

Texas Commission on Environmental Quality

Texas Low-Level Radioactive Waste Disposal Compact Commission

Bill Number: Senate Bill 1397

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Continue

- Continue the Texas Commission on Environmental Quality (TCEQ) for 12 years and remove the Sunset date of the agency's enabling statute.
- Adjust the Texas Low-Level Radioactive Waste Disposal Compact Commission's Sunset review date to 2035.

Transparency

- Direct TCEQ's commission to vote in a public meeting on the acceptable level of health-based risk used in the development of toxicity factors for permitting and other regulatory actions. (Management action — nonstatutory)
- Direct TCEQ to develop a guidance document that explains what information the commission needs to evaluate whether a person is potentially affected by a permit application and states that each request is reviewed on a case-by-case basis, considering all the factors in its rule, including — but not limited to — distance. (Management action — nonstatutory)
- Require TCEQ-regulated entities with temporary or open-ended permits to annually confirm their operational status.
- Require TCEQ to review and update its website to improve accessibility and functionality, including by posting all permit applications and associated materials on TCEQ's website once the agency determines the application to be administratively complete and by making its database of water districts easily accessible to the public and regional water planning groups.
- Direct TCEQ to evaluate its current use of advisory committees to provide more public involvement in rulemaking and other decision-making processes, and continue advisory committees by rule, as appropriate. (Management action — nonstatutory)

Public Input

- Require TCEQ to provide outreach and education to the public on participating in the permitting process.
- Direct TCEQ, upon receiving public comments that are not under the jurisdiction of the agency, to answer the comment with information on the agency or organization with the relevant jurisdiction. (Management action — nonstatutory)
- Direct TCEQ to prepare and deliver a report by September 1, 2023, to the Legislature on its efforts to enhance public participation and language access as part of its November 3, 2020, Informal Resolution Agreement with the EPA. (Management action — nonstatutory)

- Direct TCEQ to consider developing Spanish language versions of its online form through which individuals may submit a complaint. (Management action — nonstatutory)

Permit Application and Notice Requirements

- Require TCEQ to electronically publish notices of permit application, in addition to physical posting requirements, and require TCEQ to accommodate affected persons in areas lacking internet availability.
- Require the public comment period for a permit application, and deadline to request a contested case hearing, remain open for at least 36 hours after the conclusion of a public meeting for air permit applications with a consolidated notice of receipt of application and intent to obtain permit (NORI) and notice of application and preliminary decision (NAPD), if a public meeting is held.
- Require TCEQ, when posting or sending out notices on all permit applications and permit amendments, to include, at a minimum, the name of the applicant, type of permit, and address of the proposed or existing site.
- Require TCEQ to provide notice, when it receives an application for any permit that requires public notice, to state representatives and senators that represent any portion of the proposed district's boundaries.
- Require TCEQ to provide notice when it receives an application to create a new district to state representatives and senators that represent any portion of the proposed district's boundaries.
- Require applicants who publish notice of a permit application to provide a copy of the notice and a publisher's affidavit to TCEQ.
- Authorize TCEQ to request an applicant provide uniformed security at a public meeting or hearing to provide for the safety of all attendees.

Enforcement and Compliance

- Increase statutory limits on administrative penalties for all violations with a current cap of \$25,000 per day to \$40,000 per day, when the violation involves an actual release of pollutants or unauthorized taking of water, the person previously committed a similar violation resulting in a penalty, and TCEQ determines the person could have reasonably anticipated and avoided the violation.
- Create the Compliance Training and Safety Program within TCEQ's Small Business and Local Government Assistance program. Authorize TCEQ to divert qualifying facilities to receive additional training and on-site follow-up by TCEQ staff in response to minor or moderate violations that do not present an imminent threat to public health or safety, rather than formal enforcement action. Establish that facilities would be eligible for participation in the program once in a 24-month period.
- Authorize TCEQ to review and potentially suspend a facility's compliance history rating in the event of exigent circumstances, such as an emergency event causing death or injury.
- Require TCEQ to consider all violations when classifying an entity as a repeat violator.
- Direct TCEQ to review and regularly update the agency's compliance history rating formula, considering a regulated entity's record of major, moderate, and repeated minor violations, as well as site complexity and cumulative violations, and to develop a separate compliance history rating

formula if necessary for facilities that are sufficiently complex to warrant application of a separate formula. (Management action — nonstatutory)

- Direct TCEQ to evaluate its compliance history rating formula to ensure a facility's compliance rating does not improve if the facility reports an unauthorized air pollution emission and seeks an affirmative defense. (Management action — nonstatutory)
- Direct TCEQ to reclassify recordkeeping violations based on the potential risk and severity of the violation. (Management action — nonstatutory)
- Direct TCEQ to develop and implement clear guidance to evaluate affirmative defense requests for unauthorized air pollution emissions and to establish a centralized committee of agency staff authorized to review and approve all applications for an affirmative defense. (Management action — nonstatutory)
- Direct TCEQ to modify its approach to nuisance complaints to make better use of the agency's investigative resources. (Management action — nonstatutory)

Water Availability

- Continue the E-Flows Advisory Group and E-Flows Science Advisory Committee, as well as the Bay and Basin Stakeholder Committees and Expert Science Teams with renewable five-year terms, and require the advisory group to adopt a biennial statewide work plan for adaptive management updates of environmental flow standards.
- Direct TCEQ to publish a report on its website on the status of its water availability models (WAMs) as they are updated, including the development and structure of WAMs, information on ongoing WAM updates, prioritization for other WAM dataset updates, and estimated cost for the prioritized updates. (Management action — nonstatutory)

Office of Public Interest Counsel

- Direct OPIC to consider developing and using umbrella contracts to procure expert assistance. (Management action — nonstatutory)
- Direct TCEQ commissioners to take formal action on OPIC's rulemaking recommendations. (Management action — nonstatutory)

Governance

- Direct TCEQ to adopt a policy guiding its rule review process to ensure that identified deficiencies in the rules are addressed. (Management action — nonstatutory)
- Update the standard across-the-board requirements related to board member training and the separation of duties of commissioners from those of staff.

Aggregate Production Operations

- Codify the permit for the operation of a temporary concrete batch plant that supports a public works project, which operates under the existing environmental regulations required by the standard concrete batch plant permit and can only be used in conjunction with a specific public works project.
- Require TCEQ to develop best management practices for aggregate production operations, making those accessible on the commission's website and including dust control, water use, and water storage.