

**WHITE
MARQUEZ
SOWARD**

MARKED WORK SESSION AGENDA

Monday, November 1, 2004

Texas Commission on Environmental Quality

9:30 a.m.
Room 201S, Building E
12100 Park 35 Circle

1. Consideration of issues relating to agency compliance and enforcement policies and practices. Glenn Shankle, Executive Director, Tracy Gross, Office of General Counsel, Tom Weber, Chief Engineer's Office, and Matt Baker, Air Permits Division, presented this issue. Additional staff participating in discussions were, John Steib, Deputy Director, Office of Compliance and Enforcement, Paul Sarahan, Litigation Division Director, and Ann McGinley, Enforcement Division Director. The following items were discussed:

- Issue No. 2 (**Enforcement Process**) Develop a field citation program;
- Issue No. 2 (**Penalty Policy**) Include economic benefit from noncompliance before adjustment to the penalty for factors as justice may require;
- Issue No. 7B-7C (**Penalty Policy**) Should statutory administrative penalties be equalized across programs;
- Issue No. 5 (**Collections**) Assessment of interest charges on payment plans or delinquent penalties;
- Issue (**Collections**) Recommendation to amend TWC § 7.052(d) to eliminate restriction on the Commission which prohibits payment plans following a contested case hearing;
- Issue No. 3 (**Enforcement Process**) Streamline process to determine financial inability to pay;
- Issue No. 3A (**Collections**) Inability to pay issues of small businesses;
- Issue No. 3B (**Collections**) Inability to pay issues of small local governments;
- Issue No. 5 (**Penalty Policy**) Adopt Penalty Policy as a rule supplemented with a guidance document; **and**
- Issue No. 7A (**Penalty Policy**) Mandatory minimum penalty for each occurrence of significant noncompliance.

The following individuals registered to speak on this issue:

Patrick Lee, representing Bracewell and Patterson
J. R. Coolidge, representing Fort Worth Small Business and Local Governmental Advisory
Committee
Celina Romero representing Texas Pipeline Association

No vote was taken on the above items. Staff will return on November 15 to resume discussions on these issues and others in the Enforcement Review.

Action: No action taken.

2. **Closed Session: No closed session convened.**
3. **Consideration of the issuance of Certificates of Recognition to participants in the “Commute Solutions” program in the Austin Early Action Compact Area.** Duncan Norton presented this issue. The Commute Solutions initiative challenged state agencies to promote new or existing commute solutions programs for their employees and other measures that would help to improve air quality in the region. Small Business Environmental Assistance Division proposes to recognize charter partners’ commitment in the Clean Air “Commute Solutions” Challenge with a certificate, signed by all three Commissioners.

Action: Approve issuance of certificate signed by all Commissioners. SW: All agree.

4. **Consideration of the Biennial Report to the 79th Legislature, FY 2003-FY 2004.** This issue was not discussed.

Consideration of issues relating to agency compliance and enforcement policies and practices.

ATTACHMENT 1

Table Listing the Order for Presenting Recommendations at the Commissioners' Work Sessions

In the table beginning on the following page:

- Column 1 refers to the subcommittee that analyzed the issue, with abbreviations for each subcommittee, as follows:
 - EP - Enforcement Process/Agency Coordination Subcommittee
 - Pen - Penalty Policy Subcommittee
 - Coll - Collections/Financial Inability to Pay Subcommittee
 - Ord - Ordering Provisions Subcommittee
 - SEP - Supplemental Environmental Projects Subcommittee
 - Comm - Enforcement Process - Communications Subcommittee
 - Comp - Complaint Procedures Subcommittee
 - EIC - Enforcement Initiation Criteria/Investigation Prioritization/NOVs/NOEs Subcommittee
- Column 2 identifies the Key Issue number as identified in the *Enforcement Process Review Draft Final Report*, August 20, 2004.
- Column 3 identifies the page number where detailed information relating to the Key Issue is found as identified in the *Enforcement Process Review Draft Final Report*, August 20, 2004.
- Column 4 is a brief description of the Key Issue question(s) that was analyzed during the review.
- Column 5 is a brief summary of the principal recommendation(s) that resulted from the agency review.
- Column 6 identifies the most significant requirement that may be required in order to revise and implement the recommendation. *Note:* other implementation may be necessary as well, as described in the draft final report.

Order for Presenting Recommendations at the Commissioners' Work Sessions

Com- mit- tee	Issue No.	Page	Issue	Recommendation	Implementation
EP	2	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. Example violations are included as backup material (Attachment 4).	Potential Statutory change
Pen	2	89	Should all or part of the economic benefit 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. Comprehensive implementation would be accomplished if the statutory penalty caps were to be equalized across all programs. Several alternative ways to treat economic benefit when preparing a penalty are described in detail in the report. Existing statutorily authorized penalties are included as backup material (Attachment 5).	Potential Statutory change
Pen	7 B - 7 C	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.	Potential Statutory change (same change as preceding row)
Coll	5	206	Would the assessment of interest charges on payment plans or delinquent penalties encourage payment or result in fewer requests for payment plans?	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. Interest should also be assessed on delinquent penalties.	Potential Statutory change

Ord	5 C	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	Potential Statutory change
Ord	5 A	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.	Policy, guidance, or process change
Ord	5 B	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.	Policy, guidance, or process change
Coll	None	None	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?	Yes. TCEQ should seek a statutory change to Texas Water Code § 7.052(d) to eliminate the restriction on the Commission which prohibits payment plans following a contested case hearing. <i>Note: This recommendation is not included in the Draft Final Report, as the issue arose after the report had been completed.</i>	Potential Statutory change
EP	3	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.	Chapter 70 rule amendment

Coll	3 A	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.	Policy, guidance, or process change
Coll	3 B	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.	Policy, guidance, or process change
Pen	5	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.	Promulgate selected policies into a new rule
Pen	1 B - 1 E	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.	Revise calculation methods and promulgate into new rule
Pen	3	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.	Promulgate selected policies into a new rule
Pen	4	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.	Establish policy and promulgate into new rule

Pen	7 A	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.	Establish assessment of mandatory minimum penalties by rule; develop list of actual penalties by violation in guidance
Pen	8	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.	Promulgate selected policies into a new rule
Pen	9	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.	Policy change
Pen	10	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.	Promulgate selected policies into a new rule
EP	1	209	How can the current enforcement time lines be revised to streamline the existing enforcement process? (recommendation addresses part of issue)	Increase the proposed penalty by 25% if a respondent fails to settle within 30 days of receiving the draft order	Promulgate selected policies into a new rule
Pen	12	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.	Formalize current policy into a new rule

Coll	1 A	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.	Policy, guidance, or process change
Coll	1 B	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.	Policy, guidance, or process change
Coll	2	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.	Policy, guidance, or process change
Coll	4	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.	Policy, guidance, or process change

EP	1	209	How can the current enforcement time lines be revised to streamline the existing enforcement process?	<p>Enforcement time lines could be reduced by a total of 125 days by a combination of the following:</p> <ul style="list-style-type: none"> -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. 	Policy, guidance, or process change
EP SEP	4 2 - 3	228 141 - 144	How could the SEP process be streamlined and or simplified?	<ul style="list-style-type: none"> -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. -Expand the pre-approved list of SEPs. -Provide SEP information to the respondent during the investigation exit briefing. -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%. 	Policy, guidance, or process change
EP	5	229	How can TCEQ increase or reallocate resources to target investigative/enforcement activities?	<p>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.</p>	Policy, guidance, or process change

EP	6	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 	Policy, guidance, or process change
Comm	1	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.	Policy, guidance, or process change
Comm	4	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.	Policy, guidance, or process change
SEP	5 A	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.	Policy, guidance, or process change
SEP	5 B	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.	Policy, guidance, or process change

Comm	2	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. 	Policy, guidance, or process change
Ord	3 A	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.	Policy, guidance, or process change
Comm	3 A - 3 B	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.	Policy, guidance, or process change
Comp	3	297	How can the TCEQ process for receiving complaints be improved, including accessibility 24-hours via telephone and agency website?	<ul style="list-style-type: none"> -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. 	Policy, guidance, or process change

Comm	5	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. 	Policy, guidance, or process change
Comp	1	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.	Policy, guidance, or process change
Comp	2	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.	Policy, guidance, or process change
Comp	5	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.	Policy, guidance, or process change
EIC	1 A	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.	Policy, guidance, or process change

EIC	1 B	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.	Policy, guidance, or process change
EIC	1 C	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.	Policy, guidance, or process change
EIC	2	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.	Policy, guidance, or process change
EIC	3	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.	Policy, guidance, or process change
EIC	4 A	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.	Policy, guidance, or process change

EIC	4 B	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.	Policy, guidance, or process change
EIC	6 A - 6 B	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.	Policy, guidance, or process change
EIC	6 C	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.	Policy, guidance, or process change
EIC	7	168	Should the use of verbal NOV's by Field Operations investigators be continued?	No. Use of verbal NOV's should be discontinued.	Policy, guidance, or process change
EIC	8	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.	Policy, guidance, or process change
EIC	9 B	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.	Policy, guidance, or process change

Ord	1 A	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.	Policy, guidance, or process change
Ord	1 B	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.	Policy, guidance, or process change
Ord	1 C	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.	Policy, guidance, or process change
Ord	1 D	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.	Policy, guidance, or process change
Ord	2 A	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.	Policy, guidance, or process change

Ord	4 A	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.	Policy, guidance, or process change
Ord	4 C	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.	Policy, guidance, or process change
SEP	4 A	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.	Policy, guidance, or process change
SEP	4 B	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".	Policy, guidance, or process change
SEP	5 C	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.	Policy, guidance, or process change
SEP	6 A	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.	Policy, guidance, or process change

SEP	6 B	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.	Policy, guidance, or process change
SEP	6 C	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.	Policy, guidance, or process change
SEP	7 A - 7 B	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). 	Policy, guidance, or process change

SEP	8 A - 8 C	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. 	Policy, guidance, or process change
Coll	6	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.	No change recommended
Comp	4	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.	No change recommended
Pen	6	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.	No change recommended

Pen	11	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.	No change recommended
Ord	3 B	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.	No change recommended
Ord	3 C	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.	This issue is addressed under recommendations for the use of compliance history.	No change recommended
Ord	4 B	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.	No change recommended
SEP	1	141	Should TCEQ continue the SEP program?	Yes, SEPs should continue to be offered to offset enforcement penalties.	No change recommended
EIC	5	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.	No change recommended
EIC	9 A	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.	No change recommended

ATTACHMENT 2

Timely Public Comments Received on Final Draft Recommendations

Comments were received from the following entities:

- (1) 7-Eleven, Inc. (submitted by Strasburger & Price) (7-Eleven)
- (2) Alliance for a Clean Texas (2 letters received) (ACT)
- (3) Allied Waste (Allied)
- (4) Association of Electric Companies of Texas (submitted by Jenkins & Gilchrist) (AECT)
- (5) ATOFINA Petrochemicals, Inc. (ATOFINA)
- (6) Birch & Becker (Erich Birch) (B & B)
- (7) BP Products North America, Inc. (BP)
- (8) Brown McCarroll, LLP (Danny Worrell) (Brown, McCarroll)
- (9) Calpine Corporation (Calpine)
- (10) City of Houston Mayor Bill White (Houston)
- (11) City of Lovelady (submitted by City Secretary Peggy Price) (Lovelady)
- (12) Dallas County Small Business Advisory Committee (Dallas SBAC)
- (13) Dow Chemical Company (Dow)
- (14) EPA Region 6 (EPA)
- (15) ExxonMobil (ExxonMobil)
- (16) Golden Triangle Small Business Advisory Committee (Golden Triangle SBAC)
- (17) Gulf Coast Waste Disposal Authority (GCWDA)
- (18) Harris County Judge Robert Eckels (Judge Eckels)
- (19) Harris County Public Health & Environmental Services (Harris County PH&ES)
- (20) Houston-Galveston Area Council (HGAC)
- (21) Houston Small Business Advisory Committee (Houston SBAC)
- (22) Lloyd, Gosselink, Blevins, Rochelle & Townsend, P.C. (Mike Nasi) (Lloyd, Gosselink)
- (23) Lower Colorado River Authority (LCRA)
- (24) Occidental Permian, Ltd. (Oxy Permian)
- (25) Phelps Dodge Mining Company, El Paso Operations (Phelps Dodge)
- (26) Port of Houston Authority (PHA)
- (27) Russell, Moorman & Rodriguez, LLP (Angela Moorman) (RM&R)
- (28) San Antonio Manufacturers Association (SAMA)
- (29) Texas Association of Business (TAB)
- (30) Texas Association of Counties (TAC)
- (31) Texas Chemical Council (TCC)
- (32) Texas Disposal Systems Landfill, Inc. (TDSL)
- (33) Texas Genco, LP (Texas Genco)
- (34) Texas Industry Project (submitted by Baker Botts, LLP) (TIP)
- (35) Texas Oil & Gas Association (TxOGA)
- (36) Texas Pipeline Association (submitted by Celina Romero) (TPA)
- (37) TXU Power (TXU)
- (38) Vinson & Elkins (David Tuckfield) (V & E)
- (39) Westward Environmental, Inc. (Westward)
- (40) 512 individuals (494 were identical e-mails)

ATTACHMENT 3

Top Ten Issues on the Draft Recommendations

1. In 494 form letters or e-mails, individuals stated that TCEQ should make sure in all cases that penalties are at least high enough to outweigh what polluters save by breaking the law and that full recovery of an economic benefit does not allow the deduction of compliance costs. More than a dozen additional individuals made similar comments. Two commentors support more punitive penalties based on economic benefit. (EPA, ACT) Four commentors could support a policy that increases penalties when it is clear a violator made a conscious decision to risk noncompliance. (TCC, Lloyd, Gosselink, Dow, ExxonMobil) Twelve commentors either support no changes to the existing policy, disagree strongly with a premise that noncompliances are motivated by profit, raise concerns with accurate computation of economic benefit by TCEQ, or oppose removing the \$15,000 benefit threshold that exists before the base penalty is adjusted. (TCC, ExxonMobil, TIP, AECT, B&B, V&E, ATOFINA, TxOGA, Dow, Lloyd, Gosselink, TAB, 7-11)
2. Twenty commentors support inspection priorities being focused on environmental risks. (TAB, RM&R, PhelpsDodge, OxyPermian, AECT, TxOGA, PHA, 7-11, Dow, Lloyd, Gosselink, TCC, TIP, B&B, Calpine, ExxonMobil, Westward, EPA, ACT, HGAC, Judge Eckels, Houston) Four commentors recommend a focus of effort based on current cleanup efforts (SIP, TMDL) or a focus by sector (EPA, Judge Eckels, Houston, HGAC) One commentor disagrees with weighing public perception. (Westward) One commentor is concerned with the current compliance history program and its use in evaluating risk of a facility. (SAMA) Two commentors describe concerns with a shift in emphasis, and suggest reserving some resources for maintaining program integrity. (EPA, ACT) One commentor suggests the shift could result in further emphasis on largely-compliant large entities. (TIP)
3. Seven commentors opposed the implementation of field citations, and six commentors believed that the program may be implemented inconsistently or arbitrarily (some commentors noted both). (TIP, Oxy Permian, PHA, TXU, Calpine, Texas Genco, B & B, Dow, TAC, Lovelady) Seven other commentors stated that they could support a citation program only with a very limited, well defined scope, which may involve rulemaking and/or additional stakeholder input. (ATOFINA, TAB, TxOGA, V & E, RM&R, 7-Eleven, Lloyd, Gosselink)
4. Twelve commentors noted that the TCEQ does not have sufficient investigative and/or enforcement resources to enforce environmental laws. (TXU, HGAC, ACT, Harris County PH&ES, 8 individuals) Eight other commentors noted that reallocation of personnel should occur where there are not enough investigators or regional enforcement coordinators to handle environmental priorities and workload. (Dallas SBAC, Houston SBAC, Golden Triangle SBAC, TAB, B & B, SAMA, Judge Eckels, Houston)
5. Sixteen commentors support regular revision of the EIC and making the EIC a more comprehensive document; some of these commentors identify specific changes they would like to see accomplished. (Judge Eckels, Houston, Harris Co. PH&ES, B&B, RM&R, TCC, Lloyd, Gosselink, ExxonMobil, ACT, EPA, SAMA, TAB, TxOGA, TPA, TIP, Calpine) Two commentors raised specific complaints on how the current EIC failed to result in adequate TCEQ enforcement. (Individual, TDSL) Three commentors recommend divergent handling of violations through either formal enforcement vs. field NOV, instead of lumping all violations into a referral (TCC, Lloyd, Gosselink, ExxonMobil)

6. Sixteen commentors stated the current formula for developing a compliance history rating was flawed and needed large improvements. Some commented that staff's recommendation to make meaningful, targeted changes would be useful while others said a complete overhaul of the agency's approach was needed. (ExxonMobil, Oxy Permian, Golden Triangle SBAC, ACT, Calpine, RM&R, DOW, TCC, TIP, TAB, TPA, 7-Eleven, SAMA, B&B, TxOGA, TAC, TexasGenco, ATOFINA, Brown, McCarroll)
7. Fourteen comments were received from industry that strongly disagreed with staff's recommendation to not include site complexity as a factor of compliance history. (ExxonMobil, TXU, RM&R, DOW, TXOGA, TCC, TIP, TAB, GCWDA, 7-Eleven, SAMA, Texas Genco, AECT, B&B) One commentor agreed with staff's recommendation. (ACT) Staff recommends no specific factor for site complexity, but states that by counting the number of inspections at a site, complexity is not ignored.
8. Thirteen commentors stated that NOV's and NOE's should not be used or at least severely discounted in calculating compliance history since NOV's and NOE's are allegations and not final enforcement actions. One commentor supported their continued use. (ExxonMobil, Oxy Permian, TXU, PHA, TCC, TPA, ATOFINA, AECT, TAB, RM&R, TIP, TxOGA, 7-11)
9. Nine commentors noted that the streamlined enforcement timeframes, as well as the increase in penalties if settlement is not achieved within 30 days, may result in less opportunities to discuss the violations, penalty, etc. with staff and may negatively affect their due process rights. (TIP, Calpine, Texas Genco, ExxonMobil, TCC, TxOGA, B & B, RM&R, 7-Eleven) Four commentors noted that although they agreed that the enforcement process needed to be streamlined, they had some concerns about the implementation of the reduced timeframes and/or believed that additional stakeholder input was necessary. (EPA, TPA, GCWDA, Calpine)
10. Nine comments were received on what entities should be given a compliance history score. Some commented that only a site should receive a score, others recommend that the owner/operator and site receive a score, while others recommended that the owner, operator, and site each receive a score. Staff recommends a score for the site and owner/operator (two scores only). (ExxonMobil, TCC, ACT, EPA, TxOGA, AECT, PHA, 7-11, TPA)

ATTACHMENT 4
Summaries of all Timely Public Comment
Received on the Draft Recommendations

Penalty and Corrective Action Committee

Penalty Policy Subcommittee

1A) Penalty Policy Simplification

- Commentors agreed with this recommendation. (AECT, TCC, TxOGA, ExxonMobil, TIP).

1B-E) Use Overall Compliance History Classification to Simplify Penalty Calculations and Avoid Double Counting

- Several agreed with recommendation. (TPA, AECT, OxyPermian, Brown, RM&R, McCarroll, GCWDA, TAB, 7-11, Dow, TxOGA, TexasGenco, ExxonMobil, TCC, TIP).
- Some supported recommendation but believe it should be supplemented with revisions to compliance history program. (B&B, Lloyd, Gosselink).

2) All or part of the economic benefit of noncompliance should be included in a penalty

- In 494 form letters or e-mails, commentors stated that TCEQ should make sure in all cases that penalties are at least high enough to outweigh what polluters save by breaking the law and that full recovery of an economic benefit does not allow the deduction of compliance costs. (Individuals).
- More than a dozen additional letters or e-mails made similar comments. (Individuals).
- A commentor believes a penalty should recover all the benefit of not having complied, before any consideration of the cost to come into compliance. (ACT).
- A commentor urges TCEQ not to adopt several of the alternatives identified in the report, including an option to only address economic benefit for egregious violations or when the facility is a major. (ACT).
- Commentors opposed a “major facility only” policy. (TCC and ExxonMobil).
- A commentor supports addressing economic benefit for egregious violations. (AECT).
- A commentor supports the alternative to remove the \$15,000 threshold. (ACT).
- Commentors do not support removal of the threshold. (TIP, B&B, V&E, ATOFINA, AECT).
- Commentors agree economic benefits should be recovered even in financial inability to pay cases. (ACT, ExxonMobil, TCC).
- A commentor urges the use of the BEN model to result in a consistent state/federal approach and to simplify calculations. (EPA).
- A commentor believes EPA is having difficulty with BEN, suggesting TCEQ may have even a harder time using it appropriately. (TxOGA).
- Commentors disagree with proposals and recommend retaining the existing policy. (TIP, TCC, RM&R, ExxonMobil).
- Commentors believe it is a flawed assumption that entities avoid compliance for financial gain, except rarely. (TCC, Dow, ExxonMobil, TAB, TIP, 7-11).
- Some could support a policy to increase penalties when it is clear a violator made a conscious decision to risk noncompliance. (TCC, Lloyd, Gosselink, Dow, ExxonMobil).
- Commentors are concerned that TCEQ estimation of economic benefit would likely be

inaccurate. (TAB, TIP, 7-11).

- A commentor believes TCEQ does not have expertise to evaluate avoided costs; further assessments by TCEQ of economic benefit would result in a significant risk of challenges to our cases. (TxOGA).

3) Allow 15% reduction (exceptions would include poor performers and violations that cause actual harm) or increase in penalty for small entities

- Some agree with the recommendation. (Judge Eckels, Harris Co. HP&ES, RM&R, Lovelady).
- A commentor does not believe the percent reduction is high enough. (B&B).
- A commentor suggests using a model they use to determine if an entity qualifies for the monetary break. (EPA).
- A commentor suggests the definition of a small entity should address how the TCEQ will classify regional governments. (LCRA).
- A commentor recommends the reduction not occur unless an economic benefit is recouped. (EPA).
- A commentor suggests not allowing an across-the-board break, but instead allowing a break if entity is substantially investing in compliance. (ACT).
- A commentor suggests a 50% reduction in penalty for a small business that settles an enforcement action fast. (SAMA).
- Some agree with recommendation for complete deferral for a small government in exchange for addressing compliance. (SAMA, TAC).
- Commentors recommend a 40 - 50% reduction as more acceptable for a small business. (TAC, Dallas SBAC, & Houston SBAC).
- Commentors recommend a 60% reduction as more acceptable for a small business. (TAB & Golden Triangle SBAC).
- Commentors do not support recommendation for a separate penalty for small entities. (7-11, AECT).
- While not opposing recommendation, some believe a large facility should not be penalized because it is perceived to be able to pay more. (TCC, ExxonMobil).

4) Improve penalty policy by adding deterrence as a goal & elimination of downward adjustment of penalties for repeat violators

- A commentor strongly supports recommendation (ACT); and another commentor agrees with recommendations. (TxOGA).
- A commentor believes the best way to deter violations is to increase penalties at TCEQ to a level arrived at through the EPA penalty policy. (EPA).
- Some believe TCEQ needs to gain further understanding of a regulated entity's compliance obligations before we can determine whether our penalties are a deterrent or not. (TCC, ExxonMobil).

5) Set penalty policy by agency rule; allow Commission discretion within rule

- Some agree with recommendation. (TAB, 7-11, RM&R, AECT, ATOFINA, TxOGA).
- Some agree with recommendation but feel the actual penalty matrix and fee tables should be outside the rule to allow flexibility. (SAMA, B&B).
- Some oppose recommendation with concerns that rule format will reduce flexibility and

- Commission discretion. (Dow, TIP, PHA, Calpine, TPA).
 - Some argue either for a rule or policy, but urge TCEQ provide a transparent process to obtain public input during development. (TIP, TxOGA, TexasGenco, TPA, AECT).
- 6) No Consideration Given for Non-mandatory Investments in Pollution Equipment
- Commentors disagree with recommendation so that TCEQ encourages voluntary improvements. (AECT, ATOFINA).
- 7A) Replace potential release category of penalty matrix with standard minimum penalties for violations that do not cause environmental harm
- Some believe that a facility not operating without a permit should be a major violation and not one in the standard minimum penalty list. (Judge Eckels, Harris Co. HP&ES, ACT).
 - Some agree with recommendation. (SAMA, 7-11, Dow).
 - Some believe the standard penalties are unnecessarily punitive. (TCC, Lloyd, Gosselink, ATOFINA, ExxonMobil, TIP).
 - Some indicate standard penalties are too inflexible, do not get adjusted based on site-specific factors, or don't factor in the degree of deviation from a requirement. (TIP, OxyPermian, ATOFINA).
 - A commentor feels this proposal over-simplifies penalty calculations for violations that do not cause harm. (TIP).
 - Some support recommendation but feel transparent process is needed to allow public input into development of standard penalties. (B&B, PhelpsDodge, RM&R).
 - A commentor feels example penalties are too low and will not deter; believes examples of penalties for paperwork or potential release violations downplay seriousness of those violations. (ACT).
- 7B-C) Raise base penalties when harm level is an actual release
- Some recommend enhancing penalties commensurate with the significance of a violation towards regional attainment of a clean air standard. (Judge Eckels, Houston).
 - Some agree with raising base penalties as recommended. (Harris Co. HP&ES, 7-11).
 - Some generally agree that penalties for harm should be higher than those for paperwork violations. (Lovelady, PhelpsDodge).
 - A commentor supports eliminating potential harm component of matrix as recommended (B&B); a commentor believes potential release determinations are subjective. (Dow).
 - Some believe this recommendation would be more appropriate if the actual release were determined to exceed levels that are protective of health/environment. (TCC, ExxonMobil).
 - A commentor suggests reasonable discretion to any policy is important. (TxOGA, TIP).
 - A commentor believes an increase in penalty for actual release needs further review during rule making. (RM&R).
- 8) Allow Partial Credit for Partial Good Faith Efforts to Comply
- Several agree with recommendation. (TAB, AECT, 7-11, TCC, ExxonMobil, SAMA, TxOGA, Lovelady).
- 9) Eliminate Use of Deferrals
- A commentor urges TCEQ to adopt recommendation. (ACT).
 - Some disagree with elimination of deferrals for small businesses. (TAC, Golden Triangle

SBAC, Dallas SBAC, Houston SBAC).

- Several believe deferrals should be allowed citing a deferral as a tool to settlement of a case. (TCC, B&B, 7-11, GCWDA, ExxonMobil, Calpine, TIP).
- A commentor disagrees with recommendation, citing more due process with existing policy. (TxOGA).
- A commentor disagrees with recommendation and favors establishing distinct circumstances by rule for allowing deferrals. (RM&R).

10) Enhance Penalties in a Default Order

- Commentors are supportive, but recommend extenuating circumstances be considered. (TCC, ExxonMobil).
- A commentor does not object to recommendation. (TxOGA)

11) Continue to Pursue Cases with Low Penalties

- Some disagree with recommendation, citing TCEQ resource needs. (TCC, ExxonMobil, TIP).
- Commentors believe inflexible HPV policy results in unnecessary enforcement cases, citing Title V deviation reports. (TexasGenco, TIP).

12) Clarify Current Joint/Several Liability into Penalty Policy

- Some believe the existing practice needs review and incorporation into the policy. (TCC, 7-11, ExxonMobil).
- A commentor suggests a policy/rule incorporate facts relating to falsification of certifications. (TxOGA).

Ordering Provisions Subcommittee

1) Greater Assurance of Compliance When Closing Out Enforcement Orders

- A commentor agrees with recommendation to allow some small entities more time to comply with an order. (SAMA).
- Some believe expectations need to be established early and described in the ordering provisions; false certifications should be prosecuted but should not be assumed to be criminal. (TCC, TxOGA, ExxonMobil).
- Some believe there should be no differences based upon size of an entity. (TxOGA, 7-11).
- A commentor believes further documentation would be in conflict with enforcement streamlining goals. (7-11).

2) Establish an Order Provision to Identify Consequences of Failing to Comply

- Commentors support recommendation. (TCC, ExxonMobil).
- A commentor supports recommendation and suggests up-front clarity as being a beneficial process. (TxOGA).
- A commentor does not believe this language is necessary; but if it moves forward offers wording changes. (AECT).

3) Improve Internal Coordination During Enforcement Order Preparation

- Some support recommendation, but these entities and TxOGA cite needs for improving compliance history use. (TCC, ExxonMobil).
 - A commentor suggests the agency be reorganized to make coordination more efficient. (TxOGA).
- 4) Improving Ordering Provision Language
- Commentors support recommendation. (TCC, TxOGA, AECT, ExxonMobil).
- 5) Require Financial Assurance or Root Cause Analysis in an Order Against Repeat Violator
- Some believe compliance history definition of repeat violator needs to be revised to address environmental impact, before consideration of the recommendations. (TCC, AECT, ExxonMobil, B&B, Dow, SAMA).
 - Some believe third party root cause analysis should be discretionary and not mandated by TCEQ. (TCC, TxOGA, 7-11, Dow, ExxonMobil).
 - Some believe it may be more straight-forward to raise penalties rather than seeking financial assurance. (TCC, ExxonMobil).
 - Some do not support the recommendation (Dow, RM&R); A commentor suggests these considerations be case-specific. (RM&R).
 - A commentor sees no evidence that TCEQ could judge a facility's financial ability to operate. (TxOGA).

Supplemental Environmental Projects Subcommittee

General Comments

- Some generally support SEP recommendations. (Judge Eckels, Harris Co. PH&ES).
 - A commentor is concerned the SEP program is under-utilized. (HGAC).
 - A commentor recommends a process for public comment on future changes to the SEP guidance. (TPA).
- 1) TCEQ Should Continue SEP Program
- Several agree with recommendation. (TAB, TxOGA, AECT, GCWDA, TexasGenco, ExxonMobil, TCC, Calpine, TIP).
- 2) SEP Discussions Should begin During Field Investigations or Early in Process
- Commentors support early discussion of SEPs. (Dow, PHA, TPA).
 - **Also, see Enforcement Process Subcommittee Recommendation comments**
- 3) TCEQ Should Develop Processes to Pre-approve/Designate SEP Projects
- A commentor recommends local government be included in review panels of proposed SEP projects. (Houston).
 - Some believe setting Commission-approved guidelines would add assurance to SEP approval. (TCC, TxOGA, ExxonMobil).
 - A commentor believes Commission approval of pre-approved SEP lists is unnecessary. (AECT).
 - A commentor notes a specific case where a pre-approved SEP took 120 days to be approved.

(LCRA).

- Some suggest approval of SEPs separately as partial settlement could be beneficial and provide streamlining. (TCC ExxonMobil).
- Commentors support pre-approved SEPs (Texas Genco, Calpine, 7-11, RM&R, B&B, TIP); Commentors also suggest the policy be flexible enough to also allow other projects too. (B&B, PhelpsDodge).

4) Provide Greater Credit for Preferred SEP Projects

- A commentor agrees that projects other than preferred ones should continue to be allowed. (SAMA).
- Commentors would not like to see SEPs automatically discounted if not a preferred project. (TCC, TxOGA, 7-11, ExxonMobil).
- A commentor suggests any definition of community consider facilities close to a county line. (AECT).
- A commentor disagrees with preferential ratios for SEPs based on location, media, or the directness of benefit. (RM&R).

5A-B) Distribute Information to Interested Parties Before SEP and After Completion

- A commentor suggests citizen groups be encouraged to submit SEP ideas into the process. (EPA).
- A commentor suggests enforcement respondents be required to poll community groups for SEP ideas. (EPA).
- A commentor does not support direct involvement of public in developing a SEP. (AECT).
- A commentor strongly objects to an alternative recommendation to require outreach on a SEP as an ordering provision. (AECT).

5C) Set Up Processes for Routine Input on SEP Proposals from TCEQ Regions

- No specific comments received.

6) Require Respondent to Describe SEP Project Benefits & to Report on Actual Benefits Upon Completion of Project

- Commentors disagree that all SEP benefits can be determined at time of project completion. (TCC, AECT, ExxonMobil).
- A commentor suggests the recommendation clarify how the recommendation applies to pre-approved or other SEPs. (7-11).
- A commentor suggests the TCEQ issue guidelines for estimating benefit if it goes forward with recommendation. (7-11).
- A commentor suggests a policy to allow SEPs in circumstances when the benefits cannot be quantified up-front. (AECT).

7) Eliminate Use of Some Particular SEPs/Further Classify Approvable SEP Projects

- A commentor disagrees with examples of direct benefit projects described in the report. (ACT).
- Commentors feel indirect projects are very valuable to communities or small entities that may be helped. (TCC, PHA, ExxonMobil).
- A commentor disagrees with removal of pollution prevention SEPs as approvable. (AECT).

- 8) Establish Offset Percentages on SEPs, Allowing Greater Offset Credit for Some Small Businesses Proposing Direct Benefit Projects
- A commentor indicates environmental monitoring conducted under a SEP should meet agency QA/QC requirements. (Employee).
 - A commentor supports recommendations. (RM&R).
 - Some disagree with prohibiting on-site SEPs. It is identified that EPA and the State of Oklahoma accept such projects when a project exceeds minimum regulations. (SAMA, TCC, TPA, Lloyd, Gosselink, ExxonMobil).
 - Some believe the allowance of a 100% offset for a small local government should also be allowed for a small business. (SAMA, Lloyd, Gosselink, B&B).
 - A commentor recommends a 75% offset be allowed when a non-small entity proposes a direct benefit SEP. (PhelpsDodge).

Enforcement Initiation Criteria/Investigation Prioritization/NOV & NOE Policy Subcommittee

- 1) Inspection Priorities Should Primarily be Based on Risk & Should Also Consider Compliance History, LBB Commitments, & Public Perception
- A commentor suggests inspections be shorter and more to the point. (Individual)
 - A commentor agrees with a focus based on risk, but feels the question of adequate enforcement of priority sources is not answered in the report; also disagrees with using a criterion of “public perception” as being risk-based. (Westward).
 - Commentors recommend more frequent and unannounced inspections in the Houston non-attainment region of major NOx, VOC, and HRVOC emission points. (Judge Eckels, Houston).
 - A commentor believes inspection priorities should be focused towards dischargers into segments that are not meeting water quality standards. (HGAC).
 - A commentor believes TCEQ should not use compliance history ratings rendered from current system to determine priorities because formula needs to be fixed; instead, TCEQ should focus primarily on risk. (SAMA).
 - Several agree with recommendation. (TAB, RM&R, PhelpsDodge, OxyPermian, AECT, TxOGA, PHA, 7-11, Dow, Lloyd, Gosselink, TCC, B&B, ExxonMobil, Calpine).
 - A commentor supports recommendation but is concerned a risk-based emphasis will result in too much emphasis on largely compliant large entities; TCEQ should set criteria so more out-of-compliance small entities are targeted. (TIP).
 - A commentor agrees with the recommendation but believes TCEQ must also reserve some resources for entities lacking a permit to maintain “program integrity”. (ACT).
 - A commentor generally agrees with recommendations but identifies need to negotiate the annual inspection commitments.(EPA).
 - A commentor suggests TCEQ additionally customize priorities by regulated sector and should consider the MACT targeting strategy. (EPA).
 - A commentor suggests TCEQ publicly identify sectors on which a focus is identified. (EPA).
- 2) Set Aside Specific Resources to Inspect Unauthorized Facilities
- A commentor feels this strategy is in conflict with standard minimum penalties since operating without a permit would not be a major violation. (Harris Co. PHES).
 - Several agree with recommendation. (TCC, RM&R, TxOGA, B&B, AECT, ExxonMobil); a

commentor supports the alternative of specifying sectors for focus annually. (LCRA).

- A commentor disagrees with recommendation; it would take away resources from higher priorities and has the potential to be driven by public pressure rather than environmental priorities. (PHA).
- A commentor suggests implementation include input from sector before initiation of a focus; such a process could streamline the effort in several ways. (7-11).
- A commentor suggests grace periods or moratoria be established to allow compliance after warning. (7-11).

3) Complaint Priorities Need to Pre-planned

- A commentor supports a priority on complaints since speedy resolution eliminates misunderstandings with the public. (AECT).

4) The EIC Should be Revised Regularly and All Enforcement Actions Need to be Included

- A commentor indicates TCEQ does not adequately enforce regulations on its books, including a lack of action to address pollution of Lick Creek in Travis County. (Individual).
- Commentors agree with agency-wide, annually reviewed EIC, but recommend local enforcement partners should be able to review draft proposals. (Judge Eckels, Houston).
- A commentor suggests maximizing enforcement by issuing NOEs for single violations causing air quality impacts, separate from a more comprehensive enforcement action. (Harris Co. PH&ES).
- Commentors support the recommendation; commentors support process to provide for public input to a revised EIC. (TIP, B&B, RM&R, TPA).
- Commentors agree with recommendations; they comment that separate violations should be settled separately (by NOV in field vs. NOE and formal enforcement). (TCC, Lloyd, Gosselink, and ExxonMobil)
- A commentor suggests the term “violation” be changed to two more accurate terms of either “management failure” or “operational failure” to complement an EMS by an entity. (Employee).
- A commentor believes the EIC should result in referral of cases (and penalties) where violations have *potential* to cause harm, when entity is not operating with authorization, and where Class B violations are repeated. (ACT).
- A commentor believes a lack of formal enforcement for potential releases would be a conflict with NPDES requirements of a state. (ACT).
- A commentor agrees with recommendation but suggests TCEQ identify criteria that would be applied on a sector basis. (EPA).
- Commentors believe Class A violations should be those that cause environmental harm. (SAMA, Lloyd, Gosselink, TAB).
- Commentors believe operation without a permit should be a moderate violation (SAMA, TPA); a commentor cites examples where penalties for these infractions are too high. (SAMA).
- Commentors feel EIC should be revised so that paperwork violations do not result in automatic enforcement. (SAMA, Calpine, TIP).
- A commentor supports recommendation adding that EIC is in need of major overhaul and has been long overdue. (TxOGA).
- A commentor requests TCEQ set more flexible interpretations of EPA’s HPV policy and

- further clarify handling of excessive emission events. (TIP).
 - A commentor cites a specific complaint of when TCEQ did not enforce violations in a timely manner. (TDSL).

- 5) No Separate EIC Should be Developed to Address Small Entities
 - Several believe small businesses should be allowed more time to come into compliance with a field NOV before having to face formal enforcement/penalties. (Judge Eckels, Harris Co. PH&ES, TAB, SAMA).
 - Commentors agree with recommendation. (EPA, TxOGA).
 - Commentors believe any discretion afforded small entities should be described within the EIC policy. (TCC, ExxonMobil)

- 6) Formalize NOV appeals and Continue to Allow NOE Appeals
 - Several agree with recommendation. (TAB, 7-Eleven, AECT, GCWDA, Dow, TxOGA, Lloyd, Gosselink, PHA, TexasGenco, ExxonMobil, TCC, Calpine, TIP).
 - Commentors believe the NOE appeal process should also be formalized. (TCC, 7-11, ExxonMobil).
 - Commentors suggested time frames for appeals are too short. (Lloyd, Gosselink, AECT, and PHA).
 - A commentor indicates any policy should identify how results of local official inspections fit into policy. (Houston).

- 7) Discontinue Use of Verbal NOVs
 - Commentors believe verbal NOVs should continue when violations are corrected before inspector leaves facility. (Harris Co. PH&ES, TIP).
 - Commentors disagree with recommendation. (TPA, Lloyd, Gosselink, TIP, AECT, 7-11).
 - A commentor believes verbal NOVs should be used when a violation does not result in harm to the environment. (Lovelady).
 - Several agree with recommendation. (EPA, TAB, TCC, TxOGA, ExxonMobil, SAMA).
 - A commentor feels verbal NOVs should continue, citing it as consistent with taking a focus off paperwork or minor violations; TCEQ should consider establishing a *de minimus* standard before an NOV is issued. (Calpine, TIP).
 - Commentors believe some other process of inspection discretion is needed, such as inclusion of “areas of improvement” into inspection reports. (TPA, TCC, TxOGA, ExxonMobil).

- 8) Adopt Formal NOV Policy
 - Commentors agree with recommendation. (TCC, TxOGA, AECT, ExxonMobil).

- 9) Continue Use of NOEs
 - Commentors agree with recommendation. (TCC, AECT, ExxonMobil).
 - A commentor is concerned but feels any policy should not short-change any due process. (TxOGA).

Enforcement Process Committee

Collections/Financial Inability to Pay Subcommittee

- 1) Hold permit applications if delinquent fees and/or penalties have not been paid.
 - There should be a mechanism for separating out fees and penalties that are being contested. (B & B, 7-Eleven)
 - Applications should not be returned until at least 60 days after an entity is notified of the delinquency. (RM&R)
 - Other alternatives such as compliance certification or strict payment schedules should be considered in lieu of the recommendation, as some regulated entities need the permit to resolve problems which may potentially pose a threat to the environment. (1 individual)

- 2) Delinquent accounts should be collected through the AG and use of a collection agency.
 - There should be a mechanism for separating out fees and penalties that are being contested. (B & B)
 - Agency tracking mechanisms of delinquent accounts should be improved. (RM&R)
 - One commentor agrees with the alternative recommendation to change the source of revenue for PST administration from storage tanks registration fees to a fee based on bulk delivery of gasoline. (7-Eleven)

- 3A) Financial inability to pay of small businesses should be evaluated using a screen of 1% of annual revenue.
 - One commentor opposed the use of a 1% revenue screen to determine financial inability to pay. (ACT)
 - If the 1% screen is used and the penalty is greater than that level, the entire penalty should be reviewed for inability to pay issues, not just the portion above 1%. (B & B)
 - TCEQ should consider an appropriate percentage for larger businesses. (7-Eleven)

- 3B) The financial inability of local governments to pay a penalty should be assessed using MUNIPAY.
 - Some commentors stated that the use of MUNIPAY may be beneficial; some believe that other data should be examined as well. (TAC, Lovelady, RM&R)
 - TCEQ should implement the alternative to exempt EDAP counties from penalties on the basis of inability to pay. (TAC)
 - TCEQ should not implement the alternative to automatically exempt certain poor small local governments from penalties. (ACT)

- 5) TCEQ should seek authority to assess interest charges on payment plans and delinquent penalties.
 - One commentor agrees that TCEQ should seek authority to assess interest. (ACT)
 - Interest should not be charged on payment plans. (B & B, RM&R)

- 6) TCEQ should not seek tools such as the ability to freeze bank accounts and garnish wages to assist in collecting delinquent accounts.
 - One commentor agreed with the recommendation to decline to seek these types of authorities. (TAB)

Enforcement Process Subcommittee

- 1) Enforcement timelines should be reduced and streamlined.
 - Several commentors noted that streamlining the enforcement process may result in less opportunities for the regulated entity to discuss the violations, penalty, etc. with staff and may affect their due process rights. Some commentors also noted that the increase in penalties if a matter does not settle impinges on due process rights to pursue a contested case hearing. (TIP, Calpine, Texas Genco, ExxonMobil, TCC, TxOGA, B & B, RM&R, 7-Eleven)
 - Many entities will be unable to meet the shortened timelines for settlement due to the need to get board/city council approval or to run the order through legal or the corporate office. (1 individual)
 - Legal staff should be involved earlier in the process in order for the streamlining proposal to work efficiently. (GCWDA, TIP, Lloyd, Gosselink)
 - Shortened timeframes will result in poorer customer service. (1 individual)
 - A few commentors stated that they agreed that the enforcement process should be streamlined and the timeframes should be shortened; however, some raised concerns about implementation without more stakeholder input. (EPA, TPA, GCWDA, Calpine)
 - Streamlining the process necessitates more expedient data entry. (HGAC)

- 2B) TCEQ should develop a limited field citation program.
 - Several commentors oppose the implementation of a field citation program. (TIP, Oxy Permian, PHA, TXU, Calpine, Texas Genco, B & B)
 - TCEQ investigators are not experienced or trained enough to issue field citations and/or the program may be implemented inconsistently or arbitrarily. (Dow, PHA, TXU, Calpine, TAC, Lovelady)
 - Several commentors stated that they could support a citation program with a very limited, well defined scope which may involve rulemaking and/or additional stakeholder input. (ATOFINA, TAB, TxOGA, V & E, RM&R, 7-Eleven, Lloyd, Gosselink)
 - Entities cannot accept field citations on the spot. (TIP, Texas Genco)
 - The amount of training and implementation necessary to implement the field citation program would outweigh the benefits. (PHA, B & B)
 - Field citations should not be counted or should count less than violations sent to formal enforcement in an entity's compliance history. (ATOFINA, V & E, 7-Eleven, Lloyd, Gosselink)

- 3 & 4) The timeframes for submittal of SEP and financial inability to pay documents should be limited to 30 days after a settlement offer is extended by the agency.
 - Two commentors disagree that a 30 day deadline for submittal of a SEP proposal or financial inability to pay documentation is appropriate. (RM&R, 7-Eleven)

- 5) The number of investigative and enforcement staff should not be increased until the full effect of implementing changes from the review is evaluated.
 - TCEQ does not have sufficient investigative and enforcement resources. (TXU, HGAC, ACT, Harris County PH&ES, 1 individual)
 - Several individuals commented that the TCEQ needs to be "sufficiently staffed" to enforce the laws. (7 individuals)

- Resources should be reallocated to educate small businesses on environmental laws. (Golden Triangle SBAC, TXU, TAC, 2 individuals)
 - Cases should be assigned to enforcement coordinators in the region where the violation occurred. Reallocation should occur where there is not enough regional coordinators or regional investigators to handle environmental priorities and workload. (Dallas SBAC, Houston SBAC, Golden Triangle SBAC, TAB, B & B, SAMA, Judge Eckels, Houston)
 - The turnover of enforcement and litigation staff needs to be examined and the TCEQ should seek measures to help retain experienced staff. (SAMA, 1 individual)
 - More regional input should be allowed in the formal enforcement process. (Judge Eckels, Houston)
 - One commentor agreed with the recommendation that the agency reevaluate the regionalization of staff. (1 individual)
- 6) TCEQ should provide additional training to investigative and enforcement staff.
- Several commentors agreed that the TCEQ should provide more training of investigators and enforcement staff to improve staff's implementation of the enforcement process. (Oxy Permian, Texas Genco, TxOGA, RM&R, AECT)
 - Two commentors supported the recommendations to develop media-specific expertise in Enforcement and/or to develop more formal mentoring programs in Field Operations and Enforcement. (SAMA, Lloyd, Gosselink)

Communications Subgroup

- 1 & 3) TCEQ should provide online public access to enforcement and/or complaint information. (See also, Complaints, Issue No. 5)
- A few commentors noted that they were uncomfortable with TCEQ placing complaint and pending enforcement information online for public access due to concerns about quality control of the data published and/or the fact that the pending information may still be subject to settlement negotiation. (TAB, ExxonMobil, TCC, TxOGA, V & E, B & B, RM&R, AECT)
 - Information should not be made available online until the regulated entity has been notified. (RM&R, 7-Eleven)
- 2) TCEQ should improve internal communications.
- Improved internal communication is needed to ensure that inspections and penalty assessments are consistent across regions. (Texas Genco, HGAC)
- 3) TCEQ's public Web site should be improved to provide more access to complaint reporting online. (See also, Complaints, Issue No. 3)
- A few commentors agreed that the agency should post more information on how to file a complaint and provide for registering a complaint online. (B & B, RM&R)
- 4) TCEQ should request proposals for a public awareness media campaign.
- A program should be established to promote more public awareness on environmental regulation. (HGAC, B & B, RM&R)
 - Use signs like the "Don't Mess with Texas" campaign to promote a clean environment. (1 individual)

- 5) TCEQ should publish compliance history classifications in newspapers.
- One commentor believes that the TCEQ needs statutory authority to publish compliance history classifications in newspapers. (TPA)
 - Efforts to communicate the performance of regulated entities should be limited to the agency's Web site. (ExxonMobil, TCC)
 - Resources could be better spent on training staff and on the use of citizens advisory panels than on publishing compliance history rankings. (SAMA)

Complaints Subcommittee

- 1 & 2) The draft Nuisance Odor Protocol and Guidance for Field Operations Investigation of Complaints should be implemented.
- There should be a stakeholder process prior to implementation of the nuisance odor protocol and complaints guidance document. (RM&R, 7-Eleven)
 - "Well digested or chemically treated sludge" and "waste activated sludge" is not unpleasant by definition. (GCWDA)
 - A nuisance violation should not be based on the field investigator alone, without an underlying citizen complaint. (TIP)
 - The nuisance odor standard should not deviate from the standard set out in rule; the FIDO is overly simplistic, confusing, does not appear to have an underlying scientific basis, and can be subjectively applied; and the case study related to the Northeast Travis County landfills should be removed from the document. (Allied)
 - One commentor agreed with the recommendation that complaints information should clearly delineate the different levels of complaints, such as those needing immediate response versus those that do not. (SAMA)
- 4) The citizen collected evidence rule and guidance should not be changed.
- One commentor agreed that the rules and guidance on citizen collected evidence should not be changed. (TAB)

Compliance History Committee

Compliance History Components/Definitions Subcommittee

- 1A-B) All NOV's and NOE's should be included in CH. Verbal NOV's should not be counted.
- Comment that NOV's and NOE's should not be included in compliance history since these are only allegations.(ExxonMobil, Oxy Permian, TXU, PHA, TCC, TPA, ATOFINA, AECT)
 - Only NOV's and NOE's that have been validated should be included. (TAB)
 - Should only use noncompliance when it is finalized in an order. (ExxonMobil, RM&R, TIP)
 - If NOV's and NOE's are used, they should be clearly marked, and removed quickly if found to be without merit. (ExxonMobil)
 - NOV's, NOE's, and field citations should either not be used or severely discounted since they are allegations. (V&E)
 - Verbal NOV's should be included in CH. (ACT)
 - NOV's should only be used when they have been found to have merit. Nothing in legislation discusses NOE's. (TXOGA)
 - NOE's should not be counted. (7-Eleven)
 - Paper violations should not carry the same weight.(7-Eleven)
- 1C-D) Self-reported violations should only count when they become an NOV or NOE
- Agree with the recommendation (ExxonMobil, Harris County PH&ES, Calpine, DOW, TCC, GCWDA, BrownMcCarroll, 7-Eleven)
 - Self-reported violations should only count if included in a final enforcement action. (AECT)
 - Should never include self-disclosed violations. (V&E, TXU, SAMA)
 - Self-reported violations should not carry the same weight.(Golden Triangle SBAC)
 - Some self-reported violations should be included. (Judge Eckels)
 - All self-reported violations should count as inspections.(TXOGA)
- 1E) There should not be a threshold for violations before they are counted.
- All violations should be counted, but there should be a threshold for how many violations need to occur before a CH is calculated. If below a certain number, based on size and complexity of the site, information may be insufficient to establish a good CH. (ExxonMobil, TCC, TAB)
 - There should be a threshold. (TXOGA, TCC)
- 1F) New and/or 1-time violations should count in CH.
- Agree but these should not be the sole basis for performance. (TXOGA, TCC)
- 1G) We should continue to have a mechanism to remove NOV's and NOE's that were issued by mistake
- General support, but the TCEQ needs to ensure the process works. (ExxonMobil, TXOGA, TCC, TAB, AECT)
- 1H) All NOV's, NOE's and 1660-styled orders should be included in CH
- Violations should only be included when they are confirmed, not just alleged (ExxonMobil, TXOGA, TCC, AECT)
- 2A-D) Site assessments, file and record reviews, and compliance investigations should be

included in CH.

- Any file review that provides an opportunity for enforcement should be included in CH. (ExxonMobil, PHA, TXOGA, TCC, AECT)
- All reviews and inspections should be counted in CH, but should not improve the score. (ACT)

2B) DMRs should only be counted if they are captured in an agency enforcement action.

- Should always count DMRs as inspections in compliance history (ExxonMobil, TXOGA, TCC, AECT)

2C) Investigation should be redefined to be consistent with strategic protocol.

- There should remain a separate definition of ‘investigation’ for compliance history.
- Should not limit the definition of ‘investigation’
- Investigation should include all inspection/file reviews that could turn up violations. (Atofina, Lloyd, Gosselink)
- The term investigation should be consistent throughout programs. (ExxonMobil, TXOGA, TCC, TAB)

3A, C) CH should be compiled for the site and person

- TCEQ needs to clarify who is a person (owner or operator).(ExxonMobil, TCC)
- General support. (ACT)
- TCEQ should not change the definition of person, but should clarify intent of the CH rules specifically. (EPA)

3B) CH should be compiled for the owner/operator and site.

- Do not recommend a compliance history for owner and operator (ExxonMobil, TXOGA, TCC)
- CH should be compiled for three categories: owner, operator, and site. (ACT)
- Operator, not owner, should have a CH. (AECT)
- Should not be a compliance history for the owner if there is no control (PHA)

3C) CH should be based on current owners/operators and not on past owners/operators.

- Support for TCEQ recommendation to only base compliance history on current owner/operator and not past owners/operators (PHA, TXOGA, TCC, TPA, 7-Eleven, AECT)
- CH should include past owners for the site CH. (ACT)

3D) CH should not include parent/sister companies

- Support for TCEQ recommendation that compliance history should not include parent/sister companies (ExxonMobil, TXOGA, TCC, TAB, 7-Eleven, AECT)
- Recommend that parent/sister companies should be included. (Houston)

3E) CH should not be established for co-permittees if there is legally a way to distinguish each entity separately.

- This will be difficult. Joint ventures usually have one entity being the operator. (ExxonMobil, TCC)
- This should not be an issue. The operator is the one who controls compliance. (TXOGA)

- 3F) Site is and should continue to be defined in 30 TAC § 60.2.
- Recommend that sites that are closed and have no authorization to operate should not have a compliance history. (AECT)
 - Current definition is adequate. (ExxonMobil, TXOGA, TCC)
- 4A) CH history should continue to be based on non-compliance.
- CH should be based on positive and negative compliance. (ExxonMobil, TXOGA, TCC)
 - CH should be based on time in compliance. (TIP, Texas Genco)
- 4B) Limited positive components such as over-compliance, voluntary programs, EMS, etc should be included in CH.
- General support (ExxonMobil, PHA, TCC, TAB, AECT)
 - Do not agree. (Harris County PH&ES)
 - Should also include good faith efforts to comply (ExxonMobil, TXOGA, TCC)
- 5A-C) All final enforcement actions, brought by the TCEQ and other Texas governments should be included in CH. Actions occurring outside of the state should not be considered.
- Only final enforcement actions should be considered in CH, period. (ExxonMobil, TXOGA, TCC, TAB, Texas Genco)
 - Should include enforcement from other state agencies. (Houston)
 - Violations from other states should be included. (Judge Eckels, Houston)
 - Should not include enforcement from other government agencies.(ExxonMobil, PHA)
 - Support for TCEQ recommendation with the exception that 1660-style orders should not be included since they is no findings or admission. (AECT)
 - Support for not including violations in other states.(ExxonMobil, TCC, TIP, BrownMcCarroll, 7-Eleven)
- 5B) We should include all enforcement actions from the TCEQ and other local governments.
- Should only include TCEQ and EPA enforcement actions in CH. (ExxonMobil, TIP)
 - Should not include enforcement from local government agencies since this would cause an imbalance in the State.
 - Recommendation that we do include local government enforcement actions. (Harris County PH&ES, individual comment)
 - All enforcement from all government agencies should be included. (ACT)
- 6) TCEQ's record keeping system does not completely reflect all of a company's CH related information. This should be audited.
- Support the need for TCEQ to ensure data quality and that currently information is incorrect in many cases.(ExxonMobil, ACT, TXOGA, TCC, TAB, AECT)
 - Recommendation for audits to occur regularly (ExxonMobil)
- 7A) CH should include both clerical/paper type violations and violations that involve direct, immediate or impending effects to human health and the environment.
- Clerical/paperwork violations should be listed but not included in the CH unless there is a reoccurring pattern. (ExxonMobil, TXOGA, TCC, TAB)
 - Recommend that clerical/paperwork violations count less than violations that have a direct impact on human health and the environment.(7-Eleven, AECT)

- All noncompliance should count. (ACT)
- 7B) Intent should not be included in CH. Repeat violators should be counted in CH.
- General support. (7-Eleven)
 - Intent should be considered for economic benefit of noncompliance.(ExxonMobil, TCC)
 - Agree that intent would be difficult to measure. (TXOGA)
- 7C) Acts of God should not count towards CH
- Support for TCEQ recommendation (ExxonMobil, TXOGA, TCC, TAB, AECT)
 - Emission Event Rules have been revised to not excuse these events. (ExxonMobil)
- 7D) CH should not include a brief narrative of their violations.
- Support that no narrative be required. (ExxonMobil, TXOGA, TCC, AECT)
 - Some cases may require a brief narrative. (ACT)
- 7E) CH should be based on the preceding 5 years.
- Recommend 3-year history vs current recommendation to remain at 5 years. (ExxonMobil, TXU, TCC, 7-Eleven, SAMA, AECT)
 - Support continuing 5-year history. (ACT)
 - A history should note and only include the current owner/operator. (TXOGA, TCC)
 - Not including prior owners would encourage sham sales of sites. (Private comment)
- 7F) Complexity should not be a specific component of CH. It would be difficult to calculate. The number of investigations in the formula will help improve the score for a larger facility.
- Strong disagreement to not include site complexity. (ExxonMobil, TXU, RM&R, DOW, TXOGA, TCC, TIP, TAB, GCWDA, 7-Eleven, SAMA, Texas Genco, AECT, B&B)
 - Site complexity should not be counted. (ACT)
 - Some consideration of complexity needs to be taken into account. A company can have its CH diluted to look good simply by investigating each report separately. (Individual comment)

Compliance History Classification Subcommittee

- 1, 2) The CH formula should be improved with meaningful, targeted changes. The formula should be risk based and better reflect true environmental performance. The classifications should be performed annually.
- Support for developing formula/system that reflects performance and risk. (ExxonMobil, Oxy Permian, Golden Triangle SBAC, ACT, Calpine, RM&R, DOW, TCC, TIP, TAB, TPA, 7-Eleven, SAMA, B&B)
 - CH should be recalculated after every inspection. (ACT)
 - The Poor classification should only be assigned if there are serious violations.(ExxonMobil, TCC)
 - There should not be a uniform rating system (ie, one size fits all). (ExxonMobil, TXOGA, TAC)
 - Substantial revisions to the program are necessary to correct inequities and unintended consequences. (ExxonMobil, TXOGA, TCC, TIP, Texas Genco)
 - Too difficult to reach classification of High. (ATOFINA)

- Less/little weight should be given to misdemeanor convictions. (BrownMcCarroll)
- 3) There should not be a separate CH system for small business or local governments.
- General support. (RM&R)
 - One common system will never work for all. (ExxonMobil, TXOGA, TCC)
- 4) The appeal process is appropriate with the exception that the 30-point requirement be eliminated. The deadlines for appeal are appropriate. The TCEQ should not bear the burden of due process in a classification appeal.
- There should be no limitation on the appeal process. These limitations are only intended to minimize TCEQ workload and often hinder due process. (ExxonMobil, Calpine, TXOGA, TCC)
 - Only the entity in question should be able to appeal its classification. (TXOGA, TAB)
 - Support the ability to appeal regardless of classification (V&E, RM&R, 7-Eleven, SAMA, B&B)
 - Burden of proof should be on the accuser. (TXOGA, TAB)
 - Burden of proof should be on the company for an appeal. (ACT)
- 5) Revise the definition of repeat violator by basing on frequency with consideration to number, size, and complexity.
- Repeat violations should be for the same violation. (ExxonMobil, TXOGA, TCC, TIP, TAB, ATOFINA, 7-Eleven)
 - Violations should be at the same site before being repeat violations. (AECT)
 - Only severe violations that have significant harm to health or the environment should be considered for repeat violators. (ExxonMobil, TXOGA, TCC, TIP, TAB, ATOFINA)
 - Should add points to the classification for minor and moderate repeat violators. (ACT)
- 6) Due process is not affected by the classification process.
- No enforcement actions prior to the CH rules should be included in CH since they occurred without an understanding of their impact in the future. (ExxonMobil, TXOGA, TCC, TAB, ATOFINA)
 - Due process is affected when CH is based on NOV's and NOE's which are allegations and not final enforcement actions.(TCC)
- 7A-C) The TCEQ should improve its data management system. Data entry staff should be better trained.
- The TCEQ should better train persons making entries of data and perform periodic audits. (ExxonMobil)
 - The data system has many errors and must be improved. (TXOGA, TCC, AECT)
 - Agreement that TCEQ data needs to be improved and validated, especially before being made public

Compliance History Use Subcommittee

- 1A) CH should be used in permit actions.
- General support for TCEQ recommendation. (ExxonMobil, Harris County PH&ES, ACT, TXOGA, TCC, AECT, B&B)
 - Guidance on the use of CH should be made public. (RM&R)

- Recommend that a legislative change occur to remove compliance history from contested case hearings unless 'poor'. (AECT)
- 1B) CH should be used in enforcement actions and prioritizing inspections
- General support. (ExxonMobil, ACT, TXOGA, TCC, B&B)
- 1C) No other permit actions not currently being affected by CH have been noted.
- Recommend that compliance history not be reviewed for transfer of ownership. (ExxonMobil, AECT)
 - CH should be reviewed when reviewing standard permits and permit by rules. (Harris County PH&ES)
 - CH should be considered when granting a hearing. (ACT)
 - Use of CH should be limited to those actions authorized by statute. (TXOGA)
- 1D) CH use should not take into account whether the respondent is a large business, small business, or local government.
- General support. (ExxonMobil, ACT, 7-Eleven)
- 1E) The approved uses of CH are not consistent within the agency and a review should be made by the TCEQ to ensure consistency.
- General support. (ExxonMobil, ACT)
- 1F) The TCEQ should not contact regulated entities when their CH score is nearing poor.
- General support. (ACT)
 - Contacting entities in these cases would encourage performance improvement. (ExxonMobil, TAB)
- 2A) The TCEQ should establish clear guidance/rules which develop a uniform process in adding additional permit conditions, monitoring requirements, etc into permits based on CH.
- The TCEQ does not have authority to do this. (ExxonMobil, TCC)
 - This is not consistent now. (TXOGA)
 - General support. (Harris County PH&ES, ACT, 7-Eleven)
- 2B) CH alone should not be the basis for reopening a permit.
- General agreement. (ExxonMobil, TXOGA, TCC, TAB)
- 2D) CH use should not take into account size of business or whether it is a local government.
- General disagreement. (TXOGA)
- 2E) Use of CH needs to be reviewed and made consistent.
- General support. (TXOGA)
- 2F) The TCEQ should not be responsible/required to contact entities whose score is nearing the lowest classification.
- Disagree. The sooner the TCEQ contacts these entities, the sooner they can be encouraged to improve compliance. (TXOGA)
 - The TCEQ should notify all poor performers prior to publication on the web. (SAMA)

- 3A) Denial of permits based on CH should be mandatory for certain conditions (repeat violator, eminent threat to the public, emissions of contaminants in an area specified as a concern) and it should be discretionary in other cases.
- No denial should be mandatory. (ExxonMobil, TCC)
 - There is no properly adopted guidance on specific contaminants in areas of concern. (ExxonMobil, TXOGA, TCC)
- 3B) CH should be considered to revoke the authorization or permit of an entity.
- It is appropriate to consider CH to revoke a permit but CH alone should not be the case. (TCC, TAB)
 - This should never be automatic. (ExxonMobil, TCC)
 - The TCEQ should be able to use CH alone to revoke a permit.(Harris County PH&ES)
 - CH should be considered at renewal. (TXOGA)
- 3C) CH should be used in consideration of shutting down a facility.
- It is appropriate to consider CH to shut down a facility but CH alone should not be the case. (TCC, TAB)
 - This should never be automatic. (TCC)
- 4A) CH should be reviewed early in the permitting process and again prior to permit issuance.
- CH alone should not cause review of a permit to cease. (ExxonMobil)
 - CH should be looked at early on but should not be the sole reason to cease. (TXOGA, TCC)
- 4B) If administrative review of CH shows conditions that warrant mandatory denial, the application should not be forwarded for technical review. If mandatory denial is not necessary, it should continue on to the technical review.
- There should not be mandatory denial. (ExxonMobil, TCC)
- 5A) The agency currently has a system that provides awards based on a tiered system and that system should be built upon.
- General support. (RM&R, Dow, 7-Eleven, B&B)
 - Current system only provides incentives for performance of High, which is difficult to achieve. There should be incentives available to facilities that are above average with increasing incentives. (ExxonMobil, TCC)
 - There are currently few incentives due to federal law. (ExxonMobil, TXOGA, TCC, Houston)
 - Should not reward compliance which is required by law. (ACT)
 - Incentives need to be improved. Some incentives have negative consequences, such as fewer inspections, which hurts CH.(AECT)
- 5B) Recent trends in CH over the previous three years should be used in granting incentives.
- General support. (ExxonMobil, TCC)
 - General support however, positive incentives, such as EMS can be counterintuitive to compliance history since EMS allows for fewer inspections
 - Not enough incentives to consider this. (TXOGA)

6A) CH should be used to adjust agency fees for poor performers.

- Charging higher fees will be counter productive since the entity is likely financially burdened already. It would be best to spend those dollars to improve compliance. (ExxonMobil, RM&R, TCC)
- The statute does not give the agency this authority. (V&E)
- Only agree if increased fees are necessary for additional resources to complete projects. (AECT)
- Fees should not be adjusted based on CH.(TXU, TXOGA, TAB)
- General support. (ACT)

6B) Fees should be decreased for high performers.

- General support. (Calpine)
- A fee decrease for high performers would be difficult to fund from increased fees from poor performers. (ExxonMobil, TCC)
- Only agree if increased fees are necessary for additional resources to complete projects. (ExxonMobil, Oxy Permian, AECT)
- The statute does not give the agency this authority. (V&E)
- General disagreement. (ACT, RM&R)
- Fees should not be adjusted based on CH.(TXU, TXOGA, TAB)

ATTACHMENT 5

Potential Field Citation Violations and Penalties

In the table beginning on the following page:

- Major Entities (per the penalty policy) would be assessed the checked column dollar amount.
- Minor entities would be assessed 50% of the checked column dollar amount
- Percentage (%) shown in each checked column is the percentage of the statutory maximum.
- The selected penalty amounts are OCE's recommended penalty amounts appropriate to the nature of the violation
- Factors such as compliance history, good-faith effort and deferral opportunities are not contemplated in this table

Potential Field Citation Violations and Penalties

Program Area	30 TAC Rule	\$100	\$250	\$500	\$750	\$1000	\$1500	\$2000
<i>Air</i> (\$10,000/day Statutory Maximum)								
Failure to have Stage I vapor recovery equipment installed as required by law.	115.221					✓ 10%		
Failure to have Stage II vapor recovery equipment as required by law.	115.241					✓ 10%		
Failure to comply with the prohibition of selling, offering for sale, leasing, or offering to lease any vehicle not equipped with all emission control systems or devices that were not originally a part of the motor vehicle or motor vehicle engine	114.20(c)(1)					✓ 10%		
Failure to comply with the prohibition of selling, offering for sale, leasing, or offering to lease any vehicle with control systems or devices that are not in good operable condition	114.20(c)(2)					✓ 10%		
<i>Edwards Aquifer</i> (\$10,000/day Statutory Maximum)								
Failure to obtain authorization prior to construction of any regulated activity in the Edwards Aquifer Program	213.4(a)(1)					✓ 10%		
Failure to obtain a contributing zone plan prior to construction	213.21(d)				✓ 7.5%			
Failure to comply with the approved Edwards Aquifer protection plan	213.4(k)			✓ 5%				
Failure to comply with the approved contributing zone plan	213.23(j)			✓ 5%				
Failure to notify TCEQ within 48 hrs of commencing a construction replacement or rehabilitation activity	213.5(f)(1)		✓ 2.5%					
<i>OSSF</i> (Non-Delegated) (\$2,500/day Statutory Maximum)								

Program Area	30 TAC Rule	\$100	\$250	\$500	\$750	\$1000	\$1500	\$2000
Failure to obtain authorization to construct from the permitting authority prior to commencing installation of an OSSF system	285.3(b)			✓ 20%				
Failure to notify the permitting authority five business days prior to OSSF system being ready for inspection	285.3(d)	✓ 10%						
Failure to install the OSSF system authorized by the permitting authority	285.61		✓ 15%					
<i>Water Rights</i> (\$5,000/day Statutory Maximum)								
Using state water in excess of authorized amounts during times of water shortage	297.50(c)						✓ 30%	
Diversion without submitting a declaration of intent or no diversion certification on record (water rights holder)	304.32				✓ 15%			
Failure to modify a declaration of intent in advance of a desired change	304.32(a)(3)		✓ 5%					
Failure to provide an outlet	304.14, 304.32(a)(5)			✓ 10%				
<i>Stormwater</i> (\$10,000/day Statutory Maximum)								
Failure to obtain authorization to discharge at a construction site	281.25(a)(4)				✓ 7.5%			
Failure to obtain authorization to discharge at an industrial site	281.25(a)(4)					✓ 10%		
Failure to implement a SWP3 at any permitted site (no documented impact as a result)	281.25(a)(4)			✓ 5%				
<i>Public Water Supply</i> (\$1,000/day Statutory Maximum)								

Program Area	30 TAC Rule	\$100	\$250	\$500	\$750	\$1000	\$1500	\$2000
Failure to issue a boil water notice	290.122(a)(2)		✓ 25%					
Failure to obtain approval for plans and specifications for a surface water treatment plant	290.39(h)(1)			✓ 50%				
Failure to provide, written notification to the Commission of system reactivation	290.39(m)		✓ 25%					
Failure to submit a drought contingency plan for municipal uses	288.20		✓ 25%					
Failure to maintain the required minimum disinfection residual	290.110(a)			✓ 50%				
<i>Occupational Licensing</i> (\$2,500/day Statutory Maximum)								
License holder authorizes or allows use of their license, seal or rubber stamp to an unauthorized operator	344.62					✓ 40%		
Failure to obtain a license before engaging in an irrigation activity	344.4, 30.5			✓ 20%				
<i>Petroleum Storage Tanks</i> (\$10,000/day Statutory Maximum)								
Failure to register a regulated tank that was in existence on Sept 1, 1987	334.7			✓ 5%				
Failure to provide the Agency written notice of changes to a UST system within 30 days	334.7(d)		✓ 2.5%					
Failure to ensure timely renewal of a previously issued UST delivery certificate	334.8(c)(5)			✓ 5%				
Failure to properly mark regulated tanks	334.8(c)(5)	✓ 1%						
Failure to implement approved inventory control methods	334.48						✓ 15%	
Failure to maintain proper operation and maintenance records	334.48(g)		✓ 2.5%					

Program Area	30 TAC Rule	\$100	\$250	\$500	\$750	\$1000	\$1500	\$2000
Failure to install and maintain proper corrosion protection	334.49						✓ 15%	
Failure to provide a release detection method	334.50						✓ 15%	
Failure to provide Spill and Overfill equipment for regulated tanks	334.51						✓ 15%	

ATTACHMENT 6

Statutorily Authorized Penalties

(Excerpt from Penalty Policy, 2nd Version, Effective September 1, 2002)

Program	Statute & Chapter	Administrative penalties, per violation per day	Civil penalties, per violation per day
Air Quality	TWC/7	\$0-10,000	\$50-25,000
Edwards Aquifer	TWC/7	\$0-10,000	\$50-25,000
Industrial and Hazardous Waste	TWC/7	\$0-10,000	\$50-25,000
Land over MSW Landfills	TWC/7	\$0-10,000	\$50-25,000
Medical Waste	TWC/7	\$0-10,000	\$50-25,000
Municipal Solid Waste	TWC/7	\$0-10,000	\$50-25,000
Petroleum Storage Tank	TWC/7	\$0-10,000	\$50-25,000
Radioactive Substances	TWC/7	\$0-10,000	\$50-25,000
Subsurface Excavation	TWC/7	\$0-10,000	\$50-25,000
Toxic Chemical Release Reporting	TWC/7	\$0-10,000	\$50-25,000
Underground Injection Control	TWC/7	\$0-10,000	\$50-25,000
Underground Water	TWC/7	\$0-10,000	\$50-25,000
Waste Tires	TWC/7	\$0-10,000	\$50-25,000
Water Quality	TWC/7	\$0-10,000	\$50-25,000
Public Water Supply	TH&SC/341	\$50-1,000	\$50-1,000
Public Water Utilities	TWC/13	0-\$500	\$100-5,000
All Occupational Licenses	TWC/7	\$0-2,500	\$50-5,000
On-Site Sewage Disposal	TWC/7	\$0-2,500	\$50-5,000
Used Oil	TWC/7	\$0-2,500	\$50-5,000
Used Oil Filter	TH&SC/371, TWC/7	\$0-2,500	\$100-500
Water Rights	TWC/11	\$0-5,000	\$0-5,000
Water Saving Performance Stds.	TWC/7	\$0-2,500	\$50-5,000
Weather Modification	TWC/7	\$0-2,500	\$50-5,000
Dam Safety	TWC/12	N/A	\$0-5,000
Levees	TWC/16	\$0-1,000	\$0-1,000

Closed Session:

- a. Docket No. 1998-1154-EXE. The Commission will meet in closed session to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Commission's Executive Director, as permitted by Section 551.074 of the Texas Open Meetings Act, Chapter 551 of the Government Code. The Commission may also meet in open session to take action on this matter as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.**
- b. Docket No. 1999-0024-EXE. The Commission will conduct a closed meeting to receive legal advice and will discuss pending or contemplated litigation, settlement offers, and/or the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of specific commission employees, as permitted by Sections 551.071 and 551.074, the Open Meetings Act, codified as Chapter 551 of the Government Code. The Commission may also meet in open session to take action on a legal or personnel matter considered in the closed meeting as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.**
- c. Docket No. 1999-0025-EXE. The Commission will conduct a closed session to discuss their duties, roles, and responsibilities as commissioners of the TCEQ pursuant to section 551.074 of the open meetings act, codified as chapter 551 of the government code. The Commission may also meet in open session to take action on this matter as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.**

Consideration of the issuance of Certificates of Recognition to participants in the “Commute Solutions” program in the Austin Early Action Compact Area.

**Consideration of the Biennial Report to the 79th Legislature, FY
2003-FY 2004.**

From the Commission

The TCEQ is a large, complex agency. What we do, and how we do it, involves and affects every resident of the state. As TCEQ commissioners, we approach our jobs with the fundamental tenet that we are the humble servants of the people of Texas. This belief influences every decision we make, and points us toward continually striving to improve how we perform our critical mission.

Consistent with that belief, we have undertaken a number of initiatives that will impact planning and operations for years to come. These steps will literally change how we do business and will help ensure that our programs are effective, efficient, just, and responsive to the needs of all Texans.

One initiative will improve how we collect and use vital information on environmental conditions. The Environmental Monitoring and Response System (EMRS) will detect and react to air and water pollution on a real-time basis. Through a pilot project, the agency is testing a system near the Houston Ship Channel that notifies industry as soon as troublesome air patterns appear. Industry then can react before serious pollution forms. A parallel pilot project with water pollution near Waco is under way, too. Our ultimate goal is to deploy a permanent system that will allow us to more rapidly convert data to knowledge and action, as well as put information in the hands of the public.

In another culture change, we have looked internally at our enforcement process in a top-down, comprehensive review. We scrutinized everything—from how we initiate enforcement to use of compliance history. As a result, the commission will implement meaningful changes to ensure that the enforcement process is swift, fair, and effective.

In addition, the TCEQ is dealing with major regulatory challenges. New, more stringent air quality pollution standards must be met in some urban areas, starting in 2007. Tougher drinking water standards could affect several hundred water suppliers. Work is under way to rewrite rules governing municipal solid waste landfills. And the agency will begin the process of licensing a proposed low-level radioactive waste disposal facility.

Meanwhile, there is good news to report. El Paso has monitored compliance for three different air pollutants that once posed problems, and Texas has been declared in compliance of the federal standard for "fine" particulate matter, or PM2.5.

We are excited at finding new opportunities. Every year, we continue to enhance existing public-private partnerships and to create new ones. In doing so, we can achieve better efficiencies with existing resources. By making better use of existing technology and knowledge, we can further environmental protection. The TCEQ looks forward to the many challenges that lie ahead.

Kathleen Hartnett White, Chairman

R.B. "Ralph" Marquez, Commissioner

Larry R. Soward, Commissioner