

## **Chapter II. History and Major Events**

The history of natural resource protection by the State of Texas is one of gradual evolution from protecting the right of access to natural resources (principally surface water) to a broader role in protecting public health and conserving natural resources for future generations of Texans. Natural resource programs were established in Texas at the turn of the Twentieth Century, motivated initially by concerns over the management of water resources and water rights. In parallel with developments in the rest of the nation, and at the federal level, state natural resource efforts broadened at mid-century to include the protection of air and water resources, and later to the regulation of hazardous and non-hazardous waste generation.

During the 1990s, the Texas Legislature moved to make natural resource protection more efficient by consolidating programs with the intention of creating more streamlined customer service and more synergy between programs. This trend culminated in the creation of the TNRCC in the Fall of 1993 as a comprehensive environmental protection agency.

The most recent trend is toward a more functional approach, in which programs dealing with air, water, land and waste are becoming more closely integrated at both a strategic and an operational level. Another recent trend has been to move beyond the use of permitting and enforcement to encourage additional voluntary steps to reduce waste and releases to the environment. This activity is being accomplished through training and technical assistance and through voluntary reduction and conservation programs such as the highly successful Clean Industries 2000 Program and Water Smart.

**Provide a timeline discussion of the agency's history, briefly describing the key events in the development of the agency, including:**

### **TEXAS TIMELINE**

- 1913 The Legislature creates the State Board of Water Engineers to establish procedures for defining and administering the rights of surface water users.
- 1953 The Legislature creates the Texas Water Pollution Advisory Council, the first state body charged with dealing with pollution related issues.
- 1956 Texas' first air quality initiative is established in 1956, when the State Department of Health, Division of Occupational Health and Radiation Control, begins air sampling in the state.
- 1957 The Legislature creates the Texas Water Development Board to forecast state water supply needs and to provide funding for water supply and water conservation projects.
- 1961 The Legislature creates the Texas Water Pollution Board and eliminates the Water Pollution Advisory Council, creating the state's first true pollution control agency.
- 1962 Texas Board of Water Engineers is renamed the Texas Water Commission, with responsibility for surface water rights, water conservation and pollution control.

## **TEXAS TIMELINE (cont.)**

- 1965 The Legislature reorganizes the Texas Water Commission as the Texas Water Rights Commission, and transfers non-water rights functions to the Texas Water Development Board.
- 1965 The Texas Clean Air Act establishes the Texas Air Control Board within the Texas Department of Health.
- 1967 The Legislature creates the Texas Water Quality Board, assuming all the functions of the Texas Water Pollution Board.
- 1969 The Legislature adopts the Texas Solid Waste Disposal Act.
- 1971 The Legislature creates a pre-construction permit review system.
- 1973 The Legislature removes the Texas Air Control Board (TACB) and air staff from the Health Department and establishes the TACB as a separate state agency.
- 1977 The Legislature creates the Texas Department of Water Resources by combining the Water Rights Commission, Water Quality Board and Water Development Board. A six-member board is set up as a policymaking body for the new agency.
- 1985 The Legislature dissolves the Texas Department of Water Resources, giving most regulatory and water rights duties to the re-created Texas Water Commission and most planning and finance responsibilities to the re-created Texas Department of Water Resources. At the same time, the Legislature moves the Water Rates and Utilities Services Program from the Public Utility Commission of Texas to the newly created Texas Water Commission.
- 1992 The Legislature transfers the Water Hygiene Division, Solid Waste Bureau and Radioactive Waste Disposal Bureau from the Texas Department of Health to the Texas Water Commission. The Commission also acquires the functions of the Texas Water Well Driller's Board and the State Board of Irrigators.
- 1992 The Texas Water Commission and Texas Air Control Board are consolidated by Senate Bill 2 to create the Texas Natural Resource Conservation Commission, a comprehensive environmental protection agency with responsibilities for air, water and land resource protection.
- 1997 The Legislature transfers water well drillers regulation from the TNRCC to the Texas Department of Licensing and Regulation.
- 1997 TNRCC concludes a Performance Partnership Agreement with U.S. Environmental Protection Agency, allowing limited flexibility in federally funded program organization and funding. Aim of agreement is to allocate resources most appropriately throughout Texas on a regional basis.
- 1997 Texas Legislature adopts Senate Bill 1, mandating water conservation planning for large water users and requiring development of drought contingency plans by public water suppliers.

## **TEXAS TIMELINE (cont.)**

- 1997 Texas Legislature returns uranium mining, processing and by-product disposal oversight functions to Texas Department of Health.
- 1999 The Texas Legislature transfers the functions of the Texas-Low Level Radioactive Waste Disposal Authority to the TNRCC.

## **FEDERAL TIMELINE**

- 1969 Presidential Order creates Federal Environmental Protection Agency (EPA).
- 1971 EPA adopts Federal Ambient Air Quality Standards.
- 1972 Congress adopts the Federal Clean Water Act.
- 1974 Congress adopts the Federal Safe Drinking Water Act.
- 1976
- 1979 Congress adopts the Resource Conservation and Recovery Act (RCRA), controlling the treatment, storage and disposal of hazardous and solid waste.
- 1977 Congress adopts the Federal Clean Air Act.
- 1980 Congress enacts the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), popularly known as the Superfund Law. Law authorizes cleanups of hazardous waste sites.
- 1984 Hazardous and Solid Waste Amendments (HSWA) pass, creating major amendments to RCRA.
- 1986 Congress adopts the Superfund Amendments and Reauthorization Act (SARA), re-authorizes CERCLA and creates the Toxic Release Inventory (TRI).
- 1986 Congress amends the Federal Safe Drinking Water Act.
- 1987 Federal Clean Water Act re-authorization is adopted.
- 1990 Federal Clean Air Act Amendments increase the responsibilities of the TACB.
- 1996 Federal Safe Drinking Water Act re-authorization is adopted.

Figure 1  
**Evolution of the  
 Texas Natural Resource Conservation Commission**

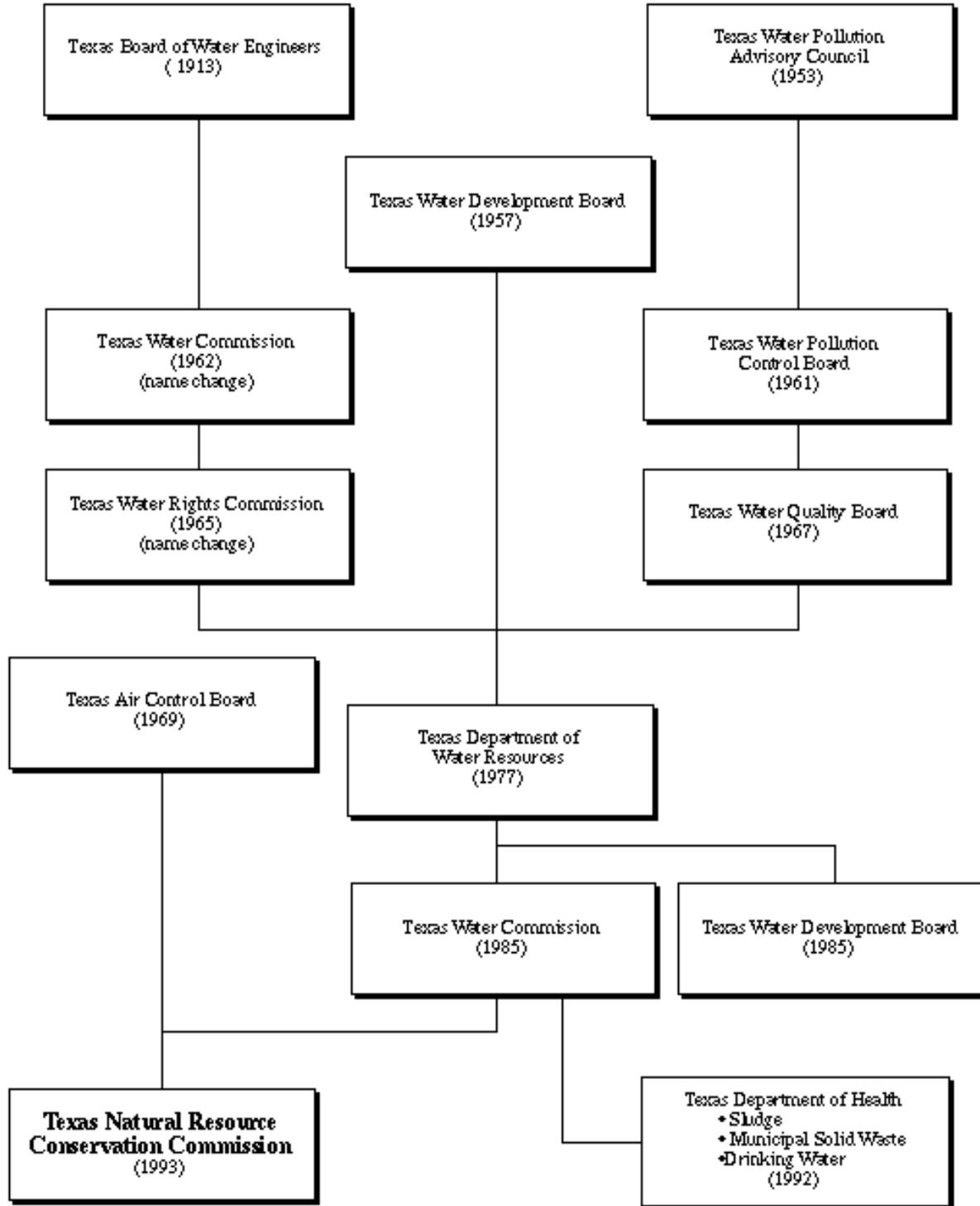


Table 6  
**Past Court Cases**

<b>Background</b>	<b>Status of Case</b>	<b>Potential Impact on TNRCC Key Functions</b>
<p><b>Heat Energy Advanced Tech., Inc. v. West Dallas Coalition for Environmental Justice 962 S.W.2d 288 (Tex. App. -- Austin 1998, writ denied):</b> Suit for judicial review of a TNRCC order denying party status to a protestant group in the permit renewal application of Heat Energy Advanced Technology (HEAT). Issues also included what is the effective date of the order for the purpose of filing a petition for judicial review. District Court and Court of Appeals both found that the TNRCC abused its discretion in overturning the Administrative Law Judge’s finding that the protesting Coalition member was an affected person for the purposes of granting the Coalition associational standing. The courts also found that the effective date can be indicated by evidence of the Commission’s intent, manifested through its actions, as well as the applicable statutes and rules, and that it was reasonable for the Coalition to file its petition with the court before the TNRCC’s order was final</p>	<p>Supreme Court denied petitions for review.</p>	<p>This decision holds that potential protestants need not prove the merits of their case to gain standing, but rather that they will potentially suffer harm. The Court also stated that the determination of what is the effective date of a TNRCC order can vary based on evidence of the Commission’s intent and applicable law. The potential impact on TNRCC key functions is limited due to the enactment of HB 801 which significantly changes the environmental permitting process.</p>
<p><b>Citizens for Healthy Growth v. Texas Natural Resource Conservation Commission, No. 98-06046 (98<sup>th</sup> Dist. Court, Travis County, Tex.)( United Copper )</b></p> <p>United Copper is a District Court’s Opinion reversing the TNRCC’s denial of a contested case hearing, concerning competent evidence on the issues of “affected person” and “reasonableness.”</p>	<p>The District Judge has reversed the TNRCC’s denial of a contested case hearing and has remanded to the agency to allow for a contested case hearing.</p>	<p>The potential impact on TNRCC key functions is limited due to the enactment of HB 801 which significantly changes the environmental permitting process.</p>

Background	Status of Case	Potential Impact on TNRCC Key Functions
<p><b>Ex Parte Milton Dick Elliott, 973 S.W.2d 737 (Tex. Crim. App. 1998):</b> Court of Criminal Appeals case based on prosecution for TSWDA violations. Resulted in a June 1998 opinion that the TSWDA definition of hazardous waste, as wastes identified by EPA as hazardous, did not result in prospective statutory adoption of any changes to the EPA regulatory definition of hazardous waste. The court found instead that the legislature intended to incorporate by reference the federal regulatory definition of hazardous waste in existence on July 30, 1991, and did not incorporate federal regulatory changes adopted after that date.</p>	<p>The TNRCC, who was not a party to the case, filed a motion for discretionary review with the appellate court. The motion was not granted by the court and the case has not been reviewed by the Supreme Court. The status of the case is closed at this time.</p>	<p>The TNRCC regulatory and statutory definitions were considered to be prospective; as a result of this case, some suggestions are being made that the statutory definition has been determined not to be prospective.</p> <p>This opinion did not seem to take note of indicators of legislative intent relating to the statutory definition of hazardous waste. The Elliott rationale could also arguably apply to other statutory adoptions, to other TNRCC statutes, and to other agencies' statutes.</p>
<p><b>City of Stephenville v. Texas Parks &amp; Wildlife Dept., 940 S.W.2d 667 (Tex. App. Austin 1996, writ denied):</b> Landowners and Texas Parks &amp; Wildlife Dept. brought action seeking judicial review of Texas Water Commission's decision to grant application for permit to construct dam and reservoir on river. Court of Appeals remanded cause to Texas Water Commission with instructions that applicant for permit refile their permit application for it to be considered. This followed a finding by the Court of actual impropriety in the permit process by the Texas Water Commission. Specifically, promise of favors to Texas Water Commissioner and decision on rehearing motions were made without public meeting. Court found that landowners and Parks &amp; Wildlife Dept. were substantially harmed by the procedural improprieties.</p>	<p>All appeals finals with no further litigation anticipated.</p>	<p>Where there is evidence and findings made as to actual impropriety in the permit process, an applicant for permit may refile their permit application for it to be considered. The Court stated that such action by the Court in allowing the applicant to refile did not in any way improperly usurp agency authority.</p>

Background	Status of Case	Potential Impact on TNRCC Key Functions
<p><b>City of Austin v. Quick, 930 S.W.2d 678 (Tex. App. Austin 1996, writ granted):</b>  Owners of land whose value had allegedly been adversely affected by watershed pollution control ordinance brought action against city, seeking declaratory judgment that ordinance was void. District Court rendered judgment striking ordinance as void, and on appeal, Court of Appeals held: (1) ordinance was not void pending approval by the TNRCC; (2) ordinance did not usurp TNRCC's authority.</p>	<p>All appeals final with no further litigation anticipated.</p>	<p>A municipal water pollution and abatement program is not void pending approval by the TNRCC. Also, watershed pollution control ordinance in mandating that levels of contaminants not increase, did not impose numerical standards so as to violate Water Code section providing that the TNRCC has sole and exclusive authority to set water quality standards for all water in the state.</p>

Background	Status of Case	Potential Impact on TNRCC Key Functions
<p><b>Texas Rivers Protection Ass n v. TNRCC, 910 S.W.2d 147 (Tex. App. Austin 1995, writ denied):</b> Action challenging water diversion permit granted to river authority by the TNRCC. District Court upheld permit. On appeal, Court of Appeals held: (1) permit was not invalid on ground that it contemplated aquifer recharge; (2) permit was not invalid on ground that it listed water uses as “municipal and recharge”; (3) permit was not improper on ground that water injected into aquifer became ground water outside control of state due to rule of capture; (4) permit was not invalid for failure to require diligent construction of diversion and storage facilities or for allowing cancellation of rights to divert any water not subject to supply contract 17 years after issuance of permit; (5) permit was not invalid on ground that river authority derived its right to appropriate water from superior claimant , or on ground that superior claimant never modified its permit to reflect subordination.</p>	<p>Supreme Court denied petitions for review.</p>	<p>Provides guidance on standing in water rights cases. Also, provided law on aquifer storage and retrieval projects. The legislature has since added law to Chapter 11 Chapter 11, Water Code, clarifying requirements for these projects.</p>

Background	Status of Case	Potential Impact on TNRCC Key Functions
<p><b>Hunter Industrial Facilities, Inc. v. TNRCC et al. (910 SW2d 96; Tex. App.-Austin 1995, writ denied):</b> Applicant (HIFI) appealed TNRCC decision overruling Proposal for Decision and denying applications for hazardous waste permits, including injection wells. Court of Appeals upheld TNRCC decision as not arbitrary and capricious, and not in violation of Texas Solid Waste Disposal Act.</p>	<p>1996 - One appeal nonsuited and the other denied by Supreme Court.</p>	<p>The court articulated the authority of and limitations on the Commission, pursuant to Health &amp; Safety Code section 361.0832, in overturning findings of fact and conclusions of law in SOAH Proposals for Decision on applications for industrial and hazardous waste permits. For future cases, this case provides the following: 1) The limitation on overturning an underlying finding of fact was intended by the legislature to significantly restrict the Commission’s discretion to reject an examiner’s underlying findings of fact, and can only exercise its discretion to reverse those findings that are not supported by the “great weight” of evidence in the record. 2) The Commission is permitted to overturn a conclusion of law if it is clearly erroneous in light of precedent or applicable rules, and the Commission may find a conclusion clearly erroneous strictly based on its rules if there is no precedent. 3) Ultimate findings of fact can be rejected not just on strictly policy grounds, but on both policy and factual grounds. 4) “Substantial or obvious public need” in section 361.114 is a sufficiently definite standard without development of guidelines as to what meets that standard.</p>

Background	Status of Case	Potential Impact on TNRCC Key Functions
<p><b>Texas Water Commission and City of Arlington, Texas v. City of Fort Worth, 875 S.W.2d 332 (Tex. App. Austin 1994):</b> The City of Arlington filed a petition for review of a wholesale contract rate for delivery and treatment of wastewater to the City of Fort Worth’s treatment facility. The Texas Water Commission concluded that it had jurisdiction over Arlington’s petition under Section 13.043(f) of the Texas Water Code and set a rate. Fort Worth appealed in District Court. The District Court found that the Commission had jurisdiction to hear Arlington’s appeal of its wastewater rate, but the Commission could not modify the contractual rate unless it first found that such a rate would adversely affect the public interest. The appellate court affirmed the District Court’s decision.</p>	<p>Court of Appeals decision rendered March 3, 1994. Rehearing overruled June 8, 1994.</p>	<p>The TNRCC amended its rules at 30 TAC Chapter 291, Subchapter I, to require a bifurcated appeals process whereby the Commission would first make a determination as to whether the wholesale contract violated the public interest, and if it did, then the Commission would set a rate. These rules were effective September 20, 1996.</p>
<p><b>F/R Cattle Co. v. TACB, 866 S.W.2d 200 (Tex. 1993):</b> An appeal of enforcement action brought by the old TACB under the Texas Clean Air Act. The company sought to avoid all regulation under the TCAA by alleging they are a “natural process” under the Act’s definition of “air contaminant.”</p>	<p>All appeals final and decision rendered by the formation of the TNRCC in fall of 1993.</p>	<p>The language of this case (both the Supreme Court decision and the subsequent decision of the case by the Austin Court of Appeals on remand) continue to trouble the agency. It has been difficult for the agency to implement, since it makes the determination of what is a natural process a factual matter to be determined on a case by case basis. Further broadening of the reading of this case could result in severe restrictions on the agency's enforcement of the TCAA.</p>

<p>No. 98-0247 <b>Bart Sipriano, Harold Fain, and Doris Fain V. Great Spring Waters of America, Inc. A/k/a Ozarka Natural Spring Water Co. A/k/a Ozarka Spring Water Co. A/k/a Ozarka</b>; from Henderson County; 12th district (12-97-00044-CV, 973 SW2D 327, 01-29-98) Affirmed the rule of capture for groundwater adopted in 1904 in <i>Houston &amp; Texas Central Railway Co. v. East</i>, noting that Senate Bill 1's recent provisions had not been tested and that groundwater regulation is a legislative function.</p>	<p>Supreme Court opinion issued May 6, 1999.</p>	<p>The impact of the opinion itself on the agency is only to affirm current statutory and regulatory practice, including the statutes and rules adopted under Senate Bill 1.</p>
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