



TCEQ SUNSET LEGISLATION OVERVIEW

**PRESENTATION TO WEAT
September 20, 2011**



GENERAL INFORMATION

- In September 2009, the Sunset Advisory Commission began its review of the TCEQ to evaluate our programs, how we fulfill our mission and our response to our customers.
- That review culminated in the adoption of recommendations by the Sunset Advisory Commission at their January 12, 2011 committee hearing.



GENERAL INFORMATION

- The adopted recommendations were included in the introduced version of the TCEQ Sunset legislation, HB 2694.
- HB 2694 was passed by the 82nd Legislature and signed by the Governor on June 17, 2011.
- TCEQ's sunset legislation was sponsored by Representative Wayne Smith and Senator Joan Huffman.



ADOPTION OF HB 2694

- The Legislature demonstrated its support of TCEQ by including in HB 2694, the continuation of the agency for the maximum allowed 12 years, until 2023.
- TCEQ is grateful for this vote of confidence and is currently hard at work implementing the many provisions in HB 2694.
- Implementation of HB 2694 is expected to require 11 separate rulemaking packages and many more non-rule making activities such as procedural changes, changes to guidance documents, etc...



HB 2694 PROVISIONS

THE TCEQ SUNSET LEGISLATION

- includes recommendations adopted by the Sunset Advisory Commission (SSAC);
- expands on several SSAC recommendations; and
- adds new issues not considered by SSAC.



HB 2694 PROVISIONS

Select Sunset Recommendations in HB 2694

- Increases Penalties assessed and requires the agency to adopt a general Enforcement Policy in rule
- Expands the use of SEPs by Local Governments
- Requires the agency to review water basins every five years to determine whether a Watermaster should be established
- Establishes requirements for Water Use Reporting and the distribution of electronic copies of water rate applications



HB 2694 PROVISIONS

Select Sunset Recommendations in HB 2694

- Repeals three water-related application fees
- Transfers surface casing program to the Railroad Commission
- Establishes a central point of contact in Executive Director's office for public assistance and education
- Requires the Commission to develop public interest factors for use by the Office of Public Interest Council (OPIC)



HB 2694 PROVISIONS

Sunset Recommendations Expanded in HB 2694:

- Activities and Fee concerning PST Remediation program
- Modifications to Dam Safety Program
- Changes to Compliance History Program
- Requirements associated with the Executive Director's authority to curtail water under specific circumstances



HB 2694 PROVISIONS

Non-Sunset Recommendations in HB 2694:

- Allows e-mail notification for water utility rate changes and statements of intent
- Changes requirements for the Annual Financial Report filed by Water Districts
- Changes to the Contested Case Hearing (CCH) process
- Establishes requirements for a MACT-related permit



PENALTIES

Sections 4.10 and 4.12

- Increases the maximum assessed penalty to \$25,000 for most violations.
- Increases to \$5,000 penalties assessed related to Occupational Licensing, On-Site Sewage Disposal, Performance Standards for Plumbing Fixtures, Used Oil and Irrigators.
- Allows the commission to assess penalties not greater than \$5,000 on persons associated with water rate penalties.
- Agency will implement by revising its Penalty Policy document.



PENALTIES

Sections 4.10 and 4.12

- Staff discussed revisions to the penalty policy document at both the July and August Commission Work Sessions (CWS).
- Initial revised document posted on agency web page on August 29th, with comments received through September 9, 2011.
- The revised document will be considered at the September 28, 2011 CWS
- Link to revised document:
<http://www.tceq.texas.gov/assets/public/agency/penaltypolicy-revised82511.pdf>



ENFORCEMENT Section 4.09

- Requires the TCEQ to adopt a general enforcement policy by rule.
- Requires that the enforcement policy include a deterrence to prevent economic benefit of noncompliance.
- A stakeholder meeting was held on August 2nd , 2011 with a comment period ending August 30th.
- Agency staff will discuss at September 28th CWS, with an anticipated CWS in November/December to receive specific guidance to draft rule language.
- The proposed rule package is scheduled for consideration for publication and comment at the March 28, 2012 Commission Agenda.



SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP) Section 4.11

- Allows Local Governments to apply penalty money assessed by the Commission toward the cost of compliance in the form of a SEP.
- Requires agency to develop policy to prevent entities from systematically avoiding compliance through the use of SEPs.
- Staff is preparing draft policy to be considered at the September 28th, 2011 CWS.



WATER CURTAILMENT AUTHORIZATION

Section 5.03

- Authorizes that in a “period of drought or other emergency shortage of water” the executive director may temporarily suspend a water right and adjust the diversion of water between water right holders based on 11.024 & 11.027, TWC.
- The Executive Director must ensure that any action taken maximizes the beneficial use of water, minimizes the impact on water right holders, and prevents the waste of water.
- By statute, the Executive Director is to take into consideration efforts to develop and implement water conservation and drought contingency plans.



WATER CURTAILMENT AUTHORIZATION

Section 5.03

- Rulemaking is required for implementation to provide definitions and address terms, conditions and appeals process.
- Stakeholder meeting was held on August 11, 2011, with comments accepted through August 26, 2011.
- The proposed rule package is scheduled for consideration for publication and comment at the October 18th, 2011 Commission Agenda.
- Proposed language available on TCEQ's web page beginning September 29th, 2011.



DAM SAFETY PROGRAM

Section 1.07

- Provides direction to TCEQ to focus its efforts on the most hazardous dams in the state.
- Allows agency to enter into agreements with dam owners regarding adequacy of dam or spillway, including timeline to comply.
- Exempts dams from dam safety regulations if:
 - impoundment is less than 500 acre feet of water;
 - has a classification of low or significant hazard;
 - is located in a county with a population of less than 215,000; or
 - is not located inside the city limits.



DAM SAFETY PROGRAM

Section 1.07

- Requires owners of a dam to comply with operation & maintenance requirements even if dam is exempt from safety requirements.
- Sets a sunset date of August 31, 2015 for exemption provisions.
- Agency has revised its guidance document for this program.
- Revised guidance posted on agency web page on August 30, 2011.



COMPLIANCE HISTORY (CH) Various Provisions in Article 4

- Requires changes to the current CH requirements, with rules to be adopted by September 1, 2012.
- Clarifies that compliance history standards must ensure consistency and that the commission can consider differences among regulated entities in developing compliance history standards.
- States the penalty enhancement attributed to compliance history may not exceed 100% of the base penalty for an individual violation.
- Allows the use of an NOV as a component for CH for one year from date of issuance of the NOV.



COMPLIANCE HISTORY (CH) Various Provisions in Article 4

- Requires that the CH classification consider the size and complexity of the site.
- Rulemaking required to implement new CH program.
- Stakeholder meeting scheduled for September 22nd @ 9:30 am
- The proposed rule package is scheduled for consideration for publication and comment at the January 25th, 2012 Commission Agenda.



REVIEW OF WATER BASINS Section 5.05

- Directs the executive director to evaluate at least once every five years whether a watermaster should be appointed in water basins not covered under the jurisdiction of a watermaster. The results of the evaluation and subsequent recommendations would be reported to the commission.
- Directs the commission to determine the criteria or risk factors to be considered when evaluating the need for a watermaster.
- Staff is preparing information for procedures, criteria and timeline for the evaluation. This information will be considered at the September 28th, 2011CWS.



WATER USE REPORTS

Section 5.02

- Requires water right holders to provide monthly water use reports to TCEQ upon request during times of drought, emergency shortages of water or to respond to a complaint.
- Clarifies that information maintained regarding monthly water use reports is the same information that is required for Annual Water Use Report.
- In January 2012, agency staff will mail template for Annual Water Use Report to water right holders and include notification of TCEQ's Executive Director's authority to request monthly totals separate and apart from the Annual Report.



WATER UTILITY RATES: ELECTRONIC COPIES Section 7.01

- When provided an electronic copy of documents associated with a water rate case, including initial application, the agency must make it available to the public at a reasonable cost.
- Agency staff made changes to rate/tariff application effective September 1, 2011.



WATER UTILITY RATES: NOTICES

Sections 9.01 & 9.02

- Allows public utilities and cities to use e-mail to provide required notice of rate changes.
- Allows a statement of intent to be sent by e-mail to affected municipalities and other affected persons.
- Increases time frame for delivery of notice from 30 to 60 days.
- The proposed rule package is scheduled for consideration for publication and comment at the February 8th, 2012 Commission Agenda.



FINANCIAL REPORTS & FEE REPEALS

Sections 4.23 and 6.03

- Increases the trigger for water districts to submit a financial report rather than an audit.
- New trigger is now \$250,000 in gross receipts, up from \$100,000.
- Repeal three existing water related application fees: rate change requests; CCNs; and sale, transfer and merger requests.
- Rule required for implementation of both provisions. This proposed rule package is scheduled for consideration for publication and comment at the February 8th, 2012 Commission Agenda.



PST PROGRAM

Sections 1.05 & 1.06

- Provides for a process to develop PST remediation contracts to allow contractors currently cleaning up sites that have been eligible for reimbursement to continue their work.
- Agency has prioritize all PST sites to be cleaned up, both “state lead sites” and those sites allowed to move from reimbursement to direct award status.
- Based on appropriations, agency staff is finalizing list of sites where clean up activities can be performed in the FY ‘12/’13 biennium.



PST PROGRAM

Sections 4.16 thru 4.19

- Reinstates common carrier liability to prevent delivery or deposit of regulated substance into underground storage tanks (UST) which have not self-certified to be compliant.
- Provides affirmative defense conditions for common carriers of petroleum products delivering to an underground storage tank.
- Expands the use of the PST remediation fee to remove underground or aboveground storage tanks if certain criteria are met.
- Reauthorizes the PST remediation fee with no expiration date.
- Authorizes the Commission to set fees in rule based on appropriation amounts.
- A proposed rule package is scheduled for publication and comment at the November 2nd 2011 Commission Agenda.



SURFACE CASING PROGRAM TRANSFER

Article 2

- On September 1, 2011 the authority for making groundwater protection recommendations regarding oil and gas activities was transferred from TCEQ to the Railroad Commission (RRC).
- Nine TCEQ employees were transferred to the RRC Travis Building office on September 1, 2011.
- TCEQ and RRC web pages have been revised to reflect transfer.



WEB ADDRESSES

For information on status of rulemaking:

http://www.tceq.texas.gov/rules/rules_rulemaking.html

For information on status of implementation of Sunset legislation:

<http://www.tceq.texas.gov/agency/sunset/index.html>



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