

Understanding the Enforcement Process

2022 Environmental Trade Fair

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Water Enforcement Section



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General Overview

- From Investigation to Enforcement
- Enforcement Process
- Enforcement Documents
- Post Settlement Actions
- Litigation/SOAH/OAG
- Other Enforcement Division Duties
- Compliance Assistance



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Investigation Types

- Scheduled
- Complaint
- Record Review
 - University of Texas at Arlington Energy Act Investigations
 - Petroleum Storage Tanks
 - Program Area Record Reviews
 - Focused Investigations
 - Active/Inactive



Scheduled

- Prior Notice
- Media Specific
- Exit Interview



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Record Review Investigation

- Unannounced
- Review of specific documents
- Conducted at TCEQ offices
- Can be conducted by Program Area



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Violations Cited?

- If not, the process ends
 - General Compliance Letter
- If so:
 - Notice of Enforcement (NOE)
 - Notice of Violation (NOV)
 - Field Citation
 - Area of Concern (AOC)
- Enforcement Initiation Criteria (EIC)



NOE vs NOV

- NOV (Categories B-C): Allows for a chance to return to compliance without being sent to the Enforcement Division
 - Failure to comply with the violation can result in enforcement
 - Timeframe for compliance is generally 180 days and is specified in the NOV
- NOE (Categories A and repeat B): Automatically sent to the Enforcement Division



Category A

- Require automatic initiation of enforcement action
 - Operating with an expired permit
 - Unauthorized disposal of solid waste
 - Discharges resulting in a fish kill
 - Failure to issue boil water notice within 24 hours



Category B

- Given an opportunity to return to compliance
 - Failure to conduct required monitoring
 - Failure to conduct waste determinations
 - Inadequate level of occupational license
 - Failure to maintain the required minimum disinfectant residual (24 hours)



Repeat B

- Two B violations during two consecutive investigations within the most recent 5-year period
 - Results in automatic enforcement referral
 - Compliance does not prevent enforcement action



Category C

- Not otherwise designated as a Category A or Category B.
- Same violation three times within the most recent 5-year period
 - Failure to control windblown waste
 - Failure to have sanitary control easements for drinking water wells



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Field Citations

- Informal Process
- Certain Violations and Entity Type
- Financial Penalty
- Corrective Action
- Compliance Dates



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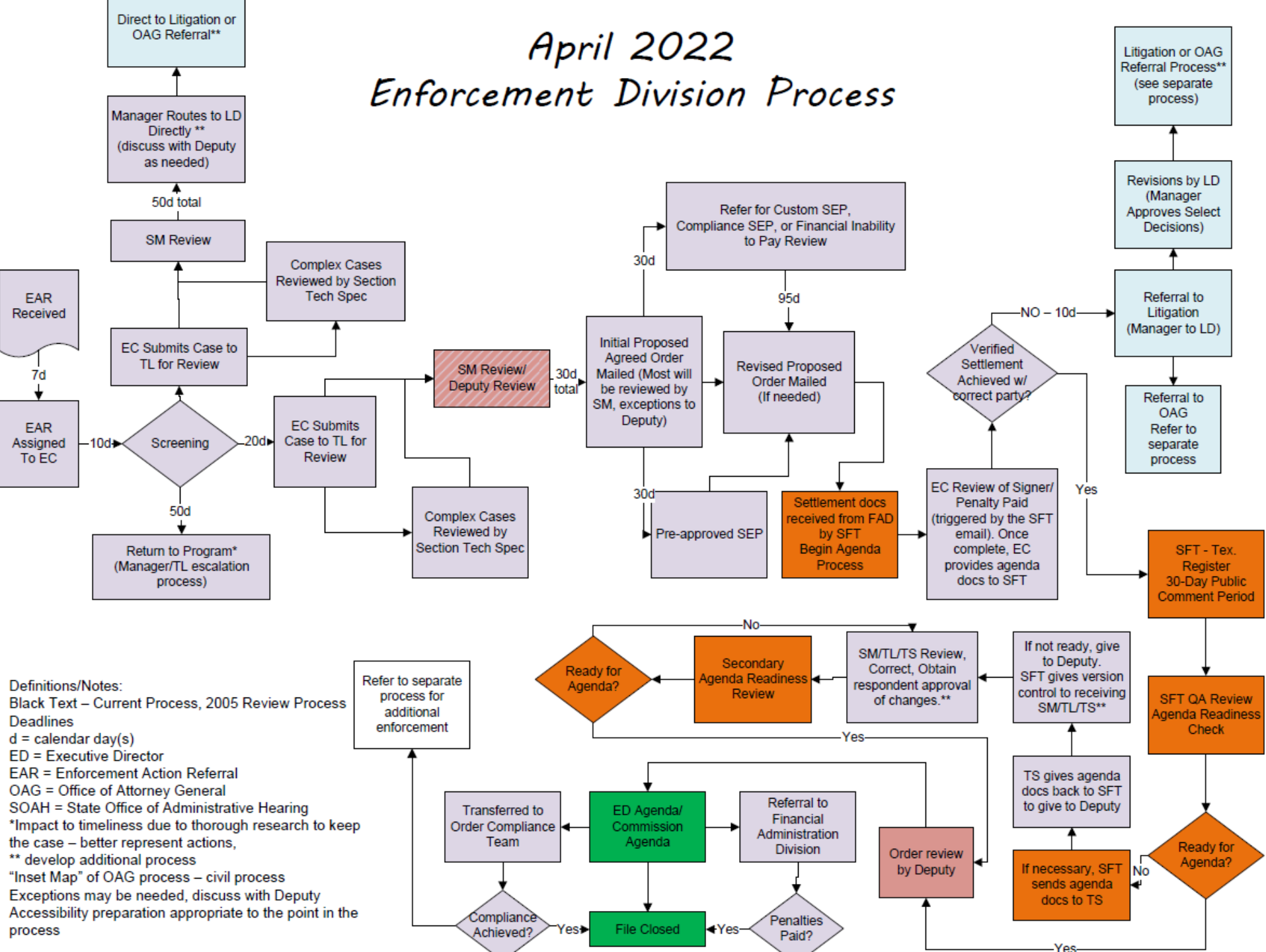
Sent to Enforcement. Now What?



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April 2022 Enforcement Division Process



Enforcement Coordinator 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 Enforcement Coordinator
- Enforcement Coordinator establishes communication
- Verify owner/operator
- Ensure EIC is met
- Ensure violations are valid
- Determine order type
 - Civil vs Administrative



Civil Actions

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



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OAG

- Enforcement Division can make a referral directly to the OAG
 - Pattern of non-compliance with TCEQ enforcement actions
 - Egregious violations where the availability of civil penalties is necessary to adequately address the violations
 - Bad actors



Types of Administrative Enforcement Actions

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



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1660 Order

- Most common type
- Contains a denial of liability
- Contains a conditional 20% deferral of the penalty



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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
 - NOVs 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
- Contact Information



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Proposed Order

- Documented violations
- Recent compliance actions
- Penalty amount
- Ordering provisions



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Penalty Calculation Worksheet

- Uses the Penalty Policy (RG-253) to assess a penalty for each violation
- Comprehensive formula for creating administrative penalty
- Adjustments:
 - Entity size
 - Compliance history
 - Compliance determination
 - Economic Benefit
 - Other Factors



Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$8,060
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	46.0%	Adjustment	Subtotals 2, 3, & 7	\$3,707
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Notes

Enhancement for four NOVs with the same/similar violations, three NOVs with dissimilar violations, and one agreed order containing a denial of liability.

Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$529
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$4,921
Estimated Cost of Compliance	\$29,672

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,238
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$11,238
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,238
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$11,238
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Penalty Policy

- Statutory Authorizations and Limits
- Violation Groupings
 - Major and Minor sources
 - Record keeping vs potential or actual releases
- Compliance History
- Good Faith Effort
- Economic Benefit



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Compliance History

- Snapshot of five-year period
 - High, Satisfactory, Unsatisfactory, Unclassified
 - 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>



Proposed Order Packet

- Enforcement Coordinator negotiates settlement
- 60 days to settle
- Settlement Includes:
 - Signed to agree to terms in order
 - Penalty payment



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Settlement Options

- Pay Penalty in Full
- Payment Plan
- Financial Inability to Pay Review
- SEP
 - Pre-approved SEP
 - Custom SEP
 - Compliance SEP (governmental entities only)
- Litigation



No Settlement

- Transfer to the Litigation Division
 - No settlement within 60 days
 - Respondent disputes violations or terms of agreed order



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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
 - 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
- Scheduled for approval at Agenda
 - Executive Director Agenda
 - <\$7,500
 - 1660 Order
 - Commissioners' Agenda
 - ≥\$7,500 (1660 Order)
 - All Findings Orders



Post Agenda

- Transitions to monitoring the 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



Effective Orders

- Order is effective the date it is signed by the Commission
- Technical Requirement timelines begin
- SEP timelines begin
- Payment plan payments begin



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Other Teams in Enforcement Division

- Compliance Monitoring Team
 - Technical specialists for Texas Pollutant Discharge Elimination System
 - Receives and assesses compliance with Discharge Monitoring Reports
- Air Audit Coordinators
 - Receive and review self-audits
 - Four coordinators



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Other Teams in Enforcement Division Cont.

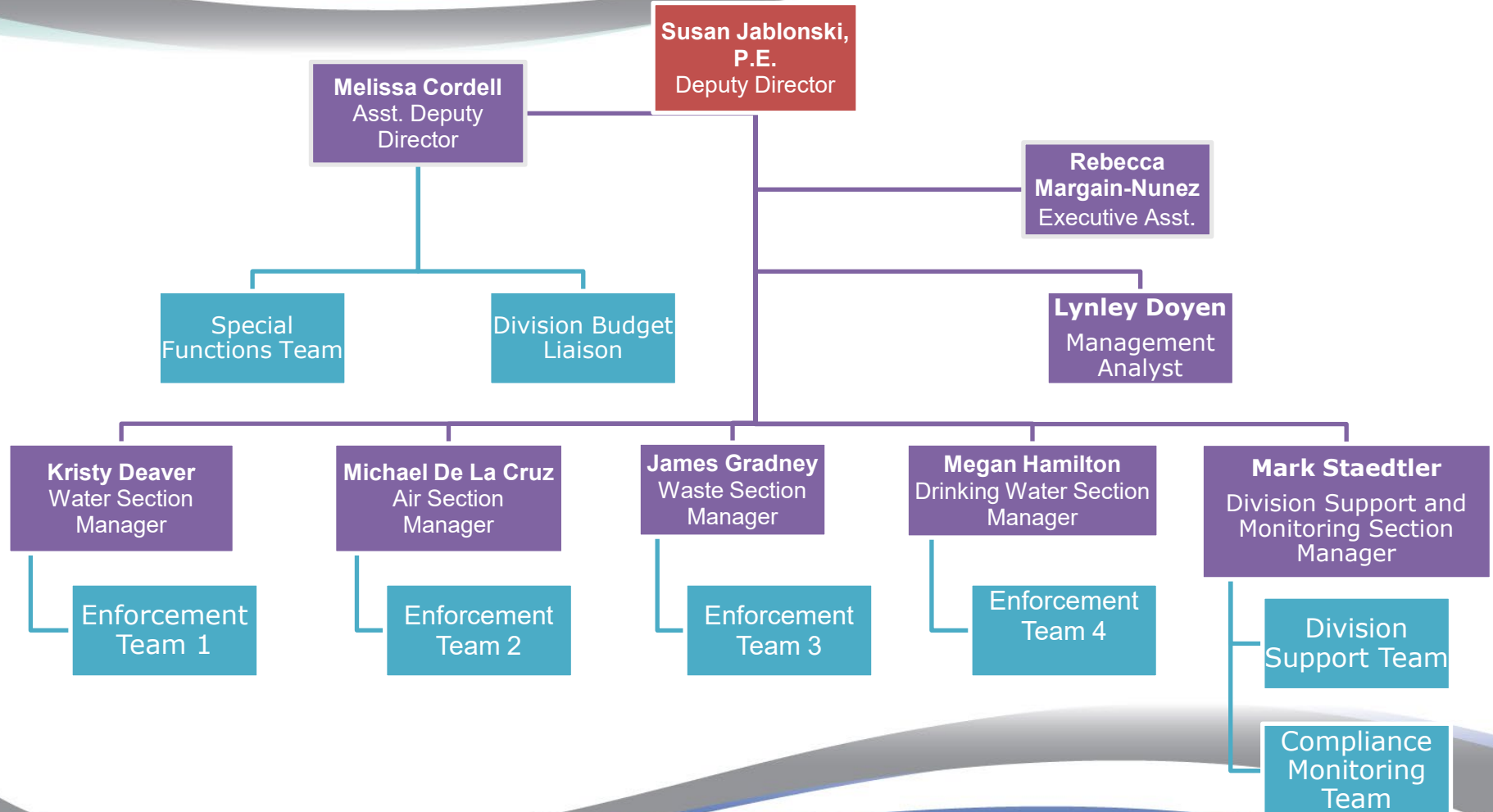
- Special Functions and Division Support Teams
 - Database QA
 - Agenda preparation
 - Document review
 - Compliance History maintenance and annual classification



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Enforcement Division Organization Chart



**The ultimate goal
is compliance.**



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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



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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>



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