

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: September 7, 2022

DATE OF REQUEST: August 19, 2022

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Cecilia Mena, Rule/Agenda Coordinator, (512) 239-6098

CAPTION: Docket No. 2021-1295-RUL. Consideration of the adoption of amended Sections 299.1, 299.2, and 299.7 of 30 TAC Chapter 299, Dams and Reservoirs.

The rulemaking adoption will implement Senate Bill 600 from the 87th Legislature, 2021, Regular Session, relating to requiring river authorities to submit information on their dams, House Bill (HB) 2694, 82nd Legislature, 2011, and HB 677, 83rd Legislature, 2013 relating to exemption of dams. The rulemaking adoption will also make revisions to clarify language in the rules. The proposed rules were published in the April 15, 2022, issue of the *Texas Register* (47 TexReg 1970). (Warren Samuelson, Harrison Malley; Rule Project No. 2021-027-299-CE)



Director



Division Deputy Director

Cecilia Mena

Agenda Coordinator

Copy to CCC Secretary? NO YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** August 19, 2022

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From:  Craig Pritzlaff, Director
Office of Compliance and Enforcement

Docket No.: 2021-1295-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 299, Dams and Reservoirs
SB 600: Dam Safety Updates
Rule Project No. 2021-027-299-CE

Background and reason(s) for the rulemaking:

Senate Bill (SB) 600, Perry, 87th Texas Legislature (2021), required the rulemaking adoption to add the language of SB 600 requiring river authorities to submit information on their dams. There are eight river authorities that meet the requirements of SB 600, and there are 79 dams owned by these river authorities.

House Bill (HB) 2694, 82nd Texas Legislature (2011), Author: Smith, provided language for exemptions to the rules, and HB 677, 83rd Texas Legislature (2013), Author: Geren, added to the language requiring dam exemptions. The recent audit report findings on the Dam Safety Program by Texas State Auditor's Office, issued July 2020, recommended that the language of these two bills be included in the rules.

Revisions were made to clarify language in the rules.

Scope of the rulemaking:

A.) Summary of what the rulemaking would do:

The rulemaking adoption will implement Legislation and make revisions to clarify the language in the rules.

B.) Scope required by federal regulations or state statutes:

- 1) Add 30 Texas Administrative Code §299.7(b)(1) and (2), after reformatting and add "a" to §299.7, to include language from SB 600 that each river authority, designated in Section 325.025(b), Government Code, shall provide to the executive director information regarding the operation and maintenance of dams under the control of that river authority. The following information is to be provided for each dam: (1) location of dam; (2) jurisdiction over the dam; (3) required maintenance schedule for the dam; (4) costs of operation and maintenance; and (5) method of finance for operations and maintenance costs.
- 2) Add §299.7(b)(3) to require the river authorities to submit the information annually.
- 3) Add §299.7(b)(4) to require the TCEQ to create and maintain an internet website to contain the information.
- 4) Add §299.1(c)(6) to include language for exemption of dams from HB 677 if the dams meet all five of the criteria listed in the proposed rule; (a) privately owned;

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(b) low or significant hazard; (c) maximum capacity less than 500 acre-feet; (d) dam located in a county less than 350,000; and (e) dam located outside a city limits.

C.) Additional staff recommendations that are not required by federal rule or state statute:

- 1.) Add clarifying language to §299.1 (Applicability) of the rules to better define a dam. There has been confusion on what constitutes a dam.
- 2.) Revise the figure located in §299.1(a)(2) to clarify the applicability of the rules to a dam.
- 3.) Revise the language for the definitions of major highways, minor highways, and secondary highways in §299.2 to better define each for use in hazard classifications.
- 4.) Revise the definition of “removal” in §299.2(54) to clarify and agree with the definition in the *Dam Removal Guidelines for Dams in Texas*.
- 5.) Revise the language for the Inventory of Dams in §299.7 to better define what is in the Inventory and to remove language for items that are not included.

Statutory authority:

- Texas Water Code (TWC), §12.052, Dam Safety
- TWC, §12.053 Inventory of Dams Operated by River Authorities

Effect on the:

A.) Regulated community:

The river authorities will be required to provide information on their dams annually. The additional updates will clarify the confusion that has resulted from the current rules.

B.) Public:

The public will be able to access the information on river authority dams and will have clarification of the rules.

C.) Agency programs:

The TCEQ Dam Safety Program will be required to maintain the information on river authorities. There will be no fiscal impact to the agency.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing was held during the comment period in Austin.

Public comment:

The commission offered a public hearing on May 17, 2022. The comment period closed on May 17, 2022. No public comments were received.

Significant changes from proposal:

None.

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Potential controversial concerns and legislative interest:

There are no known controversial concerns. There is legislative interest, specifically from Senator Perry's office, on the information provided to ensure that the river authorities are maintaining the dams they own.

Will this rulemaking affect any current policies or require development of new policies? No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking? No alternatives.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: April 15, 2022

Anticipated Texas Register adoption publication date: September 23, 2022

Anticipated effective date: September 29, 2022

Six-month Texas Register filing deadline: October 15, 2022

Agency contacts:

Warren D. Samuelson, Rule Project Manager, Critical Infrastructure Division, (512) 239-5195

Harrison Malley, Staff Attorney, Environmental Law Division, (512) 239-1439

Cecilia Mena, Texas Register Rule/Agenda Coordinator, (512) 239-6098

Attachments:

SB 600, 87th Texas Legislature (2021)

HB 677, 83rd Texas Legislature (2013)

HB 2694, 82nd Texas Legislature (2011)

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Krista Kyle
Office of General Counsel
Warren Samuelson
Harrison Malley
Cecilia Mena

AN ACT

relating to an inventory of dams controlled by river authorities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 12, Water Code, is amended by adding Section 12.053 to read as follows:

Sec. 12.053. INVENTORY OF DAMS OPERATED BY RIVER AUTHORITIES. (a) This section applies only to a river authority described by Section 325.025(b), Government Code.

(b) Each river authority shall provide to the commission information regarding the operation and maintenance of dams under the control of that river authority. The commission by rule shall require a river authority to provide for each dam under its control at least the following information:

- (1) the location of the dam;
- (2) under whose jurisdiction the dam operates;
- (3) a required maintenance schedule for the dam;
- (4) costs of the operation and maintenance of the dam;

and

(5) the method of finance for the operation and maintenance costs of the dam.

(c) A river authority shall submit the information required by Subsection (b) to the commission each year and in the event of a significant change in the information.

(d) Subject to federal and state confidentiality laws, the

1 commission shall create and maintain an Internet website that
2 contains the information collected under this section.

3 SECTION 2. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 600 passed the Senate on April 9, 2021, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 27, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 600 passed the House, with amendment, on May 11, 2021, by the following vote: Yeas 137, Nays 6, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

By: Geren

H.B. No. 677

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the regulation and enforcement of dam safety by the
3 Texas Commission on Environmental Quality.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 12.052(e-1), Water Code, is amended to
6 read as follows:

7 (e-1) The commission shall exempt an owner of a dam located
8 on private property from meeting requirements related to dam safety
9 if the dam:

10 (1) at maximum capacity impounds less than 500
11 acre-feet;

12 (2) has a hazard classification of low or significant;

13 (3) is located in a county with a population of less
14 than 350,000 [~~215,000~~]; and

15 (4) is not located inside the corporate limits of a
16 municipality.

17 SECTION 2. Section 12.052(e-3), Water Code, is repealed.

18 SECTION 3. This Act takes effect September 1, 2013.

1 AN ACT

2 relating to the continuation and functions of the Texas Commission
3 on Environmental Quality and abolishing the On-site Wastewater
4 Treatment Research Council.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 ARTICLE 1. GENERAL PROVISIONS

7 SECTION 1.01. The heading to Chapter 5, Water Code, is
8 amended to read as follows:

9 CHAPTER 5. TEXAS [~~NATURAL RESOURCE CONSERVATION~~] COMMISSION ON
10 ENVIRONMENTAL QUALITY

11 SECTION 1.02. Section 5.014, Water Code, is amended to read
12 as follows:

13 Sec. 5.014. SUNSET PROVISION. The Texas [~~Natural Resource~~
14 ~~Conservation~~] Commission on Environmental Quality is subject to
15 Chapter 325, Government Code (Texas Sunset Act). Unless continued
16 in existence as provided by that chapter, the commission is
17 abolished and this chapter expires September 1, 2023 [~~2011~~].

18 SECTION 1.03. Subchapter C, Chapter 5, Water Code, is
19 amended by adding Section 5.061 to read as follows:

20 Sec. 5.061. PROHIBITION ON ACCEPTING CAMPAIGN
21 CONTRIBUTIONS. A member of the commission may not accept a
22 contribution to a campaign for election to an elected office. If a
23 member of the commission accepts a campaign contribution, the
24 person is considered to have resigned from the office and the office

1 immediately becomes vacant. The vacancy shall be filled in the
2 manner provided by law.

3 SECTION 1.04. Subchapter D, Chapter 5, Water Code, is
4 amended by adding Section 5.1031 to read as follows:

5 Sec. 5.1031. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE
6 RESOLUTION. (a) The commission shall develop and implement a
7 policy to encourage the use of:

8 (1) negotiated rulemaking procedures under Chapter
9 2008, Government Code, for the adoption of commission rules; and

10 (2) appropriate alternative dispute resolution
11 procedures under Chapter 2009, Government Code, to assist in the
12 resolution of internal and external disputes under the commission's
13 jurisdiction.

14 (b) The commission's procedures relating to alternative
15 dispute resolution must conform, to the extent possible, to any
16 model guidelines issued by the State Office of Administrative
17 Hearings for the use of alternative dispute resolution by state
18 agencies.

19 (c) The commission shall:

20 (1) coordinate the implementation of the policy
21 adopted under Subsection (a);

22 (2) provide training as needed to implement the
23 procedures for negotiated rulemaking or alternative dispute
24 resolution; and

25 (3) collect data concerning the effectiveness of those
26 procedures.

27 SECTION 1.05. Section 5.2291(b), Water Code, is amended to

1 read as follows:

2 (b) Except as provided by Section 5.2292, the [The]
3 procurement of a contract for scientific and technical
4 environmental services shall be conducted under the procedures for
5 professional services selection provided in Subchapter A, Chapter
6 2254, Government Code.

7 SECTION 1.06. Subchapter F, Chapter 5, Water Code, is
8 amended by adding Section 5.2292 to read as follows:

9 Sec. 5.2292. CONTRACTS FOR SERVICES UNDER PETROLEUM STORAGE
10 TANK STATE-LEAD PROGRAM. (a) The executive director may directly
11 award a contract for scientific and technical environmental
12 services to a person if:

13 (1) the contract is for the performance of services
14 related to the remediation of a site that has been placed in the
15 state-lead program under Section 26.3573(r-1);

16 (2) the person has registered to perform corrective
17 action under Section 26.364;

18 (3) the person is eligible to receive a contract award
19 from the state;

20 (4) the person was performing related work at the site
21 on or before July 1, 2011; and

22 (5) the contract includes all contract provisions
23 required for state contracts.

24 (b) Notwithstanding Section 2254.004, Government Code, the
25 executive director may directly award a contract for engineering
26 services to a person if:

27 (1) the contract is for the performance of services

1 related to the remediation of a site that has been placed in the
2 state-lead program under Section 26.3573(r-1);

3 (2) the person is licensed under Chapter 1001,
4 Occupations Code;

5 (3) the person has registered to perform corrective
6 action under Section 26.364;

7 (4) the person is eligible to receive a contract award
8 from the state;

9 (5) the person was performing related work at the site
10 on or before July 1, 2011; and

11 (6) the contract includes all contract provisions
12 required for state contracts.

13 (c) Nothing in Subsection (a) or (b) requires the executive
14 director to make an award at a site or prevents the executive
15 director from negotiating additional contract terms, including
16 qualifications.

17 SECTION 1.07. Section 12.052, Water Code, is amended by
18 amending Subsection (a) and adding Subsections (b-1), (e-1), (e-2),
19 and (e-3) to read as follows:

20 (a) The commission shall make and enforce rules and orders
21 and shall perform all other acts necessary to provide for the safe
22 construction, maintenance, repair, and removal of dams located in
23 this state. In performing the commission's duties under this
24 subsection, the commission shall identify and focus on the most
25 hazardous dams in the state.

26 (b-1) The commission may enter into an agreement with an
27 owner of a dam who is required to reevaluate the adequacy of an

1 existing dam or spillway. The agreement may include timelines to
2 achieve compliance with the commission's design criteria and may
3 authorize deferral of compliance with the criteria, as appropriate.

4 (e-1) The commission shall exempt an owner of a dam located
5 on private property from meeting requirements related to dam safety
6 if the dam:

7 (1) at maximum capacity impounds less than 500
8 acre-feet;

9 (2) has a hazard classification of low or significant;

10 (3) is located in a county with a population of less
11 than 215,000; and

12 (4) is not located inside the corporate limits of a
13 municipality.

14 (e-2) Notwithstanding Subsection (e-1), an owner of a dam
15 shall comply with operation and maintenance requirements
16 established by commission rule.

17 (e-3) This subsection and Subsections (e-1) and (e-2)
18 expire August 31, 2015.

19 ARTICLE 2. TRANSFER OF CERTAIN DUTIES TO THE RAILROAD COMMISSION

20 SECTION 2.01. Section 91.011, Natural Resources Code, is
21 amended to read as follows:

22 Sec. 91.011. CASING. (a) Before drilling into the oil or
23 gas bearing rock, the owner or operator of a well being drilled for
24 oil or gas shall encase the well with good and sufficient wrought
25 iron or steel casing or with any other material that meets standards
26 adopted by the commission, particularly where wells could be
27 subjected to corrosive elements or high pressures and temperatures,

1 in a manner and to a depth that will exclude surface or fresh water
2 from the lower part of the well from penetrating the oil or gas
3 bearing rock, and if the well is drilled through the first into the
4 lower oil or gas bearing rock, the well shall be cased in a manner
5 and to a depth that will exclude fresh water above the last oil or
6 gas bearing rock penetrated.

7 (b) The commission shall adopt rules regarding the depth of
8 well casings necessary to meet the requirements of this section.

9 SECTION 2.02. Subchapter B, Chapter 91, Natural Resources
10 Code, is amended by adding Section 91.0115 to read as follows:

11 Sec. 91.0115. CASING; LETTER OF DETERMINATION. (a) The
12 commission shall issue, on request from an applicant for a permit
13 for a well to be drilled into oil or gas bearing rock, a letter of
14 determination stating the total depth of surface casing required
15 for the well by Section 91.011.

16 (b) The commission may charge a fee in an amount to be
17 determined by the commission for a letter of determination.

18 (c) The commission shall charge a fee not to exceed \$75, in
19 addition to the fee required by Subsection (b), for processing a
20 request to expedite a letter of determination. Money collected
21 under this subsection may be used to study and evaluate electronic
22 access to geologic data and surface casing depths under Section
23 91.020.

24 SECTION 2.03. Subchapter B, Chapter 91, Natural Resources
25 Code, is amended by adding Section 91.020 to read as follows:

26 Sec. 91.020. ELECTRONIC GEOLOGIC DATA. The commission
27 shall work cooperatively with other appropriate state agencies to

1 study and evaluate electronic access to geologic data and surface
2 casing depths necessary to protect usable groundwater in this
3 state.

4 SECTION 2.04. Subchapter D, Chapter 91, Natural Resources
5 Code, is amended by adding Section 91.1015 to read as follows:

6 Sec. 91.1015. GROUNDWATER PROTECTION REQUIREMENTS. The
7 commission shall adopt rules to establish groundwater protection
8 requirements for operations that are within the jurisdiction of the
9 commission, including requirements relating to the depth of surface
10 casing for wells.

11 SECTION 2.05. Section 27.033, Water Code, is amended to
12 read as follows:

13 Sec. 27.033. LETTER OF DETERMINATION [~~FROM EXECUTIVE~~
14 ~~DIRECTOR~~]. A person making application to the railroad commission
15 for a permit under this chapter shall submit with the application a
16 letter of determination from the railroad commission [~~from the~~
17 ~~executive director~~] stating that drilling and using the disposal
18 well and injecting oil and gas waste into the subsurface stratum
19 will not endanger the freshwater strata in that area and that the
20 formation or stratum to be used for the disposal is not freshwater
21 sand.

22 SECTION 2.06. Section 27.046, Water Code, is amended to
23 read as follows:

24 Sec. 27.046. LETTER OF DETERMINATION [~~FROM EXECUTIVE~~
25 ~~DIRECTOR~~]. (a) The railroad commission may not issue a permit
26 under rules adopted under this subchapter until the railroad
27 commission issues to the applicant for the permit [~~provides to the~~

1 ~~railroad commission~~] a letter of determination [~~from the executive~~
2 ~~director~~] stating that drilling and operating the anthropogenic
3 carbon dioxide injection well for geologic storage or operating the
4 geologic storage facility will not injure any freshwater strata in
5 that area and that the formation or stratum to be used for the
6 geologic storage facility is not freshwater sand.

7 (b) To make the determination required by Subsection (a),
8 the railroad commission [~~executive director~~] shall review:

9 (1) the area of review and corrective action plans;

10 (2) any subsurface monitoring plans required during
11 injection or post injection;

12 (3) any postinjection site care plans; and

13 (4) any other elements of the application reasonably
14 required in order for the railroad commission [~~executive director~~]
15 to make the determination required by Subsection (a).

16 (c) The railroad commission shall adopt rules to implement
17 and administer this section.

18 SECTION 2.07. Section 5.701(r), Water Code, is repealed.

19 SECTION 2.08. (a) The Railroad Commission of Texas shall
20 adopt rules to implement the changes in law made by this article not
21 later than March 1, 2012.

22 (b) A rule, form, policy, or procedure of the Texas
23 Commission on Environmental Quality related to the changes in law
24 made by this article continues in effect as a rule, form, policy, or
25 procedure of the Railroad Commission of Texas and remains in effect
26 until amended or replaced by that agency.

27 ARTICLE 3. PUBLIC INTEREST

1 SECTION 3.01. Subchapter F, Chapter 5, Water Code, is
2 amended by adding Section 5.239 to read as follows:

3 Sec. 5.239. PUBLIC EDUCATION AND ASSISTANCE. (a) The
4 executive director shall ensure that the agency is responsive to
5 environmental and citizens' concerns, including environmental
6 quality and consumer protection.

7 (b) The executive director shall develop and implement a
8 program to:

9 (1) provide a centralized point for the public to
10 access information about the commission and to learn about matters
11 regulated by the commission;

12 (2) identify and assess the concerns of the public in
13 regard to matters regulated by the commission; and

14 (3) respond to the concerns identified by the program.

15 SECTION 3.02. Section 5.271, Water Code, is amended to read
16 as follows:

17 Sec. 5.271. CREATION AND GENERAL RESPONSIBILITY OF THE
18 OFFICE OF PUBLIC INTEREST COUNSEL. The office of public interest
19 counsel is created to ensure that the commission promotes the
20 public's interest [~~and is responsive to environmental and citizens'~~
21 ~~concerns including environmental quality and consumer protection~~].
22 The primary duty of the office is to represent the public interest
23 as a party to matters before the commission.

24 SECTION 3.03. Subchapter G, Chapter 5, Water Code, is
25 amended by adding Section 5.2725 to read as follows:

26 Sec. 5.2725. ANNUAL REPORT; PERFORMANCE MEASURES. (a) The
27 office of public interest counsel shall report to the commission

1 each year in a public meeting held on a date determined by the
2 commission to be timely for the commission to include the reported
3 information in the commission's reports under Sections 5.178(a) and
4 (b) and in the commission's biennial legislative appropriations
5 requests as appropriate:

6 (1) an evaluation of the office's performance in
7 representing the public interest in the preceding year;

8 (2) an assessment of the budget needs of the office,
9 including the need to contract for outside expertise; and

10 (3) any legislative or regulatory changes recommended
11 under Section 5.273.

12 (b) The commission and the office of public interest counsel
13 shall work cooperatively to identify performance measures for the
14 office.

15 SECTION 3.04. Subchapter G, Chapter 5, Water Code, is
16 amended by adding Section 5.276 to read as follows:

17 Sec. 5.276. FACTORS FOR PUBLIC INTEREST REPRESENTATION.

18 (a) The commission by rule, after consideration of recommendations
19 from the office of public interest counsel, shall establish factors
20 the public interest counsel must consider before the public
21 interest counsel decides to represent the public interest as a
22 party to a commission proceeding.

23 (b) Rules adopted under this section must include:

24 (1) factors to determine the nature and extent of the
25 public interest; and

26 (2) factors to consider in prioritizing the workload
27 of the office of public interest counsel.

ARTICLE 4. COMPLIANCE AND ENFORCEMENT

SECTION 4.01. Section 5.751, Water Code, is amended to read as follows:

Sec. 5.751. APPLICABILITY. This subchapter applies to programs under the jurisdiction of the commission under Chapters 26, ~~and~~ 27, and 32 of this code and Chapters 361, 375, 382, and 401, Health and Safety Code. It does not apply to occupational licensing programs under the jurisdiction of the commission.

SECTION 4.02. Section 5.752(1), Water Code, is amended to read as follows:

(1) "Applicable legal requirement" means an environmental law, regulation, permit, order, consent~~[-]~~ decree, or other requirement.

SECTION 4.03. The heading to Section 5.753, Water Code, is amended to read as follows:

Sec. 5.753. STANDARDS ~~[STANDARD]~~ FOR EVALUATING AND USING COMPLIANCE HISTORY.

SECTION 4.04. Section 5.753, Water Code, is amended by amending Subsections (a), (b), and (d) and adding Subsection (d-1) to read as follows:

(a) Consistent with other law and the requirements necessary to maintain federal program authorization, the commission by rule shall develop standards ~~[a uniform standard]~~ for evaluating and using compliance history that ensure consistency. In developing the standards, the commission may account for differences among regulated entities.

(b) The components of compliance history must include:

1 (1) enforcement orders, court judgments, [~~consent~~
2 ~~decrees,~~] and criminal convictions of this state [~~and the federal~~
3 ~~government~~] relating to compliance with applicable legal
4 requirements under the jurisdiction of the commission [~~or the~~
5 ~~United States Environmental Protection Agency~~];

6 (2) notwithstanding any other provision of this code,
7 orders issued under Section 7.070;

8 (3) to the extent readily available to the commission,
9 enforcement orders, court judgments, consent decrees, and criminal
10 convictions relating to violations of environmental rules [~~laws~~] of
11 the United States Environmental Protection Agency [~~other states~~];
12 and

13 (4) changes in ownership.

14 (d) Except as provided by this subsection, notices of
15 violation must be included as a component of compliance history for
16 a period not to exceed one year from the date of issuance of each
17 notice of violation. The listing of a notice of violation must be
18 preceded by the following statement prominently displayed: "A
19 notice of violation represents a written allegation of a violation
20 of a specific regulatory requirement from the commission to a
21 regulated entity. A notice of violation is not a final enforcement
22 action nor proof that a violation has actually occurred." [~~The set~~
23 ~~of components shall include notices of violations.~~] A notice of
24 violation administratively determined to be without merit may
25 [~~shall~~] not be included in a compliance history. A notice of
26 violation that is included in a compliance history shall be removed
27 from the compliance history if the commission subsequently

1 determines the notice of violation to be without merit.

2 (d-1) For purposes of listing compliance history, the
3 commission may not include as a notice of violation information
4 received by the commission as required by Title V of the federal
5 Clean Air Act (42 U.S.C. Section 7661 et seq.) unless the commission
6 issues a written notice of violation. Final enforcement orders or
7 judgments resulting from self-reported Title V deviations or
8 violations may be considered as compliance history components for
9 purposes of determining compliance history.

10 SECTION 4.05. Section 5.754, Water Code, is amended by
11 amending Subsections (a), (b), (c), (d), (e), (g), and (h) and
12 adding Subsection (e-1) to read as follows:

13 (a) The commission by rule shall establish a set of
14 standards for the classification of a person's compliance history
15 as a means of evaluating compliance history. The commission may
16 consider the person's classification when using compliance history
17 under Subsection (e).

18 (b) Rules adopted under Subsection (a):

19 (1) [~~this section~~] must, at a minimum, provide for
20 three classifications of compliance history in a manner adequate to
21 distinguish among:

22 (A) unsatisfactory [~~(1) poor~~] performers, or
23 regulated entities that in the commission's judgment perform below
24 minimal acceptable performance standards established by the
25 commission [~~average~~];

26 (B) satisfactory [~~(2) average~~] performers, or
27 regulated entities that generally comply with environmental

1 regulations; and

2 (C) [~~(3)~~] high performers, or regulated entities
3 that have an above-satisfactory [~~above-average~~] compliance record;

4 (2) may establish a category of unclassified
5 performers, or regulated entities for which the commission does not
6 have adequate compliance information about the site; and

7 (3) must take into account both positive and negative
8 factors related to the operation, size, and complexity of the site,
9 including whether the site is subject to Title V of the federal
10 Clean Air Act (42 U.S.C. Section 7661 et seq.).

11 (c) In classifying a person's compliance history, the
12 commission shall:

13 (1) determine whether a violation of an applicable
14 legal requirement is of major, moderate, or minor significance;

15 (2) establish criteria for classifying a repeat
16 violator, giving consideration to the size [~~number~~] and complexity
17 of the site at which the violations occurred, and limiting
18 consideration to violations of the same nature and the same
19 environmental media that occurred in the preceding five years
20 [~~facilities owned or operated by the person~~]; and

21 (3) consider:

22 (A) the significance of the violation and whether
23 the person is a repeat violator;

24 (B) the size and complexity of the site,
25 including whether the site is subject to Title V of the federal
26 Clean Air Act (42 U.S.C. Section 7661 et seq.); and

27 (C) the potential for a violation at the site

1 that is attributable to the nature and complexity of the site.

2 (d) The commission by rule may require [~~shall establish~~
3 ~~methods of assessing the compliance history of regulated entities~~
4 ~~for which it does not have adequate compliance information. The~~
5 ~~methods may include requiring~~] a compliance inspection to determine
6 an entity's eligibility for participation in a program that
7 requires a high level of compliance.

8 (e) The commission by rule shall provide for the use of
9 compliance history [~~classifications~~] in commission decisions
10 regarding:

11 (1) the issuance, renewal, amendment, modification,
12 denial, suspension, or revocation of a permit;

13 (2) enforcement;

14 (3) the use of announced inspections; and

15 (4) participation in innovative programs.

16 (e-1) The amount of the penalty enhancement or escalation
17 attributed to compliance history may not exceed 100 percent of the
18 base penalty for an individual violation as determined by the
19 commission's penalty policy.

20 (g) Rules adopted under Subsection (e) for the use of
21 compliance history shall provide for additional oversight of, and
22 review of applications regarding, facilities owned or operated by a
23 person whose compliance performance is classified as
24 unsatisfactory according to commission standards [~~in the lowest~~
25 ~~classification developed under this section~~].

26 (h) The commission by rule shall, at a minimum, prohibit a
27 person whose compliance history is classified as unsatisfactory

1 according to commission standards [~~in the lowest classification~~
2 ~~developed under this section~~] from[~~+~~

3 [~~(1) receiving an announced inspection; and~~

4 [~~(2)~~] obtaining or renewing a flexible permit under
5 the program administered by the commission under Chapter 382,
6 Health and Safety Code, or participating in the regulatory
7 flexibility program administered by the commission under Section
8 5.758.

9 SECTION 4.06. Section 5.755(b), Water Code, is amended to
10 read as follows:

11 (b) The strategically directed regulatory structure shall
12 offer incentives based on:

13 (1) a person's compliance history [~~classification~~];
14 and

15 (2) any voluntary measures undertaken by the person to
16 improve environmental quality.

17 SECTION 4.07. Section 5.756, Water Code, is amended by
18 adding Subsection (e) to read as follows:

19 (e) Before compliance performance information about a site
20 may be placed on the Internet under this subchapter, the
21 information must be evaluated through a quality assurance and
22 control procedure, including a 30-day period for the owner or
23 operator of the site to review and comment on the information.

24 SECTION 4.08. Sections 5.758(a), (b), (d), and (h), Water
25 Code, are amended to read as follows:

26 (a) The commission by order may exempt an applicant from a
27 requirement of a statute or commission rule regarding the control

1 or abatement of pollution if the applicant proposes to control or
2 abate pollution by an alternative method or by applying an
3 alternative standard that is:

4 (1) as [~~more~~] protective of the environment and the
5 public health as [~~than~~] the method or standard prescribed by the
6 statute or commission rule that would otherwise apply; and

7 (2) not inconsistent with federal law.

8 (b) The commission may not exempt an applicant under this
9 section unless the applicant can present to the commission
10 [~~documented~~] evidence that the alternative the applicant proposes
11 is as protective of the environment and the public health as the
12 method or standard prescribed by the statute or commission rule
13 that would otherwise apply [~~of benefits to environmental quality~~
14 ~~that will result from the project the applicant proposes~~].

15 (d) The commission's order must provide a [~~specific~~]
16 description of the alternative method or standard and condition the
17 exemption on compliance with the method or standard as the order
18 prescribes.

19 (h) In implementing the program of regulatory flexibility
20 authorized by this section, the commission shall:

21 (1) promote [~~market~~] the program to businesses in the
22 state through all available appropriate media;

23 (2) endorse alternative methods that will clearly
24 benefit the environment and impose the least onerous restrictions
25 on business;

26 (3) fix and enforce environmental standards, allowing
27 businesses flexibility in meeting the standards in a manner that

1 clearly enhances environmental outcomes; and

2 (4) work to achieve consistent and predictable results
3 for the regulated community and shorter waits for permit issuance.

4 SECTION 4.09. Subchapter A, Chapter 7, Water Code, is
5 amended by adding Section 7.006 to read as follows:

6 Sec. 7.006. ENFORCEMENT POLICIES. (a) The commission by
7 rule shall adopt a general enforcement policy that describes the
8 commission's approach to enforcement.

9 (b) The commission shall assess, update, and publicly adopt
10 specific enforcement policies regularly, including policies
11 regarding the calculation of penalties and deterrence to prevent
12 the economic benefit of noncompliance.

13 (c) The commission shall make the policies available to the
14 public, including by posting the policies on the commission's
15 Internet website.

16 SECTION 4.10. Sections 7.052(a) and (c), Water Code, are
17 amended to read as follows:

18 (a) The amount of the penalty for a violation of Chapter 37
19 of this code, Chapter 366, 371, or 372, Health and Safety Code, or
20 Chapter 1903, Occupations Code, may not exceed \$5,000 [~~\$2,500~~] a
21 day for each violation.

22 (c) The amount of the penalty for all other violations
23 within the jurisdiction of the commission to enforce may not exceed
24 \$25,000 [~~\$10,000~~] a day for each violation.

25 SECTION 4.11. Section 7.067, Water Code, is amended to read
26 as follows:

27 Sec. 7.067. SUPPLEMENTAL ENVIRONMENTAL PROJECTS. (a) The

1 commission may compromise, modify, or remit, with or without
2 conditions, an administrative penalty imposed under this
3 subchapter. In determining the appropriate amount of a penalty for
4 settlement of an administrative enforcement matter, the commission
5 may consider a respondent's willingness to contribute to
6 supplemental environmental projects that are approved by the
7 commission, giving preference to projects that benefit the
8 community in which the alleged violation occurred. The commission
9 may encourage the cleanup of contaminated property through the use
10 of supplemental environmental projects. The commission may approve
11 a supplemental environmental project with activities in territory
12 of the United Mexican States if the project substantially benefits
13 territory in this state in a manner described by Subsection (b).
14 Except as provided by Subsection (a-1), the [The] commission may
15 not approve a project that is necessary to bring a respondent into
16 compliance with environmental laws, that is necessary to remediate
17 environmental harm caused by the respondent's alleged violation, or
18 that the respondent has already agreed to perform under a
19 preexisting agreement with a governmental agency.

20 (a-1) The commission may approve a supplemental
21 environmental project that is necessary to bring a respondent into
22 compliance with environmental laws or that is necessary to
23 remediate environmental harm caused by the respondent's alleged
24 violation if the respondent is a local government.

25 (a-2) The commission shall develop a policy to prevent
26 regulated entities from systematically avoiding compliance through
27 the use of supplemental environmental projects under Subsection

1 (a-1), including a requirement for an assessment of:

2 (1) the respondent's financial ability to pay
3 administrative penalties;

4 (2) the ability of the respondent to remediate the
5 harm or come into compliance; and

6 (3) the need for corrective action.

7 (b) In this section:

8 (1) "Local government" means a school district,
9 county, municipality, junior college district, river authority,
10 water district or other special district, or other political
11 subdivision created under the constitution or a statute of this
12 state.

13 (2) "Supplemental [~~,"supplemental]~~ environmental
14 project" means a project that prevents pollution, reduces the
15 amount of pollutants reaching the environment, enhances the quality
16 of the environment, or contributes to public awareness of
17 environmental matters.

18 SECTION 4.12. Section 13.4151(a), Water Code, is amended to
19 read as follows:

20 (a) If a person, affiliated interest, or entity subject to
21 the jurisdiction of the commission violates this chapter or a rule
22 or order adopted under this chapter, the commission may assess a
23 penalty against that person, affiliated interest, or entity as
24 provided by this section. The penalty may be in an amount not to
25 exceed \$5,000 [~~\$500~~] a day. Each day a violation continues may be
26 considered a separate violation.

27 SECTION 4.13. Section 26.028(d), Water Code, is amended to

1 read as follows:

2 (d) Notwithstanding any other provision of this chapter,
3 the commission, at a regular meeting without the necessity of
4 holding a public hearing, may approve an application to renew or
5 amend a permit if:

6 (1) the applicant is not applying to:

7 (A) increase significantly the quantity of waste
8 authorized to be discharged; or

9 (B) change materially the pattern or place of
10 discharge;

11 (2) the activities to be authorized by the renewed or
12 amended permit will maintain or improve the quality of waste
13 authorized to be discharged;

14 (3) for NPDES permits, notice and the opportunity to
15 request a public meeting shall be given in compliance with NPDES
16 program requirements, and the commission shall consider and respond
17 to all timely received and significant public comment; and

18 (4) the commission determines that an applicant's
19 compliance history under the method for using ~~[evaluating]~~
20 compliance history developed by the commission under Section 5.754
21 raises no issues regarding the applicant's ability to comply with a
22 material term of its permit.

23 SECTION 4.14. Section 26.0281, Water Code, is amended to
24 read as follows:

25 Sec. 26.0281. CONSIDERATION OF COMPLIANCE HISTORY. In
26 considering the issuance, amendment, or renewal of a permit to
27 discharge effluent comprised primarily of sewage or municipal

1 waste, the commission shall consider the compliance history of the
2 applicant and its operator under the method for using [~~evaluating~~]
3 compliance history developed by the commission under Section 5.754.
4 In considering an applicant's compliance history under this
5 subsection, the commission shall consider as evidence of compliance
6 information regarding the applicant's implementation of an
7 environmental management system at the facility for which the
8 permit, permit amendment, or permit renewal is sought. In this
9 section, "environmental management system" has the meaning
10 assigned by Section 5.127.

11 SECTION 4.15. Section 26.040(h), Water Code, is amended to
12 read as follows:

13 (h) Notwithstanding other provisions of this chapter, the
14 commission, after hearing, shall deny or suspend a discharger's
15 authority to discharge under a general permit if the commission
16 determines that the discharger's compliance history is classified
17 as unsatisfactory according to commission standards [~~in the lowest~~
18 ~~classification~~] under Sections 5.753 and 5.754 and rules adopted
19 and procedures developed under those sections. A hearing under this
20 subsection is not subject to Chapter 2001, Government Code.

21 SECTION 4.16. Section 26.3467, Water Code, is amended by
22 adding Subsections (d) and (e) to read as follows:

23 (d) A person may not deliver any regulated substance into an
24 underground storage tank regulated under this chapter unless the
25 underground storage tank has been issued a valid, current
26 underground storage tank registration and certificate of
27 compliance under Section 26.346. The commission may impose an

1 administrative penalty against a person who violates this
2 subsection. The commission shall adopt rules as necessary to
3 enforce this subsection.

4 (e) It is an affirmative defense to the imposition of an
5 administrative penalty for a violation of Subsection (d) that the
6 person delivering a regulated substance into an underground storage
7 tank relied on:

8 (1) a valid paper delivery certificate presented by
9 the owner or operator of the underground storage tank or displayed
10 at the facility associated with the underground storage tank;

11 (2) a temporary delivery authorization presented by
12 the owner or operator of the underground storage tank or displayed
13 at the facility associated with the underground storage tank; or

14 (3) registration and self-certification information
15 for the underground storage tank obtained from the commission's
16 Internet website not more than 30 days before the date of delivery.

17 SECTION 4.17. Section 26.351, Water Code, is amended by
18 adding Subsections (c-1) and (c-2) to read as follows:

19 (c-1) The commission may undertake corrective action to
20 remove an underground or aboveground storage tank that:

21 (1) is not in compliance with the requirements of this
22 chapter;

23 (2) is out of service;

24 (3) presents a contamination risk; and

25 (4) is owned or operated by a person who is financially
26 unable to remove the tank.

27 (c-2) The commission shall adopt rules to implement

1 Subsection (c-1), including rules regarding:

2 (1) the determination of the financial ability of the
3 tank owner or operator to remove the tank; and

4 (2) the assessment of the potential risk of
5 contamination from the site.

6 SECTION 4.18. Section 26.3573(d), Water Code, is amended to
7 read as follows:

8 (d) The commission may use the money in the petroleum
9 storage tank remediation account to pay:

10 (1) necessary expenses associated with the
11 administration of the petroleum storage tank remediation account
12 and the groundwater protection cleanup program;

13 (2) expenses associated with investigation, cleanup,
14 or corrective action measures performed in response to a release or
15 threatened release from a petroleum storage tank, whether those
16 expenses are incurred by the commission or pursuant to a contract
17 between a contractor and an eligible owner or operator as
18 authorized by this subchapter;

19 (3) subject to the conditions of Subsection (f),
20 expenses associated with investigation, cleanup, or corrective
21 action measures performed in response to a release or threatened
22 release of hydraulic fluid or spent oil from hydraulic lift systems
23 or tanks located at a vehicle service and fueling facility and used
24 as part of the operations of that facility; ~~and~~

25 (4) expenses associated with assuring compliance with
26 the commission's applicable underground or aboveground storage
27 tank administrative and technical requirements, including

1 technical assistance and support, inspections, enforcement, and
2 the provision of matching funds for grants; and

3 (5) expenses associated with investigation, cleanup,
4 or corrective action measures performed under Section 26.351(c-1).

5 SECTION 4.19. Section 26.3574, Water Code, is amended by
6 amending Subsection (b) and adding Subsection (b-1) to read as
7 follows:

8 (b) A fee is imposed on the delivery of a petroleum product
9 on withdrawal from bulk of that product as provided by this
10 subsection. Each operator of a bulk facility on withdrawal from
11 bulk of a petroleum product shall collect from the person who orders
12 the withdrawal a fee in an amount determined as follows:

13 (1) not more than \$3.75 for each delivery into a cargo
14 tank having a capacity of less than 2,500 gallons [~~for the state~~
15 ~~fiscal year beginning September 1, 2007, through the state fiscal~~
16 ~~year ending August 31, 2011]~~;

17 (2) not more than \$7.50 for each delivery into a cargo
18 tank having a capacity of 2,500 gallons or more but less than 5,000
19 gallons [~~for the state fiscal year beginning September 1, 2007,~~
20 ~~through the state fiscal year ending August 31, 2011]~~;

21 (3) not more than \$11.75 for each delivery into a cargo
22 tank having a capacity of 5,000 gallons or more but less than 8,000
23 gallons [~~for the state fiscal year beginning September 1, 2007,~~
24 ~~through the state fiscal year ending August 31, 2011]~~;

25 (4) not more than \$15.00 for each delivery into a cargo
26 tank having a capacity of 8,000 gallons or more but less than 10,000
27 gallons [~~for the state fiscal year beginning September 1, 2007,~~

1 ~~through the state fiscal year ending August 31, 2011]; and~~

2 (5) not more than \$7.50 for each increment of 5,000
3 gallons or any part thereof delivered into a cargo tank having a
4 capacity of 10,000 gallons or more [~~for the state fiscal year~~
5 ~~beginning September 1, 2007, through the state fiscal year ending~~
6 ~~August 31, 2011]~~.

7 (b-1) The commission by rule shall set the amount of the fee
8 in Subsection (b) in an amount not to exceed the amount necessary to
9 cover the agency's costs of administering this subchapter, as
10 indicated by the amount appropriated by the legislature from the
11 petroleum storage tank remediation account for that purpose.

12 SECTION 4.20. Section 27.025(g), Water Code, is amended to
13 read as follows:

14 (g) Notwithstanding the other provisions of this chapter,
15 the commission, after hearing, shall deny or suspend authorization
16 for the use of an injection well under a general permit if the
17 commission determines that the owner's compliance history is
18 classified as unsatisfactory according to commission standards [~~in~~
19 ~~the lowest classification]~~ under Sections 5.753 and 5.754 and rules
20 adopted and procedures developed under those sections. A hearing
21 under this subsection is not subject to the requirements relating
22 to a contested case hearing under Chapter 2001, Government Code.

23 SECTION 4.21. Section 27.051(d), Water Code, is amended to
24 read as follows:

25 (d) The commission, in determining if the use or
26 installation of an injection well is in the public interest under
27 Subsection (a)(1), shall consider, but shall not be limited to the

1 consideration of:

2 (1) compliance history of the applicant and related
3 entities under the method for using ~~[evaluating]~~ compliance history
4 developed by the commission under Section 5.754 and in accordance
5 with the provisions of Subsection (e);

6 (2) whether there is a practical, economic, and
7 feasible alternative to an injection well reasonably available; and

8 (3) if the injection well will be used for the disposal
9 of hazardous waste, whether the applicant will maintain sufficient
10 public liability insurance for bodily injury and property damage to
11 third parties that is caused by sudden and non-sudden accidents or
12 will otherwise demonstrate financial responsibility in a manner
13 adopted by the commission in lieu of public liability insurance. A
14 liability insurance policy which satisfies the policy limits
15 required by the hazardous waste management regulations of the
16 commission for the applicant's proposed pre-injection facilities
17 shall be deemed "sufficient" under this subdivision if the policy:

18 (A) covers the injection well; and

19 (B) is issued by a company that is authorized to
20 do business and to write that kind of insurance in this state and is
21 solvent and not currently under supervision or in conservatorship
22 or receivership in this state or any other state.

23 SECTION 4.22. Section 32.101(c), Water Code, is amended to
24 read as follows:

25 (c) The commission, in determining if the use or
26 installation of a subsurface area drip dispersal system is in the
27 public interest under Subsection (a)(1), shall consider:

1 (1) compliance history of the applicant and related
2 entities under the method for using [~~evaluating~~] compliance history
3 developed by the commission under Section 5.754 and in accordance
4 with the provisions of Subsection (d) of this section;

5 (2) whether there is a practical, economic, and
6 feasible alternative to a subsurface area drip dispersal system
7 reasonably available; and

8 (3) any other factor the commission considers
9 relevant.

10 SECTION 4.23. Section 49.198(a), Water Code, is amended to
11 read as follows:

12 (a) A district may elect to file annual financial reports
13 with the executive director in lieu of the district's compliance
14 with Section 49.191 provided:

15 (1) the district had no bonds or other long-term (more
16 than one year) liabilities outstanding during the fiscal period;

17 (2) the district did not have gross receipts from
18 operations, loans, taxes, or contributions in excess of \$250,000
19 [~~\$100,000~~] during the fiscal period; and

20 (3) the district's cash and temporary investments were
21 not in excess of \$100,000 at any time during the fiscal period.

22 SECTION 4.24. Sections 361.089(a), (e), and (f), Health and
23 Safety Code, are amended to read as follows:

24 (a) The commission may, for good cause, deny or amend a
25 permit it issues or has authority to issue for reasons pertaining to
26 public health, air or water pollution, or land use, or for having a
27 compliance history that is classified as unsatisfactory according

1 to commission standards [~~in the lowest classification~~] under
2 Sections 5.753 and 5.754, Water Code, and rules adopted and
3 procedures developed under those sections.

4 (e) The commission may deny an original or renewal permit if
5 it is found, after notice and hearing, that:

6 (1) the applicant or permit holder has a compliance
7 history that is classified as unsatisfactory according to
8 commission standards [~~in the lowest classification~~] under Sections
9 5.753 and 5.754, Water Code, and rules adopted and procedures
10 developed under those sections;

11 (2) the permit holder or applicant made a false or
12 misleading statement in connection with an original or renewal
13 application, either in the formal application or in any other
14 written instrument relating to the application submitted to the
15 commission, its officers, or its employees;

16 (3) the permit holder or applicant is indebted to the
17 state for fees, payment of penalties, or taxes imposed by this title
18 or by a rule of the commission; or

19 (4) the permit holder or applicant is unable to ensure
20 that the management of the hazardous waste management facility
21 conforms or will conform to this title and the rules of the
22 commission.

23 (f) Before denying a permit under this section, the
24 commission must find:

25 (1) that the applicant or permit holder has a
26 compliance history that is classified as unsatisfactory according
27 to commission standards [~~in the lowest classification~~] under

1 Sections 5.753 and 5.754, Water Code, and rules adopted and
2 procedures developed under those sections; or

3 (2) that the permit holder or applicant is indebted to
4 the state for fees, payment of penalties, or taxes imposed by this
5 title or by a rule of the commission.

6 SECTION 4.25. Section 382.0518(c), Health and Safety Code,
7 is amended to read as follows:

8 (c) In considering the issuance, amendment, or renewal of a
9 permit, the commission may consider the applicant's compliance
10 history in accordance with the method for using ~~[evaluating]~~
11 compliance history developed by the commission under Section 5.754,
12 Water Code. In considering an applicant's compliance history under
13 this subsection, the commission shall consider as evidence of
14 compliance information regarding the applicant's implementation of
15 an environmental management system at the facility for which the
16 permit, permit amendment, or permit renewal is sought. In this
17 subsection, "environmental management system" has the meaning
18 assigned by Section 5.127, Water Code.

19 SECTION 4.26. Section 382.056(o), Health and Safety Code,
20 is amended to read as follows:

21 (o) Notwithstanding other provisions of this chapter, the
22 commission may hold a hearing on a permit amendment, modification,
23 or renewal if the commission determines that the application
24 involves a facility for which the applicant's compliance history is
25 classified as unsatisfactory according to commission standards ~~[in~~
26 ~~the lowest classification]~~ under Sections 5.753 and 5.754, Water
27 Code, and rules adopted and procedures developed under those

1 sections.

2 SECTION 4.27. Subchapter C, Chapter 382, Health and Safety
3 Code, is amended by adding Section 382.059 to read as follows:

4 Sec. 382.059. HEARING AND DECISION ON PERMIT AMENDMENT
5 APPLICATION OF CERTAIN ELECTRIC GENERATING FACILITIES. (a) This
6 section applies to a permit amendment application submitted solely
7 to allow an electric generating facility to reduce emissions and
8 comply with a requirement imposed by Section 112 of the federal
9 Clean Air Act (42 U.S.C. Section 7412) to use applicable maximum
10 achievable control technology. A permit amendment application
11 shall include a condition that the applicant is required to
12 complete the actions needed for compliance by the time allowed
13 under Section 112 of the federal Clean Air Act (42 U.S.C. Section
14 7412).

15 (b) The commission shall provide an opportunity for a public
16 hearing and the submission of public comment on the application in
17 the manner provided by Section 382.0561.

18 (c) Not later than the 45th day after the date the
19 application is received, the executive director shall issue a draft
20 permit.

21 (d) Not later than the 30th day after the date of issuance of
22 the draft permit under Subsection (c), parties may submit to the
23 commission any legitimate issues of material fact regarding whether
24 the choice of technology approved in the draft permit is the maximum
25 achievable control technology required under Section 112 of the
26 federal Clean Air Act (42 U.S.C. Section 7412) and may request a
27 contested case hearing before the commission. If a party requests a

1 contested case hearing under this subsection, the commission shall
2 conduct a contested case hearing and issue a final order issuing or
3 denying the permit amendment not later than the 120th day after the
4 date of issuance of the draft permit under Subsection (c).

5 (e) The commission shall send notice of a decision on an
6 application for a permit amendment under this section in the manner
7 provided by Section 382.0562.

8 (f) A person affected by a decision of the commission to
9 issue or deny a permit amendment may move for rehearing and is
10 entitled to judicial review under Section 382.032.

11 (g) This section expires on the sixth anniversary of the
12 date the administrator adopts standards for existing electric
13 generating facilities under Section 112 of the federal Clean Air
14 Act (42 U.S.C. Section 7412), unless a stay of the rules is granted.

15 (h) The commission shall adopt rules to implement this
16 section.

17 SECTION 4.28. Section 401.110(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) In making a determination whether to grant, deny, amend,
20 renew, revoke, suspend, or restrict a license or registration, the
21 commission may consider an applicant's or license holder's
22 technical competence, financial qualifications, and compliance
23 history under the method for using ~~evaluation of~~ compliance
24 history developed by the commission under Section 5.754, Water
25 Code.

26 SECTION 4.29. Section 401.112(a), Health and Safety Code,
27 is amended to read as follows:

1 (a) The commission, in making a licensing decision on a
2 specific license application to process or dispose of low-level
3 radioactive waste from other persons, shall consider:

4 (1) site suitability, geological, hydrological, and
5 meteorological factors, and natural hazards;

6 (2) compatibility with present uses of land near the
7 site;

8 (3) socioeconomic effects on surrounding communities
9 of operation of the licensed activity and of associated
10 transportation of low-level radioactive waste;

11 (4) the need for and alternatives to the proposed
12 activity, including an alternative siting analysis prepared by the
13 applicant;

14 (5) the applicant's qualifications, including:

15 (A) financial and technical qualifications and
16 compliance history under the method for using ~~[evaluation of]~~
17 compliance history developed by the commission under Section 5.754,
18 Water Code, for an application to the commission; and

19 (B) the demonstration of financial
20 qualifications under Section 401.108;

21 (6) background monitoring plans for the proposed site;

22 (7) suitability of facilities associated with the
23 proposed activities;

24 (8) chemical, radiological, and biological
25 characteristics of the low-level radioactive waste and waste
26 classification under Section 401.053;

27 (9) adequate insurance of the applicant to cover

1 potential injury to any property or person, including potential
2 injury from risks relating to transportation;

3 (10) training programs for the applicant's employees;

4 (11) a monitoring, record-keeping, and reporting
5 program;

6 (12) spill detection and cleanup plans for the
7 licensed site and related to associated transportation of low-level
8 radioactive waste;

9 (13) decommissioning and postclosure care plans;

10 (14) security plans;

11 (15) worker monitoring and protection plans;

12 (16) emergency plans; and

13 (17) a monitoring program for applicants that includes
14 prelicense and postlicense monitoring of background radioactive
15 and chemical characteristics of the soils, groundwater, and
16 vegetation.

17 SECTION 4.30. Not later than the 180th day after the
18 effective date of this Act, the Texas Commission on Environmental
19 Quality shall adopt rules to implement Section 382.059, Health and
20 Safety Code, as added by this article.

21 SECTION 4.31. (a) Not later than September 1, 2012, the
22 Texas Commission on Environmental Quality by rule shall establish
23 the method for evaluating compliance history as required by Section
24 5.753(a), Water Code, as amended by this article. Until the
25 commission adopts that method, the commission shall continue in
26 effect its current standard for evaluating compliance history.

27 (b) The changes in law made by Sections 7.052 and 13.4151,

1 Water Code, as amended by this article, apply only to a violation
2 that occurs on or after the effective date of this Act. For
3 purposes of this section, a violation occurs before the effective
4 date of this Act if any element of the violation occurs before that
5 date. A violation that occurs before the effective date of this Act
6 is covered by the law in effect on the date the violation occurred,
7 and the former law is continued in effect for that purpose.

8 (c) The change in law made by Section 26.3467(d), Water
9 Code, as added by this article, applies only to a delivery of a
10 regulated substance to an underground storage tank made on or after
11 the effective date of this Act.

12 (d) The fee applicable to a delivery in Section 26.3574(b),
13 Water Code, as that subsection existed immediately before the
14 effective date of this Act, remains in effect until the Texas
15 Commission on Environmental Quality adopts and implements a fee
16 applicable to that delivery under Section 26.3574(b-1), Water Code,
17 as added by this article.

18 SECTION 4.32. Section 49.198(a), Water Code, as amended by
19 this article, applies to a district that files its annual financial
20 report on or after the effective date of this Act. A district that
21 files its annual financial report before the effective date of this
22 Act is governed by the law in effect on the date the report is filed,
23 and that law is continued in effect for that purpose.

24 ARTICLE 5. WATER RIGHTS

25 SECTION 5.01. Section 11.002(12), Water Code, is amended to
26 read as follows:

27 (12) "Agriculture" means any of the following

1 activities:

2 (A) cultivating the soil to produce crops for
3 human food, animal feed, or planting seed or for the production of
4 fibers;

5 (B) the practice of floriculture, viticulture,
6 silviculture, and horticulture, including the cultivation of
7 plants in containers or nonsoil media, by a nursery grower;

8 (C) raising, feeding, or keeping animals for
9 breeding purposes or for the production of food or fiber, leather,
10 pelts, or other tangible products having a commercial value;

11 (D) raising or keeping equine animals;

12 (E) wildlife management; ~~and~~

13 (F) planting cover crops, including cover crops
14 cultivated for transplantation, or leaving land idle for the
15 purpose of participating in any governmental program or normal crop
16 or livestock rotation procedure; and

17 (G) aquaculture, as defined by Section 134.001,
18 Agriculture Code.

19 SECTION 5.02. Section 11.031, Water Code, is amended by
20 adding Subsections (d), (e), and (f) to read as follows:

21 (d) Each person who has a water right issued by the
22 commission or who impounds, diverts, or otherwise uses state water
23 shall maintain water use information required under Subsection (a)
24 on a monthly basis during the months a water rights holder uses
25 permitted water. The person shall make the information available
26 to the commission on the commission's request.

27 (e) Except as provided by Subsection (a), the commission may

1 request information maintained under Subsection (d) only during a
2 drought or other emergency shortage of water or in response to a
3 complaint.

4 (f) Subsection (e) does not affect the authority of a
5 watermaster to obtain water use information under other law.

6 SECTION 5.03. Subchapter B, Chapter 11, Water Code, is
7 amended by adding Section 11.053 to read as follows:

8 Sec. 11.053. EMERGENCY ORDER CONCERNING WATER RIGHTS. (a)
9 During a period of drought or other emergency shortage of water, as
10 defined by commission rule, the executive director by order may, in
11 accordance with the priority of water rights established by Section
12 11.027:

13 (1) temporarily suspend the right of any person who
14 holds a water right to use the water; and

15 (2) temporarily adjust the diversions of water by
16 water rights holders.

17 (b) The executive director in ordering a suspension or
18 adjustment under this section shall ensure that an action taken:

19 (1) maximizes the beneficial use of water;

20 (2) minimizes the impact on water rights holders;

21 (3) prevents the waste of water;

22 (4) takes into consideration the efforts of the
23 affected water rights holders to develop and implement the water
24 conservation plans and drought contingency plans required by this
25 chapter;

26 (5) to the greatest extent practicable, conforms to
27 the order of preferences established by Section 11.024; and

1 (6) does not require the release of water that, at the
2 time the order is issued, is lawfully stored in a reservoir under
3 water rights associated with that reservoir.

4 (c) The commission shall adopt rules to implement this
5 section, including rules:

6 (1) defining a drought or other emergency shortage of
7 water for purposes of this section; and

8 (2) specifying the:

9 (A) conditions under which the executive
10 director may issue an order under this section;

11 (B) terms of an order issued under this section,
12 including the maximum duration of a temporary suspension or
13 adjustment under this section; and

14 (C) procedures for notice of, an opportunity for
15 a hearing on, and the appeal to the commission of an order issued
16 under this section.

17 SECTION 5.04. Subchapter D, Chapter 11, Water Code, is
18 amended by adding Section 11.1273 to read as follows:

19 Sec. 11.1273. ADDITIONAL REQUIREMENT: REVIEW OF AMENDMENTS
20 TO CERTAIN WATER MANAGEMENT PLANS. (a) This section applies only
21 to a water management plan consisting of a reservoir operation plan
22 for the operation of two water supply reservoirs that was
23 originally required by a court order adjudicating the water rights
24 for those reservoirs.

25 (b) Not later than the first anniversary of the date the
26 executive director determines that an application to amend a water
27 management plan is administratively complete, the executive

1 director shall complete a technical review of the plan.

2 (c) If the executive director submits a written request for
3 additional information to the applicant, the applicant shall submit
4 the requested information to the executive director not later than
5 the 30th day after the date the applicant receives the request or
6 not later than the deadline agreed to by the executive director and
7 the applicant, if applicable. The review period required by
8 Subsection (b) for completing the technical review is tolled until
9 the date the executive director receives the requested information
10 from the applicant.

11 (d) The commission shall provide an opportunity for public
12 comment and a public hearing on the application, consistent with
13 the process for other water rights applications.

14 (e) If the commission receives a request for a hearing
15 before the period for submitting public comments and requesting a
16 hearing expires, the commission shall act on the request for a
17 hearing and, if the request is denied, act on the application not
18 later than the 60th day after the date the period expires. If a
19 request for a hearing is not submitted before the period expires,
20 the executive director may act on the application.

21 SECTION 5.05. Section 11.326, Water Code, is amended by
22 adding Subsections (g) and (h) to read as follows:

23 (g) For a water basin in which a watermaster is not
24 appointed, the executive director shall:

25 (1) evaluate the water basin at least once every five
26 years to determine whether a watermaster should be appointed; and

27 (2) report the findings and make recommendations to

1 the commission.

2 (h) The commission shall:

3 (1) determine the criteria or risk factors to be
4 considered in an evaluation under Subsection (g); and

5 (2) include the findings and recommendations under
6 Subsection (g) in the commission's biennial report to the
7 legislature.

8 ARTICLE 6. FUNDING

9 SECTION 6.01. Section 401.246(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) Compact waste disposal fees adopted by the commission
12 must be sufficient to:

13 (1) allow the compact waste facility license holder to
14 recover costs of operating and maintaining the compact waste
15 disposal facility and a reasonable profit on the operation of that
16 facility;

17 (2) provide an amount necessary to meet future costs
18 of decommissioning, closing, and postclosure maintenance and
19 surveillance of the compact waste disposal facility and the compact
20 waste disposal facility portion of the disposal facility site;

21 (3) provide an amount to fund local public projects
22 under Section 401.244;

23 (4) provide a reasonable rate of return on capital
24 investment in the facilities used for management or disposal of
25 compact waste at the compact waste disposal facility; ~~and~~

26 (5) provide an amount necessary to pay compact waste
27 disposal facility licensing fees, to pay compact waste disposal

1 facility fees set by rule or statute, and to provide security for
2 the compact waste disposal facility as required by the commission
3 under law and commission rules; and

4 (6) provide an amount necessary to support the
5 activities of the Texas Low-Level Radioactive Waste Disposal
6 Compact Commission.

7 SECTION 6.02. Subchapter F, Chapter 401, Health and Safety
8 Code, is amended by adding Section 401.251 to read as follows:

9 Sec. 401.251. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT
10 COMMISSION ACCOUNT. (a) The low-level radioactive waste disposal
11 compact commission account is an account in the general revenue
12 fund.

13 (b) The commission shall deposit in the account the portion
14 of the fee collected under Section 401.245 that is calculated to
15 support the activities of the Texas Low-Level Radioactive Waste
16 Disposal Compact Commission as required by Section 4.04(4), Texas
17 Low-Level Radioactive Waste Disposal Compact (Section 403.006 of
18 this code).

19 (c) Money in the account may be appropriated only to support
20 the operations of the Texas Low-Level Radioactive Waste Disposal
21 Compact Commission.

22 SECTION 6.03. Sections 5.701(n) and (p), Water Code, are
23 amended to read as follows:

24 (n)(1) Each provider of potable water or sewer utility
25 service shall collect a regulatory assessment from each retail
26 customer as follows:

27 (A) A public utility as defined in Section 13.002

1 ~~[of this code]~~ shall collect from each retail customer a regulatory
2 assessment equal to one percent of the charge for retail water or
3 sewer service.

4 (B) A water supply or sewer service corporation
5 as defined in Section 13.002 ~~[of this code]~~ shall collect from each
6 retail customer a regulatory assessment equal to one-half of one
7 percent of the charge for retail water or sewer service.

8 (C) A district as defined in Section 49.001 ~~[of~~
9 ~~this code]~~ that provides potable water or sewer utility service to
10 retail customers shall collect from each retail customer a
11 regulatory assessment equal to one-half of one percent of the
12 charge for retail water or sewer service.

13 (2) The regulatory assessment may be listed on the
14 customer's bill as a separate item and shall be collected in
15 addition to other charges for utility services.

16 (3) The ~~[commission shall use the]~~ assessments
17 collected under this subsection may be appropriated by a rider to
18 the General Appropriations Act to an agency with duties related to
19 water and sewer utility regulation or representation of residential
20 and small commercial consumers of water and sewer utility services
21 solely to pay costs and expenses incurred by the agency
22 ~~[commission]~~ in the regulation of districts, water supply or sewer
23 service corporations, and public utilities under Chapter 13~~[, Water~~
24 ~~Code]~~.

25 (4) The commission shall annually use a portion of the
26 assessments to provide on-site technical assistance and training to
27 public utilities, water supply or sewer service corporations, and

1 districts. The commission shall contract with others to provide
2 the services.

3 (5) The commission by rule may establish due dates,
4 collection procedures, and penalties for late payment related to
5 regulatory assessments under this subsection. The executive
6 director shall collect all assessments from the utility service
7 providers.

8 (6) The commission shall assess a penalty against a
9 municipality with a population of more than 1.5 million that does
10 not provide municipal water and sewer services in an annexed area in
11 accordance with Section 43.0565, Local Government Code. A penalty
12 assessed under this paragraph shall be not more than \$1,000 for each
13 day the services are not provided after March 1, 1998, for areas
14 annexed before January 1, 1993, or not provided within 4-1/2 years
15 after the effective date of the annexation for areas annexed on or
16 after January 1, 1993. A penalty collected under this paragraph
17 shall be deposited to the credit of the water resource management
18 account to be used to provide water and sewer service to residents
19 of the city.

20 (7) The regulatory assessment does not apply to water
21 that has not been treated for the purpose of human consumption.

22 (p) Notwithstanding any other law, fees collected for
23 deposit to the water resource management account under the
24 following statutes may be appropriated and used to protect water
25 resources in this state, including assessment of water quality,
26 reasonably related to the activities of any of the persons required
27 to pay a fee under:

1 CHAPTER 367. ON-SITE WASTEWATER TREATMENT RESEARCH [~~COUNCIL~~]

2 SECTION 8.02. Section 367.001, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 367.001. DEFINITIONS. In this chapter:

5 (1) "Commission" means the Texas Commission on
6 Environmental Quality [~~Natural Resource Conservation Commission~~].

7 (2) [~~"Council" means the On-site Wastewater Treatment~~
8 ~~Research Council.~~

9 [~~(3)~~] "On-site wastewater treatment system" means a
10 system of treatment devices or disposal facilities that:

11 (A) is used for the disposal of domestic sewage,
12 excluding liquid waste resulting from the processes used in
13 industrial and commercial establishments;

14 (B) is located on the site where the sewage is
15 produced; and

16 (C) produces not more than 5,000 gallons of waste
17 a day.

18 SECTION 8.03. Section 367.007, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 367.007. ADMINISTRATION. (a) [~~The council is not an~~
21 ~~advisory body to the commission. The commission, at the direction~~
22 ~~of the council, shall implement council decisions.~~

23 [~~(b) The council may enter into an interagency contract with~~
24 ~~the commission to provide staff and other administrative support as~~
25 ~~required to improve the quality of wastewater treatment and reduce~~
26 ~~the cost of providing wastewater treatment to consumers.~~

27 [~~(c)~~] The commission [~~council~~] may accept grants and

1 donations from other sources to supplement the fees collected under
2 Section 367.010. Grants and donations shall be deposited to the
3 credit of the water resource management [~~on-site wastewater~~
4 ~~treatment research~~] account and may be disbursed as the commission
5 [~~council~~] directs and in accordance with Section 367.008.

6 (b) [~~(d)~~] Administrative and facilities support costs are
7 payable from the water resources management [~~on-site wastewater~~
8 ~~treatment research~~] account.

9 [~~(e) The council may award grants and enter into contracts~~
10 ~~in its own name and on its own behalf.~~]

11 SECTION 8.04. Section 367.008, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 367.008. AWARD OF COMPETITIVE GRANTS. (a) The
14 commission [~~council~~] shall establish procedures for awarding
15 competitive grants and disbursing grant money.

16 (b) The commission [~~council~~] may award competitive grants
17 to:

18 (1) support applied research and demonstration
19 projects by accredited colleges and universities in this state, by
20 other governmental entities, or by acceptable public or private
21 research centers regarding on-site wastewater treatment technology
22 and systems applicable to this state that are directed toward
23 improving the quality of wastewater treatment and reducing the cost
24 of providing wastewater treatment to consumers; and

25 (2) enhance technology transfer regarding on-site
26 wastewater treatment by using educational courses, seminars,
27 symposia, publications, and other forms of information

1 dissemination.

2 (c) The commission shall seek the advice of relevant experts
3 when choosing research topics, awarding grants, and holding
4 educational conferences associated with activities under this
5 chapter. [~~The council may award grants or make other expenditures~~
6 ~~authorized under this chapter only after the comptroller certifies~~
7 ~~that the on-site wastewater treatment research account contains~~
8 ~~enough money to pay for those expenditures.~~]

9 SECTION 8.05. Section 367.009, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 367.009. APPROPRIATIONS. Money collected and
12 appropriated for the purposes of this chapter shall be disbursed as
13 the commission [~~council~~] directs and in accordance with Section
14 367.008.

15 SECTION 8.06. Section 367.010(d), Health and Safety Code,
16 is amended to read as follows:

17 (d) The fee proceeds shall be deposited to the credit of the
18 water resources management [~~on-site wastewater treatment research~~]
19 account.

20 SECTION 8.07. Sections 367.002, 367.003, 367.004, 367.005,
21 367.006, and 367.011, Health and Safety Code, are repealed.

22 SECTION 8.08. (a) On the effective date of this Act, the
23 Texas Commission on Environmental Quality shall assume the
24 administration of all grants of the On-site Wastewater Treatment
25 Research Council in existence on that date.

26 (b) The Texas Commission on Environmental Quality shall
27 assume all contracts held by the On-site Wastewater Treatment

1 Research Council on the effective date of this Act, including all
2 rights and obligations associated with the contracts.

3 ARTICLE 9. RATE NOTIFICATION

4 SECTION 9.01. Section 13.043(i), Water Code, is amended to
5 read as follows:

6 (i) The governing body of a municipally owned utility or a
7 political subdivision, within 60 [~~30~~] days after the date of a final
8 decision on a rate change, shall provide individual written notice
9 to each ratepayer eligible to appeal who resides outside the
10 boundaries of the municipality or the political subdivision. The
11 notice must include, at a minimum, the effective date of the new
12 rates, the new rates, and the location where additional information
13 on rates can be obtained. The governing body of a municipally owned
14 utility or a political subdivision may provide the notice
15 electronically if the utility or political subdivision has access
16 to a ratepayer's e-mail address.

17 SECTION 9.02. Section 13.187(b), Water Code, is amended to
18 read as follows:

19 (b) A copy of the statement of intent shall be mailed, sent
20 by e-mail, or delivered to the appropriate offices of each affected
21 municipality, and to any other affected persons as required by the
22 regulatory authority's rules.

23 ARTICLE 10. CONTESTED CASE HEARINGS

24 SECTION 10.01. Section 5.115(b), Water Code, is amended to
25 read as follows:

26 (b) At the time an application for a permit or license under
27 this code is filed with the executive director and is

1 administratively complete, the commission shall give notice of the
2 application to any person who may be affected by the granting of the
3 permit or license. A state agency that receives notice under this
4 subsection may submit comments to the commission in response to the
5 notice but may not contest the issuance of a permit or license by
6 the commission. For the purposes of this subsection, "state
7 agency" does not include a river authority.

8 SECTION 10.02. Sections 5.228(c) and (d), Water Code, are
9 amended to read as follows:

10 (c) The executive director shall [~~may~~] participate as a
11 party in contested case permit hearings before the commission or
12 the State Office of Administrative Hearings to:

13 (1) provide information [~~for the sole purpose of~~
14 ~~providing information~~] to complete the administrative record; and

15 (2) support the executive director's position
16 developed in the underlying proceeding. [~~The commission by rule~~
17 ~~shall specify the factors the executive director must consider in~~
18 ~~determining, case by case, whether to participate as a party in a~~
19 ~~contested case permit hearing. In developing the rules under this~~
20 ~~subsection the commission shall consider, among other factors:~~

21 [~~(1) the technical, legal, and financial capacity of~~
22 ~~the parties to the proceeding,~~

23 [~~(2) whether the parties to the proceeding have~~
24 ~~participated in a previous contested case hearing,~~

25 [~~(3) the complexity of the issues presented, and~~

26 [~~(4) the available resources of commission staff.]~~

27 (d) In a contested case hearing relating to a permit

1 application, the executive director or the executive director's
2 designated representative may not rehabilitate the testimony of a
3 witness unless the witness is a commission employee [~~testifying for~~
4 ~~the sole purpose of providing information to complete the~~
5 ~~administrative record~~].

6 SECTION 10.03. Subchapter H, Chapter 5, Water Code, is
7 amended by adding Section 5.315 to read as follows:

8 Sec. 5.315. DISCOVERY IN CASES USING PREFILED WRITTEN
9 TESTIMONY. In a contested case hearing delegated by the commission
10 to the State Office of Administrative Hearings that uses prefiled
11 written testimony, all discovery must be completed before the
12 deadline for the submission of that testimony, except for water and
13 sewer ratemaking proceedings.

14 SECTION 10.04. Section 5.228(e), Water Code, is repealed.

15 SECTION 10.05. (a) Section 5.115(b), Water Code, as
16 amended by this article, applies only to an application for the
17 issuance, amendment, extension, or renewal of a permit or license
18 that is received by the Texas Commission on Environmental Quality
19 on or after the effective date of this Act. An application that is
20 received before that date is governed by the law in effect at the
21 time the application is received, and the former law is continued in
22 effect for that purpose.

23 (b) The changes in law made by this article apply to a
24 proceeding before the State Office of Administrative Hearings that
25 is pending or filed on or after September 1, 2011.

26 ARTICLE 11. EFFECTIVE DATE

27 SECTION 11.01. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 2694 was passed by the House on April 20, 2011, by the following vote: Yeas 109, Nays 40, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2694 on May 17, 2011, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2694 on May 28, 2011, by the following vote: Yeas 147, Nays 0, 1 present, not voting.

Chief Clerk of the House

H.B. No. 2694

I certify that H.B. No. 2694 was passed by the Senate, with amendments, on May 12, 2011, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2694 on May 28, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§299.1, 299.2, and 299.7.

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§299.1, 299.2, and 299.7, without changes to the proposed text as published in the April 15, 2022, issue of the *Texas Register* (47 TexReg 1970) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The purpose of this rulemaking adoption is to amend existing rules to add the language of Senate Bill (SB) 600, 87th Texas Legislature (2021), Author: Perry, requiring river authorities to submit information on their dams. There are eight river authorities that meet the requirements of SB 600, and there are 79 dams owned by these river authorities.

Language requiring dam exemptions from House Bill (HB) 2694, 82nd Texas Legislature (2011), Author: Smith, and HB 677, 83rd Texas Legislature (2013), Author: Geren, has been added. The recent audit report findings on the Dam Safety Program by Texas State Auditor's Office, issued July 2020, recommended that the language of these two bills be included in the rules.

Revisions were made to clarify language in the rules.

Section by Section Discussion

Subchapter A: General Provisions

The commission adopts amended §299.1 (Applicability) by clarifying language to better define a dam. There has been confusion on what constitutes a dam.

The commission adopts the figure located in §299.1(a)(2) to clarify the applicability of the rules to a dam.

The commission adopts §299.1(c)(6) to include language from HB 677 for exemption of dams if the dam meets all five of the criteria listed in the adopted rule: (1) is located on private property; (2) at maximum capacity impounds less than 500 acre-feet; (3) has a hazard classification of low or significant; (4) is located in a county with a population of less than 350,000; and (5) is not located inside the corporate limits of a municipality.

The commission adopts revised language for the definitions of main highways (§299.2(33)), minor highways (§299.2(38)), and secondary highways (§299.2(59)) to better define each for use in hazard classifications.

The commission adopts the revised definition of “removal” in §299.2(54) to clarify and be consistent with the definition in the *Dam Removal Guidelines for Dams in Texas*.

The commission adopts the revised language for the Inventory of Dams in §299.7 to better define what is in the inventory and to remove language for items that are not included.

The commission adopts §299.7(b)(1) and (2), after reformatting, and the addition of “a” to §299.7, to include language from SB 600 that each river authority, designated in Section 325.025(b), Government Code, shall provide to the executive director information regarding the operation and maintenance of dams under the control of that river authority. The following information is to be provided for each dam: (1) location of the dam; (2) under whose jurisdiction the dam operates; (3) required maintenance schedule for the dam; (4) costs of the operation and maintenance of the dam; and (5) method of finance for operations and maintenance costs of the dam.

The commission adopts §299.7(b)(3) to require the river authorities to submit the information annually.

The commission adopts §299.7(b)(4) to require the TCEQ to create and maintain an internet website to contain the information, subject to federal and state confidentiality laws.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225, applies to a “Major environmental rule” which is defined in Texas Government Code, §2001.0225(g)(3), as a rule with a specific intent “to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.”

First, the adopted rulemaking does not meet the statutory definition of a “Major environmental rule” because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The purpose of this rulemaking is to amend existing rules to add the language of Senate Bill (SB) 600, Perry, 87th Texas Legislature (2021), requiring river authorities to submit information on their dams. There are eight river authorities that meet the requirements of SB 600, and there are 79 dams owned by these river authorities.

Second, the adopted rulemaking does not meet the statutory definition of a “Major environmental rule” because the adopted rules will not adversely affect in a material

way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a “Major environmental rule” listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: “1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the regulation of dams ; 2) does not exceed any express requirements of state law related to the regulation of dams; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program;

and 4) is not adopted solely under the general powers of the agency. Since this adopted rulemaking does not meet the statutory definition of a “Major environmental rule” nor does it meet any of the four applicability requirements for a “Major environmental rule,” this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated this rulemaking and performed an analysis of whether the adopted rules will constitute a taking. Texas Government Code, §2007.002(5), defines a taking as either: 1) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Sections 17 or 19, Article I, Texas Constitution; or 2) a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the

affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission determined that these adopted rules will not constitute a taking as that term is defined under Texas Government Code, §2007.002(5). Specifically, the adopted rules will not affect any landowner's rights in private real property, and there are no burdens that will be imposed on private real property by the adopted rules; the adopted rules are solely procedural and do not impact real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the Coastal Management Program.

Public Comment

The commission offered a public hearing on May 17, 2022. The comment period closed on May 17, 2022. The commission received no comments.

SUBCHAPTER A: GENERAL PROVISIONS

§§299.1 - 299.7

Statutory Authority

These amendments are adopted under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over various statutory programs, such as dam safety; §5.103 and §5.105, which establish the commission's general authority to adopt rules; §12.052, which establishes the commission's authority to promulgate rules for the safe construction, maintenance, repair, and removal of dams located in this state; and §12.053 which establishes rules regarding the inventory of dams operated by river authorities.

These adopted amendments implement Senate Bill 600, 87th Texas Legislature (2021), Author: Perry; House Bill (HB) 2694, 82nd Texas Legislature (2011), Author: Smith; and HB 677, 83rd Texas Legislature (2013), Author: Geren.

§299.1. Applicability.

(a) This chapter applies to design, review, and approval of construction plans and specifications; and construction, operation and maintenance, inspection, repair, removal, emergency management, site security, and enforcement of dams that:

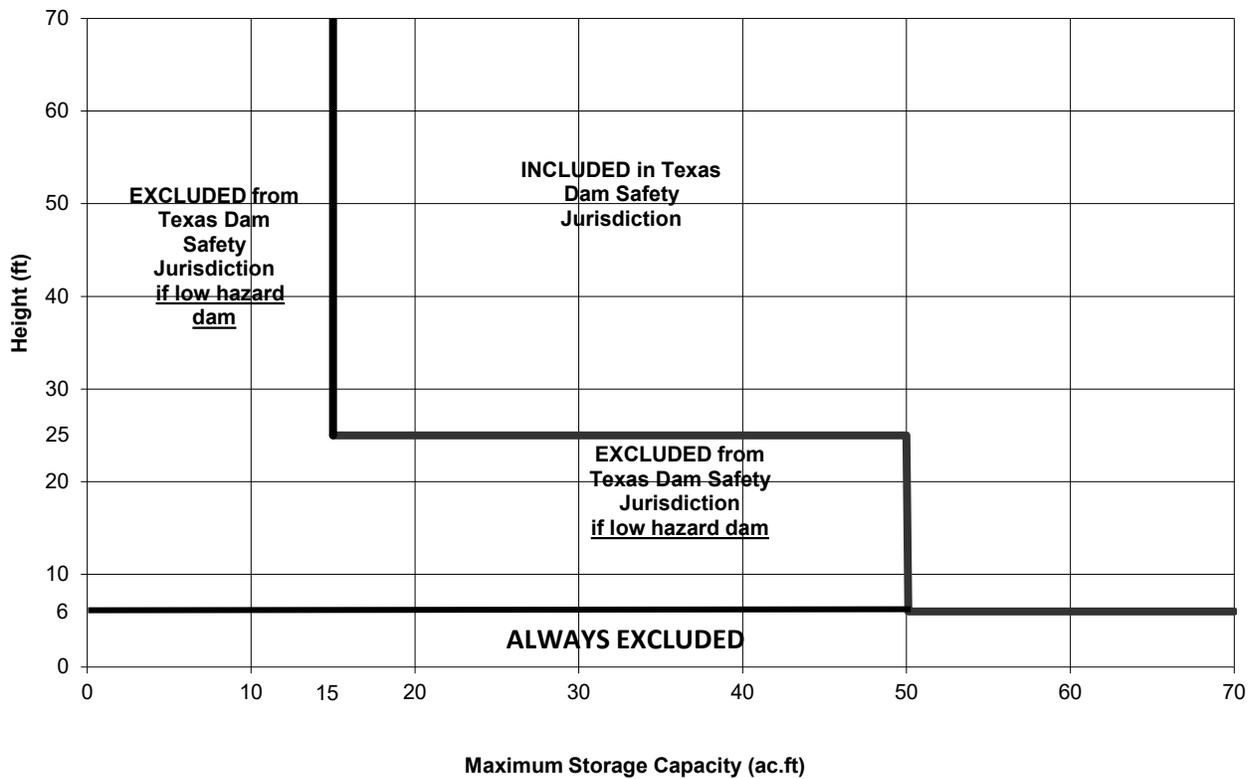
(1) have a height greater than or equal to 25 feet and a maximum storage capacity greater than or equal to 15 acre-feet, as described in paragraph (2) of this subsection;

(2) have a height greater than six feet and a maximum storage capacity greater than or equal to 50 acre-feet;

Figure: 30 TAC §299.1(a)(2)

[Figure: 30 TAC §299.1(a)(2)]

Figure 1. Minimum Dam Heights



(3) are a high- or significant-hazard dam as defined in §299.14 of this title (relating to Hazard Classification Criteria), if over 6 feet high, regardless of [height or] maximum storage capacity; or

(4) are used as a pumped storage or terminal storage facility.

(b) This chapter provides the requirements for dams, but does not relieve the owner from meeting the requirements in Texas Water Code (TWC), Chapter 11, and Chapters 213, 295, and 297 of this title (relating to Edwards Aquifer; Water Rights, Procedural; and Water Rights, Substantive; respectively). All applicable requirements in those chapters will still apply.

(c) This chapter does not apply to:

(1) dams designed by, constructed under the supervision of, and owned and maintained by federal agencies such as the Corps of Engineers, International Boundary and Water Commission, and the Bureau of Reclamation;

(2) embankments constructed for roads, highways, and railroads, including low-water crossings, that may temporarily impound floodwater, unless designed to also function as a detention dam;

(3) dikes or levees designed to prevent inundation by floodwater;

(4) off-channel impoundments authorized by the commission under TWC, Chapter 26; [and]

(5) above-ground water storage tanks (steel, concrete, or plastic); and

(6) exempt dams authorized under TWC, Chapter 12. A dam is exempt from this chapter if it meets all of the following:

(A) is located on private property;

(B) has a maximum capacity of less than 500 acre-feet, the capacity at the top of the dam as defined in 30 TAC §299.2(36);

(C) has a hazard classification of low or significant as defined in 30 TAC §299.14;

(D) is located in a county with a population of less than 350,000 based on the most current U. S. Census numbers; and

(E) is not located inside the corporate limits of a municipality, as based on the most current municipal information.

(d) All dams must meet the requirements in this chapter, including dams that do not require a water right permit, other dams that are exempt from the requirements in Subchapter C of this chapter (relating to Construction Requirements), and dams that are granted an exception as defined in §299.5 of this title (relating to Exception).

§299.2. Definitions.

The following words and terms in this section are in addition to the definitions in §3.2 of this title (relating to Definitions). The words and terms in this section, when used in this chapter, have the following meanings.

(1) Abandon--The owner no longer maintaining a dam for a period of ten years, or refusing to maintain the dam.

(2) Accepted engineering practices--The application of design and analysis methods that are commonly used by professional engineers in their field of expertise and are well documented in published design manuals, codes of practice, text books, and engineering journals.

(3) Alteration--Any change to a dam or appurtenant structures that affects the integrity, safety, and operation of the dam, including, but not limited to:

(A) changing the height of a dam;

(B) increasing the normal pool or principal spillway elevation, or changing the hydraulic capability of the principal spillway; or

(C) changing the original elevation, physical dimensions, or hydraulic capability of an emergency spillway.

(4) Appurtenant structures--The outlet works and controls, spillways and controls, gates, valves, siphons, access structures, bridges, berms, drains, hydroelectric facilities, instrumentation, and other structures related to the operation of a dam.

(5) Breach--An excavation or opening, either controlled or a result of a failure of the dam, through a dam or spillway that is capable of completely draining the reservoir down to the approximate original topography so the dam will no longer impound water, or partially draining the reservoir to lower impounding capacity.

(6) Breach analysis--The analysis of potential dam failure scenarios, including overtopping and piping (magnitude, duration, and location), using accepted engineering practices, to evaluate downstream hazard potential or to develop inundation maps.

(7) Breach inundation area--An area that would be flooded as a result of a dam failure.

(8) Closure of dam--The commencement of placing material within the closure section of the dam.

(9) Closure section--The section of the dam left open during construction of a proposed dam in order to pass floodwaters through the dam without endangering the dam.

(10) Commence construction--An actual, visible activity beyond planning or land acquisition that initiates the beginning of the construction of a dam in the manner specified in the approved construction plans and specifications for that dam. The action must be performed in good faith with the intent to continue with the construction through completion.

(11) Conceptual design--A design that presents a location and proposed plan of the dam and appurtenant structures and elevations of all pertinent features of the dam.

(12) Construction--Building a proposed dam and appurtenant structures capable of storing water.

(13) Construction change order--A document recommended by the owner's professional engineer and signed by the owner's contractor and the owner that

authorizes a significant addition, deletion, or revision of the approved construction plans and specifications that has a material impact on the safety and integrity of the dam.

(14) Dam--Any barrier or barriers, with any appurtenant structures, constructed for the purpose of either permanently or temporarily impounding water.

(15) Dam failure--breach and uncontrolled release of the reservoir.

(16) Deficient dam--A dam that fails to meet the requirements of this chapter and poses a significant threat to human life or property.

(17) Deliberate impoundment--The intentional impoundment of water in the reservoir, including:

(A) closing the lowest planned outlet or spillway;

(B) blocking the diversion works that are used during construction to divert water around the construction area; and

(C) beginning the closure of the dam.

(18) Design flood--The flood used in the design and evaluation of a dam and appurtenant structures, particularly for determining the size of spillways, outlet works, and the effective crest of the dam.

(19) Detention dam--A dam that has an impoundment that is normally dry and has an ungated outlet structure that is designed to completely drain the water impounded during a flood within five days.

(20) Drawdown--The change in surface elevation of a reservoir due to a withdrawal of water from the reservoir.

(21) Effective crest of the dam--The elevation of the lowest point on the crest (top) of the dam, excluding spillways.

(22) Emergency action plan--A written document prepared by the owner or the owner's professional engineer describing a detailed plan to prevent or lessen the effects of a failure of the dam or appurtenant structures.

(23) Emergency repairs--Any repairs, considered to be temporary in nature, necessary to preserve the integrity of the dam and prevent a possible failure of the dam.

(24) Emergency spillway--An auxiliary spillway designed to pass a large, but infrequent, volume of flood flow, with a crest elevation higher than the principal spillway or normal operating level.

(25) Engineering inspection--Inspection performed by a professional engineer, or under the supervision of a professional engineer, to evaluate the condition, safety, and integrity of the dam and appurtenant structures to determine if the dam and appurtenant structures meet applicable rules and accepted engineering practices, including a field inspection and review of records for design, construction, and performance.

(26) Enlargement--Any change in, or addition to, an existing dam or reservoir that raises, or may raise, the normal storage capacity of the reservoir impounded by the dam.

(27) Existing dam--Any dam under construction or completed as of the effective date of these rules.

(28) Fetch--The straight-line distance across a reservoir subject to wind forces.

(29) Hazard classification--A measure of the potential for loss of life, property damage, or economic impact in the area downstream of the dam in the event of a failure or malfunction of the dam or appurtenant structures. The hazard classification does not represent the physical condition of the dam.

(30) Height of dam--The difference in elevation between the natural bed of the watercourse or the lowest point on the downstream toe of the dam, whichever is lower, and the effective crest of the dam.

(31) Inundation map--A map delineating the area that would be flooded by a particular flood event, or a dam failure.

(32) Loss of life--Human fatalities that would result from a failure of the dam, without considering the mitigation of loss of life that could occur with evacuation or other emergency actions.

(33) Main highways--Roads classified as an [a rural] arterial system by the Texas Department of Transportation, including interstate highways, United States highways, and state highways, listed as either interstate or principal or minor arterial.

(34) Maintenance--Those tasks that are generally recurring and are necessary to keep the dam and appurtenant structures in a sound condition, free from

defect or damage that could hinder the dam's functions as designed, including adjacent areas that also could affect the function and operation of the dam.

(35) Maintenance inspection--Visual inspection of the dam and appurtenant structures by the owner or owner's representative to detect apparent signs of deterioration, other deficiencies, or any other areas of concern.

(36) Maximum storage capacity--The volume, in acre-feet, of the impoundment created by the dam at the effective crest of the dam. For purposes of calculating maximum storage capacity for the Inventory of Dams as described in §299.7 of this title (relating to Inventory of Dams), only water that can be stored above natural ground level (not in excavations in the reservoir) or that could be released by a failure of the dam is considered in assessing the storage volume. The maximum storage capacity may decrease over time due to sedimentation or increase if the reservoir is dredged.

(37) Minimum freeboard--The difference in elevation between the effective crest of the dam and the maximum water surface elevation resulting from routing the design flood appropriate for the dam.

(38) Minor highways--Roads not classified as a main or secondary highway as defined in this subsection [rural collector road or rural local road by the

Texas Department of Transportation], including county roads and Farm-to-Market roads not used to provide service to schools.

(39) Modification--Any structural alteration of a dam, the spillways, the outlet works, or other appurtenant structures that could influence or affect the integrity, safety, and operation of the dam.

(40) Normal storage capacity--The volume, in acre-feet, of the impoundment created by the dam at the lowest uncontrolled spillway crest elevation, or at the maximum elevation of the reservoir at the normal (non-flooding) operating level.

(41) NAD83 conus datum--The North American Datum of 1983 is a reference system used to obtain the spherical coordinates of a point on the earth's surface. The standard North American Datum of 1983, or any future updates, must be used for all latitude and longitude measurements.

(42) NAVD88 datum--The North American Vertical Datum of 1988 is a reference system used to obtain vertical measurements on the earth's surface. The North American Vertical Datum of 1988 must be used for all vertical measurements recorded with a global positioning system receiver.

(43) Outlet--A conduit or pipe controlled by a gate or valve, or a siphon, that is used to release impounded water from the reservoir.

(44) Owner--Any person who can be one or more of the following:

(A) holds legal possession or ownership of an interest in a dam;

(B) is the fee simple owner of the surface estate of the tract of land on which the dam is located if actual ownership of the dam is uncertain, unknown, or in dispute unless the person can demonstrate by appropriate documentation, including a deed reservation, invoice, bill of sale, or by other legally acceptable means that the dam is owned by another person or persons;

(C) is a sponsoring local organization that has an agreement with the Natural Resources Conservation Service for a dam constructed under the authorization of the Flood Control Act of 1944 (as amended), Public Law 78-534, the Watershed Protection and Flood Prevention Act, 1954 (as amended), Public Law 83-566, the pilot watershed program under the Flood Prevention of the Department of Agriculture Appropriation Act of 1954, Public Law 156-67, or Subtitle H of Title XV of the Agriculture and Flood Act of 1981, the Resource Conservation and Development Program; or

(D) has a lease, easement, or right-of-way to construct, operate, or maintain a dam.

(45) Piping--The progressive removal of soil particles from a dam by percolating water, leading to development of channels or flow paths.

(46) Principal spillway--Also commonly referred to as the service spillway, the [The] primary or initial spillway engaged during a rainfall runoff event that is designed to pass normal flows.

(47) Probable maximum flood (PMF)--The flood magnitude that may be expected from the most critical combination of meteorologic and hydrologic conditions that are reasonably possible for a given watershed.

(48) Probable maximum precipitation (PMP)--The theoretically greatest depth of precipitation for a given duration that is physically possible over a given size storm area at a particular geographical location at a certain time of the year.

(49) Professional engineer--An individual licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the state of Texas, with experience in the investigation, design, construction, repair, and maintenance of dams.

(50) Proposed dam--Any dam not yet under construction.

(51) Pumped storage dam--A rectangular or circular embankment used to store water pumped from another source.

(52) Reconstruction--Removal and replacement of an existing dam or appurtenant structures.

(53) Rehabilitation--The completion of all work necessary to extend the service life of a dam and meet the safety and performance standards of this chapter.

(54) Removal--The complete elimination of a dam, the appurtenant structures, and the reservoir to its natural channel by removing enough of the dam to the extent that no water can be either permanently impounded, nor temporarily detained, by the dam (no significant differential between the upstream and downstream water surface elevations) during normal conditions, as well as during the design flood of the dam [or reservoir and the approximate original topography of the dam and reservoir area is restored].

(55) Repairs--Any work done on a dam that may affect the integrity, safety, and operation of the dam, including, but not limited to:

(A) excavation into the embankment fill or foundation of a dam; or

(B) removal or replacement of major structural components of a dam or appurtenant structures.

(56) Reservoir--A body of water impounded by a dam.

(57) Safe manner--Operating and maintaining a dam in sound condition, free from defect or damage that could hinder the dam's functions as designed.

(58) Seal--To affix a professional engineer's seal to each sheet of construction plans or to an engineering report or required document.

(59) Secondary highways--Roads classified as a [rural] major or minor collector road by the Texas Department of Transportation, including Farm-to-Market roads used to provide service to schools.

(60) Secure location--A building that is locked and accessible to the owner and owner's representative.

(61) Spillway--An appurtenant structure that conducts outflow from a reservoir.

(62) Sponsoring local organization--any political subdivision of the state, or other entity, with the authority to carry out, maintain, or operate work of improvement installed with the assistance of the federal government.

(63) Stability analysis--The analytical procedure for determining the most critical factor of safety for a slope.

(64) Substantially complete--A dam under construction that is complete except for minor correction of items identified in the final construction inspection and that can be operated in a safe manner to the dam's full functional capability.

§299.7. Inventory of Dams.

(a) The executive director shall maintain an inventory of dams that includes information on:

(1) ownership;

(2) physical dimensions of the dam;

(3) hazard classification;

(4) normal and maximum storage capacity;

(5) hydraulic data [use of reservoir, including the water rights permit, if applicable];

(6) inspection date;

(7) location; [and]

(8) condition of the dam; [.]

(9) emergency action plan status; and

(10) design dates.

(b) Inventory of dams operated by river authorities.

(1) This section applies only to a river authority described by Section 325.025(b), Government Code.

(2) Each river authority shall provide to the executive director information regarding the operation and maintenance of dams under the control of that river authority. The following information is to be provided for each dam:

(A) the location of the dam;

(B) under whose jurisdiction the dam operates;

(C) a required maintenance schedule for the dam;

(D) costs of the operation and maintenance of the dam; and

(E) the method of finance for the operation and maintenance costs of the dam.

(3) A river authority shall submit the information required by paragraph (2) of this subsection to the executive director each year and in the event of a significant change in the information.

(4) Subject to federal and state confidentiality laws, the executive director shall create and maintain an Internet website that contains the information collected under this section.

Austin Kinghorn
General Counsel
Office of the Attorney General
Earliest possible date of adoption: May 15, 2022
For further information, please call: (512) 936-1200

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SUBCHAPTER F. ADDRESS DISCLOSURE EXCEPTIONS

1 TAC §64.50

STATUTORY AUTHORITY. New chapter 64, Subchapter F is proposed pursuant to the Texas Code of Criminal Procedure article 58.052. Article 58.052 directs the Attorney General to adopt rules to administer an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§64.50. Exceptions.

(a) Pursuant to Texas Code of Criminal Procedure Article 58.061, the OAG will disclose a participant's true residential, business, or school address if requested by:

- (1) a law enforcement agency;
- (2) the Department of Family and Protective Services for the purpose of conducting a child protective services investigation under Texas Family Code Chapter 261; or
- (3) the Department of State Health Services or a local health authority for the purpose of making a notification of a communicable disease described under Texas Code of Criminal Procedure Article 21.31, Texas Family Code §54.033, or Texas Health and Safety Code §81.051.

(b) Pursuant to Texas Code of Criminal Procedure Article 58.104, the OAG will disclose a participant's true residential, business, or school address if required by a court order.

(c) A request for disclosure of a participant's true residential, business, or school address from an agency pursuant to this section must be submitted to the Address Confidentiality Program via mail, fax, or email, along with any supporting documentation, such as the following information:

- (1) the name of the agency requesting the disclosure and the statutory exception upon which the agency bases its request;
 - (2) the name and title of the individual authorized to make the request on behalf of the agency;
 - (3) a signed statement by the agency representative affirming that the information submitted is correct; and
 - (4) an original certified copy of the court order, if applicable.
- (d) The OAG may require additional information as deemed necessary.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2022.
TRD-202201158

Austin Kinghorn
General Counsel
Office of the Attorney General
Earliest possible date of adoption: May 15, 2022
For further information, please call: (512) 936-1200

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SUBCHAPTER G. ADMINISTRATIVE REMEDIES

1 TAC §64.60

STATUTORY AUTHORITY. New chapter 64, Subchapter G is proposed pursuant to the Texas Code of Criminal Procedure article 58.052. Article 58.052 directs the Attorney General to adopt rules to administer an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§64.60. Request for Reconsideration.

(a) An ACP applicant or participant has 30 days from the date of the OAG's denial or cancellation to seek reconsideration. The OAG may require additional information as deemed necessary. If the applicant or participant fails to seek reconsideration within the 30-day time period, the decision of the OAG becomes final.

(b) The OAG will issue a written determination on the request for reconsideration based on the evidence submitted.

(c) The OAG's determination on the request for reconsideration is final.

(d) If an application for the ACP is denied or participation in the ACP is cancelled, the applicant or participant may reapply in the event of a new qualifying incident.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 299. DAMS AND RESERVOIRS

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§299.1, 299.2, 299.7

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§299.1, 299.2, and 299.7.

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rulemaking is to amend existing rules to add the language of Senate Bill (SB) 600, 87th Texas Legislature (2021), Author: Perry, requiring river authorities to submit information on their dams. There are eight river authorities that meet the requirements of SB 600, and there are 79 dams owned by these river authorities.

Language requiring dam exemptions from House Bill (HB) 2694, 82nd Texas Legislature (2011), Author: Smith, and HB 677, 83rd Texas Legislature (2013), Author: Geren, has been added. The recent audit report findings on the Dam Safety Program by Texas State Auditor's Office, issued July 2020, recommended that the language of these two bills be included in the rules.

Revisions will also be made to clarify language in the rules.

Section by Section Discussion

Subchapter A: General Provisions

The commission proposes to amend §299.1 (Applicability) by clarifying language to better define a dam. There has been confusion on what constitutes a dam.

The commission proposes to amend the figure located in §299.1(a)(2) to clarify the applicability of the rules to a dam.

The commission proposes to add §299.1(c)(6) to include language from HB 677 for exemption of dams if the dam meets all five of the criteria listed in the proposed rule: (1) is located on private property; (2) at maximum capacity impounds less than 500 acre-feet; (3) has a hazard classification of low or significant; (4) is located in a county with a population of less than 350,000; and (5) is not located inside the corporate limits of a municipality.

The commission proposes to revise the language for the definitions of main highways (§299.2(33)), minor highways (§299.2(38)), and secondary highways (§299.2(59)) to better define each for use in hazard classifications.

The commission proposes to revise the definition of "removal" in §299.2(54) to clarify and be consistent with the definition in the *Dam Removal Guidelines for Dams in Texas*.

The commission proposes to revise the language for the Inventory of Dams in §299.7 to better define what is in the inventory and to remove language for items that are not included.

The commission proposes to add §299.7(b)(1) and (2), after reformatting, and add "a" to §299.7, to include language from SB 600 that each river authority, designated in Section 325.025(b), Government Code, shall provide to the executive director information regarding the operation and maintenance of dams under the control of that river authority. The following information is to be provided for each dam: (1) location of the dam; (2) under whose jurisdiction the dam operates; (3) required maintenance schedule for the dam; (4) costs of the operation and maintenance of the dam; and (5) method of finance for operations and maintenance costs of the dam.

The commission proposes to add §299.7(b)(3) to require the river authorities to submit the information annually.

The commission proposes to add §299.7(b)(4) to require the TCEQ to create and maintain an internet website to contain the information, subject to federal and state confidentiality laws.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with state law and improved public access to information about certain dams under the control of river authorities. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, or require an increase or decrease in fees paid to the agency. The proposed rulemaking does alter an existing regulation requiring additional information about certain dams under the control of river authorities. In compliance with state law, the regulations decrease the number of individuals subject to its authority by exempting certain dams from its applicability. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which

is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The purpose of this rulemaking is to amend existing rules to add the language of Senate Bill (SB) 600, Perry, 87th Texas Legislature (2021), requiring river authorities to submit information on their dams. There are eight river authorities that meet the requirements of SB 600, and there are 79 dams owned by these river authorities.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: "1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the regulation of dams; 2) does not exceed any express requirements of state law related to the regulation of dams; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency. Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule," this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this rulemaking and performed an analysis of whether the proposed rules would constitute a taking. Texas Government Code, §2007.002(5), defines a taking as either: 1) a governmental action that affects private real property,

in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Sections 17 or 19, Article I, Texas Constitution; or 2) a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission determined that these proposed rules would not constitute a taking as that term is defined under Texas Government Code, §2007.002(5). Specifically, the proposed rules would not affect any landowner's rights in private real property, and there are no burdens that would be imposed on private real property by the proposed rules; the proposed rules are solely procedural and do not impact real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor would they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hybrid in-person and virtual public hearing on this proposal on May 17, 2022, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, staff will be available to discuss the proposal 30 minutes prior to the hearing.

Registration

Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by Friday, May 13, 2022. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on May 16, 2022, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

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47 *TexReg* 1972 April 15, 2022 *Texas Register*](https://teams.microsoft.com/l/meetup-join/19%3ameeting_OTY4NTYwNjktYTM2NC00OGVmLWEwN-DUiZWE3NDg2NTk4NDhh%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-</p></div><div data-bbox=)

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Persons who have special communication or other accommodation needs who are planning to register to provide formal oral comments and/or attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RE-LAYTX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2021-027-299-CE. The comment period closes on May 17, 2022. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Warren Samuelson, Critical Infrastructure Division, (512) 239-5195.

Statutory Authority

These amendments are proposed under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over various statutory programs, such as dam safety; §5.103 and §5.105, which establish the commission's general authority to adopt rules; and §12.052, which establishes the commission's authority to promulgate rules for the safe construction, maintenance, repair, and removal of dams located in this state.

These proposed amendments implement Senate Bill 600, 87th Texas Legislature (2021), Author: Perry; House Bill (HB) 2694, 82nd Texas Legislature (2011), Author: Smith; and HB 677, 83rd Texas Legislature (2013), Author: Geren.

§299.1. Applicability.

(a) This chapter applies to design, review, and approval of construction plans and specifications; and construction, operation and maintenance, inspection, repair, removal, emergency management, site security, and enforcement of dams that:

(1) have a height greater than or equal to 25 feet and a maximum storage capacity greater than or equal to 15 acre-feet, as described in paragraph (2) of this subsection;

(2) have a height greater than six feet and a maximum storage capacity greater than or equal to 50 acre-feet;

~~Figure: 30 TAC §299.1(a)(2)~~

~~[Figure: 30 TAC §299.1(a)(2)]~~

(3) are a high- or significant-hazard dam as defined in §299.14 of this title (relating to Hazard Classification Criteria), if over 6 feet high, regardless of ~~height or~~ maximum storage capacity; or

(4) are used as a pumped storage or terminal storage facility.

(b) This chapter provides the requirements for dams, but does not relieve the owner from meeting the requirements in Texas Water

Code (TWC), Chapter 11, and Chapters 213, 295, and 297 of this title (relating to Edwards Aquifer; Water Rights, Procedural; and Water Rights, Substantive; respectively). All applicable requirements in those chapters will still apply.

(c) This chapter does not apply to:

(1) dams designed by, constructed under the supervision of, and owned and maintained by federal agencies such as the Corps of Engineers, International Boundary and Water Commission, and the Bureau of Reclamation;

(2) embankments constructed for roads, highways, and railroads, including low-water crossings, that may temporarily impound floodwater, unless designed to also function as a detention dam;

(3) dikes or levees designed to prevent inundation by floodwater;

(4) off-channel impoundments authorized by the commission under TWC, Chapter 26; ~~and~~

(5) above-ground water storage tanks (steel, concrete, or plastic); and

(6) exempt dams authorized under TWC, Chapter 12. A dam is exempt from this chapter if it meets all of the following:

(A) is located on private property;

(B) has a maximum capacity of less than 500 acre-feet, the capacity at the top of the dam as defined in 30 TAC §299.2(36);

(C) has a hazard classification of low or significant as defined in 30 TAC §299.14;

(D) is located in a county with a population of less than 350,000 based on the most current U. S. Census numbers; and

(E) is not located inside the corporate limits of a municipality, as based on the most current municipal information.

(d) All dams must meet the requirements in this chapter, including dams that do not require a water right permit, other dams that are exempt from the requirements in Subchapter C of this chapter (relating to Construction Requirements), and dams that are granted an exception as defined in §299.5 of this title (relating to Exception).

§299.2. Definitions.

The following words and terms in this section are in addition to the definitions in §3.2 of this title (relating to Definitions). The words and terms in this section, when used in this chapter, have the following meanings.

(1) Abandon--The owner no longer maintaining a dam for a period of ten years, or refusing to maintain the dam.

(2) Accepted engineering practices--The application of design and analysis methods that are commonly used by professional engineers in their field of expertise and are well documented in published design manuals, codes of practice, text books, and engineering journals.

(3) Alteration--Any change to a dam or appurtenant structures that affects the integrity, safety, and operation of the dam, including, but not limited to:

(A) changing the height of a dam;

(B) increasing the normal pool or principal spillway elevation, or changing the hydraulic capability of the principal spillway; or

(C) changing the original elevation, physical dimensions, or hydraulic capability of an emergency spillway.

(4) Appurtenant structures--The outlet works and controls, spillways and controls, gates, valves, siphons, access structures, bridges, berms, drains, hydroelectric facilities, instrumentation, and other structures related to the operation of a dam.

(5) Breach--An excavation or opening, either controlled or a result of a failure of the dam, through a dam or spillway that is capable of completely draining the reservoir down to the approximate original topography so the dam will no longer impound water, or partially draining the reservoir to lower impounding capacity.

(6) Breach analysis--The analysis of potential dam failure scenarios, including overtopping and piping (magnitude, duration, and location), using accepted engineering practices, to evaluate downstream hazard potential or to develop inundation maps.

(7) Breach inundation area--An area that would be flooded as a result of a dam failure.

(8) Closure of dam--The commencement of placing material within the closure section of the dam.

(9) Closure section--The section of the dam left open during construction of a proposed dam in order to pass floodwaters through the dam without endangering the dam.

(10) Commence construction--An actual, visible activity beyond planning or land acquisition that initiates the beginning of the construction of a dam in the manner specified in the approved construction plans and specifications for that dam. The action must be performed in good faith with the intent to continue with the construction through completion.

(11) Conceptual design--A design that presents a location and proposed plan of the dam and appurtenant structures and elevations of all pertinent features of the dam.

(12) Construction--Building a proposed dam and appurtenant structures capable of storing water.

(13) Construction change order--A document recommended by the owner's professional engineer and signed by the owner's contractor and the owner that authorizes a significant addition, deletion, or revision of the approved construction plans and specifications that has a material impact on the safety and integrity of the dam.

(14) Dam--Any barrier or barriers, with any appurtenant structures, constructed for the purpose of either permanently or temporarily impounding water.

(15) Dam failure--breach and uncontrolled release of the reservoir.

(16) Deficient dam--A dam that fails to meet the requirements of this chapter and poses a significant threat to human life or property.

(17) Deliberate impoundment--The intentional impoundment of water in the reservoir, including:

(A) closing the lowest planned outlet or spillway;

(B) blocking the diversion works that are used during construction to divert water around the construction area; and

(C) beginning the closure of the dam.

(18) Design flood--The flood used in the design and evaluation of a dam and appurtenant structures, particularly for determining the size of spillways, outlet works, and the effective crest of the dam.

(19) Detention dam--A dam that has an impoundment that is normally dry and has an ungated outlet structure that is designed to completely drain the water impounded during a flood within five days.

(20) Drawdown--The change in surface elevation of a reservoir due to a withdrawal of water from the reservoir.

(21) Effective crest of the dam--The elevation of the lowest point on the crest (top) of the dam, excluding spillways.

(22) Emergency action plan--A written document prepared by the owner or the owner's professional engineer describing a detailed plan to prevent or lessen the effects of a failure of the dam or appurtenant structures.

(23) Emergency repairs--Any repairs, considered to be temporary in nature, necessary to preserve the integrity of the dam and prevent a possible failure of the dam.

(24) Emergency spillway--An auxiliary spillway designed to pass a large, but infrequent, volume of flood flow, with a crest elevation higher than the principal spillway or normal operating level.

(25) Engineering inspection--Inspection performed by a professional engineer, or under the supervision of a professional engineer, to evaluate the condition, safety, and integrity of the dam and appurtenant structures to determine if the dam and appurtenant structures meet applicable rules and accepted engineering practices, including a field inspection and review of records for design, construction, and performance.

(26) Enlargement--Any change in, or addition to, an existing dam or reservoir that raises, or may raise, the normal storage capacity of the reservoir impounded by the dam.

(27) Existing dam--Any dam under construction or completed as of the effective date of these rules.

(28) Fetch--The straight-line distance across a reservoir subject to wind forces.

(29) Hazard classification--A measure of the potential for loss of life, property damage, or economic impact in the area downstream of the dam in the event of a failure or malfunction of the dam or appurtenant structures. The hazard classification does not represent the physical condition of the dam.

(30) Height of dam--The difference in elevation between the natural bed of the watercourse or the lowest point on the downstream toe of the dam, whichever is lower, and the effective crest of the dam.

(31) Inundation map--A map delineating the area that would be flooded by a particular flood event, or a dam failure.

(32) Loss of life--Human fatalities that would result from a failure of the dam, without considering the mitigation of loss of life that could occur with evacuation or other emergency actions.

(33) Main highways--Roads classified as an [a rural] arterial system by the Texas Department of Transportation, including interstate highways, United States highways, and state highways, listed as either interstate or principal or minor arterial.

(34) Maintenance--Those tasks that are generally recurring and are necessary to keep the dam and appurtenant structures in a sound condition, free from defect or damage that could hinder the dam's functions as designed, including adjacent areas that also could affect the function and operation of the dam.

(35) Maintenance inspection--Visual inspection of the dam and appurtenant structures by the owner or owner's representative to

detect apparent signs of deterioration, other deficiencies, or any other areas of concern.

(36) Maximum storage capacity--The volume, in acre-feet, of the impoundment created by the dam at the effective crest of the dam. For purposes of calculating maximum storage capacity for the Inventory of Dams as described in §299.7 of this title (relating to Inventory of Dams), only water that can be stored above natural ground level (not in excavations in the reservoir) or that could be released by a failure of the dam is considered in assessing the storage volume. The maximum storage capacity may decrease over time due to sedimentation or increase if the reservoir is dredged.

(37) Minimum freeboard--The difference in elevation between the effective crest of the dam and the maximum water surface elevation resulting from routing the design flood appropriate for the dam.

(38) Minor highways--Roads ~~not classified as a main or secondary highway as defined in this subsection [rural collector road or rural local road by the Texas Department of Transportation]~~, including county roads and Farm-to-Market roads not used to provide service to schools.

(39) Modification--Any structural alteration of a dam, the spillways, the outlet works, or other appurtenant structures that could influence or affect the integrity, safety, and operation of the dam.

(40) Normal storage capacity--The volume, in acre-feet, of the impoundment created by the dam at the lowest uncontrolled spillway crest elevation, or at the maximum elevation of the reservoir at the normal (non-flooding) operating level.

(41) NAD83 conus datum--The North American Datum of 1983 is a reference system used to obtain the spherical coordinates of a point on the earth's surface. The standard North American Datum of 1983, or any future updates, must be used for all latitude and longitude measurements.

(42) NAVD88 datum--The North American Vertical Datum of 1988 is a reference system used to obtain vertical measurements on the earth's surface. The North American Vertical Datum of 1988 must be used for all vertical measurements recorded with a global positioning system receiver.

(43) Outlet--A conduit or pipe controlled by a gate or valve, or a siphon, that is used to release impounded water from the reservoir.

(44) Owner--Any person who can be one or more of the following:

(A) holds legal possession or ownership of an interest in a dam;

(B) is the fee simple owner of the surface estate of the tract of land on which the dam is located if actual ownership of the dam is uncertain, unknown, or in dispute unless the person can demonstrate by appropriate documentation, including a deed reservation, invoice, bill of sale, or by other legally acceptable means that the dam is owned by another person or persons;

(C) is a sponsoring local organization that has an agreement with the Natural Resources Conservation Service for a dam constructed under the authorization of the Flood Control Act of 1944 (as amended), Public Law 78-534, the Watershed Protection and Flood Prevention Act, 1954 (as amended), Public Law 83-566, the pilot watershed program under the Flood Prevention of the Department of Agriculture Appropriation Act of 1954, Public Law 156-67, or Subtitle H of Title XV of the Agriculture and Flood Act of 1981, the Resource Conservation and Development Program; or

(D) has a lease, easement, or right-of-way to construct, operate, or maintain a dam.

(45) Piping--The progressive removal of soil particles from a dam by percolating water, leading to development of channels or flow paths.

(46) Principal spillway--Also commonly referred to as the service spillway, the [The] primary or initial spillway engaged during a rainfall runoff event that is designed to pass normal flows.

(47) Probable maximum flood (PMF)--The flood magnitude that may be expected from the most critical combination of meteorologic and hydrologic conditions that are reasonably possible for a given watershed.

(48) Probable maximum precipitation (PMP)--The theoretically greatest depth of precipitation for a given duration that is physically possible over a given size storm area at a particular geographical location at a certain time of the year.

(49) Professional engineer--An individual licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the state of Texas, with experience in the investigation, design, construction, repair, and maintenance of dams.

(50) Proposed dam--Any dam not yet under construction.

(51) Pumped storage dam--A rectangular or circular embankment used to store water pumped from another source.

(52) Reconstruction--Removal and replacement of an existing dam or appurtenant structures.

(53) Rehabilitation--The completion of all work necessary to extend the service life of a dam and meet the safety and performance standards of this chapter.

(54) Removal--The complete elimination of a dam, the appurtenant structures, and the reservoir to its natural channel by removing enough of the dam to the extent that no water can be either permanently impounded, nor temporarily detained, by the dam (no significant differential between the upstream and downstream water surface elevations) during normal conditions, as well as during the design flood of the dam [or reservoir and the approximate original topography of the dam and reservoir area is restored].

(55) Repairs--Any work done on a dam that may affect the integrity, safety, and operation of the dam, including, but not limited to:

(A) excavation into the embankment fill or foundation of a dam; or

(B) removal or replacement of major structural components of a dam or appurtenant structures.

(56) Reservoir--A body of water impounded by a dam.

(57) Safe manner--Operating and maintaining a dam in sound condition, free from defect or damage that could hinder the dam's functions as designed.

(58) Seal--To affix a professional engineer's seal to each sheet of construction plans or to an engineering report or required document.

(59) Secondary highways--Roads classified as a ~~rural~~ major or minor collector road by the Texas Department of Transportation, including Farm-to-Market roads used to provide service to schools.

(60) Secure location--A building that is locked and accessible to the owner and owner's representative.

(61) Spillway--An appurtenant structure that conducts outflow from a reservoir.

(62) Sponsoring local organization--any political subdivision of the state, or other entity, with the authority to carry out, maintain, or operate work of improvement installed with the assistance of the federal government.

(63) Stability analysis--The analytical procedure for determining the most critical factor of safety for a slope.

(64) Substantially complete--A dam under construction that is complete except for minor correction of items identified in the final construction inspection and that can be operated in a safe manner to the dam's full functional capability.

§299.7. *Inventory of Dams.*

(a) The executive director shall maintain an inventory of dams that includes information on:

- (1) ownership;
- (2) physical dimensions of the dam;
- (3) hazard classification;
- (4) normal and maximum storage capacity;
- (5) hydraulic data [use of reservoir, including the water rights permit, if applicable];
- (6) inspection date;
- (7) location; [~~and~~]
- (8) condition of the dam; [-]
- (9) emergency action plan status; and
- (10) design dates.

(b) Inventory of dams operated by river authorities.

(1) This section applies only to a river authority described by Section 325.025(b), Government Code.

(2) Each river authority shall provide to the executive director information regarding the operation and maintenance of dams under the control of that river authority. The following information is to be provided for each dam:

- (A) the location of the dam;
- (B) under whose jurisdiction the dam operates;
- (C) a required maintenance schedule for the dam;
- (D) costs of the operation and maintenance of the dam;

and

(E) the method of finance for the operation and maintenance costs of the dam.

(3) A river authority shall submit the information required by paragraph (2) of this subsection to the executive director each year and in the event of a significant change in the information.

(4) Subject to federal and state confidentiality laws, the executive director shall create and maintain an Internet website that contains the information collected under this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 1, 2022.

TRD-202201141

Charmaine Backens

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Texas Commission on Environmental Quality

Earliest possible date of adoption: May 15, 2022

For further information, please call: (512) 239-0600

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 21. RIGHT OF WAY

The Texas Department of Transportation (department) proposes amendments to §§21.31, 21.37, 21.38, 21.40, and 21.41, concerning Utility Accommodation, and the repeal of §§21.921 - 21.930, concerning Utility Relocation Prepayment Funding Agreements.

EXPLANATION OF PROPOSED AMENDMENTS AND REPEAL

Senate Bill 507, Acts of the 87th Legislature, Regular Session, 2021, requires that the Texas Transportation Commission (commission) adopt rules to provide for broadband providers use of state highway right-of-way. This bill triggered a review of the department's rules regarding utility accommodation within state right-of-way. The review resulted in this rulemaking revising Chapter 21, Subchapter C, Utility Accommodation, to provide for accommodation of broadband services and to address advances in technology and current construction practices and safety standards for all utility installations within state right-of-way. The proposed revisions are in the interests of safety, protection, use, and future development of the state highway system with due consideration given to the public service afforded by adequate and economical utility facilities.

The review also revealed the need to repeal Chapter 21, Subchapter P, Utility Relocation Prepayment Funding Agreements, which addresses a utility relocation prepayment funding program under Transportation Code, §203.0922, which expired September 1, 2013.

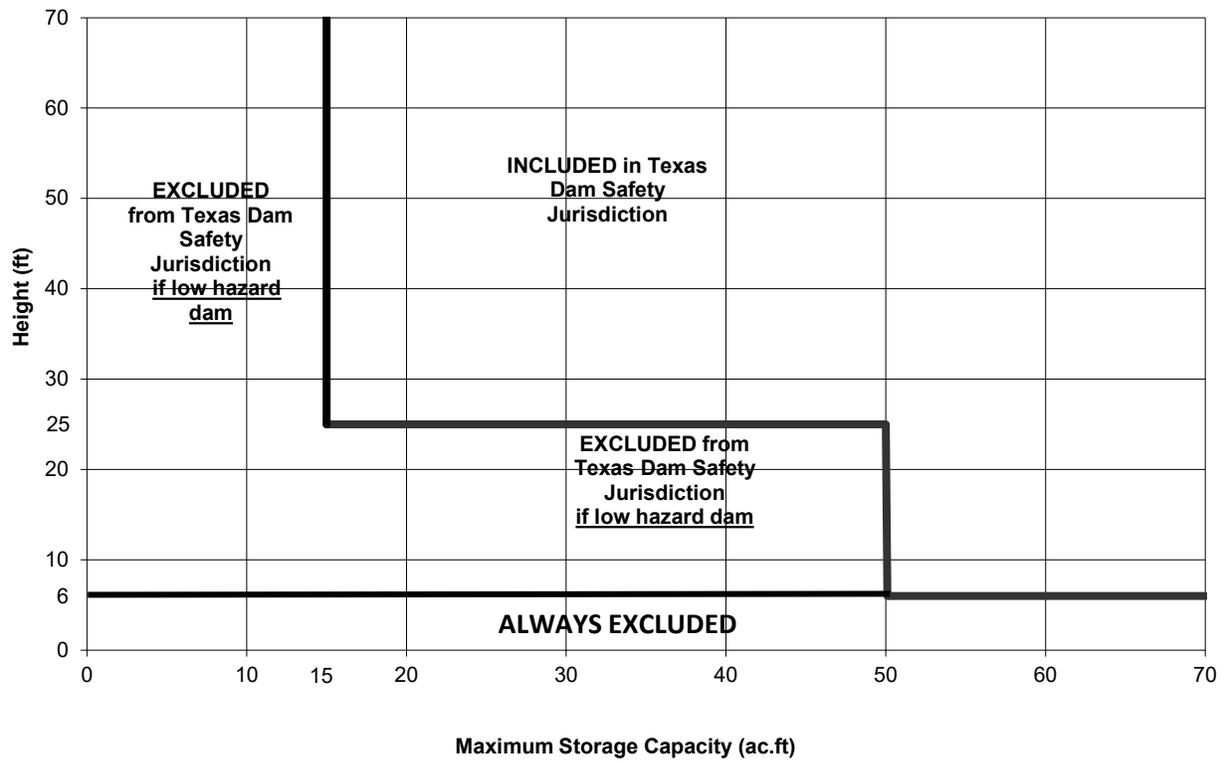
Amendments make various changes throughout Chapter 21, Subchapter C, to correct minor wording errors and to provide consistency within the subchapter in the use of "shall," "may," and "must" by aligning the use of those words with the statutory construction rules set out in Government Code, §311.016.

Amendments to §21.31, Definitions, adds definitions for ASCE (American Society of Civil Engineers), broadband service, communication line, and encasement for clarification in the accommodation rules. The rules also amend the definitions of "public utility" and "utility product" to incorporate broadband service and repeal the definitions of "idled facility" and "ramp terminus" because those terms are not used in the subchapter.

Amendments to §21.37, Design, address the requirements of a utility in the design phase of any installation of a utility facility within state right of way. The amendments list additional federal and state regulations and policies that were previously required but not specified in the rule. The amendments also incorporate certain design criteria for utility installations in and around

Figure: 30 TAC §299.1(a)(2)

Figure 1. Minimum Dam Heights



Texas Commission on Environmental Quality



ORDER ADOPTING AMENDED RULES

Docket No. 2021-1295-RUL

Rule Project No. 2021-027-299-CE

On September 7, 2022, the Texas Commission on Environmental Quality (Commission) adopted amended rules in 30 Texas Administrative Code Chapter 299, Sections 299.1, 299.2, and 299.7, concerning Dams and Reservoirs. The proposed rules were published for comment in the April 15, 2022, issue of the *Texas Register* (47 TexReg 1970).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code Ann., Chapter 2001 (West 2016).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Jon Niermann, Chairman

Date Signed