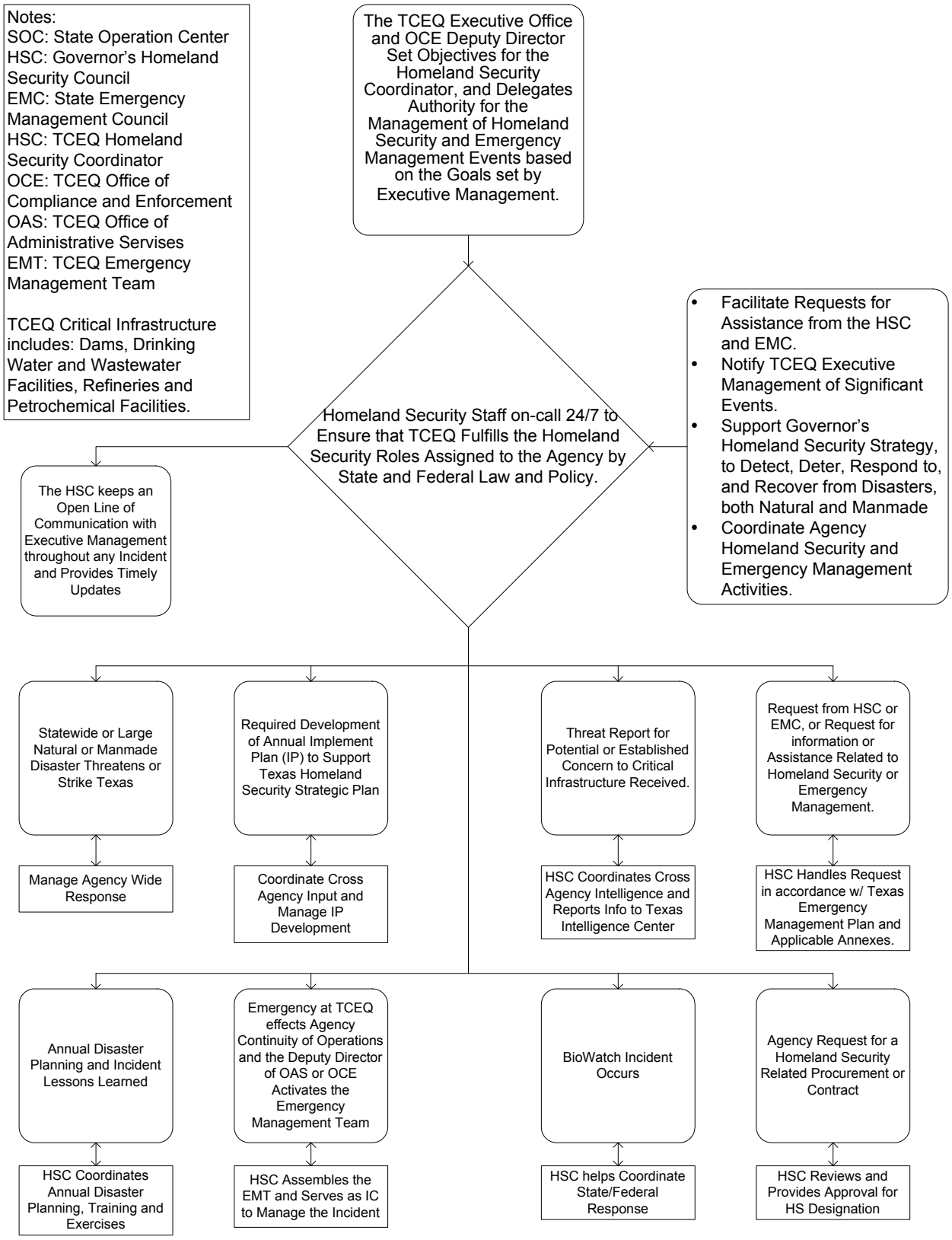
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

TCEQ HOMELAND SECURITY PROCESS



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Mobile Monitoring
Location/Division	3rd Floor / Building A / Monitoring Operations Division / Office of Compliance and Enforcement
Contact Name	David Bower
Actual Expenditures, FY 2008	$1,483,200
Number of FTEs as of August 31, 2008	17

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Mobile Monitoring Program conducts short-term ambient air monitoring downwind of emission sources. Various sampling techniques are combined with imagery and mapping to pinpoint emission sources such as storage tanks, flares, product loading and unloading, and processing units. Mobile-monitoring deliverables include validated data, technical reports, infrared imagery, and investigative and scientific documentation. These deliverables are used in a variety of applications, including the Air Pollutant Watch List, stakeholder meetings, enforcement actions, emissions-inventory considerations, investigator training, permitting, scientific studies, and determinations related to public health.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

During FY 08, the program conducted 12 studies that resulted in sampling at approximately 235 sites. These studies supported permitting, enforcement, and air quality planning activities by characterizing the ambient air quality in the vicinity of over 200 regulated entities.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The program was established in the mid-1980s. Although its original intent focused on permitting and enforcement actions, the customer base has expanded significantly to include applications related to public education, technical assistance, and pollution prevention.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Mobile Monitoring is within the Monitoring Operations Division of the Office of Compliance and Enforcement. It is not a regulatory program, however; it does supply data to support various agency functions including investigative actions (30 %), health-effects reviews including the Air Pollutant Watch List (30 %), enforcement actions (10 %), permitting activities (5 %), emissions-inventory functions (5 %), relating to technical stakeholders (5 %), investigator training (5 %), Small Business and Environmental Assistance Program oil and gas seminars (5 %), and technical services and presentations (5 %).

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The program's management team seeks input on priorities each fiscal year from a variety of internal and external customers who request mobile-monitoring studies to address specific issues. Scheduling decisions take into account logistical, managerial, and scientific considerations including required wind direction, facility operating schedules, agency priorities, pending permitting actions, citizen complaints, and public interest.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0151	Clean Air Account	$630,373
5094	Operating Permit Fees	$852,827

Strategy—A.1.1—Air Quality Assessment and Planning

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

No other programs in Texas offer identical services or functions. The City of Houston has recently developed a limited mobile-monitoring program that samples for volatile organic compounds within the city limits. However, Houston's program differs from the TCEQ's in that it is limited in scope and does not have National Environmental Laboratory accreditation, without which its data cannot be used as the basis for commission decisions.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The program undertakes studies in response to internal and external customer requests. As part of study planning, program personnel assess whether efforts to conduct a study will duplicate or conflict with the TCEQ's investigative efforts. Additionally, planning for a mobile monitoring operation study includes program personnel coordinating with other TCEQ employees familiar with the relevant data sets and geographic areas. For example, the TCEQ regional-office staff, Air Quality Division, and Toxicology staff are consulted when a mobile-monitoring study is being planned.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

All TCEQ mobile-monitoring activities are coordinated through its appropriate regional office, which also coordinates as needed with relevant local governments.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

None

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Remediation / Petroleum Storage Tank and Dry Cleaner
Location/Division	2nd Floor / Building D / Remediation Division / Office of Compliance and Enforcement
Contact Name	Brent Wade
Actual Expenditures, FY 2008	$46,810,780
Number of FTEs as of August 31, 2008	61.5

B. What is the objective of this program or function? Describe the major activities performed under this program.

Petroleum Storage Tank Program

The Petroleum Storage Tank (PST) Program oversees the assessment and cleanup of leaking petroleum storage tanks (LPSTs). The objective of the program is to ensure proper cleanup of releases by evaluating and tracking all reported releases of petroleum and other hazardous substances from underground and above-ground storage tanks.

The PST Program uses a risk-based approach in managing cleanup at LPST sites. This approach determines the timing, type, and degree of remediation at contaminated sites. Many LPST cleanups are addressed by responsible parties. For sites that meet eligibility requirements, the PST Remediation (PSTR) Fund is used to reimburse owners or operators for the cost associated with cleanups. The PSTR Fund is also used for sites where the responsible party is unwilling, unable, or unknown. For these sites the TCEQ's PST Program directs and pays a state contractor to conduct the corrective action. The program also develops PST technical standards for preventive equipment for tank systems to allow for early detection or prevention of releases.

Dry Cleaner Program

The Dry Cleaner Program oversees the assessment and cleanup of releases of solvents from dry-cleaner facilities using a risk-based approach. The TCEQ's Dry Cleaner Remediation Fund is used to pay for the cleanup of contaminated sites and to administer the Dry Cleaner Registration Program.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Petroleum Storage Tank Program

The program began tracking PST releases in 1987, the year the Legislature established comprehensive regulation of underground storage tanks. As of August 31, 2008, 22,401 out of 25,370 known contaminated PST sites have been cleaned up. Additional performance measures are as follows:

#	LBB Number	Type	FY 08 Performance Measure	Percent of Annual Target
1	04-01.01	Outcome	Percent of leaking petroleum storage tank sites cleaned up (key)	100.34
2	04-01-01.03	Output	Number of petroleum storage tank fund applications processed (key)	76.37
3	04-01-01.01	Efficiency	Average time (days) to review and respond to remedial action plans	83.33
4	04-01-01.02	Efficiency	Average time (days) to review and respond to risk-based site assessments	79.67
5	04-01-01.03	Efficiency	Average time (days) to process PST–remediation-fund reimbursement claims	40.88

Variance Explanations:

#2—The number of sites undergoing remediation has decreased; therefore, the number of applications received and processed decreased.

#3—The program was consistently reviewing and responding *before* the required 30 days.

#4—The PST program has implemented procedures to ensure the 30-day time frame is consistently met.

#5—The program is required to process claims within 90 days, but consistently did so in an average of 36.8 days in FY 08.

Dry Cleaner Program

The Dry Cleaner Remediation Program was created in 2003. As of August 31, 2008, the program had initiated assessment and cleanup on 139 sites. Eight sites were cleaned up in FY 08.

#	LBB Number	Type	FY 08 Performance Measure	Percent of Annual Target
1	04-01-02.07	Output	Number of Dry Cleaner Remediation Program Application Received (Key)	103.33
2	04-01-02.01	Efficiency	Average Time (Days) to Process Dry Cleaner Remediation Program Applications	50

Variance explanation for #2: The program has implemented procedures to ensure the average time to process an application is less than the required 90 days.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Petroleum Storage Tank Program

1984

- Congress amended the Resource Conservation and Recovery Act (RCRA) authorizing a national program regulating underground storage tanks.

1986

- The Texas Water Commission was designated to receive and process underground storage tank registrations.

1987

- The 70th Legislature adopted SB 779 which authorized the Texas Water Commission to develop and administer a comprehensive program regulating underground storage tanks.

1989

- The 71st Legislature adopted HB 1588 which authorized limited regulation of above-ground storage tanks; established the Petroleum Storage Tank Remediation Fund providing financial assistance to owners and operators of LPSTs; imposed a bulk delivery fee to finance the program; and established a registration program for contractors performing corrective actions.

1995

- The Environmental Protection Agency (EPA) approved Texas' regulatory program, allowing it to operate in lieu of the federal program.

1998

- Eligibility ended for owners and operators to report a release and receive reimbursement for cleanup.

2007

- The 80th Legislature adopted HB 3554 which extended reimbursement for eligible LPST sites through August 2012.

Dry Cleaner Program

2003

- The Dry Cleaner Program was created by HB 1366 and codified in Texas Health and Safety Code, Chapter 374. This law established new environmental standards for dry cleaners and a remediation fund to assist with the assessment and remediation of contamination caused by releases of dry-cleaning solvents.

2005

- HB 2376 authorized removal of the five-year ownership requirement for landowner eligibility for the remediation program, revised the fee structures, extended the deadline for opting out of the Dry Cleaner Facility Release Fund and limited the applicability of some performance standards. SB 444 extended the deadline for opting out of the Dry Cleaner Facility Release Fund to February 28, 2006, and allowed some dry cleaners that opted-out to receive credit for previously paid fees.

2007

- HB 3220 (1) created registration requirements for current and former property owners to claim benefits from the Dry Cleaner Remediation Fund, (2) allowed liens against applicable properties for past-due registration fees and clean-up costs that occurred while fees are in arrears, and (3) prohibited the use of perchloroethylene at sites where the TCEQ has funded cleanup.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Petroleum Storage Tank Program

The PST Program affects owners and operators of regulated storage tanks, as well as current and former property owners where a release has occurred. Cleanup expenses for sites being addressed by the owner-operator as the responsible party are eligible for reimbursement if they were reported to the TCEQ before December 22, 1998, and meet additional requirements as listed in 30 TAC Chapter 334, Subchapter H. Sites that cannot be addressed by the owner-operator may be eligible for cleanup by the state. The criteria for a site to be managed by the state appear in 30 TAC Section 334.84.

Dry Cleaner Program

The Dry Cleaner Program affects dry-cleaner facility and drop station owners, current and former owners of a property where a release has occurred, and solvent distributors.

To be eligible for the program, an applicant must be registered with the TCEQ and be one of the following: (1) the owner of the dry cleaner facility or drop station; (2) an owner of property where the facility or drop station is (or was) located; or (3) a former property owner with an agreement with the current owner establishing responsibility for cleanup costs.

Applicants must submit an application for ranking which documents a release of dry cleaner solvent into the environment from a currently registered or former retail dry cleaner facility. The applicant must pay the first $5,000 of corrective action costs and sign an affidavit stating that perchloroethylene shall not be used at the site in the future.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Petroleum Storage Tank Program

Responsible parties may request reimbursement for cleanup expenses at eligible sites. If approved, the expenses are paid from the Petroleum Storage Tank Remediation (PSTR) fund, for which the responsible party submits a reimbursement application to the TCEQ. Applications are reviewed and processed by the PSTR program within 90 days from the day they are deemed administratively complete. The flowchart *Leaking Petroleum Storage Tank Remediation Process* following Question O depicts how a PST release is processed from reporting to closure.

Dry Cleaner Program

Refer to the flowchart *Dry Cleaner Remediation Work Flow Process* following Question O.

Except for sites that require emergency action, the program cannot commence assessment and cleanup at a site until the site application has been ranked and prioritized. Site ranking is based on potential harm to human health or the environment from the site. Site prioritization includes ranking, but also takes into account non-risk factors such as the cost of assessment and cleanup.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0549	Waste Management Account	$3,521,564
0655	Petroleum Storage Tank Remediation	$36,691,334
5093	Dry Cleaning Facility Release	$5,110,470
0555	Federal Funds	$1,487,412

Strategies:
D.1.1—Storage Tank Administration and Cleanup
D.1.2—Hazardous Materials Cleanup

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

Petroleum Storage Tank Program

The EPA's Office of Underground Storage Tanks has delegated to the State of Texas, through a Memorandum of Agreement, the responsibility for implementing the RCRA Subtitle I Underground Storage Tank Program. The EPA serves as an information resource and supports the state with grants from the Leaking Underground Storage Tank Trust

Fund. Other programs within the TCEQ perform PST-related registration functions, primarily within the Office of Permitting and Registration.

Dry Cleaner Program

The remediation of dry cleaner facilities may be addressed in the Voluntary Cleanup Program or the Corrective Action Program within the Remediation Division. However, only the Dry Cleaner Remediation Program funds assessment and site cleanup. All programs use the same cleanup standards: 30 TAC Chapter 350. Only in the Dry Cleaner Remediation Program are sites prohibited from continuing the use of perchloroethylene as a dry cleaning solvent.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Petroleum Storage Tank Program

Releases of hazardous substance from PSTs are under the jurisdiction of the LPST Program and the RCRA Corrective Action Program. An interoffice memorandum ("Site Characterization and Coordination of Assessment and Remediation Standards …," dated December 21, 2001) outlines which program has primary responsibility in directing corrective action at the sites. A Memorandum of Understanding between the Texas Railroad Commission and the TCEQ (16 TAC Part 1, Chapter 3, Section 3.30) defines jurisdiction between the two state agencies.

Dry Cleaner Program

To ensure that a site is not simultaneously in the Voluntary Cleanup Program and the Dry Cleaner Remediation Program (DCRP), an applicant is required to withdraw from the VCP Agreement before the site can be accepted in the DCRP. In addition, a site will not be accepted in the DCRP if it is being managed in the TCEQ's Corrective Action Program. Once corrective action costs have been incurred at a site under the DCRP, an applicant may not withdraw the site from the DCRP before the completion of correction action unless approved by the executive director.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Petroleum Storage Tank Program

The EPA serves as an information resource and supports the state with grants from the Leaking Underground Storage Tank Trust Fund. The federal grant money is used to support agency PST-related activities such as field investigations, emergency responses, remediation, and cleanup at sites where releases have occurred and the responsible party is unknown, unwilling, or unable to respond. Semiannual and annual program update reports are submitted to the EPA, and meetings are held annually to discuss activities conducted and plan for the upcoming year.

Dry Cleaner Program: None

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

Petroleum Storage Tank Program

The PST Program spent $12,323,728 in FY 08. Expenditures were distributed between 27 PST state lead contracts and one PST privatization contract. PST state lead contracts were used to conduct risk-based site assessments and cleanups of contaminated sites. The PST privatization contract was used for regulatory oversight (assistance with reviews of cleanup reports and reimbursement claims).

The program experienced no contracting problems in FY 08.

Dry Cleaner Program

The Dry Cleaner Remediation Program spent $3,172,160 in FY 08. Expenditures were distributed between three state lead contracts. Funds were used to conduct risk-based site assessments and cleanups of contaminated sites.

For the PST and Dry Cleaner Programs, contractor performance must adhere to the quality-assurance project plan, as well as all technical requirements in contracts, guidance, and rules. Both programs conduct regular field oversight and audits. The PST Program performs internal and external management-system reviews, as required under a federal grant and the TCEQ quality-management plan.

To ensure accountability for funding (PST and Dry Cleaner Programs), work orders are created and subsequent invoices are tracked in the TCEQ Remediation Division's Contract Administration and Tracking System, designed to prohibit invoices, work orders, or contracts from exceeding budget allocations. Additionally, all invoices must undergo technical and administrative review to ensure allowable costs and compliance with contractual guidelines. To ensure contractor accountability, five percent of each invoice amount is retained until each work order is completed and approved. All costs are reconciled with the Uniform Statewide Accounting System. Currently, the TCEQ's Remediation Division is enhancing its fiscal monitoring program to further ensure contractor accountability and accuracy.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

Petroleum Storage Tank Program

Reinstate Common Carrier Liability in the Texas Water Code. The Federal Energy Act of 2005 required all states with EPA-approved, delegated underground storage tank programs to make common carriers liable for deliveries to uncertified tanks. To fully comply with this requirement, the TCEQ would need statutory authority to reinstitute common-carrier liability that was rescinded during the 79th legislative session in 2005.

Clarify verbiage in TWC Chapter 26 to allow the TCEQ state lead program the use of Petroleum Storage Tank Remediation (PSTR) Funds for removals of underground storage tank systems from sites where the owner and operator are unwilling or unable to proceed, or cannot be found. Currently, TWC Section 26.351 states that this type of corrective action may be funded by PSTR "in response to a release or a threatened release." However, it is not clear what situations would constitute "threatened releases." Numerous TCEQ enforcement cases have been initiated in the last several years against property owners for failure to remove tanks from the ground; many of the respondents may be willing but are financially unable to do so.

Clarify verbiage in TWC Section 26.3513 (Liability and Costs: Multiple Owners and Operators), which addresses how to apportion liability among multiple *current* owners or operators. It is not clear if there should also be some liability between *current* and *former* owners or operators. As a result, the PST Program has a significant, recurring issue with PST responsible-party remediation. Current owners and operators are referred for formal enforcement when a cleanup remains outstanding. The issue for the PST Program and the TCEQ's enforcement program is that many times the *current* owner or operator can demonstrate the contamination occurred or began under a prior owner.

Dry Cleaner Program: None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

Petroleum Storage Tank Program

Improvements for the PST Program include: (1) a higher quality of underground storage tank systems, (2) higher technical standards to prevent leaks, and (3) a requirement that owners or operators carry insurance. However, new LPST sites are reported each year from the current universe of underground storage tanks in Texas that tops 60,000.

If a PST release is reported today, the cleanup must be paid for by the owner/operator, an insurance company, or by the TCEQ's state lead program (which is funded by the PSTR Fund). The PST Program can address this ongoing need if funding from the PSTR account continues to be sufficient. Though the fee that supports the PSTR Fund is scheduled for

sunset on August 31, 2011, the obligations associated with the PST regulatory program and state lead program continue.

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

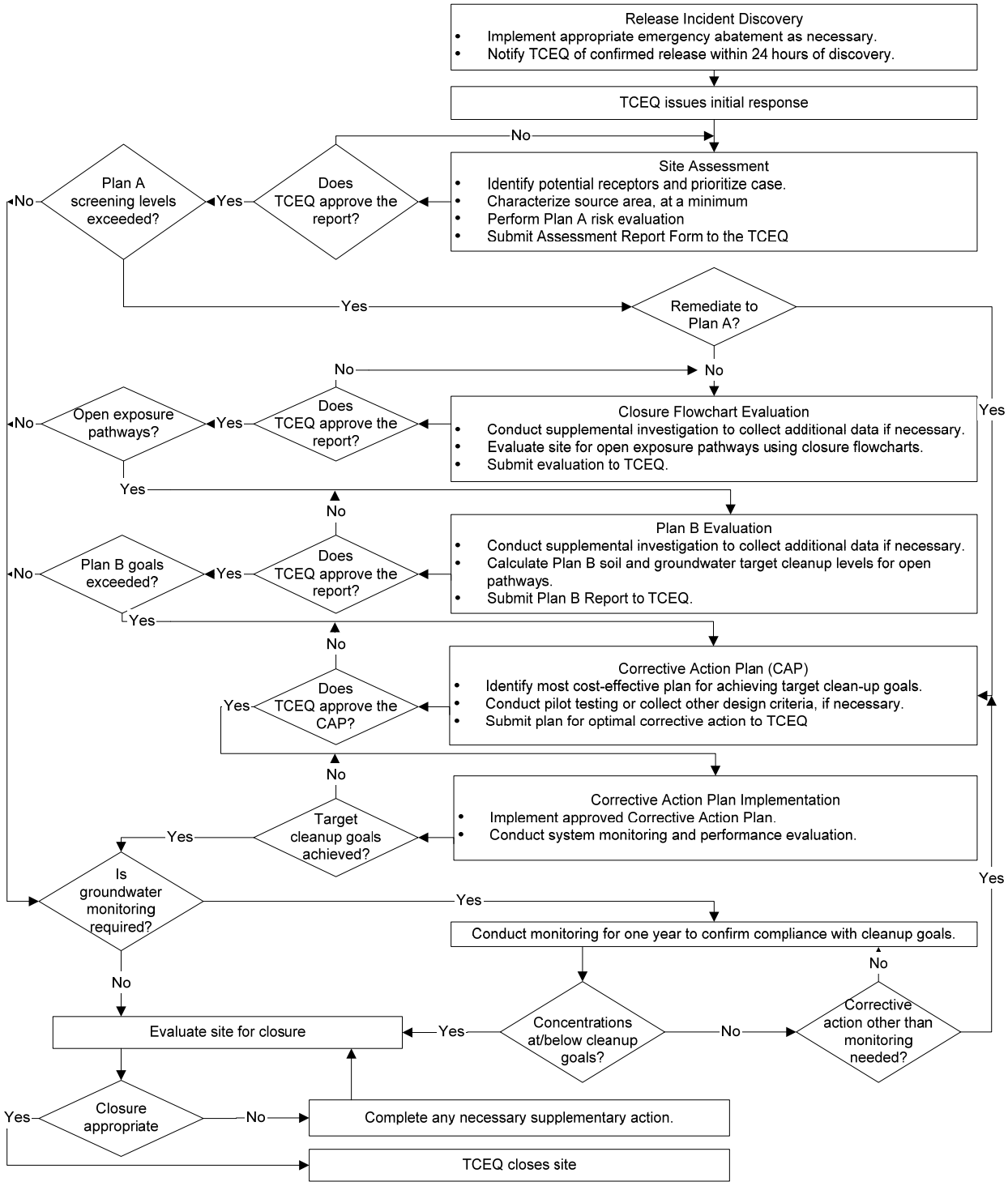
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

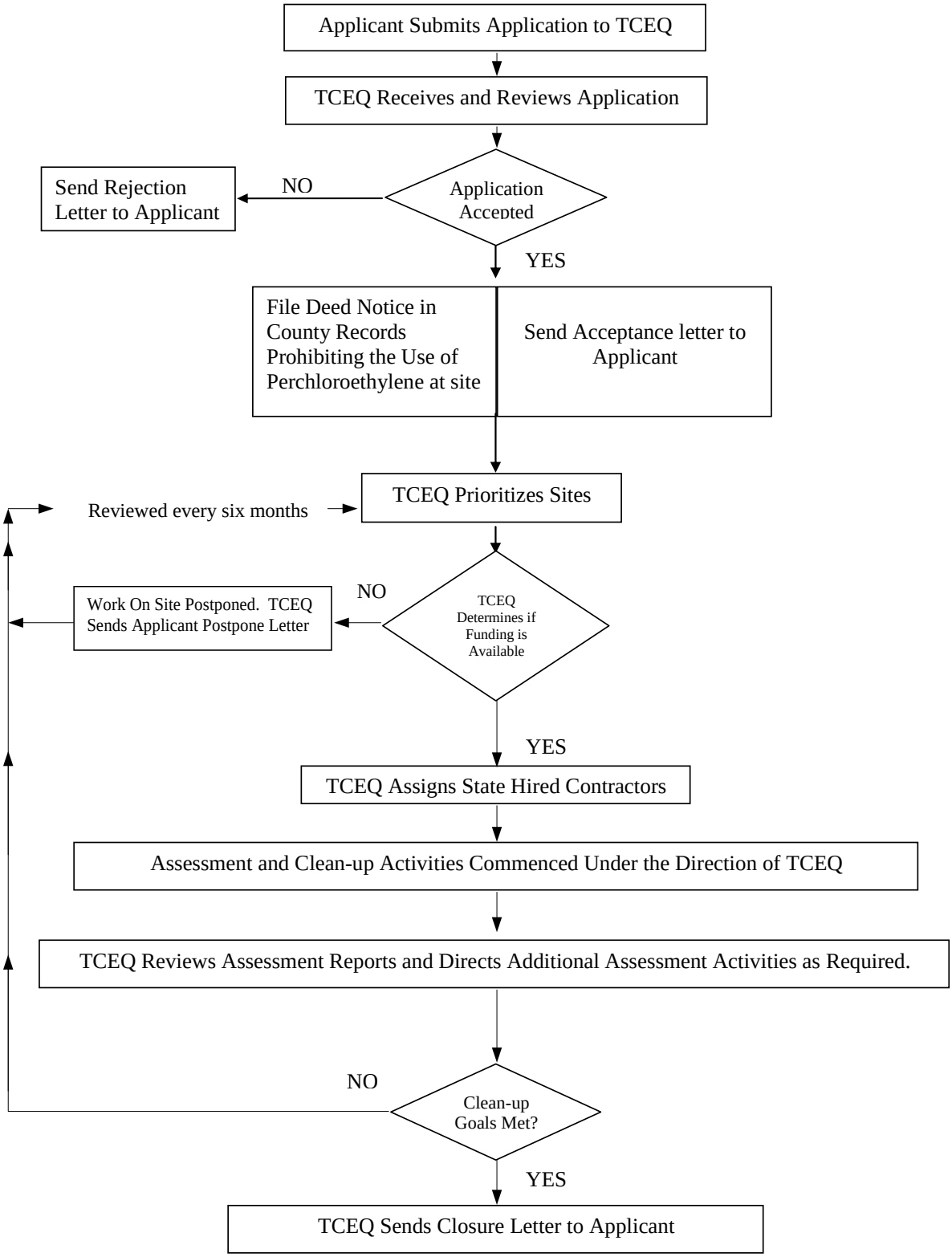
Not Applicable

Leaking Petroleum Storage Tank (LPST) Remediation Process



Revised July 2009

Dry Cleaner Remediation Work Flow Process



August 2009

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Remediation / Superfund
Location/Division	2nd Floor / Building D / Remediation Division / Office of Compliance and Enforcement
Contact Name	Brent Wade
Actual Expenditures, FY 2008	$18,036,815
Number of FTEs as of August 31, 2008	74.5

B. What is the objective of this program or function? Describe the major activities performed under this program.

The primary objective of the state Superfund Program is to address sites with a release or threatened release of hazardous substances associated with imminent or substantial endangerment to public health, public safety and/or the environment. Its major functions are to investigate and evaluate threatened or actual releases of hazardous substances, identify responsible parties, and remediate federal and state Superfund sites.

Superfund sites are identified and referred by the TCEQ's Superfund Site Discovery and Assessment Program (SSDAP). The SSDAP identifies and ranks sites contaminated with hazardous substances for remediation by the state and federal Superfund Programs. Sites contaminated with hazardous substances without a responsible party willing to address the problem through a permit, corrective action, voluntary cleanup or enforcement are identified through referral from internal and external groups, including the TCEQ Enforcement Division, the TCEQ regions, the TCEQ Water Supply Division, complainants, and the Environmental Protection Agency (EPA). On behalf of the EPA, the SSDAP also oversees the Preliminary Assessment / Site Inspection (PA/SI) Program, which focuses on evaluating sites for the federal Superfund Program.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

The effectiveness and efficiency of the Superfund Program is reported to the Legislative Budget Board. In FY 08, the program reported the following key performance measures:

<u>Pollution Cleanup (Goal 04-01)</u>

- Outcome Measure 02: Superfund sites that have completed cleanup compared to the total number of State and Federal sites since program inception—111.53 percent of annual target attained.

Hazardous Materials Cleanup (Goal 04-01-02)

- Output Measure 04: Number of Superfund sites in Texas undergoing Evaluation and Cleanup—71.64 percent of annual target attained. This output measure was not met because fewer sites than projected met program criteria, resulting in fewer sites undergoing evaluation and cleanup.

- Output Measure 05: Number of Superfund Cleanups Completed—100 percent of annual target attained.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Most of the program's history is included in the general agency history section of this Self Evaluation Report; the following is in addition:

1982

- The Texas Department of Water Resources (a TCEQ predecessor agency) is designated as the state's lead agency for the federal Superfund Program.

1985

- The Solid Waste Disposal Act is amended to create the state Superfund Program.

1986

- Congress amends the Comprehensive Environmental Response, Compensation, and Liability Act with the Superfund Amendment and Reauthorization Act to expand the program to federal facilities.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Superfund Program affects property owners and present and former owners or operators of facilities, as well as generators and transporters of waste that have caused a release of hazardous substance.

To determine eligibility for the state or federal Superfund Program, a site is ranked by hazard. For a site to be eligible for the Federal Superfund Program, its score must be greater than 28.5 on a scale of 100. If the EPA elects not to address a contaminated site, it is then referred to the state Superfund Program for consideration. A score greater than 5.0 indicates that a site may be eligible for the state program.

In FY 08, 76 site assessments were completed in the SSDAP, 39 of which were completed on PA/SI Federal Program sites.

As of August 31, 2008, the TCEQ's Superfund Program was addressing cleanup at 48 State Superfund sites and 49 Federal Superfund sites in Texas.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Refer to the flowchart *Superfund Process* following Question O.

The majority of program staff managing Superfund site activities are located in the central office. The Superfund Program also has three project managers located in the TCEQ Houston, Dallas–Fort Worth and Tyler regional offices.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0549	Waste Management Account	$1,171,650
0550	Hazardous and Solid Waste Remediation Fee	$14,146,397
5000	Solid Waste Disposal Fee	$1,493,870
0555	Federal Funds	$1,224,898

Strategy—D.1.2—Hazardous Materials Cleanup

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

The SSDAP (state) and PA/SI Program (federal) both discover and evaluate potential federal Superfund sites. The TCEQ conducts the site assessments for the EPA's PA/SI Program to determine if the Federal Superfund Program will take the lead on the site cleanup based on hazard (see Question E, above). The EPA also has similar authorities over Texas Superfund cleanup activities.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The TCEQ'S SSDAP and the EPA's PA/SI Program perform similar functions but within differing processes and time lines. Once a site is scored, a determination for referral to the state or federal Superfund Program occurs. However, the evaluation steps are not repeated since the TCEQ's Superfund Program staff conducts work in both programs.

In January 1989, the TCEQ signed a Memorandum of Agreement with the EPA that identifies the respective roles and responsibilities of both agencies regarding cleanup of hazardous-waste sites in Texas and ensures their efforts are not duplicated.

There is no duplication of activities for sites in the state Superfund Program, because they are managed solely by the State of Texas. The TCEQ and the EPA negotiate, based on available resources, which sites in the federal Superfund Program will be managed by the state and by the EPA.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The TCEQ's Superfund Program coordinates and works with many local, regional, state, and federal units of government during the course of identifying, ranking, investigating, evaluating, and remediating sites throughout Texas:

Local Government	**Regional Units of Government**
city councils	councils of government
county judges and commissioners' courts	water conservation districts
county extension services	subsidence districts
municipal utility districts	

State Units of Government:	**Federal Units of Government:**
state elected officials	federal elected officials
Office of the Attorney General	EPA
Department of State Health Services	Army Corps of Engineers
General Land Office	Department of Justice
Parks and Wildlife Department	Occupational Safety and Health Administration
Department of Transportation	Department of Defense
comptroller	Department of Energy
secretary of state	Nuclear Regulatory Commission
	Department of Homeland Security

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**

- **a short description of any current contracting problems.**

The amount spent in contracts for the Superfund Program was $11,990,762. These funds were spent through 16 different contracts, including:

- random laboratory analysis of soil samples
- identifying potentially responsible parties for hazardous contamination
- conducting feasibility studies
- developing remedial designs
- investigation oversight
- water-filtration services
- removals
- oversight of remedial actions
- an intergovernmental agreement with the City of Midland for construction of a water line.

The program has a Quality Assurance Project Plan in place to ensure accountability of contractor performance. Additionally, the program conducts field oversight and audits, internal and external management-system reviews, and background reviews of key personnel; conducts regular meetings with contractors; and performs project-manager review for each invoice and approves deliverables.

To ensure accountability for funding, work orders are created and subsequent invoices tracked in the TCEQ Remediation Division's Contract Administration and Tracking System, designed to prohibit invoices, work orders, or contracts from exceeding budget allocations. Additionally, all invoices must undergo a technical and administrative review to ensure allowable costs and compliance with contract guidelines. To ensure contractor accountability, five percent of each invoice amount is retained until each work order is completed and approved. All costs are reconciled to the Uniform Statewide Accounting System. Currently, the TCEQ's Remediation Division is enhancing its fiscal monitoring program to further ensure contractor accountability and accuracy.

A shortage of qualified and experienced vendors to bid on Superfund Program solicitations is a current contracting issue.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

Some of the remedies that EPA selects have lower capital costs to enact, but higher long-term operation and maintenance (O&M) costs. This is a concern for the TCEQ's Superfund Program when a responsible party has not agreed to fund or perform the remedy, because the TCEQ is then responsible for 100 percent of the O&M costs. Current funding may not be sufficient to support all future O&M activities.

Statutory language explicitly providing that the TCEQ may require recipients of state supplied and maintained filtration systems to use the water for household purposes only is suggested. This option would be beneficial to minimize risk to human health due to a breakthrough of the system and maintain the primary goal of preventing exposure to contamination from a property owner's sole source of drinking water.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

The Superfund Program also includes the Texas' Natural Resource Trustee Program, a joint effort of agencies designated by the governor under the federal Superfund law. The program acts on behalf of the public to seek compensatory restoration for injuries to natural resources from release of oil and hazardous substances. The three state trustees are the TCEQ, the Texas Parks and Wildlife Department, and the Texas General Land Office. The federal trustees are the Department of the Interior and the National Oceanic and Atmospheric Administration.

In FY 09, the Superfund Program established a fourth team in the TCEQ Houston-regional office. Staffing of this team will be complete in early FY 10 and will include five members.

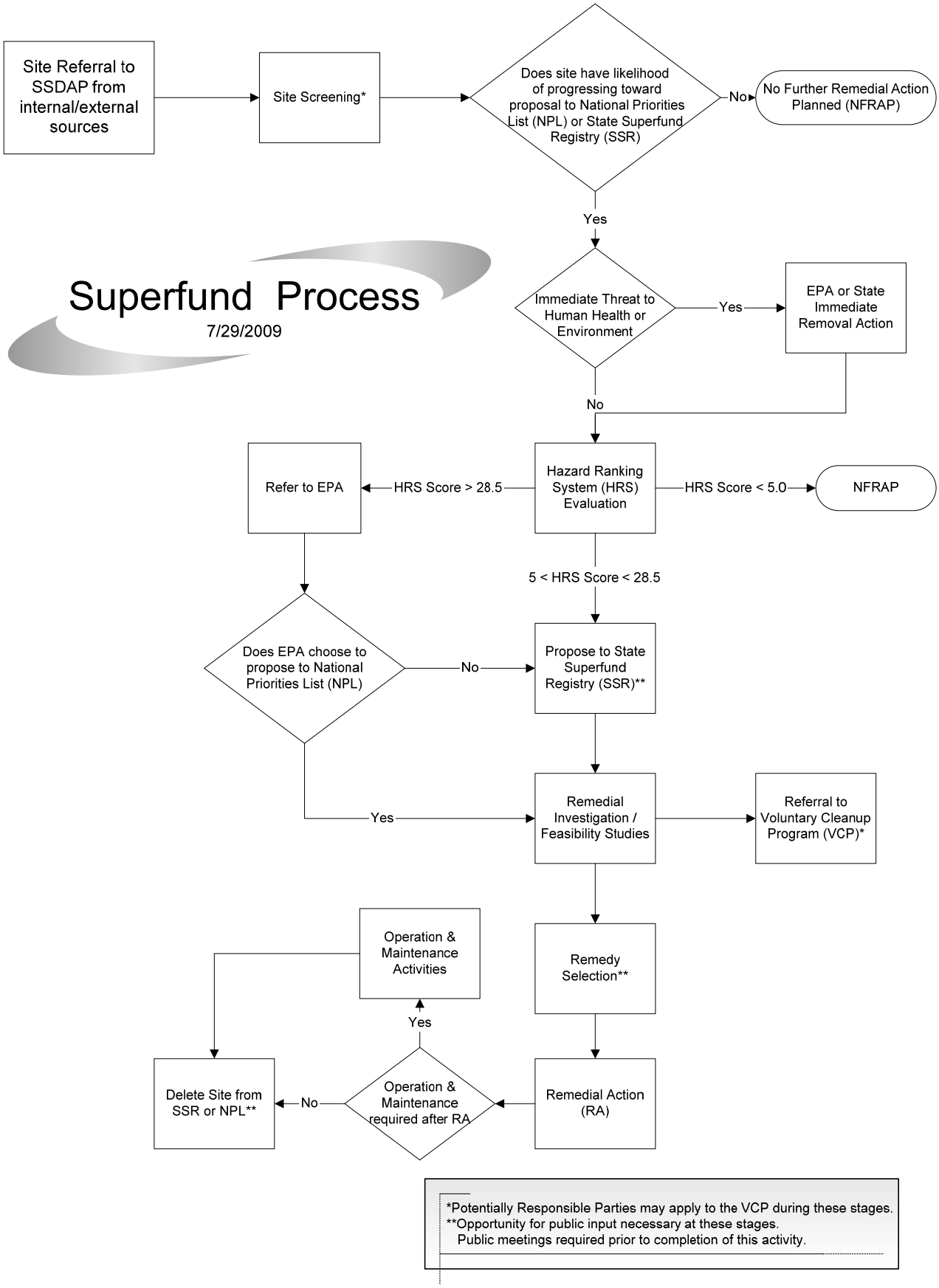
N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable


Superfund Process
7/29/2009
Site Referral to SSDAP from internal/external sources
Site Screening*
Does site have likelihood of progressing toward proposal to National Priorities List (NPL) or State Superfund Registry (SSR)
No
No Further Remedial Action Planned (NFRAP)
Yes
Immediate Threat to Human Health or Environment
Yes
EPA or State Immediate Removal Action
No
Hazard Ranking System (HRS) Evaluation
HRS Score > 28.5
Refer to EPA
HRS Score < 5.0
NFRAP
5 < HRS Score < 28.5
Does EPA choose to propose to National Priorities List (NPL)
No
Propose to State Superfund Registry (SSR)**
Yes
Remedial Investigation / Feasibility Studies
Referral to Voluntary Cleanup Program (VCP)*
Remedy Selection**
Operation & Maintenance Activities
Yes
Remedial Action (RA)
Operation & Maintenance required after RA
No
Delete Site from SSR or NPL**
*Potentially Responsible Parties may apply to the VCP during these stages.
**Opportunity for public input necessary at these stages.
Public meetings required prior to completion of this activity.

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Remediation / Voluntary Cleanup Program and Corrective Action
Location/Division	2nd Floor / Building D / Remediation Division / Office of Compliance and Enforcement
Contact Name	Brent Wade
Actual Expenditures, FY 08	$3,191,717
Number of FTEs as of August 31, 2008	59.5

B. What is the objective of this program or function? Describe the major activities performed under this program.

Voluntary Cleanup Program (VCP)

The objective of the VCP is to encourage cleanup and redevelopment of properties with contamination with incentives to property owners, lenders, operators, and prospective purchasers. The program oversees cleanups by participants who apply, complete cleanup activities, and certify property cleanup is complete, whereupon the VCP issues a certificate of completion. The program also provides a release of liability for all future owners, lessees, operators, and lenders regarding the cleanup of past contamination at the site. Additionally, the VCP manages three other programs: the Innocent Owner/Operator Program, Brownfields Site Assessment, and the Municipal Setting Designation Program.

Innocent Owner/Operator Program (IOP)

The IOP provides a process where an owner or operator of a property can apply for designation as an innocent owner or if the affected property became contaminated as a result of the migration of contaminants from releases not located on the property. The program reviews applications and environmental reports documenting that the source of the contamination is or was off-site. The program issues a certificate to the current owner-applicant that protects the owner from liability to the state for further investigation, monitoring, or remediation of the affected property

Brownfields Site Assessment (BSA)

The TCEQ manages a grant from the EPA to help governments and nonprofit organizations redeveloping brownfield properties in Texas with assessments, limited cleanups, and technical review. Brownfields are properties where expansion, redevelopment, or reuse may be hampered by the real or perceived presence of contamination.

Municipal Setting Designation (MSD) Program

The MSD Program, created in Texas Health and Safety Code Chapter 365, authorizes municipalities to restrict the potable use of groundwater within their jurisdiction. The TCEQ

receives, processes, and denies or certifies MSD applications. Once a municipality is designated, it can limit the investigation and remediation requirements for contaminated groundwater that is not, and will not be, used for potable water. The result is an expedited cleanup of the site which in turn gives municipalities a tool for promoting economic redevelopment. The MSD Program is dependent upon the support of the local municipalities and retail water utilities, as the TCEQ cannot issue an MSD certificate without their support.

Corrective Action (CA)

The purpose of the Corrective Action Program is to oversee the cleanup of sites with soil and groundwater contamination by requiring mitigation and/or removal of the contamination to levels protective of human health and the environment. The program oversees remediation at many sites under the TCEQ's jurisdiction, including:

- facilities with industrial and hazardous waste permits which have released hazardous contaminants to environmental media from units regulated under the Resource Conservation and Recovery Act (RCRA);
- facilities with contamination caused by releases from solid waste management units, or closing such units, whether RCRA or not;
- facilities with municipal and water quality permits with units that have released hazardous contaminants to environmental media;
- RCRA and non-RCRA facilities which conduct corrective action through state-issued enforcement orders and agreed final judgments;
- facilities which self-implement the cleanup regulations of 30 TAC Chapter 335 and Chapter 350; and
- federal facilities which may include any of the above-referenced sites.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Voluntary Cleanup Program

In FY 08, it is estimated that 1,850 jobs were created in Texas due to increased VCP activities. Additionally, based on voluntary responses to the Texas VCP/Brownfields Survey, property values in Texas were reported to have increased by $211,460,000.

Documentation supporting the effectiveness and efficiency of the program is reported to the Legislative Budget Board (LBB). The VCP has two *key* performance measures that were reported in FY 08.

- LBB Outcome Performance Measure 04-01.03—Percentage of voluntary and brownfield cleanup properties made available for commercial/industrial redevelopment, community, or other economic reuse: 103.38 percent of annual target attained.

- LBB Output Performance Measure 04-01-02.03—Number of Voluntary and Brownfield Cleanups Completed (Certificates of Completion issued): 136.25 percent of annual target attained.

Innocent Owner/Operator Program

During FY 08, 59 IOP applications were received and reviewed within the required average time of 45 days.

Brownfields Site Assessment

The BSA Program had seven applications in FY 08. One applicant was issued a "no further action" letter; six others had phase I environmental site assessments completed.

Municipal Setting Designation

The MSD Program received 33 applications; all were reviewed within the statutorily mandated 90 days.

Corrective Action

The CA Program documents its effectiveness and efficiency to the LBB and the EPA. The program reported the following *key* statistics and performance measures to the LBB for FY 08.

- LBB Explanatory Performance Measure 04-01-02.04—Number of approved industrial solid and municipal hazardous-waste cleanups: 128.80 percent of annual target attained.

- LBB Output Performance Measure 04-01-02.06—Number of corrective action documents approved for industrial solid and municipal hazardous-waste sites: 154.73 percent of annual target attained.

Facility-wide environmental indicator measurements are required by EPA to track performance of the CA Program under the Government Performance and Results Act of 1993. The measurements are evaluated site-wide at facilities that have been specifically targeted by the EPA. The CA Program met or exceeded established commitments for all such measurements in FY 08.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Voluntary Cleanup Program

1995

- Texas Legislature establishes the VCP by amending Texas Health and Safety Code (THSC) Chapter 361 to create Subchapter S.
- The TNRCC enters into a Memorandum of Agreement with the EPA.

Innocent Owner/Operator Program

1997

- The legislature establishes the IOP by amending THSC Chapter 361 to create Subchapter V.

Brownfields Site Assessment

1997

- The EPA entered into a cooperative agreement with the TCEQ to help develop its National Brownfields Pilot Program, allowing the TCEQ to help local governments and nonprofit organizations with assessment and redevelopment.

2002

- Congress passes the Small Business Liability Relief Act and Brownfields Revitalization Act, granting federal brownfields funds to states.

Municipal Setting Designation

2003

- The legislature establishes the MSD Program by amending THSC Chapter 361 to create Subchapter W.

2007

- The legislature amends THSC Chapter 361 to remove the municipal "20,000 population" restriction, making all municipalities eligible.

The services and functions of the VCP and Corrective Action Program have not changed significantly from their original intent.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Voluntary Cleanup Program

Most VCP applicants are property owners, lenders, prospective purchasers, developers, or tenants; however, anyone with an interest in cleaning up the property may volunteer to conduct the cleanup. An application and fee are required. Applicants must be willing to enter into an agreement with the TCEQ to perform the cleanup. In FY 08, the VCP received 138 applications and accepted 116—70 from property owners and 35 from prospective purchasers. The remaining applicants had other interests in the property (as tenants, operators, agents, etc.).

Innocent Owner/Operator Program

The IOP is open to owners or operators of property affected by contamination solely from off-site sources. As required by the IOP statute, parties must submit an application with a fee and submit a site-investigation report that describes the contamination. Of the 59 applicants in FY 08, five were operators; five, future purchasers; and 49, current owners.

Brownfields Site Assessment

The Small Business Liability Relief Act and Brownfields Revitalization Act specify what persons and properties are eligible for brownfields assistance. Participation is restricted to local governments and nonprofit organizations that lack the resources to move sites through the VCP.

In FY 08, seven brownfields site-assessment applications were received, all from municipalities.

Municipal Setting Designations

MSD Program applicants include property owners, municipalities, developers, and anyone else interested in the redevelopment of property. The property must be located within the corporate limits or extraterritorial jurisdiction of a municipality and a public drinking water supply system must be available to the property and all other properties within one-half mile. In addition, the local municipality must support the MSD and restrict the potable use of the groundwater through an ordinance or restrictive covenant. All owners of wells within five miles of the MSD property that supply water to the public must also support the MSD.

In FY 08, 33 MSD applications were received by the TCEQ, one from a municipality, the remainder from private property owners and developers.

Corrective Action

The Corrective Action Program serves owners and operators of industrial and non-hazardous waste sites, including federal facilities with contaminated sites. Application/notification to the agency is required. As of August 31, 2008, there were 1,158 affected sites in the program.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Please see the flowcharts *VCP, IOP, BSA, MSD, and CA Work Flow Process* following Question O.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0549	Waste Management Account	$745,220
0550	Hazardous and Solid Waste Remediation Fee	$724,162
0555	Federal Funds	$1,722,335

Strategy—D.1.2—Hazardous Materials Cleanup

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

Voluntary Cleanup Program

The TCEQ has other programs within the Remediation Division that oversee site remediation conducted by responsible party source sites. These other programs perform similar work; however, the VCP differs from these programs by virtue of its voluntary nature and the liability release conferred on all non-responsible parties following successful completion of site remediation.

The Texas Railroad Commission implemented a voluntary cleanup program, structured similarly to the TCEQ's VCP, in June 2002 for properties contaminated by activities under its jurisdiction.

Innocent Owner/Operator Program

The IOP differs from all other remediation programs in that it does not require a cleanup by the applicant; however, other remediation programs may oversee the remediation of sites that are causing contamination to migrate onto the innocent owner's property.

Brownfields Site Assessment

The TCEQ BSA Program is similar to other external programs assisting local governments and nonprofit organizations working with the TCEQ. Similar external brownfields programs exist at the EPA, which provides grants, assessment, and cleanup planning for local governments, nonprofits, and states. Local governments may also make assessments on brownfields through grants received from the EPA. However, because of its integral ties with the Voluntary Cleanup Program and the Remediation Division, the TCEQ brownfields program is able to efficiently, and with some authority, facilitate and offer guidance regarding technical and regulatory components of cleanups that the other programs may not be able to provide.

Corrective Action

The TCEQ regional offices, VCP, and the TCEQ's Industrial and Hazardous Waste (IHW) Permits Program similarly oversee certain remediation projects. TCEQ regional offices function as the first responders upon discovery of contamination and refer sites requiring long-term cleanup to the CA Program. Responsible parties who are not subject to permit or enforcement directives for cleanup have the option to clean up the site through the VCP. The TCEQ's IHW Permits Program is responsible for closure of permitted site cases, whereas the Corrective Action Program is responsible for closure of non-permitted site cases.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Voluntary Cleanup Program

The roles and responsibilities of the TCEQ and EPA under the Texas VCP are defined in the May 1996 Memorandum of Agreement. Jurisdictional issues with the Texas Railroad Commission are clarified in a Memorandum of Understanding (16 TAC Section 3.30). Additionally, disclosure of prior regulatory involvement is required from applicants to the program. Contact with the applicable TCEQ regional office is also a part of VCP application review.

Brownfields Site Assessment

The EPA, local governments, and the TCEQ work closely on all brownfields projects to prevent duplication and ensure complementary results. Also, TCEQ brownfields program cleanup authority, standards, and the ability to issue certificates of completion and no further action letters are specific to the TCEQ.

Corrective Action

Oversight of certain remediation activities by the TCEQ's regional offices, the TCEQ Petroleum Storage Tank Program, and the TCEQ IHW Permits Program are coordinated through interoffice memorandums between the programs dated November 14, 2000, December 21, 2001, and August 29, 2002.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Voluntary Cleanup Program and Innocent Owner/Operator Program

Both the VCP and IOP may work with local, regional, or federal government authorities on particular cases. Free review and oversight of investigation and remedial activities are available for local governmental authorities that apply, paid for through a federal brownfields grant.

Brownfields Site Assessment

The BSA Program assists local municipalities, counties, and councils of governments with technical issues and with site assessments on brownfield properties. The EPA relies upon the TCEQ to ensure local municipalities and councils of governments are eligible for petroleum brownfield grants. All applicants for EPA brownfields grants must include in their grant application a letter from the state environmental agency acknowledging that the applicant has informed the agency of its intent to apply.

Municipal Setting Designation
The MSD Program often gives local municipalities guidance on the program and attends meetings on site-specific issues as requested by the local government.

Corrective Action
At military installations undergoing base realignment and closure, the program partners with the redevelopment authorities, the Department of Defense and the EPA, to achieve effective cleanups and maximize productive reuse. The CA program also works with the EPA to identify key environmental-indicator (EI) cleanup milestones at sites subject to Government Performance and Results Act tracking requirements. Target commitments for each measurement are established by EPA in the RCRA grant and are evaluated, tracked, and reported to EPA mid-year and at year end.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

Brownfields Site Assessment
In FY 08, the BSA Program spent $89,472, entirely on its two contracts for remedial investigations, removal actions, and environmental audits on sites with certificates of completion.

Corrective Action
In FY 08 Corrective Action spent $169,358 for two interagency contracts, the Texas Engineering Experiment Station (TEES)—a division of Texas A&M University—and the Department of Energy Pantex Plant, respectively. The contracts are for technical support and review and evaluation of corrective-action documents and data, and for recommendations pertaining to soil and groundwater remediation projects.

The TEES contracts were not renewed in FY 09. Instead, a competitively bid contract was secured for the FY 10–11 biennium for technical oversight of military cleanup projects.

To ensure accountability for funding (Brownfield and Corrective Action), work orders are created and subsequent invoices are tracked in the TCEQ Remediation Division's Contract Administration and Tracking System (CATS). The CATS is designed to prohibit invoices, work orders, or contracts from exceeding budget allocations. Additionally, all invoices must undergo a technical and administrative review to ensure allowable costs and compliance with contractual guidelines. To ensure contractor accountability, five percent of each invoice amount is retained until each work order is completed and approved. All costs are reconciled under the Uniform Statewide Accounting System. Currently, the TCEQ's Remediation Division is enhancing its fiscal-monitoring program to further ensure contractor accountability and accuracy.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

The following statutory changes could be made to assist the Municipal Setting Designation Program in performing its functions:

- *THSC Chapter 361, Subchapter W, Municipal Setting Designations.* The TCEQ has encountered arguments that a previously certified MSD should benefit a person addressing groundwater contamination sourced on property not under an MSD that has migrated onto a property that has an MSD. The applicable statute does not explicitly provide this relief to parties located outside of the MSD.

- THSC Section 361, Subchapter W requires no minimum size for a MSD. Adding language to the statute that would explicitly require that all known areas of groundwater contamination be included within the boundary of the proposed MSD should reduce the likelihood that contaminated groundwater underlying property located outside of the MSD remains unrestricted from use by current and future property owners.

- THSC Chapter 361, Subchapter W is silent on what effect, if any, an MSD has on non-aqueous phase liquids in contact with groundwater.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

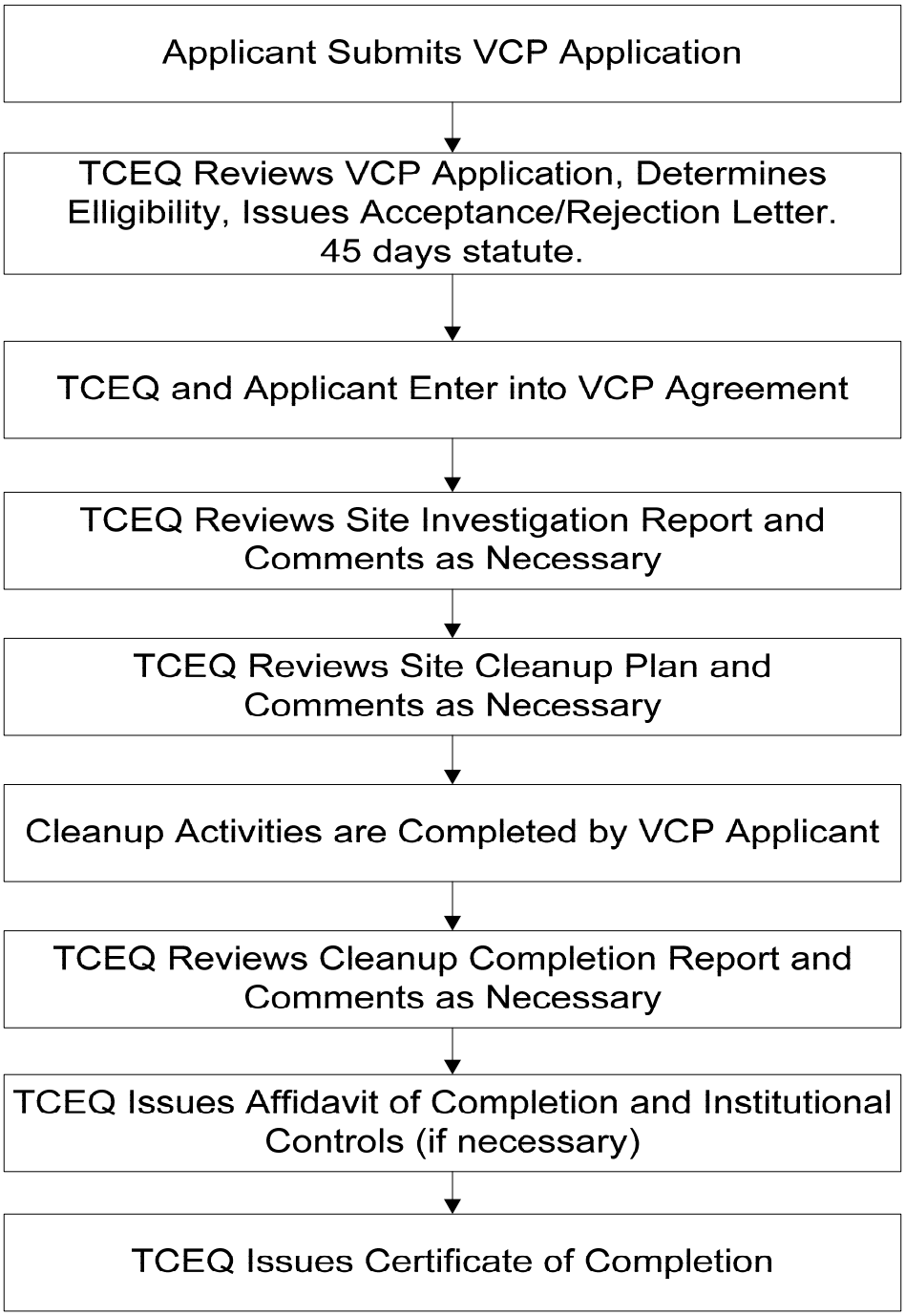
N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

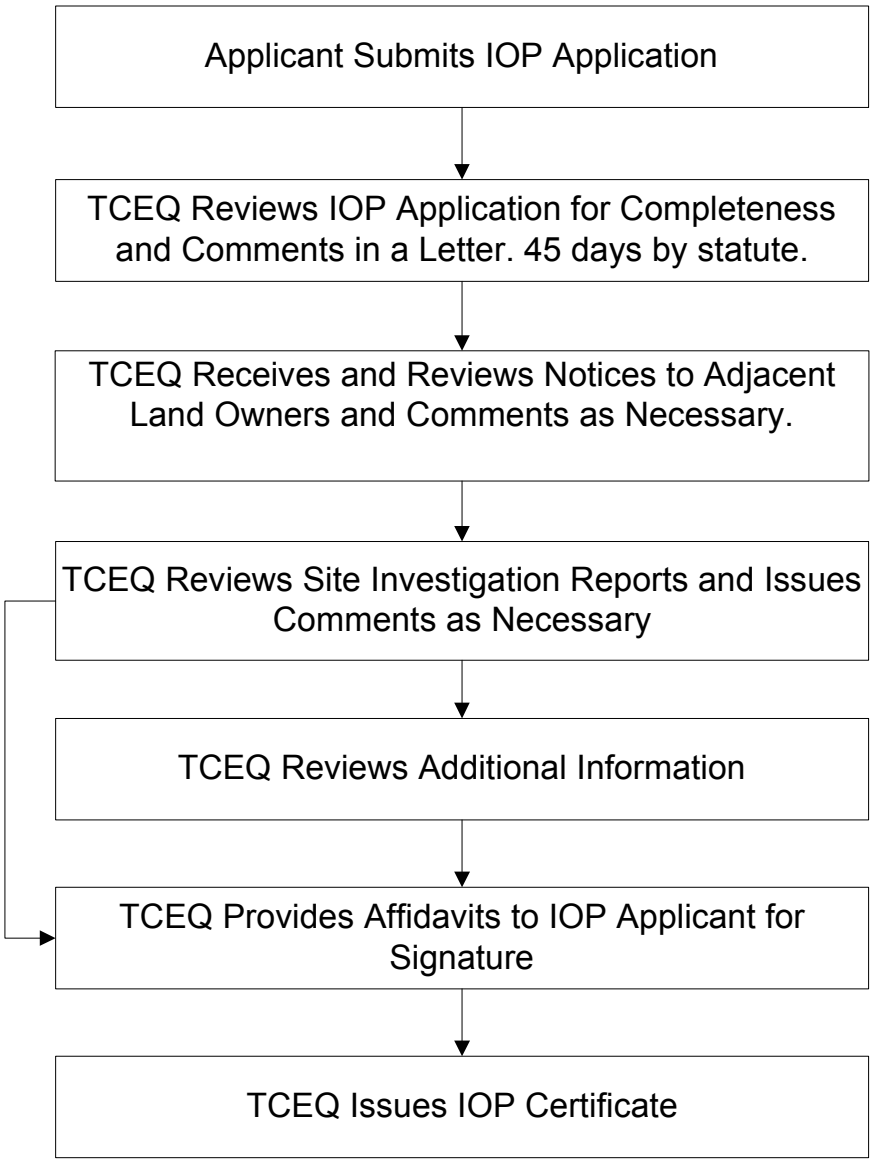
O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

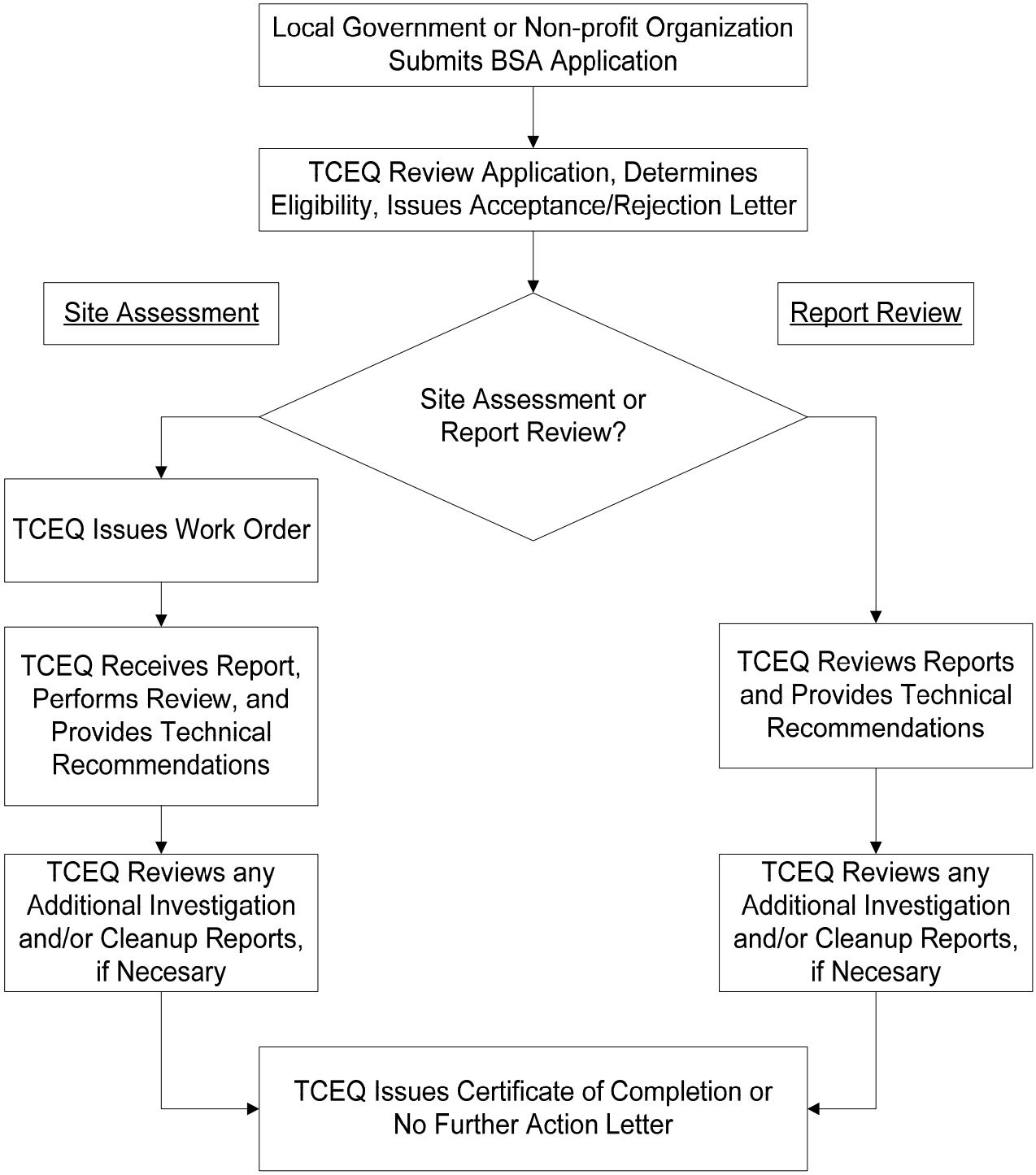
Voluntary Cleanup Program (VCP)
Work Flow Process



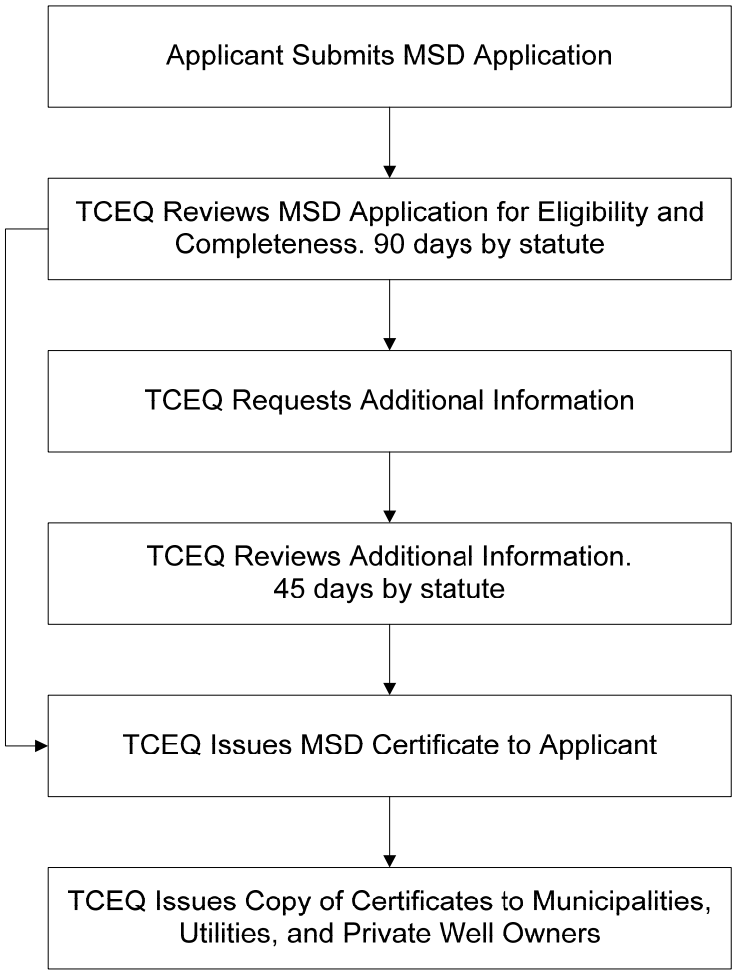
Innocent Owner/Operator (IOP)
Work Flow Process



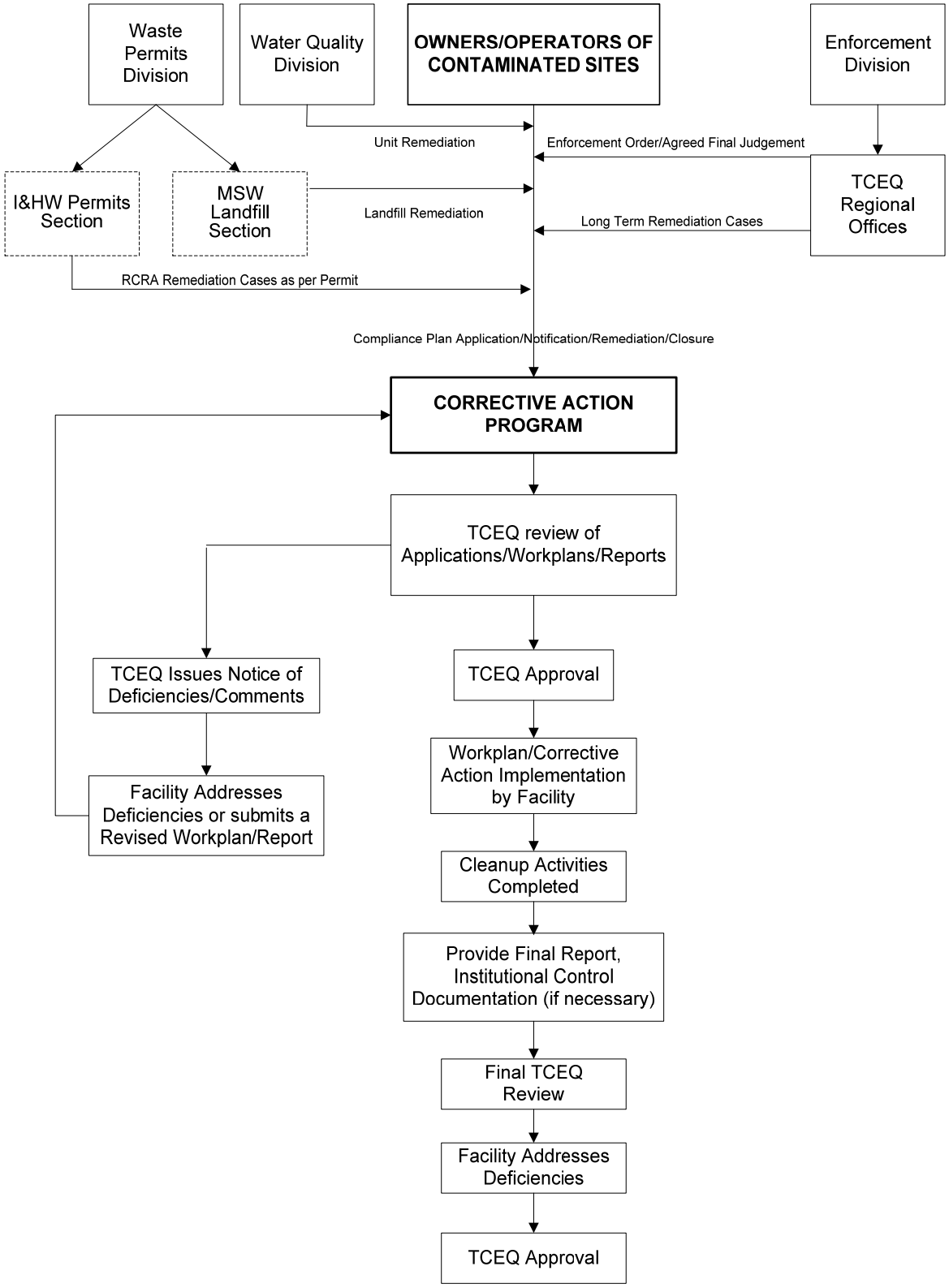
Brownfields Site Assessment (BSA)
Work Flow Process



Municipal Setting Designation (MSD)
Work Flow Process



Corrective Action Process



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Stationary Monitoring Operations
Location/Division	3rd Floor / Building A / Monitoring Operations Division / Office of Compliance and Enforcement
Contact Name	David Bower
Actual Expenditures, FY 2008	$9,250,599
Number of FTEs as of August 31, 2008	68

B. What is the objective of this program or function? Describe the major activities performed under this program.

The TCEQ's Stationary Monitoring Operations Program conducts ambient air sampling, and collects and manages data, ensuring its accuracy and timeliness.

The program involves continuous sampling of Texas' air, managing and analyzing vast amounts of data, and then ultimately reporting the air quality data to the public and the EPA. The program relies on an expansive network of state- and partner-owned air quality monitors and laboratories used to analyze air samples. Depending on the time of year and other factors, between 180 and 220 monitoring sites are active.

A major program activity is supplying data of known and acceptable quality for TCEQ and external-party use in a timely, concise, and easy-to-interpret manner. The TCEQ Chief Engineer's Office uses stationary-monitoring data to support air quality attainment designations and several aspects of the State Implementation Plan (SIP), including verification of models and of other data used for selecting measures designed to reduce emissions. Also, the TCEQ's investigation strategy involves using stationary monitoring data to prioritize some candidates for investigation. Another major activity involves examining and interpreting the causes, nature, and behavior of air pollution in Texas.

The program allows the public and local governments ready access to network data, which allows for consideration of air quality conditions as daily activities are planned. For example, the forecasts of possible high concentrations of ground-level ozone and particulate matter in Texas' urban areas, based on program data, help the public to adjust their driving and outdoor activities.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

The Stationary Monitoring Program is effective at sampling, analyzing, and reporting on the air quality in Texas due to the broad coverage of its network, which meets all statutory requirements for monitoring. A total of 80 percent of Texans live in a county with a stationary air quality monitor.

The program's efficiency is based on the use of partnerships to achieve public access to data not only from state-owned monitoring sites, but also from monitors belonging to local governments, councils of governments (COGs), and private partners. Many COG monitors in near-nonattainment areas receive special funding from the Texas Legislature. The privately owned monitors are often established through self-monitoring initiatives, voluntary agreements, court orders, or Supplemental Environmental Projects (SEPs). While data from these partners can become part of the agency's data set, those data are generally not used in determining attainment with air quality standards as they do not meet EPA requirements. However, they do offer a broader picture of air quality in Texas.

The program's efficiency is measured for the Legislative Budget Board in terms of the proportion of data collected by the TCEQ's continuous and non-continuous air-monitoring networks that are deemed valid. The program consistently meets the projected goal of 90 percent–valid data return. In FY 08, the data return was 94 percent; or 104 percent of projections.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Since 1973, the stationary-monitoring network has increased the number of monitoring sites, the number and complexity of sampling instruments, and the number of data points collected—now more than 200 million each year. This growth is the result of technological innovations allowing more frequent sampling, new federal requirements, and expanded partnerships with public and private organizations.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Generally, stationary monitoring is not a regulatory program. Monitoring, however, is involved in voluntary emission-reduction agreements, permit conditions designed to verify emissions, and enforcement of agreed orders. For example, some enforcement respondents have chosen to direct their administrative penalties toward a SEP that involved fence-line or ambient air quality monitoring. These projects involve interaction and collaboration with the Stationary Monitoring Operations Program.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The program is managed to ensure that all regulatory requirements for monitoring are met. It also ensures coordination of monitoring priorities with network partners. Programmatic decisions take into account logistical, managerial, and scientific considerations including air quality planning needs, agency priorities, citizen input, and the public interest.

Generally, decisions regarding the type and location of samplers are made based on EPA requirements. As an example, additional lead monitors are required in 2010 to support the revised National Ambient Air Quality Standard (NAAQS). The associated regional offices and Chief Engineer's Office are also involved in the selection of monitoring sites to ensure consideration of operator logistical needs and the SIP for air quality.

In most cases, TCEQ regional personnel serve as the day-to-day operators for the sampling instrumentation, ensuring their proper functioning and the validity of data collected.

Most of the monitoring data are transmitted by telecommunications equipment to a centralized system. Within hours, the raw data are displayed on a TCEQ Web page. All stationary-monitoring data are validated and their quality assured before submission to the EPA or use as the basis for the TCEQ decisions.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0151	Clean Air Account	$5,170,654
5094	Operating Permit Fees	$335,849
0555	Federal Funds	$3,744,096

Strategy—A.1.1—Air Quality Assessment and Planning

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

While many organizations conduct meteorological and air chemistry monitoring, no program other than the TCEQ stationary monitoring network manages air quality data from such a broad geographic area for display to the public shortly after samples are collected. Generally, the TCEQ partners with other organizations that are monitoring air quality so the data can be displayed via the TCEQ Web page. Most other organizations in Texas that collect air quality data opt to share those data with TCEQ. In some cases, such as university studies, data collection is quite focused in nature or scope and not appropriate for display on TCEQ Web pages.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

To avoid duplication of effort, TCEQ routinely collaborates with network partners, described in Question J (below), using a combination of grants, contracts, and voluntary participation commitments. Generally, grant requirements ask grantees to document coordination of roles and responsibilities with EPA, actual contract language documents expectations from local governments, and voluntary agreements are used to coordinate requirements with universities, private institutions, and other organizations.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Federal	Relationship with Program
Environmental Protection Agency	Partially funds TCEQ's stationary-monitoring network
National Park Service	Supply data to support the network (especially data essential to forecasting air quality events)
National Oceanic and Atmospheric Administration	
National Weather Service	
National Aeronautics and Space Administration	
Geological Survey	

State Government	Relationship with Program
Texas Department of Transportation	In-kind contributions such as access to property to locate stationary monitors
Texas Parks and Wildlife Department	

Local Government	Relationship with TCEQ
City of Houston	Operate monitors in the TCEQ network
Harris County Public Health & Environmental Services	
City of Fort Worth	
City of El Paso	
City of San Antonio	
City of Corpus Christi	
City of Victoria	
Ciudad Juarez	
Capitol Area Council of Government (CAPCOG)	
Alamo Area Council of Government (AACOG)	
North East Texas Air Care (NETAC)	
South East Texas Regional Planning Commission (SETRPC)	

Universities and Research Institutions	Relationship with Program

University of Texas (Austin, Galveston, El Paso, San Antonio)	Share data from monitoring sites they operate
Texas A&M University (College Station, Kingsville)	
University of Houston (Main and Clear Lake)	
Baylor University	
Lamar University	
Rice University	
Texas Tech University	
Houston Advanced Research Center	

Industry	Relationship with Program
Houston Regional Monitoring	Share monitoring data with the TCEQ
Brazoria County—Chocolate Bayou Industry Group	
Brazoria County—Sweeny Industry Group	
Texas City Industry Group	
Freeport Industry Group	

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

In FY 08, the Stationary Monitoring Operations Program spent $3,023,736 through 38 contracts on monitoring operations (32 contracts), sample analysis (3 contracts), laboratory-waste disposal (1 contract), support for data management (1 contract), and laboratory assistance (1 work order under an umbrella contract).

Each contract is monitored by a contract manager to ensure that expenditures do not exceed the contract amount and that the work is performed in accordance with contract requirements before payments are approved. Separate division personnel audit contractor performance to verify costs and troubleshoot potential problems that would impede the contractor's ability to deliver valid data.

The primary contracting problems encountered by the stationary monitoring program relate to staff turnover at local-government partners, which can result in lower rates of valid data return.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

The Stationary Monitoring Program network includes:

- Monitors that take 5-minute average measurements of ozone, nitrogen oxides, carbon monoxide, and other compounds, in addition to several meteorological parameters.

- Automated gas chromatographs that separate and identify 48 to 65 volatile organic compounds hourly.

- Canister samples that are collected every sixth day for analysis of more than 100 air toxics and ozone precursors.

- Polycyclic aromatic hydrocarbon samples that are collected every sixth day for analysis of 16 compounds.

- Carbonyl samples that are collected every sixth day for analysis of 18 ozone precursor compounds.

- Automated continuous and non-continuous monitors for $PM_{2.5}$ and PM_{10} such as soot, smoke, and dust.

A comprehensive list of stationary air quality monitoring sites that feed data to TCEQ Web pages is at <www.tceq.state.tx.us/cgi-bin/compliance/monops/site_info.pl>. The table on that page has multiple options for viewer customization (sorting by city, county, responsible party, etc.). Additional information, including photos, maps, and descriptions of what is monitored at the site, is available by clicking on the Continuous Ambient Monitoring Station (*CAMS)* number for each site.

Another informative page is at <www.tceq.state.tx.us/cgi-bin/compliance_/_monops_/texas_aqi.pl>. The map shows the Air Quality Index calculated for various areas of the state.

Recent revisions to the NAAQS for ozone, lead and nitrogen dioxide will require deployment of additional monitors. Areas that may have new monitoring sites in the next few years include the McAllen-Edinburg-Mission area, Lubbock, Amarillo, the College Station–Bryan area, Abilene, Wichita Falls, Texarkana, Odessa, Midland, the Sherman–Denison area, and San Angelo.

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Texas Pollutant Discharge Elimination System Compliance Monitoring
Location/Division	1st Floor / Building C / Enforcement Division / Office of Compliance and Enforcement
Contact Name	Bryan Sinclair
Actual Expenditures, FY 2008	$694,459
Number of FTEs as of August 31, 2008	18

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Texas Pollutant Discharge Elimination System (TPDES) Compliance Monitoring Program reviews and responds to self-reported data recorded on a discharge monitoring report (DMR). All TPDES-permitted wastewater treatment facilities discharging to surface waters are required to submit DMRs. These reports summarize wastewater analytical results from samples collected at those facilities. The outcome of a DMR compliance review is to determine compliance with the applicable permit limits and initiate the appropriate level of enforcement action when necessary. The level of enforcement is based on Environmental Protection Agency (EPA) criteria and TCEQ referral initiation criteria, all designed to protect human health and water quality in Texas.

The program focuses primarily on domestic and industrial wastewater and sewage sludge. Other areas that the program supports include: pretreatment, biomonitoring (whole effluent toxicity testing), and concentrated animal feed operations. All TPDES facilities are designated as *major* or *minor*, depending on the design flow. For oversight and review purposes, major facilities are required to be monitored as specified in 40 CFR Section 123.45.

Major activities performed by the program include the following:

- monitoring self-reported TPDES permit data (DMR data);
- reviewing records to determine compliance status;
- issuing notices of violation for such noncompliances as missing data or missing reports;
- issuing notices of enforcement and initiating enforcement referrals for TPDES permit noncompliances that trigger formal enforcement;

- supplying standard DMR forms to permit holders;

- transcribing DMR data into the federal database tracking system (Permit Compliance System); and

- supporting the electronic DMR reporting system.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

The program has an established 45-day time frame from the assignment date to complete enforcement action referrals (EARs). In FY 08, the program completed required EARs in an average of 35 days.

With electronic reporting of DMRs, which began in February 2006, the program became more efficient, streamlining data reporting for the regulated community and the program, improving overall data quality and timeliness in reviewing reported data, and reducing program expense for postage on DMR forms and data-transcription costs. In FY 07, the paper DMRs submitted totaled 58,447 (74 percent); e-DMRs, 20,222 (26 percent). In FY 08, paper DMRs totaled 37,838 (56 percent); e-DMRs, 29,710 (44 percent).

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

2006

- The STEERS (e-DMR) system became available for TPDES facilities to electronically report DMR data.

2009

- The program began giving technical and administrative support to the modernized e-DMR reporting system called *NetDMR* (released for public use on June 23, 2009). The Texas NetDMR application was developed under an EPA grant by a consortium of 12 states coordinated by the Environmental Council of States and led by Texas.

- The program assumed responsibility for monitoring the TCEQ NetDMR help line, helping potential NetDMR users subscribe, and approving NetDMR subscriber participation agreements.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

In FY 08, the TPDES Compliance Monitoring Program included 3,970 regulated facilities: 521 major facilities and 3,449 minor facilities.

Major facility: Any National Pollutant Discharge Elimination System (NPDES) facility or activity classified as such by the EPA regional administrator in conjunction with the TCEQ executive director. Major municipal dischargers include all facilities with design flows of greater than one million gallons per day and/or facilities with EPA or state approved industrial pretreatment programs. Major industrial facilities are determined based on specific rating criteria developed by the EPA and the state.

Minor facility: Any non-major facility.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Refer to the flowchart *Compliance Monitoring* following Question O.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0001	General Revenue	$702
0151	Clean Air Account	$2,732
0153	Water Resource Management Account	$617,435
0549	Waste Management Account	$69,480
0555	Federal Funds	$3,073
0655	Petroleum Storage Tank Remediation	$1,037

Strategies:
A.1.2—Water Assessment and Planning
C.1.2—Enforcement and Compliance Support
D.1.1—Storage Tank Administration and Cleanup

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

No other specific program exclusively conducts compliance monitoring for TPDES facility effluent limits. However, TCEQ's Field Operations Program reviews self-reported DMR data as part of an on-site investigation. The TPDES Program reviews DMR data monthly for minor facilities and at least quarterly for major facilities—whereas the Field Operations Program conducts a DMR data review for a one-year period to supplement a comprehensive compliance investigation conducted at a major facility once every two years

and, at a minor facility, once every five years.

The Texas Railroad Commission (RRC) retains jurisdiction and authority over NPDES facilities for oil and gas, and over geothermal exploration and development activities. The EPA maintains authority over any offshore oil and gas exploration facilities with a NPDES permit.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The program's compliance monitoring coordinators screen self-reported (TPDES and NPDES facility) DMR data for compliance and enforcement determinations. These functions are specified in the TCEQ's enforcement-initiation criteria (EIC) to ensure that the Field Operations Program does not duplicate an enforcement referral for effluent violations. Specifically, the EIC state that the TPDES Program is exclusively or primarily responsible for determining when self-reported effluent violations meet EPA enforcement-referral criteria. A more detailed interagency agreement implemented in May 2003 states that TCEQ Field Operations investigators are not expected to apply the EPA enforcement referral criteria or the TCEQ impaired segment referral criteria to self-reported effluent data that they review as part of an investigation of a TPDES or NPDES facility.

In May 1998, a Memorandum of Agreement established policies, responsibilities and procedures for program commitments between the TCEQ and EPA Region 6 for assumption of the NPDES program by the TCEQ.

Also in May 1998, a Memorandum of Understanding clarified jurisdictional boundaries of the TCEQ and the RRC.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The program routinely communicates with local, state, and federal governmental authorities that operate wastewater treatment facilities subject to TPDES requirements. The program also communicates and coordinates with EPA Region 6 as needed. The EPA plans to fully delegate all remaining TPDES permits (50) to the TPDES Compliance Monitoring Program by the end of 2009.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

In FY 08, the program had one contract for expenditures in the amount of $12,953. The contract was to support TPDES DMR data entry services. The program conducted edit/audit checks on data entered by the contracted staff and manually validated the number of DMRs transcribed on a monthly basis.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

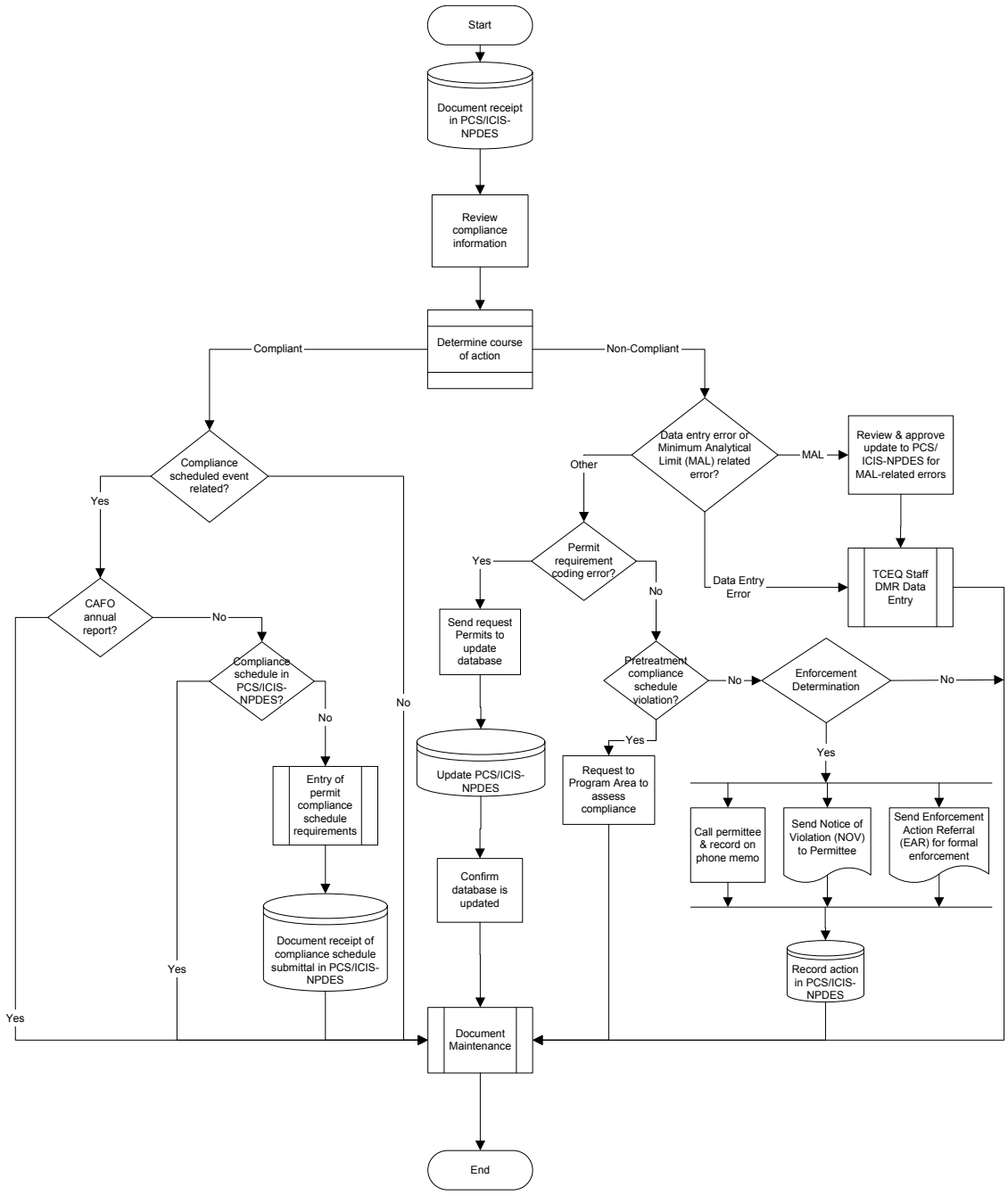
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not applicable, please see Field Operations Question O for complaint-related data related to this program.

Compliance Monitoring



VIII. STATUTORY AUTHORITY AND RECENT LEGISLATION

A. Fill in the following chart, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact your agency. Do not include general state statutes that apply to all agencies, such as the Public Information Act, the Open Meetings Act, or the Administrative Procedure Act. Provide information on Attorney General opinions from FY 2005 – 2009, or earlier significant Attorney General opinions, that affect your agency's operations.

Texas Commission on Environmental Quality Exhibit 13: Statutes/Attorney General Opinions	
Statutes	
Citation/Title	**Authority/Impact on Agency** (e.g., "provides authority to license and regulate nursing home administrators")
Texas Water Code, Chapter 5 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 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, sets forth rules, orders, permits, or other decisions of the commission, and authorizes the imposition of administrative, civil, and criminal penalties.
Texas Rev. Civ. Stat. Ann., art. 4447cc (Vernon's) 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 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 Provisions Generally Applicable to Water Rights	This chapter directs the manner in which dams and water rights applications will be processed and defines the agency's general supervision over dams, water districts and authorities.
Texas Water Code, Chapter 13 Water Rates and Services	This chapter addresses general powers and duties relating to water rights, federal projects and dam safety, oversight of districts, and disposition of fees.
Texas Water Code Section 16.236 Construction of Levees	This section requires the commission to review levee projects and adopt rules.

Texas Water Code, Chapter 26 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, the operation of existing industries, taking into consideration the economic development of the state to encourage and promote 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 Injection Wells	This chapter establishes a policy of the state to maintain the quality of its freshwater 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 Drilled or Mined Shafts	This chapter establishes permitting requirements for drilled or mined shafts.
Texas Water Code, Chapter 30 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 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.
Texas Water Code, Chapter 32 Subsurface Area Drip Dispersal System Act	This chapter establishes permitting requirements for subsurface area drip dispersal systems.
Texas Water Code, Chapter 35 Groundwater Studies	This chapter requires the commission to evaluate and designate priority groundwater management areas.
Texas Water Code, Chapter 36 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 XVI.59. The chapter recognizes groundwater conservation districts as the state's preferred method of groundwater management.
Texas Water Code, Chapter 37 Occupational Licensing and Registration	This chapter requires the commission to adopt rules for licenses and registrations prescribed by Texas Water Code 26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code 341.033, 341.034, 361.027 and 366.071; and Texas Occupations Code 1903.251.

Texas Water Code, Chapters 41 through 44, and 46 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 Provisions Applicable to All Districts	This chapter describes the rights, duties, and obligations of districts created by the authority of Texas Constitution III.52, or XVI.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 Water Control and Improvement Districts	This chapter's provisions that govern the creation and regulation of this type of district as well as outline the role and authority of the TCEQ in regard to such districts.
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 Stormwater 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 chapter 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.
Texas Health and Safety Code, Chapter 361 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 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 generation 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 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 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, its standards or the chapter.
Texas Health and Safety Code, Chapter 366 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 from these systems. The commission is required to license or register persons who install and maintain OSSFs.

Texas Health and Safety Code, Chapter 367 On-site Wastewater Treatment Research Council	This chapter establishes the On-site Wastewater Treatment Research Council and defines its role and authorities. 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 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 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 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 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 Dry Cleaner Environmental Response	This chapter establishes an environmental regulation and remediation program for drycleaning 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.
Texas Health and Safety Code, Chapter 375 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 recovery of convenience switches.
Texas Health and Safety Code, Chapter 382 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 emitting pollutants from operations.

Texas Health and Safety Code, Chapter 384 Area Emission Reduction Credit Organizations	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 the initial establishment, withdraw approval, dissolve or renew, and to audit an area emission-reduction credit organization.
Texas Health and Safety Code, Chapter 386 Texas Emissions Reduction Plan	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 New Technology Research and Development Program	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 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.
Texas Health and Safety Code, Chapter 391 (SB 1759, 81st Legislature) 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) 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 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 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 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.
Texas Local Government Code, Section 212.0101 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 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 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 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 Irrigators	This chapter provides authority to license and regulate irrigators.
Texas Occupations Code, Chapter 1904 Water Treatment Specialists	This chapter provides authority to license and regulate water-treatment specialists.
Texas Tax Code Section 11.31 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 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.

33 United States Code, Section 1251 et seq. Federal 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 water of the United States. The Act creates the federal framework on which the delegated National Pollution Discharge Elimination System program is patterned.
33 United States Code, Section 2701 et seq. Federal 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 an 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. TCEQ is one of three state Natural Resource Trustees.
42 United States Code, Section 300f et seq. Federal Safe Drinking Water Act	The Federal Safe Drinking Water Act gives authority to regulate 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. Federal 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 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 to the NRC's requirements. Texas is an agreement state.
42 United States Code, Section 2021b et seq. Federal Low Level Radioactive Waste Policy Act and Federal 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 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 federal Resource Conservation and Recovery Act (RCRA) governs the management and disposal of solid wastes. Specifically, 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 federal program.

42 United State Code, Section 7401 et seq. Air Pollution Prevention and Control (Federal Clean Air Act)	The Clean Air Act establishes the federal program for air-pollution prevention and control. It provides for air quality 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 nonattainment permits, emissions standards for moving vehicles (including engine and fuel standards), and acid deposition control; the federal operating permit program (Title V); and other programs not administered by the states (Title VI— Stratospheric Ozone Protection). The TCEQ administers the federal air permitting programs, i.e. Title V and New Source Review permits.
42 United States Code, Section 9601 et seq. Federal 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.
Attorney General Opinions	
Attorney General Opinion No.	Impact on Agency
GA-0624	The opinion concerns the Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) under Health and Safety Code 382.209. It removes the prohibition on TCEQ distribution of funds to participating counties when required reviews and approvals by the county commissioner, county auditor, and county treasurer for payments to LIRAP dealers within the statutorily mandated five days are impractical. Date: May 7, 2008
GA-0587	The opinion concludes that neither Section 11.31(k) nor Section 26.045(f) of the Texas Tax Code restricts the rulemaking authority of the TCEQ only to those pollution control facilities, devices, or methods associated with advanced clean-energy projects. Date: December 20, 2007

GA-0390	The opinion defers to the TCEQ's interpretation of Title 30, Texas Administrative Code, Section 285.50(g)(2), and concludes that a deputy sheriff is an individual who "acts in any capacity for a permitting authority" when the county which the deputy serves is the permitting authority for the on-site sewage facility. Date: December 28, 2005

B. Provide a summary of recent legislation regarding your agency by filling in the chart below or attaching information already available in an agency-developed format. Briefly summarize the key provisions. For bills that did not pass, briefly explain the key provisions and issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation). See Exhibit 14 Example or click here to link directly to the example.

Texas Commission on Environmental Quality Exhibit 14: 81st Legislative Session Chart		
Legislation Enacted – 81st Legislative Session		
Bill Number	**Author**	**Summary of Key Provisions**
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. Includes provisions of SB 2111 by Averitt (Advanced Clean Energy Projects) relating to the franchise tax and emissions profile.
HB 715	King, P.	Specifies that Texas Department of Public Safety rules may not restrict a qualified inspection station from performing fewer than 150 emissions inspections per month using its onboard diagnostic system.
HB 1433	Lucio III	Increases the statutory cap for the annual water quality fee for holders of wastewater discharge permits and water-right users through permit or contract from $75,000 to $100,000 beginning on September 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 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. Requires the TCEQ to adopt standards for monitoring, measuring and verifying the permanent storage status of the repository, with the BEG to perform those functions and serve as a scientific adviser. The BEG is to measure, monitor, and verify the permanent status of carbon dioxide in the repository. Requires the TCEQ to establish and administer a New Technology Implementation Grant (NTIG) to implement new technologies to reduce emissions from facilities and other stationary sources. This program will be part of the Texas Emissions Reduction Plan (TERP). Projects eligible in 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. Extends the TERP Program and all associated fees until August 31, 2019. Also adds stationary engines to the list of items the TCEQ can fund through TERP grants. Exempts mobile generators used for recovery of natural gas 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 amends the allocation of TERP funds. Requires the TCEQ, the Railroad Commission, and the Public Utility Commission to jointly participate in the federal process to develop federal greenhouse gas reporting requirements. Directs the TCEQ to establish an inventory of voluntary actions by Texas businesses and state agencies since September 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 regulation. Includes components of SB 16 by Averitt— Advanced Clean Energy Projects, NTIGs, LIRAP, the Section 185 Fee, TERP, NTRD, the federal greenhouse-gas reporting rule, and an inventory of voluntary CO_2 reductions Includes components of SB 2111 by Averitt (Advanced Clean Energy Projects) relating to emissions profiles for such projects.
HB 1922	Martinez Fischer	Authorizes introduction of recycled water 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 water-reuse system and to discharge reclaimed water contributed to a reuse system at certain outfalls.
HB 2729	Pitts	Authorizes the TCEQ to pay certain outstanding claims from existing fund balances.
HB 3206	Edwards	Makes changes to the Tax Relief for Pollution Control 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 section 11.31 of the Texas Tax Code and (2) requires the creation of a permanent advisory committee.

HB 3544	Lucio III	Authorizes the TCEQ to transmit information electronically. Also exempts e-mail addresses from nondisclosure of email addresses under the Public Information Act if they are submitted for public comment, or notices, orders, or decisions from a governmental body. Deletes a reference to paper copies of public information provided by a governmental body so as to encourage requests for electronic copies. Includes HB 3206 by Edwards—Tax Relief for Pollution Control Program.
HB 3547	Elkins	Gives 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.
HB 3765	Paxton	Provides that the TCEQ may use up to 10 percent of the fees collected on batteries under Health and Safety Code Section 31.138 (deposited in the Hazardous and Solid Waste Remediation Fee Account 550) for programs related to lead-acid batteries. Funds from Account 550 can now be used to support innovative technologies in recycling lead-acid batteries.
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 FY 2009. Appropriations to the TCEQ include: • $2 million from Account 550 for cleanup activities at Ballard Pits, a state Superfund site in Nueces County; • $37 million from TERP Account 4071 for the TERP program; and • $4.6 million from General Revenue Account 001 for reimbursement of costs associated with natural disasters.
SB 1	Ogden	TCEQ Appropriations for FY 2010–11. 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 December 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 in an interagency advisory committee.
SB 361	Patrick	Requires a retail public utility, exempt utility, or provider of wholesale sewer service or potable water service that furnishes water or sewer service to more than one customer to ensure the operation of its water and sewer systems during an extended power outage. Each service provider is required to submit an emergency-preparedness plan to the TCEQ for review and approval. The bill establishes five phases, depending on the location of the service provider, for the submission of the emergency-preparedness plans.
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).

SB 1387	Seliger	Creates a state-level regulatory framework for the storage and sequestration of carbon dioxide into geologic formations that may contain oil or gas. Gives the Texas Railroad Commission (RRC) jurisdiction over the injection of carbon dioxide into wells that are or may be productive of oil or gas, and over storage in a salt-brine formation above or below an oil or gas formation. Also requires that, before the RRC may issue a permit under Chapter 27 of the Texas Water Code that the TCEQ must certify that underground freshwater supplies will not be injured by the permitted activity. Calls for the TCEQ, RRC, and the University of Texas Bureau of Economic Geology (BEG) to study, and report to the legislature on, the appropriate agency to regulate the long- term storage of CO_2 into non–oil- or gas-producing geologic formations. 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 CO_2 on state-owned lands, including an assessment of storage capacity and new legal and regulatory frameworks that it recommends as necessary.
SB 1693	Ogden	Amends current law to address issues related to poultry-facility odors, response to complaints, measures to prevent air contaminants, and the recording of sale, purchase, transfer or application of poultry. Adds a course of action for responding to poultry-odor complaints, as well as improving upon record retention for the sale, purchase or transfer of poultry litter. Includes provisions from HB 3550; allows the commission to delegate authority to the executive director for administrative orders and penalties. Amends the statutory limit for payment plans from 12 to 36 months. Makes technical corrections from SB 3 (80R) to the Clean Rivers Program.
SB 1757	Watson	Directs the TCEQ study and make recommendations on the methods currently used in the state for safe handling and disposal of pharmaceuticals, medical sharps, and other potentially dangerous medical waste; alternative methods, including those 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 fleet vehicles in the commercial fleet for an extended period of one through eight years. Includes components of SB 1425 by Williams (alternative fuels program funded by TERP); establishes a Texas Clean Fleet Program to be administered by the TCEQ, funding it with five percent of the 87.5 percent of the Emission Reduction Incentives Grant within TERP.
SB 2445	Uresti	Allows for expansion of areas covered by the prohibition against boat sewage disposal to include all inland waters of the state and to coastal waters up to three nautical miles from shore.

Legislation Not Passed – 81st Legislative Session		
Bill Number	**Author**	**Summary of Key Provisions/Reason the Bill Did Not Pass**
HB 177	Creighton	Requires applicants of injection wells that dispose of industrial or municipal waste to use on-site monitoring wells to monitor and analyze groundwater quality, and to conduct soil testing. Includes reporting requirements as established by the TCEQ. Left pending in House Natural Resources on 3/24/09.

HB 179	Creighton	Requires the TCEQ to adopt rules governing the management and operation of new commercial underground injection wells. Requires the TCEQ to suspend permitting for any pending application relating to an underground injection well. Set on the House Calendar on 5/14/09.
HB 290	Dutton	Specifies that the TCEQ must consider the cumulative effects on the public's health and physical property of expected emissions from the facility and from other facilities located less than three miles from the facility. Also specifies that the TCEQ, in determining whether and under which conditions a permit is renewed, consider the cumulative effects on the public's health and physical property of emissions from the facility and from other facilities located less than three miles from the facility. Left pending in House Environmental Regulation on 4/15/09.
HB 557	Hernandez	Proposes to codify the TCEQ's current Air Pollutant Watch List process. Requires annual public meetings in Watch List areas and an annual electronic report. Requires the TCEQ to promptly publish on its Web site any ambient air quality data it collects from mobile or stationary monitors. Grants the TCEQ the ability to control air contaminants as necessary to protect against adverse effects related to air pollution. Left pending in House Environmental Regulation on 4/1/09.
HB 632	Turner, S.	Requires a retail public utility to maintain auxiliary power generators to ensure the provision of water to the local distribution system and sewer services. Requires the TCEQ to establish rules that include standards for generators, inspection schedules, and penalties for violations. Reported from House State Affairs on 4/23/09.
HB 721	Howard, D.	Requires the TCEQ to track and post on its Web site a list of emissions limitations represented as best available control technology or lowest achievable emission rate in the ten most recently filed applications and to consider these limitations when issuing or amending a permit. Requires the TCEQ to conduct or analyze and evaluate a facility's or proposed facility's effect on concentrations of ground-level ozone prior to granting a permit or permit amendment. Left pending in House Environmental Regulation on 4/29/09.
HB 769	Hernandez	Requires the TCEQ to adopt, by rule, effects screening levels for air contaminants and to assemble an expert panel to review the effect screening levels (ESLs) and recommend standards. ESLs would be set at levels protective of cancer risk at 1 chance in 100,000. Includes a general prohibition for violations of the ESLs and requires the TCEQ to adopt rules for the assessment of penalties or the imposition of injunctive relief. Requires the TCEQ to annually publish a report on violations and suspected violations later determined not to be violations. Left pending in House Environmental Regulation on 4/1/09.

HB 776	Strama	Requires the TCEQ to implement a low-emission-vehicle program that is consistent with the California Low Emission Vehicle Program, known as CalLev. The program applies to motor vehicles with a model year of 2012 or later. Under the proposed bill, if California changes its vehicle standard after Texas' law is adopted, the TCEQ may change the standard to reflect those changes. Hearing set for House Environmental Regulation on 4/15/09. Not heard.
HB 821	Leibowitz	Creates the Television Equipment Recycling Program, requiring television manufacturers to recycle their market share of the televisions recycled in Texas, regardless of brand. Vetoed by the Governor on 6/19/09.
HB 826	Gattis	Requires the TCEQ to assess an administrative penalty that is at least equal to the value of any economic benefit gained by a violation. The TCEQ may allow a governmental authority or nonprofit organization to defer payment on any portion of the penalty attributable to the economic benefit if the authority or organization complies with the schedule and terms of the enforcement order. Left pending in House Environmental Regulation on 3/4/09.
HB 1014	Corte	Requires the TCEQ to categorize counties by their risk of experiencing a major disaster. Requires water and sewer utilities in high-risk counties to maintain on-site generators capable of ensuring operation of the utility during an extended power outage. Requires the TCEQ to set rules for minimum operating standards, including how long the generators must perform during a disaster and their operating capacity. Referred to House State Affairs on 2/23/09.
HB 1245	Brown, B.	Changes the effective date of a rate increase if a hearing is scheduled to final approval by the regulatory authority, except in emergencies. Notice is increased to 120 days from 60 days for ratepayers and regulatory authorities. Left pending in House Natural Resources on 3/31/09.
HB 1355	Guillen	Expands the computer-equipment recycling program to cover televisions, personal digital assistants, electronic cameras, mobile telephones, and pagers. Expands the definition of *computer equipment* to include peripheral devices such as a computer mouse or computer keyboard. Would also expand the definition of *consumer* to include certain small businesses, not-for-profit organizations, and schools. Left pending in House Environmental Regulation on 3/18/09.

HB 1450	Rodriguez	Adds requirements related to management of coal combustion waste. Requires the commission to assess the status and stability of sites at which coal combustion waste is disposed of or reused, regardless of whether the site is regulated by the commission, and publish a cumulative report on its findings every five years beginning no later than September 1, 2014, including the volume of such waste at each type of disposal or reuse site and the toxic constituents in the waste. Left pending in House Environmental Regulation on 4/1/09.
HB 1469	Villarreal	Requires the TCEQ and the Legislative Budget Board to jointly prepare for each joint resolution to amend the Texas Constitution or bill pending before the legislature in a regular or special session, other than an appropriations bill, a statement of the effect the proposed change in law would have, if implemented, on the anthropogenic emissions of carbon dioxide in Texas. Left pending in House Environmental Regulation on 3/25/09.
HB 1508	Bolton	Prohibits the TCEQ from issuing a new permit authorizing the discharge of waste or pollutants or amend a permit that was issued before September 1, 2009 to authorize an increase in the discharge of waste or pollutants to waters in the contributing or recharge zone of the Barton Springs segment of the Edwards Aquifer. Specifically states that it does not affect the commission's authority to authorize discharges of storm water and certain non–storm water discharges. Reported from House Natural Resources on 4/27/09.
HB 1669	Callegari	Allows the Commission to grant to a retail public utility a certificate of public convenience and necessity (CCN) within a municipality's extraterritorial jurisdiction (ETJ) if the municipality refuses to extend service to property within its ETJ. The commission may grant the CCN irrespective of whether the municipality consents to the CCN. Prohibits the commission from extending a municipality's CCN area beyond its ETJ without the written consent of the owner of property in which the CCN is to be extended. Voids the portion of any CCN that extends beyond the ETJ of the municipality without the consent of the landowner. Reduces the time the commission has for reviewing petitions from 90 to 60 days. Left pending in Senate Natural Resources on 5/21/09.
HB 1734	Walle	Allows a utility to file an application to increase water and/or sewer rates no more than once in 36 months. The rate increase requested may not exceed 20 percent. Left pending in House Natural Resources on 3/31/09.

HB 2254	Hancock	Prohibits the TCEQ or the RRC from issuing a permit for a waste-disposal well if a local government whose territory overlies the geologic formation used for injection determines that the formation is unsuited for disposal because of its proximity to a water table and notifies the TCEQ or RRC of its determination. Requires that the TCEQ's letter associated with an application for an RRC injection-well permit state that the commission has not been notified by a local government whose territory overlies the injection formation or strata that the local government has determined that the formation or stratum is unsuited for that use because of its proximity to a water table. Left pending in House Natural Resources on 3/31/09.
HB 2266	Allen	Specifies that the executive commissioner of the Health and Human Services Commission, in consultation with the Texas Environmental Health Institute shall adopt guidelines for indoor air quality in public elementary and middle school buildings. The TCEQ, in collaboration with the Department of State Health Services, shall investigate the air quality of a school building on the request, inquiry, or complaint of a school administrator or parent group. Left pending in House Environmental Regulation on 4/15/09.
HB 2405	Callegari	Requires the TCEQ to assign each county in the state a level of risk of "low," "moderate," or "high" according to that county's likelihood of experiencing a major disaster, based on historical information regarding the number of past major disasters affecting each county. Each retail public utility, exempt utility, or provider of wholesale sewer service or potable water service in a county that receives a risk designation of "high" is required to submit to the commission for approval a mutual-aid agreement with another utility or provider that ensures each utility's or provider's provision of water and sewer services during an extended power outage. Left pending in House Defense and Veterans' Affairs on 3/18/09.
HB 2495	Dunnam	Requires, for new permit and permit-amendment applications, the consideration of cumulative effects from expected emissions from the facility in the application and from other proposed facilities for which an application for a permit or permit amendment under Section 382 of the Texas Health & Safety Code is pending with the commission on or after the effective date of the bill. Left pending in House Environmental Regulation on 3/25/09.
HB 2497	Dunnam	Requires the TCEQ to determine if any coal-fired electric generating facility that uses pulverized coal; became operational on or after January 1, 2009; and emits nitrogen oxides at a rate greater than 0.02 pounds per million British thermal unit caused or contributed to a new ozone nonattainment area designation. If the TCEQ determines that the electric generating facility failed to reduce the facility's nitrogen oxide emissions to the extent technically feasible, regardless of cost, the commission is to require emission reductions by the electric generating facility prior to requiring any reductions from automobiles, area sources, or other stationary sources to reduce air contaminants that contribute to the area's nonattainment status. Left pending in House Environmental Regulation on 4/15/09.

HB 2535	Creighton	Allows the commission to assess administrative penalties related to dam safety of up to $10,000 per day. Allows the commission to regulate the operation of dams in the state. Set on House Calendar on 5/14/09.
HB 2704	Olivo	Establishes a term not to exceed 10 years for municipal solid waste (MSW) permits and to allow for their renewal. Requires the TCEQ to adopt procedures and a schedule as soon as practicable for the renewal of MSW permits issued before its effective date. Allows the TCEQ to implement the schedule over any period of time necessary for administrative feasibility and effectiveness. Left pending in House Environmental Regulation on 4/1/09.
HB 3121	Alvarado	Requires the TCEQ to conduct a study to identify the three toxic air contaminants with the highest emission levels in the state. The study would determine the main emission sources and evaluate the effects on public health. Requires the TCEQ to evaluate the data collected, recommend strategies for reducing emission levels, and report the results and recommendations. Left pending in House Environmental Regulation on 4/22/09.
HB 3366	Rose	Removes the ability of the commission to allow recovery of any rate-case expenses incurred by a retail public utility when an appeal is filed by ratepayers and its ability to consider any evidence of reasonable expenses incurred by the retail public utility on appeal when determining the rates the governing body should have fixed in the action from which the appeal was taken. Stipulates that the executive director, in addition to the commission, may establish interim rates until a final decision is made in an appeal filed. Limits a utility's rate increases to no more than once in 36 months and to no more than 20 percent. Stipulates that the regulatory authority may not allow a utility to recover rate-case expenses incurred during the hearing process. Left pending in House Natural Resources on 3/31/09.
HB 3422	Burnam	Proposes new requirements for the management of out-of-service lights containing mercury. Requires manufacturers to establish mercury-containing-light programs that entail collection and recycling, education and outreach, collection incentives and education, and progress reports. Prohibits persons from selling or offering for sale lights manufactured by noncompliant manufacturers. Directs manufacturers to report certain information to the TCEQ and to submit a survey plan and methodology and survey results. Bans disposal of mercury-containing lights at a municipal solid waste landfill or incinerator by a manufacturer, wholesaler, or retailer. Makes the TCEQ responsible for tracking and posting noncompliant manufacturers, developing performance standards, and establishing a methodology for estimating the number of out of service lights that become waste annually and gives it the authority to authority to require manufacturer program revision. Left pending in House Environmental Regulation on 4/1/09.

HB 3428	Hernandez	Codifies the commission's current air pollutant watch list (APWL) process. The APWL must identify each air contaminant to be included and each geographic area of the state where ambient air monitoring indicates either individual or cumulative emissions may cause short-term or long-term health effects or odors. Includes provisions for publishing notice and allowing public comment, as well as for public meetings. Requires the TCEQ to adopt guidelines for acute and chronic effects screening levels (ESLs) for air contaminants. The ESLs would be set at levels protective of cancer risk at 1 chance in 100,000 or another level set by the TCEQ to protect human health and welfare. Left pending in House Environmental Regulation on 4/1/09.
HB 3550	King, T.	Addresses many provisions within the Water Code, including penalty payment plans, Investor Owned Utility rate hearings, certain duties of the executive director, certificates of convenience and necessity, and the Clean Rivers Program. Placed on Senate Intent Calendar on 5/27/09.
HB 3590	Burnam	Requires the TCEQ to develop and maintain an inventory of all emissions from oil and gas industry sources, to include major, minor, area, and fugitive air emissions. Authorizes the TCEQ to prescribe reasonable requirements for measuring, monitoring, or estimating emissions for the inventory. Left pending in House Environmental Regulation on 4/29/09.
HB 3827	Hancock	Creates a criminal penalty for any person who physically delivers regulated substance into an underground storage tank which has not been issued a valid, current registration and certificate of compliance. Violation would be punishable as a Class A misdemeanor. Conference Committee Report printed and distributed on 5/30/09.
HB 3833	Hilderbran	Expedites the review of air permit applications to the TCEQ for rock crushers meeting certain requirements. Left pending in House Environmental Regulation on 4/8/09.
HB 3838	Hilderbran	Abolishes the Office of Public Interest Counsel (OPIC), transferring OPIC's powers, duties, functions, programs and activities to a separate state agency, the Office of Public Utility Counsel (OPUC). Gives additional authority to OPUC to represent consumers in rate-change (current law does not authorize OPIC to represent individuals). Also authorizes OPUC to initiate judicial proceedings, which current law does not authorize for OPIC. Left pending in Senate Natural Resources on 5/22/09.
HB 3942	Truitt	Requires the TCEQ to conduct a pilot test of an advanced technology to control nitrogen oxides and selective catalytic reduction technology on one cement kiln in a nonattainment or near-nonattainment area. Left pending in House Environmental Regulation on 4/15/09.

HB 4056	Allen	Proposes new requirements for the management of out-of-service mercury-added thermostats. Requires manufacturers to establish thermostat programs which entail collection and recycling, education and outreach, collection incentives and education, and progress reports. Makes the TCEQ responsible for tracking and posting noncompliant manufacturers, developing performance standards, and establishing a methodology for estimating the number of out of service thermostats that become waste annually and gives it the authority to require manufacturer program revision. Reported from House Environmental Regulation on 5/11/09.
HB 4082	Farrar	Requires that total annual mercury or mercury-compound emissions from each facility that generates electric energy for compensation may not exceed 10 percent of the facility's total mercury and mercury-compound emissions from 2002 as reported to the TCEQ. Left pending in House Environmental Regulation on 4/29/09.
HB 4085	Farrar	Requires the owner or operator of a major source as assigned by Section 501 of the Federal Clean Air Act (a Title V major source) to conduct daily fence-line monitoring for air-contaminant emissions from the major source, and to maintain records of the monitoring. Left pending in House Environmental Regulation on 4/29/09.
HB 4581	Hochberg	Requires the TCEQ to use information submitted to the agency and gathered during other agency activities to evaluate emissions inventories and emissions factors. Authorizes the agency to measure and monitor emissions or activities that cause air contaminants and requires it to adopt policies to permanently reduce quantifiable surplus emissions found during the use of any authorized advanced technologies and to use those reductions for credits under the State Implementation Plan. Requires the TCEQ to use optical gas imaging to measure emission concentrations and volume of volatile organic and nitrogen oxide compounds. Reported from House Environmental Regulation on 5/1/09.
SB 136	Ellis	Authorizes the TCEQ to monitor and regulate greenhouse gas emission sources that cause global warming to reduce those emissions. Requires the TCEQ to establish a limit of greenhouse gas emissions based on 1990 emission levels and that the limit be achieved by 2023. Referred to Senate Natural Resources on 2/10/09.
SB 171	Gallegos	Requires the TCEQ to adopt, by rule, effects screening levels (ESLs) for air contaminants and to assemble an expert panel to review the ESLs and recommend standards. ESLs would be set at levels protective of cancer risk at 1 chance in 100,000. Includes a general prohibition for violations of the ESLs and requires the TCEQ to adopt rules for the assessment of penalties or the imposition of injunctive relief. Requires the TCEQ to annually publish a report on violations and suspected violations later determined not to be violations. Left pending in Senate Natural Resources on 2/10/09.

SB 173	Gallegos	Requires fence-line monitoring of air emissions by major sources. Requires the TCEQ to establish and maintain an air pollutant watch list, including public notice and comment requirements. Referred to Senate Natural Resources on 2/10/09.
SB 213	Shapleigh	Requires the TCEQ to establish rules that require a person who generates, collects, transports, processes, stores, or disposes of municipal sewage sludge, and grit and grease-trap waste to keep records and use transportation manifests. Requires retention of records for three years by the generator, transporter, and disposer. Reported from House Environmental Regulation on 5/21/09.
SB 221	Nichols	Requires most public water systems (CCN holders, districts, and affected counties) to have automatically starting emergency generators on site. Requires the TCEQ to adopt minimum standards. Referred to Senate Natural Resources on 2/11/09.
SB 273	Nichols	Requires applicants of injection wells that dispose of industrial or municipal waste to use on-site monitoring wells to monitor and analyze groundwater quality, and to conduct soil testing. Includes reporting requirements to be established by the TCEQ. Left pending in Senate Natural Resources on 3/24/09.
SB 274	Nichols	Prohibits the issuance of an injection-well permit in the recharge zone of a sole-source aquifer or in an oil field from which commercial production began before 1935. Prohibits the issuance of a permit for an injection well located within ½ mile of a residence, church, school, day-care center, park, or surface water used by a public drinking water system, unless the applicant demonstrates certain operational safeguards. Also establishes other areas unsuitable for injection wells, including flood hazards, soil conditions, coastal areas, etc. Allows a local government to petition the TCEQ for a rule that would restrict or prohibit the siting of a new injection well. Left pending in Senate Natural Resources on 4/7/09.
SB 456	Gallegos	Requires the TCEQ to designate certain geographic areas as toxic hot spots. In designating a toxic hot spot and establishing its boundaries, the TCEQ must consider where people are exposed to ambient levels exceeding the toxic air standard, the location of dense or vulnerable populations, the location of emission sources, and the meteorology, geography, and topography of the area. By December 31, 2009, the TCEQ must designate toxic hot spots for benzene, 1,3-butadiene, hydrogen sulfide, and nickel. Left pending in Senate Natural Resources on 5/12/09.
SB 719	Nichols	Changes the effective date of a rate increase if a hearing is scheduled for final approval by the regulator except in emergencies. Required notice is increased from 60 to 120 days for ratepayers and the regulator. Set on House Calendar for 5/23/09.

SB 752	Davis	Prohibits the TCEQ or the RRC from issuing a permit for a waste-disposal well if a local government whose territory overlies the geologic formation used for injection determines that the formation is unsuited for disposal because of its proximity to a water table and notifies the TCEQ or RRC of its determination. Withdrawn from the House Local Calendar on 5/24/09.
SB 761	Watson	Amends the Computer Equipment Recycling Program to include televisions. Left pending in Senate Natural Resources on 4/14/09.
SB 800	Williams	Proposes to establish a pilot program for sand and gravel quarry operations in portions of the East Fork and West Fork of the San Jacinto River and Spring Creek. The pilot program addresses permitting, financial responsibility, inspections, water quality sampling, enforcement, cost recovery, and interagency cooperation with regard to sand and gravel quarries. Left pending in Senate Natural Resources on 3/17/09.
SB 1238	Ogden	Requires the TCEQ to conduct a study regarding the impact on the Carrizo-Wilcox aquifer of rules and plans adopted by groundwater conservation districts (GCDs) and of joint planning determinations made by GCDs in groundwater management area planning. Provides that the Texas Water Development Board and University of Texas Bureau of Economic Geology shall assist the TCEQ in conducting the study, and that the TCEQ may contract with any appropriate person for assistance with the study. Requires the TCEQ to report the results to the legislature by December 31, 2012, and authorizes the TCEQ to include recommendations for legislation in the report to address any areas of concern. Left pending in House Natural Resources on 4/28/09. SB 1, Art. VI, Rider 36 requires study of the Carrizo-Wilcox aquifer.
SB 1386	Seliger	Extends the TCEQ and TWDB evaluation period for critical groundwater problems from 25 to 50 years. Clarifies that the TCEQ has the authority to adopt rules for the creation of a groundwater conservation district or the addition of a priority groundwater management area (PGMA) to an existing GCD for any PGMA designated as a critical area before September 1, 1997. Validates related governmental acts and proceedings, including adoption of commission rules for creation of a GCD in a PGMA designated as a critical area before September 1, 1997. Provides that the 50-year evaluation period is relevant only to designation of a PGMA after the effective date of the act, and that designation of a PGMA made before the effective date is governed by the law in effect on the date when the designation occurred. Set on House Calendar on 5/23/09.

SB 1414	Williams	Requires the responsible party for an aggregate production operation to register the operation with the TCEQ, and requires that the registration be renewed annually. Requires the TCEQ to conduct a physical survey to identify all aggregate production operations in the state, and to ensure that all of them are registered. Requires the TCEQ to conduct compliance inspections at all such sites at least once every three years. Requires that authorized aggregate production facilities pay an annual fee not to exceed $1,000. It also provides that TCEQ may assess a penalty of $5,000 –10,000 for every year in which an aggregate production facility operates without registration (with the total penalty no greater than $25,000). Set on House Calendar on 5/23/09.
SB 1541	Gallegos	Codifies the commission's current air pollutant watch list process. The APWL must identify each air contaminant to be included and each geographic area of the state where ambient air monitoring indicates that either individual or cumulative emissions may cause short-term or long-term health effects or odors. Provides for publishing notice and allowing public comment and for public meetings. Requires the TCEQ to adopt guidelines for acute and chronic effects screening levels for air contaminants. The ESLs would be set at levels protective of cancer risk at 1 chance in 100,000 or another level set by the TCEQ to protect human health and welfare. Referred to House Environmental Regulation on 4/20/09.
SB 1572	Hinojosa	Requires the TCEQ to obtain approval in the form of a resolution from the governing body of a municipality, a county, or other political subdivision, including groundwater conservation districts, before awarding a permit for a scrap-tire disposal site. Directs TCEQ to revise the current rules governing such sites that prescribe minimum standards to protect soil and water and adopt new application forms and procedures for these types of permits. Left pending in House Environmental Regulation on 5/6/09.
SB 1846	Hegar	Requires a person who owns or operates a water well under certain conditions to ensure that the well water is treated by an approved chlorination system. Grants the executive director certain authority currently held by the TCEQ, including the authority to issue administrative orders that assess penalties, to issue orders for corrective measures, and to establish interim rates. Authorizes payment of penalties in periodic installments. Adds provisions relating to the setting of interim rates and a charge to utilities for construction and improvement of facilities and repeals provisions relating to the setting of public hearing dates. Set on House Calendar on 5/23/09.
SB 2440	Uresti	Sets up a mechanism to put a conservator in place at BexarMet and allows BexarMet customers who are registered voters to determine the purpose of the conservator in an election to be held in November 2009. Authorizes an election considering the dissolution of the Bexar Metropolitan Water District and provides an oversight mechanism for the district, including enforcement authority. Senate adopted conference committee report on 6/1/09.

IX. POLICY ISSUES

BRIEF DESCRIPTION OF ISSUE

Issue 1: Should the legislature consider revising the state's air permitting process?

DISCUSSION

Overview of Current Process

The Texas Clean Air Act (TCAA), Texas Health and Safety Code, Chapter 382, governs all air quality permitting in the state and implements provisions of the federal Clean Air Act (FCAA). The TCAA requires authorization for all air contaminants in addition to authorization of federally regulated air pollutants. The federal permitting program requires states to evaluate six pollutants for which there are National Ambient Air Quality Standards (NAAQS) and about 200 additional air toxic pollutants of concern. Currently, the state has a database of more than 8,000 contaminants that have been evaluated under the TCAA.

The TCEQ reviews and authorizes applications and registrations for facilities through two major air-permitting programs: New Source Review (NSR) Permits and Title V Federal Operating Permits (FOP). For permitting purposes a "major source" is a stationary source's annual potential to emit and is used to determine the applicability of federal NSR and Title V.

The NSR Permit Program requires stationary sources of air contaminants to obtain authorization before their construction begins. NSR is also referred to as *construction permitting* or *preconstruction permitting*. Before work begins, a person who plans to construct a new facility or to modify an existing facility must:

- satisfy the criteria of a streamlined authorization (*de minimis* facility or source, permit by rule [PBR], standard permit); or
- obtain an NSR case-by-case permit that includes an evaluation of best available control technology (BACT) and a finding that there will be no adverse off-property impacts from any air contaminants being emitted by the facility.

The Title V FOP Program requires major sources, and certain minor sources, to obtain a permit that consolidates all applicable air requirements in a single document. A Title V permit grants a source permission to operate. There are two types of operating permits: General Operating Permits (GOPs) and Site Operating Permits (SOPs). The GOP is a streamlined Title V authorization that is designed to cover numerous similar sources. The SOP documents all requirements that apply at a site, or an area for large sites.

The Texas NSR program gives the public the opportunity to comment on authorizations. For initial NSR case-by-case permits, permit amendments with significant emission increases, and permit renewals, notice is given via newspaper publication and sign posting,

both of which are also in alternate languages when certain criteria are met. The public has the opportunity to comment on the application as well as to request a contested-case hearing on initial NSR case-by-case permits, permit amendments with significant emission increases, and permit renewals. The commission's ability to grant a hearing request for a renewal with no increase in emissions and for denial of a renewal is limited by statute, more so than for other permit actions. In addition, the public is invited to comment on sources or facilities added to the *de minimis* list and on PBRs, standard permits, and GOPs during their initial development. For Title V SOPs, the public can request a notice and comment hearing and can petition the U.S. Environmental Protection Agency (EPA) objecting to the permit.

Review for Cumulative Effects (Impacts)

The TCAA authorizes the prevention and remedy of air pollution based on effects and interference from contaminants present in the atmosphere, i.e., direct effects.

For pollutants with an established NAAQS, the EPA requires, and the TCEQ conducts, a review for cumulative impacts if emissions from a new major source or major modification to an existing major source exceed *de minimis* concentrations. During the past three legislative sessions, interest has steadily increased in modifying the TCAA to require the evaluation of cumulative effects before a permit, amendment, or renewal could be issued. Over that same period, some members of Congress, the legislature, the EPA, and the public expressed concerns about the cumulative impacts on the formation of ozone from major sources such as electric generating facilities (power plants) and cement kilns, particularly in areas classified as in nonattainment or near nonattainment for the ozone NAAQS.

The term *cumulative* is usually understood to refer to the direct effects from the combined impact of multiple facilities emitting the same pollutant. For air toxics, the TCEQ uses the term *aggregate*, and reserves *cumulative* for the combined impact of multiple facilities emitting multiple pollutants. However, in this discussion, *cumulative* will be used for air toxics as well as criteria pollutants.

Cumulative-Effects Evaluation for Air Toxics

The TCEQ conducts NSR permit reviews for new and modified facilities to ensure that the operation of a proposed facility will not cause, or contribute to, a condition of air pollution. For a case-by-case NSR, permit reviews involve evaluations of best available control technology (BACT) and predicted air concentrations related to proposed emissions from the new or modified facility. To evaluate cumulative effects, the TCEQ uses effects screening levels which are chemical-specific air concentrations set to protect human health and welfare. ESLs are developed through a national process involving peer review and stakeholder input; include an adjustment factor to address cumulative exposure; and offer regulatory flexibility as comparison levels, not ambient-air standards.

The TCEQ uses ESLs in air-permit review to evaluate cumulative effects by evaluating site-

wide emissions and considering:

- input from regional investigators and the public;
- site-specific, mobile, and/or area ambient air-monitored concentrations;
- predicted magnitude and frequency of exceedance of ESLs;
- results from gas-find infrared cameras; and
- assessment of conservative worst-case modeling assumptions versus practical operation.

Modeled predictions of concentrations above an ESL would not necessarily result in adverse health or welfare effects, but would trigger a more in-depth review.

The TCEQ places increased emphasis on any site that is in an Air Pollutant Watch List area for a chemical of concern. In addition to the standard technical review process, the agency explores with the applicant ways to mitigate impacts from site-wide emissions with a goal of no net emissions increase. However, very limited increases may be allowed if a site had previous large decreases, or analysis of emissions and dispersion would not add to known or previously accepted impacts, and ambient air monitoring is acceptable.

Cumulative Effects Evaluation for Ozone

Unlike other criteria pollutants, ozone is not directly emitted but formed by complex chemical interactions that are highly dependent on daily variations in meteorological parameters and precursor emissions from mobile and biogenic as well as major and minor stationary point sources.

The TCEQ follows available federal guidance and conducts a cumulative evaluation using existing air quality data from representative ambient air monitors within the proposed area of a new or modified major source. This background information, along with the representative emissions from the facility, is used to make a scientific determination of the proposed facility's potential ozone contribution to nearby surrounding areas.

The TCEQ does not directly evaluate cumulative ozone impacts due to long-range transport for several reasons:

- there are no EPA-preferred or -recommended screening or refined photochemical models for NSR prevention of significant deterioration (PSD);
- the magnitude and complexity of modeling related to the State Implementation Plan (SIP);
- the lack of a *de minimis* ozone concentration; and
- the fact that evaluation of control strategies for multiple regions, facilities, and modeling scenarios would significantly increase air-permitting costs and delay issuance.

Benefits of Texas' Air Permitting Program

The BACT review in Texas has resulted in continual improvement in technology for controlling air pollution. The development of refined computer-modeling techniques has allowed a closer look at the impacts associated with emissions from various types of

processes, and this has resulted in new and additional controls as BACT. For example, the control of tank-loading emissions has reduced emissions of volatile organic compounds, critical to the formation of ozone, by thousands of tons per year.

Since 1994, the TCEQ has implemented a number of permitting programs that have significantly reduced emissions. The first of these, the flexible permitting program, is a voluntary authorization mechanism that an applicant may choose in lieu of obtaining a traditional NSR permit. These permits provide options through the use of emission caps, certain control technology, and other operational flexibility to achieve emission reductions with the ultimate goal of having a well-controlled facility after the final cap is implemented. Some very large emission reductions have been achieved through the flexible permitting program, resulting in improved air quality.

Many of the facilities authorized in the early days of the flexible permitting program were facilities that were previously "grandfathered" from the requirement to obtain a permit. These grandfathered facilities were constructed before September 1, 1971, and had not been modified since that time. The 1997 emissions inventory contained 898,075 tons of emissions from these sources. In addition, there were unquantified emissions from sources not required to submit an emissions inventory. In 1999, the 76th Legislature passed SB 7 (the electric utility restructuring bill) and SB 766, a voluntary program to reduce emissions from, and encourage permitting of, grandfathered facilities. In the 2001 session, the 77th Legislature made the permitting of grandfathered sources mandatory as part of the agency's sunset review in HB 2912.

SB 7 resulted in emissions reductions of 102,436 tons per year from these previously grandfathered sources. The voluntary and mandatory permitting requirements for previously grandfathered facilities reduced actual emissions from these facilities by more than 260,000 tons either through the addition of controls or shutdown.

Currently, the TCEQ air permits staff is in the process of reviewing permit applications for the authorization of planned maintenance, startup, and shutdown (MSS) activities at petroleum refineries and chemical plants. Carbon-black facilities, electric generating facilities, and various oil and gas facilities are expected to file MSS applications over the next few years. These permits reduce emissions from planned MSS activities through the implementation of BACT and impacts review.

EPA Oversight

Title I of the FCAA requires states to develop SIPs to address attainment and maintenance of federal clean air quality standards. Title I requires a pre-construction permitting program for both major and minor NSR sources. Since 1972, Texas, through the Texas Air Control Board (TACB) and its successor agencies, has regularly submitted revisions to the SIP to address changing federal requirements as well as updates to Texas' NSR permitting program. The EPA approved the Texas NSR program in 1972 and numerous subsequent revisions, and in 1992 the EPA gave the TACB full delegation for federal PSD NSR permits. Title V of the FCAA establishes the FOP program. The EPA approved Texas' FOP program

in 2001 (commonly referred to as “Title V”). Title V requires major sources and certain minor sources to obtain a permit that consolidates all applicable air requirements in a single document. A Title V permit grants a source permission to operate. The EPA comments to the TCEQ on individual draft Title V and major NSR permits.

The EPA retains program implementation and enforcement oversight of Texas' implementation of federal requirements and can impose sanctions against the state for failure to comply with the approved SIP and federal requirements. The EPA approval of the SIP and other federal requirements is accomplished through documents submitted by the TCEQ to the EPA, and documents created by the EPA that reflect those approvals. In addition, compliance with the FCAA is documented in permits and enforcement actions by the TCEQ.

The TCEQ implements and enforces these two permitting programs established in both federal and state law. In addition to issuing permits, the TCEQ implements these programs by adopting rules with the EPA commenting on the proposed TCEQ permitting rules. The TCEQ’s adopted rules are submitted to the EPA, which must review and approve TCEQ rules into the SIP to ensure compliance with federal law; the EPA then proposes its action (such as approval) in the *Federal Register*, and takes formal public comment. The EPA’s final action is then published in the *Federal Register*.

Although not all rules implementing state statutes are required to be submitted as SIP revisions, where a state statute or rule potentially conflicts with, or is less stringent than, a federal requirement (or a requirement that has been approved into a SIP), federal law requires that states demonstrate that the new requirement does not backslide from existing federal law and approved SIPs. The EPA uses this standard to review rules submitted by states when determining whether approval of rules is required by federal law or would strengthen the SIP.

POSSIBLE SOLUTIONS AND IMPACT

Issues Associated with EPA Oversight

The TCEQ does not delay rule effectiveness until EPA SIP approval. To do so might arguably be an unconstitutional delegation of state authority to the federal government. If the EPA did not approve the changes, then the state would continue to be obligated to enforce the federal requirements and would be required to change the rules to make them acceptable under federal law.

Although the EPA approved the original Texas NSR permitting program and many updates, the EPA has not approved significant portions of various subsequent air permitting rules submitted to it since 1993 as revisions to the SIP, creating a “SIP gap,” i.e., the difference between what is enforceable by the TCEQ and by the EPA (the approved SIP). This gap occurs during the period between the effective date of the TCEQ’s adopted rules and the date the EPA approves those actions as a revision to the SIP. Often, new or amended rules adopted by the TCEQ are more stringent than, or are at least as stringent as, the existing

SIP, and therefore no problems are expected regarding the enforcement of any new requirement.

As part of the settlement of a lawsuit by the Business Coalition for Clean Air (BCCA) on the EPA's failure to act on approximately 25 rule packages the TCEQ had submitted, the EPA has agreed to a schedule to eliminate the SIP gap over the next four years. The EPA has informed the TCEQ that it does not expect to fully approve all of the TCEQ's NSR permitting rules that are pending EPA review. Although the TCEQ has a good track record in enforcing its rules and permits, the EPA's position is that it cannot enforce some TCEQ permits until rule deficiencies are corrected, allowing the EPA to approve them as part of the SIP.

In addition to the SIP-gap rulemaking issues, several environmental groups filed formal petitions with the EPA stating that Texas' air permitting program has three deficiencies, specifically, the TCEQ is:

- implementing a non SIP-approved NSR permitting program;
- implementing a SIP that is inadequate to assure compliance with the FCAA; and
- failing to adequately administer and enforce the approved Texas FOP program.

The groups seek an order against the state of Texas that:

- finds that the state is not properly implementing certain SIP requirements, including requirements relating to the construction of new sources or the modification of existing sources;
- immediately applies sanctions under FCAA section 179; and
- prohibits construction of new major stationary sources or the modification of major stationary sources subject to federal NSR PSD permitting requirements.

The petitions include, but are not limited to, NSR-related issues of which some are also SIP-gap issues. These include: public participation; issuance and enforcement of flexible permits; use of *de minimis*, permit-by-rule and standard permit authorization mechanisms (especially by major sources); permitting of emissions MSS activities; BACT; and cumulative impacts from new sources. The TCEQ's permitting programs have achieved significant benefits for air quality in Texas, and the TCEQ is committed to working with the EPA to resolve differences between state and federal rules.

The federal requirements for FOP programs originate from authority in Title V of the FCAA, which requires that these permits incorporate all other FCAA requirements, including Title I permitting requirements. Because NSR requirements are applicable requirements of FOPs, EPA disapproval of portions of Texas' NSR permitting program would affect how Texas incorporates those NSR requirements into FOPs, and potentially the continued approval of Texas' FOP program.

As allowed by the FCAA, environmental groups are filing public petitions with the EPA alleging defects with specific FOPs. The EPA partially granted two petitions, and advised the TCEQ how to revise the relevant FOPs. Petitions by environmental groups and citizens may result in additional EPA scrutiny of individual FOPs and the Title V program in general.

BRIEF DESCRIPTION OF ISSUE

Issue 2: Should the effectiveness of the current standard for evaluating compliance history in the TCEQ's permitting and enforcement procedures be evaluated?

DISCUSSION

Background

In its May 2000 report, the Sunset Commission identified the development and use of compliance history as one of the issues that the TCEQ needed to address.

In 2001, the 77th Legislature passed HB 2912 which, among other things, directed the TCEQ to develop a uniform standard for evaluating compliance history. The bill was codified in Sections 5.753 and 5.754 of the Texas Water Code (TWC).

In January 2002, the TCEQ adopted compliance history rules included in Title 30, Texas Administrative Code (TAC), Chapter 60.

Current Program

The commission considers an entity's compliance history in all permitting and enforcement matters.

The TCEQ's Office of Compliance and Enforcement calculates a numerical rating and determines a classification for each regulated entity. The compliance history of a customer, overall or with a particular regulated entity, results in a numerical rating that is converted to a general classification for the customer. A customer or a regulated entity may be classified as high, average, average-by-default, or poor. A high performer has a rating of less than 0.10 points, an average performer has a rating of 0.10 points to 45 points, and a poor performer has a rating of 45.01 or more points. Average-by-default is a classification for entities which the TCEQ has no compliance history information.

Annual compliance-history ratings and classifications are assigned to each regulated entity based on the compliance history over a period beginning September 1 of the current year and going back to August 31 five years prior. The components of a regulated entity's compliance history are categorized as positive or negative.

Positive components include:

- an environmental management system;
- performance of a self-audit pursuant to the Texas Environmental, Health, and Safety Audit Privilege Act; and

- correcting a violations disclosed pursuant to the act.

Negative components include:

- notices of violation (NOVs);
- state enforcement orders;
- state and federal court judgments;
- federal consent decrees;
- criminal convictions; and
- chronic excessive-emissions events.

A regulated entity may formally appeal its compliance-history classification only if the rating is "poor" or "average," with a score of 30 points or more. To dispute a classification, it must request an appeal within 45 days of the classification being posted on the TCEQ's Web site. Corrections to a regulated entity's compliance history, as opposed to appeals, may be requested at any time.

POSSIBLE SOLUTIONS AND IMPACT

The current compliance-history rule has been criticized by both the regulated community and environmental organizations. Those opposed to the current rule assert that:

- The current compliance equation is too complex and does not measure true performance.
- Some regulated entities (e.g., small ones) seem to be disproportionately burdened by the current compliance history calculation.
- In terms of compliance history, it is unfair to uniformly rank TCEQ's significantly diverse regulated universe. The current rule could be revised such that only similar industries and businesses are ranked relative to each other.

Bills filed in past legislative sessions have attempted to address these issues by revising the compliance history standards and classifications prescribed in statute.

Corrective-Action Orders. As written, the TWC in the components of compliance history does not differentiate between administrative orders with a penalty and corrective-action orders without an administrative penalty. Revisions to the statute to exclude from compliance histories corrective-action orders that do not include an administrative penalty would allow the agency to address a violation that does not warrant an administrative penalty and remain consistent with federal policies.

BRIEF DESCRIPTION OF ISSUE

Issue 3: Should the commissioners delegate additional authority to the executive director (ED) to further streamline the TCEQ's decision making?

DISCUSSION

The authority delegated by the commission to the ED includes authority to act on uncontested matters including all applications for a permit, license, certificate, or other authorization. This authority was originally granted by the legislature in 1995 to address a backlog of permitting matters that were awaiting commission action at its regularly scheduled agenda meetings.

Delegation has had measureable benefits for Texas. In the past six years alone, the backlog of uncontested permits has declined from 1,150 applications to 109. Additionally, the commission delegates contracting and grant-making authority to the ED by resolution before the beginning of each state biennium. Regarding enforcement matters, recent changes passed by the 81st Legislature allow for administrative orders assessing a penalty to be issued by the ED upon commission delegation.

Additional areas delegated to the ED include actions relating to emergency orders, innocent-owner certificates, the Dry Cleaner Program, municipal-setting designations, voluntary-cleanup certificates, the Petroleum Storage Tank Program, and settlements of natural-resource damages.

Recent Legislative Action

Utility matters. The TCEQ included in its legislative recommendations for the 81st Session provisions for giving the ED interim rate authority and amending Texas Water Code (TWC), Section 13.248, allowing agreements under this provision to be approved by the ED. While these recommendations were included in HB 3550 and SB 1846, neither bill passed.

POSSIBLE SOLUTIONS AND IMPACT

- *Interim rate setting.* Under TWC Subsections 5.311(a), 13.043(h), and 13.187(l), the authority to set an interim rate resides with the commissioners or by an administrative law judge after the State Office of Administrative Hearings has taken jurisdiction over the application. Pursuant to TWC Subsection 13.187(d), the ED can suspend a rate increase for defective notice or if the application was filled out incorrectly, but such suspensions are only effective until the applicant corrects the deficiency. The requirement for the ED to request commission approval to set interim rates extends by several months the actual setting of an interim rate after the filing of a rate application. Allowing the ED to set an

interim rate would significantly shorten the time required to implement this option because the ED could act shortly after the application is filed.

- *Contracts between retail public utilities:* Contracts between retail public utilities designating areas and customers to be served are typically uncontested, but must be set on the commission's agenda due to TWC Section 13.248, which requires a hearing prior to approval. Removal of the hearing requirement for uncontested contracts and allowing the ED to approve these applications would expedite processing.

- *Utility district conversions and dissolutions.* Applications for district conversions and dissolutions are usually uncontested and uncontroversial. These items have to go on the agenda due to the statutory requirements for a commission hearing in TWC Sections 49.321 and 49.324 and Subsections 54.030(b) and 54.033(a). With a statutory change, uncontested applications could be handled by the ED.

BRIEF DESCRIPTION OF ISSUE

Issue 4: Does the TCEQ's current enforcement authority allow for the expanded use of incentives and innovative projects to achieve compliance, as well as provide sufficient deterrence to protect the environment?

DISCUSSION

Background

Ensuring compliance with environmental laws and regulations is one of the TCEQ's primary functions. The TCEQ believes that enforcement is one tool among many available to protect the environment and public health. The commission's general enforcement authority is derived from Texas Water Code (TWC) Section 7.002. The commission's authority to assess administrative penalties for violations of environmental statutes, and commission rules and orders is derived from TWC Section 7.051.

Deterrence

Penalty Policy. The commission's penalty policy describes how TCEQ enforcement personnel will evaluate violations in recommending administrative penalties to the commission. It outlines the method of calculating the actual penalty, which is typically a percentage of the statutory maximum. The severity and duration of the violation and the size of the entity are heavily weighted factors used in determining the final penalty.

The commission issued 1,624 administrative orders during FY 08 and 1,756 during FY 09. The amount of an administrative penalty in any commission enforcement action depends on:

- the TCEQ's maximum statutory penalty amounts described in TWC Chapters 7, 11, 12, 13, and 16 and Texas Health and Safety Code Chapters 341 and 371; and
- application of the commission's penalty policy, which considers the nature, gravity, and extent of a violation.

Economic Benefit. Increasing penalties to offset economic benefits is another tool the TCEQ uses to discourage future noncompliance. Economic benefit is defined in the commission's penalty policy as a monetary gain derived from a failure to comply with any TCEQ regulation or state statute. Currently the commission recovers avoided costs of compliance only from for-profit and non-governmental organizations. Penalties are increased by 50 percent when a respondent has avoided more than $15,000 in the cost of compliance.

Criminal Enforcement. When the TCEQ discovers knowingly falsified documents or

knowingly caused harm to human health or the environment, the findings are referred to the TCEQ's Environmental Crimes Unit. The TCEQ's administrative enforcement process can continue while the criminal case is being investigated.

Compliance History. The commission considers an entity's compliance history in all permitting and enforcement matters. The standards for evaluating compliance history are defined in TWC Section 5.753, and the commission's compliance history rule is codified at Title 30, Texas Administrative Code (TAC), Chapter 60. If an entity accumulates negative compliance history components (e.g., violations and orders) and is classified as a "poor" performer, the following will result:

- escalation of an administrative penalty in a commission enforcement action;
- ineligibility to obtain authorization under a general or flexible permit;
- unannounced investigations by the TCEQ; and
- more stringent permit provisions.

Incentives to Achieve and Maintain Compliance

Penalty Policy. The commission, through its penalty policy, seeks to incentivize settlement of enforcement matters and corrective action completion in the most expedient manner possible. To encourage expedited settlement, the commission offers most respondents a deferral of 20 percent of the proposed penalty in return for quick settlement. The deferral is contingent upon full compliance with the terms of the administrative order. The TCEQ's penalty policy also incentivizes good-faith efforts to comply by offering a reduction on the recommended penalty based upon the timeliness and quality of a respondent's efforts to return to compliance.

The commission's penalty policy also directs the enforcement staff to recommend a reduction of a proposed administrative penalty if a respondent has:

- notified the executive director of its intent to perform an audit pursuant to the Texas Environmental, Health, and Safety Audit Privilege Act (Audit Act);
- corrected one or more violations disclosed pursuant to the Audit Act;
- had an environmental management system in place for more than one year prior to the enforcement action;
- allowed the TCEQ to perform a voluntary on-site compliance assessment under the TCEQ's special assistance program; or
- attained early compliance with a future state or federal regulatory requirement.

Compliance History. The commission's compliance history rule also gives incentives for enhanced environmental performance. The applicable statute and rule define the positive components that make up an entity's compliance history. The more positive components, the better the compliance history rating. An entity with an "average" or "high" compliance history:

- receives an administrative penalty reduction in an enforcement action;
- is eligible for a general permit (TWC Section 26.040);
- receives two weeks prior notice of a routine TCEQ investigation; and
- qualifies to participate in innovative programs.

An entity has the opportunity to improve its compliance history rating by: performing a self-audit pursuant to the Audit Act; correcting any violation disclosed pursuant to the act; and receiving TCEQ certification of an environmental management system.

Field Citations. To further streamline enforcement, the commission has implemented a field-citation program. A field citation is an alternative to the typical enforcement instrument and may be offered for certain violations that have been corrected or can be corrected within 30 days from the investigation date. The enforcement timeline is reduced by several months when a field citation is used. The commission incentivizes acceptance of the field citation by reducing the penalty relative to what it would be for the same violation addressed through the standard process. The TCEQ currently offers field citations for specific violations in the following programs: petroleum storage tanks; stage I and II vapor recovery; storm water (industrial and construction); occupational licenses; dry cleaners; on-site sewage facilities; and water rights. As of September 1, 2009, 475 field citations have been issued since the program was initiated in March 2006.

The current field-citation program is limited; only 18 violations have been approved to be addressed by a field citation. The executive director's staff is currently reviewing the program to determine whether its expansion is appropriate.

Innovative Projects

Special-Initiative Compliance Agreements. The TCEQ has used special initiatives to promote long-term compliance actions and significant capital investments. One such initiative, for sanitary sewer overflows, allows participating wastewater-treatment facilities to receive enforcement discretion for certain unauthorized discharges from a sanitary-sewer system. A participating facility enters into a compliance agreement with the TCEQ requiring it to complete a comprehensive evaluation of its operation and make improvements to its sanitary-sewer system. The agreement may span several years, depending on the size and complexity of the project undertaken by the participant. Adherence to the terms of the agreement shields the participant from administrative penalties that would normally result from minor to moderate discharges that may occur during the life of the agreement. Significant discharges from the collection system are typically not covered. Participating parties have expressed a desire that the TCEQ develop similar collaborative compliance initiatives for other media areas.

Supplemental Environmental Projects. A SEP is an agreement that becomes part of an administrative order and is intended to prevent pollution, reduce the amount of pollution reaching the environment, enhance the quality of the environment, or contribute to public awareness of environmental matters. A respondent in an enforcement action may choose to perform a SEP in return for a partial or 100 percent offset of the administrative penalty depending on the project benefits and whether the respondent is a nonprofit organization or governmental authority. Potential SEPs include a wide array of projects, including community collections of household hazardous waste and extending water and wastewater services to low-income households.

Audit Act. In 1995, the 74th Texas Legislature passed HB 2473, the Audit Act, which offers incentives for entities to conduct a voluntary audit of their compliance with environmental health and safety regulations and to implement prompt corrective action. The two primary incentives are (1) limited evidentiary privilege for certain information gathered during a self-audit; and (2) immunity from administrative and civil penalties for violations discovered, disclosed, and corrected as a result of such an audit. Many violations disclosed under the Audit Act would not have been discovered in a routine TCEQ investigation, since such environmental audits can involve expensive sampling and testing protocols, or time-consuming data reviews. The Audit Act is self-implementing and does not grant explicit rulemaking authority to the TCEQ. In 2008, TCEQ received 386 notices of intent to audit and 100 disclosures of violations.

POSSIBLE SOLUTIONS AND IMPACT

Penalty Policy. Members of environmental organizations and the regulated community, as well as the general public, have been critical of penalty amounts assessed by the commission.

The TCEQ has been limited under the current statutory maxima to appropriately address violations of short duration but that result in a significant impact to the environment or public health. For example, a major air emissions spanning one to two days it is difficult to assess an adequate penalty under the current statutory maximum of $10,000 per day. The legislature may want to increase statutory penalties for severe short-term violations.

Interested parties critical of the length of time for resolution of enforcement matters (i.e., to negotiate, settle, and issue an administrative enforcement order) have suggested that the commission adopt standard penalties, which could significantly shorten negotiations over the proposed administrative penalty and thereby shorten the overall enforcement timeline. In considering standard penalties, balancing the benefit of a shorter timeline with the possible loss of flexibility in negotiating settlements may need to be taken into account.

During its 81st session, the legislature adopted SB 1693 which revised TWC Section 7.002 to allow the commission to delegate its authority to issue administrative orders to the executive director. This revision, if implemented by the commission, also has the potential to shorten the enforcement timeline.

Compliance History. The current compliance-history rule has been widely criticized by both the regulated community and environmental organizations. Those opposed to the current rule assert that:

- the current compliance equation is too complex and does not measure true performance;
- some regulated entities, such as small entities, seem to be disproportionately impacted under the compliance history calculation; and

- in terms of compliance history ranking, it is unfair to uniformly rank TCEQ's significantly diverse regulated universe. The current rule could be revised such that only similar industries/businesses are ranked relative to each other.

Bills filed in past legislative sessions have attempted to address these impacts by revising the compliance history standards and classifications prescribed in statute.

Special Initiative Compliance Agreements. The EPA will no longer accept a TCEQ compliance agreement as a means to address unauthorized discharges from a wastewater treatment facility. However, because these agreements do not include an assessed penalty, they could be replaced with a "corrective action/no penalty" order. To ensure the incentive is preserved, the compliance history statute would have to be revised. As written, the statute does not differentiate between administrative orders with a penalty and corrective action orders without penalty. Revisions to the statute to exclude from the compliance history corrective-action orders that do not include an administrative penalty would allow the agency to address a violation that does not warrant an administrative penalty and still be consistent with federal policies. Without the statutory change, the agency will be required to address the unauthorized discharges through an order without consideration of an entity's willingness to commit to long-term compliance and significant capital investments.

SEPs. TWC Subsection 7.067(a) states that the commission may not approve a project that:

- is necessary to bring a respondent into compliance with environmental laws;
- is necessary to remediate environmental harm caused by the respondent's alleged violation; or
- the respondent has already agreed to perform under a pre-existing agreement with a governmental agency.

Interested parties have noted that many more innovative and beneficial projects could be implemented if the statute allowed more flexibility in the use of SEP funds.

Audit Act. The number of regulated entities disclosing violations pursuant to the Audit Act has decreased from 250 during FY 05 to 100 during FY 08. The TCEQ could incentivize the use of the Audit Act through a revision of its compliance history rule.

Currently, clauses 60.2(e)(1)(K)(i) and (ii) in 30 TAC require that each notice of audit and each violation disclosed and corrected under the Audit Act offset negative points in the compliance history equation. However, this offset is insignificant and rarely, if ever, results in meaningful changes to a regulated entity's compliance-history score or overall classification. Chapter 60 might be revised to more heavily weight notices and disclosures made pursuant to the Audit Act.

Additionally, Chapter 60 could be revised to include an exemption, such as for six months or one year, from routine investigations conducted by the TCEQ in return for completion of a comprehensive audit pursuant to the Audit Act.

Lastly, the TCEQ could incentivize use of the Audit Act through outreach efforts which might include presentations to industry groups, the distribution of audit-related information via the agency Web page, and the distribution of informational packets or brochures by agency investigators or mass mailings.

BRIEF DESCRIPTION OF ISSUE

Issue 5: How should the agency use monitoring activities in its regulatory processes?

DISCUSSION

As part of its mission, the TCEQ is committed to basing its decisions on the law, common sense, good science, and fiscal responsibility, while ensuring that regulations are necessary, effective, and current. To meet these commitments, monitoring is often currently used to make the link between good science, compliance determinations, and development of necessary rules. Monitoring supplies the agency with real, objective data that models can only predict.

Below are the more significant instances when the TCEQ is required to monitor.

- Some state and federal rules require that regulated entities conduct monitoring to demonstrate compliance with permit conditions or rules (e.g., operators of underground storage tank systems are required to monitor for releases per title 30, Texas Administrative Code (30 TAC), Section 334.50; wastewater-permit holders must monitor pollutant levels in effluent per 30 TAC Chapter 319; and specific types of air emissions are subject to monitoring per 30 TAC Chapter 115.
- Federal law requires the TCEQ to monitor air quality in certain areas for attainment of National Ambient Air Quality Standards (NAAQS).
- Federal law requires the TCEQ to conduct monitoring to determine which water bodies are or are not meeting the standards set for their use and which pollutants or conditions are responsible for the failure of a water body to attain water quality standards.
- Texas Water Code (TWC) Section 26.504 requires the TCEQ to sample permitted waste application fields associated with concentrated animal-feeding operations.

The TCEQ also conducts monitoring that is not specifically required by state or federal law. These efforts are conducted to support other agency objectives, such as focusing investigatory resources, verifying models used in air quality planning and permitting, and evaluating environmental conditions before issuing air and wastewater permits. Data from representative monitors are used to conduct a cumulative-impact evaluation during air-permit reviews and in assessing allowed Total Maximum Daily Loads (TMDLs).

To the extent possible, TCEQ uses advancements in monitoring technology to support regulatory processes and achieve improvements in air and water quality. In recent years, these advancements have focused primarily in two areas:

- ensuring that public access to data is available within hours of many ambient measurements; and

- Use of vapor detecting infrared (IR) cameras, a technology that can remotely detect and visualize volatile organic compounds (VOC) emissions not visible to the human eye.

As required by Texas Health and Safety Code (THSC) Section 382.401, the TCEQ is establishing incentives for voluntary use of supplemental leak-detection methods approved by the EPA.

Legislative Interest in Monitoring

As introduced in the 81st legislative session, HB 4085 and SB 173 would have required regulated entities meeting certain conditions (i.e., "major sources" under the Clean Air Act) to conduct fence-line monitoring for hazardous air pollutants (HAPs). HB 3119 of the 81st legislative session would have allowed franchise tax credit for the acquisition and installation of fence-line monitors at major sources. Technological limits are a consideration with source-related ambient monitoring, as there are currently no approved sampling or analysis methods for some HAPs. None of those bills were adopted.

Although Texas has an extensive number of air monitoring sites and instruments around the state, additional monitoring data could be used to further evaluate and track air quality, identify significant emission releases and potential contributing sources, and study specific pollutants or chemicals of interest. However, the significant costs associated with additional fence-line or ambient monitoring has historically been an obstacle.

Monitoring and Enforcement

The TCEQ has encouraged industry to collect more ambient air monitoring data through voluntary emission-reduction agreements and enforcement agreed orders that resulted from negotiated settlements. In cases where monitors have been used, companies have been able to act on detections immediately, significantly improving air quality.

Monitoring and Health-Effects Evaluations of Air Quality

Air monitoring data collected by the regional offices, the ambient air monitoring network, during mobile monitoring trips, and from some industry-sponsored air monitors are evaluated by the Toxicology Division to determine the potential for the measured levels to adversely affect human health and welfare. An overall health-effects evaluation of all air monitoring data is performed annually for each TCEQ region for which data are available. Ambient data are also reviewed and additional health effects evaluations are completed as required, case by case. These health-effects evaluations are used to qualify areas for the Air Pollutant Watch List (APWL), discussed below. If imminent or more serious health or welfare impacts are identified, the Toxicology Division will use the information to advise more immediate actions, such as investigations, enforcement, or solicitation of assistance from other agencies, like the Department of State Health Services.

Monitoring and the Air Pollutant Watch List

Monitoring is a cornerstone for decisions regarding the APWL, which identifies areas where specific pollutants have been measured at levels of concern. The APWL is used to heighten awareness, encourage efforts to reduce emissions, and focus TCEQ investigatory, enforcement, pollution prevention, and permitting resources.

An area or pollutant is added to the APWL when monitoring reflects persistent elevated pollutant concentrations such that the TCEQ determines there is a potential for adverse health effects or odor.

Monitoring and Air Permitting

Ambient air monitoring data are used in air-permits technical review. Federal permitting rules for major new source review (NSR) require ambient air monitoring before construction to determine existing air quality and to project future compliance with national air-quality standards in the area affected by the source. Per federal rule, the TCEQ waives the preconstruction monitoring requirement and uses representative or conservative monitoring from counties with similar or greater emissions to evaluate cumulative impacts. This process balances air quality with economic-development objectives.

Monitoring is not required for minor NSR, including applications involving federal and state air quality standards and air toxics. However, available monitoring data are used in air-permit technical review to assess cumulative impacts of a single pollutant from multiple facilities at a site or in areas of concentrated operations, particularly for projects in APWL areas. In addition, the TCEQ requires monitoring, at applicant expense, if an applicant believes that permit emission limits based on modeled predictions may not be representative and wants the limits increased. The monitoring results are used to corroborate modeled predictions.

Use of Emerging Technologies to Improve Air Quality

New technologies can present policy challenges alongside opportunities. A paradigm shift is occurring as the VOC-detecting capabilities of IR cameras make visible previously unknown or underreported emissions. In particular, the TCEQ has developed a unique side-by-side IR–visible light display that creates compelling images of emissions from sources of numerous types, simultaneously displayed with standard video scenes showing no visible emissions.

It is essential to note that IR cameras cannot speciate or quantify detected emissions. Follow-up is necessary to obtain information to attempt any speciation or quantification of plumes observed via IR cameras. In addition, the camera presents unique operational challenges, because both camera settings and environmental factors—such as background temperature, clouds, distance, and wind speed—can greatly affect the appearance of the emissions or even the camera's ability to image them.

The camera assists in identifying the exact operations with emissions, thus expediting the ability to focus resources on appropriate controls or pollution prevention measures. Images are shown to the operators of emission sources, who also receive technical assistance on emission-reduction strategies and regulatory requirements. Using IR cameras to identify emission sources for more intensive review allows the TCEQ and the regulated community to extend limited resources and maximize investments in emission control or pollution prevention.

The IR cameras are used to:

- assist in identifying potential emission sources when monitoring results indicate elevated concentrations,
- augment and bolster compliance investigations,
- identify control or prevention options by sharing images with the relevant company,
- identify the potential effectiveness of source control strategies,
- screen potential sources in an attempt to identify potential unreported or underreported emissions or emissions-source categories as related to the emissions inventory and modeling used during SIP development,
- screen sources for potential permitting and emissions inventory issues,
- improve and validate emissions inventory estimates, and
- identify source categories for additional research and investigation.

With recent EPA adoption of IR cameras as an approved alternative leak-detection methodology, this technology is moving beyond application as a screening device into a new role and in certain applications as a primary means of detecting VOC emissions.

State-of-the-art technology such as differential-absorption light detection and ranging (DIAL) can create unique opportunities to monitor and calculate mass emissions rates. The DIAL technology is capable of measuring emissions from sources that are very difficult to capture using conventional sampling. The TCEQ conducted measurements of industrial sources in the Houston area using DIAL technology during the summer of 2007 to compare DIAL emissions measurement with currently accepted emissions calculation methods. This project identified source categories where emissions may be underrepresented and warrant additional research. However, cost and availability are currently major limiting factors for regular use of this technology.

Monitoring and Water Quality

Surface water quality monitoring is a key component of the TCEQ's overall strategy for managing water quality. Data produced by this program are used extensively for regulatory activities, including setting water quality standards, developing TMDLs for water bodies that do not meet standards, and evaluating wastewater-permit applications. New technology has been employed in the TCEQ's water quality monitoring network. Approximately 65 continuous monitoring systems are now in place to supply rapid, real-time information on water quality.

POSSIBLE SOLUTIONS AND IMPACT

As better monitoring technology becomes available for lower cost, the increased use of monitoring can better inform policy decisions with information about actual environmental effects.

Monitoring and Enforcement

Currently, the TCEQ has broad authority to require air monitoring under THSC Section 382.016. This broad authority states that the commission may prescribe “reasonable requirements” for monitoring. While this gives the agency broad authority to require the monitoring, in the enforcement process the agency is usually left negotiating what "reasonable" is and this can significantly lengthen the process and cause the agency to enter into more negotiated agreements rather than unilaterally requiring the monitoring.

Also, the TCEQ has encouraged regulatory entities to offset their enforcement penalties by agreeing to a Supplemental Environmental Project (SEP) designed to collect fence line and other ambient air quality data. Greater flexibility in allocation of SEP moneys could also result in expansion of the ambient monitoring networks.

Monitoring and the Air Pollutant Watch List

Several bills introduced in the 81st legislative session (HB 557, HB 1447, HB 2912, HB 3428, SB 173, and SB 1541) would have codified the procedures for the APWL process; however, none of these bills were adopted. The APWL is used primarily as a means to link monitoring data to various agency actions, like more stringent review of air quality permit applications, and enforcement actions, and as leverage in compelling industry to reduce emissions and improve processes through voluntary agreements with the TCEQ. A key aspect of the APWL process is that monitoring data can be used to make rapid decisions. To quickly and effectively react to monitoring data, the TCEQ needs to maintain its current statutory authority.

Monitoring and Air Permitting

As part of some federal permit applications, citizens, government officials, and the EPA have requested monitors to determine air quality locally and adjacent to ozone nonattainment and near-nonattainment areas. Most concerns are related to the formation of ozone due to emission transport from existing and proposed major sources, such as cement kilns and power plants.

Responding to these requests presents technical and administrative challenges because:

- it is difficult to monitor how a particular permit applicant influences ozone levels as ozone is not directly emitted, but instead formed by complex chemical interactions that are dependent on variations in precursor emissions and meteorological parameters, and

- the permitting process could be extended a year or longer if pre-construction monitoring is required in response to these requests.

Use of Emerging Technologies

The TCEQ will balance various factors—such as public expectations, cost, and benefit—when considering whether to expand the use of emerging technology to improve air quality and to expand its use of water quality monitoring technologies.

BRIEF DESCRIPTION OF ISSUE

Issue 6: Are there any additional avenues, including technological advances, that should be considered to enhance the public's participation in the TCEQ's regulatory activities?

DISCUSSION

To afford the public ample opportunities to participate in matters administered by the TCEQ, the agency has employed multiple means of communication and continues to research new methods for enhancing interaction through its current technologies. The agency has invested significant time and resources in an effort to manage the deployment of rapidly developing technological improvements to increase its efficiency and expand its ability to interact with its customers. The TCEQ is committed to providing information, including online, to both the public and the regulated community using means that are participatory, collaborative, and transparent.

Current Public Outreach and Participation
The TCEQ reaches out to its customers through a variety of mechanisms, using both traditional and electronic means, depending on what best serves the needs of particular communities in Texas and what is required by statute or rule. Members of the public can access a wide variety of information from the TCEQ about what is going on across the street, or across the state, via the agency's Web site and many other user-friendly methods appropriate to their needs and interests.

Traditional Methods. The agency has relied on traditional means of communication for many years and still finds it an effective way to reach out to its varied group of customers with differing levels of access to and familiarity with technology. Some of the traditional methods the TCEQ uses to communicate with the public include:

- *Mail.* Sending of notices, fact sheets and other material via first-class, express, or certified mail.

- Public meetings, held in communities around the state, give the public a chance both to hear information from agency staff and to comment.

- *Toll-free numbers.* In addition to toll-free hot lines for reporting complaints and suspected violations, the agency also has additional toll-free numbers for the public to obtain information on a wide variety of topics.

- *Publication* of information in the *Texas Register* or in local newspapers (in English and alternative languages where required).

- *Newsletters and other printed items.* The TCEQ has a quarterly newsletter (*Natural Outlook*) that covers an array of environmental issues affecting Texas. Additionally, the agency produces brochures on a variety of topics as well as over 300 publications (many of them in both English and Spanish) on topics ranging from air permitting to rainwater harvesting.

- *Presentations and trainings* convey information to the public as well as regulated entities concerning specific programs of the TCEQ.

- *Spanish-language materials.* The TCEQ has developed a strategy for reaching its Spanish-speaking customers. The strategy began as a plan to fulfill the previous Sunset Commission recommendation that the TCEQ make more of its Web content available in Spanish. Additionally, Senator Eliot Shapleigh authored a bill in 2005 (SB 213, 79th Session) that requires agencies to make a reasonable effort to ensure that Spanish speakers have meaningful access to information posted online.

- *Accessibility.* The TCEQ is a leader among state agencies in working to make its communications accessible to all Texans, including those with disabilities. The agency has developed and implemented policies and procedures to meet federal guidelines on accessibility.

- *Sign posting.* For permit applications the agency may require the applicant to post a sign at the site of the proposed new or existing facility notifying the public of the opportunity to submit comments to the agency in the permit application. Under certain circumstances the posting may be in alterative languages.

- *Broadcasting.* On a limited basis, the agency may use radio or television broadcasts to communicate to the public such information as the designation of ozone action days.

Electronic Methods. The best place for finding a wide range of information on the agency and those it regulates is the TCEQ's Web site. The site gives general information such as agency structure and contact numbers, as well as information specific to certain programs. The home page has a topical search function and links to many other items including:

- databases that allow customers to track complaints and enforcement actions
- proposed and adopted rules
- the status of permits
- daily air-quality reports

The agenda for the commission's public meetings is now posted with links to the supporting documents for each item on the same day that printed materials become available through the Office of the Chief Clerk. The public can also follow proceedings for commission agenda meetings and work sessions in real time through a link to <www.texasadmin.com>, and find archived meetings for the last six months. Webcasts are also available at the TCEQ Web site for meetings of several agency advisory groups. The following are additional avenues for the public to gain information or participate on

specific issues via the agency's Web site:

- *E-comments.* The agency has an e-comments system for both rulemaking and permit matters. The rulemaking system has been operational since September 2006, and allows the public an electronic mechanism to submit comments on proposed TCEQ rules. The agency recently launched its e-comments system for permits, which allows the electronic filing of comments on pending permit applications with the chief clerk as well as for requests for hearings, public meetings, and reconsideration.

- *E-mail subscription service.* The public can sign up to receive e-mail updates from the agency through a free service called GovDelivery, whenever information is modified on select Web pages. At the end of FY 09, there were over 80 different subscriptions to choose from and over 180,000 subscribers.

- *Shared e-mail boxes* employ e-mail addresses for a variety of agency programs and topics (e.g., Superfund sites). These e-mail boxes are monitored regularly for communications from the public, which are forwarded to the best available staff member for response.

- *Webinars*. The TCEQ has conducted several successful webinars (online interactive seminars). The agency continues to enhance the enabling technology for its staff and the public.

- *Central Registry* allows the public to access information about the sites, individuals, organizations, and entities regulated by the TCEQ. To better serve its customers, the TCEQ redesigned the home page and upper-level navigation pages of its Web site in September 2008, and extended the capabilities of its Central Registry database into a series of simplified Web pages in September 2009. The year-long project included extensive testing—involving more than 100 customers from both the regulated community and the general public—to best meet the needs of the many audiences the agency serves. The public can now search the TCEQ Web site for orders pertaining to permit applications, enforcement orders, resolutions, and other items issued by the commission.

Required Public Notice: In addition to the outreach and opportunity for public participation outlined above, the TCEQ is also required by statute or rule to ensure notice in certain circumstances involving permitting, enforcement, rulemaking, and public meetings. Recent amendments to Section 5.128 of the Texas Water Code authorize the commission to transmit information electronically, including information on notices, orders, and decisions. Other methods of notice for these areas are as follows.

- *Permits.* There are both state and federal requirements for notice, depending on the permit at issue and the program. State requirements for notice delivery in the TCEQ's air, water and waste permitting programs include hand delivery, first-class mail; publication in a newspaper meeting certain publication specifications (including alternative-language newspapers in certain instances), sign posting, publication in the *Texas Register*, radio broadcast, posting on the county courthouse door, and posting at the TCEQ's Web site.

Federal requirements for federal permitting programs administered by the TCEQ include notice by mail, newspaper, and—in limited circumstances—radio broadcast. Additionally, federal rules ensure public notice of the opportunity to be put on the mailing list through periodic publication in the press and in such publications as regional and state-funded newsletters, environmental bulletins, or state law journals. In recent years, the EPA has approved states' use of electronic notification in certain instances.

- *Enforcement.* Under TWC Section 7.075, the commission is required to allow the public to comment on proposed administrative orders or settlement agreements regarding enforcement actions. The notice of the opportunity to comment must be published in the *Texas Register*.

- *Rulemaking* Under the Administrative Procedures Act (Chapter 2001, Texas Government Code), an agency is required to give at least thirty days' notice of its intent to adopt a rule and the notice is required to be published in the *Texas Register*. Additionally, under Section 2001.026, advance notice of the rulemaking proceedings must be mailed to persons who make a timely request. Agencies are also required to give all interested persons an opportunity to submit comments orally or in writing prior to adopting a rule. The agency develops responses to all comments and publishes the responses.

- *Commissioners' public meetings.* - For commission agenda meetings, the Open Meetings Act (Chapter 551, Texas Government Code) requires the agency to give notice to the Secretary of State's Office for posting on the internet. The Act also requires that a computer terminal be provided in the Secretary of State's office for public access to the notice.

POSSIBLE SOLUTIONS AND IMPACT

Emerging Opportunities for Enhancing Public Participation

Enhancing public participation is inherent to the TCEQ's mission. There are a range of possible options for doing so, though some are longer term due to cost and logistics associated with implementation. As the agency looks to the future, measures for consideration include:

- Undertaking an across-the-board evaluation of TCEQ data to determine the most cost-effective ways to make more data available to the public in formats that are useful and easily accessible.

- Exploring today's emerging technology and communication options to determine the most appropriate avenues for the TCEQ to pursue. Some examples of possible options include:

    - Really Simple Syndication, which—if the customer is signed up to receive it—would push out TCEQ updates to the public automatically versus the public

having to check TCEQ Web sites for updates or click on links in emails from the agency;

- the development of small software programs called widgets; which, when downloaded by the public, could allow easy access to meaningful information with respect to complex data sets such as air and water monitoring data; and

- Applets, another small software program specifically designed for smart phones, which would provide similar high level results to the public in a convenient and readily available manner.

- Continuing to image TCEQ records and making those images available to the public online in a timely manner.

- Identifying those technologies best suited to increasing the TCEQ's ability to communicate with its varied population of customers while enhancing the public's ability to interact with the agency.

- Accomplishing the TCEQ's communication objectives in the most cost-effective manner for the state within budgetary limits.

- Enhancing the TCEQ's public outreach capabilities in such a way that the agency can keep pace with the resulting increase in public demand for information.

- Taking into account the needs of customers—such as small businesses and individuals—without online access.

- Ensuring continued compliance with laws concerning privacy, record retention, and accessibility.

BRIEF DESCRIPTION OF ISSUE

Issue 7: What is the state's responsibility in remediating aging dams identified across the state?

DISCUSSION

The TCEQ is charged with the regulation, not remediation, of dams. The agency inspects existing dams, and dams under construction, for compliance. The TCEQ recently received additional inspection-related resources for its dam-safety program which will enhance the identification of compliance issues relating to the safety of existing dams. Though an effective dam-inspection program can identify deficiencies, inspections alone will not address the safety concerns posed by inadequately maintained dams, dams with outdated engineering, or deficient dams, all of which will need to be rehabilitated or repaired.

Under TWC Section 12.052, the TCEQ has authority to enforce related rules and regulations through civil penalties, but not the authority for administrative penalties under this program. Further, the TCEQ does not fund the repair or rehabilitation of dams.

Texas does not have a state program specifically designed to assist private dam owners to pay for needed repairs and rehabilitation. However, Texas now has 969 high-hazard dams, whose estimated cost for repair and rehabilitation exceeds $1 billion. Some public dam-repair projects have received financial assistance from the Texas Water Development Board in the past; however, none have been funded in recent years. Certain public dam repair projects may be eligible for assistance from the Texas Community Development Program Disaster Relief / Urgent Need Fund at the Office of Rural and Community Affairs.

In Texas, approximately 93 percent of all the dams in the Inventory of Dams are over 25 years old. The inspections conducted over the last five years revealed that approximately 50 percent of the 817 dams inspected are either in fair or poor condition, confirming their deterioration over the years, primarily from lack of maintenance and repair. In addition, approximately 65 percent of the high-hazard dams are identified as either hydraulically inadequate or of undetermined hydraulic adequacy. Therefore, thousands of people in the state may be at risk from dam failure.

The 81st Legislature appropriated $3 million to Bexar-Medina-Atascosa Water Control and Improvement District No. 1 for structural improvements to Lake Medina Dam. At the same time they also appropriated $15 million to the Texas State Soil and Water Conservation Board for the maintenance and repair of Natural Resource Conservation Service (NRCS) dams. A local match is required receive the state funds.

The NRCS has received federal stimulus dollars to fund in Texas repairs for 24 NRCS-assisted dams at a cost of $21.54 million, and rehabilitation of 6 NRCS-assisted dams at a

cost of $1.2 million.

POSSIBLE SOLUTIONS AND IMPACT

Without proper maintenance, repair, and rehabilitation a dam may, over time, become unable to serve its intended purpose and could be at risk for failure. Such dams need to be repaired or rehabilitated, yet for most public and private dam owners, finding the funds is nearly impossible. Owners of public and private dams need a funding source to make dam repairs and resolve safety issues.

BRIEF DESCRIPTION OF ISSUE

Issue 8: Does the TCEQ have sufficient authority and funding to coordinate the management and use of the limited water resources of the state?

The following issues regarding the TCEQ's authority to manage water resources statewide are discussed: drought contingency plans, watermaster programs, surface water use reports, groundwater conservation districts, and receivership.

Drought Contingency Plans

BRIEF DESCRIPTION OF ISSUE

One significant impediment to TCEQ efforts to ensure continuous water service to Texas consumers is a lack of statutory authority to require water suppliers to implement a drought-contingency plan. A DCP requires ever more stringent water-conservation measures as drought worsens. The TCEQ finds that many suppliers are hesitant to voluntarily implement a DCP and thereby curtail water usage by customers. As a result, water-conservation efforts often come too late to prevent service interruptions resulting from diminished supplies.

DISCUSSION

In response to persistent drought conditions across the state in 1997, the 75th Texas Legislature directed the TCEQ to adopt rules establishing common drought plan requirements for water suppliers. As a result, the TCEQ adopted title 30, Texas Administrative Code (30 TAC), Chapter 288, Subchapter B. Chapter 288 specifically describes the scope and content of the DCP and requires water suppliers to either submit the DCP to the TCEQ or, depending upon the number of customers served, retain the DCP on site and make it available to TCEQ upon request.

POSSIBLE SOLUTIONS AND IMPACT

A statutory change to allow the TCEQ to mandate consistent, enforceable, and timely DCP implementation would further maximize water-conservation efforts throughout the state.

Establish Watermaster Programs Statewide

BRIEF DESCRIPTION OF ISSUE

In June 2009, the TCEQ received a priority call in the Brazos River Basin located outside established watermaster-program areas. The TCEQ's efforts to protect this senior call have, and continue to, consume resources including personnel, vehicles, equipment, and travel expenses redirected from other agency programs to protect the senior call. As drought conditions persist throughout areas of the state, the redirection of resources could negatively affect the TCEQ's ability to meet federal and state performance metrics.

DISCUSSION

For the appropriations of water, senior or older, water rights must be satisfied before later or junior water rights. The priority date of a water right establishes the place in line for holders of junior and senior water rights. A water right holder with a senior priority date may call on junior water right holders if the senior right is not receiving the flows authorized in their water right. The junior water right holder(s) being called upon must allow flows to pass their location and flow to the senior water right holder until the senior right is satisfied.

Pursuant to Texas Water Code (TWC) Section 11.325, the TCEQ has divided the state into water divisions for the purpose of administering adjudicated water rights. The water divisions are to secure the best protection to water rights holders and to provide for the most economical supervision on the part of the state. The executive director may then appoint one watermaster for each water division or service area.

The TCEQ currently has three watermaster programs: the Rio Grande program, which serves the Rio Grande Basin, as well as a portion of the Nueces–Rio Grande River Basin; the South Texas program which serves the Nueces, San Antonio, and Guadalupe River Basins, as well as the adjacent coastal basins; and the Concho River program, which serves a portion of the Concho River segment of the Colorado River Basin.

The watermaster programs are responsible for allocating, monitoring, and controlling the use of surface water within their respective service areas. The TCEQ personnel assigned to the three programs authorize diversions, monitor stream flows, and oversee pumping operations on a daily basis. This oversight allows TCEQ to anticipate problems and develop regional responses before surface water availability issues become severe.

Each watermaster program is entirely funded by the water-right holders within its service area through the assessment of annual fees. These fees are based on the water-use types for which each water right is permitted and calculated to ensure the minimum revenues necessary for each program to be self-sufficient.

In droughts, watermasters have the authority to allocate available surface water in accordance with the priority doctrine that states, "first in time, first in right." However, this

doctrine does not apply to the middle and lower Rio Grande, which use allocations based on authorized type of use and on water in the usable storage of Falcon and Amistad reservoirs. With detailed knowledge of water-right permits in relation to each other, watermasters are equipped to negotiate surface water use to minimize impacts on all water-right holders they serve. Actual water management of available surface water reduces the potential for senior water-right holders to make a priority call. A priority call requires that junior water-right holders curtail or suspend all diversions of surface water until the needs of the senior water-right holder are met.

Further, pursuant to 30 TAC Subsection 303.22(h) and Section 304.41, watermasters may take any appropriate actions to prevent the waste of water or to alleviate emergencies. Emergencies may include, for example, situations of extreme or exceptional drought, danger to public water supplies or homeland security, or imminent threat to public health and safety or the environment.

POSSIBLE SOLUTIONS AND IMPACT

The TCEQ is responsible for protection of a senior call, regardless of whether a watermaster program has been established in the affected area. For those 15 remaining major river basins in the state without a watermaster program, the TCEQ uses existing staff resources to address water-right issues as they arise.

Perhaps additional watermasters in other areas of the state should be considered. Changes to TWC Chapter 11, which sets forth three mechanisms by which a watermaster program can be established, would be needed. If authorized, the TCEQ would request additional personnel to ensure adequate resources for the operation and management of additional watermaster programs.

Reports of Surface Water Use

BRIEF DESCRIPTION OF ISSUE

Pursuant to TWC Section 11.031, each person who has a water-use permit or has impounded, diverted, or otherwise used state water must file a written report to the TCEQ by March 1 of each year to assist the agency in making an inventory of the water resources in the state. Domestic and livestock uses exempt from permitting do not entail the filing of an annual use report. In accordance with the TWC, failure to submit a report could result in a penalty of $25, plus $1 per day for each day that the report is late, with a maximum penalty of $150. The annual reporting requirement may be waived in areas of the state where watermaster operations are established.

DISCUSSION

As currently written, the requirement to report annually to the TCEQ on the previous year's water use significantly hinders the TCEQ's ability to properly plan and allocate water resources to meet the demand of all water-right holders on an ongoing basis. Specifically, the annual report requirement does not offer the TCEQ access to the most current data in negotiating surface water use. In contrast, watermasters have the authority to require monthly water-use reports as a condition of continued use. Evaluating the most current information allows the negotiation of surface water use to minimize the impacts on all water-rights holders during shortages.

POSSIBLE SOLUTIONS AND IMPACT

The TCEQ would be assisted by revising the reporting requirement as outlined in TWC Section 11.032 to require permit holders to not only submit annual reports but also maintain monthly reports and make those reports available within 10 days of a request by the TCEQ. More frequent and current records would allow the TCEQ to make timely compliance determinations and more readily address unauthorized and excess water usage if necessary.

In addition, the statutory penalties for failure to submit the report are not sufficient to encourage compliance. The TCEQ feels that explicit administrative-penalty authority would ensure efficient and timely resolution of reporting violations.

Groundwater Conservation Districts

BRIEF DESCRIPTION OF ISSUE

Groundwater-conservation districts (GCDs) are the state's current preferred method of groundwater management. They are the only entities in Texas explicitly granted the authority to regulate the spacing of water wells and groundwater withdrawals. The GCDs are charged to manage groundwater by providing for its conservation, preservation, protection, and recharging, and preventing its waste. Each GCD is governed by a locally selected board of directors. Because of the actions of some GCDs, some interests are calling for enhanced state oversight of them.

DISCUSSION

The GCDs are created by one of four methods:

1. The majority are created by action of the legislature.
2. Some are created administratively by the TCEQ) responding to a landowner petition.

3. A GCD can be created by the TCEQ on its own motion in a designated Priority Groundwater Management Area (PGMA). This method of creation is only authorized when local actions are not taken to create a GCD following the designation of a PGMA.
4. Individuals or groups of landowners can petition an existing district to have their territory administratively added to the district.

The GCDs are authorized under TWC Chapter 36 with powers and duties that enable them to manage groundwater resources. The three primary GCD authorities are permitting water wells, developing a comprehensive management plan, and adopting the rules necessary to implement the management plan. The plan must be readopted and approved at least once every five years.

State-Agency Roles Related to GCD Management Plans

The TCEQ is responsible for enforcing GCD management-plan adoption, approval, and implementation, and joint planning requirements of TWC Chapter 36, and for technical assistance to GCDs when requested. The GCDs must also register board members with the TCEQ and keep the agency apprised of any changes to district boundaries.

The Texas Water Development Board (TWBD) provides technical and administrative support to groundwater districts in the development of their groundwater management plans, reviews and approves district management plans, and is responsible for the delineation and designation of groundwater management areas (GMAs). For planning purposes, the TWDB determines values for managed available groundwater based on desired aquifer conditions developed by GCDs in common GMAs.

Desired Future Conditions

TWC Section 36.108 mandates regional decisions on groundwater availability, requires regional water planning groups to use groundwater availability numbers from the groundwater conservation districts, and defines a permitting target or cap for groundwater production.

The GCDs are required to work together in each of the 16 TWDB-delineated groundwater management areas to develop “desired future conditions” for their groundwater resources. During planning, the districts deliver these desired future conditions to the TWDB, which, in turn, provides estimates of “managed available groundwater” (a new term relating to groundwater availability) to the districts for inclusion in their groundwater management plans and to the regional water-planning groups for inclusion in their plans. Because managed available groundwater is defined by the desired future conditions, GCDs work collectively within each GMA to define groundwater availability for regional water planning.

Desired future conditions are essentially a management goal. The philosophy and policies addressing how an aquifer will be managed and identifying what the districts want the aquifer to look like in the future. This can be stated in terms of water levels, water quality, spring flows, or volumes at specified times in the future or in perpetuity. Statements of desired future conditions must be adopted by a two-thirds vote of the GCDs located in

whole or in part in the GMA. GCDs are encouraged to actively seek the involvement of stakeholders in joint planning in order to consider all perspectives before deciding on desired future conditions.

In its rules, the TWDB requires desired future conditions to be physically possible. Also, if there are multiple desired future conditions in the same aquifer in a GMA, the TWDB requires them to be compatible. This TWDB requirement, however, does not apply across groundwater management areas in the same aquifer.

POSSIBLE SOLUTIONS AND IMPACT

Proponents of local control generally note the state's long history under the case law rule of capture and the variation in groundwater resources across the state. These stakeholders generally note that most of the stronger provisions of TWC Chapter 36 that can limit the impact of the rule of capture (imposition of pumping limits, well-spacing requirements, etc.) allow the locally elected GCD board to determine which of these requirements to use in the local situation. These stakeholders are generally protective of groundwater resources for local use for future generations.

Proponents of more state control often suggest that the best way to manage a common resource is to have political control that coincides with the aquifer boundary. These stakeholders note that GCD management goals, projected availability, and projected use of groundwater resources may vary greatly between GCDs in a common groundwater management area. These stakeholders prefer a more structured, region- and aquifer-specific approach to groundwater management and generally view groundwater resources as a marketable commodity that should be used as availability, demand, and economics dictate. Stakeholders who feel they have been treated arbitrarily or on a different basis than other applicants generally seek enhanced oversight from either the TCEQ or the TWBD.

Receivership Water Policy Issue

BRIEF DESCRIPTION OF ISSUE

The Texas Water Code authorizes the TCEQ to seek receivership or temporary management only for a water or sewer utility. These are *investor-owned utilities* (IOUs). Problems arise with the high legal standard needed to appoint a receiver for an investor-owned utility.

Additionally, the TCEQ does not have the authority to seek receivership or temporary management for nonprofit water-supply corporations (WSCs) or sewer service corporations, water districts, cities, or counties. This lack of authority is an issue when one of those corporations or political subdivisions demonstrates a complete failure to provide services that meet state and federal standards.

DISCUSSION

Under TWC Section 13.4132, a temporary manager may be appointed to manage an IOU if the utility:

- has discontinued or abandoned operations,
- has discontinued or abandoned providing services, or
- has been, or is being, referred to the Office of the Attorney General for the appointment of a receiver.

Under TWC Section 13.412, the Office of the Attorney General may bring suit for a receiver to be appointed to carry on the business of an IOU if the utility has:

- abandoned operations of its facilities,
- informed the commission that the owner is abandoning the system,
- violated a final order of the commission, or
- allowed any property it owns or controls to be used in violation of a final order of the commission.

A temporary manager for an IOU is appointed by the executive director with the appointment later affirmed, modified, or set aside by the commission. Appointment of a permanent receiver for an IOU is by a district court after the TCEQ refers an enforcement case to the Office of the Attorney General for receivership.

POSSIBLE SOLUTIONS AND IMPACT

Increased authority to appoint temporary managers and receivers could pose challenges for the TCEQ. A receivership is really a last-ditch effort to keep a utility system in operation and move it toward compliance. Receiverships always take longer than anticipated.

More flexibility in the criteria under the statute could perhaps allow the TCEQ to appoint a temporary manager or receiver to prevent situations from deteriorating till there is a threat to health, safety, and welfare.

The TCEQ's authority to appoint temporary managers or receivers could be expanded to nonprofit water-supply or sewer-service corporations and possibly to political subdivisions, such as municipal utility districts.

Some very troubled water systems are WSCs and districts which under current laws are not eligible for receivership. The ability to appoint a receiver would be particularly helpful in situations where all the water-district board members resign and a vacancy appointment is difficult or impossible.

X. OTHER CONTACTS

A. Fill in the following chart with updated information on people with an interest in your agency, and be sure to include the most recent e-mail address.

Texas Commission on Environmental Quality Exhibit 15: Contacts			
INTEREST GROUPS (groups affected by agency actions or that represent others served by or affected by agency actions)			
Group or Association Name/ Contact Person	**Address**	**Telephone**	**E-mail Address**
Advocates for Responsible Disposal in Texas / Edward Selig, general manager	P.O. Box 26586 Austin, TX 78755-0586	512-391-0400	eselig@ardt.org
American Society of Civil Engineers—Texas Chapter / Allen Beene	8521 Charing Cross Ln. Dallas, TX 75238	214-749-2805	bbeene@evl.net
Americans for Prosperity / Peggy Venable, state director	807 Brazos, Ste. 210 Austin, TX 78701	512-476-5905	pvenable@afptx.org
Armand Bayou Nature Center / Mark Kramer	P.O. Box 58828 Houston, TX 77258	281-474-2551	mark@abnc.org
Austin Area Urban League / Herman Lessard	1825 E. 38½ St. Austin, TX 78722	512-478-7176	aaul@austinfree.net
Buffalo Bayou Partnership / Trudi Smith	Vine Street Studios 1113 Vine Street, Ste. 200 Houston, TX 77002	713-752-0314	tsmith@buffalobayou.org
Citizens' Environmental Coalition / Katie Molina	6420 Richmond, Ste. 658 Houston, TX 77057	713-524-4232	katie@cechouston.org
Citizens for Environmental Justice / Suzie Canales	5757 S. Staples #2506 Corpus Christi, TX 78413	361-334-6764	scanales@grandecom.net
Clean Water Action / David Foster	715 W. 23rd St. R Austin, TX 78705	512-474-0605	dfoster@cleanwater.org
Coastal Bend Bays and Estuaries / Lois Huff	Coastal Bend Bays Foundation P.O. Box 23025 Corpus Christi, TX 78403-3025	361-882-3439	loish@baysfoundation.org
Colonia Unidas / Priscilla Martinez, acting director	1 Las Lomas Rio Grande City, TX 78582	956-487-0964	colonias_unidas@yahoo.com

Dallas Urban League / Dr. Beverly Mitchell-Brooks, president	4315 S. Lancaster Dallas, TX 75216	214-915-4608	info@dallasurbanleague.com
Downwinders at Risk / Jim Schermbeck	P.O. Box 763844 Dallas, TX 75376 707 Wylie Cedar Hill, TX 75104	972-230-3185 972-293-8300	info@downwindersatrisk.org
Earth Share of Texas / Edie Muehlberger, director	707 West Avenue, Ste. 203 Austin, TX 78701	512-472-5518	estx@earthshare-texas.org
El Paso Interreligious Sponsoring Organization (EPISO) / Kevin Courtney	1415 Dakota El Paso, TX 79930	915-778-3200	episo@sbcglobal.net
Environmental Defense Fund / James D. Marston	44 East Ave., Ste. 304 Austin, TX 78701	512-478-5161	jmarston@edf.org
Environmental Defense Fund / Mary Kelly, vice president	44 East Ave., Ste. 304 Austin, TX 78701	512-478-5161	mkelly@edf.org
Environmental Defense Fund / Ramon Alvarez	44 East Ave., Ste. 304 Austin, TX 78701	512-478-5161	ralvarez@edf.org
Environmental Justice Alliance / Rev. Reginald Blow	P.O. Box 3741 Wichita Falls, TX 76301	940-766-6525	ntxjournal@yahoo.com
Environmental Law and Justice Center / Martina E. Cartwright, director	3100 Cleburne St. Houston, TX 77004	713-313-1019	mcartwright@tsulaw.edu
Galveston-Houston Association for Smog Prevention (GHASP) / Dr. Matthew Tejada	2311 Canal St., Ste. 326 Houston, TX 77003	713-528-3779	tejada@ghasp.org
Greater Edwards Aquifer Alliance / Anna Lisa Peace	P.O. Box 151618 San Antonio, TX 78212	210-320-6294	annalisa@aquiferalliance.org
Greater Houston Partnership / Jeff Moseley, president	1200 Smith St. Ste. 700 Houston, TX 77002	713-844-3631	jmoseley@houston.org
Hill Country Alliance / Christy Muse, executive director	15315 SH 71 West Bee Cave, TX 78738	512-560-3135	christy@hillcountryalliance.org

Houston Audubon Society / Winnie Burkett, sanctuary manager	440 Wilchester Blvd. Houston, TX 77079	713-932-1639	wburkett@houstonaudubon.org
Houston Wilderness / Judy Triplett	P.O. Box 66413 Houston, TX 77266-6413	713-524-7330	judy@houstonwilderness.org
Industry Council of the Environment / Richard Box	13003 Southwest Freeway, Ste. 190 Stafford, TX 77477	888-540-0804	rbox@gesonline.com
International Environmental Alliance of the Bravo / Bill Addington	P.O. Box 218 Sierra Blanca, TX 79851	915-369-2541	No email address
Keep Texas Beautiful, Inc. (KTB) / Cathie Gail, executive director	1524 S. IH 35, Ste. 150 Austin, TX 78704	512-478-8813	cathie@ktb.org
League of United Latin American Citizens (LULAC) / Angel Abitua	P.O. Box 13505 Austin, TX 78711	512-699-0944	angelabitua@lulac.org
League of Women Voters of Texas / Raul Salazar	1011 W. 31st St. Austin, TX 78705	512-472-1100	rsalazar@lwvtexas.org
Mexican American Legislative Caucus / Maritza Kelley	202 W. 13th St. Austin, TX 78701	512-236-8410	mkelley@malc.org
Mothers for Clean Air / Jane Laping, executive director	3100 Richmond Ave., Ste. 309 Houston, TX 77098	713-526-0110	mfca@mothersforcleanair.org
National Wildlife Federation / Myron Hess, manager, water programs	44 East Ave., Ste. 200 Austin, TX 78701	512-476-9805	hess@nwf.org
Nature Conservancy in Texas—Austin Office / Laura Huffman, state director	816 Congress Avenue Ste. 920 Austin, TX 78701	512-494-9559	lhuffman@tnc.org
North Texas Clean Air Coalition / Jennifer Cohen, project director	P.O. Box 610246 DFW Airport, TX 75261	817-690-1921	jennifer@workingforcleanair.org
People Organized in Defense of Earth and her Resources (PODER) / Susana Almanza, director	P.O. Box 6237 Austin, TX 78762	512-472-9921	poder.austin@gmail.com
Pleasantville Environmental Coalition / Debbie Allen	P.O. Box 24322 Houston, TX 77229	713-298-9833	1dallen1@gmail.com

Public Citizen Texas / Tom "Smitty" Smith, director	1303 San Antonio St. Austin, TX 78701	512-477-1155	smitty@citizen.org
Save Our Springs Alliance / Andrew Hawkins	P.O. Box 684881 Austin, TX 78768	512-477-2320	sosinfo@sosalliance.org
SCENIC Galveston / Evangeline Whorton, executive board chairman	20 Colony Park Circle Galveston, TX 77551	979-234-2096	Evangelinewhorton@yahoo.com
Sierra Club / Carl Pope, executive director	85 2nd Street, 2nd Floor San Francisco, CA 94105-3441	415-977-5500	information@sierraclub.org
Sierra Club—Lone Star Chapter / Dr. Neil Carman, Clean Air Program director	P.O. Box 1931 Austin, TX 78767-1931	512-472-1767	neil_carman@greenbuilder.com
Sierra Club—Lone Star Chapter / Ken Kramer, chapter director	P.O. Box 1931 Austin, TX 78767-1931	512-476-6962	kenwkramer@aol.com
Sportsmen Conservationists of Texas / Alan Allen	807 Brazos St. #311 Austin, TX 78701	512-472-2267	alanallen-scot@worldnet.att.net
State of Texas Alliance for Recycling / Greta Calvery, chair	P.O. Box 40516 Austin, TX 78704	512-852-4379	info@recyclingstar.org
Sustainable Energy and Economic Development (SEED) Coalition / Karen Hadden, executive director	1303 San Antonio St., Ste. 100 Austin, TX 78701	512-637-9481	karen@seedcoalition.org
Texas Audubon Society / Bob Benson, executive director	427 Sterzing Sty., Ste. 105-B Austin, TX 78704	512-469-7891	bbenson@audubon.org
Texas Campaign for the Environment / Robin Schneider	611 S. Congress, Ste. 200 Austin, TX 78704	512-326-5655	robin@publicresearchworks.org
Texas Center for Policy Studies / David Hall, chair	44 East Ave., Ste. 100 Austin, TX 78701	512-740-4086	cr@texascenter.org
Texas Corn Producers / David Gibson, executive director	4205 North IH 27 Lubbock, TX 79403	806-763-2676	dgibson@texascorn.org
Texas Economic Development Council / Carlton Schwab, president/CEO	1300 Guadalupe St., Ste. 107 Austin, TX 78701	512-480-8432	carlton@texasedc.org

Texas League of Conservation Voters / James Canup	44 East Ave., Ste. 202 Austin, TX 78701-1227	512-477-4424	tlcv@tlcv.org
Texas Public Interest Research Group / Melissa Cubria	815 Brazos Sty., Ste. 600A Austin, TX 78701	512-479-7287	mcubria@txpirg.org
Texas Public Policy Foundation (TPPF) / Brooke Rollins, president and CEO	900 Congress Ave. #400 Austin, TX 78701-2432	512-472-2700	info@texaspolicy.com
Valley Interfaith / Elizabeth Valdez	1508 E. US 83, Ste. C Weslaco, TX 78596	956-968-3900	viemail83@aol.com
West Dallas Coalition for Environmental Justice / Luis D. Sepulveda, president	5105 Goodman St. Dallas, TX 75211	214-330-7947	No email address
Wildlife Habitat Council / Matthew Moskwic	8737 Colesville Road, Ste. 800 Silver Spring, MD 20910	301-588-8994	mmoskwic@wildlifehc.org
INTERAGENCY, STATE, OR NATIONAL ASSOCIATIONS (that serve as an information clearinghouse or regularly interact with your agency)			
Group or Association Name/ Contact Person	**Address**	**Telephone**	**E-mail Address**
Air and Waste Management Association (AWMA) / Dennis Mitchell, executive director	One Gateway Center, Third Floor Pittsburgh, PA 15222	412-232-3444	info@awma.org
Air and Waste Management Association—Central Texas Chapter / Mike Nasi	100 Congress Ave. Ste. 1100 Austin, TX 78701	512-472-8355	mnasi@jw.com
American Backflow Prevention Association / Bruce Rathburn, president	ABPA National Office P.O. Box 3051 Bryan, TX 77805-3051	979-846-7606	shane@abpa.org
American Corn Growers Association / Pamela Horwitz, executive director	P.O. Box 18157 Washington, DC 20036	202-835-0330	phorwitz@acga.org
American Electronics Association / Jeff Clark, executive director	401 West 15th St. Austin, TX 78701	512-474-4403	jeff_clark@aeanet.org
American Forest and Paper Association / Lee Thomas, chairman	1111 19th St. NW, Ste. 800 Washington, DC 20036	202-463-2700	info@afandpa.org

American Foundry Society / Mark Shelton, chairman	P.O. Box 1560 Corsicana, TX 75110	903-872-6571	oilcityironworksengineering@airmail.net
American Foundrymen's Society, Inc. / Jerry Call, executive vvice president	1695 North Penny Lane Schaumburg, IL 60173	847-824-0181	jcall@afsinc.org
American Lung Association / Susan Dunning, regional VP of development	5926 Balcones Drive, Ste. 100 Austin, TX 78755	512-467-6753	sdunning@breathehealthy.org
American Petroleum Institute / Jack Gerard, president	1220 L St., N.W., #900 Washington, DC 20005	202-682-8000	mediacenter@api.org
American Portland Cement Alliance / Andy O'Hare	1225 Eye Street, N.W., Ste. 300 Washington, DC 20005	202-408-9494	info@cement.org
American Trucking Associations, Inc. / Allen Shaeffer	950 North Glebe Road, Suite 210 Arlington, VA 22203-4181	703-838-1700	atamembership@trucking.org
American Water Works Association / Jack Hoffbuhr, executive director	6666 W. Quincy Ave. Denver, CO 80235	303-794-7711	custsvc@awwa.org
American Water Works Association—Texas Section / Mike Howe Carole Baker	P.O. Box 80150 Austin, TX 78708 1660 W. Bates Area Blvd. Friendswood, TX 77564	512-238-9292 281-455-3841	mikehowe@tawwa.org cbaker@subsidence.org
Associated General Contractors of Texas / Jennifer Newton	P.O. Box 2185 Austin, TX 78768	512-478-4691	jnewton@agctx.org
Association of Chemical Industries of Texas / Hector Rivero	1402 Nueces Austin, TX 78701-1586	512-646-6400	rivero@acit.org
Association of Community Organizations for Reform Now (ACORN)	714 N. Watson, Ste. 304C Arlington, TX 76006	817-649-8256	txacornar@acorn.org
Association of Community Organizations for Reform Now (ACORN)	3333 Fannin St., Ste. 107 Houston, TX 77004	713-868-7015	txacornho@acorn.org

Association of Electric Companies of Texas / John W. Fainter Walt Baum	1005 Congress Ave. Ste. 600 Austin, TX 78701	512-474-6725	john@aect.net & walt@aect.net
Association of Rural Communities in Texas / Donna Chatham, executive director	P.O. Box 200847 Austin, TX 78720	512-331-1354	donna@arcit.org
Association of State Dam Safety Officials / Lori C. Spragens, executive director	450 Old Vine St. Lexington, KY 40507	859-257-5140	info@damsafety.org
Association of State Drinking Water Administrators (ASDWA) / Jim Taft, executive director	1401 Wilson Blvd. Suite 1225 Arlington, VA 22209	703-812-9505	info@asdwa.org
Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) / Linda Eichmiller, executive director	1221 Connecticut Ave. N.W., 2nd Floor Washington D.C. 20036	202-756-0600	l.eichmiller@asiwpca.org
Association of State and Territorial Solid Waste Management Officials (ASTSWMO) / Mary Zdanowicz, executive director	444 N. Capitol St., N.W., Ste. 315 Washington, DC 20001	202-624-5828	maryz@astswmo.org
Association of Water Board Directors / Joe B. Allen	400 Randal Way, Ste. 307 Spring, TX 77388	713-860-6400	jallen@abhr.com
Bayou Preservation Association / Mary Ellen Whitworth	P.O. Box 131563 Houston, TX 77219-1563	713-529-6443	bpa@bayoupreservation.org
Cement Kiln Recycling Coalition / Mike Benoit, executive director	P.O. Box 7553 Arlington, VA 22207	703-534-0892	mbenoit@ckrc.org
Coastal Conservation Association of Texas / John Blaha	6919 Portwest, Suite 100 Houston, TX 77024	713-626-4222	jdblaha@ccatexas.org

Coastal States Organization / Kristen Fletcher, executive director	Hall of the States 444 North Capitol Street, N.W., Ste. 322 Washington, DC 20001	202-508-3860	kfletcher@coastalstates.org
Consulting Engineers Council of Texas / Mike Hancock	1001 Congress Ave., Ste. 200 Austin, TX 78701	512-474-1474	mike@cectexas.org
Consumers Union / Southwest Regional Office / Reggie James, director	506 W. 14th St. , Ste. A Austin, TX 78701	512-477-4431	rjames@consumersunion.org
County Judges & Commissioners Association of Texas / James P. Allison, general counsel	Allison, Bass & Associates, L.L.P. 402 W. 12th Street Austin, TX 78701	512-482-0701	j.allison@allison-bass.com
Dairy Farmers of America / Rick Smith, CEO	10220 N. Ambassador Dr. Kansas City, MO 64153	816-801-6455	webmail@dfamilk.com
EGI Industrial Maintenance; National Association of Corrosion Engineers (NACE) / Birdie Gonzales, executive manager	10201 Leopard Corpus Christi, TX 78410	361-241-3385	birdiegonzales@egiindustrial.com
Engine Manufacturers' Association / Jed R. Mandel	Two North LaSalle St., Ste. 1700 Chicago, IL 60602	312-827-8700	jmandel@emamail.org
Environmental Council of the States / Steve Brown, executive director	444 N. Capitol St. NW, Ste. 305 Washington, DC 20001	202-624-3660	sbrown @ sso.org
Galveston Bay Foundation / Bob Stokes, president	17330 SH 3 Webster, TX 77598	281-332-3381	bstokes@galvbay.org
Groundwater Protection Council (GWPC) / Michael J. Paque	13308 N. MacArthur Blvd. Oklahoma City, OK 73142	405-516-4972	mpaque@gwpc.org
Gulf Coast Institute / David Crossley	3015 Richmond Ave., Ste. 201 Houston, TX 77098	713-523-5757	crossley@gulfcoastideas.org
Gulf of Mexico Foundation / Quenton Dokken, director	PMB 51-5403 Everhart Corpus Christi, TX 78411-4895	361-882-3939	qdokken@gulfmex.org
Hispanic Contractors Association / Javier Arias, chairman/CEO	300 Bouldin Ave. Austin, TX 78704	972-557-4186	jarias@hcadetejas.org

Independent Bankers Association of Texas / Mae Beth Palone	1700 Rio Grande St., Ste. 100 Austin, TX 78701	512-474-6889	mbpalone@ibat.org
Independent Cattlemen's Association of Texas / Shane Sklar	P.O. Box 1168 Lockhart, TX 78644	512-620-0162	sklar@io.com
Independent Water & Sewer Companies of Texas / Mark Zeppa	6101 West Courtyard Dr., Ste. 221 Austin, TX 78730	512-346-8242	mhzeppa@attglobal.net
Institute of Scrap Recycling Industries (ISRI) / Robin K. Wiener, executive director	1615 L Street, Ste. 600 Washington, DC 20036-5610	202-662-8500	robinwiener@isri.org
Irrigation Association / Deborah M. Hamlin, executive director	6540 Arlington Blvd. Falls Church, VA 22042-6638	703-536-7080	deborah@irrigation.org
Keep America Beautiful, Inc. / Donna DeVito	1010 Washington Blvd. Stamford, CT 06901	203-659-3000	ddevito@kab.org
Livestock Marketing Association of Texas / Keith Chapman	P.O. Box 974 Georgetown, TX 78627	512-863-7005	kchapman@lmawebb.com
Lumbermen's Association of Texas / Barbara Dougles, executive director	816 Congress Ave., Ste. 1250 Austin, TX 78701	512-472-1194	barbara@lat.org
National Association of Clean Air Agencies / George Hawkins, director	444 N. Capitol Street, N.W., Ste. 307 Washington, DC 20001	202-624-7864	4cleanair@4cleanair.org
National Association of Regulatory Utility Commissioners (NARUC) / Charles D. Gray, executive director	1101 Vermont Ave., N.W., Ste. 200 Washington, DC 20005	202-898-2200	admin@naruc.org
National Assocation of Water Companies / Michael Deane, executive director	2001 L Street NW, Ste. 850 Washington, DC 20036	202-833-8383	michael@nawc.com
National Association of Women in Construction / Dede Hughes, executive vice president	327 S. Adams St. Fort Worth, TX 76104	817-877-5551	dedeh@nawic.org

National Federation of Independent Businesses of Texas / Jeff Clark	1201 Rio Grande St., Ste. 100 Austin, TX 78701	512-476-9847	jeff.clark@NFIB.org
National Governors' Association / Raymond C. Scheppach, executive director	444 N. Capitol Street, Ste. 267 Washington, DC 20001-1512	202-624-5300	webmaster@nga.org
National Independent Automobile Dealers Association (NIADA) / Michael Linn, CPP	2521 Brown Blvd., Ste. 100 Arlington, TX 76006	817-649-2377	mike@niada.com
National Solid Waste Management Association / Bruce Parker, president and CEO	4301 Connecticut Ave., N.W., Ste. 300 Washington, DC 20008	202-244-4700	bparker@nswma.org
National Solid Waste Management Association—Texas Chapter / Tom Brown	c/o IESI 2301 Eagle Parkway, Ste. 200 Fort Worth, TX 76177	817-632-4008	tlbrown@iesi.com
Nature Heritage Society / Glenn Miller, executive director	P.O. Box 330954 Houston, TX 77233-0594	713-738-8016	natureheritagesociety@hotmail.com
North American Hazardous Materials Management Association—Lone Star Chapter	Hornsby Bend, 2210 FM 973 Austin, TX 78725	512- 916-6040	kfreeman@capcog.org
Petroleum Marketers Association of America / Mark S. Morgan	4200 Wisconsin Ave., N.W., #106 Washington, DC 20016	202-364-6767	mmorgan@pmaa.com
Plains Cotton Cooperative Association / Wally Darneille, president and CEO	P.O. Box 2827 Lubbock, TX 79408-2827	806-763-8011	wdarneille@pcca.com
Plains Cotton , Inc. / Steve Varett	4517 W. LP 289 Lubbock, TX 78414	806-792-4904	steve@plainscotton.org
Printing and Imaging Association of MidAmerica / Joe Polanco	8828 N. Stemmons Freeway, Ste. 505 Dallas, TX 75247	800-788-2040	joep@piamidam.org
Renewable Fuels Association / Bob Dinneen, president and CEO	One Massachusetts Ave, N.W., Ste. 820 Washington, DC 20001	202-289-3835	bdinneen@ethanolrfa.org

Rubber Manufacturers Association / Michael Blumenthal	1400 K Street, N.W., Ste. 900 Washington, DC 20005	202-682-4800	mblumenthal@rma.org
San Antonio Manufacturers Association / Mike Harris	9607 Broadway, Ste. C San Antonio, TX 78217-4905	210-979-7530	michaelharris@samatx.org
Small Business United of Texas / David Pinkus	100 Congress Ave., Ste. 2000 Austin, TX 78701	512-476-1607	sbutx@usa.net
Solid Waste Association of North America / John Skinner, Ph.D., executive director	1100 Wayne Ave., Ste. 700 Silver Springs, MD 20910	800-467-9262	jskinner@swana.org
Solid Waste Association of North America—Lone Star Chapter / Mary Nix, director	1527 South Mayhill Rd. Denton, TX 76208	940-349-8002	mary.nix@dallascityhall.com
Southwest Dry Cleaners Association / Andrew Stanley, executive director	1800 NE LP 410, Ste. 308 San Antonio, TX 78217	210-826-4684	de.sda@sbcglobal.net
Southwest Meat Association / Dr. Joe Harris	4103 S. Texas Ave., Ste. 101 Bryan, TX 77802	979-846-9011	info@southwestmeat.org
Texas Ag Industries Association / Donnie Dippel	145 West Travis LaGrange, TX 78945	979-968-5602	ddippel@cvctx.com
Texas Aggregates and Concrete Association / Michael K. Stewart	900 Congress Ave., Ste. 200 Austin, TX 78701	512-451-5100	stewartm@tx-taca.org
Texas Air Conditioning Contractors Association / Todd McAlister	13706 Research Blvd. #109 Austin, TX 78750	512-320-0616	todd@tacca.org
Texas Aquaculture Association / Donna Hanson, executive secretary	P.O. Box 10584 College Station, TX 77842	979-695-2040	TAA@txaqua.net
Texas Alliance of Energy Producers / John Rhodes	719 Scott Avenue, Ste. 500 Wichita Falls, TX 76301	800-299-2998	alliance@wf.net
Texas Alliance of Groundwater Districts / Gregory Ellis, executive director	P.O. Box 152169 Austin, TX 78715-2169	512-590-1422	tagdexec@texasgroudwater.org

Texas Association of African American Chambers of Commerce / Odel Crawford, chairperson	17424 W. Grand Parkway, Ste. 179 Sugar Land, TX 77479	361-655-3126	taaacc179@yahoo.com
Texas Association of Builders / Scott Norman and Ashlei Leck	313 E. 12th St. , Ste. 210 Austin, TX 78701	512-476-6346	scott@texasbuilders.org ashlei@texasbuilders.org
Texas Association of Business / Bill Hammond	1209 Nueces St. Austin, TX 78701-1209	512-477-6721	bhammond@txbiz@org
Texas Association of Counties / Paul Sugg & Rex Hall	P.O. Box 2131 Austin, TX 78768	512-478-8753	pauls@county.org / rexh@county.org
Texas Association of Dairymen / James Terrell	1300 Guadalupe St., Ste. 209 Austin, TX 78701	800-460-0382	terrel@onr.com
Texas Association of Dairymen (DFA Chapter) / John Cowan, executive director	3500 William D. Tate Ave., Ste. 100 Grapevine, TX 76051-8734	866-770-4823	jcowan@dfamilk.com
Texas Association of Manufacturers / Luke Bellsnyder, executive director	P.O. Box 11510 Austin, TX 78711-1510	512-826-0826	info@manufacturetexas.org
Texas Association of Metal Finishers / Robert Baugh	P.O. Box 21262 Waco, TX 76702-1262	254-751-7259	wacobob@aol.com
Texas Association of Mexican-American Chambers of Commerce / Sam Guzman, president and CEO	3000 South IH 35. Ste. 210 Austin, TX 78704	512-444-5727	paula@tamacc.org
Texas Association of Regional Councils / Jim Ray, executive director	1305 San Antonio St. Austin, TX 78701	512-478-4715	jray@txregionalcouncil.org
Texas Association of Storage Tank Professionals / Bill Greer, executive director	8760-A Research Blvd., Ste. 248 Austin, TX 78758-6420	512-251-4089	director@tastp.com
Texas Automotive Recyclers Association / Carol Morton	P.O. Box 9 New Caney, TX 77357	281-354-8272	txautorecyclers@aol.com

Texas Automobile Dealers Association / Karen Coffey, Executive vice president/Chief Council	P.O. Box 1028 Austin, TX 78767	512-476-2686	kcoffey@tada.org
Texas Cast Metals Association / Harley Scoggins, executive director	3917 Lakewood Heights Fort Worth, TX 76179	817-238-7177	tcmaharley@aol.com
Texas Cattle Feeders Association / Ross Wilson	5501 West I-40 Amarillo, TX 79106	806-358-3681	ross@tcfa.org
Texas Chemical Council / Hector Rivero, President & Christina Wisdom, vice president	1402 Nueces St. Austin, TX 78701	512-646-6400	rivero@txchemcouncil.org & wisdom@txchemcouncil.org
Texas Conference of Urban Counties / Don Lee, executive director	500 West 13th Street Austin, TX 78701	512-476-6174	don.lee@cuc.org
Texas Cotton Ginners' Association / Kelley Green	408 W. 14th St. Austin, TX 78701	512-476-8388	kelley@tcga.org
Texas cotton producers / Aaron Nelson	408 W. 14th St. Austin, TX 78701	512-476-3913	aaron@tcga.org
Texas Farm Bureau / Ned Meister and Billy Howe	P.O. Box 2689 Waco, TX 76702	254-751-2457	nmeister@txfb.org & bhowe@txfb.org
Texas Food Industry Association / Rick Johnson	7333 US 290 East Austin, TX 78723	512-926-9285	rick@txgca.org
Texas Forestry Association / Ronald Hufford	P.O. Box 1488 Lufkin, TX 75902	936-632-8733	tfa@texasforestry.org
Texas Grain and Feed Association / Ben Boerner	2630 West Freeway, Ste. 100A Fort Worth, TX 76102	817-336-7879	info@tgfa.com
Texas Hospital Association / Amanda Engler	P.O. Box 679010 Austin, TX 78767	512-465-1050	aengler@tha.org
Texas Asphalt Pavement Association / Karen Pagitt, Office Manager	149 Commercial Drive Buda, TX 78610	512-312-2099	kpagitt@txhotmix.org

Texas Independent Automotive Association / Debbie Van den Berghe	P.O. Box 65148 San Antonio, TX 78265	210-946-5060	debbie@tiaa.net
Texas Independent Producers and Royalty Owners Association (TIPRO) / Adam Haynes, executive vice president	919 Congress Ave., Ste. 1000 Austin, TX 78701	512-477-4452	ahaynes@tipro.org
Texas Irrigation Council / Wayne Halbert	P.O. Box 148 Harlingen, TX 78551	956-423-7015	waynehalbert@hidcc1.org
Texas Mining & Reclamation Association (TMRA) / Shannon S. Lucas, executive director	100 Congress Ave., Ste. 1100 Austin, TX 78701	512-236-2325	information@tmra.com
Texas Motor Transportation Association / John Esparza President/CEO Les Findeisen	700 E. 11th St. Austin, TX 78701	800-727-7135 512-478-2541	john@tmta.com les@tmta.com
Texas Municipal League / Frank Sturzl	1821 Rutherford Ln. Ste. 400 Austin, TX 78754	512-231-7464	exec@tml.org
Texas Nursery and Landscape Association (TAN) / Eddy D. Edmondson, President	7730 South IH 35 Austin, TX 78745	512-280-5182	eddy@tnlaonline.org
Texas Oil and Gas Association / Debbie Hastings	304 W. 13th St. Austin, TX 78701	512-478-6631	dhastings@txoga.org
Texas Paint Council / Richard D. Williamson, chairperson	c/o Trinity Coatings Co. 1800 Park Place Fort Worth, TX 76110	817-926-6811	rwilliamson@trinitycoatings.com
Texas Pest Control Association / Ken Myers	100 E. Anderson Ln., #325 Austin, TX 78752	512-835-2801	txpca@aol.com
Texas Petroleum Marketers and Convenience Store Association / Scott Fisher and Chris Newton	701 W. 15th St. Austin, TX 78701-1535	512-476-9547	sfisher@tpca.org / cnewton@tpca.org

Texas Pipeline Association / Patrick Nugent, executive director Celina Romero	604 W. 14th St. Austin, TX 78701	512-478-2871 512-474-1129	texaspipelineassociation@yahoo.com
Texas Pork Producers / Ken Horton	P.O. Box 10168 Austin, TX 78766	512-453-0615	ken@texasporg.org
Texas Poultry Federation / James Grimm	595 Round Rock West Dr. #305 Round Rock, TX 78681	512-248-0600	jgrimm@texaspoultry.org
Texas Propane Gas Association / Bill Van Hoy	8408 N. IH 35 Austin, TX 78753	512-836-8620	bvanhoy@txpropane.com
Texas Public Works Association / Marsha Reed, P.E., President Storm Water Engineer, City of Lubbock	P.O. Box 2000 Lubbock, TX 79457	806-775-2335	mreed@mail.ci.lubbock.tx.us
Texas Rural Water Association / Tom Duck	1616 Rio Grande St. Austin, TX 78701	512-472-8591	duck@trwa.org
Texas Sheep and Goat Raisers' Association / Stephen Salmon	P.O. Box 2290 San Angelo, TX 76902	915-655-7388	sjsalmon@verizon.net
Texas Sign Association / Leona Stabler, executive director	7070 Rye Loop Bryan, TX 77807	979-778-3170	leona@txsigns.org
Texas Society of Professional Engineers / Trish B. Smith, executive director	P.O. Box 2145 Austin, TX 78768	512-472-9286	trishb@tspe.org
Texas and Southwestern Cattle Raisers Association / Eldon White, Executive vice president, CEO	1301 W. 7th St. Fort Worth, TX 76102	817-332-7064	ewhite@texascattleraisers.org
Texas and Southwestern Cattle Raisers Association—Austin Office / Jason Skaggs	1005 Congress Ave., Ste. 825 Austin, TX 78701	(512) 469-0171	jskaggs@texascattleraisers.org
Texas Tire Dealers Association (TTDA) / Wyatt Pugh	4600 Spicewood Springs Rd., Ste. 103 Austin, TX 78731	512-343-8604	info@texastiredealers.org

Texas Veterinary Medical Association / Chris Copeland	8104 Exchange Drive Austin, TX 78754	512-452-4224	ccopeland@tvma.org
Texas Water Conservation Association / Dean Robbins & Leroy Goodson	221 E. 9th St. , Ste. 206 Austin, TX 78701	512-472-7216	robbins@twca.org / goodson@twca.org
Texas Water Utilities Association / George Patterson, executive director	1106 Clayton Ln., Ste. 101 East Austin, TX 78723	512-459-3124	g.patterson @twua.org
Water Environment Association of Texas / Carol Batterton	2619 Jones Rd., Ste. C Austin, TX 78745	512-693-0622	carol@weat.org
Western Governors' Association / Pam Inmann , executive director	1600 Broadway, Ste. 1700 Denver, CO 80202	303-623-9378	Pnmann @westgov.org

LIAISONS AT OTHER STATE AGENCIES
(with which your agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)

Agency Name/Relationship/ Contact Person	Address	Telephone	E-mail Address
Agencia de Proteccion al Medio Ambiente / director, asuntos internacionales y regionales / Norma A. Rangel Sevilla	Parque Niños Heroes Ave. Alfonso Reyes #1000 Col. Regina Monterrey, Nuevo Leon Mexico	81-20-20-7427	normaarangel@gmail.com
Agencia de Proteccion al Medio Ambiente y Recursos Naturales / Coord. de Ordenamiento Territorial e Impacto Ambiental / David Diaz Conty	Av. Alfonso Reyes #1000 Monterrey, Nuevo Leon Mexico	81-20-20-74-11	daviddconty @hotmail.com
Agriculture, Texas Department of / Commissioner of Agriculture / Honorable Todd Staples	P.O. Box 12847 Austin, TX 78711-2847	512-463-7567	Commissioner.staples@texasagriculture.gov
Angelina and Neches River Authority, Board of Directors / general manager / Kelley Holcomb	P.O. Box 387 Lufkin, TX 75902-0387	936-632-7795	Kholcomb@anra.org

Animal Health Commission, Texas / executive director / State Veterinarian / Bob R. Hillman, D.V.M.	P.O. Box 12966 Austin, TX 78711-2966	512-719-0700	Bob.Hillman@tahc.state.tx.us
Attorney General, Office of the / Environmental Protection and Administrative Law Division / Barbara Deane	P.O. Box 12548 Austin, TX 78711-2548	512-475-4300	Barbara.deane@oag.state.tx.us
Attorney General for Protection of the Environment (PROFEPA) / Chihuahua Delegado of PROFEPA / Sergio Zepeda Rodriguez	Blvd. Picacho-Ajusto 200 México, D.F. Mexico	54-49-63-25	agoyenechea@correo.profeba.gog.mx
Border Environment Cooperation Commission (BECC) / general counsel / Donald Hobbs	P.O. Box 1589 Brownsville, TX 78520	011-52-656-688-4613	hobbs@cocef.org
Border Environment Cooperation Commission (BECC) / Ricardo Castanon	P.O. Box 221648 El Paso, TX 79913	915-688-4600	castanon@cocef.org
Brazos River Authority / general manager/CEO / Phillip J. Ford	P.O. Box 7555 Waco, TX 76714-7555	254-761-3194	PFord@Brazos.org
Canadian River Municipal Water Authority / president / Norman Wright	P.O. Box 9 Sanford, TX 79078-0009	806-865-3325	nwright@crmwa.com
Central States Air Resource Agencies (CenSARA) / executive director / Annette Sharp	10015 S. Pennsylvania, Ste. A, Bldg. D Oklahoma City, OK 73159	405-378-7377	asharp@censara.org
Comptroller of Public Accounts / deputy comptroller / Martin Hubert	P.O. Box 13528 Austin, TX 78711-3528	512-463-4002	martin.hubert@cpa.state.tx.us
Direccion de Seguridad Publica Municipal, Nuevo Laredo, Tams. / coordinador general / Domingo Castellanos	Blvd. Avila Camacho y Carr. Anahuac, Tmps. 88000 Mexico	867-711-39-30	ccomatsp_@nuevolaredo.gob
Education Agency, Texas / Commissioner of Education / Robert P. Scott	1701 N. Congress Ave. Austin, TX 78701-1494	512-463-8985	commissioner@tea.state.tx.us

Edwards Aquifer Authority / general manager / Velma R. Danielson	1615 N. St. Mary's St. San Antonio, TX 78215	210-222-2204	vdanielson@edwardsaquifer.org
Electric Reliability Council of Texas (ERCOT) / Paul Wattles	7620 Metro Center Dr. Austin, TX 78744	512-225-7242	pwattles@ercot.com
Emergency Management Council, State / chief, Governor's Division of Emergency Management / Jack Colley	P.O. Box 4087 Austin, TX 78773-0220	512-424-2443	Jack.Colley@txdps.state.tx.us
Engineers, Texas Board of Professional / executive director / Dale Beebe-Farrow, P. E.	1917 IH 35 South Austin, TX 78741	512-440-3050	db.farrow@tbpe.state.tx.us
Facilities Commission, Texas / executive director / Edward Johnson	P.O. Box 13047 Austin, TX 78711-3047	512-463-6533	Edward.johnson@tfc.state.tx.us
Geoscientists, Texas Board of Professional / Interim executive director / Charles Horton	P.O. Box 13225 Austin, TX 78711-3225	512-936-4401	chorton@tbpg.state.tx.us
Gobierno del Estado de Tamaulipas / director general of natural resources / Heberto Cavazos Lliteras	Torre Gubernalmente, piso 9 C.A. Cd. Victoria, Tamps. 78000 Mexico	3189450	hclliteras@tamaulipas.gob.mx
Governor's Office / Toby Baker and Terry Zrubek	State Capitol P.O. Box 12428 Austin, TX 78711-2428	512-463-5856	toby.baker@governor.state.tx.us / terry.zrubek@governor.state.tx.us
Guadalupe-Blanco River Authority / general manager / W. E. "Bill" West, Jr.	933 East Court Street Seguin, TX 78155	830-379-5822	gm@gbra.org
Gulf Coast Waste Disposal Authority / general manager / Charles Ganze	910 Bay Area Blvd. Houston, TX 77058	281-488-4115	cganze@gcwda.com
Health Services, Texas Department of State / commissioner / David Lakey, M.D.	P.O. Box 149347 Austin, TX 78714-9347	512-458-7375	david.lakey@dshs.state.tx.us

Health Services, Texas Department of State / Radiation Safety Branch / Richard Ratliff	P.O. Box 149347 Austin, TX 78714-9347	512-834-6688	richard.ratliff@dshs.state.tx.us
Information Resources, Texas Department of / Statewide Technology Service Delivery / Ginger Salone	P.O. Box 13564 Austin, TX 78711-3564	512-463-7920	ginger.salone@dir.state.tx.us
Insurance, Texas Department of / Commissioner of Insurance / Mike Geeslin	P.O. Box 149104 Austin, TX 78714-9104	512-463-6464	Mike.Geeslin@tdi.state.tx.us
Land Office, General / Texas land commissioner / Honorable Jerry Patterson	P.O. Box 12873 Austin, TX 78711-2873	512-463-5256	jerry.patterson@glo.state.tx.us
Lavaca-Navidad River Authority / general manager / Patrick Brzozowski, P.E.	P.O. Box 429 Edna, TX 77957	361-782-5229	pbrzozowski@lnra.org
Legislative Budget Board / analyst / Tom Lambert	P.O. Box 12666 Austin, TX 78711-2666	512-936-1609	tom.lambert@lbb.state.tx.us
Licensing and Regulation, Texas Department Of / executive director / William H. Kuntz	P.O. Box 12157 Austin, TX 78711-2157	512-463-6599	executive.director@license.state.tx.us
Lower Colorado River Authority / general manager / Thomas G. Mason	P.O. Box 220 Austin, TX 78767-0220	512-473-3283	Thomas.mason@lcra.org
Lower Neches Valley Authority / general manager / Scott Hall	P.O. Box 5117 Beaumont, TX 77726-5117	409-892-4011	scotth@lnva.net
Mexican Maquiladora Association of Matamoros (AMMAC/Delphi E&S) / Presidente, Environmental Committee / Alfredo Hassanille	Sendero Nacional km 3.5 Parque Ind. del Norte Matamoros, Tamps. 87316 Mexico	956-228-7230	alfredo.a.hassanille@delphi.com
National Chamber of Manufacturers (CANACINTRA) / gerente general / Juan Gonzalez	Gonzalez # 2609 Sector Centro Nuevo Laredo, Tamps. Mexico	867-712-96-98	cintranl@prodigy.net.mx

National Pollution Prevention Roundtable / Jeffrey J. Burke, executive director	11 Dupont Circle, N.W., Ste. 201 Washington, DC 20036	202-299-9701	staff@p2.org
North American Development Bank (NADBank) / Angeles Aguilar	203 S. St. Mary's St., Ste. 300 San Antonio, TX 78205	210-231-8000	aaguilar@nadb.org
Nueces River Authority / executive director / Con Mims	P.O. Box 349 Uvalde, TX 78002-0349	830-278-6810	cmims@nueces-ra.org.
Parks and Wildlife Department, Texas / executive director / Carter Smith	4200 Smith School Road Austin, TX 78744	512-389-4802	carter.smith@tpwd.state.tx.us
Plumbing Examiners, Texas State Board of / executive director / Robert L. Maxwell	P.O. Box 4200 Austin, TX 78765-4200	512-936-5233	info@tsbpe.state.tx.us
Port Freeport / executive port director / A. J. Reixach, Jr.	200 W. 2nd St., 3rd Floor Freeport, TX 77541	979-233-2667	reixach@portfreeport.com
Public Safety, Texas Department / Director / Colonel Stanley E. Clark	P.O. Box 4087 Austin, TX 78773-0001	512-424-7770	stanley.clark@txdps.state.tx.us
Public Utility Commission of Texas / executive director / W. Lane Lanford	P.O. Box 13326 Austin, TX 78711-3326	512-936-7040	lane.lanford@puc.state.tx.us
Railroad Commission of Texas / executive director / John Tintera	P.O. Box 12967 Austin, TX 78711-2967	512-463-7068	john.tintera@rrc.state.tx.us
Red River Authority of Texas / general manager / Curtis W. Campbell	P.O. Box 240 Wichita Falls, TX 76307-0240	940-723-8697	info@rra.dst.tx.us
Risk Management, State Office of / executive director / Jonathan D. Bow	P.O. Box 13777 Austin, TX 78711-3777	512-475-1440	jonathan.bow@sorm.state.tx.us
Rural Community Affairs, Office of / executive director / Charles S. "Charlie" Stone	P.O. Box 12877 Austin, TX 78711-2877	512-936-6704	cstone@orca.state.tx.us

Sabine River Authority of Texas / executive VP and GM / Jerry L. Clark	P.O. Box 579 Orange, TX 77631-0579	409-746-2192	jclark@sratx.org
San Antonio River Authority / general manager / Suzanne B. Scott	P.O. Box 839980 San Antonio, TX 78283-9980	210-227-1373	sbscott@sara-tx.org
San Jacinto River Authority / general manager / H. Reed Eichelberger, P.E.	P.O. Box 329 Conroe, TX 77304	936-588-1111	reed@sjra.net
Secretaria de Salud Ambiental (SSA), or Environmental Health Secretariat / Jefe Dpto. Salud. / Rommel Castaneda	Blvd. Saltillo. Esq. Reynosa Saltillo, Coahuila Mexico	844-438-83-30	rommel.castaneda@hotmail.com
Secretariat of Environment and Natural Resources (SEMARNAT) / director para asuntos de la frontera norte / Armando Yanez Sandoval	Sn. Jeronimo 45, 3er piso Jardines del Pedregal Mexico	011-52-55-5490-2140	armando.yanez@semarnat.gob.mx
Soil And Water Conservation Board, Texas State / executive director / Rex Isom	P.O. Box 658 Temple, TX 76503-0658	254-773-3311	risom@tsswcb.state.tx.us
State Bar of Texas, Environmental and Natural Resources Law Section / chair / Mary Koks	c/o Munsch, Hardt, Kopf & Harr, P.C. Bank of America Center 700 Louisiana Street, Ste. 4600 Houston, TX 77002-2732	713-222-1470	mkoks@munsch.com
State Federal Relations, Office Of / executive director Washington Office / Ed Perez	10 G Street, N.E., Suite 650 Washington, DC 20002	202-638-3927	eperez@osfr.state.tx.us
Transportation, Texas Department Of / executive director / Amadeo Saenz, Jr. P. E.	125 East 11th Street Austin, TX 78701-2483	512-305-9501	asaenz@dot.state.tx.us
Trinity River Authority of Texas / general manager / Danny R. Vance	P.O. Box 60 Arlington, TX 76004-0060	817-467-4343	trinity@trinityra.org

United States Army Corps of Engineers–Fort Worth District / Colonel Richard J. Muraski, Jr., District Commander	P.O. Box 17300 Fort Worth, TX 76102	817-886-1326	richard.j.muraski@usace.army.mil
United States Bureau of Reclamation—Great Plains (Texas) Area Office / Mark Trevino, Area Manager	5316 US 290 West, Suite 510 Austin, TX 78735-8931	512-899-4150	mtrevino@usbr.gov
United States Department of Energy—Pantex Plant / Steve Erhart, Manager	P.O. Box 30030 Amarillo, TX 79120	806-477-3183	serhart@pantex.doe.gov
United States Department of the Interior / secretary / Ken Salazar	1849 C Street, N.W. Washington, DC 20240	202-208-3100	feedback@ios.doi.gov
United States Department of Transportation, Federal Highway Administration—Texas Division / division administrator / Janice Brown	300 E. 8th Street, Rm 326 Austin, TX 78701	512-536-5901	Janice.Brown@dot.gov
United States Environmental Protection Agency (EPA) / administrator / Lisa Jackson	Ariel Rios Building 1200 Pennsylvania Avenue, N.W. Mail Code: 1101A Washington, DC 20460	202-564-4700	jackson.lisa@epa.gov
United States Environmental Protection Agency (EPA) / acting regional administrator / Region 6 Main Office / Larry Starfield	1445 Ross Avenue, Ste. 1200 Mail Code: 6RAD Dallas, TX 75202-2733	214-665-2100	starfield.lawrence@epa.gov
United States Fish and Wildlife Service, Austin Field Office / supervisor / Robert Pine	10711 Burnet Rd., Ste. 200 Austin, TX 78758	512-490-0057	robert_pine@fws.gov
United States Forestry Service / forest supervisor / Fred Salinas	415 South 1st Street, Ste. 110 Lufkin, TX 75901	936-639-8501	rchaffin@fs.fed.us
United States Nuclear Regulatory Commission	Office of State Programs Washington, DC 20555-0001	301-415-7000	General.FormResource@nrc.gov

University of Texas at Austin—Bureau of Economic Geology / Scott W. Tinker, Director	University of Texas at Austin University Station, Box X Austin, TX 78713-8924	512-471-1534	begmail@beg.utexas.edu
Upper Colorado River Authority / office manager / Ellen Groth	512 Orient San Angelo, TX 76903	325-655-0565	elleng@ucratx.org
Upper Guadalupe River Authority / general manager / Ray Buck, Jr.	125 Lehmann Dr., Ste. 100 Kerrville, TX 78028-5908	830-896-5445	rbuck@ugra.org
Upper Neches River Municipal Water Authority / general manager / Monty D. Shank	P.O. Box 1965 Palestine, TX 75802	903-876-2237	unrmwa@dctexas.net
Valley Proud Environmental Council / Laura Maxwell, executive director	513 E. Jackson #304 Harlingen, TX 78550	956-412-8004	vpec@sbcglobal.net
Water Development Board, Texas / J. Kevin Ward, executive administrator	P.O. Box 13231 Austin, TX 78711-3231	512-463-7847	kevin.ward@twdb.state.tx.us

XI. ADDITIONAL INFORMATION

A. Fill in the following chart detailing information on complaints regarding your agency. Do not include complaints received against people or entities you regulate. The chart headings may be changed if needed to better reflect your agency's practices.

Texas Commission on Environmental Quality Exhibit 16: Complaints Against the Agency—Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Number of complaints received	66	110
Number of complaints resolved	66	110
Number of complaints dropped/found to be without merit	0	0
Number of complaints pending from prior years	0	0
Average time period for resolution of a complaint	3 days	3 days

B. Fill in the following chart detailing your agency's Historically Underutilized Business (HUB) purchases.

Texas Commission on Environmental Quality Exhibit 17: Purchases from HUBs				
FISCAL YEAR 2006				
Category	**Total $ Spent**	**Total HUB $ Spent**	**Percent**	**Statewide Goal**
Heavy Construction	N/A	N/A	N/A	11.9%
Building Construction	$ 22,937	$ 0	0.00%	26.1%
Special Trade	$ 41,723	$ 4,545	10.89%	57.2%
Professional Services	$ 5,414,540	$ 1,493,352	27.58%	20.0%
Other Services	$ 39,037,474	$ 12,484,908	31.98%	33.0%
Commodities	$ 14,277,585	$ 5,936,482	41.58%	12.6%
TOTAL	**$ 58,794,259**	**$ 19,919,287**	**33.88%**	

FISCAL YEAR 2007				
Category	**Total $ Spent**	**Total HUB $ Spent**	**Percent**	**Statewide Goal**
Heavy Construction	N/A	N/A	N/A	11.9%
Building Construction	$ 953	$ 0	0.00%	26.1%
Special Trade	$ 113,526	$ 18,877	16.63%	57.2%
Professional Services	$ 8,132,901	$ 1,699,515	20.90%	20.0%
Other Services	$ 39,317,582	$ 11,957,773	30.41%	33.0%

Commodities	$ 11,950,413	$ 4,257,300	35.62%	12.6%
TOTAL	**$ 59,515,375**	**$ 17,933,465**	**30.13%**	
FISCAL YEAR 2008				
Category	**Total $ Spent**	**Total HUB $ Spent**	**Percent**	**Statewide Goal**
Heavy Construction	N/A	N/A	N/A	11.9%
Building Construction	$ 21,709	$ 0	0.00%	26.1%
Special Trade	$ 132,595	$ 3,827	2.89%	57.2%
Professional Services	$ 15,789,213	$ 3,439,194	21.78%	20.0%
Other Services	$ 38,722,105	$ 12,731,202	32.88%	33.0%
Commodities	$ 10,956,468	$ 3,618,737	33.03%	12.6%
TOTAL	**$ 65,622,090**	**$ 19,792,960**	**30.16%**	

C. Does your agency have a HUB policy? How does your agency address performance shortfalls related to the policy? (Texas Government Code, Sec. 2161.003; TAC Title 34, Part 1, rule 20.15b)

TCEQ has a HUB policy. Shortfalls are addressed through a combination of ongoing strategies, including: evaluating procurement and contract documents for potential HUB opportunities, working to ensure that agency policies and procedures promote HUB participation, directing assistance to agency programs working to meet HUB goals, fostering of mentor-protégé agreements, and conducting outreach activities such as mailouts to chambers of commerce and participation in vendor forums.

D. For agencies with contracts valued at $100,000 or more: Does your agency follow a HUB subcontracting plan to solicit bids, proposals, offers, or other applicable expressions of interest for subcontracting opportunities available for contracts of $100,000 or more? (Texas Government Code, Sec. 2161.252; TAC Title 34, Part 1, rule 20.14)

TCEQ has formally adopted HUB rules and implemented HUB procedures in its contracting functions in accordance with 34 Texas Administrative Code (TAC) , Part 1, Section 20.14. The agency evaluates all contracts, bids, offers, or other applicable expressions of interest for subcontracting opportunities with an expected value of $90,000 or more, and when it is determined subcontracting opportunities exist. To deem proposals and bids responsive, the agency requires respondents to submit a completed HUB Subcontracting Plan (HSP) with their proposals and bids.

E. For agencies with biennial appropriations exceeding $10 million, answer the following HUB questions.

	Response / Agency Contact
1. Do you have a HUB coordinator? (Texas Government Code, Sec. 2161.062; TAC Title 34, Part 1, rule 20.26)	Yes. Contact: Laura Cagle, HUB Program Coordinator, at 512-239-1273.
2. Has your agency designed a program of HUB forums in which businesses are invited to deliver presentations that demonstrate their capability to do business with your agency? (Texas Government Code, Sec. 2161.066; TAC Title 34, Part 1, rule 20.27)	Yes. Contact: Laura Cagle, HUB Program Coordinator, at 512-239-1273.
3. Has your agency developed a mentor-protege program to foster long-term relationships between prime contractors and HUBs and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract? (Texas Government Code, Sec. 2161.065; TAC Title 34, Part 1, rule 20.28)	Yes. Contact: Laura Cagle, HUB Program Coordinator, at 512-239-1273.

F. Fill in the chart below detailing your agency's Equal Employment Opportunity (EEO) statistics.[1] See Exhibit 18.

Texas Commission on Environmental Quality
Exhibit 18: Equal Employment Opportunity Statistics

FISCAL YEAR 2006

Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	303	6.6%	6.6%	10.89%	14.2%	36.63%	37.3%
Professional	2028	8.83%	8.3%	11.98%	13.4%	40.53%	53.2%
Technical	190	12.1%	12.4%	20.0%	20.2%	37.9%	53.8%
Administrative Support	638	19.91%	11.2%	24.29%	24.1%	84.80%	64.7%
Service Maintenance	0	N/A	13.8%	N/A	40.7%	N/A	39.0%
Skilled Craft	0	N/A	6.0%	N/A	37.5%	N/A	4.8%

[1] The Service/Maintenance category includes three distinct occupational categories: Service/Maintenance, Para-Professionals, and Protective Services. Protective Service Workers and Para-Professionals are no longer reported as separate groups. Please submit the combined Service/Maintenance category totals, if available.

FISCAL YEAR 2007							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	302	5.96%	9.0%	10.6%	23.7%	36.42%	38.8%
Professional	2038	9.67%	11.7%	11.29%	19.9%	41.12%	54.5%
Technical	189	10.58%	17.0%	19.1%	27.0%	38.62%	55.6%
Administrative Support	627	20.1%	13.2%	24.08%	31.9%	84.21%	66.2%
Service/Maintenance	0	N/A	12.8%	N/A	44.8%	N/A	39.7%
Skilled Craft	0	N/A	5.1%	N/A	46.9%	N/A	5.1%

FISCAL YEAR 2008							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	304	6.58%	9.0%	11.84%	23.7%	34.87%	38.8%
Professional	2074	9.64%	11.7%	12.25%	19.9%	42.91%	54.5%
Technical	175	8.0%	17.0%	16.6%	27.0%	35.43%	55.6%
Administrative Support	661	20.88%	13.2%	23.75%	31.9%	84.27%	66.2%
Service/Maintenance	0	N/A	12.8%	N/A	44.8%	N/A	39.7%
Skilled Craft	0	N/A	5.1%	N/A	46.9%	N/A	5.1%

G. Does your agency have an equal employment opportunity policy? How does your agency address performance shortfalls related to the policy?

Yes. All employees receive training on agency policies prohibiting discrimination. Employees who violate the policy on equal employment opportunity policy are subject to disciplinary action, including termination.

XII. AGENCY COMMENTS

Provide any additional information needed to gain a preliminary understanding of your agency.

The mission of the Texas Commission on Environmental Quality (TCEQ) is to protect the natural resources and human health of the State of Texas consistent with sustainable economic development. The TCEQ strives for clean air, clean water, and the safe management of waste in regulating more than 340,000 public and private facilities and individuals.

To accomplish our mission, the TCEQ:

- 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; and
- hire, develop, and retain a high-quality, diverse workforce.

Public Outreach and Accessibility

The TCEQ is continuously seeking new ways to involve the public in its processes. Avenues such as technological advances in virtual media and social networking are two of the newer tools being considered for TCEQ proceedings. An indicator that the TCEQ is already succeeding in its outreach efforts is the number of public meetings and participants in those meetings. Between FY 05 and FY 09, the TCEQ's Office of Public Assistance held 385 public meetings which included 18,476 attendees. This attendance is comparable to the period of FY 00 to FY 04, when 352 meetings were conducted with approximately 17,592 attendees.

Through the TCEQ Web site, the public is offered 24/7 accessibility to track enforcement actions, complaints, and the status of a regulated entity. The advent of online access to enforcement and complaints information was a notable outcome of TCEQ's 2003 extensive self-review of its enforcement functions. Additional content on the TCEQ's Web site includes permit and authorization queries for the majority of TCEQ programs, as well as a wealth of data related to air and water quality across the state. The management and use of all this data is an evolving process at the TCEQ, with the goal to provide information in a timely, understandable, and accessible manner.

Another vehicle to obtain information from the TCEQ has been the Public Information Request (PIR) process. An agency-wide procedure has been established to comply with the Public Information Act and to ensure timely responses to all PIRs. Interested parties may submit a PIR via letter or through an electronic form available on the TCEQ's website. In FY 08, 2,666 PIRs were received and processed and 2,197 in FY 09.

Materials for the TCEQ's meetings involving the commissioners, such as Agendas and Work Sessions, are posted online at least 19 days before each meeting. This allows anyone interested, an opportunity to review the information prior to the meetings. The agency also offers the public access to view live, as well as archived, Agenda and Work Session meetings online, free of charge.

Efficiencies

In an on-going effort for efficiency, accessibility, and paperless processes, the TCEQ offers an abundance of electronic services to the public and the regulated community. These electronic services include eFiling, eComments, ePermits, eReporting, eLicense Renewal, and ePay. The move to online comments is the latest in a series of efforts to improve efficiency and encourage public participation at the TCEQ.

Considerable improvement to all of the TCEQ's permitting time frames has occurred since the inception of the TCEQ's 2002 permit time-frame reduction project. This project resulted in significant progress toward the goal of improving permitting efficiencies and reducing the backlog of permit applications. Over the last six years, the agency reduced the overall backlog of uncontested permits from 1,150 to 109. Staff continues to build on this success by implementing a new initiative, project time-frame tracking. This initiative focuses not only on permits but also on non-permitting functions such as water system plans and specification reviews, water district bond reviews, Superfund cleanups, corrective actions, and voluntary cleanup.

On-Demand

There is a significant on-demand aspect to the TCEQ's workload commitments. Hurricanes, flooding, explosions, catastrophic groundwater contamination, and exceptional drought conditions are among the realities that the TCEQ must address. Across the agency, TCEQ staff respond to on-demand activities in a highly coordinated fashion. These statewide demands are not just shouldered by the TCEQ's regional staff. The agency's technical experts, legal staff, homeland security personnel, and program staff in the Austin Central Office are an integral part of the on-demand team. To effectively and quickly respond, it is understood that the TCEQ is not always an 8-to-5 state agency.

Hurricanes top the list of challenging on-demand activities. For example, the response to Hurricane Ike involved TCEQ staff spending approximately 62,000 working hours and almost $7.5 million in unforeseen expenses. The TCEQ was among the first responders to the stricken Gulf Coast area. The agency's experience, as well as its response-and-recovery training, facilitated its staff's ability to integrate well with other responders and act as a major contributor to the recovery efforts.

The TCEQ's communication with critical organizations during major on-demand incidents is intact when using its Mobile Command Post. This dynamic accumulation of cutting-edge homeland security technology ensures that communication and critical data access are intact no matter the disaster situation. Also, as a member of the State's Homeland Security Council, TCEQ assists in the planning, development, coordination, and implementation of initiatives to promote the governor's homeland security strategy to detect, deter, respond

to, and recover from disasters, both natural and manmade.

Compliance

Ensuring compliance with environmental laws and regulations is one of the TCEQ's primary functions. The TCEQ believes that enforcement is one tool among many available to protect the environment and public health. When enforcement is necessary, it is swift, sure, and just, and within an overall strategy for achieving maximum compliance. A number of tools are used to enable and require the regulated community to comply. These tools include pollution prevention, on-site and off-site facility assistance, small business and local government assistance, regulatory workshops, publications and guidance documents, telephone hotlines, and the agency's expansive Web site. These tools work alongside the more traditional investigations and enforcement responsibilities.

The TCEQ also has an Environmental Crimes Unit that investigates and assists in the prosecution of environmental crimes, in coordination with a federal, state and local task force. This unit also screens cases, helps to execute search warrants, and testifies in certain cases.

In FY 08:

- over 100,000 routine and complaint investigations were conducted;
- over 14,000 notices of violation, the TCEQ's informal enforcement tool, were issued;
- 1,624 enforcement orders were issued and tracked for compliance;
- $16.9 million was assessed in administrative penalties; and
- approximately $4.6 million of the penalties were approved for Supplemental Environmental Projects (SEPs), which allows respondents to invest their penalty dollars in agency approved environmental projects in lieu of paying fines to the state.

In December 2003, the TCEQ initiated a comprehensive review of the agency's enforcement policies and practices. The results of the 14-month study included significant improvements in efficiency and transparency and an assurance that agency resources are dedicated to preventing and reducing risk to the public and the environment. Examples of the efficiencies included a drastic reduction in backlogged enforcement actions, implementation of a field citation program, and a risk-based investigation strategy.

At the same time, the TCEQ is exploring whether its current enforcement authority allows for the use of incentives and innovative projects to achieve compliance, as well as provide sufficient deterrence to protect the environment. A component of the TCEQ's enforcement process is utilization of a site's compliance history. The agency continues to evaluate the compliance history process for its use and effectiveness.

The commission strives to ensure that its enforcement policies and decisions are based on sound science, responsive to the public and fulfill Environmental Protection Agency (EPA) requirements.

Border Affairs

The TCEQ's Border Affairs program supports the agency's mission along the Texas-Mexico

border. Major responsibilities and accomplishments include:

- The Border Initiative – Encompasses all agency work with Mexico and in the border region. Special projects are developed to meet needs identified by the agency or that may be required by state and/or federal legislation. The program also works with local, state, and federal agencies on both sides of the border. As an example, a regional emergency response plan was developed in the Lower Rio Grande Valley, and the TCEQ helped negotiate a specific emergency response agreement between El Paso and Ciudad Juárez. The TCEQ also performs most of the work that sustains the Texas-Tamaulipas-Nuevo León-Coahuila regional workgroup, including meetings of three task forces and fourteen committees. One workgroup's efforts resulted in the proper disposal of 230,000 scrap tires in the sister cities of Piedras Negras, Coahuila, and Eagle Pass.
- The Border Governors Conference (BGC) – The TCEQ supports the Texas representatives of the BGC Water and Environment Work Tables, including development and implementation of declarations by the ten U.S.-Mexico border governors. As part of the 2007 BGC declaration, a definition of "extraordinary drought" in the Rio Grande basin was developed. The lack of a definition allowed Mexico to prolong the now-resolved debate over the decade-long Rio Grande water debt to the U.S.; water that actually belonged to Texas water rights holders. This definition complimented the March 2005 joint U.S. and Mexico announcement that Mexico's water debt would be repaid to Texas – repayment was fulfilled on September 27, 2005.
- Specific International Environmental Programs – The TCEQ works with local, state, and federal stakeholders to ensure proper implementation of local projects along the border. One of the TCEQ commissioners is a member of the Governmental Advisory Council to the EPA administrator on implementation of the North American Agreement on Environmental Cooperation, the trilateral environmental side-agreement to the North American Free Trade Agreement (NAFTA). The TCEQ also manages and is a member of the Joint Air Quality Advisory Committee (JAC) in the Ciudad Juárez-El Paso-Doña Ana County, New Mexico, air shed. The JAC, created under Annex V to the U.S.-Mexico La Paz Agreement for the protection of the border environment, develops and implements recommendations to address growing binational air quality problems.

Conservation

The TCEQ works to practice what it preaches about preventing pollution and promoting energy and water conservation. The agency's "green" efforts involve a number of recycling and resource conservation projects to ensure that the TCEQ employees' work environment reflects current best practices for conservation. Austin Energy lists the TCEQ as a "Corporate Leader" for its energy purchases through the Green Choice Program, which uses alternative energy sources, such as wind and solar.

Outside the buildings, fuel conservation is a theme in the TCEQ's central fleet. Hybrid and alternative fuel vehicles make up 62% of the central fleet, and a pair of electric delivery vehicles is also used for on-campus deliveries. Going paperless is another TCEQ operating goal, and changes have been instituted across the agency to reduce paper usage. The TCEQ also buys environmentally friendly products and supplies to meet its needs each year. In cooperation with the Texas Facilities Commission, the TCEQ is the first state agency to offer employees a single-stream recycling option for paper, plastic, glass, and

aluminum cans.

The TCEQ also promotes and facilitates recycling and reducing waste in Texas communities. For example, the TCEQ provides assistance to local and regional organizations so that household hazardous waste disposal options are available for urban and rural Texans. In FY 07 and FY 08, household hazardous waste collection events and lake and river cleanups collected more than 3,000 tons of hazardous and solid waste. Electronics have also become an important recycling focus, and the TCEQ adopted rules regulating computer recycling in September 2008. To ensure the program is effective, the TCEQ's Web site has the most complete list of Texas' computer recycling locations.

Additional TCEQ programs that promote and facilitate recycling efforts include Recycle Texas Online, which offers the public the free service of locating a recycler in Texas communities and helps to reduce waste going to our landfills, and the Resource Exchange Network for Eliminating Waste (RENEW), which is a materials-exchange network established by the Texas Legislature in 1987 to promote the reuse or recycling of industrial materials. Over the life of RENEW, 916 million pounds of materials have been exchanged to market wastes for recycling, reuse, or composting.

The Texas Environmental Excellence Award (TEEA) Program that began in 1993 celebrates the efforts of citizens, communities, businesses, and organizations that work to preserve and protect the Texas environment. Presented annually by the governor and the TCEQ commissioners, these awards spotlight the state's highest achievements in environmental preservation and protection. Since resource conservation is primarily a voluntary effort by the public, this program is very meaningful in offering recognition for conservation efforts.

Water

Since 2006, Texas has been suffering the effects of an exceptional drought. This drought, along with Texas' growing population, magnifies the water availability problem, posing the question whether the TCEQ has sufficient authority and resources to coordinate the management of the state's limited water resources. To combat the effects of the drought in Texas, the TCEQ provides water systems and the public with water-saving guidance that includes special emphasis on reducing water usage and on rain harvesting.

The TCEQ is recognized as a pioneer in the use of long-distance continuous monitoring and reporting of water quality data. The agency consistently improves its continuous water monitoring as newer systems are designed to address the data needs of individual sites. These needs include documenting water quality trends, tracking cleanup of a water body under the implementation plan of the Total Maximum Daily Load Program, prioritizing field investigations, and providing water quality data to local governments. The public can view this data on the TCEQ Web site. The TCEQ also uses the monitoring network to guide decisions on how to better protect certain segments of Texas' rivers or lakes. Looking forward, the TCEQ is exploring the possibility of expanding the use of water quality monitoring data within the TCEQ's regulatory process as well as utilizing the data to respond more quickly to environmental conditions.

The TCEQ is also charged with investigating the safety of Texas dams and received additional funding from the 81st Texas Legislature to do so. The dam safety investigators are responsible for bringing noncompliance to the attention of each dam owner and initiating any necessary enforcement actions. The cost to maintain and repair dams is considerable, and that financial burden is the sole responsibility of each dam owner. However, the state may need to consider whether it has a role in remediating aging dams. This concern is based on the age of Texas' dams—26 percent were constructed before 1960 and 84 percent prior to 1980—as well as increases in population which is resulting in development downstream from many of these existing dams.

Air

Texas' air quality is a top priority for the TCEQ, which requires constant awareness and improvement. The agency's air quality monitoring network, which is one of the largest and most highly integrated in the country, is the foundation for ensuring that accurate data for compliance, enforcement, and planning is readily available.

The blueprint for dealing with air quality issues region by region is the State Implementation Plan (SIP). This is an enforceable plan developed at the state level that demonstrates to the EPA how the state will comply with air quality standards under the federal Clean Air Act. A SIP must be submitted by the state government of any state seeking authorization to operate the federal air quality program. Revisions to parts of Texas' SIP are necessary when new federal or state requirements are enacted, when new data improves modeling techniques, when a specific area's attainment status changes, or when an area fails to reach attainment. Revisions to the SIP typically include an assessment of the problem and measures that will fix the problem. Assessments of the situation include monitoring data, an emissions inventory, and photochemical modeling. Measures to address air quality issues are known as control strategies. With the recent revision to the federal ozone air quality standard, the agency will be required to submit to the EPA a considerable number of revisions to the SIP by 2013.

Targeting industrial pollution is another major aspect of the TCEQ's air quality protection activities. Due to the concentration of petroleum and chemical facilities in Harris County and the surrounding counties, a prominent focus for the agency's protection efforts includes Southeast Texas. Even with widespread industrial and population growth, the air quality in Harris County continues to improve. With state regulations and enforcement activity, nitrogen oxides (NO_x) emissions have fallen by 57 percent and volatile organic compounds (VOCs) by 38 percent since 2000. This represents a total reduction of 675 tons per day of these smog-forming pollutants. The TCEQ and partners in local government and industry jointly operate a network of 65 stationary monitors, some of which calculate hourly averages of pollutants day and night. The innovative system includes monitors capable of triggering e-mail alerts when concentrations spike, so that the TCEQ, along with its governmental and industry partners, can quickly identify the emissions source.

Additionally, the agency has assembled an array of advanced monitoring tools including infrared cameras and mobile monitoring units that combine infrared and ultraviolet laser

technology to scan industrial facilities and measure emissions from sources such as storage tanks, flares, and cooling towers.

Clean and efficient energy production is one opportunity for Texas as demands for energy increases and the state's population grows. The TCEQ's response to state legislation supporting ultraclean energy was to adopt definitions for advanced clean energy projects and federally qualified clean coal technology. The agency also approved air permit requirements for both categories. In response to passage of state legislation in 2007, the TCEQ adopted rules to include 18 energy-saving and emission-reducing categories, addressing the expansion of equipment eligible for property tax abatement.

The TCEQ's monitoring network, data analysis and subsequent modeling have demonstrated that mobile sources (on-road and non-road) continue to be a significant source of emissions. The TCEQ has implemented several innovative programs created by the Texas Legislature to reduce mobile emissions.

The Texas Emissions Reduction Plan (TERP) was established by the 77th Texas Legislature in 2001 and includes a number of voluntary financial incentive and assistance programs, including emissions reduction incentive grants and the Clean School Bus Program. Since TERP began, more than 5,700 projects have been approved, totaling almost $750 million in grants awarded. These programs have achieved environmental benefits in the state's urban areas, with more than 156,000 tons of nitrogen oxides (a precursor to ozone, which is a major contributor to smog) removed from the atmosphere. Another successful incentive program is Drive a Clean Machine — AirCheckTexas. As of May 2009, this program has helped retire 22,217 older vehicles, with an equivalent number of newer, cleaner-burning vehicles now on the road. Funds from this program have also provided for the repair of 7,194 vehicles that failed the emissions test. These programs have helped to make Texas air safer to breathe.

Reductions in emissions from mobile and point sources have happened at the same time that the state's population has increased and its economy has grown; demonstrating that protection of the environment does not have to limit the state's ability to prosper.

Waste

The TCEQ has sought to improve the regulation and oversight of waste materials so that the public and the environment are kept safe from the improper management of waste. Another aspect of this effort is the encouragement of appropriate recycling activities.

The TCEQ's municipal solid waste (MSW) rules (30 TAC Chapter 330) were significantly revised in March 2006 to regulate MSW facilities in a more effective and comprehensible manner. The new TCEQ rules were adopted after lengthy deliberations by the commission and considerable input from the public and industry representatives. In addition to reorganizing the solid waste rules and improving readability, the commission also made dozens of substantive changes, including enhanced environmental protection.

Of late, mulch and compost facilities that operate out of compliance have received greater

scrutiny. The TCEQ's investigation strategy moved to a more proactive approach with accelerated enforcement, so that the risk to public health and safety is minimized. Innovative technology such as carbon monoxide monitors and additional temperature reading devices are useful tools for the TCEQ and its emergency response contractors to make determinations and respond proactively to fire hazards at mulch and compost facilities.

The contamination of groundwater and soil due to leaking petroleum storage tanks (PSTs) has been a known statewide environmental issue. The TCEQ oversees PST cleanups and reimburses eligible parties. Since the program began in 1987, the TCEQ has received reports of more than 25,000 leaking PST sites and as of August 2009, 23,000 sites have been completely cleaned up. The vast majority of PST cleanups have been paid through the State PST Remediation Fund, from which expenditures topped $1 billion. The PST reimbursement and regulatory programs are supported through a fee collected on the bulk delivery of gasoline and diesel fuel. This fee ends on August 31, 2011. Though the reimbursement program ends August 31, 2012, the PST regulatory program will continue, and there will be an ongoing need to clean up leaking PST sites.

Conclusion

The TCEQ is a dynamic organization with extensive responsibilities. The Self- Evaluation Report demonstrates the complexity and array of issues addressed daily by staff in Austin and across the state. The TCEQ welcomes the opportunity to continue this dialogue and provide additional information to assist the Sunset Commission in its evaluation.

ATTACHMENTS

Attachments Relating to Key Functions, Powers, and Duties

1. A copy of the agency's enabling statute.

(A) Texas Water Code - Chapter 5

Subchapter C. Texas Natural Resource Conservation Commission
Section 5.051

Subchapter D. General Powers and Duties of the Commission
Section 5.102

(B) *Texas Environmental Laws* – 2008 Edition

2. A copy of each annual report published by the agency from FY 2004 – 2008.

(A-C) Biennial Reports to the legislature FY 2003 – FY 2008

3. A copy of each internal or external newsletter published by the agency from FY 2007 – 2008.

External Newsletters

(A) Natural Outlook – Fall 2006 – Summer 2008 (7 items)
(B) The Advocate – July 2006 – September 2008 (9 items)
(C) Clean Texas Environmental News You Can Use – September 2006-August 2007 (10 items)
(D) Take Care of Texas – News You Can Use – September 2007 – August 2008 (11 items)

Internal Newsletters

(E) Natural Resource – September 2006 – February 2007 (6 items)
(F) The Resource – March 2007 – August 2008 (18 items)

4. A list of publications and brochures describing the agency.

(A) TCEQ Publications Catalog – April 2009 (PD-001)

5. A list of studies that the agency is required to do by legislation or riders.

(A) See attached list

ATTACHMENTS - CONTINUED

6. A list of legislative or interagency studies relating to the agency that are being performed during the current interim.

(A) See attached list

7. A list of studies from other states, the federal government, or national groups/associations that relate to or affect the agency or agencies with similar duties or functions.

(A) See attached list

Attachments Relating to Policymaking Structure

8. Biographical information (e.g, education, employment, affiliations, and honors) or resumes of all policymaking body members.

(A) See attached list

9. A copy of the agency's most recent rules.

(A) *Texas Administrative Code* – Title 30-Environmental Quality – 2009-Part One

Attachments Relating to Funding

10. A copy of the agency's Legislative Appropriations Request for FY 2010 – 2011.

(A) TCEQ Legislative Appropriations Request for Fiscal Years 2010 and 2011

11. A copy of each annual financial report from FY 2006 – 2008.

(A-C) Annual Financial Report – Fiscal Years Ending August 31, 2006 – August 31, 2008

12. A copy of each operating budget from FY 2007 – 2009.

(A-C) TCEQ Summary of the FY 2007 – 2009 Approved Operating Budget

ATTACHMENTS - CONTINUED

Attachments Relating to Organization

13. If applicable, a map to illustrate the regional boundaries, headquarters location, and field or regional office locations.

(A) Listing of TCEQ area and regional office addresses and key staff
(B) TCEQ area and regional map
(C) TCEQ headquarters map

Attachments Relating to Agency Performance Evaluation

14. A copy of each quarterly performance report completed by the agency in FY 2006 – 2008.

(A-L) TCEQ Quarterly Reports on Performance Measures Fiscal Years 2006 - 2008

15. A copy of any recent studies on the agency or any of its functions conducted by outside management consultants or academic institutions.

Not Applicable

16. A copy of the agency's current internal audit plan.

(A) TCEQ FY 2010 / 2011 Biennial Audit Plan (August 2009) (Report #09-81)

17. A copy of the agency's current strategic plan.

(A) TCEQ Strategic Plan – Fiscal Years 2009-2013

18. A list of internal audit reports from FY 2005 – 2009 completed by or in progress at the agency.

(A) See attached list

19. A list of State Auditor reports from FY 2005 – 2009 that relate to the agency or any of its functions.

(A) See attached list

20. A copy of any customer service surveys conducted by or for your agency in FY 2008.

(A) TCEQ Customer Satisfaction Survey – TCEQ-10333 (1/08)