

# ENVIRONMENTAL ENFORCEMENT IN HARRIS COUNTY

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**Manager, Environmental & Infrastructure  
Practice Group**

**Harris County, Texas**

- The Harris County Attorney is charged with representing Harris County in civil matters,
- Elected 4 year term coincides with Presidential Elections
- Appoints 1<sup>st</sup> Assistant and Assistant County Attorneys. 95 lawyers; 90 support; 10 Inv. County Law Library
- <http://www.harriscountytexas.gov/coatty/>

- Uses civil enforcement to protect neighborhoods, clean up the environment, and shut down illegal enterprises;
- Protects children and the elderly through our representation of state and county agencies;
- Defends Harris County when lawsuits are filed against it;
- Pursues claims and collects revenue when the County is owed money;
- Advises elected officials and prepares contracts for Harris County.

# Environmental & Infrastructure Practice Group

- Environmental Enforcement
- Environmental Compliance
- Development Regulation Enforcement
- Title and Abstract
- Toll Road Authority
- Flood Control District

# Environmental Enforcement

- Most State level enforcement actions are initiated pursuant to Chapter 7 of the Water Code;
- Counties file action as “suits by other” TWC Section 7.351
- TCEQ a necessary & indispensable party to any suit filed under Chapter 7

# Other Agencies Charged With Civil Enforcement We Work With

- Federal: EPA, OSHA
- State: TCEQ, TDHS, RR Commission, Parks & Wildlife
- Suits by Others: Includes cities, counties and other governmental and non-governmental entities like H-GAC

# City of Houston

- Permitting Cases- sometimes join with Harris County...
  - Southern Crushed Concrete      fine air particulates
  - Hunter Industrial Facilities      injection wells
  - American Envirotech (AEI)      haz waste incinerator
- Water Code & City Municipal Code: CES/ US Oil

# CHAPTER 7 TEXAS WATER CODE

## SUBCHAPTER H. SUIT BY OTHERS

### Sec. 7.351. CIVIL SUITS.

- a) If it appears that a violation or threat of violation of Chapter 16, 26, or 28 of this code, Chapter 361, 371, 372, or 382, Health and Safety Code, a provision of Chapter 401, Health and Safety Code, under the commission's jurisdiction, or Chapter 1903, Occupations Code, or a rule adopted or an order or a permit issued under those chapters or provisions has occurred or is occurring in the jurisdiction of a local government, the local government or, in the case of a violation of Chapter 401, Health and Safety Code, a person affected as defined in that chapter, may institute a civil suit under Subchapter D in the same manner as the commission in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation. (next slide)



- b) If it appears that a violation or threat of violation of Chapter 366, Health and Safety Code, under the commission's jurisdiction or a rule adopted or an order or a permit issued under that chapter has occurred or is occurring in the jurisdiction of a local government, an authorized agent as defined in that chapter may institute a civil suit under Subchapter D in the same manner as the commission in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation

# A Local Government

- 1. Chapter 16, 26, or 28 of this code, Chapter 361, 371, 372, or 382, Health and Safety Code, a provision of Chapter 401, Health and Safety Code, under the commission's jurisdiction, or Chapter 1903, Occupations Code, or a rule adopted or an order or a permit issued under those chapters or provisions

## ■ A Person Affected

- 2. Chapter 366, Health and Safety Code, under the commission's jurisdiction or a rule adopted or an order or a permit issued under that chapter

# In the same manner as the Commission

- What does this mean?
- In a state district court?
- For injunction, civil penalty, costs & attorneys fees?

# What Determine Whether or Not a Case is to Be Filed?

1. Referral from Harris County Pollution Control Services based on Enforcement Guideline
2. Some case are initiated because of public concern and in some cases inter-local cooperation

# Commissioners Court Approval Required



Section 7.352 of the Texas Water Code provides for any Chapter 7 case “...a local government may not exercise the enforcement power authorized by this subchapter unless its governing body adopts a resolution authorizing the exercise of the power.”

# Public Interest Cases

- Underground Storage Tanks- PSTs, Wood Brothers, (mulch fires) McCarty Landfill
- Superfund sites (Brio, U. S. Oil)

- If at any time PCS receives evidence that a violation is knowingly and intentionally committed the violation will be considered for enforcement.

- In order to protect the public the PCS director may initiate enforcement against any subject at any time based on the facts of an investigation.



# Air Pollution

- Sec. 382.085. UNAUTHORIZED EMISSIONS PROHIBITED. (a) Except as authorized by a commission rule or order, a person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution.
- (b) A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any commission rule or order.

# Air Nuisance

- 30 TAC 101.4 No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.

# Air Investigations

- Sec. 382.111. INSPECTIONS; POWER TO ENTER PROPERTY. (a) A local government has the same power and is subject to the same restrictions as the commission under Section 382.015 to inspect the air and to enter public or private property in its territorial jurisdiction to determine if:
  - (1) the level of air contaminants in an area in its territorial jurisdiction and the emissions from a source meet the levels set by:
    - (A) the commission; or
    - (B) a municipality's governing body under Section 382.113; or
  - (2) a person is complying with this chapter or a rule, variance, or order issued by the commission.
- (b) A local government shall send the results of its inspections to the commission when requested by the commission.

# Factors in Air Emission Cases that warrant referral to County Attorney

- A. Emission Events may be considered for enforcement when:
  - 1. Emissions include highly reactive volatile organic carbons (HRVOC) and are over a reportable quantity (RQ), or
  - 2. Emissions are over a RQ and the facility is a repeat offender for operator error, equipment failure etc., or
  - 3. Emissions cause a violation of 30 Texas Administrative Code (TAC) Section 101.4 Nuisance or other harm is confirmed, or
  - 4. Emission events are not reported within 24 hours as required by 30 Texas Administrative Code, Section 101.201(a)(1) to PCS.

# Factors in Outdoor Burning Cases

- Outdoor Burning violations may be considered for enforcement when:
  - 1. When harm is confirmed to the public health, safety or the environment.
  - 2. Up to three VNs have been issued.
- Air curtain incinerators

# Other Factors in Air Cases

- Violations of a valid TCEQ permit or other authorizations are considered for enforcement when they are repeated, or the total number of permit violations increase upon re-inspection.
- Unauthorized facilities may be considered for enforcement 30 days from the issuance of the second Violation Notice if operating and still not TCEQ authorized.

# Waste Investigations

- Sec. 361.032. INSPECTIONS; RIGHT OF ENTRY.
  - (a) The commission may inspect and approve solid waste facilities used or proposed to be used to store, process, or dispose of solid waste.
  - (b) Agents or employees of the commission or local governments have the right to enter at any reasonable time public or private property in the governmental entity's jurisdiction, including a municipality's extraterritorial jurisdiction, to inspect and investigate conditions concerning solid waste management and control.

# Solid Waste



# Factors Considered For Referral in Unauthorized Waste Disposal Site

- 1) May be considered for enforcement if after 30 days (or shorter period of time if so determined by the PCS Director and notice is given) the owner/operator has failed to remove and dispose of all solid waste; and provide receipts for disposal of solid waste at a TCEQ authorized facility.
- 2) The PCS Director in his sole discretion may give additional time to remove and properly dispose of solid waste if the owner/operator is actively removing waste from the property according to a disposal plan, documenting proper disposal, and the waste is not creating a fire hazard, or any other ongoing threat to public health, safety and the environment.

# Unauthorized solid waste processing, or transfer stations:

- May be considered for enforcement if after 30 days from the second Violation Notice they are still operating without TCEQ authorization

# Illegal Dumping on public property

- 1) Any responsible party, if known, may be considered for an enforcement action.
- 2) Based on the facts of the investigation and with management approval, consideration may be given if upon notification the removal and proper disposal of the solid waste at the site is achieved in a reasonable time period.

# Water Pollution Investigations



# violations of municipal or industrial wastewater treatment plant permits

- Severe – example: a hazardous waste discharge, a discharge causing harm to human health & the environment, or a discharge that is determined by lab analysis to be greater than 20 % over the applicable TCEQ permit parameter, or
- Repeat offenses – Greater than 20% non-compliance for samples taken in a previous 12 month period.

# Texas Water Code Chapter 26.121 (illicit discharges)

- Severe-example: a hazardous waste discharge or a discharge causing harm to human health & the environment, or
- Not ceased in a timely manner as determined by PCS, or
- No immediate or adequate clean-up as determined by PCS, or
- Repeat offenders.

# Storm Water Quality Regulations

- Referral if after 60 days of the inspection the facility is still in operation and is not following an approved storm water pollution prevention plan (SWP3) and/or has not submitted a Notice of Intent (NOI) to the TCEQ.
- If upon re-inspection the violations are repeated, or the total number of permit violations increase upon re-inspection.