

TEXAS WATER CODE
CHAPTER 7. ENFORCEMENT
SUBCHAPTER D. CIVIL PENALTIES

§ 7.101. VIOLATION. A person may not cause, suffer, allow, or permit a violation of a statute within the commission's jurisdiction or a rule adopted or an order or permit issued under such a statute.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.102. MAXIMUM PENALTY. A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to Chapter 37 of this code, Chapter 366, 371, or 372, Health and Safety Code, Subchapter G, Chapter 382, Health and Safety Code, or Chapter 1903, Occupations Code, shall be assessed for each violation a civil penalty not less than \$50 nor greater than \$5,000 for each day of each violation as the court or jury considers proper. A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to any other matter within the commission's jurisdiction to enforce, other than violations of Chapter 11, 12, 13, 16, or 36 of this code, or Chapter 341, Health and Safety Code, shall be assessed for each violation a civil penalty not less than \$50 nor greater than \$25,000 for each day of each violation as the court or jury considers proper. Each day of a continuing violation is a separate violation.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 376, § 3.03, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 880, § 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, § 14A.844, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [262](#), § 1.09, eff. June 8, 2007.

§ 7.103. CONTINUING VIOLATIONS. If it is shown on a trial of a defendant that the defendant has previously been assessed a civil penalty for a violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute within the year before the date on which the violation being tried occurred, the defendant shall be assessed a civil penalty not less than \$100 nor greater than \$25,000 for each subsequent day and for each subsequent violation. Each day of a continuing violation is a separate violation.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.104. NO PENALTY FOR FAILURE TO PAY CERTAIN FEES. A civil penalty may not be assessed for failure to:

(1) pay a fee under Section 371.062, Health and Safety Code; or

(2) file a report under Section 371.024, Health and Safety Code.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.105. CIVIL SUIT. (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

(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.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.106. RESOLUTION THROUGH ADMINISTRATIVE ORDER. The attorney general's office and the executive director may agree to resolve any violation, before or after referral, by an administrative order issued under Subchapter C by the commission with the approval of the attorney general.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.107. DIVISION OF CIVIL PENALTY. Except in a suit

brought for a violation of Chapter 28 of this code or of Chapter 401, Health and Safety Code, a civil penalty recovered in a suit brought under this subchapter by a local government shall be equally divided between:

- (1) the state; and
- (2) the local government that brought the suit.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.108. ATTORNEY'S FEES. If the state prevails in a suit under this subchapter it may recover reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.109. PARKS AND WILDLIFE DEPARTMENT JURISDICTION.

(a) If it appears that a violation or a threat of violation of Section 26.121 or a rule, permit, or order of the commission has occurred or is occurring that affects aquatic life or wildlife, the Parks and Wildlife Department, in the same manner as the commission under this chapter, may have a suit instituted in a district court for injunctive relief or civil penalties, or both, as authorized by this subchapter, against the person who committed or is committing or threatening to commit the violation.

(b) In a suit brought under this section for a violation that is the proximate cause of injury to aquatic life or wildlife normally taken for commercial or sport purposes or to species on which this life is directly dependent for food, the Parks and Wildlife Department is entitled to recover damages for the injury. In determining damages, the court may consider the valuation of the injured resources established in rules adopted by the Parks and Wildlife Department under Subchapter D, Chapter 12, Parks and Wildlife Code, or the replacement cost of the injured resources. Any recovery of damages for injury to aquatic life or wildlife shall be deposited to the credit of the game, fish, and water safety account under Section 11.032, Parks and Wildlife Code, and the Parks and Wildlife Department shall use money recovered in a suit brought under this section to replenish or enhance the injured resources.

(c) The actual cost of investigation, reasonable attorney's fees, and reasonable expert witness fees may also be recovered, and those recovered amounts shall be credited to the same operating accounts from which expenditures occurred.

(d) This section does not limit recovery for damages available under other laws.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.110. COMMENTS. (a) Before the commission approves an agreed final judgment, consent order, voluntary settlement agreement, or other voluntary settlement agreement, or other voluntary agreement that would finally settle a civil enforcement action initiated under this chapter to which the State of Texas is a

party or before the court signs a judgment or other agreement settling a judicial enforcement action other than an enforcement action under Section 113 or 120 or Title II of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.), the attorney general shall permit the public to comment in writing on the proposed order, judgment, or other agreement.

(b) Notice of the opportunity to comment shall be published in the Texas Register not later than the 30th day before the date on which the public comment period closes.

(c) The attorney general shall promptly consider any written comments and may withdraw or withhold consent to the proposed order, judgment, or other agreement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter, the statutes within the commission's jurisdiction, or a rule adopted or an order or a permit issued under such a statute. Further notice of changes to the proposed order, judgment, or other agreement is not required to be published if those changes arise from comments submitted in response to a previous notice.

(d) The attorney general may not oppose intervention by a person who has standing to intervene as provided by Rule 60, Texas Rules of Civil Procedure.

(e) This section does not apply to:

- (1) criminal enforcement proceedings; or
- (2) proposed temporary restraining orders, temporary injunctions, emergency orders, or other emergency relief that is not a final judgment or final order of the court or commission.

(f) Chapter 2001, Government Code, does not apply to public comment under this section.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.

§ 7.111. RECOVERY OF SECURITY FOR CHAPTER 401, HEALTH AND SAFETY CODE, VIOLATION. On request by the commission, the attorney general shall file suit to recover security under Section 7.033.

Added by Acts 1997, 75th Leg., ch. 1072, § 2, eff. Sept. 1, 1997.