

BIENNIAL REPORT

TO THE 83RD LEGISLATURE
FY 2011 - FY 2012

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

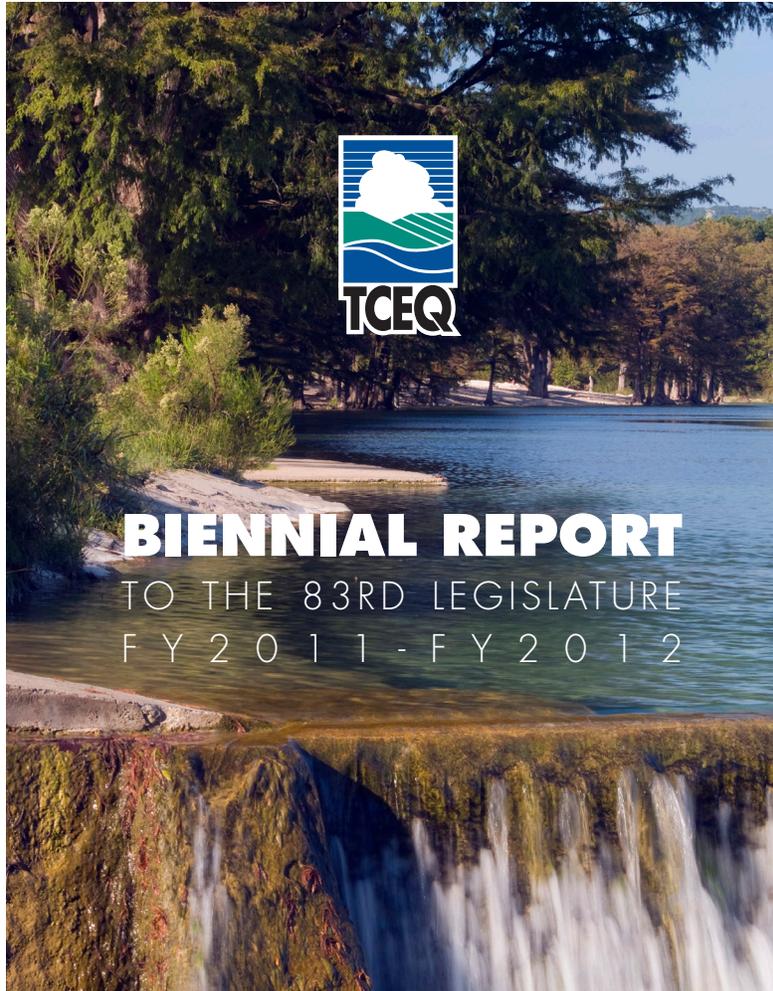


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ENVIRONMENTAL QUALITY



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The TCEQ's *Biennial Report* to the Legislature is published every December prior to a regular legislative session, as required by the Texas Water Code, Section 5.178. This submission to the 83rd Legislature contains other information and reports that are required by statute:

- Description of cooperative research efforts, page 18. This information was last published in December 2010 in the *Biennial Report to the 82nd Legislature* (SFR-57/10).
- Waste exchange information, page 31. This information was last published in December 2010 in the *Biennial Report to the 82nd Legislature* (SFR-57/10).
- Assessment of complaints received, page 41. This report was last published in December 2010 in the *Biennial Report to the 82nd Legislature* (SFR-57/10).
- Permit time-frame reduction process, page 47. This report was last published in December 2010 in the *Biennial Report to the 82nd Legislature* (SFR-57/10).
- Office of Public Interest Counsel evaluation of performance measures, page 55. This report is published for the first time.
- Study on water basins without a watermaster, page 66. This report is published for the first time.

Agency Mission and Philosophy

Mission

The Texas Commission on Environmental Quality strives to protect our state's public health and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste.

Philosophy

To accomplish our mission, we

- Base decisions on the law, common sense, good science, and fiscal responsibility.
- Ensure that regulations are necessary, effective, and current.
- Apply regulations clearly and consistently.
- Ensure consistent, just, and timely enforcement when environmental laws are violated.
- Promote and foster voluntary compliance with environmental laws and provide flexibility in achieving environmental goals.
- Hire, develop, and retain a high-quality, diverse workforce.

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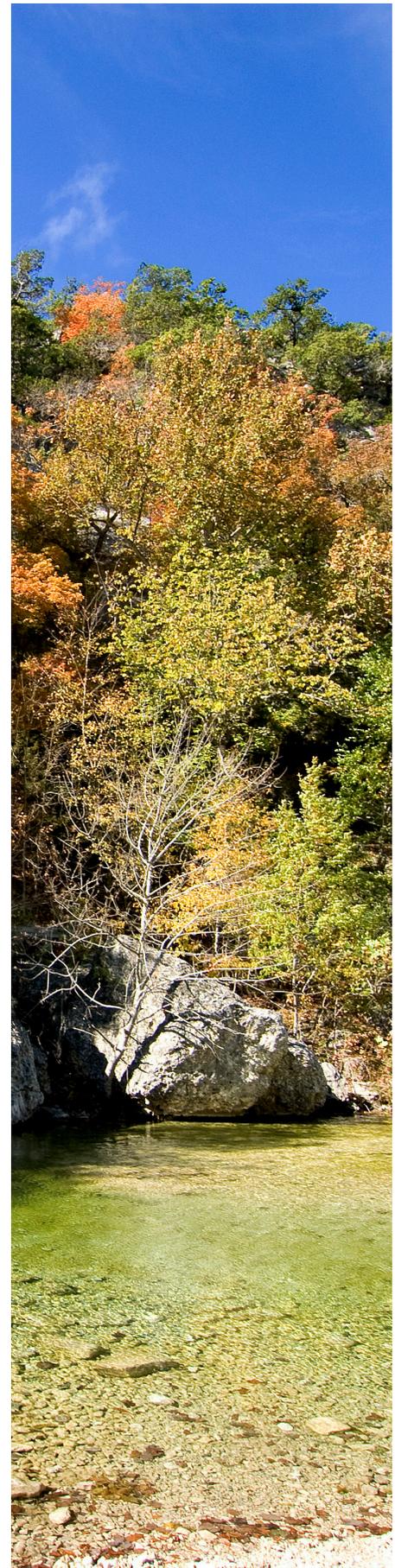
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From the Commission

The fact that Texas has much to offer is obvious, as seen by the impressive number of people and companies moving here. Our burgeoning population and booming business base are testament to a can-do spirit that thrives in every region.

At the same time, the state's growth streak presents major challenges. More people translate into additional vehicles in areas already dealing with elevated levels of ozone. New homes and schools need a reliable water supply, as do existing and expanding industry and agricultural interests. Increased manufacturing activity brings more industrial operations affecting air and water quality. A bigger population also places greater demands on waste disposal.

Protecting human health and natural resources in Texas is a responsibility that grows more complex. The Texas Commission on Environmental Quality has shown the ability to meet this challenge. Our employees across the state are dedicated to ensuring that Texans have clean air and water and safe management of waste.

The last two years brought new challenges. While Texas is no stranger to dry spells, 2011 became the driest 12-month period on record. With all parts of the state suffering, the TCEQ worked with other agencies to coordinate the state's response. Staff provided technical assistance to public water systems and helped identify alternate water sources.

In addition, the state experienced a rapid upswing in oil and gas production. The TCEQ played an important role in these activities, including air and water quality monitoring and surface water and waste management.

Meanwhile, the agency took a stand in opposition to some regulations imposed by the Environmental Protection Agency. We contended these federal measures were unlawful, damaging to the economy, and without measureable environmental benefit.

The TCEQ also saw internal changes. With the departure of Commissioner Buddy Garcia, we welcomed Toby Baker as a new commissioner. Executive Director Mark Vickery retired after a distinguished career at the TCEQ. Filling the top management post is Zak Covar.

Finally, the TCEQ went through a rigorous Sunset review in which all aspects of the agency were evaluated. The result was a sizable package of legislative measures that created new agency programs and broadened or fine-tuned many existing ones. With gratitude, we watched lawmakers extend TCEQ operations for another 12 years.

Drawing on that vote of confidence, all three commissioners will continue to apply the law and sound science, as well as common sense, to environmental regulation. We consider it a privilege to serve in this capacity at the TCEQ. We want to ensure that Texas remains a state we are all proud to serve.



Carlos Rubinstein, *Commissioner*



Bryan W. Shaw, Ph.D., *Chairman*



Toby Baker, *Commissioner*



Agency Highlights



During the 2011 and 2012 fiscal years, Texas was thrust into the national spotlight as a record-setting drought dealt a serious blow to most regions within our borders.

At the same time, the state found itself in the vanguard of a new wave of natural gas and oil production that could provide the United States with decades of safe, reliable energy.

Managing both of these developments presented many new challenges that required innovative management and careful prioritization of this agency's resources.

In addition, the Texas Commission on Environmental Quality continued to deal successfully with its core responsibilities—ensuring safe air quality and water quality for the state's 26 million residents, as well as safe, efficient management of waste.

The following summaries provide a closer look not only at these recent challenges but other ongoing agency programs that are conducted day in and day out by the dedicated employees of the TCEQ.

Legislature to TCEQ: Good to Go for 12 More Years

For the TCEQ, the highlight of the 82nd legislative session was concluding an intensive two-year review by the Sunset Advisory Commission and winning a vote of confidence from state lawmakers. With unanimous votes, both the House and Senate approved continuation of the agency to 2023.

Throughout the review process, TCEQ employees and upper management responded to almost 200 separate requests for information, participated in more than 60 meetings, and conferred extensively with Sunset staff. In

addition, agency personnel participated in hearings before Sunset Advisory commissioners, as well as House and Senate committees.

Implementing the Sunset Bill, House Bill 2694, required the agency to consider 11 separate rule packages, in addition to a number of non-rulemaking activities such as operational changes, revisions to guidance documents, and changes to agency Web pages.

As with most state agencies, the TCEQ saw reductions in 2011. The TCEQ's total appropriations for the 2012-2013 biennium was set at \$692 million, a cut of \$274 million—or 28 percent—from the previous biennium. This translated into budget cuts in the Texas Emissions Reduction Plan, low-income vehicle repair assistance (LIRAP/LIP), the Superfund and petroleum storage tanks programs, and grant programs for air quality planning and solid waste planning.

As for staffing, the agency's cap for full-time equivalent staff (FTEs) is 2,766.2, which reflects a reduction of 235 FTEs, or 8 percent, from the 2010-2011 biennium. However, nine FTEs in the Surface Casing Program were transferred to the Railroad Commission of Texas, and four FTEs were added to the Aggregate Production Program. The net was 2,761.2 FTEs for the 2012-2013 biennium.

The Sunset review and other associated legislative actions affected many agency programs. See Chapter 3 for an analysis of legislation and implementation.

Teamwork Helps Localities Prepare for Water Shortages

The drought that ravaged the state in 2011 was the most severe one-year drought in

Texas history. In as many as 15 instances, some water-rights holders in several water basins had to curtail diversion of water in favor of senior water rights holders. Even in East Texas, which is normally flush with rain, operators had to enact previously unused water restrictions in their drought contingency plans.

In mid-2011, Gov. Rick Perry issued an emergency disaster proclamation certifying that exceptional drought conditions posed a threat of imminent disaster in certain counties. This proclamation, which was later extended to most Texas counties, gave state regulators some leeway in enforcement to allow for expedited action in an emergency situation.

In the winter respite following the drought, the TCEQ and partner agencies recognized an opportunity to reach out to local water systems and learn more about what they had experienced. It was also a chance to provide customized state assistance so local operators could get the specific help they most needed.

A number of drought emergency management workshops were held the first quarter of 2012. The TCEQ was joined by the state's Division of Emergency Management, Department of Agriculture, and Texas Water Development Board in making staff available to confer with water utility operators.

The focus was planning ahead to avoid expensive emergency situations. In fact, at each workshop, TCEQ staff directly asked water system operators: "Do you have a plan to deal with a catastrophic outage? What will you do?"

At the first workshop in Nacogdoches, almost 100 people attended presentations by the partner agencies. Audience members responded with questions on a range of topics,

from long-range water planning to the proper timetable for drilling an emergency well.

Subsequent workshops were held in Kerrville, New Braunfels, Liberty, Midland, Lubbock, San Angelo, and Brownsville. In each case, meeting rooms were filled with participants eager to express concerns related to their specific region.

Agency representatives urged operators to review their drought contingency plans to determine whether the triggers for restricting water use still made sense in light of regional population growth and the brutal experience of the 2011 drought. Operators were challenged to identify in advance the well drillers, alternative sources of water, possible interconnections, and even licensed haulers that would be needed in an emergency.

While the state cannot make decisions for public water systems on how to supply water to customers, these workshops demonstrated that agencies can work in cooperation to suggest options and offer technical assistance before a catastrophe strikes.

In the Vanguard of an Oil and Gas Boom

In recent years, Texas found itself at the forefront of an energy bonanza. Widespread use of horizontal drilling and hydraulic fracturing (commonly called fracking) in shale fields made it possible to harvest huge amounts of natural gas and oil that were previously thought to be too expensive to produce.

For Texas, this energy boom produced billions of dollars of income and thousands of jobs.

While the regulation of oil and gas production in Texas falls primarily under the Railroad Commission of Texas, the TCEQ has had air emission regulations in place for parts of oil and gas facilities since the 1970s. The TCEQ continues to play an important role in these activities, primarily in the areas of air quality, surface water management and water quality, and waste management.

Increased oil and gas production has raised the issue of regulation at the federal level. The EPA issued new requirements for hydraulic fracturing and proposed other pending regulations for the natural gas production sector. The EPA's specific focus—

minimizing air emissions from hydraulically fractured natural gas wells—includes proposed requirements for flaring and green completions (a process that limits the escape of natural gas during hydraulic fracturing).

Barnett Shale. This geographic area encompasses more than 5,000 square miles in 24 counties in and around the Dallas-Fort Worth area. Since 2001, the area has produced more than 9 trillion cubic feet of natural gas. With development occurring in urban and rapidly developing suburban areas, some residents were concerned about potential air quality issues caused by oil and gas activities. In response, the TCEQ performed air quality studies, established state-of-the-art air monitoring, instituted new investigative procedures, and increased the number of local investigators. The agency installed seven automated gas-chromatograph monitors in the area and has plans for four more. No monitor has shown any chemical levels of concern.

Eagle Ford Shale. This rapidly developing oil and gas production area comprises 23 counties in South Texas, stretching from Bryan–College Station to Laredo. Most of the Eagle Ford production has taken place in sparsely populated areas and, in addition to natural gas, has yielded large quantities of oil and condensate. Concerns in Eagle Ford focus on water, production waste, and problems stemming from a rapidly expanding workforce.

As in the Barnett Shale, the TCEQ has conducted proactive outreach in the Eagle Ford Shale. Staff met with nine county judges in South Texas to learn more about local concerns. The agency held numerous workshops to brief local governments and other groups about the respective jurisdictions of the TCEQ and the Railroad Commission. The TCEQ also held a workshop to educate small producers on air authorization issues.

The more rural nature of the Eagle Ford Shale, as well as the information gained from the Barnett Shale monitoring, resulted in a different approach to evaluating air quality concerns and impacts. The TCEQ continues to evaluate potential air monitoring needs and resources to adequately address concerns regarding the impact of these operations on the overall air quality.

As for water use, the amount of water used in hydraulic fracturing is relatively small, compared to water uses in agriculture, manufacturing, and municipal water supplies, according to the Railroad Commission. Hydraulic fracturing and total mining water use represent less than 1 percent of statewide water consumption, although percentages can be larger in some localized areas.

Surface water, which is also used for oil and gas production activities in the Eagle Ford Shale, is regulated by the TCEQ through the state's water-rights system, which allows water to be used for mining purposes.

Groundwater, including that used for oil and gas production in South Texas, is regulated by local groundwater conservation districts.

The Texas Water Code requires the Texas Groundwater Protection Committee, which was established by the Legislature in 1989, to compile and publish a joint groundwater monitoring and contamination report that contains a description of each case of groundwater contamination documented during the previous calendar year. Despite thousands of documented cases of groundwater contamination, not one case has been attributed to hydraulic fracturing.

Another water source, reclaimed wastewater, is being examined for potential use in oil and gas production activities. The TCEQ has issued several authorizations allowing water to be used for this purpose.

As a result of the increased drilling activities, particularly in the Barnett Shale and Eagle Ford Shale areas, the TCEQ has seen a substantial increase in the amount of oil and gas waste being processed and disposed of at municipal solid waste landfills. To address this influx of waste, the TCEQ has worked closely with the Railroad Commission and the waste disposal industry to evaluate existing regulatory processes to ensure that permitting actions related to oil and gas waste disposal are as efficient as possible.

International Visitors Study TCEQ's Regulatory Role in Oil and Gas Drilling

In 2009, the massive Eagle Ford Shale area had a total of 67 producing gas wells.

Two years later, the number had grown to 368 wells.

The oil and gas production in these rich underground formations, as well as the extensive gas production in the Barnett Shale area in North Texas, caught the attention of other countries looking to increase their own energy independence.

The TCEQ has hosted delegations from 10 countries—Brazil, Canada, China, India, Japan, Jordan, Poland, Turkmenistan, Spain, and the United Kingdom—all seeking to learn about the environmental management of oil and gas drilling in shale formations.

Noting that the Barnett Shale region has about 6 million residents, the agency demonstrated to visitors that, through diligent monitoring and timely response to all complaints, urban gas production is possible.

In addition, the foreign guests were interested in the agency's efforts to address storage-tank emissions in the Barnett Shale region through the helicopter-mounted HAWK technology, which uses an infrared camera to detect hydrocarbon compounds. The visitors also noted the scale of monitoring conducted by the TCEQ, along with the number of stationary air quality monitors already installed or in the planning stages.

Such briefings were not limited to the TCEQ's Austin headquarters. Delegations from China, India, Jordan, and Poland also traveled to the Metroplex to hear presentations at the Dallas-Fort Worth regional office on monitoring, investigations, and rule-making.

Regional staff further explained the TCEQ's response time for complaints received in the Barnett Shale region, as well as periodic reconnaissance investigations.

Environmental Summits Highlight Leading Concerns

The TCEQ partnered with various communities to hold four Environmental Summits in fiscal 2012 to bring together community leaders and examine major environmental issues.

In El Paso, the summit drew about 400 people to hear keynote speaker U.S. Rep. Silvestre Reyes and attend breakout sessions

on a variety of environmental issues, such as the ongoing problem of illegal tire dumping. Also, middle school and high school students contributed ideas on the proper disposal of plastic bags and glass bottles.

At the Laredo summit, State Sen. Judith Zaffirini delivered opening remarks to a crowd of 230 guests, who also heard from Susan Ghertner, director of environmental affairs for H-E-B. Participants joined breakout sessions to discuss ideas for recycling and conservation.

In McAllen, TCEQ commissioners Carlos Rubinstein and Buddy Garcia, both from Brownsville, drew on personal experiences to discuss area issues with attendees. In his keynote address, Garcia focused on specific environmental issues on the border. In breakout sessions, 200 participants discussed local issues such as plastic waste bags, recycling, and water conservation.

At the summit in Schertz near San Antonio, which was the TCEQ's first environmental summit in Central Texas, drought was the overriding theme. Rubinstein told a crowd of more than 300 that "the drought we are experiencing is unlike any drought that any of us has ever seen. We know it is the worst one-year drought in Texas."

Rubinstein said communities have much to learn from the San Antonio area for the way local officials have effectively dealt with water problems. While the San Antonio Water System saw its customer base increase by 67 percent in the last 25 years, the utility still uses the same amount of water.

Emergency Response Moved to Regions

In preparation for the 2012 hurricane season, the TCEQ instituted a major change in its emergency management structure.

Looking to expand the experience and institutional knowledge of staff called on during emergency events, the agency assigned the emergency response function to all 16 regional offices. The move provides for more flexibility, especially in the case of multiple emergencies, and allows for better long-term planning.

The TCEQ already had a highly trained Emergency Response Strike Team based

in Austin, which has been on the scene of some of the state's worst natural disasters of the last decade—hurricanes, floods, and tornadoes. The team's role is to address environmental hazards and help restore vital public services.

The team, with its analytical and monitoring equipment and communications gear, also has responded to train derailments, industrial accidents, fires, and spills around the state, often working in tandem with local governments, state agencies, and federal organizations like the U.S. Coast Guard and the EPA.

The new regional Disaster Response Strike Teams report to the agency's regional directors and area directors, who decide on the makeup and size of each team. TCEQ regions with the largest populations have more team members, as do regions along the coast.

By having strike teams drawn from regional staff, all of the necessary disciplines can be called on to respond to any particular event. This includes staff trained in hazardous materials, as well as experts in wastewater, drinking water, waste and debris management, and other areas.

Another advantage to the regional structure is the ability to distribute the workload during any emergency lasting longer than a few days. With major flooding, for example, emergency response can last for several weeks.

Meanwhile, the Austin headquarters maintains a lead role in emergency management. An emergency management coordinator and three liaisons work closely with all the teams to ensure they receive proper training and certifications, conduct practice drills, and receive support during actual disasters.

The TCEQ Joins Border Crackdown on Tire Dumping

The accumulation of abandoned tires has been an ongoing concern in El Paso and other areas along the border with Mexico. Not only are these illegal dumps an eyesore, they also harbor mosquitoes and rodents and can affect local water use.

Texas Scrap Tire Usage and Landfill Disposal 2011

Close to 700 active irrigation and drainage canals in El Paso County have become prime spots for illegal tire disposal. For local irrigation districts, staying ahead of the flow of tires has been an almost constant battle.

That is why the TCEQ has partnered with the irrigation districts, the city and county of El Paso, and area law enforcement. In 2011, the TCEQ organized an educational initiative aimed at local businesses that deal in tires. These stores and facilities received letters detailing the scrap-tire rules.

The TCEQ also paired with the Texas Irrigation Council to develop strategies to address illegal tire dumping. The agency and irrigation districts worked to ensure that tire generators know their responsibilities under the law. Additionally, district input helped with investigations into illegal dumping.

The TCEQ oversees the collection, processing, storage, and recycling or disposal of scrap tires in the state. Scrap-tire transporters, processing facilities, storage sites, and end-use or disposal facilities must submit an annual report showing the number of scrap tires handled and the form of the tire (whole or cut, bales, or shreds). The agency can initiate enforcement when an annual report is not filed or the information is improperly reported.

El Paso is hardly alone when it comes to scrap-tire dumping. More than 24 million tires are discarded in Texas each year. In addition, an estimated 14.2 million tires reside in sites known to be in need of cleanup.

The agency has stepped up its efforts in the El Paso region with a dedicated investigator, who conducts reconnaissance along the canals to deter dumpers. The investigator screens complaints received by the regional office to determine which ones might lead to criminal enforcement. This includes not only the illegal dumping of tires, but also the dumping of municipal solid waste and other unauthorized discharges.

Several illegal-dumping investigations conducted by the TCEQ have been prosecuted by El Paso County. Fines have ranged from \$750 to \$4,000, and most penalties have included site cleanup, community service, and probation for the offender.

Three separate collection events held in Clint, a small town in El Paso County,

Category	2011 Consumption		
	Pounds	Scrap Tire Units*	Percentage of Total
End Uses			
Land Reclamation	170,082,720	7,559,232	23.3%
Tire-Derived Fuel	389,827,845	17,325,682	53.3%
Crumb Rubber	27,416,925	1,218,530	3.7%
Septic/Leachate Drainage	381,555	16,958	0.1%
Other End Uses	67,896,720	3,017,632	9.3%
End Uses Subtotal	655,605,765	29,138,034	89.7%
Landfill Disposal	75,373,988	3,349,955	10.3%
Total	730,979,753	32,487,989	100%

* Scrap Tire Unit. 1 STU = 22.5 pounds of scrap tire material.
This unit is used because scrap tire material can take many different forms.

resulted in hundreds of vehicles arriving as early as 4 a.m. to drop off an estimated 20,000 used tires at the collection facility—a number that far exceeded expectations. The free events were targeted at residents, not retailers.

Leaders in Risk Assessment

In 2012, the TCEQ hosted the fourth workshop in a series designed to enhance a framework of chemical risk assessment methods used by government and other scientific organizations to solve current risk management problems. Toxicologists from across the United States and Canada attended in person or via webcast. The workshop, "Beyond Science and Decisions," was organized by the Alliance for Risk Assessment.

Attendees discussed a number of case studies designed to highlight biological and statistical issues related to dose-response assessment, which is the process used to determine the level at which a chemical will produce harmful health effects.

The TCEQ Toxicology Division presented a case study that incorporated how a chemical acts within the human body to predict the level of a chemical in air at which health effects would be expected. These effect levels will be important to illustrate to the

public, risk managers, and other TCEQ staff the interval between the level that is safe and the level that is unsafe when communicating air monitoring results from a specific project or statewide.

The TCEQ not only evaluates the potential for chemicals to harm human health, it also interacts with stakeholders, drafts rules, and makes technical recommendations related to permitting, remediation, monitoring, and enforcement. Case studies and discussions, such as those held in the workshop series, ultimately result in research that informs agencies making regulatory decisions. In view of the demand for public resources, risk assessment should be used to put risks into context to determine where to direct resources that do the most good.

Since a majority of EPA toxicity assessments are outdated and, as of late, of questionable quality, the TCEQ has also taken the initiative to develop scientifically sound, state-of-the-science guidelines and use these guidelines to develop its own toxicity factors. In fiscal 2012, the TCEQ published two peer-reviewed articles, with another article accepted for publication, in scientific journals. These peer-reviewed articles pertain to chemicals that have undergone the TCEQ's state-of-the-science process for developing toxicity values.

In Pursuit of Willful Polluters

Environmental crimes occur all across the state, sometimes in malicious ways that can harm human health and natural resources.

The investigations are usually lengthy and require a staff knowledgeable in illegal dumping, illegal transportation and disposal of hazardous waste, illegal discharge of waste and pollutants into state waters, violations of state rules for public drinking water, and fraud involving TCEQ programs. The investigators need experience in executing search warrants, conducting witness interviews, analyzing documentation and data, and writing investigative reports for prosecutors.

Such challenges are best met with a coordinated response. The Texas Environmental Enforcement Task Force is composed of representatives from the TCEQ, Texas Parks and Wildlife Department, Travis County District Attorney's Office, Attorney General's Office, General Land Office, Railroad Commission of Texas, and Governor's Office, as well as the EPA, FBI, and U.S. Attorney's Office.

The teamwork approach has proven to be effective. In a recent case related to financial fraud in the Texas Emissions Reduction Plan (TERP), the TCEQ obtained a state-led search warrant, and the AG's office conducted computer forensics. Texas Parks and Wildlife provided air surveil-

lance, laboratory support for environmental analyses, and game wardens to execute the search warrants. EPA's Criminal Investigation Division assisted with search warrants.

Since the task force was organized in 1991, successful cases have resulted in 353 convictions, prison sentences totaling 168 years, and probation terms of 761 years. Total fines come to \$91.7 million; restitution, \$7.5 million. (Restitution, such as the cost of remediation or money fraudulently obtained, is paid by the offender to the individual or entity that suffered financial losses.)

Cases of environmental crime can originate in the TCEQ's regional offices, enforcement division, and litigation division, as well as a dedicated program such as the TERP. Tips also come from the public.

The TCEQ's environmental crimes unit has nine investigators and two attorneys. Investigators are stationed not just in Austin but also in regional offices: Houston, Dallas-Fort Worth, Tyler, Corpus Christi, Beaumont, El Paso, and San Antonio. They follow up on leads and conduct field work, while the attorneys provide legal support and counsel regarding statutes, search-warrant affidavits, and grand-jury language, as well as ensuring that constitutional rights are not violated.

Since 1995, the TCEQ has also trained select local law-enforcement personnel who serve as an extension of the task force. More than 1,400 peace officers and

enforcement-related officers have attended specialized training to help them perform environmental enforcement at the local level.

The TCEQ's involvement in environmental crime cases does not end after a conviction. If remediation was needed but not obtained, the sites contaminated as a result of these crimes are restored at state expense.

Environmental crimes result from some action—or inaction—that damaged the environment. Typically the motive is monetary. Examples of recent cases are:

- A dumper of commercial solid waste did not want to pay to have the material disposed of properly.
- A company refused to upgrade a wastewater treatment facility and allowed illegal or unauthorized discharges.
- A company falsely reported to the TCEQ it had implemented upgrades to its emission controls at a painting operation.
- An individual provided false information to obtain a TERP grant, thereby applying for a financial incentive for which he knowingly did not qualify.

CHAPTER TWO

Agency Activities

2

The Texas Commission on Environmental Quality has a range of responsibilities as broad as the state itself, all keyed to various aspects of environmental protection.

This role of environmental oversight is conducted in the agency's Austin headquarters and in its 16 regional offices. Staff duties cover a wide spectrum, from investigating an odor nuisance complaint in a small Panhandle town to conducting fence-line air quality monitoring at a large petrochemical plant on the Gulf Coast. A typical workday will find employees leading field investigations, evaluating permit applications, organizing and hosting environmental seminars, and evaluating a Superfund site.

This chapter examines some of the major programs under way at the TCEQ to address the agency's goals of protecting public health and the state's natural resources.

Enforcement

Environmental Compliance

The TCEQ enforcement process begins when a violation is discovered during an investigation at the regulated entity's location, through a review of records at agency offices, or as a result of a complaint from the public that is subsequently verified as a violation. Enforcement actions may also be triggered after submission of citizen-collected evidence.

In a typical year, the agency will conduct almost 100,000 investigations statewide to assess compliance with environmental laws.

When environmental laws are violated, the agency has the authority in administrative cases to levy penalties up to the

statutory maximum per day, per violation. The statutory maxima range as high as \$25,000. Civil judicial cases carry penalties up to \$25,000 per day, per violation, in some programs.

In fiscal 2011, the TCEQ issued 1,628 administrative orders, which required payments of \$12.5 million in penalties and about \$5 million for Supplemental Environmental Projects, or SEPs. The average number of days from initiation of an enforcement action to completion (with an effective order) was 241 days.

In fiscal 2012, the TCEQ issued 1,826 administrative orders, which required payments of \$11.4 million in penalties and \$2.5 million for SEPs. The average number of days from initiation of an enforcement action to completion (with an effective order) was 245 days.

The TCEQ can also refer cases to the state Attorney General. In fiscal 2011, the AG's office obtained 29 judicial orders in cases referred by the TCEQ or in which the TCEQ was a party. These orders resulted in more than \$4.3 million in civil penalties and another \$115,000 for SEPs.

In fiscal 2012, the AG's office obtained 48 judicial orders, which resulted in \$57.4 million in civil penalties and \$121,500 for SEPs.

Other enforcement statistics can be found in the agency's annual enforcement report at www.tceq.texas.gov/goto/enforcement.

Also, orders that have been approved by the commission and have become effective are posted on the agency's website, as are pending orders not yet presented to the commission.

Supplemental Environmental Projects

When the TCEQ finds a violation of environmental laws, the agency and the regulated entity often enter into an administrative order, which regularly includes the assessment of a monetary penalty. The penalties collected do not stay at the agency, but instead go to general revenue.

One option under state law, however, gives regulated entities a chance to direct some of the penalty dollars to local improvement projects. By agreeing that penalty amounts can be used for a Supplemental Environmental Project, the violator can do something beneficial for the community in which the environmental offense occurred. Such a project must reduce or prevent pollution, enhance the environment, or raise public awareness of environmental concerns.

The agency has a list of preapproved SEPs, which consists of projects that have already received general approval from the commission. The list includes nonprofits and governmental agencies that sponsor activities such as cleaning up illegal dump sites, providing first-time adequate water or sewer service for low-income families, retrofitting

TCEQ Enforcement Orders

Fiscal Year	Number of Orders	Penalties Paid	Orders with SEPs	SEP Funds
2011	1,628	\$12.5 million	222	\$5.0 million
2012	1,826	\$11.4 million	146	\$2.5 million

or replacing school buses with cleaner emission technologies, removing hazards from bays and beaches, and improving nesting conditions for colonial water birds.

A regulated entity that meets program requirements may propose its own custom SEP if the proposed project is environmentally beneficial and the party performing the SEP was not already obligated or planning to perform the SEP activity before the violation occurred. Additionally, the activity covered by a SEP must be one that is above and beyond what is already required by state and federal environmental laws.

As of Sept. 1, 2011, the Texas Water Code gives the TCEQ the discretion to allow local governments cited in enforcement actions to use SEP money to achieve compliance with environmental laws or to remediate the harm caused by the violations in the case. This compliance SEP may be offered to governmental authorities such as school districts, counties, municipalities, junior-college districts, river authorities, or water districts.

Other than compliance SEPs, a SEP cannot be used to remediate a violation or any environmental harm caused by a violation, or to correct any illegal activity that led to an enforcement action.

Compliance History

Since 2002, the agency has rated the compliance history of every owner or operator of a facility that is regulated under certain state environmental laws.

An evaluation standard has been used to assign a rating to about 300,000 entities regulated by the TCEQ that are subject to the compliance-history rules. The ratings take into consideration prior enforcement orders, court judgments, consent decrees, criminal convictions, and notices of violation, as well as investigation reports, notices, and disclosures submitted in accordance with the Texas Environmental, Health, and Safety Audit Privilege Act. Agency-approved environmental management systems and participation in agency-approved voluntary pollution-reduction programs are also taken into account.

An entity's classification comes into play when the TCEQ considers matters regarding

not only enforcement but also permit actions, the use of unannounced investigations, and participation in innovative programs.

Each September, regulated entities are classified or reclassified. (The ratings database can be found at www11.tceq.texas.gov/oce/ch/.)

Ratings below 0.10 receive a classification of "high," which means that those entities have an "above-satisfactory compliance record" with environmental regulations. Ratings from 0.10 to 55.00 merit "satisfactory" for having "generally complied." Ratings greater than 55.00 result in an "unsatisfactory" classification because these entities "performed below minimal acceptable performance standards."

An entity with no compliance information for the last five years will not receive a classification and is therefore "unclassified."

In 2011, House Bill 2694 called for changes to the compliance history rule. The commission responded in 2012 by adopting revisions to 30 Texas Administrative Code Chapter 60 (Compliance History). This allows the TCEQ to use new standards, instead of the existing uniform standard, for evaluating and using compliance history. In addition, the adopted rule modified the components and formula of compliance history to provide a more accurate measure of regulated entities' performance and to make compliance history a more effective regulatory tool. These

changes will be reflected in compliance history information for fiscal 2013.

Critical Infrastructure

In November 2011, the TCEQ created the Critical Infrastructure Division within the Office of Compliance and Enforcement (OCE). This new division combines elements from the OCE that are critical to the agency's responsibilities under the Texas Homeland Security Strategic Plan. The division seeks to ensure compliance with environmental regulations and, during disaster conditions, to support regulated critical infrastructures that are essential to the state and its residents. This includes not only responding to but also recovering from disasters.

The Critical Infrastructure Division programs are Dam Safety and Emergency Management Support, as well as Homeland Security, which includes compliance investigations involving radioactive materials and the federally funded BioWatch. The latter is a federally funded initiative aimed at early detection of bioterrorism agents.

Dam Safety

The Dam Safety Program monitors and regulates both private and public dams in Texas. The program periodically inspects dams that pose a high or significant hazard and issues recommendations and reports to the dam

Compliance History Designations, September 2012

Classifications are updated each September to reflect the previous five years.

Classifications	Number of Entities Subject to Compliance Rules	Percent
High	37,405	12.48%
Satisfactory	9,619	3.21%
Unsatisfactory	1,643	.55%
Unclassified	251,111	83.76%
Total	299,778	100%

owners to help them maintain safe facilities. The program ensures that these facilities are constructed, maintained, repaired, and removed safely. High- or significant-hazard dams are those at which loss of life could occur if the dam should fail.

In 2012, Texas had 7,126 state-regulated dams, with 1,046 high-hazard dams and 725 significant-hazard dams. The remaining dams were classified as low hazard.

As of August 2012, 96.2 percent of all high- and significant-hazard dams had been inspected during the past five years. Securing access to the few remaining dams became an issue that the program continues to address. About half of the dams inspected are in either “fair” or “poor” condition. The majority of owners have begun making repairs, as funds are available.

In addition to inspections, the program conducts workshops—primarily for dam owners and engineers—on emergency action plans and dam maintenance. Emergency management personnel also attend. In fiscal 2011, four workshops were conducted; in fiscal 2012, three were conducted.

Emergency Management

In a state as large and geographically and economically diverse as Texas, natural disasters or emergencies caused by human activities occur almost daily. Disasters may have a widespread impact, or significant emergencies may occur at the same time in different areas.

In an emergency or disaster, the TCEQ is the lead state agency for hazardous materials and oil-spill response. As such, it supports several other state emergency-management functions.

The TCEQ’s responsibilities in a disaster align with the agency’s mission—to protect human health and the environment. Those responsibilities also apply to the critical infrastructure facilities regulated by the agency, such as public water systems, wastewater-treatment plants, dams, and chemical and refining facilities.

The TCEQ regional offices form the basis of the agency’s support for local jurisdictions addressing emergency and disaster situations. For that reason, the Emergency

Management Support Team was created to implement a strategy of building greater disaster-response capabilities in each TCEQ region.

The Emergency Management Support Team is charged with maintaining preparedness, assisting with the development of the Disaster Response Strike Team in each region by providing enhanced disaster preparedness training to staff, and maintaining sufficient trained personnel so that response staff can rotate during long-term emergency events.

In addition, the Emergency Management Support Team maintains enhanced disaster-response equipment that can be deployed to any of the regions. This enables responders to conduct environmental monitoring, communicate with other responding jurisdictions or disciplines, and restore continuity of operations at any regional office affected by a disaster.

Accredited Laboratories

The TCEQ only accepts regulatory data from laboratories accredited according to standards set by the National Environmental Laboratory Accreditation Program (NELAP) or from laboratories that are exempt from accreditation, such as a facility’s in-house laboratory.

All labs accredited by the TCEQ are held to the same quality-control and quality-assurance standards. The analytical data produced by these laboratories is used in TCEQ decisions relating to permits, authorizations, compliance actions, enforcement actions, and corrective actions, as well as in characterizations and assessments of environmental processes or conditions.

TCEQ laboratory accreditations are recognized by other states using NELAP standards and by some states that do not operate accreditation programs of their own.

In fiscal 2012, the number of laboratories accredited by the TCEQ was 281.

Houston Laboratory

The TCEQ Houston Laboratory is accredited through the National Environmental Laboratory Accreditation Program (NELAP),

and serves the agency’s 16 regional field offices. The laboratory performs routine analyses that support the environmental monitoring programs of the TCEQ, river authorities, and other environmental partners.

The Houston Laboratory supports monitoring operations for the TCEQ’s air, water, and waste programs through laboratory analysis of surface water, wastewater, sediments, and sludge samples, airborne particulate matter, and a variety of environmental contaminants. The Houston Laboratory also analyzes samples collected as part of investigations conducted by the agency’s Office of Compliance and Enforcement. The laboratory develops analytical procedures and performance measures for accuracy and precision, and maintains a highly qualified staff of analytical chemists and biologists.

The laboratory generates scientifically valid and legally defensible test results under its NELAP-accredited quality system. Analytical data are traceable to national standards, such as the National Institute of Standards and Technology and the American Type Culture Collection, and are produced using EPA-approved methods.

With the rapid transmission of electronic data, the TCEQ can upload results directly to program databases.

Edwards Aquifer Protection Program

As a karst aquifer, the Edwards Aquifer is one of the most permeable and productive groundwater systems in the United States. The regulated portion of the aquifer crosses eight counties in south central Texas, serving as the primary source of drinking water for more than 1.7 million people. This replenishable system also supplies water for farming and ranching, manufacturing, generation of electric power using steam, mining, and recreation.

The aquifer’s pure spring water also supports a unique ecosystem of aquatic life, including a number of threatened and endangered species.

Because of the unusual nature of the aquifer’s geology and biology—and its role as a primary water source—the TCEQ

requires an Edwards Aquifer pollution abatement plan for any regulated activity proposed within the recharge, contributing, or transition zones. Regulated activities include construction, clearing, excavation, or anything that alters the surface or possibly contaminates the aquifer and its surface streams. Best management practices must be used during and after construction to treat stormwater in the regulated areas.

Each fiscal year, the TCEQ receives about 550 plans to be reviewed by the Austin and San Antonio regional offices. In addition to reviewing plans for development within the regulated areas, personnel conduct compliance investigations to ensure that best management practices are appropriately used and maintained. In addition, personnel conduct site assessments to ensure that aquifer-recharge features are adequately identified for protection prior to the start of construction.

Air Quality

Changes to Criteria-Pollutant Standards

The federal Clean Air Act requires the EPA to review the standard for each criteria pollutant every five years to ensure that it provides the required level of health and environmental protection. Federal clean-air standards cover six air pollutants: ozone, particulate matter, carbon monoxide, lead, nitrogen dioxide, and sulfur dioxide. Over the years, attaining the ozone standard has been the biggest air quality challenge in Texas.

Ground-level ozone, a component of smog, is not emitted directly into the air but forms through a reaction of nitrogen oxides (NO_x) and volatile organic compounds (VOCs) in the presence of sunlight. The major sources of NO_x and VOCs are industrial facilities, electric utilities, car and truck exhaust, and chemical solvents.

Types of Sources

Emissions that affect air quality can be characterized by their sources.

Point sources: industrial facilities such as refineries and cement kilns

Area sources: dry cleaners, gasoline stations, and residential heating

On-road mobile sources: cars and trucks

Nonroad mobile sources: construction equipment and engines such as locomotives

2008 Ozone Standard

In January 2010, the EPA published a proposed reconsideration of the 2008 eight-hour ozone standard of 0.075 parts per million (ppm). In September 2011, at President Obama's request, the EPA withdrew the proposed reconsidered ozone standard.

Soon after, the EPA announced it would proceed with initial area designations under the 2008 eight-hour ozone standard, starting with the recommendations states had made in 2009 and updating them with more current, certified air quality data (2008 through 2010).

Based on the latest available certified monitoring data, Governor Rick Perry

revised the March 2009 Texas designation recommendation for the 2008 eight-hour ozone standard. The revised recommendation indicated that the nine-county Dallas-Fort Worth (DFW) area—Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant counties—and the eight-county Houston-Galveston-Brazoria (HGB) area—Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties—should be designated nonattainment.

In late 2011, the EPA indicated it intended to modify the state's recommendations to include Wise County in the DFW nonattainment area and Matagorda and Hood counties in the HGB nonattainment area.

At the behest of the TCEQ, the governor in February 2012 asked the EPA to reverse its plan to expand the DFW and HGB ozone nonattainment areas, pursuant to EPA's 2008 eight-hour ozone standard, because of insufficient scientific justification for the action. Texas' position was supported by the TCEQ's comprehensive technical analysis.

In May 2012, the EPA published final designations and classifications for the 2008 eight-hour ozone standard. It also published a final rule for the 2008 eight-hour ozone standard that included classification thresholds, establishing December 31 of each relevant calendar year as the attainment date for each classification.

Ozone Compliance Status

Area	Attainment Status			
	1997 Eight-Hour Ozone	Attainment Deadline	2008 Eight-Hour Ozone	Attainment Deadline
Houston-Galveston-Brazoria (HGB)	Severe	6/15/2019	Marginal	12/31/2015
Dallas-Fort Worth (DFW)	Serious	6/15/2013	Moderate	12/31/2018
Beaumont-Port Arthur, El Paso, Austin, Corpus Christi, Victoria, San Antonio, East Texas, Waco	Attainment	n/a	Attainment	n/a

Note: The HGB area includes the counties of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. The DFW area includes the counties of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant; also Wise for the 2008 eight-hour ozone standard.

The EPA also revoked the 1997 eight-hour ozone standard for purposes of transportation conformity.

The DFW area was designated nonattainment with a “moderate” classification and the HGB area was designated nonattainment with a “marginal” classification. Matagorda and Hood counties were designated attainment/unclassifiable. Wise County was designated nonattainment with a “moderate” classification and became part of the DFW nonattainment area. The effective date was July 20, 2012.

Identifying control measures that are reasonable—as well as technologically and economically feasible—has presented a challenge for the TCEQ, considering the magnitude of emission reductions already achieved under the 1990 one-hour ozone standard.

Two of the main control strategies implemented in the HGB area for the one-hour ozone standard were as follows:

- An annual cap-and-trade program to reduce emissions of nitrogen dioxides (NO_x) by an average of 80 percent from utility, industrial, commercial, and institutional combustion sources.
- An annual cap-and-trade program to reduce emissions of highly reactive volatile organic compounds (VOCs) from process vents, flares, and cooling-tower heat exchange systems.

Meeting the eight-hour ozone standard in the HGB area has also been complicated by unique meteorological conditions along the Gulf Coast and the complex chemistry of ozone formation.

In June 2012, the EPA published its final rule to determine that the HGB area did not attain the one-hour ozone standard by the attainment date of Nov. 15, 2007. Although the EPA had revoked the one-hour standard in 2005, states must continue to meet the one-hour ozone anti-backsliding requirements when triggered by a finding of failure to attain by the applicable attainment date. The requirements are contingency measures and the Clean Air Act’s major stationary source fee programs.

14 Reductions from contingency measures have already been achieved in the HGB

area, so a final determination of failure to attain does not trigger additional emission reductions. However, a final determination of failure to attain by the area’s one-hour attainment date does trigger the one-hour anti-backsliding obligation to implement the penalty fee program under the Clean Air Act, unless that obligation is terminated.

2010 Sulfur Dioxide Standard

In 2010, the EPA published a final rule strengthening the primary sulfur dioxide (SO₂) standard. The rule sets a new one-hour standard of 75 parts per billion (ppb), determined by a three-year average of the 99th percentile of the annual distribution of daily maximum one-hour average concentrations. The rule revokes the previous annual SO₂ standard of 0.03 parts per million and the 24-hour standard of 0.14 ppm. The rule, which took effect in August 2010, was challenged in federal court by Texas and other states. That challenge was dismissed by the D.C. Circuit Court of Appeals in July 2012. Texas and the other parties to the lawsuit chose not to appeal the decision.

In 2011, Texas recommended the following designations: nonattainment for Jefferson County; attainment for Dallas, Ellis, El Paso, Galveston, Gregg, Harris, Kaufman, McLennan, and Nueces counties; and unclassifiable for all remaining counties. Texas revised its recommendation for Jefferson County to attainment in April 2012. The EPA’s initial designations were delayed beyond the June 2012 anticipated release. All Texas counties with regulatory monitors have 2011 design values indicating compliance with the 2010 SO₂ one-hour standard.

The EPA’s initial implementation guidance required maintenance plans and modeled demonstration of attainment for unclassifiable areas. In April 2012, the EPA put those requirements on hold. Roundtable meetings were held with stakeholders at EPA headquarters to determine how best to implement and assess compliance with the standard. By February 2014, states must submit State Implementation Plans (SIPs) to demonstrate attainment of the standard by August 2017 in nonattainment areas. By June 2013, states must submit infrastructure and transport SIPs.

The EPA was moving forward with designations focused on areas with sufficient air quality monitoring data. No attainment designations are anticipated, while areas in which monitored data indicate violation of the standard will be designated nonattainment. All other areas are expected to be designated unclassifiable.

As part of the final rulemaking for the 2010 standard, new SO₂ monitors are required in Amarillo, Austin–Round Rock, Beaumont–Port Arthur, Dallas–Fort Worth–Arlington, Houston–Sugar Land–Baytown, Longview, and San Antonio. The monitors must be operational by Jan. 1, 2013.

2010 Nitrogen Dioxide Standard

In February 2010, the EPA published the final rule to strengthen the primary standard for nitrogen dioxide (NO₂). The rule establishes a new one-hour NO₂ standard at 100 parts per billion. The new standard focuses on short-term exposures to NO₂, which are generally greater on and near major roads. No area in Texas has monitored above the 100 ppb standard.

The EPA retained the current annual average NO₂ standard of 53 ppb, but changed the monitoring network requirements to capture both peak NO₂ concentrations that occur near roadways and community-wide NO₂ concentrations.

In February 2012, the EPA published in the *Federal Register* the initial designations identifying all counties and parishes in the United States as unclassifiable/attainment. Two near-road NO₂ monitors in DFW and HGB must begin operating no later than Jan. 1, 2013, while two near-road NO₂ monitors in San Antonio and Austin–Round Rock must begin operating no later than Jan. 1, 2014.

Once the expanded network of NO₂ monitors is fully deployed and three years of air quality data have been collected—in 2016 or 2017—the EPA intends to redesignate areas based on data from the new monitoring network. The 2010 NO₂ attainment date is January 2021 or 2022, about five years after the date of the nonattainment designations.

2008 Lead Standard

In 2008, the EPA revised the primary standard for lead from 1.5 to 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), measured in total suspended particulate matter. In 2010, the EPA published a final rule designating a portion of Collin County—surrounding the Exide Technologies facility for recycling lead-acid batteries in Frisco—as nonattainment for the 2008 lead standard. The effective date of the designation was Dec. 31, 2010. The EPA's designation was identical to the revised recommendation the governor had submitted.

In 2011, the commission approved proposal of the Collin County attainment demonstration SIP revision for the 2008 lead standard. The SIP revision demonstrates attainment using an air-dispersion modeling analysis that includes existing control strategies, as well as the control strategies described in an agreed order with Exide. The agreed order was being processed concurrently with the SIP revision. A public hearing on this proposal was held in Frisco in July 2011.

In June 2012, the City of Frisco and Exide approved an agreement that would result in the closure of Exide's plant. Under the terms of the agreement, about 180 acres of undeveloped land surrounding the plant will be sold to the Frisco Community Development Corporation and the Frisco Economic Development Commission Corporation. As stipulated by the agreement, Exide will retain ownership of the federal and state permitted plant site, and it will cease business operations no later than Jan. 6, 2014. Also the Exide permits will be voided by Dec. 31, 2015.

The commission approved the Collin County attainment-demonstration SIP revision and agreed order in August 2012. The attainment date is Dec. 31, 2015.

Particulate-Matter Standards

The standard for particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($\text{PM}_{2.5}$) was proposed in June 2012. The EPA's proposal would reduce the annual primary $\text{PM}_{2.5}$

standard to a range of 12 to 13 $\mu\text{g}/\text{m}^3$. The EPA has been taking comments on alternative levels down to 11 $\mu\text{g}/\text{m}^3$. The EPA has proposed to retain the current 24-hour primary $\text{PM}_{2.5}$ standard of 35 $\mu\text{g}/\text{m}^3$ and the current coarse-particulate (PM_{10}) standard. Based on 2009–2011 air quality monitoring data, Harris County could be in nonattainment for primary $\text{PM}_{2.5}$ if the design value is set at 11 or 12 $\mu\text{g}/\text{m}^3$.

The EPA has proposed adding a separate 24-hour secondary standard for fine particles to protect visibility in urban areas. The proposal is for two levels: 28 and 30 deciviews. The EPA has also been taking comment on alternative levels down to 25 deciviews. Based on current air quality monitoring data, all of Texas would meet the secondary $\text{PM}_{2.5}$ standard.

The El Paso area is classified as moderate nonattainment for the PM_{10} standard. In January 2012, the commission adopted a SIP revision to incorporate a revised memorandum of agreement between the TCEQ and the City of El Paso to reflect a concurrent rulemaking to amend the PM control measures.

Evaluating Health Effects

The TCEQ relies on health- and welfare-protective values developed by its toxicologists to ensure that airborne concentrations of pollutants stay below levels of concern.

In 2006, the TCEQ finalized state-of-the-science guidelines for developing safe levels of chemicals in air, and in 2011 began the process of updating the guidelines to incorporate the latest scientific advancements. The updated guidelines have been subject to two rounds of public comment and an external scientific peer review by experts in assessing human-health risk. The document should be final in fiscal 2013.

The draft development support documents outlining the scientific procedures used to develop effects screening levels (ESLs) and air monitoring comparison values for individual chemicals are subject to a 90-day public comment period before they become final. In addition, the development support documents for some individual chemicals have undergone a technical review or

independent external peer review by subject experts. Updated toxicity assessments were derived for 21 chemicals using this process in fiscal 2011, and proposed development support documents for three chemicals were opened for public comment in fiscal 2012.

The toxicity assessments conducted by the agency have received widespread attention. In 2009, the Ontario Ministry of the Environment deemed the TCEQ toxicity assessment for 1,3-butadiene as the most defensible assessment of health risk over the assessments made by the EPA and other states. In 2010, Texas became the only state to have its toxicity factors posted to the International Toxicity Assessments for Risk Assessment database.

The EPA has recommended review of Texas' guideline levels to other states, and Texas has received compliments from the Agency for Toxic Substances and Disease Registry. Other countries now use Texas' values, including Australia, Israel, Taiwan, China, Austria, Belgium, Mexico, and the Netherlands.

Air Pollutant Watch List

Air toxics are pollutants known or suspected to cause cancer or other serious health effects. The TCEQ routinely reviews and conducts health-effects evaluations of ambient air monitoring data from across the state by comparing air-toxic concentrations to their respective air monitoring comparison values (AMCVs) or state standards. The TCEQ evaluates areas for inclusion on the air pollutant watch list (APWL) where monitored concentrations of air toxics are persistently measured above AMCVs or state standards.

The purpose of the APWL is to reduce air-toxic concentrations below levels of concern by focusing TCEQ resources and heightening awareness for interested parties in areas of concern.

The TCEQ also uses the APWL to identify companies with the potential of contributing to elevated ambient air-toxic concentrations and to then develop strategic actions to reduce emissions. An area's inclusion on the APWL results in more stringent permitting, prioritized investigative efforts, and in some cases increased monitoring.

Ten areas of the state are on the APWL (see <www.tceq.texas.gov/toxicology/AirPollutantMain/APWL.html>). In fiscal 2011 and 2012, the TCEQ conducted boundary reevaluations, which resulted in the redefinition of two APWL areas and the removal of one. Monitoring data indicated significant improvement in several other APWL areas, including Galena Park, Texas City, and Port Arthur. The TCEQ has evaluated these areas to determine whether the improvements in air quality are expected to be maintained. In the last two years, no new areas were added to the APWL.

Residential Exposure Studies

The TCEQ's Toxicology Division has been involved in numerous studies investigating human exposure to airborne toxic chemicals and the potential of these exposures to cause adverse health effects. These studies lead to a greater understanding of air pollution and more knowledgeable decision making at the TCEQ. They are also a valuable way to address community concerns, since many of the study requests come from individuals.

Two significant scientific research projects sponsored by the TCEQ were completed in fiscal 2011 and 2012:

- The Frisco Blood Lead Testing study was a collaborative sampling event in which the Texas Department of State Health Services collected blood samples to determine lead concentrations in Frisco-area residents. This occurred after the EPA lowered the standard for lead, which resulted in a portion of Frisco being identified as a nonattainment zone. The study found that all adult and child blood lead levels were below levels of concern and consistent with those of national and state data.
- The Hillcrest Community Environmental Investigation was a collaborative investigation, with citizen input, to address local concerns in the Corpus Christi community about potential sources of VOCs within the community and other environmental impacts. The investigation found that all measured levels of VOCs, polycyclic aro-

matic hydrocarbons and total petroleum hydrocarbons in soil and groundwater were below a level of health concern.

Oil and Gas: Barnett Shale and Eagle Ford Shale

As mentioned in Chapter 1, the TCEQ has conducted numerous air-monitoring projects in the Barnett Shale area, which encompasses 24 counties in the Dallas-Fort Worth area. From August 2009 to May 2012, the TCEQ surveyed 2,247 sites using the GasFind infrared (IR) camera; at 2,203 of these sites, employees also used a hand-held volatile-compound sampler.

Based on these instrument observations, 1,175 canister samples were collected. The agency's Toxicology Division provided health effects evaluations for all of the canister samples and posted the information on the TCEQ's Barnett Shale Web page (see <www.tceq.texas.gov/goto/barnettshale>). The site also features an interactive map to show the location and results of sampling conducted in the Barnett Shale area.

The TCEQ continues to conduct research projects aimed at improving oil and gas emissions inventory estimates and emissions factors, including a special emissions inventory in the Barnett Shale area. A summary of the Barnett Shale emissions inventory data, along with the other research to improve oil and gas emissions inventory estimates and emissions factors, is available at the TCEQ's Point Source Emissions Inventory Web page (see www.tceq.texas.gov/airquality/point-source-ei/psei.html). The TCEQ uses this data to update the periodic emissions inventory submitted to the EPA.

In late 2009, the TCEQ implemented a procedure to respond to all complaints received concerning oil and gas facilities in the Barnett Shale area. Average response time to Barnett Shale complaints has been less than five hours from the time the complaint is received until arrival of investigators on-site. From early 2009 to mid-2012, more than 1,175 complaints had been investigated.

New drilling activity is expected to continue, based on recent rig counts. However, drilling activity has slowed considerably in the "dry gas" areas of the Barnett Shale since October 2008.

The TCEQ will continue to analyze how the oil and gas sector affects overall air quality in the state, specifically the Dallas-Fort Worth area. Because of continued lower pricing for natural gas, drilling in the Barnett Shale has been shifting to the more oil-rich area of that shale or moving out of the area. Relocation areas are the oil-rich area of the Eagle Ford Shale play in South Texas and various Permian Basin shale zones in West Texas.

Based on lessons learned from the TCEQ's work in the Barnett Shale area, a number of activities have been conducted or will take place in other areas of the state. This includes meeting with county judges, conducting workshops for local government agencies and industry, making presentations, conducting flyovers using the infrared camera, performing reconnaissance investigations, and developing guidance documents (see <www.TexasOilandGasHelp.org>) for oil and gas compliance issues.

The TCEQ belongs to the Railroad Commission of Texas' Eagle Ford Task Force and is a member of the Energy Sector Impacts Task Force led by the Texas Department of Transportation.

The TCEQ is in the early development stages of determining what additional air monitoring might be needed in the Eagle Ford Shale area. The goal would be to gather baseline data on VOCs and NO_x so the agency can evaluate, anticipate, and address the impact of oil and gas drilling and production activities on air quality throughout the Eagle Ford Shale play.

In addition, the data would be used to evaluate the potential transport of ozone precursors into the San Antonio area.

CAMR, CAIR, and CSAPR

In 2005, the EPA issued new rules to significantly reduce emissions for new and existing electricity-generating units.

The Clean Air Mercury Rule (CAMR) was designed to permanently cap—for the first time—mercury emissions from new and existing coal-fired power plants. This rule promised to make the United States the first country to regulate mercury emissions from electricity-generating utilities. In 2006, the

TCEQ approved rulemaking to implement the CAMR trading program for mercury.

The Clean Air Interstate Rule (CAIR) was intended to help nonattainment areas for ozone and fine particulate matter (PM_{2.5}) control NO_x and SO₂ emissions from new and existing electricity-generating utilities. In 2006, the TCEQ approved rulemaking to implement the CAIR trading program for NO_x and SO₂ and incorporated the provisions of Texas House Bill 2481, passed in 2005, and Texas Senate Bill 1672, passed in 2007.

In 2008, the D.C. Circuit Court of Appeals vacated CAMR. In a decision later that year, the court vacated CAIR and remanded it back to the EPA until the EPA could replace it with another rule that addressed the flaws the court identified in CAIR. The commission adopted the CAIR SIP and rule revisions in 2010. Texas electric generating units were only included in CAIR for the PM_{2.5} requirements, not for both ozone and PM_{2.5}, as was the case in more than 20 other states in the eastern half of the United States.

In 2011, the EPA finalized a rule, called the Cross-State Air Pollution Rule (CSAPR), requiring 28 eastern states to reduce emissions from electric generating units that contribute to ozone and PM_{2.5} pollution in other states. The rule is intended to help eastern states meet federal air quality obligations regarding interstate transport of air pollution for the 1997 ozone and PM_{2.5} and 2006 PM_{2.5} standards. The rule requires reductions in ozone season NO_x emissions for states under the ozone requirements, and reductions in annual SO₂ and NO_x for states under the PM_{2.5} requirements. The proposed rule had included Texas only under the ozone requirements, but the final rule required Texas to be included in both the ozone and PM_{2.5} programs.

To ensure emissions reductions, the EPA is implementing federal implementation plans (FIPs) for each of the states covered by the rule, beginning with the 2012 control periods. States may choose to develop SIP revisions to replace the FIP, beginning with the 2013 control period. The rule fully replaces CAIR.

In September 2011, the Texas Attorney General filed with the EPA a petition for

reconsideration and a stay of CSAPR, as it applies to Texas. The AG's Office also filed with the D.C. circuit court a petition for review and a motion for partial stay of the final rule.

On Dec. 30, 2011, the circuit court granted the state's request for a stay, which halted implementation of CSAPR, pending a full review of Texas' petition. The court heard oral arguments in April 2012. CAIR remains in place.

In June 2012, the EPA published the final rule to implement revisions. The EPA has stated that it is prudent to proceed with these amendments so the rules will be in place in case the CSAPR stay is lifted. However, given the stay, these amendments did not impose any requirements on regulated electric generating units or states.

In August 2012, CSAPR was vacated in a 2-1 decision from the D.C. Circuit Court of Appeals. The court ordered CSAPR vacated and the EPA to continue to administer CAIR while it works on a replacement transport rule. The court reiterated its language from the CAIR decision that the court did not intend an indefinite continuation of CAIR, and an expectation that the EPA would act expeditiously.

Fuel Requirements

In another strategy to lower levels of NO_x and VOC emissions from mobile sources, either the TCEQ or the EPA has requirements in place to use various fuel mixtures in different parts of the state, as follows:

- Reformulated gasoline is required year round in the eight-county Houston-Galveston-Brazoria area and the four-county Dallas-Fort Worth area (Collin, Dallas, Denton, and Tarrant counties).
- Low Reid vapor pressure gasoline is required between May and October in 95 counties in East and Central Texas, the Beaumont-Port Arthur area, and El Paso County.
- Oxygenated gasoline with a minimum oxygen content of 2.7 percent by weight is required from October through March in El Paso County (to lower carbon monoxide).

- Texas low-emission diesel fuel is required year-round in 110 counties in East and Central Texas.

Major Incentive Programs

The TCEQ has three important programs aimed at reducing emissions: the Texas Emissions Reduction Plan, Drive a Clean Machine, and the Texas Clean School Bus Program.

Texas Emissions Reduction Plan

The Texas Emissions Reduction Plan (TERP) provides financial incentives to owners and operators of heavy-duty vehicles and equipment for projects that will lower NO_x emissions. Because NO_x is a leading contributor to the formation of ground-level ozone, lowering these emissions is key to achieving compliance with the Clean Air Act.

In providing grants for voluntary upgrades, the program has focused largely on the ozone nonattainment areas of Dallas-Fort Worth and Houston-Galveston-Brazoria. Funding has also been awarded to projects in the Tyler-Longview-Marshall, San Antonio, Beaumont-Port Arthur, Austin, Corpus Christi, El Paso, and Victoria areas.

From 2002 through August 2012, the program awarded more than \$858 million for the upgrade or replacement of 14,685 heavy-duty vehicles, locomotives, marine vessels, and pieces of equipment. Over the life of these projects, 164,965 tons of NO_x are projected to be reduced, which equals to 62.4 tons per day in 2013.

Two programs were established under the TERP program in 2009.

- The **Texas Clean Fleet Program** provides funding for replacement of diesel vehicles with alternative-fuel or hybrid vehicles. Eight projects were awarded grants in 2011 for a total of \$29.4 million. The 2012 grant round closed in August. These projects included a range of alternative-fuel vehicles, including propane school buses, natural gas refuse vehicles, hybrid delivery vehicles and refuse vehicles, and electric vehicles.
- The **New Technology Implementation Grant Program** funds incremental

costs of reducing emissions from facilities and other stationary sources in Texas. Two grants were awarded in 2011 for a total of almost \$6.2 million. These projects involve systems to capture and store energy from wind-powered generation sources.

In 2011, the Legislature established additional programs to support alternative fuel vehicles in Texas.

- The **Clean Transportation Triangle Program** provides grants to support the development of a network of natural gas vehicle-fueling stations along the interstate highways connecting the Houston, Dallas, Fort Worth, and San Antonio areas. The program is allocated up to \$2.3 million per fiscal year. Plans called for the first grants to be awarded in the fall of 2012, with an additional grant application period anticipated for December 2012.
- The **Alternative Fueling Facilities Program** provides grants for the construction, reconstruction, or acquisition of facilities to store, compress, or dispense alternative fuels in areas of Texas designated as nonattainment. This program is allocated \$1.1 million per fiscal year. Plans called for the first grants to be awarded in early fiscal 2013.
- The **Texas Natural Gas Vehicle Grants Program** provides grants for the replacement or repower of heavy-duty or medium-duty diesel- or gasoline-powered vehicles with natural gas-powered vehicles and engines. Eligible vehicles must be operated in the counties intersected by the interstate highways designated under the Clean Transportation Triangle program and in counties designated as nonattainment. This program is allocated at least \$9.1 million per fiscal year. The first application period opened in July 2012 and will extend until May 2013 or until all funds are awarded, whichever occurs earlier. These grants are awarded on a first-come-first-served basis.

TERP grants and activities during the last two years are detailed in a separate report, *Texas Emissions Reduction Plan (TERP)*

(SFR-079/12). (The report is available at <www.tceq.texas.gov/publications>.)

Drive a Clean Machine

The Drive a Clean Machine program (see <www.driveacleanmachine.org>) was established in 2007 as part of the Low Income Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) to remove older, polluting cars and trucks and replace them with newer, cleaner-running vehicles.

Backed by a \$45 million annual appropriation from fiscal 2008 through 2011 and \$5.6 million in fiscal 2012, the Drive a Clean Machine program is available in the areas of Houston-Galveston-Brazoria (Brazoria, Fort Bend, Galveston, Harris, and Montgomery counties), Dallas-Fort Worth (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant counties), and Austin-Round Rock (Travis and Williamson counties). These counties conduct annual inspections of vehicle emissions.

From the program's debut in December 2007 through May 2012, about \$161 million was provided to qualifying vehicle owners in the Houston-Galveston-Brazoria, Dallas-Fort Worth, and Austin-Round Rock areas. This funding helped retire or replace a total of 49,729 vehicles and repair an additional 24,213 vehicles.

Texas Clean School Bus Program

The Texas Clean School Bus Program provides grants for technologies that reduce diesel-exhaust emissions inside the cabin of a school bus. In addition to grant funding, the program offers educational materials to school districts on other ways to reduce emissions, such as idling reduction. By the end of August 2012, the Texas Clean School Bus Program had reimbursed approximately \$18.9 million in grants to 181 public school districts or charter schools to retrofit 6,692 school buses in Texas.

Environmental Research and Development

The TCEQ supports cutting-edge scientific research into the causes of air pollution in Texas.

The agency sponsored the Texas Air Quality Study (TexAQ5) field campaign in 2000, and the TexAQ5 II from 2005 to 2006.

More recently, the TCEQ and the Air Quality Research Program supported a range of projects. Among the air quality topics studied by TCEQ-sponsored researchers in fiscal 2011 and 2012 are the following:

- estimates of industrial emissions (especially flares) and emissions from oil and gas production;
- analyses of the transport of pollutants from city to city within the state and from out of state into Texas;
- detailed analyses of ozone production chemistry to develop more accurate simulations of the chemical processes that create and destroy ozone in Houston and Dallas; and
- advanced meteorological simulations for high pollution episodes in Houston, Dallas, and eastern Texas.

The most important studies are summarized as follows:

- **The destruction and removal efficiency of industrial flares.** Flares burn waste gases from industrial processes. Standard operating practices are assumed to destroy at least 98 percent of the gases, but recent measurement studies using state-of-the-science technology by the TCEQ indicated that the waste gases may not always be burned with the assumed efficiency. Based on these preliminary investigations, the TCEQ, the University of Texas at Austin, and John Zink (a flare manufacturer) developed a project to test flares under different conditions to quantify the true emissions of vent gases from high-volume flares being operated at low volume (i.e., as process flares instead of emergency flares). One of the key factors found to affect flare destruction efficiency is the amount of steam assist or air assist supplied to the flare during combustion. Steam or air assist is used to reduce smoke from the flame and to mix the gases thoroughly with air. The TCEQ's Comprehensive Flare Study found that it was easy to over-assist the flare, which

could dramatically reduce its destruction efficiency and thus dramatically increase the emission of gases that were supposed to be destroyed. UT conducted computer simulations of ozone episodes to test the effects of lowered destruction efficiency and found that the increased emissions could increase ozone formation within flare plumes. Therefore, this study identified one of the major underreported sources of highly reactive VOC emissions in the Houston area. Fourteen papers, based on the research during the TCEQ Comprehensive Flare Study, have been published in *Industrial and Engineering Chemistry Research*.

- **Direct measurements of emission fluxes.** In 2009, the TCEQ sponsored researchers from the University of California–Los Angeles and other universities to conduct a field study in the Houston area to examine industrial emission sources with advanced remote sensing devices, including devices that could directly quantify the emissions of organic compounds. Analysis of these measurements in 2011 to 2012 found that formaldehyde, an important ozone precursor, can be emitted directly from the tip of the flame atop an industrial flare and from the unit that refreshes the catalyst used in fluidized catalytic cracking processes. These observations also determined that the destruction and removal efficiency and combustion efficiency of vent gases from the flares ranged from 70–99 percent. Since the assumed efficiencies are 98–99 percent, the emissions of vent gases are presumably greatly underestimated. These observations are corroborated by other on-site measurements, and by the results from the TCEQ Comprehensive Flare Study. Short-term SO₂ flux measurements were found to agree with the reported emissions inventories, but short-term flux measurements of highly reactive VOCs were found to exceed the emissions inventory rates by up to two orders of magnitude.
- **Sources of formaldehyde.** The TCEQ funded scientists at the National Oceanic and Atmospheric Administration to investigate the relative importance of primary versus secondary sources of

formaldehyde. Primary formaldehyde is directly emitted, whereas secondary formaldehyde is created from chemical reactions of highly reactive VOCs in the ambient air. The investigation was based on measurements collected during five field studies in 2000, 2006, and 2009. Secondary formation of formaldehyde was the dominant source. Small amounts of ambient formaldehyde were contributed by primary emissions from industrial facilities, secondary production from vehicle emissions, and primary emissions from vehicles. The primary emissions from both industry and vehicles are well-quantified by current emission inventories.

- **DFW field study.** The TCEQ and the Air Quality Research Program funded a field study in the Dallas–Fort Worth area in 2011. One of the purposes was to characterize emissions from the Barnett Shale oil and gas production region. The emission flux measurements performed during the study found that the largest sources of hydrocarbons at oil and gas locations near Fort Worth were gas-treatment facilities, combined with large compressor stations. Emissions were an order of magnitude lower from smaller compressor stations and well pads; however, flashing emissions on one occasion from a condensate tank were estimated at 140 kg/h methane and 10 kg/h ethane (and other species), suggesting further study for this potentially important intermittent source.

The latest findings should help in solving some of the persistent air quality issues faced by the Houston area. However, challenges remain for Dallas–Fort Worth and the southeastern portions of the state, as the revised air quality standards proposed by the EPA will be challenging to meet.

Water Quality

Developing Surface Water Quality Standards

Texas Surface Water Quality Standards

Under the federal Clean Water Act, every three years the TCEQ is required to review

and, if appropriate, revise the Texas Surface Water Quality Standards. These standards are the basis for establishing discharge limits in wastewater permits, setting instream water quality goals for Total Maximum Daily Loads and providing criteria to assess instream attainment of water quality.

Water quality standards are set for major streams and rivers, reservoirs, and estuaries based on their specific uses: aquatic life, recreation, drinking water, fish consumption, and general. The standards establish water quality criteria, such as temperature, pH, dissolved oxygen, salts, bacterial indicators for recreational suitability, and a number of toxic substances.

The commission adopted revised water quality standards and standards implementation procedures in fiscal 2010. Major revisions included:

- Expanded categories for recreational uses and criteria, as well as more specific protocols to assign recreational uses.
- Revisions to toxicity criteria to incorporate new data on toxicity effects and revisions to the basic requirements for toxicity effluent testing to address revised TCEQ and EPA procedures.
- Addition of new numerical nutrient criteria to protect numerous reservoirs from the excessive growth of aquatic vegetation related to nutrients.
- Numerous revisions and additions to the uses and criteria of individual water bodies to incorporate new data and the results of recent use-attainability analyses.

Revised standards must be approved by the EPA before being applied to Clean Water Act–related activities. The EPA acted on about half of the 2010 revisions in June 2011. Although portions of the 2010 standards had yet to finish federal review, the TCEQ proceeded with its triennial review of the Texas Surface Water Quality Standards.

Use-Attainability Analyses

The Surface Water Quality Standards Program also coordinates and conducts use-attainability analyses (UAAs) to develop site-specific uses for aquatic life and

recreation. A UAA is a scientific assessment of the physical, chemical, biological, or recreational characteristics of a water body. This assessment is often used to reevaluate designated or presumed uses when the existing standards might be inappropriate for water bodies that are listed as impaired or are potentially affected by permitted actions.

As a result of aquatic life UAAs, site-specific aquatic life uses or dissolved oxygen criteria were adopted in the 2010 water quality standards revision for more than 50 individual water bodies.

In 2009, the TCEQ developed recreational UAA procedures to evaluate and more accurately assign levels of protection for water recreation activities such as swimming and fishing. Since then, the TCEQ has initiated more than 100 recreational UAAs to evaluate recreational uses of water bodies that have not attained their existing criteria.

Using results from recreation UAAs, the TCEQ adopted site-specific contact recreation criteria for three individual water bodies in the 2010 Texas Surface Water Quality Standards revision. Additional site-specific contact-recreation criteria will be included in future revisions to the Texas Surface Water Quality Standards.

Clean Rivers Program

The Texas Clean Rivers Program is a unique state-fee-funded water quality monitoring, assessment, and public outreach program. Fifteen regional water agencies (primarily river authorities) perform monitoring, assessment, and outreach. The program affords the opportunity to approach water quality issues within a watershed or river basin at the local and regional level through coordinated efforts among diverse organizations.

Accomplishments include doubling the water quality data available for TCEQ decision making and increasing public awareness of water quality issues at the local level.

Water Quality Monitoring

Surface water quality is monitored across the state in relation to human-health concerns, ecological conditions, and design-

nated uses. The resulting data forms a basis for policies that promote the protection and restoration of surface water in Texas.

Coordinated Routine Monitoring

Each spring, TCEQ staff meet with various water quality organizations to coordinate their monitoring efforts for the upcoming fiscal year. The TCEQ prepares the guidance and reference materials, and the Texas Clean Rivers Program partners assist with the local meetings. The available information is used by participants to select stations and parameters that will enhance the overall water quality monitoring coverage, eliminate duplication of effort, and address basin priorities.

The coordinated monitoring network, which is made up of about 1,800 active stations, is one of the most extensive in the country. Coordinating the monitoring among the various participants ensures that available resources are used as efficiently as possible.

Continuous Water Quality Monitoring

The TCEQ has developed—and continues to refine—a network of continuous water quality monitoring sites on priority water bodies. The agency maintains 65 to 70 sites in its Continuous Water Quality Monitoring Network (CWQMN). At these sites, instruments measure basic water quality conditions every 15 minutes.

CWQMN monitoring data may be used by the TCEQ or other organizations to make water-resource management decisions, target field investigations, evaluate the effectiveness of water quality management programs such as TMDL implementation plans and watershed-protection plans, characterize existing conditions, and evaluate spatial and temporal trends. The data is posted at <www.texaswaterdata.org>.

The monitoring network is used daily to guide decisions on how to better protect certain segments of rivers or lakes, as seen by the following:

- **Pecos River.** From 2006 to 2012, the TCEQ developed a network of

nine CWQM sites from New Mexico to the Amistad Reservoir. The primary purpose of these sites is to monitor levels of dissolved salts and obtain information on the effectiveness of the Pecos River Watershed Protection Plan, which was implemented to protect the water supply in the Amistad Reservoir. The Pecos River CWQM sites are operated and maintained by the U.S. Geological Survey through cooperative agreements with the TCEQ and the Texas State Soil and Water Conservation Board. Other uses of this data includes development of water quality models.

- **Lower Rio Grande.** Seven Lower Rio Grande CWQMN stations provide near real-time data to support Rio Grande watermaster decisions. This occurs by monitoring water quality impacts from agricultural return flows from multiple sources in Texas and Mexico. These sites help the watermaster anticipate and lessen these water quality impacts.

Assessing Surface Water Data

Every even-numbered year, the TCEQ assesses water quality to determine which water bodies meet the surface water quality standards for their designated uses, such as contact recreation, support of aquatic life, or drinking water supply. Data associated with 200 different water quality parameters are reviewed to conduct the assessment. These parameters include physical and chemical constituents, as well as biological communities.

The assessment is published on the TCEQ website (see <www.tceq.texas.gov/waterquality/monitoring/index.html>) and submitted as a draft to the EPA as the *Texas Integrated Report for Clean Water Act Sections 305(b) and 303(d)*.

The report evaluates conditions during the assessment period and identifies the status of the state's surface waters in relation to the Texas Surface Water Quality Standards. Waters that do not regularly attain one or more of the standards may require action by the TCEQ and are placed on the 303(d) List of Impaired Water Bodies for Texas (part of the Integrated Report). The EPA must approve

this list before implementation by the TCEQ's water quality management programs.

Because of its large number of river miles, Texas can assess only a portion of its surface water bodies. The most important river segments and those considered at highest risk for pollution are assessed regularly. For the 2010 Integrated Report, water quality data was evaluated from 4,320 sites on 1,214 water bodies. The draft 2012 Integrated Report is expected to be submitted to the EPA in late 2012.

Restoring Water Quality

Watershed Action Planning

Water quality planning programs in Texas have responded to the challenges of maintaining and improving water quality by developing new approaches to addressing water quality issues in the state. Watershed action planning is a process for coordinating, documenting, and tracking the actions necessary to protect and improve the quality of the state's streams, lakes, and estuaries. The major objectives are:

- To fully engage stakeholders in determining the most appropriate action to protect or restore water quality.
- To improve access to state agencies' management decisions in water quality and increase the transparency of that decision making.
- To improve the accountability of state agencies assigned with protecting and improving water quality.

Leading the watershed action planning process are the TCEQ, the Texas State Soil and Water Conservation Board, and the Texas Clean Rivers Program partners. Key to the success of this process is involving all stakeholders, especially at the watershed level.

Total Maximum Daily Load

The Total Maximum Daily Load (TMDL) Program is one of the agency's primary means of improving the quality of impaired surface waters. This program works closely with the agency's Wastewater Permitting

and Nonpoint Source programs, as well as other governmental agencies and regional stakeholders, during the development of TMDLs and related implementation plans.

A TMDL is like a budget for pollution—it estimates the amount of a pollutant that a water body can assimilate daily and meet water quality standards. The budget, or load, is divided among categories of sources of pollution in the watershed. A TMDL sets the target for reaching attainment. Fully restoring water quality is a long-term commitment of the stakeholders in the watershed. For many impaired water bodies, an implementation plan to reduce pollutant loads is developed by the stakeholders in the affected watershed.

Since 1998, the TCEQ has been developing TMDLs to improve the quality of impaired water bodies on the federal 303(d) List, which identifies surface waters that do not meet one or more quality standards. In all, the agency has adopted 206 TMDLs for 134 water bodies in the state.

As of August 2012, the TMDL Program had restored water quality to attain standards for 28 impairments to surface waters. Overall, the program restored fishing uses, conditions for aquatic life, and proper salinity to 353 stream miles; made water suitable as a source of drinking water for 19,310

reservoir acres; and restored conditions for aquatic life in 12 square miles of estuary.

From August 2010 to August 2012, the commission adopted eight TMDL reports (56 impairments) for the following projects in which bacteria had impaired contact-recreation use: Brays Bayou and tributaries, Carters Creek and Burton Creek and tributaries, Cottonwood Branch and Grapevine Creek and tributaries, and Dickinson Bayou and tributaries. Also, 10 water bodies in the eastern Houston area, Halls Bayou and tributaries, nine water bodies upstream of Lake Houston, Sims Bayou and tributaries, and the Upper Trinity River.

Bacteria TMDLs

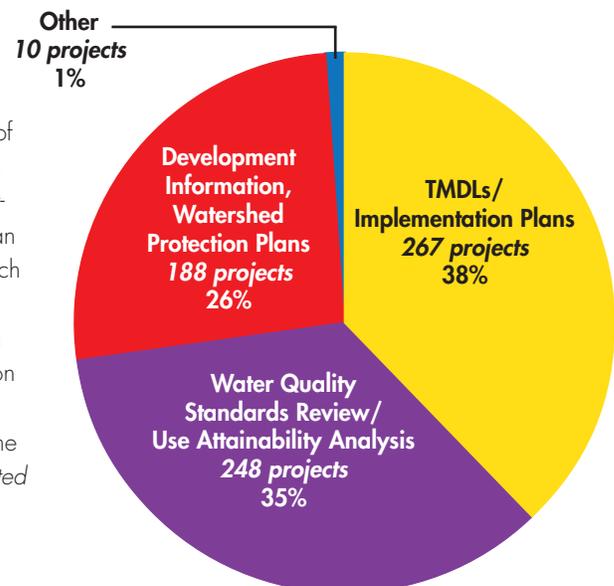
Bacteria from human and animal wastes can indicate the presence of disease-causing microorganisms that pose a threat to public health. People who swim or wade in waterways with high concentrations of bacteria have an increased risk of contracting gastrointestinal illnesses. High bacteria concentrations can also affect the safety of oyster harvesting and consumption.

Of the 621 impairments listed for surface water segments in Texas, about half are for bacterial impairments to recreational water uses.

Management Strategies for Restoring Water Quality

There are a variety of ways the TCEQ can address water impairments. Selection of an appropriate approach is coordinated with stakeholders through the Watershed Action Planning process. Numbers are from the 2010 Texas Integrated Report.

Total projects: 713



In the last two years, 41 TMDLs for bacteria were completed, and 51 were under way or planned for fiscal 2013. A workable strategy has been developed for bacteria TMDLs that is simple and relies on the consensus of the stakeholders in the affected watersheds.

Other actions are also being taken to address bacteria impairments, such as recreational use-attainability analyses that ensure that the appropriate contact-recreation use is in place, as well as watershed-protection plans developed by stakeholders and primarily directed at nonpoint sources.

Implementation Plans

Implementation plans are developed by the stakeholders in watersheds affected by a TMDL. They describe the activities that stakeholders will conduct in the watershed to decrease pollutant loads. The plans also map out the schedule, the responsible party, needed technical and financial assistance, estimated load reductions, and milestones to measure progress. For simple pollutants that are distributed throughout the watershed, such as bacterial and dissolved oxygen, the TMDL and implementation plans are developed together. This efficiency shortens the length of time needed to complete the process.

Each plan contains a commitment by the stakeholders to meet annually and review progress. They can revise or renew the plan to continue the water quality improvement with the goal of meeting the water quality standards. Engaging stakeholders in the development of an implementation plan allows them to develop a strategy that can be accomplished with available resources.

The best example of engaging stakeholders is the Bacteria Implementation Group in the Houston area. The group consists of 31 members and alternates representing government, private industry, agricultural interests, conservation organizations, watershed groups, and the public. Stakeholders convened in 2009 to develop a single implementation plan for 72 bacterial impairments in the Houston area. The watersheds in the plan make up 2,200 square miles, including all or part of 10

counties and more than 55 municipalities. Public comments on the draft implementation plan were accepted from June 13 to July 30, 2012. The stakeholder group is expected to remain active throughout implementation of the plan.

Nonpoint Source Program

The Nonpoint Source (NPS) Program administers the provisions of Section 319 of the federal Clean Water Act to control urban and non-agricultural NPS pollution. Section 319 authorizes grant funding for states to develop projects and implement NPS management strategies.

The TCEQ, with the Texas State Soil and Water Conservation Board, manages the NPS grants to implement the goals identified in the Texas NPS Management Program. The management program must be approved by the TCEQ, the governor, and the EPA. The governor submitted an updated NPS Management Program to the EPA in June 2012, and approval was granted in August. The NPS Program annual report tracks the progress in meeting the long- and short-term goals of the management program.

The NPS Program annually applies for funding from the EPA. The award is split between the TCEQ to address urban NPS pollution and the Texas State Soil and Water Conservation Board to address agricultural and silvicultural NPS pollution. The TCEQ receives \$2 million to \$3 million annually. Sixty percent of overall project costs are federally reimbursable; the remainder must be matched by the grantee. In fiscal 2012, \$2.5 million was matched with \$1.6 million, for a total of \$4.1 million.

The TCEQ solicits applications to develop projects that contribute to the NPS Program management plan. Typically, 20 to 25 applications are received, reviewed, and ranked each year. Because the number of projects funded depends on the amount of each contract, the number fluctuates. Ten projects were selected in fiscal 2011; nine in fiscal 2012. Half of the federal funds awarded must be used for the development and implementation of watershed-protection plans and TMDL implementation plans.

The NPS Program also administers the provisions of Section 604(b) of the federal Clean Water Act. These funds are derived from State Revolving Fund appropriations under Title VI of the act. Using a legislatively mandated formula, money is passed through to councils of governments for planning purposes. In fiscal 2012, the program applied for about \$680,000 in funding from the EPA.

Bay and Estuary Programs

The estuary programs are non-regulatory, community-based programs focused on conserving the sustainable use of bays and estuaries in the Houston-Galveston and Coastal Bend Bays regions through implementation of locally developed comprehensive conservation management plans. Plans for Galveston Bay and the Coastal Bend bays were established in the 1990s by a broad-based group of stakeholders and bay user groups. These plans strive to balance the economic and human needs of the regions.

The plans are implemented by two different organizations: the Galveston Bay Estuary Program (GBEP), which is a program of the TCEQ, and the Coastal Bend Bays and Estuaries Program (CBBEP), which is managed by a nonprofit authority established for that purpose. The TCEQ partially funds the CBBEP.

Additional coastal activities at the TCEQ include:

- Participating in the Gulf of Mexico Alliance, a partnership composed of Alabama, Florida, Louisiana, Mississippi, and Texas. The TCEQ contributes staff time to implement the Governors' Action Plan, focusing on several water quality concerns (pathogens, nutrients, and mercury, and improved comparability of data collection among the states), as well as education and outreach.
- Participating on the Coastal Coordination Advisory Committee and implementing the state's Coastal Management Program, both of which are led by the General Land Office.
- Directing, along with the General Land Office and the Railroad Commission of

Texas, the allocation of funds from the Coastal Impact Assistance Program.

- Working with the General Land Office to gain full approval of the Coastal Non-point Source Program, which is required under the Coastal Zone Act Reauthorization Amendments.

Galveston Bay Estuary Program

The GBEP provides ecosystem-based management that strives to balance economic and human needs with available natural resources in Galveston Bay and its watershed. Toward this goal, the program fosters cross-jurisdictional coordination among federal, state, and local agencies and groups, and cultivates diverse, public-private partnerships to implement projects and build public stewardship.

GBEP priorities include:

- wetlands conservation
- oyster-reef restoration
- water conservation
- stormwater quality improvement
- public outreach and education

During fiscal 2011 and 2012, GBEP protected and restored 1,600 acres of coastal wetlands and other important habitats; worked to control the spread of invasive species in Galveston and Brazoria counties; assisted local governments in managing stormwater through water quality improvement projects; helped interested landowners maintain working farms while preserving long-term wildlife values on their property; and partnered with industry and local governments to initiate a regional education campaign.

Through collaborative partnerships established by the program, \$7 in private, local, and federal contributions was leveraged for every \$1 the program dedicated to these projects.

Coastal Bend Bays and Estuaries Program

During fiscal 2011 and 2012, the CBBEP implemented 60 projects, including habitat

restoration and protection in areas totaling 1,369 acres. Based in the Corpus Christi area, the CBBEP is a voluntary partnership working with industry, environmental groups, bay users, local governments, and resource managers to improve the health of the bay system. In addition to receiving program funds from local governments, private industry, the TCEQ, and the EPA, the CBBEP seeks funding from private grants and other governmental agencies. In the last two years, the CBBEP secured more than \$7.7 million in additional funds to leverage TCEQ funding.

CBBEP priority issues focus on human uses, freshwater inflows, maritime commerce, habitat loss, water and sediment quality, and education and outreach. The CBBEP has become more active in water and sediment quality issues. The goal is to address 303(d) List segments so they meet state water quality standards.

Other areas of focus:

- Restoration of a 180-acre emergent marsh complex in Nueces Bay to restore fish and wildlife habitat.
- Environmental education of more than 7,000 students and teachers a year at the CBBEP Nueces Delta Preserve, which provides experiential activities.
- Colonial-waterbird rookery island enhancement for which CBBEP biologists implement predator control, habitat management, and other actions to help stem the declining populations of nesting coastal birds.
- The San Antonio Bay Partnership in which CBBEP assists local stakeholders to better characterize the San Antonio Bay system and develop plans to protect and restore wetlands and wildlife habitats.

Drinking-Water Standards

For more than a decade, the EPA has been instituting major changes that require public water systems to remove disease-causing microorganisms from surface waters, reduce arsenic and radionuclides from groundwater aquifers, and enact stricter controls regarding the chemical by-products created when chlorine is used to disinfect water. These

new standards have been integrated into TCEQ rules.

Of the 7,023 public water systems in Texas, about 4,700 are community water systems, mostly operated by cities. These systems serve about 96 percent of Texans. The rest are non-community water systems—such as those at schools, churches, factories, businesses, and state parks.

The TCEQ provides online data tools so the public can find information on the quality of locally produced drinking water. The Texas Drinking Water Watch (see <[dwww.tceq.texas.gov/DWWW/](http://www.tceq.texas.gov/DWWW/)>) provides analysis results from the compliance sampling of public water systems. In addition, the Source Water Assessment Viewer (see <www.tceq.texas.gov/gis/swaview/>) shows the location of the sources of drinking water. The viewer also allows the public to see any potential sources of contamination, such as an underground storage tank.

All public water systems are required to monitor the levels of contaminants present in treated water and to verify that each contaminant does not exceed its maximum contaminant level (MCL), action level (AL), or maximum residual disinfection level (MRDL). The MCL, AL, or MRDL is the highest level at which a contaminant is considered acceptable in drinking water for the protection of public health.

In all, the EPA has set standards for 102 contaminants in the major categories of microorganisms, disinfection by-products, disinfectants, organic and inorganic chemicals, and radionuclides. The most significant microorganism is coliform bacteria, particularly fecal coliform. The most common chemicals of concern in Texas are disinfection by-products, arsenic, fluoride, and nitrate.

More than 41,000 water samples are analyzed each year just for chemical compliance. Most of the chemical samples are collected by contractors, and then submitted to a certified laboratory. The analytical results are sent to the TCEQ and the public water systems.

Each year, the TCEQ holds a free symposium on public drinking water, which draws about 700 participants. The agency also provides technical assistance to public

water systems to ensure that consumer confidence reports are developed correctly.

Any public system that fails to have its water tested or reports test results incorrectly faces a monitoring or reporting violation. When a public water system has significant or repeated violations of state regulations, the case is referred to the TCEQ's enforcement program.

In May 2011, the TCEQ adopted EPA's new approach for "enforcement targeting" under the federal Safe Drinking Water Act. The approach is designed to identify public water systems with violations that rise to the level of significant non-compliance by focusing on systems with health-based violations and those with a history of violations across multiple rules.

The TCEQ also enacted an enforcement response policy. This new system-based approach uses an enforcement targeting tool that prioritizes public water systems by assigning each violation a "weight," or number of points, based on the assigned threat to public health. Points for each violation at a public water system are totaled to produce a score. For example, a violation stemming from an acute MCL carries more weight than a monitoring and reporting violation. This way, the TCEQ can target resources to address water systems having the highest priority problems.

Utility Services

Public water systems are required to submit engineering plans and specifications for new water systems or for improvements to existing systems. The plans must be reviewed by the TCEQ before construction can begin. In fiscal 2011, the TCEQ completed compliance reviews of 1,735 engineering plans for public water systems. In fiscal 2012, the agency performed 1,734 such reviews.

Investor-owned utilities and water supply corporations are required to obtain certificates of convenience and necessity (CCNs) before providing service. A CCN is a TCEQ authorization that allows a retail public utility to furnish retail water or sewer utility service to a specified geographic area. Investor-owned utilities must also

have an approved tariff that includes a rate schedule, service rules, an extension policy, and a drought contingency plan.

The TCEQ has original jurisdiction over the rates and services of investor-owned utilities, and has appellate jurisdiction over the rates of water-supply corporations, water districts, and out-of-city customers of municipally owned retail public utilities.

In fiscal 2011, the agency completed 137 CCN-related application reviews and 138 rate-related application reviews. In fiscal 2012, it completed 192 CCN-related application reviews and 160 rate-related application reviews.

The agency strives to ensure that all water and sewer utility systems have the capability to operate successfully. The TCEQ contracts with the Texas Rural Water Association to assist utilities by providing financial, managerial, and technical expertise. About 570 assignments for assistance to utilities were made through this contract in fiscal 2011, as were 549 in fiscal 2012.

In addition to contractor assistance, the TCEQ certifies utilities as regional providers. With this certification, utilities are eligible for tax-exempt status for utility-system construction and improvements. More than 350 utilities have been certified as regional providers.

The TCEQ also has jurisdiction over the creation of, and bond reviews for, water districts such as municipal utility districts, water control and improvement districts, and freshwater supply districts.

The agency reviews the creation of applications for general-law water districts and bond applications for water districts to fund water, sewer, and drainage projects. In fiscal 2011, the agency reviewed 226 major and 306 minor water-district applications. In fiscal 2012, it reviewed 200 major and 270 minor water district applications.

Stormwater

The Texas Pollutant Discharge Elimination System (TPDES) was created in 1998 when the EPA transferred authority of the National Pollutant Discharge Elimination System for water quality permits in the state to Texas. This included stormwater permits.

As the permitting authority, the TCEQ has renewed the federal permits as they expired and developed new stormwater permits to conform to updated federal and state requirements. A permittee can obtain authorization for stormwater discharges through an individual or general permit.

The TCEQ receives thousands of applications a year for coverage under TPDES stormwater general permits. To handle the growing workload, the agency has incrementally introduced online applications for some of these permitting and reporting functions. The agency has also outsourced the management of incoming paper notices of intent (NOIs), notices of termination (NOTs), and no-exposure certifications (NECs).

Permits are issued under the categories of industrial, construction, and municipal.

Industry

The multi-sector general permit regulates stormwater discharges from industrial facilities. The permit groups similar industrial activities into sectors, with requirements specific to each of 29 sectors.

Facilities must develop and implement a stormwater pollution prevention plan, conduct regular monitoring, and use best management practices to reduce the discharge of pollutants in stormwater. The permit also contains limitations for certain discharges—specific pollutants and concentrations that cannot be exceeded. The TCEQ receives about 150 NOIs, NECs, and NOTs a month for industrial facilities. This general permit was renewed and amended in August 2011.

Construction

The construction general permit was developed for stormwater runoff associated with construction activities, which includes clearing, grading, or excavating land at building projects such as homes, schools, roads, and businesses. The size of a construction project determines the level of regulation. Construction disturbing five or more acres is labeled a "large" activity, while construction disturbing one to five acres is termed "small."

Smaller projects are also regulated if they are a part of a larger common plan of

Stormwater Permits

	No. Affected (Issued)		Applications Received (mo. ave.)		Applications Received (total)	
	FY 2011	FY 2012	FY 2011	FY 2012	FY 2011	FY 2012
Industrial (facilities)	2,180	9,800	189	817	2,272	9,802
Construction (large sites)	5,407	5,858	460	504	5,515	6,042
MS4s (public entities)	22	9	2	1	21	3

development or sale more than one acre in size. Construction operators at large sites are required to apply for coverage under the general permit by filing an NOI. Operators at small sites must meet permit requirements, but are not required to submit an NOI. The TCEQ receives about 400 NOIs and 300 NOTs a month for large construction activities. This general permit was reissued in February 2008; it will expire in 2013.

Municipal

The TCEQ also regulates discharges from municipal separate storm-sewer systems, or MS4s. This category applies to a citywide system of ditches, curbs, gutters, and storm sewers that collect runoff. It also includes other publicly owned systems, such as controls for drainage from state roadways.

The TCEQ is responsible for renewing previously issued individual federal permits for discharges from medium and large MS4s. These systems are operated by cities and other public authorities, such as the Texas Department of Transportation, in areas in which the 1990 census showed a count of 100,000 people or more. Thirty-three municipalities and other public authorities fall into this category. The TCEQ has issued 26 individual MS4 permits to medium and large MS4s. Some of these entities are permitted together under one permit.

In 2007, the TCEQ issued a general permit regulating small MS4s (populations under 100,000 in 1990) in urbanized areas. This permit requires a regulated MS4 operator to develop and implement a stormwater-management program that includes minimum plan requirements for public education and participation, as well as minimum control measures for illicit-discharge detection and elimination, control of construction stormwater runoff, post-construction stormwater management, and pollution prevention

and good housekeeping. About 500 small cities, districts, and other public authorities have submitted NOIs for authorization or waivers under this general permit. The permit was in the process of being renewed in 2012.

Water Availability

Drought

Texas has experienced some serious dry spells in recent years, but the drought of 2011 turned out to be a record breaker. By October, all 254 counties in Texas were experiencing some stage of drought—most in the “exceptional” category.

As the state agency charged with managing surface water rights in Texas, the TCEQ carries out this responsibility primarily through issuing and enforcing water-right permits. Among permitted water-right holders, the permit holders that got their authorization first (senior water rights) are entitled to receive their water before water-right holders that got their authorization later (junior water rights). Any water-right holders not getting their entitled water can call on the TCEQ to enforce the priority doctrine—a priority call.

As drought persisted in 2011, the TCEQ received 15 priority calls on surface water from municipal, industrial, irrigation, and domestic and livestock users in the Brazos, Guadalupe, Colorado, Sabine, and Neches river basins. These priority calls resulted in the suspension or curtailment of more than 1,200 water-right permits, and the TCEQ stopped issuing temporary water-right permits. When drought conditions began to abate, priority calls were rescinded and suspensions lifted, allowing junior water-right holders the opportunity to use and store water.

During the drought, TCEQ field personnel enforced curtailments through ground-

level and aerial investigations. They also conducted streamflow monitoring to aid agency decisions regarding curtailments and management of priority calls.

The TCEQ initiated proactive steps as concerns intensified over extreme drought conditions. Information about drought conditions and permit suspensions was communicated to state leadership, legislative officials, county judges, county extension agents, holders of water-right permits, and the media.

This response was coordinated through the TCEQ Drought Team, a multidisciplinary agency group that began meeting in February 2010. The team issued updates on the status of drought conditions and agency response activities. Attending team meetings were agency partners, such as the Texas Department of Emergency Management and the Texas Water Development Board.

The TCEQ conducted a number of outreach and assistance activities—specifically targeting public water systems—in an effort to prevent systems from running out of water. The agency contacted all public water suppliers to urge implementation of drought contingency plans. TCEQ staff offered assistance to any public water systems experiencing critical conditions.

The agency intensively monitored a targeted list of public water systems that had a limited or an unknown supply of water remaining. The TCEQ offered those systems financial, managerial, and technical assistance, such as identifying alternative water sources, coordinating emergency drinking-water planning, and finding possible funding for alternative sources of water.

Because of the exceptional and prolonged nature of the drought, the TCEQ was also called on to assist power plants in managing lake levels and temperatures and to work with the U.S. Army Corps of Engineers to coordinate releases from Lake Whitney.

Drought Hits Home

When Texas experienced a record drought in 2011, 742 public water systems reported to the TCEQ that they implemented mandatory water restrictions. Weather conditions improved in 2012 and only 171 water systems reported implementing mandatory water restrictions, as of Aug. 20, 2012.

Water Rights

Water flowing in Texas creeks, rivers, lakes, and bays is state water. The right to use it may be acquired through appropriation via the permitting processes established in state law.

Each permit application is reviewed by the TCEQ for administrative and technical requirements to evaluate the proposed project's likely impact on matters such as other water rights, fish and wildlife habitat, conservation, water availability, and public welfare.

In fiscal 2011 and 2012, the agency processed a total of 792 water-rights actions, including new permits and amendments, water supply contracts, and ownership transfers.

As more surface water rights are issued, available water supplies diminish. For this reason, some cities are turning to indirect reuse of water as a source of supply. With indirect reuse, a city takes effluent that has been discharged into a stream, re-diverts the wastewater, and reuses it for irrigation or some other purpose. This type of project requires a bed-and-banks permit. Of these permits, a total of two were issued in fiscal 2011 and 2012.

Environmental Flows

In 2007, the Legislature passed HB 3 and SB 3 relating to the development, management, and preservation of water resources, including the protection of instream flows and freshwater inflows. This legislation changed the process by which the state would decide the flow that needed to be preserved in the watercourse for the environment, considering both environmental and other public interests. The TCEQ is required to adopt rules for environmental flow standards for Texas' rivers and bays.

Schedule for Adoption of Environmental Flow Standards

TCEQ Rule Adoption	River and Bay Systems
April 2011	Sabine and Neches rivers and Sabine Lake Bay; Trinity and San Jacinto rivers; Galveston Bay
August 2012	Guadalupe, San Antonio, Mission, and Aransas rivers; Mission, Copano, Aransas, and San Antonio bays; Colorado and Lavaca rivers; Matagorda and Lavaca bays
August 2013	Nueces River and Corpus Christi and Baffin bays; Brazos River and its associated bay and estuary system
December 2013	Rio Grande, Rio Grande estuary, and Lower Laguna Madre

Once environmental flow standards are adopted for a river basin, the TCEQ's goal is to protect the standards, along with the interests of senior water-right holders, in the agency's water-rights permitting process for new appropriations and amendments that increase the amount of water to be taken, stored, or diverted.

Texas Instream Flow Program

Established in 2001, the Texas Instream Flow Program is a cooperative effort by the TCEQ, the Texas Water Development Board, and the Texas Parks and Wildlife Department to perform scientific studies to determine flow conditions necessary for supporting a sound ecological environment in river basins. Texas Instream Flow Program studies are ongoing in the San Antonio, Brazos, Trinity, and Guadalupe River Basins, and scheduled to be completed by the end of 2016.

Groundwater Management

The TCEQ is responsible for delineating and designating priority groundwater management areas (PGMAs) (see <www.tceq.texas.gov/assets/public/permitting/watersupply/groundwater/maps/pgma_areas.pdf>) and creating groundwater conservation districts (GCDs) (see <www.tceq.texas.gov/assets/public/permitting/watersupply/groundwater/maps/gcds_in_pgmas.pdf>) in response to landowner petitions or through the PGMA creation process.

In 2011, the Legislature made changes to the PGMA program, including the

requirement that new studies will be undertaken over the next several years to determine whether any areas of the state without GCDs have—or will have—critical groundwater problems in the next 50-year planning cycle.

The TCEQ adopted new rules to implement the 2011 statutory changes, added one PGMA to an existing GCD, and began tracking and pursuing GCD creation in the other PGMAs.

Also, the TCEQ and the Texas Water Development Board (TWDB) will submit a report to the Legislature in 2013 on the following topics: the creation of new GCDs, the status and result of actions in the PGMAs, GCD management planning, and agency-required interactions.

Groundwater conservation districts are the state's preferred method of groundwater management. Each district is governed by a locally selected board of directors. Under the Texas Water Code, GCDs are authorized and required to permit water wells, develop a management plan, and adopt rules to implement the management plan.

By quantifying and evaluating the groundwater resource on an ongoing basis, GCDs help groundwater users understand the aquifer located in their area, the combined demands on the aquifer, and the need for conservation of the aquifer. A GCD uses aquifer data and public input to develop a plan to manage and conserve groundwater resources. A locally developed management plan outlines goals to conserve and protect the groundwater resources within the aquifers. A GCD implements rules and programs to achieve the plan's goals

through monitoring, registration and permitting, and educational outreach.

A GCD management plan and the “desired future conditions” for a groundwater management area (GMA) must be readopted and approved at least once every five years. The state’s GCDs have completed the first round of GMA planning to adopt desired future conditions for their groundwater resources. The TWDB has provided the estimates of “modeled available groundwater” to the GCDs for their next management plans and to the regional water planning groups for their 2016 plans.

In 2011, the Legislature continued the current law for the first round of GMA planning, but made significant changes to the GMA process for the next cycle of joint planning. The changes apply to GCD responsibilities, petitions for inquiry to the TCEQ, and appeals of desired future conditions to the TWDB.

The TCEQ actively monitors and ensures GCD compliance to meet management-plan adoption and readoption requirements. The agency also takes action when the State Auditor’s Office determines that a GCD is not operational in achieving the objectives of its management plan, and responds to petitions for inquiry of a GCD. TCEQ rules governing these responsibilities were updated in fiscal 2012 to implement the statutory changes.

Evaluations of River Basins without a Watermaster

Under Sections 11.326(g) and (h) of the Texas Water Code, the TCEQ is required every five years to evaluate river basins that do not have a watermaster program to determine whether a watermaster should be appointed. Staff is directed to report its findings and make recommendations to the commission.

In September 2011, the TCEQ developed a schedule for conducting these evaluations, as well as criteria for developing recommendations. Several basins are to be evaluated each calendar year and findings presented to the commission. The first year of evaluation was 2012, which included the Brazos and Colorado river basins, along with the Brazos-Colorado

and Colorado-Lavaca coastal basins. For information about watermaster evaluations, see Appendix D.

Texas Interstate River Compacts

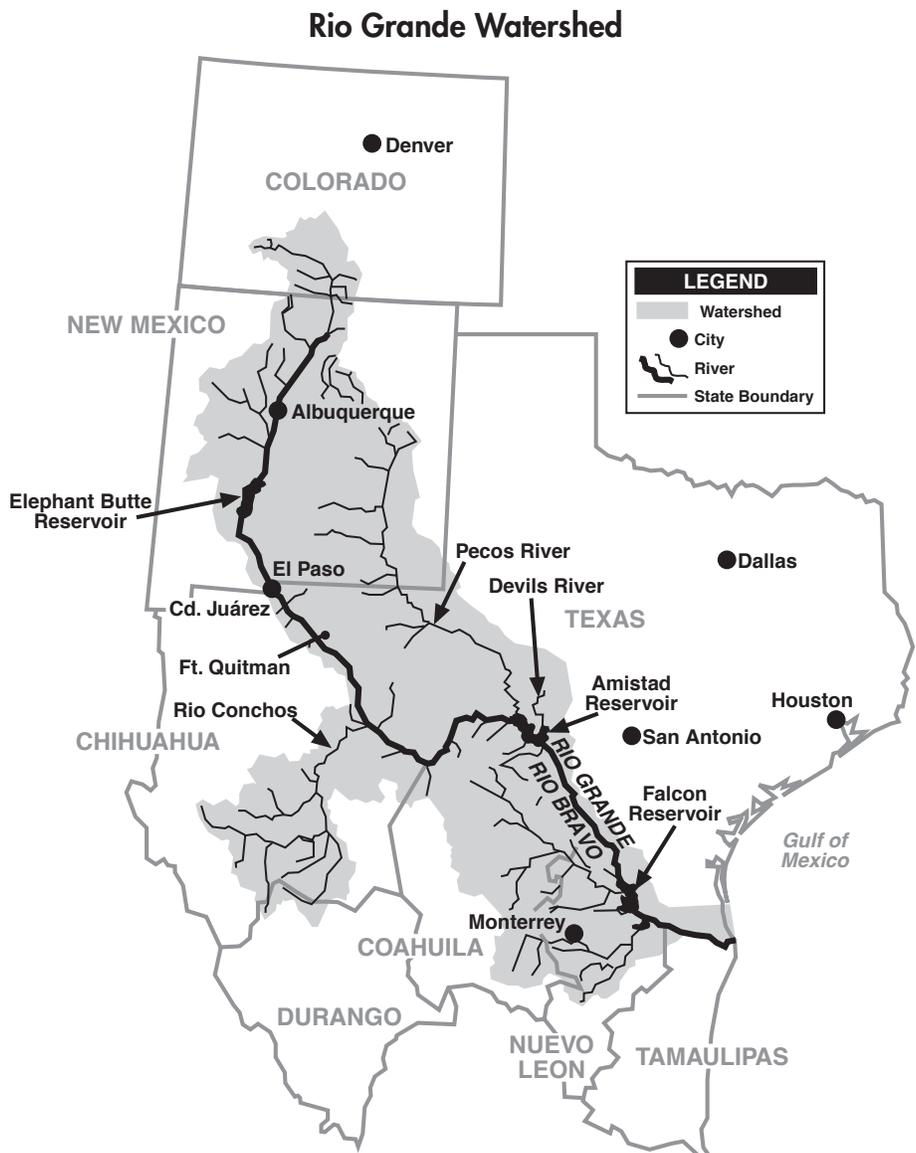
Texas is a party to five interstate river compacts. These compacts apportion the waters of the Canadian, Pecos, Red, Rio Grande, and Sabine rivers between the appropriate states. Interstate compacts form a legal foundation for the equitable division of the water of an interstate stream with the intent of settling each state’s claim to the water.

Rio Grande Compact

The Rio Grande Compact, ratified in 1939, divided the waters of the Rio Grande

among the signatory states of Colorado, New Mexico, and Texas from its source in Colorado to Fort Quitman, Texas. The compact did not contain specific language regarding the apportionment of water in and below Elephant Butte Reservoir. However, the compact was drafted and signed against the backdrop of the 1915 Rio Grande Project and a 1938 U.S. Bureau of Reclamation contract that referred to a division of 57 percent to New Mexico and 43 percent to Texas.

The Rio Grande Project (Project) serves the Las Cruces and El Paso areas and includes Elephant Butte Reservoir, along with canals and diversion works in New Mexico and Texas. Historically, Project water has been allocated by the 57/43 division, based on the relative



amounts of Project acreage originally identified in each state. Two districts receive Project water: Elephant Butte Irrigation District in New Mexico and El Paso County Water Improvement District No. 1 in Texas. The latter provides the City of El Paso about half of its water.

In 2008, after 20 years of negotiations, the two districts and the Bureau of Reclamation completed an operating agreement for the Rio Grande Project. The agreement acknowledged the 57/43 division of water and established a means of accounting for the allocation. The agreement also settled major issues regarding the impact of large amounts of groundwater development and pumping in New Mexico that affected water deliveries to Texas.

More recently, significant compliance issues have arisen regarding New Mexico's water use associated with the Rio Grande Compact. In August 2011, New Mexico took action in federal district court to invalidate the 2008 operating agreement. In response to the lawsuit and in coordination with the Legislative Budget Board and the Attorney General's Office, the TCEQ hired outside counsel with specialized experience in interstate water litigation to ensure protection of Texas' share of water.

International Treaties

Two international treaties have an impact on water supplies available to Texas. The 1906 convention between the United States and Mexico apportions the waters of the Rio Grande basin above Fort Quitman, Texas, while the 1944 treaty between the United States and Mexico apportions the waters of the Rio Grande basin below Fort Quitman.

An issue remains regarding the accounting of waters in the Rio Grande at Fort Quitman. While the 1906 convention clearly granted 100 percent of all waters below El Paso to Fort Quitman to the United States, the International Boundary and Water Commission has allocated the waters equally between the two countries.

Waste Management

Disposal of Low-Level Radioactive Waste

In 2009, the TCEQ issued a license to Waste Control Specialists LLC (WCS) authorizing

the operation of a facility for disposal of low-level radioactive waste (LLRW) in Andrews County in West Texas.

The low-level radioactive waste generated in the Texas LLRW Disposal Compact, comprising the states of Texas and Vermont, will be disposed of in the compact's waste-disposal facility, as will accepted non-compact wastes. A separate, adjacent facility, which was authorized by the same license, will accept low-level radioactive waste and mixed waste (waste that contains both a hazardous and a radioactive constituent) from federal facilities. This facility will be owned by the Department of Energy (DOE), should a contract between WCS and DOE be approved.

In January 2011, the TCEQ authorized WCS to begin construction of the LLRW disposal facility. In April 2012, the TCEQ issued a letter authorizing WCS to accept waste in the compact's waste-disposal facility. The first shipment of low-level radioactive waste was received and disposed of by WCS that same month. With this facility now accepting waste, the TCEQ's resident inspectors inspect every shipment and approve waste before Texas takes title.

Construction of the initial phase of the federal disposal facility was nearing completion and, if approved, will be available for operations once WCS and DOE successfully negotiate and approve a contract.

The wastes disposed of in the compact facility will generally include paper, plastic, glass, resins, metals, radiography tools, equipment, and other materials that have been contaminated by or contain radionuclides that meet the classification of low-level radioactive waste under state and federal regulations. These wastes are commonly generated by nuclear power plants, diagnostic and therapeutic nuclear medical facilities, industry, universities, and state governments.

Waste sent to the adjacent federal facility could include contaminated soil and debris from federal facilities. Neither disposal facility is authorized to accept high-level radioactive wastes, such as spent nuclear fuel rods or weapons-grade plutonium.

By law, the TCEQ is responsible for setting rates for the disposal of low-level radioactive waste at the compact facility. In June

2010, WCS submitted a waste disposal rate application to the TCEQ for review. In August 2011, the TCEQ recommended an interim disposal rate that is "reasonable and necessary" to protect Texas and Vermont businesses and services.

In January 2012, the TCEQ filed the notice of the LLRW rate application and the preliminary rate decision, which created the opportunity for a contested-case hearing. LLRW Compact Generators requested a contested-case hearing, and in May the TCEQ executive director referred the request to the State Office of Administrative Hearings.

Upon completion of this process, the recommended rates will be referred to the commission for consideration of adoption through expedited rulemaking.

Radioactive By-product Material Disposal

The Waste Control Specialists disposal site for by-product material, which was licensed in May 2008, has been open for by-product disposal operations since October 2009. By-product material that can be disposed of by WCS is defined as tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore.

Since October 2009, WCS has disposed of one by-product waste stream containing 3,776 canisters of waste generated by the U.S. Department of Energy's Fernald facility in Ohio.

Underground Injection Control of Radioactive Waste

The TCEQ regulates disposal of by-product wastewater material generated at *in situ* uranium mining and processing sites. This occurs through permitting and enforcement of Class I injection wells under the agency's federally authorized Underground Injection Control (UIC) Program.

Each uranium mining site has one or more permitted Class I UIC wells for disposal of excess water produced from *in situ* mining and uranium recovery, as well as groundwater produced in restoration of mined aquifers.

Texas has nine mining projects with on-site permitted Class I UIC wells. All are located in South Texas.

Superfund Program

Superfund is the federal program that enables state and federal environmental agencies to address properties contaminated by hazardous substances. The EPA has the legal authority and resources to clean up sites where contamination poses the greatest threat to human health and the environment.

Texas either takes the lead or supports the EPA in the cleanup of Texas sites that are on the National Priorities List (NPL), which is EPA's ranking of national priorities among known releases or threatened releases of hazardous substances, pollutants, or contaminants.

In addition, Texas has a state Superfund program to deal with sites that are ineligible for the federal program. This program is the state's safety net for dealing with contaminated sites. The TCEQ uses state funds for cleanup operations at sites on the Texas Superfund Registry if no responsible parties can, or will, perform the cleanup. The TCEQ also takes legal steps to recover the cleanup expenses.

After a site is proposed for the state Superfund program, either the responsible party or the TCEQ proceeds with a remedial investigation, during which the agency determines the extent and nature of the contamination. A feasibility study follows to identify possible cleanup remedies. A local public meeting is held to explain the proposed remedy and to accept public comments. The TCEQ then selects an appropriate remedial action.

Projects entering the Superfund program are prioritized by risk. Locating the responsible parties and resolving legal matters, such as access to the site, consumes time and resources. It can take several years for sites to be fully investigated and cleaned up, though the TCEQ will expedite its response when necessary.

In fiscal 2011, Texas had a total of 111 sites in the state and federal Superfund programs, including an additional site proposed for the NPL in Midland County. Remedial

actions were completed at two NPL sites and two Texas Superfund Registry sites.

In fiscal 2012, two additional sites were proposed for the NPL in Parker and Harris counties, for a total of 113 sites. Remedial actions at two federal NPL sites were completed.

Petroleum Storage Tanks

The contamination of groundwater and soil due to leaking petroleum storage tanks (PSTs) has been a statewide environmental problem. The TCEQ oversees PST cleanups. Since the program began in 1987, the agency has received reports of 26,431 leaking PST sites—primarily at gasoline stations.

By the end of fiscal 2012, cleanup had been completed at 24,716 sites, and corrective action was under way at 1,715 sites.

Of the total reported PST releases, about one-half have affected groundwater.

Leaking PSTs are often discovered when a tank owner or operator upgrades or removes tanks, when an adjacent property owner is affected, or when the tank leak-detection system signals a problem. Some leaks are detected during construction or utility maintenance. Most tank system leaks are due to corrosion, incorrect installation, or damage during construction or repairs.

To avoid releases, tank owners and operators are required to properly operate and monitor their storage-tank systems, install leak-detection equipment and corrosion protection, and take measures to prevent spills and overfills.

Tank owners and operators are required to clean up releases from leaking PSTs, beginning with a site assessment that may include drilling monitoring wells and taking soil and groundwater samples. The TCEQ oversees the remediation.

The PST Remediation Fund has paid for most PST cleanups, with total expenditures topping \$1 billion. Revenue comes from a fee on the delivery of petroleum products removed from bulk storage facilities. In 2011, H.B. 2694 continued the petroleum-product-delivery fee; however, the TCEQ was required to set the amount of the fee by rule sufficient only to cover the agency's costs for administering the program. As a result, the

fee was reduced by about 27 percent.

Under state law, cleanups of leaking tanks that were discovered and reported after Dec. 23, 1998, are paid by the owners' environmental liability insurance or other financial assurance mechanisms, or from their own funds.

The PST reimbursement program, which funded cleanups at sites meeting specific eligibility criteria, ended Sept. 1, 2012, per H.B. 2694. The PST regulatory and State Lead programs remain active.

Before the expiration deadline, several milestones had to be met for a responsible party to remain eligible for reimbursement. The TCEQ required implementation of a corrective-action plan or groundwater monitoring to demonstrate progress toward cleanup goals. Eligible parties not completing all corrective actions by the deadline could apply to have their sites placed in the PST State Lead Program by July 1, 2011.

The PST State Lead Program continues to clean up sites at which the responsible party is unknown, unwilling, or financially unable to do the work—and in situations in which an eligible site was transferred to State Lead by the July 2011 deadline. State and federal funds pay for the corrective actions. Except for the eligible sites placed in the program by the deadline, the state allows cost recovery from the current owner or any previous responsible owner.

Voluntary Cleanups

The Texas Voluntary Cleanup Program (VCP) provides incentives for pollution cleanup by releasing future property owners from liability once a previously contaminated property meets the appropriate cleanup levels.

Since 1995, the program has provided regulatory oversight and guidance for 2,344 applicants and has issued 1,774 certificates of completion for residential, commercial, and industrial properties.

In the last two years, the program received 179 applications and issued 163 certificates. Recipients of the certificates report that the release of liability helps with property sales, including land transactions that would not have otherwise occurred due to concerns about environmental liability.

As a result, many underutilized or unused properties may be restored to economically beneficial or community use.

Recent sites successfully addressed under the Texas VCP range from green-space projects, such as an urban park in Dallas, to commercial developments, such as a retail development in Harlingen.

The key benefit is the liability release afforded to future property owners once the certificate is issued. The certificate insulates future owners from potential changes in environmental conditions, such as the discovery of previously unknown contamination or even future changes in cleanup levels. Most importantly, the certificate provides finality concerning environmental issues.

The VCP is funded by an initial \$1,000 application fee paid by each applicant. Costs beyond the initial fee are invoiced to the applicant on a monthly basis by the TCEQ.

Under the Innocent Owner/Operator Program, the TCEQ also implements the law providing liability protection to property owners whose land has been affected by contamination that migrated onto their property from an off-site source. In the last two years, the TCEQ issued about 55 certificates.

Dry Cleaners

Since 2003, the TCEQ has been responsible for collecting fees for a remediation fund designed to help pay for the cleanup of contaminated dry-cleaner sites. The fees come from the annual registration of dry-cleaning facilities and drop stations, property owners, previous property owners, and solvent fees from solvent distributors.

The Legislature in 2007 established registration requirements for property owners and preceding property owners who wish to claim benefits from the remediation fund, and authorized a lien against property owners and preceding property owners who fail to pay registration fees due during corrective action. In addition, the use of perchloroethylene was prohibited at sites where the agency has completed corrective action.

In fiscal 2012, the TCEQ identified potentially unregistered dry-cleaner locations and initiated contact through letters and

site visits aimed at improving compliance. These efforts resulted in an increase of 435 registrations and a \$716,715 increase in fees invoiced from fiscal 2011. Fiscal 2012 saw a total of 3,238 registrations and more than \$3.6 million in invoiced fees.

Municipal Solid-Waste Management

With growing demands on the state's waste-disposal facilities, the TCEQ evaluates the statewide outlook for landfill capacity and strives to reduce the overall amount of waste generated.

In fiscal 2011 (the most recent data available), the total disposal in the state's 193 active municipal solid-waste landfills was about 28.8 million tons, representing a reduction of 10.7 percent from fiscal 2009. Per capita, the rate of landfill disposal was about 6.2 pounds per day in fiscal 2011.

By the end of fiscal 2011, overall municipal solid-waste capacity stood at about 1.8 billion tons, representing almost 64 years of disposal capacity. That was a net increase of about 263 million tons, or roughly 285 million cubic yards, compared with fiscal 2009 capacity. More populous areas have seen a trend toward regional landfills serving larger areas, while less populous areas in West

Texas continue to be served by small (less than 40 tons per day) arid exempt landfills, which are operated by municipalities.

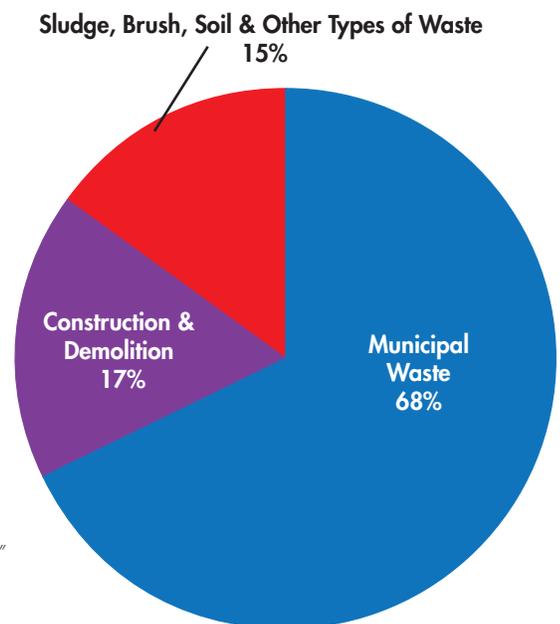
To assist regional and local solid-waste planning initiatives, such as addressing adequate landfill capacity, the TCEQ provides solid waste planning grants to each of the 24 regional councils of governments (COGs). The planning initiatives are based on goals specified in each COG's regional solid-waste management plan.

For the grant period of 2010 to 2011, the COGs received about \$21.9 million, including \$8.1 million for regional solid waste planning activities and \$13.8 million for 452 local and regional solid-waste projects. These projects included collection stations in underserved areas, reduce-reuse-or-recycle and organic waste management projects, education, and outreach. The Legislature in 2011 halved the 2012–2013 biennial funding to \$10.9 million, resulting in fewer local and regional projects being funded.

Regional solid waste grants and activities of the last two years are detailed in a separate report, *Regional Councils of Governments and the Municipal Solid Waste Grant Program, FY 2010–2011: Report to the Texas Legislature*, published in cooperation with the TCEQ by the 24 COGs and the Texas Association of Regional Councils.

Municipal Waste Disposal

Texas had 193 active municipal solid waste landfills in fiscal 2011. Municipal waste disposal reached about 28.8 million tons.



NOTE: The categories of "residential" and "commercial" listed in the 2009-2010 TCEQ Biennial Report have been merged into the category of "municipal."

Environmental Assistance

Voluntary Programs

The TCEQ uses technical assistance, education, and pollution prevention programs to encourage environmental improvements. The Small Business and Environmental Assistance Division has steered many of these programs to better focus on agency priorities and to align more closely with agency regulatory systems.

In fiscal 2011 and 2012, the agency provided direct compliance assistance to about 11,100 small businesses and local governments; of those, 758 received one-on-one assistance at their business or facility site.

Also, almost 400 small businesses and local governments took advantage of the Compliance Commitment Program. This program allows participants to undergo a site visit, during which a consultant contracted by the TCEQ uses a checklist to identify environmental compliance problems. After the visit, the businesses and facilities receive recommended actions they can take to resolve those problems. They must correct deficiencies within six months to be eligible for a compliance-commitment certificate.

Forty-four percent of Compliance Commitment Program participants achieved full environmental compliance with the applicable industry checklist. Upon successful completion of the program, businesses receive a certificate and an exemption of up to two years from routine investigations by the agency and partners, such as the EPA and local environmental-enforcement authorities.

Moreover, the program allows small businesses and local governments to achieve compliance voluntarily, confidentially, and without fear of enforcement. Site visits do not lead to an investigation or citation, unless there is an imminent threat to human health or the environment. Many times, participants find they save money by improving the efficiency of their processes and reducing paperwork.

In fiscal 2012, the agency conducted eight drought emergency-planning workshops across the state for local government officials, board members, and water-system operators. These workshops, which reached more than 500 attendees, offered information and tools to prevent or mitigate water outages.

For larger organizations, the TCEQ offered technical advice on innovative approaches for improving environmental performance through pollution prevention planning.

These efforts resulted in reductions of hazardous waste by more than 516,000 tons and toxic chemicals by about 52,700 tons during fiscal years 2011-2012.

Renewing Old and Surplus Materials

Texas established the Resource Exchange Network for Eliminating Waste (RENEW) in 1988 to promote the reuse or recycling of industrial waste.

The materials-exchange network has assisted in the trading of millions of pounds of materials, including plastic, wood, and laboratory chemicals. These exchanges divert materials from landfills and help participants reduce waste-disposal costs and receive money for their surplus materials.

RENEW is a free, easy-to-use service. Listings are grouped under "Materials Available" for anyone offering raw materials to other facilities, and "Materials Wanted" for anyone looking to find raw materials.

Through the website <www.renewtx.org>, these entities list and promote information on materials-exchange opportunities at a national and regional level.

During the last two years, an additional 292 users signed up to use RENEW, and 366 new listings were posted.

CHAPTER THREE

Legislation from the 82nd Session

3

During the regular legislative session in 2011, lawmakers considered 978 bills that had the potential to affect the programs and activities of the Texas Commission on Environmental Quality. Of those, about 240 bills were passed and signed into law.

One measure in particular, the agency's Sunset legislation, created many new and enhanced duties for agency employees. Divisions throughout the agency spent a year or more drafting new rules, creating new programs, revising existing requirements, and updating print and online documents.

This chapter summarizes some of the key legislation resulting from the 82nd Legislature.

HB 2694 TCEQ Sunset Review

The Sunset Advisory Commission (SSAC) began its review of the TCEQ in September 2009. The overall purpose of a Sunset review is to determine whether an agency should continue to operate, while also evaluating how it manages its programs, fulfills its mission, and responds to its customers.

After completion of the review in January 2011, the SSAC commissioners adopted recommendations that became the basis of the introduced version of the TCEQ Sunset legislation, House Bill 2694. The legislation, co-sponsored by State Rep. Wayne Smith, chairman of the House Environmental Regulation Committee, and State Sen. Joan Huffman, included a recommendation to continue the agency until 2023, the maximum-allowed 12 years.

HB 2694 addressed a wide range of issues affecting many areas of the agency. In addition, some programs were transferred.

program (nine FTEs) to the Railroad Commission of Texas and absorbing the duties of the now-abolished Texas On-site Wastewater Treatment Research Council.

Overview

The adopted version of HB 2694 included not only the recommendations that originated with the SSAC, but also expansions of some of those recommendations, as well as other issues that arose outside of the SSAC recommendations.

SSAC recommendations:

- Transfer the TCEQ surface casing program to the Railroad Commission.
- Increase the statutory maximum for environmental penalties.
- Require the TCEQ to adopt in rule a general enforcement policy.
- Expand the use of Supplemental Environmental Projects by local governments.
- Require the agency to review water basins that do not have a Watermaster Program.
- Establish a central point of contact in the executive director's office to provide public assistance and education.
- Establish additional requirements for water use reports.
- Require the distribution of electronic copies of water rate applications.
- Require the commission to develop public interest factors for use by the Office of Public Interest Council.
- Repeal three water-related fees.

SSAC recommendations that were expanded:

- Clarify the executive director's authority to curtail water.
- Revise the Compliance History Program.
- Modify the Dam Safety Program.
- Revise the activities and fees governing the remediation program for leaking petroleum storage tanks.

Issues that did not originate as SSAC recommendations:

- Establish requirements for permits to comply with federal Maximum Achievable Control Technology (MACT).
- Allow e-mail notification for water utility rate changes and statements of intent.
- Change the Contested Case Hearing process.
- Establish deadlines for the TCEQ review of the water management plan submitted by the Lower Colorado River Authority.
- Revise requirements for annual financial reports filed by water districts.

Implementation

To implement the many and varied provisions of HB 2694, the agency undertook both rulemaking and non-rulemaking activities. Included in these efforts was development of 11 separate rule packages, along with non-rulemaking activities such as procedural and operational changes and revisions to various guidance documents.

Rulemaking Packages

MACT Permit Procedures, adopted February 2012

- Provides for a public hearing and submission of public comment on permit

amendment applications from electric generating facilities to solely comply with the federal Maximum Achievable Control Technology (MACT) requirements to regulate mercury emissions.

- Provides specific timelines for issuance of the MACT-related permit.

Changes to the Petroleum Storage Tank (PST) Program, adopted March 2012

- Reinstates common carrier liability to prevent delivery or deposit of any regulated substance into underground storage tanks that have not been issued a delivery certificate by the TCEQ.
- Expands the use of the PST remediation fee to remove underground or above-ground storage tanks, under certain criteria.
- Reauthorizes the PST remediation fee, with no expiration date.
- Authorizes the commission to set fees in rule, based on appropriation amounts.

Authority to Suspend or Adjust Water Rights, adopted April 2012

- Authorizes the executive director, during a "period of drought or other emergency shortage of water," to temporarily suspend a water right and adjust the diversion of water between water right holders.
- Actions taken by the executive director must maximize the beneficial use of water, minimize the impact on water right holders, and prevent the waste of water.

Changes to the Contested Case Hearing Process, adopted April 2012

- Allows that a state agency may submit comments to the TCEQ but may not contest the issuance of a permit or license by the commission. "State agency" does not include a river authority.
- Requires the executive director to participate as a party in contested case hearings.
- Provides that for a hearing using pre-filed testimony at the State Office of Administrative Hearings, all discovery must be completed before the deadline for the submission of that testimony.

Public Interest Factors for the Office of Public Interest Counsel (OPIC), adopted May 2012

- Requires the commission to define, by rule, factors that OPIC will consider in representing the public interest.

Revision to the Compliance History Program, adopted June 2012

- Clarifies that the standards for compliance history must ensure consistency and that the commission can consider differences among regulated entities in developing compliance history standards.
- Allows the use of a Notice of Violation as a component for compliance history for only one year from date of issuance of the NOV.
- Requires that the compliance history classification consider the size and complexity of the site and the potential for the violation to occur at the site that is attributable to the nature and complexity of the site.

Incentives Program, adopted June 2012

- Allows for an alternative process for the control or abatement of pollution if this process is demonstrated to be as protective of the environment and public health as the method required by statute or agency rule.

Texas On-site Wastewater Treatment Research Council, adopted July 2012

- Abolishes the TOWTRC.
- Requires revenue from the On-site Wastewater Treatment permit fee to be deposited in the TCEQ's Water Resource Management Account.

Water Reporting Requirements; Water Fee Repeals, adopted August 2012

- Raises from \$100,000 in gross receipts to \$250,000 the basis for when a water district can opt to submit a financial report instead of an audit.
- Adds aquaculture to the definition of agriculture.
- Eliminates three existing water and wastewater utility application fees: rate

changes, certificate of convenience and necessity and sale, and transfer or merger of a CCN.

- Allows e-mail to be used when public utilities and cities send the required notices of a rate change and when members of the public file a statement of intent for a TCEQ review of the rate change.

General Enforcement Policy, adopted August 2012

- Directs the TCEQ to adopt a general enforcement policy by rule.
- Requires the commission to regularly update, assess, and publicly adopt specific enforcement policies.
- Requires those enforcement policies to be available to the public through postings on the website.
- Requires that the agency's enforcement policy include a deterrence to prevent the economic benefit of non-compliance.

Transfer of Surface Casing Program, adoption expected in December 2012

- Transferred the authority for making groundwater protection recommendations regarding oil and gas activities to the Railroad Commission, effective Sept. 1, 2011.
- Updates the memorandum of understanding between the TCEQ and the Railroad Commission to reflect the transfer authority.

Non-rulemaking Activities

Some new laws can be enacted without rulemaking. Instead, they require the agency to carry out various actions such as evaluations, procedural changes, and revisions to existing guidance documents. The following activities were conducted from August 2011 to August 2012 to implement specific provisions in HB 2694.

Dam Safety. Revisions to the agency's Dam Safety Program guidance materials were posted on the agency website to reflect changes for exempted dams and the authority to develop agreements with dam owners.

- Directs the TCEQ to focus on the most hazardous dams in the state.
- Allows the agency to enter into agreements with dam owners regarding adequacy of a dam or spillway, including a timeline to meet safety requirements.
- Requires that a dam owner comply with operation and maintenance requirements.
- Exempts dams on private property from safety regulations if the dam:
 - has less than 500 acre feet of water impoundment,
 - is classified as low or significant hazard (not as high hazard),
 - is located in a county with a population of less than 215,000, and
 - is not located inside the city limits
 (All exemptions expire Aug. 31, 2015.)

Penalty Policy. The commission adopted changes to the Penalty Policy to reflect the following:

- Increase the maximum fines to \$25,000 for all penalties, except in several specified areas of jurisdiction.
- Increase the maximum fines to \$5,000 for penalties related to occupational licensing, on-site sewage disposal, performance standards for plumbing fixtures, used oil program, and irrigators.
- Allows the commission to assess penalties not greater than \$5,000 for water rate-related violations.

Compliance Supplemental Environmental Projects (SEPs). The commission provided direction for the development of language for a guidance document to implement Compliance SEPs.

- Allows local governments to apply penalty money assessed by the commission toward the cost of compliance in the form of a SEP.

Water Use Reports. A January 2012 mailing to all water right holders included notification that under certain circumstances, the agency can request monthly water use reports.

- Requires water right holders to maintain monthly water use reports and make this information available to the agency, upon request.
- Allows the agency to request the monthly water use reports during a drought or emergency water shortage or, if needed, to respond to a complaint.

Public Education Program. Public assistance related to the TCEQ's permitting programs was transferred to the Small Business and Environmental Assistance Division.

- Requires the agency to offer a centralized point of contact for information, and to assess and respond to public concerns.

Petroleum Storage Tanks (PSTs).

The agency established a new program to issue direct awards for PST cleanup activities.

- Creates a process to develop PST remediation contracts so that contractors currently cleaning PST sites, which have been eligible for reimbursement, may continue their work.

Water Rates. The agency posted online documents reflecting the changes associated with water rate applications.

- Directs the agency, when provided an electronic copy of a water rate case, to make it available to the public at a reasonable cost.

Office of Public Interest Council (OPIC).

Enforcement and permit notice letters were revised to reflect the statutory changes in OPIC's duties in representing the public interest before the commission.

- Requires OPIC to develop an annual report, including legislative recommendations and information on the development of performance measures. (See Appendix C for "OPIC's Annual Report to the TCEQ.")

Watermaster Program. The agency will perform evaluations and report the findings.

- Requires the TCEQ, at least once every five years, to evaluate the water basins that do not have a watermaster program and determine whether a program should

be established. (See Appendix D for "Evaluation of Water Basins Without a Watermaster.")

**HB 1981
Air Pollutant Watch List**

The TCEQ maintains the Air Pollutant Watch List (APWL) to identify each contaminant and each geographic area at which ambient monitoring has indicated the potential for short-term or long-term adverse human health effects.

The TCEQ had drafted protocol to provide a framework for adding areas to, and removing areas from, the Watch List. HB 1981 codified the TCEQ's APWL program and provided procedural clarifications for the APWL process. It also established a new requirement for the TCEQ to provide information on air monitoring data to applicable legislative officials when proposing to add, or remove, an area on the APWL.

HB 1981 also clarified the TCEQ's emissions event reporting requirements. While the agency was already required to do annual assessments and reports on emissions events, the agency will also provide the information to legislators, upon request. In addition, this information will be entered into an online database that can be searched by the public.

The law further requires the TCEQ to notify legislators within four hours of a dangerous environmental incident occurring in their district. While it was already the TCEQ's practice to notify lawmakers of significant events that might affect constituents, HB 1981 provided a statutory framework and deadline for doing so. During fiscal 2012, eight environmental events took place that required immediate notification of legislators. In each instance, staff initiated phone calls and e-mails, describing the nature of the incident and the response by the TCEQ.

**SBs 20 and 385
Grant Programs for
Natural Gas and Other
Alternative Fuels**

New grant programs were established under the Texas Emissions Reduction Plan (TERP) to fund incentives for replacing gasoline

and diesel vehicles with natural gas vehicles and to create fueling infrastructure for natural gas and other alternative fuels.

- The **Clean Transportation Triangle** helps fund new natural gas fueling facilities on interstate highways connecting Houston, Dallas–Fort Worth, and San Antonio (see map at <www.tceq.texas.gov/assets/public/implementation/air/terp/ctt/CTT_Map.pdf>). The program pays the following: up to \$100,000 for a compressed natural gas facility, up to \$250,000 for a liquefied natural gas facility, and up to \$400,000 for a facility providing both forms of natural gas. After the first grant round closed in April 2012, 15 applications were selected for grants totaling \$3.1 million. With a biennial allocation of \$4.6 million, the program planned another round of grants in early fiscal 2013 to award the remaining funds.
- The **Texas Natural Gas Vehicle Grant Program** makes grants avail-

able for replacing heavy- and medium-duty gasoline and diesel vehicles with vehicles powered by natural gas. The vehicles must be operated for four years or 400,000 miles (whichever occurs first) in the state’s nonattainment areas and in the counties along the corridors designated in the Clean Transportation Triangle (see map at <www.tceq.texas.gov/assets/public/implementation/air/terp/tngvgp/TNGVGP_Map.pdf>). The application period opened in July 2012, and will remain open through May 2013 or until all of the \$18.3 million biennial allocation has been awarded.

- The **Alternative Fueling Facilities Program** funds up to 50 percent of the eligible costs or \$500,000 (whichever is less) for fueling facilities that provide compressed or liquefied natural gas, biodiesel, propane, hydrogen, electricity, or fuels containing at least 85 percent methanol by volume. Eligible projects must be located in the state’s designated nonattainment areas. The first application

period ran from May through July 2012, with awards planned for early fiscal 2013. This program was allocated \$2.3 million for the biennium.

SB 527 New Air Monitoring Program Approved for the Regions of Dallas-Fort Worth and Abilene

With the continuing natural gas activities in the North Texas area—specifically in the Barnett Shale geological area, the Legislature moved to augment the agency’s air monitoring activities in the Dallas–Fort Worth area (TCEQ Region 4) and the Abilene area (TCEQ Region 3).

This Senate bill allocated up to \$7 million annually for 2012 and 2013, and up to \$3 million in 2014 and each subsequent fiscal year to fund this new regional air monitoring program. The funding comes from the Texas Emissions Reduction Plan.

The new program is being implemented under the TCEQ’s oversight, with the agency providing direction on the number, types, locations, and operations of the new monitors, as well as data validation practices.

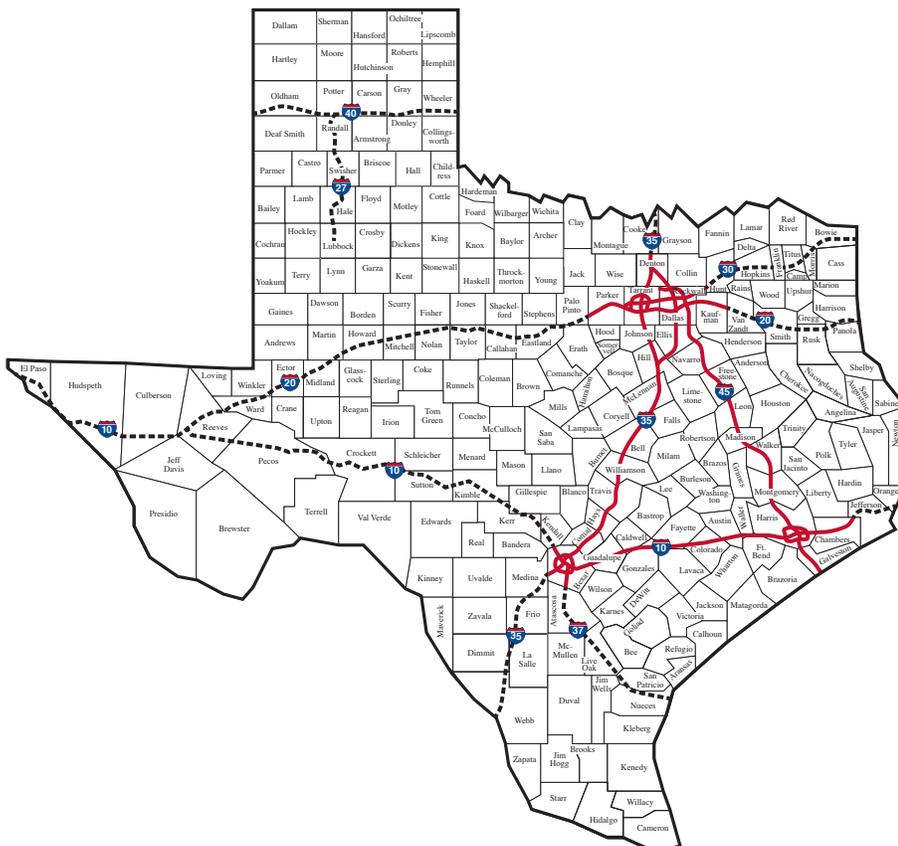
SB 527 directed that the program be executed by a regional nonprofit entity, which is located in North Texas and has representation from counties, municipalities, higher education institutions, and private sector interests across the area.

In consultation with the North Central Texas Council of Governments, the TCEQ reviewed a number of entities to determine which could meet the eligibility requirements. The North Texas Commission (NTC) was approved for the project in September 2011.

NTC assembled a monitoring committee comprised of local municipalities, higher education, and private sector interests in the region to aid in development of the monitoring program. NTC then hosted monitoring committee meetings from March to June 2012 to formulate a monitoring proposal for the TCEQ to review and approve.

In the fall of 2012, the first SB 527 monitoring site was installed on the campus of the University of Texas at Arlington.

Texas Clean Transportation Triangle



Installation of additional air monitoring sites throughout the DFW and Abilene regions was due to begin by the end of 2012, with the entire network scheduled for completion by the summer of 2013.

SB 1134 Oil and Gas Permitting Requirements

The TCEQ is now prohibited from promulgating new authorizations for the oil and gas industry, or amending existing ones, without performing a regulatory impact analysis in accordance with the Government Code. The agency also must evaluate relevant air monitoring data, develop correlated air quality modeling to determine whether emissions limits or emissions-related requirements are necessary, and consider whether the requirements should be imposed on a particular geographic region of the state.

In addition, SB 1134 moved the deadline for filing applications seeking to authorize maintenance, startup, and shutdown activities from January 2012 to January 2014.

The agency adopted one rulemaking project on Oct. 31, 2012 that was partially affected by SB 1134. Specifically, the commission adopted the following revisions to the Barnett Shale permit by rule: removed eight counties from the Barnett Shale requirements, and extended the date for notifying the TCEQ about the location of wells and other facilities, as well as their methods of authorization, from Jan. 1, 2013, to Jan. 5, 2015.

Only portions of SB 1134 were triggered by this rulemaking, because no new emissions-related requirements were adopted.

SBs 1605 and 1504 Texas Low-Level Radioactive Waste Disposal Compact Commission

SB 1605 clarified that the Texas Low-Level Radioactive Waste Disposal Compact Commission (TLLRWDC) is an independent

entity and not a program, department, or other division of the TCEQ.

The TLLRWDC is required to submit biennial reports to the Legislature, be represented in legal matters by the state attorney general, and be subject to audits by the state auditor. Furthermore, the TLLRWDC is subject to the Sunset Act as if it were a state agency, except that it may not be abolished.

The bill also set the service of the eight TLLRWDC commissioners (six from Texas and two from Vermont) as staggered six-year terms. The terms of two Texas commissioners expire September 1 of each odd-numbered year. Texas and Vermont are the two states that belong to the Texas Low-Level Radioactive Waste Disposal Compact.

SB 1504 required the TCEQ, in coordination with the TLLRWDC, to adopt rules establishing criteria and thresholds by which incidental commingling of waste from the Compact and waste from other sources at a commercial processing facility is reasonably limited. The bill also implemented a statutory prohibition on the acceptance of waste of international origin. The TCEQ rules took effect in June 2012.

SB 1504 further directed the TCEQ to conduct three legislative studies regarding the Compact waste disposal facility in West Texas, and submit them by Dec. 1, 2012. The topics are:

1. Capacity. Examine the available volume and curie capacity of the Compact waste disposal facility for the disposal of state Compact waste and non-Compact waste.
2. Financial assurance. Review the adequacy of the financial assurance for the low-level radioactive waste site.
3. Surcharge revenue. Examine the assessment of surcharges for the disposal of non-Compact waste at the Compact waste disposal facility.

SB 1504 further required the TCEQ executive director to establish interim disposal rates for state Compact waste, which are only effective until the final rates are adopted by rule. It also provided for the importation of non-Compact waste at the low-level radioactive waste facility and established a 20 percent surcharge.

The Texas Health and Safety Code was amended to address the issue of timing, in case the Compact waste disposal fee schedule goes through a contested case hearing. The fee schedule must be established no later than one year after the State Office of Administrative Hearing (SOAH) assumes jurisdiction of a case. Otherwise, the low-level radioactive waste disposal facility must cease operations until the rates are adopted by rule.

In early 2012, the TCEQ filed and published the licensee's Compact waste disposal rate application. Seven Texas generators requested that the application be referred to SOAH for a contested case hearing. SOAH assumed jurisdiction in June 2012, which triggered the one-year period for the fee schedule. The contested case hearing is planned for Feb. 20, 2013.

SB 329 TV Recycling

For several years, the TCEQ has helped consumers find free options to recycle their old computers and related equipment. SB 329 created a television-equipment recycling program that is separate from—and more extensive than—the computer recycling program. The new program requires TV manufacturers to offer consumers free collection, reuse, and recycling opportunities for television sets.

Under TCEQ rules, manufacturers must register with the agency each year, beginning Jan. 31, 2013. Manufacturers choosing not to participate in a Recycling Leadership Program will face additional annual requirements, including paying a fee and reporting the results of their collection and recycling efforts.

Participation in a Recycling Leadership Program will exempt manufacturers from some requirements. This program must submit annual information to the TCEQ about its TV collection and recycling plans, and create public education programs on the available options for the collection, reuse, and recycling of TVs.

Retailers in Texas are required to provide consumers written information on the proper and legal ways to recycle or dispose of

television equipment. Beginning April 1, 2013, retailers may only sell televisions from manufacturers that are on the TCEQ's list of manufacturers, which demonstrates they are authorized to sell TVs in Texas. The list will be available at <www.TexasRecyclesTVs.org>.

Recyclers must follow specific standards for management of collected television equipment and complete the TCEQ's annual registration and reporting.

HB 571 Aggregate Production Operations

Aggregate production in Texas encompasses dirt, sand, and rock quarries and their processing plants. HB 571 created a program for registration and inspection of these operations.

Aggregate production operations are required to register with TCEQ each year

and pay a fee. The initial registration period was held from Sept. 1 to Oct. 30, 2012.

The agency structured registration fees on four tiers, using the disturbed acreage as the basis for the each tier. The fees range from \$200 to \$900, with a 25 percent reduction when submitted electronically. Fees will be adjusted annually.

Also the TCEQ will conduct compliance inspections of each operations site once every three years. For entities that submitted a notice of audit for compliance during the initial registration period, routine inspections of the operation will not begin until Sept. 1, 2015.

SB 341 Bexar Metropolitan Water District

The TCEQ was directed to conduct an evaluation of the Bexar Metropolitan Water

District (BexarMet). At the same time, the water district was required to hold an election to determine whether it should remain in place or be dissolved and merged with the San Antonio Water System (SAWS).

In November 2011, voters in BexarMet elected to dissolve the water district and merge with SAWS. After the Justice Department reviewed the election, SAWS began operating the water district in January 2012.

The TCEQ's executive director executed a master assignment to transfer and assign all assets and liabilities to SAWS. After the transfer was formally acknowledged by SAWS, the TCEQ proceeded in May 2012 to dissolve the district.

The TCEQ's evaluation, which began in mid-2011, was approved by the agency's executive director in August 2012. SAWS will have five years to integrate all the BexarMet systems.

CHAPTER FOUR

Agency Resources

4

The Texas Commission on Environmental Quality has more than 2,700 full-time employees, with more than a quarter working outside of the Austin headquarters. The agency has 16 regional offices, as well as three special-project offices.

These field offices give the TCEQ a statewide presence, enabling its staff to communicate firsthand with municipalities, businesses and industry, and community groups in all quarters of Texas.

The TCEQ's budgetary needs are based on the demands of state and federal laws concerned with protecting human health and the environment. The operating budget totaled \$428.8 million in fiscal 2011 and \$354.7 million in fiscal 2012. Most of the budget is supported from revenues collected from fees.

The TCEQ posts its quarterly expenditures at <www.tceq.texas.gov/about/expend.html>. The data is reported in broad categories, such as salaries, travel, utilities, and maintenance. The Web page also links to an expenditure database, called "Where the Money Goes," at the state comptroller's website. These online postings are in response to the Legislature's call for greater accountability in state government.

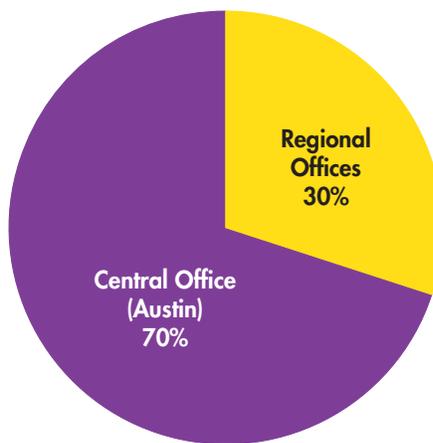
Workforce

The overall size of the TCEQ workforce remains fairly consistent. In fiscal 2011, the agency was authorized to have 3,001.3 full-time-equivalent (FTE) positions, and the average number of FTEs utilized was 2,834.2. In fiscal 2012, the authorized FTEs were 2,761.2; the TCEQ averaged 2,644.3 FTEs during that time.

The TCEQ staff is composed largely of professionals trained in science, technology,

Locations of TCEQ Employees

Fiscal 2012



engineering, computer science, and related fields. In fiscal 2012, professionals represented 65.3 percent of the workforce; technical and administrative support staff made up 23.6 percent; and officials and administrators (managers) filled 11.1 percent of positions. This reflects a minor change in the composition of job categories within the agency from fiscal 2010, with professionals up 0.7 percent, technical and administrative support staff down 1.9 percent, and officials and administrators (managers) up 1.2 percent.

It is the TCEQ's policy to afford equal employment opportunities to all employees and qualified applicants, regardless of race, color, religion, national origin, sex, sexual orientation, age, disability, genetic information, veteran status, or other status protected by law.

The agency is committed to recruiting, selecting, and retaining a multitalented, culturally diverse workforce that is representative of the state's available labor force. In accordance with the Texas

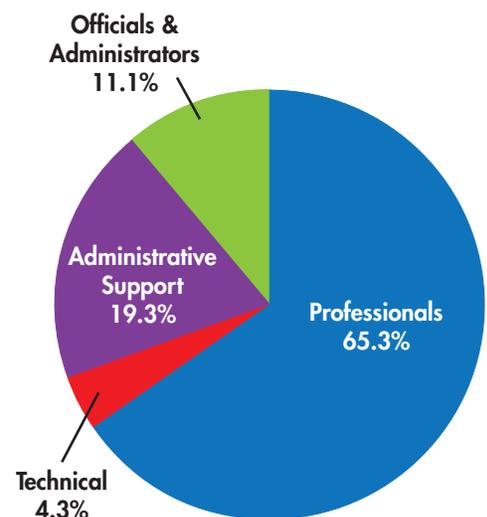
Labor Code, Chapter 21, all employees are trained on equal employment practices to make them aware of state and federal employment laws and regulations.

With regard to race and ethnicity, the agency workforce composition was 66.4 percent white, 10.7 percent black, 16.1 percent Hispanic, and 6.8 percent other (including Asian, Pacific Islander, American Indian, and Alaskan Native) in fiscal 2012. In terms of gender, women continue to be in the majority at the TCEQ: female employees represented 52 percent; males, 48 percent.

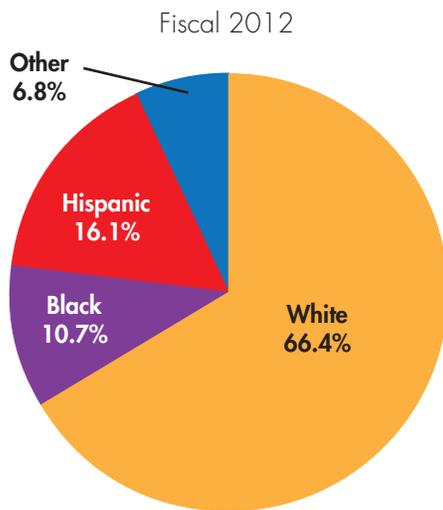
Since 1999, the Legislature has required each state agency to analyze its workforce by ethnicity and gender. The TCEQ compares its workforce to the state civilian workforce using data provided by the Civil Rights Division of the Texas Workforce Commission. The TWC's report on equal-employment-opportunity hiring practices, which is published at the start of each legislative

Job Categories of TCEQ Workforce

Fiscal 2012



Ethnicities of TCEQ Workforce



session, uses data sets based on the percentage of blacks, Hispanics, and females—by job category—within the civilian labor force in Texas.

In fiscal 2012, the TCEQ exceeded the percentage of the available black workforce in the job category of administrative support by almost 9 percent. The agency's female workforce exceeded the available state civilian female labor force in top management (officials and administrators/managers) by over 4 percent, as well as in administrative support, by 18.1 percent.

The TCEQ continues its recruitment and retention efforts by emphasizing employee recognition, professional development, and workforce and succession planning. The agency also uses hiring programs, such as Express Hire at recruitment events and Transitions Hiring for entry-level positions. In addition, the agency recruits at colleges and universities and administers the Mickey Leland Environmental Internship Program with a focus on summer internship opportunities for minorities, women, and economically disadvantaged students pursuing environmental, engineering, science-related, and public-administration careers at colleges and universities across the United States. In addition, the TCEQ partners with Texas State University to offer environmental internships. This program is open to undergraduate and graduate students enrolled in any Texas university. (See www.tceq.texas.gov/goto/employment for more information.)

In the coming years, TCEQ officials anticipate several challenges as the agency strives to fulfill its mission and goals. In fiscal 2012, staff turnover was 11.1 percent, an increase of 0.6 percent from fiscal 2011, continuing the trend of increased turnover. However, the agency's turnover continues to fall below the overall average for full- and part-time classified employees at state agencies. The TCEQ will continue its efforts to attract and retain a qualified and diverse workforce.

Finances

In fiscal 2011, the agency's approved operating budget was \$428.8 million. Of that, \$359.1 million was appropriated from dedicated fee revenue, \$45.0 million from federal funds, and \$13.6 million from general revenue. Other sources provided the remaining \$11.1 million.

In fiscal 2012, the approved operating budget totaled \$354.7 million. Of that, \$297.2 million was appropriated from dedicated fee revenue, \$44.7 million from federal funds, and \$5.9 million from general revenue. Other sources supplied the remaining \$6.9 million.

Pass-through funds accounted for 45 percent of the agency's operating budget in fiscal 2011 and 38 percent in fiscal 2012. Pass-through funds are used primarily for grants, contracts, and reimbursements

in the agency's programs for petroleum storage tanks, Superfund cleanups, and municipal solid waste. The water and air programs also pass dollars on to local and regional units of government, but the amounts are not as significant.

Funds other than pass-through are the moneys devoted to agency day-to-day operations. Salaries accounted for 39 percent in fiscal year 2011 and 44 percent in fiscal 2012. The remaining operating funds were consumed by other expenses such as supplies, utilities, rent, travel, training, and capital.

Fees

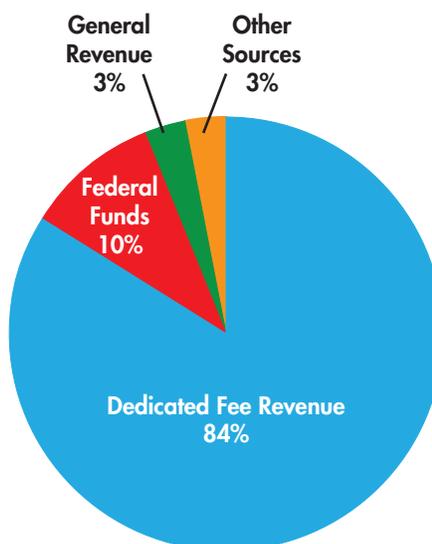
The TCEQ collects more than 100 separate fees. Each of the following fees generated revenue in excess of \$25 million a year:

Texas Emissions Reduction Plan

(\$162.1 million in fiscal 2011, \$188.7 million in fiscal 2012). Fees are assessed on the sale, registration, and inspection of vehicles. The TERP Account (5071) draws from five separate fees, surcharges, interest, and a monthly transfer from the Texas Mobility Fund. The various revenue sources for this account are collected by the Texas Department of Public Safety (DPS), the Texas Department of Motor Vehicles, and the Comptroller of Public Accounts on behalf of the TCEQ. In 2008, the TCEQ became the authorized manager of the account and

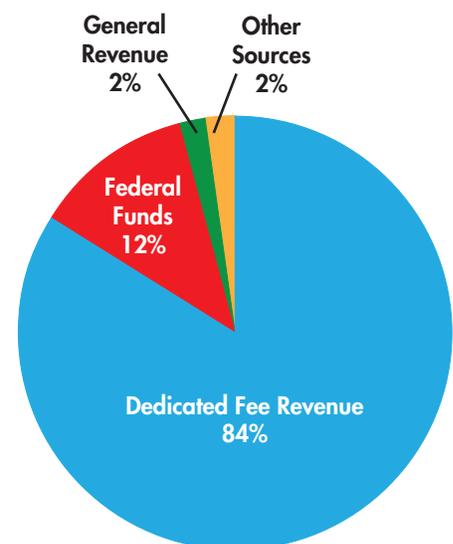
Fiscal 2011

\$428.8 Million



Fiscal 2012

\$354.7 Million



handled the management and transfer of funds from the account.

Petroleum product delivery fee (\$29.3 million in fiscal 2011, \$29.2 million in fiscal 2012). The fee is assessed on the bulk delivery of petroleum products. It is collected by the state comptroller and deposited to the Petroleum Storage Tank Remediation Account (0655).

Air emissions fee (\$26.5 million in fiscal 2011, \$35.2 million in fiscal 2012). The fee is authorized to recover the costs of developing and administering the Title V Operating Permit Program. The fee revenue is deposited to the Operating Permit Fees Account (5094).

Solid waste disposal fee (\$35 million in fiscal 2011, \$34.9 million in fiscal 2012). The fee is assessed on the operators of municipal solid waste facilities for disposal of solid waste. The fee revenue is deposited 50/50 between the Waste Management Account (0549) and the Solid Waste Disposal Account (5000).

Auto emission inspection, on-board diagnostic fee (\$39.8 million in fiscal 2011, \$40.7 million in fiscal 2012). The fee provides funding for the Low-Income Repair Assistance Program (LIRAP) for counties that have opted into the program. The fee is collected by the DPS and deposited to the Clean Air Account (0151).

Motor vehicle safety inspection fee (\$36.5 million in fiscal 2011, \$37.6 million in fiscal 2012). The fee is assessed per vehicle on the sale of state safety-inspection stickers at inspection stations, auto dealers, and other service providers. The fee is collected by the DPS and deposited to the Clean Air Account (0151).

Fee Revisions

As a result of state legislation passed in 2011, a number of changes were made to the TCEQ's fees and funding structure, including the following:

HB 2694 (the Sunset Bill) continued the Petroleum Storage Tank fee and transferred the rate structure from statute to rule. As a result of this change, the commission adopted a rate change on March 28, 2012. The new rates were a 27 percent decrease from the maximum statutory rates and became effective on July 1, 2012. The fee revenue is deposited to the Petroleum Storage Tank Remediation Account (0655). The bill also transferred the Surface Casing Program and fee to the Railroad Commission of Texas, effective Sept. 1, 2011. This resulted in a decrease of approximately \$700,000 in revenue deposited to the Water Resource Management Account.

HB 2964 transferred the Texas Onsite Wastewater Treatment Research Council fee deposit authority from General Revenue to the Water Resource Management Account (0153). The bill also increased the maximum administrative penalty from \$10,000 to \$25,000, and increased the minimum penalty from \$2,500 to \$5,000. Administrative penalties are deposited to general revenue.

HB 2964 also repealed three water and wastewater utility application fees: rate changes; CCNs; and the sale, transfer or merger of a CCN or retail public water or wastewater system.

SB 1504 allowed the site for disposal of low-level radioactive waste disposal in Andrews County to accept waste that was not generated in either Texas or Vermont. Upon

the receipt of waste, the facility is required to collect a 20 percent surcharge on the total value of the non-party waste, which will be deposited to the Low-Level Radioactive Waste Account (0088).

SB 1504 created a new 20 percent surcharge on gross receipts on the storage of radioactive waste in excess of 360 days at the Andrews County facility. The TCEQ began collecting revenue from this fee in 2012. Revenue from this fee is deposited to general revenue.

HB 571 required the TCEQ to implement a registration program for aggregate operations in Texas. Aggregate operations are first required to register in fiscal 2013, and pay an application fee upon registration. A cap of \$1,000 was set in statute for the annual application fee. The TCEQ has adopted rules relating to the new program outlined in the bill and has designed a three-tier structure for assessing the registration fee. Revenue collected from the fee will be deposited to the credit of the Water Resource Management Account (0153).

SB 329 created a program for recycling television equipment, including a website and a toll-free hotline. The bill required manufacturers of covered television equipment to register with the TCEQ and pay an annual registration fee of \$2,500, if not in a Recycling Leadership Program. In addition, manufacturers are required to submit other information about their television-equipment recycling. Fee revenues will be deposited to general revenue. The program became effective on Sept. 1, 2012, and all manufacturers will be required to register on Jan. 31, 2013.

APPENDIX A

Assessment of Complaints Received



The Texas Commission on Environmental Quality receives thousands of complaints each year from Texans concerned about various environmental matters.

In these communications, the complainant relates a situation or event in which a possible environmental, health, or regulatory violation has occurred. Typically,

complaints are submitted to the agency by phone, e-mail, or letter, and then forwarded to one of its 16 regional offices for response. The agency maintains a 24-hour

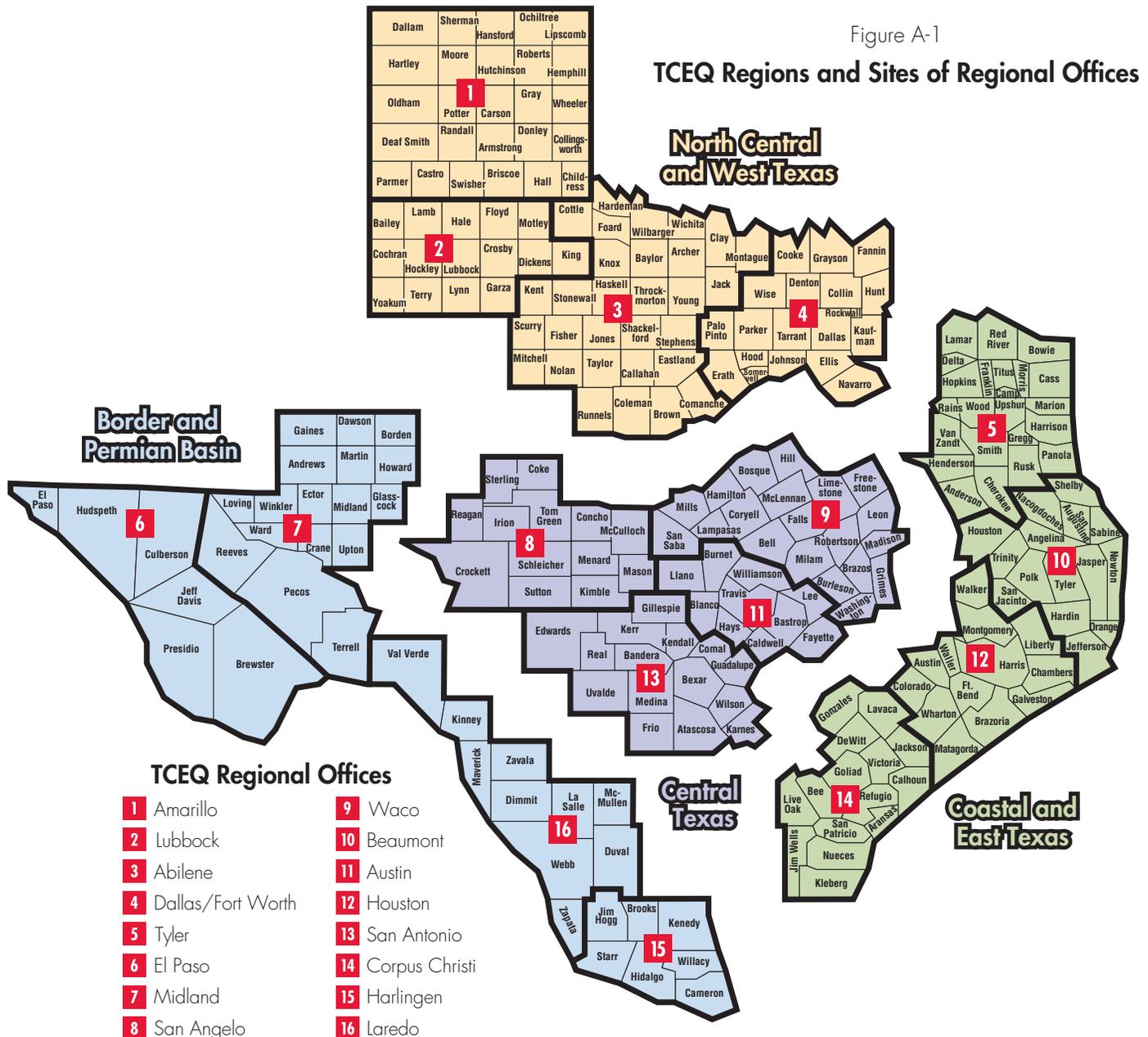


Figure A-2
Complaints by Region
FY 2011

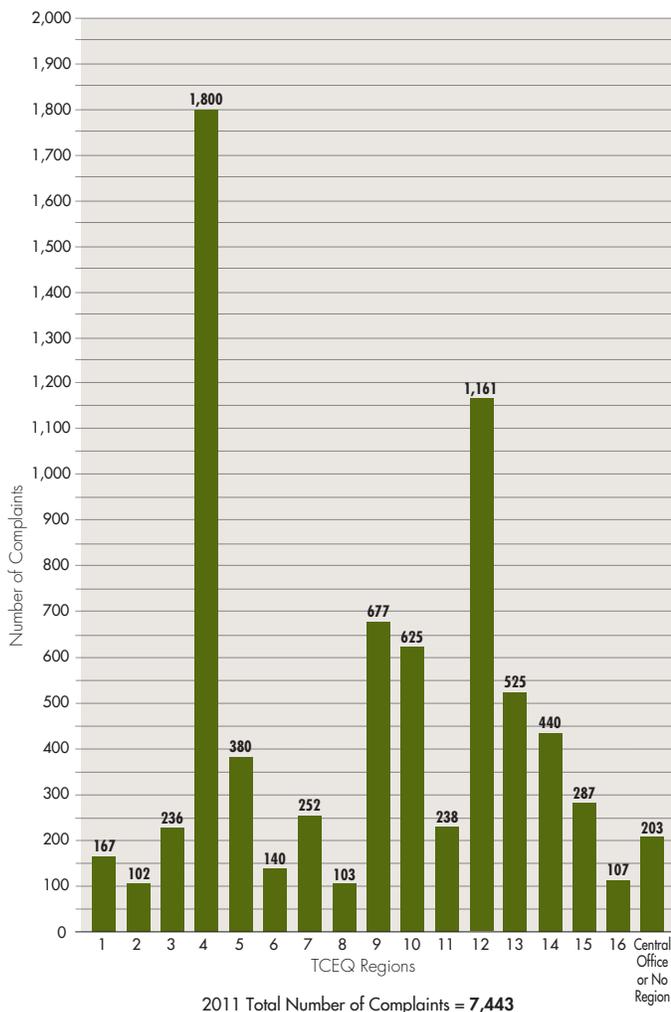
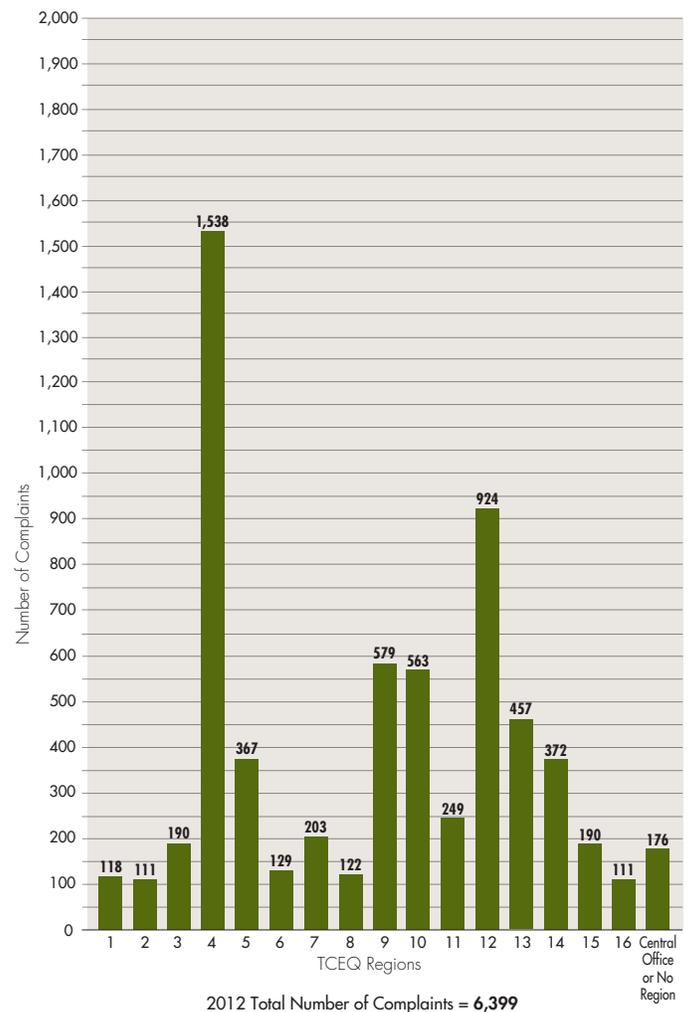


Figure A-3
Complaints by Region
FY 2012



toll-free hotline (888-777-3186) for receiving such calls.

Legislation requires the TCEQ to review the complaints received each year, including analyses by the following categories:

- region
- environmental media (air, waste, and water)
- priority classification
- enforcement action
- commission response
- trends by complaint type

The agency is also required to assess the impact of any changes made in the commission's complaint policy. This analysis is conducted and submitted in accordance with Sections 5.1773 and 5.178 of the Texas Water Code.

Complaint Data Collection and Reporting

After an environmental complaint is received by the Office of Compliance and Enforcement, the data related to the initial complaint is recorded in the Consolidated Compliance and Enforcement Data System (CCEDS). If an investigation is warranted, regional managers assign the complaint to an investigator, who is responsible for investigating the complaint and entering all resulting data into the CCEDS. Management reviews, approves, and closes the investigation and a record is entered directly into the data system.

All of the data summarized in this chapter was extracted from the CCEDS. This report reflects activity that occurred in the agency's 16 regions and at the Central

Office during fiscal 2011 (Sept. 1, 2010, through Aug. 31, 2011) and fiscal 2012 (Sept. 1, 2011, through Aug. 31, 2012). The data is presented in a series of charts (Figures A-2 to A-9).

Complaints by Region

In fiscal 2011, the TCEQ regions received a total of 7,443 complaints; in fiscal 2012, the total was 6,399. Figures A-2 and A-3 show the complaints received annually.

The data show that the number of complaints received varies generally according to regional population. For example, 39 percent of all the complaints were received from the two largest metropolitan areas, Dallas-Fort Worth and Houston (24 percent and 15 percent, respectively).

Complaints Received by Environmental Media (Air, Waste, and Water)

Total complaints received can be analyzed by environmental media (air, waste, and water) statewide and by region or central office. By media, water complaints represent the largest number of complaints received, as seen in Figure A-4.

For years air complaints constituted the largest portion of total complaints received statewide, beginning in fiscal 2003 with the TCEQ's first reporting of complaints received. But in fiscal 2009 and 2010, the agency received more complaints related to water than air. The data reflect an apparent increase in the interest and concerns that Texans have regarding their water quality and water resources, such as water rights. In comparison to fiscal 2009 and 2010, the TCEQ experienced an increase in complaints during drought conditions when water-right holders were asked to take steps to conserve water, implement their drought contingency plans, and prepare for suspensions or curtailments.

This trend is demonstrated in Figures A-5 and A-6, which show the distribution of complaints received by region and by media.

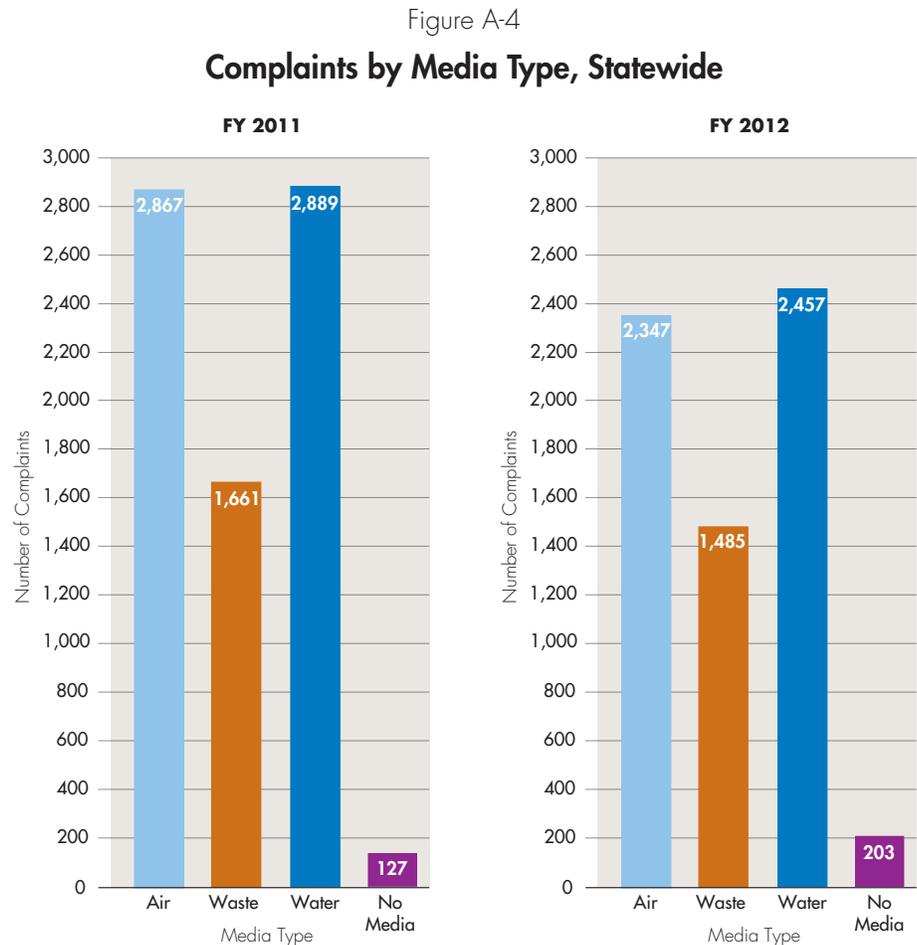
Water complaints in fiscal 2011 outnumbered air complaints in 10 of the 16 regions; in fiscal 2012, in 11 regions. By comparison, water complaints in fiscal 2009 outnumbered air complaints in nine regions; and in fiscal 2010, in 10 regions. Air complaints continued to be the leading category in the heavily populated region of Dallas-Fort Worth for fiscal 2011 and 2012.

Complaints Received by Priority Level

Complaints received in regional offices are prioritized in the following categories, based on their relative threat to public health, safety, or the environment. Each priority level represents a prescribed response time. The priority levels are:

Immediate response required.

Response time is as soon as possible, but no later than 24 hours from receipt. This classification includes a new category established by the 81st Legislature of response within



18 hours for odor complaints involving certain types of poultry operations.

Respond within one working day. As soon as possible, but no later than one working day from receipt.

Respond within five working days. As soon as possible, but no later than five working days from receipt.

Respond within 14 calendar days. As soon as possible, but no later than 14 calendar days from receipt.

Respond within 30 calendar days. As soon as possible, but no later than 30 calendar days from receipt.

Respond within 45 calendar days. As soon as possible, but no later than 45 calendar days from receipt.

Respond within 60 calendar days. As soon as possible, but no later than 60 calendar days from receipt.

Respond within 90 calendar days. As soon as possible, but no later than 90 calendar days from receipt. This category was added in fiscal 2008 for use only with complaints related to the recycling of electronic components.

Refer or do not respond. This classification is for complaints that, due to jurisdictional issues, are referred to other authorities for investigation, or for complaints that the TCEQ does not routinely investigate but needs to track for special projects, as determined by management.

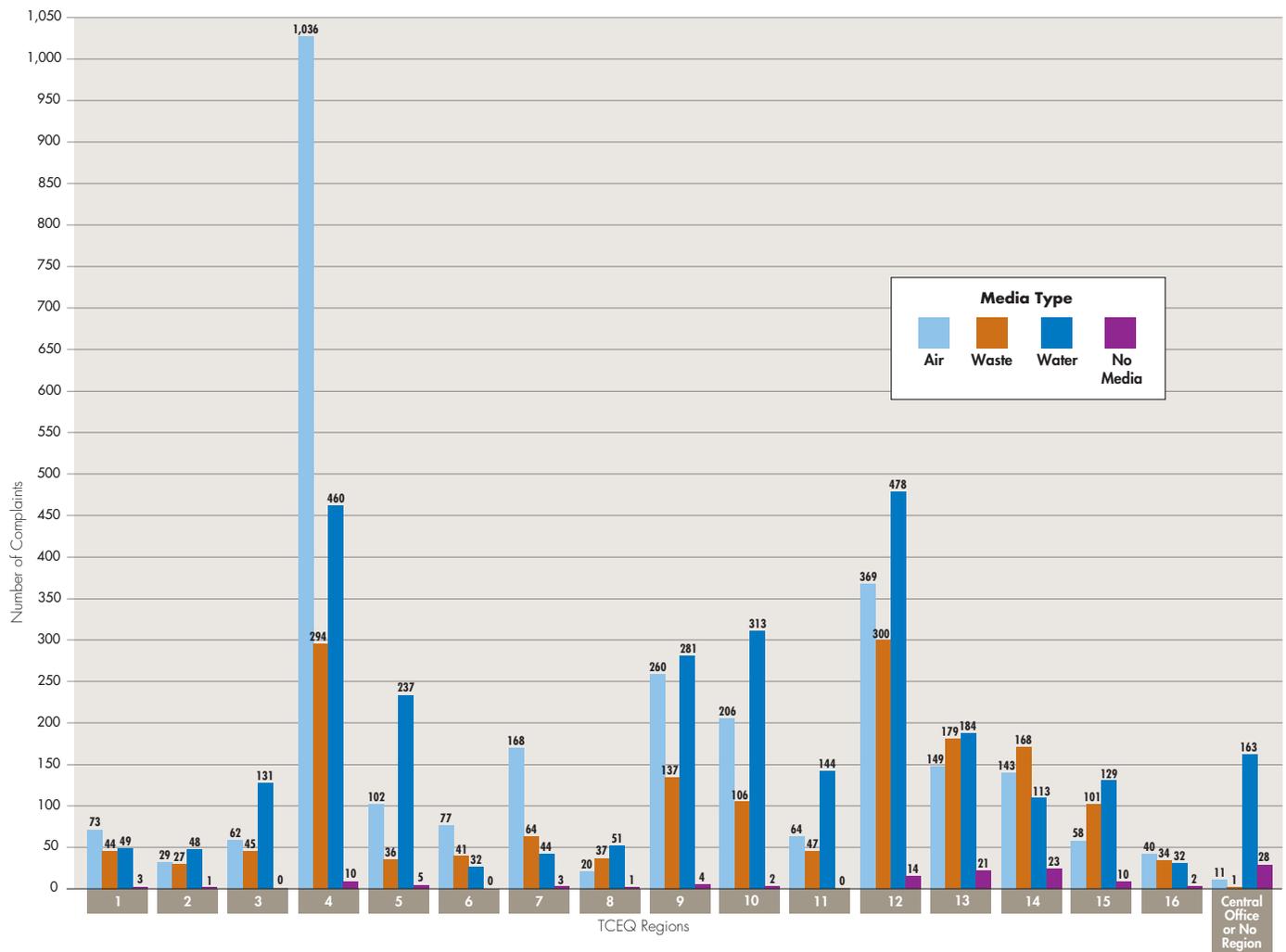
For this report, the distribution of complaints is shown by priority classification statewide (Figure A-7). Approximately 81 percent of the complaints received during the last two years were classified as requiring investigation in 30 calendar days or less.

Other specified time frame. This classification is for special projects that occur as on-demand events. Response time is based on management's evaluation of the project and the overall staff workload.

Complaints that Trigger Enforcement Action

All complaint investigations are conducted according to priority levels, as described above. Subsequent action depends on the

Figure A-5
Complaints by Region & Media Type
FY 2011



Total Number of Air Complaints = **2,867** Total Number of Waste Complaints = **1,661** Total Number of Water Complaints = **2,889** Total Number of No Media Complaints = **127**

outcome of the investigation. For about 75 percent of the complaints received, no specific enforcement action is necessary. But in some cases, the agency must take enforcement action in the form of a Notice of Violation (NOV) or a Notice of Enforcement (NOE).

Issuance of an NOV indicates that TCEQ rules have been violated, but that the violation is not considered serious enough to require an enforcement order and that the case is expected to be resolved quickly within a time frame specified by the investigating office.

An NOE is issued when a substantial violation of TCEQ rules has been documented and formal action is required. Often, an

NOE leads to the assessment of administrative penalties.

In fiscal 2011, the agency issued 1,445 NOVs and 327 NOEs as a result of complaint investigations; in fiscal 2012, the totals were 1,053 NOVs and 239 NOEs (Figure A-8).

Complaints Investigated by Program Type

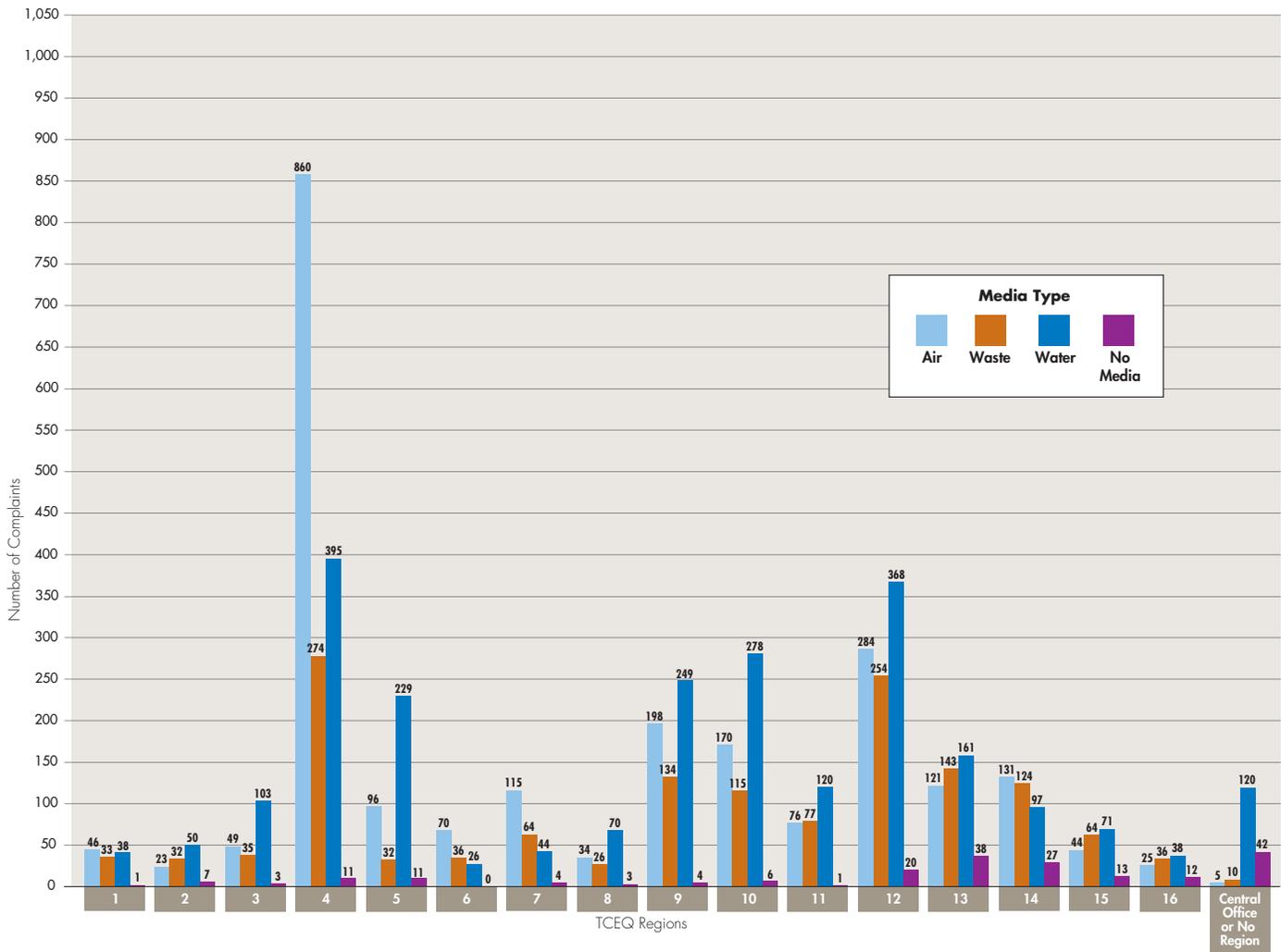
Another analysis is by the type of investigation conducted to address each complaint—the program type. In the CCEDS, air complaints are not subdivided by program type, but waste and water media each have several subcategories of programs.

The waste program types are dry cleaners, emergency response, petroleum storage tanks (including Stage II vapor recovery), industrial and hazardous waste, and municipal solid waste.

The water program types are animal-feeding operations, the Edwards Aquifer Protection Program, on-site sewage facilities, public water supply, water rights, and water quality. Water quality also comprises several program sub-types (sludge transporters, beneficial use, stormwater, and municipal and industrial wastewater treatment, and pretreatment); however, these sub-types are not listed separately in this analysis.

Figure A-9 shows the number of complaint investigations that were conducted in

Figure A-6
Complaints by Region & Media Type
FY 2012



Total Number of Air Complaints = 2,347 Total Number of Waste Complaints = 1,485 Total Number of Water Complaints = 2,457 Total Number of No Media Complaints = 203

Figure A-7
Complaints by Priority, Statewide

Priority	FY 2011	FY 2012
Other	73	74
Immediate	727	394
1 day	236	210
5 days	190	217
14 days	1,353	1,050
30 days	3,599	3,257
45 days	28	23
60 days	35	57
Refer	1,202	1,117

each program type. In fiscal 2011, 5,608 complaint investigations were conducted in response to the 7,443 complaints received. Another 1,202 complaints were prioritized for referral or no agency response (as indicated in Figure A-7). The remaining 633 complaints were either investigated in conjunction with other complaints, or were associated to investigations that were not yet approved in fiscal 2011.

In fiscal 2012, 3,943 investigations were conducted in response to 6,399 complaints received. Another 1,117 complaints were prioritized for referral or no response. The remaining 1,339 complaints were either investigated in conjunction with other complaints, or were associated with investiga-

tions that were not yet approved in fiscal 2012. In fiscal 2011, air complaint investigations made up 39 percent of the total; water complaint investigations, 39 percent; and waste investigations, 21 percent. In fiscal 2012, air investigations were 37 percent of the total; water investigations, 38 percent; and waste investigations, 23 percent.

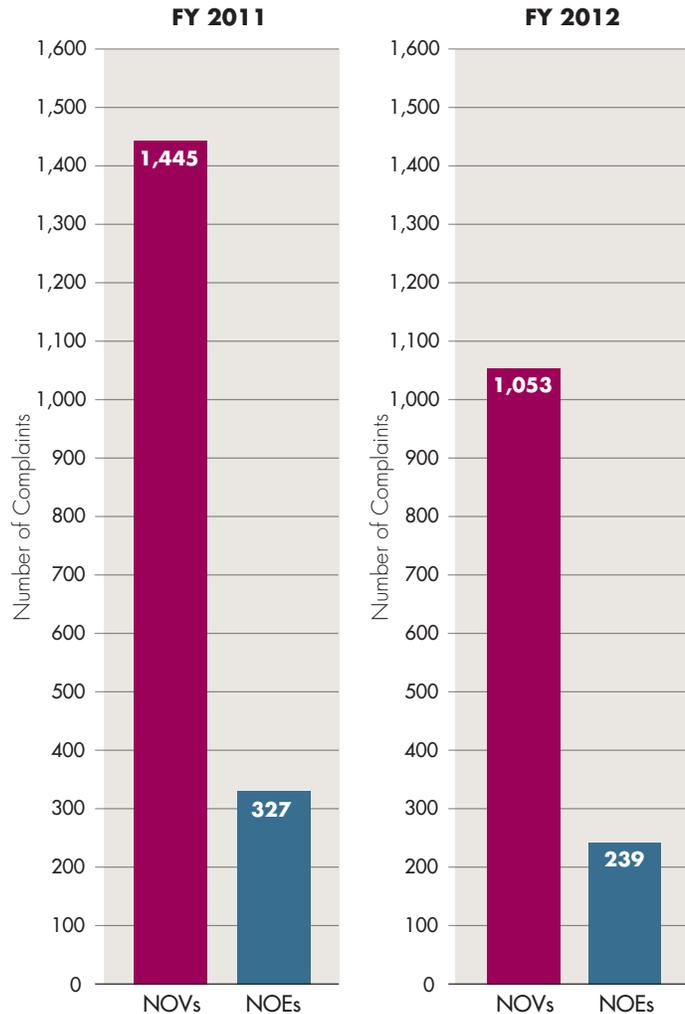
Typically, a small number of complaint investigations (about 1 percent in fiscal 2011, and less than 1 percent in fiscal 2012) do not fall under the specific program areas listed in this report.

Conclusions

The complaint data for fiscal 2011 and 2012 are typical of complaints received and

Figure A-8

Complaints Resulting in NOVs & NOEs, Statewide



investigated in previous years, with minor variations within some analysis categories.

The trend of an increasing percentage of complaints occurring in the water program continued through fiscal 2010, but has declined in fiscal 2011 and 2012. Fiscal 2011 saw a peak in complaints (primarily air related) in the North Central Texas Barnett Shale area—resulting in a slight increase in total complaints received,

and a more significant increase in air complaints received in that region. In response to this public concern, the TCEQ has undertaken a significant effort to monitor and characterize emissions and air quality related to these gas-production facilities, and to identify regulatory approaches to alleviating these concerns. (See description of Barnett Shale, page 6.)

Figure A-9

Complaint Investigations by Program Type

Program Type	FY 2011	FY 2012
Animal Feeding Operations	161	84
Air Quality	2,404	1,651
Dry Cleaners	2	0
Edwards Aquifer	28	16
Emergency Response	17	14
Industrial/Hazardous Waste	211	150
Municipal Solid Waste	715	499
On-Site Sewage Facilities	183	154
Petroleum Storage Tanks	202	154
Public Water Supply	863	511
Water Quality	759	694
Water Rights	117	70
Landscape Irrigator Operator Licensing	3	55
No Program Assigned*	88	7
Total	5,753**	4,059†

* "No Program Assigned" includes complaint investigations that cannot be categorized in the listed program areas, or complaints occurring at the end of the fiscal year that have not yet been assigned to a program area.

** The number of complaints investigated and approved in FY 2011 is 5,608. However, since some complaints are investigated by multiple programs, the total number of complaint investigations may appear greater.

† The number of complaints investigated and approved in FY 2012 is 3,943. However, since some complaints are investigated by multiple programs, the total number of complaint investigations may appear greater.

Finally, the analysis of complaint investigations by program type reflects the fact that the TCEQ places a high priority on investigating citizen complaints. All complaints received are reviewed by management, prioritized according to potential impact on public health or the environment, and either investigated in accordance with the assigned priority or, if not within the jurisdiction of this agency, referred to the appropriate authority.

Permit Time-Frame Reduction and Tracking



The Texas Commission on Environmental Quality is charged with issuing permits and other authorizations for the control of air pollution, the management of hazardous and nonhazardous waste, the management of surface water, the protection of water quality, the remediation of soil and groundwater, and the safe operation of *in situ* mines and water and wastewater utilities.

Texas Government Code 2005.007 requires the TCEQ to report every two years on its permit application system, showing the periods adopted for processing each type of permit issued and any changes enacted since the last report.

The biennial update also includes a statement of the minimum, maximum, and median time periods for processing each type of permit—from the date a request is received to the final permitting decision.

Finally, the report describes specific actions taken to simplify and improve the entire permitting process, including application and paperwork requirements.

Permit Time-Frame Tracking

One of the agency's primary goals is to issue well-written permits that are protective of human health and the environment, and to do so in the most efficient manner possible. Each year, the TCEQ receives more than 100,000 applications for various types of permits, licenses, registrations, and authorizations.

In 2002, the TCEQ implemented the Permit Time-Frame Reduction initiative to improve efficiencies in the permitting process and to reduce the permit "time frame"—the amount of time required to complete all the steps in the permitting process.

In 2007, the agency implemented the Project Time-Frame Tracking initiative, focusing not only on permit processing time frames, but also establishing time-frame goals. The goal in most program areas is to review 90 percent of all permit applications within the established time frames. Since then, the agency has realized substantial progress, most notably reducing the permit backlog from 1,150 in 2002 to 588 at the end of fiscal 2010. At the end of fiscal 2012, the permitting projects backlog increased to 868 due primarily to the significant number of air and water rights applications received.

Each type of TCEQ authorization tracked within this process is prioritized as follows:

Priority 1. These projects require agency action before applicants may begin operations. This category includes uncontested applications for new permits and for amendments to existing permits for new operations.

Priority 2. These projects allow permit applicants to continue operating while the agency processes the request. This category includes uncontested applications for renewals of existing permits and for amendments to existing permits that involve activities already permitted.

The agency also established time-frame goals for processing each type of permit. These goals, or "target maximums," vary by program area and by environmental media.

Figures B-1 through B-6 show the status of Priority 1 and Priority 2 projects at the end of fiscal 2012 in the following categories:

- air permits
- waste permits
- water quality permits
- water right permits

- water supply permits
- licenses for radioactive materials and uranium
- permits and authorizations for underground injection control

Excluded from the data are projects that were contested or that involved significant review or approval outside of the TCEQ, such as the reviews that EPA conducts, that can significantly slow down the application processing times.

By the end of fiscal 2012, about 75 percent of all Priority 1 permits were issued within the agency's time-frame goals, as were 89 percent of all Priority 2 permits. The backlog numbers for air permitting were below the goals as a result of a tremendous increase in permit by rule registrations for oil and gas activities. In addition, performance outcomes for 2011 and 2012 were below goals for water-rights permits due to persistent drought across the state.

Greater Efficiencies

In recent years, the agency has identified a number of streamlining measures to improve efficiencies in permitting and to reduce paperwork requirements. Some of those measures are described below.

Expand online permitting options for applicants. The TCEQ continues to improve streamlined options for the e-permitting system, which allows applicants to apply for a permit online and receive authorization within minutes. A feature that went online in 2008 makes it easier for the agency to add more applications. The TCEQ has established fee incentives for applicants using the e-permitting system for three general permits—those

for construction stormwater, concentrated animal-feeding operations, and pesticides. Fee incentives for additional water quality and air permit-by-rule applications are also being considered.

The Air Permits Division recently expanded e-Permitting options to allow online completion of notification and air permitting requirements for the Barnett Shale area. New electronic options in air permitting were also being developed for use in late 2012 to handle the influx of notifications of oil and gas well completions required to satisfy federal requirements. Additionally, electronic permitting of maintenance, start-up, and shutdown (MSS) emissions for various industries, including oil and gas sites, will ensure faster responses for the regulated community and allow the agency to process the vast quantity of MSS authorization requests it anticipates. Finally, automation of change of ownership requests and voluntary voiding of authorizations through the e-Permitting system is under consideration, which would allow TCEQ air permitting personnel to focus on more complex permitting activities.

Expand the options for more standardized permitting through the use of general permits, standard permits, and permits by rule. The TCEQ offers over 20 types of standard permits in the air permitting program; 12 general permits in its water quality program; one standard permit, one permit by rule, and one registration by rule in the waste permitting program; and one general permit in the underground-injection-control (UIC) program. The continued use of these authorizations has significantly reduced the permit processing time frames by as much as 300 days in certain instances.

On Nov. 2, 2011, the TCEQ adopted a pesticide general permit authorizing the discharge of pesticides for the control of

mosquitoes and other insects, vegetation and algae, animal pests, area-wide pests, and forest-canopy pests. The commission also adopted the "Nuisance and Abandoned Buildings Disposal" permit by rule in July 2012. This rule implemented legislation passed during the 82nd Legislative Session that enables communities with populations of 10,000 or fewer to demolish and dispose of nuisance and abandoned buildings on land that the community owns or controls under a permit by rule if certain criteria are met, including those exempting arid lands. On July 25, 2012, the TCEQ adopted rules to amend the UIC Class I General Permit to allow an additional waste stream to be permitted under the general permit (i.e., disposal of drinking water treatment residuals in bedded salt caverns or non-domal salt).

Develop an electronic payment system in coordination with the Texas.gov website (formerly TexasOnline) so that TCEQ customers can pay any invoiced fee and most permit application fees

online. During fiscal 2011 and 2012, the agency's ePay system processed about 81,865 fee payments and collected \$17 million in fees.

In September 2012, the TCEQ's delinquent fee protocol was integrated to interface with the agency's central database system (Central Registry), along with ePay and the TCEQ's revenue accounting system. This interface will ensure all TCEQ permits and fees are subject to the protocol and will increase the number and reduce the time it takes to collect delinquent fees.

Maintain an expedited permitting process for all economic development projects. In addition to the time-frame goals for standard permit processing, the TCEQ maintains an expedited permitting process for economic development projects. TCEQ personnel meet regularly with the Governor's Office of Economic Development and Tourism to prioritize economic-development projects. During fiscal 2011 and 2012, the TCEQ tracked and issued 26 permits for major economic-development projects.

Definitions

Number Received – The number of applications/permits/amendments received.

Number Processed – The number of applications/permits/amendments completed.

Total Under Review – The total number of applications/permits/amendments pending as of the report date.

Average Processing Time (Days) – The average processing time of applications/permits/amendments completed over the previous 12 month period, WITHOUT exceptions.

Target Maximum – The maximum days allowed for processing the specific application/permits/amendments of that row.

Number Under Review Exceeding Target – The total pending applications/permits/amendments exceeding target WITHOUT exceptions.

Percent Exceeding Target – The Total Number Under Review Exceeding Target divided by the Total Under Review.

Figure B-1
Air Permits (Uncontested) Processing Times
August 2012

Application Type	Number Received	Number Processed	Total Under Review	Average Processing Time (Days)	Target Maximum	Number Under Review Exceeding Target	Percent Exceeding Target
Priority 1							
New Source Review (NSR) New Permits	11	14	155	372	240/285*	32	21%
New Source Review Amendments	29	34	363	454	270/315*	80	22%
NSR New Permits - Federal Timeline	0	0	0	1,015	330/365*	0	0%
NSR Amendments - Federal Timeline	0	0	4	872	330/365*	3	75%
Federal New Source Review (Prevention of Significant Deterioration, Nonattainment, 112g) New & Major Modifications	0	2	54	440	330/365*	15	28%
Permits By Rule	553	441	1,147	55	45	425	37%
Standard Permits (Without Public Notice), Changes to Qualified Facilities (SB 1126) & Relocations	81	54	108	37	45	14	13%
Standard Permits (With Public Notice)	7	2	17	80	150	0	0%
Standard Permits for Concrete Batch Plants (With Public Notice)	8	7	15	109	150/195*	0	0%
Priority 1 Totals	689	554	1,863			569	31%
Priority 2							
New Site Operating Permit (SOP)	2	3	53	280	330/365*	2	4%
Site Operating Permit Revision	23	26	208	155	330/365*	9	4%
New Source Review Alterations & Other Changes	46	65	52	50	120	0	0%
New General Operating Permit (GOP)	5	4	17	95	120	5	29%
General Operating Permit Revision	4	13	34	143	330	0	0%
New Source Review Renewals	39	39	259	188	270	15	6%
General Operating Permit Renewal	7	9	42	123	210	9	21%
Site Operating Permit Renewal	12	14	136	347	330/365*	26	19%
Priority 2 Totals	138	173	801			66	8%
Overall Totals	827	727	2,664			635	24%

* Denotes target maximum for applications received on or after Sept. 1, 2010.

Figure B-2
Waste Permits (Uncontested) Processing Times
August 2012

Application Type	Number Received	Number Processed	Total Under Review	Average processing Time (Days)	Target Maximum	Number Under Review Exceeding Target	Percent Exceeding Target
Priority 1							
Industrial & Hazardous Waste (IHW) New Permits	0	0	2	—	450	0	0%
IHW Class 3 Modifications	0	0	3	445	450	0	0%
IHW Major Amendments	0	0	0	—	450	0	—
Municipal Solid Waste (MSW) New Permits	0	0	12	187	360	4	33%
MSW Major Amendments	0	2	16	400	360	2	13%
MSW Registered Transfer Stations	0	0	2	327	230	2	100%
MSW Registered Liquid Waste Processor	0	0	0	618	230	0	0
Priority 1 Totals	0	2	35			8	23%
Priority 2							
IHW Renewals	0	1	36	523	450	9	25%
Priority 2 Totals	0	1	36	523	0	9	25%
Overall Totals	0	3	71			17	24%

Figure B-3

Water Quality Permits (Uncontested) Processing Times

August 2012

Application Type	Number Received	Number Processed	Total Under Review	Average processing Time (Days)	Target Maximum	Number Under Review Exceeding Target	Percent Exceeding Target	Change in Percent Exceeding Target
Priority 1								
New Permits (Major Facilities)	0	0	0	0	330	0	0%	0%
Major Amendments (Major Facilities)	1	0	25	307	330	9	36%	3%
New Permits (Minor Facilities)	8	8	54	299	330	7	13%	-1%
Major Amendments (Minor Facilities)	5	2	38	301	300	7	18%	1%
Sludge Registrations	3	1	8	69	270	0	0%	0%
Priority 1 Totals	17	11	125			23	18%	1%
Priority 2								
Renewals (Major Facilities)	14	4	99	278	330	11	11%	0%
Renewals (Minor Facilities)	45	23	240	217	300	10	4%	-3%
Priority 2 Totals	59	27	339			21	6%	-2%
Overall Totals	76	38	464			44	9%	-2%

Figure B-4
Water Rights (Uncontested) Processing Times
August 2012

Application Type	Number Received	Number Processed	Total Under Review	Average processing Time (Days)*	Target Maximum	Number Under Review Exceeding Target	Percent Exceeding Target	Change in Percent Exceeding Target
Priority 1								
Water Rights New Permits	6	8	68	210	300	35	51.5%	-2.3%
Water Rights Amendments With Notice	2	0	62	304	300	36	58.1%	3.1%
Water Rights Requiring Notice Review Pursuant to Work Session	3	3	39	452	300	17	43.6%	5.8%
Water Rights Amendments Without Notice, Rio Grande Watermaster Area	3	3	13	173	180	4	30.8%	7.7%
Water Rights Amendments Without Notice, Outside Rio Grande Watermaster Area	1	0	4	111	180	0	0.0%	0.0%
Priority 1 Totals	15	14	186			92	49.5%	1.7%

* Based on the prior 12 months

Figure B-5
Water Supply Permits (Uncontested) Processing Times
August 2012

Application Type	Number Received	Number Processed	Total Under Review	Average processing Time (Days)*	Target Maximum	Number Under Review Exceeding Target	Percent Exceeding Target	Change in Percent Exceeding Target
Priority 1								
Water District Expedited Bond Applications	8	3	26	44	60	4	15.4%	6.3%
Water District Regular Bond Applications	1	8	40	137	180	9	22.5%	2.1%
Water District Expedited Escrow Releases and Surplus Fund Requests	5	8	4	25	60	0	0.0%	0.0%
Water District Regular Minor Applications	8	14	22	68	120	3	13.6%	-2.4%
Water District Expedited Creation Applications	0	0	0	0	120	0	0.0%	0.0%
Water District Regular Creations & Conversions	0	0	4	112	180	1	25.0%	0.0%
Certificates of Convenience & Necessity - New or Amended	2	9	46	189	180	13	28.3%	10.4%
Certificates of Convenience & Necessity - Transfers	1	1	40	257	365	7	17.5%	0.0%
Water Engineering Plan Reviews	149	116	124	25	60	0	0.0%	0.0%
Exceptions	29	53	126	97	100	2	1.6%	1.6%
Alternative Capacity Requirements	7	4	24	69	90	1	4.2%	-1.4%
Priority 1 Totals	210	216	456			40	8.8%	2.0%

* Based on the prior 12 months

Figure B-6
Radioactive Materials (Uncontested) Processing Times
August 2012

Application Type	Number Received	Number Processed	Total Under Review	Average Processing Time (Days)	Target Maximum	Number Under Review Exceeding Target	Percent Exceeding Target
Priority 1							
Radioactive Licenses for Waste Processing, Disposal and Uranium Recovery, Initial Issuance	0	0	1	1022#	885	1	100%
Low-Level Radioactive Waste Disposal License, Initial Issuance	0	0	0	1649#	990	0	0%
New Underground Injection Control (UIC) Permit^^	0	0	6	310	390	0	0%
UIC Class I Desalination General Permit	0	0	0	18	60	0	0%
UIC Permit, Major Amendment	0	0	3	694**	390	0	0%
Priority 1 Totals	0	0	10			1	10%
Priority 2							
Radioactive Licenses for Waste Processing, Disposal and Uranium Recovery, Renewal	0	0	8	*	885	8	100%
Radioactive Licenses for Waste Processing, Disposal and Uranium Recovery, Major Amendment	0	0	3	*	885	2	67%
Radioactive Licenses for Waste Processing, Disposal and Uranium Recovery, Minor Amendment (With Notice)	0	2	3	190	230	2	67%
Low-Level Radioactive Waste Disposal, Renewal	0	0	0	*	990	0	0%
Low-Level Radioactive Waste Disposal, Major Amendment	0	0	0	310	990	0	0%
Low-Level Radioactive Waste, Minor Amendment (With Notice)	0	1	9	360	230	6	67%
UIC Permit, Renewal	1	0	17	51***	390	0	0%
UIC Class V Authorization	2	2	30	53	60	21	70%
Priority 2 Totals	3	5	70			39	56%
Overall Totals	3	5	80			40	50%

* Pending radioactive licensing actions were transferred from the DSHS and not prioritized for immediate completion by SB 1604. Therefore, the licensing actions have not been completed and there is no "average processing time" for comparison.

The "average processing time" is based on those licenses which have been issued by the TCEQ, which were under a set of legislative priorities as part of the SB 1604 transfer legislation. Due to these legislative priorities, other pending licensing actions and new actions coming in were mainly idle until statutory milestones were reached and those pending and new actions could be re-initiated.

^^ Pre-injection Unit Registrations (PIU) and Production Area Authorizations (PAA's) included.

** A request for hearing was associated with three Pergan Marshall applications. Therefore, these permit applications were not counted in previous project time-frame tracking reports. A settlement was reached and the permits were issued in July, 2012.

*** One renewal was processed in the previous year. The application was withdrawn.

Office of Public Interest Counsel Annual Report to the TCEQ



— AUGUST 17, 2012 —

Passage of House Bill 2694 (the TCEQ Sunset Bill) in 2011 continued the Texas Commission on Environmental Quality for 12 years and made changes to several functions of the commission. In particular, Article 3 of the bill addressed the responsibilities of the Public Interest Counsel (counsel) and the Office of Public Interest Counsel (OPIC), and amended provisions of Chapter 5 of the Texas Water Code relating to the duties of the office.

This report was provided to the commission in response to Article 3, Section 3.03, which added Section 5.2725 to the Texas Water Code and directed OPIC to provide an annual report to the commission.

This annual report serves to fulfill the following purposes:

1. Evaluate OPIC's performance in representing the public interest the preceding year.
2. Assess the budget needs of the office, including the need to contract for outside expertise.
3. Advise the commission of OPIC's recommended legislative or regulatory changes, as authorized under Section 5.273 of the Texas Water Code.

Finally, the annual report must be submitted in time to be included with the reported information in the commission's reports under Texas Water Code, Sections 5.178 (a) and (b), and in the commission's biennial legislative appropriations requests, as appropriate.

This report is intended to comply with the requirements of H.B. 2694 and was respectfully submitted to the commission for its consideration.

OPIC Mission and Philosophy

The mission of the Office of Public Interest Counsel is to represent the public interest as a party to all proceedings before the commission. OPIC is committed to providing professional legal representation of the public interest on these matters and to ensure that the public is afforded meaningful participation in the decision-making process of the commission.

OPIC was created in 1977 to ensure that the commission promotes the public's interest. The primary duty of the office is to represent the public interest as a party to matters before the commission. To this end, the office is committed to providing sound legal and policy-related opinions to the commission on all matters affecting the public interest, including environmental permitting, utility and district proceedings, compliance and enforcement, and rulemaking matters.

OPIC performs all duties professionally, ethically, and fairly. The office strives to ensure meaningful public participation in the decision-making process of the commission. It participates in contested case hearings and other agency proceedings to ensure that decisions of the commission are based on a complete and fully developed record and to further the public interest.

Overview and Organization

Texas Water Code Section 5.271 directs the counsel to participate in all matters before the commission and to ensure that the public's interest is promoted. While OPIC is an integral part of the agency, the office works independently of other TCEQ

divisions to bring to the commission OPIC's perspective and recommendations on public interest issues arising in matters before them. The independence of OPIC's participation ensures that relevant and material evidence on environmental and utility-related issues is developed and made part of the record for the commission's consideration.

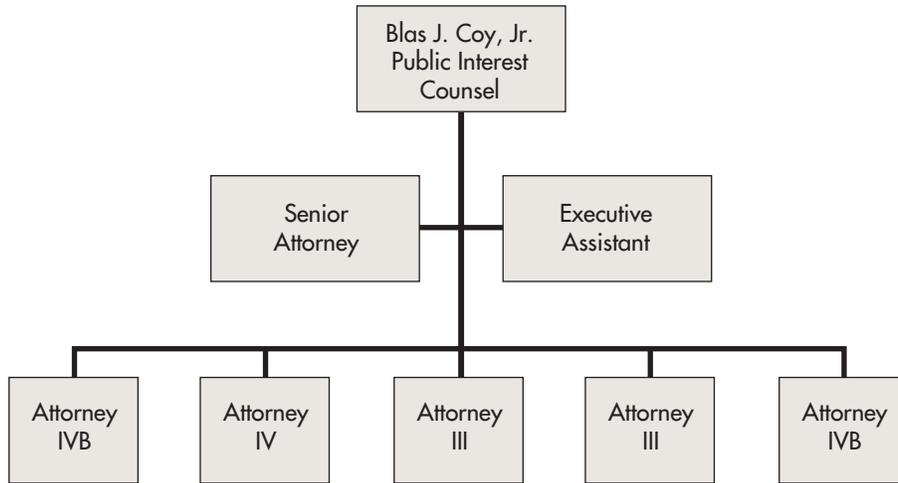
OPIC seeks to work with the commission and the public to create an environment to further this goal. The office has determined that this objective can best be accomplished by engaging in a number of activities on behalf of the public and the commission, including:

- Participating as a party in contested case hearings involving permit applications, utility rate increase applications, and enforcement petitions.
- Preparing legal briefs for commission consideration regarding hearing requests, requests for reconsideration, motions to overturn, motions for rehearing, use determination appeals, and various other matters set for briefing by the Office of General Counsel.
- Providing review and comment on rule-making proposals.
- Participating in public meetings on permit applications with significant public interest.
- Responding to inquiries from the public to ensure that their concerns are brought before the commission and addressed in the decision-making process.

OPIC has the critically important task of creating a process that encourages the participation of the public and the development of information that might otherwise not be

Figure C-1
Office of Public Interest Counsel

AUGUST 2012



available to the commission. As a party to every proceeding, OPIC's involvement also provides balance and preserves the integrity of the application and hearings process. OPIC's participation ensures that relevant evidence on environmental or consumer-related issues is developed and made part of the record.

As a result, the commission is able to make informed decisions, issue permits that are protective of human health and the environment, and take into account the greater public interest, as well as the interests of affected parties.

The Office of Public Interest Counsel has eight full-time equivalent (FTE) positions (see Figure C-1). As of August 2012, 25 percent of the staff was minority and 25 percent women. The counsel is appointed by the commission; the staff consists of a senior attorney, five assistant public interest counsels, and an executive assistant.

OPIC is committed to being responsive to the commission and all Texans. OPIC will continue to provide high quality professional legal representation of the public interest on environmental quality and consumer protection issues. To maintain this level of representation, the counsel ensures that the staff receives the training, education, and professional development opportunities to allow them to perform their duties and responsibilities professionally and effectively.

1. Evaluation of OPIC's Performance

OPIC is charged to represent the public interest in all proceedings before the commission. OPIC participates each fiscal year as a party in contested case hearings at the State Office of Administrative Hearings and in various other agency proceedings.

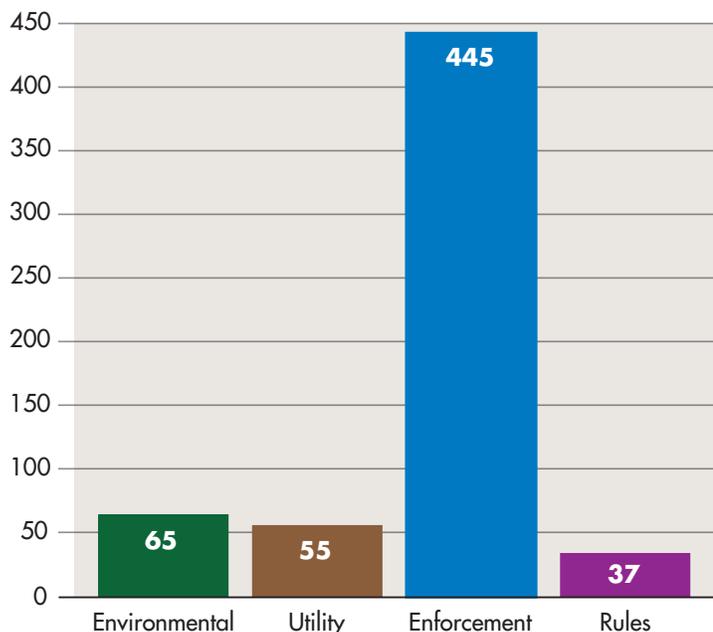
Contested cases include applications for municipal solid waste landfills, underground injection waste disposal facilities, municipal and industrial wastewater treatment facilities, sludge application facilities, rock and concrete crushers, concrete batch plants, new source review air permits, water rights permitting, utility and district proceedings, and enforcement actions. The office also participates in agency rulemaking projects, emergency order hearings, and other matters that may come before the commission.

Article 3, Section 3.03, of H.B. 2694 requires that the counsel provide the commission with an evaluation of OPIC's performance in representing the public interest. In the past, the counsel has kept the commission apprised of the work of the office by providing information on the number and type of matters in which it participated over the year. The methodology used in Figure C-2 reflects the total number of matters assigned to staff.

The performance measures developed in response to H.B. 2694 were not used for this report. However, OPIC implemented and began using the performance measures on Sept. 1, 2012, to provide a more

Figure C-2

Proceedings with OPIC Participation, FY 2012 (as of August 31)



complete accounting of the office’s performance over the fiscal year.

OPIC participated in a total of 602 proceedings in fiscal 2012. Of those, 120 were hearings involving environmental and utility-related matters, and 445 were cases related to enforcement. The office also reviewed and commented on 33 rules proposals and participated as a member of four rule teams, including serving as the program lead on the agency team implementing Article 3, Section 3.04, of H.B. 2694.

Use of Technology

OPIC has historically relied on the TCEQ’s information resources and technology to fulfill its duties. The implementation of H.B. 2694, however, created new duties and responsibilities for the office, including new reporting requirements and recordkeeping. OPIC’s database was not developed for the calculations required for the office’s performance measures nor for the related accounting for cases and other assignments. Compliance with these new duties poses a challenge, but the office must have in place proper evaluation and decision-making processes and accountability systems.

Planning for the future, OPIC must undertake initiatives to obtain and use new technology tools to ensure that the office is effectively complying with the direction of the Legislature. OPIC staff looks forward to working with the appropriate offices in the TCEQ to take advantage of technological advancements that will improve the ability to measure the workload of the office and ensure accountability to the public.

Performance Measures

Article 3, Section 3.03 (adding new TWC Section 2.2725 (b)), of H.B. 2694 also directed OPIC to work with the commission to identify performance measures for the office. The performance measures were developed by the counsel and the commission in accordance with the provisions of H.B. 2694 (see Attachment 1, page 59). They are intended to comply with the law and to document progress toward the office’s goals and objectives and ensure that OPIC is accountable to the public.

The measures were not used to evaluate OPIC’s performance in this report. They were implemented beginning Sept. 1, 2012, and will be reflected in the August 2013 “Annual Report to the TCEQ.”

2. Assessment of Budget Needs

Section 5.2725 of the Texas Water Code, which was added by Article 3, Section 3.03, of H.B. 2694, directed OPIC to provide the commission with an assessment of the budget needs of the office, including the need to contract for outside expertise.

The operating budget for OPIC in fiscal 2012 totaled \$566,120 (see Figure C-3).

Figure C-3

OPIC Budget, FY2012

Budget Category		Budget
31	Salaries	\$543,420
35	Professional/Temporary	\$7,750
37	Travel	\$7,100
39	Training	\$3,485
41	Postage	\$50
43	Consumables	\$550
46	Other operating expenses	\$1,570
54	Facilities, furniture, & equipment	\$2,195
Total		\$566,120

The FY2012 budget did not include funding to allow OPIC to contract for outside consultants. The following assessment of the need for outside expertise is provided in response to Section 5.2725 of the Texas Water Code.

Outside Consultants

OPIC was authorized by prior legislation, codified at Texas Water Code Section

5.274 (b), to obtain and use outside technical support to carry out its functions under the code. H.B. 2694 also directed OPIC to provide to the commission an assessment of the budget needs of the office, including the need to contract for outside expertise. This evaluation and request for funding is made pursuant to this legislation.

The use of outside technical consultants to assist OPIC attorneys in contested matters, rulemaking, and other assignments would greatly enhance the effectiveness of the office. OPIC proposes to hire consultants to review applications and related documents, explain technical issues, perform research, and prepare reports. The office has determined that it is a more effective use of taxpayer dollars to contract for these services than to have these experts on staff.

The Public Interest Counsel requests an initial budgeted amount of \$30,000 in the first year to be used, as necessary, to hire non-testifying experts. The actual amount used will depend on, among other things, types and number of matters requiring the assistance of experts, the level and nature of expertise held by a particular consultant, the extent of services required, and the type and scope of any required reports.

Based on research, the rates for consultant work in the environmental field can range from \$125 to \$300 an hour, or higher for certain experts. Assuming that funding is available, OPIC anticipates hiring expert consultants to assist staff attorneys in contested matters, rulemaking, and other assignments on a case-by-case basis to explain technical issues, perform research, and prepare reports. For purposes of discussion, it is assumed one consultant at an hourly rate of \$200 for 10 hours of review would be required per project.

Under this scenario of a \$30,000 budget, OPIC could have the assistance of experts in about 15 matters. This support would allow OPIC to provide more informed technical opinions and recommendations to the commission.

In addition to using the Public Interest Factors rule at 30 Texas Administrative Code Section 80.110 for participating in agency proceedings, the office will also develop criteria for determining when and

in what types of cases outside technical assistance will be necessary. These criteria will include the area of expertise required, the scope of the assignment, an estimate of the time required for the expert's review of an application, and the type of final product to be delivered by the expert. The use and effectiveness of the funds will be evaluated and findings provided to the commission.

Finally, the procedures for obtaining outside technical support are complicated, and OPIC lacks staff with the necessary contracting and administrative expertise. Consequently, implementation—at least in the beginning phases—will require assistance and guidance from other agency divisions with experience in the process.

3. Legislative and Regulatory Recommendations

The Texas Water Code, Section 5.273, provides authority to OPIC to recommend needed legislative and regulatory changes. H.B. 2694 directs the counsel to advise the commission of any recommended legislative or regulatory changes. After careful consideration, OPIC offers the following proposals.

Legislative Recommendations

Utility Rate Changes

OPIC proposes amending Chapter 13 of the Texas Water Code to move the effective date of a water or sewer rate change until the first billing period after the effective date of a final order from the commission approving a rate change, after an interim rate order from the commission, or after an interim rate order from the State Office of Administrative Hearings.

The proposal addresses a concern frequently expressed by customers about current law, which allows investor-owned utilities (IOUs) to begin charging customers a rate that no regulatory body has approved. Under current law, IOUs apply to the commission for a rate change without having to provide supporting documentation of their expenses, and the IOU may begin charging the new rate before customers

have had the opportunity to have a contested case. If the executive director determines that the application is administratively complete, IOUs have the authority to charge a proposed rate 60 days after providing notice to customers of the increase. Thus, customers pay proposed rates that neither the executive director nor the commission has reviewed to determine whether they are just and reasonable.

OPIC's proposal would address this concern by amending Texas Water Code Section 13.187 so that a proposed rate increase would not go into effect until after an order has been issued by the commission.

Changes to Permit Applications

OPIC proposes prohibiting changes to permit applications across all agency programs after the 31st day before the date on which a preliminary hearing is scheduled to begin.

Existing Texas Health and Safety Code, Section 382.0291(d) (THSC), currently limits an air quality permit applicant's ability to amend applications. OPIC proposes revisions to clarify THSC Section 382.0291(d) and to incorporate the revised language of this provision into provisions of the Texas Water Code and other provisions of the THSC. Such legislative changes would ensure that the same limitation would apply with respect to all environmental permit applications under the commission's jurisdiction.

The proposed change would address the perceived unfairness when permit applications are changed during the hearing process in response to the issues brought to light by protesting parties. Members of the public have expressed concern that when applicants change their applications late in the public participation process and such changes are allowed in the draft permit, applicants and the agency make the subject of the contested case hearing a moving target. This proposal would address that concern by discouraging application changes late in the public participation process. With some modifications, the proposal is based on the current provisions restricting amendments to air quality permit applications under THSC Section 382.0291(d).

This change would promote consistency across agency programs by imposing a uniform limitation on application revisions across environmental media programs. The proposal seeks to encourage applicants to make sure their applications are accurate and complete when filed. This would result in a more efficient and effective use of the time and resources of all parties to a proceeding.

Regulatory Recommendation

Factors for Public Interest Representation

H.B. 2694, Section 3.04, which was codified at Texas Water Code Section 5.276, directed the office to develop factors which the counsel must consider before deciding to participate as a party to a commission proceeding. OPIC developed the first draft of the rule and served as the program lead on the agency team to implement this provision of the Sunset Bill. The rulemaking includes factors to determine the nature and extent of the public interest, as well as criteria to consider in prioritizing the workload of the office.

The proposed rule was approved for publication on Dec. 7, 2011. The comment period ended on Jan. 30, 2012. The commission adopted the rule on May 16, 2012 (see Attachment 2, page 65).

Conclusion

OPIC's primary duty is to represent the public interest in all matters before the commission.

This annual report is provided to apprise the commission of the effectiveness of the office in carrying out its statutory duties. The report serves the purpose of H.B. 2694: to ensure that the functions of the OPIC are accomplished in a transparent and effective manner.

The report also provides the counsel an opportunity to examine the role of the office and to make changes, as necessary, to ensure that OPIC continues to earn the confidence of the public and the commission.

Attachment 1

Office of Public Interest Counsel Goals, Objectives, Strategies, and Measures

GOAL 1:	To provide effective representation of the public interest as a party in all environmental and utility and district proceedings before the Texas Commission on Environmental Quality
Objective:	To provide effective representation of the public interest as a party in 75 percent of environmental proceedings and 75 percent of utility and district proceedings heard by the TCEQ
Outcome Measures:	<ul style="list-style-type: none"> • Percentage of environmental proceedings in which OPIC participated • Percentage of utility and district proceedings in which OPIC participated
STRATEGY:	Respond to duty to represent the public interest by participating in contested case hearings and other proceedings involving environmental actions and utility and district actions and by providing legal counsel, advice, opinions, and recommendations to the commission
Output Measures:	<p>Number of environmental air quality proceedings in which OPIC participated</p> <p>Number of environmental water quality proceedings in which OPIC participated</p> <p>Number of environmental water rights proceedings in which OPIC participated</p> <p>Number of environmental waste proceedings in which OPIC participated</p> <p>Number of utility and district proceedings in which OPIC participated</p>
STRATEGY:	Respond to duty to represent the public interest by participating in contested case hearings and other proceedings involving environmental actions and utilities and district actions and by providing legal counsel, advice, opinions, and recommendations to the commission
Outcome Measures:	Percentage of environmental proceedings in which OPIC participated
Short Definition:	“Environmental proceedings” means proceedings involving air quality, water quality, water rights and waste permits, authorizations, decisions, or other actions open at anytime during the year; includes hearings before the TCEQ or the State Office of Administrative Hearings (SOAH).
Purpose/Importance:	Participation in these cases addresses the office’s statutory duty to be a party to all proceedings before the commission. On an annual basis, the percentage is used to demonstrate increases and decreases in certain types of cases, which may indicate a need to reallocate resources.
Source/Collection of Data:	OPIC Case Management Database Report
Method of Calculation:	This measure is the number of environmental proceedings in which OPIC participated during the reporting period divided by the total number of such proceedings for the reporting period.
Data Limitations:	The number of contested cases and other proceedings are determined by factors not within the control of the office, including the number and timing of permit filings by applicants, commission referral to the SOAH, and matters initiated by the executive director of the TCEQ. The amount of time spent on a case is also not totally within the control of the office. Other factors including available staff, actions by opposing parties, depositions, and court dockets can impact time spent on a case.
Calculation Type:	Non-cumulative
New Measure:	Yes
Desired Performance:	Higher than target
Outcome Measure:	Percentage of utilities and district proceedings in which OPIC participated
Short Definition:	This measure means contested case rate hearings and other utility and district proceedings open at any time during the year; includes hearings before the TCEQ or the State Office of Administrative Hearings.
Purpose/Importance:	Participation in these projects addresses the office’s statutory duty to be a party to all proceedings before the commission. On an annual basis, the percentage is used to demonstrate increases and decreases in open and closed projects, which may reflect a need to reallocate resources.
Source/Collection of Data:	OPIC Case Management Database Report

Method of Calculation:	This measure is the number of utility and district proceedings in which OPIC participated divided by the total number of such proceedings for the reporting period.
Data Limitations:	The number of utility and district matters is influenced by factors not within the control of the office, including the number and timing of rate or other filings by applicants, and the number of hearings scheduled. The amount of time spent on a case is also not totally within the control of the office. Other factors including available staff, actions by opposing parties, depositions, and court dockets can impact time spent on a case.
Calculation Type:	Non-cumulative
New Measure:	Yes
Desired Performance:	Higher than target
Outcome Measure:	Number of environmental air quality proceedings in which OPIC participated
Short Definition:	The number of environmental air quality proceedings open at anytime during the year in which OPIC participated
Purpose/Importance:	This measure demonstrates the number of air matters in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
Source/Collection of Data:	OPIC Case Management Database Report
Method of Calculation:	This measure is the cumulative count of air quality proceedings in which OPIC participated during the reporting period.
Calculation Type:	Cumulative
New Measure:	Yes
Desired Performance:	Higher than target
Outcome Measure:	Number of environmental water quality proceedings in which OPIC participated
Short Definition:	The number of environmental water quality proceedings open at anytime during the year in which OPIC participated
Purpose/Importance:	This measure demonstrates the number of water quality permitting matters in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
Source/Collection of Data:	OPIC Case Management Database Report
Method of Calculation:	This measure is the cumulative count of water quality proceedings in which OPIC participated during the reporting period.
Calculation Type:	Cumulative
New Measure:	Yes
Desired Performance:	Higher than target
Output Measure:	Number of environmental water rights proceedings in which OPIC participated
Short Definition:	The total number of environmental water rights proceedings open at anytime during the year in which OPIC participated
Purpose/Importance:	This measure demonstrates the number of water rights matters in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
Source/Collection of Data:	OPIC Case Management Database Report
Method of Calculation:	This measure is the cumulative count of water rights proceedings in which OPIC participated during the reporting period.
Calculation Type:	Cumulative
New Measure:	Yes
Desired Performance:	Higher than target
Output Measure:	Number of environmental waste proceedings in which OPIC participated

Short Definition:	The total number of environmental waste proceedings open at anytime during the year in which OPIC participated
Purpose/Importance:	This measure demonstrates the number of waste permitting matters in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
Source/Collection of Data:	OPIC Case Management Database Report
Method of Calculation:	This measure is the cumulative count of waste proceedings in which OPIC participated during the reporting period.
Calculation Type:	Cumulative
New Measure:	Yes
Desired Performance:	Higher than target
Output Measure:	Number of utility and district proceedings in which OPIC participated
Short Definition:	The total number of utility and district proceedings open at anytime during the year in which OPIC participated
Purpose/Importance:	This measure demonstrates the number of utility and district matters in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
Source/Collection of Data:	OPIC Case Management Database Report
Method of Calculation:	This measure is the cumulative count of utility and district proceedings in which OPIC participated during the reporting period.
Calculation Type:	Cumulative
New Measure:	Yes
Desired Performance:	Higher than target
GOAL 2:	To provide effective representation of the public interest as a party in all rulemaking proceedings before the Texas Commission on Environmental Quality
Objective:	To participate in 75 percent of rulemaking proceedings considered by the TCEQ.
Outcome Measure:	Percentage of rulemaking proceedings in which OPIC participated
STRATEGY:	Respond to duty to represent the public interest by participating in rulemaking proceedings and by providing legal counsel, advice, opinions, and recommendations to the commission.
Output Measure:	Number of rulemaking proceedings in which OPIC participated
STRATEGY:	Respond to duty to represent the public interest by participating in rulemaking proceedings and by providing legal counsel, advice, opinions, and recommendations to the commission.
Outcome Measure:	Percentage of rulemaking proceedings in which OPIC participated
Short Definition:	These are rulemaking projects that raise environmental, utility and district, and public interest issues and that are open at anytime during the year.
Purpose/Importance:	Participation in these cases addresses the office's statutory duty to be a party to all proceedings before the commission. On an annual basis, the percentage is used to demonstrate increases and decreases in certain types of rulemaking projects, which may reflect a need to reallocate resources.
Source/Collection of Data:	OPIC Case Management Database Report
Method of Calculation:	This measure is the number of rulemaking projects in which OPIC participated during the reporting period divided by the total number of such proceedings for the reporting period.
Data Limitations:	The number of rulemaking projects developed by the TCEQ is influenced by factors not totally within the control of the office. Rulemaking may be initiated by the agency or by petition by any member of the public. Other factors, including available staff, can impact the office's participation in a project.
Calculation Type:	Non-cumulative
New Measure:	Yes
Desired Performance:	Higher than target

Output Measure:	Number of rulemaking proceedings in which OPIC participated
Short Definition:	The total number of rulemaking projects open at anytime during the year in which OPIC participated
Purpose/Importance:	This measure demonstrates the number of rulemaking projects in which OPIC participated during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
Source/Collection of Data:	OPIC Case Management Database Report
Method of Calculation:	This measure is the cumulative count of rulemaking projects in which OPIC participated during the reporting period.
Calculation Type:	Cumulative
New Measure:	Yes
Desired Performance:	Higher than target
GOAL 3:	To provide effective representation of the public interest as a party in all enforcement proceedings involving environmental and utility and district violations before the Texas Commission on Environmental Quality
Objective:	To provide effective representation of the public interest as a party for 75 percent of enforcement contested case and other proceedings heard by the TCEQ
Outcome Measures:	<ul style="list-style-type: none"> • Percentage of enforcement hearings and other proceedings related to environmental violations in which OPIC participated • Percentage of enforcement hearings and other proceedings related to utility and district violations in which OPIC participated
STRATEGY:	Respond to duty to represent the public interest by participating in contested cases and other proceedings involving environmental and utility and district violations and by providing legal counsel, advice, opinions, and recommendations to the commission.
Output Measures:	<ul style="list-style-type: none"> • Number of environmental air quality enforcement proceedings in which OPIC participated • Number of environmental water quality enforcement proceedings in which OPIC participated • Number of environmental water rights enforcement proceedings in which OPIC participated • Number of environmental waste enforcement proceedings in which OPIC participated • Number of utility and district enforcement proceedings in which OPIC participated
STRATEGY:	Respond to duty to represent the public interest by participating in contested cases and other proceedings involving environmental and utility and district violations and by providing legal counsel, advice, opinions, and recommendations to the commission.
Outcome Measure:	Percentage of enforcement hearings and other proceedings related to environmental violations in which OPIC participated
Short Definition:	This measure means proceedings involving air quality, water quality, water rights, and waste violations open at anytime during the year; includes hearings before the Texas Commission on Environmental Quality or the State Office of Administrative Hearings (SOAH).
Purpose/Importance:	Participation in these cases addresses the office's statutory duty to be a party to all proceedings before the commission. On an annual basis, the percentage is used to demonstrate increases and decreases in certain types of cases, which may indicate a need to reallocate resources.
Source/Collection of Data:	OPIC Case Management Database Report

Method of Calculation:	This measure is the number of enforcement cases involving environmental violations in which OPIC participated during the reporting period divided by the total number of such proceedings for the reporting period.
Data Limitations:	Enforcement cases are referred to SOAH by the commission; the number referred is influenced by factors not within the control of the office. The amount of time spent on a case is also not totally within the control of the office. Other factors including available staff, actions by opposing parties, depositions, and court dockets can impact time spent on a case.
Calculation Type:	Non-cumulative
New Measure:	Yes
Desired Performance:	Higher than target
Outcome Measure:	Percentage of enforcement hearings and other proceedings related to utility and district violations in which OPIC participated.
Short Definition:	This measure means proceedings involving utility and district violations open at anytime during the year; includes hearings before the Texas Commission on Environmental Quality or the State Office of Administrative Hearings (SOAH).
Purpose/Importance:	Participation in these cases addresses the office's statutory duty to be a party to all proceedings before the commission. On an annual basis, the percentage is used to demonstrate increases and decreases in certain types of cases, which may reflect a need to reallocate resources.
Source/Collection of Data:	OPIC Case Management Database Report
Method of Calculation:	This measure is the number of enforcement cases involving utility and district violations in which OPIC participated during the reporting period divided by the total number of such proceedings for the reporting period.
Data Limitations:	Enforcement cases are referred to SOAH by the commission; the number referred is influenced by factors not within the control of the office. The amount of time spent on a case is also not totally within the control of the office. Other factors including available staff, actions by opposing parties, depositions, and court dockets can impact time spent on a case.
Calculation Type:	Non-cumulative
New Measure:	Yes
Desired Performance:	Higher than target
Output Measure:	Number of environmental air quality enforcement proceedings in which OPIC participated
Short Definition:	The total number of environmental air quality enforcement proceedings open at anytime during the year in which OPIC participated
Purpose/Importance:	This measure demonstrates the number of air quality enforcement proceedings in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
Source/Collection of Data:	OPIC Case Management Database Report
Method of Calculation:	This measure is the cumulative count of air quality enforcement proceedings in which OPIC participated pending August 31 of the prior fiscal year, plus the number of opened cases from September 1 through August 31 of the current fiscal year.
Calculation Type:	Cumulative
New Measure:	Yes
Desired Performance:	Higher than target
Output Measure:	Number of environmental water quality enforcement proceedings in which OPIC participated
Short Definition:	The total number of environmental water quality enforcement proceedings open at anytime during the year in which OPIC participated
Purpose/Importance:	This measure demonstrates the number of water quality enforcement proceedings in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
Source/Collection of Data:	OPIC Case Management Database Report

Method of Calculation:	This measure is the cumulative count of water quality enforcement proceedings in which OPIC participated pending August 31 of the prior fiscal year, plus the number of opened cases from September 1 through August 31 of the current fiscal year.
Calculation Type:	Cumulative
New Measure:	Yes
Desired Performance:	Higher than target
Output Measure:	Number of environmental water rights enforcement proceedings in which OPIC participated
Short Definition:	The total number of environmental water rights enforcement proceedings open at anytime during the year in which OPIC participated
Purpose/Importance:	This measure demonstrates the number of water rights enforcement proceedings in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
Source/Collection of Data:	OPIC Case Management Database Report
Method of Calculation:	This measure is the cumulative count of water rights enforcement proceedings in which OPIC participated pending August 31 of the prior fiscal year, plus the number of opened cases from September 1 through August 31 of the current fiscal year.
Calculation Type:	Cumulative
New Measure:	Yes
Desired Performance:	Higher than target
Output Measure:	Number of environmental waste enforcement proceedings in which OPIC participated
Short Definition:	The total number of environmental waste enforcement proceedings open at anytime during the year in which OPIC participated
Purpose/Importance:	This measure demonstrates the number of waste enforcement proceedings in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
Source/Collection of Data:	OPIC Case Management Database Report
Method of Calculation:	This measure is the cumulative count of waste enforcement proceedings in which OPIC participated pending August 31 of the prior fiscal year, plus the number of opened cases from September 1 through August 31 of the current fiscal year.
Calculation Type:	Cumulative
New Measure:	Yes
Desired Performance:	Higher than target
Output Measure:	Number of utility and district enforcement proceedings in which OPIC participated
Short Definition:	The total number of utility and district enforcement proceedings open at anytime during the year in which OPIC participated
Purpose/Importance:	This measure demonstrates the number of utility and district enforcement proceedings in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
Source/Collection of Data:	OPIC Case Management Database Report
Method of Calculation:	This measure is the cumulative count of utility and district enforcement proceedings in which OPIC participated pending August 31 of the prior fiscal year, plus the number of opened cases from September 1 through August 31 of the current fiscal year.
Calculation Type:	Cumulative
New Measure:	Yes
Desired Performance:	Higher than target

Attachment 2

30 Texas Administrative Code, Chapter 80 Subchapter C: Hearing Procedures

Section 80.110. Public Interest Factors

In order to determine the nature and extent of the public interest, the public interest counsel must consider the following factors before deciding to represent the public interest as a party to a commission proceeding on a proposed agency action:

1. The extent to which the action may impact human health.
2. The extent to which the action may impact environmental quality.
3. The extent to which the action may impact the use and enjoyment of property.
4. The extent to which the action may impact the general populace as a whole, rather than impact an individual private interest.
5. The extent and significance of interest expressed in public comment received by the commission regarding the action.
6. The extent to which the action promotes economic growth and the interests of citizens in the vicinity most likely to be affected by the action.
7. The extent to which the action promotes the conservation or judicious use of the state's natural resources.
8. The extent to which the action serves commission policies regarding regionalization or other relevant considerations regarding the need for facilities or services to be authorized by the action.

In prioritizing the public interest counsel's workload, the public interest counsel must consider the following factors:

1. The number and complexity of the issues to be considered in any contested case hearing on the action.
2. The extent to which there is a known disparity in the financial, legal, and technical resources of the potential parties to the action, including consideration of whether the parties are represented by counsel.
3. The extent to which the public interest counsel's participation will further the development of the evidentiary record on relevant environmental or consumer-related issues to be considered by the commission.
4. Staffing and other resource limitations of the Office of Public Interest Counsel.

APPENDIX D

Evaluation of Water Basins in Texas Without a Watermaster



Section 5.05 of House Bill 2694, the TCEQ’s Sunset bill from the 82nd legislative session, requires the agency to evaluate at least once every five years the water basins that do not have a watermaster program to determine whether one should be established. The statutory language requires that the commissioners establish criteria to be considered for the evaluation.

Overview of Watermaster Programs

A watermaster office is a TCEQ office headed by a watermaster and staffed with personnel who regulate and protect *water rights* under the provisions of Chapter 11 of the Texas Water Code (TWC). Watermaster programs are created and autho-

riized to take actions under TWC Sections 11.326, 11.3261, 11.327, 11.3271, 11.329, and 11.551–11.559. Rules governing this program are under 30 Texas Administrative Code Chapters 303, 304, 295, and 297.

Watermasters and their staffs have the authority to protect water rights by:

- reviewing diversion notifications,
- authorizing appropriate diversions,
- deterring illegal diversions,
- providing real-time monitoring of area streamflows,
- investigating alleged violations of Chapter 11, and
- mediating conflicts and disputes among water users.

TWC, Chapter 11, provides the mechanisms by which a watermaster program can be established. The mechanisms are:

- by the executive director in a *water division* established by the commission under Section 11.325;
- by court appointment; and
- by the commission, upon receipt of a petition of 25 or more *water right holders* in a river basin or segment of a river basin; or on its own motion, if the commission finds that senior water rights have been threatened.

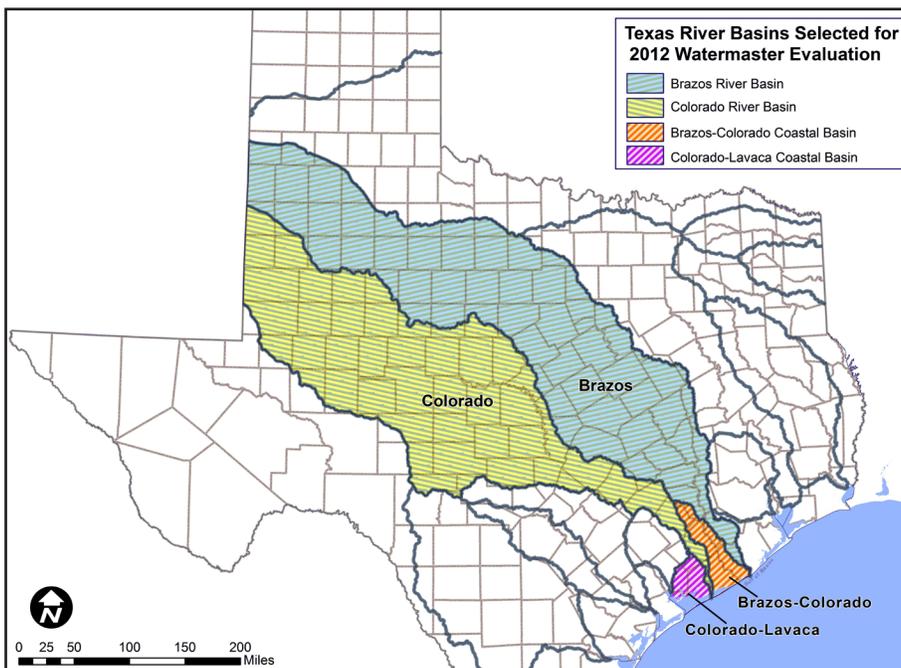
In addition, the Legislature has the authority to create a watermaster.

The TCEQ has an existing watermaster program in each of these river basins:

- **Rio Grande**, which serves the Rio Grande River Basin and coordinates releases from the Amistad and Falcon reservoir systems. Established by a 1956 court appointment.
- **South Texas**, which serves the Lavaca, Nueces, San Antonio, and Guadalupe river basins, as well as the adjacent coastal basins. Established in 1988, based on a water division creation order in 1988 and amended in 1998.
- **Concho River**, which serves a portion of the Concho River segment of the Colorado River Basin. Created by the Legislature in 2005.

Figure D-1

2012 Watermaster Evaluations



Criteria and Schedule

At an agency work session on Sept. 28, 2011, the commissioners established the following criteria to consider in performing the evaluations:

- Is there a court order to create a watermaster.
- Has a petition been received requesting a watermaster.
- Have *senior water rights* been threatened based on the following:
 - a history of senior calls or water shortages within the river basin
 - a number of water right complaints received on an annual basis in each river basin

The commissioners also approved an evaluation schedule:

- Fiscal 2012
 - Brazos River Basin
 - Brazos-Colorado Coastal Basin
 - Colorado River Basin
 - Colorado-Lavaca Coastal Basin
- Fiscal 2013
 - Trinity River Basin
 - Trinity-San Jacinto Coastal Basin
 - San Jacinto River Basin
 - San Jacinto-Brazos Coastal Basin
- Fiscal 2014
 - Sabine River Basin
 - Neches River Basin
 - Neches-Trinity Coastal Basin
- Fiscal 2015
 - Canadian River Basin
 - Red River Basin
- Fiscal 2016
 - Sulphur River Basin
 - Cypress River Basin

Evaluation Activities in FY 2012

For the fiscal 2012 evaluation, the agency performed the following:

- Created a Web page exclusively for the evaluation process, with an opportunity for stakeholders to receive automated updates by e-mail. (See www.tceq.texas.gov/permitting/water_rights/wmaster/evaluation)

- Mailed initial outreach letters (Figure D-2) to the stakeholders in each area on Feb. 17, 2012, and accepted comments until March 31, 2012. Stakeholders included all water right holders, county judges and extension agents, river authorities, agricultural interests, industries, environmental organizations, and other interested parties.
- Mailed information on May 22, 2012, announcing public meetings and providing the preliminary evaluation, which included four possible options for each basin. The letter (Figure D-3) also solicited additional input.
- Held nine stakeholder meetings between June 4 and June 21, 2012, in Rosenberg, San Saba, Lubbock, Big Spring, San Angelo, Wharton, Waco, Fredericksburg, and College Station. Approximately 250 people attended. In each meeting, the manager of the Watermaster Section, the South Texas watermaster, and either the director of the Water Availability Division or the manager of the Water Rights Permitting and Availability Section were present to deliver information and answer questions.

Below is a summary of the 305 comments received through Sept. 26, 2012, as part of the agency's stakeholder process.

- Of the 245 comments received from the Colorado stakeholders on the establishment of a watermaster program:
 - 214 were opposed,
 - 27 were in favor, and
 - 4 were neutral.
- Of the 60 comments received from the Brazos stakeholders on the establishment of a watermaster program:
 - 42 were opposed,
 - 14 were in favor, and
 - 4 were neutral.
- Some of the reasons stated for opposing establishment of a watermaster program included:
 - the required fee assessment;
 - addition of a watermaster program would only bring more regulation

and bureaucracy, with little or no benefit;

- if a watermaster program is to be created, it should be done by the petition process; and
- many indicated that the TCEQ handled the 2009 and 2011 droughts very well, with no additional costs to the water right holders.
- Some of the reasons stated for supporting the establishment of a watermaster program included:
 - the desire for more active oversight that a watermaster would provide,
 - excessive withdrawals upstream impacting downstream users,
 - seniors needing to purchase water to meet their permitted demand, and
 - watermasters proactively manage river basins.
- Some Concho area stakeholders initially had concerns about the creation of the watermaster program in that area. Legislation creating the program included a provision in TWC, Section 11.559, allowing for a referendum on the continuation of the watermaster program upon petition by at least 50 percent of the water right holders. To date, none of the water right holders has exercised this option; in fact, each year the budget is approved by a near unanimous vote of the Concho Watermaster Advisory Committee.

Drought-related Activities in 2009 and 2011

In 2009, the TCEQ received a *priority call* that resulted in the suspension of water rights with a priority date of 1980 and later, except for municipal and power generation uses, in the lower Brazos River Basin. That call resulted in the suspension of 88 water rights.

In 2011, the TCEQ received a priority call for water that resulted in suspension of water rights with a priority date of 1960 and later, except for municipal and power

generation uses, in the lower Brazos River Basin. That call resulted in suspension of 600 water rights.

In addition to the call in the lower Brazos River Basin, two calls were made by *domestic and livestock (D&L) users* in the upper Brazos River. While there were no suspensions associated with these calls, they were included in the evaluation.

In 2011, the TCEQ received eight priority calls for water in the Colorado Basin. In the San Saba watershed, there were six calls from D&L users that resulted in the suspension of 65 water rights. There was one priority call on the Llano River that resulted in the suspension of 69 water rights, and one call on the main stem of the Colorado River that resulted in the suspension of 14 water rights. A total of 148 water rights were suspended in 2011.

Agency Costs to Respond to Drought-related Activities

To appropriately respond to the increasing demands associated with the droughts of 2009 and 2011, resources were assembled from across the agency. The TCEQ's drought response was the top priority. This agencywide response affected personnel in the Office of Water (OW), Office of Compliance and Enforcement (OCE), and Office of Legal Services. Also the divisions of Intergovernmental Relations (IGR), Small Business and Environmental Assistance (SBEA), and Agency Communications, as well as Sunset review staff.

Activities conducted as part of the agencywide response included:

- drought meetings
- review of water right permits
- GIS work
- field investigations
- stream-flow measurements
- outreach and workshops
- legal reviews
- Sunset staff work
- response to media inquiries

- outreach to state and local officials
- public drinking water system assistance

Estimated the costs to the agency by year and basin are as follows:

- 2009, Brazos Basin: \$283,328
- 2011, Brazos Basin: \$513,874
- 2011, Colorado Basin: \$280,895

Staffing hours associated with the agency's drought response in 2009 and 2011:

- 2009, Brazos Basin: 4,708
- 2011, Brazos Basin: 10,318
- 2011, Colorado Basin: 4,049

The number of investigations conducted by OCE, as part of the staffing commitments:

- 2009, Brazos Basin: 372
- 2011, Brazos Basin: 325
- 2011, Colorado Basin: 144

The costs to conduct the required evaluations of four water basins in 2012:

- Office of Water: \$131,012, which included salary and fringe benefits, postage, and travel.
- Representatives from OCR, IGR, and the executive director's Sunset review staff attended the stakeholder meetings but incurred no travel costs.

Most of the agency's appropriations are funded from fees. To support the agency's activities associated with the 2009 and 2011 drought responses, the TCEQ used appropriations from Accounts #153, #549, #550, and #551, as well as general revenue.

Another type of cost to the agency is the ability to meet required *Legislative Budget Board (LBB) performance measures*. Using staff from across the agency to work on drought-related activities required a shift in priorities. That shift presented a challenge to the agency to meet various performance measures related to activities associated with permit timeframes, application reviews, investigations and inspections, and so forth.

The TCEQ will continue to carefully monitor these performance numbers in an effort to meet the requirements over the fiscal year, as well as determine whether discussions with the LBB are needed.

Work Session Presentation

At the commission's work session on Sept. 14, 2012, TCEQ staff provided a presentation on the activities related to the evaluation of the four water basins conducted in fiscal 2012. Included was a list of considerations for the commissioners to discuss, as outlined below.

Considerations:

- No watermaster program be established in either the Brazos or the Colorado river basins or associated coastal basins.
- A watermaster program that includes the portion of the Brazos River from Possum Kingdom Reservoir and below, plus the Brazos-Colorado Coastal Basin. Approximate first-year cost: \$595,977. Approximate costs for subsequent years: \$449,768.
- A watermaster program that includes the portion of the Colorado River Basin above Lake Buchanan, plus the Llano River watershed prior to its confluence with the main stem of the Colorado River. This proposal would not include the Colorado-Lavaca Coastal Basin in a watermaster program. Approximate first-year cost: \$610,977. Approximate costs for subsequent years: \$464,768.
- A watermaster program that includes the entire Colorado or Brazos river basins and the associated coastal basins. Approximate first-year cost for this option in the Brazos Basin is \$674,431; in the entire Colorado Basin, \$729,064. Approximate costs for subsequent years: \$500,709 in the Brazos Basin area, and \$492,329 in the Colorado Basin area.
- A watermaster program that includes only the San Saba watershed in the Colorado River Basin. Approximate first-year cost: \$112,554. Approximate costs for subsequent years: \$77,041.
- A program with no more than three or four staff positions for the entire Brazos or Colorado Basin, which could be centrally located and have no requirement for ongoing regularly scheduled investigations. A program of this scale would

likely monitor diversions and streamflows from a central location and would act in the event of low flows to adjust diversion and manage priority calls. Approximate first-year cost: \$227,197 to \$292,880 (depending on a staff of three or four). Approximate costs for subsequent years: \$232,897 to \$300,139.

- Expand the Concho watermaster to the Upper Colorado. Approximate first-year cost: \$152,587 to \$228,832 (depending on the addition of two or three staff positions). Approximate costs for subsequent years: \$99,361 to \$148,993.
- The commission could create a water division for the purpose of administering water rights. Creation of a water division allows the executive director to appoint a watermaster for that division. In a water division for which the office of watermaster is vacant, the executive director has the power of a watermaster.
- Dedicate additional staff to OCE to work on conditions when water rights are threatened and continue to monitor actions taken.

It was noted that if the agency were to establish a watermaster program, the commission would be required to call and hold a hearing to determine whether the need exists. Other methods to establish a watermaster program are:

- 25 or more water right holders can petition the commission to establish a watermaster program, or
- the Legislature may create a watermaster program, as it did for the Concho River watershed.

Path Forward: New Review Process

The commissioners noted during their work session that the agency did a great job responding to the worst one-year drought on record and commended the staff's efforts. Moving forward, the commissioners instructed staff to refine the priority call response process and look for efficiencies to expedite the response.

OW has worked with OCE and OLS to develop a new process that establishes a Drought Response Task Force, which will have the job of responding to senior calls as soon as possible—a goal of fewer than 10 business days. OW, OCE, and OLS will work concurrently on the major elements including technical and legal analysis, as well as field investigations. The new task force is a subgroup of the well-established agency-wide drought team that frequently includes participation by other state agencies.

OCE has also developed a pro-active surface water management process for areas outside of a watermaster program. The goals are: 1) to improve the agency's responsiveness to the potential impacts to surface water availability, and 2) to provide information critical for the agency's evaluation and determination of priority calls in areas of the state outside the jurisdiction of a watermaster program. To accomplish these goals, OCE will use existing resources by acknowledging a connection between current regional water quality efforts and field observations to provide data necessary to address surface water availability.

OCE's approach will use U.S. Geological Survey (USGS) data, as well as surface water quality monitoring data, to assist in determining impacts to flow trends. In addition, OCE will increase regional knowledge of water rights and water quantity management by enhancing water rights training for regional staff. By partnering with OW and SBEA, OCE will expand its awareness of impacts to surface water availability, such as permitted industrial uses, agricultural irrigation trends, water reuse authorizations, and drought contingency planning for public water systems.

The key to successful proactive water management—in the absence of a watermaster program—is timely and accurate communications among multiple offices across the TCEQ. By coordinating and communicating data currently captured for water quality, the agency can more efficiently address water right issues while minimizing impacts to resources required for continued success in meeting commitments and performance measures.

Definition: A Threatened Water Right

During a work session on Sept. 14, 2012, the commission directed staff to use the definition of "threatened water right" from a 2004 commission order made in response to petitions in the Concho River watershed.

The following language from the 2004 order will be used in the evaluations:

"Threat" to the rights of senior water rights holders as used in Chapter 11, Subchapter I, of the Water Code implies a set of circumstances creating the possibility that senior water rights holders may be unable to fully exercise their rights—not confined to situations in which other people or groups convey an actual intent to harm such rights. Specifically, in time of water shortage, the rights of senior water rights holders in the basin are threatened by the situation of less available water than *appropriated water rights*; the disregard of prior appropriation by junior water rights holders; the storage of water; and the diversion, taking, or use of water in excess of the quantities to which other holders of water rights are lawfully entitled.

Senior water rights were threatened in 2009 and in 2011 in the Brazos Basin and in 2011 in the Colorado Basin.

During the work session, the commission encouraged water right holders and domestic and livestock users to exercise their rights under the TWVC to file complaints or initiate senior calls if there is a concern. Water right holders may also petition the commission for creation of a watermaster.

Water Right Reporting: Issues

One other issue discussed was the requirement in TWVC, Section 11.031, that each water right holder submit an *annual water use report* to the TCEQ by March 1 of each year. In the process of compiling information on the evaluation, it was learned that in some years up to 40 percent of water right holders

in the four basins being evaluated had not reported their water use, as required.

To address this non-reporting concern, OW, along with OCE and SBEA, will take a “find it, fix it” approach by pursuing the following steps:

- OW will send a letter to water right holders who did not submit a 2011 water use report. The letter will explain the applicable statutes and penalties for non-compliance. Blank water use reports and tips for completing the reports will be enclosed.
- OW will work with SBEA to develop an outreach strategy that:
 - develops additional tools (e.g. record-keeping forms, plain language instructions for reporting and general requirements);
 - develops a reminder postcard to be sent in early February, which could also be turned into handouts for extension agents and agency employees; and
 - partners with county extension agents to help spread the word and provide assistance to irrigators, such as the use of workshops.
- Those not responding to the first letter will receive an additional letter from the Water Availability Division specifying a deadline for submittal of the report.
- After the initial outreach and eventual completion of “find it, fix it” efforts, OCE will initiate proper enforcement action on water right holders who have failed to report water use.

TCEQ Penalty Assessment: A Possible Change

Under TWC, Section 11.031(b), the penalty for failing to file an annual report with the TCEQ is \$25, plus \$1 per day for each day after the due date of March 1, to a maximum of \$150. Failure to submit water use reports may result in water right cancellation proceedings under TWC, Section 11.174.

OW and OCE will pursue a proposal to change TWC, Section 11.031(b), to increase penalties for non-reporting. A possible recommendation would be to delete the specific penalty structure for non-reporting and allow the administrative penalty in TWC, Section 11.0842, to take precedence as the penalty structure.

Definitions

Water Rights – A right or any amendment acquired under Texas laws to impound, divert, store, convey, take, or use state water.

Except for certain exempt uses, the use of surface water in Texas requires a water right permit from the commission. Water rights are granted on a “first come-first served” basis. The most common exemption is under the Texas Water Code Section 11.142, which provides an exemption from permitting for a reservoir used for domestic and livestock purposes, with an average capacity of no more than 200 acre-feet. The exempt reservoir must be built on the owner’s property and may not be located on a navigable stream. The owner may not divert water from the reservoir for any purpose other than domestic and livestock use. Domestic and livestock riparian rights also do not require a permit because they are the superior right in the stream.

Water Right Holder – A person or entity that owns a water right.

In the case of divided interests, the term will apply to each separate owner. Present day water rights are granted in permits or certificates of adjudication. The riparian domestic and livestock right is sometimes referred to as a “water right.” However, a riparian domestic and livestock user may not be considered a “water right holder” as the term is used or defined under some statutes and rules.

Water Division – A specific area of the state, designated by the commission under Texas Water Code, Section 11.325, for the purpose of administering water rights.

The term “water division” includes the entire water division and any segments. The commission is authorized to divide adjudicated segments or river basins into water divisions. A water division may be created from time to time as necessity arises. The commission must find that the divisions would secure the best protection to the holders of water rights and the most economical supervision on the part of the state.

Annual Water Use Report – A report that water right holders are required to file every year under the Texas Water Code.

In this report, water right holders provide the amount of water they have used on a monthly basis.

Performance Measure – A quantifiable indicator of achievement that measures progress toward achieving goals and objectives based upon the legislature’s funding priorities.

Measured data is used for accountability and evaluation purposes.

Penalties for non-reporting would then be calculated in accordance with the commission's penalty policy, taking into account the Palmer Drought Index level for penalty enhancements. As outlined by statute, penalties would be limited to no more than \$5,000 per day/per violation.

Executive Director's Recommendation

There are currently three successful watermaster programs in the state, which were created by various methods. The Rio Grande program was established by court action. The South Texas program was established in response to a declared water division. The Concho River program was established by both a petition (at least 25 water right holders who successfully proved in a hearing their water rights were threatened) and by legislative action.

At this time, the executive director recommends that the commission not move forward on its own motion with the creation of a watermaster program in either basin areas. Creation of a watermaster program by the commission requires a hearing be held to determine whether water rights were threatened. A follow-up consideration is the need for the creation of a new watermaster program, associated new fees, and a new regulatory structure for the impacted basins. In proving a threat to water rights, the commission on its own motion would bear the burden of proof of impact to water right holders. This burden of proof can best be articulated by those water right holders who were actually impacted. The TWC allows them to petition the commission for such action.

Terms Used in Water Rights

Domestic and Livestock Use (D&L). The right to take water from a river or stream adjoining the diverter's property for domestic and livestock use has been a riparian right since before Texas became a republic. The livestock right includes the use of water for open-range watering of livestock. Irrigation of pastureland for livestock is not included. Any irrigation use, other than that described as domestic use, requires a permit. The domestic right includes the watering of a personal lawn or garden or use of water by a household to support domestic activities, such as for drinking, washing, or cooking. D&L use is superior to all appropriative water rights.

Senior Water Right. This water right has a priority date that is earlier than the priority date of another water right.

Priority Call. This is a claim by a senior water right holder or a superior domestic and livestock user that it needs water that it is authorized but unable to use. If valid and not futile, a priority call requires that junior water right holders curtail (cut back) or suspend (not take any water under the water right) diversions of surface water until the needs of the senior water right holder or superior domestic and livestock user are met.

Appropriative Water Right. This refers to a certificate of adjudication or permit and does not include riparian domestic and livestock rights.

While the statute requires the agency to evaluate the need for a watermaster in those basins without a watermaster program at least every five years, there is no prohibition against evaluating a basin sooner on an as needed basis. The executive director can review this decision and evaluate additional threats to senior water rights as they occur, and can consider area stakeholder input. It is important to have stakeholders' support in articulating the threat and the need to establish a new program, as they will be responsible for paying a new fee to support the new regulatory program.

As stated above, the executive director is always open to any additional information

stakeholders may want to provide, and 25 water right holders may petition the agency at any point to consider creating a watermaster program. Once a petition from 25 water right holders is received, the commission will refer the issue to the State Office of Administrative Hearings for a complete administrative hearing and recommendation to the commissioners for consideration.

Wrap-Up

The TCEQ staff will continue to refine its activities associated with the evaluation of water basins without a watermaster program in preparation for the fiscal 2013 evaluations.

Figure D-2

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 17, 2012

Re: Preliminary Watermaster Evaluation for the Brazos River Basin

Dear Stakeholder:

In accordance with Section 5.05 of House Bill (HB) 2694 of the 82nd Legislature (the Sunset legislation), the Texas Commission on Environmental Quality (TCEQ) is required to evaluate all river basins in the state without a watermaster program every five years to determine the need to appoint a watermaster. The authority provided in TWC § 11.327 allows the watermaster to manage surface water resources in a way that protects senior and superior rights while balancing the needs of all water right holders under their jurisdiction.

The Executive Director (ED) must report the findings from the evaluation and make recommendations to the TCEQ Commissioners. The Commissioners may direct the ED to move forward with or revise the recommendation or they can take no action on the recommendation. The evaluation findings and recommendations must be included in the agency's Biennial Report to the Legislature.

The purpose of this letter is to notify you of the evaluation process and to seek written input from stakeholders on that process as well as what the agency should consider during our evaluation of the Brazos River Basin.

Our request for written input is the first opportunity to participate in this process. As part of the evaluation process, TCEQ also plans to mail notifications to all current water right holders within the Brazos River Basin for stakeholder meetings expected to be held in the spring of 2012. Stakeholders will include all water right holders, domestic and livestock users, river authorities, agricultural, industrial and environmental organizations, and other interested parties. The input received from these stakeholder meetings will be included in the ED's presentation and recommendation to the Commissioners, tentatively scheduled for later this summer.

As a water right holder in the Brazos River Basin or a representative of the general public or environmental concerns, you are being contacted during this initial outreach. If you are aware of any other person who might be interested but did not receive this initial outreach letter, please forward this information to them. We welcome and encourage input from any interested stakeholders.

The ED will consider the following criteria when evaluating a basin:

- (1) Has there been a court order to create a watermaster?
- (2) Has TCEQ received a petition requesting a watermaster?
- (3) Have senior water rights been threatened, based on either the history of senior calls or water shortages within the basin or the number of water right complaints received on an annual basis in each basin?

Evaluation
Page 2

If the establishment of a watermaster is recommended and approved, a budget would be established each year, and the watermaster program would be administered using fees collected from water rights holders in the watermaster area. The amount assessed to each water right holder would be determined annually based on the watermaster's program budget by establishing a base fee (currently \$50) and then adding the water right permitted amount multiplied by a rate factor depending on the type of use. The enclosed fact sheet includes general information about the watermaster program as well as the evaluation process.

TCEQ requests and appreciates your input on this evaluation. In particular, we ask that you provide written input regarding the possible threat to senior water rights (item 3 above) as well as proposals for implementing a possible watermaster program.

Please send written comments by **March 31, 2012** to my attention at the following address: TCEQ, Water Availability Division, Watermaster Section, MC-160, P.O. Box 13087, Austin, Texas 78711-3087. Alternatively, you may send an electronic mail to: waterm12@tceq.texas.gov.

If you have any questions or additional comments, please feel free to contact my staff in the Watermaster Section: Cindy Hooper at (210) 403-4080 or Michael Redda at (512) 239-4631. In addition, you may sign up at <https://public.govdelivery.com/accounts/TXTCEQ/subscriber/new> to receive email updates. Additional information on the evaluation process is available at the following website: www.tceq.texas.gov/goto/watermaster.

We value your comments on the evaluation process, including the criteria being used, as well as information to assist the agency in its evaluation of your basin. Thank you for your participation.

Sincerely,



Ricky Anderson, Manager
Watermaster Section
Water Availability Division

Enclosure

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • tceq.texas.gov

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Figure D-2 cont.

Watermaster Evaluation Fact Sheet - 2012

Background

On May 28, 2011, the Texas Legislature adopted the Texas Commission on Environmental Quality (TCEQ) Sunset legislation, HB 2694, which continues the agency for 12 years. Governor Perry signed the bill into law on June 17, 2011. The legislation includes a requirement for the TCEQ to evaluate and issue a report for all river and coastal basins that do not have a watermaster. The report will assess whether or not there is a need to appoint a watermaster. This assessment is required at least once every five years, and the TCEQ developed a schedule to consider several basins each year. During 2012, the TCEQ is evaluating the Brazos River Basin, the Brazos-Colorado Coastal Basin, the Colorado River Basin, and the Colorado-Lavaca Coastal Basin.

What is a Watermaster Program?

The watermaster programs typically operate where our TCEQ regional offices are located. Here is how the watermaster system typically works:

- ❖ A watermaster continuously monitors streamflows, reservoir levels, and water use within a basin.
- ❖ As needed, holders of impoundment rights may notify the watermaster when they plan to release sold water. The watermaster can then monitor usage downstream to ensure that the released water reaches the buyer.
- ❖ Before starting their pumps, opening their sluice gates, or starting to divert water in any other way, all water users must notify the watermaster and state how much water they plan to divert.
- ❖ The watermaster determines whether a diversion will remove water that rightfully belongs to another user. If so, the watermaster notifies the user with lower priority to reduce pumping—or, if necessary, to stop pumping altogether.
- ❖ When streamflows diminish, the watermaster allocates available water among the users according to each user's priority date.
- ❖ If a water-right holder does not comply with the water right or with TCEQ rules, the executive director may direct a watermaster to adjust the control works, including pumps, to prevent the owner from diverting, taking, storing, or distributing water until the water right holder complies.

There are currently three watermaster programs in Texas. The Rio Grande Watermaster coordinates releases from the Amistad and Falcon reservoir system for irrigation, municipal, and industrial uses. The South Texas Watermaster serves the Nueces, San Antonio, Guadalupe, and Lavaca river basins, as well as the adjacent coastal basins. The Concho Watermaster, currently a division of the South Texas Watermaster, serves the Concho River segment of the Colorado River Basin, which includes the Concho River and all of its tributaries, downstream to a point on the Concho River upstream of the O.H. Ivie Reservoir.

Advantages of a Watermaster Program.

TCEQ watermasters can provide valuable services to the water users in the basins they oversee, in addition to their monitoring of river conditions:

- ❖ Watermasters can coordinate diversions in the basin, ensuring that all water users get the best overall value from the water available to them.
- ❖ With their real-time monitoring of local streamflows, watermasters can quickly identify and stop illegal diversions.
- ❖ Watermasters should be able to anticipate a shortage before it reaches the crisis point, thus enabling local users to work together to develop a strategy that will meet everyone's most basic needs.
- ❖ When disputes arise among water users, the watermaster is often able to help the users settle the matter, thereby avoiding costly litigation.
- ❖ Watermasters can provide valuable technical assistance.
- ❖ Finally, having a watermaster program in place affords a long-term solution for managing water rights in that river basin.

Program Costs and Fees.

As provided by state law, appropriated water-right holders in a watermaster area must pay the costs associated with a watermaster program through an annual fee. In accordance with Chapter 11 of the Texas Water Code, Domestic and livestock users are exempted from water rights permitting and any fees associated with water uses.

The total amount assessed per water right holder is comprised of both a base fee charged on each account and an annual fee based on the volume of water that may be diverted for each authorized use. The current base fee is \$50 per account and generally does not change from year to year. The use fee is calculated each year and is based on the proposed operating budget for each watermaster program.

In addition to the cost of the watermaster program itself, most users will be required to add a meter to their pumps. Depending on the specific technology, a meter may cost \$400 or more. However, metering may lead to enough of a savings in pumping costs to offset the cost of the meter. In other words, the user might find that he or she had been running the unmetered pumps longer than it took to get the volume of water they needed.

Participating in the Process

We encourage input on this process. If you are interested in the evaluation of the Brazos River Basin, the Brazos-Colorado Coastal Basin, the Colorado River Basin, or the Colorado-Lavaca Coastal Basin, or if you have any questions on this process, please contact us:

By Letter: Manager, Watermaster Section (MC-160), P.O. Box 13087, Austin, Texas 78711-3087

By Email: waterm12@tceq.texas.gov

By Phone: Call Watermaster Program Liaison: Michael Redda at (512) 239-4631 or Cindy Hooper at (210) 403-4080.

Web Site: www.tceq.texas.gov/goto/watermaster

Figure D-3

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 22, 2012

Re: Stakeholder Meetings - Watermaster Evaluation for the Brazos River Basin, Brazos-Colorado Coastal Basin, Colorado River Basin, and Colorado-Lavaca Coastal Basin

Dear Stakeholder:

In accordance with the Section 5.05 of House Bill (HB) 2694 of the 82nd Legislature (the Sunset legislation), the Texas Commission on Environmental Quality (TCEQ) is required to evaluate all river basins in the state without a watermaster program every five years to determine the need to appoint a watermaster.

On February 17, 2012 the TCEQ sent letters requesting initial comments to all water right holders, County Judges, Extension Agents, and other interested parties in the Brazos River Basin, Brazos-Colorado Coastal Basin, Colorado River Basin, and Colorado-Lavaca Coastal Basin. Based on staff's evaluation and comments received, we developed some draft options which can be found at <www.tceq.texas.gov/goto/watermaster> for consideration and comment.

TCEQ will be holding the following stakeholder meetings to discuss these options and the watermaster program:

6:00 p.m. – June 4, 2012
Fort Bend County Fair Ground, Bldg B
4310 Highway 36 South
Rosenberg, Texas 77471

6:00 p.m. – June 6, 2012
TEEX Emergency Service Training Institute
Building No. 25 (H.D. Smith), Room 122A
1595 Nuclear Science Road
College Station, Texas 77843

6:00 p.m. – June 7, 2012
San Saba High School Cafeteria
104 South 8th Street
San Saba, Texas 76877

6:00 p.m. – June 12, 2012
First Christian Church of Lubbock
2323 Broadway
Lubbock, Texas 79401

6:00 p.m. – June 13, 2012
Dora Roberts Community Center
100 Whipkey Drive
Big Spring, Texas 79720

6:00 p.m. – June 14, 2012
C.J. Davidson Conference Center
Angelo State University
2601 West Avenue N
San Angelo, Texas 76904

6:00 p.m. – June 15, 2012
Wharton Civic Center
1924 North Fulton Street
Wharton, Texas 77488

6:00 p.m. – June 18, 2012
Texas Farm Bureau Conference & Training Center
J.W. Hammond Auditorium
7410 Fish Pond Road
Waco, Texas 76710

Stakeholder
Page 2

6:00 p.m. – June 21, 2012
Pioneer Pavilion
Lady Bird Johnson Municipal Park
164 Recreation Loop
Fredericksburg, Texas 78624

Final close of comments will be **5:00 p.m. on July 6, 2012**. Comments should be mailed to Water Availability Division MC 160, P.O. Box 13087, Austin, Texas 78711-3087 or emailed to waterm12@tceq.texas.gov.

If you have any questions, please feel free to contact my staff in the Watermaster Section: Cindy Hooper at (210) 403-4080 or Michael Redda at (512) 239-4631. In addition, you may sign up to receive email updates at <https://public.govdelivery.com/accounts/TXFTCEQ/subscriber/new>. Additional information on the watermaster evaluation process is available at www.tceq.texas.gov/goto/watermaster.

We value your input on the evaluation process, including the draft options, as well as information to assist the agency in its evaluation of your basin. Thank you for your participation as we go through this very important process.

Sincerely,



John Gillen
Assistant Director
Water Availability Division

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • tceq.texas.gov

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