

# **The Senate Committee on Natural Resources**



## **Interim Report to the 79th Legislature**

**December 2004**

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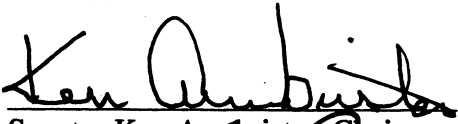
December 17, 2004

The Honorable David Dewhurst  
Lieutenant Governor of Texas  
Members of the Texas Senate  
Texas State Capitol  
Austin, Texas 78701


Dear Governor Dewhurst and Fellow Members:

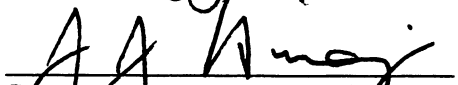
The Committee on Natural Resources of the Seventy-Eighth Legislature hereby submits its interim report including findings and recommendations for consideration by the Seventy-Ninth Legislature.

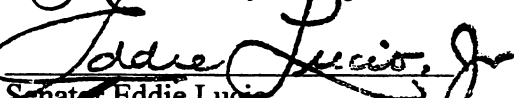
Respectfully submitted,

  
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Senator Gonzalo Barrientos

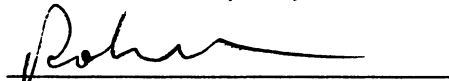
  
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## INTRODUCTION

Lieutenant Governor David Dewhurst charged the Senate Natural Resources Committee with studying four issues during the interim relating to air quality, coastal erosion, municipal solid waste management and state and local enforcement of air and water.

The interim committee held public hearings in Houston, Plano and Austin to receive testimony from interested parties on these subjects.

The Houston hearing was held March 30, 2004. Attachment 1 contains the hearing notice, agenda, minutes and witness list.

The Plano hearing was held on August 5, 2004. Attachment 2 contains the hearing notice, agenda, minutes and witness list.

The Austin hearing was held on November 9, 2004. Attachment 3 contains the hearing notice, agenda, minutes and witness list.

## INTERIM CHARGE 1

Study the ongoing efforts, and make recommendations, as needed, to achieve cleaner air in Texas including:

- Implementation of HB 1365, 78<sup>th</sup> Regular Session;
- State Implementation Plan revisions;
- Texas Commission on Environmental Quality's (TCEQ) implementation of the 8-hour air quality standard;
- Early action compacts and other innovative air quality planning tools;
- Emissions transport issues, including recent court decisions and federal legislation implementing transport policy;
- Transition of the Texas Council on Environmental Technology to TCEQ; and
- Regional air quality challenges.

## RECOMMENDATIONS

1.1 Continue to invest in research in collaboration with business, academic, and other stakeholders to obtain objective data for decision making based on sound science.

1.2 Improve emissions inventory information. Support an air quality field study by TCEQ that includes the quantification and impact of federally exempted emission sources from seaports, railyards and airports.

1.3 Provide full funding for the next biennium for the Texas Emissions Reduction Plan (TERP) and maintain the integrity of the program, including funding for air quality research to the Texas Environmental Research Consortium.

1.4 Extend the revenue sources for TERP beyond the current expiration dates in 2008, in order for the state to fund emission reductions to meet State Implementation Plan (SIP) attainment for the 8-hour standard. Find a replacement fund for the vehicle title fee that transfers to the Texas Mobility Fund on September 1, 2008.

1.5 Broaden the applicability and participation in TERP to more classes of vehicles and engines in order to achieve greater cost-effective reductions in emissions. TERP needs to be improved to allow for retrofit or replacement of high emissions engines such as shuttles and taxis. Additional emissions reductions must be obtained from mobile sources with upgraded requirements to reduce vehicle fleet emissions.

1.6 TCEQ enforcement needs to include consideration of upset emissions, deterrence, economic benefit and timeliness of enforcement measures.

1.7 Support improvements to the Low Income Repair and Replacement Assistance Program (LIRAP) to allow local governments to continue to repair and retire the dirtiest cars on the road in the nonattainment and near nonattainment areas. Establish an emission standard for replacement vehicles in order to maximize the benefit of LIRAP.

## Implementation of House Bill 1365, 78<sup>th</sup> Regular Session

### BACKGROUND

The Texas Emissions Reduction Plan (TERP or the Plan) was established by the 77<sup>th</sup> Texas Legislature in 2001, through enactment of Senate Bill 5 (SB 5) to help improve and maintain good air quality in areas throughout the State. Agencies responsible for developing and implementing TERP programs are the Texas Commission on Environmental Quality (TCEQ), the Comptroller's Office, State Energy Conservation Office, Public Utility Commission of Texas, and local governments. The Energy Systems Laboratory at Texas A & M University assists in energy efficiency and renewable energy research and emission reduction calculations.

The goals of the TERP are:

- ensure that the air in this state is safe to breathe and meets minimum federal standards established under the federal Clean Air Act (Section 7407, Title 42, United States Code);
- develop multi-pollutant approaches to solving the state's environmental problems; and,
- adequately fund research and development that will make the state a leader in new technologies that can solve the state's environmental problems while creating new business and industry in the state.

In 2003, House Bill 1365 (HB 1365, Attachment 4) added new revenue sources for the Plan, increased the number of eligible counties, and added a Small Business Grants Program.

One of the primary TERP programs administered by TCEQ is the Emissions Reduction Incentive Grants Program. Authorized in Subchapter C, Chapter 386, Health and Safety Code, the program provides for grants to fund the incremental cost of projects in the state's 41 air quality nonattainment and near-nonattainment counties. Eligible projects include new purchases, replacements, and repowers for vehicles, equipment, locomotives and marine vessels; retrofit technologies; infrastructures for idle reduction technologies and alternative fueling stations; and, qualifying fuels.

A new TCEQ program in 2003 is the Small Business Grants Program. Section 386.116, Health and Safety Code, established this program for businesses that own and operate not more than two vehicles or pieces of equipment.

### *TERP Revenue Sources and Projects*

<b>REVENUE SOURCE</b>	<b>CITATION</b>	<b>EXPIRES</b>
2% surcharge on sale price or lease/rental amount of off road diesel equipment sold, rented or leased. 2% surcharge on the storage, use and consumption in Texas of new and used equipment.	Tax Code Section 151.0515(b)	9/30/08
2.5% surcharge of the total consideration on sale, lease, or use of model year pre-1997 vehicles over 14,000 lbs. 1% surcharge on 1997 or later model year vehicles.	Tax Code Section 151.0215(a)	9/30/08
10% surcharge of total fees due for registration of truck tractors and commercial motor vehicles.	Transportation Code Section 502.1675	8/31/08
As of July 2003, portion of certificate of vehicle title fee: \$20 out of \$33 fee for applicants in nonattainment counties; and \$15 out of \$28 fee for applicants in other counties.	Transportation Code Section 501.138(a)	after 9/1/08 title fee is deposited into Texas Mobility Fund
\$10 fee on commercial motor vehicles required to be inspected.	Transportation Code Section 548.5055	8/31/08

In FY 02, TCEQ received \$14.0 million and in FY 03, \$24.4 million, to provide grants for the Emission Reduction Incentive Grants Program. In FY04, TCEQ received \$120 million for the Emission Reduction Incentive Grants and Small Business Grants Programs. From the onset of the program, there have been over 100 projects funded, for a total of \$42,457,507 (FY 02 through August 24, 2004). These projects are projected to result in NOx emission reductions of 7,616.3247 tons, or 4.5568 tons per day in 2007. The projected average cost per ton is \$5,574.

### **Projects Funded through FY 2004 -- First Funding Round**



Area <sup>1</sup>	No. Of projects	\$ awarded	projected NOx reductions (tons)	projected NOx reductions (tons/day)	average cost per ton/NOx <sup>2</sup>
Austin	4	\$514,423	41.1708	0.0107	\$12,174
Beaumont/Port Arthur	1	\$400,000	120.2500	0.0962	\$3,326
Corpus Christi	1	\$15,432	3.3029	0.0026	\$4,672
Dallas/Fort Worth	31	\$11,346,229	3,098.4084	1.7738	\$3,661
El Paso	1	\$1,475,000	327.3413	0.1637	\$4,506
Houston/Galveston	71	\$23,590,036	3,117.5285	2.0465	\$7,566
San Antonio	2	\$5,116,387	908.3228	0.4682	\$5,632
Tyler/Longview	111	\$42,457,507	7616.3247	4.5568	\$5,574

### Project Selection Summary FY 2004 -- Second Funding Round

Area <sup>1</sup>	No. of Projects	Grant Amount	Projected NOx Reductions (tons)	Projected NOx (Tons/day)	Average Cost per ton/NOx <sup>2</sup>
Austin	43	\$6,069,179	871.91	0.59	\$6,961
Beaumont/Port Arthur	7	\$2,181,910	426.48	0.29	\$5,116
Corpus Christi	4	\$1,907,996	275.35	0.22	\$6,929
Dallas/Fort Worth	93	\$29,693,983	5564.12	3.78	\$5,337
El Paso	2	\$457,018	113.90	0.09	\$4,012
Houston/Galveston	43	\$36,408,518	5690.89	3.72	\$6,398
San Antonio	5	\$2,547,923	388.59	0.26	\$6,557
Tyler/Longview	2	\$799,450	122.74	0.10	\$6,513
Victoria	4	\$828,390	119.89	0.51	\$6,910
<b>Total</b>	<b>203</b>	<b>\$80,894,367</b>	<b>13,573.87</b>	<b>9.55</b>	<b>\$5,960</b>

<sup>1</sup>Projects may operate in more than one area - they are listed by the primary area of operation.

<sup>2</sup>The average cost per ton is based on the dollars awarded divided by the projected tons of NOx to be removed by the projects.

To further improve the ability of the Emissions Reduction Incentive Grants program to achieve its goals, HB 1365 provided that persons other than owners may apply for and receive grants (Section 386.103(a), Health and Safety Code). In the 2004 revised guidelines, general procedures were spelled out for “Third-Party Grants.” In August 2004, TCEQ and the Railroad Commission of Texas (RRC) entered into an inter-governmental cooperative agreement to allow the RRC to use TERP funds for a forklift initiative program. The program will focus on encouraging the purchase of lower-emitting forklifts and replacing, repowering, or retrofitting higher polluting forklifts.

The latest Request for Applications was issued in October 2004, with an application deadline of December 17, 2004.

***Small Business Grants Program Implementation***

In accordance with Section 386.116, Health and Safety Code, in FY04, the TCEQ established a grant program targeted at small businesses and other entities that own and operate not more than two vehicles or pieces of equipment. The program is a stream-lined way for small businesses in the 41 designated counties to apply for financial assistance to replace or repower vehicles or equipment using a simplified application process. The program is funded through the Emissions Reduction Incentive Program and is administered under the same quality assurance and fraud prevention and detection program measures.

The first Small Business Request for Applications (RFA) had a deadline of March 12, 2004. Five applications were received and three projects were approved for funding. The type of activities funded included replacement vehicles for businesses transporting materials and a mobile heavy-duty equipment repair operation. The following table summarizes the three projects:

**Small Business Grant Projects**

Area	Grant Amount	Projected NOx reductions (tons)	Projected NOx reductions (tons/day)	Average Cost per ton/NOx
San Antonio	\$38,500	3.2792	0.0026	\$11,741.00
Dallas-Fort Worth	\$104,531	9.2464	0.0074	\$11,305.00
Dallas-Fort Worth	\$91,624	9.2559	0.0074	\$9,899.00
<b>Total</b>	<b>\$234,655</b>	<b>21.7815</b>	<b>0.0174</b>	<b>\$10,773.13</b>

## State Implementation Plan Revisions

### BACKGROUND

State Implementation Plan (SIP) revisions are being completed for the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston/Brazoria nonattainment areas.

On April 30, 2004, the EPA published in the Federal Register requirements for areas that were both 8-hour and 1-hour nonattainment and had outstanding requirements for 1-hour ozone planning. The Dallas/Fort Worth area fell into this category. By April 2005, TCEQ could: submit a 1-hour attainment demonstration showing attainment in 2005; submit an 8-hour attainment demonstration showing attainment in 2010; or submit a 5% increment of emissions reductions from the area's baseline.

The Beaumont/Port Arthur area also fell into this category. TCEQ adopted the 8-hour and 1-hour ozone SIP in October of 2004. The SIP demonstrates attainment of the 1-hour and 8-hour air quality standards in 2005 and 2007, respectively. The adoption of this 8-hour ozone attainment demonstration is the first in the country.

TCEQ adopted the Houston/Galveston/Brazoria Mid-Course Review December 1, 2004. This SIP will set a Motor Vehicle Emissions Budget (important for continued federal funding of highways) and propose stringent requirements for emissions of highly-reactive volatile organic compounds from chemical plants and refineries in the area. The SIP shows that the area will attain the 1-hour air quality standard in 2007.

The El Paso area has monitored attainment of the ozone, carbon monoxide and particulate matter air quality standards. A SIP is expected to be prepared for the El Paso area, including the appropriate maintenance plans that provide contingency measures if the air quality standards are jeopardized by elevated monitored readings in the future.

The SIPs approved by TCEQ must still be accepted by the Environmental Protection Agency. Failure to obtain timely actions by the EPA on the proposed state plan could result in a lapse of funding for highway construction without a determination of the impact on the environment for each individual project.

## TCEQ Implementation of the 8-hour Air Quality Standard

### BACKGROUND

The Environmental Protection Agency (EPA) issued the revised National Ambient Air Quality Standard for ozone in 1997, based on the theory that protection of public health requires limiting long-term exposure to lower levels of ozone rather than controlling short-term, higher levels of ozone. A U.S. Supreme Court decision upheld the 8-hour standard, but required EPA to adopt new rules for implementation. An area violates the standard if its fourth highest daily maximum 8-hour ozone average in a year, averaged over three consecutive years, is 0.085 parts per million or higher. EPA has adopted a rule revoking the 1-hour ozone standard effective June 15, 2005.

After the Supreme Court decision, EPA began implementation of the 8-hour ozone standard in 2002. Simultaneously, TCEQ began a review and analysis of the air quality data and other criteria EPA identified as requiring consideration in determining the status of a state's areas compliance with the 8-hour standard. In response to a request from EPA to the Governor, TCEQ developed a designation recommendation based on its regional air quality planning strategy, the then current air quality data, and the most significant of the EPA criteria. That recommendation was forwarded to Governor Perry who submitted the 8-hour ozone standard designation recommendations for all areas in Texas on July 15, 2003.

After initial review of the Governor's recommendation, EPA requested additional information supporting that recommendation including an analysis of each of their identified criteria. On October 16, 2003, TCEQ submitted additional information that included analysis of the most significant of EPA's criteria. The agency requested approval of the Governor's recommendation based on the information submitted and the state's regional air quality planning area approach including voluntary and mandated control strategies to reduce pollution in the East and Central Texas Region.

In December 2003, EPA responded to the Governor's recommendation indicating that Travis and Gregg counties had come into compliance with the 8-hour standard and agreement on the recommendation for the Houston and Beaumont areas. However, EPA disagreed with the recommendation for the Dallas-Fort Worth (DFW) and San Antonio areas by adding additional counties in each area to include the full Consolidated Metropolitan Statistical Area (CMSA) for each.

This notification initiated the 120-day consultation period required by the federal Clean Air Act during which the state and Governor are able to present additional information to EPA concerning any disagreement for area designations. TCEQ conducted additional analysis including all of the EPA criteria and presented additional information supporting the recommendation to support the Governor's original recommendation of attainment designation for Henderson, Hood, Hunt, Kaufman and Rockwall counties in the DFW area and Comal, Guadalupe, and Wilson counties in the San Antonio area.

On April 15, 2004, the EPA signed the final designations of areas under the 8-hour ozone standard as well as classification of those areas. TCEQ has begun the process of developing SIPs to demonstrate attainment of the 8-hour standard for the designated areas by their respective attainment dates or to provide increments of progress as allowed by EPA's 8-hour ozone implementation rule.

## Early Action Compacts and Other Innovative Air Quality Planning Tools

### BACKGROUND

Early Action Compacts (EACs) are the result of efforts by Texas to encourage near non-attainment areas to be proactive in cleaning up their air in return for flexibility. In conjunction with local governments and stakeholders, TCEQ proposed the idea to EPA, which has now adopted EACs as a national policy.

The compacts are agreements between EPA, states and local areas that allow flexibility to an area that might have been designated non-attainment for the 8-hour ozone standard in return for early compliance with the standard. Communities with EACs will start reducing air pollution at least two years earlier than required by the EPA. There are three primary requirements for EACs:

- 1) develop and implement air pollution control strategies;
- 2) account for emissions growth; and
- 3) achieve and maintain the national 8-hour ozone standard.

The San Antonio area was the first in the nation to sign an EAC with the state and federal environmental agencies. As an EAC area, EPA designated the San Antonio area as “nonattainment deferred” for the 8-hour ozone standard. The area currently does not monitor attainment of the 8-hour ozone standard but has developed a plan to achieve the standard and requested TCEQ’s assistance in adopting a San Antonio area SIP and rules for submission to the EPA by December 2004.

The Austin area was designated as attainment for the 8-hour ozone standard based on air quality for 2001-2003. During 2004, the area has not monitored attainment of the 8-hour ozone standard, but EPA has not taken action to redesignate Austin to nonattainment. Austin proposed a number of measures designed to ensure attainment, but TCEQ concluded that it lacked authority to implement some of them in an area that had not yet been designated nonattainment. TCEQ adopted the remainder of the measures as the Austin area EAC SIP and related rules in November 2004.

The Tyler/Longview area participated in the EAC process and currently monitors attainment for the 8-hour ozone standard. Complex computer modeling indicates the area will continue to attain the 8-hour ozone standard.

The TCEQ will submit the three finalized EAC SIPs to the EPA in December 2004.

## **Emissions Transport Issues, Including Recent Court Decisions and Federal Legislation Implementing Transport Policy**

### **BACKGROUND**

In adopting 1-hour ozone SIPs for the Dallas-Ft. Worth (DFW) and Beaumont-Port Arthur (BPA) areas in 2000, TCEQ relied on EPA guidance known as the transport policy. By pushing back the attainment deadlines for these two areas to 2007, (the Houston-Galveston area attainment deadline) it allowed the state to satisfy the requirement to demonstrate that these areas would meet the standard on time.

The transport policy has been ruled unlawful by several courts, including the U.S. Fifth Circuit Court of Appeals in a 2002 case which overturned EPA's approval of the Beaumont-Port Arthur SIP. As a result of the Fifth Circuit's decision, EPA has declined to approve DFW's 2002 SIP. This means that two areas of the state do not have approved 1-hour ozone SIPs.

After the decision on the Beaumont-Port Arthur SIP, EPA and TCEQ worked with the plaintiffs in the lawsuit, local governments and industry to find a constructive solution to the obstacles facing the SIP. This successful process resulted in the area being bumped-up to "serious" classification, rather than the more stringent "severe" classification under the 1-hour ozone standard. Five local industries agreed to make certain voluntary emission reductions federally enforceable, and agreed to provide monitoring equipment and educational programs in the Beaumont-Port Arthur area.

## Transition of the Texas Council on Environmental Technology to TCEQ

### BACKGROUND

The Texas Council on Environmental Technology (TCET) was established by Senate Bill 5, 77th Texas Legislature (SB 5), and is promulgated in Chapter 387, Health and Safety Code. TCET was charged with enhancing the entrepreneurial and inventive spirit of Texas to assist in developing solutions to air, water, and waste problems by identifying, supporting, and evaluating new environmental technologies. Under SB 5, the TCET was also responsible for establishing and administering the New Technology and Research Development (NTRD) Program, which was also created by SB 5. Since funding for the NTRD program was limited in its first two years due to a court ruling regarding a revenue source, the focus of the TCET was on technologies which improve air quality that may be used for projects eligible for awards under the Texas Emission Reduction Plan (TERP) Emissions Reduction Incentive Grants Program. TCET was housed at the University of Texas, Austin, during the FY 02-03 biennium.

House Bill 37, 78th Legislative Session, Third Called Session, transferred the functions of the former TCET to TCEQ and required TCEQ to establish and administer the NTRD program. On November 1, 2003, TCEQ assumed the responsibility for implementing the NTRD program and the responsibility for fifteen (15) NTRD grants that TCET had previously issued.

The “Texas Council on Environmental Technology” now refers to the council consisting of 11 members appointed by the Governor to represent the academic and nonprofit communities and act in an advisory capacity to TCEQ for the NTRD program.

The NTRD program is funded through revenue from the Texas Emissions Reduction Plan (TERP) fund. The fund consists of fees and surcharges established under SB 5 by the Texas Legislature. House Bill 1365, 78th Legislative Session (HB 1365), revised Section 386.252(a)(2), Health and Safety Code, to increase the funding for the NTRD program from 7.5% to 9.5% of the TERP fund. As a result of the increase in funding to the TERP Fund brought forth by other revisions to revenue appropriations under HB 1365, the NTRD allocation from the TERP fund in FY 04 was \$12.9 million and is estimated to be \$13.8 million in FY 05.

Based on the statutory requirements, not less than 20% of the 9.5% is earmarked to support air quality-related research by a nonprofit organization and \$500,000 is deposited to the Clean Air Account to support air quality activities. The allocation for administrative costs for the NTRD program is limited to no more than \$250,000 per fiscal year. TCEQ is concentrating the efforts and priorities of the NTRD program on providing grants to support development of emissions-reducing technologies that may be used for projects eligible for awards under the TERP Emissions Reduction Incentive Grants Program and other new emissions reducing technologies that show promise for commercial application.

TCEQ’s first Request for Grant Applications (RFGA) under its implementation of the NTRD program, was posted on February 17, 2004, and closed on March 31, 2004. TCEQ received



seventy-four NTRD grant applications in response to the RFGA, with a total requested amount of \$60.8 million.

Seventeen NTRD grant applications were selected by TCEQ for funding with the \$8,301,448 available for these grants, with ten of these projects leading towards verification of new technologies. Twelve of these technologies could be eligible for funding under the TERP grants program once they are verified or commercially available. These projects include, by category:

- 7 projects for retrofit/add-on devices for existing engines/vehicles
- 7 projects for advanced technologies for new engines/vehicles (3 hybrid electric projects, 1 fuel cell project, and 3 fuel additive projects, with one being for locomotives)
- 2 studies to improve air quality assessment and modeling
- 1 advanced technology project to reduce emissions from other sources (coal-fired power plants)

TCEQ posted a RFGA for FY 05 funding under the NTRD program on May 26, 2004 and closed it on July 7, 2004. A total of fifty-nine NTRD grant applications were received during this period for an estimated \$37 million in requested funding. In addition, forty-nine NTRD grant applications from the FY 04 funding round that were not among those recommended for funding in FY 04, are being considered in the selection for the FY 05 funding, for an estimated \$37.4 million in requested funding. A decision has not yet been made by TCEQ on which projects will be selected to receive a NTRD grant for FY 05.

A Memorandum of Agreement between TCEQ, the former TCET, and EPA's Office of Transportation and Air Quality was signed in 2003 to facilitate an expeditious review and verification of NTRD funded projects. Currently, TCEQ is coordinating with EPA to ensure that projects funded will be processed as quickly as possible to allow these verified technologies to be used in Texas to meet the goals of the SIP by 2007.

TCEQ provided EPA with a list of the applicants seeking EPA verification that were awarded NTRD grants with FY 04 funds and will be communicating with EPA on a regular basis to monitor the progress of these verification projects.

## Regional Air Quality Challenges

### BACKGROUND

The EPA issued a regional haze rule in April 1999, to protect visibility in federal areas. In Texas the haze rule applies to Big Bend and Guadalupe Mountains National Parks. The rule required State Regional Haze SIPs by January 2008, to demonstrate a return to natural visibility conditions by 2064. Proposed amendments to the 1999 rule require states to consider visibility impacts of an individual facility when determining whether an individual facility would have to install controls and what the controls would be. Facilities targeted for controls are those built between 1962 and 1977 that have the potential to emit more than 250 tons a year of particulate matter and compounds contributing to particulate matter such as oxides of nitrogen, sulfur dioxides and some volatile organic compounds. The types of sources include utility and industrial boilers, pulp mills, refineries and smelters. A SIP is due to the EPA by January 2008.

## INTERIM CHARGE 2

Study long-term funding and planning solutions to combat erosion along the Texas coast with particular attention to: the National Flood Insurance Program, securing matching and additional federal dollars, and alternative funding approaches.

## RECOMMENDATIONS

- 2.1 Continue funding of the Coastal Erosion and Response Act (CEPRA).
- 2.2 Continue efforts to identify long-term, non-General Revenue funding sources for CEPRA, ensuring that such funding sources benefit by Texas' coastal natural resources and the coastal economy.

<b>BACKGROUND</b>
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Texas has the third longest coastline in America and some of the highest rates of coastal erosion in the nation. Until 1999, Texas had no state program to fund coastal erosion. As a result, Texas lagged behind other coastal states in securing federal funding for coastal erosion. The need for healthy, full beaches is critical for the economic stability of coastal communities. These coastal areas provide habitat to many wildlife species and create a vibrant tourism industry as well as commercial fishing. Protecting habitat, homes, businesses and industry will maintain the local tax base and enhance other revenue sources to the state.

**Coastal Erosion and Response Act (CEPRA)**

The Texas Legislature enacted Subchapter H, Chapter 33, Texas Natural Resources Code, the Coastal Erosion and Response Act in 1999 (CEPRA). CEPRA calls for the funding of beach nourishment projects with a mix of state and local funds. CEPRA funds consist of General Revenue appropriated by the legislature and interest accrued on the Oil-Spill Account. CEPRA continues to receive funding requests beyond the limitations of previously appropriated funding and leveraging with federal, state and local project partners.

The Texas Legislature allocated \$15 million in the 2000-2001 biennium for the new CEPRA program. On February 2, 2000, the General Land Office (GLO) announced the approval of funding for 27 preliminary coastal projects for the 2001-2002 biennium (Cycle 1 of CEPRA). During Cycle 1, the GLO allocated funds to 34 erosion response projects and three studies.

A similar amount was allocated in the 2002-2003 biennium. On January 28, 2002, the GLO announced 41 priority projects for funding under Cycle 2 of CEPRA. Both biennial funding cycles for erosion control required local partnerships and participation in the funding of erosion control projects. This four-year total of \$30 million funded 75 projects. Due to budgetary constraints during the last biennium (2004-2005), the Legislature appropriated only \$7.32 million for the 2004-2005 biennium. As a result, on March 25, 2004, the GLO announced only 20 priority projects for funding under Cycle 3 of CEPRA.

Any local government, state or federal agency, institution of higher education, homeowners' association, or other public or private entity may apply for CEPRA funding through the GLO. The GLO requires a 25% minimum match (cash or in-kind services) for potential project partners proposing erosion response projects or studies for beach nourishment projects on a public beach or bay shore. For marsh restoration projects, bay shoreline protection projects other than beach nourishment, or any other coastal erosion response study or project, a 40% minimum cash or in-kind services match is required. The exception to the project partner cost-sharing match requirement relates to proposed large-scale beach nourishment projects on a public beach each biennium, the Land Commissioner may select one such project which will not require a project partner match. The cost of such a project cannot exceed one third of the total biennial appropriation to the CEPRA program.

## **National Flood Insurance Program**

The U.S. Congress established the National Flood Insurance Program (NFIP) with the passage of the National Flood Insurance Act of 1968. The Federal Emergency Management Agency (FEMA) is responsible for the management of the NFIP through its Mitigation Division. There are three components of the NFIP: flood insurance, floodplain management and flood hazard mapping.

The NFIP is a federal program enabling property owners in participating communities to purchase insurance as a protection against flood losses in exchange for state and community floodplain management regulations that reduce future flood damages. Participation in the NFIP is based on an agreement between communities and the Federal Government. If a community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains, the Federal Government will make flood insurance available within the community as a financial protection against flood losses. This insurance is designed to provide an insurance alternative to disaster assistance to reduce the escalating costs of repairing damage to buildings and their contents caused by floods.

Nearly 20,000 communities across the United States and its territories participate in the NFIP by adopting and enforcing floodplain management ordinances to reduce future flood damage. In exchange, the NFIP makes federally backed flood insurance available to homeowners, renters, and business owners in these communities. Community participation in the NFIP is voluntary.

Flood insurance is designed to provide an alternative to disaster assistance to reduce the escalating costs of repairing damage to buildings and their contents caused by floods. Flood damage is reduced by nearly \$1 billion a year through communities implementing sound floodplain management requirements and property owners purchasing of flood insurance. Additionally, buildings constructed in compliance with NFIP building standards suffer approximately 80 % less damage annually than those not built in compliance. And, every \$3 paid in flood insurance claims saves \$1 in disaster assistance payments.

In addition to providing flood insurance and reducing flood damages through floodplain management regulations, the NFIP identifies and maps the Nation's floodplains. Mapping flood hazards creates broad-based awareness of the flood hazards and provides the data needed for floodplain management programs and to actuarially rate new construction for flood insurance.

## **Other States**

Of the 23 states with coastal shoreline, five states, California, Delaware, Florida, Mississippi, and New Jersey have a dedicated source of state revenue that entirely funds a coastal erosion program. Florida and New Jersey utilize a revenue from a real estate transfer tax, and California's program receives funding from the state gasoline tax. The Mississippi Coastal Preserves Program is financed by revenue collected from tideland leaseholders, which are primarily casinos. Delaware's Beach Preservation Program receives one percent of the proceeds from the state lodging tax.

Texas and Rhode Island use revenue from state oil spill response funds to pay for part of a coastal erosion program; general revenue and federal funds are also used. Louisiana created the State Wetlands Trust Fund from oil and gas severance taxes to provide state matching funds for federal wetlands projects that often include erosion control. In Alabama, the state's share of federal beach nourishment projects is financed by a percentage of general obligation bond revenue for parks.

While 11 states, including Texas, provide legislative appropriations from a general revenue fund to fight coastal erosion, two of those state, South Carolina and Virginia, have suspended all projects due to budget constraints. In Virginia, a proposal to create a lottery scratch-off game to fund coastal projects was proposed but not acted upon by their General Assembly. Maryland uses money from its General Fund to finance a revolving loan fund that provides zero or low-interest loans for shore erosion control.

Generally, the West Coast states are not active participants in coastal erosion abatement; Alaska, Oregon, and Washington have very few projects. In contrast, the Gulf Coast states are very active and each uses state revenue to support a coastal erosion program. On the Atlantic Coast, the southeastern states do not provide state funding, while three of the four mid-Atlantic states have a dedicated funding source for projects. The northeastern states and Hawaii depend largely on federal funding for beach erosion control.

### INTERIM CHARGE 3

Study and make recommendations regarding current state and federal laws relating to the permitting and operation of landfills. Issues to be considered include the generation and transportation of waste; the selection, approval, and regulation of treatment and storage facilities; the projected demand for new facilities; and the adequacy of existing technology to safely dispose of waste.

### RECOMMENDATIONS

3.1 Continue to monitor the rules revision process at the Texas Commission on Environmental Quality as they begin their comprehensive re-write of Title 30, Part 1, Chapter 330, Texas Administrative Code.

## BACKGROUND

The management of solid waste in Texas is a cooperative effort among a variety of federal, state, regional and local entities. TCEQ is the state agency authorized with certain jurisdiction under the Texas Solid Waste Disposal Act (Chapter 361, Health and Safety Code). The state does not directly provide solid waste management services, although some financial assistance programs are available at the state level. The provision of solid waste management services in Texas is primarily the activity of private companies and local governments.

TCEQ's role is to help ensure that the generation and management of these wastes are conducted in a way that protects human health and the environment, through permitting and monitoring certain waste generation and management activities. TCEQ also administers programs to encourage reductions in wastes generated and disposed of in Texas.

Municipal Solid Wastes (MSW) are defined in Title 30, Chapter 330, Subchapter A, Texas Administrative Code, as "solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste." Nonhazardous industrial waste may be accepted at certain permitted MSW facilities in Texas, though it is not defined as MSW under the Texas Administrative Code. Further, the Texas definition of MSW differs from that of EPA and several other states, in that the Texas definition includes construction and demolition debris and municipal sludge. Consequently, per capita MSW disposal and generation rates for Texas appear to be significantly higher than those of other states and the nation as a whole.

Certain materials are excluded by federal or state laws and regulations from the MSW disposal system, including whole scrap tires, used oil and oil filters, lead-acid batteries and antifreeze. Local public and private entities have the primary responsibility for dealing with these materials, with the preferred approach of reusing and recycling as much of these materials as possible.

The state's 24 Councils of Governments (COGs) have been designated as the regional MSW planning entities for Texas, and are responsible for developing management plans to encourage regional approaches to providing services and reducing MSW generation and disposal.

Texas has between 20 to 30 years of available MSW landfill disposal capacity. However, MSW landfill disposal capacity is not equally distributed across the state, and some regions and local areas have limited landfill capacity. Based on FY 2002 reporting data, total disposal in the state was 29.06 million tons. Based on the state population estimate of 21,779,893 (Texas State Data Center population estimates), the per-capita landfill disposal rate for 2002 was 7.31 pounds per person per day. (TCEQ publication AS-187)

Total remaining landfill capacity in the state at the end of 2002 was 1.7 billion cubic yards.



Based on reported compaction rates, this volume would hold 970 million tons of waste. Presuming that no new landfill expansions or new permits are issued, and that the population and disposal amounts remain constant, this capacity would serve for over 33 years. If only the active facilities are considered, this lifetime drops to just under 30 years. Projected population growth could reduce the life expectancy of current landfills. However, other factors, such as further increases in recycling and other efficiencies can reduce reliance on landfill disposal. It is also expected that new projects and expansion of existing facilities will continue, so that landfill disposal capacity will remain above 20 years for the foreseeable future.

While the number of MSW landfills has decreased in total number, landfill capacity has actually increased. This is due to the landfill closures involving mostly small, community-based landfills, while larger regional landfills have expanded and the newly permitted landfills have been larger. In 2002 three new facilities received permits to open, and seven received amendments to expand, resulting in an increase of 36,984,542 cubic yards (20,830,338 tons equivalent) over FY 2001 capacity.

The more immediate issues of capacity for the state involve local and regional access to the available capacity. In 2003, six COG regions had less than 20 years capacity remaining, with two having less than 10 years capacity remaining.

Voluntary waste reduction (source reduction and recycling) programs have helped to limit the growth in the generation and disposal of municipal solid waste. There remain regional and local areas underserved by processing, collection, or transportation services. Further waste reduction will need to come from targeting those sources and components of the waste stream that offer the greatest potential for reductions.

### **Collection and Transportation**

Landfill capacity is not spread equally across the state, and the closure of small, community-based landfills has resulted in substantial increases in the distances from communities to an available landfill. Also, while disposal fees are relatively low, transportation costs and the cost and availability of basic collection services are continuing issues at the local level. Increased distances to disposal facilities and increased transportation costs, as well as a lack of affordable collection services in some areas, contributes to an increase in littering and illegal disposal of MSW in parts of the state.

### **Liquid Waste Processing**

Liquid wastes, particularly septage, grit and grease trap waste, must be processed to remove the liquids before the materials can be disposed of in a MSW landfill. Most of the major urban areas of the state now have processing services available within a reasonable distance. However, some rural areas, especially along the Mexico border and in West Texas still have need for services. Improper disposal of grit and grease trap waste in sanitary sewer systems can cause major

problems for the system, both in the pipes and at the treatment plant. In addition, illegal dumping of these wastes (particularly into rivers and lakes) can pose a risk to human health and the environment.

### **Trends Analysis**

From 1986 to the mid-1990's, the state's reserve capacity for disposal was less than 22 years. The reserves have shown a steady increase since that time, with the current reserve capacity for disposal at over 30 years. (Attachment 5) The trend in reserve capacity shows about a one-year increase in reserve capacity per year over the last 10 years. This is due in part to increases in available volume of permitted disposal capacity, and in part to improvements in landfill technology. These technological improvements have increased waste compaction rates (not counting cover materials) from an average of 650 pounds of waste per cubic yard disposed of in 1986 to approximately 1,300 pounds of waste per cubic yard in 2003.

In addition to improvements in the operation of landfills, the size and service area of landfills has continued to grow over the last decade and a half. In 1986, the average landfill size was 50 acres with an average depth of 6.5 feet and a height of 13 feet. In 2002, the average landfill size was 178 acres with an average depth of 31 feet and a height of 50 feet.

#### INTERIM CHARGE 4

Study the consistent implementation of federal and state air and water quality standards by local governments and make recommendations for improving the consistency and effectiveness of the requirements.

#### RECOMMENDATIONS

4.1 Continue oversight of enforcement standards utilized between state agencies and units of local governments for consistency and uniform application.

<b>BACKGROUND</b>
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### **Air Quality Standards Implementation**

TCEQ contracts with five Local Air Programs (LAPs), which receive state and federal grants to conduct air investigations within their jurisdictions. These include the El Paso County Health District, City of Dallas, City of Fort Worth, City of Houston and Galveston County Health District. Cooperative work under these contracts and federal grants include development of workplans to address local air quality issues, involving LAP staff with the Consolidated Compliance and Enforcement Database System Workgroup (CCEDS), in the Air Investigator Committee, and in the TCEQ Air Investigator Training.

TCEQ regularly coordinates with LAPs to exchange information, assist with technical issues, oversight, and to foster positive working relationships including:

- Monthly meetings or conference calls to discuss issues;
- Quarterly meetings to review work plan progress and to consider requests for amendments or revisions to the workplan; and
- Mid-year meeting to review programmatic and policy updates and to discuss issues relating to contract implementation.

### **Water Quality Standards Implementation**

TCEQ Field Operations Division participates each fiscal year in the development of the statewide coordinated water monitoring schedule. This effort involves all monitoring entities in the state, including local entities such as the Houston-Galveston Area Council, all state River Authorities and, many of their subcontractors, TCEQ, Texas Parks and Wildlife Department, and United States Geological Survey to ensure that monitoring activities are targeted for efficiency and coverage to ensure that the state's bodies of water are monitored to comply with the federal requirement to assess the state's waters. The TCEQ Total Maximum Daily Loading (TMDL) staff are dedicated to work with the TMDL contractors at a local level to evaluate specific conditions which contribute to a watershed's failure to meet water quality standards. These staff coordinate with local officials and contractors. The TCEQ staff provide coordination and support to authorized agents for local governments who administer the On-Site Sewage Facility program in their jurisdiction.

The TCEQ Stormwater Program coordinates investigation activities with local entities that are required to have a Municipal Separate Storm Sewer System permit. The permit requires these entities to investigate all potential sources of stormwater discharge in their jurisdiction. The coordination occurs at the region level to prevent a duplication of effort and to maximize resources.

Other activities of local governments that relate to water quality standards implementation include:

- Operation of domestic and industrial wastewater treatment facilities under state/federal permits that are designed to meet the Texas surface water quality standards.
- Control of storm water runoff in accordance with requirements of multi-sector storm water permits issued by TCEQ under the nationally delegated TPDES program.
- Regulation and control of industrial discharges to municipal waste treatment systems, in accordance with “pretreatment” regulations and programs of TCEQ.
- Local involvement through the stakeholder process in the following state/local programs:
  1. Implementation of “total maximum daily load” limits to restore impaired waters. (For example, staff from the City of Houston Wastewater and Storm Water Departments are participating and providing technical assistance to the development of TMDLs for bacteria in the White Oak and Buffalo Bayous.)
  2. Coordinated water quality monitoring planning and implementation.
  3. Voluntary efforts to improve and clean up local watersheds.
  4. Establishing source water protection measures for drinking water supplies.
  5. “Beachwatch” monitoring programs to evaluate recreational water quality at major swimming beaches (coordinated by the General Land Office).

# **ATTACHMENT 1**

**\*\* REVISION \*\***  
**SENATE**  
**NOTICE OF PUBLIC HEARING**

**COMMITTEE:** Natural Resources  
**TIME & DATE:** 10:30AM, Tuesday, March 30, 2004  
**PLACE:** Houston, TX  
**CHAIR:** Senator Kenneth Armbrister

Houston Firefighters Relief & Retirement Fund

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The Committee will meet at Houston Firefighters Relief & Retirement Fund,  
4225 Interwood North Parkway, Houston, TX 77032

- I. Call to Order
- II. Roll Call
- III. Invited Testimony
- IV. Public Testimony
- V. Other Business
- VI. Adjourn/Recess

**AGENDA**

**Tuesday, March 30, 2004, 10:30AM**

**Houston Firefighters' Relief and Retirement Fund Building  
Houston, Texas**

\*\*\*\*\*

- I. Call to Order and Roll Call
  
- II. Committee Business
  - Adoption of Committee Rules
  - Review of Charges
  
- II. Invited Testimony
  - Texas Commission on Environmental Quality
  - Texas Clean Air Working Group (TCAWG)
  - Texas General Land Office
  
- IV. Public Testimony
  
- V. Other Business
  
- VI. Recess



**MINUTES**

**SENATE COMMITTEE ON NATURAL RESOURCES**  
**Tuesday, March 30, 2004**  
**10:30 a.m.**  
**Houston Firefighters' Relief & Retirement Fund Building**

\*\*\*\*\*

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Natural Resources was held on Tuesday, March 30, 2004, in the Houston Firefighters' Relief & Retirement Fund

\*\*\*\*\*

**MEMBERS PRESENT:**

Senator Kenneth Armbrister  
Senator Mike Jackson  
Senator Craig Estes  
Senator Troy Fraser  
Senator Jon Lindsay

**MEMBERS ABSENT:**

Senator Gonzalo Barrientos  
Senator Robert Duncan  
Senator Juan Hinojosa  
Senator Eddie Lucio, Jr.  
Senator Florence Shapiro  
Senator Todd Staples

\*\*\*\*\*

The chair called the meeting to order at 10:35 a.m. The following business was transacted:

The Chair thanked Senator Whitmire's office for helping arrange the meeting place. He also thanked the Houston Firefighters' Relief and Retirement Fund for hosting the committee.

The Chair explained the Committee Rules. Senator Fraser moved adoption, there being no objection, the rules were adopted.

The Chair explained the purpose of interim committee hearings. He then went over the interim charges of the National Resources Committee.

The following invited testimony was given:

Commissioner Ralph Marquez, Texas Commission on Environmental Quality  
Anne Culver, Texas Clean Air Working Group  
Bill Peacock, Texas General Land Office  
Wade Wheatley, Texas Commission on Environmental Quality

Public testimony was then given. A complete witness list is attached.

The Chair announced the next meeting in Dallas on June 2, 2004.

There being no further business, at 12:40 p.m. Senator Armbrister moved that the Committee stand recessed subject to the call of the chair. Without objection, it was so ordered.

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Senator Kenneth Armbrister, Chair

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RuthAnn Nicholson, Clerk

## WITNESS LIST

**March 30, 2004**

**10:30 AM**

### **Houston Interim Hearing**

ON: Berger, Dr. Pamela Director of Environmental  
Policy (Mayor's Office - City of Houston), Houston, TX  
Brittin, Carolyn (Texas Commission on Environmental Quality), Austin, TX  
Culver, Anne Sr. Vice President (Texas Clean Air Working Group), Houston, TX  
Hartt, Mary Business Management Consultant (Self), Conroe, TX  
Macomb, Chris Governmental Affairs Director (Waste Management of Texas, Inc.), Austin, TX  
Marquez, Ralph B. Commissioner (Texas Commission on Environmental Quality), Austin, TX  
Peacock, Bill (General Land Office), Austin, TX  
Smith, Leah Geologist (Self), Conroe, TX  
Stegenga, Linda Vice-Chair (Citizens Against Montgomery Landfill), Cleveland, TX  
Turkal, Dave General Manager (BFI/Allied Waste), Houston, TX  
Wheatley, Wade Director, Waste Permitting (Texas Commission on Environmental Quality),  
Austin, TX

## **ATTACHMENT 2**

**SENATE  
NOTICE OF PUBLIC HEARING**

**COMMITTEE:** Natural Resources  
**TIME & DATE:** 10:00AM, Thursday, August 5, 2004  
**PLACE:** N. Tx. Tollway Authority  
**CHAIR:** Senator Kenneth Armbrister

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The committee will meet at the North Texas Tollway's Administrative Offices. They are located at 5900 West Plano Parkway, Plano, Tx 75093

- I. Call to Order
- II. Roll Call
- III. Invited Testimony
- IV. Public Testimony
- V. Other Business
- VI. Adjourn/Recess

## **AGENDA**

**5900 West Plano Parkway, Plano, Texas 75093**

**August 5, 2004 10:00 am**

- I. Call to Order & Roll Call
- II. Welcoming Remarks  
Mayor Evans, City of Plano  
Donald D. Dillard, Chairman, North Texas Tollway Authority
- III. Invited Testimony  
North Texas Panel
  - Judge Ron Harris, Collin County
  - Judge Mary Horn, Denton County
  - Mike Eastland, North Central Texas Council of Governments

Commissioner Marquez, Texas Commission on Environmental Quality

Rebecca Weber, Environmental Protection Agency - Region 6

George Beatty, Jr., Texas Environmental Research Consortium

Transportation Panel

- Gary Thomas, Dallas Area Rapid Transit
- Jim Crites, Dallas/Fort Worth Airport
- Dana Blume, Port of Houston

Scheleen Walker, Early Action Compact Task Force

Wade Stansell, Manager of Environmental Strategy, TXU

Jennifer Newton, Association of General Contractors

Jerry James, Director of Environmental Services, City of Victoria

Ramon Alvarez, Environmental Defense

Dub Taylor, State Energy Conservation Office

Bahman Yazdani, Texas Engineering Experiment Station

IV. Public Testimony

V. Recess

**MINUTES**

**SENATE COMMITTEE ON NATURAL RESOURCES**

Thursday, August 5, 2004

10:00 a.m.

N. Tx Tollway Authority, Plano, Texas

\*\*\*\*\*

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Natural Resources was held on Thursday, August 5, 2004, at the N. Tx Tollway Authority in Plano, Texas.

\*\*\*\*\*

**MEMBERS PRESENT:**

Senator Kenneth Armbrister  
Senator Mike Jackson  
Senator Craig Estes  
Senator Jon Lindsay  
Senator Eddie Lucio, Jr.

**MEMBERS ABSENT:**

Senator Gonzalo Barrientos  
Senator Robert Duncan  
Senator Troy Fraser  
Senator Juan Hinojosa  
Senator Frank Madla  
Senator Todd Staples

\*\*\*\*\*

The chair called the meeting to order at 10:25 a.m. The following business was transacted:

Senator Armbrister thanked the North Texas Tollway Authority for the use of their facility. He then gave a brief overview of the charges for the Senate Natural Resources Committee and discussed future meeting dates.

The Chair recognized the Mayor of Plano, The Honorable Pat Evans for welcoming remarks. The Chair then recognized the Chairman of the North Texas Tollway Authority, Donald D. Dillard for welcoming remarks.

The Chair then introduced invited testimony from The Honorable Judge Ron Harris, Collin County, The Honorable Judge Mary Horn, Denton County, Mike Eastland, North Central Texas Council of Governments, Commissioner Marquez from the Texas Commission on Environmental Quality, Carl Edlund with the Environmental Protection Agency, George Beatty, Jr. with the Texas Environmental



Research Consortium, Gary Thomas with the Dallas Area Rapid Transit, Jim Crites, with the Dallas/Fort Worth Airport, Dana Blume with the Port of Houston, Scheleen Walker with Early Action Compact Task Force, Wade Stansell, Manager of Environmental Strategy at TXU, Jennifer Newton with the Association of General Contractors, Jerry James, the Director of Environmental Services for the City of Victoria, Ramon Alvarez with Environmental Defense, Dub Taylor with the State Energy Conservation Office, Bahman Yazdani with the Texas Engineering Experiment Station.

The Chair then opened public testimony. A complete witness list is attached.

There being no further business, at 4:55pm, Senator Armbrister moved the Senate Natural Resource Committee stand recessed subject to the call of the Chair. There being no objection, it was so ordered.

---

Senator Kenneth Armbrister, Chairman

---

Kelly C. Gilbert, Committee Clerk

## WITNESS LIST

**August 5, 2004**  
**10:00 AM**

### **Interim Charges**

ON: Alvarez, Ramon Scientist (Environmental Defense), Austin, TX  
Beard, Monica (Mobile Emissions Reduction Coalition), Austin, TX  
Beatty, George Consultant (Texas Environmental Research Consortium),  
Houston, TX  
Bell, Peter (Distribution Drive), Addison, TX  
Beving, Rita Agency Owner (Dallas Sierra Club), Addison, TX  
Blume, Dana Environmental Affairs Program Coordinator (Port of Houston  
Authority), Houston, TX  
Boyle, Thomas D. (Self), Midlothian, TX  
Crites, James Executive Vice President Operations (DFW International Airport),  
Dallas/Fort Worth, TX  
Edlund, Carl Director (EPA), Dallas, TX  
Evans, Pat Mayor (City of Plano), Plano, TX  
Ferrer, Liz (Walsh Ranches Limited Partnership), Austin, TX  
Fischer, Nile (Self), Arlington, TX  
Grinnell, Joseph (Self), Palmer, TX  
Hammond, Wendi Executive Director (Blue Skies Alliance), Dallas, TX  
Harris, Ron County Judge (North Tx Clean Air Steering Committee, Tx Clean  
Air Working Group), McKinney, TX  
James, Jeremy (City of Victoria), Victoria, TX  
Kaminsky, Cynthia (Citizens for Responsible Economic Development),  
McKinney, TX  
Marquez, Ralph Commissioner (Texas Commission on Environmental Quality),  
Austin, TX  
McCracken, J. Guy (Texas Citizens Lobby), Grapevine, TX  
Meyer, Claudia (Self), Dallas, TX  
Newton, Jennifer (AGC of Texas), Austin, TX

Parks, Jim General Manager (North Texas Municipal Water District), Wylie, TX  
Rooke, Molly (Public Citizen, Texas office), Dallas, TX  
Stansell, Wade Environmental Strategy Manager (TXU), Dallas, TX  
Taylor, Dub Director (State Energy Conservation Office), Austin, TX  
Thomas, Gary President/Executive Director (Dallas Area Rapid Transit), Dallas, TX  
Tull, Laura (Self), Fort Worth, TX  
Walker, Scheleen Air Quality Planner (Travis County Judge Samuel T. Biscoe), Austin, TX  
Whitmore, Eleanor Program Director (Texas Campaign for the Environment, Texas Trash Watch), Arlington, TX  
Yazdani, Bahman (Energy Systems Laboratory/ Tx A&M University), College Station, TX  
Chapman, Barney (Self), Clarksville, TX  
Harbour, Jan Polk (Self), Dallas, TX  
Hubener, Katy (Self), Grand Prairie, TX  
Louden Jr., G. Malcolm (Walsh Ranches, L.P.), Fort Worth, TX  
Matthews, David (Texans who like to breathe), Dallas, TX  
Traub, Marilyn (Self), Dallas, TX  
Smith, Deborah Angell (Democratic Party of Collin County), Dallas, TX

# **ATTACHMENT 3**

**SENATE  
NOTICE OF PUBLIC HEARING**

**COMMITTEE:** Natural Resources  
**TIME & DATE:** 10:00AM, Tuesday, November 9, 2004  
**PLACE:** Capitol Extension E1.016  
**CHAIR:** Senator Kenneth Armbrister

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If you have comments or written testimony that you would like to submit to the committee for consideration, that information must be submitted at this hearing.

- I Call to Order / Roll Call
- II. Invited Testimony
- III. Public Testimony
- IV. Other Business
- V. Adjourn / Recess

## **AGENDA**

**Tuesday, November 9, 2004, 10:00 a.m.  
Capitol Extension, Room E1.016  
Austin, Texas**

### **I. Call to Order / Roll Call**

### **II. Invited Testimony**

Texas Clean Air Working Group (TCAWG)  
Ann Culver, Resolution of Legislative Priorities

Citizen Interests in Regulation and Enforcement Panel  
Thomas Smith, Public Citizen of Texas  
Wendy Hammond, Exec. Director, Blue Skies Alliance  
Mary Kelly, Environmental Defense

Business Interests in Regulation and Enforcement Panel  
Jon Fisher, Texas Chemical Council  
Mary Miksa, Texas Association of Business  
Shawn Glacken, Association of Electric Companies of Texas, Inc.

Texas Commission on Environmental Quality  
Wade Wheatley, Briefing on the Site Operating Plan rule and update on TCEQ rule  
revisions for Municipal Solid Waste facilities

Glen Hackler, City Manager of Andrews  
Wendell Moody, City of Eden  
Affordability of Federal arsenic and radio-nuclides drinking water standards for rural  
communities and options for flexibility for compliance with the rules

### **III. Public Testimony**

### **IV. Other Business**

### **V. Recess**

## MINUTES

### SENATE COMMITTEE ON NATURAL RESOURCES

Tuesday, November 9, 2004

10:00 a.m.

Capitol Extension, Room E1.016

\*\*\*\*\*

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Natural Resources was held on Tuesday, November 9, 2004, in the Capitol Extension, Room E1.016, at Austin, Texas.

\*\*\*\*\*

#### **MEMBERS PRESENT:**

Senator Kenneth Armbrister  
Senator Mike Jackson  
Senator Gonzalo Barrientos  
Senator Craig Estes  
Senator Troy Fraser

#### **MEMBERS ABSENT:**

Senator Robert Duncan  
Senator Juan Hinojosa  
Senator Jon Lindsay  
Senator Eddie Lucio, Jr.  
Senator Frank Madla  
Senator Todd Staples

\*\*\*\*\*

The chair called the meeting to order at 10:15 a.m. The following business was transacted:

The chair recognized the following for invited testimony:

Ann Culver, Texas Clean Air Working Group  
Gregg Cooke  
Thomas Smith, Public Citizen of Texas  
Wendy Hammond, Blue Skies Alliance

Mary Kelly, Environmental Defence  
Jon Fisher, Texas Chemical Council  
Mary Miksa, Texas Association of Business  
Shawn Glacken, Association of Electric Companies of Texas, Inc.  
Wade Wheatley, TCEQ  
Glen Hackler, City of Andrews  
Wendell Moody, City of Eden

The chair then recognized the following for public testimony. (See attached for list of all witnesses)

There being no further business to come before the Senate Natural Resources Committee, at 2:00PM, the Chair moved the Committee stand recessed, subject to the call of the Chair. There being no objection, the motion prevailed.

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Senator Kenneth Armbrister, Chairman

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Kelly C. Gilbert, Committee Clerk



## WITNESS LIST

**November 9, 2004**

**10:00 AM**

### **Interim Charges**

ON: Conales, Suzie (Citizens for Environmental Justice), Corpus Christi, TX  
Cooke, Gregg Attorney (Dallas, Denton, Collin and Tarrant County), Dallas, TX  
Culver, Anne Senior VP, Greater Houston Partnership (Tx Clean Air Working Group), Houston, TX  
Fisher, Jon Sr. Vice President (Tx Chemical Council), Austin, TX  
Glacken, Shawn TXU (Association of Electric Companies of Texas), Dallas, TX  
Gregory, Bob President and Owner (Texas Disposal Systems Landfill, Inc.), Austin, TX  
Hackler, Glen E. City Manager (City of Andrews), Andrew, TX  
Hadden, Karen (SEED Coalition), Austin, TX  
Hammond, Wendi Executive Director (Blue Skies Alliance), Dallas, TX  
Kelly, Mary Attorney (Environmental Defense), Austin, TX  
Miksa, Mary Sr. Vice President - Governmental Affairs (Texas Association of Business), Austin, TX  
Moody, Wendell City Councilman (City of Eden), Eden, TX  
Sahs, Mary Attorney (Walsh Rances Limited Partnership), Austin, TX  
Schneider, Robin Executive Director (Texas Campaign for Environment), Austin, TX  
Smith, Thomas Director (Public Citizen of Texas), Austin, TX  
Walker, Scheleen Planner, Air Quality Project Manager (Travis County), Austin, TX  
Wheatley, Wade Director - Waste Permits (TCEQ), Austin, TX  
Green, Renee D. Director Environmental Services (Bexar County), San Antonio, TX

# **ATTACHMENT 4**

H.B. No. 1365

AN ACT

relating to the Texas emissions reduction plan.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 386.001(2), Health and Safety Code, is amended to read as follows:

(2) "Affected county" includes:

- (A) Bastrop County;
- (B) Bexar County;
- (C) Caldwell County;
- (D) Comal County;
- (E) Ellis County;
- (F) Gregg County;
- (G) Guadalupe County;
- (H) Harrison County;
- (I) Hays County;
- (J) Henderson County;
- (K) Hood County;
- (L) Hunt County;
- (M) Johnson County;
- (N) [~~K~~] Kaufman County;

- (O) [~~L~~] Nueces County;
- (P) [~~M~~] Parker County;
- (Q) [~~N~~] Rockwall County;
- (R) [~~O~~] Rusk County;
- (S) [~~P~~] San Patricio County;
- (T) [~~Q~~] Smith County;
- (U) [~~R~~] Travis County;
- (V) [~~S~~] Upshur County;
- (W) [~~T~~] Victoria County;
- (X) [~~U~~] Williamson County; ~~and~~
- (Y) [~~V~~] Wilson County; and
- (Z) any other county designated as an affected county by commission rule

because of deteriorating air quality.

SECTION 2. Section 386.053(d), Health and Safety Code, is amended to read as follows:

(d) The commission may propose revisions to the guidelines and criteria adopted under this section as necessary to improve the ability of the plan to achieve its goals. Revisions may include, among other changes, adding additional pollutants, adding stationary engines or engines used in stationary applications, adding vehicles and equipment that use fuels other than diesel, or adjusting eligible program categories, as appropriate, to ensure that incentives established under this chapter achieve the maximum possible emissions reductions. The commission shall make a proposed revision available to the public before the 45th day preceding the date of final adoption

of the revision and shall hold at least one public meeting to consider public comments on the proposed revision before final adoption.

SECTION 3. Sections 386.101(6) and (9), Health and Safety Code, are amended to read as follows:

(6) "On-road diesel" means an on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 8,500 [~~10,000~~] pounds or more.

(9) "Repower" means to replace an old engine powering an on-road or non-road diesel with a new engine, a used engine, a remanufactured engine, or electric motors, drives, or fuel cells:

~~—————[(A) a new engine that emits at least 30 percent less than the oxides of nitrogen emissions standard required by federal regulation for the current model year for that engine;~~

~~—————[(B) an engine manufactured later than 1987 that emits at least 30 percent less than the oxides of nitrogen emissions standard emitted by a new engine certified to the baseline oxides of nitrogen emissions standard for that engine;~~

~~—————[(C) an engine manufactured before 1988 that emits not more than 50 percent of the oxides of nitrogen emissions standard emitted by a new engine certified to the baseline oxides of nitrogen emissions standard for that engine; or~~

~~—————[(D) electric motors, drives, or fuel cells].~~

SECTION 4. Section 386.102(b), Health and Safety Code, is amended to read as follows:

(b) Projects that may be considered for a grant under the program include:

- (1) purchase or lease of on-road or non-road diesels;
- (2) emissions-reducing retrofit projects for on-road or non-road diesels;
- (3) emissions-reducing repower projects for on-road or non-road diesels;
- (4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;
- (5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower emissions of oxides of nitrogen;
- (6) use of qualifying fuel; ~~and~~
- (7) implementation of infrastructure projects; and
- (8) replacement of on-road or non-road diesels with newer on-road or non-road diesels.

SECTION 5. Section 386.103(a), Health and Safety Code, is amended to read as follows:

(a) Any person as defined by Section 382.003 that owns one or more on-road or non-road diesels that operate primarily within a nonattainment area or affected county of this state or that otherwise contributes to the state inventory of emissions of oxides of nitrogen may apply for a grant under the program. The commission may adopt guidelines to allow a person other than the owner to apply for and receive a grant in order to improve the ability of the program to achieve its goals.

SECTION 6. Section 386.104(f), Health and Safety Code, is amended to read as follows:

(f) A proposed retrofit, repower, replacement, or add-on equipment project must document, in a manner acceptable to the commission, a reduction in emissions of oxides of nitrogen of at least 30 percent compared with the baseline emissions adopted by the commission for the relevant engine year and application. After study of available emissions reduction technologies, after public notice and comment, and after consultation with the advisory board, the commission may revise the minimum percentage reduction in emissions of oxides of nitrogen required by this subsection to improve the ability of the program to achieve its goals.

SECTION 7. Section 386.105, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) The commission may allow for the apportionment of credits associated with a project between the plan and another program or entity if the part of the credit assigned to the program that is part of the plan still meets any applicable cost-effectiveness criteria.

SECTION 8. Section 386.106(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Section 386.107 and except for infrastructure projects and infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment project, the commission may not award a grant for a proposed project the cost-effectiveness of which, calculated in accordance with Section 386.105 and criteria developed under that section, exceeds \$13,000 per ton of oxides of nitrogen emissions reduced in the nonattainment area or affected county for which the project is proposed. This subsection does not restrict commission authority under other law to require emissions reductions with a cost-effectiveness that exceeds \$13,000 per ton.

SECTION 9. Section 386.112(b), Health and Safety Code, is amended to read as follows:

(b) The program shall authorize statewide incentives for the reimbursement of incremental costs for the purchase or lease, according to the schedule provided by Section 386.113, of new on-road diesels that are certified by the United States Environmental Protection Agency or the California Air Resources Board to an emissions standard provided by Section 386.113 if the purchaser or lessee of the on-road diesel agrees to register the vehicle in this state and to operate the on-road diesel in this state for not less than 75 percent of the on-road diesel's annual mileage.

SECTION 10. Subchapter C, Chapter 386, Health and Safety Code, is amended by adding Sections 386.115 and 386.116 to read as follows:

Sec. 386.115. MODIFICATION OF VEHICLE ELIGIBILITY. After evaluating the availability of vehicles meeting the emissions standards and after public notice and comment, the commission, in consultation with the advisory board, may expand the program to include other on-road vehicles, regardless of fuel type used, that meet the emissions standards, have a gross vehicle weight rating of greater than 8,500 pounds, and are purchased or leased in lieu of a new on-road diesel.

Sec. 386.116. SMALL BUSINESS INCENTIVES. (a) In this section, "small business" means a business owned by a person who:

(1) owns and operates not more than two vehicles, one of which is:

(A) an on-road diesel with a pre-1994 engine model; or

(B) a non-road diesel with an engine with uncontrolled emissions; and



(2) has owned the vehicle described by Subdivision (1)(A) or (B) for more than one year.

(b) The commission by rule shall develop a method of providing fast and simple access to grants under this subchapter for a small business.

(c) The commission shall publicize and promote the availability of grants under this section to encourage the use of vehicles that produce fewer emissions.

(d) On or before December 1 of each even-numbered year, the commission shall report commission actions and results under this section to the governor, lieutenant governor, and speaker of the house of representatives.

SECTION 11. Section 386.202(b), Health and Safety Code, is amended to read as follows:

(b) Programs approved under this subchapter and other energy efficiency programs administered by the utility commission must include energy conservation programs for the retirement of materials and appliances that contribute to energy consumption or peak energy demand to ensure the reduction of energy consumption, energy demand, or peak loads, and associated emissions of air contaminants.

SECTION 12. Section 386.252, Health and Safety Code, is amended to read as follows:

Sec. 386.252. USE OF FUND. (a) Money in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:

(1) for the diesel emissions reduction incentive program, 87.5 [~~72~~] percent of the money in the fund, of which not more than [~~three percent may be used for infrastructure projects and not more than~~] 10 percent may be used for on-road diesel purchase or lease incentives;

(2) [~~for the motor vehicle purchase or lease incentive program, 15 percent of the money in the fund;~~

~~—————~~ [(3) for the energy efficiency grant program, 7.5 percent of the money in the fund;

~~—————~~ [(4) for the new technology research and development program, 9.5 [~~7.5~~] percent of the money in the fund, of which up to \$250,000 is allocated for administration, up to \$200,000 is allocated for a health effects study, [~~and~~] \$500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties, and not less than 20 percent is to be allocated each year to support research related to air quality for the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas by a nonprofit organization based in Houston; [~~and~~]

(3) [(5)] for administrative costs incurred by [~~the utility commission;~~] the commission[~~;~~ ~~the comptroller;~~] and the laboratory, three percent.

(b) Up to 25 [~~15~~] percent of the money allocated under Subsection (a) to a particular program and not expended under that program by January [~~March~~] 1 of the second fiscal year of a fiscal biennium may be used for another program under the plan as determined by the commission in consultation with the advisory board.

SECTION 13. Section 387.003(b), Health and Safety Code, is amended to read as follows:

(b) Under the program, the Texas Council on Environmental Technology shall provide grants to be used to support development of emissions-reducing technologies that may be used for projects eligible for awards under Chapter 386 and other new technologies that show promise for commercialization. The primary objective of this chapter is to promote the development of commercialization technologies that will support projects that may be funded under Chapter 386 and this chapter, including advanced technologies such as fuel cells, catalysts, and fuel additives.

SECTION 14. Section 387.006(a), Health and Safety Code, is amended to read as follows:

(a) An application for a technology grant under this chapter must show clear and compelling evidence that:

(1) the proposed technology project has a strong commercialization plan and organization; and

(2) the technology proposed for funding:

(A) is likely to be offered for commercial sale in this state as soon as practicable but no later than [~~within~~] five years after the date of the application for funding; and

(B) once commercialized, will offer opportunities for projects eligible for funding under Chapter 386.

SECTION 15. Section 388.003, Health and Safety Code, is amended by adding Subsection (i) to read as follows:

(i) A building certified by a national, state, or local accredited energy efficiency program and determined by the laboratory to be in compliance with the energy efficiency requirements of

this section may, at the option of the municipality, be considered in compliance. The United States Environmental Protection Agency's Energy Star Program certification of energy code equivalency shall be considered in compliance.

SECTION 16. Section 388.004, Health and Safety Code, is amended to read as follows:

Sec. 388.004. ENFORCEMENT OF ENERGY STANDARDS OUTSIDE OF MUNICIPALITY. (a) For construction outside of the local jurisdiction of a municipality:

(1) a building certified by a national, state, or local accredited energy efficiency program shall be considered in compliance;

(2) a building with inspections from private code-certified inspectors using the energy efficiency chapter of the International Residential Code or International Energy Conservation Code shall be considered in compliance; and

(3) a builder who does not have access to either of the above methods for a building shall certify compliance using a form provided by the laboratory, enumerating the code-compliance features of the building.

(b) A builder shall retain until the third anniversary of the date on which compliance is achieved the original copy of any documentation that establishes compliance under this section. The builder on receipt of any compliance documentation shall provide a copy to the owner of the building.

(c) A single-family residence built in the unincorporated area of a county the construction of which was completed on or after September 1, 2001, but not later than August 31, 2002, shall be considered in compliance.

SECTION 17. Chapter 388, Health and Safety Code, is amended by adding Sections 388.009 and 388.010 to read as follows:

Sec. 388.009. ENERGY-EFFICIENT BUILDING PROGRAM. (a) In this section, "National Housing Act" means Section 203(b), (i), or (k) of the National Housing Act (12 U.S.C. Sections 1709(b), (i), and (k)), as amended.

(b) The General Land Office, in consultation with the laboratory, the commission, and an advisory committee appointed by the General Land Office, may develop an energy-efficient building accreditation program for buildings that exceed the building energy performance standards under Section 388.003 by 15 percent or more.

(c) If the General Land Office adopts a program under this section, the General Land Office, in consultation with the laboratory, shall update the program on or before December 1 of each even-numbered year using the best available energy-efficient building practices.

(d) If the General Land Office adopts a program under this section, the program shall use a checklist system to produce an energy-efficient building scorecard to help:

(1) home buyers compare potential homes and, by providing a copy of the completed scorecard to a mortgage lender, qualify for energy-efficient mortgages under the National Housing Act; and

(2) communities qualify for emissions reduction credits by adopting codes that meet or exceed the energy-efficient building or energy performance standards established under this chapter.

(e) The General Land Office may establish a public information program to inform homeowners, sellers, buyers, and others regarding energy-efficient building ratings.

(f) If the General Land Office adopts a program under this section, the laboratory shall establish a system to measure the reduction in energy and emissions produced under the energy-efficient building program and report those savings to the commission.

Sec. 388.010. OUTREACH TO NEAR-NONATTAINMENT AREAS. The commission shall conduct outreach to near-nonattainment areas and affected counties on the benefits of implementing energy efficiency initiatives, including the promotion of energy-efficient building programs and urban heat island mitigation techniques, as a way to meet air quality attainment goals under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.), as amended.

SECTION 18. Chapter 389, Health and Safety Code, is amended by adding Section 389.003 to read as follows:

Sec. 389.003. COMPUTING ENERGY EFFICIENCY EMISSIONS REDUCTIONS. The commission shall develop a method to use in computing emissions reductions obtained through energy efficiency initiatives.

SECTION 19. Subchapter H, Chapter 2155, Government Code, is amended by adding Section 2155.451 to read as follows:

Sec. 2155.451. VENDORS THAT MEET OR EXCEED AIR QUALITY STANDARDS.  
(a) This section applies only to a contract to be performed, wholly or partly, in an affected county, as that term is defined by Section 386.001, Health and Safety Code.

(b) The commission and state agencies procuring goods or services may:

(1) give preference to goods or services of a vendor that demonstrates that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality; or

(2) require that a vendor demonstrate that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.

(c) The preference may be given only if the cost to the state for the goods or services would not exceed 105 percent of the cost of the goods or services provided by a vendor who does not meet the standards.

SECTION 20. Subchapter Z, Chapter 271, Local Government Code, is amended by adding Section 271.907 to read as follows:

Sec. 271.907. VENDORS THAT MEET OR EXCEED AIR QUALITY STANDARDS.

(a) In this section, "governmental agency" has the meaning assigned by Section 271.003.

(b) This section applies only to a contract to be performed, wholly or partly, in an affected county, as that term is defined by Section 386.001, Health and Safety Code.

(c) A governmental agency procuring goods or services may:

(1) give preference to goods or services of a vendor that demonstrates that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality; or

(2) require that a vendor demonstrate that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.

(d) The preference may be given only if the cost to the governmental agency for the goods or services would not exceed 105 percent of the cost of the goods or services provided by a vendor who does not meet the standards.

SECTION 21. Section 151.0515, Tax Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (b-1) to read as follows:

(a) In this section, "equipment" includes all off-road, heavy-duty diesel equipment [~~classified as construction equipment~~], other than implements of husbandry used solely for agricultural purposes, including:

- (1) pavers;
- (2) tampers/rammers;
- (3) plate compactors;
- (4) concrete pavers;
- (5) rollers;
- (6) scrapers;
- (7) paving equipment;
- (8) surface equipment;
- (9) signal boards/light plants;
- (10) trenchers;
- (11) bore/drill rigs;
- (12) excavators;
- (13) concrete/industrial saws;



- (14) cement and mortar mixers;
- (15) cranes;
- (16) graders;
- (17) off-highway trucks;
- (18) crushing/processing equipment;
- (19) rough terrain forklifts;
- (20) rubber tire loaders;
- (21) rubber tire tractors/dozers;
- (22) tractors/loaders/backhoes;
- (23) crawler tractors/dozers;
- (24) skid steer loaders;
- (25) off-highway tractors; [~~and~~]
- (26) Dumpsters/tenders; and
- (27) mining equipment.

(b) In each county in this state, a surcharge is imposed on the retail sale, lease, or rental of new or used equipment in an amount equal to two [~~one~~] percent of the sale price or the lease or rental amount.

(b-1) In each county in this state, a surcharge is imposed on the storage, use, or other consumption in this state of new or used equipment. The surcharge is at the same percentage rate as is provided by Subsection (b) on the sales price or the lease or rental amount of the equipment.

(c) The surcharge shall be collected at the same time and in the same manner and shall be administered and enforced in the same manner as the tax imposed under this chapter [~~subchapter~~]. The comptroller shall adopt any additional procedures needed for the collection, administration, and enforcement of the surcharge authorized by this section and shall deposit all remitted surcharges to the credit of the Texas emissions reduction plan fund.

SECTION 22. Section 152.0215(a), Tax Code, is amended to read as follows:

(a) A surcharge is imposed on every retail sale, [~~or~~] lease, or use of every on-road diesel motor vehicle that is over 14,000 pounds [~~and is of a model year 1996 or earlier~~] and that is sold, [~~or~~] leased, or used in this state. The amount of the surcharge for a vehicle of a model year 1996 or earlier is 2.5 percent of the total consideration and for a vehicle of a model year 1997 or later, one percent of the total consideration.

SECTION 23. Section 224.153, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) The department may not authorize vehicles addressed in Subsection (c) to use a high occupancy vehicle lane if such use would violate federal transit or highway funding restrictions.

SECTION 24. Sections 501.138(a) and (b), Transportation Code, are amended to read as follows:

(a) An applicant for a certificate of title, other than the state or a political subdivision of the state, must pay the county assessor-collector a fee of:

(1) \$33 if the applicant's residence is a county located within a nonattainment area as defined under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407), as amended, or is an affected county, as defined by Section 386.001, Health and Safety Code;

(2) \$28 if the applicant's residence is any other county; or

(3) on or after September 1, 2008, \$28 regardless of the county in which the applicant resides [\$13].

(b) The county assessor-collector shall send:

(1) \$5 of the fee to the county treasurer for deposit in the officers' salary fund;

[and]

(2) \$8 of the fee to the department:

(A) together with the application within the time prescribed by Section 501.023; or

(B) if the fee is deposited in an interest-bearing account or certificate in the county depository or invested in an investment authorized by Subchapter A, Chapter 2256, Government Code, not later than the 35th day after the date on which the fee is received; and

(3) the following amount to the comptroller at the time and in the manner prescribed by the comptroller:

(A) \$20 of the fee if the applicant's residence is a county located within a nonattainment area as defined under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407), as amended, or is an affected county, as defined by Section 386.001, Health and Safety Code;

(B) \$15 of the fee if the applicant's residence is any other county; or

(C) Fees collected under this subsection to be sent to the comptroller shall be deposited as follows:

(i) before September 1, 2008, to the credit of the Texas emissions reduction fund; and

(ii) after September 1, 2008, to the credit of the Texas Mobility Fund.

SECTION 25. Section 545.353, Transportation Code, is amended by adding Subsection (j) to read as follows:

(j) The commission may not determine or declare, or agree to determine or declare, a prima facie speed limit for environmental purposes on a part of the highway system.

SECTION 26. Sections 386.157 and 386.159, Health and Safety Code, are repealed.

SECTION 27. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

(b) Sections 21 and 22 of this Act take effect on the first day of the first month beginning on or after the earliest date on which this Act may take effect if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect before September 1, 2003, Sections 21

and 22 of this Act take effect September 1, 2003. The comptroller of public accounts may adopt emergency rules for the implementation of Sections 21 and 22 of this Act.

(c) The change in law made by Section 25 of this Act does not affect speed limits that have been approved by the Texas Transportation Commission before the effective date of this Act.

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\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 1365 was passed by the House on April 8, 2003, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 1365 on May 7, 2003, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1365 on June 1, 2003, by the following vote: Yeas 132, Nays 11, 4 present, not voting; and that the House adopted H.C.R. No. 300 authorizing certain corrections in H.B. No. 1365 on June 2, 2003, by a non-record vote.

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Chief Clerk of the House

I certify that H.B. No. 1365 was passed by the Senate, with amendments, on May 5, 2003, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference

committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1365 on June 1, 2003, by the following vote: Yeas 31, Nays 0; and that the Senate adopted H.C.R. No. 300 authorizing certain corrections in H.B. No. 1365 on June 2, 2003, by a viva-voce vote.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor

# **ATTACHMENT 5**

### Historical Data Summary MSW Landfills in Texas

Year	Waste Disposal (Tons)	State Population	Per Capita Disposal (Pounds/Day)	Accepting Waste	Not Accepting Waste	Remaining Capacity		
						Cubic Yards	Tons	Years
1986	17,283,977	16,562,639	5.72	790	94	1,194,118,	388,088,47	22.5
1987	18,269,917	16,623,592	6.02	763	104	1,188,680,	386,301,22	21.1
1988	18,114,295	16,668,639	5.95	750	84	1,162,374,	377,771,75	20.9
1989	18,531,001	16,806,521	6.04	616	83	1,111,902,	361,368.16	19.5
1990	19,969,615	16,986,510	6.44	493	142	1,124,524,	393,583,67	19.7
1991	19,973,622	17,349,000	6.31	405	135	1,183,699,	414,294,66	20.7
1992	21,675,661	17,655,650	6.73	345	77	1,193,233,	440,730,04	20.3
1993	21,517,063	18,031,484	6.54	289	62	1,205,635,	456,161,79	21.2
1994	21,808,274	18,378,185	6.50	199	58	1,269,565,	483,752,98	22.2
1995	21,639,678	18,723,991	6.33	191	39	1,071,520,	523,633,36	24.2
1996	21,738,137	19,128,261	6.23	186	35	1,023,799,	554,095,94	25.5
1997	22,094,777	19,439,337	6.23	181	37	1,169,628,	659,694,44	29.9
1998	23,259,425	19,759,614	6.45	184	29	1,300,609,	716,302,14	30.8
1999	25,791,066	20,044,141	7.05	179	34	1,557,349,	862,778,82	33.4
2000†	28,034,517	20,851,820	7.37	183	44	1,633,321,	904,891,93	32.3
2001	27,938,751	21,235,018	7.18	186	42	1,710,713,	939,383,63	33.6
2002	29,061,966	21,779,893	7.31	190	40	1,691,970,	971,314,96	33.4

† FY 2000 data revised after publication