

TCEQ's Investigation & Enforcement Process

About Me

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Topics

The investigation process.

Notice of violation (NOV) vs. Notice of enforcement (NOE).

Types of enforcement actions the TCEQ handles.

What is Sunset Act and what impact did Texas's Sunset Act have on the investigation and enforcement process?

What will TCEQ be doing as a result of the Sunset Act?



Investigation

▶ Process/Outcome

Investigations

Inhouse

Onsite

Scheduled

OnDemand

Investigation Outcome

NOV

NOE

Neither

TCEQ Enforcement Process Review

- ▶ Enforcement is the process in which TCEQ responds to environmental violations by requiring corrective actions to be taken and/or by assessing monetary penalties against businesses or individuals for those violations.
- ▶ TCEQ's enforcement process begins when a violation is discovered during an inspection conducted either at the regulated entity's location or through a review of records at TCEQ offices.

Notice of Violation

- ▶ Documents violations discovered during investigation, specifies a time frame to respond, and requires documentation of compliance.
- ▶ If violations listed in NOV are corrected within the time specified, violations are resolved.
- ▶ If violations listed in NOV are **not** corrected within the time specified, violations may be referred for formal enforcement.

Notice of Enforcement

- ▶ Documents violations discovered during investigation, specifies a time frame to respond, and requires documentation of compliance.
- ▶ When violations are serious or are continuing violations, TCEQ is authorized to enforce correction of the violations and assess penalties to prevent future noncompliance.
- ▶ TCEQ is allowed to pursue penalties in two different types of enforcement action: **Administrative orders** and referral to the **Office of the Attorney General** for enforcement through the courts, including potential civil penalties.

Administrative Orders

- ▶ TCEQ has authority to issue administrative orders, as opposed to civil or criminal orders issued in court.
- ▶ Administrative orders are TCEQ orders enforcing or directing compliance with any provisions (whether of statutes, rules, regulations, permits, licenses, or orders) that we are authorized by law to enforce or with which we are authorized by law to compel compliance.
- ▶ **Types:**
 - **Agreed Orders:** This type of administrative order is used when the respondent agrees to the terms and conditions of the administrative order, including the penalty.
 - **Default Orders:** This type of administrative order is issued when the respondent fails to answer the Executive Director's Preliminary Report and Petition within the time frame allowed by the Administrative Procedures Act.



Sunset Act/Review

▶ **Process/Outcome**

What is Sunset and how does the process work?

- ▶ It's a legislative oversight tool.
- ▶ It's the regular assessment of the continuing need for a state agency or program to exist.
- ▶ The process works by setting an automatic termination (Sunset) date in state law on which an agency will be abolished unless the Legislature passes a bill to continue it, typically for another 12 years.
- ▶ The **Sunset Date** determines when an agency is subject to Sunset review and provides the Legislature an opportunity and a strong incentive to closely examine an agency's mission, priorities, performance and take action to address problems identified.

- ▶ **The Texas Sunset Act: Government Code, Chapter 325.**
- ▶ The TCEQ is subject to the Sunset Act under **Texas Water Code, Sec. 5.014. SUNSET PROVISION.** Unless continued in existence as provided by **Sec. 5.014**, the commission is abolished.
- ▶ **Texas Sunset Advisory Commission:** A legislative agency consisting of 12 members (5 senate members and 1 public member appointed by the lieutenant governor/ 5 house members and 1 public member appointed by the speaker of the house). The lieutenant governor and the speaker of the house may serve as one of the legislative appointees (**Sec. 325.003**).



The TCEQ went through a Sunset Review in 2021-2022, during the 88th Legislative Session.

- ❑ On May 23, 2023, the Texas Legislature adopted the TCEQ Sunset legislation, Senate Bill (SB) 1397.
- ❑ Governor Abbott signed the bill into law on June 18, 2023.
- ❑ The legislation continues the TCEQ for 12 years.

Next Step

- ▶ TCEQ is in the process of implementing the statutory changes adopted by the 88th Legislature and the management recommendations adopted by the Sunset Advisory Commission. The sunset items may require rulemaking, development of reports, hiring of additional staff, and program changes.
- ▶ The Texas Sunset Act requires a review of the agency's implementation efforts.
 - The Sunset Advisory Commission staff will complete a compliance review of the statutory changes.
 - Also, the State Auditor's Office will conduct a review to assess the implementation of selected management recommendations adopted by the commission. The implementation review is anticipated to begin in the fall of 2024.

- More information on the TCEQ's Sunset Review can be found at the TCEQ website at [2021-2022 Sunset Review of TCEQ](#)
- You may review the complete final Sunset Advisory Commission report on the TCEQ website at [Sunset Advisory Commission Staff Report with final Results](#)
- Sunset Implementation Information **Sunset Implementation Table**
- **Senate Bill 1397**

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