

## CHAPTER 3

# LEGISLATION FROM THE 86TH SESSION

(FY 2019-FY 2020)



**D**uring the regular legislative session in 2019, state lawmakers considered 405 bills that had the potential to affect the programs and activities of the Texas Commission on Environmental Quality.

Of those, 91 bills were passed and became law. The new laws triggered a variety of activities at 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.

## Aggregate Production Operation (APO) Fees and Penalties (HB 907)

House Bill 907, introduced by Rep. Dan Huberty, amended Sections 28A.053, 28A.101, and 28A.102 Texas Water Code (TWC) Chapter 28A. This amendment:

- required TCEQ to investigate APOs every two years during the first six years in which the APO is registered, and at least once every three years thereafter.

- authorized TCEQ to conduct unannounced periodic investigations at APOs that were issued notices of violations during the preceding three-year period, but limited the period for unannounced investigations to one year or less.
- required all investigations, including those prompted by complaints, to be conducted by one or more investigators trained in the regulatory requirements under the jurisdiction of TCEQ that are applicable to an active APO.
- increased the maximum annual registration fee for APOs from \$1,000 to \$1,500, as well as, increased the maximum penalty assessed to an unregistered APO from \$10,000 to \$20,000 for each year the APO operates without a registration.
- increased the maximum total penalty assessed to an APO that is operated three or more years without being registered from \$25,000 to \$40,000.

HB 907 became effective on Sept. 1, 2019. TCEQ was required to conduct rulemaking to increase the annual registration fee for APOs.

The commission adopted rules implementing the bill on July 15, 2020, which became effective Aug. 6, 2020.



## Application Fee for a Permit for a Municipal Solid Waste Facility (HB 1331)

House Bill 1331, introduced by Representative Ed Thompson, increased the application fee for a permit for a municipal solid waste (MSW) facility from \$100 to \$2,000.

The commission determined that the \$2,000 application fee would apply to applications for a permit or major permit amendment for an MSW landfill, as provided in 30 Texas Administrative Code (30 TAC) Section 305.62(j)(1). All other application fees would remain unchanged. Under Section 305.53(b), the application fee must also include an additional fee of \$50 to be applied toward the cost of providing required notice. This would result in a total fee of \$2,050 for the specified applications.

The bill became effective on Sept. 1, 2019. TCEQ rules implementing the bill are anticipated to be effective Oct. 29, 2020.



## Procedure for Action on Certain Applications for an Amendment to a Water Right (HB 1964)

HB 1964, introduced by Reps. Lyle Larson and Trent Ashby, streamlined the water rights permitting process by removing requirements for technical review, public notice, and the opportunity for a contested case hearing for specific water right amendment applications that have no impact on other water rights or the environment. HB 1964 added new Texas Water Code, Subsection 11.122 (b-3) to describe specific types of amendment applications that would only be subject to an administrative review. The types of amendments covered by HB 1964 include changes to the purpose of use, place of use, and small moves of diversion points.

The bill became effective on June 10, 2019. TCEQ's water rights notice rules in 30 TAC Chapter 295 were amended to implement the provisions of HB 1964. The commission adopted these rules on May 6, 2020, which became effective on May 28, 2020.

## Construction While Permit Amendment Application Pending (HB 2726)

HB 2726, introduced by Rep. John Kuempel, revised Texas Health and Safety Code (THSC), Section 382.004, Construction While Permit Application Pending. The revised statute allows a person who applies for a permit amendment to begin construction on the project after the TCEQ executive director has issued a draft permit including the permit amendment, rather than waiting until the final permit amendment has been issued. The statute does not authorize any construction that is prohibited by federal law, and the construction is done at the applicant's own risk.

HB 2726 also added a restriction to Section 382.004 that prohibits the use of this option for early construction at concrete batch plants located within 880 yards of a property used as a residence.

The bill became effective on Jan. 1, 2020. The commission proposed rulemaking on Jan. 29, 2020, to make agency rules consistent with the new statutory language.

Following proposal, EPA began conducting a parallel review of the proposed rules. On April 23, 2020, EPA



proposed approval of TCEQ's HB 2726 rules in the *Federal Register*. The commission adopted the final rules on July 15, 2020, which became effective Aug. 6, 2020.

## Transfer of Regulatory Authority for Wastewater Discharges from Oil and Gas Facilities (HB 2771)

House Bill 2771, introduced by Rep. J. M. Lozano, required TCEQ to submit a request by Sept. 1, 2021, to the U.S. Environmental Protection Agency (EPA) to request National Pollutant Discharge Elimination System (NPDES) program authority to regulate oil and gas discharges into water in the state.

Additionally, HB 2771 transfers state regulatory authority for these discharges from the Railroad Commission of Texas (RRC) to TCEQ upon EPA granting NPDES program authority over oil and gas discharges to TCEQ.

HB 2771 became effective Sept. 1, 2019. TCEQ was required to conduct the following activities to implement HB 2771:

- Rulemaking to adopt EPA's oil and gas effluent limitations guidelines in 40 Code of Federal Regulations Parts 435 and 437: The commission adopted the rule on May 20, 2020.
- Rulemaking to amend the TCEQ/RRC Memorandum of Understanding regarding oil and gas

jurisdiction: The commission adopted the rule on June 10, 2020, and RRC adopted on June 16, 2020.

- Develop and submit the NPDES application for oil and gas program authority: The application is expected to be submitted to EPA in September or October 2020.
- Amend the Hydrostatic Test General Permit (TXG670000): Amendments will expand permit applicability to include hydrostatic tests from oil and gas facilities upon oil and gas program approval from EPA. The revisions to the Hydrostatic Test General Permit are expected to be finalized in October 2020.

## Texas Emissions Reduction Plan Fund and Account (HB 3745)

HB 3745, introduced by Rep. Cecil Bell, amended the THSC to establish the Texas Emissions Reduction Plan (TERP) "Fund" as a trust fund, outside of the state treasury, to be held by the comptroller and administered by TCEQ as trustee. The Fund consists of money deposited from the TERP fees and from grant money recaptured under the TERP programs.

- TCEQ can use money in the Fund only as directed by THSC Chapter 386, relating to the TERP programs, allocations, and criteria.
- TCEQ is required to transfer the unencumbered balance of the Fund to the credit of the TERP Account No. 5071 no later than the 30th day after the last day of each state fiscal biennium.
- The bill also increased the allocation amount that may be used for administrative costs from \$8 million to \$16 million.

The bill became effective Aug. 30, 2019. The creation of the TERP fund and the increase in the amount allocated for administrative costs will not be effective until Sept. 1, 2021.

HB 3745 also amended the Texas Tax and Transportation Codes, effective Aug. 30, 2019, to extend the TERP Fees until all areas in Texas have been designated by EPA as in attainment or unclassifiable/attainment, or EPA has approved a redesignation substitute making a finding of attainment. In addition, the TERP programs do not expire until there is no pending judicial review of those EPA actions, and the final notice of such action is published in the *Texas Register* by TCEQ as required by THSC, Section 387.037.

## **Expedited Permitting Surcharge Allowance (SB 698)**

SB 698, introduced by Sen. Brian Birdwell, amended THSC Section 382.05155, Expedited Processing of Application. The bill allows TCEQ to pay full-time equivalent commission employees to support the expedited processing of air permit applications with surcharges collected under the expedited program.

The bill further clarified that money from the surcharge collected may be used to support the expedited processing of air permit applications.

The bill became effective on Sept. 1, 2019. The commission proposed rulemaking on Nov. 20, 2019, to make agency rules consistent with the new statutory language. The commission adopted the final rules on May 6, 2020, which became effective May 28, 2020.

