

Outcome of Commission Work Sessions

Relating to Enforcement Review

January 14, 2005



Table I
Recommendations Approved by the Commission

The Commission took action on January 14, 2005 to approve of the following recommendations.

Issue Identity	Issue	Steering Committee Recommendation	Commission Direction
EIC-1 A page 157	How should Field Operations prioritize investigations?	Investigation priorities should primarily be based on risk to human health and the environment. The agency should focus its investigative efforts on those sources that pose the greatest threat to the public and the environment. The risk-based approach should also consider performance and commitments.	•Commission agreed with recommendation.
EIC-1 B page 158	Should prioritization be based upon risks to human health and the environment, past performance of the facility, EPA and LBB output requirements, or a combination of strategies?	Prioritization should be based on a combination of strategies. A screening approach using three criteria - risk, performance, and commitment (LBB and EPA commitments) - should be used to determine investigation priorities. The initial screen of the potential universe to be inspected should be conducted based on risk.	•Commission agreed with recommendation.
EIC-1 C page 160	Does the Field Operations Division need to seek management input from other parts of the TCEQ on investigation priorities and initiatives? If so, how?	Yes. The agency should use a process to solicit input annually from across the agency on how to best utilize FOD resources to accomplish the agency mission. The workplan should be directed by agency leadership in consultation with LBB and EPA commitments.	•Commission agreed with recommendation.
EIC-2 page 161	Should the agency devote resources to the identification and investigation of unauthorized facilities?	Yes. The Field Operations Division, in conjunction with the Compliance Plan Team, should identify sectors to target on an annual basis. The sector(s) identified should be based on factors including size of the sector, potential risk to the environment, and the possible rate of non-compliance. The level of effort Field Operations Division devotes to the identification and investigation of unauthorized facilities should be determined with input from the Commissioners and Executive Management.	•Commission agreed with recommendation.

EIC-3 page 162	What priority should complaints and on-demand activities have within Field Operation's Annual Work Plan?	The Compliance Plan Team should determine the priority and level of effort for complaints and on-demand activities when developing the annual workplan. The workplan should allow the flexibility to respond to high-priority on-demand activities. The workplan should ensure that there are no disincentives to effectively answering on-demand requests including complaints.	•Recommendation deferred to ED for further consideration.
EIC-4 A page 163	Do the criteria for enforcement initiation need to be changed? If so, should the scope of revisions consider consistency, review of the categories, and whether the guidance should be formalized?	Yes. The enforcement initiation criteria should be reviewed and changed, if appropriate, at least on an annual basis. The scope of the periodic review should include consistency and appropriateness of categories. The EIC should continue as a guidance document, but with approval by the commission.	•Commission agreed with recommendation.
EIC-4 B page 164	Should compliance reviews outside of Field Operations be addressed in the Enforcement Initiation Criteria (EIC)?	Yes. The EIC should be an agency-wide document that encompasses all enforcement efforts of the agency. A cross agency team should be established to oversee development and maintenance of the document. The team should be composed of TCEQ staff who represent all major functional areas.	•Commission agreed with recommendation.
EIC-5 page 166	Should there be separate Enforcement Initiation Criteria (EIC) for small businesses and small local governments?	No. Any relief for small entities should occur in the penalty policy phase of enforcement.	•Commission agreed with recommendation.
EIC-6 A - 6 B page 167	Should there be an opportunity for post-investigation/pre-enforcement fact-finding meetings in the TCEQ Regional Offices? Should there be a formal appeal process for Field Operations determinations on the question of case referral to the Enforcement Division?	Yes, there should be an opportunity for post-investigation/pre-enforcement fact-finding meetings in the TCEQ Regional Offices. This process should be formalized as agency guidance. A definitive time frame for appeal should be established. The alleged violator should be informed of the opportunity to appeal and how to appeal during the exit interview.	•Commission agreed with recommendation.
EIC-6 C page 168	Should there be a formal appeals process for notice of enforcement (NOE) letters?	There should not be a formal appeal process since the NOE currently can be appealed anytime during the enforcement process. However, NOE letter should clarify this opportunity and include an Enforcement Division point of contact.	•Commission agreed with recommendation.

EIC-7 page 168	Should the use of verbal NOV's by Field Operations investigators be continued?	No. Use of verbal NOV's should be discontinued.	•Commission agreed with recommendation.
EIC-8 page 170	Should the NOV policy be formally adopted by the TCEQ?	Yes. Commissioners should consider adoption of policy statement(s) on NOV procedures. Then, as needed, staff can develop guidance implementing the commission policy.	•Commission agreed with recommendation.
EIC-9 A page 170	Is there a need for the category of NOE?	Yes. All entities being referred for enforcement should continue to be sent an NOE. The agency should establish a time frame for notice once the decision to refer is made.	•Commission agreed with recommendation.
EIC-9 B page 171	Are there better ways to communicate the referral of a case to the Enforcement Division?	Yes. Although the NOE is an effective means of notifying regulated entities that the matter is referred for enforcement, modifications could strengthen the communication. The NOE should clarify that the matter may be appealed during the enforcement process and should include an Enforcement Division point of contact.	•Commission agreed with recommendation.
Comp-1 page 244	What recommendations for change, if any, are needed to the draft <i>Guidance Document for Field Operations Investigation of Complaints</i> to ensure timely response and adequate follow through?	The recently revised guidance document should be implemented. The agency should continue to accept anonymous complaints. TCEQ should implement several enhancements for investigator complaint training. The ability to provide complaint handling and response training to the public upon request is effective in expanding the public's knowledge of changes in complaint procedures. FOD should periodically review other states' protocols to ensure that TCEQ's protocol is current.	•Commission agreed with recommendation.
Comp-2 page 262	What recommendations for change, if any, are needed to the draft Nuisance Odor Protocol Review Team report?	Implement the protocol; the agency should provide odor protocol training to the public. The Nuisance Odor Protocol and FIDO Chart should be posted on the external Web along with a brochure explaining the process for nuisance odor determinations. FOD should periodically review evolving technologies and other state protocols to determine their potential for use by TCEQ.	•Commission agreed with recommendation.

Comp-3 page 297	How can the TCEQ process for receiving complaints be improved, including accessibility 24-hours via telephone and agency website?	-The agency homepage and the Field Operations homepage should have a direct link to the Environmental Complaint page; -The Environmental Complaint page should provide links to the Environmental Violations Hot Line and 24-Hour Spill Reporting numbers, including an explanation of each with information on how calls are handled after hours; -Active links should be maintained to the online form to file a complaint, contact information for each region office, Citizen Collected Evidence information, the Water Utilities consumer assistance, and to the Nuisance Odor Protocol.	•Commission agreed with recommendation.
Comp-4 page 302	What, if any, recommendations for change are needed to the citizen collected evidence (CCE) rules and guidance?	No change is recommended to the rule or current CCE protocols or procedures. The TCEQ should continue to provide training for individuals and citizen/industry groups, and self-instructional training using materials available at regional offices.	•Commission agreed with recommendation.
Comp-5 page 303	What capital resources would be needed to develop an online complaint database that will allow public access to complaint information?	Providing online access to the incident/complaint data in CCEDS may involve requesting about \$50,000 in capital resources for the FY06-07 biennium from the 2005 Legislature.	•Commission agreed with recommendation.
EP-3 page 225	How can the financial inability to pay process be streamlined or simplified?	Enforce a 30-day deadline, running from the respondent's receipt of the draft order, to submit documentation supporting a financial inability to pay. Remove the reference to financial inability to pay in the initial communication to the respondent.	•Commission agreed with recommendation.
EP-4 page 228	How could the SEP process be streamlined and or simplified?	-Limit extensions for inclusion of Supplemental Environmental Projects to cases where an agreement concerning the amount of the administrative penalty to be paid by the respondent is reached within 30 calendar days after receipt of the draft order by the respondent. -If final agreement concerning an SEP is not reached within 90 days after the date of the extension letter then the enforcement case should be referred to LD for processing and the proposed penalty would increase by 25%.	•Commission agreed with simplifying the SEP process.

EP-5 page 229	How can TCEQ increase or reallocate resources to target investigative/enforcement activities?	The number of investigative or enforcement staff should not be increased until the full effect of implementing changes from this review is evaluated. If recommendations on compressed settlement time lines are implemented, additional cases may be referred to Litigation and additional staff may be needed in that division. In the interim, consider other steps such as media-specific coordinators, training and mentoring programs to increase the efficiency of existing staff.	•Recommendation deferred to ED for further consideration.
EP-6 page 231	How can the TCEQ achieve better trained investigative and enforcement staff?	<ul style="list-style-type: none"> -Use distance learning methods; -Align the Environmental Investigator (EI) Career Ladder with the Enforcement Coordinator and Natural Resource Specialist tracks to encourage equitable and cross-division staff development opportunities; -Recognize senior agency staff serving as mentors and technical specialists; -Add CCEDS training capacity and enhance CCEDS to allow secure remote access to the system to allow staff to utilize the system 24 hours a day from any location; -Continue core program and cross-media training; -Offer advanced environmental technical training at the training academy 	•Commission deferred recommendation to the ED for consideration.
Comm-1 page 234	How can the TCEQ better share enforcement-related information with the public and the regulated community?	Enhance TCEQ enforcement information on the public web site; update and expand outreach materials on enforcement; expand outreach at the local level.	•Commission agreed with recommendation.
Comm-2 page 236	How can the TCEQ incorporate enhanced internal communication tools to improve effectiveness and consistency of the enforcement process?	<ul style="list-style-type: none"> -Develop and post a step by step description of the enforcement process. -Expand the data available on the public site and provide additional data on the T-Net for staff viewing. -Instruct staff attorneys to contact the investigator and the enforcement coordinator prior to filing the EDPRP. -Evaluate matrix management of enforcement and litigation staff to include no more than two locations per case. -Set up training and regular reinforcement of what information is available and where. -Expand use of video conferencing. 	•Commission agreed with recommendation and deferred to the ED for further consideration.

Comm-3 A - 3 B page 237	How can the TCEQ better educate the public on filing a complaint or reporting environmental problems? How can the TCEQ educate the public on citizen collected evidence?	Revise the TCEQ public Web site to provide easier access to information on agency complaint procedures. More extensively publicize the agency Web site as an avenue for complaints, and in other venues publicize TCEQ complaint handling procedures.	•Commission directed ED to develop effective strategies to improve communications.
Pen-1 B - 1 E page 88	Should TCEQ continue to use specific components of a compliance history in calculating a penalty?	No. The Penalty Policy can be simplified by eliminating the Compliance History Worksheet from page 2 of the Penalty Calculation Worksheet and replacing it with a penalty adjustment based on the overall compliance history classification of the respondent would remain. This recommendation address many concerns of "double-dipping" in the use of compliance history.	•Commission agreed with recommendation.
Pen-4 page 95	Are the penalties assessed effective in deterring violations?	Yes, but the deterrent effect of the Penalty Policy could be improved by establishing a purpose statement to the Penalty Policy articulating the goal of deterrence and by measuring the level of deterrence achieved by enforcement program improvements.	•Commission agreed with recommendation.
Pen-5 page 98	Should the Penalty Policy be adopted as a rule and supplemented with a single guidance document encompassing all internal guidance and internal memos?	Yes. The Penalty Policy should be adopted by rule and supplemented with guidance to maintain commission discretion.	•Commission agreed with recommendation.
Pen-7 A page 100	Should a mandatory minimum penalty be required for each occurrence of significant noncompliance?	Yes. The "Potential Release" category should be deleted from the penalty matrix and replaced with common categories across all major program areas, standardizing the penalties for the most common violations that do not cause actual environmental harm.	•Commission agreed with recommendation.
Pen-7 C page 100	Does the penalty policy equitably account for and make a distinction between harm to the environment and a "paperwork" violation?	Simplify the penalty policy by eliminating the "potential release" component from the existing base penalty matrix. Make upward adjustments to the percentage of a base penalty calculations for all levels of harm and for both major and minor respondents.	•Commission agreed with recommendation.

Pen-8 page 102	Should a partial good faith adjustment in a penalty calculation be allowed based on completion of some but not all required corrective actions?	Yes, allow a 20% reduction if compliance is achieved after the NOV/NOE and a 30% reduction if achieved before the NOV/NOE. Repeat or culpable violators would not be provided a good faith adjustment.	•Commission agreed with recommendation.
Pen-11 page 107	Should TCEQ decline to pursue a penalty in enforcement cases where agency resources could be better applied elsewhere, for example in cases with a <i>de minimis</i> fine?	The agency should continue to pursue issuance of orders with no penalties and only corrective actions. A mandatory minimum penalty, although small, may be required in certain cases.	•Commission agreed with recommendation.
Pen-12 page 107	Should the Penalty Policy make special provisions for PST certification and fuel distribution violations, including guidance on whether and to what extent both the owner and operator are responsible?	No. No special provisions for PST violations should be included, but formalize current commission practice and policy on the imposition of joint and several liability for different respondents responsible for the same violation.	•Commission agreed with recommendation.
SEP-1 page 141	Should TCEQ continue the SEP program?	Yes, SEPs should continue to be offered to offset enforcement penalties.	•Commission agreed with recommendation.
SEP-2 - 3 page 141, 144	How could the SEP process be streamlined and or simplified?	-Expand the pre-approved list of SEPs. -Provide SEP information to the respondent during the investigation exit briefing.	•Commission agreed with recommendations.
SEP-4 A page 145	Does a SEP need to benefit the environmental media (air quality, water quality, etc.) affected by the violations? If not, what should be allowed ?	Yes, preferably. Direct benefit SEP projects within the affected community for the same environmental media associated with the violation should be allowed a 1:1 penalty offset. Projects relating to a different media or that with an indirect benefit should still be allowed, but only with a greater offset ratio.	•Commission agreed with recommendations.
SEP-4 B page 145	Should the SEP be performed exclusively in the community where the violation occurred? If not, are there other location restrictions that should apply?	Same recommendation as preceding row. Also, guidance should be revised to reconsider "county" as the definition of a "community".	•Commission agreed with recommendation.

SEP-5 A page 147	Do the public and regulated entities understand how SEPs are used in TCEQ enforcement?	Yes, there is some understanding of the concept of SEPs. However, the level of understanding varies between large companies, small businesses, local governments, community groups, and individuals. We need to better publicize and distribute information regarding SEPs, especially with the benefits and cost.	•Commission agreed with recommendation.
SEP-5 B page 147	Are there ways to better inform the public and regulated entities of SEP outcomes?	Yes. TCEQ should require publicizing the results and distributing a report once a SEP has been completed.	•Commission agreed with recommendation.
SEP-5 C page 147	Should selection of SEPs consider citizen, community, agency, or regulated entity priorities? If so, how?	Yes. Regional and management input on SEPs and priorities should be institutionalized. Commission consideration and designation of proposed SEP projects can provide an opportunity for local input.	•Commission agreed with recommendation.
SEP-6 A page 149	How can we quantify the environmental benefit from a SEP?	At proposal of each SEP, the respondent should be required to estimate the environmental benefits expected from the project. The SEP staff should consider this information in determining whether the benefit is sufficient to merit the inclusion of the SEP in an enforcement order.	•Commission agreed with recommendation.
SEP-6 B page 149	Should quantifying benefit be included as part of a reporting requirement? If so, how can TCEQ verify the benefit?	Yes. As part of each SEP completion report, the respondent should be required to quantify the environmental benefit actually achieved, and provide the documentation to support these facts. To verify the benefit claimed, the SEP program should include a verification checklist in its risk assessment procedures.	•Commission agreed with recommendation.
SEP-6 C page 149	Is TCEQ's current oversight of SEPs achieving the desired results?	Yes, but the current system could be improved by providing a mechanism for quantifying and verifying the environmental benefit obtained from SEPs.	•Commission agreed with recommendation.
SEP-7 A -7 B page 151	Should TCEQ have a classification system for non-direct or mixed benefit projects? If so, what should be appropriate ratios for such SEPs? Should restrictions limit SEPs to only direct benefit?	<ul style="list-style-type: none"> -The ratios of three direct benefit project types should remain unchanged and projects consistent with the Proposition 2 pre-approved list that reduce/prevent pollution should be added. -Some indirect projects should be allowed with less favorable ratios, while others should be prohibited or curtailed. -Standard ratios should be established for certain types of indirect benefit. -Some indirect project types need to be modified so that the results can be quantified (or else not approved). 	•Commission agreed with recommendation.

Ord-1 A page 124	Should additional and clearer information be required of a respondent to demonstrate that compliance with an order has been achieved prior to closing out the order?	Yes. TCEQ should continue to require the respondent to certify compliance, but the standard technical requirements should include the type of documentation needed for each type of certification.	•Commission agreed with recommendation.
Ord-1 B page 125	Should small business or small local government be given different consideration from larger entities in the documentation required to close out an order?	Yes, on a limited basis. Ordering provisions should allow small entities a longer time frame to implement corrective action, depending on the type of violation. However, the corrective action should be the same for all violators and a. If the small entity is a repeat violator or if there is an imminent threat to the environment, there should be no special consideration.	•Commission agreed with recommendation.
Ord-1 C page 126	Are there cases where additional monitoring, either by the respondent or the agency, should be required to demonstrate compliance prior to order close-out?	Yes. A decision matrix should be used to determine the additional monitoring needed based on compliance history, type of violation, potential harm to the environment, significant citizen complaints or previous submission of a false certification. Additional monitoring requirements should be specified in the order.	•Commission agreed with recommendation.
Ord-1 D page 127	What are the consequences of false compliance certifications and does the agency know the frequency of occurrence? Could agency data systems be used to track and provide reports showing when violations previously assumed resolved are not actually resolved?	TCEQ should audit certifications to determine whether they are achieving compliance. The Enforcement Division should work with criminal investigators to prosecute those who knowingly submit false certifications.	•Commission agreed with recommendation.
Ord-2 A page 128	Should orders contain additional standard provisions that communicate to the respondent the consequences of failure to comply with the provisions of the order?	Yes. A provision directly preceding the signature block should be placed in all enforcement orders that outlines the consequences of not complying with the Corrective Action provisions of the order.	•Commission agreed with recommendation.

Ord-2B page 129	Should small businesses and small government be given different consideration from larger entities in establishing additional language changes in an order?	No. The additional language discussed in 2A should be placed in all orders regardless of size.	•Commission agreed with recommendation.
Ord-3 A page 131	What improvements can be made in the internal coordination between the Enforcement Division and other areas of the agency during order development?	Establish liaisons from all divisions and programs to regularly discuss orders under development. These liaisons should evaluate standard conditions and processing procedures, as well as conferring on specific cases as needed to ensure comprehensive requirements which do not conflict with permit requirements or time frames.	•Commission agreed with recommendation.
Ord-3 B page 132	Is there a unique coordination role for SBLGA with a respondent and the Enforcement Division during the development of an order?	Continue existing practices by SBLGA staff to assist violator after an NOV is issued; no additional special roles are recommended.	•Commission agreed with recommendation.
Ord-4 A page 134	Do ordering provisions adequately communicate to the respondent and other interested parties what is necessary to achieve compliance? If not, what improvements can be made?	Yes. But this communication could be improved by including specific compliance criteria beyond the certification of compliance in the ordering provisions and simplify ordering provision language.	•Commission agreed with recommendation.
Ord-4 B page 135	Are there situations where additional monitoring and/or other restrictions, other than to correct a specific violation, should be required?	No. However, specific violations may require additional monitoring as recommended to address Ordering Provision Key Issue 1 C.	•Commission agreed with recommendation.
Ord-4 C page 135	Should small business or small local government be given different consideration from larger entities in development of ordering provisions?	Yes, on a limited basis, especially where large capital expenditures are involved.	•Commission agreed with recommendation.
Coll-1 A page 173	Should an entity be allowed to acquire, amend, or renew a permit while in default of a penalty?	No, suspend processing and do not issue new, amended, or renewal permits/registrations/certifications/licenses to an entity or person owing a delinquent fee or penalty. If fees and penalties are not all paid within a prescribed time period, the application for permit would be returned.	•Commission agreed with recommendation.

Coll-2 page 188	Are current resources sufficient to more aggressively collect delinquent fees and penalties? If not, what resources are needed for the TCEQ to more quickly collect unpaid fees and penalties?	No. The TCEQ needs the assistance of outside resources to collect the delinquent accounts or determine that they are uncollectible. TCEQ should refer delinquent accounts over \$2,500 to the Attorney General after two demand letters and should contract with a collection agency to collect amounts under \$2,500.	•Commission agreed with recommendation.
Coll-3 B page 198	How can the agency address inability to pay issues of small local governments?	Use EPA's MUNIPAY system to determine whether governments are financially able to pay a penalty.	•Commission agreed with recommendation.
Coll-5 page 206	Would the assessment of interest charges on payment plans or delinquent penalties encourage payment or result in fewer requests for payment plans?	Interest should also be assessed on delinquent penalties. (See Table II for additional information)	•Commission agreed to a finance charge being assessed for delinquent penalties.
Coll-6 page 208	Would tools such as the ability to levy bank accounts or garnish wages be helpful in collecting delinquent accounts?	No. Other alternatives such as interest charges, payment plans, use of a collection agency, and withholding permits for unpaid penalties and fees would be more efficient for collecting delinquent accounts. If these alternatives do not decrease delinquencies we should revisit these options.	•Commission agreed with recommendation.
Coll (new issue)	Should Texas Water Code §7.052(d) be amended to eliminate the restriction on the Commission which prohibits payment plans following a contested case hearing?	No recommendation developed; seeking guidance from the Commission.	•Commission agreed the Texas Water Code should be amended to eliminate the restriction prohibiting payment plans following a contested case hearing.

Table II
Recommendations Not Approved by the Commission

The Commission took action on January 14, 2005 to disapprove of the following recommendations.

Issue Identity	Issue	Steering Committee Recommendation	Commission Direction
Comm-4 page 240	What is the best way to educate the public and regulated community on the enforcement process?	Request proposals on a statewide agency public awareness campaign to better educate the public on what the TCEQ does and ways it improves and maintains the environment.	•Commission disagreed with recommendation.
Pen-6 page 99	Should investment in pollution prevention technology be used as a factor in calculating penalties for violations or economic benefit while operating in noncompliant status?	Currently, no consideration is given to investment in pollution control equipment not mandatory under an agency requirement. No change from this policy is recommended.	•Commission felt the recommendation was too absolute and desired flexibility to allow for consideration of an investment in site-specific circumstances, as justice may require.
Pen-7 B page 100	Should statutory administrative penalties be equalized across programs to provide for consistency, including lowering penalties for small entities?	Yes, having one range of penalties and the same cap for all TCEQ programs would allow a consistent approach for assessing penalties that cause actual harm, lower penalties for potential or no harm, and differentiating between major and minor respondents.	•Commission disagreed with recommendation.
Pen-9 page 104	Should deferrals continue to be offered for expedited settlements or when an upward adjustment for culpability is included?	No, eliminate deferrals. They do not speed up the existing process. Maintain the existing policy of no deferrals for a culpable violator.	•Commission disagreed with recommendation.
Ord-3 C page 133	Where permit applications and enforcement actions for the same entity are occurring at the same time, should special provisions be included in the permit to address frequent noncompliance and vice-versa.	No, however other recommendations by the compliance history use subcommittee would require additional monitoring provisions in a permit issued to a person with a poor compliance history rating.	•Commission disagreed with recommendation.

<p>Coll-5 page 206</p>	<p>Would the assessment of interest charges on payment plans or delinquent penalties encourage payment or result in fewer requests for payment plans?</p>	<p>A finance charge should be assessed with a payment plan, with a rate that increases with the length of the payment plan to discourage using the agency as a lender. The revenue accounting system would have to be upgraded substantially to treat these accounts more like loans.</p> <p>(See Table 1 for additional information)</p>	<p>•Commission disagreed with recommendation.</p>
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Table III
Enforcement Review Issues for Discussion

The following issues and recommendations were discussed by the Commission during the January 14, 2005 Work Session and direction was provided as identified.

Issue Identity	Issue	Steering Committee Recommendation	Commission Direction
EP-1 page 209	How can the current enforcement time lines be revised to streamline the existing enforcement process?	Enforcement time lines could be reduced by a total of 125 days by a combination of the following: -Assign cases to an Enforcement Coordinator within 7 days after the Enforcement Action Referral -Require that all draft orders and penalty calculations worksheets be mailed no longer than 60 calendar days after the date that the case is assigned; -If the case is referred directly to the Litigation Division, then it should be forwarded within 60 days of screening; -If the respondent declares an intent not to settle an expedited enforcement action, the case should be referred to the Litigation immediately; -Limit extensions of the settlement deadline to 90 calendar days; -Set agreed orders on agenda within 70 days; -Change notice of service requirements. - Increase the proposed penalty by 25% if a respondent fails to settle within 30 days of receiving the draft order	Pending
EP-2 page 220	Should the TCEQ develop a field citation program?	Yes, TCEQ should develop a limited citation program to allow investigators to issue citations during inspections. This should include a schedule of penalties for specific violations or types of violations.	Commission agreed with recommendation.

Pen-2 page 89	Should all or part of the economic benefit (EB) resulting from noncompliance be included in the penalty before adjustment for other factors as justice may require? If so, what is an equitable method to calculate economic benefit?	Staff agrees all or part of the economic benefit should be included in a penalty. Several alternative ways to treat economic benefit when preparing a penalty are described in detail in the report.	Proceed with obtaining stakeholder input followed by incorporations into the Penalty Policy rule making.
Pen-3 page 92	Should small entities be allowed a downward adjustment of a base penalty?	Yes. Allow a 15% reduction so long as violation did not cause actual major environmental harm and entity does not have a poor compliance history; define entities considered as “small” in rule.	Proceed with obtaining stakeholder input followed by incorporations into the Penalty Policy rule making.
Pen-10 page 104	In a penalty calculation included in a default order against a respondent, should penalties be increased?	Yes, additional penalties should be included in a default order when a respondent does not reply to a petition and when the respondent replies to a petition requesting a hearing but does not show up to the hearing.	Proceed with obtaining stakeholder input followed by incorporations into the Penalty Policy rule making.
SEP-8 A - 8 C page 155	What percentage of the penalty should be eligible for offset by a SEP? Should SEP requirements or restrictions be different based on the environmental impact of a violation? What restrictions should there be for SEPs?	<ul style="list-style-type: none"> -Existing policy of 100% offset of penalty for local governments should be continued if the SEP has a direct environmental benefit, otherwise up to a 50% offset should be allowed. -A business should be allowed up to a 100% offset if it is a small business and the SEP has a direct environmental benefit, otherwise up to a 50% offset should be allowed. -Allow local governments whether or not currently in enforcement to benefit from a SEP to address compliance issues. -No on-site SEPs should be allowed. -For indirect benefit SEPs, tie the percentage of offset to the ratio so that a project with a 2:1 ratio allows a 50% offset or a project with a 3:1 ratio allows a 33% offset. -Anyone who does not comply with the technical requirements of their SEP agreement is not eligible for future participation in the program. 	Incorporate Commission direction into revisions to the SEP Guidance and provide to Commission for review.

Coll-1 B page 173	Should a current permit be revoked if the entity owes fees or penalties to the agency?	Yes, the agency should initiate revocation of a permit as a last resort. The sequence to follow would be 1) letters and phone calls informing customer of the process of collection leading to potential revocation; 2) referral to collection agency for specified period of time; all cases greater than \$2,500 will be sent to OAG for collection; and 3) initiation of revocation.	Commission disagreed with recommendation.
Coll-3 A page 192	How can the agency address inability to pay issues of small businesses?	The agency should use an initial screen of 1% of annual gross revenue for operating businesses. If this amount does not completely pay the assessed penalty, a more thorough analysis to include the respondent's assets is needed. Non-operating businesses should undergo a similar analysis of assets. The minimum payment for an operating business should be \$100, with a maximum payment time of 36 months. Non-operating businesses should be screened based on assets, and the maximum payment time should be 12 months.	Pending
Coll-4 page 204	Should a policy be established providing criteria for payment plans?	Yes. The criteria should include a maximum payment term of 36 months, along with eligibility criteria and a minimum payment of \$100.	Pending
Compliance History (General)			Tabled for later consideration
Compliance History Classification -5 page 60	How should repeat violator be defined?	Currently, a repeat violator is defined in 30 TAC Chapter 60.2(d). It is recommended that the definition of major violation be revisited, ensuring that major violations reflect those that harm human health, the environment, or demonstrates a blatant disregard for environmental regulations. Additionally, major violations do not necessarily need to be a repeat of the same violation.	Tabled for later consideration
Ord-5 A page 136	Should ordering provisions differ for repeat violators to include more specific requirements, additional monitoring, or other restrictions?	Yes. A multi-media agency team should develop guidelines for issues including evaluation and review of previously issued Orders for effective monitoring, testing, and other compliance assurance requirements. These guidelines should be mandatory for any Repeat Violator.	Tabled for later consideration
Ord-5 B page 137	Should ordering provisions be used to require self-examination or assessment of root causes of violations?	Yes. Orders should require Repeat Violators to do root cause evaluations to address the principal/major reason for the violation and prevention of future violations. Guidance should address the use of independent or third parties for the root cause analysis.	Tabled for later consideration

Ord-5 C page 138	Should repeat violators be required to demonstrate a financial ability to operate in compliance and to fulfill all technical requirements of the order via audit, bond, or performance assessment?	Yes. Recommendation 2 suggests that repeat violators provide financial assurance, such as a performance bond. The bond would fall due and collected by TCEQ if compliance is not achieved.	Tabled for later consideration
Comm-5 page 242	What is the best way to educate the public and regulated community on the use of compliance history?	<ul style="list-style-type: none"> -Design an easily explained rating system. -Rework Web and enforcement materials to relate compliance history to the rest of the enforcement process. -Publish lists of poor and high performers. -Visibly use ratings in enforcement and permit actions. 	Tabled for later consideration