



Manufacturing Matters

ENVIRONMENTAL LITIGATION LAWSUITS INITIATED BY LOCAL GOVERNMENTS

Texas law currently allows local governments to sue businesses in district court in the same manner as the Texas Commission on Environmental Quality (TCEQ) for injunctive relief and civil penalties (up to \$25,000/day for each violation) when there has been a violation of the state's environmental statutes and rules. It also requires that TCEQ be joined as a necessary and indispensable party to these lawsuits, requiring the state to expend its resources in joining these suits. Any civil penalties awarded in these lawsuits are divided equally between the state and the local government.

>> Current law allows local governments to bring these lawsuits **without any regard** for whether the business has cooperated with TCEQ and addressed the alleged violation.

>> In recent years, this law has been abused by counties that have filed lawsuits seeking grossly excessive civil penalties, in some cases after the business voluntarily self-reported and remediated the violation to the full satisfaction of TCEQ and in compliance with the law.

>> The majority of these lawsuits are not only seeking damages owed to the county for its contribution to the remediation in question, but also seek to punish business while generating funds for the county.

>> This is bad policy and punitive for Texas businesses. Furthermore, it creates a tremendous amount of uncertainty for businesses operating in this state. Once a business has complied with state law to the satisfaction of the TCEQ on any environmental matter, it should not be subject to additional litigation by a local government unless the purpose of the litigation is

strictly for the local government to collect economic damages that it is legitimately owed.

>> The current law allowing this type of private cause of action by local governments is inconsistent with the overall state goal of encouraging effective, prompt remediation and cooperation with TCEQ.

Potential Legislative Solutions

>> Create a safe harbor for a regulated entity where it is protected from the assessment of additional civil penalties when it has fully complied with the state's laws to the satisfaction of TCEQ, regardless of what type of action TCEQ took in its enforcement process.

>> Amend the law to allow local governments to sue only for any out-of-pocket expenses they incur if in fact a local government paid to remediate a third party's site.

>> Create a statute of limitations for the recovery of any damages.

