



INTERIM REPORT

TO THE 88TH TEXAS LEGISLATURE

HOUSE COMMITTEE ON ENVIRONMENTAL REGULATION
DECEMBER 2022

**HOUSE COMMITTEE ON ENVIRONMENTAL REGULATION
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2022**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
88TH TEXAS LEGISLATURE**

**BROOKS LANDGRAF
CHAIRMAN**

**COMMITTEE CLERK
BEN LANCASTER**



Committee On
Environmental Regulation

December 5, 2022

Brooks Landgraf
Chairman

P.O. Box 2910
Austin, Texas 78768-2910

The Honorable Dade Phelan
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Environmental Regulation of the Eighty-seventh Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eighty-eighth Legislature.

Respectfully submitted,

Brooks Landgraf
Chair

Alex Dominguez

Kyle Kacal

Geanie Morrison

Jay Dean

John Kuempel

Ron Reynolds

Vikki Goodwin

Penny Morales Shaw

Alex Dominguez
Vice-Chairman

Members: Jay Dean, Vikki Goodwin, Kyle Kacal, John Kuempel, Penny Morales Shaw, Geanie Morrison, Ron Reynolds

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INTRODUCTION

At the beginning of the 87th Legislative Session, the Honorable Dade Phelan, Speaker of the House of Representatives, appointed nine members of the 87th Legislature to serve on the House Committee on Environmental Regulation. The following members were named to the committee: Chairman Brooks Landgraf, Vice-Chairman Alex Dominguez, Representative Jay Dean, Representative Vikki Goodwin, Representative Kyle Kacal, Representative John Kuempel, Representative Penny Morales-Shaw, Representative Geanie Morrison, and Representative Ron Reynolds.

Pursuant to House Rule 3, Section 12, the House Committee on Environmental Regulation has 9 members, with jurisdiction over all matters pertaining to the following:

- (1) air, land, and water pollution, including the environmental regulation of industrial development;
- (2) the regulation of waste disposal;
- (3) environmental matters that are regulated by the Department of State Health Services or the Texas Commission on Environmental Quality;
- (4) oversight of the Texas Commission on Environmental Quality as it relates to environmental regulation; and
- (5) the following state agency: the Texas Low-Level Radioactive Waste Disposal Compact Commission.

After the 87th legislative session, Speaker Phelan charged all committees to study and make recommendations to numerous issues and priorities facing the State of Texas. The interim charges for the House Committee on Environmental Regulation are listed on the following page.

INTERIM STUDY CHARGES

CHARGE I: MONITOR

Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 87th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure the intended legislative outcome of all legislation, including the following:

- HB 1680, relating to the regulation of on-site sewage disposal systems on certain leased land that is owned by the federal government;
- HB 4472, relating to the Texas Emissions Reduction Plan (TERP); and
- SB 900, which updates performance and safety standards for chemical storage vessels.

CHARGE II: TERP

Evaluate the allocation of TERP funds for effective air pollution reduction programs. Review which existing programs are over or undersubscribed and identify unrealized opportunities that would further program goals.

CHARGE III: WELL PLUGGING & POLLUTION CLEAN-UP

Review recent passage of the Bipartisan Infrastructure Law (Infrastructure Investment and Jobs Act, Public Law No. 117-58), specifically funds that may bolster efforts to clean up polluted sites and plug wells and how federal funds can be used to complement state efforts on well plugging and pollution clean-up.

CHARGE IV: EPA REGULATIONS

Monitor newly adopted and proposed federal regulations that could directly impact economic development, manufacturing, and industrial activities that fall within the jurisdiction of the committee, including regulations adopted or proposed by the Environmental Protection Agency.

CHARGE I: MONITOR

Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 87th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure the intended legislative outcome of all legislation, including the following: HB 1680, HB 4472, and SB 900.

BACKGROUND

Texas Commission on Environmental Quality

The Texas Natural Resource Conservation Commission was created by the Texas Legislature in 1991 after consolidating the Texas Water Commission and Texas Air Control Board into one environmental agency. Sunset legislation passed by the Texas Legislature in 2001 continued the agency and changed its name to the Texas Commission on Environmental Quality. Tasked with the protection of the state's natural resources, the agency focuses on promoting clean air and water, the safe management of waste in the state, and the implementation of laws passed by the state legislature.

Texas Low-Level Radioactive Waste Disposal Compact Commission

In 1980, the United States Congress passed the Low-Level Radioactive Waste Policy Act, shifting the responsibility of waste disposal back to the states. This shift allowed the creation of the Texas Low-Level Radioactive Waste Compact Commission between Texas and Vermont. The commission is responsible for the preparation, adoption, and implementation of contingency plans regarding the management and disposal of low-level radioactive waste in the event of a compact facility closing.

HB 1680, relating to the regulation of on-site sewage disposal systems on certain leased land that is owned by the federal government.

The 87th Texas Legislature passed HB 1680 to amend existing statute in the Health and Safety Code governing the regulation of on-site sewage disposal systems in federally owned land under leasing. Under previous law, separate leases under one tract of federal land were not recognized as individual properties for the purposes of sewage disposal system requirements. Recognition as a whole unit under the law therefore subjected separate properties to the 5000-gallon-per-day limit thereby preventing their ability to replace outdated sewage-disposal systems.

The bill was enacted on September 1, 2021 requiring TCEQ to consider each tract of land owned by the federal government that is leased out to be considered as separate tracts of land under Chapter 366 of the Health and Safety Code.

HB 4472, relating to the Texas Emissions Reduction Plan (TERP).

The 86th Texas Legislature passed House Bill 3745 to create the TERP trust fund account, ensuring that TERP funds no longer had to be appropriated but instead were guaranteed to go towards TERP programs. Prior to the start of the 87th Texas Legislative Session, it was determined that one of the fees that compose the fund -- the certificate of title fee -- could not be directly deposited to the newly created TERP trust fund account without statutory change. House Bill 4472 includes that statutory change to ensure that all TERP fees and surcharges flow into the TERP trust fund account.

HB 4472 also amended statute to allow for the new technology implementation grant program within TERP to provide grants to cover costs associated with leasing, operation, and maintenance for projects that reduce flaring emissions and other site emissions and expanded grant eligibility for new technology projects that reduce emissions from upstream and midstream oil and gas activities through the installation of systems that reduce site emissions.

Importantly, HB 4472 amended statute to require TCEQ to remit not less than 35 percent of the amount deposited to the credit of the TERP fund to the state highway fund for use by the Texas Department of Transportation (TxDOT) for congestion mitigation and air quality improvement projects in nonattainment areas and affected counties. The provisions of the bill require TxDOT, not later than October 1 of each year, to report to TCEQ information for all congestion mitigation and air quality improvement projects in nonattainment areas and affected counties that are planned to be funded, or received initial funding during the preceding 10 years, from money received from TERP.

SB 900, which updates performance and safety standards for chemical storage vessels.

In response to the 2019 ITC Terminal fire in Houston, SB 900 was passed by the 87th Texas Legislature requiring the TCEQ to develop, establish and enforce the Performance Standards for Safety at Storage Vessels Program. The ITC fire, in addition to several other similar incidents, underscored the insufficiency of the state's existing regulatory framework to mitigate potential safety hazards and protect ground and surface water in the event of a catastrophic incident or a natural disaster.

The bill amended the Water Code to add requirements for the design, construction, operation, and maintenance of storage vessels for the purpose of protecting groundwater and surface water resources. Further, it required TCEQ to establish a storage vessels program incorporating critical safety elements from federal statutes, regulations, and national consensus standards by September 1, 2023.

SUMMARY OF COMMITTEE ACTION

The Committee heard testimony related to this charge during its April 26 and October 19 public hearings in 2022. The individuals listed below provided testimony to the Committee on this charge.

Public Hearings:

April 26, 2022 - 10:00 AM

HB 1680, relating to on-site sewage disposal systems

1. Mills-Jurach, Kristi (TCEQ)

HB 4472, relating to the Texas Emissions Reduction Plan (TERP)

1. Beall, Jon (Self; Citizens Climate Lobby volunteer)
2. Burks, Brody (Hydron)
3. Crossley, Jay (Farm & City)
4. Lewis, Michael (Self; Environment Texas)
5. Shelley, Adrian (Public Citizen)
6. Smith, Tom Smitty (Self; TxETRA)

-
7. Wilson, Mike (TCEQ)
 8. Young, Jerry (Mustang Cat)

SB 900, relating to chemical storage vessels

1. Gammage, Sam (Texas Chemical Council)
2. Pritzlaff, Craig (TCEQ)
3. Reed, Cyrus (Sierra Club Lone Star Chapter)
4. Shaw, Bryan (Texas Oil & Gas Association)
5. Shelley, Adrian (Public Citizen)

October 19, 2022 - 9:00 AM

HB 1680, relating to on-site sewage disposal system.

1. Pritzlaff, Craig (TCEQ)

HB 4472, relating to the Texas Emissions Reduction Plan (TERP)

2. Lykins, Eric (Self; TxDOT)
3. Noonan, Chris (Texas Chemical Council)
4. Reed, Cyrus (Sierra Club, Lone Star Chapter)
5. Stewart, Stephen (Self; TxDOT)

SB 900, relating to chemical storage vessels

1. Coffee, Jennifer (Texas Pipeline Association)
2. Gibbs, Paul (Xtreme Tank Technologies)
3. Noonan, Chris (Texas Chemical Council)
4. Shaw, Bryan (Texas Oil & Gas Association)

FINDINGS

HB 1680, relating to the regulation of on-site sewage disposal systems on certain leased land that is owned by the federal government.

Rulemaking is not required for implementation, but TCEQ plans to amend Title 30 TAC Chapter 285 to clarify requirements for federal land with individually leased properties. Since this chapter was already opened for rulemaking in December 2020, in response to a petition from an industry group, TCEQ staff plan to integrate the statutory change into the draft rule with the other changes. The proposed rule is scheduled to be presented at the Commissioner's Agenda Meeting on December 15th, 2022 for consideration.

TCEQ staff have worked with Authorized Agents in areas where there are federally owned lands to ensure that any permit application for a leased property is reviewed with consideration of the statute change.

HB 4472, relating to the Texas Emissions Reduction Plan (TERP).

Rule and non-rule changes were required to incorporate changes to the Texas Emissions Reduction Plan (TERP) Diesel Emissions Reduction Incentive (DERI) program, and the TERP New Technology Implementation Grant (NTIG) Program.

- On January 12, 2022, TCEQ conducted a proposal agenda to amend Texas Administrative

Code, (TAC) Chapter 114, to incorporate changes made by HB 4472 to the Diesel Emissions Reduction Incentive (DERI) Program.

- On February 18, 2022, TCEQ invited public comment and held a public hearing on the proposed DERI rule changes; *no comments were received*.
- TCEQ adopted non-rule changes made by HB 4472 and HB 2361 to the New Technology Implementation Grant (NTIG) Program Guidelines on April 13, 2022.
- TCEQ adopted DERI rule changes to TAC 114 on June 1, 2022.
- TCEQ adopted non-rule changes to DERI Program Guidelines on October 19, 2022.
- TCEQ opened the DERI Rebate Grants Program October 25, 2022.
- TCEQ plans to open the NTIG Program in January 2023

SB 900, which updates performance and safety standards for chemical storage vessels.

New rules are required in Title 30 Texas Administrative Code Chapter 338 to establish the Aboveground Storage Vessel Safety (ASVS) Program. TCEQ must establish the ASVS Program by September 1, 2023.

At this time TCEQ has formed an agency-wide rulemaking team, hosted three stakeholder meetings, and has worked through trade associations to survey their members to gain a better understanding of the number and size distribution of regulated storage vessels. TCEQ is currently drafting the proposed rules based on the stakeholder feedback and guidance in statute.

The following outlines TCEQ's anticipated rulemaking timeline for the ASVS Program:

- July 2022: Stakeholder meetings were held virtually on July 12th and 14th.
- June - November 2022: Draft the proposed rules based on the stakeholder meetings and guidance in statute.
- Early February 2023: Present the proposed rulemaking package at the commissioners' agenda meeting.
- Early March 2023: Begin accepting public comments on the proposal.
- August 2023: Present the rule package at the Commissioners' Agenda Meeting for final adoption.
- Sept. 1, 2027: Registration deadline. TCEQ will provide details about the registration requirements after the rule adoption.
- Sept. 1, 2037: Self-certification deadline for existing vessels. New vessels constructed after Sept. 1, 2027 must certify compliance within 30 days of the start date.

CHARGE II: TERP

Evaluate the allocation of TERP funds for effective air pollution reduction programs. Review which existing programs are over or undersubscribed and identify unrealized opportunities that would further program goals.

BACKGROUND

The purpose of the Texas Emissions Reduction Plan (TERP) program is to provide grants to reduce nitrogen oxides (NO_x) emissions from mobile sources, support programs to encourage the use of alternative fuels for transportation in Texas, and help to keep the air in Texas clean.¹

The Federal Clean Air Act (FCAA) requires the EPA to set national ambient air quality standards (NAAQS) for six criteria pollutants (carbon monoxide, ozone, sulfur dioxide, nitrogen dioxide, particulate matter, and lead). Areas not meeting the NAAQS are designated as nonattainment areas. The state implementation plan (SIP) is the state's comprehensive plan for meeting the NAAQS and other requirements of the FCAA.

TERP was created by the Texas Legislature in 2001 to provide grants to reduce NO_x emissions, a precursor to the formation of ground level ozone, from mobile sources. Since 2001, the TERP has been included in certain SIP revisions as either a control strategy or as "Weight of Evidence," which includes additional activities that are expected to further support the adequacy of the control plan included in the SIP revision.

TERP currently includes ten grant programs that offer financial incentives to help improve air quality in Texas by replacing or upgrading older vehicles and equipment, constructing alternative fueling infrastructure, and implementing new technologies to reduce emissions. Four of the TERP grant programs are available statewide, five are statutorily limited to designated areas, and one is only available to port authorities.

Individuals, businesses, governmental entities, and other organizations operating anywhere in the state currently have access to grant funds under the following statewide TERP programs:

1. Texas Clean School Bus Program (TCFP) - provides grants to replace or retrofit older diesel school buses with newer school buses.
2. Governmental Alternative Fuel Fleet Grant Program (GAFF) - provides grants for state agencies and political subdivisions to upgrade, replace, or expand their vehicle fleets to alternative fuel, and to purchase, lease, or install refueling infrastructure for grant-funded vehicles.
3. New Technology Implementation Grant Program (NTIG) - provides grants to offset the cost of the implementation of existing technologies that reduce emissions from facilities and other stationary sources in Texas.
4. Light-Duty Motor Vehicle Purchase or Lease Incentive Program (LDPLIP) - provides grants for the purchase or lease of an eligible new light-duty motor vehicle powered by compressed natural gas, liquefied petroleum gas, or hydrogen fuel cell or other electric drive.

Individuals, businesses, governmental entities, and other organizations operating in counties designated as nonattainment can access grant funds under the following TERP programs:

1. Diesel Emissions Reduction Incentive Grants (DERI) - provides grants to upgrade or replace older heavy-duty vehicles, non-road equipment, locomotives, marine vessels, and stationary equipment through the Emissions Reduction Incentive Grants Program; as well as grants to replace or repower heavy-duty on-road diesel vehicles and select non-road equipment through the Rebate Grants Program.
2. Seaport and Rail Yard Areas Emissions Reduction Program (SPRY) - provides grants for the replacement or repower of older drayage trucks, terminal tractors, and cargo-handling equipment operating at seaports and rail yards in areas of Texas designated as nonattainment.
3. Texas Clean Fleet Program (TCFP) - provides grants for large fleets of on-road light-duty or heavy-duty vehicles to replace diesel vehicles with new alternative fuel or hybrid vehicles.
4. Texas Natural Gas Vehicle Grants Program (TNGVGP) - provides grants for entities to upgrade or replace existing on-road heavy-duty and medium-duty vehicles powered by diesel or gasoline with new or used natural gas vehicles and engines.
5. Alternative Fueling Facilities Program (AFFP) - provides grants for the construction or expansion of natural gas and other alternative fueling stations.

The TERP Port Authority Studies and Pilot Program provides grants to port authorities in Texas' nonattainment and affected areas for incentives to encourage cargo movement that reduces NO_x emissions and particulate matter.

House Bill 3745, 86th Texas Legislature, 2019, established the TERP Fund as a trust fund, outside of the state treasury, to be held by the comptroller and administered by TCEQ as trustee. The Fund consists of money deposited from the TERP fees and from grant money recaptured under the TERP programs.²

TERP fees:

- Tax Code Section 151.0515(b): A 1.5% surcharge on the sale price or lease/rental amount of off-road diesel equipment sold, rented, or leased (a surcharge is also applied to the storage, use, or consumption of this equipment in Texas).
- Tax Code Section 152.0215(a): A 2.5% surcharge of the total consideration on sale or lease of model year pre-1997 on-road diesel vehicles over 14,000 pounds and a 1% surcharge for vehicle model year 1997 and newer.
- Texas Transportation Code Section 502.358: A 10% surcharge of the total fees due for the registration of truck-tractors and commercial motor vehicles.
- Texas Transportation Code Section 501.138(a): A portion of the vehicle certificate of title fee, \$20 of the \$33 fee for applicants in the nonattainment counties and affected counties, and \$15 of the \$28 fee for applicants in all other counties.
- Texas Transportation Code Section 548.5055: A \$10 fee on commercial motor vehicles required to have an annual safety inspection.

House Bill 4472, 87th Texas Legislature, 2021, amended the THSC to require that the TCEQ remit

not less than 35% of the TERP Trust Fund to the state highway fund for the Texas Department of Transportation (TxDOT) to administer congestion mitigation projects.

SUMMARY OF COMMITTEE ACTION

The Committee heard testimony related to this charge during its April 26, May 25 and October 19 public hearings in 2022. The individuals listed below provided testimony to the Committee on this charge.

April 26, 2022 - 10:00 AM

1. Gammage, Sam (Texas Chemical Council)
2. Linenschmidt, Larry (Self)
3. Reed, Cyrus (Sierra Club Lone Star Chapter)
4. Wilson, Mike (TCEQ)

May 25, 2022 - 10:00 AM

1. Eubanks, Jessica (Self; Citizens Climate Lobby)
2. Linenschmidt, Larry (Self)
3. Noonan, Chris (Texas Chemical Council)
4. Reed, Cyrus (Lone Star Chapter Sierra Club)
5. Shelley, Adrian (Public Citizen)
6. Wilson, Mike (TCEQ)

October 19, 2022 - 9:00 AM

1. Brown, Barry (Red Wolf Water and Power)
2. Gillette, Susan (Citizens' Climate Lobby)
3. Hickman, Nate (Texas Commission on Environmental Quality)
4. Smith, Tom "Smitty" (Texas Electric Transportation Resources Alliance)
5. Stewart, Greg (GSXI Group Inc)

FINDINGS

In fiscal years 2020-2021, 14.7% of TERP funds were allocated to grant programs available statewide, while 56.8% of TERP funds were allocated to grant programs available only in nonattainment and affected areas. TERP grants awarded in 2020 and 2021 totaled \$111.6 million, representing 72.1% of available TERP funding for the biennium.³

In fiscal years 2020-2021, the following TERP programs were oversubscribed (from greatest to least):

1. New Technology Implementation Grant Program (NTIG)
 - FY20-21 funds awarded: \$4.6 million (3% of total TERP allocation)
 - 702.3% oversubscribed
2. Texas Clean Fleet Program (TCFP)
 - FY20-21 funds awarded: \$7.7 million (5% of total TERP allocation)
 - 225.2% oversubscribed
3. Texas Clean School Bus Program (TCFP)

-
- FY20-21 funds awarded: \$8.3 million (5.4% of total TERP allocation)
 - 197.3% oversubscribed
4. Governmental Alternative Fuel Fleet Grant Program (GAFF)
 - FY20-21 funds awarded: \$6 million (3.9% of total TERP allocation)
 - 127.2% oversubscribed (capped at \$3 million/FY)
 5. Diesel Emissions Reduction Incentive Grants (DERI)
 - FY20-21 funds awarded: \$54.1 million (35% of total TERP allocation)
 - 127.1% oversubscribed
 6. Alternative Fueling Facilities Program (AFFP)
 - FY20-21 funds awarded: \$11.7 million (7.5% of total TERP allocation)
 - 31.5% oversubscribed
 7. Seaport and Rail Yard Areas Emissions Reduction Program (SPRY)
 - FY20-21 funds awarded: \$9.2 million (6% of total TERP allocation)
 - 23.8% oversubscribed

Over the same time period, the following TERP programs were undersubscribed:

1. Texas Natural Gas Vehicle Grants Program (TNGVGP)
 - FY20-21 funds awarded: \$4.5 million (2.9% of total TERP allocation)
 - 59.2% undersubscribed
2. Light-Duty Motor Vehicle Purchase or Lease Incentive Program (LDPLIP)
 - FY20-21 funds awarded: \$4.4 million (2.8% of total TERP allocation)
 - 40.8% undersubscribed

Of note, the Port Authority Studies and Pilot Program is capped at \$500,000 per year and was not over or undersubscribed in fiscal year 2020-2021.

The TERP grant programs are opened throughout the fiscal biennium with application acceptance periods that cross fiscal years 2022-2023. Funds available for TERP grants in FY2022-2023 are projected to be \$281.6 million.⁴ As of October 2022, TCEQ has opened seven of the eleven scheduled grant programs this biennium. Three of the seven opened programs have closed with more funds requested than initially allocated. TCEQ is completing the review and selection of applications for the programs that have closed and will post updated award totals at www.terpgrants.org once all grant awards have been finalized.

TCEQ anticipates that all of the TERP grant programs scheduled this biennium will be oversubscribed with two possible exceptions:

1. The Light-Duty Motor Vehicle Purchase or Lease Incentive Program (LDPLIP) is oversubscribed for the 2,000 statutorily allocated rebates for electric, plugin-hybrid electric, and hydrogen fuel cell vehicles. However, the 1,000 statutorily allocated rebates for natural gas vehicles have been undersubscribed in previous biennia and have low-subscription as of October 27, 2022.
2. The Texas Natural Gas Vehicle Grant Program (TNGVGP) has been undersubscribed in previous biennia. The TNGVGP was opened October 14, 2022 and will close March 31, 2023. TCEQ has implemented House Bill 963 to allow for the replacement of older

vehicles with used natural gas vehicles and has increased the grant amounts available for qualifying projects. TCEQ will post updated award totals at www.terpgrants.org once all grant awards have been finalized.

The balance of the TERP Trust Fund is projected to reach \$504,500,000 by the end of the FY 2022-2023 biennium. If this holds true, TCEQ will be allocated a projected \$327,925,000 for the TERP and TxDOT will be allocated a projected \$176,575,000 for congestion mitigation projects for the biennium.⁵

During the public committee hearing on October 19th, TxDOT provided testimony regarding the report required by HB 4472 for fiscal year 2022. According to the report, \$81,260,747.07 was transferred from the TERP Fund to the credit of the state highway fund for use by TxDOT on projects to mitigate congestion and improve air quality in non-attainment areas. The projects selected for funding in FY 2022 are projected to reduce NO_x emissions by 0.0088 tons per day along US 281 in Bexar County.⁶

Various recommendations for consideration were offered in testimony provided to the committee to improve TERP. These included the necessity of frequent reporting on the use of TERP funds by TxDOT. Others included allowing charging infrastructure to be included in grants for drayage and freight hauling equipment, increasing the purchase rebate to \$4,000 for electric vans and pick-ups, lifting the 2,000 unit cap on EV rebates to a percentage of funds, and changing the electric vehicle rebate program to an incentive-based program.

CHARGE III: WELL PLUGGING & POLLUTION CLEAN-UP

Review recent passage of the Bipartisan Infrastructure Law (Infrastructure Investment and Jobs Act, Public Law No. 117-58), specifically funds that may bolster efforts to clean up polluted sites and plug wells and how federal funds can be used to complement state efforts on well plugging and pollution clean-up.

BACKGROUND

Senate Bill 1, the General Appropriations Act of the 87th Texas Legislature, appropriated \$87.5 million (\$87,475,953.00) to the Texas Commission on Environmental Quality (TCEQ) for pollution clean-up and \$112 million (\$112,103,400.00) to the Texas Railroad Commission (RRC) for oil and gas well plugging and remediation for the 2022-2023 biennium.

On November 15, 2021, the Infrastructure Investment and Jobs Act, Public Law No. 117-58 (IIJA), was signed into law by President Joe Biden. Among other provisions, this bill provides new federal funding for infrastructure projects, including for orphaned well plugging and cleaning up Brownfield and Superfund sites.

Brownfield and superfund programs in the United States are operated by the Environmental Protection Agency to revitalize sites deemed hazardous from pollutants, chemicals, or other similar issues. These sites typically require immense work to remove the hazardous waste and rehabilitate the areas to a usable state. The Brownfield program helps to rehabilitate these sites to a usable state to avoid the unnecessary paving of undeveloped land. The Superfund program works to mitigate the environmental and health concerns of the worst hazardous waster sites in the nation.

The RRC has maintained a statewide program since 1984 to clean up abandoned oil and gas wells. TCEQ provides management assistance to the U.S. Environmental Protection Agency (EPA) as they address federal Superfund sites. Both RRC and TCEQ receive some grant funding for Brownfield sites.

SUMMARY OF COMMITTEE ACTION

The Committee heard testimony related to this charge during its May 25 and October 19 public hearings in 2022. The individuals listed below provided testimony to the Committee on this charge.

Public Hearings:

May 25, 2022 - 10:00 AM

1. Albrecht, Darren (Legislative Budget Board)
2. Benavides, Tannya (Commission Shift)
3. Embrey, Ty (Middle Pecos Groundwater Conservation District)
4. Forrest, Colleen (Railroad Commission of Texas)
5. Linenschmidt, Larry (Self)
6. Modglin, Jason (Texas Alliance of Energy Producers)
7. Reed, Cyrus (Lone Star Chapter Sierra Club)
8. Seaton, Beth (TCEQ)

-
9. Warford, Luke (Self)
 10. Wight, Schuyler (Self)

October 19, 2022 - 9:00 AM

1. Forrest, Colleen (Railroad Commission of Texas)
2. Larson, Scott (Railroad Commission of Texas)
3. Lewis, Michael (Environment Texas)
4. Modglin, Jason (Texas Alliance of Energy Producers)
5. Palacios, Virginia (Self; Commission Shift)
6. Tarpley, Timothy (Energy Workforce and Technology Council)
7. Wight, Schuyler (Self)

FINDINGS

The IIJA designated \$4.7 billion in grant funding to states for well plugging only. In January, the RRC was informed it would be awarded \$343.7 million. States have five to six years to expend or obligate the grant funds, which will be made available in phases. Phase 1 totals \$107.6 million. An initial grant of \$25.0 million will be made available in fiscal year 2023. The remaining \$82.6 million is anticipated to be made available in fiscal year 2024.

This brings total appropriations for oil and gas well plugging and site remediation up from \$112 million to \$137 million for the 2022-23 biennium. The RRC expects to plug 800 wells with this additional funding, bringing the total number of orphaned wells scheduled for plugging to 2,800 for the biennium.

Texas has led the issue of well plugging for almost four decades. Started in 1984 with the formalization of the RRC's well plugging program. The commission regularly exceeds performance targets. Operators are required by law to plug up to 10% of their inactive wells each year to maintain their licensed to operate. They also must engage in mechanical integrity tests to make sure those inactive wells are not leaking to subsurface. We are dealing with substantially older wells for plugging, those costs are high, but this is an opportunity.

Of the \$3.5 billion provided to the EPA by the IIJA for cleaning up Superfund sites, \$1 billion has already been allocated to 49 sites across the nation, none of which are located in Texas. EPA Region 6 is in the process of identifying sites in Texas that could be eligible for the funds remaining for Superfund clean up. Importantly, Texas will not be required to pay the 10% cost share when IIJA funding is used as is required for all other funds used for Superfund cleanup.

The IIJA also directed \$1.5 billion to the EPA for existing Brownfield cleanup programs. TCEQ currently receives \$500,000 per year for Brownfield cleanups and will identify additional needs that could be met with this new funding.

CHARGE IV: EPA REGULATIONS

Monitor newly adopted and proposed federal regulations that could directly impact economic development, manufacturing, and industrial activities that fall within the jurisdiction of the committee, including regulations adopted or proposed by the Environmental Protection Agency.

BACKGROUND

The U.S. Environmental Protection Agency (EPA) has proposed several rule changes that could impact economic development, manufacturing, and industrial activities in Texas. While the EPA sets standards to meet Clean Air Act requirements, the Texas Commission on Environmental Quality (TCEQ) Office of Air develops and implements plans to ensure those requirements will be met.

Recently, the EPA has pointed out that both Dallas-Fort Worth and Houston-Galveston-Brazoria areas failed to meet standards for both the 2008 and 2015 standards and bumped up both areas from serious to severe, which will require further obligations. Similarly, San Antonio failed to meet its requirements under the 2015 standards, and EPA is proposing bumping up San Antonio from marginal to moderate for ozone pollution. Furthermore, in Spring 2022, the EPA published a proposal to redesignate portions of the Permian Basin in Texas as out of compliance with National Ambient Air Quality Standards (NAAQS) for ozone. This could have a significant impact on Texas oil and natural gas production.

Additionally, the EPA proposed a new "Good Neighbor" rule with the stated purpose to clean up air pollution that travels from one state to another as is required by the Clean Air Act's "Good Neighbor" provision. The provision instructs the EPA and states to address interstate transport of air pollution that affects downwind states' ability to attain and maintain National Ambient Air Quality Standards (NAAQS). If implemented could require additional measures for certain large industrial plants whose emissions contribute to ozone in other states.

SUMMARY OF COMMITTEE ACTION

The Committee heard testimony related to this charge during its May 25 and October 19 public hearings in 2022. The individuals listed below provided testimony to the Committee on this charge.

Public Hearings:

May 25, 2022 - 10:00 AM

1. Coday, Matt (Self; Oil & Gas Workers Association)
2. Gammage, Sam (Texas Chemical Council)
3. Reed, Cyrus (Lone Star Chapter Sierra Club)

October 19, 2022 - 9:00 AM

1. Burnett, Teresa (Monahans Chamber)
2. Coday, Matt (Oil & Gas Worker's Association)
3. Coffee, Jennifer (Texas Pipeline Association)
4. Hegar, Glenn (Texas Comptroller of Public Accounts)

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5. Huff, Donna (Texas Commission on Environmental Quality)
 6. Lozano, Michael (Permian Basin Petroleum Association)
 7. McKenna, Jay (Nacero, Inc.)
 8. Pearson, Shea (Texas Chemical Council)
 9. Reed, Cyrus (Sierra Club, Lone Star Chapter)
 10. Shaw, Bryan (Texas Oil & Gas Association)
 11. Tippin, Russell (Medical Center Hospital)
 12. Vickery, Mark (Texas Association of Manufacturers)
 13. Williams, Hope (Self)
 14. Stewart, Greg (GSXI Group Inc)

FINDINGS

The EPA previously found the Permian Basin in compliance with NAAQS for ozone less than 5 years ago. The EPA's proposed action to redesignate portions of the Permian Basin in Texas as nonattainment is not supported by data collected from air monitors in Texas, but rather monitors located in New Mexico. The proposed action is also discretionary, not required by any existing rule or law. By deeming this proposal “nonsignificant”, the EPA can expedite its final decision and avoid a review of how the proposal would impact jobs and the Texas economy.

Letters written by Governor Abbott, Comptroller Hegar, and members of the Texas House of Representatives outline concerns with the EPA's process and call into question the motivation for the proposed action to redesignate the Texas Permian Basin.

If the EPA's actions result in as little as a 10% reduction in oil and gas production in Texas, that could lead to a loss of more than 40,000 jobs statewide, 60% of which would be in West Texas. This would cause Texas gross domestic product to be reduced by \$13 billion and would have a significant negative impact on the state budget -- 5% of which is funded by oil and natural gas production taxes.

Furthermore, if the EPA decides to lower the ozone standard from 70 ppb to 65 ppb, it would impact every sector of the Texas economy and could lead to a 13% increase in the price of retail gasoline and shrink output for the Texas agriculture industry by 8.7%. While the 65 ppb would be a national ozone standard, it would disproportionately impact the Texas economy because of the significant compliance cost borne directly by Texas companies.

Appendix A

**Texas Emissions Reduction Plan (TERP)
TERP Demand Subscription Rates
Fiscal Year (FY) 2020-2021**

FY 2020-2021								
PROGRAM	Section 386.252 Initial Allocation (%)	Section 386.252 Initial Allocation (\$)	Section 386.252 Max Allocation	Funds Requested	% Over/under/bud	% Under/over/bud	Funds Awarded	Awarded as % of Total TERP Allocation
TERP Administration	N/A	\$16,000,000	not more than \$8,000,000/fy	N/A	N/A	N/A	\$16,000,000	10.0%
Regional Air Monitoring Program	N/A	\$6,000,000	not more than \$3,000,000/fy	N/A	N/A	N/A	\$6,000,000	3.8%
Research	N/A	\$1,300,000	not more than \$750,000/fy	N/A	N/A	N/A	\$1,300,000	1.0%
Energy Systems Laboratory Contract	N/A	\$432,000	not more than \$432,000/fy	N/A	N/A	N/A	\$432,000	0.3%
Health Effects Study	N/A	\$400,000	not more than \$200,000/fy	N/A	N/A	N/A	\$400,000	0.3%
SUBTOTAL NON-INCENTIVE GRANT ALLOCATIONS		\$24,132,000	N/A	N/A	N/A	N/A	\$24,132,000	13.7%
Alternative Fueling Facilities Program (AFFF)	N/A	\$11,000,000	not more than \$6,000,000/fy	\$12,762,699	31.5%		\$11,668,330	7.3%
Direct Emissions Reduction Incentives (DERI) Emissions Reduction Incentive Grants Program (ERIG) and Rebate Grants Program	DERIVE of TCRQ appropriation	\$40,321,000	N/A	\$137,081,614	127.5%		\$24,118,293	35.0%
Governmental Alternative Fuel Fleet Program (GAFF)	N/A	\$6,000,000	\$1,000,000/fy to the extent that money is appropriated	\$13,630,000	127.2%		\$6,000,000	3.9%
Light-Duty Motor Vehicle Purchase or Lease Incentive Program (LDPVP)	3%	\$7,734,987	N/A	\$4,362,308	-43.0%		\$4,362,313	2.6%
New Technology Implementation Grant Program (NTIG)	2% with at least \$1 million set aside for battery storage	\$4,641,192	N/A	\$97,343,351	702.3%		\$4,641,192	3.0%
Port Authorities Studies and Pilot Programs (PAAPP)	N/A	\$1,000,000	not more than \$500,000/fy	\$1,000,000	0.0%	0.0%	\$1,000,000	0.6%
Seaport and Rail Yard Areas Emissions Reduction Program (SEREP)	6%	\$9,284,884	N/A	\$11,494,048	23.8%		\$9,233,529	6.6%
Texas Clean Fleet Program (TCFP)	3%	\$7,734,987	N/A	\$25,162,370	223.2%		\$7,734,986	3.0%
Texas Clean School Bus Program (TCSBP)	4%	\$6,183,500	N/A	\$18,485,311	197.3%		\$6,184,865	3.4%
Texas Natural Gas Vehicle Grant Program (TNGVGP)	10%	\$18,473,874	N/A	\$6,809,762	-51.2%		\$6,817,090	2.8%
SUBTOTAL INCENTIVE GRANT ALLOCATIONS		\$130,413,204		\$276,687,772	107.8%		\$111,616,597	72.1%
TOTAL		\$154,545,204		\$290,687,772	94.9%		\$135,748,597	87.9%

*TCRQ implemented each TERP Incentive Grant Program with the initial allocation as provided under Texas Health and Safety Code (THSC), Sec. 386.232. Funds Awarded were more or less than the initial Allocation where TCRQ moved funds from one program to another program based on demand, in accordance with THSC, Sec. 386.252(b), and where funds from previous grant awards were returned to the agency and used for a particular program within the state fiscal biennium in which they were returned.

**Texas Emissions Reduction Plan (TERP)
TERP Demand Subscription Rates
Fiscal Year (FY) 2021-2022
(as of October 27, 2021)**

FY 2021-2022								
PROGRAM	Section 386.252 Initial Allocation (%)	Projected Allocation (\$)	Section 386.252 Max Allocation	Funds Requested	% Over/under/bud	% Under/over/bud	Funds Awarded	Awarded as % of Allocation
TERP Administration	N/A	\$16,000,000	not more than \$8,000,000/fy	N/A	N/A	N/A	\$16,000,000	7.0%
Regional Air Monitoring Program	N/A	\$6,000,000	not more than \$3,000,000/fy	N/A	N/A	N/A	\$6,000,000	2.2%
Research	N/A	\$1,300,000	not more than \$750,000/fy	N/A	N/A	N/A	\$1,300,000	0.9%
Energy Systems Laboratory Contract	N/A	\$432,000	not more than \$432,000/fy	N/A	N/A	N/A	\$432,000	0.2%
Foreign Emissions/ Occupational Events Research	N/A	\$2,000,000	not more than \$1,500,000/fy	N/A	N/A	N/A	\$2,000,000	1.0%
Health Effects Study	N/A	\$400,000	not more than \$200,000/fy	N/A	N/A	N/A	\$400,000	0.1%
SUBTOTAL NON-INCENTIVE GRANT ALLOCATIONS		\$28,132,000	N/A	N/A	N/A	N/A	\$28,132,000	18.7%
Alternative Fueling Facilities Program (AFFF)	N/A	\$11,000,000	not more than \$6,000,000/fy	\$42,874,968	238.1%		pending	pending
Direct Emissions Reduction Incentives (DERI) Rebate Grants Program*	DERIVE of TCRQ appropriation	\$79,800,000	N/A	pending	pending	pending	pending	pending
Direct Emissions Reduction Incentives (DERI) Emissions Reduction Incentive Grants Program (ERIG)	DERIVE of TCRQ appropriation	\$47,300,000	N/A	pending	pending	pending	pending	pending
Governmental Alternative Fuel Fleet Program (GAFF)	3%	\$4,300,000	not more than 3% of fund revenues/fy	pending	pending	pending	pending	pending
Light-Duty Motor Vehicle Purchase or Lease Incentive Program (LDPVP)	3%	\$16,396,120	N/A	\$1,724,920	N/A	-43.1%	pending	pending
New Technology Implementation Grant Program (NTIG)	2% with at least \$1 million set aside for battery storage	\$9,637,750	N/A	pending	pending	pending	pending	pending
Port Authorities Studies and Pilot Programs (PAAPP)	N/A	\$1,000,000	not more than \$500,000/fy	pending	pending	pending	pending	pending
Seaport and Rail Yard Areas Emissions Reduction Program (SEREP)	6%	\$16,679,500	N/A	\$17,888,917	N/A	8.8%	pending	pending
Texas Clean Fleet Program (TCFP)	3%	\$16,396,120	N/A	\$28,477,664	43.3%	N/A	pending	pending
Texas Clean School Bus Program (TCSBP)	4%	\$11,417,600	N/A	\$41,143,459	213.8%	N/A	pending	pending
Texas Natural Gas Vehicle Grant Program (TNGVGP)	10%	\$32,792,500	N/A	pending	pending	pending	pending	pending
SUBTOTAL INCENTIVE GRANT ALLOCATIONS		\$245,411,750		\$132,130,177	pending	pending	pending	pending
TOTAL		\$273,543,750		\$160,260,177	pending	-41.8%	pending	pending

*Projected Allocations (2) funds available for TERP grants in FY2021-2022 are projected to be \$101,791,000. This may be updated as revenue is received and distributed to the TERP grant programs according to TERP the revenue received and the statutory initial allocation amounts provided under THSC, Sec. 386.232.

ENDNOTES

¹ United States, Texas Commission on Environmental Regulation. (2021). *TERP 101*. TX.

² United States, Texas Commission on Environmental Regulation. (2021). *TERP 101*. TX.

³ United States, Texas Commission on Environmental Regulation. (2021). *TERP Demand Subscription Rates Fiscal Year 2020-2021*.

⁴ United States, Texas Commission on Environmental Regulation. (2021). *TERP Demand Subscription Rates Fiscal Year 2022-2023*.

⁵ United States, Texas Commission on Environmental Regulation. (2021). *TERP 101*. TX.

⁶ United States, Texas Department of Transportation, Transportation Planning and Programming Division. (2021). *Transportation Emission Reduction Plan (TERP) TxDOT Annual Report, House Bill 4472, 87th Legislature, Regular Session (2021)*. Texas.

