



Chairman Christi Craddick
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May 2017





Railroad Commission of Texas Guide to Self-Audit Submissions

Office of General Counsel

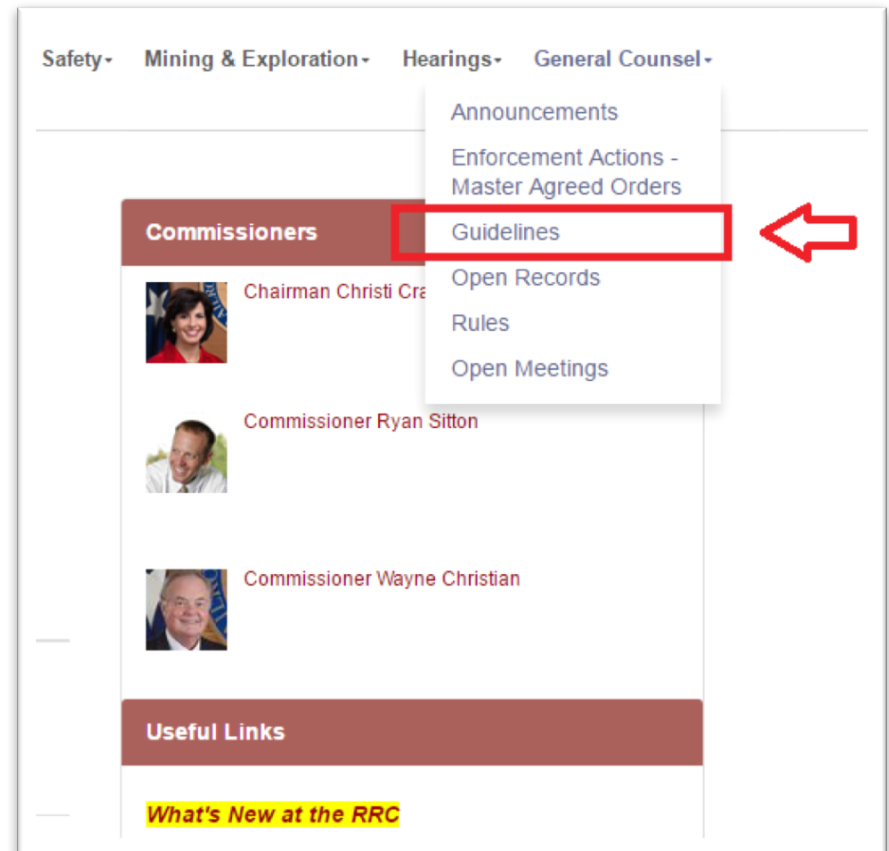
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Background



- The Guidelines were adopted as part of the Texas Oilfield Relief Initiative
- Create a streamlined process for submissions
- Can be found on the Commission's website



Overview of the Act



- The Texas Environmental, Health, and Safety Audit Privilege Act
 - Tex. Civ. Stat. art. 4447cc
- Four primary parts of the Act:
 - Immunity
 - Privilege
 - Notices of Audit
 - Disclosures of Violations

Overview of the Act



- Immunity
 - Immunity from administrative or civil *penalties* for *properly disclosed voluntary* violations
 - A penalty is an “administrative, civil or criminal sanction imposed by the state to punish a person for a violation of a statute or rule”
 - Does not apply to technical recommendations, injunctive relief, or remedial provisions

Overview of the Act



- Immunity can be further limited. No immunity for violations:
 - Intentionally or knowingly committed;
 - Recklessly committed; or
 - That resulted in a substantial economic benefit which gives the violator a clear advantage over its business competitors
- No immunity for a person found by a court or an ALJ to have continuously committed significant violations and engaged in a pattern of disregard

Overview of the Act



- Privilege
 - Audit Reports developed under the Act are granted a limited evidentiary privilege
 - Audit report: “a report that includes each document and communication...produced from an environmental or health and safety audit.”
 - The privilege is for use in an administrative or civil proceeding

Overview of the Act



- Situations in which the report can be disclosed without waiver of the privilege:
 - To government officials pursuant to a confidentiality agreement;
 - To government officials under a claim of confidentiality;
 - Review of privileged documents by a governmental authority;
 - Disclosure to nongovernmental parties to address matters raised by the audit; and
 - Disclosure to nongovernmental parties pursuant to a confidentiality agreement

Overview of the Act



- Disclosure to Commission Staff does not waive the privilege under two circumstances:
 - Confidentiality agreement
 - Claim of confidentiality
 - Mark the documents “COMPLIANCE REPORT: PRIVILEGED DOCUMENT”
 - Information required to be “made available” does not waive the privilege
 - As opposed to information required to be “collected, developed, maintained or reported”

Overview of the Act



- Disclosure to nongovernmental parties for the purpose of correcting or addressing violations does not waive the privilege:
 - Employees, including temporary and contract employees
 - Legal representatives
 - Officers or directors
 - Independent contractors
 - Persons considering acquisition of the facility or operation

Overview of the Act



- Disclosure to nongovernmental parties pursuant to a confidentiality agreement does not waive the privilege:
 - A partner or potential partner;
 - A transferee or a potential transferee;
 - A lender or a potential lender; and
 - A person or entity engaged in the business of insuring, underwriting or indemnifying the operation

Notice of Audit Letter



- Notice Letter must be sent in accordance with the Act's requirements and must include:
 - Name and P-5 number
 - Specific date that the audit will commence
 - A description of the properties, leases or facilities to be audited
 - Oil and Gas leases: lease numbers, wells identifiers, permit numbers
 - Other operations: relevant numbers and physical locations
- Notice should be emailed to:
audit.notice@rrc.texas.gov

Disclosure of Violations Letter



- You must submit this letter by *certified mail* to the Office of General Counsel to receive immunity
 - Please send a courtesy copy to audit.notice@rrc.texas.gov
- The disclosure must be “voluntary”
- Must be disclosed within a reasonable time not to exceed six months
- OGC will send a copy to Enforcement and any applicable Staff members

Disclosure of Violations Letter



- A disclosure is voluntary if it includes:
 - Same information contained in Notice Letter
 - Certified mail reference number
 - Specific date and time the audit was completed
 - An affirmative assertion that a violation has been discovered during the audit period
 - A description of each violation
 - The duration of each violation
 - The status and completion date of corrective action

Request for an Extension



- The Commission may approve an audit period to extend further than six months “based on reasonable grounds”
- Please include the reason why the extension is requested
- Continuation of an audit past six months without prior approval of the Commission could limit the availability of immunity or privilege

- Audits are often conducted in connection with acquisitions
 - Notice letters are not required for pre-acquisition audits
 - Disclosure letters are due not more than 45 days after the acquisition closing date
 - Audit may be continued after the acquisition closing date but must be noticed not more than 45 days after
 - 6 month rule still applies - a request for an extension is required for any longer

The RRC's Guidelines



- The Guidelines include an FAQ section
- The Guidelines include an Appendix of form letters:
 - Notice Letter
 - Disclosures Letter
 - Request for Extension Letter
 - Pre-Acquisition Audit Notices
 - Pre-Acquisition Audit Disclosures

Questions?



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