CHAPTER 3

Legislation From the 81st Session

Field of bluebonnets

During the regular legislative session in 2009, lawmakers considered more than 957 bills that had the potential to affect the Texas Commission on Environmental Quality. Of those, 235 bills were passed and signed into law (164 were utility or district-creation bills).

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.

SB 361: Emergency Preparedness

In 2008, Hurricane Ike left approximately 2.4 million Texans along the coast without electricity, potable water, fuel, or sanitary services for weeks.

Concerns about the availability of drinking water and effective wastewater treatment in the aftermath of a natural disaster such as Hurricane Ike prompted passage of SB 361. The law requires an affected utility to adopt an emergency preparedness plan, thereby demonstrating the ability to provide emergency operations of its water system during a power outage as soon as it is safe and practicable after a natural disaster.

An affected utility was defined as a retail public utility, exempt utility, or provider or conveyor of potable or raw water that furnishes water service to more than one customer in a county with a population of 3.3 million or more, or in a county with a population of 400,000 or more adjacent to a county with a population of 3.3 million or more. Based on the 2000 census, the requirements

apply only to water systems with customers in Harris County.

Those utilities were required to submit an emergency preparedness plan (EPP) to the TCEQ for review and approval by March 1, 2010, and to begin implementation of the plan by July. Financial waivers could be requested by systems able to demonstrate that implementation of an emergency preparedness plan would constitute a financial hardship for its customers.

The TCEQ developed a template to assist affected utilities in the development of their emergency preparedness plans and to provide financial, managerial, and technical assistance.

The agency adopted rules to address the bill's requirements in December 2009, and as of August 2010 had completed the review of 494 EPPs, and had granted 113 implementation deadline extension requests.

SB 1757: Pharmaceutical Disposal Study

Increased attention is being given to the occurrence of pharmaceuticals in the environment, especially in drinking water sources. Items such as leftover or expired prescription drugs, over-the-counter drugs, and veterinary drugs are often disposed of by being dumped into the wastewater stream. Typical wastewater treatment does not completely remove these products, so this practice can eventually affect the quality of surface water and groundwater.

As a result, the TCEQ was directed to study and recommend ways that consumers, health-care providers, and others can dispose of unused pharmaceuticals other than through a wastewater system.

The TCEQ formed an interdisciplinary team to conduct a study addressing the objectives of the bill and to compile a legislative report, which was due by December 2010. The report describes the effects of current disposal practices on both public health and the environment, and analyzes the feasibility of implementing certain recommended disposal methods on a statewide basis.

The TCEQ team conducted extensive research through a number of information-gathering activities, as follows:

- Formed a pharmaceutical disposal advisory group of 210 participants from stakeholder categories outlined in the bill.
- Created online surveys to help identify how health-care providers, consumers, and others dispose of unused pharmaceuticals, as well as what factors influence their disposal decisions.
- Distributed surveys to 13 target groups involved in the handling and disposal of unused pharmaceuticals.
- Consulted with experts at leading educational institutions and other state and federal agencies.

The advisory group helped the TCEQ identify the various methods being used in Texas to dispose of unused pharmaceuticals, the amount and types of unused pharmaceuticals disposed of by each method, regional differences in disposal practices, and the factors driving those practices. The advisory group also looked at consumer and health-care industry desires for alternative disposal methods.

SB 1759: Addressing Fleet Vehicles

Texas Clean Fleet Program

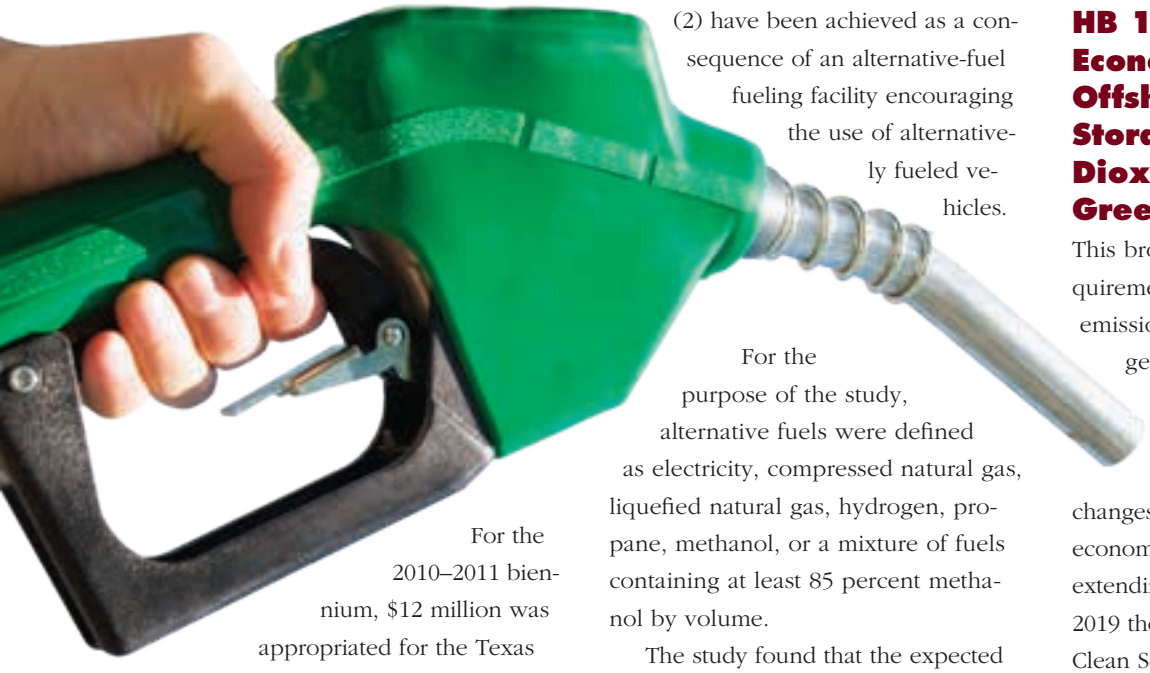
The Texas Clean Fleet Program was added to the package of incentives funded under the Texas Emissions Reduction Plan (TERP) and administered by the TCEQ.

Incentive programs under the TERP are designed to provide voluntary financial incentives to offset the costs associated with reducing emissions of nitrogen oxides (NO_x) and other pollutants from high-emitting internal combustion engines and other sources. NO_x is one of the primary pollutants leading to the formation of ground-level ozone.

To help reduce emissions of NO_x and other pollutants, the Texas Clean Fleet Program encourages entities with a large fleet of diesel vehicles to replace those vehicles with alternative-fuel and hybrid vehicles. The program provides grant funding for entities that own and operate at least 100 vehicles in Texas, and will replace at least 25 diesel-powered vehicles under the grant.

The replacement vehicles must be powered by either an alternative-fuel or hybrid engine and must be certified to emit at least 25 percent less NO_x than the vehicle being replaced. The alternative fuels included under this program are electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, and a mixture of fuels containing at least 85 percent methanol.

The Texas Department of Transportation has estimated that there are 400,000 fleet vehicles in Texas, with more being added every year.



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For the 2010–2011 biennium, $12 million was appropriated for the Texas Clean Fleet Program. The TCEQ adopted rules on Feb. 24, 2010. Thirteen applications were received during the first grant application period, from April 23 to July 16, 2010. Awards were to be announced in the fall of 2010.

Alternative-Fuel Fueling Facilities Study

The TCEQ was directed to conduct a study assessing the correlation between the installation of alternative-fuel fueling facilities in ozone nonattainment areas and the deployment of fleet vehicles that use alternative fuels. The study was also to determine the emission reductions that could be achieved by replacing a diesel-powered engine with an engine using alternative fuels.

In addition, the Legislature authorized the TCEQ to seek approval from the EPA for credit in the State Implementation Plan (SIP) for emission reductions that were determined by the study to (1) be directly attributable to an alternative-fuel fueling facility, and (2) have been achieved as a consequence of an alternative-fuel fueling facility encouraging the use of alternatively fueled vehicles.

For the purpose of the study, alternative fuels were defined as electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, methanol, or a mixture of fuels containing at least 85 percent methanol by volume.

The study found that the expected reductions in nitrogen oxides (NO_x), particulate matter (PM), carbon monoxide (CO), and volatile organic compound (VOC) emissions from the use of alternative fuels in motor vehicles have been diminishing significantly over time and will be near zero by 2018.

Recent changes in the federal exhaust emission standards require 2007 and newer light-duty and heavy-duty motor vehicle engines to meet the same criteria pollutant standards regardless of fuel type used (diesel, gasoline, natural gas, or propane). These changes were found to be the reason that the future use of alternative fuels will do little to reduce emissions from motor vehicles. Due to the lack of future emission reductions from alternative-fuel use shown by the study, the TCEQ did not seek the EPA's approval regarding the use of alternative fuels for SIP credit.

The full findings of the Alternative-Fuel Fueling Facilities Study can be found at <www.tceq.state.tx.us/goto/airqualityresearch>.

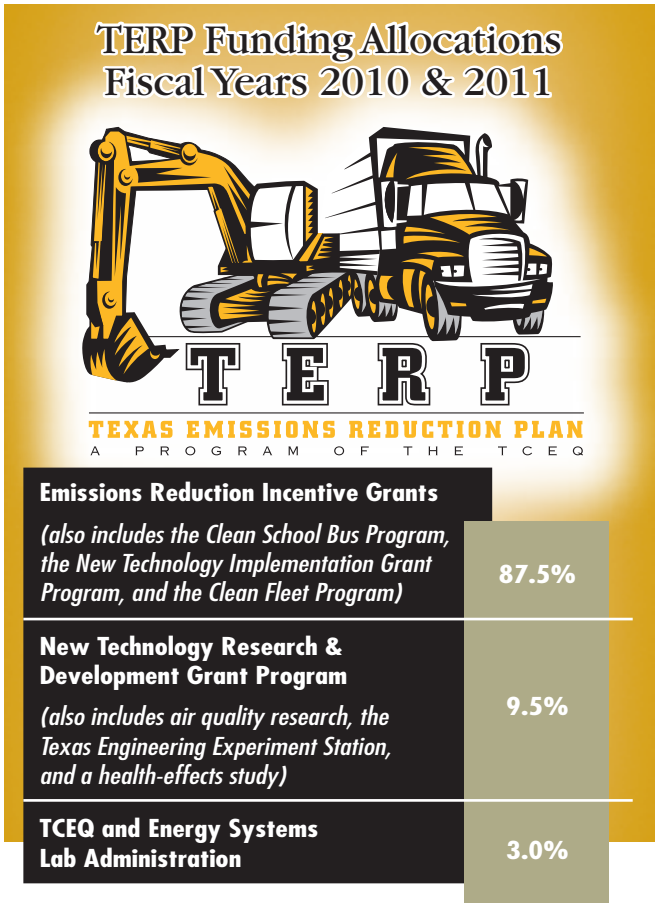
HB 1796: Economic Incentives, Offshore Geologic Storage of Carbon Dioxide, and Greenhouse Gases

This broad-based law included requirements pertaining to voluntary emission reduction programs, offshore geologic storage of carbon dioxide, and greenhouse gas inventory and reporting.

HB 1796 also made changes in some of the TCEQ's largest economic incentive programs, such as extending from August 2013 to August 2019 the expiration dates for the Texas Clean School Bus Program, the Texas Emissions Reduction Plan incentive programs, and TERP surcharges and fees. Other program changes are as follows:

- **Texas Emissions Reduction Plan (TERP).** Minor changes were made to the allocation of TERP revenue and to some of the eligibility requirements for certain types of equipment under the TERP Incentive Grants Program. The grants offset the costs of projects that reduce NO_x emissions from high-emitting mobile diesel sources in certain counties. New TERP rules were adopted on Feb. 24, 2010, and new guidelines were approved on March 30. A new TERP Incentive Grants Program application period was open from May 25 to Aug. 13, 2010, during which 1,068 applications were received.
- **New Technology Implementation Grant (NTIG) Program.** While other TERP incentive programs target mobile emission

sources, the NTIG program provides financial incentives to the owner of a stationary facility to help fund emission reductions. The goal is to assist with the implementation of new technologies to reduce emissions of regulated pollutants from point sources. Eligible NTIG projects include advanced clean energy projects, new technology projects that reduce emissions of regulated pollutants from point sources and involve capital expenditures that exceed $500 million, and electricity-storage projects related to renewable energy. For the 2010–2011 biennium, $7.1 million was available to award under the program. The TCEQ adopted guidelines on June 25, 2010, and in late summer began taking applications for electricity-storage projects.



- **New Technology Research and Development (NTRD) Grants.** Through the allocation of state-funded grants, the NTRD grant program provides financial incentives to encourage and support research, development, and commercialization of technologies that reduce pollution in Texas. The TCEQ is now responsible for the administration of this program. Previously, the NTRD was administered by a nonprofit organization in the Houston area, through a contract with the TCEQ. A total of $14.8 million was budgeted for the 2010–2011 biennium. The TCEQ adopted program guidelines on June 25, 2010. During the first grant application period of March 12 to April 6, 2010, 44 applications were received. Eight were awarded grants.

Offshore Geologic Storage of Carbon Dioxide

HB 1796 laid the groundwork for Texas to develop an offshore carbon dioxide storage repository in state-owned submerged land. This initiative affects not only the TCEQ but also the General Land Office, the School Land Board, and the University of Texas Bureau of Economic Geology. As an important part of the overall effort, the TCEQ was authorized to develop and adopt standards for monitoring, measuring, and verifying the permanent-storage status of an offshore repository, and to ensure that any standards adopted by the agency comply with EPA regulations. Meanwhile, UT's Bureau of Economic Geology, under contract to the General Land Office, was to conduct a study to identify potential locations for a repository. The School Land Board will make the final decision on suitable locations.

Inventory of Voluntary Actions to Reduce Greenhouse Gases

The TCEQ was charged with establishing an inventory of voluntary actions taken by state agencies and businesses in Texas to reduce carbon dioxide emissions. The voluntary reductions must have been achieved between Sept. 1, 2001, and Dec. 31, 2009. Toward this end, the agency developed a voluntary actions registry, deployed a registry Web page, notified industry trade associations, and contacted some 2,000 individuals and organizations from the TCEQ's Point Source Emission Inventory. Program development activities were coordinated with the TCEQ's Point Source Emissions Inventory and Emissions Banking and Trading programs to take advantage of the available expertise. The deadline for submitting data was Sept. 1, 2010.

Review of Federal Greenhouse Gas Reporting Requirements

As directed, the TCEQ, the Railroad Commission of Texas, the Texas Department of Agriculture, and the Public Utility Commission of Texas all participated in a coordinated review of the Federal Mandatory Greenhouse Gas Reporting Rule. The EPA published most of the rule package on Oct. 30, 2009, and continued to issue proposals on different sectors.

As each proposal was issued, the TCEQ notified the other agencies. Staff from each agency intending to comment developed draft comments, and a teleconference was held to discuss the comments and resolve any inconsistencies. Based on these drafts, the individual agencies issued their own comment letters, rather than developing a joint letter.

Comments were exchanged on proposals related to carbon sequestration, petroleum and natural gas, electronics manufacturing, fluorinated gas production, imports and exports of equipment pre-charged with fluorinated greenhouse gases (GHGs) or containing fluorinated GHGs in closed-cell foam, the use of electronic transmission and distribution equipment, and the manufacture of electronic transmission and distribution equipment.

The federal rule requires applicable sources to report their greenhouse gas emissions directly to the EPA. No reporting is required of the TCEQ.

HBs 3206 and 3544: Prop 2 Tax Exemption Program

House Bills 3206 and 3544 amended the Texas Tax Code (TTC), Section 11.31, and added new requirements regarding the Commission's use determinations for the Tax Relief for Pollution Control Property Program. The revised TTC

West Texas prairie

requires that the standards and methods used to make use determinations be applied uniformly to all applications. The Commission was also required to establish a permanent advisory committee to provide the TCEQ with advice on matters relating to property tax exemptions for pollution control property, and on the implementation of TTC 11.31. HB 3544 further amended TTC 11.31(d) to allow the agency to send the required appraisal district notices through electronic transmission rather than regular mail.

In order to implement requirements of HBs 3206 and 3544, the Commission has proposed rulemaking to amend Title 30 Texas Administrative Code Chapter 17, Tax Relief for Property Used for Environmental Protection. The proposed rulemaking was approved by the Commission for publication and public comment on June 30, 2010, and was scheduled to be considered for adoption in November 2010. The proposed amendments would consolidate Tier III and IV applications, modify the cost-analysis procedure, and allow electronic transmittal of appraisal district notices.

As required by HBs 3206 and 3544, the Commission appointed the Tax Relief for Pollution Control Property Advisory Committee on Jan. 27, 2010. At the end of August 2010, the advisory committee—composed of 13 representatives from industry, appraisal districts, taxing units, environmental groups, and members who are not representatives of any of those groups but have substantial technical expertise in pollution control technology and environmental engineering—had made recommendations regarding the proposed rulemaking to implement the changes required by HBs 3206 and 3544. It is anticipated that the committee will meet periodically to advise the TCEQ on issues related to the Tax Relief Program.