

## CHAPTER 3

# LEGISLATION FROM THE 88TH SESSION

FY 2023-FY 2024

Barton Springs with Austin's skyline in the background. [Credit: iStock]

During the regular legislative session in 2023, state lawmakers considered 655 bills that had the potential to affect the programs and activities of the Texas Commission on Environmental Quality. Of those, 138 bills were passed and became law. The new laws triggered a variety of activities at TCEQ: new rules, operational and procedural changes, revised guidance documents, and internal administrative actions. Some of the newly enacted laws are summarized in this chapter.

## REGULATION OF RECYCLING AND RECYCLED PRODUCTS (HB 3060)

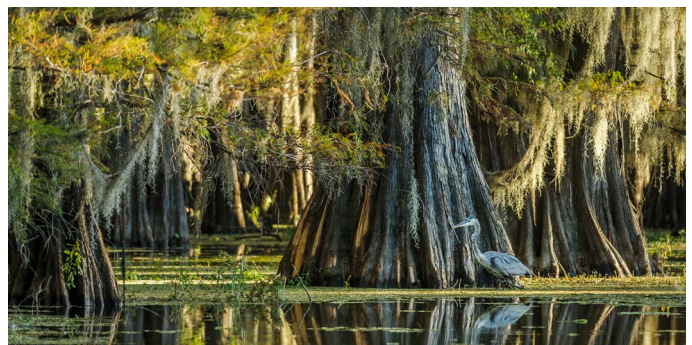
House Bill 3060, introduced by Rep. Ed Thompson with a companion bill filed by Sen. Kelly Hancock, amended Chapter 361 of the Texas Health and Safety Code (THSC). This bill expanded the conditional solid waste exclusions for recycling introduced in HB 1953 (86th Texas Legislature) and revised the eligibility criteria for recycled products.

HB 1953 added definitions that exclude post-use polymers and recoverable feedstocks (i.e., plastics) from solid waste regulation when they are recycled by pyrolysis or gasification. HB 3060 further expanded this exclusion by adding two additional recycling methods, depolymerization and solvolysis, and categorizing them as advanced recycling.

HB 3060 also revised definitions and criteria related to recycled products in THSC Chapter 361, Subchapter N. Revisions to Subchapter N require TCEQ to adopt rules identifying third-party mass balance attribution certification systems used to determine the amount of material that has been recycled and the amount of recycled material in a recycled product, and to amend recycled product guidelines to include the amount of recycled material determined through third-party certified mass balance attribution.

HB 3060 became effective May 27, 2023. TCEQ initiated rulemaking in 2023 and:

- Sought informal stakeholder input on the implementation of third-party certification systems and recycled product guidelines during rule development.
- Proposed rules in May 2024 and received no public comments.
- Anticipates adopting the rules in October 2024, with an effective date of November 2024.



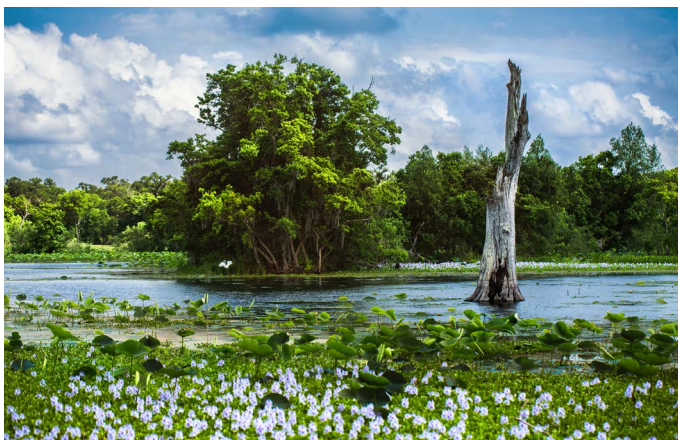
Caddo Lake in east Texas. [Credit: iStock]

## REGULATION OF NOTICES PROVIDED TO TCEQ BY CERTAIN PUBLIC WATER SYSTEMS (HB 3810)

House Bill 3810, introduced by Rep. Brooks Landgraf, amended Chapter 341 of the THSC. These amendments:

- Require nonindustrial public water systems to notify TCEQ when a condition has caused or could cause a public water supply outage or an issuance of an unplanned outage; or the issuance of a boil water notice, do-not-use-advisory, or do-not-consume advisory.
- Specify that TCEQ may collaborate with the Texas Division of Emergency Management (TDEM) in regulating the notifications required by the legislation.

HB 3810 became effective on Sept. 1, 2023. TCEQ and TDEM developed an online reporting form to facilitate the implementation of notification requirements from this legislation. The online reporting form was made available to the public on Sept. 1, 2023. The proposed rulemaking was printed in the Texas Register on Aug. 16, 2024. TCEQ anticipates rulemaking to be complete in December 2024.



Brazos Bend, Texas [Credit: iStock]

## TEXAS EMISSIONS REDUCTION PLAN PROGRAMS (HB 4885)

House Bill 4885, introduced by Chairman Brooks Landgraf, amended THSC to do the following:

- Establish the Texas Hydrogen Infrastructure, Vehicle, and Equipment (THIVE) Program.
- Add downstream “refining” oil and gas activities to projects eligible for the New Technology Implementation Grant (NTIG) Program.
- Increase the dollar amount that TCEQ may contract with the Energy Systems Laboratory at the Texas A&M Engineering Experiment Station. It also adds energy efficiency programs administered by the Public Utility Commission or State Energy Conservation Office to the types of projects that may be included in that contract.
- Adjust the funding allocations for certain TERP grant programs and change the allocation for administrative costs from \$16 million per fiscal year to not more than 15% of TERP Trust revenue each biennium. Specifically, HB 4885 reduced the Texas Natural Gas Vehicle Grant Program from 10% of TERP revenue to 7.5%, and the Light Duty Motor Vehicle Purchase or Lease Incentive Program from 5% to 2.5%. The bill increased the allocation for the NTIG Program from 3% to 8% and allowed up to \$8 million of that allocation to be used for the new THIVE Program each fiscal year.

HB 4885 became effective Sept. 1, 2023. TCEQ solicited public and stakeholder input on the development of the new THIVE Program and opened the solicitation in November 2023. Per HB 4885, TCEQ also added new technology projects to reduce emissions from downstream oil and gas activities to those eligible for funding under the NTIG Program, and opened the solicitation for that program in October 2024.



Finally, TCEQ increased the annual allocation for the Energy Systems Laboratory at Texas A&M contract from \$216,000 to \$500,000 for the development and annual computation of creditable statewide emissions reductions obtained through wind and other renewable energy resources. TCEQ updated the contract language to include the computation of emissions reductions obtained through energy efficiency programs administered by the Public Utility Commission of Texas, the State Energy Conservation Office, or through the implementation of advanced building energy codes for buildings.

## REGULATION OF PUBLIC WATER SUPPLY CONNECTIONS AND WATER TO RECREATIONAL VEHICLE PARKS (SB 594)

Senate Bill 594, introduced by Sen. Judith Zaffirini, amended Chapter 341 of the THSC and Chapter 13 of the Texas Water Code (TWC) as follows:

- Requires public water systems to provide enough water or capacity for the number of connections they serve.
- Requires TCEQ to establish by rule both a connection equivalency value and an alternative recreational vehicle park connection equivalency value used to determine the connection count for recreational vehicle parks that are retail customers of public water systems.
- Requires non-municipal retail public water utilities to ensure billing is based on actual use and not impose a surcharge for recreational vehicles or cabins at recreational vehicle parks.

SB 594 became effective Sept. 1, 2023. The proposed rulemaking was printed in the Texas Register on Aug. 16, 2024, and TCEQ anticipates rulemaking to be complete in December 2024.

## RELATING TO THE CONTINUATION AND FUNCTIONS OF TCEQ (SB 1397)

Senate Bill 1397, co-sponsored by Rep. Keith Bell and Sen. Charles Schwertner, amended Chapters 5, 7, 11, 28A, and 49 of the TWC and Chapter 382 of the THSC.

To implement the many and varied provisions of SB 1397, the agency undertook both rulemaking and non-rulemaking activities, which included procedural and operational changes as well as revisions to various guidance documents.

These amendments require TCEQ to:

- Provide at least a 36-hour extension of the public comment period and requests for contested case hearings after the conclusion of a public meeting for air permit applications for which a consolidated notice was issued under THSC Section 382.056.
  - » This extension is currently in practice and rulemaking to amend 30 TAC Chapter 39 is underway.
- Post permit applications that are declared administratively complete, as well as any subsequent revisions, to its website. TCEQ must also consider and accommodate residents of each area affected by a proposed permit, permit amendment, or permit renewal who may need assistance accessing the application and associated materials due to lack of internet services.
  - » Rulemaking to amend 30 TAC Chapter 281 is underway.
  - » Permit applications that are administratively complete as of June 1, 2024, are posted on the agency's website.
  - » Commission rules require applicants to make a copy of their application available for review and copying at a public place in the county where the relevant facility is located or proposed to be located (30 TAC 39.405).

- Consider all violations when classifying an entity as a repeat violator.
  - » Rulemaking to amend 30 TAC Chapter 60 is underway.
- Obtain annual reports from TCEQ-regulated entities with temporary or open-ended permits on their operational status.
  - » Notifications of reporting requirements were made directly to the regulated community and this information was also posted on the agency's website.
  - » An online system is in place to accept operational status reports due by Dec. 31 of each year.
- Continue the E-flows Advisory Group and E-Flows Science Advisory Committee. The Group is also required to adopt a statewide work plan for adaptive management updates of environmental flow standards by Jan. 1, 2025. TCEQ is required to develop and submit a biennial report on the implementation and effectiveness of environmental flow standards to the Environmental Flows Advisory Group that includes input from the Texas Water Development Board and Texas Parks and Wildlife Department by January 1 of each even-numbered year.
  - » The first biennial report on E-Flow Standards was submitted by Jan. 1, 2024. The biennial report included the progress made over the previous biennium in implementing environmental flow standards, the status of any efforts to set aside unappropriated water, input provided by Texas Water Development Board and Texas Parks and Wildlife Department on their environmental flow activities and recommendations, and any recommendations for the workplan.
- Ensure that all notices on permit applications and amendments include (to the extent applicable): the name of permit applicant, type of permit applied for, and the location of each proposed or existing site subject to the proposed permit.
  - » Notices for permit applications meet the requirements of this provision.
- Publish notice of permit applications on the agency's website.
  - » TCEQ public notices are available on the agency's website.
- Create a new standard permit for the operation of certain temporary concrete plants for public works.
  - » A draft permit is under development.
- Provide notice to state representatives and senators when an application is received to create a new district.
  - » The required notice is now being provided.
- Establish the Enforcement Diversion Program for small business and local governments, allowing for eligible entities to receive compliance assistance training and resources as an alternative to an enforcement action.
  - » This program is under development.
- Authorize the review, suspension, or reclassification of an entity's compliance history rating in the event of exigent circumstances.
  - » This statute codified 30 TAC Section 60.4 – Site Classification Changes Due to Exigent Circumstances.
- Increase administrative penalties for all violations with a current cap of \$25,000 to \$40,000, if the following are met: the violation involves an actual release of pollutants or an unauthorized taking of water, the person previously committed a similar violation, and the person could have reasonably avoided the violation.
  - » Violations occurring on or after Sept. 1, 2023, which meet these criteria, are subject to the increased administrative penalties.
- Provide outreach and education to the public on how to participate in the permitting process.
  - » The TCEQ and You video series is now available on the agency's website and on YouTube.
  - » Additional implementation of this item is in progress.

- Develop best management practices (BMPs) for aggregate production operations that include dust control, water use, and water storage, and make them available on the agency's website.
  - » BMPs are under development.
- Require applicants to provide a copy of any published notice and an affidavit from the publisher of the notice, certifying that the notice was published and meets applicable requirements.
  - » All required elements are included on the publisher's affidavits.
- Provide notice of application (when TCEQ receives any application for a permit which requires a notice) to state representatives and senators that represent any portion of the proposed district's boundaries.
  - » TCEQ is currently providing the required notices.
- Provide notice related to the creation of a water district to each state representative and state senator who represents an area inside a proposed district's boundaries.
  - » TCEQ is currently providing the required notices.
- Develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.
  - » This item was adopted by commission resolution in April 2024.
- Train commissioners on the law governing commission operations; on the functions, rules, and budget of the commission; on the scope and limitations of the rulemaking authority of the commission; and the results of the most recent formal audit.
  - » Training was completed by Dec. 1, 2023.

- Have the executive director create a training manual for a commissioner training program and distribute a copy annually to each member of the commission. Commissioners are required to sign and submit a statement acknowledging each member has received and reviewed the material.
  - » The training manual was created and distributed to all members, who signed an acknowledgement of their receipt and review of the manual.

Additionally, SB 1397 authorizes TCEQ to request that an applicant provide uniformed security at a public meeting or hearing. TCEQ currently has a practice in place to request that applicants provide security at public meetings and hearings.



*Butterfly on a Nettle Flower in the Texas Hill Country. [Credit: iStock]*