

Executive Summary

Background

In December, 2003, the TCEQ announced a comprehensive review of its enforcement functions to ensure that the agency is enforcing environmental laws fairly, effectively, and swiftly.

In the course of the review, the agency solicited public comment through a mail and web survey, along with hearings in Houston, Harlingen, Dallas-Ft. Worth and Midland. A steering committee established by the executive director, along with chairs of three major committees and a number of subcommittees, reviewed the comments and identified key issues raised in the comments. These issues were then published on the web site for additional comment.

The steering committee identified seven criteria for the evaluation of issues:

- Improvement of the enforcement process
- Clarity, transparency, and simplicity
- Consistency across regions and programs;
- Impact on small business;
- Maximizing compliance through deterrence and incentives;
- Maximizing benefit to the environment in the agency's enforcement policies; and
- Timeliness, efficiency, and effectiveness.

Three broad categories of issues were identified:

- compliance history
- the enforcement process
- penalties and corrective action

These issues were further subdivided into a number of key issues, which were assigned to subcommittees for research, analysis and recommendation. The subcommittee recommendations were collected and reviewed by the chairs of the three major issues, who in some cases recommended changes. The report of the chairs was then evaluated by the full steering committee, and any changes that were deemed necessary were made. The current document represents the recommendation of the steering committee to the commissioners.

Significant Recommendations

All of the recommendations are included in Attachment 1 of this report. The attachment summarizes the analyses and recommendations proposed by the subcommittees to address each key issue identified. In each instance, a primary recommendation is identified, and the basis of the recommendation is discussed. In some cases, alternative recommendations and analyses are also included. Depending upon the recommendation, implementation may require anything from an operational change up to a statutory change followed by a rule process and policy and operational changes.

The most significant changes proposed are also summarized in Table 1. Collectively, these significant recommendations would result in important improvements to the enforcement program.

Focus on Environmental Harm

Several recommendations would sharpen the agency's focus on preventing and reducing risk to human health and the environment. Implementation of these recommendations would assign a higher priority and additional agency inspection and enforcement resources to those violations causing harm or that have the potential to cause harm. For instance, inspections would be scheduled based primarily on a facility's potential risk to the environment. Because unauthorized facilities are less likely to install the controls needed to protect the environment, field resources would also be reserved every year to address sectors that have high levels of unauthorized operations. To ensure proper enforcement against environmental problems detected through citizen complaints, the agency would implement a new complaints manual and a nuisance odor protocol. Base penalties for violations that caused actual environmental harm would be increased. Finally, an entity's compliance history score would be based more on the frequency of violations causing environmental harm. Penalties would also be enhanced when a violator does not respond to enforcement notices.

Strengthen the TCEQ Enforcement Program

Several recommendations would make the enforcement program stronger by making the process faster and more predictable. By eliminating individual assessments for minor violations, the use of standard penalties would shorten timelines and allow a shift of resources to serious violations. The use of standard and minimum penalties would also make outcomes more predictable, which enhances deterrence. Eliminating deferrals and enhancing penalty amounts for cases that do not settle quickly could encourage speedier resolution of cases and address violations more quickly.

Other recommendations would more firmly tie violations to appropriate consequences. For example, ensuring that penalties reduce the economic benefit of non-compliance would take away an important incentive for non-compliance. In order to ensure that penalties are paid promptly, interest charges would be assessed on overdue penalties, and the agency would adopt new procedures to collect delinquent fees and penalties. These procedures would include the use of a collection agency, additional referrals to the Attorney General for collection, and the return of permit applications if the applicant has past due fees and penalties. A poor compliance record should also limit an entity's opportunity to obtain new authorizations. For example, if an applicant has a poor compliance record, the agency would either return the application up front, or add conditions designed to ensure compliance.

Streamline the Enforcement Process

Much of the public comment focused on how long the enforcement process takes. The subcommittees looked at ways to shorten the existing process and considered options for a

fast-track process for certain enforcement cases. Changing and enforcing the current “expedited” timeline could reduce the average length of the enforcement process by as much as 125 days.

The process could also be streamlined by simplifying the penalty policy and establishing standard penalties would expedite the calculation of penalties and the issuance of orders. Setting firm deadlines for submitting SEP proposals and documentation of financial inability to pay that are much earlier in the process would ensure earlier review and reduce delay. A greater variety of pre-approved SEP projects and the use of tools such as thresholds and EPA software for financial inability to pay reviews should further speed the process. In addition, a field citation program in which the regional offices would assess fines directly could allow immediate resolution of some violations. These improvements should also increase deterrence by shortening the time period between when the violation occurs and when the agency takes enforcement action.

Simplify and Clarify the Process

Many of the public comments indicated that the current enforcement process is too complicated and hard to understand. Based on these comments and guidance from the Steering Committee, we recommend that two key areas would be simplified: the calculation of compliance history ratings and the assessment of penalties. First, compliance history would be based on having violations that have harmed or are likely to harm the environment rather than on a complicated mathematical formula.

The committee recommends several changes to the penalty policy to make it simpler and more accessible. First, we recommend that the commission adopt the penalty policy in rules so that it can be easily found by all citizens. The rule process will also allow all interested parties to provide input on the priorities contained in the document. In order to make the calculation of penalties more understandable, the TCEQ would eliminate the penalty matrix and replace it with common categories of violations. Potential harm and paperwork violations would be addressed primarily with standard penalties. To eliminate double-counting and make the process simpler, the TCEQ would no longer consider compliance history components in calculating a penalty. Instead, staff would simply use an entity’s compliance history rating to determine whether a penalty should be increased or decreased.

Recommendations Relating to Small Entities

An estimated two out of three enforcement cases now brought by the TCEQ address either a small business or a small local government. One of the committee’s criteria for evaluating issues was how small local governments and businesses are affected. This evaluation led to a recommendation to change the penalty policy to allow for penalty reductions of 15% to small entities. So that monies can be applied toward correcting problems, the committee also recommends that there be an opportunity for small local governments to defer penalties. If the

environment would not be affected, small entities could also receive additional time to come into compliance. Finally, the committee recommends that the commission adopt a consistent definition of “small” for purposes of enforcement.

The committee recommends no changes in the criteria for referral for formal enforcement to address small entities, or to the requirements for corrective action. SEPs with a 100% offset of a penalty would continue to be available to small cities and local governments.

Resource and Training Needs

The review identified several changes that would improve the effectiveness of agency enforcement staff. There may be a need for additional employees in the Litigation Division, and in the administration of both the SEP and financial inability to pay programs, but enforcement and investigative resources were found to be adequate at this time. However, the committee recommends reviewing the allocation of enforcement and investigative resources after the recommendations have been implemented to determine whether some shift in staffing is needed to address enforcement priorities. In addition, development of media-specific expertise in enforcement and a formal mentor program in Field Operations and Enforcement could make the programs more effective. Providing additional technical training to investigators, enforcement staff, and attorneys would also improve the effectiveness of enforcement staff. Finally, training more agency staff in CCEDs applications and providing more specialized access to enforcement information would improve the agency’s use of compliance history information and enforcement data.

Access to Enforcement Information and Public Outreach

The committee also recommends several changes to provide better public access to agency enforcement information and a clearer understanding of enforcement goals and procedures. The public web site access for reporting environmental complaints should be more informative and accessible, especially from the home page. The web site should also include enforcement process information, including case status information and access to Commission-issued orders, along with a clear, step-by-step description of the process. These pages should also include links to other enforcement-related topics such as compliance history, SEPs, and investigation and complaint information. The enhanced web site would provide a more complete look at the enforcement process and would allow the public access to site-specific enforcement information. Additional information would be added to the public web site on compliance history and complaint information such as the nuisance odor protocol and enhanced citizen-collected evidence information. Enforcement outreach materials would be reviewed and updated for a larger audience including citizens, and there would be more focus on agency outreach efforts at the regional level. Finally, a targeted public campaign would be implemented to encourage public awareness and reporting of violations that harm the environment. These recommendations would improve the public’s perception of the enforcement process by making it more open and easier to understand.

**Table 1:
Significant Recommendations from the Enforcement Review**

1. Risk based approach to investigation priorities incorporating agency wide input (pg 157)	2. Strategy to identify and inspect unauthorized facilities (pg 161)
3. Agency wide effort to maintain an up to date EIC document (pg 164)	4. Implement the draft guidance document for investigations of complaints; implement the draft nuisance protocol (pgs 244, 262)
5. Modify the agency's web site to make complaint reporting easier (pgs 237, 297)	6. Reduce the timeframe to move cases through the enforcement process (reducing it by as much as 125 days for expedited process) (pg 209)
7. Establish firm deadlines for submittal of financial inability and SEP documentation (pgs 225, 228)	8. Develop a limited field citation program (pg 220)
9. Enhance enforcement staff qualifications and specialization (pgs 229, 231)	10. Simplify the overall penalty calculation methods by using only the compliance history classification, and eliminate use of specific compliance history components (pg 88)
11. Eliminate the \$15,000 threshold for economic benefit enhancement and recover economic benefit of noncompliance up to statutory caps, rather than adjusting the base penalty (pg 89)	12. Establish downward penalty adjustments available to some defined small entities, reducing the penalty by 15% and allowing Commission discretion to consider further adjustments (pg 92)
13. Adopt the penalty policy by agency rule (pg 98)	14. Simplify penalty policy by eliminating "potential release" from the matrix and increasing the base penalty percentages for actual releases (pg 100)
15. Implement the use of standard penalty amounts for specific violations (especially common violations and violations with only potential harm) (pg 100)	16. Eliminate use of penalty deferrals; increase penalties if settlement is not reached during expedited process (pgs 104, 209)

**Table 1:
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17. Develop and approve lists of designated SEP projects (pg 143)	18. Encourage preferred (direct benefit, same media, community-based) SEP projects with higher offsets and use lower offsets for other projects (pgs 145, 151)
19. Expand the opportunity for a 100% penalty offset for direct benefit SEP projects to include small businesses (pg 155)	20. Develop additional monitoring, root cause assessment, and financial assurance as ordering provisions for repeat violators (pg 136)
21. Self reported violations should be counted as a violation and as an inspection in the compliance history formula once captured in an NOV/NOE (pg 11)	22. Site complexity should not be a component in determining facility compliance history (pg 35)
23. Revise the compliance history formula, especially revisions to the formula to better reflect actual performance (pg 37)	24. Use the final compliance history classification system for all entities, including small business and local government (pg 56)
25. Provide a compliance history appeals process to all entities regardless of classification (pg 57)	26. Continue existing practice for use of compliance history in permitting and enforcement decision making, including shutdowns and permit revocation (pgs 70, 71, 78)
27. Existing system of providing incentives based on compliance history should be reviewed and expanded (pg 82)	28. Fees should be increased or lowered based on compliance history (pg 85)
29. Hold all permit applications if the applicant owes the agency more than \$200 in delinquent fees or penalties. The holding period will not be included in backlog calculations. Permits will be returned if fees or penalties are not paid within a specified period of time (pg 173)	30. More aggressively collect delinquent fees and penalties through the use of the Attorney General and a collection agency (pg 188)

**Table 1:
Significant Recommendations from the Enforcement Review**

<p>31. Establish an initial screen of 1% of annual revenue for small businesses to determine financial inability to pay a penalty; conduct a more thorough analysis only if 1% of annual revenue does not pay the entire penalty (pg 192)</p>	<p>32. For small local governments, use MUNIPAY formula developed by EPA to determine financial inability to pay penalties (pg 198)</p>
<p>33. Seek legislative approval to assess interest charges on penalty payment plans and delinquent penalties (pg 206)</p>	<p>34. Enhance and expand the TCEQ public Web site and T-Net to provide access to enforcement and compliance history information for internal and external use (pg 234)</p>
<p>35. Request proposals for a statewide public awareness campaign to better inform the public about the agency's roles and ways in which the agency maintains and improves the environment (pg 240)</p>	