

Collections/Financial Inability to Pay Subcommittee	
Issue No.	1
Key Issue	<u>Fee & Penalty Collection:</u> A) Should an entity be allowed to acquire, amend, or renew a permit while in default of a penalty? B) Should a current permit be revoked if the entity owes fees and/or penalties to the agency?
	<u>Basis:</u> Steering Committee Input and Commissioner Input.
Other Subcommittees Reviewing Issue	Compliance History Use
Recommendation	<p>Do not issue new, amended, or renewal permits/registrations/certifications/licenses*, to an entity/person who owes delinquent penalties or fees.</p> <p>Withholding a Permit: Each employee responsible for administrative review of permit applications should check the financial report using Crystal Reports, and if an entity is delinquent, staff should send a letter notifying the applicant that the permit will not be issued unless the outstanding fees and/or penalties are paid. The subcommittee recommends a minimum delinquency of \$200 to invoke this process. Also, application forms and instructions can be revised to include a checkbox asking if all fees and/or penalties are paid. A permit application will not be considered administratively complete until delinquent accounts have been paid and the application will be held for a time period to allow the applicant to pay the fees and/or penalties. If fees and/or penalties are not paid within a certain amount of time (for example, within 30 days after notice), the permit application will be returned to the applicant.</p> <p>Permit Revocation: In addition, the agency should initiate revocation of a permit <i>only as a last resort</i> after all other efforts to collect have been exhausted. 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.</p> <p>* See the attached table for a specific list of what types of permits and registrations and reviews are recommended. (Attachment A) Water general permits should be amended to include a provision whereby in response to an NOI, the agency could indicate that authorization to operate was not granted until all outstanding fees and penalties were paid.</p>

Positive Implications:

1) Enhances Agency Collection Abilities - Since permit applicants most often desire new or continued authorizations from the agency, they may seek to resolve delinquent accounts quickly in order to avoid delay in the issuance of their permits.

2) Serves as a Deterrent for Nonpayment of Fees & Penalties - If a permit applicant knows the agency will delay issuance of a permit if accounts are outstanding, they may pay closer attention to agency invoices and demand letters.

3) Requires the Applicant to Resolve Outstanding Obligations with the Agency Before the Agency Grants New Authorizations - If a permit applicant has outstanding debts owed to the agency, then the agency should require that those matters be settled prior to the expenditure of additional staff resources on new business.

Negative Implications:

1) Permit Time Frames Will Increase - Currently the Commissioners and Executive Management are working with OPRR to ensure that permits are processed in the shortest possible time frames and in the most efficient manners. For each employee to review the customer's financial records, send letters and make phone calls, then it is highly likely that the time to process the permit will increase. In addition, any withholding of permits would increase the timeframe further. However, this can be resolved in part, if each permit that is withheld is coded differently in the database, then it can be reported separately and not included as a backlogged application.

2) Data Access - accurate and updated data access for all employees that process all applications across all programs would be needed, depending on the scope of this initiative. Currently OPRR is developing a process to provide Seagate Crystal Reports Access to staff in order to review customers' financial information maintained by OAS.

3) Permits Affected by Fees/Penalties Owed for Other Media - As proposed, a delinquent fee or penalty of \$200 or more would affect the issuance of a permit for an unrelated media. For example, a delinquent \$200 PST fee could affect the issuance of an air permit for new construction.

Basis: The agency processed in FY03 the following number of permits. In addition to these permits, the agency processes 1000s of new registrations, new and renewal certifications, as well as licenses each year.

Waste Permits

IHW 41

UIC 10

MSW 15

	<p>Water Quality Permits</p> <p>1) <u>Municipal/Domestic</u>:</p> <p>New 87 Major Amendment 77 Minor Amendment 28 Renewal 459 Emergency/Temporary Order 3 Renewal 11</p> <p>2) <u>Industrial</u>:</p> <p>New 25 Major Amendment 70 Minor Amendment 6 Renewal 157 Emergency/Temporary Order 1</p> <p>3) <u>MS4 (Multi-Sector Storm Sewer System)</u>:</p> <p>New 3</p> <p>4) <u>Sludge</u>:</p> <p>New 26 Minor Amendments 5</p> <p>5) <u>Agriculture</u>:</p> <p>New 36 Major Amendment 28 Renewal 111</p> <p>Water Supply Permits</p> <p>District Applications: 528 Utilities: 231</p> <p>Air Permits</p> <p>Total: 7339 PBRs: 3700 New: 210 Grandfathered permits: 360 Standard permit: 900</p>
	<p><u>Implementation Impacts:</u></p> <p><u>Processes:</u></p> <p>1) Access: OPRR has already developed a procedure for accessing the financial records of each regulated entity from Financial Administration Division's records. This procedure was developed by the Waste Permits Division under the direction of the Deputy in April through June, 2004. All divisions were provided the procedure and are in the process of acquiring access to Seagate for their staff. Divisions with access utilizing the reports are not all up and running yet.</p>

	<p>2) SOPs: Each division is responsible for developing their process and written SOP for addressing delinquent fees and penalties; however, the same basic process should be followed. The minimum to trigger staff action is \$200 delinquency. The delinquency will be added to the Notice of Deficiency letter. Before a permit is returned, management MUST be notified, and there are some cases in which a permit may not be returned. An example is a small local government who is financially unable to produce the fees before the permit is reviewed, but must provide drinking water or waste water services to the community. Registrations will be returned with a form letter.</p> <p>The agency should avoid getting into situations in which we are holding onto applications indefinitely, waiting for the check to arrive. Therefore, we recommend utilizing the NOD process, and if no response within specified time frame, return the application. Registrations and certifications should automatically be sent back to the customer with a standard letter notifying of the need to collect their outstanding balance.</p> <p>3) <u>Public Response</u>: The process will probably generate many phone calls and some complaints as it is implemented. However, the cost of sending mass mailouts to all of our customers to notify them up front would be extensive and time consuming and it potentially would not eliminate all complaints.</p> <p><u>LBB Measures</u>: No new performance measures will need to be created for this process. It will be part of the permit reviews and will be handled as one of many administrative requirements for an application to be considered complete.</p> <p><u>Costs</u>: The costs are due to the setup and the maintenance of the software. Resource costs for conducting the reviews were not included because the duties are added onto the work done by existing agency staff and no additional FTEs are needed.</p> <p>Seagate software licenses for OPRR staff = \$43,348. IR already has these licenses at the time that access was created. Thus, is not likely to be a new cost.</p> <p>IR Setup of OPRR access = \$1054 (2 staff, B12, 10 days)</p> <p>Maintenance for FY05: \$8,233</p> <p>Statutory or Rule Authority and Changes: No changes to statutes or rules are necessary in order to implement this procedure.</p>
<p>Other Alternatives</p>	

<p>Notes</p>	<p>TEX. WATER CODE §§ 7.302 and 7.303 allow the Commission to revoke or suspend a license, certificate, or registration issued by the Commission under:</p> <ol style="list-style-type: none"> 1. TEX. WATER CODE § 26.0301 (Sewage Treatment and Collection Facility Registration). 2. TEX. HEALTH & SAFETY CODE Ch. 37 (Occupational Licensing and Registration). 3. TEX. HEALTH & SAFETY CODE §361.0861 (Recycling and Recovery Registrations), § 361.092 (Energy, Material or Gas Recovery Registrations), § 361.112 (Storage, Transportation and Disposal of Used or Scrap Tires Registration). 4. TEX. HEALTH & SAFETY CODE Ch. 366 (On-Site Sewage Disposal Systems), Ch. 371 (Used Oil), or Ch. 401 (Radioactive Materials). 5. Under a rule adopted under any of those provisions. <p>After notice and hearing, the Commission may suspend or revoke a license, certificate, or registration the commission or a county has issued, place on probation a person whose license, certificate, or registration has been suspended, reprimand the holder of a license, certificate, or registration, or refuse to renew or reissue a license, certificate, or registration if the person is indebted to the state for a fee, payment of a penalty, or a tax imposed by a statute within the commission's jurisdiction or a rule adopted under such a statute. TEX. WATER CODE § 7.303(b)(6).</p> <p>TEX. WATER CODE § 5.552(a) gives the Executive Director authority to determine when an application is administratively complete. It could be argued that this provisions gives the ED authority to determine that an application is not administratively complete if an applicant has outstanding fees or penalties.</p> <p>TEX. WATER CODE § 26.027 provides that the commission may refuse to issue a permit when the commission finds that issuance of the permit would interfere with the purpose of chapter 26. TEX. WATER CODE §7.302 authorizes revocation or suspension of a permit or exemption for failure to pay penalties. That section suggests it is not appropriate for a person to have a permit if that person is delinquent in penalties. Therefore, it is arguable that the issuance of a permit to a person with delinquent penalties is not within the purpose of Chapter 26 of the Water Code.</p> <p>TH&S Code § 361.089 applies to municipal solid waste, industrial hazardous waste, hazardous waste, and industrial hazardous or hazardous UIC permits. Section 361.089(e) provides the commission the authority to deny an original or renewal permit if it is found, after notice and hearing, that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission. However, before denying a permit under this section, the commission must find that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the Commission.</p>
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Administrative Penalties (Attachment A - Collections Issue No. 1)

Authorization Type	Air	Water Supply	Water Quality	Waste
Individual Permits	Construction Permits - 1,3,4,5 Non attainment (NA) Permits - 1,3,4,5 Prevention of Significant Deterioration (PSD) Permits - 1,3,4,5 112(g) Hazardous Air Pollutants (HAPs) - 1,3,4,5 Voluntary Emission Reduction Permits (VERP) - 1,3,4,5 Electric Generating Facility (EGF) Permits - 1,3,4,5 Acid Rain Permits - 2,3,4 Existing Facilities Permits - 1,3,4,5 Multiple Plant Permits (MPP) - 1,3,4,5 Pipeline Facilities (PF) Permits - 1,3,4,5	Water Right Permits for new appropriations - 1,3,5 Water Right Permits for bed & banks - 1,3,5 Water Right Permits for interbasin transfers (IBTs) - 1,3,5 Water and Sewer Certificates of Convenience and Necessity - 1,3,5 Water District Creations - 1,3,5	General Authority for Individual Permits contained in §26.027 - Commission may Issue Permits and §26.040 - General Permits (pertaining to 30 TAC Subchapter B CAFOs) Texas Pollutant Discharge Elimination System (TPDES) Permits for industrial facilities - 1,3,5 TPDES Permits for municipal facilities - 1,3,5 TPDES Permits for sludge processing facilities - 1,3,5 TPDES Permits for Concentrated Animal Feeding Operations (CAFO) facilities - 1,3,5 TPDES Storm Water Permits for municipal separate storm sewer systems - 1,3,5 Texas Land Application Permits (TLAP) for industrial facilities - 1,3,5 TLAP Permits for municipal facilities - 1,3,5 CAFO Permits (State-only) - 1,3,5 Texas Pollutant Discharge Elimination System (TPDES) Permits for Storm Water from Industrial Facilities - 1,3,5 Sludge Beneficial Land Use Permits (State-only) - 1,3,5	Industrial Solid Waste Permits for treatment, storage and disposal - 1,3,5 Resource Conservation and Recovery Act Permits for hazardous waste treatment, storage and disposal - 1,3,5 Underground Injection Control (UIC) Permits for disposal in Class I wells - 1,3,5 UIC Permits for in-situ mining - 1,3,5 UIC Permits for sulfur mining by the Frasch process - 1,3,5 Radioactive Material Disposal License - 1,3,5 Municipal Solid Waste (MSW) Treatment, Storage and Disposal Permits. (Such as landfills, incinerators, large transfer stations, processing facilities, liquid waste processing facilities.) - 1,3,5 Permitted Compost Facilities (MSW) Chapter 332 (Permit required for operations that compost mixed municipal solid waste.) - 1,3,5

Reviewed for past due fees and penalties:

1. During Administrative Review - see procedures.
2. During Administrative & Tech Review for those applications w/combined review - see procedures.
3. Prior to transmittal to O.C.C. - see procedures.
4. Prior to final approval for those authorizations that do not go to O.C.C. prior to final approval - see procedures.
5. Upon publication of commission agenda, program areas will review posted items and inform management of potential issues at agenda.
6. No review for overdue fees & penalties will be conducted prior to authorization being issued.

Authorization Type	Air	Water Supply	Water Quality	Waste
<p>General Permits</p> <p>General Permits are not included (code 6) because the program is new and there is no financial data acquired for these facilities. In addition, most of the program is contracted out to Texas State University.</p>			<p>General Authority for General Permits contained in §26.040 - General Permits</p> <p>Texas Pollutant Discharge Elimination System (TPDES) Discharges from Ready-Mixed Concrete Plants and/or Products Plants or Associated Facilities - 1</p> <p>TPDES Discharges from Petroleum Bulk Stations and Terminals - 1</p> <p>TPDES Discharge of Petroleum Fuel Substance Contaminated Waters - 1</p> <p>State-only authorization for Compost Operations in the Bosque and Leon Watersheds - 1</p> <p>TPDES Multi-Sector General Permits - Industrial Facilities - 1</p> <p>TPDES Permit for Storm Water Associated with Construction Activities - 1</p> <p>CAFO General Permit - 1</p> <p>Future General Permits Issued To Various Operations - 1</p>	

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Authorization Type	Air	Water Supply	Water Quality	Waste
Registrations	Changes to Qualified Facilities (SB1126) - 6 - it is a self-implementing program, no TCEQ review is involved.		General Authority for Registrations contained in §26.027 - Commission may Issue Permits State-only Domestic Septage Beneficial Land Use - 1,3,5 except renewals (1,4,5) Water Treatment Plant Sludge Beneficial Land Use (State-only) - 1,4,5 Water Treatment Plant Sludge Disposal (State-only) - 1,4,5 Sludge Transporter s - 2	Type V Municipal Solid Waste (MSW) facilities that are registered (includes small transfer stations, some liquid waste processing facilities) - 2,3,4 Registered Compost Facilities (MSW) Chapter 332. (Registration compost operations handle materials such as municipal sewage sludge, or positively-sorted organic materials from the municipal solid waste.) - 2,3,4 Type IX MSW Gas Recovery Systems (for beneficial recovery of methane for energy) - 2,3,4 Medical Waste Transporters and On-Site Treaters - 2,3,4 Municipal Route Transporters/Stationary Compactors Ch. 330.32) - 2,3,4 Scrap Tire Facilities (Generators, Processors, Energy Recovery, Transporters, Land Reclamation Project Using Tires) - 2,3,4 Used Oil Handlers, Filter Handlers & Collection Centers (Ch 324 Sub A, Ch 328 Sub D) - 6 Underground and Aboveground Petroleum Storage Tanks (Ch 334) - 2,3,4 Dry Cleaners (to be Ch 337) - 2,3,4 Industrial Solid Waste and Municipal Hazardous Waste (Ch 335 Sub A) Generators, Transporters, Receivers - 6
General Operating Permits	Oil and Gas Facilities Bulk Fuel Terminals Landfills Site-Wide - 6 - no individual TCEQ review involved.			
Flexible Permits	1,3,4,5			
Site Operating Permits	2,3,4			

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Authorization Type	Air	Water Supply	Water Quality	Waste
Standard Permits	Pollution Control Projects, Oil and Gas Facilities Municipal Solid Waste Concrete Batch Plants - 1,3,4,5 Electric Generating Units Temporary Rock Crushers Hot Mix Asphalt Plants Except for Concrete Batch Plants, code 6 - self implementing program, no TCEQ review or authorization.			
Major Amendments and Modifications to Permits	Construction Permit - 1,3,4,5 Non Attainment Permit - 1,3,4,5 Prevention of Significant Deterioration (PSD) Permit - 1,3,4,5 112(g) Hazardous Air Pollutants (HAPs) - 1,3,4,5 Voluntary Emission Reduction Permit (VERP) - 1,3,4,5 Electric Generating Facility (EGF) - 1,3,4,5 Existing Facilities - 1,3,4,5 Multiple Plant Permit - 1,3,4,5 Acid Rain Permits - 2,3,4	Water Right Permits for new appropriations - 1,3,5 Water Right Permits for bed & banks - 1,3,5 Water Right Permits for interbasin transfers - 1,3,5 Certificates of Convenience and Necessity amendments and transfers - 1,3,5 Additional powers for Water Districts - 1,3,5	General Authority for Individual Permits contained in §26.027 - Commission may Issue Permits and §26.040 - General Permits (pertaining to 30 TAC Subchapter B CAFOs) Texas Pollutant Discharge Elimination System (TPDES) Permit for Industrial Facilities - 1,3,5 TPDES Permit for Municipal Facilities - 1,3,5 TPDES Permit for Sludge Processing Facilities - 1,3,5 TPDES Permit for Concentrated Animal Feeding Operations (CAFO) Facilities - 1,3,5 TPDES Storm Water Permits for Municipal Separate Storm Sewer Systems - 1,3,5 Texas Land Application Permits (TLAP) for Industrial Facilities - 1,3,5 TLAP for Municipal Facilities - 1,3,5 CAFO Permit (State-only) - 1,3,5 Sludge Beneficial Land Use Permit (State-only) - 1,3,5	Industrial Solid Waste Permits for treatment, storage and disposal - 1,3,5 Resource Conservation and Recovery Act Permits for hazardous waste treatment, storage and disposal Underground Injection Control (UIC) Permits for disposal in Class I wells - 1,3,5 UIC Permits for in-situ mining - 1,3,5 UIC Permits for sulfur mining by the Frasch process - 1,3,5 Radioactive Material Disposal License - 1,3,5 Municipal Solid Waste (MSW) Treatment, Storage and Disposal Permits - 1,3,5 Permitted Compost Facilities (MSW) Chapter 332 - 1,3,5

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4. Prior to final approval for those authorizations that do not go to O.C.C. prior to final approval - see procedures.
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Authorization Type	Air	Water Supply	Water Quality	Waste
Minor Amendments and Modifications to Permits	Construction Permits - 1,3,4,5 Non attainment Permits - 1,3,4,5 Prevention of Significant Deterioration (PSD) Permits - 1,3,4,5 112(g) Hazardous Air Pollutants (HAPs) Voluntary Emission Reduction Permits - 1,3,4,5 Electric Generating Facility Permits- 1,3,4,5 Existing Facilities - 1,3,4,5 Multiple Plant Permits - 1,3,4,5 Acid Rain Permits - 2,3,4	Water Right Permits of no greater impact than existing authorization under full utilization - 1,3,5 Water Right Permits for exempt interbasin transfers - 1,3,5	General Authority for Individual Permits contained in §26.027 - Commission may Issue Permits and §26.040 - General Permits (pertaining to 30 TAC Subchapter B CAFOs) Texas Pollutant Discharge Elimination System (TPDES) Permit for Industrial Facilities - 1,3,5 TPDES Permits for Municipal Facilities - 1,3,5 TPDES Permits for Sludge Processing Facilities - 1,3,5 TPDES Permits for Concentrated Animal Feeding Operations (CAFO) Facilities - 1,3,5 TPDES Storm Water Permits for Municipal Separate Storm Sewer Systems - 1,3,5 Texas Land Application Permits (TLAP) for Industrial Facilities - 1,3,5 TLAP for Municipal Facilities - 1,3,5 CAFO Permit (State-only) - 1,3,5 CAFO Permit (State-only) (continued) - repeated - same as previous - typo Sludge Beneficial Land Use Permit (State-only) - 1,3,5	Industrial Solid Waste Permits for treatment, storage and disposal - 2,3 Resource Conservation and Recovery Act Permits for hazardous waste treatment, storage and disposal - 2,3 Underground Injection Control (UIC) Permits for disposal in Class I wells - 2,3 UIC Permits for in-situ mining - 2,3 UIC Permits for sulfur mining by the Frasch process Radioactive Material Disposal License - 2,3 Municipal Solid Waste (MSW) Treatment, Storage and Disposal Permits. Permitted Compost Facilities (MSW) Chapter 332 - 2,3
Renewals	1,3,4,5		General Authority for Individual Permits contained in §26.027 - Commission may Issue Permits and §26.040 - General Permits (pertaining to 30 TAC Subchapter B CAFOs) Texas Pollutant Discharge Elimination System (TPDES) Permits for industrial facilities - 1,3,5 TPDES Permits for municipal facilities - 1,3,5 TPDES Permits for sludge processing facilities - 1,3,5	

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			TPDES Permits for Concentrated Animal Feeding Operations (CAFO) facilities - 1,3,5 TPDES Permits for Concentrated Animal Feeding Operations (CAFO) facilities (continued) - repeat of previous item TPDES Storm Water Permits for municipal separate storm sewer systems - 1,3,5 Texas Land Application Permits (TLAP) for industrial facilities - 1,3,5 TLAP Permits for municipal facilities - 1,3,5 CAFO Permits (State-only) - 1,3,5 Texas Pollutant Discharge Elimination System (TPDES) Permits for Storm Water from Industrial Facilities - 1,3,5 Sludge Beneficial Land Use Permits (State-only) - 1,3,5	
Modifications to Registrations			General Authority for Registrations contained in §26.027 - Commission may Issue Permits Domestic Septage Beneficial Land Use (State-only) - 1,3,5 Water Treatment Plant Sludge Beneficial Land Use (State-only) - 1,4,5 Water Treatment Plant Sludge Disposal (State-only) - 1,4,5	<i>Some Municipal Solid Waste Registration modifications require notice under 30 TAC §305.70(g)(2) - 2,3</i>

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Authorization Type	Air	Water Supply	Water Quality	Waste
Permits By Rule	<p>There are 124 Permit By Rules, 4 to be repealed. The following are just several examples:</p> <p>Rock Crushers; § 106.142 - 6 Bulk Mineral Handling; §106.144 - 6 Asphalt Silos; §106.150 - 6 Trench Burners; § 106.496 - 6 Surface Coating Facilities; §106.433 - 6</p> <p>* Self implementing, no agency review or authorization, except these which require site approvals:</p> <p>106.142 106.144 106.146 106.147 106.150 106.223 106.283 106.433 106.452 106.477</p>		<p>General Authority for Permits by Rule contained in §26.040 - General Permits (contained savings provision)</p> <p>Use of Reclaimed Water (State-only) - 4</p> <p>Boat Sewage Disposal (State-only) - 6</p> <p>Meat Processing (State-only) - 6</p> <p>Sand and Gravel Washing (State-only) - 6</p> <p>Discharges to Surface Waters from Treatment of Petroleum Substance Contaminated Waters (State-only) - 6</p> <p>Handling of Wastes from Commercial Facilities Engaged in Livestock Trailer Cleaning (State-only) 30 TAC 321 Subchapter N - 4</p> <p>Discharges from Aquaculture Production Facilities (State-only) 30 TAC 321 Subchapter O - 4</p> <p>*The PBRs assigned code 6 are self implementing, and do not require agency review or authorization.</p>	<p>Exclusion for Hazardous Waste permits for certain Publicly Owned Treatment Works permittees - 6</p> <p>Animal Crematories (Municipal Solid Waste) Chapter 330.4(z) - 6</p> <p>*These are code 6 because they are self implementing and do not require agency authorization or review.</p>

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Authorization Type	Air	Water Supply	Water Quality	Waste
Amendments to Registrations			<p>General Authority for Registrations contained in §26.027 - Commission may Issue Permits</p> <p>Domestic Septage Beneficial Land Use(State-only) - 1,3,5</p> <p>Water Treatment Plant Sludge Beneficial Land Use (State-only) - 1,4,5</p> <p>Water Treatment Plant Sludge Disposal (State-only) - 1,4,5</p>	
<p>Notifications</p> <p>Notifications are coded 6 because they are self implementing, not authorizations and do not need agency review prior to operation.</p>	<p>Site Operating Permit (SOP) Operational Flexibility - 6</p> <p>SOP Off-Permit Changes - 6</p> <p>Change of Ownership - 6</p>		<p>(For Water Quality, a review of the information is conducted and approval sent to applicants, so notification may not be an accurate term-more an Authorization)</p> <p>General Authority for Chapter 210 Water Reuse contained in §26.0311 - Standards for Control of Greywater</p> <p>General Authority for Sludge Notifications contained in §26.027 - Commission may Issue Permits</p> <p>Chapter 210 Water Reuse - Industrial - 4</p> <p>Chapter 210 Water Reuse - Domestic - 4</p> <p>Class A Sewage Sludge Beneficial Use - 1</p>	<p>Municipal Solid Waste (MSW) Liquid Waste Transfer Stations - 6</p> <p>MSW Resource Recovery Facilities - 6</p> <p>Notification Level Compost Facilities (MSW) Chapter 332 - 6</p> <p>On-Site industrial solid waste management - 6</p> <p>Authorizations for Underground Injection Control Class V wells - 6</p> <p>Exclusions from hazardous and industrial waste permitting under 30 Texas Administrative Code §§ 335.2, 335.41, and 335.69 and 40 Code of Federal Regulations 261.4(e) and (f) - 6</p>
Deminimis Facilities	Deminimis Authority			
Emissions Banking Credits				

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Authorization Type	Air	Water Supply	Water Quality	Waste
TCEQ Orders	Emergency Orders - 2,4,5	Water District Bonds - 1,3,5 Water District Revenue Notes - 1,3,5 Water District Standby Fees - 1,3,5 Water District Impact Fees - 1,3,5 Water District Dissolutions - 1,3,5 Emergency Order - 2,4	General Authority for Emergency and Temporary Orders contained in § 5.509. Temporary or Emergency Order Relating to Discharge of Waste or Pollutants General Authority for Authorization to Construct contained in §26.027 - Commission may Issue Permits Texas Pollutant Discharge Elimination System (TPDES) Permit Emergency Order - 1,5 TPDES Permit Temporary Order - 1,5 Emergency Order (State-only) - 1,5 Temporary Order (State-only) - 1,5 Authorization to Construct - 2,5	Post Closure Care Orders for interim status Resource Conservation and Recovery Act units, Corrective Action Management Units, and permitted units commingled plumes - 1,3,5 Emergency order for industrial waste facilities, hazardous waste facilities, Underground Injection Control (UIC) Class I wells and UIC Class III wells - 6 Temporary orders for industrial waste facilities, hazardous waste facilities, UIC Class I wells and UIC Class III wells - 2,3,5

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3. Prior to transmittal to O.C.C. - see procedures.
4. Prior to final approval for those authorizations that do not go to O.C.C. prior to final approval - see procedures.
5. Upon publication of commission agenda, program areas will review posted items and inform management of potential issues at agenda.
6. No review for overdue fees & penalties will be conducted prior to authorization being issued.

Authorization Type	Air	Water Supply	Water Quality	Waste
Others		<p>Water District Fire Plan - 1,3,5</p> <p>Water District Name Change - 1,3,5</p> <p>Water District Bankruptcy - 1,3,5</p> <p>Water District Appeal to the Commission of Decision of Board Regarding Facilities - 1,3,5</p> <p>Water District Appointment of Directors - 1,3,5</p> <p>Water District Reinstatement of Director - 1,3,5</p> <p>Water District Contract Tax Approval - 1,3,5</p>	<p>General Authority for Plans and Specifications Review and Approval contained in §26.034 - Approval of Disposal System Plans</p> <p>General Authority for 401 (Water Quality) Certifications contained in §5.120 - Conservation and Quality of Environment</p> <p>General Authority for Review and Approval of Closure Plans contained in §26.027 - Commission may Issue Permits</p> <p>30 TAC Chapter 317 Domestic Wastewater Treatment Plant Plans and Specifications review and approval - 6</p> <p>Closure Plans for Domestic Wastewater Treatment Plants review and approval (in conjunction with Remediation Division) - 4</p> <p>Water Quality Certification of Corps of Engineers 404 Dredge and Fill Permit - 6</p> <p>Water Quality Certification of Coast Guard Section 9 Permits - 6</p> <p>Water Quality Certification of Corps of Engineer Sponsored Federal Projects - 6</p>	

Reviewed for past due fees and penalties:

1. During Administrative Review - see procedures.
2. During Administrative & Tech Review for those applications w/combined review - see procedures.
3. Prior to transmittal to O.C.C. - see procedures.
4. Prior to final approval for those authorizations that do not go to O.C.C. prior to final approval - see procedures.
5. Upon publication of commission agenda, program areas will review posted items and inform management of potential issues at agenda.
6. No review for overdue fees & penalties will be conducted prior to authorization being issued.

Collections/Financial Inability to Pay Subcommittee	
Issue No.	2
Key Issue	Fee & Penalty Collection: 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?
	Basis: Steering Committee Input, State Auditor’s Report and Public Comment.
Other Subcommittees Reviewing Issue	Enforcement Process
Recommendation	<p>For the purposes of this response, agency resources are considered to include human, equipment, and systems. A review by the Office of Legal Services (OLS) and Financial Administration Division (FAD) conclude that resources are not sufficient to collect the accumulated number of old delinquent fee and penalty accounts.</p> <p>The TCEQ needs the assistance of outside resources to collect the delinquent accounts or determine that they are uncollectible. At the same time, the OLS and FAD have also determined that there are a number of improvements using internal resources that can be made to more quickly collect unpaid fees and penalties. The subcommittee reviewed the conclusions made in the OLS/FAD review and determined that they were appropriate and should be implemented.</p> <p>Implemented approaches using internal resources include:</p> <ol style="list-style-type: none"> 1. Revised collection processes and responsibilities in FAD’s Revenue Management Handbook which eliminated duplicative tasks, streamlined the collection process, established criteria for determining collectibility, incorporated any delinquent fees or penalties into pending enforcement actions, and increased the number of attorneys and revenue staff working on collection cases. 2. Established prompter identification and referral of cases over \$2,500 to the AG after 2 automated demand letters. 3. Established for the first time a billing interface between the Accounts Receivable system and CCEDS which will improve collections by automating billing, demand letters, and the placement of delinquent accounts on warrant hold. 4. Included functionality in the request for offer to upgrade the accounts receivable and billing system to incorporate a more automated compilation of collection history for the AG, OLS, or a collection agency to facilitate quicker referral for collection and better use of limited resources.

	<p><u>Proposed approaches using internal resources include:</u></p> <ul style="list-style-type: none"> • Initiate actions to revoke or suspend a permit or exemption if a permit holder is indebted to the TCEQ for fees, payment of penalties, or taxes imposed by the statutes or rules within the Commission’s jurisdiction. (Refer to Subcommittee Issue #1) • Recommend withholding and possible denial of permits to entities indebted to the TCEQ for fees, payment of penalties, or taxes imposed by the statutes or rules within the Commission’s jurisdiction. (Refer to Subcommittee Issue #1). <p><u>Proposed approaches using external resources include:</u></p> <ul style="list-style-type: none"> • Referral of cases over \$2,500 to the AG after 2 automated demand letters. • Contract with a collection agency to collect delinquent accounts that do not meet AG tolerances. <p><u>Basis:</u> Refer to the bottom of the last page of this issue.</p>
	<p><u>Implementation Impacts:</u> LBB performance measure, 03-01-02.03, Percent of Administrative Penalties Collected, would not change due to the hiring of a collection agency.</p> <p>It is anticipated that EPA would be in favor of any measures taken by the TCEQ to improve the collection rate for assessed administrative penalties.</p> <p>A Request for Offer for collection activities was posted on June 25, 2004. The current time line reflects that a contract with a collection agency would be executed in September 2004.</p> <p>A rider to appropriate to TCEQ funds necessary to pay a collection agent out of the funds collected by the collection agent has been presented to the Commission in the FY 2006-2007 Legislative Appropriation Request (LAR). Without the rider, TCEQ will be expending appropriated funds in order to collect funds which will not be appropriated to TCEQ, but will be placed in the Treasury to await future appropriations.</p> <p>To implement the other alternative proposed, a legislative change to the revenue source for PST program administration from the current registration fee per storage tank to assessment of a fee on the bulk delivery of gasoline would require changes to statute at Texas Water Code §§ 26.358, Collection, Use, and Disposition of Storage Tank Fees and Other Revenues, and 26.3574, Fee on Delivery of Certain Petroleum Products.</p>

<p>Other Alternatives</p>	<p>Legislative change to the revenue source for PST program administration from the current registration fee per storage tank to assessment of a fee on the bulk delivery of gasoline.</p> <p>Pros:</p> <ul style="list-style-type: none"> • Staff in the Revenue Section dedicated to billing and accounting related to PST registration fees could be focused on the clearing of old outstanding accounts; the collection of other accounts whose numbers would be more manageable internally; or reassignment to other areas. • Additionally, the bulk delivery fee would provide a more stable source of revenue with substantially less administrative cost as has been demonstrated in the collection of this fee to fund the Petroleum Storage Tank Remediation Fund. <p>Cons:</p> <ul style="list-style-type: none"> • The bulk delivery fee that funds the Petroleum Storage Tank Remediation Fund is scheduled to sunset at the end of fiscal year 2007. <p>Background: The administrative burden for billing and collecting this large volume (about 15,000 accounts), small dollar fee (\$50 per UST and \$25 per AST) includes the efforts of fee coordinators, cashiers, collection coordinators, and attorneys.</p> <ul style="list-style-type: none"> • 2 FTEs act as fee coordinators in the Revenue Section of Financial Administration for PST registration fees. • Cashiers processed 3,648 transactions related to PST registration fees in FY 03 representing about 6% of total transactions processed by the Cashier's Office in FY 03.
	<ul style="list-style-type: none"> • PST fees represent 40% of the total number of delinquent accounts for FY 2004, but only 7% of the total delinquent amounts outstanding for FY 2004 as of 5/17/04. This demonstrates the disproportionate effort that has to be directed toward collecting these fees. • PST fees represent 48% of delinquent accounts for all fiscal years and 28% of the total amount outstanding for all fiscal years as of 5/17/04. This demonstrates the historical difficulty in collecting these fees. • Tanks have historically been treated as a commodity, often sold and transferred which has resulted in \$1.6 million in accounts with undeliverable mail. <p>Basis: Large volume, small dollar fees require a greater proportion of effort throughout the process from preparing the billing, to accounting for payments, adjusting accounts, and multiple dunning letters and billing statements for unpaid accounts.</p>
<p>Notes</p>	<p>No legal issue involved. No legislative authority required.</p>

Basis for Primary Recommendation:

Type¹ (# count/\$ amount)	Eligible for Referral to OAG (New² and ≥\$2,500)	Eligible for Referral to Collection Agency (New and <\$2,500 & Old³)
Fees	8 \$395,084	10,976 \$6,558,612
Penalties	19 \$253,661	628 \$2,324,536
Total	27 \$648,745	11,424 \$8,883,148

1

Based on TCEQ Delinquent Accounts reports generated May 24 and 25, 2004; fees do not include delinquent dry cleaner (DCR) fees; amounts are rounded to the nearest dollar; reports exclude accounts flagged as Bankruptcy, AG, Litigation, Uncollectible, Federal, and State, which the TCEQ will handle internally.

2

For fees, “New” includes accounts that are less than 150 days past due as of 5/12/2004; for penalties, “New” includes accounts that are less than 150 days past due as of 5/25/2004.

3

For fees, “Old” includes accounts that are 150 days or more past due as of 5/12/2003; for penalties, “Old” includes accounts that are 150 days or more past due as of 5/25/2004.

Collections /Financial Inability to Pay Subcommittee

Issue No.	3
Key Issue	<p><u>Evaluation of inability to pay:</u> A) How can the agency address inability to pay issues of small businesses?</p> <p>Basis: Public Comment; Staff Input; and Review of Current Policy.</p>
Other Subcommittees Reviewing Issue	Enforcement Process; Ordering Provisions; Penalty Policy; EIC.
Recommendation	<p><u>Operating Business</u> Please refer to the flowchart for an illustration of the following proposed process. (See Attachment C). The proposed screening tool states that all operating businesses have the ability to pay an administrative penalty up to 1% of annual revenue without the need for financial analysis. Since payment plans up to 36 months are proposed to be allowed, the practical charge to annual revenue is 0.33% assuming consistent revenue for a 3 year period. If a business is unable to bring their operation into compliance and pay this percentage of their gross revenue over a 3 year period, then the subcommittee recommends that the proper forum to address the respondent’s “inability to pay” is through the Bankruptcy Court. Bankruptcy Court would consider all of the entity’s obligations and reorganize their debts over 5 years, including administrative penalties.</p> <p>A review of cases having undergone a financial analysis using existing criteria reflects that a company may be asset rich and revenue poor (see Attachment A). Therefore, if the initial screen of 1% of annual revenue does not completely pay the assessed penalty, a more thorough analysis to include the respondent’s assets is needed. The analysis determines whether liquid assets (cash, marketable securities, etc.), borrowing capacity, nonessential assets (the corporate lake house or luxury vehicle), or other factors indicate an ability to pay beyond 1% of annual revenue.</p> <p>The minimum payment plan for an operating business is proposed to be \$100 per month for a maximum of 36 months.</p> <p><u>Non-Operating Business</u> Non-operating businesses should undergo a similar analysis of assets. The minimum payment plan for non-operating businesses should be \$100 per month for a maximum of 12 months.</p>

Example 1: Operating Business; Penalty, \$10,000; Annual Revenue per 2003 Tax Return, \$500,000

- 1% of annual revenue = \$5,000
- Penalty (\$10,000) > 1% annual revenue (\$5,000)
- Analysis of assets performed to determine ability to pay \$5,000 difference between the penalty assessed and the 1% screen.
- If analysis of assets demonstrates full capacity to pay, penalty of \$10,000 payable up to 36 months.
- If analysis of assets demonstrates ability to pay \$7,500, penalty of \$7,500 payable up to 36 months.
- If analysis of assets demonstrates no additional ability to pay, penalty of \$5,000 payable up to 36 months.

Example 2: Operating Business; Penalty, \$10,000; Annual Revenue per 2003 Tax Return, \$2,000,000.

- 1% of annual revenue = \$20,000
- Penalty (\$10,000) < 1% of annual revenue (\$20,000)
- Full penalty of \$10,000 payable up to 36 months with no analysis required.

Factors Considered in Asset Analysis

- Liquid assets
- Cash flow
- Outstanding loans to officers and directors
- Assets not vital to business operations
- Extravagant entertainment expenses
- Level of compensation to corporate officers
- Ability to borrow
- Dividends
- Debts which pay off during the penalty repayment term

Please refer to Attachment A for examples of factors discovered during asset analysis which have resulted in a determination of ability to pay under existing criteria.

Please refer to Attachment B for an illustration applying the proposed screening tool to a sample of cases that underwent an ability to pay evaluation under existing criteria.

	<p><u>Basis:</u></p> <p>Positive Implications:</p> <ul style="list-style-type: none"> • Recognizes limitations of Financial staff to process increasingly larger volumes of cases and allows Financial staff to focus analytical resources on a manageable number of cases; • Recognizes that all operating businesses have the capacity to pay at least 1% of annual revenue for the most recent completed tax year. (Spread over a 36 month period is equivalent to 0.33%); • Streamlines enforcement processing time currently spent waiting for backlogged analyses; • Creates a standard easily determinable for a SOAH Judge in contested cases. <p>Negative Implications:</p> <ul style="list-style-type: none"> • Requires payment for up to 36 months; • 1% of annual revenue could be considered arbitrary and either too high or too low. • May require full payment by some businesses that are now found unable to pay based on factors other than 1% of revenue.
	<p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • No increase in FTEs as a result of this recommendation. • Inability to Pay policy would need to be revised. • Total implementation time is estimated at 2-3 months.
<p>Other Alternatives</p>	<ol style="list-style-type: none"> 1. Where the total amount paid under a payment plan is less than the calculated penalty provide for a balloon payment (of the remaining calculated penalty balance) or revised analysis of financial inability to pay at the conclusion of the payment plan. 2. As an alternative to the subcommittee’s recommendation, TCEQ could use EPA Models, INDIPAY and ABEL, to determine ability to pay for an individual, corporation, or partnership. Financial Assurance staff have attempted to use these models with generally inconclusive results and do not recommend using them. Unlike the data inputs for MUNIPAY, which are primarily audited financial statements, the financial data provided by individuals and small businesses are unaudited, often disjointed and inaccurate, and come from a variety of sources. As a result, the data is not homogeneous and financial staff must analyze all of the data with a higher degree of specificity. Thus, use of these models may not represent as great of a time-savings for the enforcement process or use staff resources as efficiently as the primary recommendation.
<p>Notes</p>	<p>See Notes Section on Issue 5.</p>

Collections Issue No. 3A, Attachment A: Examples of Factors Discovered During Asset Analysis

Case Example	Penalty	Recommended Payment	Unique Aspects
1	\$6,000	\$6,000	3 luxury vehicles not disclosed
2	\$167,420	\$105,000	Combination of liquidity and borrowing ability
3	\$13,500	\$2,300	Reported losses; however, owner's salary was higher than industry standards
4	\$12,000	\$12,000	Recent purchase of investment property with \$25,000 down payment
5	\$8,750	\$8,750	Substantial funds in brokerage account
6	\$5,200	\$5,200	Assets (non-business related) available for liquidation
7	\$8,000	\$8,000	Failed to report \$100,000 Certificate of Deposit
8	\$8,500	\$8,500	Assumed company was able to improve cash flow substantially by consolidating and refinancing existing equipment loans
9	\$10,625	\$2,500	Sale of non-exempt asset
10	\$16,875	\$16,875	Reported losses but made substantial reductions in notes payable to shareholders
11	\$3,000	\$3,000	PWS - ability to pay was based on ability to sell non-exempt personal assets
12	\$21,875	\$15,600	Loan payments of \$1300/mo ending soon - so savings could be applied to penalty
13	\$3,438	\$3,438	Considered that debt could be restructured, loans paying off in near future, sale of recreational vehicle
14	\$7,600	\$7,600	Reported losses however made substantial payments to shareholders

Collections Issue No. 3A - Attachment B: Application of Proposed Screening Tool to Sample of Previously Reviewed Cases

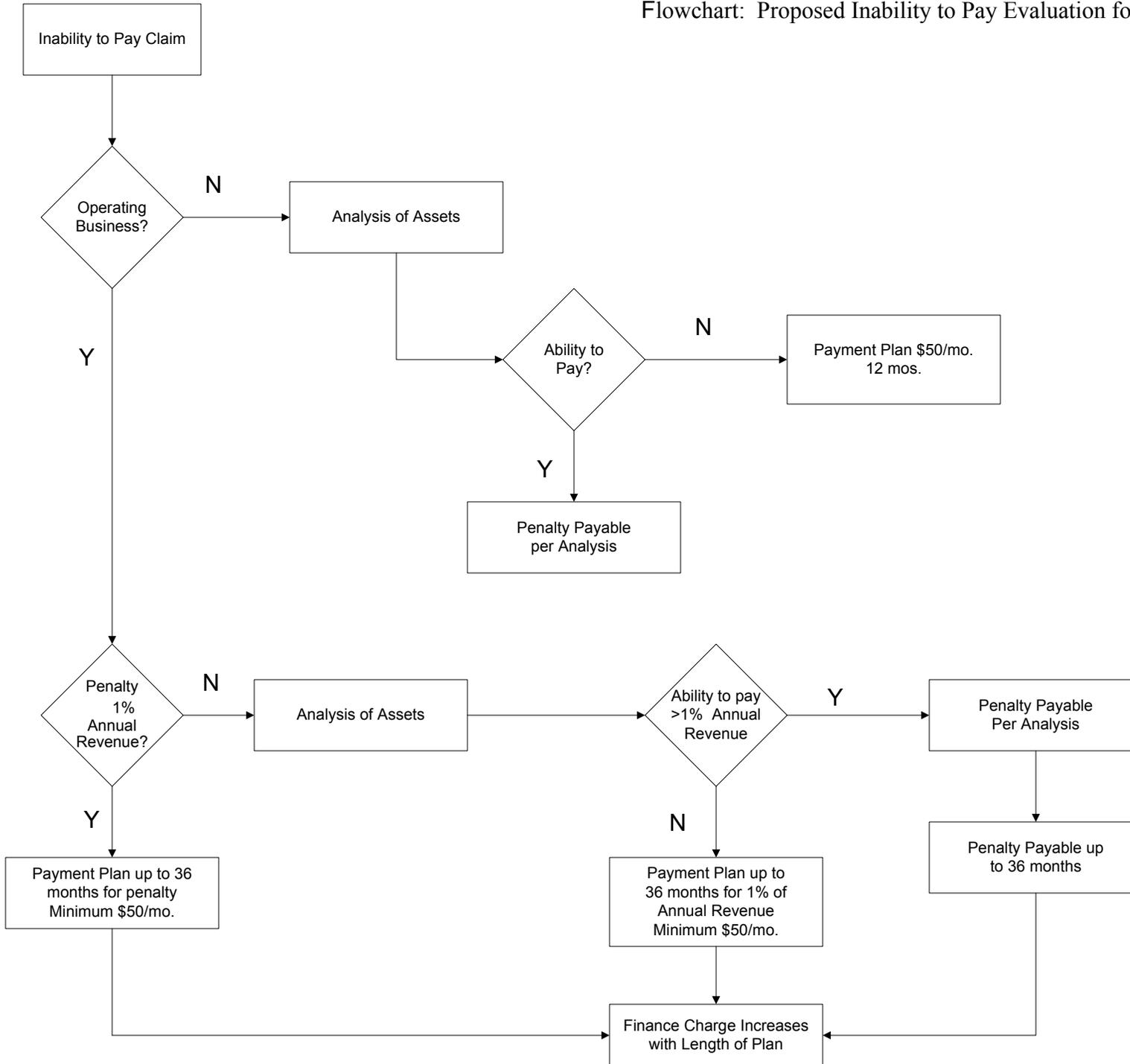
Case Example	Program	Penalty	Revenues	Penalty as % of Revenues	Full Penalty Payable over 36 mos.	1% of Annual Revenues over 36 mos.	Result of Analysis Using Existing Criteria	Reason for “Able” Determination
15	PST	\$27,600	\$2,696,000	1%	\$766	\$749	A	Adequate cash flow
16	PST	\$7,272	\$2,133,200	.3%	\$202	\$593	A	Cash Flow & Ability to Borrow
17	PST	\$3,200	\$1,008,500	.3%	\$89	\$280	A	Adequate cash flow
18	PST	\$14,038	\$ 28,950	48%	\$397	\$ 8	U	
19	MWD	\$33,170	\$204,800	16%	\$921	\$57	U	
20	MLM	\$2,625	\$ 9,722	27%	\$73	\$3	U	
21	MSW	\$10,000	\$43,026	23%	\$277	\$12	U	
22	AIR	\$300,000	\$396,500	76%	\$8,333	\$110	U	Sold business
23	IHW	\$45,675	\$574,000	8%	\$1,269	\$159	P \$27,900	Existing liquidity plus cash flow
24	PWS	\$3,100	\$334,800	.9%	\$86	\$93	A	Assets & Cash Flow
25	MSW	\$25,000	\$68,400	37%	\$694	\$19	P \$8000	

A = review found respondent able to pay entire penalty

U = review found respondent able to unable to pay the penalty. Payment reduced to a minimal amount (in the past has been \$50 per month)

P = review found respondent able to pay only the indicated amount

Flowchart: Proposed Inability to Pay Evaluation for Small Business



Collections /Financial Inability to Pay Subcommittee	
Issue No.	3
Key Issue	<p><u>Evaluation of inability to pay:</u> B) How can the agency address inability to pay issues of small local governments?</p> <p><u>Basis:</u> Public Comment; Staff Input; and Review of Current Policy</p>
Other Subcommittees Reviewing Issue	Enforcement Process, Ordering Provisions, EIC, and Penalty Policy
Recommendation	<p><u>Eligibility for Applying for Inability to Pay:</u> Any other communities or governmental organizations may apply for inability to pay using the MUNIPAY formula from EPA.</p> <p>The MUNIPAY 2000 system is designed to assist the user in executing financial analyses of municipalities held liable for environmental penalties or Superfund contributions. MUNIPAY is a free, downloadable program from the EPA. A User’s Manual is also available in a pdf. format free of charge.</p> <p>MUNIPAY uses a municipality's current financial data to evaluate its ability to pay environmental expenditures, including compliance costs, penalties, and Superfund cost contributions, either by using currently available funds or by taking on additional debt. MUNIPAY also uses U.S. Census Data to perform a demographic analysis, which is intended to provide a better understanding of long-term changes in the community's resource base.</p> <p>The MUNIPAY Model evaluates the economic and financial condition of municipalities. This includes cities, towns, and villages of any size, and even independent and publicly owned utilities (e.g., regional wastewater treatment plants). Other local and regional governmental jurisdictions may also be amenable to a MUNIPAY analysis. The model provides a consistent and theoretically sound framework for evaluating municipal affordability cases. MUNIPAY performs two separate sets of analyses: a demographic comparison, and an affordability calculation.</p> <p>Despite MUNIPAY’s ability to provide a point estimate of the municipality’s level of affordable expenditures, municipal affordability cases still require the user’s best professional judgment. MUNIPAY does contain default values for certain parameters such as the maximum incremental tax burden from the environmental expenditures, but the user must still decide whether those default values are appropriate for the particular case. The model can help with these judgments, but final determination of the municipality’s affordability ultimately is a decision only the enforcement professional can make.</p>
	<p><u>Basis:</u></p> <ol style="list-style-type: none"> 1. Feedback from local governments. 2. Public comment focused on providing an easier financial inability to pay process for small local governments. 3. Staff spends an inordinate amount of time analyzing the financial ability of local governments due to the complexity of these analyses.

	<p><u>Implementation Impacts:</u> No increase in FTEs as a result of this recommendation. Inability to Pay policy would need to be revised. Total implementation time is estimated at 3-4 months. IT requirements may be needed to support MUNIPAY.</p>
<p>Other Alternatives</p>	<p>1) Waive the noncompliance penalties for the small local governments noted below which are least able to make penalty payments. Each of these communities would get a maximum of one waiver, regardless of the media, every five years assuming they still meet the EDAP and/or poverty criteria listed below. Any subsequent requests for inability to pay consideration, during the five year period, would be run using MUNIPAY.</p> <p>Automatic Eligibility for Inability to Pay: The communities in Texas that are at the poverty level would automatically be eligible for inability to pay the first time through enforcement. There are currently 69 communities meeting this criteria. This means the median income is at or below \$20,000. These are considered impoverished according to Census Bureau data. (See Attachment A)</p> <p>The counties in Texas would be those that are designated as EDAP (next to the border or counties with a per-capita income 25 percent less than the state average and unemployment rates 25 percent greater than the state average) or have 15% or greater of the population at or below the poverty level of \$20,000. This is currently 71 counties. (See Attachment B)</p> <p>2) Set percentage of the tax roll-back rate as the criteria for inability to pay. As an example, if the tax rate was \$1.00 per \$100, the roll back rate would be \$1.08. Set the inability to pay at 80% of \$.08 (the difference between the current tax rate and the roll back rate) or \$.06.</p> <p>3) Extended payout periods in lieu of inability to pay.</p> <p>4) An alternative that could be used in addition to Poverty Level/EDAP automatic eligibility and MUNIPAY is the assessment of a minimum amount per household. Historically, the financial capacity of a local government has often translated into the ability of the local government to raise taxes or raise utility rates. This recognizes that any penalty assessed against a local government is a pass-through to the citizens of the community. A reasonably affordable measure that could be applied as a minimum assessment per household is \$1.00 per household per month for 36 months. \$1.00 is the approximate cost of an inexpensive loaf of bread.</p>

	<p>This alternative would work in tandem with the Poverty Level/EDAP automatic eligibility and MUNIPAY as follows:</p> <ol style="list-style-type: none"> 1. If a local government is designated as Poverty Level/EDAP and their one-time automatic eligibility has not been used, no additional review is applied. The entire penalty is deferred. 2. If not Poverty Level/EDAP or one-time eligibility has been used, the number of households in the local government is multiplied by \$1.00 to determine the minimum monthly penalty payment for 36 months. This calculation sets the minimum penalty amount payable. 3. If the \$1.00 per household per month minimum does not fully pay the penalty, MUNIPAY is used to determine ability to pay. The penalty payable is the greater of the results from #2 or the results from MUNIPAY. <p>Example: City of 100 households; Penalty assessed \$10,000</p> <ul style="list-style-type: none"> • If city was poverty level designated and one-time eligibility had not been used, entire penalty is deferred. No further steps required. • City is not poverty level designated or one-time eligibility already used. The following calculation establishes the minimum penalty amount payable: $100 \text{ households} \times \\$1.00/\text{household} \times 36 = \\$3,600$ <p>Minimum penalty amount payable, \$3,600 < \$10,000, assessed penalty. Run MUNIPAY.</p> • MUNIPAY indicates ability to pay \$5,000. Penalty payable is \$5,000 (the greater of \$5,000 and \$3,600); or • MUNIPAY indicates ability to pay \$2,000. Penalty payable is \$3,600 (the greater of \$3,600 and \$2,000).
Notes	<p>Tex. Water Code § 7.053 requires the Commission to consider different issues when assessing a penalty. These include the amt. necessary to deter future acts, good faith of the respondent, “other factors that justice may require,” history of previous violations, and culpability. It may be sufficient that the Commission make a general determination that, in considering these factors, a poverty level community with no prior violations and no culpability would justify no assessment of a penalty. While it could be argued that legislative authority is not required, it may be appropriate for the Commission’s decision on this to be included in 30 TAC §70.8 regarding Financial Inability to Pay.</p>

COLLECTIONS ISSUE 3B, ATTACHMENT A: INABILITY TO PAY FOR CITIES

Information from US Census Bureau (1999/2000)

The following incorporated communities in Texas are considered impoverished communities (median income at or below \$20,000 per year): (69 out of 1200 communities surveyed) 5% of the incorporated communities are at or below the poverty level of \$20,000.

<u>Community</u>	<u>County</u>
Ackerly	Dawson/Martin
Adrian	Oldham
Agua Dulce	Neuces
Alba	Wood
Alton	Hidalgo
Amherst	Lamb
Anderson (Town of)	Grimes
Angus	Navarro
Annona	Red River
Aquilla	Hill
Asherton	Dimmitt
Austwell	Refugio
Balmorhea	Reeves
Barstow	Ward
Bayside	Refugio
Bayview	Cameron
Bellevue	Clay
Benjamin	Knox
Big Wells	Dimmitt
Bonney	Brazoria
Broadus	St. Augustine
Carrizo Springs	Dimmitt
Clint	El Paso
Crosbyton	Crosby
Dickens	Dickens
Earth	Lamb
Estelline	Hall
Freer	Duval
Garrison	Nacogdoches
Goldsmith	Ector
Granjeno	Hidalgo
Hart	Castro
Hico	Hamilton
Indian Lake (Town of)	Cameron
Iraan	Pecos
Jayton	Kent
Kress	Swisher
La Costa	Medina
La Grulla	Starr
Leona	Leon

ATTACHMENT A: INABILITY TO PAY FOR CITIES

Page 2

Lipan	Hood
Lockney	Floyd
Lometa	Lampasas
Lorenzo	Floyd
Los Indios	Cameron
Los Ybanez	Dawson
Marquez	Leon
Meadow	Terry
Nazareth	Castro
Opdyke West	Hockley
Pearsall	Frio
Pecos	Reeves
Poteet	Atascosa
Putnam	Callahan
Rangerville	Cameron
Roaring Springs	Motley
Rocky Mound	Camp
Roscoe	Nolan
San Perlita	Willacy
Santa Clara	Marion
Smyer	Hockley
Spofford	Kinney
Springlake	Lamb
Spur	Dickens
Talco	Titus
Toyah	Reeves
Turkey	Hall
Van Horn	Culberson
Whiteface	Cochran

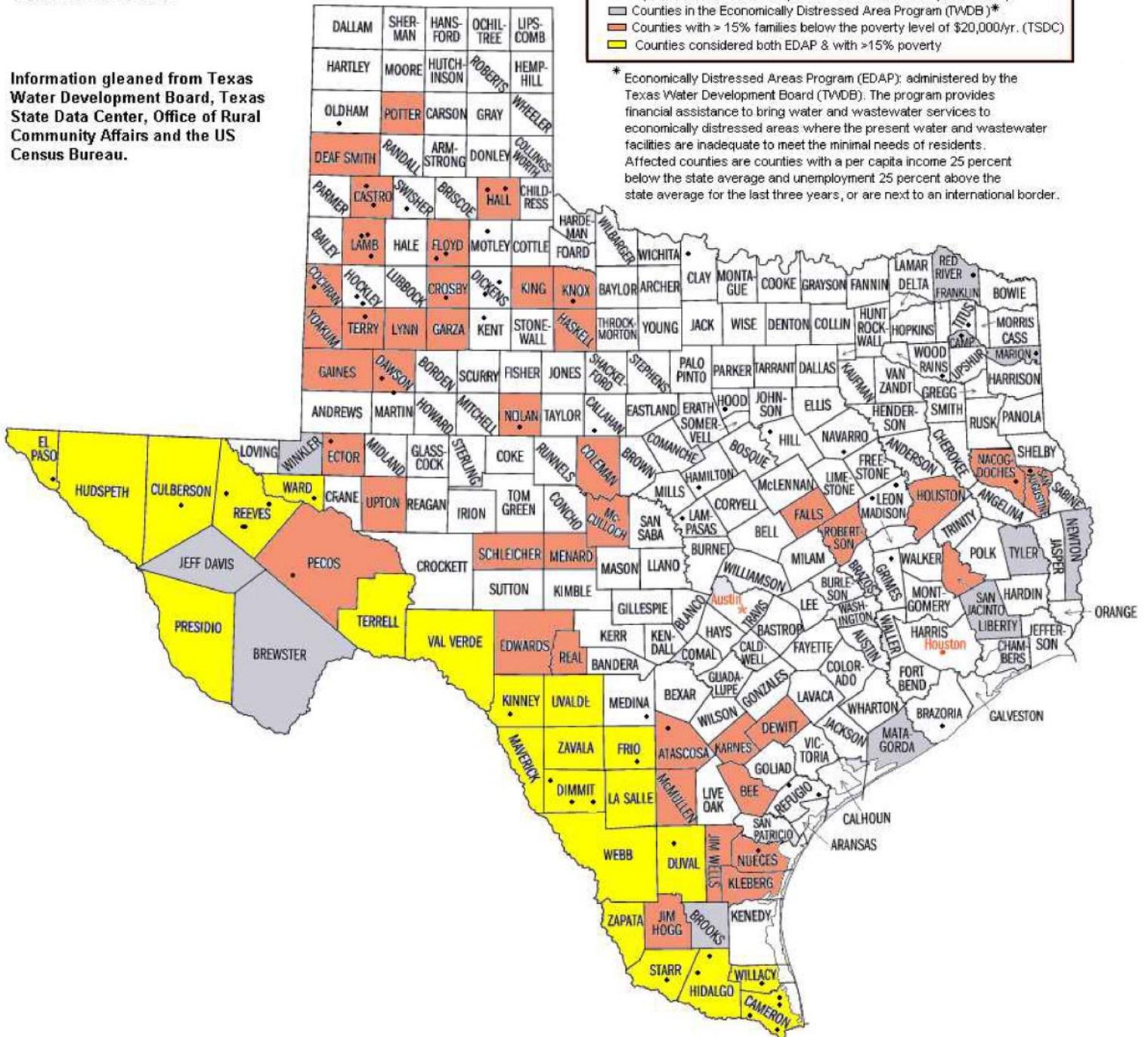
Attachment 2

Information gleaned from Texas Water Development Board, Texas State Data Center, Office of Rural Community Affairs and the US Census Bureau.

Information from the US Census Bureau, Texas State Data Center and TWADB

- Impoverished communities (median income under \$20,000 - USCB)
- Counties in the Economically Distressed Area Program (TWADB)*
- Counties with > 15% families below the poverty level of \$20,000/yr. (TSDC)
- Counties considered both EDAP & with >15% poverty

* Economically Distressed Areas Program (EDAP): administered by the Texas Water Development Board (TWADB). The program provides financial assistance to bring water and wastewater services to economically distressed areas where the present water and wastewater facilities are inadequate to meet the minimal needs of residents. Affected counties are counties with a per capita income 25 percent below the state average and unemployment 25 percent above the state average for the last three years, or are next to an international border.



Collections/Financial Inability to Pay Subcommittee	
Issue No.	4
Key Issue	<u>Payment Plans</u> : Should a policy be established providing criteria for payment plans?
	<u>Basis</u> : Public Comment and Commissioner Input.
Other Subcommittees Reviewing Issue	None.
Recommendation	<p>The workgroup consensus is that a policy should be established that provides criteria for payment plans (including length, who should get them, and minimum payment amounts).</p> <p><u>Recommended Maximum Length of Payment Term: 36 months.</u> In extraordinary circumstances where the 36 month plan is inadequate, TCEQ could consider extending the payment term to no more than 60 months if a cost/benefit analysis supports that term length. (The 5 year maximum is based on typical record keeping standards for businesses and since debts reorganized under Chapter 11 or Chapter 13 of the Bankruptcy Code use a 5 year plan.)</p> <p><u>Eligibility for Payment Plans:</u> The workgroup believes that criteria should be established for who should be eligible for payment plans. Possibilities (from 30 TAC §70.9) include any person(s), firm, or business, upon approval by the Commission, be allowed to make installment payments of an administrative penalty, and qualifying small businesses upon written request subject to criteria by number of employees and/or net annual receipts. An increasing interest rate charge (if allowed to charge interest) for longer payment plans and above market rates were also discussed as ways to ensure that by statute (see Issue 5) respondents did not request payment plans without true need. The payment term should be decreased and minimum payment amount should be increased based on ability to pay. This should discourage those with the present ability to pay the penalty from requesting a payment plan.</p> <p><u>Minimum payment amount: \$100.</u> The workgroup consensus was that the monthly payment amount should be no less than \$100. This standard could be applied to those respondents who are out of business and are unable to pay more than \$100/month (plus interest, if allowed to be assessed). The workgroup then discussed a simplified process to determine minimum payments based on an evaluation of inability to pay as shown in the example below:</p>

	<p>Respondent Revenue (2003 tax return): \$1,000,000 Minimum ability to pay determined to be 1% of revenue: 1% x \$1,000,000 = \$10,000. Maximum payment term: 36 months Minimum monthly payment: \$280 + interest (if allowed to be assessed) for 36 months. If the penalty assessed is less than \$10,000, the respondent gets the number of months needed to pay off at \$280/month. If the penalty is greater than \$10,000, additional financial review is needed.</p> <p>Both the % of revenue established as the minimum ability to pay and the maximum payment plan term are variables that would be established by policy.</p>
	<p><u>Basis:</u> Positive Implications:</p> <ul style="list-style-type: none"> • Provides a simplified method for Financial staff to calculate minimum payment amounts and allows them to focus extra analysis on the cases warranting it. • Recognizes that all operating businesses have the capacity to pay at least 1% of annual revenue for the most recent completed tax year. (Spread over 36 month period is equivalent to paying 0.33% of annual revenue/year (plus interest, if allowed).) • Streamlines enforcement processing time currently spent awaiting completion of backlogged analyses. • Creates a standard easily determinable by a SOAH Judge in contested cases. • Since the money is owed to the state, the state is essentially loaning the money to the person, firm, or business. As with any other loan, the respondent should pay interest (if charging interest is approved). • If interest on installment payments is approved, interest rate could increase in proportion to term of payout (just like any other loan), thus encouraging faster pay-off and discouraging those who do not need payment plans from requesting them. <p>Negative Implications:</p> <ul style="list-style-type: none"> • Allows payments for up to 36 months and up to 60 months in extreme circumstances. • 1% of annual revenue could be considered arbitrary and either too high or too low.
	<p>Implementation Impacts:</p> <ul style="list-style-type: none"> • Requires new statutory authority to assess interest on penalties and payment plans. (See Issue No. 5) • Implementation cost is minimal because Financial Administration is in the process of obtaining a new accounts receivable system and the interest utility function is included in the specifications.

Other Alternatives	<p>The subcommittee considered the alternatives listed below but felt the recommendation presented earlier in this document was the better option.</p> <ol style="list-style-type: none"> 1. Maximum term of 12, 24, 48, 72, 84 months. Minimum payment determined by payout period. Longer payment terms are harder to collect. 2. No installment payments. All penalties paid in full within 30 days of the Commission Order.
Notes	<p>The interest component of this recommendation will require additional statutory authority.</p> <p>While there is statutory authority to assess interest on fees, there is no statutory authority to assess interest on penalties and payment plans. The subcommittee recommends that legislative authority for interest be sought. (See Issue No. 5)</p>

Collections/Financial Inability to Pay Subcommittee	
Issue No.	5
Key Issue	<u>Interest Charges:</u> Would the assessment of interest charges on payment plans and/or delinquent penalties encourage payment or result in less requests for payment plans?
	<u>Basis:</u> Requested by Steering Committee on March 11.
Other Subcommittees Reviewing Issue	None
Recommendation	<p><u>Assessment of Interest Charges on Payment Plans:</u></p> <p>The agency currently assesses interest on delinquent fees at a rate of Prime plus 1 percent. The consensus of the workgroup is to impose interest charges on payment plans for administrative penalties. This recommended interest would be considered a financing charge for the use of payment plans.</p> <p>Interest rates should increase with the length of the payment plan to discourage using the agency as a lender.</p> <p>The revenue accounting system would have to be upgraded substantially to treat these accounts more like loans. The Financial Revenues section is investigating a new accounts receivable and billing system and will include in its functional requirements the ability to assess a finance charge. Commission rules will be impacted by this decision.</p> <p>Positive Implications:</p> <ul style="list-style-type: none"> • Discourages payment plans. • Shortens the length of payment plans and/or makes the agency the “lender” of last resort.

	<p>Negative Implications:</p> <ul style="list-style-type: none"> • Charging interest may serve to increase delinquent amounts owed. <p><u>Assessment of Interest Charges on Delinquent Administrative Penalties:</u> Administrative penalties are assessed against a respondent through agreement (Agreed Order), by default, or following a contested case hearing. Administrative penalties assessed in an Agreed Order are either paid in full when the respondent signs the order, or a payment plan is issued. Interest on payment plans is addressed above. Therefore, the question is whether the assessment of interest charges for late payment would encourage prompt payment of administrative penalties associated with Default Orders or Orders following contested case hearings.</p> <p>Default Orders result from the failure of the respondent to request a hearing or reach agreement with the agency; consequently, they often result in non-payment of the penalty. While interest will increase the amount of money owed to the agency, it will likely also be an incentive for respondents to pay more quickly. Therefore, it is recommended that the agency seek legislative authority to assess interest charges on delinquent penalties as well.</p> <p><u>Basis:</u> Interest is defined as compensation for the use, forbearance or detention of money (Finance Code Chapter 301, Sec 301.002 (4), Definitions).</p> <p>The Commission is authorized by the Water Code to impose interest on delinquent fees. A similar structure could be applied to payment plans for administrative penalties which would increase the amount of revenue collected on accounts that are slowed by payment plans.</p> <p>The use of interest charges may encourage prompter payment of penalties.</p>
	<p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> • LBB measures are not affected. • Time to implement is contingent upon implementation of a new accounts receivable system which can compute interest charges for delinquent accounts and payment plans. The agency is currently reviewing bids for a new system. Estimated completion date is August 31, 2005. • Statutory authority is needed to assess interest on delinquent penalties and payment plans.
<p>Other Alternatives</p>	<p>Other options may serve to encourage payment:</p> <ul style="list-style-type: none"> • Quicker referral to the AG and the assessment of their costs. • Referral to a collection agency. • Referral for enforcement action and the assessment of an administrative penalty for non-payment. • Withholding of permits, registrations, licenses, and authorizations. <p>These options could be combined to enhance the agency's collections capabilities.</p>

Notes	While there is statutory authority to assess interest on fees, there is no statutory authority to assess interest on delinquent penalties or payment plans. The subcommittee recommends that legislative authority be sought to assess interest on payment plans. In addition, conforming rule changes may be necessary.
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Collections/Financial Inability to Pay Subcommittee	
Issue No.	6
Key Issue	<u>Additional Collection Tools:</u> Would tools such as the ability to levy bank accounts or garnish wages be helpful in collecting delinquent accounts?
	<u>Basis:</u> Requested by Steering Committee on March 11.
Other Subcommittees Reviewing Issue	None.
Recommendation	The workgroup consensus is not to utilize the tools listed above at this time. Other alternatives such as interest charges, payment plans, use of a collection agency, and withholding permits for unpaid penalties and fees are recommended and would be more efficient for collecting delinquent accounts. If these alternatives are not effective in decreasing delinquent accounts then Financial and Legal could take steps to revisit the options above and seek needed legislative authority.
	<u>Basis:</u> Garnishing wages and levying bank accounts require legislative authority. Garnishing wages would not be effective against corporations. Additional agency resources would be needed to administer this alternative.
	<u>Implementation Impacts:</u> None
Other Alternatives	Other options to decrease delinquent accounts are recommended by the subcommittee. The use of a collection agency, payment plans, interest charges and withholding permits/certificates/renewals are better alternatives.
Notes	<p>Examples of approaches under consideration which will improve collections:</p> <ul style="list-style-type: none"> • Quicker referral to the AG and the assessment of their costs. • Referral to a collection agency. • Referral for enforcement action and the assessment of administrative penalty for non-payment. • Withholding of permits, registrations, licenses, and authorizations. <p>Additionally, the billing interface established between the Accounts Receivable system and CCEDS will improve collections by automating invoicing, demand letters, and placement on warrant hold.</p> <p>The subcommittee is not recommending that we utilize these tools. If the recommendation is adopted, no additional statutory authority is needed.</p>