

SUBCHAPTER D: CRIMINAL ENFORCEMENT REVIEW
§§70.201 - 70.206
August 4, 2004

§70.201. Scope and Purpose.

The purpose of this subchapter is to establish the procedure and mechanism for Texas peace officers to submit to the executive director a request for criminal enforcement review of an alleged criminal environmental violation related to the activity for which a permit was issued by the commission or executive director, as required under Texas Water Code, §7.203. A permit, as defined under Texas Water Code, §7.001, includes a license, certificate, registration, approval, or any other form of authorization granted by the commission or executive director.

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§70.202. Applicability.

(a) As required under Texas Water Code, §7.203, a written request for review of an alleged criminal environmental violation shall be submitted to the executive director prior to referring to a prosecuting attorney for criminal prosecution if all the following criteria are met:

(1) the individual submitting the request is a peace officer, as that term is defined in Texas Water Code, §7.193 or Texas Code of Criminal Procedure, Chapter 2;

(2) the alleged criminal offense is a violation of the Texas Water Code or the Texas Health and Safety Code;

(3) the person alleged to have committed the criminal violation is the holder of a permit issued by the commission or executive director or an employee of a person holding such a permit; and

(4) the alleged criminal violation is related to the activity for which the permit was issued.

(b) A written request for review is not required to be submitted to the executive director under Texas Water Code, §7.203, if the alleged violation constitutes imminent danger of death or bodily injury under an endangerment offense specified in Texas Water Code, §7.252.

(c) This subchapter does not apply to:

(1) enforcement by a local government of statutory provisions within the jurisdiction of the local government, and not within the jurisdiction of the commission, or to enforcement of the local government's own codes, ordinances, rules, orders, permits, or other decisions; and

(2) Class C misdemeanors that are initiated by a peace officer filing a complaint or citation with an appropriate court without first referring the case to a prosecuting attorney.

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§70.203. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **Related to** - Having an established relationship or connection.

(2) **Activity for which the permit was issued** - The activity authorized by the commission or executive director under any provision, prohibition, or requirement of a permit, license, certificate, registration, approval, or other form of authorization granted by the commission or executive director.

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§70.204. Procedure for Requesting Criminal Enforcement Review.

(a) The peace officer requesting criminal enforcement review under this section shall submit to the executive director a written request for review that is clearly marked "For Law Enforcement Use Only." The request shall include the legal name of the alleged violator and a report describing the facts and circumstances of the alleged criminal environmental violation.

(b) The requesting officer may also include any additional information that the requesting officer determines is relevant to the criminal enforcement review request, in accordance with §70.206 of this title (relating to Factors Considered in the Criminal Enforcement Review Process), and an explanation as to the reason criminal enforcement of the violation is the most appropriate action, rather than administrative or civil enforcement.

(c) Any criminal enforcement review documentation that is submitted under this section will remain the property of the submitting law enforcement agency and the records will be returned upon completion of the criminal enforcement review.

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§70.205. Criminal Enforcement Review Schedule.

Following submission of the information required by §70.204 of this title (relating to Procedure for Requesting Criminal Enforcement Review), the executive director shall determine whether the request contains the required information necessary to conduct a criminal enforcement review.

(1) If the executive director determines that the request is administratively complete by meeting the requirements in §70.204 of this title, the executive director shall, based on the information provided by the requesting peace officer, within 45 days of receiving the request:

(A) determine whether an alleged environmental violation exists;

(B) determine whether administrative or civil remedies would adequately and appropriately address the alleged violation or whether the alleged violation would be more appropriately addressed by criminal enforcement; and

(C) notify the referring peace officer in writing, of the determination as to whether an alleged criminal violation exists and whether civil or administrative remedies are adequate to address the alleged environmental violation or recommend criminal prosecution.

(2) If the executive director determines that the criminal enforcement review request is not administratively complete, the executive director shall notify the requesting peace officer in writing within ten days of receipt of the request. The notification will specify the deficiencies and identify the information necessary for the executive director to make the required determination.

(3) If the executive director does not make a determination within 45 days of receiving the request, an appropriate prosecuting attorney may bring an action for criminal prosecution, and the state is not entitled to receive any part of the amount recovered through a prosecution brought by that prosecuting attorney.

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§70.206. Factors Considered in the Criminal Enforcement Review Process.

(a) The executive director shall consider the following factors in the process of conducting a criminal enforcement review:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited act, with special emphasis on the impairment of existing water rights or the hazard or potential hazard created to the health or safety of the public;

(2) the result of the violation on:

(A) air quality in the region;

(B) a receiving stream or underground water reservoir;

(C) instream uses, water quality, aquatic and wildlife habitat, or beneficial freshwater inflows to bays and estuaries; or

(D) affected persons;

(3) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;

(D) economic benefit gained through the violation; and

(E) the necessity to deter future violations; and

(4) any other matters that justice may require.

(b) The criminal environmental enforcement review team will be comprised of representatives with expertise in criminal investigations, civil and administrative enforcement, and any other relevant specialists.

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