

<b>EIC/Investigation Prioritization/NOVs/NOEs</b>	
<b>Issue No.</b>	<b>1</b>
<b>Key Issue</b>	<u>Investigation Prioritization/Investigation Strategy:</u> A) How should Field Operations prioritize investigations?
	<u>Basis:</u> Public Input, Staff Input and Review of Current Policy
<b>Other Subcommittees Reviewing Issue</b>	Compliance History Use, Complaints
<b>Recommendation</b>	Investigation prioritization 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 [see 1(B)].  <b>Pros:</b> Appears to be consistent with concerns expressed by the public, is more logical when considering risk, and better utilizes staff resources. <b>Cons:</b> Requires more time and resources to develop prioritization process, historically compliant facilities may still be inspected based on risk, and public perception of high risk facilities may not coincide with agency's analysis of risk.
	<u>Basis:</u> The investigation prioritization is currently based primarily on LBB and EPA commitments, priorities and strategies, which may not necessarily be based on TCEQ's assessment of risk to human health and the environment.
	<u>Implementation Impacts:</u> <ul style="list-style-type: none"> <li>• Prioritizing investigations based on risk to human health and the environment could conflict with EPA's investigation priorities and strategies, and possibly LBB commitments.</li> <li>• This could require discussions, negotiations, and agreement with the EPA regarding investigation targeting strategy.</li> <li>• It may also require adjustment of LBB performance measures depending on types of facilities targeted.</li> <li>• This may require Executive Management involvement to facilitate resolution of differences and to unify the priorities of EPA and TCEQ.</li> </ul>
<b>Other Alternatives</b>	Status quo (based on LBB and EPA commitments). <b>Pros:</b> No additional resources or process changes required. <b>Cons:</b> Negative public perception, outdated strategy, does not adequately address risk, and smaller facilities regardless of risk may not be inspected.  Abbreviate inspection strategy so that as many facilities as possible are inspected regardless of risk. <b>Pros:</b> More facilities are "inspected", and promotes greater visibility of agency in field to both regulated community and public. <b>Cons:</b> May miss significant violations, would require more travel time/expense, and may not fulfill EPA requirements.
<b>Notes</b>	Issues 1(A) and 1(B) are integrally linked and should be considered together.

<b>EIC/Investigation Prioritization/NOVs/NOEs</b>	
Issue No.	<b>1</b>
<b>Key Issue</b>	<u>Investigation Prioritization/Investigation Strategy:</u>  B) 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?
	<u>Basis:</u> Public Input, Staff Input and Review of Current Policy
<b>Other Subcommittees Reviewing Issue</b>	Compliance History Components, Compliance History Classifications, Compliance History Use, Complaints, Penalty Policy
<b>Recommendation</b>	Prioritization should be based on a combination of strategies. We recommend development of a screening approach using three criteria - risk, performance, and commitment (LBB and EPA commitments) - to determine investigation priorities. The initial screen of the potential universe to be inspected should be conducted based on risk.  The Field Operations Division currently has a committee that is evaluating the investigation strategy. The following issues should be taken into consideration:
	<b>Criterion I: Risk Based</b> <i>Hazard:</i> Nature of pollutant (toxicity, persistence and quantity/volume) Multiple chemical effect High background levels  <i>Probability/Exposure:</i> Location (attainment status, population density, exposure pathway and proximity to environmentally sensitive area) Cumulative effect Nature of business (complexity) Inspection frequency (interval)
	<i>Public Perception/Interest:</i> Focused interest (special initiative) including unauthorized facilities Customer service/need  <b>Criterion 2: Performance Based</b> <i>High risk:</i> Good performer - less inspection/modified inspection from agency Poor performer - more attention/detailed inspection from agency (Dependent on outcome of classification, may need to also look at the lower tier of the average performers)

	<p><b>Criterion 3: Commitment (Bean) Based</b>  LBB commitments  EPA mandates/priorities  Need flexibility to adjust priorities of LBB and EPA when in conflict with resource needs for risk based and performance based priorities</p> <p><b>Pros:</b> Appears to be consistent with concerns expressed by the public and the regulated community, is more logical when considering risk and performance, and better utilizes staff resources.  <b>Cons:</b> Requires more time and resources to develop prioritization process, and public perception of high risk facilities may not coincide with agency’s analysis of risk. Executive management involvement may be necessary during the Compliance Planning process to facilitate resolution of differences to unify the priorities of EPA with TCEQ.</p> <p><u>Basis:</u> The recommendation addresses the facilities that pose the greatest risk to human health and the environment based on the nature of their operation or their past performance. It also satisfies EPA and LBB requirements.</p>
	<p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> <li>• Using a combination of strategies would require the development and implementation of screening criteria to determine investigation priorities.</li> <li>• FOD currently has a committee that is evaluating investigation strategies, and this committee needs to be tasked with the development of a screening criteria for determining risk-based investigation priorities.</li> <li>• This may require additional time and resources, and may require Executive Management involvement to facilitate resolution of differences between TCEQ and EPA commitments, priorities and strategies.</li> </ul>
<p><b>Other Alternatives</b></p>	<p>Status quo (based on LBB and EPA commitments).</p> <p><b>Pros:</b> No additional resources or process changes required.  <b>Cons:</b> Negative public perception, outdated strategy, does not adequately address risk, and smaller facilities regardless of risk may not be inspected.</p> <p>Abbreviate inspection strategy so that as many facilities as possible are inspected regardless of risk.</p> <p><b>Pros:</b> More facilities are “inspected” and greater visibility of agency in field to both regulated community and public.  <b>Cons:</b> May miss significant violations, would require more travel time/expense, and may not fulfill EPA requirements.</p>
<p><b>Notes</b></p>	<p>Issues 1(A) and 1(B) are integrally linked and should be considered together.</p>

<b>EIC/Investigation Prioritization/NOVs/NOEs</b>	
<b>Issue No.</b>	<b>1</b>
<b>Key Issue</b>	<u>Investigation Prioritization/Investigation Strategy:</u> C) Does the Field Operations Division need to seek management input from other parts of the TCEQ on investigation priorities and initiatives? If so, how?
	<u>Basis:</u> Public Input, Staff Input and Review of Current Policy
<b>Other Subcommittees Reviewing Issue</b>	Communications, Compliance History Use, Complaints, Ordering Provisions
<b>Recommendation</b>	Yes. The agency should develop and use an annual process to solicit input 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.
	<b>Pros:</b> The workplan reflects the priorities of the Commissioners and Executive Management, better agency coordination. <b>Cons:</b> More time and effort for those programs outside of OCE not previously involved in the process and may lengthen workplan development process.
	<u>Basis:</u> With competing priorities and limited resources, the agency needs a planned effort to focus its investigation resources on those areas deemed most critical. The agency currently has a Compliance Plan Team whose purpose could be expanded to perform this task. Developing a planned approach with input from all areas will allow us to more effectively accomplish agency goals.
	<u>Implementation Impacts:</u> <ul style="list-style-type: none"> <li>• A team consisting of representatives from every TCEQ Office would need to be formed and tasked with developing and implementing a process for soliciting and compiling input from across the agency with regards to the annual investigation workplan.</li> <li>• This workplan needs to reflect the priorities, strategies, and initiatives of the Commissioners and Executive Management.</li> </ul>
<b>Other Alternatives</b>	Status quo (Workplan primarily developed within FOD).  <b>Pros:</b> Current staff involved are familiar with process and easier to change workplan since fewer programs involved. <b>Cons:</b> Not all program areas are involved in workplan development and OCE may not be aware of other needs/initiatives in agency.
<b>Notes</b>	The Compliance Plan Team should consist of representatives from, at a minimum, OPRR, OLS, OCE, OEPAA, CEO. We recommend that the team should be renamed to better reflect its function.

<b>EIC/Investigation Prioritization/NOVs/NOEs</b>	
<b>Issue No.</b>	<b>2</b>
<b>Key Issue</b>	<p><u>Investigation prioritization addressing unauthorized facilities:</u></p> <p>Should the agency devote resources to the identification and investigation of unauthorized facilities?</p>
	<p><u>Basis:</u> Steering Committee Input and Public Comment</p>
<b>Other Subcommittees Reviewing Issue</b>	Compliance History Components, Compliance History Classifications, Compliance History Use, Collections, Complaints, Ordering Provisions, Penalty Policy
<b>Recommendation</b>	<p>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 a number of 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 [see 1(C)].</p> <p><b>Pros:</b> Addresses public/regulated community concerns (facilitates level playing field), agency focuses on higher risk facilities, may increase voluntary compliance for the targeted sector, increases public awareness, enhances public perception of the agency, and increases probability of facility compliance.</p> <p><b>Cons:</b> Increased agency workload (including permitting, field operations, legal, enforcement, small business) and resources may need to be reallocated.</p>
	<p><u>Basis:</u> There is a higher potential for noncompliance (therefore increased risk) at unauthorized facilities. Field Operations has traditionally identified unauthorized facilities as a result of complaints. This recommendation provides a more proactive approach.</p> <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> <li>• Since unauthorized facilities have the potential for noncompliance there would be an increased workload on staff, especially in enforcement, permitting, legal, small business, and field operations.</li> <li>• These divisions would need to have a coordinated strategy to identify these facilities and to best utilize staff resources. Additional time may be required to address targeted industries' concerns.</li> </ul>
	<p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> <li>• Since unauthorized facilities have the potential for noncompliance there would be an increased workload on staff, especially in enforcement, permitting, legal, small business, and field operations.</li> <li>• These divisions would need to have a coordinated strategy to identify these facilities and to best utilize staff resources. Additional time may be required to address targeted industries' concerns.</li> </ul>
<b>Other Alternatives</b>	<p>Status quo (Complaint driven).</p> <p><b>Pros:</b> No extra expenditure of staff resources.</p> <p><b>Cons:</b> May not be identifying or investigating potentially high risk facilities.</p> <p>Increased random reconnaissance.</p> <p><b>Pros:</b> Will likely identify some unauthorized facilities.</p> <p><b>Cons:</b> Will expend more resources with less possibility of facility identification.</p>
<b>Notes</b>	Depending on the sector(s)/type of facilities targeted, there may be a need for outreach and/or a "grace" period for compliance.

<b>EIC/Investigation Prioritization/NOVs/NOEs</b>	
<b>Issue No.</b>	<b>3</b>
<b>Key Issue</b>	<p><u>On demand activities:</u> What priority should complaints and on-demand activities have within Field Operation's Annual Work Plan?</p>
	<p>Basis: Subcommittee Input</p>
<b>Other Subcommittees Reviewing Issue</b>	<p>Compliance History Components, Compliance History Classifications, Compliance History Use, Complaints, Ordering Provisions, Communications</p>
<b>Recommendation</b>	<p>The Compliance Plan Team should determine the appropriate prioritization 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. Implementation of the workplan should ensure that dis-incentives do not exist to timely and effectively accomplish on-demand requests including complaints.</p> <p><b>Pros:</b> Quick response to public concerns and program area needs, effort by inspectors correlates to performance plan, enhances perception of agency responsiveness, and the agency is made aware of non-compliance issues faster.</p> <p><b>Cons:</b> Reactionary nature of these activities make it difficult to plan workload and resources, many of these investigations may divert resources from higher priority activities.</p>
	<p><u>Basis:</u> There is a need to respond in a timely manner to the concerns of the public and provide support to the program areas, and these activities are included in the current workplan process. Complaints are currently prioritized on an individual basis in each Region using the Complaint Prioritization Guidance. However, more emphasis has been placed on scheduled investigations in order to meet LBB and EPA commitments. We should recognize the consequences of failing to respond to complaints in a timely manner due to pressure to complete scheduled activities.</p>
	<p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> <li>• This recommendation would result in an additional task for the existing Compliance Plan Team.</li> </ul>
<b>Other Alternatives</b>	<p>Status quo (Focus on the "bean").</p> <p><b>Pros:</b> Allows for scheduling of investigations based on workplan and perceived risk by the agency, and no process changes required.</p> <p><b>Cons:</b> Focuses on the "bean" at the expense of responding to complaints and on-demand activities.</p> <p>Make complaints top priority over all other elements of the workplan.</p> <p><b>Pros:</b> Would address public concerns about agency's responsiveness and may increase likelihood of validating complaint.</p> <p><b>Cons:</b> Inability to plan, potential conflict with LBB and EPA commitments, may not result in inspection of high risk facilities, and would operate in a reactive mode.</p>

<b>Notes</b>	On-demand activities are investigations requested by program areas or the public that are not planned. These activities include citizen complaints, site reviews for permitting, emission events, emergency response (e.g., spills, natural disasters), and investigations to support legal action.
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<b>EIC/Investigation Prioritization/NOVs/NOEs</b>	
Issue No.	4
<b>Key Issue</b>	<p><u>Enforcement Initiation Criteria:</u></p> <p>A) 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?</p> <p>Basis: Public comment, Commissioner Input and Steering Committee Input</p>
<b>Other Subcommittees Reviewing Issue</b>	Compliance History Components, Compliance History Classifications, Penalty Policy
<b>Recommendation</b>	<p>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. The EIC should be an agency-wide document [see 4(B)].</p> <p><b>Pros:</b> Commission approval provides transparency and periodic review allows proactive approach to legislative changes, new technology, and agency initiatives. Allows for cross-agency input.</p> <p><b>Cons:</b> Would lengthen the process for completion of the guidance document.</p>
	<p><u>Basis:</u> Field Operations Division and the Enforcement Division currently review the EIC annually and have revised the current criteria nine times as a result of legislative changes, technological changes, and resource issues. An annual review would formalize the process.</p> <p>The current EIC is an FOD guidance document which is approved by OCE and OLS management, but is not formally approved by the commission. Review and approval by the commission will ensure that commission has the opportunity to provide direction on enforcement policy and initiatives.</p>
	<p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> <li>• An EIC Steering Committee would need to be formed and meet on a regular basis to review and revise the criteria for enforcement.</li> <li>• The EIC would need to be approved by the commission.</li> <li>• In addition, other divisions which initiate enforcement actions should formalize their criteria, ensure that criteria are reviewed and revised on a regular basis, and included in the EIC.</li> </ul>

<b>Other Alternatives</b>	<p>Annual review which includes formalized opportunity early in the process (prior to Commission consideration) for the public, including the regulated community, to petition for changes to the EIC.</p> <p><b>Pros:</b> May promote better acceptance of the EIC and more opportunity for early input from general public.</p> <p><b>Cons:</b> Suggestions may be self-serving and may not consider risk, would lengthen the process and would be more resource intensive.</p> <p>Eliminate the EIC and allow each region to determine the appropriate enforcement response.</p> <p><b>Pros:</b> Shortens time-frame.</p> <p><b>Cons:</b> Lack of inter- and intra-regional consistency in enforcement referral, regulated community uncertain of agency expectations and would not allow cross-agency input or Commission direction.</p>
<b>Notes</b>	<p>The EIC is a document that was developed and is maintained by Field Operations Division to insure consistency among regional staff . The document has been successful for its intended purpose, however it does not cover all enforcement actions in other parts of the agency.</p> <p>A minority of sub-committee members support the first alternative.</p>

<b>EIC/Investigation Prioritization/NOVs/NOEs</b>	
Issue No.	<b>4</b>
<b>Key Issue</b>	<p><u>Enforcement Initiation Criteria:</u></p> <p>B) Should compliance reviews outside of Field Operations be addressed in the Enforcement Initiation Criteria (EIC)?</p> <p>Basis: Public comment, Commissioner Input and Steering Committee Input</p>
<b>Other Subcommittees Reviewing Issue</b>	Compliance History Classifications, Compliance History Use, Penalty Policy, Ordering Provisions, Collections, Communications

<p><b>Recommendation</b></p>	<p>Yes. The EIC should be an agency-wide document that encompasses all enforcement responses 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 are representative of all the agency’s major functional areas, including permitting, compliance/enforcement, small business/local government, monitoring/assessment, and planning.</p> <p><b>Pros:</b> Making the EIC an agency-wide document increases the likelihood that enforcement initiation practices across the agency’s programs will be consistent. In addition, all enforcement initiation criteria will be in one document, making it easier for the public and regulated community to access.</p> <p><b>Cons:</b> Increased resources may be required to coordinate and maintain an agency-wide document.</p> <hr/> <p><u>Basis:</u> The EIC is a document that was developed and is maintained by Field Operations Division to insure consistency among the regions concerning enforcement response to violations. While the EIC has achieved its intended purpose, it does not cover all enforcement actions in other parts of the agency. Other parts of the agency may not have established criteria for initiating enforcement actions, which may lead to inconsistency. Development of the EIC as an agency-wide document will ensure consistency and provide a forum for agency-wide discussion on the appropriate level of enforcement response in all programs. In establishing the EIC as an agency-wide document, we should ensure that the process does not become burdensome and require excessive resources.</p>
	<p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> <li>• Other divisions which initiate enforcement actions should formalize their criteria and ensure that they are reviewed and revised on a regular basis.</li> <li>• All enforcement initiation criteria should be incorporated into one document and formally approved by the commission.</li> <li>• This recommendation would require increased resources and coordination to develop and maintain the EIC document, but should result in more consistent enforcement actions across the agency’s programs.</li> </ul>
<p><b>Other Alternatives</b></p>	<p>Status quo (The current EIC does not address enforcement response for all programs).</p> <p><b>Pros:</b> Does not require any additional resources or coordination.</p> <p><b>Cons:</b> Allows inconsistencies in process to continue, and is not comprehensive in scope.</p> <hr/> <p>Maintain the EIC as an FOD document and require other programs to develop their own enforcement initiation protocols.</p> <p><b>Pros:</b> Does not require any additional coordination.</p> <p><b>Cons:</b> Allows inconsistencies in process to continue, would require additional resources, would result in multiple documents for Commission approval if required, confusion to agency staff, regulated community and the public (everybody).</p>

<b>EIC/Investigation Prioritization/NOVs/NOEs</b>	
<b>Issue No.</b>	<b>5</b>
<b>Key Issue</b>	<u>Enforcement initiation relating to small business and small local government:</u> Should there be separate Enforcement Initiation Criteria (EIC) for small businesses and small local governments?
	Basis: Public Comment, Commissioner Input and Compliance Advisory Panel Input
<b>Other Subcommittees Reviewing Issue</b>	Penalty Policy
<b>Recommendation</b>	No. There should not be a separate Enforcement Initiation Criteria (EIC) for small business and small local governments. Any relief for small entities should be considered in the penalty policy phase of enforcement.  <b>Pros:</b> Provides for consistent application of the EIC. <b>Cons:</b> Impact of enforcement on small entity is proportionately greater than on larger entities and does not provide small entities with the opportunity to comply before initiation of formal enforcement.
	<u>Basis:</u> In order to achieve environmental protection, compliance must be achieved by all entities, regardless of size. Small entities can cause significant environmental impacts. An entity's eligibility may be difficult to verify during inspections. Also, conflicting definitions of "small business" exist in agency rules and statutes, which would make application of a separate EIC difficult.
	<u>Implementation Impacts:</u> <ul style="list-style-type: none"> <li>• Since no separate enforcement initiation criteria for small businesses and small local governments is recommended, there would be no implementation impact.</li> <li>• However, if relief through the penalty policy is provided, then additional resources needed to make those revisions may be necessary.</li> </ul>
<b>Other Alternatives</b>	Modify the EIC to provide relief for small entities identified as operating without proper authorization from the agency (no permit). The relief could consist of giving a variance to small entities operating without authorization, possibly avoiding automatic enforcement.  <b>Pros:</b> Allows small entities the opportunity to comply before initiation of formal enforcement, lessens workload in Enforcement and Legal Divisions and allows local government dollars to be spent for compliance rather than penalties. <b>Cons:</b> Inconsistent enforcement across the regulated community, does not encourage up-front compliance, may be perceived as reducing the necessity of having proper authorization.

<b>EIC/Investigation Prioritization/NOVs/NOEs</b>	
<b>Issue No.</b>	<b>6</b>
<b>Key Issue</b>	<p><u>Appeal processes for violations:</u></p> <p>A) Should there be an opportunity for post-investigation/pre-enforcement fact-finding meetings in the TCEQ Regional Offices?</p> <p>B) Should there be a formal appeal process for Field Operations determinations (using the Enforcement Initiation Criteria) on the question of case referral to the Enforcement Division?</p> <p>Basis: Public Comment, Staff Input and Review of Current Policy.</p>
<b>Other Subcommittees Reviewing Issue</b>	None identified.
<b>Recommendation</b>	<p>(A) and (B) 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 timeframe for appeal should be established, i.e. 10 working days from the last date of inspection. The alleged violator should be informed of the opportunity to appeal and how to appeal during the exit interview. The 10 working day allowance for appeals may need to begin upon discovery of additional violations after the field investigation.</p> <p><b>Pros:</b> Insures that everyone understands the process and provides a reasonable timeframe for resolution of issues prior to initiation of enforcement.</p> <p><b>Cons:</b> None identified.</p> <p><u>Basis:</u> The opportunity to appeal violations and determinations based on the EIC is currently available, but is not widely known by all sectors of the regulated community.</p>
	<p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> <li>• Resources will be required to write the guidance.</li> <li>• This recommendation may result in an increase in the number of meetings between regional staff and facility personnel.</li> <li>• This could require additional staff time and resources, and a slight delay in the completion of the final investigation report.</li> </ul>
<b>Other Alternatives</b>	<p>Status quo (Opportunity presently exists but not all regulated entities are aware of this).</p> <p><b>Pros:</b> None identified</p> <p><b>Cons:</b> Current process allows appeals at any time, which may result in inefficient utilization of staff resources.</p>

EIC/Investigation Prioritization/NOVs/NOEs	
Issue No.	6
<b>Key Issue</b>	<u>Appeal processes for violations:</u>  C) Should there be a formal appeals process for notice of enforcement (NOE) letters?
	Basis: Public Comment, Staff Input and Review of Current Policy.
<b>Other Subcommittees Reviewing Issue</b>	None identified.
<b>Recommendation</b>	No. The NOE currently can be appealed anytime during the enforcement process. The NOE letter should clarify this and include an Enforcement Division point of contact (POC). A formal process is not necessary.  <b>Pros:</b> Requires very little change in current process, insures that everyone understands the process and provides an opportunity for clarification of issues prior to formal action. <b>Cons:</b> Enforcement Division POC may not necessarily be the case enforcement coordinator and may not yet be familiar with specifics of the case.
	<b>Basis:</b> There is not an identified process for appealing NOEs and some facilities are not aware of the opportunity to appeal.
	<u>Implementation Impacts:</u> • This recommendation would require staff time to modify the NOE letter.
<b>Other Alternatives</b>	Develop a formal NOE appeals process with defined timelines similar to the NOV appeals process.  <b>Pros:</b> Process would be formalized to be consistent with NOV appeals policy. <b>Cons:</b> Unnecessarily lengthens process and may require more staff resources.

EIC/Investigation Prioritization/NOVs/NOEs	
Issue No.	7
<b>Key Issue</b>	<u>Verbal notice of violation (NOV) policy:</u>  Should the use of verbal NOVs be continued by Field Operations investigators?
	Basis: Public Comment, Staff Input and Review of Current Policy.
<b>Other Subcommittees Reviewing Issue</b>	Compliance History Use and Complaints

<p><b>Recommendation</b></p>	<p>No. Use of verbal NOVs should be discontinued.</p> <p><b>Pros:</b> No additional agency resources would be required since verbal NOVs are currently documented and entered into CCEDS, no misconception about necessity to correct a violation, less confusion to the regulated community and agency staff and more objective enforcement.</p> <p><b>Cons:</b> Citing minor, low impact/low risk violations may be seen as bureaucratic (nitpicky), may impact compliance history score unless compliance history formula is modified.</p> <hr/> <p><u>Basis:</u> Inconsistent application of the verbal NOV policy has resulted in confusion among the regulated community.</p>
	<p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> <li>• This would require no additional agency resources since verbal NOVs are currently documented and entered into CCEDS.</li> <li>• This should result in less confusion among agency staff and the regulated community regarding the need to correct a violation.</li> <li>• There could be an impact on a facility’s compliance history score under the present formula.</li> </ul>
<p><b>Other Alternatives</b></p>	<p>Status quo (Present policy allows for verbal NOVs in certain circumstances).</p> <p><b>Pros:</b> Regulated community appreciate the opportunity to achieve compliance without enforcement action or impact on compliance history.</p> <p><b>Cons:</b> Violations are often ignored by facilities, perpetuates public perception that agency is not addressing all violations, and continued confusion among regulated community due to inconsistent application of the policy.</p> <p>Revise/clarify existing verbal NOV policy to include, but not be limited to, that a verbal NOV can be issued when the violation(s) falls into category C and is/are corrected before the investigator leaves the facility that day. The verbal NOV should be documented in a letter to the facility explaining the verbal NOV is an “area of concern” that was resolved during course of the investigation. The letter should also include an explanation that a repeat of the violation at next inspection will result in a written violation.</p> <p><b>Pros:</b> Facility is given the opportunity to correct minor, low impact/low risk violations without impacting compliance history.</p> <p><b>Cons:</b> Perpetuates public perception that agency is not addressing all violations.</p>
<p><b>Notes</b></p>	<p>If this recommendation is adopted, the Compliance History Classification subcommittee should consider the weight given to violations that previously would have been eligible for verbal NOV.</p>

EIC/Investigation Prioritization/NOVs/NOEs	
Issue No.	8
Key Issue	<u>Notice of Violation (NOV) policy approval:</u> Should the NOV policy be formally adopted by the TCEQ?
	Basis: Staff Input and Review of Current Policy
Other Subcommittees Reviewing Issue	None identified.
Recommendation	Yes. Commissioners should consider adoption of policy statement(s) on NOV procedures. Then, as needed, staff can develop guidance implementing the commission policy.
	<b>Pros:</b> Gives clear direction from Commission and Executive Management to agency staff, public, and regulated community. <b>Cons:</b> Future changes in direction may require Commission action.
	<u>Basis:</u> Currently, only Verbal NOVs are addressed by Commission policy and there is a need to have a policy for all NOVs.
	<u>Implementation Impacts:</u> • This would require formal adoption by the Commission.
Other Alternatives	No policy with respect to NOVs, which would require revocation of existing verbal NOV policy.  <b>Pros:</b> Currently addressed in Field Operations SOP. <b>Cons:</b> Lack of formal direction from Commission and Executive Management.

EIC/Investigation Prioritization/NOVs/NOEs	
Issue No.	9
Key Issue	<u>Notices of enforcement (NOE):</u>
	A) Is there a need for the category of NOE?
	Basis: Staff Input and Review of Current Policy
Other Subcommittees Reviewing Issue	Compliance History Components, Penalty Policy

<b>Recommendation</b>	<p>Yes. All entities being referred for enforcement should be sent an NOE. The agency should establish a timeframe for notice once decision for referral is made.</p> <p><b>Pros:</b> Provides notification to the alleged violator that the matter has been referred for formal enforcement.</p> <p><b>Cons:</b> Notification may not be timely in all program areas. NOEs are not counted in compliance history scoring.</p>
	<p><u>Basis:</u> The regulated entity should be informed in a letter from the region or referring program area when the matter is sent to enforcement. An NOE is necessary to draw a clear distinction from a Notice of Violation letter and to communicate that the matter is being escalated for an order and possible administrative penalties. Currently, not all program areas send an NOE when referring a case for enforcement. Timely notice to the regulated entity is very important in the process so that there are no surprises when they are contacted by Enforcement Division staff.</p>
	<p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> <li>• Since NOEs are presently being used, there would be no impact to the agency and all facilities being referred for enforcement would receive notification.</li> </ul>
<b>Other Alternatives</b>	<p>Status quo (NOEs are currently issued in most programs when a violation is referred for formal enforcement).</p> <p><b>Pros:</b> The present NOE process works effectively for the programs utilizing it, but needs to be expanded for all enforcement actions.</p> <p><b>Cons:</b> Not all alleged violators receive NOEs when their cases are referred to enforcement.</p>

<b>EIC/Investigation Prioritization/NOVs/NOEs</b>	
<b>Issue No.</b>	<b>9</b>
<b>Key Issue</b>	<p><u>Notices of enforcement (NOE):</u></p> <p>B) Are there better ways to communicate the referral of a case to the Enforcement Division?</p>
	<p><u>Basis:</u> Staff Input and Review of Current Policy</p>
<b>Other Subcommittees Reviewing Issue</b>	<p>Compliance History Components, Penalty Policy</p>

<b>Recommendation</b>	<p>Yes. Although the NOE is an effective means of notifying regulated entities that the matter is referred for enforcement, modifications are recommended to 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 [see Issue 6C)].</p> <p><b>Pros:</b> Better communication with regulated community and clarification of the enforcement process.</p> <p><b>Cons:</b> By clearly communicating the opportunity to appeal an NOE, the number of appeals may increase which would result in an increased workload for agency staff.</p> <hr/> <p><b>Basis:</b> The current NOE does not reference the opportunity to appeal. Minor modifications to the letter and providing a point of contact will help in this regard [see Issue 6(c)].</p>
	<p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> <li>• This recommendation would require staff time to modify the NOE letter.</li> </ul>
<b>Other Alternatives</b>	<p>A phone call prior to sending the NOE.</p> <p><b>Pros:</b> Increases communication, alerts entity of pending enforcement action and may encourage the alleged violator to begin or complete corrective action.</p> <p><b>Cons:</b> Increased staff resources, could potentially lengthen process, inability to contact respondent.</p>
<b>Notes</b>	<p>The current NOE shell document was developed with the Office of Legal Services (OLS). Any changes to the document should be coordinated with OLS.</p>