

How to have successful dealings with the Texas Commission on Environmental Quality

Before trouble strikes.

Develop internal protocols for each city department that is regulated by TCEQ. It is also wise to create a TCEQ committee that will be responsible for all TCEQ dealings.

What to do when a regional inspector appears on site at your city.

1. Action Items for a TCEQ Investigation:
 - Inquire about purpose of site investigator's visit.
 - Assign a city employee responsible for documenting any information relating to the inspection to accompany the investigator.
 - Be friendly and professional with the investigator:
 - The investigator is gathering evidence against you and your city.
 - The investigator will be the witness during any contested proceeding.
 - If the investigator is gathering evidence, gather your own evidence:
 - If the investigator is taking pictures, immediately take your own pictures.
 - If the investigator is taking samples, request that those samples be split and send your samples to an independent lab.
2. Contact city attorney or special counsel with TCEQ experience.
3. Conduct internal staff meeting to discuss what transpired and the city's mitigation options.

Have you received a NOV?

1. Notice of Violation is written notification that documents and communicates violations observed during an inspection to the business or individual inspected.
2. Request an Enforcement Review Meeting with TCEQ to attempt to resolve the alleged issue.

Have you received a NOE with proposed Agreed Order?

1. Notice of Enforcement is written notification that the TCEQ is initiating formal enforcement action for violations observed during an inspection.
2. Be careful to note if the Agreed Order is a Findings of Fact Agreed Order or a 1660 Agreed Order:
 - **Findings of Fact Orders** - Show causes for additional fines that may be significant in future enforcement actions and permit renewals.
 - **1660 Orders** - Do not affect a facility's compliance history. It is not an admission of a violation of a TCEQ statute, or a rule, order, or permit. (Note: Certain actions do not allow for the 1660 Order).
3. **Penalty** - The penalty included in an enforcement action is calculated by the enforcement coordinator according to the TCEQ's Penalty Policy, which contains the elements of Tex. Water Code §7.053.
 - Factors considered in penalty calculations are:
 - Compliance history
 - Culpability

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- A good-faith effort to comply.
- Economic benefit.
- Other factors as justice may require.

4. If you agree to accept one of the two forms of the Agreed Order, then either:

- Pay the fine; or
- Attempt to use a Supplemental Environmental Program (SEP).

5. If you do not agree with the Agreed Order, you will receive the Executive Director's Preliminary Report and Petition (EDPRP).

- EDPRP notifies respondent of violations and the penalty assessed, and of any corrective actions needed to bring respondent back into compliance with the regulations. It is not an order, but a petition filed with the Chief Clerk's Office to start the administrative hearing process.

6. Respond within 20 days to EDPRP.

- Failure to respond may result in a Default Order.
- This type of administrative order is issued when the respondent fails to answer the EDPRP within the 20 day time frame provided under 30 Tex. Admin. Code §70.105.

Contesting the enforcement action.

1. Contact your city attorney to contest the matter.
2. File General Denial.
3. The city attorney may engage in informal nego-

tiations with TCEQ staff and an attorney in the TCEQ Office of Legal Services Litigation Department.

When TCEQ refers matter to SOAH.

1. TCEQ will then notify respondent of a preliminary hearing at the State Office of Administrative Hearings.
2. During the preliminary hearing, you will set a procedural schedule and participate in an informal negotiation/mediation. The procedural schedule is as follows:
 - Discovery period begins.
 - Hearing on the merits (i.e., a trial).
 - Administrative Law Judge (ALJ) issues ruling.
 - Respondent files exceptions to the ALJ ruling.
 - TCEQ Commissioners' Agenda rules on adopting, denying, or modifying the ALJ Proposal For Decision (PFD).
 - File Motion for Rehearing.
 - Appellate remedy in Travis County District Court.

-DISCLAIMER-

This abbreviated guide is NOT comprehensive. It is intended only as an educational tool for municipal officials.