

Anatomy of a TCEQ Enforcement Action

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I'm a TCEQ Investigator and I am
Here to Inspect Your Facility



"I'm from the government and I'm here to help you"

Enforcement Process Brief Outline

Preliminary

- Facility/records inspection
- Mailed Notice of Violation
- Enforcement Review Meeting, if requested
- Mailed Notice of Enforcement with proposed Agreed Order
- Execute Agreed Order (and pay penalty or use Supplemental Environmental Project in lieu of penalty) or contest enforcement action

Contested

- Mailed Executive Director's Preliminary Report and Petition
- Written general denial and request for contested case hearing
- Referral to the State Office of Administrative Hearings
- Preliminary Hearing / procedural schedule
- Discovery period
- Evidentiary Hearing on the Merits
- Administrative Law Judge's Proposal for Decision
- TCEQ Commission Agenda for final Administrative decision
- Judicial appeal to Travis County District Court, Court of Appeals, Supreme Court

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Investigation is completed (either by TCEQ investigator at facility or through a TCEQ records review)

- Notice of Violation ("NOV") is Issued
 - City can request a Violation Review Meeting ("VRM") if there are additional details related to the violation(s) that need to be presented
 - If no City response is provided by the due date, the case is referred to TCEQ's Austin office for issuance of a Notice of Enforcement ("NOE").

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Notice of Violation

- TCEQ local region issues the NOV
- City may informally settle violation by immediate correction
- City can schedule a meeting with inspector and TCEQ local region staff
- TCEQ local region staff can withdraw allegations based on information provided by the City
- TCEQ local region staff forward the NOV to TCEQ's Austin office for issuance of a NOE

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Notice of Enforcement

- NOE issued jointly by TCEQ local region and TCEQ's Austin office
- City can still schedule a meeting with TCEQ staff and a TCEQ attorney to resolve the NOE
- City can appeal the NOE directly to TCEQ's Executive Director
- NOE can be settled through an Agreed Order ("AO")
- Supplemental Environmental Project ("SEP") may be available to offset penalty in AO

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Supplemental Environmental Project

- A SEP is a way to either have your penalty payment applied towards specific TCEQ preapproved project or to utilize the penalty amount for other environmental improvements in the City
- Custom or preapproved proposed SEP must be sent to the TCEQ within 30 days of the date of the NOV

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Agreed Order

- Proposed AO is issued by the TCEQ Austin office
 - City negotiates with the TCEQ legal staff on final AO terms
 - AO is signed by City and placed on the TCEQ's Commission Agenda for final approval
- OR
- City requests a contested case hearing within 60 days of the date of the cover letter transmitting the proposed AO

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Contested Case Hearing Request

- The TCEQ Litigation Division is responsible for preparing the Executive Director's Preliminary Report and Petition ("EDPRP") if the City rejects the proposed AO
- The City has 20 calendar days to deny the EDPRP and to request a contested case hearing
- The State Office of Administrative Hearings ("SOAH") Docketing Team makes a referral to SOAH and a Preliminary Hearing is scheduled

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Contested Case Hearing Process

- An Administrative Law Judge ("ALJ") holds a Preliminary Hearing to establish a hearing schedule
- Discovery is conducted by the City and the TCEQ
- An evidentiary Hearing on the Merits ("HOM") is held in Austin
- A Proposal for Decision ("PFD") is issued by the ALJ
- The ALJ's PFD is placed on the TCEQ's Commission Agenda for a final administrative decision
- The final TCEQ Commission decision is subject to judicial appeal

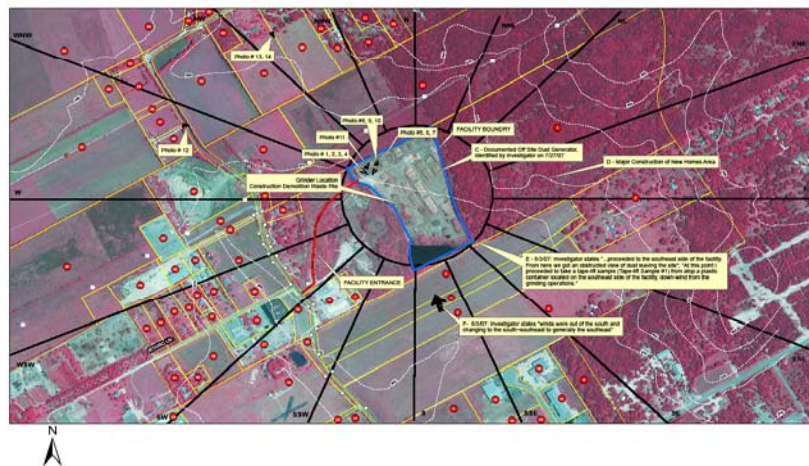
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Garden-ville Compost/Mulch Facility

- TCEQ inspections in 2001 to 2006 = no violations noted
- TCEQ inspections in July and August 2006 = alleged nuisance dust violations
- No NOV was issued
- NOE was issued
- Contested Case Hearing was initiated
- TCEQ Evidence
 - TCEQ Investigators' reports
 - TCEQ Investigators' tape lift samples
 - TCEQ Investigators' photos allegedly showing dust off-site

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Aerial Photo of Garden-Ville Composting Operations



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DISCOVERY

- Discovery was initiated through Interrogatories, RFPs, and RFAs, as well as Depositions
 - TCEQ inspections were poorly documented
 - Wrong wind direction was discovered in TCEQ investigation notes
 - Improper tape lift samples procedures were discovered
 - No fence line air samples were taken during TCEQ investigations
 - Exculpatory photos were discovered
 - Reliable site condition instrumentation was not used by TCEQ investigators

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TCEQ Investigator Site Condition Instrumentation “Face Calibration”

- Allowing the wind to blow on your face to determine on-site wind direction and velocity, as well as dust volume



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Fatally Flawed TCEQ Enforcement at Garden-Ville

- No Standard Investigation Methodology
- No Standard Investigation Instrumentation
- No Standard Laboratory Methodology
- No Management Oversight

RESULT

- Enforcement Action was Withdrawn with Prejudice
- High Cost for Garden-ville to prevail
- Major reform of TCEQ Enforcement Methodology

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Recommendations

- Have a written investigation protocol in place for each city department that is subject to TCEQ regulations.
- Assure that a city employee accompanies the TCEQ investigator during any site inspection.
- Assure that you are notified immediately when there is a TCEQ inspection.
- Have a city employee take photos during the inspection.
- Have a city employee request split samples if any samples are taken by TCEQ during the inspection.
- Have a city employee record all relevant information during an inspection on an internal checklist designed for each city department.
- Request an exit interview with the TCEQ investigator to go over the investigator's findings.
- Request that the TCEQ investigator provide you with a copy of all photos taken during the inspection.
- Follow the inspection with an internal city staff meeting to discuss the inspection and make sure everyone understands the importance of timely responses to all subsequent TCEQ contacts.

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Helpful Links to TCEQ Documents

- All forms and guidance docs: <http://www.tceq.state.tx.us/legal/sep/forms.html>
- The TCEQ has Inspected Your Business http://www.tceq.state.tx.us/files/rg-344.pdf_4444074.pdf
- SEP guideline handout: http://www.tceq.state.tx.us/files/qi-352.pdf_4470808.pdf
- Contributing to a 3rd Party SEP Administrator - http://www.tceq.state.tx.us/assets/public/legal/sep/respondent_proposal_102504.pdf
- Custom Individual SEP Application- http://www.tceq.state.tx.us/assets/public/legal/sep/custom_proposal.pdf
- Statewide preapproved SEPs: http://www.tceq.state.tx.us/files/StatewideProjects.2008_07_30.pdf%20.pdf_4330957.pdf
- County specific SEPs: http://www.tceq.state.tx.us/legal/sep/sep_county.html
- Enforcement Process Review: http://www.tceq.state.tx.us/assets/public/comm_exec/epreview/epr_recc.pdf
- Penalty Policy: http://www.tceq.state.tx.us/files/rq-253.pdf_4447450.pdf
- Enforcement Initiation Criteria: http://www.tceq.state.tx.us/assets/public/agency/eic_rev_12_07-01-08.pdf