PUTTING YOUR BEST FOOT FORWARD

HOW TO PREPARE FOR A TCEQ INSPECTION

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INSPECTIONS

- SANITARY SURVEYS
- COMPREHENSIVE COMPLIANCE INVESTIGATIONS
- INSPECTIONS
INSPECTIONS

WHO?  WHAT?  WHERE?

How?  Why?
INSPECTIONS

• WHO?
  • TCEQ REGIONAL OFFICES

• WHERE?
  • YOUR FACILITY

• HOW?
  • PHYSICALLY VISIT YOU
INSPECTIONS

- **WHY?**
  - **MISSION STATEMENT** - THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY STRIVES TO PROTECT OUR STATE'S PUBLIC HEALTH AND NATURAL RESOURCES CONSISTENT WITH SUSTAINABLE ECONOMIC DEVELOPMENT. OUR GOAL IS CLEAN AIR, CLEAN WATER, AND THE SAFE MANAGEMENT OF WASTE.

- **WHEN?**
  - **EPA REQUIREMENTS:**
    - **PWS COMPREHENSIVE INVESTIGATIONS (CCI)**
      - NON-COMMUNITY, 1 EVERY 5 YEARS
      - COMMUNITY, 1 EVERY 3 YEARS
    - **WASTEWATER COMPREHENSIVE INVESTIGATIONS**
      - MAJORS, 1 IN EVERY 2 YEARS
      - MINORS, 1 IN EVERY 5 YEARS
INSPECTIONS

• FACTORS AFFECTING SCHEDULE
  • SIZE OF SYSTEM
  • LENGTH OF TIME SINCE LAST INVESTIGATION
  • FINDINGS RELATED TO PREVIOUS INVESTIGATIONS
  • REPORTED DATA
  • SIGNIFICANT CHANGES TO THE SYSTEM
  • INITIATIVES
  • COMPLAINTS

• NOTIFICATION
  • TYPICAL NOTIFICATION WILL BE NO MORE THAN 2 WEEKS PRIOR
  • NO NOTIFICATION ON COMPLAINT INVESTIGATIONS
WHAT WILL THEY INSPECT?

PUBLIC WATER SYSTEM - PWS

1. SOURCE (PROTECTION, PHYSICAL COMPONENTS AND CONDITION)
2. TREATMENT
3. DISTRIBUTION SYSTEM
4. FINISHED WATER STORAGE
5. PUMPS/PUMP FACILITIES AND CONTROLS
6. MONITORING/REPORTING/DATA VERIFICATION
7. WATER SYSTEM MANAGEMENT/OPERATIONS
8. OPERATOR COMPLIANCE WITH STATE REQUIREMENTS
A. GROUNDWATER SYSTEMS

- GENERAL INFORMATION (RESPONSIBLE OFFICIAL, PHYSICAL LOCATION AND MAILING ADDRESS)
- CONNECTIONS AND POPULATION - 290.38(15)
- NUMBER OF RETAIL METERS
- NUMBER OF MASTER METERS (APARTMENTS & MOBILE HOMES)
- NUMBER OF EQUIVALENT LIVING UNITS (INDIVIDUAL APARTMENT UNITS & MOBILE HOMES)
- POPULATION SERVED
- PRESSURE PLANES (IF >1, DETERMINE THE TOTAL NUMBER OF CONNECTIONS & METERS FOR EACH PLANE) – 290.45(A)(1)
- PURCHASE WATER CONTRACT(S)/LETTER/MEMORANDUM OF UNDERSTANDING (MUST SPECIFY MAXIMUM PURCHASE RATE) – 290.45(F)(1-7)
- WHOLESALE CONTRACT(S) /LETTER/MEMORANDUM OF UNDERSTANDING (MUST SPECIFY MAXIMUM PURCHASE RATE) – 290.45(E)(1-2)
• List of certified operators (including water operators, backflow prevention assembly testers, customer service inspectors, plumbing inspectors or water supply protection specialist endorsement, if appropriate) – 290.46(E), 290.46(P)(2), and form located in 290.47(G)

• Monthly reports of water works operation, including: - 290.46(F)(3)(E)(I)
  • Records of amount of water utilize usage for past 12 months – 290.46(F)(3)(A)(II)
  • Maximum day water usage for past 12 months (date and amount)
  • Amount and type of chemicals used – 290.46(F)(3)(A)(I)

• Flushing log – 290.46(L) and 290.46(F)(3)(A)(IV)

• Copy of chemical and bacteriological monitoring plan— 290.121 and 290.46(F)(3)(E)(IX)

• Distribution system map – 290.46(N)(2)

• Bacteriological sample results (past 12 months) – 290.46(F)(3)(D)(I)
• PUBLIC NOTICES ISSUED FOR THE LAST 3 YEARS – 290.46(F)(3)(B)(II)

• GROUND WATER RULE COMPLIANCE RECORDS (INCLUDING 4-LOG REMOVAL AND TRIGGERED SOURCE MONITORING RECORDS) – 290.46(F)(3)(D)(IV), 290.46(F)(3)(E)(VIII AND X)

• EQUIPMENT CAPACITIES – 290.45(B-F)
  • WELL PUMPS
  • SERVICE/FILTER/TRANSFER PUMPS
  • GROUND STORAGE
  • ELEVATED STORAGE AND HEIGHT OF TANK OVERFLOW
  • PRESSURE TANKS

• ANNUAL TANK INSPECTION FORMS - 290.46(M)(1) AND 290.46(F)(3)(D)(II)
DOCUMENTS

WELL COMPLETION DATA, INCLUDING: - 290.46(N)(3)
- DRILLER’S WELL LOG
- CEMENTING CERTIFICATE
- SANITARY CONTROL EASEMENT OR ORDINANCE – 290.41(C)(1)(F)
- PLUGGING REPORTS FOR ABANDONED WELLS – 290.46(U)

- ANSI/NSF STANDARD 60 CERTIFICATION FOR DIRECT ADDITIVES (WHICH COULD BE PROVIDED IN MSDS) OR IN (HTTP://WWW.NSF.ORG/CERTIFIED/PWSCHEMICALS/) AND STANDARD 61 FOR INDIRECT ADDITIVES (HTTP://WWW.NSF.ORG/CERTIFIED/PWSCOMPONENTS/) – 290.42(J)

- VERIFICATION OF ADOPTED PLUMBING CODE, ORDINANCE OR SERVICE AGREEMENT (WITH ENFORCEABLE PROVISIONS FOR CROSS CONNECTIONS OR UNACCEPTABLE PLUMBING PRACTICES) – 290.46(I)

- “CUSTOMER SERVICE INSPECTION” FORMS (IF NEW CONNECTIONS WERE ADDED SINCE THE LAST INSPECTION OR IF OTHER CONDITIONS WHICH REQUIRED CSIS OCCURRED) – 290.46(F)(3)(E)(IV) AND 290.46(J)
"BACKFLOW PREVENTION ASSEMBLY TEST AND MAINTENANCE REPORT" FORMS (IF POTENTIAL HAZARDS EXIST, I.E. CONNECTIONS TO WASTEWATER TREATMENT PLANT, CATTLE TROUGHS, IRRIGATION USING FERTILIZERS, RAINWATER HARVESTING, ETC.) – 290.44 (H) AND 290.44(H)(1)(B)(II)

• DOCUMENTATION OF TCEQ PLAN REVIEW APPROVAL FOR NEW WELLS, TREATMENT FACILITIES, AND STORAGE TANKS (IF ANY MAJOR NEW SYSTEM COMPONENTS WERE ADDED SINCE LAST INSPECTION) - 290.39(H, I AND J)

• AS-BUILT ENGINEERING PLANS AND MAPS – 290.46(N)

• CHLORINE RESIDUAL MONITORING RECORDS AND DISINFECTANT LEVEL QUARTERLY OPERATING REPORTS – 290.46(F)(3)(B)(III) AND 290.110(E)(4)

• PLANT OPERATIONS (O&M) MANUAL – 290.42(L)

• DROUGHT CONTINGENCY PLAN (RETAIL PUBLIC WATER SUPPLIERS) – 288.20

• COMPLAINT RECORDS – 290.46(F)(3)(A)(III)
• RESULTS OF CHEMICAL ANALYSES - 290.46(F)(3)(E)(II)
• WELL METER CALIBRATION RECORDS (ONCE EVERY THREE YEARS) – 290.46(S)(1)
• MANUAL DISINFECTANT RESIDUAL ANALYZER CALIBRATION VERIFICATION RECORDS— 290.46(S)(2)(C)(I)
• CONSUMER CONFIDENCE REPORTS (COMMUNITY WATER SYSTEMS) – 290.271 & 290.46(F)(3)(D)(VII)
• EXCEPTION(S) /ALTERNATIVE CAPACITY REQUIREMENT(S) (INCLUDING ANY RECORDS REQUIRED FOR EXCEPTION(S)) – 290.39(L) AND 290.45(G)
• EMERGENCY POWER/ALTERNATE SOURCE (FOR GENERATOR(S) PROVIDE MAINTENANCE RECORDS)— 290.45(B)(1)(D)(V), 290.45(B)(2)(H) OR 290.45(E)(3)
• SUPERIOR/APPROVED SYSTEM RECOGNITION – 290.47(A)
• IF SYSTEM IS LOCATED IN HARRIS OR FORT BEND COUNTY
  • EMERGENCY PREPAREDNESS PLAN - 290.39(O)
  • IMPLEMENTATION OF EPP - 290.45(H)(1)(A-H)
B. SURFACE WATER SYSTEM

• ALL OF THE ABOVE (IF APPLICABLE)
• SURFACE WATER MONTHLY OPERATING REPORTS (PAST 12 MONTHS) (INCLUDING TOC AND CLO2 MORS) – 290.46(F)(3)(E)(I)
• RAW WATER PUMPING CAPACITIES - 290.45(B-F)
• SEDIMENTATION/CLARIFICATION BASIN AND FILTER DIMENSIONS – 290.42(D)(10)
• RISK MANAGEMENT PLAN (GAS CHLORINE/AMMONIA EVACUATION PLAN) – 290.42(K)(2)
• COPY OF ALL CURRENT CT STUDIES – 290.111(D)(2)(B)
• CALIBRATION RECORDS FOR RAW WATER, TREATED WATER, BACKWASH, & RECYCLE FLOW METERS, AND RATE OF FLOW CONTROL METER – 290.46(S)(1)
• LABORATORY INFORMATION (LAB APPROVAL FORM (290.119(A), STANDARDS UP-TO-DATE, COMPUTER FOR RECORDS (290.42(D)(16), ANALYTICAL METHODS AND REQUIREMENTS (290.119(B) AND 290.111 (D)(4), EQUIPMENT 290.42(D)(15)(C))
• LAB DATA VERIFICATION (YOU MAY BE ASKED TO RUN SOME OR ALL DAILY TESTS AND PERFORM A FILTER BACKWASH)
WHAT THEN?

- GO OUT AND LOOK AT YOUR FACILITIES
  - CHECK SCREENS ON ALL VENTS
  - CHECK FOR PROPERLY CLOSING FLAP VALVES ON OVERFLOW PIPES
  - LOCKS ON HATCHES AND MANWAYS
  - FENCES – 6’ INTRUDER RESISTANT – (BARBED WIRE)
  - COMPARE WHAT IS ACTUALLY IN THE FIELD VERSUS WHAT THEY HAVE ON RECORD – INSTALLATIONS OR CHANGES IN PROCESS FACILITIES
  - GENERAL HOUSEKEEPING - MAD
WHAT THEN?

• **GO OUT AND LOOK AT YOUR FACILITIES**
  
  • CHECK SCREENS ON ALL VENTS
  • CHECK FOR PROPERLY CLOSING FLAP VALVES ON OVERFLOW PIPES
  • LOCKS ON HATCHES AND MANWAYS
  • FENCES – 6’ INTRUDER RESISTANT – (BARBED WIRE)
  • COMPARE WHAT IS ACTUALLY IN THE FIELD VERSUS WHAT THEY HAVE ON RECORD – INSTALLATIONS OR CHANGES IN PROCESS FACILITIES
  • GENERAL HOUSEKEEPING – MAD
  • SEDIMENTATION BASINS
  • FILTERS
  • CHEMICAL FEED SYSTEMS
  • LABORATORY
  • DISTRIBUTION SYSTEM
WHAT DO I NEED TO DO TO PREPARE?

• GET YOUR DOCUMENTS IN ORDER

• PRE-INSPECT YOUR FACILITIES
  • CHECK SCREENS ON ALL VENTS
  • CHECK FOR PROPERLY CLOSING FLAP VALVES ON OVERFLOW PIPES
  • LOCKS ON HATCHES AND MANWAYS
  • FENCES – 6’ INTRUDER RESISTANT – (BARBED WIRE)
  • COMPARE WHAT IS ACTUALLY IN THE FIELD VERSUS WHAT THEY HAVE ON RECORD – INSTALLATIONS OR CHANGES IN PROCESS FACILITIES
  • GENERAL HOUSEKEEPING
  • FILTERS
    • BACKWASH
  • CHEMICAL FEED SYSTEMS
    • LEAKS AND SPILLS
    • CONTAINMENT
    • LABELING
  • LABORATORY
    • STOCK SOLUTIONS
    • JAR TEST
  • DISTRIBUTION SYSTEM
    • DISINFECTANT RESIDUALS
    • FLUSH
WHAT ARE THE MOST COMMON NON-COMPLIANCE ISSUES FOUND ON THESE INSPECTIONS?

- MONITORING PLAN NOT UPDATED
  - RTCR
  - PB & CU
  - NAP
- GENERAL MAINTENANCE OF THE PLANT AND ITS SUPPORTING SYSTEMS
- MAINTENANCE RECORDS & DOCUMENTING ACTIVITIES
- CONDITION AND MAINTENANCE OF FILTER MEDIA
- MAINTAINING DISINFECTANT LEVELS
- DAY TANKS, CHEMICAL FEED, AND SECONDARY CONTAINMENT
WHAT WILL THEY INSPECT?

PUBLIC WASTEWATER SYSTEM - POTW

1. RECORDS
   1. SAMPLING PROCEDURE ACCURACY AND DATA ANALYSIS
   2. SELF REPORTED DATA AND COMPLIANCE WITH PERMIT LIMITS

2. FACILITY DESIGN, CONSTRUCTION, MAINTENANCE, AND SAFETY

3. OPERATIONS AND PROCESS CONTROL
   1. OPERATOR QUALIFICATIONS AND STAFFING
   2. ACTIVATED SLUDGE INVENTORY, ANALYSIS, AND MANAGEMENT

4. SLUDGE DISPOSAL MANAGEMENT AND TESTING

5. COLLECTION SYSTEM
   1. LIFT STATION DESIGN, CONSTRUCTION, AND MAINTENANCE
   2. OPERATOR QUALIFICATIONS AND STAFFING
   3. REPORTED SSOS
• A. OPERATION AND MAINTENANCE RECORDS
  
  • PROCESS CONTROL RECORDS
    • MLSS, SVI, MCRT, F/M RATIO, GSA, WAS RATE, RAS RATE, SLUDGE BLANKET LEVELS, INFLUENT SAMPLING DATA
  
  • OPERATOR DAILY LOGS
    • DATE AND TIME OF ACTIVITY
    • OPERATOR’S INITIALS
    • FLOW
    • TOTAL CHLORINE RESIDUAL
    • INFLUENT AND EFFlUENT PH
    • INFLUENT AND EFFlUENT DO
    • SOLIDS WASTED
    • VOLUME OF SOLIDS PROCESSED
    • RAINFALL RECORDS
    • COMMENTS
  
  • MAINTENANCE RECORDS FOR EQUIPMENT
B. LABORATORY AND SAMPLING RECORDS

- SAMPLING RECORDS
  - DATE AND TIME OF ACTIVITY
  - OPERATOR’S NAME
  - SAMPLE TYPE
  - PRESERVATION

- LABORATORY REPORTS
  - ANALYST'S NAME
  - DATE AND TIME
  - METHOD
  - QA DATA
  - CHAIN OF CUSTODY

- CALIBRATION RECORDS FOR LAB INSTRUMENTS
C. SELF MONITORING RECORDS

- SELF MONITORING FORMS
  - DMR’S
  - MER’S
  - COPIES OF SUPPORTING DATA BY MONTH

- NON-COMPLIANCE NOTIFICATIONS
  - BYPASSES
  - UNAUTHORIZED DISCHARGES
  - SSO’S
  - EFFLUENT VIOLATIONS >40% ABOVE LIMITATION

- BACKFLOW ASSEMBLY CERTIFICATIONS

- IRRIGATION APPLICATION RECORDS (IF APPLICABLE)
C. SELF MONITORING RECORDS

- SLUDGE DISPOSAL RECORDS
  - TCLP
  - PAINT FILTER TESTS
  - AMOUNTS OF SLUDGE DISPOSED OF
  - DATES OF DISPOSAL
  - METHOD OF DISPOSAL
  - DISPOSAL SITE
  - OWNER
  - NAME AND REGISTRATION OF SLUDGE HAULER
  - MANIFESTS
  - APPLICATION RATE
  - ALTERNATIVES SELECTED FOR REDUCING
    - PATHOGENS
    - VECTOR ATTRACTION
D. OTHER RECORDS

- FLOW METER CALIBRATION RECORDS
- COMPOSITE SAMPLE AND LOADING CALCULATIONS
- OPERATOR CERTIFICATION RECORDS
- SOP'S
WHAT THEN?

• GO OUT AND LOOK AT YOUR FACILITIES
  • COMPARE WHAT IS ACTUALLY IN THE FIELD VERSUS WHAT THEY HAVE ON RECORD – INSTALLATIONS OR CHANGES IN PROCESS FACILITIES
  • FENCES – 6’ INTRUDER RESISTANT – (BARBED WIRE)
  • GENERAL HOUSEKEEPING
    • DEBRIS ON GROUND
    • MOWING
  • CLARIFIERS
  • CHEMICAL FEED SYSTEMS
    • LEAKS AND SPILLS
    • CONTAINMENT
    • LABELING
  • BACKFLOW PREVENTERS
  • LABORATORY
  • COLLECTION SYSTEM
    • LIFT STATIONS
WHAT ARE THE MOST COMMON NON-COMPLIANCE ISSUES FOUND ON THESE INSPECTIONS?

- Failure to manage sludge inventory within acceptable ranges
- General maintenance of the plant and its supporting systems
- Maintenance records & documenting activities
- Failure to prevent unauthorized discharge (SSOS / sludge)
- Failure to meet permit limits
- Day tanks, chemical feed, and secondary containment
WHAT DO I NEED TO DO TO PREPARE?

• AT A MINIMUM
  • CHECK FENCES – 6’ INTRUDER RESISTANT – (BARBED WIRE)
  • GENERAL HOUSEKEEPING – DEBRIS CLEAN UP AND MOWING
  • CHECK CLARIFIERS
    • MANAGE SLUDGE
RECOMMENDATIONS

- ALSO
  - REVIEW ALL HANDWRITTEN LAB DATA AGAINST MOR’S TO MAKE SURE DATA IS CONSISTENT
  - THIS SHOULD REALLY BE DONE ON A DAILY BASIS
  - INSPECTOR OFTEN REQUESTS TO SEE DATA FROM SOME RANDOM DATE

- MOST IMPORTANTLY
  - ASSIGN SOMEONE TO ACCOMPANY INSPECTOR THAT HAS THE AUTHORITY TO MAKE IMMEDIATE CORRECTIONS TO MINOR “ALLEGED VIOLATIONS”.
  - IF POSSIBLE, MAKE REPAIR OR CORRECTION WHILE INSPECTOR IS STILL THERE
  - WILL PAY DIVIDENDS WHEN YOU RECEIVE THE FOLLOW-UP LETTER
AFTER THE INSPECTION

• EXIT INTERVIEW

• AT THE END OF THE INSPECTION, TCEQ INVESTIGATORS SHOULD GO OVER THEIR FINDINGS WITH YOU IN AN EXIT INTERVIEW.

• YOU SHOULD FIND OUT IN THIS INTERVIEW WHAT VIOLATIONS, IF ANY, THE INVESTIGATOR FOUND.

• IF THE INVESTIGATOR FINDS NO PROBLEMS, YOU SHOULD RECEIVE A LETTER CALLED A “GENERAL COMPLIANCE LETTER” WITHIN SEVERAL WEEKS.

• IF, AFTER FURTHER REVIEW OF AGENCY REGULATIONS, ADDITIONAL VIOLATIONS APPEAR TO HAVE OCCURRED, THE INVESTIGATOR SHOULD BUT DO NOT ALWAYS CONTACT YOU BY TELEPHONE TO DISCUSS THEM.
AFTER THE INSPECTION

• EXIT INTERVIEW

• AT THE END OF THE INSPECTION, THE INVESTIGATOR SHOULD ADVISE YOU OF YOUR RIGHT TO MEET WITH THE REGIONAL OFFICE TO DISCUSS THE FINDINGS.

• THIS IS WHERE THE PROCESS STARTS GETTING TRICKY.

• THE TCEQ WEBSITE IMPLIES THAT MEETING WITH THEM IS RELATIVELY EASY; IN ACTUAL PRACTICE, “NOT SO MUCH.”

• IN ADDITION, THE ENFORCEMENT CLOCK CONTINUES TO RUN. “MEETINGS” DO NOT TOLL THE RUNNING OF THE ENFORCEMENT CLOCK.
THE NOV IS A FORMAL STATEMENT OF THE SPECIFIC VIOLATIONS THE INVESTIGATOR FOUND.

AN NOV IS WRITTEN NOTIFICATION THAT DOCUMENTS AND COMMUNICATES VIOLATIONS OBSERVED DURING AN INSPECTION.

MOST NOVS ARE PREPARED AND SENT OUT BY TCEQ REGIONAL OFFICES, ALTHOUGH OTHER AREAS OF THE TCEQ ALSO DO THIS.

IF YOU RECEIVE AN NOV, THAT MEANS TCEQ HAVE OBSERVED ONE OR MORE VIOLATIONS, AND YOU WILL HAVE A PRESCRIBED TIME PERIOD TO RETURN TO COMPLIANCE AND PROVIDE DOCUMENTATION THAT ALL VIOLATIONS HAVE BEEN CORRECTED.
RECOMMENDATIONS

WHEN YOU GET THE LETTER

• REVIEW TO MAKE SURE IT IS CONSISTENT WITH WHAT WAS FOUND AND DISCUSSED DURING THE INSPECTION
  • IF IT IS NOT, CALL THE INSPECTOR AND QUESTION HIM OR HER

• DEVELOP A PLAN TO ADDRESS ALLEGED VIOLATIONS WITHIN THE TIME FRAME SPECIFIED IN THE LETTER

• IF AN ALLEGED VIOLATION WAS ADDRESSED DURING THE INSPECTION AND NOT NOTED AS SUCH ON THE LETTER, CALL THE INSPECTOR

• DRAFT A RESPONSE LETTER AND SEND PHOTOS OF ANY ALLEGED VIOLATIONS RESOLVED.
  • NOTE – “ALLEGED VIOLATIONS”

• IF ALLEGED VIOLATION CAN NOT BE RESOLVED QUICKLY NOTE ACTION PLAN AND TIMELINE AND THEN FOLLOW UP WITH A SECOND LETTER ONCE IT IS RESOLVED.
RECOMMENDATIONS

• TCEQ MAY ELECT TO VISIT THE SITE AND VERIFY THAT THE VIOLATIONS HAVE BEEN CORRECTED, OR IT MAY BE ENOUGH FOR YOU TO SUBMIT DOCUMENTATION TO TCEQ THAT THE VIOLATION HAS BEEN CORRECTED.

• IF YOU HAVE RECEIVED AN NOV AND CORRECT THE VIOLATIONS WITHIN THE TIME GIVEN, YOU WILL NOT BE REFERRED FOR ENFORCEMENT, UNLESS THE TCEQ CONSIDERS THE VIOLATION “SERIOUS.”

• IF YOU DO NOT CORRECT THE VIOLATIONS IN TIME, YOU MAY THEN BE REFERRED FOR ENFORCEMENT ACTION.
QUESTIONS?
PUTTING YOUR BEST FOOT FORWARD

HOW TO PREPARE FOR A TCEQ INSPECTION

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Enforcement

- If serious or continuing violations are identified during an inspection, the TCEQ initiates enforcement and you will receive a Notice of Enforcement (NOE).

- The NOE documents the violations and puts you on notice that the case has been referred for enforcement.

- This notice also lets you know that you can appeal the NOE by requesting an Enforcement Review Meeting if you believe the violations were cited in error and you have new information that was not previously evaluated by the investigator.
ENFORCEMENT

- **WHEN VIOLATIONS ARE SERIOUS ENOUGH TO WARRANT AN ENFORCEMENT ACTION, THE TCEQ IS AUTHORIZED TO ENFORCE CORRECTION OF THE VIOLATIONS AND TO SEEK PENALTIES TO DETER FUTURE NONCOMPLIANCE.**

- THE TCEQ IS ALLOWED TO PURSUE PENALTIES IN TWO DIFFERENT TYPES OF ENFORCEMENT ACTIONS:
  - ADMINISTRATIVE ORDERS THAT ARE ISSUED BY THE TCEQ COMMISSIONERS; OR
  - REFERRAL OF THE CASE TO THE OFFICE OF THE ATTORNEY GENERAL FOR ENFORCEMENT THROUGH THE COURTS, INCLUDING POTENTIAL CIVIL PENALTIES.
• MOST ENFORCEMENT CASES ARE HANDLED THROUGH THE ADMINISTRATIVE ORDER PROCESS.

• ADMINISTRATIVE ORDERS ARE TCEQ ORDERS ENFORCING OR DIRECTING COMPLIANCE WITH ANY PROVISIONS - WHETHER OF STATUTES, RULES, REGULATIONS, PERMITS, LICENSES, OR ORDERS - THAT TCEQ ARE ENTITLED BY LAW TO ENFORCE OR WITH WHICH TCEQ ARE ENTITLED BY LAW TO COMPEL COMPLIANCE.

• THE FIRST STEP IN THIS PROCESS IS TO VERIFY THE INFORMATION DOCUMENTED IN THE INVESTIGATION REPORT.

• THE ENFORCEMENT COORDINATOR THEN SHOULD CONTACT YOU BY PHONE AND EXPLAIN THE ENFORCEMENT PROCESS AND WHAT YOU CAN EXPECT NEXT. THEY MAY OR MAY NOT OFFER YOU THE OPPORTUNITY TO SUBMIT ADDITIONAL INFORMATION OR SET UP A MEETING.

• IF THE CASE IS EXPECTED TO SETTLE QUICKLY, THE ENFORCEMENT COORDINATOR THEN DRAFTS AN AGREED ORDER, WHICH DESCRIBES THE ALLEGED VIOLATIONS AND ANY ACTIONS THAT NEED TO BE TAKEN TO CORRECT THEM.

• THE AGREED ORDER WILL ALSO NORMALLY INCLUDE A CALCULATED PENALTY. WHERE POSSIBLE, THE TCEQ ATTEMPTS EXPEDITIOUS SETTLEMENT OF ENFORCEMENT ACTIONS BY EXTENDING A SETTLEMENT OFFER IN THE AGREED ORDER.
AGREED ORDER

• AGREED ORDERS ARE USED WHEN YOU AGREE TO THE TERMS AND CONDITIONS OF THE ADMINISTRATIVE ORDER, INCLUDING THE PENALTY.

• THERE ARE TWO KINDS OF AGREED ORDERS:
  • 1660 ORDERS MAY INCLUDE A RESERVATION THAT:
    • 1) THE ORDER IS NOT AN ADMISSION OF A VIOLATION OF A STATUTE WITHIN TCEQ JURISDICTION OR OF A RULE ADOPTED OR AN ORDER OR A PERMIT ISSUED UNDER SUCH A STATUTE;
    • 2) THE OCCURRENCE OF A VIOLATION IS IN DISPUTE.
  • FINDINGS ORDERS ARE USED IF THE FINDINGS CRITERIA ARE MET.
    • FINDINGS ORDERS DO NOT CONTAIN DENIAL LANGUAGE AND DO CONTAIN FINDINGS OF FACT AND CONCLUSIONS OF LAW.
AGREED ORDER

• If settlement does not occur within a specified time, the agency will start the process that can lead to an administrative hearing, which is similar to the process used in a court of law for civil cases.

• The TCEQ Commissioners have ultimate approval of all administrative enforcement orders.
PENALTY

- The penalty included in an enforcement action is calculated according to the TCEQ's penalty policy. This document contains the elements of Texas Water Code, Section 7.053, entitled factors to be considered in determination of penalty amount.

- Some of the factors are:
  - Compliance history
  - Culpability
  - A good-faith effort to comply
  - Economic benefit
  - Other factors as justice may require.
PENALTY

• IN ADDITION, THE FOLLOWING ARE CONSIDERED:
  • WHETHER THE SITE OF THE VIOLATION IS CONSIDERED A MAJOR OR MINOR SOURCE OF POTENTIAL POLLUTANTS; WHETHER
  • THE VIOLATION HARMED THE ENVIRONMENT OR HUMAN HEALTH, OR HAS THE POTENTIAL TO CAUSE HARM;
  • WHETHER THE VIOLATION WAS CLERICAL (USUALLY STEMMING FROM ERRORS IN PAPERWORK).
AGREED ORDER

• IF YOU AGREE WITH THE TERMS OF THE AGREED ORDER AND THE PENALTY AMOUNT, THE CASE IS SET FOR APPROVAL BY THE TCEQ COMMISSIONERS AT A FUTURE TCEQ MEETING.

• DURING THE TIME ALLOWED FOR SETTLEMENT, YOU MAY HAVE THE OPPORTUNITY TO DISCUSS THE VIOLATIONS WITH TCEQ ENFORCEMENT COORDINATOR AND PROVIDE ADDITIONAL DOCUMENTATION THAT MAY INFLUENCE THE INSPECTION FINDINGS, AND/OR CALCULATED PENALTY.
DEFAULT ORDER

• A DEFAULT ORDER IS ISSUED WHEN YOU FAIL TO AGREE TO THE AGREED ORDER WITHIN THE TIME FRAME ALLOWED BY THE ADMINISTRATIVE PROCEDURES ACT.

• IF YOU FAIL TO COMPLY WITH THE DEFAULT ORDER, THEN THE EXECUTIVE DIRECTOR MAY REFER THE CASE TO THE OFFICE OF THE ATTORNEY GENERAL FOR CIVIL ENFORCEMENT IN A COURT OF LAW.
CONTESTING AN ENFORCEMENT ACTION

• IF YOU CONTEST THE ENFORCEMENT ACTION, AN AGENCY ATTORNEY IS ASSIGNED, WHO DRAFTS AN EXECUTIVE DIRECTOR’S PRELIMINARY REPORT AND PETITION (EDPRP).

• THE EDPRP NOTIFIES YOU OF THE VIOLATIONS AND THE PENALTY ASSESSED, AND OF ANY CORRECTIVE ACTIONS NEEDED TO BRING YOU BACK INTO COMPLIANCE WITH THE REGULATIONS.

• THIS DOCUMENT IS NOT AN ORDER, BUT A PETITION FILED WITH TCEQ CHIEF CLERK’S OFFICE TO START THE ADMINISTRATIVE HEARING PROCESS.
CONTESTED CASE HEARING

• YOU MAY REQUEST AN ADMINISTRATIVE HEARING, WHICH IS HELD IN FRONT OF AN ADMINISTRATIVE LAW JUDGE WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS (SOAH).

• SOAH IS A NEUTRAL PARTY. IT APPOINTS AN ADMINISTRATIVE LAW JUDGE (ALJ) TO PRESIDE OVER THE EDPRP.

• THERE ARE NO JURIES IN CONTESTED CASE HEARINGS, AND THE TCEQ IS THE PROSECUTOR.

• TCEQ ATTEMPTS TO PERSUADE THE ALJ THAT IT SHOULD ACCEPT AND APPROVE THE EDPRP.

• YOU (RESPONDENT) ATTEMPT TO PERSUADE THE ALJ THAT IT SHOULD REJECT THE EDPRP.
CONTESTED CASE HEARING

• AT THE END OF THE CONTESTED CASE HEARING, THE ALJ ISSUES A PROPOSAL FOR DECISION (PFD).

• THE PFD WILL BE PLACED ON AN AGENDA OF A FUTURE MEETING OF THE TCEQ.

• AT THIS MEETING, THE ALJ WILL EXPLAIN THE PROPOSED PFD.

• THE PARTIES (TCEQ AND YOU) MAKE ARGUMENTS FOR THEIR RESPECTIVE POSITIONS.

• THE COMMISSIONERS THEN CONSIDER THE PFD AND MAKE THE FINAL DECISION WHETHER TO ISSUE, DENY, OR MODIFY THE ALJ DECISION.
CIVIL APPEAL

• TO CHANGE THE TCEQ’S DECISION, YOU HAVE TO APPEAL THE CASE TO THE DISTRICT COURT IN TRAVIS COUNTY.

• THE STATE OF TEXAS IS THE DEFENDANT.

• THE TRIAL THEN PROCEEDS THROUGH THE CIVIL TRIAL PROCESS LIKE A NORMAL CIVIL CASE, AND THE COURT RENDERS A FINAL DECISION.

• IF YOUR CASE IS REFERRED TO THE OFFICE OF THE ATTORNEY GENERAL FOR ENFORCEMENT THROUGH THE COURTS, THE CASE PROCEEDS AS A CIVIL CASE. YOU ARE THE DEFENDANT AND THE ATTORNEY GENERAL’S OFFICE IS THE PROSECUTOR.
RECOMMENDATIONS

• PRAY THAT YOU NEVER GET TO THE ENFORCEMENT PHASE

• CERTAINLY NOT BEYOND THE AGREED ORDER OR, AT THE WORST CASE, THE CONTESTED CASE HEARING LEVEL OF ENFORCEMENT.

• GET A GOOD ATTORNEY. ONE THAT IS EXPERIENCED WITH ENVIRONMENTAL LAW AND THAT HAS A GOOD TRACK RECORD OF REPRESENTING PUBLIC ENTITIES AGAINST THE STATE.
QUESTIONS?
PUTTING YOUR BEST FOOT FORWARD

HOW TO PREPARE FOR A TCEQ INSPECTION

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