

TCAA Fall Conference  
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*Presented by:*

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# Environmental Audits:

**An often overlooked tool for  
cities**

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# The Texas Environmental, Health, and Safety Audit Privilege Act (the “Act”)

- Tex. Rev. Civ. Stat. art. 4447cc
- The Act allows entities and individuals to **conduct voluntary audits** of a facility’s compliance with environmental laws and regulations in exchange for **privilege of audit reports** and **immunity from penalties** for violations discovered during the audit with certain exceptions.

# The Texas Environmental, Health, and Safety Audit Privilege Act

The Act has two main components:

- **Privilege** for documents and information gathered from a self-audit applicable to discovery and admissibility in civil and administrative proceedings
- **Immunity** from administrative or civil penalties for violations

# Privilege under the Act

- The privilege applies to an “audit report” developed from an “environmental or health and safety audit” (the “Audit”) as defined by the Act.
- In short, an Audit is a systematic voluntary evaluation of compliance with environmental or health and safety laws or with a permit issued pursuant to such laws.

# Privilege under the Act

An “audit report” may include:

- A description of the audit’s scope
- Memoranda and documents
- Implementation plans or tracking systems
- Attached supporting information such as interviews, field notes, legal analyses, lab data, and photos

# Privilege under the Act - Exceptions

The privilege does not apply to:

- Documents, reports, or data required to be disclosed under state or federal law
- Information obtained outside the Audit such as permit reporting requirements
- Criminal proceedings

# Privilege under the Act - Waiver

Privilege may be waived if:

- Information gathered from the Audit is communicated to others, including the EPA and other federal agencies.
- Court or administrative hearings official determines Audit Report demonstrates noncompliance but efforts to achieve compliance were not promptly initiated.

# Immunity for Violations

In addition to privilege, entities may be granted immunity for **voluntary disclosures** of violations discovered during a voluntary audit conducted pursuant to the Act.



# Immunity for Violations

This immunity does not affect TCEQ's authority to:

- seek injunctive relief,
- make technical recommendations, or
- generally enforce compliance.

# Immunity for Violations – Notice of Audit

To receive immunity, an entity must first submit a **Notice of Audit (“NOA”)**, a letter notifying TCEQ of intent to initiate an environmental audit. The NOA must specify:

- the facility or portion of the facility to be audited,
- the duration and scope of the audit, and
- statutory and regulatory cites.

Note: A NOA is not required if the entity does not intend to take advantage of the Act’s immunity provision.

## Immunity for Violations – Disclosure of Violation

To receive immunity, if during the audit any violations are discovered, a **Disclosure of Violation (“DOV”)** must be sent to TCEQ

- in writing
- by certified mail
- promptly after the violation is discovered

Note: A DOV is not required if the entity does not seek to take advantage of the Act’s immunity provision.

# Immunity for Violations

To receive immunity for a violation:

- the violation must be discovered during the Audit
- the violation must lack injury or imminent and substantial risk of injury
- the violation must be voluntarily reported promptly
- the entity must correct the violation in a reasonable amount of time after reporting

# Why use the Act?

- Protect findings
- Conduct more extensive internal investigations without concern for penalties
- Resolve potential violations before fined
- Develop a compliance schedule in lieu of an enforcement action
- In the case of a pre-acquisition audit, reduce risks associated with purchase

# Water Rights

Concern regarding municipal impoundment for amenity purposes

- Notice Audit for TWC Chapter 11 compliance
- Engineering assessment regarding watercourse
- Engineering assessment of options for water
- File application



# Water Rights

## Disclosure of failure to secure permit

- Secured permit for impoundment
- No unappropriated water so groundwater supplement
- Potential fines of up to \$5k/day
- Better understanding of regulations regarding water rights and reuse

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



THE STATE OF TEXAS  
COUNTY OF TRAVIS

I hereby certify that this is a true and correct copy of a Texas Commission on Environmental Quality document, which is filed in the permanent records of the Commission. Given under my hand and the seal of office on

*Leandra Caposavella* DEC 05 2005

LEANDRA CAPOSAVELLA, Civil Clerk  
Texas Commission on Environmental Quality

#### AMENDMENT TO CERTIFICATE OF ADJUDICATION

APPLICATION NO. 12-4106C	CERTIFICATE NO. 12-4106C	TYPE: 11.122
Owner: City of Cleburne	Address: P.O. Box 657 Cleburne, Texas 76033	
Filed: August 20, 2004	Granted: NOV 30 2005	
Purposes: Agricultural, Municipal, and Industrial	Counties: Johnson	
Watercourse: West Buffalo Creek, tributary of Buffalo Creek, tributary of the Nolan River, tributary of the Brazos River	Watershed: Brazos River Basin	

WHEREAS, Certificate of Adjudication No. 12-4106 authorizes the City of Cleburne (City or applicant) to maintain a dam and reservoir, (known as Lake Pat Cleburne) on the Nolan River, tributary of the Brazos River and to impound 25,600 acre-feet of water. The City is also authorized to divert and use not to exceed 240 acre-feet of water from Lake Pat Cleburne for agricultural purposes to irrigate 80 acres of land in Johnson County with a time priority of March 29, 1976 and 5,760 acre-feet of water per year from Lake Pat Cleburne for municipal and industrial purposes with a time priority of August 6, 1962; and

WHEREAS, the City is further authorized to use the bed and banks of Lake Pat Cleburne to deliver 5,300 acre-feet of water (Lake Aquilla contract water) and 4,700 acre-feet of water (Lake Whitney contract water) per year pursuant to a contract between the City and the Brazos River Authority and to divert and use said water for municipal purposes from the diversion point authorized by the Certificate; and

WHEREAS, the maximum combined diversion rate for all water is 55.2 cfs (24,774 gpm). Special conditions apply; and

WHEREAS, Applicant seeks to amend Certificate of Adjudication No. 12-4106 to:

- Divert and reuse existing and future City return flows for agricultural, industrial, and municipal purposes within the City's service area in Johnson County,
- Use the bed and banks of West Buffalo Creek, Buffalo Creek, and the Nolan River to transport the discharged water to the diversion point(s) downstream of the outfalls/discharge points on the Nolan River or its tributaries, and

# Wastewater System

Concern regarding methods and procedures for reporting sewer overflows (SSOs)

- Potential for administrative, civil and criminal liability
- Focus on process and prior reports
- Discovered improper DMRs
- Disclosed and corrected reporting





# Wastewater System

Significant savings on fines - \$25k/day

- Corrected laboratory reports
- Corrected DMRs
- Amended SSO reports
- Developed SOPs for reporting
- Developed SOPs for system assets
- Led to better asset management



# Reclaimed Water

Concern regarding compliance with reclaimed water regulations, including contracts

- Audited system for cross connects
- Evaluated safety and integrity
- Evaluated contracts, signage, and compliance
- Determined noncompliance on number of fronts
- Disclosed violations



# Reclaimed Water

Corrected system and avoided same fine structure

- Discovered cross connection, although valved closed
- Needed to update signage
- Contract language was insufficient for user
- Developed GIS
- Cost \$250,000



# Drinking Water System

Series of spills and costly clean up lead to desire for municipal evaluation

- Chemical feed system integrity
- Proper pipe materials (aging)
- Proper safety requirements (eye wash)
- Secondary containment
- Proper reporting
- Training and licensing



# Drinking Water System

## Evaluation led to disclosures

- Not enough chemical storage for regulations
- Improper piping and color coding, signage
- More eye wash stations
- Chemical delivery location containment
- Proper reporting
- \$2,000,000



# Limit Liability and Improve Compliance

The Act is an underutilized, but powerful tool available to public entities.

When used properly, it can assist public entities in ensuring compliance and understanding of their permit obligations while limiting liability.

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TML Annual Conference  
& Exhibition  
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Questions?

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