

Wet Debris Study Group

HB 6

State of Texas

September 2020

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Executive Summary

In the evaluation of the response and recovery to Hurricane Harvey (Eye of the Storm Report), wet debris removal in certain bodies of water and streams proved to be a difficult and complex issue for many local jurisdictions and state and federal agencies. Wet debris means natural or man-made debris located in bodies of water, including lakes, rivers, streams, bays, bayous, wetlands, and tidal areas, that results from a disaster.

Responsibility for the removal of wet debris depends on its location, whether near tidal influenced waters, rivers, waterways, or other bodies of water. Multiple state and federal agencies as well as regional and local jurisdictions have roles and responsibilities over these waters. This large degree of responsibility makes sorting out the responsible party and the applicable law very difficult. The complexity of this issue requires additional study to resolve.

In response to these requests the 86th Texas Legislature passed HB 6, amending Section 2, Subchapter C, Chapter 418 of the Texas Government Code through the addition of 418.055 / 418.056 establishing the Wet Debris Study Group. The wet debris study group was established and composed of representatives of the Texas Division of Emergency Management (TDEM), other state agencies selected by TDEM, local and federal governmental entities. The work group reviewed wet debris removal categories for bodies of water in the state and the applicable laws for each category, current jurisdictions of local, state, federal, and private entities responsible for wet debris removal, including any concurrent, joint, or overlapping roles and responsibilities of those entities, funding sources applicable to each wet debris removal category, and issues that impede wet debris removal.

Recommendations for minimizing impediments to wet debris removal, clarifying local, state, federal, and private entities' roles and responsibilities for wet debris removal, and educating interested persons on the results of the study described by this subsection are included here.

Overview

This section provides an overview of the project topic.

Goal

Study issues related to removal of wet debris, including best practices for clearing wet debris following a disaster and determining responsibility for that removal.

Objectives

- Identify wet debris removal categories for bodies of water in the state and the applicable laws for each category
- Identify current jurisdictions of local, state, federal, and private entities responsible for wet debris removal, including any concurrent, joint, or overlapping roles and responsibilities of those entities
- Identify funding sources applicable to each wet debris removal category
- Identify issues that impede wet debris removal
- Recommend minimizing impediments to wet debris removal
- Clarify local, state, federal, and private entities' roles and responsibilities for wet debris removal; and
- Educating interested persons on the results of the study

Audience

- Texas Legislature
 - Other state agencies
 - Local jurisdictions
- a. Bills - <https://capitol.texas.gov/billlookup/billnumber.aspx>
 - b. Statutes - <https://statutes.capitol.texas.gov/>
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Authority

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For more information:

Texas Legislature Online

<https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=86R&Bill=HB6>

Stakeholders

Members are identified in the chart below. (This should include all stakeholders such as the chain of command, working group members, local official committee members, etc.)

Agent	Summary
Texas Division of Emergency Management (TDEM)	The Texas Division of Emergency Management is charged with carrying out a comprehensive all-hazard emergency management program for the state and for assisting cities, counties, and state agencies in planning and implementing their emergency management programs.
Texas Commission on Environmental Quality (TCEQ)	TCEQ strives to protect the state’s public health and natural resources consistent with sustainable economic development. The goal is clean air, clean water and the safe management of waste.
Texas Department of Transportation (TXDOT)	TXDOT focuses on the well-being, safety, and quality of life for Texans and the traveling public are of the utmost concern to the Department.
Texas A&M Engineering Extension Service (TEEX)	TEEX provides emergency responders to disasters across the state and nation to developing training and practical workforce solutions.
Texas A&M Forest Service (TFS)	The Texas A&M Forest Service conserves and protects the resources and lands of the Lone Star State.

Background, Discussion and Recommendations

In the evaluation of the response and recovery to Hurricane Harvey (Eye of the Storm Report), wet debris removal in certain bodies of water and streams proved to be a difficult and complex issue for many local jurisdictions, state and federal agencies.

Wet debris means natural or manmade debris located in bodies of water, including lakes, rivers, streams, bays, bayous, wetlands, and tidal areas, that results from a disaster.

Issues that impede wet debris removal include funding, responsibility, management and eligibility.

There are no dedicated funds for the removal of wet debris. Responsibility for cleaning and maintain a waterway is the responsibility of the owner of said waterway. Clean up and Funds may be available following a disaster, however, strict eligibility requirements apply one of which is prior maintenance.

Responsibility for the removal of wet debris depended on its location, whether near tidal influenced waters, rivers and waterways, or other bodies of water. Multiple agencies and jurisdictions have roles and responsibilities over these waters, which makes sorting out the responsible party and the applicable law very difficult. The National Oceanic and Atmospheric Administration (NOAA), [Texas Marine Debris Emergency Response Guide: Comprehensive Guidance Document](#) and complementary [Field Reference Guide](#) outline existing response structures at the local, state, and federal levels to facilitate a coordinated, well-managed, and immediate response to potential waterway debris incidents impacting the State of Texas.

Wet debris management involves the removal of eligible obstructions, debris and vessels from waterways impacted by an incident. The debris removal boundaries are within the waterway and include the shorelines of the waterway itself. Strict eligibility requirements exist to determine which debris may be removed and from which waterways.

Wet debris management involves close and extensive coordination between local jurisdictions, state agencies and federal agencies.

(State of Texas Emergency Management Plan – Catastrophic Debris Management Annex)

For debris (WET or DRY) removal to be eligible for federal disaster reimbursement, follow the policy and procedures in the [State of Texas](#)

[Emergency Management Plan – Catastrophic Debris Management Annex](#). Debris removal costs could be reimbursed when the project will:

- Eliminate an immediate threat to lives, public health and safety.
- Eliminate immediate threats of significant damage to improved public or private property.
- Ensure the economic recovery of the affected community to the benefit of the community at large.
- Mitigate the risk to life and property by removing substantially damaged structures and associated appurtenances as needed to convert property acquired through a FEMA hazard mitigation program to uses compatible with open space, recreation, or wetlands management practices.

Texas' extensive river systems supply water for the State's inhabitants and ecosystems. To protect and monitor this precious resource, the Texas Legislature (following passage of an amendment to the Texas Constitution) created river authorities. River authorities now control rights to more than 70% of the State's surface water.

There are more than 20 [river authorities in Texas](#) and their primary function is to distribute and conserve the State's surface water. In addition, some river authorities, depending upon the laws creating and empowering them, may monitor and enforce surface water quality throughout an entire watershed, finance and conduct water projects, manage wastewater systems, and oversee permit application processes.

The water to which river authorities have rights is either sold to consumers (i.e., households and businesses) or sold to other suppliers of water (i.e., municipal and county water suppliers, private water companies). Many parts of the State receive water, either directly or indirectly, from a river authority.

River authorities must monitor water quality in their respective basins and prepare an assessment of that water quality on a periodic basis, meet the obligations of the State's open records and open meetings laws, submit annual independent audit reports, get approval from the State Attorney General to issue bonds.

River authorities are accountable to the Texas Legislature, the customers of the river authority, and the officials who select the members of the governing board of the river authority.

The Texas Legislative Council is working on a long-term project to codify all special districts, including river authorities. Three river authorities have had their original enabling legislation codified into the Special District Local Law Code, including the Angelina-Neches River Authority, the Brazos River Authority, and the Lower Colorado River Authority.

The beds of navigable streams are generally owned by the State, in trust for the public. Most of the land alongside navigable streams is privately owned. The beds of non-navigable streams are usually privately owned, and public use of the stream may be forbidden by the private landowner. However, the State owns the beds of perennial streams, regardless of navigability, where the original land grant was made under the civil law prior to December 14, 1837.

Freshwater streams and rivers are open to the public if they meet anyone of three tests:

(1) "Navigable by statute" (TEX. NAT. RES. CODE ANN. § 21.001(3) (Vernon 2001); "'Navigable stream' means a stream which retains an average width of 30 feet from the mouth up");

(2) "Navigable in fact";

(3) or recognition as a perennial stream under a Spanish land grant issued prior to December 14, 1837.

All the beds, bottoms, the products of the beds and bottoms of the public rivers, bayous, lagoons, creeks, lakes, bays, and inlets in this State and of that part of the Gulf of Mexico within the jurisdiction of this State are the property of this State. The State may permit the use of the waters and bottoms and the taking of the products of the bottoms and waters.

In Texas, the land under navigable streams is legally open for public access. No state agency, however, holds plenary responsibility for the management of freshwater riverbed lands. In effect, the Texas Legislature is the land manager for most of the roughly one million acres underlying navigable fresh water in Texas. By contrast, the Texas Parks and Wildlife Department (TPWD) manages the State parks, and the Texas General Land Office (GLO) oversees coastal submerged lands. Various state agencies have been allotted authority over limited aspects of freshwater riverbeds, but no agency is generally in charge. As a result, when new riverbed usage issues arise, the Legislature must address them directly.

In 2019, the Texas Legislature initiated the first statewide flood planning efforts with the passage of [Senate Bill 8](#). The bill established the framework for the Texas Water Development Board (TWDB) to institute regional, watershed-based flood planning.

With extensive stakeholder input, the TWDB established [15 flood planning regions](#) based on the State's watersheds. Flood planning regions are each represented by a regional flood planning group (RFPG), which coordinates the flood planning process. These RFPGs are comprised of at least 12 voting members who represent various interests of their region. RFPGs will be responsible for developing a regional flood plan every five years. Each planning cycle, once RFPGs finalize and adopt their regional plans, TWDB will incorporate them into a comprehensive state

flood plan. The first regional flood plans will be due in January 10, 2023, and the first state flood plan will be due September 1, 2024. The structure of the regional flood planning process is like that of the successful regional water supply planning process. However, the need and approaches for flood planning is very different from that of water planning.

Recommendation: TWDB has instituted regional, watershed-based flood planning with the establishment of [15 flood planning regions](#) based on the State's watersheds. Flood planning regions are each represented by a regional flood planning group (RFPG), which coordinates the flood planning process. RFPGs will be responsible for developing a regional flood plan every five years. As part of this required flood planning process, a wet debris management plan shall be required for the regional flood plan. The plan shall address prevention of the creation of wet debris and best practices for clearing wet debris following a disaster. Additionally, it shall include the creation of maintenance programs for bodies of water in the region and issues related to the clearance of wet debris on private property.

Recommendation: The state of Texas river authorities shall be responsible for the removal of wet debris in their respective areas to include all navigable streams.

Recommendation: To aid local jurisdictions and/or Texas river authorities, a fund shall be established to assist with initial clean-up of wet debris. Ongoing maintenance shall be the responsibility of the appropriate authority having jurisdiction.

For More Information

[State of Texas Emergency Management Plan Catastrophic Debris Management Annex](#)

[Texas Marine Debris Emergency Response Guide: Field Reference Guide](#)

[Emergency Watershed Protection Program](#)

[Texas Marine Debris Emergency Response Guide: Comprehensive Guidance Document](#)

[Up the Creek Navigating Public Waterways](#)

[Overview of Laws Regarding the Navigation of Texas Streams](#)

[Managing Debris from Declared Disasters \(RG-518\) - TCEQ](#)