

IX. Major Issues

The purpose of this section is to briefly describe any potential issues raised by the agency, the Legislature, or stakeholders that Sunset could help address through changes in statute to improve the agency's operations and service delivery. Inclusion of an issue does not indicate support, or opposition, for the issue by the agency's commission or staff. Instead, this section is intended to give the Sunset Commission a basic understanding of the issues so staff can collect more information during their detailed research on the agency

Issue 1: Funding Source or Financial Assistance for Small Water Systems

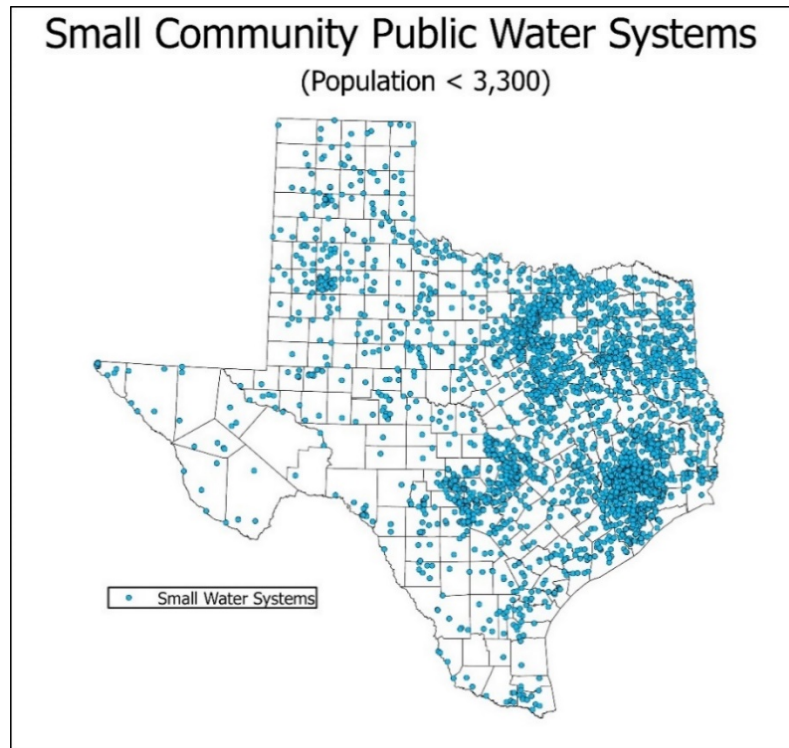
A. Brief Description of Issue

Currently, 84% of Texas' 7,053 public water systems serve a population of less than 3,300. As water infrastructure ages and regulations become more stringent and complex, a small system that serves 3,300 people or less is more likely than a larger system to face challenges in its ability to maintain safe and adequate drinking water supplies.

B. Discussion

A public water system provides potable water for public use. The following types of entities can qualify as a "public water system": cities, residential subdivisions, private businesses, and governmental entities. TCEQ is responsible for enforcing the federal Safe Drinking Water Act, which requires a public water system to provide safe and adequate drinking water supplies to the public. Most of Texas' public water systems are classified as a community water system. This means the system serves the same people on a year-round basis. Of the 4,641 community water systems, 3,483 serve a population of less than 3,300. The following map shows locations of small community public water systems.

Locations of Small Community Public Water Systems



Small System Challenges: Small systems face the greatest challenge in supplying water of adequate quality and quantity because of the difficulty in developing or accessing the financial, managerial, and technical resources needed to comply with the increasing number and complexity of EPA regulations and rising customer expectations. Given their small customer base, small systems often struggle to effectively operate and maintain their systems. These systems lack the expertise to make upgrades and repairs and also lack financial resources to hire experienced operators to make infrastructure upgrades and repairs, or to install or operate treatment technology. They also lack resources and expertise to develop short- and long-term financial planning and asset management. When operational problems arise, residents can be faced with limited or no water service. Small systems often lack capital reserves or resources of a large system. The problems are compounded by the fact that the customers of these systems are often on low or fixed incomes and cannot afford to collectively contribute to the projects needed to improve service.

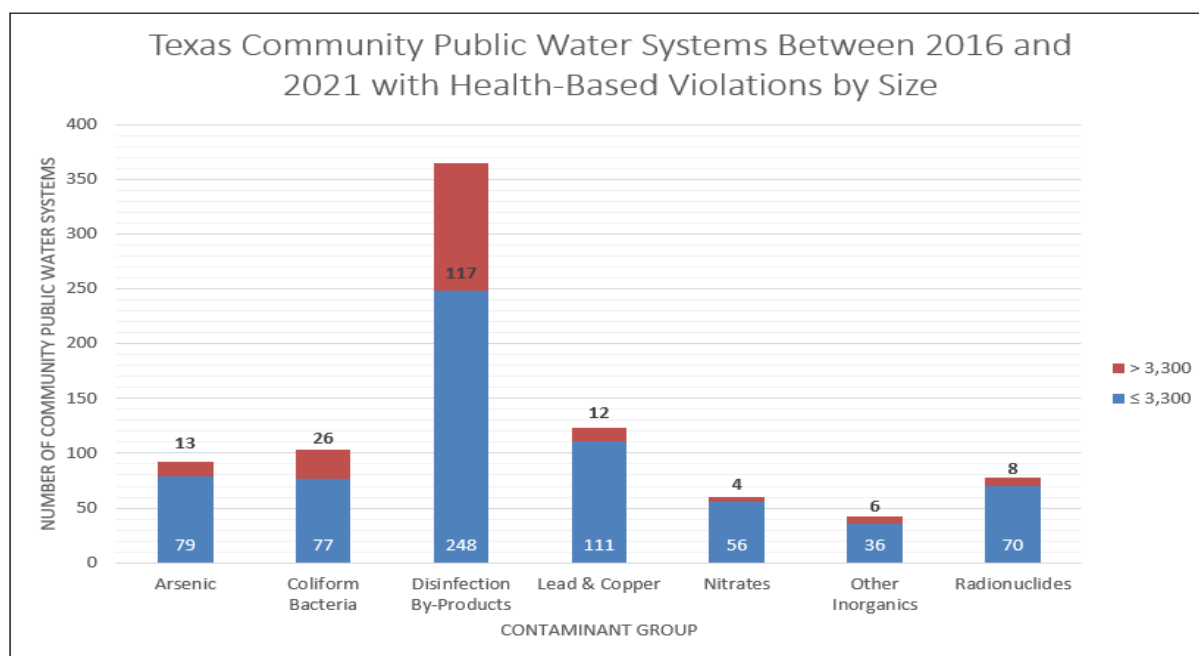
Some owners even abandon these small systems and a receiver or temporary manager must be found through state resources to continue operations. When immediate management is necessary to restore service, TCEQ has the authority to appoint a temporary manager for short-term relief (Texas Water Code (TWC) Sections 5.507 and 13.4132). The system can also be referred to the Office of Attorney General for the appointment of a receiver (TWC Section 13.412).

Other circumstances that impede the viability and performance of small systems include the lack of alternative water supplies, limited financial assistance mechanisms, and the inability to promote system consolidation or regionalization. These types of challenges ultimately hinder their ability to achieve and

maintain system sustainability and lead to hundreds of Texas' small systems every year being noncompliant with state and federal drinking water regulations⁶.

Small System Non-Compliance with Health-Based Standards: In the last 30 years, the number and complexity of drinking water regulations has significantly increased, for systems of every size and type of water source. Currently, small systems account for 92% of the community water systems that have outstanding health-based violations. Health-based violations in Texas are largely due to naturally occurring contaminants such as arsenic, nitrates, fluoride, and radionuclides. The following graph provides health-based violation details.

Texas Community Public Water Systems with Health Based Violations Between 2016 and 2021



Naturally occurring contaminants are often the result of poor-quality source water options and the inability to obtain alternative sources of acceptable quality due to geographic, geological, or economic limitations. When alternative water sources are not available, treating these types of contaminants usually requires the addition of enhanced treatment at a substantial expense and continued operations by an experienced and knowledgeable operator. The financial, managerial, and technical limitations of small systems often put enhanced treatment beyond the capabilities of the system.

TCEQ often receives numerous complaints regarding small, struggling systems, which require more frequent investigations, sampling, and onsite assistance to determine if public health is being protected. Systems with drinking water violations must work rapidly to make changes to their system or face formal enforcement and fines. These systems are often referred for formal enforcement. TCEQ allows public water systems under a commission enforcement order to participate in a Supplemental Environmental Project (SEP), which is not a long-term viable option to address major system issues or deficiencies. An

⁶ <https://www.tceq.texas.gov/compliance/enforcement/enforcement-reports/annenreport.html>

approved SEP can allow a non-profit organization or government to offset up to 100%, and a for profit organization to offset up to 50%, of an assessed penalty to contribute toward an environmentally beneficial project. Under the provisions of TWC Section 7.067 for certain local governments, the offset amount may also be used to address a system's compliance needs.

Extensive Agency Resources are Used Assisting Small Systems to Remain Viable: Many small public water systems require extensive TCEQ resources to respond to recurring or on-going compliance issues, failing treatment and facility equipment, service interruptions or outages, drinking water contamination, distribution of boil water notices to customers when small systems are unable or unwilling to do so, and abandonment. TCEQ staff rapidly troubleshoot issues to get systems back online as soon as possible by helping systems make repairs, adjust treatment strategies, find funding opportunities, and identify alternate water sources by working with adjacent systems or water haulers to ensure water is delivered to customers. Agency staff work with city, county, and state emergency management personnel to address a multitude of operational issues, relay citizen needs, and work within the emergency management structure to secure bottled water for drinking and water for basic sanitation needs when necessary.

While TCEQ does not provide direct financial assistance for small systems, it does employ various tactics and services to encourage systems to operate effectively and in compliance with state and federal drinking water requirements. TCEQ's Financial, Managerial, and Technical Assistance and Small Business and Local Government Assistance programs work with small public water systems to help resolve compliance and operational issues; find and apply for funding; and provide guidance on system sustainability. These programs also assist with capacity assessments, consolidation, operator training and a multitude of other financial, managerial, and technical assistance activities.

During the last five years, TCEQ performed 5,119 financial, managerial, technical, and general assistance water system related assignments, 4,190 of which related to small systems. During the same period, staff from the Texas Optimization Program provided advanced on-site operator training and technical assistance at 206 small systems.

Although TCEQ and other state agencies and organizations provide financial, managerial, and technical assistance to these systems, the needs of small systems often outweigh the available capacity of state agencies and supporting organizations.

C. Possible Solutions and Impact

Funding: Owners of small public water systems need additional funding sources and financial assistance opportunities. Because most of the state and federal agencies that fund water system improvements have limited grants, most of the funding comes in the form of loans. However, many small systems are reluctant to take out loans either because they already have considerable debt, or they do not have the financial resources to repay the loan.

It is also difficult for small systems to access funding for anything but relatively large infrastructure projects. There is a lack of loans and grants in small amounts that are easy to access. It would be beneficial to have a state grant program operated by qualified nonprofits for small projects including general infrastructure improvements, emergency repairs, operator training, access to third-party analysis and recommendations from engineers and consultants, and asset management. Availability of easy to access small grants and loans for other supporting activities is also important. These activities could include short

and long-term planning, financial education and management, and assistance to resolve legal issues, such as ownership.

When small ailing systems are abandoned, receivers and temporary managers need swift emergency funding sources for repair of failing infrastructure or to get non-operational systems back online as quickly as possible. Currently, temporary managers and receivers must rely solely on the revenues of the ailing system or their own personal funds for operations and for immediate or emergency repairs. The approval process for utility rate increases (overseen by the Public Utility Commission) can take time and often the customer base for many struggling systems is so small that revenues are not adequate to make needed repairs so the infrastructure can provide continuous and adequate water service.

A potential funding source could be a fund set in statute such as the previously created Water Utility Improvement Account (WUIA) discussed below. TCEQ could access the account to provide funds to authorized small systems for improvements or for operating and maintenance expenses needed to protect the public health and water resources of the state. The WUIA, originally created in 1997 in Texas Health and Safety Code (THSC) Section 341.0485, provides that certain civil or administrative penalties collected from a utility be deposited into the WUIA rather than the state's General Revenue Fund. Similarly, TWC section 13.418 was amended to provide that fines and penalties collected from a utility pursuant to violations of TWC Chapter 13 be deposited into the WUIA instead of the General Revenue fund. However, the account was never created because the WUIA was not included in the funds consolidation bill.

In addition, expanding eligibility requirements for who can be a receiver and providing incentives that will attract receivers to operate abandoned systems are also needed. Currently, under Civil Practice and Remedies Code Section 64.021, only an individual can be appointed as a receiver. If the eligibility requirements are expanded to include corporations or a municipality, entities with additional resources may be appointed to serve as receivers. Since receivers typically manage abandoned systems that have significant infrastructure needs due to lack of adequate maintenance, it is common for a receiver to be required to immediately invest in new infrastructure to avoid a water outage.

Regionalization and Consolidation: Small systems need reasonable and practical mechanisms to consolidate or tie into larger or high-functioning systems. Regionalization may be best supported by legislation that creates incentives to encourage voluntary regionalization projects at a local level. Small systems struggle with gaps in expertise that can make regionalization projects daunting. Increased flexibility in existing or new funding to include regionalization support such as feasibility studies, increased outreach and education, legal assistance, funding coordination, and meeting facilitation would be beneficial. Additionally, it could also be helpful to have state funding to increase the economic feasibility of connecting to an existing system, rather than developing a new system, or to incentivize formal and informal private or public partnerships.

Sometimes the best solution for a non-compliant system is to be part of a regional project, consolidate, or purchase water from a compliant system. Legislatively mandated regionalization or consolidation may be necessary where there are recalcitrant systems. However, willing partners would be needed to provide service to the troubled systems as well as funding incentives to make interconnects or mergers affordable and attractive. Larger systems are often reluctant to take on another water system's problems and non-compliance issues. Larger municipal systems require annexation to provide service and smaller system customers typically do not want to be annexed.