

## CHAPTER

# Legislation from the 85th Session

**D**uring the regular legislative session in 2017, state lawmakers considered 959 bills that had the potential to affect the programs and activities of the Texas Commission on Environmental Quality.

Of those, 209 bills were passed and became law. The new laws triggered a variety of activities at the TCEQ: new rules, operational or procedural changes, revised guidance documents, or internal administrative actions. Some of the newly enacted laws are summarized in this chapter.

## Public Notice Consolidation for Certain Air Quality Permit Applications (SB 1045)

Senate Bill 1045, introduced by Sen. Craig Estes, allows consolidation of the Notice of Receipt of Application and Intent to Obtain Permit (commonly referred to as "NORI" or "first notice") and Notice of Application and Preliminary Decision (commonly referred to as "NAPD" or "second notice") into one 30-day notice period during which comments and requests for public meetings or contested case hearings can be submitted to the TCEQ. This allows for a more efficient air quality permit application process.

The consolidation of the timeframes for NORI and NAPD apply to new air quality permit or permit amendment applications that are solely for the addition or modification of facilities that are commonly authorized and for which TCEQ staff has extensive experience reviewing. This option is available only to air quality applications that the agency determines are administratively and technically complete, and for which a draft permit is prepared within 15 days of receipt of the application.

The number of applications and the types of facilities that are eligible for this option depends upon the complexity of the project for which authorization is sought and the quality of the air quality application, both of which affect the agency's ability to prepare the draft permit within 15 days of receipt of the application.

The bill was effective on Sept. 1, 2017. TCEQ rules implementing the bill became effective May 31, 2018.

## Used Oil Recycling and the Water Resource Management Account (SB 1105)

Senate Bill 1105, introduced by senators Juan "Chuy" Hinojosa and Craig Estes, abolished Used Oil Recycling Account No. 146 (to which fees, penalties, and interest collected on used oil sales were deposited) and transferred the account's balance, future revenue, and program costs to Water Resource Management Account No. 153. The agency fully implemented the legislation on Sept. 1, 2017. Among the actions taken: transferring the \$22 million fund balance, updating the revenue chart of accounts and Uniform Statewide Accounting System, and redirecting the revenue as stipulated.

## Low-Level Radioactive Waste Disposal Fund (SB 1330)

SB 1330, introduced by Sen. Kel Seliger, without modifying existing fees, changed the account deposit requirements for fees collected on waste delivered to the Texas Low-Level Radioactive Waste Disposal Compact Commission. The TCEQ fully implemented the legislation on Sept. 1, 2017, updating the revenue chart of accounts and Uniform Statewide Accounting System, and redirecting the revenue to correctly deposit in Low-Level Radioactive Waste Fund No. Account 0088 instead of General Revenue.

## Texas Emissions Reduction Plan (SB 1731)

SB 1731, introduced by Sen. Brian Birdwell, amended the Texas Health and Safety Code to extend the Texas Emission Reduction Plan programs until the U.S. Environmental

Protection Agency designates each area in Texas under 40 C.F.R. Section 81.344 to be in attainment or unclassifiable with respect to each National Ambient Air Quality Standard for ozone under that section. The TERP fees and surcharges were not extended and are scheduled to expire Aug. 31, 2019. The TERP programs may continue to be implemented using appropriations from the TERP Fund, which has an estimated remaining balance of \$1.4 billion in August 2019. The bill also eliminated the TERP Advisory Board and allowed the commission to transfer unobligated TERP funds among the programs when those funds cannot be otherwise expended.

SB 1731 provided up to \$500,000 per fiscal year for port authorities located in nonattainment areas or affected counties to study or implement pilot programs for incentives to reduce NO<sub>x</sub> emissions from cargo movement. The TCEQ awarded \$500,000 to the Port of Houston Authority in May 2018 to assess opportunities for reducing NO<sub>x</sub> emissions in the port area.

The bill re-instated the Texas Light-Duty Motor Vehicle Purchase or Lease Incentive Program, which expired in fiscal 2015. The TCEQ adopted rules amending Texas Administrative Code, Chapter 114, to implement the LDPLIP in April 2018 and opened the program in May 2018 to award rebates for qualifying electric and natural gas-powered vehicles purchased in Texas after Aug. 31, 2017. The bill also directed the TCEQ to implement the Government Alternative Fuel Fleet Program once funds are appropriated to do so. No funds were appropriated to the program in FY2018 or FY2019.

Finally, SB 1731 changed the name and adjusted the eligibility criteria and program requirements for certain TERP programs.

## Texas Low-Level Radioactive Waste Disposal Compact Waste Disposal Facility (HB 2662)

House Bill 2662, introduced by Rep. Brooks Landgraf, amended Texas Health and Safety Code Chapters 401 and 403 regarding disposal of low-level radioactive waste in the following manner:

- Changes the surcharge of the total contracted rate assessed for the disposal of nonparty compact waste at the compact waste disposal facility from 20 percent to 10 percent for the biennium of Sept. 1, 2017 to Aug. 31, 2019, after which time the same surcharge is automatically reinstated.

- Requires the TCEQ to conduct a study every four years, with the next study due Dec. 1, 2020, regarding the available volume and curie capacity of the compact waste disposal facility for the disposal of party state compact waste and nonparty compact waste.
- Removes the requirement to collect 5 percent of gross receipts on all compact and federal waste disposed at the compact waste disposal facility for the biennium of Sept. 1, 2017 to Aug. 31, 2019, after which time the same collection rate is automatically reinstated.
- Creates a legislative oversight committee to assess the compact waste disposal facility and then prepare a final report to the appropriate senate and house committees no later than Dec. 1, 2018. The committee will be abolished Dec. 31, 2018.

## New and Amended Water Rights Applications (HB 3735 and SB 1430)

HB 3735, introduced by Rep. James Frank, relates to an application for a new or amended water right submitted to the TCEQ. HB 3735 amended Texas Water Code, Subsection 11.125, to change specific map requirements with a more general requirement to submit maps in the form prescribed by the commission and remove additional specific map requirements. HB 3735 also added TWC, Subsection 11.134(b-1), which codified the commission's practice to limit the commission's consideration of the public welfare in water rights applications to "those factors that are within the commission's jurisdiction and expertise."

The engrossed version of HB 3735 also added the provisions of SB 1430, introduced by Sen. Charles Perry, which relates to a requirement that the TCEQ provide an expedited procedure for acting on certain applications for an amendment to a water right by certain applicants that use desalinated seawater:

- Added new TWC, Subsection 11.122(b-1), which provides that an applicant has a right, under certain circumstances, to expedited consideration of an application to change the diversion point for their existing non-saline surface water right when the applicant begins using desalinated seawater.
- Added new TWC, Subsection 11.122(b-2), which further requires the executive director or the commission to prioritize the technical review of such an application over the technical review of other applications that are not subject to that subsection.

- Amended Texas Government Code, Subsections 2003.047(e-3) and (e-6) to require the State Office of Administrative Hearings Administrative Law Judge (ALJ) to complete a proceeding and provide a proposal for decision to the commission not later than the 270th day after the date the matter was referred for a contested case hearing relating to an application under new TWC, Subsection 11.122(b-1).
- Amended Texas Government Code, Subsection 2003.047(e-3), to authorize the ALJ to extend a TWC, Subsection 11.122(b-1) proceeding by agreement of the parties with the approval of the ALJ; or by the ALJ if the judge determines that failure to extend the deadline would unduly deprive a party of due process or another constitutional right. For the purposes of Texas Government Code, Subsection 2003.047(e-3), a political subdivision has the same constitutional rights as an individual.

The rulemaking to implement HB 3735 and SB 1430 amended Title 30, Texas Administrative Code Chapters 80, 295, and 297.

- Chapter 80 was amended to establish contested case hearing deadlines and criteria for extension of the deadlines by an ALJ for TWC, Subsection 11.122(b-1) applications.

- Chapter 295 was amended to implement TWC, Subsection 11.122(b-1) requirements to allow for expedited technical review of certain amendments to begin using desalinated seawater, and to implement the provision in HB 3735 to revise outdated mapping requirements.
- Chapter 297 was amended to implement the changes required by HB 3735, which requires the commission to consider only the factors that are within the jurisdiction and expertise of the commission as established by TWC, Chapter 11, in determining whether an appropriation is detrimental to the public welfare.

Rules for bill implementation were adopted on July 25, 2018, and became effective on Aug. 16, 2018.

## Electronic Transmission of New Source Review Air Permit Renewal Notices and Federal Operating Permit Proposed Final Action Notices *(HB 4181)*

HB 4181, introduced by Rep. Mary Ann Perez, revised provisions of the Texas Clean Air Act to give the TCEQ authority to use electronic methods as an alternative to traditional postal mail when sending renewal notices for New Source Review (NSR) air permits and notices of proposed final actions for Federal Operating Permits. The effective date of the legislation was Sept. 1, 2017.

HB 4181 did not explicitly require the TCEQ to conduct rulemaking, but rule changes to Chapters 116 and 122 are necessary to implement the new options for providing these notices electronically. The commission proposed corresponding rule revisions to Chapters 116 and 122 on May 9, 2018. These rule revisions are scheduled to be considered for adoption by the commission on Oct. 31, 2018.

HB 4181 also requires the TCEQ to develop a verification method to ensure that NSR permit renewal notices sent electronically are received by the permit holder. To satisfy this requirement, the agency has identified a software application that will provide an electronic receipt when the recipient opens the renewal notice.

The TCEQ intends to begin sending these permit notices electronically once the rule revisions are adopted and go into effect. If adopted, the effective date of the rule changes will be Nov. 22, 2018.

