



**I GOT A
COMMISSIONER'S
ORDER: NOW WHAT?**

TDEC Commissioner's Orders

- Tennessee Safe Drinking Water Act of 1983 – T.C.A. § 68-221-712 (Drinking Water Act)
- Water Quality Control Act of 1977 - T.C.A. § 69-3-109 (Water Quality Act)
- Water Environmental Health Act, T.C.A. § 68-221-904 (operator certification act)

TDEC Commissioner's Orders

- Authority to issue orders, the procedures for hearing and appeals are similar in each Act
- Civil penalty provisions are similar in each Act
- Operator Certification Act grants the Commissioner power to revoke an operator's certificate

TDEC Commissioner's Orders

- Commissioner's power to issue orders under the Acts is broad
- Orders may be issued when violation “has occurred, is occurring or is about to occur”
- Commissioner's Order may mandate corrective action without a civil penalty assessment

TDEC Commissioner's Orders

- Civil penalties authorized under the Acts
 - Drinking Water Act - not less than \$50 nor more than \$5,000 per day for each day of violation.
 - Water Quality Act – up to \$10,000 per day for each day of violation
 - Operator Certification Act - up to \$10,000 per day for each day of violation

TDEC Commissioner's Orders

- Commissioner has broad discretion in setting civil penalties
- Water Quality Control Board and Operator Certification Board have never established schedule of penalties by rule
- Considerations for Civil Penalty Assessment - Drinking Water and Water Quality Acts

TDEC Commissioner's Orders

- Harm done to the public health or the environment
- Will civil penalty be a substantial economic deterrent
- Economic benefit gained by the violator

TDEC Commissioner's Orders

- Violator's effort to remedy the violation
- Unusual or extraordinary enforcement costs
- Amount of penalty set by the board for specific categories of violations

TDEC Commissioner's Orders

- Damages to the state including:
 - Reasonable expenses in investigating and enforcing violations
 - Under Water Quality Act, compensation for loss of wildlife, fish or other aquatic life
 - Costs incurred in rectifying damages to the state

TDEC Commissioner's Orders

- Operator Certification Board rule setting minimum periods of certificate revocation
- Minimum one year revocation
 - For failure to use reasonable care, judgment or the application of operator knowledge
 - For incompetency

TDEC Commissioner's Orders

- Minimum five year revocation
 - Practicing fraud or deception
 - Willful violations
 - Falsifying records and reports

TDEC Commissioner's Orders

- I got the Order – what next?
- Must appeal within 30 days or Commissioner's Order becomes final
- Appeals to Water Quality Control Board for violations of Drinking Water Act and Water Quality Act
- Appeals under Operator Certification Act to Operator Certification Board

TDEC Commissioner's Orders

- After the appeal, then what?
- Negotiation with TDEC
- Proceed with hearing

TDEC Commissioner's Orders

- Factors to consider in deciding whether to appeal or in negotiations
 - Whether facts cited in the Commissioner's Order are true
 - Whether size of civil penalty seems excessive for nature of violations cited
 - Length of revocation of operator's certificate

TDEC Commissioner's Orders

- Disparate treatment for same violations from other utilities
- Ability to pay civil penalties
- Employment issues of utility employees involved

TDEC Commissioner's Orders

- Anticipated legal expenses for hearing
- Willingness of utility to pay defense costs when civil penalty against a person
- Criminal proceeding arising out of the same violation

TDEC Commissioner's Orders

- Court review of board decisions
- File within 60 days of final board order in Davidson County Chancery Court
- Appeals from Water Quality Control Board may also be filed in chancery court of county in which violation occurred

TDEC Commissioner's Orders

- Review of Board decision by chancery court is limited review
- Court must uphold Board decision when supported by substantial and material evidence

TDEC Commissioner's Orders

- Court may reverse Board decision if the decision
 - Violates constitution or state statute
 - Was made upon unlawful procedure
 - Was arbitrary and capricious

TRA Enforcement of Natural Gas Safety Standards

- First step - informal conference
- Show cause hearing before TRA
- Civil penalties not to exceed \$10,000 per day or maximum of \$500,000 for continuing violations