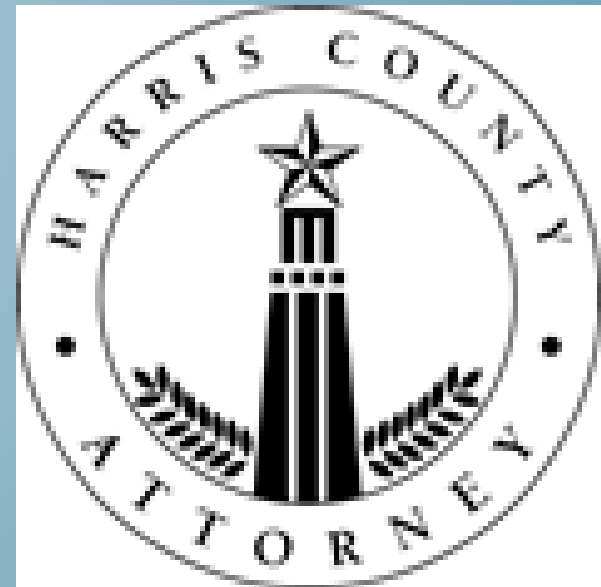


***COUNTY
GOVERNMENT
ENVIRONMENTAL
ENFORCEMENT***

*VINCE RYAN, County Attorney
1019 Congress, Houston TX 77002
Phone: (713) 274 - 5121*

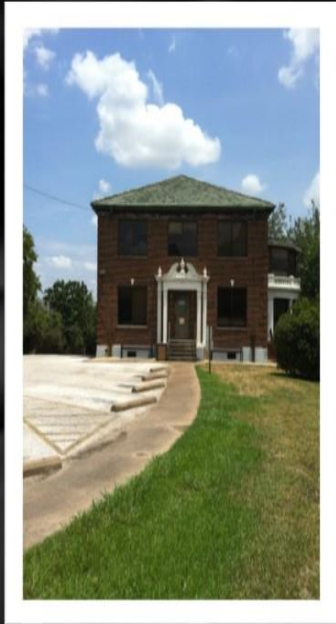
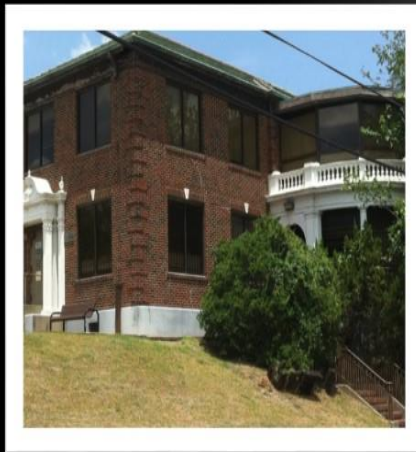


HARRIS COUNTY POLLUTION CONTROL SERVICES DEPT.

***Founded 1953 – Stream and Air Pollution Control Section of
Harris County Health Unit***

The Laboratory

The original laboratory was located at 1225 Franklin near the old Jeff Davis Hospital (now converted to lofts). The building was still owned by the county until it burned in September 2013.



- Legal tools available:
- English common law of nuisance
- 1945 Texas Sanitation Law
“health, comfort and well-being of citizens”
- 1966 Texas Air Control Board – ban: outdoor burning

2004 - H-GAC ENVIRONMENTAL CIRCUIT RIDER PROGRAM



**ENVIRONMENTAL CIRCUIT
RIDER PROGRAM:**

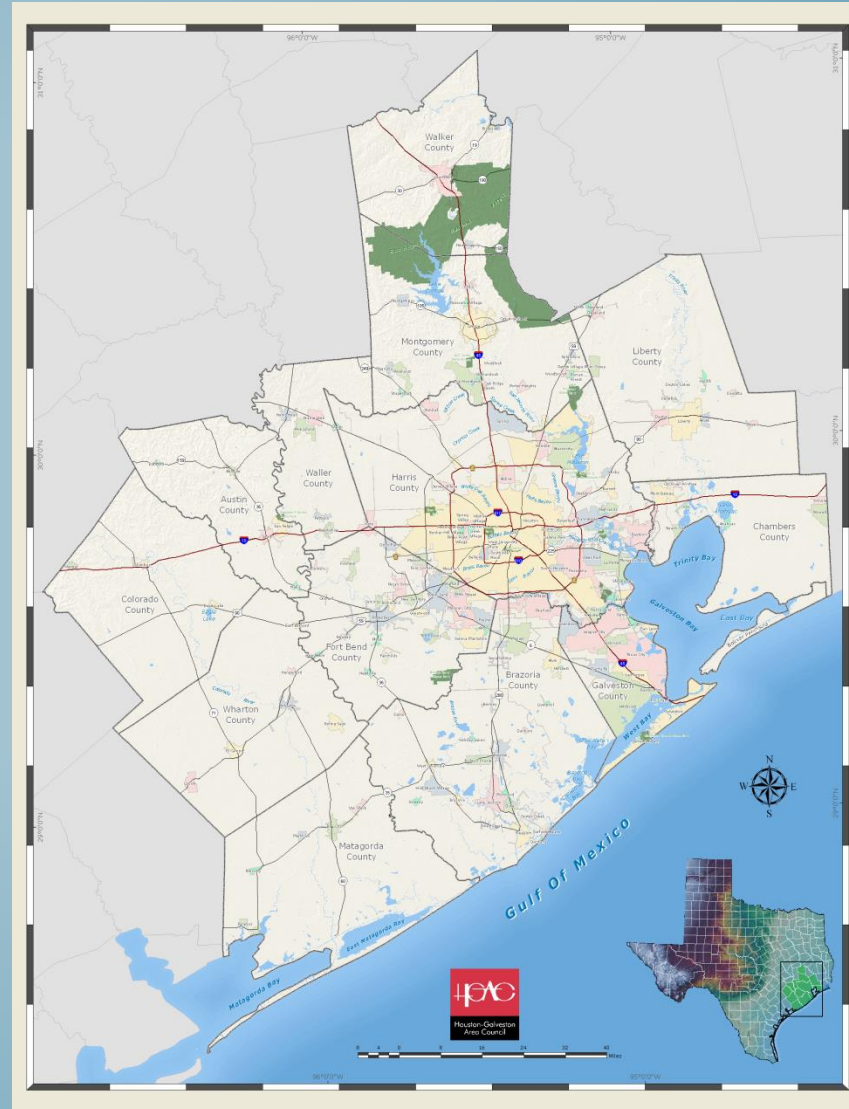


**CIVIL ENVIRONMENTAL
ENFORCEMENT AND
PROSECUTION**

FALL 2004



PREPARED IN COOPERATION WITH THE HOUSTON-GALVESTON
AREA COUNCIL AND THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY.



TCEQ - TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

- **Jurisdiction – WATER**

(TX Water Code – Chapter 5)

Water quality & water rights

Water, drainage, irrigation &

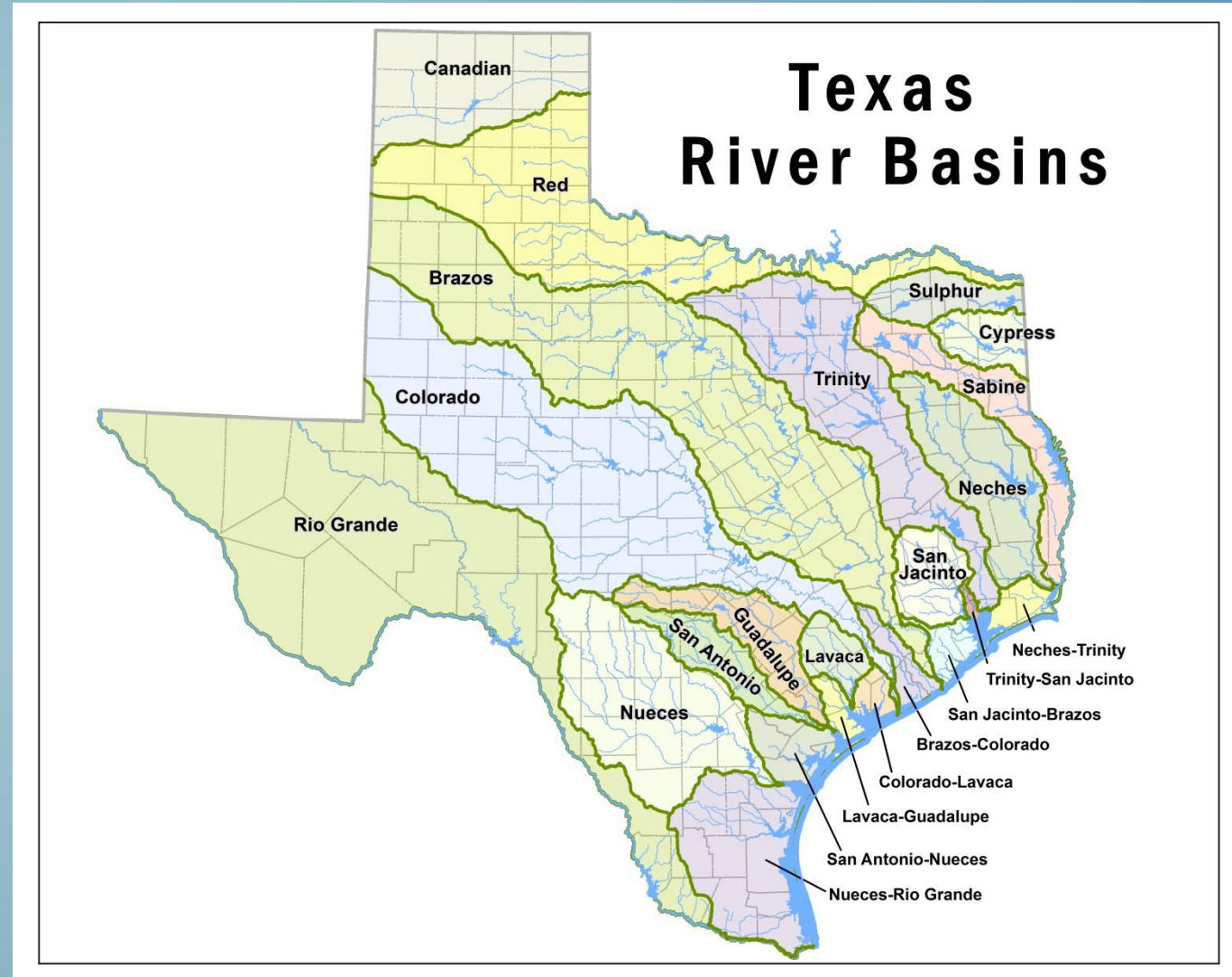
flood control districts

Underground water &

water wells

Dam construction & maintenance

Hazardous spill prevention



TCEQ - TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

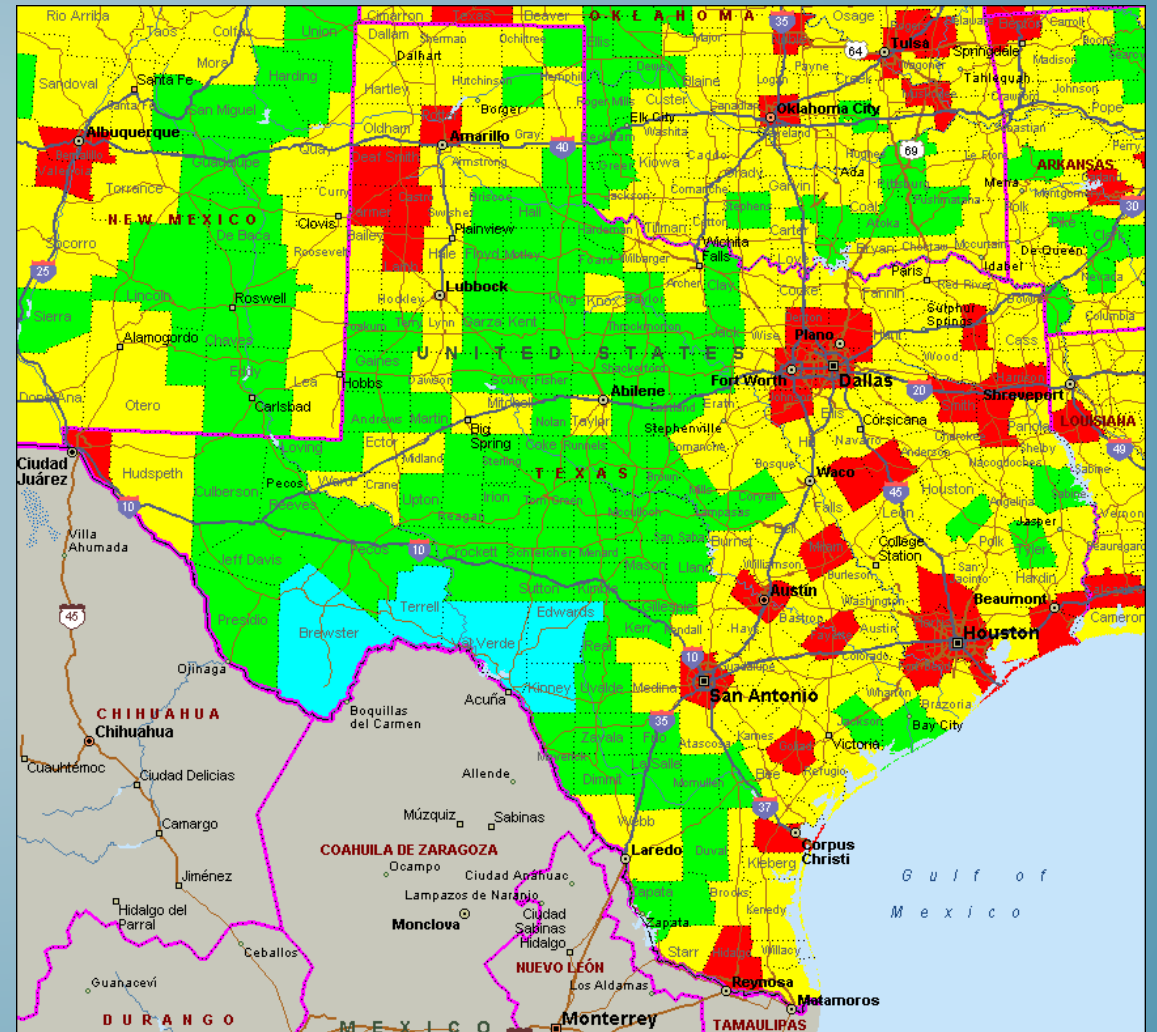
- Jurisdiction – SOLID WASTE
(TX Water Code – Chapter 5)
- Solid waste disposal –
municipal, industrial,
construction, hazardous

Used Auto Parts Recycling w/o
TCEQ storm water permit



TCEQ - TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

- Jurisdiction– CLEAN AIR ACT
(TX Health & Water Code –
Chapter 382)
 - Outdoor waste burning
 - Emissions @ “regulated entities”
 - Concrete crushing plants
 - Poultry farms – nuisance odors
 -



Chapter 343 – Texas Health & Safety Code - Subchapter C County Authority to Abate Nuisances

Sec. 343.022 – County must adopt abatement procedures administered by a regularly salaried, full-time county employee.

- Written notice to premises owner – 31 days if first offense, 10 business days if repeat offender
- Landowner may request hearing before Commissioners Court or designated County official.
- County may abate the nuisance, assess costs against person responsible , impose lien against landowner if guilty

HEALTH & SAFETY 343.011
“PUBLIC NUISANCE”

(1) keeping refuse on premises in a neighborhood not entirely contained in a closed receptacle;

(2) keeping, rubbish, newspapers, abandoned vehicles, refrigerator, stoves, furniture, tires, or cans, in a neighborhood or within 300 feet of a public street for 10 days or more, unless completely enclosed in a building or not visible from a public street;

(3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests



HEALTH & SAFETY 343.011
“PUBLIC NUISANCE” – (CONT’D)

- (9) discarding refuse or creating a hazardous visual obstruction on:
 - (A) county-owned land; or
 - (B) land or easements owned or held by a special district that has the commissioners court of the county as its governing body;
- (10) discarding refuse on the smaller of:
 - (A) the area that spans 20 feet on each side of a utility line; or
 - (B) the actual span of the utility easement;
- (11) filling, blocking, or failing to maintain a drainage easement, or allowing the easement to be clogged with debris, sediment, or vegetation, or violating an agreement with the county to improve or maintain a drainage easement;
- (12) discarding refuse on property that is not authorized for that activity;



COUNTY AUTHORITY FOR PROSECUTION OR INJUNCTION TO ABATE A NUISANCE

- *Criminal*

- *Health & Safety 343.012*
- *Failing to abate nuisance >30 days*
– Class C (\$50 - \$200)
- *2nd offense: (\$200 - \$1,000) plus 6*
months in jail

- *Civil Injunction*

- *Health & Safety 343.013*
- *County may sue in County or*
District Court to abate a nuisance
in unincorporated areas; recover
attorney fees, court costs

COUNTY CIVIL SUITS FOR INJUNCTIONS & CIVIL PENALTIES

TX Water Code Sec. 7.351

*Local government may sue by
its own attorney in the same
manner as TCEQ for an
injunction and civil penalties to
prevent a violation of certain
statutes and rules under TCEQ
jurisdiction.*



VIOLATIONS SUBJECT TO CIVIL PENALTY ENFORCEMENT

TX Water Code – Chs. 26 & 28

-Unauthorized discharges

-Failure to plug wells allowing salt water to escape

TX Health & Safety Ch. 361

unauthorized solid waste disposal

TX Health & Safety Ch. 371

unauthorized handling or disposal of used oil

- ***TX Health & Safety Ch. 372***
- *Sale of lead in plumbing fixtures*

- ***TX Health & Safety Ch. 382***

TX Clean Air Act – outdoor burning, other air pollution

- ***TX Health & Safety Ch. 401***
unauthorized handling of radioactive materials

TX WATER CODE – CHS. 26 & 28

-UNAUTHORIZED DISCHARGES

**-FAILURE TO PLUG WELLS
ALLOWING SALT WATER TO
ESCAPE**



TX HEALTH & SAFETY CH. 361

- *Unauthorized solid waste disposal*



TX HEALTH & SAFETY CH. 371

Unauthorized handling or disposal of used oil

May not be mixed with solid waste or other fluids

May not discharge into soil or water

Placing uncontained used oil filters on land

Using containers that are open, leaky or not waterproof



TX HEALTH & SAFETY CH.372

SALE OF LEAD IN PLUMBING FIXTURES

***Bans sale of fixtures, pipes or
fittings with > 8% lead***

Bans solder/flux with >0.02 %



TX HEALTH & SAFETY CH. 382
TX CLEAN AIR ACT –

Outdoor burning,
other air pollution

Air Curtain Incinerators (ACI)

***Trees, brush, grass, branch
trimmings exempt only if they
grew on the site***

***Site designated for consolid-
ated residential waste burning,
supervised by FD employee***



TX HEALTH & SAFETY CH. 401

UNAUTHORIZED HANDLING OF RADIOACTIVE MATERIALS

Sources:

Oil & gas drilling

Medical x-rays, lasers

**Low-Level Radioactive Waste
Disposal Compact (Andrews Co. TX)**

State rules for transport & routing

**Must report accidents to County
Emergency Planning Committee**

**DALLAS City Council opposes
transport of LLR waste**



TX HEALTH & SAFETY CODE CH. 366

On-site sewage disposal systems

***Surfaced discharge from sewage
systems = “nuisance”***

Failure to repair after TCEQ order

***TCEQ may designate a local
government as its agent***



SUING POLLUTERS FOR CIVIL PENALTIES USING TEXAS WATER CODE SEC. 351

- **COUNTY**
- **Written Notice to Violator and Owner of Site**
- **Commissioners Court Order authorizing lawsuit**
 - **File suit in District Court**
 - **Name TCEQ as necessary party and serve the Attorney General**
- **HARRIS COUNTY, TEXAS,**
 - **Plaintiff,**
 -
 - **and the**
 -
 - **STATE OF TEXAS**
 - **Acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party**
 -
 - **v.**
 -
 - **PASADENA REFINING SYSTEM, INC.**
 - **Defendant.**

LEGAL REMEDIES

INJUNCTION– T.R.O.
*Temporary and
Permanent*

CIVIL PENALTY
\$50 – \$ 25,000/ day
(Divide 50/50 with TCEQ)

ATTORNEY FEES
Both County & TCEQ

COURT COSTS



TRO- Temporary Restraining Order

- Emergency Order sometimes referred to as Cease & Desist- Sworn Petition
- Egregious Conduct
- It may be **ex parte**: Harris County requires notice of hearing
- Only lasts 14 days, renewed 1 time, must contain date for TI hearing of Trial
- Order enforceable by contempt

TI- Temporary Injunction:

Service is required- Notice is not enough

Sworn Pleading

Full Adversarial Hearing on merits

Must show substantial likelihood you will prevail at trial

TI must contain a trial date; lasts until case is called to trial (vacated)

Order is enforceable by contempt

Some factors to consider in asking for a TRO

1. Judges don't like to grant them unless they can give the defendant an opportunity to tell their story
2. If Judge grants it he keeps the case- docket roulette - really warranted this is not a problem but if there is any doubt, they will set it for a TI and punt
3. You will have to go back in 14 days or less. You can get one extension but there is no exception to this rule!

Judge decides injunctive relief

*Although a litigant has the right to a trial by jury in an equitable action, only ultimate issues of fact are submitted for jury determination. **The jury does not determine the expediency, necessity, or propriety of equitable relief.***

State v. Texas Pet Foods, Inc.
591 S.W.2d 800, 803 (Tex. 1979)

85TH LEGISLATURE UPDATE

SEC. 7.3511. PROCEDURE FOR CIVIL PENALTY; REQUIRED NOTICE.

H.B. 2533 – (Geren)

Local govt. to give 90-day pre-suit notice to Atty. Gen. and TCEQ of each violation

-Atty. Gen or TCEQ Director may deny local government authority to file suit

now C.S.H.B. 2533 (Larson)

- 90-day notice still required of each claimed violation, supporting facts and relief
- May sue unless TCEQ sues within 90 days or
- After 45 days if 5-year Statute of Limitations expires in < 120 days

H.B. 1115 (Dutton) – “Affected person”

For purposes of a contested case hearing on a TCEQ permit application, an “affected person” includes State Representatives, Senators, City Council members, and the County Commissioners Court where the facility is located

S.B. 793 – Miles

Concrete crushers

TCEQ by rule shall prohibit a concrete crushing facility within 440 yards of the following types of facilities:

- *residence, school, or place of worship*
- *business where employees perform outdoor work*
- *a park or other outdoor recreational facility, including*
- *a playing field*

WE WILL WORK WITH YOU

Harris County Attorney Vince Ryan is ready to cooperate with any local government in the Houston-Galveston Area to see that the environmental laws of Texas and the United States are obeyed and enforced

- Contact:
- Rock Owens, JD , Manager: rock_owens@cao.hctx.net or
- Jennifer Wheeler: j.wheeler@pcs.hctx.net