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

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”).
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

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
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

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
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

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
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

Aerial Photo of Garden-Ville Composting Operations
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 fenceline air samples were taken during TCEQ investigations
  – Exculpatory photos were discovered
  – Reliable site condition instrumentation was not used by TCEQ investigators

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
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

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.
Helpful Links to TCEQ Documents

- All forms and guidance docs: http://www.tceq.state.tx.us/legal/sep/forms.html
- County specific SEPs: http://www.tceq.state.tx.us/legal/sep/sep_county.html