The TCEQ Has Inspected Your Business

What does this mean to you?

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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Contents

Why was my facility inspected? 1

The investigator found a violation. What happens next? 2

What if I don't agree with the investigator's findings? 2

If I receive an NOV, what should I do? 3
- Call Us! 3
- Meet with Us! 3
- Write Us a Letter! 3

What happens if I don't respond? 3

Confused? Find Help Here 4

What if I don't understand the letter or what I'm required to do? 4

What if my case goes to "formal enforcement"? 5

How will I know whether formal enforcement has begun? 5

What happens during formal enforcement? 6

How do I reach an agreement with the TCEQ? 6

How much could my fine be? 7

Put Part of Your Fine to Work at Home! 7

What if I can't afford to pay a fine? 8
- Reducing Your Payment 8
- Working Out a Payment Plan 8
- Deferring Part of Your Fine 8

If we can't reach an agreement, can I get a hearing? 9

If I ask for a hearing, do I lose my chance to settle? 10

What happens at the end of the hearing? 10

Bottom line: How do I avoid any unpleasant surprises? 10

Put It in Writing! 11

Disclaimer 12

An investigator has just finished inspecting your place of business for the Texas Commission on Environmental Quality (TCEQ). You probably have a few questions about what this inspection means—and about what you can expect to happen in the next few days, weeks, or months. This booklet answers many of the questions you may have.

In this booklet, questions are written as you might ask them. In the answers to these questions, "we" or "us" means the TCEQ.

Why was my facility inspected?

Under the law, the TCEQ must adopt and enforce rules that protect the people and environment of Texas. We have designed these rules to reduce and prevent pollution and to ensure that public health is protected.

Part of our job is to find out whether the people we regulate are complying with these rules. One way we do this is to inspect facilities on a regular schedule. We also may inspect a facility in response to a specific complaint or a spill.

We require our investigators to go over their findings with you in an exit interview. You will find out in this interview what violations, if any, the investigator found. If the investigator finds no problems, you will also receive a letter called a "general compliance letter" within several weeks. If, after further review of agency regulations, additional violations appear to have occurred, the investigator will contact you to discuss them.

The investigator found a violation. What happens next?

The law requires us to respond to all the violations our investigators find. This response is called our "enforcement process" and is intended to ensure that your facility complies with the rules.

In this case, the inspection is the first of several steps in the enforcement process. The second step has also already occurred—that is, the investigator has told you of one or more alleged violations.

If your facility does not or cannot correct all alleged violation(s) within 14 calendar days, or if the violation(s) involved an actual emission or discharge, or if you have been cited for the same violation(s) within the past 12 months, the next step will begin. In this step, we will send you a letter called a "notice of violation," or NOV. The NOV is a formal statement of the specific violations the investigator found. In the NOV, either we will ask you to send us a written schedule that shows when and how you plan to correct each of these alleged violations or we will give you a schedule you must follow.

For the more serious violations, we also must begin a step called "formal enforcement" immediately—even if you are able to correct these violations within 14 calendar days. For more information about this step, see "What if my case goes to 'formal enforcement?'" on page 5.

What if I don't agree with the investigator's findings?

At the end of the inspection, the investigator will advise you of your right to meet with the regional office to discuss the findings.

Use this meeting to discuss the investigator's findings and present your point of view. See "Put It in Writing!" in the box on page 11. Don't put it off.

If I receive an NOV, what should I do?

You must respond to the NOV in writing. You may also call us or meet with us, but you must respond in writing by the deadline given in the letter. Whatever you do, don't ignore the NOV, and don't wait for us to call you first. If you're not sure what to do, call one of the numbers in "Confused? Find Help Here:" on the next page.

Call Us!

As well as listing each violation, the NOV will tell you the name and phone number of our contact person for your case. You may call this contact person as soon as you get the NOV. Discuss your concerns. Ask any questions you may have.

Meet with Us!

If you wish, ask to meet with our contact person to discuss these violations. Often, having a face-to-face meeting can help.

Write Us a Letter!

In this required letter, let us know that you have received our letter. Respond to each point the NOV raised. And if you have already corrected the violations, tell us.

What happens if I don't respond?

If you don't respond to the NOV by the deadline or to any other letter we send you about an

enforcement action, you could give up some of your rights under the law. For one thing, the TCEQ commissioners might eventually have to issue a "default order." The default order could require you to pay a fine—even if you have corrected the violations without telling us.

CONFUSED? FIND HELP HERE:

For answers to questions about:	Call this TCEQ office:
The enforcement process, hearings, and your legal rights	Office of Public Interest Counsel 512/239-6363
General information, technical assistance, or guidance	Environmental Assistance Division 1-800-447-2827 or your TCEQ regional office (See your NOV)

What if I don't understand the letter or what I'm required to do?

Ask to meet with the contact person identified in the letter to clear up anything you don't understand. Call us at the phone number listed in the letter, or call one of the numbers listed in "Confused? Find Help Here:" above. Whatever you do, be sure to protect your rights by answering the letter in writing by the deadline given in the letter.

What if my case goes to "formal enforcement"?

"Formal enforcement" is the process we use to seek an order and a fine.[1] This process may even include a hearing, if you request it. If your case does go to formal enforcement, you may want to consider consulting with an attorney.

Some violations are directly referred to formal enforcement—even if the violations are corrected. Still, if you correct the violations before formal enforcement begins, you might face a smaller fine.

You can still call or meet with us during this process.

How will I know whether formal enforcement has begun?

When formal enforcement begins, we will send you a letter called a "notice of enforcement" (NOE). The NOE tells you clearly that we are beginning formal enforcement. Don't ignore this notice—respond to it right away. See "Put It in Writing" on page 11 for more information about contacting us.

[1] These fines are called "administrative penalties." For the sake of simplicity, we have called them "fines" in this booklet.

What happens during formal enforcement?

Formal enforcement could result in any one of three kinds of commission orders:

- You may work out an agreement with us to correct the violations and probably pay a fine. The TCEQ commissioners approve this agreement by issuing an "agreed order."
- You may request a formal hearing before a judge from the State Office of Administrative Hearings (SOAH). Following this hearing, the TCEQ commissioners will issue an administrative order. This order could force you to pay a fine and will instruct you to correct the violations.
- If you stop communicating with us, the TCEQ commissioners will eventually issue a default order. In other words, because you did not respond, you have given up your chance to state your case and must pay a fine and correct all violations.

Once you have complied with the order issued, the enforcement process ends.

How do I reach an agreement with the TCEQ?

We will send you a letter along with a settlement offer. We call this offer a "proposed agreed order." This order will give you the following information:

- how much you must pay in fines;
- what specific violations you must correct;
- a time frame to correct the violations, also known as the "ordering provisions."

If you agree to the terms of this order, just sign it without making any changes and return it along with payment of the fine within 60 calendar days of the date of the cover letter. This is the way to settle your case without an attorney or a formal hearing.

If you disagree with the terms of this proposed agreed order, then you can and should speak with the contact person named in the cover letter. Ask to set up a meeting to discuss your questions.

How much could my fine be?

You can find the guidelines the commissioners use to set the amounts of these fines in TCEQ publication RG-253, *Penalty Policy*. To get a free copy of RG-253, fax your order to 512/239-4488, call TCEQ Publications at 512/239-0028, or visit our website:

www.tceq.texas.gov

PUT PART OF YOUR FINE TO WORK AT HOME!

Instead of paying part of your fine, you might be able to do something good for the environment in your community!

This option is called a "supplemental environmental project," or SEP. You may be able to use up to half of your fine to do or support a SEP. Even small businesses can participate by contributing to a fund that will be used to pay for a SEP.

Doing a SEP does not reduce your out-of-pocket expense, but does give you some choice about where the money goes. To find out about eligibility for this program, call the SEP coordinator at 512/239-2223.

What if I can't afford to pay a fine?

If you don't think you can afford the proposed fine, you may ask our staff to consider one or more of three possible solutions—to reduce your payment, to work out a payment plan, or to defer part of your fine. But bear in mind that the TCEQ commissioners make the final decision. They may approve, deny, or adjust any solutions you work out with our staff.

Reducing Your Payment

If you can't pay all or part of the proposed fine, then you may claim "financial inability to pay." To find out how to make this claim, contact the person named in the letter with the proposed agreed order right away. We will send you a list of the documents that you must send us before we can evaluate your claim.

If our accountants agree that you cannot pay the proposed fine, then we will change the proposed agreed order to make the fine reasonable according to your documents. You still must correct the violations in the time frame given in the order—and let us know when you have made these corrections. If you do not comply with the order, then you must pay the remaining portion of the original fine.

Working Out a Payment Plan

If you can't pay the assessed fine in a single payment, you may ask us to revise the order to arrange for up to 36 monthly installments.

Deferring Part of Your Fine

If we defer a part of your fine, you still must pay a portion of the fine right away. However, we will agree to wait until a date stated in the order to collect the remaining balance from you. On that date, if you have

met certain requirements stated in your order, we will waive the remaining balance.

We can offer deferrals in some—but not all—cases. To find out whether you qualify for a deferred fine, contact the person named in the letter with the proposed agreed order right away.

If we can't reach an agreement, can I get a hearing?

You have 60 calendar days from the date on the proposed agreed order's cover letter to work out an agreement with us. If we can't agree by then, we will assign your case to an attorney in our Litigation Division. This attorney will draft a document called an "executive director's preliminary report and petition" (EDPRP). This document is your signal that we are preparing for a hearing—if you request one—or that we are going to ask the commissioners to issue an order against you.

An EDPRP means you have 20 calendar days to ask for a hearing. Act fast!

We will send you the EDPRP with a cover letter. This cover letter will advise you of your legal rights. When you receive the EDPRP, you have 20 calendar days to ask for a hearing. Your request must be in writing—for example, "I request a hearing." If you don't ask for this hearing within this 20-day period, the TCEQ commissioners may issue a default order against you.

This hearing will be held before a judge from SOAH and is formal—much like a civil trial. Each side will present its case, may call witnesses, and may question the other side's witnesses.

If I ask for a hearing, do I lose my chance to settle?

No. Even if you ask for a hearing, you can still discuss your case with us over the phone or in a meeting. We will keep trying to work out a settlement. If you and our staff still cannot settle your case, we will ask SOAH to schedule the hearing you requested.

What happens at the end of the hearing?

After the hearing, the presiding judge makes a recommendation to the TCEQ commissioners about an enforcement order. The TCEQ commissioners consider this recommendation and then make the final decision whether to issue, deny, or modify the judge's decision.

Bottom line: How do I avoid any unpleasant surprises?

Stay in touch with us until your case is settled. We know that enforcement is not easy to endure, but we do our best to reach decisions that are well-informed and fair. Whether we are able to do that depends to a large extent on whether you tell us when and how you correct the violations.

And remember—our Environmental Assistance Division (EAD) or your regional office may be able to give you technical assistance if you need it to bring

your facility into compliance with the rules. Call either the EAD at 1-800-447-2827 or your regional office to find out more about the free help we can offer. You don't need to be under enforcement to take advantage of this assistance.

PUT IT IN WRITING!

You can—and should—call us to get a faster response, but a phone call won't protect your legal rights.

Whenever you call us about your enforcement case, follow your phone call with a letter. In your letter, cover the main points of your phone call—for example:

> ***This letter confirms that in my phone call of [time and date] we agreed to meet on [date] to discuss the results of your inspection of my facility. I disagree with these points in the inspection report: [list them]***

A follow-up letter is one simple way to confirm that you called us—and for both of us to be sure we understood what was said.

DISCLAIMER

We intend for this booklet to give you an overview of the TCEQ's enforcement process. Because every case is unique, we could not cover all the details that might apply to your case here. Read this booklet for a basic understanding of your rights and responsibilities in this process, but please understand that there are sometimes exceptions to these rules.

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