



**TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY**

Protocol and Procedures For Delinquent Fees and Penalties

Revised July 2012

Delinquent Fee and Penalty Protocol
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Introduction

In December 2003, the TCEQ announced a comprehensive review of its enforcement functions to ensure that the TCEQ is enforcing environmental laws fairly, effectively, and swiftly.

In the course of the review, the TCEQ solicited public comment through a mail and web survey, along with hearings in Houston, Harlingen, Dallas-Fort Worth and Midland. A steering committee established by the Executive Director, along with chairs of three major committees and a number of subcommittees, reviewed the comments and identified key issues raised in the comments. These issues were then published on the TCEQ's web site for additional comment.

The steering committee identified seven criteria for the evaluation of issues:

- Improvement of the enforcement process;
- Clarity, transparency, and simplicity;
- Consistency across regions and programs;
- Impact on small business;
- Maximizing compliance through deterrence and incentives;
- Maximizing benefit to the environment in the TCEQ's enforcement policies; and
- Timeliness, efficiency, and effectiveness.

Three broad categories of issues were identified:

- Compliance history
- Enforcement process
- Penalties and corrective action

These issues were further subdivided into a number of key issues, which were assigned to subcommittees for research, analysis and recommendation. The subcommittee recommendations of the three major issues were collected and reviewed by the chairs, who in some cases recommended changes. The report of the chairs was then evaluated by the full steering committee and any changes that were deemed necessary were made. Each key issue was presented to the Commissioners at several work sessions beginning November 1, 2004 and concluding at the January 14, 2005 work session. The Commissioners reviewed the steering committee's recommendations and either approved (with or without modification), denied, or tabled for future discussion.

The purpose of this document is to address Collections/Financial Inability to Pay Issue No. 1A (page 173) in the Enforcement Process Review Final Draft Report (dated January 2005): Should an entity be allowed to acquire, amend, or renew a permit while in default of a penalty? The steering committee recommended that the TCEQ not issue, amend, or renew permits, registrations, certifications, or licenses to an entity or person who owes delinquent penalties or fees (with exceptions). This recommendation was presented to the Commissioners at the December 17, 2004 work session and subsequently approved during the January 14, 2005 work session.

Objective

The Enforcement Process Review Steering Committee has charged that each issue, as identified from the Enforcement Process Review, be implemented as directed by the Commission. As a result of this charge, a team consisting of representatives from throughout the TCEQ was developed to address the processing of permits, registrations, certifications and licenses for applicants who are delinquent on fees and/or penalties. The team's purpose was to develop a protocol addressing this issue consistent with Commission direction.

Issue

Should an entity be allowed to acquire, amend, revise, alter or renew a permit, registration, certification or license while in default or delinquent on a penalty or fee?

Protocol Statement

Any application submitted by a person/entity who is delinquent on a fee and/or penalty will not be declared administratively complete until the fees/penalties are paid and/or current. Similarly, final action will be withheld by the TCEQ on an application if it is discovered after the application is considered administratively complete that the owner/entity who submitted the application is delinquent on fees and/or penalties until such time as the fees/penalties are paid and/or current. The ePermits system will not allow an application to be completed or submitted until the outstanding balance of delinquent accounts is less than \$25.

Exceptions

The following exceptions shall be made to this protocol:

1. **If monies owed are being paid on a payment plan and installment payments are current.**
2. **If the applicant is, or has been, a debtor in a bankruptcy proceeding which affects the fees or penalties at issue.**
3. **If the total delinquent monies owed are less than \$25:** The \$25 amount is consistent with the agency's threshold for placing a delinquent customer on warrant hold. TCEQ has developed a Central Registry interface based on the \$25 threshold and is incorporating the \$25 threshold in the ePermits process. The incorporation in ePermits will expand the number of regulated entities impacted by the delinquent protocol and will include General Permits.
4. **If submitting a Notice of Termination:** The protocol is not applied if an entity is terminating its current coverage or application. This will prevent additional financial hardship on a regulated entity. The entity will be subject to the protocol if they attempt to obtain an application in the future from TCEQ.
5. **If Submitting a Notice of Changes:** If an entity is not expanding or modifying its application coverage but is updating information such as address. The protocol will be

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applied if an entity is attempting to transfer ownership or permit coverage to a new entity, and the transfer will not be processed until the balance owed is less than \$25.

At the discretion of Division Directors or above, the following additional exceptions may be applied:

6. An applicant may be granted more than 30 days to pay monies owed if the applicant can show good cause. Good cause may include a governmental entity that must hold a council meeting to vote/authorize additional expenditures.
7. An applicant may be exempt from this protocol if the approval of the pending application is crucial to address an immediate economic or environmental concern or health hazard or if required by Commission order. An example includes a small local government that is financially unable to produce fees before the permit is reviewed, but must provide drinking water or waste water services to the community.

Fee Protocol Involving Military Installations:

Due to the unique organizational structure of military installations, this protocol will only apply to the specific military installation seeking authorization. This exception will only apply to the military installations.

Fee Protocol Involving State Agencies:

To maximize electronic technology, the Financial Administration Division (FAD) recommends a proactive approach to collecting delinquent fees from state agencies. This approach ensures the use of the Interagency Transaction Voucher (ITV) as part of the electronic billing cycle. The steps include:

1. The revenue collection coordinator will bill by ITV and then follow up with the state agency after 30 days and for up to 60 days from billing;
2. If the bill remains unpaid after 60 days, the collection coordinator will refer it to the Revenue Operations Section Manager to contact the state agency;
3. If the bill remains unpaid after 90 days, FAD will recommend TCEQ's Chief Financial Officer (CFO) contact the Chief Financial Officer of the delinquent state agency;
4. If the bill remains unpaid after 120 days, the CFO may contact the Comptroller for assistance.

Implementation

As part of implementation, all programs shall follow these guidelines:

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1. Application forms shall include a notice that the form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol.
2. Instructions and guidance documents, including those published on the TCEQ web site, shall clearly explain that processing of applications and requests for actions on permits, registrations, certifications, and licenses will be withheld as set out in the Delinquent Fee and Penalty Protocol if the applicant is delinquent on fees or penalties.
3. Determination of any fees and/or penalties owed shall occur at the beginning of the administrative review phase, and, if more than 180 days have passed since the check for delinquencies during the administrative review, just prior to issuance. The ePermits system will conduct a review prior to application information being entered and again before final submission. In all cases, a review of delinquent fees and/or penalties shall occur just prior to a project being presented at agenda.
4. An application may not be declared administratively complete if delinquent fees and/or penalties are \$25 or more.
5. Staff is only expected to check for delinquent fees/penalties on a regular basis for all applications and authorizations. Previously exempt fees such as General Permits are now subject to the protocol. The ePermits process will quickly and efficiently review for delinquent fees/penalties for all application submitted electronically.
6. If delinquent fees and/or penalties are owed, the applicant shall be given 30 days or less to make payment in accordance with specific program rules and regulations. The TCEQ shall notify the entity in accordance with the individual fee's rules and program area's policies. If the applicant pays the delinquent fees within the time limit, staff will continue processing the application. If payment is not received in the established timeframe, the application will not be processed and will not be declared administratively complete (if in administrative review) or void/denied (if in technical review). This paragraph does not apply if the applicant meets one of the exceptions outlined in this protocol. The ePermits process will allow the payment at the time of initial entry when the fee payer is notified that they are delinquent and will not allow the application to be submitted until the delinquent outstanding balance is less than \$25.
7. If the applicant does not pay their fee or penalty within the time limit outlined in the letter (Step 6), staff is to notify their Team Leader. The Team Leader will call the applicant explaining that the application is about to be returned/voided/denied (as appropriate for the program area). If the delinquencies are not immediately addressed by the applicant, a recommendation by the Team Leader shall be provided to the Section Manager. The Section Manager will discuss the case with the Division Director who will then make the

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final decision whether to return the application or provide additional time. This step should not exceed a total of seven working days, but the final timeline decision is to be determined by the Division Director. Applications submitted by ePermits cannot be processed until the outstanding balance is less than \$25.

8. The Central Registry search and ePermits system depend upon program area staff correctly matching facilities that have outstanding balances to the correct Central Registry customer number (CN). If this match is not done biweekly, delinquent entities will not appear delinquent and in the central registry system, or ePermits system and could potentially obtain a permit when they are delinquent.
9. Provisional coverage cannot be applied if ePermits does not process the application because the outstanding balance is in excess of \$25. If an entity is unable to process an application through ePermits because of delinquent accounts, it cannot obtain provisional coverage by submitting the application through mail.

Instruction on how to obtain delinquent fee information from BASIS2 or Central Registry is available on the T-Ne page for the Protocol,

Currently: http://home.tceq.texas.gov/internal/exec/communication/delin_protocol/

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History:

- 03-15-2007 Added Addendum II
- 01-08-2008 Replaced Program Fee Coordinator List
- 02-13-2008 Updated all Program Fee Coordinator Lists
- 10-14-2009 Updated to Direct Users of Reports to the Oracle Reports Portal and updated all Program Fee Coordinator Lists
- 04-30-2012 Review and Update of Document by Offices of Administrative Services, Air, Water, and Waste.
- 07-11-2012 New Protocol developed to incorporate Central Registry and ePermits functionality.

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July 2012

Protocol Statement Acknowledgment

Initialing by the following Deputy Directors indicates their review and support of this protocol. In addition, final approval and effective date of this protocol are indicated by the signature of Richard Hyde, Deputy Executive Director.

	Initials	Date
Dorca Zaragoza-Stone, Deputy Director Office of Administrative Services	_____	_____
Ramiro Garcia, Jr., Deputy Director Office of Compliance & Enforcement	_____	_____
Caroline Sweeney, Deputy Director Office of Legal Services	_____	_____
Steve Hagle, P.E., Deputy Director Office of Air	_____	_____
Brent Wade, Deputy Director Office of Waste	_____	_____
L'Oreal Stepney, P.E., Deputy Director Office of Water	_____	_____

Signed and Effective:

Richard A. Hyde, P.E.
Deputy Executive Director

Date