

TACWA Times-Enforcer

Lloyd
Gosselink
ATTORNEYS AT LAW

Nathan E. Vassar

Friday, September 13, 2019

\$Cost tied to Compliance History

Feds Slow Enforcement; POTWs Relax



GAO Investigating Slowing Enforcement Trends

EPA POLICING OF ENVIRONMENTAL VIOLATIONS PLUMMETED IN 2018

Environmental Protection Agency enforcement fell to lowest level in 25 years, GAO says. (WASH. POST, 9/11/19)

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Ongoing Negotiations Reach Finish Line



@FamilyFees: Negotiations had been ongoing for a long time, it was time to wrap them up and get them behind. Texas will soon have their Consumer Directed completed over the last six years. Beautiful decisions. Very strong. Very comprehensive. The utilities agree.

Jeff Sessions' Legacy on Enforcement: SEP, Stipulated Penalties, and Tailored Enforcement



aTXEnforcer: "I'm still watching"



TCEQ Enforcement Update



2018 (bottom) based revision of TCEQ WQVs issued since 2014



Clean Water Act Current Top Five "Don't Do's" for Enforcement



#1 @ProcrastinatePaula: EPA enforcement is in rear-view mirror #HakunaMatata



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TCEQ Enforcement Update



2019 (through) Bureau enforcement TCEQ
FY19 issued since 2014
Comprehensive Enforcement Update
2019 (through) Bureau enforcement



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EPA POLICING OF ENVIRONMENTAL VIOLATIONS PLUMMETED IN 2018

Environmental Protection Agency enforcement fell to 10-year lows in



Ongoing Negotiations Reach Finish Line

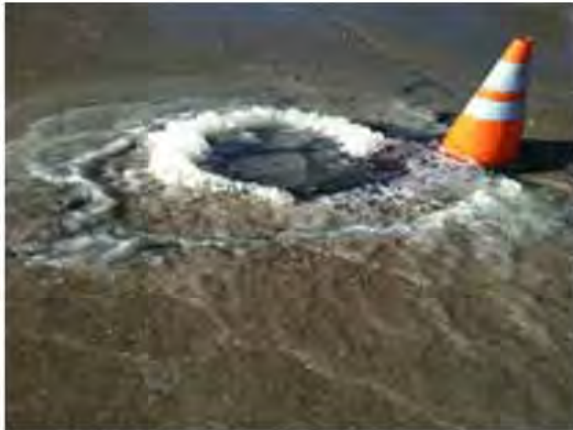


@PenaltyPete: "Negotiations had been ongoing for a long time; it was time to wrap them up and get them entered. Texas will soon have three Consent Decrees completed over the last six years. Beautiful decrees. Very strong. Very comprehensive. The utilities agree."

Jeff Sessions' Legacy on Enforcement



Feds Slow Enforcement; POTWs Relax



GAO Investigating Slowing Enforcement Trends

EPA POLICING OF ENVIRONMENTAL VIOLATIONS PLUMMETED IN 2018

Environmental Protection Agency enforcement fell to 10-year lows in 2017, but 2018's numbers may be even lower.

FRANCIE DIEP · UPDATED: FEB 26, 2019 · ORIGINAL: NOV 21, 2018

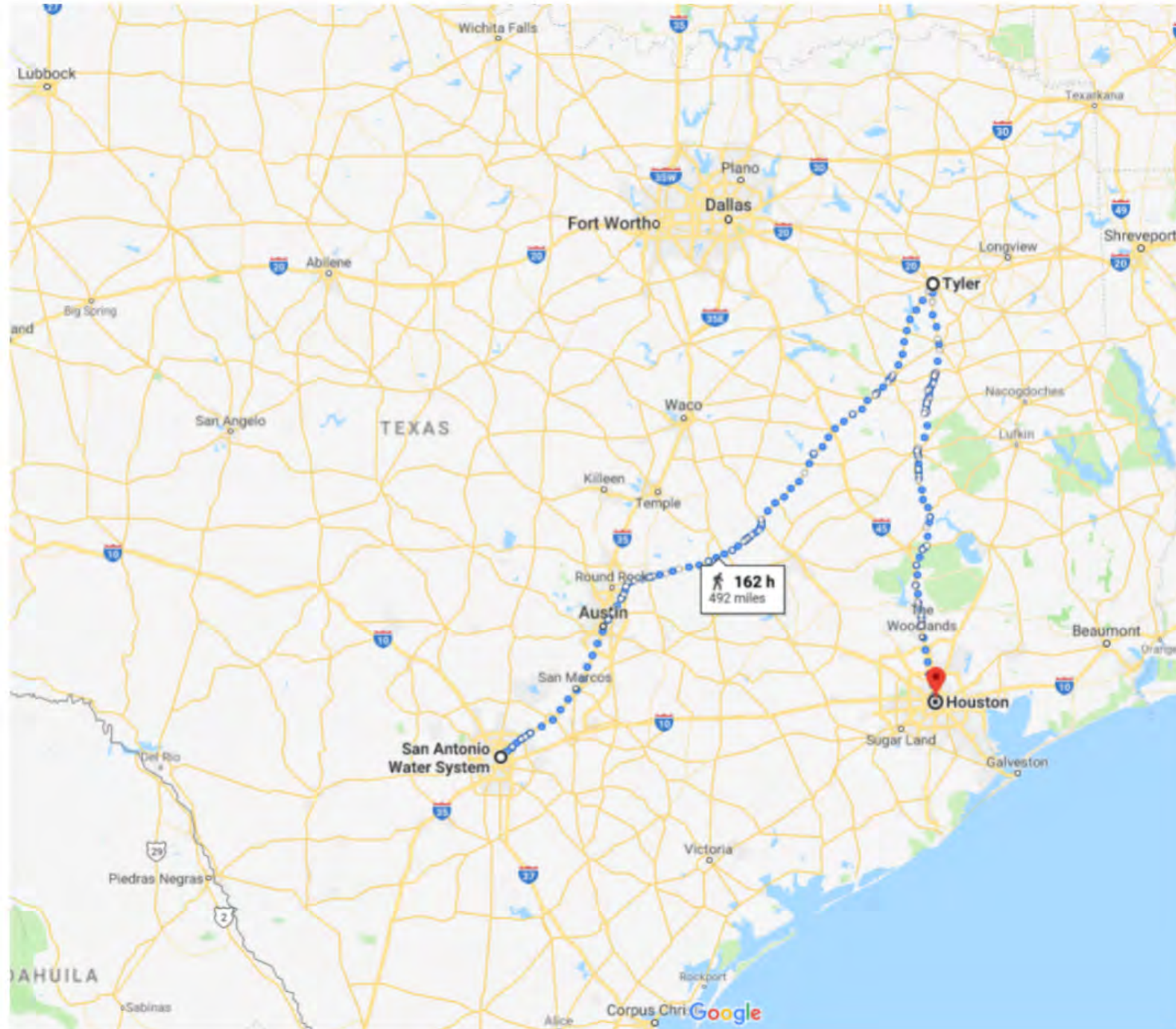


Ongoing Negotiations Reach Finish Line



@PenaltyPete: "Negotiations had been ongoing for a long time; it was time to wrap them up and get them entered. Texas will soon have three Consent Decrees completed over the last six years. Beautiful decrees. Very strong. Very comprehensive. The utilities agree."

Texas Collection of Recent Consent Decrees



Jeff Sessions' Legacy on Enforcement: SEPs, Stipulated Penalties, and Tailored Enforcement



Office of the Attorney General
Washington, D. C. 20530

MEMORANDUM FOR: HEADS OF CIVIL LITIGATING COMPONENTS
UNITED STATES ATTORNEYS

FROM: THE ATTORNEY GENERAL *JS 11/7/13*

SUBJECT: Principles and Procedures for Civil Consent Decrees and Settlement
Agreements with State and Local Governmental Entities

I. INTRODUCTION

In enforcing federal law, the Department of Justice ("Department") sometimes brings lawsuits against state and local governmental entities.¹ State governments are sovereigns with special and protected roles under our constitutional order. Accordingly, the Department must ensure that its practices in such cases are in the interests of justice, transparent, and consistent with the impartial rule of law and fundamental constitutional principles, including federalism and democratic control and accountability.

This memorandum's purpose is to provide direction to all civil litigating components and United States Attorneys' Offices ("USAO") concerning several important issues arising when a civil action against a state or local governmental entity is resolved by consent decree or settlement agreement.² In particular, it requires that the Department provide state and local governmental entities an adequate opportunity to respond to any allegations of legal violations; requires special caution before using a consent decree to resolve disputes with state or local governmental entities; provides guidance on the limited circumstances in which such a consent decree may be appropriate; limits the terms for consent decrees and settlement agreements with state and local governmental entities, including terms requiring the use of monitors; and amends the process for the approval of these mechanisms in cases in which they are permissible.



-BACKGROUND (Police Civil Rights Cases)

-Length of Consent Decrees

-Scope of Work Ordered under Consent Decrees

Recent Fallout from Sessions November Memo



E&E NEWS

[<< Back to E&E News index page.](#)

LAW

DOJ sidelines popular enforcement tool

Ellen M. Gilmer, E&E News reporter • Greenwire: Wednesday, August 21, 2019



"No SEP for you!"

civil action against a state or local governmental entity is resolved by consent decree or settlement agreement.² In particular, it requires that the Department provide state and local governmental entities an adequate opportunity to respond to any allegations of legal violations; requires special caution before using a consent decree to resolve disputes with state or local governmental entities; provides guidance on the limited circumstances in which such a consent decree may be appropriate; limits the terms for consent decrees and settlement agreements with state and local governmental entities, including terms requiring the use of monitors; and amends the process for the approval of these mechanisms in cases in which they are permissible.

-Scope of Work Ordered under Consent Decrees



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Recent Fallout from Sessions November Memo



Texas Collection of Recent Consent Decrees



TCEQ Enforcement Update



-2018 showed lowest number of TCEQ
NOVs issued since 2014

-Cooperative Federalism means . . .

-SEPs in Texas (vs. Federal approach)





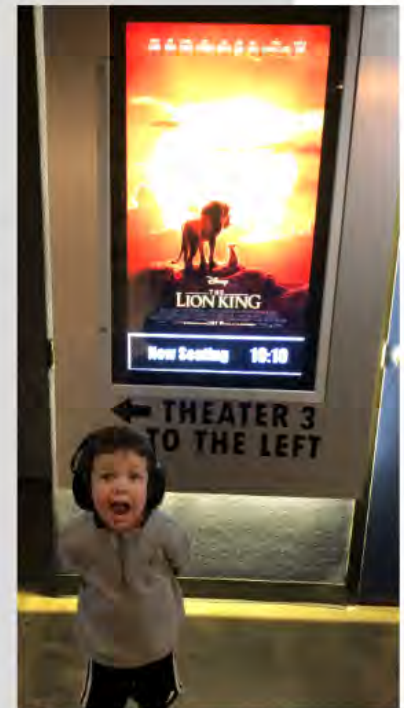
Clean Water Act Current

Top Five "Don't Do's" for Enforcement

#1





@ProcrastinatePaula: EPA enforcement is in rear-view mirror! #HakunaMatata



Top Five "Don't Do's" for Enforcement



#2:  "TCEQ Enforcement Coordinator accepted my LinkedIn Request! They will surely look the other way on these DMRs."

#3:  @UtilityLimitedPaperwork: No more need for an SSOI plan, self-audits, or the 30 day reporting form! #ThanksJeffSessions

The screenshot shows the Texas Commission on Environmental Quality (TCEQ) website. The header includes the TCEQ logo, the text 'TEXAS COMMISSION ON ENVIRONMENTAL QUALITY', a search bar, and a navigation menu with links for Home, Air, Land, Water, Licenses, Permits, and Reporting. The main content area is titled 'Spills: Information for the Follow-up Report Required within 30 Days'. It includes a sub-header 'What to report and who to report it to.' and a paragraph stating that within 30 working days of the discovery of a reportable discharge or spill, the person responsible must submit written information to the appropriate TCEQ regional office. The page lists three items that must be included in the report:

1. Information from the **initial notification**, and a **statement that** the response to the discharge or spill has been completed and a description of how the action was conducted.
2. A request for an extension of time to complete the response, along with the reasons for the request, and a projected work schedule outlining the time required to complete the response action. Proceed according to the projected schedule unless otherwise notified by the appropriate TCEQ regional director.
3. A statement and explanation that the discharge or spill response has not been, and is not expected to be, completed within the maximum allowable extension (six months from the date of the discharge or spill), along with a projected work schedule.

At the bottom of the page, there is a link to a customer satisfaction survey: [How are we doing? Take our customer satisfaction survey](#).

Top Five "Don't Do's" for Enforcement



PENALTY ENFORCEMENTS **Made Easy**



Position
- by -
Position
Responsibilities

#4:

Assume past work and investments can't be credited toward identified penalties in Texas Enforcement.

#5: Stop building your narrative/ compliance story



"The road ahead is filled with danger.
Take this lawyer for protection."

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PHOTO: EPA / COURTESY OF THE ENVIRONMENTAL NEWS SERVICE

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TCEQ Enforcement Update



2019 (through August) enforcement TCEQ
NCRs issued since 2014

Comprehensive Enforcement Update

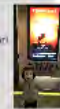
Water in Texas (see Facebook updates)



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