TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

ENFORCEMENT INITIATION CRITERIA (EIC)

Revision No. 13
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The EIC effective on the start date of an investigation applies

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ACRONYMS

ACC	ANNUAL COMPLIANCE CERTIFICATION
AOC	AREA OF CONCERN
AFO	ANIMAL FEEDING OPERATION
BACT	BEST AVAILABLE CONTROL TECHNOLOGY
BMP	BEST MANAGEMENT PRACTICES
CA	COMPLIANCE AGREEMENT
CAA	CLEAN AIR ACT
CAFO	CONCENTRATED ANIMAL FEEDING OPERATION
CAP	CORRECTIVE ACTION PLAN
CCEDS	CONSOLIDATED COMPLIANCE & ENFORCEMENT DATA SYSTEM
CCN	CERTIFICATE OF CONVENIENCE AND NECESSITY
CFR	CODE OF FEDERAL REGULATIONS
DOPA	DAIRY OUTREACH PROGRAM AREA
EAR	ENFORCEMENT ACTION REFERRAL
EIC	ENFORCEMENT INITIATION CRITERIA
EPA	U.S. ENVIRONMENTAL PROTECTION AGENCY
GUI	GROUND WATER UNDER THE INFLUENCE OF SURFACE WATER
HAP	HAZARDOUS AIR POLLUTANT
HPV	HIGH PRIORITY VIOLATOR
IHW	INDUSTRIAL AND HAZARDOUS WASTE
IOM	INTEROFFICE MEMORANDUM
IU	INDUSTRIAL USER
LAER	LOWEST ACHIEVABLE EMISSION RATE
LDAR	LEAK DETECTION AND REPAIR
LMU	LAND MANAGEMENT UNIT
MACT	MAXIMUM AVAILABLE CONTROL TECHNOLOGY
MCL	MAXIMUM CONTAMINANT LEVEL
MEH	MANDATORY ENFORCEMENT HEARING
MOU	MEMORANDUM OF UNDERSTANDING
MSW	MUNICIPAL SOLID WASTE
NESHAP	NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
NMP	NUTRIENT MANAGEMENT PLAN
NOE	NOTICE OF ENFORCEMENT
NOI	NOTICE OF INTENT
NOV	NOTICE OF VIOLATION
NPDES	NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
NSPS	NEW SOURCE PERFORMANCE STANDARDS
NSR	NEW SOURCE REVIEW
NUP	NUTRIENT UTILIZATION PLAN
OSSF	ON-SITE SEWAGE FACILITY
POTW	PUBLICLY OWNED TREATMENT WORKS
PPP	POLLUTION PREVENTION PLAN
PSD	PREVENTION OF SIGNIFICANT DETERIORATION
PST	PETROLEUM STORAGE TANK
PWS	PUBLIC WATER SUPPLY
QNCR	QUARTERLY NONCOMPLIANCE REPORT
RCRA	RESOURCE CONSERVATION AND RECOVERY ACT
RCS	RETENTION CONTROL STRUCTURE
RP	RESPONSIBLE PARTY
SIP	STATE IMPLEMENTATION PLAN
SIU	SIGNIFICANT INDUSTRIAL USER
SNC	SIGNIFICANT NONCOMPLIANCE
SS	SOLICIT SCHEDULE
SV	SIGNIFICANT VIOLATOR
SWP3	STORMWATER POLLUTION PREVENTION PLAN
TAC	TEXAS ADMINISTRATIVE CODE
TD	TCEQ-ESTABLISHED DEADLINE
TPDES	TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM
TSSWCB	TEXAS STATE SOIL AND WATER CONSERVATION BOARD
UST	UNDERGROUND STORAGE TANK
VOC	VOLATILE ORGANIC COMPOUND
WMP	WASTE MANAGEMENT PLAN

DEFINITIONS

As Required: Pertaining to a requirement specified by statute, order, rule, permit, registration or other authorization

Clerical Violation: A violation of a provision of a statute, order, rule, permit, registration or other authorization that is procedural or administrative in nature, such as submittal of reports or maintaining records

Existing Requirements: Requirements in effect at the time the enforcement initiation criteria is being applied

Force Majeure: An act of God, war, strike, riot or other catastrophe to be determined by Litigation Division Director upon request. If a violation is attributable to *force majeure*, initiation of formal enforcement action is not required.

Formal Enforcement Action: An action taken by TCEQ to obtain a legally binding obligation for an entity to achieve and/or maintain compliance; includes a Compliance Agreement (functions as a contract), Commission Order, referral to the Attorney General for civil litigation, criminal prosecution, or referral to EPA for a federally enforceable enforcement action. A Compliance Agreement resulting from a Texas Environmental, Health, and Safety Audit Privilege Act disclosure is not considered a formal enforcement action, but it is a formal agreement with the ED.

Initiation of Formal Enforcement Action: Taking action to start the process for consideration of a Compliance Agreement (functions as a contract), Commission Order, referral to the Attorney General for civil litigation, criminal prosecution, or referral to EPA for a federally enforceable enforcement action

Monitoring: Any activity performed which observes or measures a discharge/release/emission to the environment or production requirements for a PWS system, or observes or measures one or more components of a facility which may cause such discharge/release/emission or is necessary for maintaining PWS production requirements; includes quantifying or characterizing through measuring, sampling, testing or visual observation

Non-clerical Violation: A violation of a provision of a statute, order, rule, permit, registration or other authorization which has the purpose and effect to limit, reduce, control, or prohibit a discharge/release/emission of one or more contaminants into the environment or to maintain production requirements for a PWS system, or which requires measurement or monitoring of a discharge/release/emission or production requirements for a PWS system

Noncompliant Discharge or Emission: Discharge or emission from an authorized location to an authorized receiving point which fails to meet required limits or standards; authorized means as allowed by statute, order, rule, permit, registration or other authorization

Nuisance Dumping : Unauthorized disposal or burning of nonhazardous municipal solid waste where the only economic gain is avoiding the cost of disposing at a landfill; does not include cash-for-trash operations

Records: Electronic or written documentation of required information

Unauthorized Discharge, Release, or Emission: Violation in which the responsible party does not have authorization by statute, order, rule, permit, registration or other authorization to make a discharge, release, or emission (regardless of quality or quantity) from a given location and/or to a particular receiving location

STATUTES WITH SPECIFIC DIRECTION FOR TCEQ ENFORCEMENT INTIATION

CAs for Regionalization: TEX. WATER CODE § 7.0026: "If a water supply, sewer, wastewater treatment, or solid waste disposal service operated by or for a municipality or county is being integrated into a regional water supply, sewer, wastewater treatment, or solid waste disposal service, the commission may enter into a Compliance Agreement with the regional service under which the commission will not initiate an enforcement action against the regional service for existing or anticipated violations resulting from the operation by the regional service of the service being integrated. A Compliance Agreement under this section must include provisions necessary to bring the service being integrated into compliance."

For violations documented from a Title V Deviation Report review only: TEX. WATER CODE § 7.00251: Refer only Category A violations, HPVs, and Repeat Category Bs for formal enforcement via EAR and NOE. Non-repeat Category B and C violations shall not be included in an NOE and EAR, but shall be addressed separately in an NOV. Additionally, any non-repeat Category B and C violations corrected within the time frame specified in an NOV or for which a due date (via NOV or TCEQ Order) has not been specified shall not be included in an EAR or NOE

Occupational Safety and Health Administration (OSHA) related incidents: TEX. WATER CODE § 7.256: "If a person can establish that an act or event that otherwise would be a violation of a statute within the commission's jurisdiction or a rule adopted or an order or permit issued by the commission under such a statute was caused solely by compliance with the general duty clause of the federal Occupational Safety and Health Act of 1970 (29 U.S.C. Section 654), the act or event is not a violation of that statute, rule, order, or permit." The RP is required to claim this enforcement discretion and the burden of proof is on that RP.

Poultry Facility Odor – Response to Complaints: TEX. HEALTH & SAFETY CODE § 382.068: "If after the [complaint] investigation the commission determines that a poultry facility is violating the terms of its air quality authorization or is creating a nuisance, the commission shall issue a notice of violation. The commission by rule or order shall require the owner or operator of a poultry facility for which the commission has issued three notices of violation under this section during a 12-month period to enter into a comprehensive Compliance Agreement with the commission. The Compliance Agreement must include an odor control plan that the executive director determines is sufficient to control odors." If a poultry facility violates a nuisance odor CA, an enforcement action referral should be initiated (category A1). Additionally, if a nuisance violation (excluding the third violation in 12 months) is documented along with a category A and/or repeat B violation, the nuisance violation shall be issued in an NOV, while the other violations will be referred in an EAR.

GENERAL INSTRUCTIONS

USE OF THE EIC: The procedures set forth in this document are intended only as staff guidance. The information is not intended, and cannot be relied on, to create any rights, substantive or procedural, on the part of any person or entity. The TCEQ reserves the right to modify these procedures at any time without public notice.

In order to promote consistency in handling air, water and waste violations, the criteria specified in this document will be used for initiating formal enforcement action.

FORMAT: Violations have been divided into three categories: A, B, and C.
Category A violations require automatic initiation of formal enforcement action when documented during an investigation
Category B violations require a Notice of Violation (NOV) at the first occurrence. Then, Category B violations require initiation of formal enforcement action if the violation is not corrected by an established NOV deadline or if the violation is documented at two consecutive investigations within the most recent 5-year period, unless an extension or EIC variance has been approved. (See page 17 for more detailed information regarding repeat Bs).
Category C violations may require initiation of formal enforcement action if the entity receives a notice of violation for the same violation 3 consecutive times within the most recent 5-year period, including the notification for the current violation. Decisions about whether formal enforcement action will be initiated for a third time Category C violation will be made by the section manager for the staff who is considering the enforcement action.
Area of Concern (AOC): See page 25 for comprehensive AOC information.
Specific exclusions: In addition to the categorization of the violations, it is important to note that some criteria have specific exclusions written into them that change the required enforcement action for the excluded violation(s).
Violations that fall into multiple categories: When a violation falls into more than one EIC category, the most stringent category applies.
The most specific [e.g., A12.a(5) instead of A6] EIC category for the violation(s) that trigger formal enforcement shall be noted in the investigation report.

VIOLATIONS TO BE INCLUDED IN AN ENFORCEMENT ACTION REFERRAL (EAR): If multiple violations are documented during an investigation and one or more violations require initiation of formal enforcement, all violations are included in the EAR (see Title V Deviation Report exception on page 4. After a violation has been documented, the status of the required corrective action thereafter does not affect what violations are included in the EAR. If a violation warrants formal enforcement (NOE), but happens to be corrected before an NOE is issued, the formal enforcement action is required to address the past noncompliance period. Also, AOCs are <u>not</u> utilized when an NOE is being issued.
For NOV follow-up investigations: Once a violation is issued in a NOV and <u>not</u> corrected by the due date specified in the NOV, that violation is subject to formal enforcement (NOE) unless an extension or EIC variance has been approved. Any resulting formal enforcement action for an outstanding/continuing violation is based on noncompliance with an NOV due date, *not* to be designated as repeat B or C (see scenario #2 on page 17). Additionally, if multiple violations have been issued in an NOV, refer in an EAR only the violations documented as outstanding/continuing during an NOV follow-up investigation.
See page 4 for Title Deviation Report Directions.

COORDINATION OF REGIONAL AND CENTRAL OFFICE ACTION: Violations documented by a central office program division and the region for the same regulated entity may be consolidated by the Enforcement Division if timing allows.

VARIANCE REQUESTS: A particular situation may warrant a variance from the procedures outlined in this document (e.g., a compliance time frame longer than 6 months for a Category B violation, automatic initiation of formal enforcement for a Category B (non-repeat) or C violation, exclusion from automatic initiation of formal enforcement for a Category A violation, etc.). Each request should include the investigation type and date; detailed descriptions of all the violations, including rule cites, violation dates, and category; current compliance due date; previous or active enforcement actions; and reasons to support a variance from the EIC. Ensure a copy of any approved/denied variance IOM is mailed to the applicable region office for the region's compliance file on the regulated entity. The variance process is as follows:

<u>For Field Operations:</u>

Submit a request via emailed-IOM **FROM** the investigator **THRU** the investigator's manager **TO** the Regional Director ("RD"), who will provide final approval/denial. The RD informs the applicable Area Director ("AD") of any approved EIC variance.

<u>For Local Air Programs (LAP)</u>:

Submit a request (with all information described above) via IOM from LAP Management **THRU** the LAP Liaison **TO** the appropriate RD, who will provide final approval or denial for all LAP EIC variance requests. The RD informs the applicable AD of any approved EIC variance.

<u>All Other TCEQ Divisions:</u>

Submit a request via IOM **FROM** the investigator **THRU** investigator's supervisor **TO** the Division Director, who provides final approval/denial.

Department of Defense and State Memorandum of Agreement (DSMOA): Compliance at facilities that are owned or operated by the Department of Defense should be achieved through the dispute resolution process as defined in Section IV of the DSMOA (facilities with executed Federal Facility Agreements under CERCLA Section 120).

CATEGORY A VIOLATIONS

CATEGORY A: Category A violations require automatic initiation of formal enforcement action when discovered.

*** NOTE:** An asterisk (*) indicates the determination will be made exclusively or primarily by the central office program. Items without an asterisk are criteria primarily used by regional offices or criteria used by both regional and central office program staff.

VIOLATIONS (apply to all programs as applicable):

A1. Failure to comply with any provision of a CA, Commission Order or Court Order [Enforcement Division Section Manager discretion may be used to decide whether or not initiation of formal enforcement action is warranted.] When a regional investigator believes that noncompliance with provisions of a CA, Commission Order or Court Order has occurred, the RD will contact the Enforcement Division Director to determine if a violation of the CA, Commission Order or Court Order should be cited, and if initiation of formal enforcement is required (this applies to enforcement follow-up investigations conducted at the request of the Enforcement Division and investigations initiated by the regional offices).

A2.a For a responsible party (RP) that has/had the same required authorization at another regulated entity, or for which documentation exists (including but not limited to, a voided/rejected permit application or a grandfather status letter) to demonstrate that the RP has been informed that the authorization is required: **Operating without proper authorization.** See B4 for an RP that has ***never*** had the same required authorization at another regulated entity. Exclusions: A2.b-d, A8 (attachment A), A12.a(7)-(14), A12.g(5), A12.h(8), A12.j(3), A12.k(1), A12.p(2), A12.q(1)&(3). See B9 for *constructing* without authorization when operations have not commenced.

A2.b Operating with an expired authorization when an authorization is required. See category B5 for authorizations that require TCEQ technical review/approval **and** the RP: 1) is in compliance with the expired authorization requirements; and 2) submitted the necessary authorization application/renewal at least 90 days before expiration. If "1)" or "2)" is not true, the expired authorization violation is covered by A2.b.

A2.c *Operating* without the proper permit amendment or major modification for a substantive requirement when a permit amendment or major modification is required. (If not substantive requirement or major modification, use B3). (See B9 for *constructing* without authorization when operations have not commenced)

A2.d Operating, without a permit/authorization, a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing and is required to obtain a permit under TEX. HEALTH & SAFETY CODE § 382.0518. (This category applies to the air program only)

A3.a Individual performing a regulated activity without a required occupational license or registration. See A3.b and B7 for facility/operation applicability. See B8 for an individual with an inadequate level of license.

A3.b Regulated entity (including an operations company that has previously been cited for having the same kind of unlicensed/unregistered operator) allowing an unlicensed/unregistered individual to perform duties that should only be performed by a licensed individual. (See A3.a and B8 for an individual's violation)

A4. A violation for which corrective action will take longer than six (6) months to complete, **except for the following violations**:

- An unauthorized discharge from a wastewater collection system which is the result of infiltration/inflow and is not a Category A6 violation [B19.a(1)]
- Inadequate or no waste control facilities for a TCEQ-regulated AFO operating by rule provided a Category A6 or Category A10 violation has not been noted [B19.b(8)]
- Documented ground water contamination, soil contamination, violation of the lower explosive limit for methane gas at a landfill, or methane gas migration at a closed landfill being addressed within the scope of the Voluntary Cleanup Program or through actions in compliance with a Commission rule, permit, or compliance plan directive from the Executive Director, or any other enforceable instrument, provided a Category A6 or A10 violation has not been documented [B11 and B12]
- For a responsible party that has never had the same required permit for another regulated entity: Operating without a permit, provided a Category A6, A8, or A10 violation has not been noted [B4]. This exception applies to permits that involve TCEQ review and/or a comment period that typically requires more than six months to complete and only applies to applicants that are responsive to TCEQ requests for permitting information
- Failure by a community water system to meet a minimum water system capacity requirement [B19.c(9)]
- Failure to obtain approval for plans and specifications and/or well completion data for a transient non-community ground water system [B19.c(1)]
- Category C violations

A5. Disposing of, shipping, receiving, treating, or transporting any solid waste, recyclable material, or a regulated substance at or to an unauthorized facility or site [See B19.e(9) for nuisance dumping]

A6. Unauthorized or noncompliant discharge, release, spill, (including spills responded to in compliance with 30 TAC Ch. 327) or emission which results in a documented effect on human health or safety or a documented serious impact to the environment. [Fish kills that satisfy the "Notice, Response and Cause Demonstrations for Potable Water Discharges" (described on page 25) are not included in this category. If appropriate, enforcement discretion should be applied if the demonstrations on page 25 are met]

A7.a Upon becoming aware of the violation, failure to immediately abate and contain a reportable spill/discharge **and** provide notification required by 30 TAC Ch. 327

A7.b Failure to immediately notify and cooperate fully with the local emergency authorities if a discharge or spill creates an imminent health threat

A8. HPV, SNC or SV violation for which TCEQ has agreed with EPA to take formal enforcement action upon discovery of the violation (Attachment A, pgs. 12-16)

A9.a Documented falsification of data, documents or reports

A9.b TCEQ investigators have right of entry to a TCEQ-regulated entity for investigative purposes under TEX. WATER CODE §§ 12.017 and 26.014 and TEX. HEALTH & SAFETY CODE §§ 361.032 and 382.015. Denial of entry or impeding an investigation (e.g., not allowing an investigator to take photos) is not a violation of these statutes, however, the violations that may be documented once entry is gained should be reviewed for formal enforcement on a case-by-case basis. **Consult with the applicable Area Director for concurrence with enforcement determination.**

A9.c Failure to submit/maintain required data, documents, reports, or notifications or monitor, and the violation results in substantial interference with the TCEQ's ability to perform regulatory oversight and/or determine compliance status. This criterion applies when it reasonable to assert that the absence of data/records/reports/notifications/monitoring prevents documentation of a category A violation. Ex: failure to maintain required production records to prove eligibility for a claimed PBR. **Consult with the applicable Area Director for concurrence that this criterion has been met.** See B1 and B3 if absence of data/records/reports/notifications/monitoring prevents documentation of a possible category B violation.

A10. Violation(s) not otherwise listed in Category A in which exposure of contaminants to the air, water or land (a) is adversely affecting or has adversely affected human health and safety or is causing or has caused a serious impact to the environment (such as a fish kill or a nuisance with a serious environmental and/or human health impact), or (b) will adversely affect human health and safety or will cause a serious impact to the environment unless immediate actions are taken.

A11. Complete failure to provide required financial assurance mechanism or possessing a financial assurance mechanism with gross deficiencies

A12. Program specific violations as listed below. These are violations which either meet the general definition in Category A10 or have been determined to be critical to program integrity. Any other program specific violations not on this list must meet the definition in Category A10 to be handled as a Category A violation.

a. Water Quality Program (excluding Permitted CAFOs) (See Page 4 for CAs for Regionalization)

(1) Any unauthorized discharge by a sludge/septage transporter, excluding a minor leak

(2)* For a TPDES non-major: Self-reported effluent violations that meet EPA referral criteria

(3) For a land application facility: Self-monitored effluent violations that meet EPA referral criteria

(4)* For a major facility: Self-reported effluent violations which meet established EPA referral criteria

(5) Improper operation and maintenance of a wastewater treatment plant which results in serious stream degradation due to substantial accumulation of solids in the receiving stream

(6) Improper operation and maintenance of a wastewater treatment plant which results in the discharge of substantial toxic or organic loading to the receiving stream

(7) Failure to obtain approval of an Edwards Aquifer pollution protection plan (which includes contributing zone plans) prior to initiating construction

(8) Upon discovery of a sensitive feature (defined in 30 TAC Ch. 213) during construction, replacement or rehabilitation, failure to immediately suspend activities and notify the appropriate TCEQ regional office

(9) Failure to maintain flow to a naturally-occurring, sensitive feature identified in a geologic assessment, executive director review of Edwards Aquifer Pollution Abatement Plans, or during excavation, blasting, or construction related activities conducted in the regulated zones of the Edwards Aquifer. [This criterion applies to construction related or post construction related activities and does not apply to authorized activities related to water rights.]

(10) Failure to provide/implement/maintain BMPs and measures to prevent pollutants from entering sensitive features located within the Edwards Aquifer Recharge Zone

(11) John Graves Scenic Riverway Only: Discharging without authorization

(12) John Graves Scenic Riverway Only: Operating a quarry within 200 feet of water body in a water quality protection area

(13) John Graves Scenic Riverway Only: Operating a quarry within 200 to 1,500 feet of a water body in a water quality protection area without obtaining authorization through an individual permit as required by 30 TAC Ch. 311, Subchapter H

(14) John Graves Scenic Riverway Only: Expanding existing quarry operations within 1,500 feet of a water body within a water quality protection area without obtaining an individual permit as required by 30 TAC Ch. 311, Subchapter H

b. Permitted CAFOs

(1) Failure to construct waste control facilities according to design specifications

(2) Failure to contain a discharge as a result of *less* than a 100-year rainfall event at a new source swine, veal, or poultry CAFO.

(3) through (6) below are for Bosque Segments 1226 and 1255 Only

(3) Failure to provide an RCS necessary to prevent overflow resulting from statistically-determined probability overflow resulting in a discharge frequency of no more than once in 25 years

(4) Failure to de-water to accommodate the 25-year, 10-day rainfall event (effective upon the date established by the individual permit)

(5) Failure to develop and implement a certified NMP on or before December 31, 2006

(6) Failure to apply manure, litter or wastewater according to an NMP or NUP such that it results in contaminated runoff from an LMU

(7) through (10) below are for the North Texas DOPA Counties (Bosque, Comanche, Erath, Johnson, and Hamilton)

(7) Failure to notify the executive director and regional office of a discharge from an RCS or LMU

(8) Application of manure, litter, or wastewater on an application field with a soil analysis of >200 ppm phosphorus without an NMP or NUP

(9) Operating above the authorized head count

(10) Any unauthorized discharge

c. TSSWCB-regulated AFOs: Inadequate or no waste control facilities for an AFO that is referred to TCEQ by the TSSWCB for enforcement action

d. Public Water Supply (See Page 4 for CAs for Regionalization)

(1) Failure to obtain approval for plans and specifications for a surface water treatment plant

(2) Failure to provide minimum required treatment for surface water or GUI, as required by 30 TAC §290.42

(3) Failure to provide disinfection equipment to maintain the required minimum disinfection residual

(4) Failure to issue a boil water notice, within 24 hours, as required by 30 TAC Ch. 290

(5) Second occurrence of low pressure (<20 psi)

(6) Second occurrence of an outage for the same cause when the cause was preventable by proper operation and maintenance

(7)* Failure to provide required treatment for a spring or GUI following written notification from the ED

(8)* Violation of any primary chemical MCL

(9)* Exceeding the short term acceptable risk level for a given chemical/radiological contaminant other than lead (Phase 2 and 5)

(10)* Failure to monitor/report the results of any regulated chemical/radiological contaminant other than lead for 2 consecutive compliance periods

(11)* Failure to submit lead and copper samples for any two consecutive 6-month sample periods

(12)* Failure to submit lead and copper water quality parameter results for any two consecutive 6-month sample periods

(13)* Failure to conduct corrosion control study 6 months after due date

(14)* Failure to conduct bacteriological monitoring for any 6 months in a 12 consecutive month period

(15) Greater than 50% deficiency of Supply Requirements as defined in 30 TAC § 290.45

(16) Failure, by the PWS owner that de-activated the PWS under review, to provide immediate, written notification to the Commission of system reactivation-as defined in 30 TAC § 290.38

(17)* Refusal to participate in a third-party Comprehensive Performance Evaluation as required by 30 TAC § 290.111

(18)* Significant failure to comply with the requirements of a Corrective Action Plan that resulted from a required third-party Comprehensive Performance Evaluation per 30 TAC § 290.111(i)(7)

e. Industrial and Hazardous Waste

(1) Failure to have adequate (rule-required) secondary containment for hazardous waste tank systems

(2) Failure to properly close a solid waste management unit

(3) Failure to implement required procedures in a response plan during an emergency

(4) Proven dilution of any restricted waste or the residual from treatment of any restricted waste as a substitute for treatment that is not excluded by the land disposal restriction requirements in 40 CFR Part 268

(5) Failure to remove land disposal restricted wastes within the time frame specified in a permit or the land disposal restriction requirements in 40 CFR Part 268

(6) Documented failure of the Automatic Waste Feed Cut-off System (AWFCO) for a permitted thermal destruction device [such as a Boiler/Industrial Furnace (BIF), or incinerator]

(7) Failure to determine and certify required operating limits during a compliance test or trial burn

(8) Failure to comply with BIF, incinerator, or permitted miscellaneous unit operating parameters set by permit, compliance test, or certification of compliance

(9) For Subpart AA, BB and/or CC Facilities only: Failure to establish a leak detection and repair program (LDAR) AND failure to control emissions from components used to manage hazardous waste exhibiting the characteristic of toxicity

(10) For Subpart AA, BB and/or CC Facilities only: Failure to establish an inspection and monitoring program of air emission control

equipment for hazardous waste management units (e.g. process vents, equipment leaks, tanks, surface impoundment, containers). See A9.c for failure to maintain records demonstrating compliance for the inspection and monitoring program

(11) For Subpart AA, BB and/or CC Facilities only: Failure to prevent open-ended lines (OELs) in hazardous waste service AND the number of OELs is ≥15% of the total number of potential OELs in hazardous waste service within the unit under review. (If the number of OELs is <15%, see B19.d.(6) or C11, for the category that applies)

f. Underground Injection Control

(1) Documented disposal of an unauthorized waste into an injection well

(2) Operation of an injection well which fails mechanical integrity test

g. Municipal Solid Waste (See Page 4 for CAs for Regionalization)

(1) Failure to maintain a scrap tire storage site so that all areas can be reached by fire-fighting equipment and/or fire-fighting personnel

(2) Failure to maintain adequate fire-fighting equipment on-site as required at a scrap tire storage site

(3) Violation of any used oil prohibition specified in 40 CFR Part 279.12 and 30 TAC §324.4

(4) Failure to treat medical waste by an approved method

(5) Failure by an owner/operator of a facility involved in recycling, processing, storage and/or disposal of brush, clean wood, yard waste, vegetative material or mixed municipal solid waste containing combustible materials to submit a Notice of Intent to Recycle or obtain proper authorization via registration or permit, as required

(6) Failure by an owner/operator of a facility that manages combustible materials to have a fire prevention and suppression plan *and/or* failure to make that plan available to the local fire prevention authority having jurisdiction over the facility for review and coordination

(7) Unauthorized storage (see A5 for unauthorized disposal) of combustible landscape-related materials (brush, clean wood, yard waste, vegetative material or mixed municipal solid waste containing combustible materials). *This criterion is intended to address authorized and unauthorized facilities, but is primarily intended to address authorized facilities not meeting turnover requirements*

h. Petroleum Storage Tanks

(1) Failure to investigate a suspected release

(2) Failure to have an operating Stage I vapor recovery system

(3) Failure to have an operating Stage II vapor recovery system

(4) Failure to verify the proper operation of Stage II equipment by testing in accordance with 30 TAC § 115.245(2) ≥60 days late

(5) Failure to provide corrosion protection (Failure to produce records within 48 business hours demonstrating compliance status with 30 TAC § 334.49 will remove eligibility for a Field Citation and should be addressed through the traditional enforcement process)

(6) Failure to provide release detection. (Failure to produce records within 48 business hours demonstrating compliance status with 30 TAC § 334.50 will remove eligibility for a Field Citation and should be addressed through the traditional enforcement process). See B19.f(4) for incorrect implementation of a release detection method that does not substantially undermine the applicable release detection method

(7) Failure to provide spill and overfill protection. (Failure to produce records within 48 business hours demonstrating compliance status with 30 TAC § 334.51 will remove eligibility for a Field Citation and should be addressed through the traditional enforcement process)

(8) Failure to submit UST Registration and Self-Certification form (initial and/or renewal) in accordance with 30 TAC § 334.8 [Except for late certifications, submitted prior to an investigation, which should be handled as Category B19.f(5)]

(9) Failure to possess a valid TCEQ Delivery Certificate prior to receiving fuel

i. Air

(1) A release of vinyl chloride of 100 lbs or more per incident

(2) Any violation of 30 TAC §114.20, Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles, on a post-1979 vehicle for which any of the following major tampering actions has been confirmed:

(A) Catalytic converter is missing;

(B) Air injection system components (except the belt) are missing, or the pump is inoperable;

(C) Exhaust gas re-circulation valve is missing or made inoperable (excluding disconnected or missing vacuum lines); and/or

(D) Evaporative control system is missing (this includes two or more missing vacuum/vapor lines but not lines which are disconnected)

(3)* Any violation of vehicle emissions inspection requirements specified in 30 TAC §114.50(d)(2) which is referred to TCEQ by the Department of Public Safety for enforcement

(4) Any violation of El Paso County oxygenated fuels requirements specified in 30 TAC §114.100

(5) Any violation of El Paso County Reid Vapor Pressure requirements specified in 30 TAC §115.252

(6) A significant deviation from a permit and/or permit application representations (when using this category, ensure the "significance" of the deviation is thoroughly explained in the investigation report.)

(7) Failure to submit a Title V deviation report 60 days after it was due for a major source. See the deviation reporting timeline on page 13. Note: If a deviation report was submitted without information that was previously submitted in another report to the TCEQ and/or EPA, (e.g., an emission event or NSPS report), then that incomplete deviation report violation is a B3, and this same failure for a minor Title V source is also a B3. This criterion is intended to encompass substantially inadequate/inaccurate deviation report submittals.

(8) Complete failure to report an emissions event (as in an upset, or unscheduled maintenance, start-up, or shut-down activity that results in the unauthorized emissions of air contaminants from an emissions point), as required by 30 TAC Ch. 101. The underlying emissions event itself is also subject to formal enforcement. This criterion does not apply where an owner or operator reports an emissions event, and the report was incomplete, inaccurate, or untimely unless, the owner or operator knowingly or intentionally falsified the information in the report [TEX. HEALTH & SAFETY CODE§ 382.0216(i)]

(9) Emission limit/standard violation determined to be associated with an excessive emissions event under 30 TAC Ch. 101 Subchapter F, including emissions events that recur because an owner or operator fails to take corrective action as required and within the time specified in an approved Corrective Action Plan (CAP)

(10) Failure to obtain commission approval of a CAP no later than 120 days after the commission receives the first CAP submission

(11)* Failure to submit a complete and accurate emissions inventory in accordance with 30 TAC §101.10 [Note: If emissions inventory is > 30 but ≤ 90 days late, B19.g.(3) applies. If emissions inventory is ≤ 30 days late, C9 applies]

(12) Failure of a Leak Detection and Repair (LDAR) program resulting in under-controlled annualized emissions exceeding a major source, PSD review, or non-attainment review threshold. This includes LDAR audits that result in a rejection of the company claimed leaker rate and LDAR program emissions reductions relied on by the regulated entity to net out of NSR or PSD review, notwithstanding that the annualized emissions may be less than the threshold values noted above

(13) LDAR Program: Failure to prevent open-ended lines in regular Volatile Organic Compound (VOC) Service AND the number of open-ended lines is ≥15% of the total number of potential open-ended lines in regular VOC service within the unit under review [Hazardous Air Pollutant (HAP) service lines at this percentage should be treated as an HPV under General Criterion 2]

(14) Failure to comply with a site emission cap under a Flexible New Source Review Permit based on records showing excess emissions (but unrelated to emission events) and after taking into account any credits at that permitted regulated entity as authorized by applicable regulations

(15) Failure to monitor > 10% of the total number of components subject to fugitive monitoring requirements in the Title V permit under review, and HPV General Criterion (c)(1)(G) will apply. [Failure to monitor ≥5% but ≤10% of the total number of components, see B19.g(9), if <5%, C7 applies]

j. Water Rights

(1) Reported or documented use or impoundment of state water in excess of authorized amounts during exceptional or extreme drought conditions as indicated by the U.S Drought Monitor or at any time for the Rio Grande Watermaster Program

(2) Breaking, tampering with, or mutilating any seal or other device used to enforce orders of the Commission, ED, Court or Watermaster

(3) Impounding, diverting, or using state water without the required permit

k. On-site Sewage Facilities (OSSF)

(1) Installer beginning construction of an OSSF before an authorization to construct (ATC) is issued

(2) Failure to obtain approval of planning materials for a subdivision or a development utilizing OSSF systems prior to subdividing the property

(3) Performing any activity prohibited by 30 TAC § 285.50(g)

l. Approved Pretreatment Programs - TPDES POTW as the Control Authority

(1) Failure to enforce as required by the approved pretreatment program against a discharge to a POTW which results in interference with the treatment process or sludge quality or pass through of pollutants that causes a Category A6 or Category A10 violation

(2) Failure to enforce as required by the approved pretreatment program against an industrial user that does not meet a compliance schedule for categorical standards within 90 days of the required due date

(3) Complete failure to investigate instances of noncompliance by dischargers to a POTW

m. Significant IUs Discharging to TPDES POTWs without Approved Pretreatment Programs - TCEQ as the Control Authority

(1) Discharge to a POTW which results in interference with the treatment process or sludge quality or pass through of pollutants that causes a Category A6 or Category A10 violation

(2) Failure to meet a compliance schedule for categorical standards within 90 days of the required due date

n. Beneficial use of non-industrial wastewater sludge

(1)* Application of sludge which does not meet class B pathogen-reduction requirements, to a registered beneficial use site

(2) Application of sludge which does not meet class B vector-attraction reduction requirements, to a registered beneficial use site

o. Sludge Surface Disposal Sites

(1) Disposal of sludge which does not meet pathogen reduction requirements

(2) Disposal of sludge which does not meet vector attraction reduction requirement

(3) Failure to maintain setback requirements required for metals concentrations

p. *Landscape Irrigation:

(1) License, certification, or registration holder that authorizes or allows use of their license, seal or rubber stamp to anyone else to act as licensed, certified, or registered operator

(2) A licensed irrigator fails to obtain a permit prior to installing a landscape irrigation system

q. Dry Cleaners

(1) The sale, delivery, distribution, or purchase of perchloroethylene without a valid/proper certificate

(2) *Purchasing* dry cleaning solvent [as defined in Tex. Health & Safety Code §374.001(8)] from a distributor that does not possess a valid, current distributor registration issued by the TCEQ **and** the facility is operating with an expired/invalid/no registration **or** has a (current/past) registration at another site (see B19.s when another site has never been registered)

(3) The sale, delivery, or distribution of any dry cleaning solvent: 1) to a dry cleaning facility or drop station that does not possess a valid, current registration certificate issued by the TCEQ; and/or 2) without a valid, current distributor registration issued by the TCEQ.

(4) Failure to install a dike or other secondary containment around a dry cleaner unit, solvent/waste solvent storage area or wastewater storage unit

ATTACHMENT A
CATEGORY A VIOLATIONS FOR WHICH TCEQ HAS AGREED WITH EPA TO TAKE FORMAL ENFORCEMENT ACTION

The following violations are SNC or SV violations for which TCEQ has agreed with EPA to take formal enforcement action upon discovery of the violation (Category A8).

a. Public Water Supply

(1)* Surface water treatment rule (filtered systems)

(A) 4 or more treatment technique violations in any 12 consecutive months

(B) A combination of 6 violations including treatment technique violations and major monitoring/reporting violations in any 12 consecutive months

(C) 10 or more combined monitoring or treatment technique violations in any 12 consecutive months

(2) * Total coliform rule systems on monthly monitoring

(A) 4 or more combined monthly MCL or major monitoring (routine, repeat, raw, or triggered source sample) violations in any 12 consecutive months

(B) 6 or more combined MCL or major monitoring or reporting (routine, repeat, raw, or triggered source sample) violations in any 12 consecutive months

(C) 10 or more combined MCL or monitoring/reporting violations (routine, repeat, raw, or triggered source sample) in any 12 consecutive months

(D) One acute MCL and any other coliform MCL or major monitoring (routine, repeat, raw, or triggered source sample) violations in any 12 consecutive months

(3) * Chemical/radiological violations (other than lead)

(A) Exceeding the unreasonable risk to health level for a given contaminant (15 mg/l for nitrates)

(B) Exceeding the 10^{-4} risk level for carcinogens

(C) Exceeding the MCL but not the unreasonable risk to health level for a period of greater than 7 years

(D) Two or more major monitoring violations consecutively if the monitoring period is less than annual (nitrates)

(E) One major monitoring violation if the monitoring period is annual or greater

(4) * Lead and copper

(A) For initial monitoring, a system that does not correct a violation within:

(i) 3 months for large systems;
(ii) 6 months for medium systems; or
(iii) 12 months for small systems.

(B) Systems with optimal corrosion control treatment installation violation and a 90th percentile lead concentration $\geq$30 ug/l

(C) Systems with source water treatment violations and a 90th percentile lead concentration $\geq$30 ug/l

(D) Systems with public education violations and a 90th percentile lead concentration $\geq$30 ug/l

(5) Violation of a state formal enforcement action

(6) * Providing a Consumer Confidence Report (CCR) to customers six months or more late OR providing a CCR that is significantly deficient

b. Industrial and Hazardous Waste

(1) RCRA facilities which have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; are chronic or recalcitrant violators; or deviate substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements

Note: Chronic or recalcitrant violators and substantial deviations are addressed by the application of the criteria in this document. If a facility is found to be in violation but is not designated a SNC, then it is designated a SV. An informal enforcement response is the minimally appropriate enforcement response for all SVs but the implementing agency can choose to take a formal enforcement response as it deems appropriate. An informal enforcement response is a non-formal action that notifies the violator of its violations (NOV). If the violator does not come into compliance within 240 days of Day Zero (investigation date), then the implementing agency should re-classify the facility as a SNC, if appropriate (based on management concurrence), in accordance with EPA's Response Time Guidelines.

c. Air

Note: The High Priority Violation (HPV) criteria should be applied to violations discovered on or after September 1, 1999 that occur at a major source **and** are related to a pollutant for which the source is considered a major. Also, the HPV criteria apply to violations that affect a minor source status at a synthetic minor source. A source only needs to have one HPV to be placed on the HPVL (High Priority Violation List); therefore, it is not necessary to determine if every violation at a particular facility qualifies as an HPV.

(1) High Priority Violations - General Criteria

(A) Failure to obtain a PSD permit (and/or to install BACT), an NSR permit (and/or to install LAER or obtain offsets) and/or a permit for a major modification of either

(B) Violation of an air toxics requirement (i.e., NESHAP, MACT) that either results in excess emissions or violates operating parameter restrictions

(C) Violation by a synthetic minor of an emission limit or permit condition that affects the source's PSD, NSR or Title V status (i.e., failure to comply with permit restrictions that limit the source's potential emissions below the appropriate thresholds; refers only to pollutants for which the source is a synthetic minor; not necessary for a source's actual emissions to exceed the NSR/PSD/Title V thresholds)

(D) Violation of any substantive term of any local, state or federal order, consent decree or administrative order

(E) Substantial violation of the source's Title V certification obligations (e.g., submitting an annual compliance certification 30 days after it was due. (See Annual Compliance Certification timeline below)

(F) Substantial violation of the source's obligation to submit a Title V permit application (i.e., failure to submit a permit application within 60 days of the applicable deadline)

(G) Violations that involve testing, monitoring, record keeping or reporting that substantially interfere with enforcement or determining the source's compliance with applicable emission limits

(H) Violation of an allowable emission limit detected during a reference method stack test

(I) Clean Air Act (CAA) violations by chronic or recalcitrant violators

Note: Chronic or recalcitrant violators are addressed by the application of the criteria in this document.

(J) Substantial violation of Clean Air Act Section 112(r) requirements (for permitting authorities that are not implementing agencies under Section 112(r) program, limited to source's failure to submit Section 112(r) risk management plan)

(2) High Priority Violation - Matrix Criteria - See Table 1.1

(A) Violation of allowable emissions limitations
- (i) Reference method stack testing, or
- (ii) Coatings analysis, fuel samples or other process material sampling

(B) Violation of parameter emissions limitations
- (i) Continuous/periodic parameter monitoring

(C) Violation of applicable standards (non-opacity)
- (i) Continuous emissions monitoring (where the CEM is certified under federal performance specifications)

(D) Violation of applicable standards (opacity)

(3) High Priority Violation - Discretionary: Violation of regulations not taken into account by the HPV policy that warrants high enforcement priority (This should be a mutual agreement between TCEQ and EPA)

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ANNUAL COMPLIANCE CERTIFICATION TIMELINE

	Compliance Period Ends		ACC due		HPV	
Day	**0**	No violation	**30**	NOV	**60**	NOE

Day 0-30 = No Violation
Day 31-59 = NOV
Day 60+ = HPV/NOE

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DEVIATION REPORT TIMELINE

	Reporting Period Ends		Dev. Report due		Category A	
Day	**0**	No violation	**30**	NOV (B3)	**90**	NOE

Day 0-30 = No Violation
Day 31-89 = NOV
Day 90+ = NOE

TABLE 1.1

VIOLATION	METHOD OF DETECTION	STANDARD	SUPPLEMENTAL SIGNIFICANT THRESHOLD [1]	% IN EXCESS OF REFERENCE LIMIT/PARAMETER		% OF TIME IN EXCESS OF REFERENCE LIMIT
Violation of Allowable Emissions Limitations	Stack Testing	Any applicable requirement		Any violation of the applicable standard		N/A
	Coatings analysis, fuel samples, other process materials sampling or raw/process materials usage reports	Any applicable requirement	CO 23 lb/hr NOx 9 lb/hr SO2 9 lb/hr VOC 9 lb/hr PM 6 lb/hr PM10 3 lb/hr	>15% of the applicable emission limitation or the supplemental significant threshold (whichever is more stringent)		N/A
Violation of parameter limits where the parameter is a direct surrogate for an emissions limitation	Continuous/Periodic Parameter Monitoring (includes indicators of control device performance)	Any applicable requirement		>5% of the applicable parameter limit	FOR	>3% of the operating time during the reporting period
					OR	any exceedance of the parameter limit for >50% of the operating time during the reporting period[3]
Violation of applicable non-opacity standard	Continuous Emissions Monitoring (where the CEM is certified under federal performance specifications)	≤24 hour averaging period (for example, one hour or three hour blocks)	CO 23 lb/hr NOx 9 lb/hr SO2 9 lb/hr VOC 9 lb/hr	15% of the applicable standard or, the supplemental significant threshold, (whichever is more stringent)	FOR	>5% of the operating time during the reporting period[4 6]
					OR	any exceedance of the reference limit for >50% of the operating time during the reporting period[3]
	Continuous Emissions Monitoring (where the CEM is certified under federal performance specifications)	> 24 hour averaging period		Any violation of the applicable standard		N/A
Violation of applicable opacity standard [2]	Continuous Opacity Monitoring	0-20% opacity >20% opacity		>5% opacity over the limit >10% opacity over the limit	FOR	>5% of the operating time during the reporting period[4 6]
	Method 9 VE Readings	0-20% opacity		>50% over limit	AND	Any violation of SIP/NSPS limits[5]
		>20% opacity		>25% over limit		

Table Footnotes:

1. Supplemental Significant Threshold (SST) is based on PSD significant levels. The SST value is the lb/hr emission rate at 8760 hours which would result in PSD review.
2. Based on the applicable averaging period (e.g. 6-minute block averages).
3. For the first reporting period. If exceedances occur for more than 25% of the operating time during the first reporting period evaluated, and if such exceedances continue during the subsequent consecutive reporting period, the exceedances will be considered high priority violations for both reporting periods if the percent of time in excess exceeds 25% of the operating time during the second reporting period.
4. For the first reporting period. If exceedances occur for more than 3% of the operating time during the first reporting period evaluated, and if such exceedances continue during the subsequent consecutive reporting period, the exceedances will be considered high priority violations for both reporting periods if the percent of time in excess exceeds 3% of the operating time during the second reporting period.
5. Unless the state or local agency concludes that 1) the cause of the violation has been corrected within 30 days and the source has returned to compliance, or 2) the source was in compliance with an applicable mass limit at the time the Method 9 visual reading was taken.
6. This would not include any federally approved exempt period (e.g., startup/shutdown/malfunction 40 CFR 60.11), since these would not be violations.

NOTE: Emission Events (EEs) & Matrix Criterion 2 – while EEs are not authorized by operating permits, using an operating limit to determine the significance of emissions released during an EE is the basis for HPV determinations (when an affirmative defense has not been met). Specifically, EEs that exceed 15% of a permit limit (for a contaminant that the entity is a major source) is an HPV (July 1, 2004 HPV-EE memo). For flexible permits that do not have short-term limits, use the permit application representations that are a relevant comparison to the EE under review.

d. TPDES (Applies as SNC criteria for major facilities only)

(1)* Effluent violations of monthly average limits for a major (for pollutants listed in Appendix A of the EPA's General Design for SNC Redefinition Enhancement revised December 16, 1996)

(A) Technical review criteria violations

(i) 40% exceedance of a monthly average effluent limit for a specific conventional pollutant (listed in Appendix A - Part 1) at a given discharge point for any two or more months during the two consecutive quarter review period, or

(ii) 20% exceedance of a monthly average effluent limit for a specific toxic pollutant (listed in Appendix A - Part 2) at a given discharge point for any two or more months during the two consecutive quarter review period

(B) Chronic violations

(i) Violations of any monthly average effluent limit at a given pipe for a specific conventional or toxic pollutant (listed in Appendix A - Parts 1 and 2) by any amount for any four or more month during the two consecutive quarter review period

(2)* Effluent violations of non-monthly average limits for a major (for pollutants listed in Appendix A of the EPA's General Design for SNC Redefinition Enhancement revised December 16, 1996)

(A) Technical review criteria violations and chronic violations for non-monthly average effluent limits are the same as for monthly average effluent limits as described in provision d.(1) above. However, the following caveat also applies:

When a pollutant has both a monthly average and a non-monthly average effluent limit, a facility is only considered to be in SNC for the non-monthly average effluent limit if the monthly average is also violated to some degree (but less than SNC).

Note: Non-monthly average SNC applies to all maximum and most average (other than monthly) statistical base codes (see Appendix B of the EPA's General Design for SNC Redefinition Enhancement revised December 16, 1996)

(3) Other effluent violations

(A) Effluent violation that causes or has the potential to cause a water quality or human health problem

Note: These types of violations are addressed by the application of the criteria in this document

(4) Non-effluent violations

(A) Unauthorized bypass, un-permitted discharge, or pass through of pollutants which causes or has the potential to cause a water quality problem (e.g. fish kill, oil sheen) or health problems (e.g. beach closing, fish ban, or other restrictions of beneficial uses)
Note: These types of violations are addressed by the application of the criteria in this document

(B) Failure by a POTW to implement or enforce an approved pretreatment program
Note: These types of violations are addressed by the application of the criteria in this document.

(5) Permit schedule violations

(A) Failure to start construction, end construction, or attain final compliance within 90 days of the scheduled date
(B) Pretreatment schedule milestone missed by 90 days or more

Note: Formal enforcement is not required for these violations if the violation can be resolved within 90 days of appearing on a selective Quarterly Noncompliance Report (QNCR) or within 90 days of an NOV being sent to the regulated entity for a pretreatment schedule milestone violation not tracked on the selective QNCR

(6)* Permit reporting violations

(A) Discharge monitoring report, POTW pretreatment performance report (annual report), or compliance schedule final report of progress (i.e. whether final compliance has been attained) that is not submitted at all or is submitted 30 or more days late

Note: Formal enforcement is not required for these violations if the violation can be resolved within 90 days of appearing on a selective QNCR.

(7) Enforcement Order violations

(A) Judicial Order

(i) Any violation of a Judicial Order

(B) Administrative Order

(i) Violation of an effluent limit (or other water quality/health impact) established in an Administrative Order; however, when an Administrative Order limit is as stringent as an applicable permit limit, the facility is considered in SNC only if the permit effluent SNC criteria, set out in numbers d.(1) through (3) above, are met

(ii) Unauthorized bypass, un-permitted discharge or pass-through of pollutants which causes or has the potential to cause a water quality problem or human health problem

(iii) Schedule or reporting violation listed in numbers d.(5) and (6)

(iv) Violation of a narrative requirement or any other violation of concern to the director

e. Underground Injection Control (UIC)

For the UIC program, significant noncompliance means:

(1) For an owner/operator of a Class I well, violations as described in 40 CFR § 144.8(a) and on EPA Form 7520-4. Minor infractions (e.g., late paperwork, absence of wellhead signs) do not necessarily mean significant noncompliance, unless there is a pattern of repeated, late reporting.

(2) The following violations by Class I UIC well owners and/or operators include:

(A) Contamination of an underground source of drinking water ("USDW");
(B) Injection of unauthorized fluid(s);
(C) Injection into unauthorized zones;
(D) Failure to cease injection after loss of mechanical integrity detected;
(E) Failure to comply with corrective action requirements;
(F) Failure to operate automatic shutdown system;
(G) Failure to operate automatic warning system;
(H) Unauthorized plugging and abandonment;
(I) Violation of Formal Order;
(J) Knowing submission of false information;
(K) Violations involving loss of mechanical integrity;
(L) Violations of maximum injection pressure;
(M) Failure to install and/or operate injection pressure and annulus pressure monitoring systems or other monitoring systems, required by permit or rule;
(N) Failure to maintain required annulus pressure; and
(O) Failure to submit monthly, quarterly, or other reports when original monitoring data have not been obtained and/or retained

(3) For an owner/operator of a Class II, III, or V well, any unauthorized emplacement of fluids (where formal authorization is required

(4) For an owner/operator of a Class II, III or V well, operation without mechanical integrity that causes the movement of fluid outside the authorized zone of injection if such movement may have the potential for endangering an USDW judged according to the following criteria:

(A) The characteristics of the fluid release;

(B) The quantity of fluid released; and

(C) The relationship of the point of release to any USDW. Potential endangerment exists in cases where the release occurs above or into an USDW; or the release occurs below an USDW, but the hydrogeology is such that fluids may be forced upward into the USDW.

(5) For an owner/operator of a Class II, III or V well, operation at an injection pressure that exceeds the permitted or authorized injection pressure & causes the movement of fluid outside the authorized zone of injection if such movement may have the potential for endangering a USDW. Potential danger exists if:

(A) Pressure in the tubingless well exceeds the mechanical integrity test pressure of the casting; or
(B) Pressure exceeds the fracture pressure of the confining zone and the zone immediately above the confining zone is an USDW

(6) For an owner/operator of a Class II, III, or V well, failure to properly plug and abandon an injection well in any manner other than what is authorized;

(7) For an owner/operator of a Class II, III, or V well, any violation of a formal enforcement action, including an administrative or judicial order, consent agreement, judgment, or equivalent State action;

(8) For an owner/operator of a Class II, III, or V well, the knowing submission or use of any false information in a permit application, periodic report, or special request for information about a well; and

(9) For an owner/operator of a Class II, III, or V well, any other violation that the Director considers significant.

CATEGORY B VIOLATIONS

CATEGORY B: For Category B violations, a responsible party (RP) will first be given an opportunity to come into compliance via NOV. The NOV will specify a compliance due date, solicit a compliance schedule, and/or acknowledge violations have been resolved.

* NOTE: An asterisk (*) indicates the compliance determination will be made exclusively or primarily by a central office program. Items without an asterisk are criteria primarily used by regional offices or criteria used by both regional and central office program staff.

COMPLIANCE TIME FRAME: The recommended time frames to correct a Category B violation after notification are shown in parentheses after the violation. Where a specific time frame is not designated, the following codes are used: **TD** = TCEQ Deadline established on a case-by-case basis; and **SS** = Solicit Schedule from entity

Time frames for corrective action which are listed for Category B violations should be measured from the date of notification of the violation, unless otherwise noted. The time frame specified in parenthesis is the recommended maximum time that should routinely be given to resolve the violation. A shorter time frame may be imposed on a case-by-case basis if there is a need for quicker action in order to maximize protection of human health and safety or the environment.

NOV DUE DATE EXTENSIONS: An extension of time may be granted by a Section Manager, but the total time to achieve compliance (including any extra time given for an extension) may not exceed six months. This six-month time frame is in accordance with the requirements of Category A4. An exception to this timeframe is allowed if the violation is one of the exclusions specified in Category A4 or if the applicable RD determines that the situation warrants a compliance time frame longer than 6 months. Refer to the EIC Variance process on page 5 of this document for extensions beyond six months.

Category B violation scenarios that warrant formal enforcement:

1A) **Repeat B for stationary regulated entities:** A Category B violation was documented at the regulated entity during two consecutive investigations (not including the investigation to close an NOV) within the most recent 5-year period ("repeated"), unless otherwise noted (e.g., B19.a.9). When segmented investigations (not multimedia) are conducted, only consider consecutively reviewed compliance requirements (cross-over in scope of review from one investigation to another) when determining if a B violation has been repeated consecutively. Also, when a statute or rule which does not identify specific requirements is cited [e.g., TWC §26.121(a), 30 TAC §§116.115(c) and 305.125(1)], ensure there is a connection between two, consecutive category B violations, such as a same/similar root cause or location, before determining that the second occurrence is a repeat B. Air Program: root cause of monitoring violations and/or considerable improvements in monitoring programs should be considered when determining if a repeat B has occurred. Dissimilar root causes and considerable improvements in monitoring (either one) are reasons to make a non-repeat B determination. The intent of formally-enforcing repeated category B violations is to elevate a *pattern* of noncompliance, not solely based on the same rule citation.

1B) **Repeat B for portable/temporary regulated entities** (including but not limited to: MSW mobile medical waste treatment units, concrete batch plants, asphalt plants, rock & concrete crushers, landscape irrigators**, trench burners, sludge transporters, OSSF installers, but does not apply to stationary regulated entities that move units or pieces of equipment within a permanent location): A repeat B occurs when the same person (addressee) receives an NOV for the same category B violation during two investigations at different locations (stationary criteria still apply) and less than one year elapsed between the violation events. **If the same landscape irrigator receives an NOV for the same violation within an 18-month period, the second, same B violation warrants formal enforcement;

2) A respondent did not correct a B violation within the established time frame given in an NOV or in an exit interview form when short compliance time frames are necessary. Specifically, when a short compliance time frame (example: 24 hours for a chlorine residual violation), does not allow for an NOV to be mailed (before the necessary compliance time frame has expired), the responsible party is subject to formal enforcement after the time frame expires if the violation has not been corrected, even without an NOV, provided the compliance time frame has been successfully communicated to the regulated entity's RP(s) via exit interview form **and** in person or over the telephone.

3) A Category B violation has escalated to a Category A violation; and/or

4) A respondent fails to answer an NOV after reasonable effort was made to contact the respondent for compliance progress/information and no/inadequate response is received.

Category B violation scenarios that DO NOT warrant formal enforcement:

1) When it has been determined that an entity is compliant with the Ordering Provision for a Category B violation, the subsequent discovery of that same category B violation will be considered the first occurrence in terms of accruing a consecutively-repeated violation (i.e. a repeat B); and

2) The second consecutive occurrence for a violation may only be counted as a repeat if the second investigation occurs **after** the compliance due date given in an NOV or exit interview form (exit interview due dates are only used when a very short compliance timeframe, such as "immediately" or 24 hours, is necessary. Also see # 2 above).

VIOLATIONS (apply to all programs as applicable):

B1. Complete failure to conduct required monitoring or testing, including self-inspections where applicable. **Before using this category, ensure Category A9.c does not apply** (begin correct procedures within 15 days; if not possible to do within 15 days, begin correct procedures at next required event)

B2. Complete failure to conduct waste analyses and/or waste characterization of a waste stream, including but not limited to, hazardous waste determinations and screening procedures for halogens (refutable presumption) (60 days)

B3. Complete failure to submit or maintain required data, documents, notifications, plans or reports, and the violation is not specified in Category A. **Before using this category, ensure the violation does not fall under Category A9.c** (Begin correct procedures within 30 days; if not possible to do within 30 days, begin correct procedures at the next required event; if delinquent material can be produced, submit within 30 days)

B4. For a RP that has *never* had the same required authorization at another regulated entity: Operating without proper authorization as required. (See exceptions listed under A2.a) [Submit individual permit application within 60 days. Submit application/form for all other authorizations within 30 days. Less/more time may be given when deemed appropriate. Comply with time frames for submittal of additional information, if required, to process the application; schedule longer than 6 months allowed by A4 exclusion but see 4th bullet under A4 exclusions for conditions]

B5. Operating with an expired authorization but continuing to operate within the expired authorization requirements **and** any necessary permit application was submitted within 90 days before the authorization expired or the RP submitted the necessary document before the TCEQ documented the expiration violation for authorizations that do not require individual review and approval [See A2.b for ***not*** operating within expired authorization requirements and/or not submitting as described in B5. If the expired authorization requirements are violated after an NOV is issued for a B5 and before the required authorization is obtained, the violation elevates to an A2.b. At such time only allege operating with an expired authorization, because expired authorization requirements are not enforceable]

B6.* Regulated Entity operating without a required CCN (submit a CCN application within 30 days and comply with any time frames for submittal of additional information, if required, to process the application)

B7. Regulated entity (see A3.a/B8 for an Individual) allowing an individual with an inadequate level of occupational license to perform a regulated activity (employ an individual with a proper occupational license/registration within 30 days)

B8. Individual performing a regulated activity with an *inadequate* level of occupational license, including an operator-in-training conducting a portion of his/her duties without direct supervision by a licensed operator. This category does not apply to an unlicensed operator-in-training that has no access to a licensed operator (TD or SS)

B9. ***Construction*** without authorization or notification (See A2.a for ***operating*** without authorization) Note: This criterion does not apply to Stormwater Construction General Permits [B4 or A2.a], OSSF construction [A12.k(1)] or Edwards Aquifer pollution protection plans [A12.a(7)] (cease construction upon notification by TCEQ and refrain from further construction until such time as the required authorization is received and/or required notification is provided)

B10. Documented ground water contamination, soil contamination, violation of the lower explosive limit for methane gas at a landfill, or methane gas migration at a closed landfill where corrective action can be completed within 6 months or less provided a Category A6 or Category A10 violation has not been noted (TD or SS)

B11. Complete failure OR failure to continue to perform the necessary corrective action to address violation of the lower explosive limit for methane gas at a landfill or methane gas migration at a closed landfill within the scope of the Voluntary Cleanup Program or through actions in compliance with a Commission rule, permit, or compliance plan, directive from the Executive Director, or any other enforceable instrument. (TD or SS; schedule longer than 6 months is allowed by the exclusion in Category A4)

B12. Complete failure OR failure to continue to perform the necessary corrective action to address documented ground water contamination and/or soil contamination within the scope of the Voluntary Cleanup Program or through actions in compliance with a Commission rule, permit, or compliance plan, directive from the Executive Director, or any other enforceable instrument. (TD or SS; schedule longer than 6 months is allowed by exclusion in Category A4)

B13. Region-documented violation of an emission or discharge quality or quantity limit noted during a record review or on-site investigation conducted by the region or based on sample data collected by the region, **excluding**: (a) a violation of a secondary drinking water standard [handle as Category C7]; (b) a violation based on self-monitored or self-reported effluent data from a water quality facility [handle as Category B19.a(9)]; and/or (c) a violation of a pH, chlorine residual, or dissolved oxygen limit for a domestic wastewater treatment plant based on region sample data [handle as Category C7] (TD or SS)

Note: if the ***only*** region-documented violation is a secondary drinking water standard, refer the violation in an EAR, so a Compliance Agreement may be developed

B14. Unauthorized discharge, release or emission where corrective action will take less than 6 months to complete and the violation is not a Category A6 or an unauthorized discharge from a wastewater collection system [see Category B19.a(2)] (TD or SS)

B15. Failure to secure a facility, area or site when required (30 days)

B16. Failure to construct or provide monitoring system(s) as required (TD or SS)

B17. Providing a financial assurance mechanism only partially fulfilling rule requirements or failure to provide an updated mechanism meeting rule requirements (30 days)

B18. Violation not otherwise listed in Category B or Category A in which exposure of contaminants to the air, water or land is not known to have affected human health and safety or caused a serious impact to the environment but has the potential to cause such impacts if left unaddressed (TD or SS)

B19. Program-specific violations listed below:

a. Water Quality (excluding TCEQ-regulated AFOs)

(1) Unauthorized discharge from a wastewater collection system where corrective action will take **longer** than 6 months to complete and the violation is not a Category A6 violation (TD or SS; schedule longer than 6 months is allowed by the exclusion in Category A4)
Examples:
- Inflow/infiltration (I/I)
- Undersized plant and/or collection lines

(2) Unauthorized discharges from a wastewater collection system where corrective action will take **less** than 6 months to complete and the violation is not a Category A6 violation. See repeat B directions "1A)" regarding violations of non-specific requirements. (TD or SS)
Examples:
- Manhole overflows at multiple locations or at the same location caused by grease blockages
- Lift station failures at multiple locations or at the same location caused by poor maintenance
- Lift station overflow caused by a power outage
- Line blockage caused by debris, rags in pump impellers, etc.
- Maintenance-related problems

(3) Failure to submit a summary letter describing plans for a domestic wastewater treatment system when required (60 days)

(4) Failure to dispose of sludge in accordance with the required method (30 days)

(5) Failure to provide adequate runoff control measures for accumulated wastewater sludge (14 days)

(6) Failure to comply with required wastewater irrigation application rate (TD or SS)

(7) Failure to implement water protection measures required by an approved water pollution abatement plan for construction activity over the Edwards Aquifer (14 days)

(8) Failure to implement maintenance and corrective action on a permanent storm water structure (14 days)

(9) Region-documented self-monitored or self-reported effluent violations noted during a record review or on-site investigation conducted by the region, provided the violations do not meet MEH criteria for a land disposal facility or a Category A6 or Category A10 violation has not been noted. This excludes violations of a pH, chlorine residual, or dissolved oxygen limit for a domestic wastewater treatment plant which should be handled as Category C7.
Note: For Category B violations under B19.a(9), three written notifications within a 5-year period for violations of the same parameter will be required before formal enforcement action may be initiated. Formal enforcement action is discretionary at the time of the third notification.

b. TCEQ-regulated Animal Feed Operations (AFOs)

(1) Failure to operate the RCS according to the RCS management plan (21 days, weather permitting)

(2) Failure to maintain a visible, permanent pond marker (14 days)

(3) Failure to properly dispose of manure, litter, wastewater, sludge and/or pond solids and all other solid waste materials (30 days)

(4) Failure to maintain applicable buffer zones (30 days)

(5) Failure to uniformly-apply waste into soil within 48 hours when required (48 hours, weather permitting)

(6) Failure to develop and/or implement an adequate PPP when required (60 days)

(7) Failure to provide adequate runoff control measures for waste storage, silage, and/or compost piles (14 days)

(8) Inadequate or no waste control facilities for a TCEQ-regulated AFO operating by rule where a Category A6 or Category A10 violation has not been noted (TD or SS; schedule may exceed 6 months as allowed by the exclusion in Category A4)

(9) Failure to maintain or include a recharge feature certification in the PPP if required (90 days)

(10) Failure to design and construct an RCS for the design rainfall event (60 days)

(11) Failure to properly maintain storage for the design rainfall event (14 days)

(12) Failure to properly dispose of dead animals (TD)

(13) Failure to comply with a NUP or a NMP [if not A 12(b)(4)] (immediately upon the next application)

(14) Failure to install backflow prevention devices (7 days)

(15) Failure to design/maintain earthen pens to ensure good drainage, minimize ponding, and minimize the entrance of uncontaminated storm water to the RCS (TD)

(16) When animals are in pastures, failure to maintain vegetation in the normal growing season for a total of 45 days or more in any 12-month period, and failure to sustain crops, vegetation, forage growth, or post-harvest residues in animal confinement areas during the normal growing season over any portion of the lot or facility (TD)

c. Public Water Supply

(1) Failure to obtain approval for plans and specifications and/or well completion data for a new ground water system (TD or SS; schedule longer than 6 months is allowed by exclusion in Category A4 for transient non-community water systems)

(2) Incomplete treatment at a surface water treatment plant due to malfunctioning or non-functioning equipment (60 days)

(3) Water distribution system cross connections (30 days)

(4) Well located closer than allowable distance to a cited hazard (e.g., drain field), unless the entity has not been able to resolve the violation after making reasonable efforts and there is no apparent risk to public health and safety due to the lack of compliance (TD or SS)

(5) Low pressure (<20 psi) or outage (30 days; a 15 day extension may be granted if satisfactory progress is being made)

(6) Failure to maintain the required minimum disinfection residual when disinfection equipment is available (24 hours)

(7) Failure to repair a known leak (14 days)

(8) Failure to obtain a customer service agreement as required by 30 TAC §290.46(j) or a plumbing ordinance as required by 30 TAC § 290.46(i) (120 days)

(9) Failure by a community water system to meet a minimum water system capacity requirement (TD or SS; schedule longer than 6 months is allowed by the exclusion in Category A4)
- Exclusions to be handled as a C7:
- Community water systems which are <10% deficient
- Community purchase water systems which do not meet the 0.6 gallon per minute per connection requirement. For the purposes of this category, a purchased water system is one that receives the majority of its water supply through purchase water (with or without contract)
- Failure by a non-community water system to meet a minimum water system capacity requirement

(10) Failure to have the appropriate backflow prevention device where one is required (7 days)

(11) Failure to obtain and operate in accordance with an approved Contact-Time (CT) Study that accurately details the current disinfection process of a treatment plant as required (TD or SS)

(12)* Providing a consumer confidence report (CCR) to applicable customers less than six months late and/or failing to certify delivery of a CCR to the TCEQ

(13) Any violation listed in the "Category B violations for Groundwater Facilities" provided to EPA as documentation for primacy (TD or SS)

d. Industrial and Hazardous Waste

(1) Failure to meet accumulation time requirements (30 days)

(2) Failure to properly maintain a closed solid waste management unit (TD or SS)

(3) Storing waste for more than 10 days at a transfer facility (10 days from investigation date)

(4) For Subpart AA, BB and/or CC Facilities only: failure to establish a leak detection and repair (LDAR) program AND failure to control emissions from components used to manage hazardous waste [See A12.e.(9) for waste exhibiting toxicity characteristic] (TD or SS)

(5) For Subpart AA, BB and/or CC Facilities only: inaccurate LDAR component count that results in failure to monitor components in hazardous waste service [See A12.e.(10) for complete failure to monitor] (TD or SS)

(6) For Subpart AA, BB and/or CC Facilities only: Failure to prevent open-ended lines (OELs) in hazardous waste service AND the number of OELs is ≥5% but <15% of the total number of potential OELs in hazardous waste service within the unit under review. [If the number of OELs is ≥15%, see A12.e.(11), and if the number of OELs is <5%, see C11] (TD or SS)

(7) Failure to submit a monthly summary of on-site waste management activities subject to the assessment of fees under 30 TAC § 335.325 on forms furnished or approved by the ED by the 25th day following the end of the month (or quarter) for which the report is due (14 days)

e. Municipal Solid Waste

(1) Accepting (not disposing) an unauthorized waste at a MSW-regulated landfill while following the site operating plan screening requirements (accepting and not following site operating screening requirements is an A5) (30 days)

(2) Filling over permitted contours at a MSW landfill (TD or SS)

(3) Placing waste outside of the permitted boundary at a MSW landfill (TD or SS)

(4) Placing waste in an area not designated or approved for waste disposal within the boundary of a MSW landfill (7 days)

(5) Failure to apply daily cover at a MSW landfill (24 hours)

(6) Failure to provide intermediate cover at a MSW landfill (7 days)

(7) Failure to provide final cover at a MSW landfill (30 days)

(8) Failure to provide adequate compaction at a MSW landfill (60 days)

(9) Unauthorized disposal or burning of nonhazardous municipal solid waste where the only economic gain is avoiding the cost of properly disposing at a landfill (i.e., nuisance dumping) (TD or SS)

(10) Failure to provide adequate secondary containment for the storage of used oil and/or used oil filters (TD or SS)

(11) Failure to maintain design requirements for a Type VIII-R waste tire storage facility (30 days)

(12) Failure to split, quarter or shred scrap tires at a Type VIII-R waste tire storage facility within 90 days from delivery (30 days)

(13) Failure to comply with vehicle requirements relating to sanitation for transporters of medical waste (14 days)

(14) Failure to maintain leachate at 12 inches or less (30 days)

(15) Failure to demonstrate accumulated material is potentially recyclable and economically feasible-recycled, and/or failure to meet applicable time frames and percentages of recycling activities at recycling facilities (14 days)

(16) Failure to maintain records that document reasonable efforts to maintain source-separation of materials, including notice to customers, training of staff, documentation of rejected loads, and documentation that incidental waste constitutes no more than 5% of average total scale weight at recycling facilities (7 days)

f. Petroleum Storage Tanks

(1) Failure to perform the temporary or permanent removal of an UST unless the tank is empty, provided a Category A6 or Category A10 has not been documented. (See Category C6 for exclusion)

(2) UST systems lacking the upgrade requirements in 30 TAC § 334.47(b) and improperly removed from service prior to the implementation schedule specified in 30 TAC § 334.44(b) (30 days)

(3) Failure to comply with any general prohibition requirement for an UST specified in 30 TAC §334.5 and 30 TAC §334.12 (30 days)

(4) Failure to comply with any technical standard requirement for an UST specified in 30 TAC Chapter 334, Subchapter C, except for complete failure to provide release detection (which does not include incorrect implementation of the release detection method such as, incomplete inventory control, minor errors in monthly reconciliation, and errors in automatic tank gauge test results), spill and overfill prevention and corrosion protection (See A12.h) (30 days)

(5) Late submittal of UST Registration and Self-Certification form, initial and/or renewal, submitted prior to an investigation (TD or SS)

(6) Complete failure of an owner/operator of a retail fueling facility in an Affected County (as defined in 30 TAC §114.319) to maintain for two years diesel fuel transfer documents containing the required information specified in 30 TAC §114.316(g). (If a proper

certification statement is present on the transfer document but other required information is missing, use C3) (Submit a copy of a properly certified transfer document for next transfer load within 30 days or submit required information from the carrier)

(7) Failure to verify the proper operation of Stage II equipment by testing in accordance with 30 TAC § 115.245(2) <60 days late (30 days)

g. Air

(1) Non-clerical air violation not otherwise listed in Category A (TD or SS; substantive corrective measures must be initiated within 30 days)

(2)* Failure of an analyzer manufacturer certified by the state of Texas to meet the performance standards stated in 30 TAC §114.51(e) (30 days)

(3)* Failure to submit a complete and accurate emissions inventory in accordance with 30 TAC §101.10 [Note: If emissions inventory is >90 days late, A12.i.(11) applies. If emissions inventory is ≤ 30 days late, C9 applies] (30 days)

(4) Complete failure of an owner/operator of a retail fueling facility in an Affected County (as defined in 30 TAC §114.319) to maintain for two years diesel fuel transfer documents containing the required information specified in 30 TAC §114.316(g). (If a proper certification statement is present on the transfer document but other required information is missing, use C3) (Submit a copy of a properly certified transfer document for the next transfer load within 30 days or submit required information from the carrier)

(5) Complete failure of an owner/operator of a retail fueling facility in an Affected County (as defined in 30 TAC §114.309) to maintain for two years fuel transfer documents containing the required Reid Vapor Pressure information specified in 30 TAC §114.306(b). If a proper certification statement is present on the transfer document but other required information is missing, use C3 (Within 30 days: Submit certification statement that confirms the necessary actions to achieve compliance with the next Reid Vapor Pressure season will be met OR submit a copy of a properly certified transfer document if the Reid Vapor Pressure season is still active OR obtain the required information from the carrier)

(6) LDAR: Failure to prevent open-ended lines in regular VOC service or HAP service AND the number of open-ended lines is ≥5 but <15% of the total number of potential open-ended lines in regular VOC service or HAP service within the unit under review (TD or SS)

(7) Failure of an LDAR program resulting in annualized under-controlled emissions **less than** a major source, PSD review, or non-attainment review threshold (90 days)

(8) Inaccurate LDAR component count that results in under-reported emissions (60 days)

(9) Failure to monitor ≥ 5 but ≤ 10% of the total number of components subject to fugitive monitoring requirements in the Title V permit under review [if > 10 %, A12.i(15) applies, if < 5%, C7 applies]

h. Water Rights

(1) Refusing to allow, or interfering with the investigation of any land, natural water course, natural waterway, artificial waterway, impoundment, return flow point, or diversion facility by an agent or employee of the Commission or Executive Director that would assist the Commission in the discharge of its duties (7 days from investigation date)

(2) Failure to provide a measuring device as required (TD or SS)

(3) Failure to provide an outlet as required (TD or SS)

(4) Impounding, diverting, using, or making a dedicated release of state water in excess of authorized amounts during severe drought conditions as indicated by the U.S. Drought Monitor [See A.12.j(1) for Rio Grande Watermaster Program] (TD or SS)

(5) Failure to report, on an annual basis, the authorized use of state water (30 days)

i. On-site Sewage Facilities

(1) Failure to install an OSSF system which meets required standards provided a Category A6 or Category A10 has not been noted (30 days)

(2) Failure to perform maintenance on an OSSF by a registered maintenance company as described by rule or contract (14 days)

(3) Failure by an owner either to perform maintenance or to obtain a maintenance contract on an OSSF (14 days)

j. Approved Pretreatment Programs - TPDES POTW as the Control Authority

(1) Failure to enforce as required by the approved pretreatment program against an IU using dilution as a substitute for pretreatment (initiate required enforcement action within 30 days and monitor/enforce until the problem is resolved)

(2) Failure to enforce as required by the approved pretreatment program against a discharge to a POTW which results in interference with the treatment process or sludge quality or pass through of pollutants that does not cause a Category A6 or Category A10 violation (initiate required enforcement action within 30 days and monitor/enforce until the problem is resolved)

(3) Failure to comply up to 90 days beyond the required due date with a pretreatment schedule milestone specified in the permit for the TPDES program (comply within 90 days of the required due date)

(4) Complete failure to implement any of the following requirements:

(A) Issue/reissue SIU mechanisms as required by the approved pretreatment program (30 days)

(B) Sample/inspect SIUs as required by the approved pretreatment program (begin correct procedures within 15 days; if not possible to do within 15 days, begin correct procedures at next required event)

(C) Establish and enforce SIU self-monitoring and reporting requirements (30 days)

(D) Enforce pretreatment categorical standards and local limits as required by the approved pretreatment program (initiate required enforcement action within 30 days and monitor/enforce until the problem is resolved)

(E) Publish a list of significant IUs in significant noncompliance with pretreatment standards or requirements (30 days or at next required event)

(F) Maintain and update IU inventory (60 days)

k. Significant IUs Discharging to TPDES POTWs without Approved Pretreatment Programs - TCEQ as the Control Authority

(1) Using dilution as a substitute for pretreatment (TD or SS)

(2) Discharge to a POTW which results in interference with the treatment process or sludge quality or pass through of pollutants that does not cause a Category A6 or Category A10 violation (TD or SS)

(3) Failure to meet a compliance schedule for categorical standards up to 90 days beyond the required due date (comply within 90 days of the required due date)

(4) Technical review criteria violations (TD or SS):

(A) 40% exceedance of an average limit or daily maximum limit for BOD, TSS, fats, or oil and grease for 33% or more of all measurements taken during a six month period for a specific pollutant limit

(B) 20% exceedance of an average limit or daily maximum limit for all other pollutants except pH for 33% or more of all measurements taken during a six month period for a specific pollutant limit

(5) Chronic violations: violations of an average limit or daily maximum limit for any pollutant by any amount for 66% of the measurements taken during a six month period for a specific pollutant limit (TD or SS)

l. Beneficial use of non-industrial wastewater sludge

(1) Application of sludge to saturated or frozen ground or during rainstorms (TD or SS)

(2) Application of sludge in excess of annual application rate (TD or SS)

(3) Failure to maintain setback requirements for Class B applications (TD or SS)

(4) Failure to apply sludge evenly to the surface of land (TD or SS)

m. Surface Disposal Sites

(1) Disposal of sludge which does not meet pathogen reduction requirements (TD or SS)

(2) Disposal of sludge which does not meet vector attraction reduction requirement (TD or SS)

(3) Failure to maintain setback requirements required for metals concentrations (TD or SS)

n.* Landscape Irrigation

(1) Failure to design, install, maintain, repair, and/or service an irrigation system in a manner that promotes water conservation (SS)

(2) Failure to space irrigation heads according to the manufacturer's maximum recommended head-spacing (SS)

(3) Heads do not meet the minimum head pressure required by the manufacturer (SS)

(4) Failure to install irrigation piping so that it meets the minimum standards for depth of coverage (SS)

(5) Failure to install water conservation devices according to the manufacturer's recommendation (SS)

(6) A licensed irrigator designing a system that requires the use of any component part that exceeds the manufacturer's performance limitations for the part (SS)

(7) False, misleading or deceptive practices relating to bidding, advertising or fees (TD)

(8) Failure to provide and/or honor a warranty (SS)

(9) Failure to properly connect an irrigation system to a public or private potable water supply through a Commission-approved backflow prevention method that does not cause a Category A6 or Category A10 violation (7 days)

(10) Failure to comply with a requirement, ordinance, or regulation, other than obtaining a permit prior to installation, where any city, town, county, special purpose district, or other political subdivision or public water supply regulates irrigation work performed within such political subdivision's territory (SS)

o. Storm Water Multi-Sector General Permit

(1) Failure to conduct the annual comprehensive site compliance evaluation (TD or SS)

(2) Complete failure to conduct annual effluent limitation (heavy metals) sampling (begin correct procedures at next eligible rainfall event)

(3) Failure to properly develop/implement a SWP3 (TD or SS)

(4) Failure to comply with a no exposure exclusion (TD or SS)

(5) Failure to maintain BMPs in an effective operating condition (TD or SS)

p. Small Construction Activities-Storm Water Construction General Permit

(1) Failure to make the SWP3 readily available or available on-site (24 hours from investigation date)

(2) Failure to post the signed copy of the construction site notice at the construction site (24 hours from investigation date)

(3) Failure to submit a signed and certified construction site notice to the operator of any MS4 receiving the discharge 2 days prior to construction (24 hours from investigation date)

q. Large Construction Activities-Storm Water Construction General Permit

(1) Failure to make the SWP3 readily available or available on-site (24 hours from investigation date)

(2) Failure to develop and implement the SWP3 prior to beginning construction (14 days from investigation date)

(3) Failure to post the NOI or the construction site notice (24 hours from investigation date)

(4) If sediment is escaping the site, failure to remove accumulations of sediment often enough to minimize further negative effects and prior to the next rain event (when feasible), provided a Category A6 or A10 has not resulted from the discharge (TD or SS)

(5) Where sedimentation basins are not feasible, failure to install minimum controls such as silt fences, vegetative buffer strips, or equivalent sediment controls for all down slope boundaries at the site (TD or SS)

(6) Failure to maintain BMPs in an effective operating condition (7 days from investigation date)

(7) Complete failure to conduct inspections of controls (Begin correct procedures according to the time frame specified in SWP3)

r. Emergency Response

(1) Failure to notify the agency as soon as possible, but no later than 24 hours after discovery of the spill or discharge [if also failed to contain and abate, see A7.a] (TD or SS)

(2) Failure to immediately contain and abate a discharge or a spill without a documented effect on human health and safety and/or a serious impact to the environment [if also failed to notify, see A7.a] (TD or SS)

(3) Failure to reasonably attempt notification to an owner or occupant of a property impacted by a discharge or spill as soon as possible but no later than two weeks after discovery of the discharge or spill (TD or SS)

(4) Failure to notify the Agency as soon as possible to provide information that would trigger a change in the response to a spill or discharge (TD or SS)

(5) Failure to provide a written description of the planned response action when requested (TD or SS)

(6) Failure to begin reasonable response action as required by 30 TAC §327.5(a)(1-5) (TD or SS)

(7) Failure to obtain an extension in accordance with 30 TAC §327.5(c)(2) for the necessary response action (TD or SS)

s. Dry Cleaners: *Purchasing* dry cleaning solvent [as defined in Tex. Health & Safety Code §374.001(8)] from a distributor that does not possess a valid, current distributor registration issued by the TCEQ operating without a registration and the purchasing party does not have a TCEQ dry cleaner-related registration (See A12.q(2) when another facility/drop station has been registered) (TD or SS)

CATEGORY C VIOLATIONS

CATEGORY C: A Category C violation is a noncompliance not otherwise designated as a higher priority violation in Category A or Category B.

COMPLIANCE TIME FRAME: The timeframe to come into compliance for a Category C violation will either be a case-by-case TCEQ-established deadline (TD) or a schedule will be solicited (SS) from the entity.

REPEAT CATEGORY C VIOLATIONS: Formal enforcement action may be initiated if the entity receives written and/or investigation date 3 times within the most recent 5-year period for the same Category C violation, including the notification for the current violation (e.g., chronic repeated). Initiation of formal enforcement action may occur at the time of the third notification at the discretion of the section manager for the staff who is considering the enforcement action. See page 5 for instructions on how to handle repeat Category Cs documented from a Title V Deviation Report.

VIOLATIONS (apply to all programs as applicable):

C1. Partial or inadequate implementation of monitoring/testing requirements, including self-inspections where applicable. **Before using this category, ensure the violation does not fall under Category A9.c** (not applicable to emissions events) (TD or SS)

C2. Partial or inadequate implementation of waste analysis and/or waste characterization requirements, including but not limited to, hazardous waste determinations and screening procedures for halogens [refutable presumption] (TD or SS)

C3. Partial or inadequate submittal or maintenance of required data, documents, notifications, plans or reports. **Before using this category, ensure the violation does not fall under Category A9.c** (TD or SS)

Examples:
- Not providing records in a timely manner when records are required to be readily available for review during an investigation
- Late submittal of required information
- Incorrect calculation of data
- Not having required signature(s) on records
- Failure to modify a declaration of intent in advance of a desired change as required
- Failure to submit planning report (30 TAC 291.93(3))
- Failure to submit complete reports documenting performance of corrective actions related to a confirmed release

C4. Inadequate operation and maintenance (TD or SS)

Examples:
- Windblown waste at a MSW not picked up in a timely manner so as to become a nuisance
- Water mains at a PWS facility not flushed adequately
- Not cleaning sludge out of chlorine contact chamber at a wastewater treatment plant
- Broken clarifier rake at a wastewater treatment plant
- Using slightly torn filter bags for the collection of baghouse dust
- Clogged water sprays used for dust suppression
- Stormwater Sediment not removed from sediment traps/sedimentation ponds before design capacity is reduced by 50%

C5. Failure to establish sanitary control easements on drinking water wells, unless an exception has been approved by the program division (submit a compliance schedule within 30 days; the responsible party should be required to collect raw water samples until the easement is established or an exception is granted; if raw water samples indicate contamination, further enforcement action should be evaluated)

C6. For an UST which meets the definition of an empty system as specified in 30 TAC §334.54(d): Failure to comply with the technical standard requirements for corrosion protection (TD or SS)

C7. Violations not otherwise listed in Category A or Category B (TD or SS)

C8. Impounding, diverting, using, or making a dedicated release of state water in excess of authorized amounts during moderate, abnormally dry, or normal drought conditions as indicated by the U.S Drought Monitor (TD or SS)

C9. Violations related to emission inventory requirements: (A) Incomplete/inaccurate emissions data or supporting data, necessary to characterize the origin, nature, and/or control of emissions related to the development of the air emissions inventory; (B) Improper ~~data~~ emissions speciation; (C) Failure to properly characterize air contaminant emission paths (e.g., FIN+CIN+EPN); or (D) Failure to submit a complete and accurate emissions inventory in accordance with 30 TAC § 101.10 [Note: If emissions inventory is >90 days late, A12.i.(11) applies. If emissions inventory is >30 but ≤ 90 days late, B19.g.(3) applies] (14 days)

C10. LDAR: Failure to prevent open-ended lines in regular VOC service or HAP service AND the number of open-ended lines is < 5% of the total number of potential open-ended lines in regular VOC service or HAP service within the unit under review (TD or SS)

C11. For Subpart AA, BB and/or CC Facilities only: Failure to prevent open-ended lines (OELs) in hazardous waste service AND the number of OELs is >5% but <15% of the total number of potential OELs in hazardous waste service within the unit under review. [If the number of OELs is ≥15%, see A12.e.(11), and if the number of OELs is ≥5% but <15%, see B19.d.(6)].

AREA OF CONCERN

The following criteria shall be evaluated to determine if a violation should be issued as an Area of Concern (AOC):

1. The violation falls into Category C;
2. The violation does not involve a potential harm/impact;
3. The violation is corrected within 14 calendar days from the investigation date; AND
4. The violation was not documented at the same regulated entity in the prior 12 months.

- A violation may be resolved as an AOC if it meets all four criteria above
- AOCs will *not* be utilized when a standard NOE is being issued but will be utilized in conjunction with a field citation
- Each AOC shall be entered as a violation in CCEDS; however, the AOC designation in CCEDS prevents AOCs from counting toward compliance history
- All violations that meet the AOC criteria shall be documented in an investigation report with as much information as necessary to prove any violation

AOCs issued in an NOV or a General Compliance Letter (not applicable to field citations):

- If a violation does NOT meet all four criteria, it will be included as a violation in an NOV
- If all documented violations meet the AOC criteria, then document this on the exit interview form and only send a General Compliance letter that includes each AOC in the summary of investigation findings
- The time frame allowed for a respondent to submit corrective action documentation (to prove #3 above has been satisfied) should routinely be no longer than 30 days from the investigation date but may be as few as 14 days from the investigation date. On a very limited basis, time frames longer than 30 days may be allowed
- Once a violation is resolved as an AOC in an NOV, it will not be included in any formal enforcement action, regardless if a non-AOC violation in the NOV escalates into an NOE
- All violations resolved as an AOC will be noted separately if a written NOV is necessary to address other violations that do not meet the AOC criteria

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Notice, Response and Cause Demonstrations for Potable Water Discharges

A violation may not be addressed via NOV or NOE, or Order against a regulated entity for the discharge of potable water, if proper and complete notice (as required by rule/statute/permit) is provided to the appropriate TCEQ regional office; **AND**

1) Reasonable steps were taken as soon as possible to stop and/or minimize the actual/possible environmental impact of the potable water discharge; and

2) The cause was based on one of the following:

   a) The discharge was unavoidable due to proper maintenance (which must include adequate dechlorination when practicable) or servicing of the water system and/or due to the negligent actions of a third party (excluding contracted services that were performed per the responsible party's instruction); or

   b) The discharge was caused by the subsidence of soil due to drought conditions (exceptional, extreme or severe drought intensity) or other natural causes outside the control of or anticipation by the responsible party. The drought intensity determination shall be based on the U.S. Drought Monitor reading. (http://drought.unl.edu/dm/monitor.html)