

Table of Contents

PART I. THE REGULATORY FRAMEWORK

CHAPTER 1. OVERVIEW

I. INTRODUCTION

- § 1:1 Overview of environmental laws
- § 1:2 Types of environmental laws
- § 1:3 Sources of environmental regulation

II. FEDERAL, STATE, AND LOCAL PROGRAMS

- § 1:4 Federal laws
- § 1:5 State laws
- § 1:6 Local and Municipal laws

III. OTHER LEGAL ISSUES

- § 1:7 Preemption
- § 1:8 Commerce Clause
- § 1:9 State jurisdiction over federal facilities

IV. SUMMARY

- § 1:10 Summary

CHAPTER 2. TEXAS AGENCY STRUCTURE

I. INTRODUCTION

- § 2:1 Introduction

II. FEDERAL AGENCIES

- § 2:2 Environmental Protection Agency
- § 2:3 Army Corps of Engineers
- § 2:4 Fish & Wildlife Service
- § 2:5 Forest Service
- § 2:6 Council on Environmental Quality
- § 2:7 Federal Emergency Management Agency

III. STATE AGENCIES

- § 2:8 Texas Commission on Environmental Quality

- § 2:9 Texas Attorney General
- § 2:10 Texas Parks and Wildlife Department
- § 2:11 Railroad Commission of Texas
- § 2:12 Texas Water Development Board
- § 2:13 Texas Department of Agriculture
- § 2:14 General Land Office
- § 2:15 Texas Department of Transportation
- § 2:16 Coastal Coordination Advisory Committee
- § 2:17 Texas Historical Commission
- § 2:18 Texas Department of State Health Services
- § 2:19 Counties, municipalities, and other political subdivisions

CHAPTER 3. ADMINISTRATIVE PROCEDURES

I. THE TEXAS ADMINISTRATIVE PROCEDURE ACT

- § 3:1 Introduction
- § 3:2 Rulemaking
- § 3:3 Contested cases
- § 3:4 Agency actions other than rulemaking and contested cases
- § 3:5 Judicial review

II. THE TEXAS OPEN MEETINGS ACT

- § 3:6 General requirements of the Open Meetings Act
- § 3:7 Notice of meetings
- § 3:8 Meetings
- § 3:9 Executive sessions
- § 3:10 Enforcement, civil and criminal sanctions

III. THE TEXAS PUBLIC INFORMATION ACT

- § 3:11 General requirements of the Public Information Act
- § 3:12 Requests for records and related procedural matters
- § 3:13 Enforcement, civil and criminal sanctions

IV. OTHER ADMINISTRATIVE LAW ISSUES

- § 3:14 Non-APA administrative procedures
- § 3:15 Alternative dispute resolution
- § 3:16 Res judicata, collateral estoppel, and collateral attack
- § 3:17 Lobbying before the agency and legislature
- § 3:18 Disclosure of certain relationships with local government officers; providing public access to certain information
- § 3:19 *Ex Parte* contacts
- § 3:20 Pandemic 2020—Emergency Orders Impact Open Meetings, Contested Cases and Other Administrative Proceedings

TABLE OF CONTENTS

**CHAPTER 4. ENVIRONMENTAL
ENFORCEMENT**

A. INTRODUCTION

- § 4:1 Goals of enforcement
- § 4:2 Federal-state relationship
- § 4:3 Overview of the state's enforcement options

B. ADMINISTRATIVE CIVIL ENFORCEMENT

- § 4:4 Authority
- § 4:5 The enforcement process
- § 4:6 Supplemental Environmental Projects
- § 4:7 Audit Privilege Act
- § 4:8 Citizen-collected evidence
- § 4:9 Compliance history and ranking system
- § 4:10 Role of Public Interest Counsel
- § 4:11 In general
- § 4:12 Judicial enforcement remedies
- § 4:13 Initiation of judicial enforcement action

**C. CRIMINAL ENFORCEMENT OF ENVIRONMENTAL
LAWS**

- § 4:14 Introduction
- § 4:15 The intent element of environmental crimes
- § 4:16 State statutory authority
- § 4:17 Offenses under the Texas Penal Code
- § 4:18 Defenses to violations
- § 4:19 Use of federal statutes to prosecute environmental crimes
- § 4:20 Criminal enforcement of city ordinances
- § 4:21 Parallel proceedings
- § 4:22 Environmental investigations

PART II. POLLUTION PROGRAMS

CHAPTER 5. AIR QUALITY

A. OVERVIEW

- § 5:1 Federal Clean Air Act
- § 5:2 Texas Clean Air Act
- § 5:3 Related state statutes
- § 5:4 Delegation of federal programs to the states and State
Implementation Plan Approval

- § 5:5 Regulation of criteria pollutants
- § 5:6 Regulation of hazardous air pollutants
- § 5:7 Overview of other federal regulatory issues

B. TEXAS PROGRAMS

- § 5:8 General overview
- § 5:9 New source review permits
- § 5:10 Federal operating permit program
- § 5:11 Regulation of specific pollutants
- § 5:12 Miscellaneous air issues

CHAPTER 6. SURFACE WATER QUALITY

I. INTRODUCTION

- § 6:1 Introduction

II. FEDERAL PROGRAM

- § 6:2 History
- § 6:3 Texas assumption of federal program under the Clean Water Act
- § 6:4 Regulated activities
- § 6:5 Federal oversight
- § 6:6 Clean Water Act Overview
- § 6:7 Construction grants and State Water Pollution Control Revolving Fund
- § 6:8 TPDES program
- § 6:9 Permitting Process
- § 6:10 Nonpoint source pollution
- § 6:11 Wetlands
- § 6:12 Enforcement

III. STATE PROGRAMS

- § 6:13 Regulated activities
- § 6:14 State administration
- § 6:15 Enforcement

CHAPTER 7. DRINKING WATER

- § 7:1 Introduction to the Safe Drinking Water Act
- § 7:2 Texas' Primacy for Implementation
- § 7:3 Primary and Secondary Drinking Water Regulations
- § 7:4 Sole Source Aquifer Program
- § 7:5 Underground Injection Control

TABLE OF CONTENTS

- § 7:6 Source Water Quality Assessment Program
- § 7:7 Financial Assistance
- § 7:8 Public Disclosures
- § 7:9 Variances
- § 7:10 Enforcement
- § 7:11 Recent Legislation and Rules

CHAPTER 8. OIL AND HAZARDOUS SUBSTANCE RELEASES

- § 8:1 Introduction
- § 8:2 Federal release reporting requirements
- § 8:3 Texas release reporting requirements
- § 8:4 Conclusion

CHAPTER 9. UNDERGROUND INJECTION CONTROL

I. OVERVIEW OF UNDERGROUND INJECTION CONTROL

- § 9:1 Introduction to Underground Injection Control (UIC)

II. FEDERAL UNDERGROUND INJECTION CONTROL

- § 9:2 Federal Safe Drinking Water Act (SDWA) and EPA UIC regulations
- § 9:3 Texas UIC program authorization

III. TEXAS UNDERGROUND INJECTION CONTROL

- § 9:4 Texas Injection Well Act and other Texas UIC requirements
- § 9:5 Texas statutory requirements
- § 9:6 TCEQ rules
- § 9:7 RRC rules

CHAPTER 10. SOLID WASTE

I. INTRODUCTION

- § 10:1 Introduction

II. MUNICIPAL SOLID WASTE

- § 10:2 Municipal solid waste

III. INDUSTRIAL NON-HAZARDOUS SOLID WASTE

- § 10:3 Industrial non-hazardous solid waste

IV. HAZARDOUS WASTE

§ 10:4 Hazardous waste

CHAPTER 11. TEXAS SUPERFUND

- § 11:1 Introduction
- § 11:2 Overview of federal program
- § 11:3 Overview of Texas program
- § 11:4 Procedural steps at a Texas Superfund site
- § 11:5 Hazardous and solid waste remediation fee account
- § 11:6 Persons responsible for solid waste; solid waste; and solid waste facilities
- § 11:7 Enforcement
- § 11:8 Appeals
- § 11:9 Liability under Texas Superfund
- § 11:10 Cost recovery
- § 11:11 Brownfields programs

CHAPTER 12. STORAGE TANKS

- § 12:1 Introduction
- § 12:2 Texas program overview
- § 12:3 Regulated USTs
- § 12:4 Regulated ASTs
- § 12:5 Exempt and excluded tanks
- § 12:6 Registration, notification, certification and disclosure requirements
- § 12:7 Lender liability and similar liability protections
- § 12:8 Technical standards for new UST systems
- § 12:9 Release reporting and remediation of storage tank contamination
- § 12:10 Closure of UST systems
- § 12:11 Financial assurance/responsibility
- § 12:12 UST supervisor, contractor and remediation contractor licensing
- § 12:13 Special Rules for Aboveground Storage Vessels

CHAPTER 13. BROWNFIELDS AND TEXAS RISK REDUCTION PROGRAMS

I. IN GENERAL

- § 13:1 Introduction to Brownfields programs
- § 13:2 Federal Brownfields incentives/programs
- § 13:3 Texas brownfield programs.
- § 13:4 Municipal brownfield programs

TABLE OF CONTENTS

§ 13:5 Tax incentives

II. VOLUNTARY CLEANUP PROGRAM

§ 13:6 The TCEQ's Voluntary Cleanup Program (VCP)

§ 13:7 The Railroad Commission of Texas' (RRC's) Voluntary Cleanup Program (VCP)

III. INNOCENT OWNER/OPERATOR PROGRAM

§ 13:8 Introduction to Innocent Owner/Operator Program (IOP)

§ 13:9 IOP application process

§ 13:10 Innocent owner/operator certificates (IOC)

IV. MUNICIPAL SETTING DESIGNATION

§ 13:11 Purpose of municipal setting designation (MSD)

§ 13:12 Eligibility for MSD

§ 13:13 Application and approval process for MSD

§ 13:14 The MSD's impact on groundwater protection and remediation

V. TEXAS RISK REDUCTION PROGRAM

§ 13:15 Overview of Texas Risk Reduction Program (TRRP)

§ 13:16 Affected property assessment

§ 13:17 Response action

§ 13:18 Closure

§ 13:19 Post response action and response action re-openers

§ 13:20 Notification requirements

§ 13:21 Institutional controls

VI. DRY CLEANER REMEDIATION PROGRAM

§ 13:22 Overview of Dry Cleaner Remediation Program

VII. COUNTY PROGRAMS FOR CLEANUP AND ECONOMIC REDEVELOPMENT

§ 13:23 Overview of county programs for cleanup and economic redevelopment

PART III. OTHER ENVIRONMENTAL PROGRAMS

CHAPTER 14. WATER RIGHTS AND WATER DEVELOPMENT

I. INTRODUCTION

§ 14:1 Introduction

II. STATE WATER LAW

§ 14:2 Groundwater

§ 14:3 Surface water

§ 14:4 Obtaining a surface water right under current statutory procedures

III. WATER LAW INSTITUTIONS

§ 14:5 International water and institutions

§ 14:6 Interstate water and institutions

§ 14:7 Federal waters and institutions

§ 14:8 State government institutions

IV. WATER DEVELOPMENT AND STATE ASSISTANCE

§ 14:9 Texas Water Development Board

§ 14:10 Planning and forecasting

§ 14:11 Research and technical assistance

§ 14:12 Financial assistance

§ 14:13 Water banking

CHAPTER 15. FLOODING AND THE LAW

§ 15:1 Introduction

§ 15:2 Theories of liability for flood-related damages

§ 15:3 Legal issues regarding construction of flood control projects

§ 15:4 Legal issues regarding floodplain mapping

§ 15:5 Evolving concepts of reasonable care

§ 15:6 Flood planning and funding

§ 15:7 Conclusion

CHAPTER 16. CONSERVATION AND LAND USE STATUTES

I. INTRODUCTION

§ 16:1 Introduction

TABLE OF CONTENTS

II. COASTAL LAND USE RESTRICTIONS

- § 16:2 Texas Coastal Zone Management Program
- § 16:3 Regulation of beaches and littoral property
- § 16:4 State ownership of submerged lands

III. WATER RELATED PROGRAMS

- § 16:5 Wetlands
- § 16:6 State regulation of levees and flood control structures
- § 16:7 Floodplain and watershed management
- § 16:8 Groundwater / Surface Water Impoundments

IV. HISTORIC AND ARCHEOLOGICAL PRESERVATION

- § 16:9 Texas Historical Commission
- § 16:10 Texas Antiquities Code

V. PROTECTION OF PARKS AND WILDLIFE

- § 16:11 Texas Parks & Wildlife Code
- § 16:12 Restrictions on hunting & fishing
- § 16:13 Endangered species

VI. ACTIVITIES ON STATE-OWNED LANDS

- § 16:14 Authority of the Texas General Land Office
- § 16:15 Authority of other state agencies
- § 16:16 Permits for removal of sand, gravel, or marl
- § 16:17 Zoning

VII. LOCAL CONSERVATION AND LAND USE RESTRICTIONS

- § 16:18 Conservation servitudes