

CHAPTER 3

LEGISLATION FROM THE 87TH SESSION

FY 2021-FY 2022

During the regular legislative session in 2021, state lawmakers considered 562 bills that had the potential to affect the programs and activities of the Texas Commission on Environmental Quality.

Of those, 147 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.

REGULATION OF THE INJECTION AND GEOLOGIC STORAGE OF CARBON DIOXIDE IN TEXAS (HB 1284)

House Bill 1284, introduced by Rep. Chris Paddie, amended Chapter 27 of the Texas Water Code (TWC), Chapter 382 of the Texas Health and Safety Code (THSC), Chapter 121 of the Texas Natural Resources Code, and Chapter 202 of the Texas Tax Code. These amendments did the following:

- Gave the Texas Railroad Commission (RRC) sole jurisdiction over onshore and offshore injection and geologic storage of carbon dioxide.
- Gave RRC authority to establish by rule standards for monitoring, measurement, and verification status of the carbon dioxide in a carbon dioxide repository.
- Removed TCEQ certification and rulemaking requirements from the Texas Tax Code.
- Specified that “The Railroad Commission may not issue a permit under this subchapter for the



Lighthouse formation, Palo Duro Canyon. Credit: iStock.

conversion of a previously plugged and abandoned Class I injection well, including any associated waste plume, to a Class VI injection well.”

- Required that a person applying to RRC for a permit under this subchapter also include a letter of determination from TCEQ. The letter must conclude that drilling and operating an anthropogenic carbon dioxide injection well for geologic storage—or constructing or operating a geologic storage facility—will not impact any Class I injection well and any associated waste plume, or any other injection well authorized by TCEQ.
- Removed TCEQ jurisdiction over the injection of carbon dioxide produced by a clean coal project into a zone below the base of usable quality water and that is not productive of oil, gas, or geothermal resources.

HB 1284 became effective June 9, 2021. TCEQ adopted rules implementing the bill on June 3, 2022, effective June 9, 2022, to amend Chapter 331 of Title 30, Texas Administrative Code (30 TAC).

TEXAS EMISSIONS REDUCTION PLAN PROGRAMS, FUND, AND ACCOUNT (HB 4472)

House Bill 4472, introduced by Rep. Brooks Landgraf, amended THSC to do the following:

- Require TCEQ to remit not less than 35% of the Texas Emissions Reduction Plan (TERP) Trust Fund to the state highway fund for the Texas Department of Transportation (TxDOT) to administer congestion mitigation projects.
- Require TxDOT to report emissions reductions and other information related to congestion mitigation projects to TCEQ.
- Redirect the transfer of the Motor Vehicle Certificate of Title Fee revenue from the Texas Mobility Fund to the TERP Trust Fund.
- Set the minimum percentage of annual hours of operation required for TERP-funded marine vessels or engines at 55% under the Diesel Emissions Reduction Incentive (DERI) program.
- Remove the requirement that flaring and other oil and gas site emissions reduction projects capture waste heat to generate electricity solely for on-site service under the New Technology Implementation Grant (NTIG) program.
- Add NTIG projects that reduce flaring emissions and other site emissions to the list of projects that TCEQ must give preference to when awarding grants.
- Allow use of NTIG funds for the lease of necessary equipment and the costs for operating and maintaining the grant-funded system.

HB 4472 became effective Sept. 1, 2021. TCEQ was required to conduct rulemaking and adopt revisions to the DERI guidelines to set the minimum percentage of annual hours of operation required for TERP-funded marine vessels or engines at 55%. The commission adopted rules implementing the bill on June 1, 2022. TCEQ



Monahans Sandhills State Park. Credit: iStock.

is accepting public comment on the DERI guideline revisions and anticipates adoption of the guidelines in October 2022.

TCEQ was also required to adopt revisions to the NTIG guidelines to incorporate the statutory changes. The commission adopted the guideline revisions on June 29, 2022.

EMERGENCY PREPAREDNESS PLANS AND THE TEXAS ENERGY RELIABILITY COUNCIL (SB 3)

Senate Bill 3, introduced by Sen. Charles Schwerner, added new TWC Section 13.1394, which requires the implementation of Emergency Preparedness Plans (EPPs) statewide.

An EPP documents how an affected utility will maintain a water pressure of 20 psi throughout the distribution system when the power has been off for more than 24 hours during an emergency, and it contains emergency contact information. An affected utility is a retail public utility, exempt utility, or provider or conveyor of potable or raw-water service that furnishes water service to more than one customer.

Affected utilities were required to submit their EPP to TCEQ by March 1, 2022. They were also required to implement their EPP by July 1, 2022, or upon final approval by TCEQ.

In addition, SB 3 required TCEQ to become a member of the Texas Energy Reliability Council. The council is to ensure that the energy and electric industries in the

state meet human needs, address critical infrastructure concerns, and enhance coordination and communication in the energy and electric industries in the state.

SB 3 became effective May 8, 2021. TCEQ has:

- developed a template for the EPP;
- provided financial, managerial, and technical assistance to affected utilities that request assistance; and
- reviewed EPP submissions, implementation extension requests, and waiver submissions.

TCEQ will begin the rulemaking process in September 2022.

SAFETY OF ABOVEGROUND STORAGE VESSELS (SB 900)

Senate Bill 900, introduced by Sen. Carol Alvarado, with a companion bill filed by Rep. Chris Paddie, amended TWC Subsection 26.341(b) and added new TWC Sections 26.3442, 26.3443, and 26.3444. These amendments require TCEQ to establish a new Aboveground Storage Vessel Safety (ASVS) Program (originally called “Performance Standards for Safety at Storage Vessels” in the bill), with the objective of protecting groundwater and surface water resources in the event of an accident or natural disaster. The bill identifies new safety elements that TCEQ must include in the ASVS Program and defines the universe of regulated entities.

SB 900 became effective Sept. 1, 2021. By Sept. 1, 2023, TCEQ must adopt rules and establish the ASVS Program to include the safety performance standards of affected storage vessels.

Also as part of the ASVS Program, TCEQ is to establish a fee structure that is sufficient to cover program costs for:

- implementation of a registration program for affected facilities;
- review of initial, amended, and ten-year certifications;
- inspection of certified facilities; and
- enforcement of compliance with applicable standards, rules, and orders of the agency.

TCEQ rules for the ASVS Program will be adopted in new 30 TAC Chapter 338.

DIRECT POTABLE REUSE GUIDANCE (SB 905)

Senate Bill 905, introduced by Sen. Charles Perry and Sen. Drew Springer, amended THSC Chapter 341, Subchapter C, by adding a new section requiring TCEQ to develop a regulatory guidance manual on the regulations applicable to the direct potable reuse of reclaimed municipal wastewater.

SB 905 became effective Sept. 1, 2021, and TCEQ expects to complete guidance by October 2022.



Sunrise at Caddo Lake. Credit: iStock.