Under current law, oil and gas operators that wish to discharge produced water into waters of the state would need to get a permit from both the Railroad Commission of Texas, and the U.S. Environmental Protection Agency. However, other than discharge permits for “Stripper” wells or coalbed methane, current EPA rules prohibit direct discharges into rivers, streams and bays, and EPA is currently reviewing “effluent” guidelines for Centralized Wastewater Treatment Plants (CWTP), and considering changes. A 2018 study by the EPA found that existing CWTP standards for oil and gas wastewaters were not protective due to the wide variety of chemicals that exist in produced water, particularly from hydraulic fracturing operations.

Why Sierra Club is Opposed

EPA is currently studying changes to wastewater discharge permits. Indeed the Trump administration is considering allowing hydraulic fracturing wastewater in ocean drilling, and we are concerned they might move in a similar direction in land-based hydraulic fracturing. The oil and gas industry in Texas is attempting to force a change such that the TCEQ would be required to seek delegation authority at exactly the time such changes are occurring, such that the industry would only be required to obtain one permit.

It is too soon, there are too many questions, and the state does not have the regulatory framework in place to take over delegation of such permits. These are permits to discharge the oil and gas industries produced water, which would be treated as a hazardous waste under federal law if the industry didn’t enjoy a special exemption and as such we must be very careful about moving too fast. Between 2008 and 2011, Pennsylvania allowed for discharges into the Allegheny River, a practice that was halted as the produced water impacted the ability of sewage treatment plants to manage fecal coliform levels. Recent peer reviewed science indicates that a decade later some of those materials in the fracking waste are bioaccumulating, meaning they are available and entering the food chain¹.

¹ Accumulation of Marcellus Formation Oil and Gas Wastewater Metals in Freshwater Mussel Shells
Thomas J. Geeza, David P. Gillikin, Bonnie McDevitt, Katherine Van Sice, and Nathaniel R. Warner
Environmental Science & Technology 2018 52 (18), 10883-10892
DOI: 10.1021/acs.est.8b02727

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What CSHB 2771 Does

- Requires that TCEQ assume the responsibility to approve permits to discharge wastewater from the oil and gas industry into our rivers, lakes and streams by a requirement they seek “delegation” authority from the U.S. EPA by September of 2020 just as EPA is revisiting the current prohibitions against direct discharges

- Shifts responsibility from Railroad Commission to TCEQ of such permits;
- Provides good timing for the oil and gas industry, bad timing for Texas

It is reasonable to look at the issue of wastewater standards, it is unreasonable to require TCEQ to seek delegation authority before we even know of staff needs, water quality standards, and what the national standards will be.

Proposed Amendments. While we continue to oppose the bill, these amendments would improve the bill and give more protections to Texans. As an example the bill was improved in the House by moving the date to September 1, 2021, but the Senate author has moved it back to 2020.

1. Move the requirement that TCEQ seek delegation authority by September 1, 2020 to September 1, 2021. A year after the bill would become law is not reasonable when TCEQ lacks sufficient staff or standards to take on such a complicated program;
2. Require that before the TCEQ seeks delegation it must conduct a cost-benefit analysis and study to be submitted to the Governor, Lt. Governor, and Speaker, as well as seek public input on the study;
3. Require that any proposed changes in rules go through a full rulemaking process, with at least five public hearings in geographically diverse locations such as San Antonio, Dallas and Midland.