Prior to 1995

SELF-EVALUATIVE PRIVILEGE
ATTORNEY CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT
NO IMMUNITY

VERY LITTLE INCENTIVE TO BE PROACTIVE
TEXAS AUDIT ACT 1995


1) Privileges
2) Immunity

BIG INCENTIVE TO BE PROACTIVE
KEY TO ENVIRONMENTAL COMPLIANCE: HAVE A PLAN!
Admissibility and Discovery of Audit Reports

1) Civil Proceedings
2) Administrative Proceedings

No Privilege for:

1) Criminal
2) Data required to be collected or Reported
TCEQ WILL NOT ROUTINELY REQUEST PRIVILEGED AUDIT REPORT INFORMATION

HOWEVER, IF NEEDED TO DETERMINE COMPLIANCE STATUS, TCEQ WILL ENTER INTO CONFIDENTIALITY AGREEMENT
TEXAS AUDIT ACT

IMMUNITY

• Immunity From:
  1) Civil Penalties
  2) Administrative Penalties

• No Immunity From:
  1) Criminal
  2) Injunctive Relief
  3) Technical Requirements
TEXAS AUDIT ACT IMMUNITY

- Exceptions from Immunity for Civil/Administrative Penalties

1) Intentional
2) Knowing
3) Reckless
4) Substantial Economic Benefit
5) Pattern of Disregard
TEXAS AUDIT ACT MECHANICS

1) VOLUNTARY
2) PRECEEEDED BY PROPER NOTICE OF AUDIT LETTER
3) DISCLOSURE OF VIOLATION LETTER
1) VOLUNTARY

**P**—the disclosure was made *promptly* after the violation was discovered;

**I**—the disclosure was made *in writing by certified mail* to the TCEQ;

**N**—the violation was *not independently detected*, or an investigation of the violation was not initiated, before the disclosure was made in writing by certified mail;

**N**—the violation was *noted and disclosed as the result* of a voluntary environmental audit;

**A**—*appropriate efforts to correct* the noncompliance are initiated, pursued, and completed within a reasonable amount of time;

**C**—the disclosing person *cooperates in the investigation* of the issues identified in the disclosure;

**L**—the violation *lacks injury or imminent and substantial risk of injury*; and

**E**—the disclosure is not required by an *enforcement order or decree*. 
2) NOTICE OF AUDIT LETTER

-- the legal name of the person, including its TCEQ Customer Number (CN);
-- the location of the facility;
-- a description of the facility or portion of the facility to be audited, including the applicable TCEQ permit number, registration number, regulated-entity number (RN);
-- specific date and time the audit will commence (time, day, month, and year); and
-- a general scope of the audit, with sufficient detail to enable a determination of whether subsequently discovered violations are included.

Send Certified
3) DISCLOSURE OF VIOLATION LETTER

-- the legal name of the person audited (the Audit Act defines “person” as an individual, corporation, partnership, or any other legal entity)
-- a reference to the date of the relevant NOA
-- certified mail reference number
-- the time of initiation and completion (if applicable) of the audit
-- an affirmative assertion that a violation has been discovered
-- a description of the violation discovered, including references to relevant statutory, regulatory, and permit provisions, where appropriate
-- the date the violation was discovered
-- the duration of the violation (start date of violation to completion date of corrective actions)
-- the status and schedule of corrective actions
The new rules require commercial APOs to:

-- register with the TCEQ beginning Sept. 1, 2012 (with a deadline of Oct. 30, 2012), and renew registration annually;
-- pay registration fees; and
-- undergo inspection every three years.
TEXAS AUDIT ACT
HB 571

APOs that submit a Notice of Audit to conduct a self-audit under the Audit Act with their initial registration may delay their inspection requirements until Sept. 1, 2015.
TEXAS AUDIT ACT

Miscellaneous Issues

1) Extensions
2) Consent Agreements
3) Inspections
4) Files
5) Multiple Facilities
6) Multiple Audits
TEXAS AUDIT ACT
USEFUL RESOURCES

HB571:

http://www.tceq.texas.gov/assistance/industry/aggregate-production


Audit Act: