

Enforcement Process/Agency Coordination Subcommittee	
Issue No.	1
Key Issue	<u>Streamline the Existing Enforcement Process</u> : How can the current enforcement time lines be revised to streamline the existing enforcement process?
	<u>Basis</u> : Public Comment, State Auditor’s Report, Staff Input and Review of the Current Policy.
Other Subcommittees Reviewing Issue	None
Recommendation	<ul style="list-style-type: none"> • Enforcement cases should be assigned to an Enforcement Coordinator (EC) within 7 days after the Enforcement Action Referral (EAR) is approved in CCEDs by the Section Manager. If the referral is not produced in CCEDs, then the case should be assigned within 7 days of the receipt of the hard copy of the referral to the Enforcement Division; • Abandon the current enforcement case priority criteria that establishes the amount of time the EC has to mail out the draft order and require that all draft orders and penalty calculations worksheets (PCW) be mailed to the respondent no longer than 60 calendar days after the date that the case is assigned to the EC; • If the enforcement screening decision is to refer the case directly to the Litigation Division (LD) for processing, then the case (which includes technical requirements, PCW, and backup documentation) should be forwarded to LD within 60 calendar days after the enforcement screening date; • In the event that the respondent declares an intent not to settle an expedited enforcement action, the case should be referred to the Litigation immediately (without regard for the normal 30 day settlement period); • The settlement deadline should <u>always</u> be limited to 30 calendar days after the date that the draft order and PCW are mailed to the respondent unless an extension of the settlement deadline is approved by the Enforcement or Litigation Division Director; • If a respondent fails to settle or agree to an SEP or provide all the documentation to demonstrate financial inability to pay within 30 days of receiving the draft order, the Enforcement Division refers the case to the Litigation Division and the proposed penalty is increased by 25%; • An extension of the settlement deadline for claims of financial inability to pay penalties should be approved only if the appropriate financial documentation is submitted to the Financial Administration Division within 30 calendar days after the date of receipt of the draft order by the respondent;

- An extension of the settlement deadline for inclusion of a SEP should be approved only if an agreement concerning the amount of the administrative penalty to be paid by the respondent is reached within 30 calendar days after the date of receipt of the draft order and PCW by the respondent;
- Provide SEP information to the respondent during the investigation exit briefing. The information (pamphlet/brochure) should include information concerning basic program requirements/restrictions and a listing of the pre-approved SEPs. The information packet should also include a requirement that the respondent provide the agency with a written declaration that they desire to perform an SEP. The declaration must be submitted to the agency within 30 calendar days from the date of the investigation to retain eligibility;
- An extension of the settlement deadline should never exceed 90 calendar days. This requirement would have the result of limiting the period of time that agency staff and the respondent would have to complete negotiations regarding SEPs and claims of days. This requirement would have the result of limiting the period of time that agency staff and the respondent would have to complete negotiations regarding SEPs and claims of financial inability to pay penalties;
- Reallocate staff resources in such a manner as to increase the number of staff dedicated to financial reviews and the SEP program;
- Remove the invitation for the respondent to submit financial documentation necessary to support a claim of inability to pay the proposed penalty from the order cover letter. The option should only be discussed when the respondent claims financial hardship either in writing or verbally during settlement negotiations;
- If final agreement concerning an SEP and/or claim of financial inability to pay is not reached within 90 calendar days after the date of the extension approval letter then within 95 calendar days after the date of the extension approval letter the enforcement case should be referred to LD for processing (assuming a signed order and penalty payment have not been received by the cashier's office) and the proposed penalty is increased by 25%;
- Settled enforcement actions should be set for consideration by the commission on a date not later than 70 calendar days after the date that the signed agreed order and penalty payment are received by the cashier's office;
- Issued orders containing technical requirements should be tracked/monitored by dedicated ECs whose only function is to ensure timely compliance with the ordering provisions;
- Change the rules to allow service of petition at last known address as provided to TCEQ (in Central Registry);
- Review the use of Findings Orders to ensure that the criteria match up with the agency's compliance history system and permitting decisions.

- Change format of agenda backup materials to include a copy of the Agreed Order or the Default Order and a memo summarizing the facts and issues. The commissioners will receive all of the information they currently receive. The format would facilitate more timely development of the backup.
- Set in place a 90 day review process in which the Litigation Division Management and Enforcement Division Management meet to discuss cases in which an Executive Director's Preliminary Report and Petition (EDPRP) has not been filed within 90 days after referral to the Litigation Division to either get the cases moving or to appropriately dispose of them. Also, have a 180 day review to ensure that no case is in the Litigation Division longer than 180 days without an EDPRP being filed;
- Ensure that Senior Attorneys and Enforcement Section Managers and Division Directors have easy access to case tracking reports from CCEDS (automatically provided to them by e-mail). Building data extracts would help the management of both divisions ensure that cases are processed in a timely manner;
- Reevaluate the advantages/disadvantages of placing enforcement coordinators and litigation attorneys in the field offices. Matrix management of enforcement related personnel may be slowing case processing times;
- Reallocate staff resources in such a manner as to increase the number of staff dedicated to financial reviews and the SEP program;
- Revise the current case assignment process to allow enforcement coordinators and litigation attorneys to develop media specific expertise. The multimedia approach currently used fosters a scenario where coordinators and attorneys struggle to understand case specific facts and therefore slow overall case processing times.

Basis:

Statistical data compiled for fiscal years 2002 through 2004 indicate that barring an extension of the settlement deadline for inclusion of an SEP, determination of financial ability to pay penalties, and/or referral to the Litigation Division, the average length of time between the enforcement screening date and the date of order issuance was:

FY 2002 = 292 days
 FY 2003 = 323 days
 FY 2004 = 291 days

Implementation of the streamlined process should result in an order issuance time line that would not typically exceed **approximately 167 days** from the enforcement screening date (again barring an extension for SEP, ability to pay determination, and/or referral to the Litigation Division).

The streamlined process should also result in a decrease of the time necessary to issue an agreed order when an extension of the settlement deadline is granted by the Enforcement Division. The average length of time between the enforcement screening date and the date of order issuance when an extension was granted for inclusion of an SEP was:

FY 2002 = 417 days (the extension added an additional 125 days to the enforcement process)

FY 2003 = 509 days (the extension added an additional 186 days to the enforcement process)

FY 2004 = 523 days (the extension added an additional 232 days to the enforcement process)

Implementation of the streamlined process should result in an order issuance time line that would not typically exceed **approximately 257 days** from the enforcement screening date when an extension is granted for an SEP.

The order issuance time line would also be decreased when an extension of the settlement deadline is granted for a determination of ability to pay the administrative penalty. The average length of time between the enforcement screening date and the date of order issuance when an extension was granted for an ability to pay determination was:

FY 2002 = 545 days (the extension added an additional 253 days to the enforcement process)

FY 2003 = 491 days (the extension added an additional 168 days to the enforcement process)

FY 2004 = 588 days (the extension added an additional 297 days to the enforcement process)

The streamlined process would again result in an order issuance time line that would not typically exceed **approximately 257 days** from the enforcement screening date when an extension is granted for an ability to pay determination.

The time line recommended for preparation and mail-out of the draft agreed order (i.e., not to exceed 60 days from the screening date), was implemented by the Enforcement Division at the beginning of fiscal year 2004. Implementation of this measure has drastically decreased the average time taken to complete this task as follows:

FY 2002 = 111 days

FY 2003 = 159 days

FY 2004 = 52 days (through February 2004)

Allowing service of process at the last known address of the respondent, as set forth in Central Registry, would save approximately 20 days in the process. This situation happens in about 15% of the cases.

Modifying the use of Findings Orders would result in approximately 30-45 less days being necessary to negotiate an Agreed Order. Thus, Agreed Orders could be negotiated more quickly and corrective action (the same corrective action that would be required in a Findings Order) could be begun and be completed quicker. Currently, if a respondent has an attorney, then much of the time in trying to reach a settlement is spent in arguing about the type of order, i.e. 1660 (in which the respondent denies all the allegations) or a Findings Order (in which the commissioners specifically find that the respondent committed certain violations) because of the ramifications of having "Findings of Facts and Conclusions of Law." Changing the Agenda backup material would reduce the amount of time that is spent reviewing the materials and would decrease the opportunity for errors. All of the necessary information would be set out in the memo. Currently, errors in the agenda backup can result in a case being continued from one Agenda to another for up to a month, or being remanded to the ED and taking several months before it is again set on Agenda.

The 90/180 day Litigation review process would help ensure that cases are moved through the process in a timely manner.

Having the case tracking reports easily available would allow management to identify problem cases quickly and set needed deadlines or assist in resolving the cases.

Disadvantages - Decreasing the time frames in which to negotiate a final agreement concerning SEPs and ability to pay determinations may require additional staff or a reallocation of existing resources in both the Litigation and Financial Administration Divisions. The decreased time lines may also result in an increase in the number of cases that are referred to the Litigation Division after settlement negotiations concerning SEP and ability to pay have failed to produce an agreement. Currently, the percentage of enforcement cases referred to the Litigation Division after negotiations conducted by the EC have failed is as follows:

FY 2002 = 19 percent

FY 2003 = 12 percent

FY 2004 = 15 percent

The degree to which the Litigation Division could be effected by shortened negotiation time lines is incalculable. However, the percentage of enforcement cases that have received an extension for either SEP and/or an ability to pay determination are listed below and we believe that a significant portion of these cases may not achieve settlement under the shortened time line and therefore would be referred to the Litigation Division:

FY 2002 = 21 percent (245 of the 1167 cases mailed out received extensions)

FY 2003 = 12 percent (62 of the 518 cases mailed out received extensions)

FY 2004 = 10 percent (78 of the 781 cases mailed out received extensions through February 2004)

	<p>The recommendation to shorten the settlement deadline to 30 days for Enforcement would increase the number of cases sent to the Litigation Division. Resources would need to be shifted upon implementation of this recommendation in order to avoid creating a backlog situation in the Litigation Division.</p> <p>If one half of the cases reviewed for SEP and/or inability to pay failed to reach agreement within the 90 day extension period, then the Litigation Division could expect to receive an additional 78 cases per annum based on the workload representations for FY 2004. These additional cases would again require either additional staff or a reallocation of existing staff resources.</p> <p>Discontinuing the Findings Orders could result in a perception by the public that the agency was being less strict with violators since the violators would get to deny any wrong-doing (while at the same time paying the same penalty and performing the same corrective actions that they would have been required to do with a Findings Order).</p>
	<p><u>Implementation Impacts:</u> Implementation of the recommendations will/may require:</p> <p>Adding or reallocating existing agency staff to support the agency's enforcement and litigation functions, to support the evaluation of processing of SEPs, and to support the review of financial inability to pay claims.</p> <p>Evaluating the effectiveness of matrix management through a contracted cost-benefit analysis of maintaining matrixed-management enforcement-related employees.</p> <p>Evaluating the appropriateness of current career ladders for enforcement-related personnel to ensure a maximum retention of experienced personnel is achieved.</p> <p>Evaluating and adjusting career ladder entry points for enforcement-related personnel in order to attract high potential candidates.</p> <p>Decreasing the number of cases being submitted for formal enforcement action through a revision of the agency's current enforcement initiation criteria.</p> <p>Revising the Enforcement Division's Standard Operating Procedures (SOP) to:</p> <ul style="list-style-type: none"> a) require that all enforcement cases be assigned to an Enforcement Coordinator (EC) within 7 days after the Enforcement Action Referral (EAR) is approved in CCEDs; b) remove the current enforcement case priority criteria that establishes the amount of time the EC has to mail out the draft order; c) require that all draft orders and penalty calculations worksheets (PCWs) be mailed to the respondent, or referred to the Litigation Division (LD) for processing, not longer than 60 calendar days after the date that the case is assigned to the EC; d) allow for immediate settlement termination in the event that the respondent declares an intent not to settle an expedited enforcement action;

	<p>e) limited the normal settlement deadline to 30 calendar days unless extended at the Director level;</p> <p>f) limit settlement extensions, regardless of justification, to 90 days;</p> <p>g) grant a settlement extension for inclusion of a SEP only if an agreement concerning the amount of the administrative penalty is reached within 30 days after the date draft order is received by the respondent;</p> <p>h) remove the invitation to submit financial documentation necessary to support a claim of inability to pay the proposed penalty from the order cover letter;</p> <p>i) provide for a 25% upward adjustment of the penalty in the event that settlement is not achieved within the established deadline; and</p> <p>j) require that all settled enforcement actions be set for commission consideration 70 calendar days after the date the final documents are received by the cashier's office.</p> <p>Adding or reallocating existing staff so that issued orders are monitored by dedicated ECs whose only function is to ensure timely compliance with the ordering provisions.</p> <p>Revising the current rules to allow service of petition at last known address as provided to TCEQ (in Central Registry).</p> <p>Evaluating the use of Findings Orders, except in the case of Default Orders.</p> <p>Revising agenda backup materials to just a copy of the Agreed Order or the Default Order and a memo summarizing the facts and issues.</p> <p>Establishing a 90 day review process in which the LD and Enforcement Division management meet to discuss cases in which an Executive Director's Preliminary Report and Petition (EDPRP) has not been filed within 90 days after referral to the Litigation Division.</p> <p>Build CCEDS data extracts to help enforcement-related managers ensure that cases are processed in a timely manner.</p>
<p>Other Alternatives</p>	<ul style="list-style-type: none"> • Using an environmental risk-based approach, revise the Enforcement Initiation Criteria (EIC) in such a manner as to decrease the total number of cases being referred for enforcement; • Allow the Chairman or General Counsel to sign certain final orders (criteria to be established), allowing those orders to be issued without undergoing the Agenda process. This process may require new statutory authority (i.e., a revision of Tex. Water Code § 5.122). If the signatory requirement was changed it may be possible to reduce the amount of time lost between the date the settled order is received by the cashier's office and the date of commissioner's agenda, by one half;

	<ul style="list-style-type: none">• Allow only small businesses and small local governments (as defined by the penalty policy subcommittee) the opportunity to demonstrate an inability to pay penalties.• Fund upgrades of CCEDs in order to generate executive summaries automatically.• Consider allowing a 25% penalty reduction for small businesses and small local governments which agree to settle within 30 days of receiving the draft order.
--	--

EXISTING ENFORCEMENT PROCESS
 WITHOUT EXTENSION FOR SEP or FINANCIAL REVIEW or REFERRAL TO LD
 FISCAL YEAR 2002

Approved EAR received	EAR Assigned	Case Screened/Prioritized	Draft Order mail out	Settlement Achieved/Agenda Preparation	Commissioner's Agenda/Order Approved	
? days	14 calendar days	60 to 120 calendar days	60 calendar days	142 days (average)	Total = 292 days (average)	

PROPOSED ENFORCEMENT TIME LINES

Approved EAR received	EAR Assigned	Draft Order mail out	Settlement Achieved/Agenda Preparation	Commissioner's Agenda/Order Approved	
7 days	60 days or less	30 days	70 days	Total = 167 days or less	

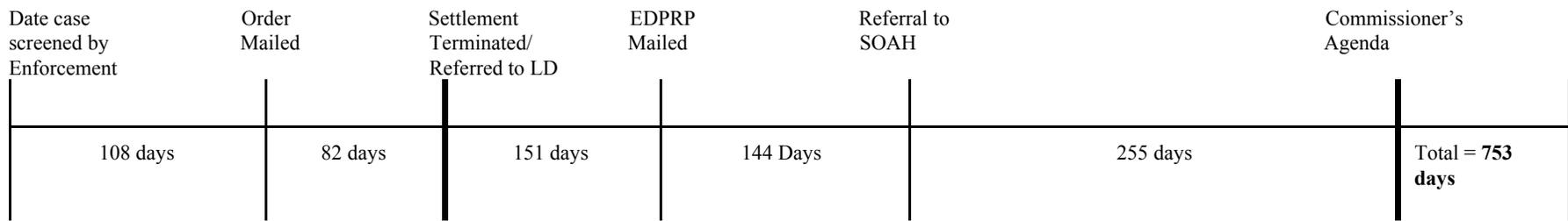
EXISTING ENFORCEMENT PROCESS
INCLUDING EXTENSION FOR SEP or FINANCIAL REVIEW
FISCAL YEAR 2002

Approved EAR received	EAR Assigned	Case Screened/Prioritized	Draft Order mail out	Referred for SEP or Financial Review	Agenda Preparation	Commissioner's Agenda/Order Approved
? days	14 calendar days	60 to 120 calendar days	60 calendar days or less	Referral for SEP added an additional 125 days to the case (average) Referral for financial review added 253 days to the case (average)	90 days	Total = 417 days Total = 545 days

PROPOSED ENFORCEMENT TIME LINES

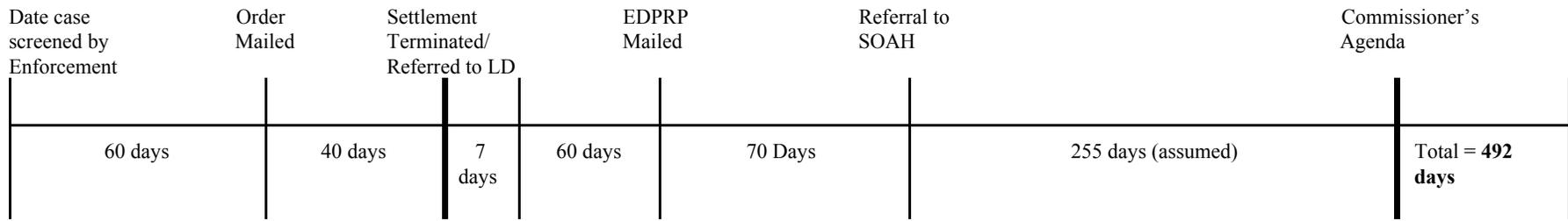
Approved EAR received	EAR Assigned	Draft Order mail out	Referred for SEP or Financial Review	Agenda Preparation	Commissioner's Agenda/Order Approved
7 days	60 days or less	30 calendar days or less	Extension (if needed) will never exceed 90 days	70 days	Total = 257 days or less

**EXISTING ENFORCEMENT PROCESS
WITH REFERRAL TO LITIGATION DIVISION SETTLED THROUGH THE HEARING PROCESS
FISCAL YEAR 2002 (AVERAGES)**



Total time case processing time within LD = 550 days

PROPOSED TIME LINE



Total time case processing time for LD = 392 days

Total case processing time from investigation to order issuance = 522

FYI - The average time line for cases where expedited settlement has failed and the case was resolved by LD without hearing in FY 2002 is 642 days from screening to order issuance. Implementation of recommendations would result in an average of 304 to order issuance (i.e., 100 days in Enforcement, 190 days in LD, and 14 days to signature).

Enforcement Process/Agency Coordination Subcommittee	
Issue No.	2
Key Issue	<p><u>Fast Tracked Enforcement Process:</u> A) Should the TCEQ have a fast track enforcement process in addition to the current process (“expedited” and “contested” process)? B) Should the TCEQ develop standard penalties and or field citations?</p> <p><u>Basis:</u> Public Comment.</p>
Other Subcommittees Reviewing Issue	Penalty Policy and EIC
Recommendation	<p>Develop a limited citation program which could be issued by the Regional Managers. A schedule of penalties would need to be developed for specific violations or types of violations. This would be an all or nothing process in which the respondent would be required to accept the citation or choose to go through the more formal enforcement process. The program could initially be developed for such programs as PST, violations of the outdoor burning rule, OSSF, Watermaster, Public Water Supply, and parts of the control of pollution from motor vehicles violations. The program could be limited to a specific range of penalties. A limit on the number of citations for the same violation could be established so that if a respondent receives two (2) citations for the same violation in a three year period, upon receipt of the third violation the respondent would be referred for enforcement action through the regular process. Field citations should not be eligible for SEP offsets.</p> <p><u>Advantages:</u> A citation program has the potential to improve the efficiency of the enforcement process for the types of violations and allow for little or no investigator discretion. These would be a yes/no type of violation, the respondent is either in compliance with the requirement or they are not. It would also provides the respondents with certainty in the penalty and quick resolution.</p> <p><u>Disadvantages:</u> It would, however, require additional training for Regional Staff and if not properly implemented could lead to inconsistencies in application across regions. It would also require the development of the citation form. A citation program administered at the regional level might also require a change in statutory authority to implement. The issue of statutory authority for such a program has been considered several times over the years with varying opinions.</p>
	<p><u>Basis:</u> Public Comment and a 1994 staff memo outlining a field citation program. This concept has been around for a significant number of years. Statistics from CCEDS regarding Agreed Orders with assessed penalties of \$0 to \$500 dollars indicate that 100 Orders in that range were issued in FY 2002, 85 in FY 2003, and 19 through February of FY 2004.</p>

Implementation Impacts: The first step in implementing a citation program would be to get explicit statutory authority along the lines of that for the Watermaster Program.

A standard citation format would need to be developed for the program. The type of format will probably depend on the type of program to be implemented. For example, if the recommendation is to implement a program where the actual citation is issued under the signature of the Regional Manager and not issued in the field then the citation itself would probably not need to be very detailed. However, if the recommendation is for the citations to be issued in the field then the format may need to be more detailed and would probably need to be considered as accountable property.

There would need to be a complete review of the types of violations and penalty amounts that would be covered by such a program.

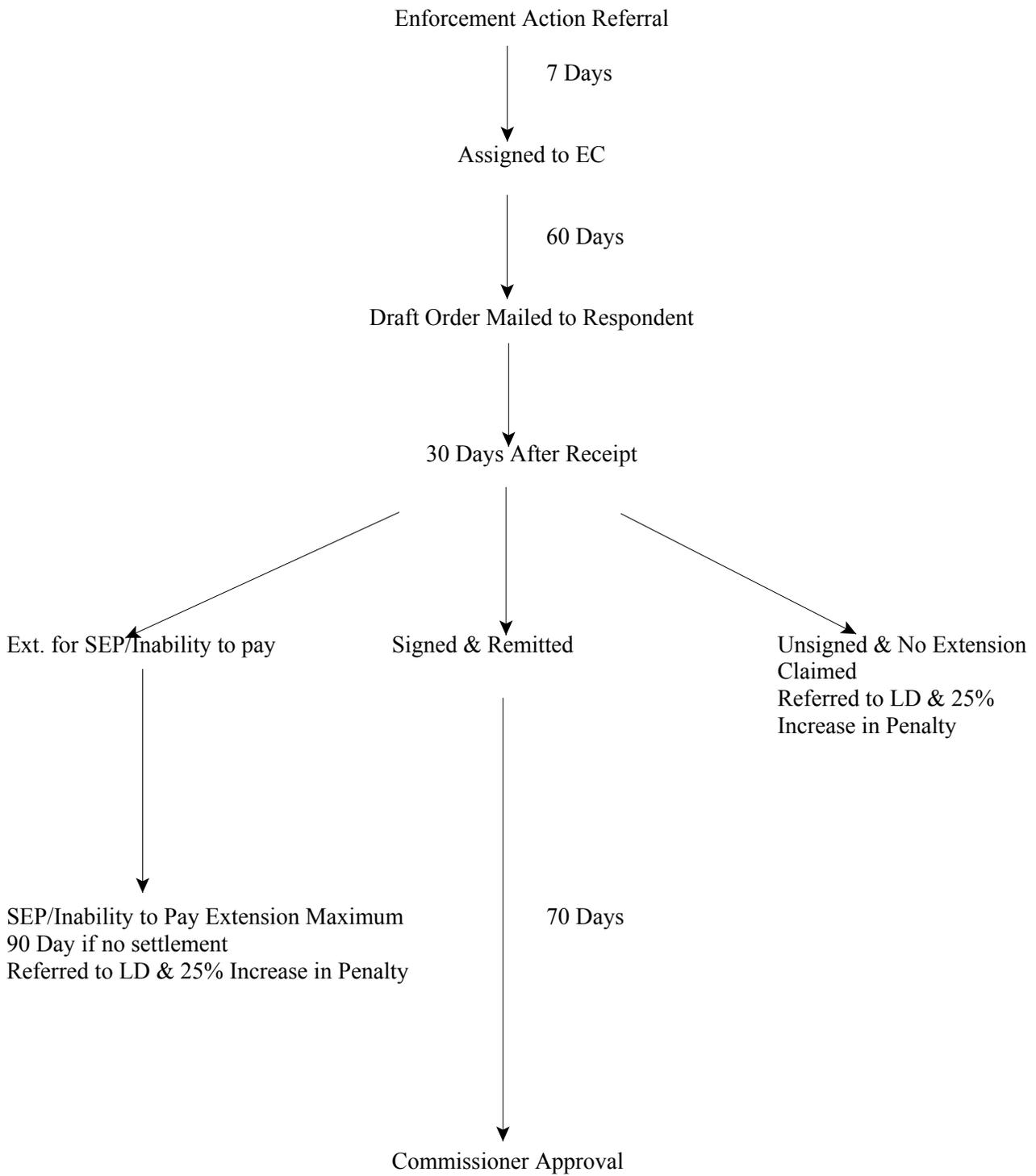
Rulemaking would be necessary to establish the types of violations and the penalty schedule covered by the program.

There would also be a need for additional inspector training and citation program procedures would need to be developed. If the program is established such that the citation is issued after the inspection in the same manner that NOVs are currently issued then many of the existing SOPs should be applicable. If an in-the-field citation program is the choice then a more extensive training program would need to be developed.

The following is a list of some of the implementation procedures that would need to be considered:

- (1) The screening criteria would need to be revised or a new criteria would need to be developed;
- (2) Establish timeframes for compliance to be achieved to help facilitate consistency between regions;
- (3) Establish the process by which payment would be remitted;
- (4) Establish a timeframe for a respondent to remit payment or appeal the citation after which the agency would pursue the more formal enforcement process;
- (5) Develop an appeals process; and
- (6) Develop an SOP to ensure region-to-region consistency within the program.

<p>Other Alternatives</p>	<p>1) Initiate a standard agreed order and standard penalty consistent the recommendations of the Penalty Policy Subcommittee regarding standard penalties.</p> <p>2) Initiate a process whereby notice equivalent to the EDPRP is mailed out with initial settlement offers. Give the Respondent 30 days to either agree to settle or file an answer requesting a hearing. Then, all cases would come to Agenda after the 30-day settlement period (as set forth in Issue No. 1) for a “docket call,” with the exception of cases where an answer was filed (those would be referred directly to Litigation for referral to SOAH within 60 days). Enforcement would present settled and defaulting matters to the Commissioners for preliminary approval, Respondents could come to Agenda to request a hearing or present information to the Commission, or the Commission could approve an extension for inclusion of a SEP or a financial inability to pay determination. The Commission would have the option of approving settled or default orders, remanding a matter back to the ED, or referring matters to SOAH. For settled and default matters, the items would then be published in the <i>Texas Register</i> for public comment and then set on a second Commission Agenda for final approval. (See Attachment B for a timeline of this alternative process).</p> <p>Pros: Provides earlier Commission oversight in the enforcement process. Provides more public interaction with the Commission on enforcement matters.</p> <p>Cons: May be seen as onerous to small businesses and small local governments to travel to Austin for Agenda “docket calls.” Would necessitate at least two Commission Agenda settings to finalize every enforcement action. Would add some additional processing time to the “expedited” process for cases that settle during the first 30 days.</p> <p>3) Consider the development of a compliance support program that would allow certain respondents to receive a partial reduction in the penalty for attending a TCEQ certified training program within 90 days of receipt of the draft order and PCW.</p>
----------------------------------	---



Enforcement Process Issue 2 Attachment A

Enforcement Process Issue No. 2 - Attachment B

PROPOSED ALTERNATIVE ENFORCEMENT TIME LINES IF SETTLEMENT ACHIEVED WITH RESPONDENT AND DRAFT ORDER APPROVED IN PRINCIPLE AT FIRST AGENDA

Approved EAR received	EAR Assigned	Draft Order mail out	Settlement Achieved	First Agenda*	Texas Register End Date	Second Agenda	Order Issued
	Case processed by the Enforcement Division	Settlement Negotiations	Processing by Chief Clerk	Preparation of the executive summary, caption, and public comment period	Processing by Chief Clerk	Chief Clerk Processing of Order	
7 days	60 days or less	30 days	19 days	45 days	19 days	10 days	190 days

- * Other potential actions at the first agenda
- Commission remand to staff for continued negotiation with respondent
 - Commission directive to staff for preparation of a Default Order
 - Commission schedules case for hearing at SOAH
 - Commission approves extension for SEP negotiations or financial review

Enforcement Process/Agency Coordination Subcommittee	
Issue No.	3
Key Issue	<u>Financial Inability to Pay Procedures</u> : How can the financial inability to pay process be streamlined and or simplified?
	Basis : Staff Input and Review of Current Policy
Other Subcommittees Reviewing Issue	The Collections/Financial Inability to Pay Subcommittee is reviewing this issue from the perspective of how the financial inability to pay process can be improved and made more effective. However, that Subcommittee is not reviewing this issue from a timing perspective.
Recommendation	<p>1. <u>30-day deadline</u> - Institute and enforce a 30-day deadline, running from the respondent's receipt of the draft order, to submit documentation supporting a financial inability to pay. Inherent in this recommendation is that the 30-day deadline constitutes a cut-off date beyond which claiming a financial inability to pay is not an option. If financial inability to pay is raised by the respondent during case development, then the enforcement coordinator will send the forms with the draft order, which is earlier than the documents are now being sent. (Currently, the forms are being sent within 60 days after the draft order is sent.)</p> <p style="padding-left: 40px;"><u>Advantages</u>: provides a clear deadline for making a financial inability to pay request and submitting documentation; reduces the number of financial inability to pay analyses which are requested as a delaying tactic; and provides a firm date beyond which a case cannot be slowed down to process a financial inability to pay analysis.</p> <p style="padding-left: 40px;"><u>Disadvantages</u>: making a financial inability to pay request will no longer be an option once the matter is referred to the Litigation Division unless the respondent had already submitted the required documentation (the 30-day deadline will have passed); increases barriers to making a financial inability to pay showing; and requires a rule change to modify the date that documentation is required (30 TAC §70.8).</p> <p>2. <u>Remove the reference to financial inability to pay in the initial communication</u> to the respondent. This would place the burden on the Respondent to make an affirmative statement of a financial inability to pay, rather than have it offered as an option by the enforcement coordinator.</p>

Advantages: would reduce the number of financial inability to pay analysis requests, because that option would no longer be “advertised;” would decrease the number of financial inability to pay requests which are initiated but never completed (simply requesting a financial inability to pay analysis adds a minimum of 20 days to the process even if no documentation is ever sent in by the respondent, because under the current system the respondent has 20 days to submit initial documentation); would decrease the time needed to process many enforcement matters, because the time for receiving documentation and performing a financial inability to pay analysis would be removed; and would reduce the time required for a financial inability to pay analysis, because the back-log of such analyses would be reduced.

Disadvantages: placing the burden on the respondent to raise the issue of a financial inability to pay adds an additional hurdle to a respondent’s ability to making a claim of financial inability to pay; if the cut-off date for requesting a financial inability to pay determination is not strictly enforced, this change could increase the likelihood that such a request is made later in the process.

Basis:

1. Data supplied by the Financial Administration Division shows that the number of financial inability to pay analyses that are being performed continued to rise (60 in calendar year 2000, 106 in calendar year 2002, 90 in calendar year 2003).

2. In 2003, approximately 48% of those requesting a financial inability to pay analysis were determined to be fully able to pay the proposed penalty amount.

3. One FTE, in the Financial Administration Division, at most, is devoted to performing financial inability to pay analyses. That same FTE also performs the analyses for state lead cases. In the past there have been about 19 state lead cases per year, however, this year it will likely be around 30. In addition, there is a recent trend (particularly out of the Abilene office) to request analyses demonstrating that respondents are eligible to be put on the SEP recipient list, which adds to the workload carried by the single FTE.

Due to the backlog and the devotion of a single FTE to financial inability to pay analyses, turnaround time for the performance of a financial inability to pay analysis generally ranges from 60-90 days. This does not include the 20 days allotted for document submission to enforcement/litigation.

	<p><u>Implementation Impacts:</u> Requires a revision to 30 TAC § 70.8(b), a change to the NOE letter, and operational change in the way the Financial Administration Division handles these claims. The Collections/Financial Inability to Pay Subcommittee is drafting a more detailed implementation plan for how financial inability to pay claims are analyzed.</p> <p>a) amend 30 TAC § 70.8(b) to provide that the deadline for submittal of financial inability to pay documentation is 30 days after the initial settlement offer is mailed out;</p> <p>b) provide for an extension of the settlement deadline for inclusion of an inability to pay claim only if all of the information to make a determination has been received within 30 calendar days after the date of receipt of the draft order and PCW by the respondent; and</p> <p>c) require that the penalty be increased by 25% in the event that settlement is not reached within the extension deadline.</p>
Other Alternatives	<p><u>Alternatives:</u></p> <ol style="list-style-type: none"> 1. Remove the financial inability to pay option altogether. <p style="margin-left: 40px;"><u>Advantages:</u> reduces the time to execute an order; holds respondents equally accountable for the full penalty regardless of financial status.</p> <p style="margin-left: 40px;"><u>Disadvantages:</u> increases the potential for default orders (respondents who truly cannot afford to pay the penalty will have no option but to default); corrective actions that may otherwise have been taken if respondent could comply with the order without paying the full penalty may not be taken; requires a rule change (30 TAC §70.8).</p> 2. Filter out “repeat customers” (i.e. only allow one financial inability to pay deferral per x years) or those with poor compliance histories are ineligible, although the latter is likely to have only a negligible impact. 3. Provide an additional FTE (or percentage) to perform financial inability to pay analyses. 4. Simplify the review process (i.e. determine as a % of income or similar standard). <i>Note:</i> the Collections/Financial Inability to Pay Subcommittee is looking at this issue in detail as part of their review. 5. Alter the way determinations for cities are made, since such determinations take significantly (up to three times) more time than an individual respondent’s analysis. <i>Note:</i> the Collections/Financial Inability to Pay Subcommittee is looking at this issue in detail as part of their review.
Notes	<p>This subcommittees’ original primary recommendation was to develop an optional “fast track” process not allowing for a financial inability to pay analysis nor a SEP and provided a deferral as an incentive. However, based on feedback from the Steering Committee, the subcommittee has removed that recommendation.</p>

Enforcement Process/Agency Coordination Subcommittee	
Issue No.	4
Key Issue	<u>SEP Process:</u> How could the SEP process be streamlined and or simplified?
	<u>Basis:</u> Public Comment, State Auditor's Report, Staff Input, and Review of Current Policy.
Other Subcommittees Reviewing Issue	SEP
Recommendation	<p>An extension of the settlement deadline for inclusion of a Supplemental Environmental Project (SEP) should be approved only if an agreement concerning the amount of the administrative penalty to be paid by the respondent is reached within 30 calendar days after the date of receipt of the draft order and PCW by the respondent. This recommendation would require an expanded pre-approved third party list of SEPs from which the respondent could choose.</p> <p>Provide SEP information to the respondent during the investigation exit briefing. The information (pamphlet/brochure) should include information concerning basic program requirements/restrictions and a listing of the pre-approved SEPs. The information packet should also include a requirement that the respondent provide the agency with a written declaration that they desire to perform an SEP. The declaration must be submitted to the agency within 30 calendar days from the date of the investigation to retain eligibility.</p>
	<p>If final agreement concerning an SEP is not reached within 90 calendar days after the date of the extension approval letter then within 95 calendar days after the date of the extension approval letter the enforcement case should be referred to LD for processing (assuming a signed order and penalty payment have not been received by the cashier's office) and the proposed penalty would increase by 25%.</p> <p><u>Advantages:</u> This would insure that the process continues to move forward and provides certainty as to when an action will move to the next stage of the enforcement process.</p> <p><u>Disadvantages:</u> This recommendation has the potential to shift more cases to the Litigation Division and increase the Division's work load.</p>
	<u>Basis:</u> Discussion and consensus by the subcommittee members with input from the Litigation Division.

	<p><u>Implementation Impacts:</u></p> <p>1) A reallocation or addition of staff for the evaluation and processing of SEPs.</p> <p>2) Revisions to the Litigation\Enforcement Division Standard Operating Procedures (SOPs) to:</p> <p>a) provide for an extension of the settlement deadline for inclusion of a SEP only if an agreement concerning the amount of the administrative penalty to be paid by the respondent is reached within 30 calendar days after the date of receipt of the draft order and PCW by the respondent; and</p> <p>b) require that the penalty be increased by 25% in the event that settlement is not reached within the extension deadline.</p> <p>3) Providing SEP information to the respondent during the investigation exit briefing would require the development of a pamphlet or brochure to include information concerning basic program requirements/restrictions and a listing of the pre-approved SEPs.</p> <p>4) Develop, through interaction with local governments, regulated community, and associations, a comprehensive list of eligible and viable SEPs. (See SEP Issue No. 3)</p> <p>5) Revision is needed to the current Notice of Violation to state that a declaration of intent must be submitted to the agency within 30 calendar days from the date of the investigation to retain SEP eligibility.</p>
Other Alternatives	Discontinue the SEP program. This is also an alternative recommendation discussed by the SEP Subcommittee in its Issue No. 1.

Enforcement Process/Agency Coordination Subcommittee	
Issue No.	5
Key Issue	<p><u>Investigation/Enforcement Resources:</u> How can TCEQ increase or reallocate resources to target investigative/enforcement activities?</p> <p>Current distribution of investigative staff has not been changed for several years. If changes are made to current investigation targeting strategies, then investigators will need to be in regions that best support those strategies.</p> <p><u>Basis:</u> Public Comment.</p>
Other Subcommittees Reviewing Issue	EIC

<p>Recommendation</p>	<p>It is not the recommendation of this subcommittee to increase the number of investigative or enforcement staff until the full effect of implementing changes to current processes can be evaluated. It is, however, anticipated that if some of these recommendations (compressed settlement timelines) are implemented, it may result in additional cases being referred to Litigation; thus, additional staff in that division may be needed.</p> <p>The following is a list of recommendations that could increase the effectiveness of the agency's investigation/enforcement programs without adding additional staff:</p> <ul style="list-style-type: none"> • Task Field Operations Division and Enforcement Division to evaluate current training needs of current investigative and enforcement staff for all programs (Air, Water Waste). When specific areas of deficiency are noted, initiate a process by which specific training can be obtained. Considerations would include cost effectiveness (travel dollars) and applicability. • Task Field Operations Division to evaluate the current distribution of investigators and management structure across the state to ensure that the goals of the agency are being effectively met.
	<ul style="list-style-type: none"> • Begin a progression of developing media specific (expert) enforcement coordinators that can be utilized by less experienced staff. • Ensure that a formalized mentoring program for investigative and enforcement staff is in place to ensure that formal and informal processes are implemented in a consistent manner. • Encourage Enforcement Coordinators to participate in programmatic training offered to field staff. This will allow the Ecs to be more efficient with a better understanding of their work product, will increase the effectiveness of ordering provisions, and will allow coordinators to more readily determine compliance with current orders. • Evaluate the effectiveness of having Enforcement Coordinators and Litigation Attorneys in region offices (Matrix Management). It is a perception and, perhaps a reality, that there is some time and effectiveness lost during the communication process between coordinators/attorneys in the field and their management in central office.
	<p><u>Implementation Impacts:</u></p> <p>Survey the training needs through evaluation of current training levels, program required training, and currently available courses. In addition, an evaluation of the cost effectiveness (i.e., travel dollars, production time lost) versus value added from the training, may be required.</p> <p>Complete the current study undertaken by the Field Operations Division to evaluate the distribution of investigative staff in relation to the distribution of regulated entities and their relative priority.</p> <p>Characterize the current media specific experience available within the enforcement-related divisions and where gaps are identified, provide program-specific training</p>

	<p>through field operations and other outside sources (i.e., TEEX, regulated community, and contract vendors).</p> <p>Evaluate whether mentoring programs are in-place and implement programs where shortfalls are noted.</p> <p>Revise current enforcement-related Standard Operating Procedures (SOPs) and formally include mentoring tasks in performance plans and functional job descriptions of management and senior staff.</p> <p>Develop methods to encourage enforcement staff to participate in programmatic training offered to field staff through the formal establishment of training requirements and criteria and by ensuring that staff workloads are adjusted accordingly. Time lost through participation in training events will be regained through an increase in production as expertise increases.</p> <p>Evaluate the effectiveness of matrix management through a contracted cost-benefit analysis of maintaining matrixed-management employees, specifically with regard to enforcement coordinators and litigation attorneys.</p>
Other Alternatives	Consider the appropriate ratio of compliance assistance activities to investigation/enforcement activities to support the agency's overall compliance and enforcement priorities.

Enforcement Process/Agency Coordination Subcommittee			
Issue No.	6		
Key Issue	<u>Investigation/Enforcement Training</u> : How can the TCEQ achieve better trained investigative and enforcement staff?		
	<u>Basis</u> : Public Comment		
Other Subcommittees Reviewing Issue	None		

<p>Recommendation</p>	<ul style="list-style-type: none"> • The agency should consider enhancing its ability to conduct distant learning as a mechanism to enhance communication and training opportunities at a reduced cost for staff and the regulated community. Examples of distant learning include: online self-paced inspector and enforcement curriculum training modules, interactive video conferencing, and desktop internet-based seminars and workshops. A video conferencing pilot project was conducted in the Houston and Arlington regional offices. • The agency should consider alignment of the Environmental Investigator (EI) Career Ladder with the Enforcement Coordinator, and Natural Resource Specialist tracks to encourage equitable and cross-division staff development opportunities. Currently, the EI career ladder provides an increased advantage for advancement that may discourage staff from pursuing an Enforcement Coordinator or Natural Resource Specialist position. • The agency should consider integrating the Environmental Investigator Professional Development Plan (PDP) requirement for Basic or Senior "certification" into the career ladder "training topics" as a formal mechanism for promotions or merit increases. This concept may be a good model for the Enforcement Coordinator track and other career ladders. • The agency should encourage and recognize senior agency staff that serve as mentors and technical specialists to support the development of technical guidance, regulatory development training and entry-level staff development. This effort should result in a higher level of technical consistency and adequately trained workforce. • The agency should encourage the development of additional CCEDS training capacity to increase staff's ability and expertise to use the system. In addition, the agency should invest resources to increase in-house staff expertise to design and produce reports to supplement services currently provided through contractor assistance. This should increase the number of staff with the ability to utilize the system beyond a core group of staff in central and regional offices. • The agency should encourage the enhancement of CCEDS to allow secure remote access to the system to provide staff the ability to utilize the system 24 hours a day from any location. • The agency should continue to build core media program expertise and encourage the cross-training of staff to attend air, water, and waste training workshops offered by the agency. • The agency should review the use of dedicated training funds to identify additional opportunities to offer core air, water, and waste technical training beyond the current training offered through the Training Academy. The Training Academy could be used to offer advanced environmental technical training beyond office productivity and staff development training currently offered.
------------------------------	--

	<p><u>Basis:</u> Discussion and consensus by the subcommittee members. Public comment indicated that staff should be better trained.</p>
	<p><u>Implementation Impacts:</u></p> <ol style="list-style-type: none"> 1) Distance Learning - OCE/FOD is allocating funding for FY05; SBEA is researching use of internet-based seminars and workshops. 2) Alignment - OCE should implement alignment beginning in FY05. 3) PDP - OCE should implement in FY05. 4) Mentoring - OCE should review and make recommendations in in FY05. 5) CCEDS Training - OCE will continue to build capacity in FY05. Management should review appropriate level of resources allocated to meet needs. 6) Remote Access - OAS will provide secure remote access to desktop applications beginning in FY05. This will allow staff to access CCEDS from remote locations. 7) Core Training - Management should prioritize in FY05 and review budget allocation for training. 8) Training Funds - TCEQ should review of use of allocated training funds for core media vs. office productivity training opportunities.
Other Alternatives	<ul style="list-style-type: none"> • Consider outsourcing technical training using contractor assistance.