

<b>Compliance History Classification</b>	
Issue No.	1
<b>Key Issue</b>	<p>Overall Approach To Compliance History Classification</p> <p>A) Should the TCEQ develop a more focused, risk-based compliance history classification process that puts greater weight on violations that harm human health and the environment?</p> <p>B) Does the formula measure environmental performance?</p> <p>C) Is there a threshold number of inspections that should occur before an entity has a classification other than “default?”</p> <p>D) Should more recent compliance activities weigh more heavily than older compliance activities?</p> <p>E) How often should the classification be recalculated?</p> <p>F) Does the current compliance history process create incentives for entities to delay resolution of enforcement actions?</p> <p>G) Does the present classification system adequately capture the complexity and size of sites?</p> <p>H) How many compliance history classifications are appropriate?</p> <p>I) Should compliance histories be program specific and/or based on size and type of facility?</p> <p>J) Should there be more opportunities for the exercise of discretion in the classification process?</p> <p>K) Should other factors be included in classification, such as financial conditions, cooperativeness, efforts to comply, trends of compliance, or modernization?</p> <p><u>Basis:</u> Staff Comment/Rule Review; Stakeholder Surveys</p>
<b>Other Subcommittees Reviewing Issue</b>	Components, EIC, Penalty Policy

**Recommendation**

The following recommendations are intended to address Issues A-K above. The present classification system can be improved. Improving the means by which we classify entities can be accomplished within the framework of the present statute; and it is recommended this be achieved with targeted, meaningful changes to the present formula. This can also be achieved through an alternative approach, one idea for which is presented below. In relation to the major issues raised by external and internal commenters, the subcommittee finds the following:

The classification system should be changed to more effectively measure environmental performance.

- The means by which entities are classified should focus on violations that harm human health and the environment and demonstrate disregard for environmental regulations; and, with respect to “high” performers, on actions that go above and beyond compliance. This approach should obviate the need to consider weighing compliance activities.
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- The “poor” performer classification should at least in part be based on whether the entity has certain serious violations. For example, certain criminal convictions or violations such as those involving falsification of records might be among those resulting in an automatic poor classification.
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- “Poor” performers should be given the opportunity to review their data for accuracy before it is released.
- The subcommittee recommends that the present classifications of “high,” “average,” “average-by-default,” and “poor” be changed to, “**high,**” “**satisfactory,**” “**poor,**” and “**unclassified.**” These changes would address widely held concerns expressed about “average” and “average-by-default.” The latter, in particular, would more accurately reflect that we do not have enough information to determine performance
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- There should not be a threshold of inspections before an entity is classified anything other than default.
- The present system does adequately capture complexity, however, this can be remedied through revisions on how inspections are counted and included in the classification formula.
- The present automated system for determining classifications should continue to be utilized under any approach taken.
- The agency should still perform an annual mass classification.
- No evidence was found that the present classification system itself encourages delay of resolution of enforcement.
- The present multi-media approach should be retained. Although not specifically addressed by the statute, the statute does seem to contemplate a holistic review. This issue is discussed at greater length below in “**Other Alternatives.**”

	<p>Option 1: Make targeted, meaningful changes to the present formula. This option would be based upon the belief that a formula is an appropriate method for classifying entities. Retaining the formula has its benefits, namely that systems have already been put in place to literally push a button and classify more than 200,000 entities. <b>Greater detail on specific changes to the formula are covered in the discussion of “Key Issue 2.”</b></p>
	<p><u>Basis:</u> The state statute provides flexibility on how to implement the classifications system, and a pilot project led by program experts would assist with identifying issues associated with changing the present formula. This recommendation was developed in response to external inputs that the present system is too complicated, a single mathematical formula is inappropriate given the diversity and number of Texas businesses, and environmental results are not measured.</p> <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> <li>• A rulemaking in 30 TAC Chapter 60 would be required. The estimated timeframe for a Tier 3 rulemaking of this scope would be nine months to one-year (i.e. adopt rules in Summer 2005).</li> <li>• Data related to compliance with Federal NOVs, Orders, Decrees, and Compliance Agreements may not be readily available in electronic format and may require resources to obtain.</li> <li>• CCEDS programming will be required to include federal data, automatically identify selected Category A violations for poor performer determinations, evaluate compliance components in determining a high performer, and change existing windows used by SBEA to incorporate voluntary actions taken beyond compliance. Costs for changes may range from \$3,500-\$35,000, depending on the scope of the change.</li> <li>• User testing will be required to ensure changes to the rule will be properly reflected in the automated process.</li> <li>• Given the timing of rule adoption (assuming a start date of October, rules could be adopted by July), it is likely that classifications will have to be done manually for the first year while CCEDs is updated.</li> <li>• LBB Measures pertaining to permitting timeframes may be impacted if the option discussed in “Alternatives” below relating to re-running the classifications is implemented.</li> <li>• Modifications, perhaps to STEERS, would be necessary to allow “poor” entities to review their data.</li> </ul>

Implications of an alternative to the formula:

- May reduce the number of “high” performers
- May increase or decrease the number of “poor” performers--a preliminary assessment of the subcommittee’s concept was inconclusive on this point--continued ground-truthing would be necessary under the proposed pilot project
- Any approach tied to the EIC could be influenced by future changes to the EIC
- The construction of a database to track those applying for, and ultimately being granted High Performer status is required
- Resources will be needed to review demonstrations that entities are going beyond compliance
- Keeping EPA and federal information in consideration when classifying “high” performers (see discussion in Attachment) would give a more complete picture of compliance, enable the agency to avoid classifying as “high” someone that has federal compliance issues of which we are unaware, and ensure compliance with state and federal laws;

Pros of an alternative:

- Results in a more valid system because the measurement tool would produce results that track more closely with what compliance history is trying to measure
- Creates a bright line for performance, making clear to both external interests and agency staff who is a “poor” or “high” performer
- Major violations identified for classifications not substantially different from present rules
- Could be made more equitable to small business and local governments

Cons of an alternative:

- Extensive work has been done on the present data system to utilize the formula. Any major modifications would cost money--an estimate cannot be provided at this time.

<p><b>Other Alternatives</b></p>	<p><b>Option 2:</b> Develop, through the initiation of a pilot project, an alternative that would replace the present formula with standards of performance—i.e., define what it means to be a “poor,” “satisfactory,” and “high” performer.” The subcommittee developed one possible concept for defining performance utilizing the EIC. A pilot project would ensure that many relevant issues, costs, and ramifications associated with such a change are anticipated, identified, and vetted. See <b>Attachment</b> for details on the subcommittee’s concept.</p> <p><b>Re-Running Classifications.</b> Consideration should be given to re-running the classification when there is a pending activity that requires consideration of classifications during the following year. This would provide an opportunity for the most recent compliance data to be considered. However, this would have resource implications. The timing of performing the re-classification, as well as the timing and availability of appeals, would also need to be considered.</p> <p><b>Three-Year Compliance Period.</b> A three-year compliance period, as opposed to five, could be considered. This may address any concerns about older data and the ability of entities to improve their classifications more quickly.</p> <p><b>Consideration of Category B and C Violations in the EIC.</b> In developing an revised approach, the pilot project should address revising the impact some violations have on classification that would result in a “poor” classification, including other “A” violations and certain “B” and “C” violations.</p>
	<p><b>Media-Specific Classifications.</b> The pilot project could also explore the possibility of doing classifications on a media-specific basis, as opposed to the current multi-media approach. The subcommittee’s analysis of this issue follows. Texas Water Code, §5.754, does not appear to specifically require that a classification be multi-media. Nor does it require or expressly authorize media-specific classifications. The only connection we could make between the statute and a media-specific classification requirement (or authorization) is by reading repeat violator to mean someone who commits the exact same offense more than once. The bill analysis for HB 2912 sheds no light on whether classifications may be media-specific. So, we conclude that there may be some flexibility. Legislative intent/our interpretation of legislative intent should be further explored. Although there is no specific directive to create multi-media classifications, it seems that in establishing "a set of standards for the classification of a person's compliance history," TCEQ is to look at an entity's operations overall. In the original compliance history rulemaking, staff seem to have considered the need for uniformity of process, taking into account the various program areas: "<u>The commission's further objective is to create a uniform standard of evaluating and utilizing compliance histories and classifications, recognizing that the commission has a large regulated universe with vast ranges in the types of programs regulated, the size of owners and operators, the size and/or complexity of sites, and the amount of regulatory oversight (investigations) of the program.</u>" (Adoption Preamble for 30 TAC Sections 60.2 and 60.3, 27 TexReg 7824, August 23, 2002).</p>

<b>Notes</b>	<ol style="list-style-type: none"><li data-bbox="443 153 1430 241">1. The House Committee on Environmental Regulation is evaluating compliance history under an interim charge</li><li data-bbox="443 241 1430 310">2. Still need to make a determination if site complexity should be a factor of determining a classification..</li></ol>
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**Attachment: Alternative (Option No. 2) Approach for Compliance History Classifications**

As an alternative to the present classifications formula, an approach can be developed that would focus more on the most significant activities at a site. For “poor” performance, focus could be placed upon the most serious violations that result in a impact on human health and the environment. High performance could be clearly defined as going above and beyond compliance. This discussion focuses on how poor performers and high performers could be clearly defined.

**Poor Performer**

- What is a poor performer?

The subcommittee determined that there are two characteristics of “poor” performers:

1. A poor performer engages in activities that pose a risk to human health and the environment, and
2. A poor performer “demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations.” TEX. WATER CODE § 5.754(I).

- What action or inaction automatically makes an entity a poor performer?

This approach proposes that entities automatically become poor performers when certain action (or inaction) is taken. In this example, all of the actions (or inactions) but one are based upon the Category A Violations listed in the Enforcement Initiation Criteria (EIC).

- What terms need to be defined in the discussion of poor performer classification?

As part of the review process, the group determined that definition is needed for the term “person.”

Person

Person is not defined in Subchapter Q, nor is it defined in Texas Water Code, Chapters 5 or 7.

- Possible definition for “person:” Person means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity. (definition based on Texas Health and Safety Code, §§ 361.003(23) and 382.003(10) and 30 TAC §3.2(25))

EIC Violations Automatically Creating Poor Performer Classification

<b>EIC Category A Violation</b>	<b>Action</b>	<b>Frequency</b>
A1	Failure to comply with any provision of a compliance agreement, Commission Order or Court Order, with the exception that if a requirement has been completed but was not done on time, Enforcement Division Section Manager discretion may be used to decide whether or not initiation of formal enforcement action is warranted for the late completion (captures EIC A2-A5).	• Once

EIC Category A Violation	Action	Frequency
A6	Unauthorized or noncompliant discharge, release or emission <i>in any media</i> which results in a documented effect on human health or safety or a documented serious impact to the environment.	• More than once during the compliance period
A7	Upon becoming aware of the violation, failure to immediately abate and contain a reportable spill/discharge and provide notification, as defined in 30 TAC Chapter 327, or a PST release which results in a documented effect on human health or safety or a documented serious impact to the environment.	• Once
A9a	Documented falsification of data, documents or reports	• Once
A9b	Denying TCEQ staff right of entry to a TCEQ-regulated entity for investigative purposes, in violation of Texas Water Code, §26.014 and/or Texas Health and Safety Code, §361.032.	• More than once during the compliance period
A10	<i>Responsible party refusing to take immediate action for violation(s) not otherwise listed in Category A in which exposure of contaminants to the air, water or land (a) is affecting or has affected human health and safety or is causing or has caused a serious impact to the environment, or (b) will affect human health and safety or will cause a serious impact to the environment.</i>	• Once
Non-EIC	Criminal (felony) conviction of any environmental rule or regulation.	• Once

Automation Issues Associated with the Above Approach

- The system may be able to discern **A1** Violations by looking at the violation (i.e. any violation that includes as a citation an ordering provision). Or, assuming that the EIC stays similar, the information could be retrieved based on the EIC code included in the violation window. One issue with this approach is, however, that we believe currently the only thing being entered into the system is whether the violation is Category A, B, or C (and not “subcategories”). If this is the case, in order catch past violations, the system would have to be updated, and this is not an easy fix - it would probably require file reviews, and also would require the contractor to go back and add to Approved Investigations. An alternative could be to start “from today.”
- For **A6** Violations, the agency may be able to retrieve using the EIC code in the violation window, assuming the EIC remains similar and the EIC Category code field is fully utilized.
- For **A 7, A9a, A9b, and A10** Violations, we could use the EIC/Category Code.
- Criminal (felony) conviction(s) of any environmental rule or regulation may be able to be pulled via the Resolution Detail.

## High Performer

To be classified as a “High Performer” a site must have **both**:

- an excellent record in terms of compliance; **and**
- demonstrated a commitment to making Texas a cleaner place.

Following the annual mass classification, those entities satisfying the compliance component of the high performer classification noted below would be notified. A list of Beyond Compliance Components should be sent with an explanation of the TCEQ's High Performer classification, the actions necessary to achieve the classification, and the benefits associated with receiving this classification. This is a proactive approach by the TCEQ and should encourage additional entities to notify the agency of qualified activities that have positive impacts to human health and the environment in Texas.

## Compliance Component

To be considered a “High Performer.” the site would need to meet the following conditions:

- has not received an NOE from TCEQ in the last three years;
- has not exceeded the compliance due date for a state or federal NOV in the last three years, or is in compliance with the schedules and terms of any active state or federal order, decree, or compliance agreement (including remediation or clean-up activities);
- has not incurred a judgement in the last three years as the result of referral to the Texas or U.S. Attorney General; and
- has not been convicted of willfully and knowingly committing an environmental crime in the past three years.

## Beyond Compliance Component

For its “beyond compliance” demonstration, the regulated entity could select from a list of voluntary actions to improve environmental performance. The voluntary actions must include:

- measured and reported performance achievement;
- performance goals that go beyond compliance or “outside compliance” (achievement in important categories not captured by regulatory programs); and
- significant performance goals that are set relative to the potential impact of the facility.

Beyond compliance voluntary actions may include:

- Reductions in Energy Use
- Reductions in Water Use
- Reductions in Materials Use
- Reductions in Air Emissions
- Reductions in Waste Generation
- Reductions in Water Discharges
- Reductions in Accidental Releases
- Environmental Management System implementation
- Public Education Programs
- Stakeholder Communication (goals and achievements should be communicated to stakeholders such as: neighbors, business partners, supply chain partners, community organizations, etc.)
- Community Involvement (input from the community is used to set goals on important environmental issues)
- Sustainability Performance (environmental performance in areas not currently regulated, such as product performance, supply chain performance, transportation, purchasing, etc.)

**Example “Beyond Compliance” Actions**

Category	Indicator	Units
<b>Stage: Upstream</b>		
Material procurement	Recycled content	Pounds, tons
	Hazardous/toxic components (total or specific)	Pounds, tons
Suppliers' environmental performance	Any relevant indicators from the Inputs or Nonproduct Outputs stages	As specified for the particular indicator
<b>Stage: Inputs</b>		
Material use	Materials used (total or specific)	Pounds, tons
	Hazardous materials used (total or specific)	Pounds, tons
	Ozone depleting substances used	CFC-11 equivalent tons
	Total packaging materials used	Pounds, tons
Water use	Total water used	Gallons
Energy use	Total (nontransportation) energy use by fuel	kWh/MWh or Btu/MMBtu
	Transportation energy use (total or specific)	kWh/MWh, gallons, cubic feet
Land use	Land conservation	Square feet, acres
<b>Stage: Nonproduct Outputs</b>		
Air emissions	Total GHGs	Tons of carbon equivalent
	VOCs (total or specific)	Pounds, tons
	Nox	Pounds, tons
	Sox	Pounds, tons
	PM10	Pounds, tons
	CO	Pounds, tons
	Air toxics (total or specific)	Pounds, tons
	Odor	European odour unit
	Radiation	Curies, Becquerels
	Dust	Pounds, tons
Discharges to water	COD	Pounds, tons
	BOD	Pounds, tons
	Toxics (total or specific)	Pounds, tons
	Total suspended solids	Pounds, tons
	Nutrients (total or specific)	Pounds, tons of total N or P
	Sediment from runoff	Pounds, tons
	Pathogens (total or specific)	MPN/ml, CFU/ml
Waste	Nonhazardous waste generation	Pounds, tons
	Hazardous waste generation,	Pounds, tons
Noise	Noise	dBA
Vibration	Vibration	Inches per second
<b>Stage: Downstream</b>		
Products	Expected lifetime energy use (total or specific)	kWh/MWh or Btu/MMBtu
	Expected lifetime water use (total or specific)	Gallons
	Expected lifetime waste from product use	Pounds, tons
	Waste to air, water, land	Pounds, tons

<b>Compliance History Classification</b>	
<b>Issue No.</b>	2
<b>Key Issue</b>	<p>Compliance History Classification Formula</p> <p>A) Is the compliance history formula too complicated?</p> <p>B) Is a High performer status too difficult to achieve?</p> <p>C) Is a mathematical formula the appropriate mechanism for classifying compliance history?</p> <p>D) Even if something is a component based on its date, should it automatically be included in the classification formula?</p> <p>E) Should the classification process be based on the total number of violations over a period of time?</p> <p>F) Are the different violations weighted appropriately in the classification process?</p> <p><u>Basis:</u> Staff Comment/Rule Review; Stakeholder Surveys</p>
<b>Other Subcommittees Reviewing Issue</b>	Components
<b>Recommendation</b>	<p>The subcommittee finds the following:</p> <ul style="list-style-type: none"> <li>• The formula is complicated and could more effectively measure environmental performance</li> <li>• The formula could be made more equitable</li> <li>• “High” classification should be based upon going above-and-beyond compliance</li> <li>• A mathematical formula is not the only way to implement the statute, however it is recommended that the current formula with revisions be retained.</li> <li>• Not all the required components of compliance history have to be included in the formula Careful consideration should be given to focusing on components that reflect the greatest impacts on human health and the environment, and to ensure against double-counting</li> <li>• The definition and use of record reviews requires further evaluation</li> </ul>

	<p><b>Option 1:</b></p> <p>Make the following modifications to the present formula/rule:</p> <ul style="list-style-type: none"> <li>• Limit “major” violations to those with a direct impact on human health and the environment, or a demonstrated disregard for the regulatory process. For example, base the definition on the major violations identified in “<b>Key Issue #1, Option 2.</b>” The subcommittee also discussed whether implementation of this approach should also include a rule change to move “operating without a required authorization” to the list of “moderate” violations. Such violations are issues for small businesses and small local governments, and further consideration should be given to these issues.</li> <li>• If the number of investigations is one or zero, and the numerator is a value other than zero, the denominator should automatically be two (2). This would ensure that sites with only one investigation have a denominator of two and would prevent them from being rated poor on the basis of one violation.</li> <li>• Remove EPA violations from the formula. This would address the inability to balance EPA “bad points” with an accurate number of EPA investigations, and could address variations between how TCEQ and EPA enforce. EPA violations would still be a component of compliance history, just not included in the formula.</li> <li>• Assign points for violations in an NOV only up until they are included in an order, at which time point values for the violation would only be in the order. This should address double-counting concerns raised by stakeholders.</li> <li>• Remove Discharge Monitoring Reports (DMRs) and other self-reporting violations and/or reports from the formula until they are codified in an NOV/NOE. This will level the playing field among the different types of facilities. As noted above, other components currently considered record reviews should be evaluated.</li> </ul>
	<p><b>Option 2:</b> Develop an alternative to the formula. See <b>Option #2</b> under “<b>Key Issue #1.</b>”</p>
	<p><u>Basis:</u>  <b>Option 1:</b> Stakeholder and staff comments.  <b>Option 2:</b> See <b>Option #2</b> under “<b>Key Issue #1.</b>”</p> <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> <li>• A Tier 3 rulemaking to Chapter 60 would be required. Assuming initiation in the Fall of 2004, the rule could be adopted by May 2005.</li> <li>• CCEDS programming and user testing would be required.</li> <li>• LBB measures should not be impacted.</li> </ul>

	<p><u>Implications:</u></p> <ul style="list-style-type: none"> <li>• May reduce or increase the current number of high and poor performers</li> <li>• Will address many inequities for small businesses and local governments</li> <li>• Ground-truthing of changes are necessary</li> </ul> <p><u>Pros:</u></p> <ul style="list-style-type: none"> <li>• Makes the formula more consistent for all industries</li> <li>• Modifying the definition of “major” violation would focus the formula on impact-related violations</li> <li>• Reduces inequities (e.g. removal of DMRs, addresses small business/local government issues)</li> <li>• Addresses the issue of a site being classified as “poor” on the basis of one inspection</li> </ul> <p><u>Cons:</u></p> <ul style="list-style-type: none"> <li>• Does not necessarily ‘simplify’ the classification system.</li> </ul>
<b>Other Alternatives</b>	The TCEQ should closely evaluate how all violations count in the classification system and consider revising some values based on environmental impact.
<b>Notes</b>	The House Committee on Environmental Regulation is evaluating compliance history under an interim charge.

### Ground Truthing of Option 1

Facility No.	Current Site Rating	Current Classification	Repeat Violator? (current status)	Rating under Option 2	Classification under Option 2	Comments
47	0	High	No	0	High	only 1 investigation
48	0	High	No	-0.868	High	removed DMRs; only audit points in numerator
49	0	High	No	-1.5	High	only audit points in numerator
50	0	High	No	na	Unclassified	removed DMRs
51	0	High	No	0	High	only 1 investigation
52	0.02	High	No	0.2	Satisfactory	removed DMRs
53	0.04	High	No	0.5	Satisfactory	removed DMRs
54	0.04	High	No	0.1	Satisfactory	removed DMRs
55	0.05	High	No	0.05	High	
56	0.06	High	No	na	Unclassified	removed DMRs
57	0.07	High	No	1.5	Satisfactory	removed DMRs
58	0.09	High	No	na	Unclassified	removed DMRs
59	0.09	High	No	1.5	Satisfactory	removed DMRs
60	0.07	High	No	0	High	only 1 investigation, removed DMRs
61	0.09	High	No	na	Unclassified	removed DMRs
62	0.8	Average	No	1	Satisfactory	removed DMRs
63	3.11	Average	No	75	Poor	removed DMRs
64	0.34	Average	No	na	Unclassified	removed DMRs
65	36	Average	No	45	Satisfactory	removed default inv. point

Facility No.	Current Site Rating	Current Classification	Repeat Violator? (current status)	Rating under Option 2	Classification under Option 2	Comments
66	40	Average	Yes	1	Satisfactory	viol. for no permit downgraded to mod., repeat viol. no longer applies
67	40	Average	No	22.5	Satisfactory	viol. for no permit downgraded to mod.
68	43.15	Average	No	43.61	Satisfactory	removed default inv. point, criminal conviction remains
69	45	Average	No	67.5	Poor	removed default inv. point
70	0.96	Average	No	7.5	Satisfactory	removed DMRs
71	0.18	Average	No	1.5	Satisfactory	removed DMRs
72	30	Average	No	0	High	Federal order removed, 1 inv.
73	30	Average	No	45	Satisfactory	removed default inv. point
74	30	Average	No	0	High	Federal order removed, 1 inv.
75	32.79	Average	No	35.31	Satisfactory	
76	33.25	Average	No	30	Satisfactory	
77	45.83	Poor	No	53.4	Poor	
78	47.15	Poor	Yes	5.92	Satisfactory	viol. for no permit downgraded to mod., repeat viol. no longer applies
79	47.27	Poor	Yes	1.2	Satisfactory	viol. for no permit downgraded to mod., repeat viol. no longer applies
80	48	Poor	No	60	Poor	
81	57.25	Poor	No	76.3	Poor	
82	57.78	Poor	Yes	3	Satisfactory	viol. for no permit downgraded to mod., repeat viol. no longer applies

Facility No.	Current Site Rating	Current Classification	Repeat Violator? (current status)	Rating under Option 2	Classification under Option 2	Comments
83	59.11	Poor	Yes	3	Satisfactory	viol. for no permit downgraded to mod., repeat viol. no longer applies
84	60	Poor	No	na	Unclassified	Federal order removed, no inv.
85	60	Poor	No	30	Satisfactory	default 2 used in denominator
86	60	Poor	No	75	Poor	
87	65	Poor	No	63	Poor	
88	66.1	Poor	Yes	15.67	Satisfactory	viol. for no permit downgraded to mod., repeat viol. no longer applies
89	67.5	Poor	No	67.5	Poor	
90	80	Poor	No	80	Poor	
91	80	Poor	No	60	Poor	
92	80	Poor	No	75	Poor	
93	103.3	Poor	Yes	21.6	Satisfactory	viol. for no permit downgraded to mod., repeat viol. no longer applies
94	104	Poor	Yes	3	Satisfactory	viol. for no permit downgraded to mod., repeat viol. no longer applies
95	110	Poor	No	87.5	Poor	
96	111	Poor	No	101.2	Poor	
97	100	Poor	No	na	Unclassified	Federal order removed, no inv.
98	135	Poor	No	166.66	Poor	viol. for no permit downgraded to mod., removed default inv. point

## Results of Evaluation Under Option 1

	High	Satisfactory	Poor	Unclassified
15 Current "High" sites	6	5	0	4
15 Current "Average" sites	2	10	2	1
38 Current "Poor" sites	1	8	26	3
<b>Total</b>	<b>9</b>	<b>23</b>	<b>28</b>	<b>8</b>

### Of the 68 sites evaluated under Option 2:

11.8% became unclassified due to no history (where history previously existed in the form of violations cited in Federal orders, and DMRs counted as self-reported NOV's and record reviews)

Of the 15 sites currently classified as High:

- 40% remained High.
- 33.3% changed to another classification.
- 26.7% became unclassified due to no history.

Of the 15 sites currently classified as Average:

- 66.6% remained Average.
- 26.7% changed to another classification.
- 6.7% became unclassified due to no history.

Of the 38 sites currently classified as Poor:

- 68.4% remained Poor.
- 23.7% changed to another classification.
- 7.9% became unclassified due to no history.

11 of the sites evaluated are currently "Repeat Violators"

10 of *these* are currently classified as Poor.

7 of the 10 Poores changed to "Satisfactory" when evaluating the violation of operating without proper authorization as Moderate instead of Major; therefore not creating a "repeat violator" scenario.

## Ground Truthing of Option 2

Facility No.	Current CH site rating	Comments
1	0	no issued orders
2	NA	no issued orders
3	NA	1660 order approved by Commission prior to 2/1/02 for cat. B violations. 2 Pending Court Orders for failure to comply with 2 previous orders.
4	0	one proposed order for cat. B violation (no
5	0	no issued orders
6	0.05	no issued orders
7	5.57	1660 order approved by Commission prior to
8	NA	no issued orders
9	0	no issued orders
10	22.5	one order with cat. B violation
11	15.95	one order with cat. B violations only- a court order is pending for failure to comply with
12	1.6	no issued orders, 1 proposed, 2 pending
13	2.45	1 proposed order, cat Bs onlycat A-not listed
14	NA	no issued orders (Central Registry problems)
15	NA	no issued orders (Central Registry problems)
16	0	no issued orders
17	NA	no issued orders (Central Registry problems)
18	0.28	no issued orders (Central Registry problems)
19	0.28	1 proposed order
20	0.14	no issued orders
21	0	no issued orders
22	0	no issued orders
23	0	no issued orders
24	0	no issued orders
25	0	no issued orders
26	0.06	no issued orders
27	0	1660 order, cat. B only
28	1.8	no issued orders
29	0	no issued orders
30	3.01	no issued orders
31	0.25	no issued orders
32	0.56	no issued orders

Facility No.	Current CH site rating	Comments
33	0	no issued orders
34	0	no issued orders
35	NA	no issued orders
36	NA	no issued orders
37	80.82	1 pending order/ 2 cat As--none from table,
38	133.5	no issued orders
39	3.01	average by default, no issued orders
40	3.01	average by default, no issued orders
41	6.15	1 pending order/10 cat Bs & 7 cat Cs, order
42	112.5	one order with cat. B violations only
43	0	proposed 1660 referred to LD; requested to be
44	0	no orders
45	NA	pending order with cat. A,B and C viols. but no
46	0	no orders
Note: of the 46 sites evaluated, none determined to be poor performer under Option 1.		

<b>Compliance History Classification</b>	
<b>Issue No.</b>	3
<b>Key Issue</b>	<p>Small Businesses and Local Government in Compliance History Classification</p> <p>A) Should small businesses and local governments be treated differently?</p> <p>B) Should there be a separate classification system for small businesses and local governments?</p>
	<u>Basis:</u> Staff Comment; Stakeholder Surveys, Steering Committee Input
<b>Other Subcommittees Reviewing Issue</b>	Components
<b>Recommendation</b>	<p>The present system does place burdens on small businesses and small local governments. However, small businesses and local governments should neither be treated differently nor subject to a separate classification system. To do either would further complicate the process for classifying entities.</p> <p>Consequently, the subcommittee finds that either Option presented in “<b>Key Issues 1 and 2</b>” would go far in addressing many concerns for small business and local governments. The recommendations under those Key Issues were developed with an eye toward addressing small business and local government concerns.</p> <p>As noted in the discussion of “<b>Key Issue 2,</b>” consideration should be given to whether “operating without required authorization” should continue to be a major violation. This is a common violation among small businesses and local governments and can result from the difficulties these entities encounter in navigating the myriad regulatory requirements to which they may be subject.</p> <p>In addition, under “<b>Key Issue 5 (Repeat Violator)</b>,” consideration should be given to impacts to small businesses and local governments.</p>
	<u>Basis:</u> See discussions under “ <b>Key Issues 1 and 2</b> ”
	<u>Implementation Impacts:</u> N/A
<b>Other Alternatives</b>	None

<b>Compliance History Classification</b>	
<b>Issue No.</b>	4
<b>Key Issue</b>	<p>Compliance History Appeals</p> <p>A) Should the TCEQ bear the burden of proof?</p> <p>B) Should the timing of appeal submittals be reconsidered? (have to know when it is posted, etc.)</p> <p>C) Should appeals be limited, for instance by rating or ability to show change of classification?</p> <p>D) Does the appeal process currently limit interested stakeholder involvement in the process?</p> <p><u>Basis:</u> These issues were raised in enforcement review process customer surveys and in letters submitted by regulated entities, the general public and TCEQ staff.</p>
<b>Other Subcommittees Reviewing Issue</b>	None
<b>Recommendation</b>	<p>To address Issues A-D, the subcommittee finds the following:</p> <ul style="list-style-type: none"> <li>• The current appeals rule is appropriate for the processing of appeals and should only be changed to eliminate the 30 point prerequisite to appeal, and should only be further changed if the point system is altered by changes to the mathematical formula.</li> <li>• The TCEQ should not bear the burden of proof in a classification appeal.</li> <li>• The deadlines set out in the appeals rule are appropriate.</li> <li>• Appeals should not be limited by rating, but the appeals process should be available only to those who can demonstrate that if the specific relief sought is granted <u>a change in classification will occur</u>.</li> <li>• The appeals process limits interested stakeholder involvement only to the extent that a classification may be appealed only if a site is classified as average and has a point total of 30 points or more. The point total requirement should be eliminated.</li> <li>• As long as the appeals rule language remains the same, with only the 30 point requirement eliminated, the appeals rule should be moved to 30 TAC § 60.2 and deleted from 30 TAC §60.3(e) and (f). This way the appeals process is set out under classifications only, and this is appropriate because only classification determinations – not use determinations – are appealable.</li> </ul> <p><b>Option 1:</b> Wholesale reinvention of the current appeals process is not necessary for the reasons set forth below. However, the requirement that an entity must be average and have a rating of 30 points or more in order to appeal its classification should be removed. This alteration would require a minor rule change.</p> <p><u>Basis:</u></p> <ul style="list-style-type: none"> <li>• Generally, the person challenging a decision is responsible for showing why a decision should be changed. <i>See</i> 30 TAC §80.17 (burden of proof is on the moving party and is by a preponderance of the evidence).</li> </ul>

**Recommendation**

- The 45-day time period in which to appeal a compliance history classification is reasonable and should not change. Rules governing challenges to most (if not all) other agency decisions allow less than 45 days to challenge the decision: Motions to Overturn an Executive Director decision must be filed within 23 days from the date the agency mails notice of the decision (30 TAC §50.139(c)); Motions for Rehearing must be filed within 23 days of receipt of written notice of the decision (30 TAC §50.119(b)) and Requests for Reconsideration or Request for Contested Case Hearing must be filed within 30 days of the Chief Clerk mailing notice of the Executive Director’s Decision and Response to Comments (30 TAC §55.201). Also, judicial review of a commission decision must be sought within 30 days of final commission action (Texas Water Code, §5.351).
- Persons interested in appealing classifications must monitor two dates: (1) the date on which the classification decision is made, and (2) the deadline by which an appeal must be filed. If the agency continues the annual mass classification procedures, all entities will be classified annually, a potential appellant need only be mindful of one date because all regulated entities are classified on the same date. 30 TAC §60.2(a). Given the usual appeal deadlines of 23 and 30 days, 45 days is an adequate timeframe in which to file an appeal.
- The current appeals process limits interested stakeholder involvement to the extent a classification may only be appealed if a person or site is classified as “average” and has a point total of 30 points or more. The rule also prohibits appeals from “average” performers seeking to be reclassified as “high” performers. 30 TAC §60.3(e). If resources can be found to support a broader appeals scheme, appeal eligibility should not be limited by rating (which means that challenges to “high” performer classifications should also be allowed).
- The appeals rule currently requires that an appellant be able to demonstrate that if the specific relief sought is granted a change in classification will occur. 30 TAC § 60.3(e)(2). This requirement is reasonable given that the purpose of appealing a classification is to change it.

Implementation Impacts:

- Rulemaking to move appeals as previously noted.
- Appeals guidance would need to be updated.

Implications:

- Rulemaking to open up the appeals process for other classifications. This could increase workload on staff.

Pros:

- No need for regulated entities and public to learn requirements of a new appeals process
- If the past fiscal year’s number of appeals (97) is any indication of the number of appeals to be expected in the future, the workload associated with the number of appeals received is heavy but should remain manageable without increasing resources

Cons:

- Possibility that some interested persons are left out of the process because they miss the window of time in which appeals must be filed

	<p><b>Option 2:</b> Changes may be needed to reflect which classifications may be appealed if the agency decides to alter the mathematical formula/point system.</p> <p><u>Basis:</u></p> <ul style="list-style-type: none"> <li>• Most of the Basis explanation provided for Option 1 applies for Option 2, except for the information related to point totals. Under 30 TAC §60.3 a person or site classification may be appealed only if the person or site is classified as either a poor performer or average performer with 30 points or more. So, if point calculation is changed the point total required for appeals may also need to change.</li> </ul> <p><u>Implementation Impacts:</u></p> <ul style="list-style-type: none"> <li>• Rulemaking to move appeals as previously noted.</li> <li>• Appeals guidance would need to be updated.</li> </ul> <p><u>Implications:</u></p> <ul style="list-style-type: none"> <li>• The universe of classifications that may be appealed may increase or decrease depending upon how the mathematical formula and resulting point totals are changed.</li> </ul> <p><u>Pros:</u></p> <ul style="list-style-type: none"> <li>• A broader range of appeals could benefit regulated entities and the public because either group would have more opportunities to appeal classifications and have the classifications made better or worse.</li> <li>• Depending on how the formula is changed, appeals of high classifications may be allowed.</li> </ul> <p><u>Cons:</u></p> <ul style="list-style-type: none"> <li>• A narrower range of appeals could harm regulated entities and the public because either group would have fewer opportunities to appeal classifications and have the classifications made better or worse.</li> <li>• A broader range of appeals could require the agency to devote more personnel and financial resources to processing appeals requests.</li> <li>• Regulated entities and public would need to become familiar with a new appeals process.</li> <li>• Would require a rulemaking to alter language related to point totals and classification required to satisfy appeals requirements.</li> </ul>
<p><b>Other Alternatives</b></p>	<p>None identified.</p>

<p><b>Notes</b></p>	<ul style="list-style-type: none"> <li>• In FY 2003 we received 97 appeals (between 10/7/03 and 11/24/03).</li> <li>• During the rulemaking the agency during decided against allowing appeals of high classifications due to the anticipated strain on agency resources.</li> <li>• If we alter the formula/point system, we will need to reevaluate how we decide which classifications may be appealed. We will need to consider whether/how the point values will change.</li> <li>• Note that a discrepancy exists between Texas Water Code § 5.754 which requires classification of a person, and 30 TAC § 60.2 which requires classification of each <i>site</i> and person.</li> <li>• The Sunset report did not specifically address the idea of classifying regulated entities, and it is completely silent on the idea of an appeals process. The report did, however, seem to encourage the comparison of regulated entities' performance: "While the agency maintains compliance history information for individual entities, it does not have a system for judging compliance collectively, and thus, cannot compare their performance." Sunset Report, Issue 2, p. 25.</li> <li>• The statute is completely silent on the issue of an appeals process. The statute does, unlike the Sunset Report, require that the agency set up a classification mechanism to compare levels of performance: high, average and low performers. TEXAS WATER CODE § 5.754(b).</li> <li>• The appeals rule changed substantially from proposal to adoption. At proposal, the agency set out a fairly brief and general appeals rule allowing appeals of both classification and use. Ultimately, formal and informal appeals processes were adopted to cover both major changes to classifications 30 TAC § 60.3(e) and corrections to classifications 30 TAC § 60.3(f).</li> </ul>
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<b>Compliance History Classification</b>	
Issue No.	5
<b>Key Issue</b>	<p><b>Repeat Violators</b></p> <p>A) How should repeat violators be classified and treated?</p> <p>B) Is there currently inconsistency in what constitutes a repeat violation (same or similar)?</p> <p>C) Should repeat violations be limited to repeat of the exact same violation (same rule cite, same media, etc.)? or perhaps limited to another major violation in the same media?</p> <p>D) Would it be more appropriate to require that at least one (or more?) of the major violations be included in an enforcement action as opposed to an NOV?</p> <p>E) Should repeat violators be denied permits outright?</p> <p>F) Does the current "definition" of repeat violator contain a "size penalty?"</p> <hr/> <p><u>Basis:</u> External Comments:</p>
<b>Other Subcommittees Reviewing Issue</b>	Use, Penalty Policy

**Recommendation**

In relation to the major issues raised by external and internal commenters, the subcommittee finds the following:

- The violations termed as major within 30 TAC Chapter 60.2(c)(1) should be changed to reflect those violations that harm human health, the environment, or that demonstrate disregard for environmental regulations.
- A system is in place that allows entities and TCEQ to rebut allegations and potentially remove them from NOVs. With this, major violations contained within NOVs should be considered in the definition of Repeat Violator.
- The current methodology for considering the number and complexity of facilities owned or operated by the person, as required by Statute, should be continued.
- The requirement that major violations must be documented on separate occasions should be continued.
- The major violations should not be a repeat of the exact same violation or within the same media given the potential serious nature of the proposed major violations.
- Consideration should be given to impacts to small businesses that have not been aware of the need to obtain authorizations from the TCEQ. Entities that have one or more authorizations, or have been notified by the TCEQ of the need for one or more authorizations, should not be given consideration with regards to Repeat Violator status.

The present definition of Repeat Violator can be improved. Improving the means by which we define Repeat Violators can be accomplished within the framework of the present statute. Improvement can be achieved through targeted, meaningful changes to the present definition, or through an alternative approach. The subcommittee has identified the following two specific options. The scope of Option 1 is within the present statute.

**Option 1:** Instead of defining Repeat Violator as a component of a formula, establish a frequency with consideration to number, size and complexity, in which an entity is a Repeat Violator. The Classification Subgroup recommends the term “Repeat Violator” be utilized in conjunction with the table labeled “EIC Violations Automatically Creating Poor Performer Classification” found within **“Key Issue #1.”** A separate table could be constructed that takes into consideration size and complexity components similar to the current Chapter 60 rule language (60.2(d)(2, 3, and 4). Entities that are more complex could be allowed to violate the same violation at a higher frequency before being designated at a Repeat Violator.

These issues could be fully defined and evaluated under the pilot project approach discussed under **“Key Issue #1.”**

Implementation Impacts:

- Rulemaking to Chapter 60.

	<p>Implications:</p> <ul style="list-style-type: none"> <li>• Additional ground-truthing is necessary to determine the number and quality of entities meeting the definition of Repeat Violator. It will be necessary to perform a detailed analysis of the use and penalty policy to determine an appropriate response to Repeat Violators. Many answers remain unanswered at this point and further detailed analysis is recommended by this subcommittee.</li> </ul> <p>Pros:</p> <ul style="list-style-type: none"> <li>• Ties Repeat Violator to an established enforcement document</li> </ul> <p>Cons:</p> <ul style="list-style-type: none"> <li>• Potential difficulty deriving meaningful complexity and number factors</li> <li>• Paradigm shift that may be not be accepted by the public and regulated community</li> <li>• Entities that commit systemic violations are not necessarily defined as Repeat Violators</li> </ul>
	<p><b>Option 2:</b> Make targeted, meaningful changes to the present formula. Modify the definition of major violation as found in 30 TAC Chapter 60.2(c)(1) to ground it to impact related violations. In order to address the violations with a high potential to impact human health and the environment and as well as those demonstrating a disregard for environmental regulations, one approach could be to utilize the EIC (see discussion in “<b>Key Issue #1</b>”). In addition, 30 TAC §60.2(c)(1)(B) should be modified to accommodate entities that were unaware of the need to obtain authorization from the TCEQ. Once an entity has been notified of the requirement for an authorization, and fails to do so, that violation constitutes a major violation for compliance history purposes. For those entities that currently have one or more authorizations from the TCEQ and are found to have not obtained all necessary authorizations, such a violation constitutes a major violation for compliance history purposes.</p> <p>Implications:</p> <ul style="list-style-type: none"> <li>• Additional ground-truthing is necessary to determine the number and quality of entities meeting the definition of Repeat Violator.</li> </ul> <p>Pros:</p> <ul style="list-style-type: none"> <li>• Is a focused modification to the existing system.</li> <li>• Does not require extensive modification to the existing rule</li> </ul> <p>Cons:</p> <ul style="list-style-type: none"> <li>• None identified</li> </ul>

<b>Other Alternatives</b>	Amend the current definition found in 30 TAC 60.2(d)(1) to include systemic violations of the terms and conditions of TCEQ authorization(s). Violations should not be limited to the same violation; rather a pattern of behavior should dictate the use of the term repeat violator. The TCEQ should also have the ability to classify a person as a poor performer if the agency can demonstrate performance issues impacting human health and/or the environment as well as systemic inability, either through lack of resources or disregard for rules and regulations, to comply with the terms and provisions of a TCEQ authorization. The EIC's definitions of certain A, B and C violation and a specific frequency based on an entities size and complexity should be incorporated in order to capture some measure of systemic violations.
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<b>Compliance History Classification</b>	
Issue No.	6
<b>Key Issue</b>	Due Process Rights  How are due process rights affected by the classification process?  <u>Basis:</u> Stakeholder Surveys
<b>Other Subcommittees Reviewing Issue</b>	N/A
<b>Recommendation</b>	The subcommittee recommends that no changes be made.
	<u>Basis:</u> This issue arose during the rulemaking to implement the compliance history requirements and was addressed by an Attorney General Opinion. Further, a review of the original Sunset Advisory Commission report on this issue shows that an evaluation of past compliance performance was intended.
	<u>Implementation Impacts:</u>
<b>Other Alternatives</b>	Modify the compliance history rule so that consideration with regard to classification would only be given to those components that "occurred" on or after February 1, 2002; the remaining (older) components would still be listed in the compliance history report, but would not be factored into the classification. (This assumes that we would still include components based on the dates we currently utilize, such as the effective date of commission orders, and the approval date of investigations, rather than the "occurrence" date of any violations referenced in them.)

<b>Compliance History Classification</b>	
<b>Issue No.</b>	7
<b>Key Issue</b>	Data Accuracy and Retention A) Is the TCEQ’s data management adequate enough to ensure compliance information is complete, up to date, and accurate? B) What is the timing of data entry? Are all components available when the classification is determined? C) What processes are needed to ensure accuracy of classification before being posted and / or used?
	D) What supporting documentation should be included with each compliance history report? E) Should it be possible for a person to post its response to its classification(s) in some public forum? <u>Basis:</u> Staff Input and Review of Current Policy / Rule, Public Comments
<b>Other Subcommittees Reviewing Issue</b>	Communications (Item D, E)
<b>Recommendation</b>	The subcommittee believes that we should continue with current data management procedures and refine the procedures when application issues or data error issues are identified and reported to the agency data maintenance team. <ul style="list-style-type: none"> <li>• Data accuracy and retention are addressed within current agency procedures.</li> <li>• <b>Communications</b> and <b>training</b> are key to effective database management, especially when data management / application procedures are changed or modified. Developing effective communications and training of our internal customers needs to be a top priority.</li> <li>• An application procedure needs to be established to prevent components from applying to all customer numbers (CNs) affiliated with the regulated entity (RN) when there is more than one customer associated with the RN. Enforcement has developed a work around using "other adjustments" window in CCEDS.</li> </ul>

	<p><b><u>Basis:</u></b></p> <p>A. Large databases are always in a constant state of revision, maintenance and data clean-up. Within available resources, the agency has done and continues to do a great deal to ensure the data is accurate and up to date. The agency has a process to prioritize data management / maintenance issues. As application issues or data errors are identified, they are prioritized and corrected within available resources.</p> <p><b><u>Implementation Impact:</u></b></p> <ul style="list-style-type: none"> <li>• \$150(K) is included in the 06/07 LAR for CCEDS quality assurance windows.</li> <li>• New windows identified may cost \$35(K) or more depending on the number of business rules impacted, minor maintenance costs \$3.5(K), while more complex maintenance projects may approximate \$18(K) each.</li> <li>• The current database maintenance contract runs through FY05 and includes two options years through FY07.</li> <li>• Additional training / travel dollars will be required if there are major systems modifications.</li> <li>• Changes to the databases will be prioritized and implemented as resources are made available, but there are limited maintenance resources.</li> <li>• Currently there is no known LBB or EPA impact.</li> </ul> <p><b><u>Implications:</u></b></p> <ul style="list-style-type: none"> <li>• Implementation expenditures for compliance history approximates \$1(M).</li> <li>• An agency data maintenance team prioritizes application and data issues within available resources.</li> <li>• There are procedures for correcting data errors, and for appealing the classification. There were 97 appeals received in FY04, and numerous data errors that were identified were corrected.</li> <li>• Periodic data sampling by third party will help to ensure the data complies with core data standards and standards established for each database.</li> </ul>
	<p><b><u>Pros:</u></b></p> <ul style="list-style-type: none"> <li>• There has been a high level of expenditures to implement current procedures.</li> <li>• There is currently a maintenance contract with two option years.</li> <li>• Procedures are in place to identify and prioritize program applications.</li> <li>• Procedures are in place for error correction and classification appeal.</li> <li>• Management is studying possible ways to implement an audit recommendation on sampling data in databases for data quality.</li> </ul> <p><b><u>Cons:</u></b></p> <ul style="list-style-type: none"> <li>• New classification procedures may require modifications to database applications which cost dollar resources and time.</li> <li>• Error correction and appeal procedures need to be better communicated to internal and external customers.</li> <li>• New applications and / or revision to an application will require better communications and training of internal customers.</li> </ul>

**B.** Timing and data entry issues have been identified by management and are being worked as resources permit.

**Implementation Impacts:**

- New data requirements may require additional applications programming or window development and additional data input to the databases.
- If the EPA reporting data is not included in the formula, some workload reduction may be achieved.
- There is no known LBB impact.

**Implications:**

- The agency has five years worth of data on enforcement issues, but not for inspections.
- Reducing the compliance period to three years reduces the data gap.
- There are scheduling gaps for EPA data and water quality self reporting data
- Compliance history is suppose to include records reviews which need to be defined.

**Pros:**

- Management is aware of the data gap between enforcement and inspection.
- Implementation of Classification Issue 1, Option 1 or 2 or implementation of Classification Issue 2 will eliminate most of the timing and data gaps issues.

**Cons:**

- To continue with the current classification will require additional dollar resources and time to eliminate the data gaps.

**C.** Information contained in the database must meet data quality standards and is presumed correct. Periodic sampling of data in the databases improves data quality. The customer is the best source to identify errors.

**Implementation Impact:**

- Third party data quality sampling will require dollar resources if contracted, and contract project management will be time consuming.
- Providing the data to “poor performers will impact the timing of the posting.
- See STEERS alternative for projected resource impact.
- There is no known LBB or EPA impact.

**Implications:**

- Providing the information before it is posted to the public website is a resource intensive process.
- Errors identified by the “poor performers” will be corrected before posting.
- It is less resource intensive to only notify potential “poor performers”.
- Letter notification was given to the “poor performers” during the mass classification last year.
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**Pros:**

- Best practices suggests making data available.
- The customer can best determine if the data is correct.
- The agency gained experience last year dealing with the mass classification and responding to customer questions on classification.

The agency has a procedure for correcting data errors identified.

	<p><b><u>Cons:</u></b></p> <ul style="list-style-type: none"> <li>• It is a resource intensive process to inform the customers of their classification before the classification is placed on the public website.</li> </ul> <p>See Alternative, using the State Environmental Reporting System (STEERS) to disseminate classification information to customers before posting to the public website.</p> <p><b>D.</b> The agency has procedures for providing compliance history and only certified records are used in the process.</p> <p><b><u>Implementation Impact:</u></b></p> <ul style="list-style-type: none"> <li>• Web space is a limiting factor that will require additional study.</li> <li>• There is no know LBB or EPA impact.</li> </ul> <p><b><u>Implications:</u></b></p> <ul style="list-style-type: none"> <li>• Only certified records are used in the compliance history report.</li> <li>• Website space limitations may prevent all the data from being displayed.</li> </ul> <p><b><u>Pros:</u></b></p> <ul style="list-style-type: none"> <li>• When records are requested, the ENF and FOD coordinate records requirements.</li> </ul> <p><b><u>Cons:</u></b></p> <ul style="list-style-type: none"> <li>• It is not cost effective to provide copies of all certified records each time a compliance history is requested.</li> <li>• Limited web space prevents all compliance history documentation from being displayed on the website.</li> </ul> <p><b>E.</b> Use of public forum was discussed during the rules-making process. The reason some type of public forum is not currently used is due to limited agency resources.</p>
	<p><b><u>Implementation Impact:</u></b></p> <ul style="list-style-type: none"> <li>• See STEERS alternative for projected resource impact.</li> <li>• There is no know LBB or EPA impact.</li> </ul> <p><b><u>Implications:</u></b></p> <ul style="list-style-type: none"> <li>• Respondent claims would have to be reviewed.</li> <li>• Claims would have to be placed on the website, or attached to respondent records.</li> <li>• Reviewing and posting require additional time and resources.</li> <li>• Revision of the classification process may eliminate the classification fairness issue.</li> </ul> <p><b><u>Pros:</u></b></p> <ul style="list-style-type: none"> <li>• Respondents could make their claims known.</li> </ul>

	<p><b><u>Cons:</u></b></p> <ul style="list-style-type: none"> <li>• Additional dollar and time resources would be required.</li> <li>• Classification fairness should not be an issue if Classification Issue 1, Option 1 or Option 2 is adapted.</li> </ul> <p>See Alternative, using the State Environmental Reporting System (STEERS) to allow customers to comment on their classification.</p>
<p><b>Other Alternatives</b></p>	<p>Use the State of Texas Environmental Reporting System (STEERS) to disseminate classification / compliance history information before it is placed on the public website.</p> <p><b><u>Implementation Impact:</u></b></p> <ul style="list-style-type: none"> <li>• Based on the complexity of the program applications, the STEERS alternative will take significant time and dollar resources. There are already a number of high priorities projects being worked by the STEERS Team.</li> <li>• The estimated program applications costs could range from \$60-\$150(K).</li> <li>• Estimated completion date if Classification Issue #1, Options 1 is adapted, end of FY07.</li> <li>• Estimated completion date if Classification Issue #1, Option 2 is adapted, end of FY06.</li> <li>• There is no known LBB or EPA impact if this alternative is selected.</li> </ul> <p><b><u>Implications:</u></b></p> <ul style="list-style-type: none"> <li>• New program applications will require time / dollar resources.</li> </ul> <p><b><u>Pros:</u></b></p> <ul style="list-style-type: none"> <li>• May be the most expeditious method of providing the information before placing it on the public website.</li> <li>• May be the least resource intensive after initial program applications are developed.</li> </ul> <p><b><u>Cons:</u></b></p> <ul style="list-style-type: none"> <li>• Will require additional time and dollar resources to implement.</li> <li>• Mail out will still need to be conducted at least initially.</li> <li>• May not be the most effective way to reach small business customers.</li> </ul> <p>Use the STEERS to provide customers the opportunity to respond to their classification / compliance history.</p>

	<p><b><u>Implications:</u></b></p> <ul style="list-style-type: none"> <li>• New program applications will require time / dollar resources.</li> </ul> <p><b><u>Pros:</u></b></p> <ul style="list-style-type: none"> <li>• Provides a medium for customer response.</li> </ul> <p><b><u>Cons:</u></b></p> <ul style="list-style-type: none"> <li>• Will require additional time and dollar resources to implement.</li> <li>• Responses will still have to be reviewed and / or attached to files or records.</li> <li>• May not be the most effective way to reach small business.</li> </ul> <p>Based on the complexity of the program applications, the STEERS alternative will take significant time and dollar resources. There are already a number of high priorities projects being worked by the STEERS Team.</p>
<b>Notes</b>	<p>To ensure efficient / effective use of information resources, the records retention schedule for some electronic data records needs to be addressed in the future.</p> <p>Based on the classification process or formula selected to determine classification, additional program applications and/or data windows will be required.</p> <p>Program applications or modification to data management procedures may impact the 06/07 LAR request for quality assurance windows for CCEDS.</p>