



Texas Legislative and Regulatory Update

2015 TMRA Annual Meeting
Hyatt Lost Pines
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Overview of 84th Regular Session

- Tax Relief – Franchise / Sales / Property Taxes
- Open Carry / Campus Carry
- Border Security
- Transportation – Proposition No. 7
- Governmental Transparency
- New faces;
 - **Senate** – 9 Freshmen / 5 Sophomores
 - **House** – 25 Freshmen / 19 Sophomores
- New leadership – Governor, Lt. Governor, & Committee Chairpersons

SB 709 (Fraser) – Revision of Contested Case Hearings Process

- First major overhaul of the TCEQ hearings process since 1999.
- Does not apply to water rights cases, but does apply to water quality, air, and waste cases.
- Designed to limit who is affected and to have additional certainty about the case's outcome.

Senate Bill 709 (Fraser) - Revision of Contested Case Hearings Process

- The application, ED's draft permit, the preliminary decision, and other supporting information in the administrative record establishes a prima facie demonstration that:
 - The draft permit meets all legal and technical requirements
 - The permit would be protective of human health and safety, environment, and physical property
- Requires the proposal for decision be provided to the commission no later than the earlier:
 - The 180th day after the date of the preliminary hearing
 - The date specified by the TCEQ
- SB 709 became effective on September 1, 2015
- TCEQ Rulemaking process on-going / Anticipated adoption date= 12/9/15

SB 757 / HB 1906 (Perry/Springer) – Repeal of Production Tax on Sulphur

- SB 757 repealed the production taxes assessed by the State of Texas on sulphur and crude petroleum.
- Example of the elimination of inefficient and needless tax.
- **Status** = Passed by Texas Legislature, signed by Governor Abbott, and effective September 1, 2015.

House Bill 6 (Otto) – Re-Creation of Environ. Rad. and Perpetual Care Account

- SB 347 enacted by Texas Legislature in 2013 created the Environmental Radiation and Perpetual Care Account for TCEQ.
- Uranium mining industry, along with other industries involved with radioactive materials, pay surcharges to TCEQ to fund ERPCA.
- ERPCA can be used to clean up sites where radioactive materials activities occurred, including uranium mining sites where mining operations no longer occur.

House Bill 2647 (Ashby) – Power Generation Permitting Exception

- Amended Chapter 36 of the Water Code to provide a permitting exemption for a well that produces groundwater used to support the operation of a power generation facility or a mine that provides fuel to a power generation facility, including production for boiler makeup water, fire suppression, dewatering, potable water, and depressurization.
- The owner/operator of such a well could petition a GCD for a delay in the effective date of any GCD action that would reduce or curtail the production amount or rate of withdrawal from the well.
- **Status** = Vetoed by Governor Abbott on June 20th. In his veto statement, Governor Abbott stated that GCDs have the ability to implement specific management strategies and that groundwater management should be based on sound science and public input at the local level.

House Bill 3413 (Frank) – General Permit to Use Streams to Convey Developed Water

- Authorized TCEQ to issue a general permit to authorize a person to use a natural stream channel to convey developed water for use in Texas.
- "Developed water" means groundwater, surface water, desalinated water, or other water that would not naturally be found in the natural stream channel used to convey the water.
- **Status** = Received public hearing but was left pending by House Natural Resources Committee.

House Bill 4112 (Burns) – Ownership of Groundwater

- Codifies in Chapter 36 of the Water Code that property owners would be entitled to whatever groundwater rights they are entitled to under Texas common / case law.
- Filed version of bill stated groundwater ownership and rights included the right to produce or save a fair share of groundwater.

House Bill 30 (Larson) – Brackish Groundwater Production Zones

- Addresses the development and production of brackish groundwater resources in Texas.
- Imposes requirements on Regional Water Planning Groups (RWPGs) and the Texas Water Development Board (TWDB) to investigate and report on opportunities for the development of brackish groundwater (including desalination projects).
- Requires TWDB to identify and designate local or regional brackish groundwater production zones using specific criteria in its biennial report to the Texas Legislature.
- Requires TWDB to include in its biennial report to Texas Legislature that is due by December 1, 2016 an identification and designation of brackish groundwater production zones for: (1) the portion of the Carrizo-Wilcox Aquifer located between the Colorado and Rio Grande Rivers; (2) the Gulf Coast Aquifer and sediments bordering it; (3) the Blaine Aquifer; and (4) the Rustler Aquifer.

House Bill 655 (Larson) – Aquifer Storage and Recovery (ASR)

- Establishes a comprehensive framework for the permitting of Aquifer Storage and Recovery projects by the TCEQ.
- Basic Framework:
 - Injection Well Permit from TCEQ (Water Code Ch. 27) is required.
 - Authorization from a Groundwater Conservation District under Water Code Ch. 36 IS NOT required unless the amount of water recovered exceeds the amount that TCEQ authorizes to be recovered.

House Bill 655 (Larson) – Aquifer Storage and Recovery (ASR)

- Monthly reports on water injected and water recovered must be sent to TCEQ (and to any GCD in which wells are located).
- Annual water quality sampling of the aquifer and reports on sampling must be sent to TCEQ (and to any GCD in which wells are located).
- New provisions were added to Water Code Ch. 27 establishing criteria TCEQ must consider in granting authorization for an ASR injection well...including water quality criteria, feasibility of recovery of injected water, impact on native water and other wells. (Water Code §27.153).

Senate Bill 854 (Zaffirini) – Permit Renewals with GCDS

- Added new Section 36.1145 to the TWC which establishes that a GCD **must** renew a permit *without a hearing* provided that the permit holder is not requesting a change to the permit.
- A GCD would not be required to renew a permit if the applicant is delinquent in paying any fees, if the applicant is subject to an unsettled or pending enforcement action initiated by the GCD, or if the applicant has not complied with any final order issued in relation to a violation of GCD rules.

House Bill 930 (Miller) – Water Well Driller and Pump Installer Apprentices Program

- Amended the Texas Occupations Code to reestablish the water well driller and pump installer apprentice programs.
- The Texas Department of Licensing and Regulation (TDLR) will propose and adopt rules by December 1, 2015 to govern the apprentice programs for water well drillers and pump installers.
- Allows well logs to be submitted electronically to TDLR, TCEQ and owner of the well or the person for whom the well is drilled.

House Bill 1232 (Lucio) – TWDB Aquifer Mapping

- Requires TWDB to conduct a study on the “hydrology and geology of the confined and unconfined aquifers” in Texas.
- TWDB must produce a map showing the area and water quality of aquifers.
- TWDB must report results to Texas Legislature by December 31, 2016.

Sunset Advisory Commission – Railroad Commission of Texas

- Railroad Commission of Texas is part of the 2016-2017 review cycle for the Sunset Advisory Commission (SAC).
- SAC issues recommendations to improve efficiency and performance of state agencies.
- SAC's recommendations typically turned into legislation to implement recommendations and continue state agency for an additional 8 to 12 years.
- Third time for RCT to go through Sunset Process in last 10 years.

EPA Rulemaking – Revisions to 40 CFR Part 192

- 40 CFR Part 192 - Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings and Uranium In Situ Leaching Processing Facilities.
- Proposed rule would impose federal restoration standards on the Texas in-situ uranium mining industry and would require that post- restoration monitoring be conducted for up to 30 years or more after restoration stability was completed at a mining site.
- Texas basically invented in-situ uranium mining and EPA did not look at any technical data from Texas operations or TCEQ.
- EPA estimates that the Final Rule will be published in April 2016.

Questions?

- Any questions?
- Thank you.

Lloyd Gosselink

ATTORNEYS AT LAW



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