Not Your Ordinary Regulatory Compliance Stories

...practical applications of environmental lawyering

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AWMA – Houston
June 13, 2017
Topics to Discuss

• **What kind of permits/registrations?** – PBRs, STD Exps, Historic STD Exps, NSR, PSD, Title V, Waste Registrations, Chemical Inventory and Reporting, Water Quality, and Water Usage

• **Customers** – crushers, batch plants, tanks, terminals, sand pits, barge docks and lots of other “facilities” (e.g., biofuel production, fertilizer, and chemical)

• **Regulators** – TCEQ, EPA, EAA, City Council, P&Z and County Commissioners Court, Galveston Co. Health District, HGAC, HPD and Game Wardens

• **Opponents** – Environmental Groups, Neighbors, and Others
General questions from permit applicants about the application process:

1. How much is this going to cost?
2. How long will it take?
3. Can you expedite my project?
4. Can you do this right now?
5. Do I really need a permit?
Specific questions from environmental managers or operations folks:

1. Will my permit application be available for public comment?

2. What deadlines or milestones should I be calendaring?

3. Will my permit be subject to the threat of a contested case hearing?

4. What strategies are in place to expedite the permit review process?

5. What kind of permits will my company need to construct and operate a chemical plant or barge cleaning facility or batch plant or concrete crusher or sand pit?
What kinds of permits?

- **Air Permits**
  - De minimis, Standard Exemptions, PBRs,
  - Standard Air Permit
  - New Source Review (NSR)
  - NNSR, PSD

- **Water**
  - GWD / River Authority Use Permit
  - WPAP (EAPP, AST/UST)
  - TPDES (Tip-Dees; waste water discharge permit---MSGP).
  - PWS (drinking water)

- **Other**
  - Waste Registration (CESQG)
  - Municipal (SUP or SDP or the “Red Tag”)
  - SPCC
  - ESA (USFWS)
  - Chemical Inventory (TSCA, TRI, and Tier 2)
C'mon Man!

Which permits matter?

The $10,000 ones?

TWC Sec. 7.052(b) “….the amount of the penalty for operating a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing, that is required to obtain a permit under Section 382.0518, Health and Safety Code, and that is operating without the required permit is $10,000. Each day that a continuing violation occurs is a separate violation.”
What **facilities** would you expect to be listed on a MAERT?

What do you see in this photo are exempted from the term "facility"?

Quarry Pit or Sand Pit – shows "face", "haul roads" and "conveyor system"
there are 186 TXG11 facilities close by; there are 144 APO facilities close by, too. 😊
NYORCS No. 1 – You be my lawyer, you don’t take your kid there and what do you mean I need more than one air permit?
Review - What types of environmental permits do chemical plants or sand pits or batch plants hold?

**Air Quality** – PBR, Std. Exemption, SAP, **NSR, PSD, Title V**

**Water Quality** – MSGP, CGP, or **TPDES (TLAP); WPAP**

**Waste** – Registration (recycling); Storage; or Disposal

**Fuel** – AST and UST (diesel fuel and gasoline); SPCC

**Water Use** – Well? Groundwater Conservation District or Subsidence District

**Other?** Federal, Local, or Municipal?
**What are common mistakes specific to Air Modeling?**

1. ...calculating the emissions using incorrect emission factor
2. ...adding PM to PM10 and/or PM 2.5 to get total emissions
3. ...forgetting emissions from other facilities on site

**What is air dispersion modeling? How is it used in the air permitting process?**

1. ISC3 or AERMOD
2. PM10 and PM2.5
3. ESLs/SILs/NAAQS
4. Health Effects Review
5. Background Levels
What are three common mistakes in the air permit application process?

1. **Address Issue** – The location of the plant, public viewing area or some other issue exists with a “zip code” fails to properly identify the potential permittee.

2. **MAERT Issue** – The EPNs on the draft MAERT don’t list the correct sources, emissions (not pollutants), or emission rates.

3. **Nomenclature Issue** – The notice fails to identify the correct emission streams, permittee(s), or contact information.

What is the worst mistake that can be made in Air Permit Application?
What about facilities near or inside city limits? SDP or SUP or Variance…

What if this were a batch plant or HMAP?

Fuel Tank?

Oh-Boy?
Permitting Strategy - What are environmental facts that we should know when corporate buys a new company, site or location?

Do we know or have a personal relationship with our “new neighbor”?

How many industrialized facilities are in close proximity to the business?

Are the local politicians or chamber folks supportive of the business?

How long have we done business in the community?

Has my environmental manager or consultant already assessed the following:

1. AAI or IOO defenses (*do we have a good fence?*);
2. Current regulatory requirements;
3. Permitting requirements;
4. Any pending regulatory deadlines; and
5. Am I operating consistent with the existing permits my new facility holds?
If you don’t *know* the answers to those questions what should you do?

1. Use EPA Self Disclosure Policy / Audit???

2. Use the Texas Environmental Health and Safety Audit Privilege Act.
TCEQ & EPA – Self Disclosure Policies

**Notice of Audit ("NOA")**: must be filed before audit is implemented; name and location of entity; describe the entity and scope of audit

**Disclosure of Violation ("DOV")**: must be filed promptly upon discovery of violation; name of facility; reference to NOA; time and completion of audit (if applicable); affirmative assertion that violation occurred; description, date of discovery and duration of violation; status and proposed schedule of corrective measures

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NYORCS Number Two: Sold!

...We just bought Pepper Jethro's Terminal. Didn't even need to take Ellie Mae on a date ...and we paid less than asking price...Whoop! And even leased it out already for $7,500!
What are common events that trigger inspections for permit compliance?

- Dust (Emission Event)
- Fire (Emission Event)
- Malfunction or Emission Event???
- New Neighbor?
What is at least one reason all APOs in Texas will be inspected?

APO/HB571 - Dirt, Sand, and Rock Quarries and Aggregate Processing Plants: Compliance Resources
If you own or operate a rock quarry, gravel pit, borrow pit, or similar aggregate production operation, use these resources to understand the environmental rules you must follow. These resources will also help you understand the rules for rock crushers, concrete crushers, and other aggregate processing operations.

Registration | Air | Water | Waste | Tools | Additional Help
1. What happens if your business has a chemical fire near downtown Galveston and you find out about it by watching the news?


3. How do you investigate its cause?

4. How do you report the event?

5. How much money is it going to cost?

6. How do you document the event?

7. Who gets to come on-site no questions asked?

NYORCS No. 3 - How does Texas legislature address emergency response?
Predictions?

1. TCEQ will continue to use “streamlined permit mechanisms” for minor sources (e.g., general permits for mine discharges) and “expedited permit applications” are the industry standard.

2. TCEQ is likely to seek enhanced enforcement / maximum enforcement for environmental violations (TCEQ Enforcement Initiation Criteria).

3. Expect continued oversight from EPA as it concerns enforcement and permitting matters.

4. Expect State of Texas to use executive and legislative "directives" to compete for domestic business growth from other states (e.g., the 'golden' state).

5. Austin will be “odd.” DC will still be a “wetland.” And AWMA is “here.”
Final Thoughts:

1. Permits are necessary
2. Complying with permit is important
3. Recordkeeping is critical
4. Aggressive “event reporting” is helpful
6. People---Love them.
7. Wildlife? Steward them!

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