



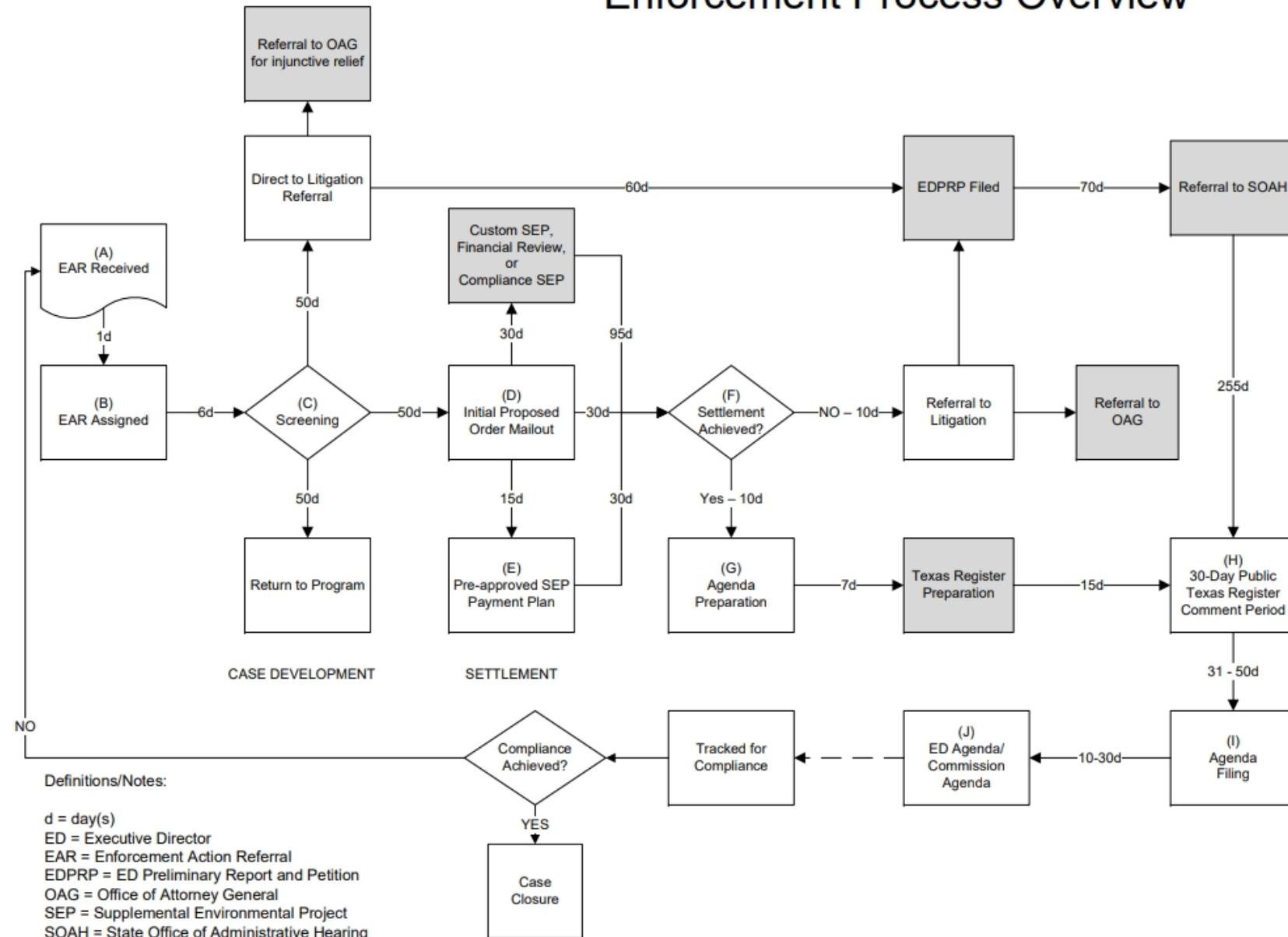
Understanding the Enforcement Process

Megan Crinklaw, Water Section

General Overview

- Enforcement Process
- Enforcement Documents
- Litigation/SOAH/OAG
- Post Settlement Actions
- Tracking
- Environmental Health and Safety Audit Privilege Act
- Other Enforcement Division Duties
- Compliance Assistance

Enforcement Process Overview



Enforcement Coordinator (EC) Actions

- Contact Respondent within 10 days of assignment
 - General enforcement process
 - Violations
 - Compliance actions
 - Settlement options
- 60 days to mail the proposed agreed order packet
 - Cover letter
 - Proposed agreed order
 - Penalty Calculation Worksheet (PCW)
 - Compliance History

Screening Process

- Within 10 days of assignment to EC
- Verify owner/operator
- Ensure Enforcement Initiation Criteria is met
- Ensure violations are valid
- Determine action type
 - Civil vs Administrative
 - Criminal

Civil Actions

- Referred to the Office of the Attorney General (OAG)
- 30 Texas Administrative Code § 70.6
- Texas Water Code § 7.105

OAG

- Enforcement Division can make a referral directly to the OAG
 - Need for immediate action to protect public health, safety, or the environment
 - Pattern of non-compliance with TCEQ enforcement actions
 - Egregious violations where the availability of civil penalties is necessary to adequately address the violations
 - TCEQ named as a Necessary and Indispensable Party

Texas Water Code § 7.105

- (a) On the request of the executive director or the commission, the attorney general shall institute a suit in the name of the state for injunctive relief under Section 7.032, to recover a civil penalty, or for both injunctive relief and a civil penalty.
- (b) The commission, through the executive director, shall refer a matter to the attorney general's office for enforcement through civil suit if a person:
 - (1) is alleged to be making or to have made an unauthorized discharge of waste into or adjacent to the waters in the state at a new point of discharge without a permit in violation of state law;
 - (2) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 26 occurring at the same wastewater management system or other point of discharge within the two years immediately preceding the date of the first alleged violation currently under investigation at that site;
 - (3) is alleged to be operating a new solid waste facility, as defined in Section 361.003, Health and Safety Code, without a permit in violation of state law;
 - (4) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 361, Health and Safety Code, occurring at the same facility within the two years immediately preceding the date of the first alleged violation currently under investigation at that site;
 - (5) is alleged to be constructing or operating a facility at a new plant site without a permit required by Chapter 382, Health and Safety Code, in violation of state law; or

Texas Water Code § 7.105 cont.

- (6) has been the subject of two or more finally issued administrative penalty orders for violations of Chapter 382, Health and Safety Code, for violations occurring at the same plant site within the two years immediately preceding the date of the first alleged violation currently under investigation at that site.
- (c) The suit may be brought in Travis County, in the county in which the defendant resides, or in the county in which the violation or threat of violation occurs.

Types of Administrative Enforcement Actions

- 1660 Orders
- Findings Orders
- Both are Agreed Orders
- Pursued by Commission

1660 Order

- Most common type
- Contains a denial of liability
- Contains a conditional 20% deferral of the penalty
 - Revision 5 of the Penalty Policy removes the 20% deferral if the criteria under Texas Water Code § 7.105(b) is met.

Findings Order

- Criteria:
 - Absence of management practices designed to ensure compliance.
 - Violation of prior order
 - Human health and environment adversely impacted
 - Three repeated enforcement actions
 - Notices of Violations and/or orders
 - Demonstrated a pattern of non-compliance
 - Indifference to legal duty
- No 20% deferral
- No denial of liability

Cover Letter

- Settlement Date
- Penalty Amount
- Supplemental Environmental Project (SEP) Information
- Financial Inability to Pay Information
- Contact Information

Agreed Order

- Documented violations
- Compliance actions already taken
- Penalty amount- assessed, deferred, and payable, as applicable
- Ordering provisions (technical requirements)

Penalty Calculation Worksheet

- Follows the Penalty Policy (RG-253) to assess a penalty for each violation
- Comprehensive formula for assessing an administrative penalty
- Statutory Authorizations and Limits
- Record keeping or potential or actual harm
- Severity and longevity of alleged violation
- Adjustments:
 - Entity size
 - Compliance History
 - Culpability
 - Compliance determination
 - Economic Benefit
 - Other Factors
- Major/minor facility

Statutory Limits

\$0 - \$25,000 per day per violation

- Air Quality
- Edwards Aquifer
- Industrial Hazardous Waste
- Land over Landfills
- Medical Waste
- Municipal Solid Waste
- Petroleum Storage Tank
- Underground Injection Control
- Waste Tires
- Water Quality

\$0 - \$5,000 per day per violation

- Occupational Licenses
- On-Site Sewage Disposal
- Public Water Supply
- Public Water Utilities
- Used Oil
- Used Oil Filter
- Water Rights

Statutory Limits and Authorizations

Conditional Limit

- \$40,000 statutory limit
- TEX. WATER CODE § 7.052(c)
- Must meet all criteria

Statutory Limits for Media

- Texas Water Code ch. 28A
 - Aggregate Production Operations
- Texas Water Code ch. 7
- Texas Water Code ch. 11
 - Water Rights
- Texas Water Code ch. 13
 - Public Water Utilities
- Texas Health & Safety Code ch. 341
 - Public Water Supplies

Environmental, Property, and Human Health Penalty Matrix

	Major Harm	Moderate Harm	Minor Harm
Source	Major/Minor	Major/Minor	Major/Minor
Actual Release	100%/50%	50%/25%	30%/15%
Potential Release	30%/15%	15%/5%	7%/3%

Programmatic Penalty Matrix

Major	Moderate	Minor
Major/Minor Source	Major/Minor Source	Major/Minor Source
20%/10%	7%/2.5%	1%/1%

Environmental, Property, and Human Health Matrix Example

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Compliance History

- 30 Texas Administrative Code Chapter 60
- Each regulated entity along with owner or operator are classified using a three-tiered rating system
 - “High” performers – above-average compliance record
 - “Satisfactory” performers – generally complied with environmental regulations
 - “Unsatisfactory” performers – below-average record
 - Recalculated every year (September 1st)
 - Includes positive and negative compliance actions
- Not all programs included
- Can result in adjustment in the penalty
- <https://www.tceq.texas.gov/compliance/enforcement/compliance-history/about.html>

Compliance History Continued

- Ratings are updated each **September 1st** based on the compliance history for the **previous five years**.
- **Enhancements:**
 - NOVs, orders and judgments, criminal convictions, chronic/excessive emissions events
- **Reductions:**
 - Notice of intended audit, disclosures of violations, environmental management systems, voluntary on-site compliance assessments, participation in a voluntary pollution-reduction program, early compliance of future requirements
- Repeat violator status results in 25% enhancement of penalty
 - Per 30 Texas Administrative Code § 60.2(f)

Proposed Order Packet

- EC negotiates settlement
- 60 days to settle
- Settlement includes:
 - Signed by authorized signer to agree to terms in order
 - Penalty payment

Settlement Options

- Pay penalty in full
- Payment plan
- Financial Inability to Pay review
- SEP
 - Contribution SEP whereby the Respondent contributes to a pre-approved SEP performed by a Third-Party
 - Custom SEP
 - Compliance SEP (governmental entities only)
- Litigation

No Settlement

- Transfer to the Litigation Division
 - If no settlement within 60 days
 - If Respondent disputes violations or terms of agreed order
 - Penalty deferral no longer offered

Litigation Division

- Proposes an Executive Director's Preliminary Report and Petition (EDPRP)
 - If settled, scheduled and approved at agenda
 - If no settlement, Default Order issued
- If disputed:
 - Option to go to State Office of Administrative Hearings (SOAH)

SOAH

- Formal Hearing
- Third-Party Judge
- Post Hearing:
 - Administrative Law Judge makes proposal for decision to the TCEQ Commissioners
 - Orders presented at agenda for Commission consideration and approval

Post-Settlement

- 30-day public comment period on Texas Register
- Case is reviewed for appropriate signature authority and document clarity
- Provide backup documents to Office of Chief Clerk

Agenda Scheduling

- Scheduled for approval at agenda
 - Executive Director Agenda
 - $\leq \$7,500$
 - 1660 Order
 - Field Citations
 - Commissioners' Agenda
 - $\geq \$7,501$ (1660 Order)
 - All Findings Orders

Effective Orders

- Order is effective the date it is **signed by the Commission**
- Technical Requirement timelines begin (encouraged to come into compliance before then)
- SEP timelines begin
- Payment plan schedule begins

Post Agenda

- Transition to monitoring the compliance of effective order
 - Open technical requirements
 - SEP
- Transfer to Financial Administration Division
 - No technical requirements
 - Payment plan
- Close
 - No technical requirements
 - No SEP
 - Penalty paid in full

Tracking

- Monitor compliance with Commission-issued orders, court orders, and compliance agreements
- Compliance is monitored by EC
- EC makes initial contact within 10 days
- Encourage timely and complete compliance
- If compliance is achieved, then the case is closed
 - A Notice of Closure may be sent to the respondent.

Tracking: Non-Compliance

- Extension Requests must include:
 - Reasonable timeframes for compliance
 - Actions toward compliance for the duration
- If compliance is not achieved, then a Notice of Noncompliance issued
 - Typically includes a 30-day compliance deadline
- If needed, a regional investigation request is made
- A record review and/or an on-site investigation can result in violation of an order and Notice of Enforcement

Environmental Health and Safety Audit Privilege Act

- Voluntary environmental self-audits conducted which enhance Commission's enforcement efforts
- To participate:
 - Notify TCEQ of intent to self-audit
 - Fully disclose and resolve violations resulting from the audit
- TCEQ ensures all violations disclosed are corrected
- Participants may not be subject to civil and administrative penalties (if certain conditions of the Audit Act are met)

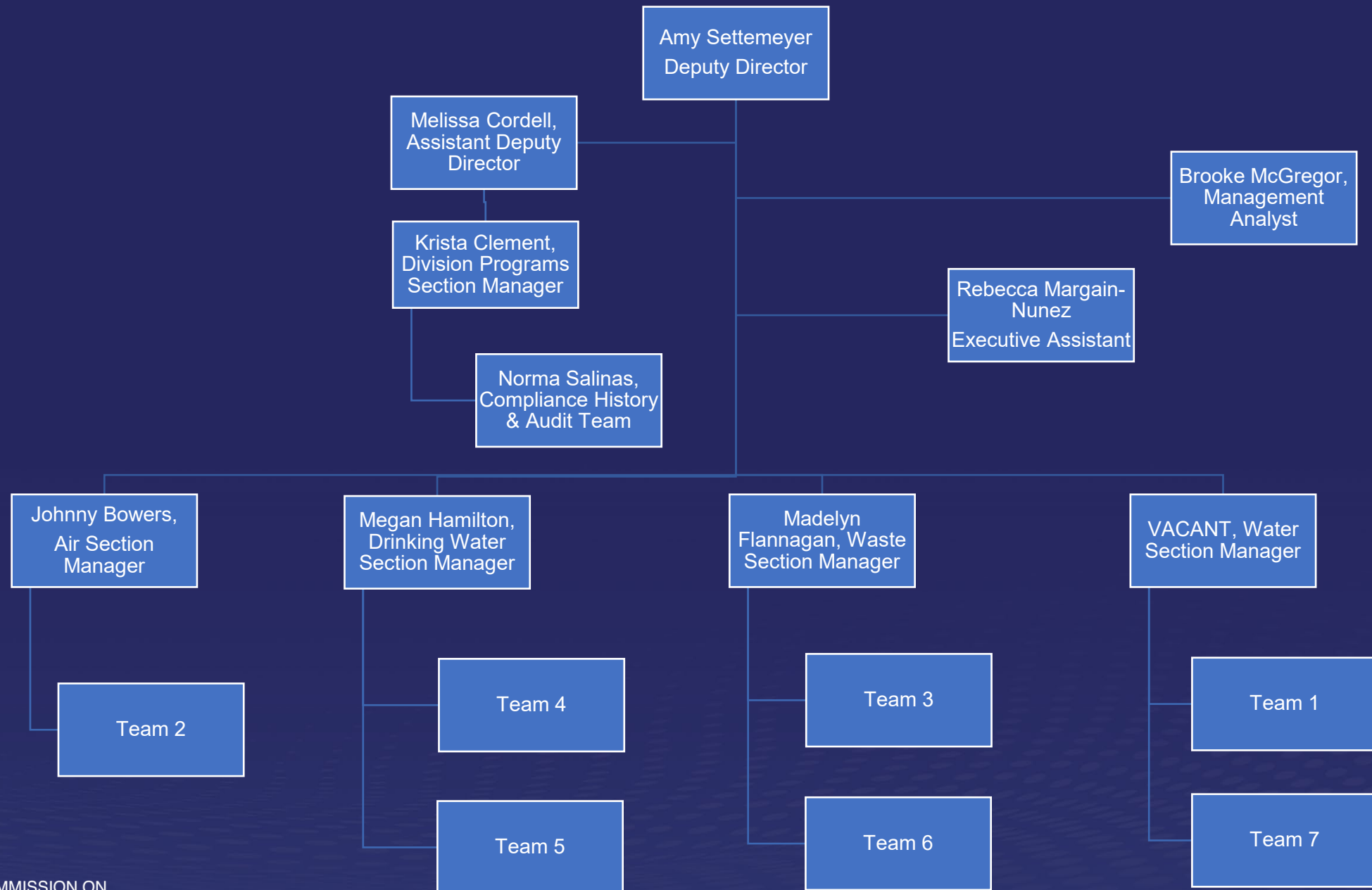
Other Teams in the Enforcement Division

Special Functions and Monitoring Section

- Compliance Monitoring Team
 - Technical specialists for Texas Pollutant Discharge Elimination System
 - Receives and assesses compliance with Discharge Monitoring Reports
- Special Functions Team
 - Agenda preparation
 - QA reviews

Division Programs Section

- Audit Privilege Act Coordinators
 - Receive and review self-audit documentation
- Compliance History Coordinators
 - Compliance History maintenance
 - Mass Classifications



**The ultimate goal is
compliance.**



Compliance Assistance

- Small Business & Local Government Assistance (SBLGA)
 - Free and confidential
 - EnviroMentors
- Financial, Managerial, & Technical Assistance
 - For drinking water and wastewater systems
 - Free technical assistance

Getting Help

- SBLGA Hotline
 - 1-800-447-2827
 - M-F 8:00am-5:00pm
- www.TexasEnviroHelp.org
- Office and Site Visits
- <https://www.tceq.texas.gov/drinkingwater/fmt>



Contact Information

Megan Crinklaw

(512) 239-1129

Megan.Crinklaw@tceq.texas.gov