Civil Environmental Enforcement
Harris County Attorney’s Office

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Environmental Practice Group
Today’s Presentation

- Who are we?
- Civil Enforcement: Process
- Enforcement: Types of Cases
Who are we?

Harris County Attorney’s Office

Environmental Practice Group

• Civil Enforcement
  • Enforce State Regulations for air, water and waste
    • Texas Water Code
      • Chapters 7 and 26
    • Texas Health and Safety Code
      • Chapters 361, 366 and 382
    • No person shall cause, suffer, allow, or permit a violation of a statute within the commission’s jurisdiction or a rule adopted or an order or permit issued under such statute. Tex. Water Code § 7.101.
  • Enforcement of Local Regulations
Enforcement: Process

Where do our enforcement cases come from?

- Harris County Pollution Control Services Department
- General Authority over Air, Water, and Waste
  - Refineries
  - Wastewater Treatment Plants
  - Nuisance Complaints for places that generate dust or odors
- Emergency Response

- Harris County Engineering
  - Construction Sites for Stormwater
  - On-Site Sewage Facilities
Enforcement: Process

How are cases initiated?

- Inspections – Routine or Complaint
- May Result in Violation Notices
- May Result in Referral to Harris County Attorney’s Office or Harris County District Attorney’s Office
Enforcement: Air Program

- Statutory Nuisance Violations
- Emission Events
- Failure to Report Emission Events
- Permit Violations
Enforcement: Air Program

• Statutory Nuisance Violations
  
  No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.” 30 Tex. Admin. Code § 101.4; Tex. Heath Safety Code § 382.085(a).
  
  • Air contaminant includes particulate matter, dust, fumes, gas, mist, smoke, vapor or odor or any combination of these items. Tex. Health & Safety Code § 382.003(2).
Enforcement: Water Program

Unpermitted Discharges
Enforcement: Water Program

• Unpermitted Discharges
  • Except as authorized by the Commission, no person may discharge sewage, municipal waste, recreation waste, agricultural waste, or industrial waste into or adjacent to any water in the State. Tex. Water Code § 26.121(a).
  • No person may cause, suffer, allow or permit the discharge of any waste or the performance of any activity in violation of this chapter or of any permit or order of the commission. Tex. Water Code § 26.121(c).
Enforcement: Water Program

Unpermitted Discharges
Enforcement: Storm Water Program

Storm water is from rain and snowmelt events that flow over land or impervious surfaces, such as paved streets, parking lots, and building rooftops, and does not soak into the ground. The runoff picks up pollutants like trash, chemicals, oils, and dirt/sediment that can harm our rivers, streams, lakes, and coastal waters.
Enforcement: Storm Water Program

TCEQ Multi-Sector General Permit for Industrial Facilities
Permit No. TXR050000

Individual TPDES Permit

Check Local Regulations
Enforcement: Waste Program

Unpermitted Storage or Disposal Sites

No person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any solid waste unless such activity is authorized by a permit or other authorization from the commission. 30 Tex. Admin. Code § 330.7(a).

Except as otherwise authorized by this chapter, a person may not cause, suffer, allow, or permit the dumping or disposal of MSW without the written authorization of the commission. 30 Tex. Admin. Code § 330.15(c).

Solid Waste is defined as garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. Tex. Health & Safety Code § 361.003(34); 30 Tex. Admin. Code § 330.3(145).
Enforcement: Waste Program

Unpermitted Storage or Disposal Sites
Enforcement: Multi-Media
Enforcement: Waste Program

Permit Violations
Enforcement: Waste Program

Permit Violations
Enforcement: Process

Upon referral to Harris County Attorney’s Office

• File Suit in the same manner as the Commission
  • Tex. Water Code § 7.351

• Seek authorization from Commissioner’s Court
  • Required by Tex. Water Code § 7.352

• TCEQ is a necessary and indispensable party
  • Tex. Water Code § 7.353
Enforcement: Process

Upon referral to Harris County Attorney’s Office

• File a Petition in Harris County District Court
• Service of Process
• Discovery
• Injunction Hearing
Enforcement: Process

What Type of Relief?

• Statutory Injunction
  • Remedy any violation or threat of a violation of an environmental statute, rule or permit

• Temporary Restraining Order
• Temporary Injunction
• Permanent Injunction
Enforcement: Process

**TRO**- Temporary Restraining Order:

a. Emergency Order sometimes referred to as Cease & Desist- Sworn Petition

b. Egregious Conduct

c. It may be *ex parte*: In Harris County you must give notice of hearing

d. Only lasts 14 days, renewed 1 time, must contain date for TI hearing of Trial

e. Order enforceable by contempt
Enforcement: Process

**TI - Temporary Injunction:**

a. Service is required- Notice is not enough
b. Full Adversarial Hearing on merits
c. Must show substantial likelihood you will prevail at trial
d. TI must contain a trial date; lasts until case is called to trial
e. Order is enforceable by contempt
Enforcement: Process

Additional Relief: Civil Penalties

- $50 to $25,000 for each day of each violation for violations of TCEQ, statutes, rules and permits; Each day of a continuing violation is a separate violation - Tex. Water Code § 7.102

- Additional Considerations
  - Split Penalty with State
  - Violations after September 1, 2015 – first $4.3 million split
    - Remainder to State - Tex. Water Code § 7.107
  - Violations after September 1, 2017 – Notice to OAG and TCEQ under Tex. Water Code § 7.3511

- Attorney Fees

- Statute of Limitations
  - Tex. Water Code § 7.360
Enforcement

• Agreed Final Judgment
  • Texas Register Publication for 30 days public comment
• Default Judgment
• Trial on Merits
Questions?

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