Dear Mr. Speaker and Fellow Members:

The Committee on Natural Resources of the Seventy-Fourth Legislature hereby submits its interim report including findings and recommendations for consideration by the Seventy-Fifth Legislature.

Respectfully submitted,

David Counts

Frank Corte
Tracy O. King
Robert Puente
Gary Walker

Patty Keel
Ron Lewis
Mark Stiles
Jerry Yost

Jerry Yost
Vice-Chairman

Members: Frank Corte, Patty Keel, Tracy O. King, Ron Lewis, Robert Puente, Mark Stiles, Gary Walker
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INTRODUCTION

At the beginning of the 74th Legislature, the Honorable James E. "Pete" Laney, Speaker of the Texas House of Representatives, appointed nine members to the House Committee on Natural Resources ("the committee"). The committee membership included the following: Representatives David Counts (Chairman), Jerry Yost (Vice-Chairman), Susan Combs, Frank Corte, Tracy O. King, Ron Lewis, Robert Puente, Mark Stiles, and Gary Walker. During the interim, Representative Susan Combs resigned from public office. Speaker Laney appointed Representative Patty Keel to replace her as a member of the Committee on Natural Resources.

During the interim, the committee was assigned six charges by the Speaker:

1. Review the on-site wastewater treatment program; identify measures to decentralize state authority and increase local government participation;

2. Study methods to provide affordable, state-sponsored financial assistance for small community water projects;

3. Review the design, mission, and goals of the Lower Neches Valley Authority;

4. Study the governance, structure, and functions of the Lower Colorado River Authority, in light of changes in the electric utility industry and other long-term changes;

5. Monitor the court action and implementation of the laws from the 73rd and 74th Legislatures relating to the Edwards Aquifer Authority; and

6. Conduct active oversight of agencies under the committee's jurisdiction.

In order to undertake the charges efficiently and effectively, Chairman Counts appointed subcommittees to address three of the charges. The remaining three charges were undertaken by the committee as a whole.

The committee and subcommittees have completed their hearings and investigations and have issued their respective reports. The Committee on Natural Resources has adopted and approved the reports of all subcommittees, which are incorporated along with the reports undertaken by the committee as a whole as the following final report for the entire committee.

Finally, the committee wishes to express appreciation to the federal and state agencies, local governments, public and private interests, and concerned citizens who testified at the hearings for their time and efforts on behalf of the committee.
COMMITTEE ON NATURAL RESOURCES  
INTERIM STUDY CHARGES AND  
SUBCOMMITTEE ASSIGNMENTS

SUBCOMMITTEE ON THE ON-SITE WASTEWATER TREATMENT PROGRAM

CHARGE Review the onsite wastewater treatment program; identify measures to decentralize state authority and increase local government participation.

Tracy O. King, Chair  
David Counts  
Robert Puente  
Gary Walker  
Jerry Yost

SUBCOMMITTEE ON SMALL COMMUNITY FINANCING

CHARGE Study methods to provide affordable, state-sponsored financial assistance for small community water projects.

Gary Walker, Chair  
David Counts  
Tracy O. King  
Robert Puente  
Jerry Yost

SUBCOMMITTEE ON THE LOWER NECHES VALLEY AUTHORITY

CHARGE Review the design, mission, and goals of the Lower Neches Valley Authority.

Mark Stiles, Chair  
Frank Corte  
David Counts  
Tracy O. King  
Ron Lewis
ON-SITE WASTEWATER TREATMENT PROGRAM

Introduction

In January 1996, the Honorable James E. "Pete" Laney, Speaker of the Texas House of Representatives, charged the House Committee on Natural Resources with reviewing the state's on-site wastewater treatment program, identifying measures to decentralize state authority, and increasing local government participation. Representative David Counts, Chairman of the Committee on Natural Resources, appointed a subcommittee to address the charge. The Subcommittee on the On-Site Wastewater Treatment Program ("the subcommittee") was comprised of the following members: Representatives Tracy O. King (Chair), David Counts, Robert Puente, Gary Walker, and Jerry Yost.

The subcommittee conducted public hearings on April 18, 1996, in Austin, Texas, and on May 29, 1996, in Odessa, Texas. The following persons testified before the subcommittee:

- Mr. Joe Vogel, Deputy Director, Office of Compliance and Enforcement, Texas Natural Resource Conservation Commission;
- Mr. Tom Brown, Deputy Executive Administrator, Texas Water Development Board;
- Mr. Michael Fahy, Texas Natural Resource Conservation Commission;
- Mr. Brad Lamb, Regional Nonpoint Source Coordinator, Region VI, United States Environmental Protection Agency;
- Dr. Bruce J. Lesikar, President, Texas On-Site Wastewater Association;
- Mr. Rick Goldberg, Chairman, Texas On-Site Wastewater Treatment Research Council;
- Mr. Jim Allison, County Judges and Commissioners Association of Texas;
- The Honorable Robert Stroder, County Judge, Jefferson County;
- Mr. Roy Smith, Plumber and OSSF Installer;
- Mr. David Venhuizen, innovative/alternative on-site technologies;
- Mr. Montel Rutledge, OSSF Installer;
- Ms. Cynthia Williams, Texas Natural Resource Conservation Commission;
- Mr. Jed Barker, Texas Natural Resource Conservation Commission;
- Mr. Richard Earl Erwin, OSSF Installer and Pumper; and
- Mr. Ed Wingo, Jr., Director, Environmental Health, Ector County Health Department.

The public testimony at the hearings raised a number of concerns with the on-site wastewater treatment program. These concerns included recent dramatic increases in the number of on-site sewage facilities ("OSSFs") throughout the state, problems with administering the program at both the state and local levels, serious public health and environmental concerns resulting from failing OSSFs, and the financial inability of low-income residents to comply with OSSF rules and regulations.

Members of the subcommittee also visited the On-Site Wastewater Treatment Training Center in
College Station, Texas, to examine both traditional and alternative/innovative OSSF technologies.

**Statewide Growth In Use of OSSFs**

Today, approximately one-third of Texas' population relies upon OSSFs\(^1\), and the number of OSSF systems continues to increase dramatically throughout the state. In Fiscal Year 1989, just over 15,500 OSSF permits were issued in the state; in Fiscal Year 1990, 18,500 new systems were permitted. However, in Fiscal Year 1995, the Texas Natural Resource Conservation Commission ("TNRCC") and its authorized agents processed more than 38,000 applications. Thus, during the five-year period between Fiscal Year 1990 and Fiscal Year 1995, the number of on-site wastewater permit applications more than doubled in Texas. The TNRCC anticipates that the number of new applications will continue to increase in the foreseeable future.

**Subdivisions Without Adequate Sewage Facilities**

Suburban growth has exceeded the ability of the State to provide centralized infrastructures for wastewater treatment. Many residential subdivisions have been developed beyond the limits of centralized water and sewage facilities. Often, the lot sizes in these areas are no larger than those found in subdivisions serviced by central water and sewage systems.\(^2\) Moreover, landowners in many of these areas draw their drinking water from private wells that are also located on the small lots, and thus are unable to comply with the minimum spacing requirements between the OSSF and the well. Residential areas with small lots that are serviced by septic tank systems frequently are characterized by the presence of widespread soil saturation, which leads to malfunctioning septic systems, sewage on the surface of the ground and in roadside ditches, and strained relations between neighbors. The problems related to soil saturation are particularly acute in the eastern regions of the state, where heavy clay soils impede the functionality of OSSFs. Many of the smaller lots with failing OSSFs occur around lakes and other recreational facilities, where the impacts to public health and the environment are more dramatic.

**Public Health and Environmental Concerns**

The increasing number of OSSF failures witnessed to date gives rise to both public health and

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\(^1\) The TNRCC arrived at this approximation by performing living unit equivalency extrapolations of data on the number of Texas' households without public sewer systems. U.S. Bureau of the Census, *1990 Census of Population and Housing: Summary Social, Economic, and Housing Characteristics-Texas* (May 1992).

\(^2\) State regulations prohibit the installation of OSSFs on lots that are less than one-half acre in size. Nonetheless, a significant number of OSSFs have been installed on such lots.
environmental quality concerns. Failure of OSSFs is known to be a significant source of non-point source pollution in watersheds. Harmful pollutants released from failing OSSFs include pathogens (harmful bacteria and viruses), household hazardous waste, and organic substances. If allowed to reach surface waters, nutrients from OSSFs stimulate algae growth, which in turn affects natural aquatic growth. As the algae dies and decomposes, the available oxygen supply for fish and plants is depleted. Fecal coliform bacteria are common indicators of the presence of bacteria and viruses that can lead to illness if ingested, including typhoid fever, gastrointestinal infections, and infectious hepatitis. These effects can be particularly acute in infants. In 1995, there were a number of deaths near Texas lakes that were attributed to water pollution; and, although it has not been conclusively established, the growth and failure of OSSFs along those bodies of water were suspected causes.³

**Installation of Inappropriate Systems and Improper Maintenance**

A large percentage of the OSSFs in the state are installed appropriately and pose no threats to public health or the environment. However, because of inadequate training, supervision, or indifference, many on-site systems continue to be installed inappropriately. This is due largely to a failure on the part of the site evaluator to properly identify the wastewater loading and treatment capacity of the soil. In conventional OSSFs, the septic tank removes only solids, while the soil is responsible for removal of nutrients and pathogens. Therefore, it is imperative that potential sites be adequately evaluated and that appropriate systems be installed. The design and installation phase is when OSSF management programs can be most effective in minimizing the potential threat to public health and water quality.⁴

Even when OSSF systems are properly installed, they often fail because of improper maintenance or old age. Homeowners frequently are neither aware of the maintenance requirements for their OSSF systems nor of the availability of innovative/alternative technologies that might better fit their particular soil profile or site conditions.

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³ Information on the public health and environmental implications of failing OSSFs was taken from the testimony of Brad Lamb, Regional Nonpoint Source Coordinator, Region VI, U.S. EPA; Public Hearing of the Subcommittee on the On-Site Wastewater Treatment Program (April 18, 1996)(tapes available from the House Communications Division), and from the testimony of Joe Vogel, Deputy Director, Office of Compliance and Enforcement, TNRCC; Public Hearing of the Subcommittee on the On-Site Wastewater Treatment Program (May 29, 1996)(tapes available from the House Communications Division).

⁴ Testimony of Brad Lamb, *id.*
Legislative and Regulatory Background

Prior to the late 1960s, the regulation of on-site sewage facilities (OSSFs) was administered primarily by municipal governments through local building inspection and plumbing inspection programs. There was no inspection of installations outside of municipal jurisdictions. Complaints concerning malfunctioning OSSFs were investigated by either local health agencies or the Texas Department of Health.

In the late 1960s, the Texas Legislature adopted legislation which empowered other local governmental entities (e.g., counties, river authorities, Municipal Utility Districts, etc.) to adopt OSSF control orders subject to approval by the Texas Water Quality Board. These approved orders gave local governments authority to permit systems, conduct inspections, collect fees, and investigate complaints. Penalties could be imposed for failure to obtain permits or for creation of a public health nuisance.

The Texas Department of Health (TDH) developed statewide minimum construction standards in 1977 regarding OSSF design, construction, and installation. The TDH acted as a clearinghouse for innovative technology and provided complaint investigation in those areas of the state without local governmental control.

A number of known shortcomings in the program resulted in the passage of House Bill 1875, 70th Texas Legislature, which established uniform OSSF regulations for the state. Some of the key points of House Bill 1875 included the following:

- Established the TDH as the permitting authority for all new, modified, expanded, or reconstructed OSSFs in the state;
- Authorized the TDH to delegate this permitting authority to any local governmental entity so requesting, provided the entity operated under an approved septic tank control order; and
- Established an OSSF installer licensing program with mandatory training, testing, and continuing education of the installers.

Following adoption of House Bill 1875, the TDH developed administrative rules (effective 1989) and minimum construction standards (effective 1990).

The authority of the TDH relating to the OSSF program was later transferred to the TNRCC as part of Senate Bill 2, Special Called Session, 72nd Texas Legislature (1991). In 1993, the 73rd Texas Legislature adopted Senate Bill 1042, which authorized administrative and civil penalties and an inspector certification program, and House Bill 346, which directed the TNRCC and the Texas Board of Plumbing Examiners to promulgate joint rulemaking for the treatment, reuse, and disposal of greywater ("greywater" generally is defined as domestic wastewater that does not contain human or animal waste).
Current Program Structure

The TNRCC is charged with regulating the location, design, construction, installation, alteration, operation, and maintenance of OSSFs. The TNRCC may also impose and collect permit fees for construction, installation, and alteration (including repair or modification of OSSFs) to cover the cost of any OSSF design review or system inspection. However, the law grants the option for the TNRCC to transfer OSSF permitting and regulatory functions to any qualified local governmental entity seeking it. To gain delegation, a local government must request OSSF program delegation from the TNRCC, conduct a public hearing, adopt minimum state OSSF program requirements, and obtain approval of its delegation order by the TNRCC. As an "authorized agent," a local government is responsible for all aspects of the program, including permitting, enforcement, and fee collection. For both the state and local programs, a permit is issued only after submittal of an application, payment of fees, and satisfactory completion of an on-site inspection.

Rules Revision Efforts

Efforts to update the OSSF program rules began with the TDH in 1990. Revision efforts continued following the transfer of the program to the Texas Water Commission, predecessor agency to the TNRCC. A draft rule was published in the Texas Register on January 25, 1994. Following a public hearing on February 28, 1994, an ad hoc committee of 12 individuals representing the industry met with the TNRCC staff to recommend changes to the draft rules. This effort ended in May 1994 largely because of complaints that the process did not provide sufficient time to address major issues.

In May 1995, the TNRCC developed a concept paper outlining proposed changes and a new OSSF rules revision process. The OSSF Working Group (14 members of the regulated community) was convened in 1995 and met several times to recommend modifications to a draft

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5 For a more comprehensive description of the current On-Site Wastewater Treatment Program, see Texas Natural Resource Conservation Commission, The Local Government Guide to the TNRCC, Chapter 10 (September 1995).

6 A permit is required whenever construction, installation, or alteration (including repair or modification) of an OSSF occurs. The only exception is an OSSF for a single-family residence located on ten acres or more. By statute, local governments must adopt minimum construction standards established by the TNRCC. TEX. HEALTH & SAFETY CODE ANN. § 366.032(a) (Vernon 1992). However, a number of local governments have adopted more stringent standards as provided by statute. TEX. HEALTH & SAFETY CODE ANN. § 366.032(b) (Vernon 1992).
revision of the rules. Also, the TNRCC conducted 11 public meetings statewide from September through October 1995. During the same time, the TNRCC met with other interested parties, including, the Texas Board of Plumbing Examiners, the Texas Board of Registered Professional Engineers, industry groups, and representatives of alternative/innovative technology manufacturers. The TNRCC staff also conducted telephone surveys with environmental agencies from other states to determine national trends on specific issues and regulations regarding evolving technologies. The TNRCC published the final draft rules in the Texas Register on July 16, 1996. The public comment period was originally to have ended on August 16, 1996, but was extended to September 3, 1996. The TNRCC anticipates that the final draft of the rules will go before the Commissioners for consideration for adoption in late 1996.

**Proposed Rules Changes**

The proposed rule changes seek to accomplish the following:

**Technical Improvements:**
- Update the minimum OSSF construction standards.
- Require improved testing criteria for aerobic units.
- List protocol for testing and approval of innovative systems.
- Establish maintenance requirements for all systems.

**Education and Certification Requirements**
- Expand the levels of installer certification and training.
- Expand inspector training and require certification.

**Better Site Evaluation Requirements**
- Improve site evaluation requirements.
- Support subdivision reviews.

**Program Funding**
- Increase permit, installer registration, and inspector fees.
- Implement civil and administrative penalties per SB 1042 (73rd Texas Legislature).

**Program Administration & Oversight**
- Establish enforcement procedures.

At the public hearings of the subcommittee, a great deal of support was expressed for the TNRCC's rules revision effort, while opposition to them was scarce. Because there have traditionally been no institutional programs to provide professional training specific to OSSF issues, the added emphasis on education and training of site evaluators, installers, and inspectors
appears to be a needed component for a successful program.\(^7\) This is especially true in light of the fact that the rules propose abandoning the present percolation test in favor of a soil identification test in the site evaluation phase, an approach that should engender appropriate system installation and allow for more design flexibility in various geographical areas. A survey conducted by the TNRCC in 1995 indicated that a number of states have moved toward this approach.

**Delegation: TNRCC Concerns**

The on-site wastewater treatment program is designed to be locally administered.\(^8\) As of the date of this report, 238 local governmental entities have petitioned for and received delegation as authorized agents. Currently, 95 percent of OSSF permits are issued by those local authorized agents.\(^9\) However, the remaining five percent of OSSF systems currently under direct TNRCC administration are spread out across the state in an area comprised of approximately 100 counties.\(^10\)

Because authorized agents find that proper administration of the program requires measures and actions that may neither be economically feasible nor politically or publicly popular, they sometimes rescind delegation of their authority to administer an OSSF program. In such cases, there is typically little or no warning to the TNRCC, which places the agency in the precarious position of having immediate responsibility for administering the program in another jurisdiction without corresponding provisions for staff to pick up the task. This compounds problems with the TNRCC's limited staff resources, which are already unable to meet the program demands in the areas of the state where the agency administers the OSSF program.\(^11\)

\(^7\) The On-Site Wastewater Treatment Training Center, the first institution of its type in the state, opened in September 1995 on the Riverside Campus of Texas A & M University. It is an educational and training center that demonstrates both treatment and land application systems technologies. It is a collaborative project of the Texas Agricultural Extension Service, Texas On-Site Wastewater Association, Texas Engineering Extension Service, TNRCC, and the Texas On-Site Wastewater Treatment Research Council. Similar training centers are planned to be constructed around the state.


\(^9\) *See* Graph 1-1, p. 26.

\(^10\) *See* Graph 1-2, p. 27.

\(^11\) The TNRCC currently has only 21 FTEs in its program statewide.
Foremost among the TNRCC's staff-related problems is the travel-time delays for installation inspections, complaint investigations, and enforcement activities. For example, when a conventional OSSF is installed, the installer must leave the OSSF and drain field trenches uncovered until it has been inspected by the TNRCC representative. In some regions of the state in which the TNRCC administers the program, the nearest inspector must come from a regional field office over 300 miles away. The delay can be on the order of weeks, which can cause undue hardship on an installer who may have travelled a great distance to complete a project. Moreover, if rain or related weather conditions occur during this time interval, the difficulty of the installer's backfilling task can increase tremendously. The task is further frustrated by the fact that the TNRCC often does not have adequate resources to send staff to a location far-removed from the regional field office unless there are multiple inspections to be completed in the area. In many of these cases, the inspector is only able to perform a cursory inspection on a given OSSF because of the magnitude of tasks to be completed on a given date.\textsuperscript{12}

Scenarios similar to the one above are commonplace for both TNRCC complaint investigations and enforcement actions. In the past two years, the number of installers licensed by the TNRCC has increased 4 percent, the number of complaints has increased 408 percent, and the number of TNRCC investigations has increased 875 percent. Currently, resource limitations result in resolution of about one-sixth of the complaints. The TNRCC simply does not have the requisite staff levels in many areas of the state to adequately respond to OSSF-related complaints, initiate compliance investigations, or follow up on enforcement actions. This lack of sufficient regulatory oversight and administration is believed to result in the installation of a large number of failing systems and bootleg systems throughout the state that go unchecked. This not only creates an uneven playing field for installers and citizens attempting to comply with OSSF rules and regulations, but also results in the installation of unpermitted, inappropriate systems that are destined to fail.\textsuperscript{13}

The TNRCC is also unable to carry out its statutory charge to audit the administrative and technical performance of local authorized agents. This problem is compounded by the fact that the TNRCC must be careful not pursue audit functions too vigorously, because of the potential threat and capability of local authorized agents to rescind delegation.

In light of these and other concerns, the TNRCC has recommended that, following an appropriate phase-in period, local entities be required to adopt OSSF programs and that there be no

\textsuperscript{12} Testimony of Richard Earl Erwin, OSSF installer and pumper; Public Hearing of the Subcommittee on the On-Site Wastewater Treatment Program (May 29, 1996)(tapes available from the House Communications Division).

\textsuperscript{13} Testimony of Roy Smith, plumber and OSSF installer, and others; Public Hearing of the Subcommittee on the On-Site Wastewater Treatment Program (April 18, 1996)( tapes available from the House Communications Division).
subsequent forfeiture of that authority to the agency. For the program to function as designed, the role of the TNRCC would be to provide oversight regulation and assistance to the local programs, provide training and certification, and to levy administrative penalties and undertake other enforcement actions where appropriate.14

**Delegation: Local Governmental Entity Concerns**

Local governmental entities have a number of concerns related to the recommendation by the TNRCC to require complete local delegation of the OSSF program. First, as is the case in those areas where the TNRCC is responsible for administration, the administrative costs of locally-run programs generally exceed the fee revenues derived from them. Counties and other local entities faced with the reality of budgetary spending limits sometimes do not find it economically feasible to accept responsibility for the OSSF program. This is especially true in rural counties with small populations, because the low number of systems installed each year neither justify nor compensate for the hiring of a designated representative to assume responsibility of administering the program. Although local authorized agents in theory have the flexibility to determine the fee rates charged for administering various aspects of the program, the reality of what people are willing to pay before they opt out of the permitting scheme for a bootleg system places practical limits on those fee rates.15

Since many of the areas experiencing significant problems with failure of OSSFs are located in low-income, often rural, areas of the state, local government entities that accept delegation in those areas find themselves with a number of challenges. Many individuals simply are financially unable to comply with OSSF rules and regulations. The cost for installation of a proper OSSF can range from $3,000 to $8,000, depending upon climatological, geographical, and soil characteristics. Thus, it seems self-defeating for an authorized agent to create greater economic hardship for these individuals by assessing civil penalties against them, when the ultimate goal of enforcement is to bring the individual's OSSF into compliance. Moreover, many authorized agents are generally discontent with the lack of enforcement mechanisms available to them, regardless of the economic status of the owner of the non-complying OSSF.16


15 Testimony of Jim Allison, representing the County Judges and Commissioners Association of Texas; Public Hearing of the Subcommittee on the On-Site Wastewater Treatment Program (April 18, 1996)(tapes available from the House Communications Division).

16 Even when the individual is financially capable of bringing the OSSF into compliance, counties presently have no authority beyond civil penalties to enforce the regulations, including particularly the ability to terminate the provision of utilities, such as water.
In addition, local authorized agents are often frustrated because OSSF systems are frequently installed (often inappropriately) before they are made aware of them. Although the regulations require individuals to first submit a permit application, individuals in rural and other sparsely-populated areas frequently fail to adhere to the permitting process, either because they are not aware of the requirement or simply because of indifference and lax enforcement. The fact that these individuals can often establish electricity and water service without notice to the authorized agent fosters these unauthorized practices. The enforcement problems associated with such ad hoc attempts to bring an OSSF up to standards after an individual or family is already living on the property underscore the need for the authorized agent to have a pre-installation notice mechanism. Although some authorized agents have attempted to work with public and private utilities on providing such notice, many private utilities have been hesitant to do so for fear of potential legal liability for releasing such information. 17

Another OSSF-related problem faced, in particular, by counties is that they have limited authority vis-à-vis municipalities to require the platting of planned subdivisions under many circumstances. In fact, a recent legal interpretation of the relevant statute 18 has further curtailed their powers in this area so that counties have no authority to require the owner of a tract of land to prepare a plat of a planned subdivision, unless the owner lays out parts of the tract for public or private use. 19 In actuality, such subdivisions are frequently ones in which many of the OSSF-related problems occur. The statutory authority granted by the Legislature to counties with colonias and other "economically distressed areas" plagued by OSSF-related problems to influence the development of subdivisions via platting and other requirements has been effective. However, counties now find that the colonias and similar developments with OSSF problems are moving north to counties that have not been granted this preventive enforcement authority. 20

and electric service, in situations where there is a serious threat to public health. Municipalities often have this ability, because they often are also the provider of utilities service. Id.

Also, some authorized agents seek to have concurrent enforcement jurisdiction with the TNRCC in the areas in which they administer the program. Testimony of the Honorable Robert Stroder, County Judge, representing Jefferson County; Public Hearing of the Subcommittee on the On-Site Wastewater Treatment Program (April 18, 1996)(tapes available from the House Communications Division).

17 Testimony of Jim Allison, supra note 15.
19 See Elgin Bank v. Travis County, 906 S.W.2d 120 (Tex. App.--Austin 1995).
20 Testimony of Jim Allison, supra note 15.
Future Delegation: Regional Solutions

Because the on-site wastewater treatment program is designed to be administered locally, its success seems inevitably linked to future, complete delegation of the program to local governmental entities, barring significant increases in appropriations to the TNRCC to carry out local administration. However, due to economic disincentives and programmatic constraints, many local entities, especially those with small populations or low-OSSF activity, are presently unable or unwilling to assume the responsibility of delegation individually.

One possible solution to this problem is for counties and other local governmental entities in sparsely-populated areas to jointly pursue delegation on a regional basis. This innovative approach has already been implemented in some areas of the state. The TNRCC is presently working with representatives of local governments and regional entities to identify regional solutions to the delegation problem in rural, sparsely-populated areas. Only after regional solutions have been pursued should the Legislature consider measures to compel local or regional governmental entities to accept OSSF program responsibility.

Once a wholly-decentralized program is established, the TNRCC will be able to redirect its resources to assume the following responsibilities:

- Promulgate rules;
- Provide oversight of the permitting system in a manner that ensures uniform construction standards;
- Maintain a central review group to evaluate innovative/alternative technologies and ensure uniform acceptance of them;
- Administer education, outreach, training, and certification programs;
- Provide oversight of delegated programs to ensure that authorized agents and their designated representatives are in compliance with rules and regulations; and
- Provide and assist with enforcement activities.

Adequate enforcement is a necessity in achieving a successful on-site wastewater treatment program. Once complete delegation is realized, the TNRCC will be expected to fully support enforcement actions in cooperation with the local authorized agent, and to initiate action in situations where the agent is unable to pursue enforcement independently. The success of such an enforcement structure is predicated on the assumption that an authorized agent will be in a more effective position than the TNRCC to discover unauthorized OSSF-related activities and to detect those systems that are not in compliance in its local jurisdiction. Ensuring that the local agent is provided with notice of new utility service to a given location would increase the

21 For example, the South Plains Public Health District is administering the on-site program for a number of counties in West Texas.
chances of realizing that assumption.

**Earmarking Certification Funding**

In the absence of a fully-decentralized program, the TNRCC requires additional staff to address administrative and oversight duties. Additionally, because the TNRCC believes that broadening the scope of installer and regulator training and certification will reduce the number of improper or malfunctioning systems installed and permitted every year, it will increase training and certification requirements for installers while creating new training and certification requirements for site evaluators and inspectors in an attempt to narrow the gulf between installer and inspector. Administering these training and certification programs will require increased staffing levels.

One method suggested to meet the new staff demands would be to earmark the OSSF certification revenue in order to fund these activities. In light of the previously-identified budget constraints in the TNRCC's administration of the program in the non-delegated areas, coupled with the prospect of assuming additional certification duties, these staffing increases seem both necessary and appropriate.

**Cluster Systems**

A cluster system is a sewage collection, treatment, and disposal system designed to serve two or more sewage-generating units where the total combined flow from all units does not exceed 5,000 gallons per day. The current definition for an "on-site sewage disposal system" in Health and Safety Code § 366.002 precludes permitting of a cluster system under the state OSSF program, because a cluster system does not treat and dispose of the wastewater on the site from which it is generated. Instead, cluster systems must be permitted under the municipal permitting rules, which elevates the cost and the processing time for the applicant. Cluster systems could sometimes be a viable solution in communities where small lots are prevalent and little or no central sewage is available. These systems could be administered in the on-site wastewater treatment program as long as no more than 5,000 gallons of waste is produced per day.

**Low-Income Assistance**

As noted previously, many families living in subdivisions without adequate sewage facilities do not possess the financial resources to construct a proper on-site system or upgrade/repair a failing system. The limited available funding from the Texas Water Development Board, Texas Department of Housing and Community Affairs, and the U.S. Department of Agriculture Rural

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22 See generally "Delegation: Local Governmental Entity Concerns", pp. 15-16.
Economic and Community Development programs is dedicated primarily to the installation of large-scale central collection and treatment facilities. This assistance is in the form of low-interest loans and grants, and candidates for this funding are generally restricted to local governments and political subdivisions with the authority to operate sewage systems.

Current levels of funding do not address immediate needs, particularly for individuals or small numbers of affected residents who do not, by definition, meet the governmental entity criteria. Because the majority of available funding options are loans, problems associated with the ability of the individuals to repay would likely prevent them from obtaining funding even if they were eligible to apply.

Additionally, if a state or federal loan administration agency could lend money to the local governmental entity, who, in turn, could re-loan it to an individual or group of individuals, the agency would nonetheless have to receive assurances regarding repayment collection. If there is a public water supplier providing service to the area, one potential option would be for the supplier to collect on the repayment. Another potential solution that would require legislative change would be for the local governmental entity to link repayment of the loan to the real property in the area. Something similar to this is already being done by municipal utility districts in providing services for "defined areas and designated property." In the end, however, a grant program may be required for the very low-income areas.

The TNRCC suggests that the legislature consider measures to subsidize the installation of new OSSFs, or the repair of failing systems, for low-income residents. It has been suggested in public comment that part of the revenues derived from on-site enforcement actions should be set aside for assisting low-income residents who cannot afford adequate on-site systems. In areas of the state where the TNRCC administers the OSSF program, the TNRCC waives the permit fee for low-income projects to help minimize costs. However, it should be noted that neither the set-aside of enforcement revenues nor the waiver of permit fees will adequately address the financial assistance needs of low-income residents. Moreover, the most economical solution in many areas will be the installation of centralized wastewater treatment systems, rather than a series of individual OSSFs.


24 Testimony of Tom Brown, Deputy Executive Administrator, Texas Water Development Board; Public Hearings of the Subcommittee on the On-Site Wastewater Treatment Program (April 18, 1996, and May 29, 1996) (tapes available from the House Communications Division).

On-Site Wastewater Treatment Research Council

The On-Site Wastewater Treatment Research Council ("Council") was created by the State to award grants to appropriate entities that support applied research and demonstration projects regarding on-site wastewater treatment technology and systems designed to improve the quality of wastewater treatment and reducing its costs for consumers. Funds for the Council are provided by the assessment of a $10 fee on each on-site system permitted in the state.26

The Council has recently completed a two-year study of on-site wastewater treatment industry priorities, in which it identified training and system performance monitoring as focal issues. It is now structuring a multi-year program to address these priorities.27 The Council has been integral in many OSSF research projects, including the recent establishment of the On-Site Wastewater Treatment Training Center in College Station, Texas.28

Presently, all funds collected for the Council's purposes are not appropriated to the Council. Because training and education in OSSF technologies has been identified as critical to the success of the OSSF industry, the Council's role will assume even greater importance. The Council recommends that the Legislature appropriate all funds collected under Chapter 367, Health and Safety Code, to the Council to be used for purposes under the statute.29


27 Testimony of Rick Goldberg, Chairman, On-Site Wastewater Treatment Research Council; Public Hearing of the Subcommittee on the On-Site Wastewater Treatment Program (April 18, 1996)( tapes available from the House Communications Division).

28 See Note 7, supra, page 13.

29 Testimony of Rick Goldberg, supra note 27.
Findings and Recommendations

FINDING #1: The on-site wastewater treatment program in Texas has many areas of concern that need to be addressed by the Legislature. Approximately one-third of the state's population currently utilizes on-site sewage facilities (OSSFs). The number of new permit applications has more than doubled in the past five years and is expected to increase in the foreseeable future. Failure of OSSFs is widespread and has significant public health and environmental consequences. Non-complying systems are frequently the result of improper installation and maintenance. The TNRCC recognizes the need for training and education throughout the OSSF industry and has responded by proposing increased emphasis on the site evaluation phase and further training, education, and certification requirements.

Enforcement of OSSF rules and regulations is grossly inadequate in many areas of the state where the program is being administered by the TNRCC, and in many areas where it is administered by a local entity. Additionally, because some areas of the state in which the TNRCC administers the program cover such vast distances, installers often must endure travel-time delays for inspectors on the order of many days to weeks. Combined, these circumstances not only result in the proliferation of many unpermitted and inappropriately installed on-site systems, but also put installers who attempt to comply with the letter of the law at a competitive disadvantage.

RECOMMENDATION #1: The Legislature should continue to review the on-site wastewater treatment program with heightened scrutiny as the number of OSSFs continues to increase dramatically throughout the state. Moreover, in light of changes that may result in the program if and when the TNRCC adopts the proposed OSSF rules package later in the year, additional policy questions may arise that warrant legislative review.

FINDING #2: The on-site wastewater treatment program is designed to be locally administered. Although 95 percent of the OSSF permits are issued by the 238 local governmental entities that have petitioned for and received delegation as authorized agents, the remaining five percent of OSSFs currently under direct TNRCC administration are spread out across the state in an area comprised of approximately 100 counties. Barring further significant appropriations increases, the TNRCC does not have the ability to adequately administer the program in those areas where it is not delegated to a local authority. The ability of local authorized agents to rescind delegation without notice to the TNRCC threatens to further impact the TNRCC's resources in this area. However, it is premature at this point in time to require complete delegation of the on-site wastewater treatment program to local governmental entities, because it would cause undue hardship in some areas of the state that are sparsely populated or economically distressed. In

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30 See Note 1, supra, page 8.
such areas, promoting the administration of the program via an interlocal agreement or regional entity is a potentially viable option.

RECOMMENDATION #2: A. It is the committee's view that complete delegation of the on-site wastewater treatment program to the local government level warrants review by the 75th Legislature. However, efforts to fully decentralize the OSSF program and compel delegation locally should be considered only after regional cooperative program options have been pursued for areas of the state that are sparsely populated or economically distressed.

B. The TNRCC should continue to work with regional entities and local governments to identify practical options for decentralizing and delegating the on-site wastewater treatment program, and report such findings to the 75th Legislature.

FINDING #3: Without complete delegation of the OSSF program, the TNRCC has insufficient resources to both adequately administer the on-site wastewater treatment program in areas where there is no approved local authority and properly perform its central regulatory responsibilities. The program is predominately funded by monies from General Revenue. Under current appropriations authority, the TNRCC is also authorized to expend permit fees collected for those systems permitted by the state in areas where there is no local authorized agent. Additionally, the TNRCC has proposed rules to implement the programs for registration and certification of installers and designated representatives. The fees to be assessed for these professional education and qualification programs, however, are not currently appropriated to the agency. Rider 21 to the TNRCC's 1996-97 legislative appropriations (Article VI, page 29, of the General Appropriations Act, 1995) limits the expenditure of on-site wastewater fees to those permit fees authorized under Texas Health and Safety Code, Chapter 366, Subchapter D. The expenditure of other OSSF program fees (i.e. certification fees) authorized under other subchapters is currently not authorized.

RECOMMENDATION #3: The Legislature should consider allocating all monies authorized by law to be assessed for the recovery of on-site wastewater treatment program costs to the TNRCC for the purposes intended. Specifically, the Legislature should consider appropriating to the TNRCC all fees assessed and collected under the authority of any subchapter of Chapter 366 of the Texas Health and Safety Code for the purposes authorized under that chapter.

FINDING #4: A cluster system is a sewage collection, treatment, and disposal system designed to serve two or more sewage-generating units where the total combined flow from all units does not exceed 5,000 gallons per day. The current definition for an "on-site sewage disposal system" in Health and Safety Code § 366.002 precludes permitting of a cluster system under the state OSSF program, because a cluster system does not treat and dispose of the wastewater on the site from which it is generated. Instead, cluster systems must be permitted under the municipal permitting rules, which elevates the cost and the processing time for the applicant. Cluster systems could sometimes be a viable solution in communities where small lots are prevalent and
little or no central sewage is available. These systems could be administered in the on-site wastewater treatment program as long as no more than 5,000 gallons of waste is produced per day.

RECOMMENDATION #4: A. The Legislature should amend the definition for an "on-site sewage disposal system" in Health and Safety Code § 366.002 to include cluster systems.

B. The TNRCC should draft guidance on suggested standard contract language for installation, maintenance, and repair agreements for parties utilizing cluster systems.

FINDING #5: Many families living in subdivisions without adequate sewage facilities do not possess the financial resources to install a proper on-site system or repair an existing system. The limited available funding from the Texas Water Development Board ("TWDB"), Texas Department of Housing and Community Affairs, and the U.S. Department of Agriculture Rural Economic and Community Development programs is devoted primarily to the installation of large-scale central collection and treatment facilities. The assistance is in the form of grants and low-interest loans, and candidates for this funding are generally restricted to local governments and political subdivisions with the authority to operate sewage systems. This level of funding does not address immediate needs, particularly for individuals or small numbers of affected residents. The difficulties low-income residents have in complying with OSSF rules and regulations are compounded by the assessment of enforcement penalties against them for failing systems. The TNRCC suggests that the Legislature consider measures to subsidize the installation or repair of new or failing OSSFs for low-income residents. It has been suggested, through public comment, that a portion of the revenues derived from OSSF enforcement actions be set aside to assist low-income residents in obtaining adequate on-site systems. The TNRCC is currently waiving permitting fees for low-income residents in areas of the state where it administers the OSSF program.

RECOMMENDATION #5: A. The TWDB should work with regional, state, and federal agencies to identify feasible options for providing low-income residents, who are financially unable to comply with OSSF rules and regulations, with access to low-interest loans and grants. The TWDB should report its findings to the 75th Legislature.

B. The 75th Legislature should carefully evaluate the TNRCC's proposal to earmark a portion of the revenues generated from on-site wastewater treatment enforcement actions for an account dedicated to assisting low-income individuals in complying with on-site wastewater treatment program requirements.

FINDING #6: Local authorized agents are often frustrated in their attempts to administer the OSSF program because systems are frequently completely installed (often inappropriately) before they are made aware of them. Although the regulations require individuals to first submit a permit application, individuals in many areas frequently fail to adhere to the permitting
process, either because they are not aware of the requirement or simply because of indifference and lax enforcement. The fact that these individuals can often establish electricity and water service without notice to the authorized agent fosters these unauthorized practices. The enforcement problems associated with ad hoc attempts to bring an OSSF up to standards after an individual or family is already living on the property underscore the need for the authorized agent to have a pre-installation notice mechanism. Although some authorized agents have attempted to work with public and private utilities on providing such notice, many private utilities have been hesitant to do so for fear of potential legal liability from releasing such information.

RECOMMENDATION #6: The Legislature should consider taking measures to ensure that counties or other governmental entities who have accepted OSSF program delegation are provided notice of, or given access to information regarding, the establishment of new electric and/or water delivery service to a particular location by a public or private utility. The Legislature should also consider granting immunity to public and private utilities for any potential liability they may incur by providing such information.

FINDING #7: Counties have limited authority vis-à-vis municipalities to require the platting of planned subdivisions under many circumstances. A recent legal interpretation of the relevant statutory law has further curtailed their powers in this area, so that counties have no authority to require the owner of a tract of land to prepare a plat of a planned subdivision, unless the owner lays out parts of the tract for public or private use. In actuality, such subdivisions are frequently ones in which many of the OSSF-related problems occur. The statutory authority granted by the Legislature to counties with colonias and other "economically distressed areas" plagued by OSSF-related problems to influence the development of subdivisions via platting and other requirements has been effective. However, counties now find that the colonias and similar developments with OSSF problems are moving north to counties that have not been granted this preventive enforcement authority.

RECOMMENDATION #7: The Legislature should carefully consider extending the authority that counties in economically distressed areas have been granted to require the platting of planned subdivisions to other areas in which the limited authority counties have to require platting allows the proliferation of developments with numerous OSSF problems.

FINDING #8: The On-Site Wastewater Treatment Research Council ("Council") is an independent body created by the State to award grants to appropriate entities that support applied research and demonstration projects regarding on-site wastewater treatment technology and systems designed to improve the quality of wastewater treatment and reducing its costs for consumers. Funds for the Council are provided by the assessment of a $10 fee on each on-site system permitted in the state. The Council has been integral in OSSF research projects, including the recent establishment of the On-Site Wastewater Treatment Training Center in College Station, Texas. Because training and education in OSSF technologies has been identified as critical to the success of the OSSF industry, the Council's role will assume even
RECOMMENDATION #8: The Legislature should consider appropriating to the On-Site Wastewater Treatment Research Council all fees assessed and collected under the authority of Chapter 367 of the Texas Health and Safety Code to be used for the purposes authorized under that chapter.
FISCAL YEAR 1995:
TNRCC Issued Permits = 1,900
Authorized Agent Issued Permits = 36,200

Graph 1-1
OSSF Designation in Texas

Graph 1-2
SMALL COMMUNITY FINANCING

Introduction

In January 1996, the Honorable James E. "Pete" Laney, Speaker of the Texas House of Representatives, charged the House Committee on Natural Resources with studying methods to provide affordable, state-sponsored financial assistance for small community water projects. Representative David Counts, Chairman of the Committee on Natural Resources, appointed a subcommittee to address the charge. The Subcommittee on Small Community Financing ("the subcommittee") was comprised of the following members: Representatives Gary Walker (Chair), David Counts, Tracy O. King, Robert Puente, and Jerry Yost. The subcommittee conducted public hearings on April 18, 1996, in Austin, Texas, and on May 29, 1996, in Odessa, Texas.

Background

Of the 16,439 community water systems across the country found in violation of drinking water regulations during 1991, 90% were small systems.31 With the advent of the Federal Safe Drinking Water Act ("SDWA") requirements, heightened waste discharge and other environmental requirements, and increasing scarcity of affordable water supplies, Texas' small communities are facing more formidable challenges than ever before in providing basic water and wastewater infrastructure.

In addition to these requirements, the unit cost of service for a small community is typically much higher when compared with larger cities because of the lack of economies of scale. The Federal government projects that, by the year 2000, the increase in annual cost per household for water and wastewater service will be almost 2.8 times higher for a home in a town of 2,500 population than for a similar household located in a city of 250,000 population.32

In the past, small communities were able to affordably address these needs with Federal grant


funds. Unfortunately, these grant funds have been either reduced or discontinued over the last few years, resulting in loan programs being the most readily available financing source. Despite the varied financing options offered through these loan programs, many small communities still have difficulty in accessing “traditional” water supply and wastewater loan programs, primarily due to interest rates being established at levels to ensure self-supporting programs.

At the public hearings, the subcommittee reviewed proposals outlined by the Texas Water Development Board (“TWDB”) for an Emergency Loan Program and a Small Community Revolving Loan Program as two possible financing options for small community water, wastewater, and flood control infrastructure needs. The TWDB proposed the development of these programs to bridge the apparent financing gap that small communities encounter with other loan and grant programs.

**Small Community Emergency Loan Program**

Subsequent to the last public hearing of the subcommittee, the TWDB established the Small Community Emergency Loan Program (“SCELP”), a workable pilot program for emergency situations that offers easily-accessible, short-term financing. The program is specifically designed to assist communities with populations of 15,000 or less in securing financing for emergency capital improvements in emergency situations, where the normal loan application process would be too time-consuming. Under this program, emergency capital improvements are considered to be non-recurring capital expenses to a utility system that are neither part of the annual budget nor an ongoing capital improvements program, and which help alleviate an imminent threat to the health, safety, or general welfare of a community. The SCELP consists of the following five elements:

♦ Loans are to be structured for a maximum of three years, thereby allowing a community the flexibility of either repaying the loan within the three years or securing permanent financing with the intention of refinancing the emergency loan;

♦ Under the Board’s current policy, interest rates are based on the Delphis “A” scale for the term of the loan;\(^{33}\)

♦ Emergency loans are limited to $250,000 per project, an amount which should allow a community sufficient funding to immediately address an

\(^{33}\) The Delphis is a published scale of rates tied to the open market.
emergency situation; 34

Flexible payment options can be developed to address the needs of the borrowing community, while protecting the State's interest; and

All repayments revolve back into the fund to be available for future emergency loans.

With limited financing alternatives available, the SCELP is structured to meet borrowers' financial and timing needs that are unique to emergency situations. It offers small borrowers the necessary interim financing to begin a proposed improvement or quick-repair project.

To provide flexibility in the program, the TWDB designed SCELP with three possible financing options available for small communities to repay an emergency loan:

1. Repay the loan within the defined three year window;
2. Obtain long-term financing through a board loan program; or
3. Find an alternative long-term solution; perhaps, the open-market.

The SCELP offers a small community borrower a short turnaround time. TWDB staff can complete a review and recommendation on the application within 10 to 15 days of receipt of the completed application and, if necessary, an emergency Board meeting could be convened to approve or deny the request.

Presently, the TWDB has $500,000 set aside for the SCELP financings. In Fiscal Year 1996, the Texas Department of Housing and Community Affairs identified a potential need for approximately $8.7 million in emergency funding for water, wastewater, and flood control projects in small communities. Thus, to address the potential emergency needs of small communities throughout the state, additional sources of funding will need to be accessed to supplement those limited funds currently available.

Safe Drinking Water Act Revolving Fund

During the public hearings, the subcommittee had evaluated a proposal by the TWDB to establish a Small Community Revolving Loan Program. As envisioned, the program could provide low-interest loans to small communities that could not otherwise afford to construct or improve water, wastewater, or flood control infrastructure by using approximately $3 million in appropriations each biennium for three bienniums.

If additional funding were needed, the emergency loan would allow a community the time to secure additional funding.
However, subsequent to the date of the last public hearing, May 29, 1996, the United States Congress enacted the Safe Drinking Water Act Amendments of 1996 ("SDWA"),\textsuperscript{35} which was signed into law by the President on August 6, 1996. The SDWA establishes the Safe Drinking Water Act Revolving Fund ("SDWARF"), a revolving loan fund established for water projects that have specific provisions for assisting small communities. Approximately $1.275 billion was appropriated to the states for Fiscal Year 1997, of which the State of Texas was allocated approximately $70 million. Thus, it is the opinion of the subcommittee that there is presently no need to pursue the establishment of a separate, state-sponsored, small community program.

The SDWARF provides Federal funding for water projects in a manner that not only addresses subsidized rates similar to those of the State Revolving Fund (SRF)\textsuperscript{36} for wastewater projects, which has been in existence since 1987, but also provides the ability to offer additional subsidies on loans to disadvantaged communities (including small communities) for up to 30 percent of the capitalization grant made to the state each year. This flexibility will give the state the ability to offer financial assistance to extremely stressed community water systems in order to maintain affordable rates, while providing the necessary funding to bring their water system up to minimum state and Federal standards.

The SDWA specifically identifies "disadvantaged communities" as those communities “providing a public water system that meet affordability criteria established...by the State in which the public water system is located,” or those communities that the state expects to become disadvantaged once a project is built.\textsuperscript{37} Many small communities with populations of 15,000 or less may fall into this disadvantaged community category.

A necessary funding measure to effectively meet the needs of small communities with the appropriate levels of very low-interest loans or significant subsidy assistance is the use of state appropriations. With state appropriations, both the SDWARF and the SRF programs could be leveraged providing an expanded ability for the TWDB to specifically target small communities and their needs. While ensuring affordability for these small communities, the long-term financing capacity of the program will still be maintained.

Through the SDWARF, appropriations can be used, in conjunction with Federal capitalization grants, to offer additional interest subsidies on water loans beyond the "expected" subsidies similarly offered through the SRF for wastewater projects, to buy-down interest rates on borrowers’ loans to 0% loans, or to provide an even deeper interest rate subsidy below a 0% interest rate. For example, if $3 million in appropriations were seeded into the SDWARF, it


would provide the match for $15 million of Federal grants. This could be used to make 0% loans of $18 million in the first program year and provide a permanent revolving loan balance available each year in the SDWRF of between $600,000 and $900,000 depending on whether loans have terms of 30 or 20 years, respectively. Of course, if the loans were made at some nominal level of interest, the available loan amounts would increase slightly.

Even though the SRF presently provides low-interest loans for wastewater projects based on the prevailing market interest rates less seventy basis points, these below-market interest rates may not be affordable to many small communities. While the SRF has no corresponding provision to that in the SDWRF for subsidies below 0% loans, appropriations may be needed to effectively assist disadvantaged or small communities in all regions of the state by offering more affordable loans at lower interest rates than those currently being offered. In order to fully address the financing needs identified for small communities, it may be necessary to create a wastewater low-interest loan program. One avenue is to create a lower loan-rate category within the SRF program for small communities and possibly disadvantaged communities. This would offer consistency between the SDWRF and SRF programs, and allow the TWDB to address both water and wastewater financing issues for small communities. The absolute floor by law for this type of assistance would be 0% loans, because the SRF Federal authorizing legislation does not have “subsidy” provisions. An injection of $3 million in appropriations into the SRF would produce levels of funding for wastewater projects that correspond to those for water projects in the SDWRF example above.

38 Example calculations provided by the TWDB.
39 The TWDB will not have fully evaluated this issue until all program needs and Federal requirements are fully assessed.
Findings and Recommendations

FINDING #1: The Texas Water Development Board ("TWDB") has established a Small Community Emergency Loan Program ("SCELP") to provide quick-response financing for emergency water project capital improvements for communities with populations of 15,000 or less. In Fiscal Year 1996, a potential need was identified for approximately $8.7 million in emergency funding for water, wastewater, and flood control projects for small communities. However, the TWDB presently has only $500,000 set aside for SCELP financings.

RECOMMENDATION #1: The Legislature should consider appropriating monies annually to the SCELP program until a sustainable revolving fund is achieved that will be adequate to respond to the emergency needs of small communities.

FINDING #2: Although the subcommittee had evaluated a proposal to establish a state-sponsored, small community revolving loan fund for water projects, the subsequent passage of the Federal Safe Drinking Water Act ("SDWA") and its Revolving Fund ("SDWARF") obviates the present need for such a state program. The SDWA has funding provisions specific to the needs of disadvantaged or small communities. However, in order to utilize the SDWARF in a manner most comparable to the needs of all small communities, appropriations will be needed to buy down interest rates to a level affordable to them.

RECOMMENDATION #2: In order to provide affordable water projects for small communities, the Legislature should consider appropriating $3 million per biennium for three bienniums to the TWDB to be used in conjunction with the SDWARF capitalization grants or other available funds to offer additional interest rate subsidies.

FINDING #3: Many small communities are unable to qualify for or afford financing for wastewater projects. Unlike the SDWARF, the State Revolving Fund ("SRF") has no provisions for subsidies below 0% loans. To provide affordable wastewater project loans for many small communities, it may be necessary to create a lower loan rate category within the SRF to provide 0% interest rates.

RECOMMENDATION #3: In order to provide affordable wastewater projects for small communities, the Legislature should consider establishing a lower loan-rate category within the SRF and appropriating $3 million per biennium for three bienniums to it to be used in conjunction with the SRF capitalization grants to offer additional interest rate subsidies.
LOWER NECHES VALLEY AUTHORITY

Introduction

In January 1996, the Honorable James E. "Pete" Laney, Speaker of the Texas House of Representatives, charged the House Committee on Natural Resources with reviewing the design, mission, and goals of the Lower Neches Valley Authority ("LNVA"). Representative David Counts, Chairman of the Committee on Natural Resources, appointed a subcommittee to address the charge. The Subcommittee on the Lower Neches Valley Authority ("the subcommittee") was comprised of the following members: Representatives Mark Stiles (Chair), David Counts, Frank Corte, Tracy O. King, and Ron Lewis.

The subcommittee conducted a public hearing on April 10, 1996, at the John Gray Institute in Beaumont, Texas. All subcommittee members were in attendance, with Chairman Stiles presiding. State Representatives Al Price, Jerry Johnson, and Zeb Zbranek were also in attendance. More than fifty people attended the public hearing, and the following persons testified before the subcommittee:

- Mr. A.T. "Tommy" Hebert, Jr., General Manager, Lower Neches Valley Authority;
- Mr. Danny F. Vance, General Manager, Trinity River Authority;
- The Honorable Jerome P. Owens, Jr., Tyler County Judge;
- The Honorable Robert Stroder, Jefferson County Judge and Jefferson County Engineer;
- The Honorable Richard P. LeBlanc, Jr., General Manager, Drainage District #6, and former Jefferson County Judge;
- Mr. James L. Smith, rice farmer and rancher;
- Mr. Glenn A. Work, Plant Manager, PD Glycol Chemical Plant;
- Ms. Kathleen Jackson, Environmental Manager, Mobil Oil Corporation and Neches River Treatment Corporation;
- Ms. Jeanie Turk, representing Pine Island Bayou Flood Control Committee;
- Mr. Walter A. Theriot, City Councilman, City of Rose Hill Acres;
- Dr. Richard C. Harrel, Professor, Lamar University;
- Dr. Garry N. McCauley, Associate Professor, Texas A & M University;
- Mr. R.H. "Bob" Darling, engineering consultant; and
- Mr. Gary Neighbors, General Manager, Angelina Neches River Authority.

As indicated in the list above, those testifying before the subcommittee represented a broad range of diverse interests, including county judges, area farmers, industry workers, university professors, and concerned local citizens. Generally speaking, testimony favorable to the LNVA focused on its reliability of service, consistency of water quality, and low costs of service. More
critical comments focused on the need for the LNVA to be more proactive in economic
development efforts, to pursue regional wastewater projects and provide other services, and to
maintain a higher profile in its service area.

History of the LNVA

In 1933, the 43rd Legislature of the State of Texas created the Lower Neches River Authority. It
was the second river authority created in the State. The LNVA was created to promote the
development of a dependable water supply and distribution system to serve expanding industrial,
municipal and agricultural water requirements in the lower Neches Basin and surrounding area.
The river authority was given powers to construct, maintain, and operate facilities for this
purpose.

Organization of the LNVA

The LNVA is an agency of the State of Texas, created in March 1933 as a “body politic and
corporate vested with all the authority as expressly authorized in the provisions of the Texas
Constitution, Section 59 of Article 16.” Its statutory act is codified at Article 8280-103,
Vernon’s Annotated Texas Civil Statutes.

With no power to levy taxes and receiving no appropriations from the Legislature, the LNVA is a
non-profit organization, funded entirely from the revenues generated by the sales of water and its
services. The LNVA has jurisdiction in all of Tyler, Hardin, and Jefferson Counties, and in
eastern Liberty and Chambers Counties.40

The LNVA is governed by a Board of Directors composed of nine (9) persons; two members
must reside within Tyler County, two in Hardin County, and five in Jefferson County. Board
members are currently appointed by the Texas Water Development Board ("TWDB"), with
confirmation by the Senate. Board members are appointed to six-year terms. The Board of
Directors is responsible for making policies under which the LNVA functions and to oversee its
operations. The LNVA is one of only two river authorities whose Board of Directors is
appointed by the TWDB (formerly, the State Board of Water Engineers).41

The LNVA maintains a complete book of accounts and records of its operations; an outside audit

40 See Appendix A-1.

41 The boards of seventeen other river authorities are appointed by the Governor,
with approval by the State Senate; two river authorities' boards are elected; and, one river
authority's board is appointed by the Commissioners Court in its service area.
is performed annually by a certified public accounting firm. After the audit report is received and approved by the LNVA Board, copies are delivered to the State Auditor, the Texas Natural Resources Conservation Commission ("TNRCC"), TWDB, the Jefferson County Clerk, and other entities and financial institutions.

The LNVA is subject to the continuing right of supervision by the State of Texas through the TNRCC, and its activities are reported annually to the State.

Through a staff of 55 employees, the LNVA operates and maintains its system of five pumping plants, 400 miles of canals and associated structures. Water deliveries are made to municipalities, industries, and agricultural interests in the Golden Triangle.  

Services and Projects: Past and Present

Delivery of fresh surface water, up to a billion gallons a day, is the primary service of the LNVA. Water deliveries are made to cities, industries, and approximately 100 rice farms on a continuous, 24-hours-a-day, seven-days-a-week basis. The water rates charged by the LNVA are among the lowest of any river authority in the state for pumped water.

The LNVA has issued over $200,000,000 dollars in bonds to construct industrial waste treatment facilities and related air environmental improvement facilities. In addition, the LNVA has financed several manufacturing and service facilities within its districts.

One of these waste treatment facilities, which receives and treats wastewater from four Beaumont-area industries, is operated and maintained by the LNVA. This particular operation has been recognized by the TNRCC as one of the ten best operations in the State of Texas.

Through the LNVA's local sponsorship of Lake Sam Rayburn, some recreational facilities at Lake Sam Rayburn may be used by non-profit organizations, with reservations made through the LNVA office. The LNVA also supplements public boat ramp construction on the Neches and Angelina Rivers in conjunction with the Texas Parks and Wildlife Department. In cooperation with Texas Tech University, the LNVA is assisting with research to determine the feasibility of reestablishing a paddlefish population in the Lower Neches Basin.

The LNVA is engaged in pollution prevention and control studies and activities. Working with the TNRCC and the Governor's Office, the LNVA is participating in a project on water quality management in the lower reaches of the Neches River area. The LNVA also takes part in water

42 See Appendix A-2.

43 See Appendix A-3 to A-4.
quality assessments authorized by the Clean Rivers Act of 1991.

The LNVA is pursuing implementation of a permanent salt water barrier in the Neches River which will eliminate the intrusion of salt water into the river’s fresh water. In addition to recovering 16 miles of fresh water, the barrier will allow for the restoration of natural breeding habitat of desirable fish. Both of these benefits will enhance the region’s appeal for water activities as well as its potential for future development.

The LNVA is a participant in the Trans-Texas Water Program, which is studying the problem of ensuring an adequate water supply for a growing population and industrial base in the state.

Finally, the LNVA participates in educational out-reach programs, informing the general public and school children of its purposes and programs.

Recommendations

RECOMMENDATION #1: To standardize the policy-making bodies of river authorities, the Legislature should amend the LNVA’s statute so that the Board of Directors of the LNVA will be appointed by the Governor, with confirmation by the Texas Senate. The Legislature should maintain the current membership on the LNVA’s Board of Directors at nine, with five members from Jefferson County, two from Hardin County, and two from Tyler County.

RECOMMENDATION #2: The LNVA should build on the successes it has had in the industrial arena by entering into joint ventures with local municipalities and other political subdivisions to enhance the economic development of the district it serves.
LOWER COLORADO RIVER AUTHORITY

Introduction

In January 1996, the Honorable James E. "Pete" Laney, Speaker of the Texas House of Representatives, charged the House Committee on Natural Resources ("the committee") with studying the governance, structure, and functions of the Lower Colorado River Authority ("LCRA"), in light of changes in the electric utility industry and other long-term changes. The charge was undertaken by the committee as a whole.

The committee conducted a public hearing on August 15, 1996. Mark Rose, General Manager of the LCRA, presented testimony on its behalf to the committee.

Creation and Statutory Authority

The LCRA was created by the Texas Legislature in 1934 to develop a reliable water supply along the lower Colorado River, to protect the region from floods, and to provide reliable, low-cost electricity to rural areas. LCRA's service area is still mostly rural and sparsely populated. LCRA's primary statutory functions are as follows:44

- Water and river management;
- Power generation and energy transmission;
- Soil conservation and water pollution control;
- Fish and wildlife preservation;
- Parks and recreational lands management; and
- Community assistance and local economic development.

Main Programs and Services

The LCRA main programs and services are as follows:

- Operates dams and hydroelectric facilities to control the Colorado River, to provide a steady supply of water to its water customers, and to generate electricity for the rural cooperatives and small cities that make up its wholesale electric customer base;

44 See Appendix B for a statutory comparison of the LCRA and four other major river authorities.
• Provides power to its customers through three power plants, a regional transmission system, and internal fuel distribution systems and offers energy-related programs such as conservation services;

• Provides environmental programs to protect the Colorado River and other water resources in the Colorado River basin;

• Develops and manages parks and recreational facilities throughout its service area; and

• Provides community assistance and economic development services to rural communities in its service area.

Organizational Structure

The LCRA is governed by a 15-member board of directors appointed by the Governor and confirmed by the Senate. Board members are appointed to six-year, staggered terms. Twelve board members are appointed from LCRA’s 10-county statutory district. Each county is represented by one member except for Travis County, which has two representatives. One at-large member also represents the statutory district. The remaining three members are appointed at-large from the counties in LCRA’s electric service area that are outside the statutory district.

At-large board members are prohibited from serving on the board for more than six consecutive years. Counties outside of the statutory district may not be represented on the board for more than six consecutive years, and not more than two board members can be residents of the same county.

A board member must have been a resident and freehold property taxpayer of the county being represented for at least two years prior to appointment. Anyone employed in the preceding three years by an electric power and light company, telephone company, or any other utility company is ineligible for appointment.

Board members may be removed from office by the governor for inefficiency, neglect of duty, or misconduct in office. Board members and employees are also subject to conflict-of-interest provisions.

The board sets policy and appoints a general manager to hire staff and manage the agency on a day-to-day basis. The board also hires a general counsel and an internal auditor, in conjunction with the general manager.

The LCRA has four lines of business: GenCo, which generates electricity; TEnSCO, which
transmits electricity; WaterCo, which manages water resources and provides water and wastewater services; and Community Services, which provides community and economic development programs, customer and community relations, development and operation of parks and lands facilities, water quality protection programs, and water surface and shoreline regulatory programs. In addition, Business Support Services provides executive and administrative support, legal services, and other services to the four lines of business.

**Funding and Oversight**

The LCRA operates on revenues from electric and water rates and fees from other services. It does not have taxing authority and does not receive state appropriations. In addition to its Board of Directors, the LCRA has established a number of advisory groups for specific programs and activities. The LCRA undergoes an annual financial audit by an independent auditor and has an internal audit program that reviews management activities.

A number of federal and state entities have oversight of the LCRA. These include the Texas Legislature, Texas Natural Resource Conservation Commission, Texas Railroad Commission, Public Utility Commission, Federal Energy Regulatory Commission, and the Environmental Protection Agency. In a sense, the LCRA is also subject to the oversight of its water and electric customers, bondholders, and bond rating agencies.

**Recommendation**

The Legislature should, under its oversight jurisdictional authority, periodically review the governance, structure, and activities of the LCRA and other river authorities to ensure their efficient performance and compliance with the law.
EDWARDS AQUIFER AUTHORITY

Introduction

In January 1996, the Honorable James E. "Pete" Laney, Speaker of the Texas House of Representatives, charged the House Committee on Natural Resources ("the committee") with monitoring the court action and implementation of the laws from the 73rd and 74th Legislatures relating to the Edwards Aquifer Authority. The charge was undertaken by the committee as a whole. The committee conducted a public hearing on August 15, 1996, and received testimony from the following persons:

Mr. Harry Potter, Office of the Attorney General;
Mr. Michael D. Beldon, Chairman, Edwards Aquifer Authority;
Mr. Russell S. Johnson, General Counsel, San Antonio Water System;
Mr. Doug Miller, Member of the Board, Edwards Aquifer Authority;
Mr. Rick Illgner, General Manager, Edwards Aquifer Authority; and
Mr. Stephan B. Rogers, General Counsel, Edwards Aquifer Authority.

Legal Background and Monitoring

Senate Bill 1477 ("the Act") was enacted by the 73rd Legislature on May 30, 1993, signed into law by the Governor on June 11, 1993, and originally effective on September 1, 1993. The law created the Edwards Aquifer Authority ("the Authority") and empowered it to develop and implement programs for comprehensive management of the Edwards Aquifer. The legislation was enacted for a number of reasons, including the State's interest in regulating its natural resources and to avoid federal control of the aquifer threatened by United States District Judge Lucius Bunton in litigation brought under the Endangered Species Act to protect springflow-dependent endangered species at Comal and San Marcos Springs from overdrafting of the aquifer.

The Act provided that the Authority would be governed by a board of nine appointed directors. However, the United States Department of Justice objected to the appointed governing body on November 19, 1993, under section 5 of the Voting Rights Act. This objection by the Department of Justice rendered the Act unenforceable as a matter of federal law. The State of Texas filed suit to overturn the Justice Department's objection and have section 5 of the Voting Rights Act ruled

45 Acts 1993, 73rd Leg., p. 2350, ch. 626, § 1.01 et seq.
inapplicable to the legislation. This litigation was still pending when the 75th Legislature adopted House Bill 3189 ("H.B. 3189") to overcome the objection by the Department of Justice.

H.B. 3189 was enacted by the 75th Legislature on May 28, 1995, and signed by the Governor on May 31, 1995. It addressed the Department of Justice’s objections by establishing an elected, rather than an appointed, board for the Authority. It also provided that, until the first election for permanent members of the board in November 1996, the Authority is to be governed by an interim board comprised of fifteen individuals delineated in the bill and two additional members to be appointed by other entities. On August 8, 1995, the Department of Justice approved the Act as amended by H.B. 1989. The Act finally became effective on August 28, 1995, 90 days after the Governor signed the bill.

On August 22, 1995, shortly before the effective date of the Act, the Medina County Underground Water Conservation District filed suit against the interim board members in state district court in Hondo, Texas, seeking to have the entire Act declared unconstitutional. On the same date, the district court issued an ex parte temporary restraining order against the interim members of the board that prevented them from taking office and carrying out the provisions of the Act.

Several parties intervened in the litigation. The State of Texas and the City of San Antonio intervened as defendants. The Uvalde County Underground Water Conservation District, Texas and Southwestern Cattle Raisers Association, and Russell Brothers Cattle Company intervened as plaintiffs. The Edwards Underground Water Conservation District ("EUWD") intervened as a neutral, amicus party.

On September 1, 1995, the district court issued a temporary injunction that allowed the interim board members to assume office, hold meetings, and apply to the court for transfers of funds from the EUWD for litigation and necessary business expenses, but restrained them from promulgating rules or otherwise carrying out the provisions of the Act. The temporary injunction also continued the existence of the EUWD.

On November 27, 1995, the district court issued an order declaring the Act unconstitutional on a number of grounds and continuing the existence of the EUWD, and issued a permanent injunction allowing the interim board members to take office for the purpose of defending themselves and the Act, but enjoining them from carrying out the provisions of the Act.

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47 The Act provided for the Authority to assume the management, files, records, property, funds, leases, rights, obligations, contracts, and staff of the EUWD, which would cease to exist after the Authority carried out these actions.
The interim board members, the State of Texas, and the City of San Antonio appealed the ruling of the district court directly to the Supreme Court of Texas. On June 28, 1996, the Supreme Court of Texas unanimously upheld the validity of the Act against the facial constitutional challenges brought by the plaintiffs, reversed the judgment of the district court, and dissolved the injunction issued by the district court. The Supreme Court subsequently overruled a motion for rehearing.

Related Litigation

On June 10, 1996, the Sierra Club filed a class action lawsuit in the United States District Court for the Western District of Texas ("the federal court") against all who pump water from the Edwards Aquifer because spring flows at Comal Springs were less than 150 cubic feet per second (cfs), which is currently the "jeopardy" spring flow level according to the U. S. Fish and Wildlife Service. The Sierra Club alleged that the pumpers are "taking" and "jeopardizing" the endangered species in violation of Section 9 of the ESA by further reducing the spring flow levels. The federal court issued a preliminary injunction in August 23, 1996, which was subsequently stayed by the 5th Circuit Court of Appeals on September 10, 1996. Oral arguments on the appeal of the preliminary injunction are scheduled for the week of Dec 2, 1996, before the 5th Circuit Court of Appeals in New Orleans, Louisiana.

Implementation Activities of the Authority

The Authority was officially established on June 28, 1996, with the issuance of the Supreme Court's decision upholding the validity of the Authority and its enabling legislation. This decision cleared the way for the Authority to begin implementation and enforcement of the Act after almost three years of delays. On this date, the Authority assumed all existing assets, staff, obligations and programs of the Edwards Underground Water District. To date, the efforts of the Board of Directors and staff of the Authority have primarily focused on developing a critical period management plan, developing application forms and a process to file historical water usage claims, and identifying current and immediate future agency funding issues.

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48 The Supreme Court did not opine as to whether the Act would be unconstitutional as applied.


50 Sierra Club v. City of San Antonio, No. MO-96-CA-097 (W.D. Tex. -- Midland/Odessa Div.).
Critical Period Management Plan

The Edwards Aquifer is a unique ground water resource requiring a special management approach. Section 1.26 of the Act requires the Authority to prepare and coordinate implementation of a plan for critical period management. The plan would reduce pumping from the Edwards Aquifer during critical periods. The plan’s main objective would be to temporarily reduce demand on the aquifer to reduce the rate of spring flow decline at Comal Springs until rainfall replenishes the aquifer.

In the Act, the Authority was provided approximately two years to develop a critical period plan. The original implementation date of the Act was September 1, 1993. The original statutory deadline for the critical period management plan, as referenced in Section 1.26 of the Act, was September 1, 1995. The Authority was unable to comply with these dates because of the numerous legal delays to the implementation of the Act. When the Authority finally came into existence in late June 1996, the hydrologic conditions of the aquifer had changed considerably since 1993. Average recharge to the Edwards Aquifer for the period 1934-1995 is 674,200 acre-feet per year. The highest recorded recharge of 2.486 million acre-feet occurred in 1992. However, below average recharge occurred during each year from 1993 to 1995, or 447,600 acre-feet in 1993, 538,100 acre-feet in 1994, and 531,300 acre-feet in 1995. Total recharge for the period 1993 to 1995 was 1,517,000 acre-feet, while total discharge (well pumping and spring flow discharge) for the same period was 2,572,500 acre-feet, which represents a net loss of approximately 1,000,000 acre-feet during this period.

When the Authority took office and began to formulate a critical period management plan, rainfall had been sparse and had resulted in lower-than-average aquifer and spring flow levels. For example, average rainfall over the recharge zone in Bexar County is 26-32 inches per year. However, from August 1995 to August 1996, rainfall over the Bexar County recharge zone was only 14.78 inches. On August 1, 1995, the level at the Bexar County index well, or J-17, was 656.8 feet above mean sea level (msl). The level of flow at Comal Springs was 253 cfs. On August 1, 1996, the values were 632.7 feet above msl at J-17 and 95 cfs at Comal Springs.

Given these aquifer conditions, the Board of Directors began work on a critical period management plan on July 2, 1996, the first official board meeting to be convened after the Supreme Court’s decision. At this meeting, the Chairman of the Board of Directors, Michael Beldon, appointed a review committee of the board to address the drought management plan and other related issues. On July 13, 1996, the Critical Period Management Committee ("the Committee") submitted a recommendation to the board to direct staff and legal counsel to undertake the following:

(1) draft a critical period management plan for board consideration based on the
“lawyers’ plan” submitted to the federal court in the Sierra Club litigation in June 1995;

(2) consult with the attorneys and others who developed the “lawyers’ plan” to obtain input; and

(3) schedule and conduct public hearings in the west, east, and Bexar County to take comments regarding whether current water supply conditions constituted an imminent peril to public health, safety, and welfare, thus requiring the adoption of emergency rules, possible actions by the Authority to improve current water supply conditions, and emergency actions to be taken by the Authority.

Three well-attended public hearings were held on July 23, July 24, and July 25, 1996. On July 31, 1996, the Board of Directors considered whether a water emergency existed which would justify the adoption of emergency rules. If such an emergency was declared, the board could have adopted rules for immediate implementation, foregoing the normal thirty-day public comment period and other requirements of the Administrative Procedures Act. Unless there is an “emergency”, a proposed rule could not take effect until approximately 60 days after the time an entity authorizes publication of the rule. After considerable discussion, a motion to have the Board of Directors find that current extremely dry weather conditions and low aquifer levels constituted a critical period justifying emergency rules failed with six members voting in favor of the motion, and seven members voting in opposition to the motion. The board did, however, vote unanimously to publish proposed rules in the Texas Register for public comment on a non-emergency basis.

The rules were subsequently submitted to the Secretary of State for publication in the Texas Register. In addition, the Committee continued to receive public testimony in meetings, receive technical presentations, and review the draft rules.

At the August 13, 1996 regular Board meeting, a the South Central Texas Water Advisory Committee submitted a resolution requesting the Board of Directors to reconsider its action on July 31, 1996, with regard to critical aquifer levels justifying emergency rules. After discussion, a motion to have the board postpone discussion of this request indefinitely passed unanimously. The Board of Directors scheduled a special meeting for August 17, 1996, to review the existing draft rules and consider recommendations for revisions to be prepared by the Committee on August 16, 1996.

On August 17, 1996, the Board of Directors unanimously approved the Committee’s recommendation to add a separate critical period management plan to the proposed rules to provide a policy statement, goals, and objectives for critical period management. The proposed critical period management rules would then implement the plan during critical periods. Upon concluding extensive discussion on the proposed plan and rules, the Board of Directors approved
revising the plan and rules as discussed during the August 17, 1996, special meeting, publishing the revised plan and rules in the Texas Register for public comment, and transmitting a copy of the proposed plan and rules to the federal court. This action by the Board of Directors was generally not endorsed by representatives from the eastern counties of the Authority (Caldwell, Comal, Guadalupe and Hays). While the eastern representatives felt that the proposed plan and rules did not go far enough, other board members felt they went too far. This version of the proposed critical period management plan and rules replaced the draft previously authorized by the Board on July 31, 1996 for publication in the Texas Register.

The Authority requested public comment on the proposed plan and rules for thirty days following the September 3, 1996, publication in the Texas Register. This initial public comment period closed on October 3, 1996, but was later extended until November 4, 1996, by an order of the Board of Directors on October 8, 1996. Authority directors and staff continue to review and consider comments, and may revise the published version of the plan and/or rules. The Authority's current schedule calls for the Board of Directors to consider adoption of the Critical Period Management Plan and Rules on January 14, 1997. The proposed plan and rules may become legally effective twenty days after the adoption by the Board and filing with the Secretary of State.

**Applications and Process for Filing Historical Water Usage Claims**

Filing applications for historical water usage is fundamental to implementing a system to issue water usage permits as mandated in the Act. Once an application for historical water usage is submitted to the Authority, the application will be processed according to the rules adopted by the Board of Directors. At the conclusion of the review process, historical water use permits will be issued to the applicants who have shown historical use. This permit system is the most crucial element of the Act because it establishes overall limitations on pumping from the aquifer, requires creation of a system to issue permits for specified amounts of water, and provides the basis for the Authority's primary revenue source. The permit system will also lay the groundwork for a water market system and will provide the basis for the comprehensive management plan. This type of permit system has never been carried out in the Edwards Aquifer region, or for any other groundwater resource in the State of Texas.

The Authority's staff began work on the permit program as most of the activities with regard to the proposed critical period management plan and rules subsided. On August 13, 1996, the Board of Directors authorized staff to publish the proposed rules for “Filing and Processing of Permit Applications” in the Texas Register. The proposed rules were subsequently published on September 3, 1996.

On September 10, 1996, the Board of Directors approved the application forms to be used by municipal, industrial, and irrigation well owners to file their historic water usage with the
Owners of domestic and livestock wells that produce less than 25,000 gallons per day of Edwards Aquifer water are not required to submit an application. These forms have been distributed throughout the Edwards Aquifer region pending approval of final rules by the Board of Directors.

The Authority requested public comment on the first set of proposed rules (Subchapters A and B) for thirty days following the September 3, 1996, Texas Register publication date. Two public hearings were held on September 25 and 26, 1996, in Hondo, Texas and San Antonio, Texas, respectively. As a result of this public comment period and additional staff review, the proposed rules were revised. The Permit Committee of the Board of Directors met on October 21, 1996, and voted to recommend that the board adopt this first set of revised rules. A special board meeting is scheduled for October 29, 1996. The proposed rules may then become legally effective twenty days after adoption by the board and filing with the Secretary of State.

In addition, the Authority staff has continued to develop a second set of rules (Subchapters C, D, E, F, and additions to Subchapters A and B) regarding procedures for processing and evaluating permit applications. The staff is requesting that the board authorize the publication of this set of rules in the Texas Register for a thirty-day public comment period. On October 21, 1996, the Permit Committee reviewed this second set of draft rules and directed the staff to make final revisions. The Permit Committee will make a recommendation to the board regarding these rules at a special board meeting on October 29, 1996. If authorized by the board, these rules will appear in the November 8, 1996, edition of the Texas Register, if accepted by the Secretary of State.

**Authority Funding Issues**

On September 10, 1996, a draft fiscal year 1996-1997 operating budget was forwarded to the Board of Directors. Given the Authority staff's estimated cash balance on September 30, 1996, of $2,155,454.08, the proposed fiscal year 1996-1997 operating budget was based on the following assumptions:

- No new revenue from water use permits will be collected until spring of 1997;
- Interest revenue will decrease significantly as total invested amounts will be reduced;
- No new staff positions are proposed;
- Budget should include funding to meet all existing contractual obligations;
- Operations of the former EUWD re-organized to achieve the Authority’s enabling statutory requirements; and
- Final payment of legal fees in the Medina County Groundwater Conservation District v. Barshop litigation has not been resolved.
The proposed Authority fiscal year 1996-1997 operating budget is $3,057,263.00, which represents a decrease of $440,720.59, or 12.60%, from the fiscal year 1995-1996 operating budget of $3,497,983.59 of the former EUWD. Some of the estimated revenue required to fund the fiscal year 1996-1997 budget will be acquired from the projected $2,155,454.08 fund balance remaining on September 30, 1996. The Authority staff estimates that an additional $100,000.00 may be obtained from interest earnings on certificate of deposit investments. The remaining $802,263.00 required to fund the proposed fiscal year 1996-1997 operating budget will have to be secured. Although the Authority will continue to receive the delinquent tax collections of the former EUWD, staff did not include a revenue estimate for delinquent collections as there is no guarantee regarding the amounts that may be collected in any fiscal year. Also, the staff has not included as revenue any legal fees which may be reimbursed to the Authority in the matter of Medina County Groundwater Conservation District v. Barshop.

The following is a summary of major programs included in the Authority's proposed budget:

- Develop and implement a system to issue permits for all wells;
- Continue efforts to register all domestic and livestock Edwards Aquifer wells;
- Develop and implement a fee collection system;
- Conduct the November 1996 director elections;
- Continue to coordinate and implement a critical period management plan;
- Continue to collect and analyze Edwards Aquifer basic data, and maintain the "real-time" data collection network;
- Organize and participate in the 1997 legislative session;
- Organize and implement a program for historically underutilized business participation in Authority procurement activity;
- Implement a program to obtain, install, and maintain water meters for irrigation wells, if loan funding is secured from the Texas Water Development Board;
- Design and implement a pilot "dry year option" program for 1997 with grant funding obtained from the Texas Water Development Board;
- Begin design and development of a comprehensive management plan;
- Establish a satellite office in Hondo, Texas, to be staffed with two existing positions;
- Continue administrative and support operations of the agency;
- Purchase minor essential capital equipment only; and
- Reduce legal fee expenditures.

To accomplish these programs and efforts with a reduced budget, the following changes and deletions were recommended:

- Eliminate the leak detection program, resulting in a deletion of three full-
time positions;

• Merge two divisions to create a single new Operations Division which would contain all technical operations of the agency;

• Suspend aquifer research programs and studies, such as the Knippa Gap study and "tracer studies," until additional funding for operations is available;

• Reduce public information and education programs to reflect "maintenance" funding levels only; and

• Combine Authority Recharge Zone protection with data collection activities, resulting in the elimination of one full-time position.

The issue of aquifer recharge studies and how to proceed with these studies was not addressed in the draft budget, pending further discussion by the Board of Directors.

The proposed fiscal year 1996-1997 budget included funding for 24 full-time and 3 part-time positions, as compared to the 34 full-time positions and 2 part-time positions budgeted for fiscal year 1995-1996. Nine Authority employment positions were proposed for elimination. In addition, the proposed budget did not provide a "cost of living" pay adjustment for staff or a merit increase budget for the 1996-1997 fiscal year. Accidental death and dismemberment insurance coverage for employees was recommended for deletion. Authority payment for one professional organization membership for staff was proposed for elimination.

The following listing is a summary of pending fiscal matters:

• An additional amount of $802,263.00 will have to be obtained to finance the proposed operating budget;

• A low interest loan from the Texas Water Development Board in the amount of $250,000.00 will need to be obtained for the meter purchase. A loan repayment schedule will be developed and loan repayment funds will be budgeted next fiscal year; and

• A grant application to the Texas Water Development Board in the amount of $200,000.00 for the Dry Year Option program has been submitted. The Authority would have to pay for all expenses related to this program prior to receiving reimbursement through a grant. This funding has been included in the proposed fiscal year 1996-1997 budget.

As indicated above, the funding shortfall was projected to be approximately $802,263.00. It was anticipated by the Legislature in both 1993 and 1995 that the new Authority would have substantially greater funds available to undertake its comprehensive Aquifer management programs. As a result of the legal challenges, however, the Authority has funds available for only a reduced budget for 1996-97. A tax levy is expressly prohibited by the Act, and fee income is not expected to be available until later in the next fiscal year.
Authority staff and the Board of Directors have identified the following listing of possible funding sources:

- A loan to be obtained from the Texas Water Development Board;
- A special emergency appropriations bill to be passed by the 75th Texas Legislature; or
- A loan from a commercial banking institution.

A special Board meeting to review the proposed budget was held on September 16, 1996. After review of the draft document, staff was directed to reconsider future plans for the Recharge Zone monitoring program, whereby returning one of the positions recommended for elimination, delete funding for the “dry-year option” program, increase funding for continuation of recharge enhancement studies in the Nueces and Guadalupe-San Antonio River Basins, and increase funding for other research projects such as the Knippa Gap study, the Comal Springs monitor well site, and an augmentation study.

On September 30, 1996, the Board of Directors approved a revised fiscal year 1996-1997 budget in the amount of $3,283,963.00. In response to the board's directives of September 16, 1996, the approved budget included the following:

- Continued participation in monitoring development over the Edwards Aquifer Recharge Zone;
- Continued funding for recharge enhancement studies in the Nueces and Guadalupe-San Antonio river basins;
- Continued funding for study of Comal Springs monitor wells augmentation; and
- Continued funding of the Knippa Gap study.

With this adopted budget of $3,283,963.00, the projected funding shortfall for the Authority for this fiscal year is $1,028,963.00. The Authority staff is continuing to research options with regard to acquiring funding to cover this shortfall.

**Recommendation**

The 75th Legislature should continue to monitor the Edwards Aquifer Authority's implementation of SB 1477 and related litigation.

* Information in this report on aquifer levels and the activities of the Edwards Aquifer Authority, since it took office on June 28, 1996, was provided by the Authority's staff.
OVERSIGHT

In January 1996, the Honorable James E. "Pete" Laney, Speaker of the Texas House of Representatives, charged the House Committee on Natural Resources ("the committee") with conducting active oversight of agencies under the committee's jurisdiction. The charge was undertaken by the committee as a whole.

In addition to frequent, informal briefings on matters of interest to the committee by the agencies under the committee's jurisdiction, the committee conducted a public hearing on August 15, 1996. Barry R. McBee, Chairman of the Texas Natural Resource Conservation Commission ("TNRCC"), updated the committee on the efforts to obtain delegation of the NPDES program. The TNRCC continues to negotiate delegation with the U.S. Environmental Protection Agency. Chairman McBee also apprised the committee on the Commission's contested case hearings process and implementation of SB 1546, 74th Texas Legislature. The Commission has made a great deal of progress internally with implementation and will continue to notify the committee of future progress.

Additionally, Dan Pearson, Executive Director of the TNRCC, Craig Pedersen, Executive Administrator of the Texas Water Development Board ("TWDB"), and others testified at the public hearing on the state inter-agency Drought Task Force. Organized in May 1996, the Drought Task Force was established to ensure effective coordination and the timely flow of information between various state agencies involved, and to provide a point of contact for local and regional water suppliers. The task force was also to serve as the point of contact with federal agencies with drought relief capabilities. Seventeen state agencies, the Governor's Office, and the American Red Cross have participated in the task force. The Department of Public Safety's Division of Emergency Management chairs the working group.

Finally, the TNRCC reported to the committee on September 30, 1996, that all legislative enactments of the 74th Legislature that required agency action have been implemented. 51

Although it has no specific recommendations at the time of publication of this report, the committee will continue to monitor the agencies' activities with regard to NPDES delegation, revisions to the State Water Plan, funding for water-related programs, and other issues of state and local concern that continue to pose challenges for the agencies. Many of these issues may warrant deliberation and action by the 75th Texas Legislature.

51 See Appendix C for a chart summarizing the TNRCC's implementation of this legislation.
PLATE 1
LOWER NECHES VALLEY AUTHORITY
FRESEE AND NICHOLS, INC.
1994

LEGEND
CITY
MAJOR RIVER
STREAM
RESERVOIR
COUNTY OR PARISH LINE
STATE LINE
RIVER BASIN BOUNDARIES
BIG THICKET NATIONAL PRESERVE
LNVA BOUNDARIES

SCALE IN MILES

A-1
### TABLE 2

**LNVA CUSTOMERS**

<table>
<thead>
<tr>
<th>Industrial</th>
<th>Municipal</th>
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<tbody>
<tr>
<td><strong>Air Liquide, Inc.</strong></td>
<td><strong>City of Groves</strong></td>
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<tr>
<td><strong>Centana Intrastate Pipeline</strong></td>
<td><strong>Jefferson County WCID #10</strong></td>
</tr>
<tr>
<td><strong>Clark Refining &amp; Marketing, Inc.</strong></td>
<td><strong>City of Nederland</strong></td>
</tr>
<tr>
<td><strong>Al Cook Nursery</strong></td>
<td><strong>City of Nome</strong></td>
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<tr>
<td><strong>E.I. Dupont de Nemours &amp; Co.</strong></td>
<td><strong>City of Port Arthur</strong></td>
</tr>
<tr>
<td><strong>Fina Oil and Chemical Co.</strong></td>
<td><strong>City of Port Neches</strong></td>
</tr>
<tr>
<td><strong>Goodyear Tire &amp; Rubber Co.</strong></td>
<td><strong>Trinity Bay Conservation District</strong></td>
</tr>
<tr>
<td><strong>Gulf Coast Machine &amp; Supply</strong></td>
<td><strong>West Jefferson County MWD</strong></td>
</tr>
<tr>
<td><strong>Walter E. Johnson Greenhouses</strong></td>
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<td><strong>Jones Boys, Inc.</strong></td>
<td><strong>Agricultural</strong></td>
</tr>
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<td><strong>Mobil Chemical Company</strong></td>
<td><strong>Approximately 100 Irrigated Farms</strong></td>
</tr>
<tr>
<td><strong>Mobil Chemical Co.-LDPE</strong></td>
<td><strong>Crawfish Farms 2,279.0 acres</strong></td>
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<tr>
<td><strong>Mobil Oil Corporation</strong></td>
<td><strong>Turf Grass Farms 410.0 acres</strong></td>
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<tr>
<td><strong>Olin Corporation</strong></td>
<td></td>
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<tr>
<td>**W.B. Osborne Oil &amp; Gas Operations</td>
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<tr>
<td><strong>PD Glycol</strong></td>
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<tr>
<td><strong>Quantum, U.S.I. Division</strong></td>
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<tr>
<td><strong>Sandoz Agro, Inc.</strong></td>
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</tr>
<tr>
<td><strong>Sun Marine Terminals, Inc.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Huntsman Corporation</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Huntsman Corporation (West)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Star Enterprises</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Texas Eastern Transmission Co.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>J.T. Thorpe Company</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Union Oil Company of CA</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Willow Creek Country Club</strong></td>
<td></td>
</tr>
</tbody>
</table>
## Pollution Control Bonds Issued by LNVA Since 1974

<table>
<thead>
<tr>
<th>Company</th>
<th>Purpose</th>
<th>Amount, $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neches River Treatment Corporation (Mobil subsidiary), 1974</td>
<td>Construction and operation of a regional industrial wastewater treatment facility serving mobil, Mobil Chem., P D Glycol, Swift and Olin.</td>
<td>38,400,000</td>
</tr>
<tr>
<td>Union Oil of California Series A-I, 1975</td>
<td>Construction of air and water pollution control facilities.</td>
<td>6,920,000</td>
</tr>
<tr>
<td>Series A-II, 1976</td>
<td></td>
<td>1,000,000</td>
</tr>
<tr>
<td>Series A-III, 1976</td>
<td></td>
<td>4,700,000</td>
</tr>
<tr>
<td>Gulf Oil Corporation, 1975</td>
<td>Wastewater collection and treatment facilities; air pollution control facilities.</td>
<td>25,000,000</td>
</tr>
<tr>
<td>Mobil Oil Refining Corp., 1979</td>
<td>Sulfur recovery plant.</td>
<td>13,000,000</td>
</tr>
<tr>
<td>Gulf Oil Corporation, 1982</td>
<td>Water and solid waste treatment facilities.</td>
<td>35,000,000</td>
</tr>
<tr>
<td>Chevron USA, Inc., 1987</td>
<td>Remarketing agreement to reissue Series 1982 bonds.</td>
<td>35,000,000</td>
</tr>
</tbody>
</table>
## Environmental Improvement and Industrial Development Bonds Issued by the Lower Neches Valley Authority Industrial Development Corporation

<table>
<thead>
<tr>
<th>Company</th>
<th>Purpose</th>
<th>Amount, $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gulf Oil Corp., 1980</td>
<td>Marine Terminal</td>
<td>18,500,000</td>
</tr>
<tr>
<td>Rainbow, Ltd., 1981</td>
<td>Floating Dry Dock</td>
<td>1,950,000</td>
</tr>
<tr>
<td>Bolivar Development Co., 1982</td>
<td>Tank truck fabricating and servicing facilities.</td>
<td>550,000</td>
</tr>
<tr>
<td>Neches River Treatment Corporation (Mobil Oil)</td>
<td>Expansion of regional wastewater treatment facilities.</td>
<td>13,200,000</td>
</tr>
<tr>
<td>Mobil Oil Refining Corp., 1982</td>
<td>Marine Terminal</td>
<td>48,000,000</td>
</tr>
<tr>
<td>Hyco Industrial, Inc.</td>
<td>Facility for assembly and disassembly of forestry, construction &amp; utility equip.</td>
<td>1,200,000</td>
</tr>
<tr>
<td>N L Industries, 1982</td>
<td>Storage and distribution facilities for off-shore industries.</td>
<td>1,500,000</td>
</tr>
<tr>
<td>Quality Mat, 1982</td>
<td>Facilities for assembly of mats for construction and oil field firms.</td>
<td>1,500,000</td>
</tr>
<tr>
<td>Ehrhart and Penland, 1985</td>
<td>Acquisition and expansion of construction equipment storage facilities.</td>
<td>2,000,000</td>
</tr>
<tr>
<td>Graybar Electric Co., 1986</td>
<td>Elect. products distribution center.</td>
<td>780,000</td>
</tr>
<tr>
<td>Mobil Oil Refining Corp., 1995</td>
<td>Collection, storage, conveyance and secondary treatment of wastewater.</td>
<td>86,000,000</td>
</tr>
</tbody>
</table>
## Comparison of General Statutory Provisions
for Major Texas River Authorities

<table>
<thead>
<tr>
<th>Summary of General Statutory Provisions</th>
<th>BRA</th>
<th>GBRA</th>
<th>LCRA</th>
<th>SBA</th>
<th>TRA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Water Services:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>flood control</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>power to store, conserve, control and utilize water</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>conserve, preserve and develop underground waters within the district and use, distribute and sell underground waters within the district</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>interbasin transfers allowed only if water being transferred out of the basin is not needed to meet municipal needs during the next 50 years</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>develop drainage systems or irrigation systems</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>develop commercial and industrial enterprises using river waters</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>develop hydro-electric power</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>use of the bed and banks of the river and its tributary streams</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>construct, acquire, equip, acquire water storage rights and operate dams and reservoirs</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>provide water supply lines, water purification and pumping facilities, and execute water supply contracts with cities and other water users</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>construct, own, operate, maintain or otherwise provide sewage gathering, treatment and waste disposal services and facilities</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>develop the navigation of inland waters</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>provide port facilities</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>water quality management/enforcement</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>control use of surface of lakes</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>environmental laboratory services</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>Community Services:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>forestry and reforestation</td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>soil conservation</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>develop and manage parks, recreational facilities or natural science laboratories</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>promote the preservation of fish and wildlife</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>
provide grants, loans, donations of property and in-kind services to cities, counties, volunteer fire departments, regional development councils, and other nonprofit entities engaged in economic development and community assistance activities

<table>
<thead>
<tr>
<th>Electric Services:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>develop and generate electric energy other than hydroelectricity</td>
<td>X</td>
</tr>
<tr>
<td>own, operate and maintain electric power and energy generating facilities in joint ownership with others</td>
<td>X</td>
</tr>
<tr>
<td>electric sales to the State of Texas in Travis County</td>
<td>X</td>
</tr>
<tr>
<td>create taxable affiliates that can build and acquire power plants to provide long-term service to wholesale customers in Texas</td>
<td>X</td>
</tr>
<tr>
<td>finance facilities for the generation of electric power and energy, the acquisition of fuel and the facilities for transporting fuel</td>
<td>X X X X</td>
</tr>
<tr>
<td>engage in hedging transactions related to oil, gas and electric energy to protect against losses due to price fluctuations</td>
<td>X X X X</td>
</tr>
<tr>
<td>participate in wind, solar and other renewable energy projects located on public lands administered by the General Land Office</td>
<td>X X X X</td>
</tr>
<tr>
<td>prohibited from condemning property of a rural electric cooperative or other corporations engaged in the generation or sale of electricity to the public, except property needed for reservoirs</td>
<td>X</td>
</tr>
<tr>
<td>prohibited from acquiring or operating a steam-generation plant for the production and sale of electricity</td>
<td>X</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>General Authority:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>prohibited from levying or collecting taxes or assessments</td>
<td>X X</td>
</tr>
<tr>
<td>levy and collect ad valorem taxes</td>
<td>X</td>
</tr>
<tr>
<td>establish and collect rates and other charges for services</td>
<td>X X X X X X</td>
</tr>
<tr>
<td>borrow money</td>
<td>X X X X X</td>
</tr>
<tr>
<td>issue bonds</td>
<td>X X X X</td>
</tr>
<tr>
<td>enter into contracts with the federal government and others</td>
<td>X X X X X</td>
</tr>
</tbody>
</table>


<p>| | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>rulemaking and regulatory authority</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>acquire property</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>condemnation of property</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>lease lands for mineral development</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>joint ownership of property with the City of Austin</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>exercise all powers within Lampasas County that may be exercised in 10 statutory counties, except water and wastewater services without consent of BRA</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>sponsor, debt finance and participate in energy and water conservation programs</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>create affiliate corporations to act on behalf of LCRA in any area except solid waste management and exempt wholesale generator activities</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>employ peace officers</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>
# TNRCC'S IMPLEMENTATION OF LEGISLATION PASSED BY 74TH LEGISLATURE

<table>
<thead>
<tr>
<th>Bill (Sponsor)</th>
<th>Bill Summary</th>
<th>Action Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>HB 433</strong> <em>(Goodman)</em></td>
<td>Relates to parent-child relationships, including the suspension of licenses for failure to pay child support. Includes occupational licenses and permits issued by the TNRCC. Upon notification from the Attorney General, the TNRCC must record the suspension and forward a letter to the licensee requesting surrender of the license. A fee can be charged to the individual by the TNRCC to cover administrative costs.</td>
<td><strong>Operational Changes</strong>&lt;br&gt;OPERATIONAL CHANGES: The required changes have been completed. These changes included data-management modifications and the development of procedures for suspension notification letters.&lt;br&gt;The rule developed by the Attorney General's office does not require additional rulemaking by the TNRCC.</td>
</tr>
<tr>
<td><strong>HB 475</strong> <em>(Willis)</em></td>
<td>Allows tax-exempt non-profit corporation to irrigate its cemetery without having to obtain a water rights permit.</td>
<td><strong>Rule Change and Guidance Document</strong>&lt;br&gt;RULEMAKING: A rule was adopted on May 29, 1996, with an effective date of June 28, 1996.&lt;br&gt;GUIDANCE DOCUMENT: Changes to the Regulatory Guidance Document have been made.</td>
</tr>
<tr>
<td><strong>HB 1001</strong> <em>(Cuellar, H.)</em></td>
<td>Establishes guidelines for county commissioners courts to regulate actions by subdivisions regarding the delivery of water and sewer services to economically distressed areas along the Texas/Mexico border. Affected counties can now own, operate and maintain a water and sewer utility, subject to all current regulations. Limits rates that a political subdivision, with a CCN, can charge for services provided to an economically distressed area that is outside its boundaries.</td>
<td><strong>Rule Change</strong>&lt;br&gt;RULEMAKING: The proposed rule was published on August 11, 1995, with a public hearing held on September 5, 1995. The rule was adopted on December 6, 1995, with an effective date of January 10, 1996.</td>
</tr>
</tbody>
</table>
# TNRCC’S IMPLEMENTATION OF LEGISLATION PASSED BY 74TH LEGISLATURE

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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>HB 1718 (Turner, S.)</td>
<td>Amends the Open Records Act. Contains provisions regarding the inspection and copying of information in electronic or magnetic media, addressing appropriate charges for information, and intervention by and compensation of requestors of information in lawsuits filed under the Public Records Act. Also provides for confidential disclosure of information to legislators for legislative purposes and adds exemptions for family and commercially available information.</td>
<td><strong>Operational Changes and Guidance Document</strong>&lt;br&gt;OPERATIONAL: The following changes have been completed: (1) a change in the length of time records must be preserved, (2) a new information request tracking system, (3) new procedures to handle requests for electronic information (including E-mail), and to protect confidential E-mail and data, and (4) procedures to ensure compliance with General Services Commission rules for setting fees for information requests.&lt;br&gt;GUIDANCE: Required changes to the Operating Policies and Procedures Manual were completed in March 1996.</td>
</tr>
<tr>
<td>HB 1826 (Jackson)</td>
<td>Removes statutory requirement that Commission must review and approve all plans and specs for domestic wastewater disposal systems, including treatment plants and collection systems.</td>
<td><strong>Rule and Operational Changes and Guidance Document</strong>&lt;br&gt;RULEMAKING AND OPERATIONAL CHANGES: Both rulemaking and operational changes have been completed. The rule was adopted on November 29, 1995, with a January 11, 1996 effective date.&lt;br&gt;GUIDANCE DOCUMENT: Completed in late November 1995.</td>
</tr>
</tbody>
</table>
## TNRCC'S IMPLEMENTATION OF LEGISLATION PASSED BY 74TH LEGISLATURE

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<thead>
<tr>
<th>Bill (Sponsor)</th>
<th>Bill Summary</th>
<th>Action Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 1989 (Rodriguez)</td>
<td>Authorizes aquifer storage and recovery pilot projects to be located in certain aquifers in the state and provides application content requirements and permit approval criteria. Also requires the TNRCC and TWDB to submit a report to the State's elected leadership on the success of the projects and the feasibility of ASR projects elsewhere in the state.</td>
<td><strong>Rule Change and Guidance Document</strong>&lt;br&gt;RULEMAKING: Rule changes to implement HB 1989 require two separate rulemaking packages:&lt;br&gt;(1) Pilot Aquifer Storage and Recovery (ASR) Projects -- the rule was adopted on May 29, 1996, with a June 28, 1996 effective date.&lt;br&gt;(2) Evaluation of Pilot Projects and Issuance of Permanent Water Rights -- the proposed rule will be published in October 1996 and a public hearing is scheduled for October 30, 1996. Adoption of final rule is expected in late December 1996 or January 1997.&lt;br&gt;GUIDANCE: Guidance document changes were completed in June 1995.</td>
</tr>
<tr>
<td>HB 2015 (Talton)</td>
<td>Makes several statutory changes relating to commissioner qualifications and conflict of interest, third party intervention in enforcement cases, and fee increases in order for TNRCC to obtain delegation of federal NPDES wastewater permitting program.</td>
<td><strong>Rule and Operational Changes</strong>&lt;br&gt;RULEMAKING: The proposed rule to increase the wastewater facility inspection fee upon NPDES delegation was published on November 24, 1995. The rule was adopted on May 8, 1996, with an effective date of June 9, 1996.&lt;br&gt;OPERATIONAL: On August 27, 1996, the agency submitted the NPDES delegation package to EPA for their approval.</td>
</tr>
</tbody>
</table>
## TNRCC’s Implementation of Legislation Passed by 74th Legislature

<table>
<thead>
<tr>
<th>Bill (Sponsor)</th>
<th>Bill Summary</th>
<th>Action Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB 2296 (Jackson)</td>
<td>Establishes a program to encourage landowners to voluntarily clean up contaminated property. Existing &quot;risk reduction rules&quot; are used to set cleanup levels for sites. The TNRCC maintains oversight of the cleanup, through written work plans and reports; the program participant is required to pay the Commission's oversight costs for the oversight, at a rate to be reviewed annually.</td>
<td><strong>Rule and Operational Changes and Guidance Document</strong>&lt;br&gt;<strong>RULEMAKING:</strong> A proposed rule was published on Nov. 7, 1995. The rule was adopted on March 27, 1996, with an effective date of April 19, 1996.&lt;br&gt;<strong>OPERATIONAL CHANGE:</strong> Establish accounting system, designate program staff, and adopt administrative procedures. The procedures will include the agreement between the TNRCC and the program participant. Changes were completed in September 1, 1995.&lt;br&gt;<strong>GUIDANCE DOCUMENT:</strong> Finalized in April 1996.</td>
</tr>
</tbody>
</table>
# TNRCC'S IMPLEMENTATION OF LEGISLATION PASSED BY 74TH LEGISLATURE

<table>
<thead>
<tr>
<th>Bill (Sponsor)</th>
<th>Bill Summary</th>
<th>Action Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>HB 2315 (Saunders)</strong></td>
<td>In lieu of applying for a permit or permit amendment, an applicant may apply for a registration for a municipal solid waste facility that has recycling, waste separation, energy and material recovery, gas recovery, or has a waste transfer facility if the facility will be established in conjunction with an existing permitted municipal solid waste facility.</td>
<td><strong>Rule Changes and Guidance Document</strong>&lt;br&gt;RULEMAKING: Two rule packages have been developed. The first provides a rule for clean recovery facilities, gas recovery and transfer stations. That proposed rule was published on August 29, 1995. The final rule was adopted on November 16, 1995, with an effective date of December 11, 1995. The second rule package addresses the extraction of materials from landfills. That proposed rule was published on September 3, 1996 and is expected to be adopted by December 1996. GUIDANCE DOCUMENT: Will be prepared for the implementation of the second rule package and will be completed by December 1996.</td>
</tr>
<tr>
<td><strong>HB 2387 (Johnson)</strong></td>
<td>Amends several provisions in Chapter 13, Texas Water Code, relating to water utility rate appeals to the TNRCC, allowable rate adjustments and service disconnections, and an executive director request for a hearing on the sale and transfer of a utility whose owner is incapable of properly operating the utility.</td>
<td><strong>Rule Changes</strong>&lt;br&gt;RULEMAKING: The final rule was adopted on December 6, 1995, with an effective date of January 10, 1996.</td>
</tr>
</tbody>
</table>
# TNRCC'S IMPLEMENTATION OF LEGISLATION PASSED BY 74TH LEGISLATURE

<table>
<thead>
<tr>
<th>Bill (Sponsor)</th>
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</tr>
</thead>
</table>
| **HB 2473** *(Chisum)* | States that environmental or health and safety audits are privileged and inadmissible in civil actions, and criminal and administrative proceedings; grants privilege to persons conducting such audits or to whom audit results are disclosed; allows the submission of such audits or a portion of such audits in confidentiality to governmental entities; provides for various penalties, waivers, and exceptions. | **Operational Changes and Guidance Document**  
OPERATIONAL: The development of a central records policy for managing the submittal of environmental audit notifications has been completed.  
GUIDANCE DOCUMENT: Distributed in late August 1995. |
| **HB 2510** *(Wilson)* | Authorizes the assessment of administrative penalties for unlicensed irrigators installers and provides a continuing education requirement for irrigators. | **Rule and Operational Changes**  
RULEMAKING: The final rule was adopted on May 29, 1996, with an effective date of June 28, 1996.  
OPERATIONAL: Staff has developed internal enforcement procedures, as well as criteria for training and continuing education programs. |
# TNRCC’S IMPLEMENTATION OF LEGISLATION PASSED BY 74TH LEGISLATURE

<table>
<thead>
<tr>
<th>Bill (Sponsor)</th>
<th>Bill Summary</th>
<th>Action Taken</th>
</tr>
</thead>
</table>
| **HB 2587** *(Alexander)* | Discontinues the reimbursement funding source September 2001 and phases out dependence on the PST Fund. Mandates use of risk-based corrective action. Site Assessment Plans and Corrective Action Plans must have established goals and timelines and will be reviewed and approved within 30 days. An Engineer Seal is required for certain remediations. Professional engineers are exempted from some Project Manager qualification requirements. Corrective Action Specialists and Program Managers are subject to registration and examination fees. TNRCC is now authorized to shut down out-of-compliance tanks and penalize owners who do not maintain financial assurance. Owners and operators must pay increased deductibles. TNRCC and owners are provided immunity at sites where closure letters are issued. Program funding is increased. | Rule and Operational Changes and Guidance Document  
RULEMAKING: The rule package was adopted on October 11, 1995, with an effective of November 8, 1995.  
OPERATIONAL AND GUIDANCE CHANGES: Operational and guidance document changes were completed in September 1995. |
| **HB 2944** *(Dukes)* | If a disposal facility allows solid waste resulting from a public entity’s effort to protect the public health and safety of a community to be disposed of at no cost to a political subdivision, that waste is exempt from the municipal solid waste tipping fee. Examples of such wastes include any solid waste resulting from natural or man-made disasters, or from destruction of drug trafficking structures (such as crack houses). | Rule and Operational Change  
RULEMAKING: Minor revisions regarding reporting of waste and collection of fees were published on October 20, 1995. The final rule was adopted on January 10, 1996, with an effective date of February 1, 1996.  
OPERATIONAL CHANGES: Notification of the waste exempt from disposal fee collection was sent on September 1, 1995. |
## TNRCC’S IMPLEMENTATION OF LEGISLATION PASSED BY 74TH LEGISLATURE

<table>
<thead>
<tr>
<th>Bill (Sponsor)</th>
<th>Bill Summary</th>
<th>Action Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>HB 3072 (Gallego)</strong></td>
<td>Designates half of the MSW fees collected to the Commission for MSW permitting and enforcement programs and related support activities and half to the Council of Governments for local and regional solid waste projects consistent with regional plans and to update those plans. The Commission must establish a formula for allocating the revenue to the regions.</td>
<td>Rule and Operational Changes&lt;br&gt;<strong>RULEMAKING:</strong> The proposed rule for the grant component of the legislation was published on October 10, 1995. The final rule was adopted on January 30, 1996, with an effective date of February 26, 1996.&lt;br&gt;<strong>OPERATIONAL:</strong> The allocation formula has been developed in conjunction with COG representatives. Changes to the application and contract forms, as well as procedures have been completed.</td>
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<td><strong>HB 3226 (Berlanga)</strong></td>
<td>Increases Coastal Coordination Council member-ship to eleven, removes Council authority to reverse and remand agency actions, but provides that if agency action found inconsistent with State Coastal Management Plan, the CCC may request the agency to reconsider the action and, if necessary, the Council may request the Attorney General for an opinion and to seek injunctive relief in state district court.</td>
<td>Rule and Operational Changes&lt;br&gt;<strong>RULEMAKING:</strong> The proposed rule adopting thresholds for agency activities which will be subject to consistency review under Coastal Coordination Council’s (CCC) rules was published on November 29, 1995. The final rule was adopted on April 10, 1996, with a May 15, 1996 effective date.&lt;br&gt;<strong>OPERATIONAL CHANGES:</strong> Operational changes necessary to implement this legislation and are underway and scheduled to be completed by October 1996.</td>
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## TNRCC’S IMPLEMENTATION OF LEGISLATION PASSED BY 74TH LEGISLATURE

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<td><strong>SB 12</strong> (Montford)</td>
<td>Transfers the Office of Hearings Examiners, which is responsible for conducting contested case hearings, from the TNRCC to the State Office of Administrative Hearings.</td>
<td><strong>Rule and Operational Changes</strong>&lt;br&gt;RULEMAKING: The changes to the procedural rules, as well as the consolidation and simplification of existing rules, were adopted on August 30, 1995, with an effective date of September 29, 1995.&lt;br&gt;OPERATIONAL CHANGE: Contested cases were transferred to SOAH organizationally on September 1, 1995. The physical move to SOAH occurred on January 1, 1996.</td>
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<td><strong>SB 14</strong> (Bivins)</td>
<td>Protects private real property from certain actions by the state. The action is considered to have taken private property if the state’s action affects an owner's private real property, that restricts or limits a right that would exist otherwise, and the action is a producing cause of a reduction in the value of the affected property of 25 percent or more. If a taking is declared, the state can either compensate the property owner or invalidate the action. A taking could include such actions as a rule, permit, resolution, policy or enforcement order. Beginning January 1, 1996, state governmental entities will be required to do Takings Impact Assessments.</td>
<td><strong>Operational Changes and Guidance Document</strong>&lt;br&gt;OPERATIONAL: Procedures for the development of Takings Impact Assessments (TIAs) have been implemented.&lt;br&gt;GUIDANCE DOCUMENT: The document has been distributed to staff, as well as interested parties.</td>
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| SB 102 (Bivins) | This bill eliminates the responsibility of state agencies to pay FICA up to 5.85% of the first $16,500 in wages for newly hired state employees and judges after August 31, 1995. | Operational and Guidance Changes  
OPERATIONAL AND GUIDANCE: Required changes to Human Resources forms and employee handbook for employees hired after August 31, 1995. All required changes were completed by November 1995. |
| SB 178 (Whitmire) | (1) Centralized emissions testing program canceled (May 2, 1995). (2) DPS administers previous decentralized emissions testing program on an interim basis (either June 1, 1995 or when DPS is ready). (3) Governor negotiates with EPA to develop new program. | Rule and Operational Changes and Guidance Document  
RULEMAKING: Emergency rules were adopted and became effective on June 14, 1995. Permanent I/M rules were adopted on November 1, 1995 and became effective on November 27, 1995.  
OPERATIONAL CHANGE: Transfer of the program to DPS was completed on July 1, 1995. On March 6, 1996, the Commission awarded a $1.4 million contract to DPS and TNRCC for startup costs for the I/M program. |
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<td>SB 200 (Armbrister)</td>
<td>Amends the alternative fuel vehicle purchase requirements of the Texas Alternative Fuels Program to allow mass transit, privately owned, and local government fleets to use any fuel or power source that when used in a clean-fuel vehicle allows the vehicle to meet the federal low emission vehicle (LEV) standards, and changes the private and local government fleet purchase requirements. The TNRCC is also required to implement rules for both a program compliance credit program and a mobile source reduction credit (MERC) program.</td>
<td><strong>Rule and Operational Changes and Guidance Document</strong>&lt;br&gt;<strong>RULEMAKING:</strong> Changes to the rule will have to coordinate with State Implementation Plan (SIP) revisions in order to align state and federal requirements. The rule package went to Commission Work Session on January 26, 1996. As directed by the Commission, the staff is proceeding with a phased approach to the rules:&lt;br&gt;<strong>PHASE 1</strong> -- addresses affected fleet requirements in serious and above nonattainment areas, and transit fleets only in the Dallas/Fort Worth area. This rule package was adopted on July 24, 1996, with an effective date of August 16, 1996.&lt;br&gt;<strong>PHASE 2</strong> -- will address private and local fleets in the Dallas/Fort Worth, and Beaumont/Port Arthur nonattainment area. Work on Phase 2 rules will begin in the spring of 1997.&lt;br&gt;<strong>OPERATIONAL AND GUIDANCE CHANGES:</strong> Both operational and guidance document changes are needed relating to (1) waiver processing and policy changes, (2) a mechanism for administering program compliance credits (PCCs), and (3) revisions of Mobile Emission Reduction Credit (MERC) procedures and guidance. The target completion date for these changes in fall 1996.</td>
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| SB 290 (Henderson) | Delays the Employer Trip Reduction Program in the Houston-Galveston area for 180 days. Allows the Governor the option of extending the delay in 45-day increments indefinitely. Exempts employees from participation in the program if they drive less than 30 miles or one hour one way to work. Establishes "good faith effort" as adequate for compliance. | **Rule and Operational Changes**  
RULEMAKING: The State Implementation Plan (SIP) for ETR will be changed to outline a regional commute alternative program that will be implemented in lieu of ETR. In conjunction with the SIP revision, the current ETR rule will be rescinded. The rule was rescinded on July 24, 1996, with an August 16, 1996 effective date.  
OPERATIONAL CHANGES: The ETR program is being replaced with a voluntary regional commute alternative program. This program will be administered by the local Metropolitan Planning Organization. The TNRCC will no longer have mandated responsibility for the program. |
| SB 424 (Madia) | Allows small businesses to pay civil and administrative penalties assessed by the TNRCC in installments over a period not to exceed 12 months. Small businesses must be classified according to their net annual receipts and number of employees. | **Rule and Operational Changes**  
RULEMAKING: The rule establishes a payment schedule, classifies small businesses by their receipts and number of employees, and establishes procedures for use by businesses to pay penalties over time. The rule was adopted on December 20, 1995, with an effective date of January 10, 1996.  
OPERATIONAL CHANGES: Finalizing a computerized invoice and tracking system for standardized payments over a 12 month period. |
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| SB 626 (Armbrister) | Consolidates administrative requirements for water districts presently in Chapter 50 through Chapter 49. Gives TNRCC approval authority over certain district actions, including issuance of notes with more than three year term, and revises definitions of "impact fee" and "standby fee." TNRCC will no longer approve issuance of bonds by Water Development Board or Farmers Home Administration. | Rule and Guidance Document Changes  
RULEMAKING: Changes will reflect the statutory changes in definitions and TNRCC approval authority. The final rule was adopted on August 28, 1996. An October 1996 effective date is expected.  
GUIDANCE DOCUMENT: Revisions to all documents, including the Handbook for Water Board Directors, have been completed. |
| SB 651 (Ratliff) | This exempts from water right permitting the use of state water for sediment control purposes relating to surface coal mining activities. | Rule, Operational and Guidance Document Changes  
RULEMAKING: The rule was adopted on May 29, 1996, with an effective date of June 28, 1996.  
OPERATIONAL AND GUIDANCE: Operational and guidance document changes were completed in June 1995. |
| SB 741 (Sims) | As authorized by the Commission, the Executive Director may approve uncontested permits, registrations, and other regulatory matters. | Rule and Operational Changes  
RULEMAKING: The final rule was adopted on August 30, 1995, with an effective date of September 29, 1995.  
OPERATIONAL CHANGES: Procedures to identify uncontested applications were in place on August 30, 1995. |
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| SB 776 (Brown) | Enables the continued operation of the Waste Tire Recycling Fund (WTRF) program for the remainder of fiscal year 1995, by providing $9.34 million in needed appropriations to reimburse processors for the shredding of tires during the months of March through August, 1995. Expands the use of the WTRF to: Pay waste tire energy recovery facility operators and waste tire recyclers for tires or tire shreds processed; provide grants to energy recovery facility operators to cover equipment capital costs and equipment installation costs to enable a facility to burn tires and shreds; and provide grants for recycling facility construction costs. Also establishes limits on expenditures from the WTRF and requires biennial audits of tire processors, recyclers, and energy recovery facility operators. | **Rule and Operational Changes**  
RULEMAKING: Revised and/or repealed existing rules to address payments to waste tire energy recovery facilities (cement kilns, utility boilers, etc.) for tires used as fuel, grants for the retrofitting of these facilities to accept tires as fuel, and grants for construction of tire recycling facilities. Rulemaking was done in two packages:  
(1) Waste Tire Recycling Grants --The final rule was adopted March 6, 1996, with an effective date of 3/13/96.  
(2) Waste Tire Recycling Program Changes --The final rule was adopted on May 29, 1996, with an effective date of July 1, 1996.  
OPERATIONAL CHANGES: Operational procedures to implement this legislation involved 1) market development, 2) training and education, 3) working with the Comptroller on delinquent fees, and 4) program audits. Grants totaling $8 million were awarded in FY ‘96 and requests for grant proposals for FY ‘97 are expected to be published in October 1996. |
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<td>SB 1017</td>
<td>Allows landowner's of 1,000 or more acres within the ETJ of certain cities, including Austin, to become exempt from the city's water quality protection ordinance by entering into an agreement among themselves to designate a &quot;water quality protection zone&quot; and file such agreement with the county clerk. Landowners in the designated zone must then submit to TNRCC for review and approval a water quality protection plan meeting the bill's requirements. It also provides the TNRCC authority to allow the same exemption to landowners for 500 to 999 acres.</td>
<td>Rule Changes and Guidance Document RULEMAKING: The guidance document is the basis for developing the rule package. A proposed rule was published on May 3, 1996 and a hearing was held on June 4, 1996. The final rule is expected to be adopted in October 1996. GUIDANCE DOCUMENT: The guidance document was finalized in late December 1995 and is sufficient to implement the statutory requirements of the legislation.</td>
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<td>SB 1125</td>
<td>Changes requirements related to air permit renewals and hearings for renewals, amendments, or modifications. Ability to impose more stringent requirements is restricted, and guidance on when to hold a hearing is provided.</td>
<td>Rule, Operational and Guidance Document Changes RULEMAKING: There were two rulemaking components to SB 1125. One set of rules dealt with permit renewals, and were adopted on November 16, 1995, with an effective date of December 11, 1995. The other rulemaking package dealt with restrictions on holding permit hearings and was implemented as part of the procedural rule change mandated by SB 12, which was adopted on August 30, 1995, with an effective date of September 29, 1995. OPERATIONAL AND GUIDANCE CHANGES: Guidance documents regarding New Source Review of permit renewals and regarding Office of Hearings Examiners' exclusions for having hearings were completed in November 1995.</td>
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<td>SB 1126 (Nixon)</td>
<td>Changes the definition of &quot;modification of existing facility&quot; for the purpose of air permitting to allow facilities to have more flexibility in physical or operational changes.</td>
<td><strong>Rule, Operational and Guidance Document Changes</strong> &lt;br&gt; RULEMAKING: Existing rules were amended to reflect the new definition of modification and the new process for tracking changes at a facility. The final rule was adopted on February 14, 1996, with an effective date of March 7, 1996. &lt;br&gt; OPERATIONAL AND GUIDANCE CHANGES: Revised guidance documents were completed in March 1996.</td>
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<td>SB 1443 (Brown)</td>
<td>Amends the Government Code concerning license validity. If a license comes up for renewal during a time in which the applicant is appealing a revocation, suspension, etc., the license will remain valid until it expires.</td>
<td><strong>Operational Change</strong> &lt;br&gt; OPERATIONAL: Minor changes needed to reflect the affect on effective dates, and the terms of TNRCC permits which are in the judicial review process, were completed by October 1995.</td>
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<td>SB 1546 (Bivins)</td>
<td>Changes definition of who may request standing in a contested case proceeding before the TNRCC. Requires notice to the School Land Board.</td>
<td><strong>Rule Change</strong> &lt;br&gt; RULEMAKING: The proposed rules were published on July 11 and 18, 1995. The final rule was adopted on August 30, 1995 with an effective date of September 29, 1995.</td>
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| SB 1660 (Ratliff)   | Adds subsections in the administrative penalties sections of the Texas Clean Water Act, Texas Solid Waste Disposal Act, and Texas Clean Air Act. The bill states that TNRCC is not required to make findings of fact and conclusions of law other than those which give the agency jurisdiction. The bill also provides for agreed orders to contain a reservation that: the order is not an admission of a violation; the occurrence of the violation is in dispute; the order is not intended for use in private litigation; and, the order is not intended to become a part of a party's compliance history. | Guidance Document and Operational Changes  
GUIDANCE DOCUMENT: The document was finalized and distributed in January 1996. A revised guidance document will be finalized in the fall of 1996.  |
| SB 1683 (Nixon)     | Broadens the Texas program for the recycling of used oil to allow the state to seek authorization to implement the federal used oil program. It requires a grant advisory committee and grant rule. It further bans used oil filters from going into permitted landfills. Beginning September 1997, the used oil fee will decrease from 2 cents to 1 cents. Exempts entities that serve as collection centers from the used oil fee. | Rule and Operational Changes  
RULEMAKING: The agency has developed two rule packages. The rule package addressing the grants program was adopted on March 6, 1996, with an effective date of April 10, 1996. The rule package addressing management of the used oil program was adopted on March 6, 1996, with an effective date of April 10, 1996.  
OPERATIONAL: The Commissioners have appointed the Advisory Committee members. The staff submitted the delegation package to EPA on March 15, 1996. Requests for proposals for FY '97 grant money is expected in October. |