



Surveillance and Compliance

Policy, Standards, & Quality Assurance Section, Environmental Hazards Unit February 2019

Guide to Surveillance Inspections and Compliance Enforcement Under the Texas Hazard Communication Act (THCA):

The Texas Department of State Health Services (DSHS), Consumer Protection Division, Policy, Standards, and Quality Assurance Section (PSQA), Environmental Hazards Unit is required to administer the Texas Hazard Communication Act (THCA). The THCA is a worker right-to-know law which applies only to public employers (i.e., city, county and state agencies; public schools, colleges, and universities; tax base-supported hospitals; river authorities; and agencies created by state law.

One aspect of administration of these laws is enforcement. The THCA specifies that the Texas Department of State Health Services must perform an investigation (compliance inspection) when a complaint is received. In addition, DSHS staff may perform random compliance inspections to enforce the worker right-to-know law in general. Most of the compliance inspections are performed by regional DSHS staff. All compliance inspection documents are reviewed by the Policy, Standards, and Quality Assurance Section, Environmental Hazards Unit staff, who determine whether these documents indicate any violations of the law. If violations are determined, then enforcement action will follow.

To ensure that inspected facilities have a full understanding of the compliance evaluation process, the PSQA, Environmental Hazards Unit has developed the following questions and answers:

What happens during a compliance inspection?

Each inspection will begin with an opening conference between the DSHS inspector(s) and members of your facility staff who participate in the inspection. The inspector will explain the steps that will be taken during the inspection, which usually include a records review, collection of document photocopies, pictures, samples, a walk-through inspection, and a closing conference. After a review of any pertinent records the inspector will survey

your facility to determine if there are any violations. Inspections will include interviews with safety, training, and supervisory staff; random surveys of work areas, and the types and amounts of hazardous chemicals used or stored in those work areas; random surveys of areas where employee notices are normally posted; inspections of available personal protective equipment; and private interviews with randomly selected employees. The inspector will also review safety data sheets (SDSs), written hazard communication programs, employee training records, and product labels. All inspections end with a closing conference between the inspector and your staff.

What happens if the compliance inspection of my facility indicates a violation of the THCA?

During the closing conference, the inspector will review his/her findings with your facility staff. The inspector will then prepare a list of any violations that were clearly observed during the inspection. It is important to understand that other violations may become apparent after the inspection is completed when inspection documents are reviewed at DSHS headquarters. However, the inspector is usually able to provide a fairly complete list of the violations by the closing conference. The inspector will review the steps that should be taken to bring the facility into compliance with the Worker Right-to-Know law.

It is in the best interest of your facility to initiate correction of all violations as soon as possible after the inspector's visit. This action will give your facility the best chance of achieving compliance status under the law and avoiding penalties. **The period to make corrections and avoid penalties ends 15 business days after your facility receives a Notice of Violation letter from the Compliance Section of DSHS.** Therefore, it is important to initiate corrections as soon as possible so that sufficient time is available to make the needed responses to the Notice of Violation letter.

What happens after the inspector leaves my facility?

The inspection records are forwarded to the PSQA, Environmental Hazards Unit staff at DSHS headquarters in Austin. The PSQA, Environmental Hazards Unit staff reviews the information, determines whether there were violations, and forwards the case to the Compliance Section.

What is meant by “enforcement action”?

The Compliance Section will recommend administrative level penalties for most first time violations, which can be administered by DSHS. The Compliance Section will issue a Notice of Violation (NOV) letter in these cases. The NOV letter will inform the violating facility’s representative of each specific violation, the proposed penalty amount for each violation, and the total penalty for all the violations. The NOV is sent via certified mail (to ensure receipt) to the violating facility.

The NOV will also inform the violating facility whether DSHS will allow a 15-day grace period for correction of the violations. When such a grace period is offered, the facility is allowed to prepare a written response to the NOV that will demonstrate current compliance with the law. (The NOV will provide detailed instructions on what information must be included in the facility’s response to the NOV.) This response must be received by the Compliance Section via mail, facsimile, or e-mail **within 15 business days of the NOV’s certified mail receipt date.**

DSHS is allowed to consider the facility’s history of violations in determining whether to offer the grace period to the facility. Most facilities, especially those who are first time violators, will be offered a compliance grace period.

DSHS may recommend fines at either the civil or criminal level for more serious violations of the Texas Hazard Communication Act. Such cases are developed by the Compliance Section and forwarded to DSHS’s Office of General Counsel staff, who will review the documentation and decide whether the violations meet the Act’s definitions of civil or criminal violations. If the Office of General Counsel staff concurs with the Compliance Section’s findings, they will refer the case to the Texas Attorney General’s Office. Civil and criminal cases are prosecuted by the Texas Attorney General’s Office in a court of law.

What happens if my facility cannot fully correct the violation(s) within the 15-day grace period?

If your facility can correct one or more of the violations, and sends written proof of these corrections to the Compliance Section within the 15-day grace period, then the penalty associated with each of the corrected violations will

be subtracted from your total penalty indicated in the NOV letter. The Compliance Section will then order your facility to pay the remainder of the fines (the fines associated with those violations that were not corrected within the 15-day grace period). If your facility fails to provide a written response during the 15-day grace period or provides a written response that fails to prove correction of the violations, then the Compliance Section will order your facility to pay the total amount of the fines indicated in the original NOV letter.

What happens if my facility is already in compliance at the time of the inspection?

The inspector will generally be able to determine that your facility is in compliance at the time of the inspection, and will indicate this finding on the inspection checklist. If the PSQA, Environmental Hazards Unit staff agrees with the inspector’s findings, then the case will be closed.

Questions About Surveillance and Compliance?

If you have questions about inspections and enforcement or other requirements of the Texas Hazard Communication Act, please contact the Hazard Communication Worker Right-to-Know Program at:

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