

# **Waste Disposal - A Case Study: *Tools to Help Mitigate Critical Risks***

## **Texas Association of Metal Finishers (TAMF)**



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# Program

- I. **Case Study – What Should Happen**
- II. **Case Study – What Really Happened**
- III. **TCEQ Regulatory Enforcement**
- IV. **TCEQ Regulatory Outcome**
- V. **Generator's Response**
- VI. **Legal Issues**
- VII. **Corrective Measures and Mitigating Risks**

## Key Concepts

- Understand the TCEQ Enforcement Process
- Know how to handle regulators during inspections
- Know how to evaluate an NOV or NOE
- Understand the compliance history implications
- Develop an Internal Environmental and Waste Management Policy and educate employees
- Know where to go for help

# Case Study Facts

## *What Should Happen?*

- Transporter – Routine Non-Hazardous Waste Shipment Pickup
- Generator – Shipment Sign-off
- Transporter – Transports Non-Haz Waste to Landfill
- Landfill - Places Non-Haz Waste in Landfill

# Case Study Facts

## *What Really Happened?*

- Transporter – Routine Non-Hazardous Waste Shipment Pickup ***from Wrong Facility***
- Generator – Shipment Sign-off ***of Wrong Wastes (Hazardous)***
- Transporter – ***Transports Hazardous Waste to Wrong Landfill***
- Landfill – ***Wrongly Places Hazardous Waste in Landfill***
- Generator – Discovers Problem, Notifies Transporter & TCEQ
- Transporter – Notifies Landfill

# TCEQ Regulatory Enforcement

- Notice of Violation (NOV) issued to Generator, Transporter, & Landfill
  - 30 T.A.C. § 335.2(b) – *Failure to prevent the disposal of hazardous waste at an unauthorized facility.*
- Required work plan to identify/remove hazardous wastes deposited in landfill
- Field Staff observed/approved hazardous waste removal from landfill to authorized landfill.  
Generator/Transporter/Landfill reps all present

# TCEQ Regulatory Outcome

- Notice of Enforcement (NOE) issued to Generator, Transporter, Landfill
  - Compliance documentation required –
    - Review of manifesting waste disposal procedures
    - Corrective actions (e.g., training, new procedures, improvements implemented to prevent future noncompliance)

# TCEQ Regulatory Outcome

- Proposed Agreed Order issued to Generator
- Administrative Penalty assessed – several thousand \$\$\$ . Penalty calculation based on -
  - Compliance History - Database review of past violation history
  - Severity and number of violations (actual vs. potential release, degree of harm)
  - Good Faith Efforts to Comply
  - Economic Benefit of Non-compliance
- Adjustment to Generator's Compliance History/Rating



# Generator's Response

## *Corrective Actions/Mitigating Risks*

- Generator submits letter including revised Standard Operating Procedures to include -
  - Personnel authorized to manage/manifest wastes
  - Proper documentation/procedures required prior to signing manifests
  - Weekly review of manifests for accuracy & completeness
  - RCRA hazardous waste regulation training for personnel responsible for handling, managing, or manifesting hazardous wastes.
- Generator signs Agreed Order, pays penalty

# Legal Issues

## ***The Enforcement Process in a "Nutshell"***

**Investigation** – either onsite by TCEQ investigator or by TCEQ records review.

**NOV Issued** – Documents alleged violation(s) discovered during inspection, specifies time frame to respond, and requires documentation of compliance.

- \* respondent can request a Violation Review Meeting ("VRM").
- \* TCEQ Local regional issues NOV
- \* Respondent may informally settle with immediate corrective measures
- \* TCEQ may withdraw allegations based on VRM

If serious or continuing violations are identified, TCEQ may initiate enforcement and issue a notice of enforcement (NOE).

# Legal Issues

## ***The Enforcement Process in a "Nutshell"***

***NOE Issued*** – documents violations and puts recipient or "respondent" on notice that case has been referred for enforcement.

- \* *issued by both the regional and Austin TCEQ offices*
- \* *Can still schedule a meeting with TCEQ staff to resolve NOE*
- \* *May appeal NOE to Executive Director*
- \* *NOE can be settled via an Agreed Order ("AO")*
- \* *A Supplemental Environmental Project ("SEP") may be available to offset penalty in the AO*

# Legal Issues

## ***Enforcement of Corrective Action***

If violations are deemed serious enough to warrant an enforcement action, TCEQ can seek penalties to deter future noncompliance in one of two types of actions:

1. Administrative Orders, issued by the TCEQ; or
2. Referral of case to the Texas Attorney Generals Office for enforcement through the courts (e.g. civil, criminal proceedings)

# Legal Issues

## ***Enforcement of Corrective Action and COMPLIANCE HISTORY***

This is a TCEQ report that tracks information about your site and is used to determine your "Compliance History Rating." This report includes:

- **Enforcement orders**
- **Criminal convictions**
- **Citation dates for chronic and successive emission events**
- **Investigation dates**
- **NOVs**
- **Etc.**

# Legal Issues

## ***Enforcement of Corrective Action and COMPLIANCE HISTORY***

Classification Ratings based on the prior information are evaluated each September and results posted on the TCEQ web within 30 days of completion. Classifications are:

- High Performer – Below 0.19
- Average Performer – 0.10 to 45.00
- Poor Performer – 45.01 or Greater

# Legal Issues

## ***Enforcement of Corrective Action and COMPLIANCE HISTORY***

### *High Performer – Below 0.19*

Complies with environmental regulations extremely well.

### *Average Performer – 0.10 to 45.00*

Generally complies with environmental regulations.

### *Poor Performer – 45.01 or Greater*

Fails to comply with a significant portion of relevant environmental regulations.

# Legal Issues

## ***Enforcement of Corrective Action and COMPLIANCE HISTORY***

What do the various classifications mean for me?

Consequences of a Poor Performer Classification may mean:

- Denial of a permit or permit renewal
- Unannounced investigations
- Higher penalties in enforcement actions
- More investigations and oversight to improve environmental compliance.



# Legal Issues

## ***Enforcement of Corrective Action and COMPLIANCE HISTORY***

Where do I find my compliance history and go for help?

E-mail: [comphist@tceq.texas.gov](mailto:comphist@tceq.texas.gov)

Call: 1 (512) 239-2545

or go to <http://www.tceq.texas.gov/enforcement/history/search.html>



# Legal Issues

## ***Responding to the NOV. Is there a violation?***

### BEFORE RESPONDING TO THE TCEQ:

Check the Law: Confirm the legal basis for the alleged violation according to the legal citations referenced in the NOV.

### **For example:**

30 T.A.C. § 335.2(b) – “. . . no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit its wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit.”

# Legal Issues

## ***Responding to the NOV. Is there a violation?***

Is it a hazardous waste?

Are there exceptions/exemptions to Hazardous Waste?

RCRA Subtitles C and D; or  
the Texas Administrative Code. 30 T.A.C. Part 335

Check the Facts - check the manifest, interview all employees or other persons who may have information, review bills of lading, MSDS sheets for the alleged waste material, etc.

# Legal Issues

## ***Responding to the NOV. Is there a violation?***

Prepare a detailed response to TCEQ

*Include chronology, factual detail, mitigation measures taken, mitigation measures in place, and legal positions that may challenge the allegations (although consult with your lawyer and consultant before preparing this portion of the response).*

# Legal Issues

## *Responding to the NOV.*

### ***Understand TCEQ's Enforcement Initiation Criteria***

This internal criteria is used by TCEQ for initiating formal enforcement action.

Understand the three categories of violations you may see on an NOV/NOE:

**Category A Violations** – requires automatic initiation of formal enforcement.

**Category B Violations** – requires an NOV at the first occurrence. Responsible Party is given an opportunity to come into compliance within a deadline.

**Category C Violations** – is for noncompliance not otherwise designated as a high priority in Category A or B.

# Corrective Measures and Mitigating Risks

## When the Inspector Arrives:

### WHY ME?

1. Inspection is regularly scheduled or required by law
2. Inspection is in response to a specific complaint or spill
3. Inspection is random

# Corrective Measures and Mitigating Risks

## When the Inspector Arrives:

### CAN THEY DO THAT?

1. They are authorized to conduct inspections
2. You can refuse, but it is not a good idea. Refusing an inspection may cause the following to occur:
  - \* *A search warrant to enter the property may be obtained*
  - \* *The business may be exposed to administrative penalties*
  - \* *The business will get the full and undivided attention of the agency, its inspectors, lawyers, and a detailed inspection.*

# Corrective Measures and Mitigating Risks

## When the Inspector Arrives:

### Measures taken to limit an Inspection

1. *Request an opening conference and ask why they are there and detail about the scope of the inspection.*
2. *Escort the inspector. Do not allow the inspector to roam the facility unescorted.*
3. *Be nice, make yourself available, and assist where possible.*
4. *Avoid "I don't know" answers, unless you are prepared to provide the inspector with someone who does know.*
5. *Avoid jokes, small talk, etc. They can sometimes be misconstrued.*



# Corrective Measures and Mitigating Risks

## When the Inspector Arrives:

### Measures taken to limit an Inspection

6. *Do not interfere with the inspection. Such may be considered refusal of access, and may be a violation of a permit, or other regulation.*
7. *Concerns about trade secrets, hazardous areas, etc. should be discussed with the inspector and its attorney during the scoping meeting.*
8. *Requests duplicates of documents, photos, split samples, etc. if the inspector takes such.*
9. *Inspectors typically provide an exit interview to go over what was observed. If they do not, then ask for a closing conference, or ask for the inspectors impressions, etc.*

# Corrective Measures and Mitigating Risks

## Have a Pro-Active Policy and Program in Place

1. Create an Environmental, Waste Management and Disposal Policy Guide for your firm that generally includes:
  - A. Policy Statement Regarding Environmental Compliance Employee Responsibilities
  - B. An investigation protocol in place that takes into account the items we discussed previously.

# Corrective Measures and Mitigating Risks

- C. A Series of protocols that may be in the form of an outline, narrative, or check list, and include the following:
- \* **Definitions of Specified Terms in the Policy**
  - \* **Duties and Responsibilities of Employees over Environmental Issues**
  - \* **Contact Info - city, county, state and federal environmental agencies**
  - \* **Protocols for emergency spills reporting/response**
  - \* **Protocols for storing, managing, disposal of solid and hazardous wastes**
  - \* **Protocols for handling Transporters (e.g. vehicle type, manifest records check, vehicle tanker placards, etc.)**

## Key Take-Aways

- Understand the TCEQ Enforcement Process
- Know how to handle regulators during inspections
- Know how to evaluate an NOV or NOE
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- Develop an Internal Environmental and Waste Management Policy and educate employees
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**QUESTIONS?**

**THANK YOU!**

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