

4. FACT SHEET

TCEQ REGULATION OF FACILITIES

CONCERN: TCEQ does not have sufficient authority or power to regulate facilities.

TCEQ is one of the largest and most powerful environmental protection agencies in the U.S. and encourages compliance through a robust investigation and enforcement program.

TCEQ is Texas' primary and comprehensive environmental regulatory agency. The federal government has delegated to TCEQ the implementation of federal environmental laws, including air quality, water quality and waste. TCEQ employs more than 2,500 staff. More than 800 staff members operate in field offices strategically located in 16 different regions of Texas. According to TCEQ's most recent Annual Enforcement Report, it regulates more than 626,700 public and private facilities.

TCEQ investigates alleged environmental noncompliance. In 2017, the agency conducted more than 104,000 routine investigations and 4,963 compliant investigations. In addition to these administrative matters, TCEQ also partners with the Texas Environmental Enforcement Task Force to pursue criminal enforcement. The agency participated in six search warrants and finalized 21 cases with convictions against 15 individuals and 12 corporations. The finalized cases included nine felony counts and 17 misdemeanor counts. TCEQ can also refer cases to the Texas Office of the Attorney General (OAG). There were an additional 22 civil judicial orders issued through representation by the OAG that resulted in more than \$1.3 million in penalties.

When environmental laws are violated, the agency has the authority in administrative cases to levy penalties up to the statutory maximum – as high as \$25,000 – per day per violation. Civil judicial cases also carry penalties up to \$25,000 per day per violation in some programs. As it concerns APOs, in FY 2017, TCEQ completed 2,341 “aggregate production operation surveys.” From these, approximately 251 actual inspections were conducted. There were 143 Notices of Violation and 23 Notices of Enforcement. In addition, 27 administrative orders were issued, with \$291,201 paid in penalties.

SUFFICIENCY OF PENALTY PROCESS

CONCERN: TCEQ penalties are not strong enough to deter some companies from complying with their requirements.

TCEQ has broad enforcement authority, including the power to administer significant penalties.

TCEQ has the authority in administrative cases to levy penalties up to the statutory maximum as high as \$25,000 per day per violation. Civil judicial cases carry penalties up to \$25,000 per day, per violation, in some programs.

By law, TCEQ can seek administrative, civil and criminal penalties for environmental violations. See e.g., Texas Water Code Chapter 7. TCEQ is statutorily required to issue any rock crusher operating without an

air quality permit fines of \$10,000 per day. See Tex. Water Code § 7.052(b). TCEQ maintains enforcement-related “guidance documents,” which are made readily available to the public as follows:

- Penalty Policy – <https://www.tceq.texas.gov/publications/rg/rg-253.html>
- Enforcement Initiation Criteria – <https://www.tceq.texas.gov/compliance/enforcement/eic.html>
- Annual Enforcement Reports – <https://www.tceq.texas.gov/compliance/enforcement/enforcement-reports/annenfreport.html>

All of TCEQ’s enforcement actions are published in multiple places, including in the Texas Register, and on TCEQ’s website prior to TCEQ Commissioners’ Agendas. For example, the list of pending enforcement actions for the TCEQ Agenda on Oct. 3, 2018, is located here:

https://www.tceq.texas.gov/agency/decisions/agendas/comm/comm_agendas.html. 2019 Agenda dates are Jan. 16, January 30, Feb. 13, Feb. 27, March 27, April 10, April 24, May 8, May 22, June 12 and June 26. TCEQ will post the Agendas, including the list of 10 pending enforcement actions, in advance of the meeting. TCEQ is glad to receive comments from the public on any matters within its jurisdiction in accordance with Texas Water Code Section § 5.112, with the exception of pending permitting matters or other contested cases, which are subject to the ex parte prohibition found in Texas Government Code Section § 2001.

SUFFICIENCY OF PENALTY PROCESS

CONCERN: TCEQ-permitted facilities ultimately receive penalties and fines for noncompliance after the damage is already done.

It is true that TCEQ issues permits to facilities that have been fined and that have had issues of non-compliance, but such permits have greater restrictions and the facilities have elevated consequences for future instances of non-compliances.

TCEQ issues permits to facilities if the facilities submit an application that is in accordance with Texas’ environmental laws. In situations where a company or a facility owned by a company has had penalties or has “had a record of noncompliance,” TCEQ will provide additional scrutiny to the pending permit application. From an air quality standpoint, in such a case where a company with “penalties” or a “poor compliance rating” receives a permit, such permit is term-limited to five years instead of 10 years. In addition, repeat violators or companies with poor compliance histories are often given enhanced penalties under TCEQ’s Penalty Policy. Also, in addition to penalties, the agency drafts proposed enforcement orders that include ordering provisions for TCEQ’s consideration and approval. These ordering provisions are intended to seek compliance and to rectify any existing environmental issues that may have been created with the determined violations.