

TCEQ Interoffice Memorandum

To: Commissioners' Work Session

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Subject: Enforcement Initiation Criteria (EIC) Guidance

The Enforcement Initiation Criteria (EIC) is an executive director-approved guidance document used by the TCEQ to determine the appropriate level of enforcement for violations of environmental rules. Violations are categorized as A, B, C, and Areas of Concern, with Category A violations being the most serious and requiring formal enforcement. In situations that are not appropriately addressed through a strict application of the EIC, the guidance provides for a variance process to forgo or initiate formal enforcement. The current version of the EIC is publicly available on the TCEQ's website.

Background

In 1997, the EIC was developed through the Office of Compliance and Enforcement's (OCE) effort to promote consistency and to prioritize how violations are addressed through either formal enforcement or notice of violation. At that time, the EIC was primarily utilized and maintained by the Field Operations Division with extensive review by the Enforcement and Litigation Division Directors during revision periods.

In 2004, during the TCEQ's Enforcement Review Process, the commission accepted the recommendation to make the EIC an agency-wide document. This requires other Divisions that initiate enforcement actions to apply the EIC and ensures all programs' violations are addressed within the document. As a result of these changes, all enforcement initiation criteria are located in one document, making enforcement initiation practices across the agency more consistent and easier for the public and regulated community to access.

Revisions to the EIC

The EIC revision process is initiated and coordinated by OCE. To begin the process, OCE sends an announcement to all Directors within the agency, inviting representatives from each Division to participate on the EIC Review Committee. Members on this committee work together in coordinating change requests for their respective program areas, evaluating change

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requests from other areas of the agency, and reviewing draft versions of the EIC for consistency and appropriateness of categories. Once the EIC Review Committee finalizes the initial draft, it goes through an extensive review process by Area and Division Directors, the Deputy Directors of OCE and the Office of Legal Services, and the Office of the Executive Director. At each level of review, changes are made as recommended. The Commission is provided an opportunity to review the proposed revisions before final approval by the Executive Director. Revisions to the EIC do not go through a public comment process. However, written requests to edit certain portions of the EIC have been received and considered in the past – resulting in some changes to the EIC.

Once a revision becomes effective, if legislative or federally mandated enforcement initiation changes later occur, those changes are implemented separately via a standing variance until they can be incorporated into the EIC during the next revision.

Since its inception, the EIC has been revised 14 times. Up until 2010, revisions occurred on an annual basis - now they are done at a frequency of every two years. The last revision (Revision 14) occurred in 2012 and became effective December 1, 2012. Some of the more significant changes included:

1. A revision to the Category A criteria pertaining to violations under the Federal Safe Drinking Water Act for which the TCEQ has agreed with the Environmental Protection Agency (EPA) to take formal enforcement action. Specifically, in April 2011, EPA implemented a new *Enforcement Response Policy* for drinking water violations, which superseded the previously-used Significant Non-Compliance criteria.
2. An addition to the Category A criteria to include additional pollutants from wastewater treatment facilities, such as bacteria, that are not captured in the enforcement screening process under the Federal Clean Water Act Significant Non-Compliance criteria.
3. An addition to the Category A criteria that addresses the failure of a “common carrier” to ensure that an underground storage tank system has a valid delivery certificate prior to delivery. This change was legislatively mandated during the 82nd Legislative Session.

The next revision to the EIC (Revision 15) is scheduled for 2014. Although no specific changes have been identified at this time, it is anticipated that the EIC Review Committee will incorporate any revisions necessary to comply with new legislative changes. There may also be a focus on criteria related to water rights, aggregate production operations, and oil and gas activities.