

**WHITE
MARQUEZ
SOWARD**

MARKED AGENDA

Friday, December 17, 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 and John Steib, Deputy Director Office of Compliance and Enforcement presented this issue. Additional staff participating in the discussions were Ann McGinley, Enforcement Division Director, Matt Baker, Office of Permitting, Remediation, and Registration, John Gillen, Office of Public Assistance, Lydia Gonzalez-Gromatsky, Deputy Director Office of Legal Services, Linda Flores, Chief Financial Officer, and John Racanelli, Financial Administration Division. Discussions resumed on the list of committee recommendations as follows:
- Issue No. **Compliance History (CH) 5** Definition of repeat violator.
 - Issue No. **Ordering Provisions (ORD) 5A** More specific ordering provisions for repeat violators
 - Issue No. **ORD 5B** Ordering provisions requiring self-examinations of root causes
 - Issue No. **ORD 5C** Repeat violators financial ability to operate in compliance and fulfill all technical requirements
 - Issue No. **Collections (COLL) 1A** Allow entity to modify permit while in default of a penalty
 - Issue No. **COLL 1B** Revoke current permit if entity owes fees or penalties to agency
 - Issue No. **COLL 2** Sufficient resources to aggressively collect delinquent fees and penalties
 - Issue No. **COLL 3A** How to address inability to pay issues of small businesses
 - Issue No. **COLL 3B** How to address inability to pay issues of small local governments
 - Issue No. **Enforcement Process (EP) 3** Streamline or simplify financial inability to pay process
 - Issue No. **COLL 4** Establish a policy for providing criteria for payment plans
 - Issue No. **COLL 5** Interest charges on payment plans as a deterrent to requests for payment plans
 - Issue No. **COLL 6** Helpful tools to collect delinquent accounts - levy bank accounts or garnish wages
 - Issue No. **Enforcement Initiation Criteria (EIC) 5** Separate EIC for small businesses and small local governments
 - Issue No. **EP 1** Revise current enforcement time lines to streamline existing enforcement process
 - Issue No. **CH 1A-1B** Should NOV's and NOE's be used when calculating compliance history?
 - Issue No. **CH 1C-1D** Should self reported violations be counted in compliance history?
 - Issue No. **CH 1-2 and 7F** Adequate measurement of environmental performance
 - Issue No. **CH 1A and 3A-3C** Compliance history role in processing permits
 - Issue No. **CH 1B** Compliance history as a factor in prioritizing schedule of inspections
 - Issue No. **Communications 5** What is the best way to educate public and regulated community on the use of compliance history?

The following individuals registered to speak on this issue:

Sarah Walls representing the Compliance Advisory Panel of Ft. Worth
Joe Polanco representing the Printing and Imaging Association of MidAmerica
Jerry Pharr representing Youth Launch

No vote was taken on the above items. Actions required of staff are as follows:

- include interpretations from today's recommendations with the ongoing list of recommendations from the previous work sessions;
- expand interpretations into a more detailed and clarified manner;
- provide individual copies of the expanded clarifications;
- schedule individual briefings to identify recommendations where there is complete agreement and update the list of recommendations, and to;
- identify recommendations where there is not complete agreements; and
- bring those issues to the January 14 work session;
- summarize lessons learned and what will be different in a report.

Commissioner Marquez requested, either at a future work session or as an individual briefing, information on enforcement initiation actions which originate outside of Field Operations. The Chairman requested information on Annual Compliance Work Plan and the process for developing the draft rule which will become the Penalty Policy.

Action: No action taken.

- 2. Consideration of compliance initiatives proposed by the Office of Compliance and Enforcement for Fiscal Year 2005. The potential initiatives include Permit Now! (Unauthorized/Unregistered Facilities), High Emitters (HRVOCs Emissions Events), and Diesel Engine Polluters (NOx Combustion Engines).** Glenn Shankle, Executive Director and John Steib, Deputy Director Office of Compliance and Enforcement presented this issue from materials distributed at work session. While no specific action was taken on the proposals, the Commissioners approved the High Emitters and Diesel Engine Polluters initiatives in principle, suggesting the initiatives could be applicable elsewhere in the State, and were interested in more information which may be presented at a future work session. Specific directions were given to staff to provide additional information and alternative approaches on the Permit Now! initiative during individual briefings. The following individual registered to speak to the Commission on this issue:

Elena Marks representing the Mayor of Houston

Action: No action taken.

- 3. Discussion of state and federal legislative issues potentially affecting the TCEQ. The commission may consider legislative proposals and federal rulemakings, as well as other state actions and state's participation in federal legislative and regulatory activities. The commission may also meet in closed meeting to receive legal advice regarding these matters, or any of the above matters, as authorized by Section 551.071 of the Open Meetings Act, Chapter 551 of the Government Code. Any commission action, decision, or vote on these matters will be made in open meeting in accordance with Section 551.102 of the Open Meetings Act, Chapter 551 of the Government Code.** Lenny Olsen, Division Director, Intergovernmental Affairs, presented this issue from the backup materials.

Action: No action taken.

4. **Planning for the next Commissioners' Work Session.** The next work session is tentatively scheduled for January 14, 2005. Items for discussion are the Environmental Monitoring and Response System, Chapter 291 rule petition related to certificates of convenience and necessity, continuation of discussions on the compliance and enforcement review, as well as the standing issues.
5. **Closed Session:** No closed session convened.

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

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners' Work Session Date: December 17, 2004

Thru: Glenn Shankle, Executive Director

From: Tracy Gross, Thomas Weber, and Matthew Baker, Committee Chairs for the Enforcement Process Review

Subject: Consideration of Recommendations Proposed in the Enforcement Process Review Draft Final Report of August 20, 2004

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

A Draft Final Report dated August 20, 2004, was prepared representing the recommendations of the steering committee to the commissioners. The Commission discussed many of the issues and recommendations contained in the report at Work Sessions on November 1, November 15, and December 6, 2004. **Attachment 1** is a table listing the issues and recommendations that are still pending discussion. This table establishes a suggested order for presenting these remaining, pending issues. The key issue number and the page number corresponding to the Draft Final Report are included in the table, to provide a quick reference to the more detailed information, alternatives, and pros/cons identified in the report. **Attachment 2** provides additional background information relating to the definition of a "repeat violator." **Attachment 3** describes statutory changes relating to compliance history that resulted from the 2001 Sunset legislation. **Attachment 4** summarizes the direction the Commission provided on all issues and recommendations discussed during this review, showing the direction provided through December 6, 2004 (the previous Work Session).

ATTACHMENT 1
Order for Presenting Pending Recommendations
at the Commissioners' December 17 Work Session

Com- mit- tee	Issue No.	Page	Issue	Recommendation	Implementation
CH Class- ifica- tion	5	60	How should repeat violator be defined?	Currently, a repeat violator is defined in 30 TAC Chapter 60.2(d) - See Attachment 2 It is recommended that the definition of major violation be revisited, ensuring that major violations reflect those that harm human health, the environment, or demonstrates a blatant disregard for environmental regulations. Additionally, major violations do not necessarily need to be a repeat of the same violation.	Rulemaking
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

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
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	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
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	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
Coll	5	206	Would the assessment of interest charges on payment plans 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.	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
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
EP	1	209	How can the current enforcement time lines be revised to streamline the existing enforcement process?	Enforcement time lines could be reduced by a total of 125 days by a combination of the following: -Assign cases to an Enforcement Coordinator within 7 days after the Enforcement Action Referral -Require that all draft orders and penalty calculations worksheets be mailed no longer than 60 calendar days after the date that the case is assigned; -If the case is referred directly to the Litigation Division, then it should be forwarded within 60 days of screening; -If the respondent declares an intent not to settle an expedited enforcement action, the case should be referred to the Litigation immediately; -Limit extensions of the settlement deadline to 90 calendar days; -Set agreed orders on agenda within 70 days; -Change notice of service requirements.	Policy, guidance, or process change

CH Com- ponent & Def	1 A - 1 B	10	Should NOV's and NOEs be used when calculating compliance history?	Yes. NOV's and NOEs are all indicators of a site/person's performance. However, a single violation should not be double counted as an NOV and an NOE. Once a violation captured as an NOV becomes an NOE, the original NOV should no longer be included in the compliance history score. This would also apply when a violation is captured in an order, etc.	Rulemaking
CH Com- ponent & Def	1 C - 1 D	11	Should self reported violations be counted in compliance history?	Self reported violations discovered in, for example, discharge monitoring reports (DMRs) or Title V deviation reports should not be counted as violations unless they are captured in a formal NOV, NOE, etc. In addition, every time a submitted report is reviewed by the TCEQ, it should be counted as an inspection.	Policy, guidance, or process change
CH Class- ifica- tion Com- ponent & Def	1 - 2 7 F	37 & 47 35	Does the present classification system adequately measure environmental performance? If not, should the TCEQ develop a more risk-based process that puts greater weight on violations that harm human health and the environment?	The present system should be modified to better measure environmental performance. For purposes of classifying entities, "major" violations should be those with a direct impact on human health and the environment, or a demonstrated disregard for the regulatory process. One option for accomplishing this would be to use certain Category A violations in the EIC. The current formula, if retained, should also be revised to address inequities for small business and reduce the formula's complexity. Additionally, how site complexity is utilized in classification should be addressed during rule revision.	Rulemaking more risk- based process that puts greater weight on violations that harm human health and the environment?

CH Use	1 A & 3 A - C	70 & 78	Should compliance history be reviewed and play a role in the processing of permits?	Yes. Compliance history should be reviewed when applications first arrive. If the compliance history is such that a permit can't be issued, the application should be returned. Otherwise, the application should be sent on for technical review. Based on the compliance history, technical staff should be given guidance on adding or deleting conditions of the permit as an incentive or disincentive for the classification. Regarding the revocation of a permit, or shutdown of a facility, compliance history should be used, however other factors should also likely be considered as well such as compliance trends, intent, environmental harm, etc.	Rulemaking
CH Use	1 B	71	Should compliance history play a role in the priority of scheduling inspections.	Yes. Although other factors should be included, it is recommended that a site's compliance history play a role. Staff should ensure that this recommendation does not have a negative impact. For example, an entity with a classification of high may be inspected less. However, fewer inspections translates into a lower classification during the next classification period. A possible remedy could be if an inspection is delayed or removed altogether, an inspection is credited in any case.	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

ATTACHMENT 2

Definition of Repeat Violator 30 TAC Chapter 60.2(d)

(1) Repeat violator criteria. A person may be classified as a repeat violator at a site when, on multiple, separate occasions, a major violation(s) occurs during the compliance period as provided in subparagraphs (A) - (C) of this paragraph. The total criteria points for a site equals the sum of points assigned to a specific site in paragraphs (2) - (5) of this subsection. A person is a repeat violator at a site when:

- (A) the site has had a major violation(s) documented on at least two occasions and has total criteria points ranging from 0 to 8;
- (B) the site has had a major violation(s) documented on at least three occasions and has total criteria points ranging from 9 to 24; or
- (C) the site has had a major violation(s) documented on at least four occasions and has total criteria points greater than 24.

(2) Complexity points. A site shall be assigned complexity points based upon its types of permits, as follows:

- (A) four points for each permit type listed in clauses (i) - (vi) of this subparagraph issued to a person at a site:
 - (i) Radioactive Waste Disposal;
 - (ii) Hazardous or Industrial Non-Hazardous Storage Processing or Disposal;
 - (iii) Municipal Solid Waste Type I;
 - (iv) Prevention of Significant Deterioration;
 - (v) Phase I - Municipal Separate Storm Sewer System; and
 - (vi) Texas Pollutant Discharge Elimination System (TPDES) or National Pollutant Discharge Elimination System (NPDES) Industrial or Municipal Major;
- (B) three points for each permit type listed in clauses (i) - (v) of this subparagraph issued to a person at a site:
 - (i) Underground Injection Control Class I/III;
 - (ii) Municipal Solid Waste Type I AE;
 - (iii) Municipal Solid Waste Type IV, V, or VI;
 - (iv) Municipal Solid Waste Tire Registration; and
 - (v) TPDES or NPDES Industrial or Municipal Minor;
- (C) two points for each permit type listed in clauses (i) and (ii) of this subparagraph issued to a person at a site or utilized by a person at a site:
 - (i) New Source Review individual permit or permit by rule requiring submission of a PI-7 under Chapter 106 of this title (relating to Permits by Rule); and
 - (ii) any other individual site-specific water quality permit not referenced in subparagraph (A) or (B) of this paragraph or any water quality general permit.

(3) Number of sites points. The following point values are assigned based on the number of sites in Texas owned or operated by a person:

- (A) 1 point when a person owns or operates one site only;
- (B) 2 points when a person owns or operates two sites only;
- (C) 3 points when a person owns or operates three sites only;
- (D) 4 points when a person owns or operates four sites only;
- (E) 5 points when a person owns or operates five sites only;
- (F) 6 points when a person owns or operates six to ten sites;

- (G) 7 points when a person owns or operates 11 to 100 sites; and
- (H) 8 points when a person owns or operates more than 100 sites.

(4) Size. Every site shall be assigned points based upon size as determined by the following:

(A) Facility Identification Numbers (FINs):

- (i) 4 points for sites with 600 or more FINs;
- (ii) 3 points for sites with at least 110, but fewer than 600, FINs;
- (iii) 2 points for sites with at least 44, but fewer than 110, FINs; and
- (iv) 1 point for sites with at least one but fewer than 44 FINs;

(B) Water Quality external outfalls:

- (i) 4 points for a site with ten or more external outfalls;
- (ii) 3 points for a site with at least five, but fewer than ten, external outfalls;
- (iii) 2 points for sites with at least two, but fewer than five, external outfalls; and
- (iv) 1 point for sites with one external outfall;

(C) Active Hazardous Waste Management Units (AHWMUs):

- (i) 4 points for sites with 50 or more AHWMUs;
- (ii) 3 points for sites with at least 20, but fewer than 50, AHWMUs;
- (iii) 2 points for sites with at least ten, but fewer than 20, AHWMUs; and
- (iv) 1 point for sites with at least one but fewer than ten AHWMUs.

(5) Nonattainment area points. Every site located in a nonattainment area shall be assigned 1 point.

(6) Repeat violator exemption. The executive director shall designate a person as a repeat violator as provided in this subsection, unless the executive director determines the nature of the violations and the conditions leading to the violations do not warrant the designation.

ATTACHMENT 3

STATUTORY CHANGES RELATING TO COMPLIANCE HISTORY RESULTING FROM SUNSET BILL

SUNSET BILL - NEW STATUTORY PROVISIONS

STATUTE	SUNSET PROVISION
Texas Water Code §5.751	Subchapter applies to programs under Chapters 26 and 27 of the Texas Water Code (TWC) and Chapters 361, 382 and 401 of the Texas Health and Safety Code (THSC).
Texas Water Code §5.752	<p>Definitions:</p> <ul style="list-style-type: none">• "Applicable legal requirement" means an environmental law, regulation, permit, order, consent, decree, or other requirement.• "Innovative program" means: (A) a program developed by the commission under this subchapter, Chapter 26 or 27 of the TWC, or Chapter 361, 382, or 401, of the THSC, that provides incentives to a person in return for benefits to the environment that exceed benefits that would result from compliance with applicable legal requirements under the commission's jurisdiction; (B) the flexible permit program; or (C) the regulatory flexibility program.• "Permit" includes a license, certificate, registration, approval, permit by rule, standard permit, or other form of authorization issued by the commission under the TWC or THSC.• "Region" means a region of the commission's field operations division or that division's successor.• "Strategically directed regulatory structure" means a program that is designed to use innovative programs to provide maximum environmental benefit and to reward compliance performance.

STATUTE	SUNSET PROVISION
Texas Water Code §5.753	<p>Establishes that the commission by rule shall develop a uniform standard for evaluating compliance history.</p> <ul style="list-style-type: none"> • The components of compliance history must include: <ol style="list-style-type: none"> (1) enforcement orders, court judgments, consent decrees, and criminal convictions of this state and the federal government under the jurisdiction of the commission or the United States Environmental Protection Agency; (2) orders issued under TWC § 7.070; (3) to the extent readily available to the commission, enforcement orders, court judgments, and criminal convictions relating to violations of environmental laws of other states; (4) changes in ownership; and (5) notices of violations. A notice of violation administratively determined to be without merit shall not be included in a compliance history. A notice of violation that is included in a compliance history shall be removed from the compliance history if the commission subsequently determines the notice of violation to be without merit. • Components must also include any information required by other law or any requirement necessary to maintain federal program authorization. • Provides that the commission by rule shall establish a period for compliance history.

STATUTE	SUNSET PROVISION
Texas Water Code §5.754	<p>Addresses classification and use of compliance history¹:</p> <ul style="list-style-type: none"> • provides for a minimum of three classifications of compliance history - poor, average and high performers. • requires commission to determine whether a violation is major, moderate or minor. • requires commission to establish criteria for classifying a repeat violator. • provides for the use of compliance history classifications in permitting and enforcement decisions, use of announced inspections and participation in innovative programs. • requires specification of circumstances in which permit of a repeat violator may be revoked and the establishment of enhanced penalties for repeat violators. • establishes that a person whose compliance history is in lowest classification may not receive announced inspection or obtain/renew a flexible permit or participate in the regulatory flexibility program. • provides that the commission, after an opportunity for hearing, shall deny a regulated entity's application for permit or permit amendment if its compliance history is unacceptable based upon violations constituting a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations.

¹TWC §5.755 provides that the commission by rule shall develop a strategically directed regulatory structure to provide incentives for enhanced environmental performance based on:

- a person's compliance history classification; and
- any voluntary measures undertaken by the person to improve environmental quality

Any innovative program offered under this section must be consistent with other law and any requirement necessary to maintain federal program authorization.

SUNSET BILL - AMENDED STATUTORY PROVISIONS
COMPLIANCE HISTORY - PERMITTING PROCESS CHANGES

STATUTE	PRE-SUNSET PROVISIONS	POST-SUNSET PROVISIONS ²
Texas Health & Safety Code §341.0315(d) Public Drinking Water Supply System Requirements	The commission shall consider compliance history in determining issuance of permits.	No change; Sunset compliance history provisions do not apply.
Texas Health & Safety Code §361.084(a) Compliance Summaries (relating to solid waste permits)	The commission by rule shall establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities.	The commission by rule shall establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities in accordance with the method for evaluating compliance history developed by the commission under Section 5.754, Water Code. A compliance summary shall include as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the authorization is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127, Water Code.
Texas Health & Safety Code §361.084(d) Compliance Summaries (relating to solid waste permits)	The commission shall consider compliance history in determining whether to issue, amend, extend, or renew a permit.	No change.

STATUTE	PRE-SUNSET PROVISIONS	POST-SUNSET PROVISIONS ²
Texas Health & Safety Code §361.088 (f) Permit Issuance, Amendment, Extension and Renewal; Notice and Hearing (relating to solid waste permits)	If commission determines compliance history within last 5 years raises an issue regarding applicant's ability to comply with material term , it shall provide opportunity to request hearing.	If commission determines compliance history developed under TWC §5.754 raises an issue regarding applicant's ability to comply with material term, it shall provide opportunity to request hearing.
Texas Health & Safety Code §361.089(a) Permit Denial or Amendment; Notice and Hearing (relating to solid waste permits)	The commission may, for good cause, deny or amend a permit it issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land use, or for a violation of this chapter or other applicable laws or rules controlling the management of solid waste.	The commission may, for good cause, deny or amend a permit it issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land use, or for having a compliance history that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections.
Texas Health & Safety Code §361.089(e) Permit Denial or Amendment; Notice and Hearing (relating to solid waste permits)	Commission may deny permit if it is found that permit holder or applicant has a record of environmental violations during preceding 5 years.	Commission may deny permit if it is found that the applicant or permit holder has a compliance history that is in the lowest classification under TWC §§5.753 and 5.754 (poor).
Texas Health & Safety Code §382.0518(c) Preconstruction Permit (relating to air quality permits)	Commission may consider any adjudicated decision or compliance proceeding within the five years before the date of application that addressed the applicant's past performance and compliance with the laws of this state, another state, or the United States governing air contaminants or with the terms of any permit or order issued by the commission.	Commission may consider an applicant's compliance history in accordance with the method developed by the commission under TWC §5.754. The commission shall consider any environmental management system implemented at the facility.

STATUTE	PRE-SUNSET PROVISIONS	POST-SUNSET PROVISIONS ²
Texas Health & Safety Code §382.055(d)(1) Review and Renewal of Preconstruction Permit (relating to air quality permits)	In determining whether and under which conditions a preconstruction permit should be renewed, the commission shall consider whether the facility is or has been in substantial compliance with this chapter and the terms of the existing permit.	In determining whether and under which conditions a preconstruction permit should be renewed, the commission shall consider the performance of the owner/operator in accordance with the method developed by the commission under TWC §5.754.
Texas Health & Safety Code §382.056(o) Notice of Intent to Obtain Permit or Permit Review; Hearing (relating to air quality permits)	Commission may hold a hearing, despite other prohibitions, if it determines that the application involves a facility for which the applicant's compliance history contains violations which are unresolved.	Commission may hold a hearing, despite other prohibitions, if it determines that the application involves a facility for which the applicant's compliance history is in the lowest classification under TWC §§5.753 and 5.754.
Texas Health & Safety Code §382.0543(e)(2) (relating to federal operating permits)	In determining whether and under which conditions a permit should be renewed the commission shall consider whether the federal source is in compliance with this chapter and the terms of the existing permit.	No change
Texas Health & Safety Code §401.110 Determination on License. (Radioactive Materials and Other Sources of Radiation)	In making a determination whether to grant, deny, amend, revoke, suspend, or restrict a license or registration, the department or commission may consider those aspects of an applicant's or license holder's background that bear materially on the ability to fulfill the obligations of licensure, including technical competence and the applicant's or license holder's record in areas involving radiation.	In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license or registration, the commission may consider an applicant's or license holder's technical competence, financial qualifications, and compliance history under the method for evaluation of compliance history under TWC §5.754.

STATUTE	PRE-SUNSET PROVISIONS	POST-SUNSET PROVISIONS ²
Texas Health & Safety Code §401.112 Radioactive Waste Processing License Application and Considerations.	The department or commission, within its jurisdiction, in making a licensing decision on a specific license application to process or dispose of radioactive waste from other persons, shall consider applicant’s qualifications, including financial, technical, and past operating practices.	The department or commission, within its jurisdiction, in making a licensing decision on a specific license application to process or dispose of low-level radioactive waste from other persons, shall consider.... (5) the applicant’s qualifications, including financial and technical qualifications and compliance history under the method for evaluation of compliance history under TWC §5.754.
Texas Water Code §13.301(e) Sale, Transfer, or Merger of Utility	In determining whether to request a hearing on the proposed transaction, executive director considers whether acquiring entity has history of noncompliance.	No change; Sunset compliance history changes do not apply.
Texas Water Code §13.302(d) Purchase of Voting Stock in Utility	In determining whether to request a hearing on the proposed transaction, executive director considers whether acquiring entity has history of noncompliance.	No change; Sunset compliance history changes do not apply.
Texas Water Code §26.028 Action on Application (relating to water quality permits)	The commission may act on certain applications without holding a public hearing if certain conditions are met and commission determines that an applicant’s compliance history for the preceding five years raises no issues regarding the applicant’s ability to comply with a material term of its permit.	The commission may act on certain applications without holding a public hearing if certain conditions are met and commission determines that an applicant’s compliance history under the method for evaluating compliance history under TWC §5.754 raises no issues regarding the applicant’s ability to comply with a material term of its permit.

STATUTE	PRE-SUNSET PROVISIONS	POST-SUNSET PROVISIONS ²
<p>Texas Water Code §26.0281 Consideration of Past Performance and Compliance (relating to water quality permits)</p>	<p>In considering the issuance, amendment, or renewal of a permit to discharge effluent comprised primarily of sewage or municipal waste, the commission shall consider any adjudicated decision on or compliance proceeding addressing past performance and compliance of the applicant and its operator with the laws of this state governing waste discharge, waste treatment, or waste disposal facilities and with the terms of any permit or order issued by the commission.</p>	<p>In considering the issuance, amendment, or renewal of a permit to discharge effluent comprised primarily of sewage or municipal waste, the commission shall consider the compliance history of the applicant and its operator under the method for evaluating compliance history developed under TWC §5.754. The commission shall consider as evidence of compliance information information regarding implementation of an environmental management system.</p>
<p>Texas Water Code §26.040(h) General Permits (relating to water quality permits)</p>	<p>The commission, after hearing, shall deny or suspend a discharger’s authority to discharge under a general permit if the commission determines that the discharger operates any facility for which the discharger’s compliance history contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations.</p>	<p>The commission, after hearing, shall deny or suspend a discharger’s authority to discharge under a general permit if the commission determines that the discharger’s compliance history is in the lowest classification under TWC §§5.753 and 5.754 (poor).</p>
<p>Texas Water Code §27.051 Issuance of Permit. (Injection Wells)</p>	<p>The commission, in determining if the use or installation of an injection well for the disposal of hazardous waste is in the public interest shall consider compliance history of the applicant.</p>	<p>The commission, in determining if the use or installation of an injection well is in the public interest shall consider compliance history of the applicant under the method for evaluating compliance history developed by the commission under TWC §5.754. A compliance summary must include as evidence of compliance information regarding implementation of an environmental management system.</p>

SUNSET BILL - AMENDED STATUTORY PROVISIONS
COMPLIANCE HISTORY - ENFORCEMENT PROCESS CHANGES

STATUTE	PRE-SUNSET PROVISIONS	POST-SUNSET PROVISIONS
Tex. Rev. Civ. Stat. Art. 4447cc	The immunity under this section does not apply if a court or administrative law judge finds that the person claiming the immunity has, after the effective date of this Act, (1) repeatedly or continuously committed significant violations, and (2) not attempted to bring the facility or operation into compliance, so as to constitute a pattern of disregard of environmental or health and safety laws. In order to be considered a "pattern," the person must have committed a series of violations that were due to separate and distinct events within a three-year period at the same facility or operation.	No change.
Texas Health & Safety Code §341.049(b)(2) Administrative Penalty	History and extent of previous violations to be considered by commission in determination of amount of penalty	No change.
Texas Water Code §7.053 Factors to be Considered in Determination of Penalty Amount	The commission shall consider the history and extent of previous violations.	No change.

STATUTE	PRE-SUNSET PROVISIONS	POST-SUNSET PROVISIONS
Texas Water Code §7.070. Findings of Fact Not Required; Reservations.	An agreed order may include reservation that the order is not intended to become a part of a party's or a facility's compliance history.	TWC §5.753(b)(2) includes 1660 agreed orders as a component of compliance history. TWC §5.753(b)(2) specifically states “. . . notwithstanding any other provision of this code, orders issued under Section 7.070.”
Texas Water Code §7.103 Continuing Violations	Effect of previous assessments of civil penalties.	No change.
Texas Water Code §7.105 Civil Suits	On the request of the executive director or the commission, the attorney general shall institute a suit in the name of the state for injunctive relief, if it is shown that defendant has been the subject of two or more finally issued administrative penalty orders for violations within the two years immediately preceding.	No change.
Texas Water Code §7.162(c) Violations Relating to Hazardous Waste	Effect of previous offenses.	No change.
Texas Water Code §7.164(b) Violations Relating to Medical Waste: Large Generator	Effect of previous offenses.	No change.
Texas Water Code §7.165(b) Violations Relating to Medical Waste: Small Generator	Effect of previous offenses.	No change.
Texas Water Code §7.166(b). Violations Relating to Transportation of Medical Waste.	Effect of previous offenses.	No change.
Texas Water Code §7.167(b) False statements relating to medical waste	Effect of previous offenses.	No change.

STATUTE	PRE-SUNSET PROVISIONS	POST-SUNSET PROVISIONS
Texas Water Code §7.172(b). Failure of Sewage System Installer to Register.	Effect of previous offenses.	No change.
Texas Water Code §7.174(b). Violation of Sewage Disposal System Permit Provision.	Effect of previous offenses.	No change.
Texas Water Code §7.176(d). Violations Relating to Handling of Used Oil.	Effect of previous offenses.	No change.
Texas Water Code §7.184(b) Violations Relating to Low Level Radioactive Waste	Effect of previous offenses.	No change.
Texas Water Code §7.188 Repeat Offenses	Effect of previous offenses.	No change.
Texas Water Code §7.302(b)(2) Grounds for Revocation or Suspension of Permit	Grounds include: having a record or environmental violations in the preceding 5 years at the permitted or exempted site.	No change.
Texas Water Code §7.303(b)(1) Grounds for Revocation or Suspension of License, Certificate or Registration	Commission may suspend or revoke if record of environmental violations in the preceding 5 years at the licensed, certified or registered site.	No change.
Texas Water Code §11.0842 Administrative Penalty (Water Rights)	In determining the amount of the penalty, the commission shall consider the history and extent of previous violations.	No change.
Texas Water Code §13.4151 (b) (2) Administrative Penalty	In determining the amount of penalty, the commission shall consider the history and extent of previous violations.	No change.

²Section 18.05 of the Sunset bill provided for two relevant effective dates for the new compliance history program:

(g) For the purposes of consideration of compliance history in decisions by the Texas Natural Resource Conservation Commission relating to the issuance, amendment, modification, or renewal of a permit under the sections listed under Subsection (f) of this section, an application submitted before September 1, 2002, is governed by the law as it existed immediately before September 1, 2001, and the former law is continued in effect for that purpose.

(i) The changes made by this Act in the definition of compliance history apply to an action taken by the Texas Natural Resource Conservation Commission on or after February 1, 2002. An action taken by the Texas Natural Resource Conservation Commission before February 1, 2002, is governed by the law in effect on the date the action is taken, and the former law is continued in effect for that purpose.

30 Texas Administrative Code (TAC) Chapter 60, relating to compliance history, has been interpreted by the commission to apply to applications submitted after September 1, 2002.

ATTACHMENT 4

Commission Direction on Enforcement Process Review Recommendations (Actions Through Dec. 6, 2004)

Com- mit- tee	Issue No.	Page	Issue	Recommendation	Commission Direction
					Implementation
Coll	5	206	Would the assessment of interest charges on payment plans 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.	Pending
					Policy, guidance, or process change
Coll	5	206	Would the assessment of interest charges on delinquent penalties encourage payment?	Interest should also be assessed on delinquent penalties.	Proceed
					Potential Statutory 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>	Proceed
					Potential Statutory change

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).	Proceed
					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.	No
					Potential Statutory 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.	Proceed
					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.	Proceed
					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.	Proceed
					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.	Proceed
					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.	Proceed
					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.	Proceed
					Policy, guidance, or process change

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.	Pending
					No change recommended
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.	Proceed
					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.	Proceed
					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.	Proceed
					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.	Proceed
					Policy, guidance, or process change
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.	Agree
					No change recommended
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.	Proceed
					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.	Referred to E.D.
					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.	Proceed
					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.	Proceed
					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. 	Proceed
					Policy, guidance, or process change

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.	Agree
					No change recommended
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.	Proceed
					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. 	<p>Pending</p> <p>Policy, guidance, or process change</p>

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.	Pending
					Chapter 70 rule amendment
EP	5	229	How can TCEQ increase or reallocate resources to target investigative/enforcement activities?	The number of investigative or enforcement staff should not be increased until the full effect of implementing changes from this review is evaluated. If recommendations on compressed settlement time lines are implemented, additional cases may be referred to Litigation and additional staff may be needed in that division. In the interim, consider other steps such as media-specific coordinators, training and mentoring programs to increase the efficiency of existing staff.	Referred to E.D.
					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 	Referred to E.D.
					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.	Proceed
					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. 	Referred to E.D.
					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.	Referred to E.D.
					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.	No
					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. 	Pending
					Policy, guidance, or process change
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.	Proceed
					Establish policy and promulgate into 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.	Proceed
					Revise calculation methods and promulgate into new rule

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. Several alternative ways to treat economic benefit when preparing a penalty are described in detail in the report.	Proceed - Stakeholder Input
					Promulgate selected policies into a new rule
Pen	3	92	How should TCEQ define a small entity for purposes of enforcement?	Define entities considered as “small” in rule.	Proceed - Stakeholder Input
					Promulgate selected policies into a 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	Proceed
					Promulgate selected policies into a new rule

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.	Proceed
					Promulgate selected policies into a new rule
Pen	7 C	100	Does the penalty policy equitably account for and make a distinction between harm to the environment and a “paperwork” violation?	Simplify the penalty policy by eliminating the “potential release” component from the existing base penalty matrix. Make upward adjustments to the percentage of a base penalty calculations for all levels of harm and for both major and minor respondents.	Proceed
					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.	No
					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.	No
					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	No
					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.	No
					Formalize current policy into a new rule
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.	Agree
					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.	Agree
					No change recommended
SEP	1	141	Should TCEQ continue the SEP program?	Yes, SEPs should continue to be offered to offset enforcement penalties.	Agree
					No change recommended

SEP	2 - 3	141 - 144	When should SEP discussions begin and how can SEP process be more efficient?	-Expand the pre-approved list of SEPs. -Provide SEP information to the respondent during the investigation exit briefing.	Proceed
					Policy, guidance, or process change
EP	4	228	How could the SEP process be streamlined and or simplified?	-Limit extensions for inclusion of Supplemental Environmental Projects to cases where an agreement concerning the amount of the administrative penalty to be paid by the respondent is reached within 30 calendar days after receipt of the draft order by the respondent. -If final agreement concerning an SEP is not reached within 90 days after the date of the extension letter then the enforcement case should be referred to LD for processing and the proposed penalty would increase by 25%.	No
					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.	Proceed
					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".	Proceed
					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.	Proceed
					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.	Proceed
					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.	Proceed
					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.	Proceed
					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.	Proceed
					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.	Proceed
					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). 	Proceed
					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. 	Proceed
					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.	Proceed
					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.	Proceed
					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.	Proceed
					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.	Proceed
					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.	Proceed
					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.	Proceed
					Policy, guidance, or process change
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.	Agree
					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
					No change recommended
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.	Proceed
					Policy, guidance, or process change

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.	Agree
					No change recommended
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.	Proceed
					Policy, guidance, or process 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.	Pending
					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.	Pending
					Policy, guidance, or process 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	Pending
					Potential Statutory change
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.	Pending
					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.	Pending
					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.	Pending
					Policy, guidance, or process change

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.	Pending
					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.	Pending
					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.	Pending
					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.	Pending
					No change recommended

Consideration of compliance initiatives proposed by the Office of Compliance and Enforcement for Fiscal Year 2005. The potential initiatives include Permit Now! (Unauthorized/Unregistered Facilities), High Emitters (HRVOCs Emissions Events), and Diesel Engine Polluters (NOx Combustion Engines).

Please note there is no backup material for this issue.

Discussion of state and federal legislative issues potentially affecting the TCEQ. The commission may consider legislative proposals and federal rulemakings, as well as other state actions and state's participation in federal legislative and regulatory activities. The commission may also meet in closed meeting to receive legal advice regarding these matters, or any of the above matters, as authorized by Section 551.071 of the Open Meetings Act, Chapter 551 of the Government Code. Any commission action, decision, or vote on these matters will be made in open meeting in accordance with Section 551.102 of the Open Meetings Act, Chapter 551 of the Government Code.

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners' Work Session Date: December 17, 2004

Thru: Glenn Shankle, Executive Director
Mark Vickery, Deputy Executive Director

From: Leonard Olson, Director, Intergovernmental Relations Division

Subject: State Legislative Issues Potentially Affecting the TCEQ

Issue Discussion of state and federal legislative issues potentially affecting the TCEQ. The commission may consider legislative proposals and federal rulemakings, as well as other state actions and state's participation in federal legislative and regulatory activities. The commission may also meet in closed meeting to receive legal advice regarding these matters, or any of the above matters, as authorized by Section 551.071 of the Open Meetings Act, Chapter 551 of the Government Code. Any commission action, decision, or vote on these matters will be made in open meeting in accordance with Section 551.102 of the Open Meetings Act, Chapter 551 of the Government Code.

Background and Current Practice

To prepare for the upcoming 79th Legislative Session IGR will provide updates on legislative activities that could have an impact or affect the programs and operations of the agency.

Attachment includes: State Legislative items of interest.

Bills of Interest for the weeks of November 8th thru December 10th

HB 39 by Eissler - Relating to outdoor burning of household refuse; creating an offense.

The bill would prohibit the outdoor burning of household refuse on a lot that is in a neighborhood or is smaller than 5 acres.

HB 86 by Smith - Relating to compliance histories for and incentives to reward compliance performance by entities regulated by the TCEQ.

The bill proposes modifications to the Texas Water Code and Health and Safety Code which would require the Commission to, by rule, develop standards for “using”, rather than “evaluating” compliance history. There are several changes specified in the bill.

HB 115 by Hilderbran - Relating to compliance by political subdivisions with unfunded legislative mandates

The bill would require the Legislative Budget Board after each legislative session to publish a list of legislative mandates for which the legislature has not provided funding. The list is to be published in the Texas Register.

HJR 20 by Hilderbran - A constitutional amendment providing that political subdivisions are exempt from unfunded legislative mandates.

This would not apply to a mandate that is necessary to comply with a requirement of the Texas Constitution, federal law or a court order.

HB 170 by Deshotel - Relating to supplemental environmental projects in local communities and site-specific air quality monitoring for certain facilities

The bill would require the Commission impose an administrative penalty for excessive emissions events and half of the penalty would be applied to a supplemental environmental project. Would require the Commission appoint a committee for each project to assist in defining goals, scope and duration.

SB 93 by Shapleigh - Relating to a manifest system to record the transportation of certain liquid wastes

Would require that the Commission amend existing rules to address new manifesting and reporting requirements.

SB 95 by Shapleigh - Relating to the establishment of an asthma research center at the Texas Tech University campus in El Paso

Would establish an asthma research center administered by Texas Tech University System and would operate in collaboration with UT El Paso and the TCEQ.

Interim Committee Reports of Interest

House Interim Committees

Committee on Environmental Regulation - report has been drafted but not released

Committee on Defense Affairs & State-Federal Relations, Subcommittee on Homeland Security - report released 11/10/04 with no recommendations with TCEQ impact

Committee on Agriculture - report released 11/24/04 dealing with feral hogs, brush control and oversight of Tx Animal Health Commission. No recommendations with TCEQ impact.

Committee on Land and Resource Management - report release 11/10/04 with no recommendations of impact to the TCEQ

Senate Interim Committees

Committee on Finance, Subcommittee on State Contracting - Progress report released 11/09/04. The majority of the report was on contracting oversight issues at HHS. The report listed numerous preliminary options or recommendation to improve oversight of all state contracting. The report noted it was the intent on the subcommittee to issue a final report with full recommendations at a later date.

Committee on Natural Resources - report is scheduled to be released in mid-December. TCEQ has provided background information relating to the committees interim charges.

Select Committee on Water Policy - report is scheduled to be release in mid-December.

Subcommittee on Lease of State Water Rights - report released 11/03/04 with 10 recommendations. The only recommendation that has a direct impact on the TCEQ is the one that recommends repeal of Section 11.3271, Tx Water Code relating to the Rio Grande Watermaster's authority to issue bed and banks permits for transportation of groundwater. This authority was provided by HB 2250, 78th Legislature.

Committee on Infrastructure Development and Security - report released 12/02/04. Recommendations to Charges to #6, #7 and #8 have potential impacts to the TCEQ.

Interim Charge #6 - Homeland Security Funding

Agency could be required to develop procedures for tracking homeland security funds and include any state appropriations in our biennial legislative appropriations requests.

Interim Charge #7 - Texas' Ability to Detect, Deter, and Respond to Terrorism

The Critical Infrastructure Protection Council (CIPC) (of which TCEQ is a member) may be required to determine the benefits of maintaining a single center to share information versus multiple centers to support information needs of several state agencies; TCEQ may be asked to

consolidate our after- hours answering services with other state agencies; and ,with the implementation of the National Incident Management System (NIMS) some agency staff may be required to receive additional training/certifications to participate in response activities. There may also be addition legislation sought to further ensure that Texas drinking water supplies are safe and secure.

Interim Charge #8 - Interoperability

We may be impacted by the creation of a statewide interoperable system including seeking grants, the purchase of additional equipment and the tracking of funds used specifically for interoperability.

Joint Interim Committees

Study Commission on Environmental Flows - Science Advisory Council report presented to the Study Commission on 11/03/04. The report contained 8 key finds or observations but no specific legislative recommendations. The Study Commission will meet in December to present their interim report.

Texas Water Advisory Council - draft report released 12/10/04 for comment. The report's findings were related to support for; the Regional Water Planning Process; funding the Water Infrastructure Fund; and, allowing interbasin transfers as a water management strategy identified in the State Water Plan, as long as no harm is done to the basin on origin. The report supported recent TCEQ rule making activities with regard to arsenic and radiounclides compliance alternatives for small systems. The TWAC recommends further study on CCNs, regulatory process within the Corps of Engineers to create mitigation banks to restore and enhance wetlands, surface and ground water rights and State-Federal relations on water funding and policy.

Committee on Rock/Crushers Quarries - report has not been released.

**Federal Notices and Regulatory Initiatives
December 8, 2004**

Water Programs

Subject	Activity Dates	Federal Register Date, Action	Agency Activity & Status
National Pollutant Discharge Elimination System--Proposed Regulations To Establish Requirements for Cooling Water Intake Structures at Phase III Facilities	March 24, 2005	November 24, 2004 Proposed Rules	Staff preparing briefing documents for ED/Commission review.
Agency Information Collection Activities: Proposed Collection; Comment Request; Underground Injection Control (UIC) Program; EPA ICR No. 0370.18; OMB Control No. 2040-0042	December 27, 2004	October 25, 2004 Notices	Staff preparing briefing documents for ED/Commission review.

Other Programs

Subject	Activity Dates	Federal Register Date, Action	Agency Activity & Status
Multi-Year Flood Hazard Identification Plan (MHIP)	Will accept comments on "ongoing" basis.	December 3, 2004 (From FEMA website; not in Federal Register)	Under review.

Emerging Issues Not Noticed in the Federal Register

Subject	Activity Dates	Source of Information	Hyperlink to HTML or PDF if available	Agency Activity & Status
EPA granting reconsideration of 3 issues in Earthjustice's petition	Within next 9 months.	None. Refer to links to review summary, petition, and EPA letter.	Summary.pdf Petition.pdf EPA Letter.pdf	Staff prepared briefing documents for ED/Commission review, no action required at this time.

Federal Notices and Regulatory Initiatives
December 8, 2004

Final Rule Adoption Notices and Reports

Subject	Activity Dates	Federal Register Date, Action
Air Quality: Revision to Definition of Volatile Organic Compounds--Exclusion of Four Compounds	December 29, 2004	November 29, 2004 Rules and Regulations
Revision to Definition of Volatile Organic Compounds--Exclusion of t-Butyl Acetate	December 29, 2004	November 29, 2004 Rules and Regulations
Approval and Promulgation of Implementation Plans; Texas; Memorandum of Agreement Between Texas Council on Environmental Quality and the North Central Texas Council of Governments Providing Emissions Offsets to Dallas Fort Worth International Airport	December 28, 2004 unless EPA receives adverse comment by November 29, 2004	October 29, 2004 Rules and Regulations
National Environmental Performance Track Program; Corrections	December 27, 2004	October 25, 2004 Rules and Regulations
National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks	January 11, 2005	October 13, 2004 Rules and Regulations
Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage	Delayed from October 1, 2004 until January 2, 2005.	May 28, 2004 Rules and Regulations

Planning for the next Commissioners' Work Session.

NATIONAL COMMENTS LOG

SUBM TO	DATE	SHORT TITLE	TNRCC COMMENTS	DIV PREPARING	DIV CONTACT
EPA	11/30/2004	Draft Guide to Analyzing Environmental	<p>It would be useful to have a process to promote innovative approaches to environmental issues.</p> <p>The draft guide is so complex and cumbersome to use that potential innovators may be discouraged from using the proposed process.</p> <p>EPA should streamline the evaluation process, particularly for innovative projects that are less complex, small in scope of potential impact, or perhaps that need to be fast-tracked.</p>	Policy and	Hector
EPA	12/2/2004	Framework for State Program Review	<p>Some metrics specified in the draft Framework conflict with the current approach to inspection planning.</p> <p>EPA should provide a flexible approach to oversight by using negotiated metrics to account for differences between states in the number, type, and size of industry, incentive programs; and other variables which affect each state's approach to inspection planning.</p> <p>EPA should consider enforcement concerns on issues such as different enforcement processes required by state statutes that impact enforcement timeframes, prescriptive requirements to determine how an entity will return to compliance, and the amount of information that may be disclosed on cases that include an analysis of ability to pay.</p> <p>All metrics should evaluate performance against a standard rather than</p>	OEPA	Herb Williams

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Last Update: December 10, 2004

Scheduled on: January 14

<u>Short Title of Issue</u>	<u>Lead Office & Staff</u>	<u>Date Issue Referred</u>
EMRS	OCE/Steib	8/16/04
Rule Petition/CCN	OPRR/Doug Holcomb	

Scheduled on: Standing Items

<u>Short Title of Issue</u>	<u>Lead Office & Staff</u>	<u>Date Issue Referred</u>
State and Federal legislation potentially affecting the TCEQ and other issues related to actions taken by the Texas Legislature	IGR/Lenny Olsen	1/1/2004
Enforcement Report	OCE/Anne Dobbs	1/1/2004
SIP Activities	OEPA	1/1/2004
Planning for next work session	Commissioners' Executive Assistants	1/1/2004
Public Comment Session	Public Participation	10/24/03

Scheduled on: To be determined

<u>Short Title of Issue</u>	<u>Lead Office & Staff</u>	<u>Date Issue Referred</u>
Permit back log and time lines	OPRR	12/1/03

Tentative Dates for November 2004 - May 2005
Commissioners' Work Sessions
Last Update: 12/10/04

DATE OF WORK SESSION	TIME OF WORK SESSION	FILE AGENDA WITH POLICY AND REGULATORY DEVELOPMENT OFFICE by NOON (effective 11/02/04)	EXECUTIVE SUMMARY DEADLINE by noon unless otherwise stated (effective 9/7/04)
November 1	9:30 am - 12:00 n	October 22	October 22
November 15	9:30 am - 12:00 n	November 5	November 5
December 6	9:30 am - 4:00 pm	November 24	November 24
December 17	9:30 am - 12:00 n	December 8	December 8
January 14	9:30 am - 12:00 n	January 5	January 5
February 11	9:30 am - 12:00 n	February 2	February 2
March 11	9:30 am - 12:00 n	March 2	March 2
April 15	9:30 am - 12:00 n	April 6	April 6
May 13	9:30 am - 12:00 n	May 4	May 4

NOTE: These dates are subject to change. Some backup deadline dates were moved up a day or two due to holidays.

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.**