VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Dam Safety
Location/Division	3rd Floor / Building A / Dam Safety Section / Field Operations Support Division / Office of Compliance and Enforcement
Contact Name	David Bower
Actual Expenditures, FY 2008	$796,855
Number of FTEs as of August 31, 2008	8

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Dam Safety Program monitors and regulates both private and public dams in Texas. The program periodically inspects dams that pose a high or significant hazard and provides recommendations and reports to responsible parties (owners) to help them maintain safe facilities. The program ensures that these facilities are constructed, maintained, repaired, and removed safely. High- or significant-hazard dams are those that could have loss of life if the dam should fail.

The major activities performed by the program are:

- review of construction plans and specifications for new dams that require a water right permit and review of dam modifications;
- review of water-right permit applications for projects with a dam and lake to address dam safety issues;
- review of owners' and contractors' inspection reports;
- inspections of existing dams, new dams under construction, modifications to existing dams, and dam security;
- hydrologic and hydraulic reviews of dams; and
- review of emergency action plans;

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

The effectiveness and efficiency of the Dam Safety Program are shown by the following:

The program reports to the Legislative Budget Board on the number of dam safety assessments completed. This output measure (01-01-02.03) increased from 451 in FY 07 to 480 in FY 08. The FY 08 annual target was met at 112 percent.

The number of inspections of high and significant hazard dams has increased from 227 in FY 06 to 459 inspections in FY 08. The number emergency action plans reviews increased from 29 in FY 06 to 39 in FY 08.

The number of reviews of owners' engineering reports has remained nearly constant with 35 in FY 07 and 36 in FY 08.

All dam owners receive a copy of the inspection report following an inspection, attached to a letter requiring the owner to respond by a specific date with a plan of action and time line for correcting any deficiencies documented during the inspection. This inspection follow-up process was implemented in FY 04. Initially, there was no response; currently, the response rate is approximately at 50 percent. This improvement is attributed to the significant outreach activities undertaken by the program.

The program has increased its presence across the state by performing more inspections, conducting dam-owner workshops, and making new publications available. These activities have been effective in increasing requests for inspections, electronic communications, telephone calls, written correspondence, and requests for presentations to discuss the program.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

1914

- The Texas Dam Safety Program began with members of the Board of Water Engineers making construction inspections.

1968

- The modern version of the program began with the first inspections of existing dams in September 1969.

1977

- Phase I of the National Dam Safety Program was funded (PL 92-367), which led to significant changes in standards used in the evaluations of dams.

1981

- Federal funding for the Dam Safety Program ended.

1986

- Texas' first comprehensive set of dam-safety rules was adopted.

1998

- The TNRCC's Executive Director Task Force on Dam Safety published its final report, which was confirmed by the House Natural Resources Subcommittee on Dam Safety. Numerous recommendations were made, including updating the applicable rules.

2003

- At the TCEQ's request, the Association of State Dam Safety Officials performed a peer review of the Dam Safety Program. The report recommended that new rules be developed and the program be revitalized.

2008

- The TCEQ approved new dam-safety rules that became effective on January 1, 2009.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The program affects all owners of dams and engineering firms that work on dam-related projects. In FY 08, there were 7,504 dams in the TCEQ's program database, but that number was reduced in January 2009 as a result of the rule changes. Of the currently regulated dams, 851 are high-hazard dams; 804 are significant-hazard dams.

The following table breaks down of the types of dam owners with the total number of dams for those owners. Each dam could have more than one owner.

Individuals	2,708
Private owners	2,093
Soil and water conservation districts	1,818
Local governments (cities and counties)	724
Water districts	351
Federal agencies	112
River authorities	77
Public utilities	77
State agencies	48

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Organizationally, the program currently is part of the Office of Compliance and Enforcement. Its staff is located at the TCEQ central office as well as in regional offices in Houston and Tyler.

In addition to the activities described above in Question B, Dam Safety personnel manage contracts, communicate with dam owners and engineers before inspections, conduct exit interviews to discuss preliminary findings, conduct dam owners' workshops, make presentations to owner associations and engineering societies, and develop owner-education materials, such as:

Dam Removal Guidelines
Guidelines for Operation and Maintenance of Dams in Texas
Hydrologic and Hydraulic Guidelines for Dams in Texas
Guidelines for Developing Emergency Action Plans for Dams in Texas
Forms for dam inspections and for reporting suspicious incidents

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0001	General Revenue	$473,719
0153	Water Resource Management Account	$100,000
0555	Federal Funds	$223,136

Strategy—A.1.2— Water Assessment and Planning

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

No other state programs in Texas, internal or external, perform dam-safety services or functions.

The Natural Resources Conservation Service (NRCS), a federal agency, offers dam-safety services—primarily technical assistance— to local sponsoring organizations on dams that were funded and built by NRCS or the predecessor agency (the U.S. Soil Conservation Service). These dams are owned by the local sponsoring organizations and are under Dam Safety Program jurisdiction. The NRCS does not have the same functions as the Dam Safety Program.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

To avoid duplication or conflict with the NRCS-assisted projects, the Dam Safety Program has an interagency contract with the NRCS that provides for the NRCS to inspect the high- and significant-hazard NRCS-assisted project dams. The NRCS submits the reports to the Dam Safety Program, which forwards the letters and reports to the dam owners.

To avoid duplication of effort on inspections by dam owners, the rules now allow the dam owner's engineering inspection reports to be counted as proof of inspection, and the program does not reinspect. The owner's inspection reports are reviewed by the Dam Safety Program and appropriate recommendations are made to the dam owner(s).

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The units of government that interrelate with the Dam Safety Program include:

Local governments	Own dams; also involved with emergency actions
River authorities	Own dams
Water districts	Own dams
Soil and water conservation districts	Own dams
State agencies	Own dams

Federal Agencies	
U.S. Fish and Wildlife Service	Owns dams
U.S. Forest Service	Owns dams
NRCS	With the Dam Safety Program has an interagency contract for inspection of dams
Corps of Engineers	Dams funded and built by the COE are exempt from state jurisdiction
Bureau of Reclamation	Dams funded and built by the BOR are exempt from state jurisdiction
International Boundary and Water Commission	Dams funded and built by the IBWC are exempt from state jurisdiction

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

The program had total contract expenditures of $393,250 in FY 08. Three contracts were developed for outsourcing inspections. Monitoring and evaluating contracts to ensure accountability for results is an integral part of every activity that receives state and federal funds. Monitoring and evaluation are conducted by the assigned contract manager. No contract is signed unless it includes baseline data from which progress can be measured. In addition, every contract specifies regular benchmarks for evaluating progress and suggested corrective actions to be implemented when necessary. Fiscal monitoring includes careful review of expenses and supporting documents to ensure that all expenses are substantiated, reported properly, and in compliance with established agency guidelines.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

Amend Texas Water Code Section 12.052 to authorize the TCEQ to assess administrative penalties for violations of dam-safety rules and regulations.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

Since December 2003, several significant activities have been initiated to improve the program and to reassert it as a positive presence in Texas:

- Rehiring the former Dam Safety Program supervisor, with over 30 years of direct experience, to oversee operations and direct activities.

- Developing a training plan and program for new staff. Training includes courses on safety evaluation of existing dams and for dam operators presented by the Bureau of Reclamation, hydrologic and hydraulic courses, a geotechnical course, GIS-GPS courses, a course on erosion and sedimentation control, Risk Assessment training, and Engineering-in-training (EIT) refresher training for becoming a professional engineer.

- Determining which Texas dams are critical infrastructures.

- Reestablishing a presence for the program by increasing the numbers of inspections, contacting owners about inspections, sending reports to owners with a request for response, reviewing owner and consultant inspection reports, and responding to owner questions.

- Conducting workshops for over 800 owners and engineers.

- Publishing guidelines for owners and engineers

In April 2008, the State Auditor's Office published an audit report on the Dam Safety Program recommending several changes. The program is on task to implement all of the recommendations.

New rules added requirements for emergency action plans, operation and maintenance plans, and inspection frequency, and changed the definition of dams.

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Texas Commission on Environmental Quality Dam Safety Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	7,504	7,504
Total number of entities inspected	297	501
Total number of complaints received from the public	3	9
Total number of complaints initiated by agency *(scheduled investigations)*	294	492
Number of complaints pending from prior years	0	0
Number of complaints found to be non-jurisdictional	1	1
Number of jurisdictional complaints found to be without merit	Not applicable	Not applicable
Number of complaints resolved	296	500
Average number of days for complaint resolution	95	105
Complaints resulting in disciplinary action:	4	0
Administrative penalty	Not applicable	Not applicable
Reprimand	Not applicable	Not applicable
Probation	Not applicable	Not applicable
Suspension	Not applicable	Not applicable
Revocation	Not applicable	Not applicable
Other	4	0

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Enforcement
Location/Division	1st Floor / Building C / Enforcement Division / Office of Compliance and Enforcement
Contact Name	Bryan Sinclair
Actual Expenditures, FY 2008	$4,860,152
Number of FTEs as of August 31, 2008	96

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Enforcement Program protects human health and the environment by enforcing TCEQ rules, regulations, and permits and by deterring future noncompliance. The program develops enforcement cases in accordance with state statutes and agency rules consistent with the TCEQ's philosophy that enforcement, when necessary, must be swift, sure, and just. For each case, the program drafts proposed enforcement orders that include appropriate penalties and ordering provisions for the commission's consideration and approval.

In addition, the program is also responsible for the following activities:

- administering third-party Supplemental Environmental Projects (SEPs);
- reviewing and responding to notices and disclosures submitted pursuant to the Texas Environmental, Health, and Safety Audit Privilege Act;
- processing compliance-history appeals; and
- sending periodic update letters to complainants until a complaint-initiated enforcement case is resolved.

When environmental laws are violated, the agency has the authority to levy penalties up to the statutory maximum per day, per violation. The statutory maxima range from $500 to $10,000, depending on program violation.

In FY 08, the TCEQ issued 1,624 administrative orders, which produced $16,907,912 in administrative penalties and $4.6 million for SEPs. The TCEQ also refers cases to the Texas Office of the Attorney General which, in FY 08, obtained 22 judicial orders for the TCEQ, which resulted in $1 million in civil penalties and $100,000 for SEPs.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

#	LBB Number	Type	FY 08 Performance Measure	Percent of Annual Target
1	03-01.07	Outcome	Percent of administrative penalties collected (key)	99.32
2	03-01-02.01	Efficiency	Average number of days to file an initial settlement offer	82.86
3	03-01-02.03	Explanatory	Number of administrative orders issued	162.40

Variance explanation for #2 - The projected performance to file an initial settlement offer is 70 days. On average, the program filed the initial settlement offer in 58 days. For this type of measure, performance below the target reflects positively on the agency's efforts to expedite cases.

The program has seen an increase in effective orders. In FY 07, the TCEQ issued 1,383 orders; in FY 08, 1,624 orders were issued. The increase is due to streamlining that made the program more efficient.

Approximately 1,300 (about 80 percent) of the orders the program issues annually are assigned to its order compliance tracking team for compliance monitoring and tracking. During the year after confirming compliance, the team closes approximately a proportional number of cases.

The program is required by statute to report monthly to the commission at a public meeting and to produce an annual report to the governor, lieutenant governor, and speaker of the Texas House of Representatives.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

1993

- Environmental enforcement was separated into seven enforcement programs: air, water quality, petroleum storage tanks, municipal solid waste, industrial solid waste, occupational license, and public water supply, each with its own penalty policy and general enforcement process. The air program had two additional policies: a small-business minor-source policy and a no-penalty policy.

1995

- The TNRCC, predecessor agency to the TCEQ, consolidated all enforcement functions into a single division. At the same time, the TNRCC's Office of Legal Services formed the Litigation Division to work with the Enforcement Program on cases that do not settle through the Enforcement Program's expedited process.

1997

- The TNRCC adopted its first penalty policy. The commission rescinded the small-business minor-source policy and the no-penalty policy.
- A guide to enforcement initiation criteria was developed to promote consistency in how violations are addressed through either formal enforcement (i.e., an order and penalty) or a notice of violation.

1998

- The State Auditor's Office (SAO) and TNRCC Internal Audit, jointly reviewed agency compliance and enforcement processes.

1999

- The EPA and TNRCC jointly signed a multi-media/multi-year enforcement memorandum of understanding setting forth the roles and responsibilities for the TNRCC's enforcement of major air sources, wastewater facilities, public water supplies, facilities with underground injection controls, and Resource Conservation and Recovery Act (RCRA) facilities.

2000

- The commission considered a revised penalty policy and criteria for use of findings orders and instructed the staff to publish the policies for public comment.
- The EPA Region VI and the TCEQ signed a protocol for the coordination of joint enforcement activities.

2002

- The commission considered and adopted a revised penalty policy.

2003

- The SAO published an audit report titled, *The Texas Commission on Environmental Quality's Enforcement and Permitting Functions for Selected Programs*.
- The TCEQ's executive director announced the agency would undertake a comprehensive review of its enforcement functions called the Enforcement Process Review.

2005

- The TCEQ issued its final report on the Enforcement Process Review, which included specific recommendations for consideration by the executive director and commissioners. Many of those recommendations were adopted and implemented. A list is available at the TCEQ public Web site.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The program develops orders and assesses penalties for regulated entities with violations that trigger a formal enforcement action (pursuant to the enforcement initiation criteria). The effective orders and assessed penalties for the affected regulated entities are sorted by program below.

Program	No. of FY 08 Orders	Assessed Penalties
Agriculture	41	$168,180
Air	381	$8,818,323
Dry Cleaners	60	$80,090
Industrial and Hazardous Waste	21	$469,239
Municipal Solid Waste	69	$492,659
Occupational Certification	59	$42,928
Petroleum Storage Tanks	246	$1,728,690
Pubic Water Supply	193	$447,570
Water Quality	435	$3,569,687
Multi-media (combining two or more of above)	119	$1,090,546
FY 08 Total	**1,624**	**$16,907,912**

Most referrals received by the program are received from the TCEQ's Field Operations Division. Other TCEQ programs and the Texas Water Development Board also refer violations to the Enforcement Program for development of an order and penalty assessment.

The program's order compliance tracking (OCT) team ensures each commission-issued order requiring corrective action is tracked until compliance is achieved. The table below describes the percentage of regulated entities with an order being tracked for corrective action completion:

Type of Regulated Entity	Percent
Water Quality	26.3
Air Quality	20.8
Public Water Supply	28.1
Petroleum Storage Tanks	6.1
Municipal Solid Waste	5.2
Industrial and Hazardous Waste	3.0
Operators and Licenses	2.6
Dry Cleaners	1.2
Other	0.2
Multi-media	6.5

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The TCEQ enforcement process begins when one or more violations meet the enforcement initiation criteria and a notice of enforcement is issued to the responsible party. Before an enforcement referral is received, an investigation report and enforcement action referral (EAR) are entered and approved in the TCEQ's Consolidated Compliance and Enforcement Data System (CCEDS). Refer to the flowchart *The Enforcement Process* following Question O for the processes that take place once an EAR is received.

After evaluating each violation, enforcement coordinators recommend an administrative penalty to the commission according to a policy that incorporates the statutory maxima designated for each regulatory program in Texas Water Code (TWC) Chapter 7 and Health and Safety Code Chapters 341 and 371.

Once the commissioners approve an order, the OCT team actively tracks each order for timely compliance and penalty payment. The OCT team also monitors compliance for court orders and compliance agreements.

Enforcement Program personnel are located in the central office and in several region offices across the state.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0001	General Revenue	$208,429
0151	Clean Air Account	$928,443
0153	Water Resource Management Account	$1,120,986
0549	Waste Management Account	$887,282
0555	Federal Funds	$865,053
0655	Petroleum Storage Tank Remediation	$526,209
5094	Operating Permit Fees	$323,750

Strategies:
A.1.3—Waste Assessment and Planning
C.1.1—Field Inspections and Complaints
C.1.2—Enforcement and Compliance Support
D.1.1—Storage Tank Administration and Cleanup

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

The TCEQ's Litigation Division has a similar enforcement function. Its attorneys work in partnership with the Enforcement Program when the program is unable to reach settlement

with a responsible party or in instances where a direct referral to the Litigation Division is deemed appropriate. Additionally, the Environmental Crimes Unit within the Litigation Division investigates and assists in the prosecution of environmental crimes, in coordination with a task force comprised of federal, state, and local agencies.

The following external programs offer similar services and functions but the distinction with TCEQ Enforcement Program functions is that they pursue their enforcement through a civil or criminal process.

- Texas cities and counties are able to enforce environmental violations through civil and criminal processes.

- The Office of the Attorney General (OAG) partners with the Enforcement Program to handle referrals from the TCEQ and pursues civil suits when the administrative process has been unsuccessful or is inappropriate for the nature of the violation.

- The EPA Region VI has a similar enforcement function to the TCEQ's.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The TCEQ's Enforcement Program and Litigation Division are the only areas that develop orders and assess penalties for the commissioners' approval. Duplication and conflict are prevented by an established process whereby only the program makes referrals to the division and each is tracked in CCEDS. Once the Litigation Division receives a referral from the program, communication and negotiations are closely coordinated between the assigned enforcement coordinator and the Litigation Division's staff attorney.

The TCEQ has an agreement with the EPA called the Joint Enforcement Cooperation Protocol to coordinate activities on a voluntary basis to avoid duplication or conflict.

When a local jurisdiction files a civil suit, TCEQ becomes a party to that case pursuant to TWC Section 7.353. Likewise, when a local jurisdiction files a criminal case it must coordinate with the TCEQ pursuant to TWC Section 7.203.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The TCEQ Enforcement Program works in partnership with the OAG. When the TCEQ refers violations to the OAG, a lawsuit is filed against a responsible party on behalf of the State of Texas. The TCEQ completes OAG referrals for: violations that need immediate corrective action, egregious violations, cases where the TCEQ is a party, and when conditions specified in TWC Section 7.105 exist.

When a local jurisdiction files a civil suit, the TCEQ becomes a party to that case pursuant to TWC Section 7.353. Likewise, when a local jurisdiction files a criminal case, it must coordinate with the TCEQ pursuant to TWC Section 7.203.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

In FY 08, the Enforcement Program had one contract in the amount of $1,110 with LexisNexis. This contracted service was used to research contact information (mailing addresses, phone numbers) for responsible parties.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

1) Revising TWC Section 5.753(a) could address concerns about the TCEQ's calculation of compliance history. The current compliance history rule has been widely criticized by the regulated community and environmental organizations. Those opposed to the current rule assert that:

- The current compliance equation is too complex and does not measure true performance;
- Some regulated entities (e.g., small entities) seem to be disproportionately impacted under the compliance history calculation; and
- In terms of compliance history ranking, it is unfair to uniformly rank TCEQ's significantly diverse regulated universe. The current rule should be revised such that only similar industries/businesses are ranked relative to each other.

2) Revise TWC Section 5.753(b) to differentiate between administrative orders with a penalty and corrective action orders without an administrative penalty in the components of compliance history.

3) Revise TWC Section 7.067(a) to broaden the use of SEP funding.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

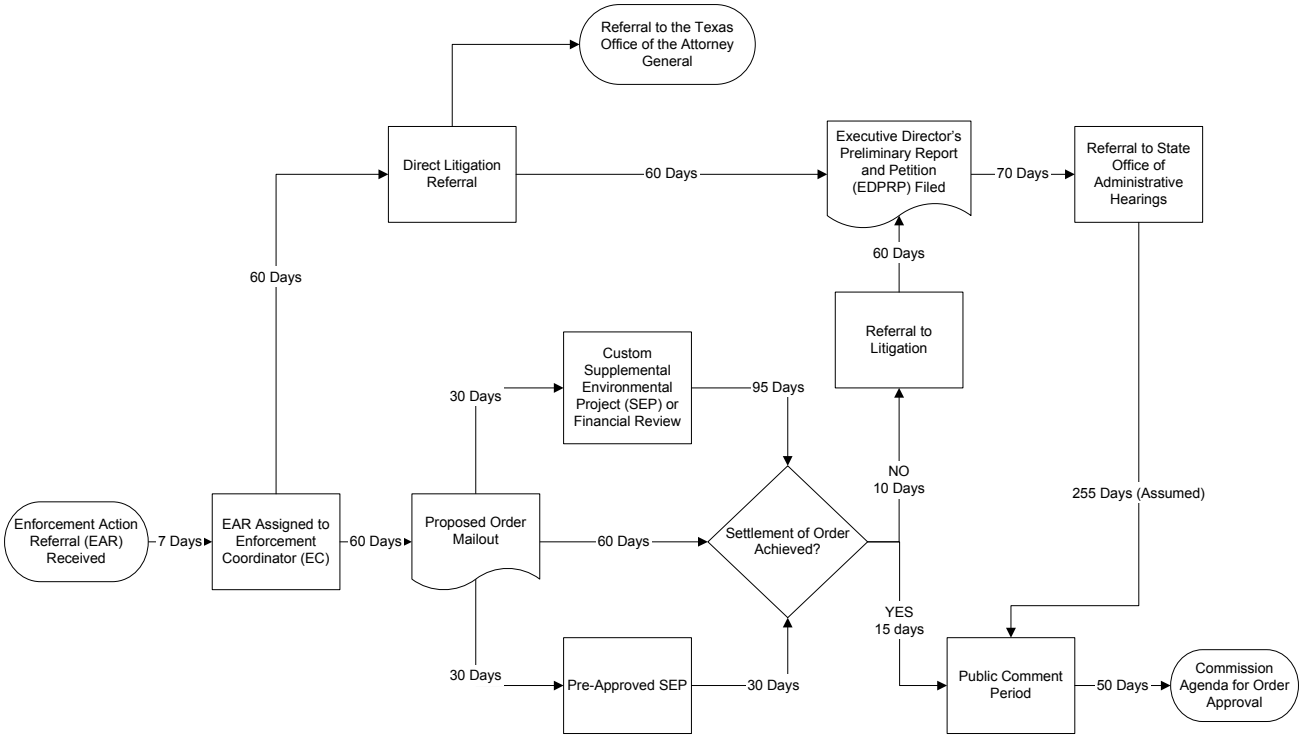
N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable



The Enforcement Process
and Timeline 7/30/09

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Environmental Testing Laboratory Accreditation
Location/Division	3rd Floor / Building A / Field Operations Support Division / Office of Compliance and Enforcement
Contact Name	David Bower
Actual Expenditures, FY 2008	$692,791
Number of FTEs as of August 31, 2008	11

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Environmental Testing Laboratory Accreditation Program ensures that laboratories provide analytical data of known and usable quality and safeguards the public health and the environment against compromising laboratory practices.

The components of accreditation include on-site assessments of laboratories, semiannual proficiency testing, adherence to recognized quality-assurance and quality-control standards and minimum qualifications for the personnel performing environmental tests and key managers. In addition, the TCEQ collects fees from laboratories, issues accreditation certificates to laboratories, and maintains extensive records regarding laboratories and their accreditations.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

From the TCEQ's Performance Measures Report to the Legislative Budget Board, a key output measure (strategy code 03-01-02.01) is the number of environmental laboratories accredited by the TCEQ. That annual target was met at 82.67 percent, or 248 certifications, because the number of applications received was lower than the projection of 300. Additional applications are still in process.

The TCEQ issues accreditations to environmental laboratories after determining that each is capable of performing analytical tests correctly and meets the standards of the National Environmental Laboratory Accreditation Program.

No single laboratory performs all types of environmental analyses; therefore, the TCEQ issues accreditations for over 72,000 separate fields, encompassing most environmental

laboratory analyses. Each field is a unique combination of matrix, analytical method, and parameter.

The effectiveness of the program is also demonstrated by actions the TCEQ has taken regarding deficient laboratories. The TCEQ has denied accreditation to three laboratories after determining they were unable to meet minimum performance and analytical standards.

On-site inspections of all initial applicants for accreditation and biennial re-inspections verify that laboratory operations meet standards for accreditation or identify items and activities that did not, for which timely and effective corrective actions must be completed before the TCEQ will accredit.

The program requires laboratories to undergo semiannual proficiency testing. This testing gives the TCEQ an objective demonstration that a laboratory can achieve correct results when performing analytical tests. A laboratory's accreditation is not issued or renewed unless it demonstrates it can successfully analyze proficiency samples.

Annually, the agency's quality-assurance staff and management carry out a comprehensive assessment of the accreditation program. The assessment and review determine, among other things, the program's compliance with national accreditation requirements, the adequacy of the program's structure and processes, and the effectiveness of program operations.

The TCEQ successfully completed an assessment by the U.S. Environmental Protection Agency and other accrediting states before its accreditation program was approved initially in 2005, and again in 2009.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

2001

- The Sunset Advisory Commission recommended, and HB 2912 (77th Legislature) required, the TCEQ to administer a voluntary laboratory-accreditation program that is consistent with the National Environmental Laboratory Accreditation Program (Texas Water Code Section 5.801). The agency has done so.

2005

- The TCEQ's accreditation program received approval from the EPA and other accrediting states.

2008

- *Requirements concerning the use of accredited laboratories became effective on July 1, 2008 (Texas Water Code Section 5.134).*

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The TCEQ's Environmental Testing Laboratory Accreditation Program affects all environmental laboratories supplying analytical data for agency decisions, directly to the TCEQ, or indirectly through regulated entities. These laboratories include commercial, governmental, and certain in-house environmental laboratories operated by regulated entities. Regulated laboratories must meet accreditation requirements and pay associated fees.

The program also affects multiple parts of the TCEQ and the public, because the TCEQ relies on analytical data to assess risks to public health and the environment and to determine how best to allocate resources for environmental protection.

Also, the program affects regulated entities that rely on laboratories for the analysis of environmental samples. A breakdown of the affected regulated entities through August 2008 appears in the table below.

	Texas Laboratories	Non-Texas Laboratories
Primary Accreditations	166	4
Secondary (Reciprocal) Accreditations	2	71
Primary and Secondary Accreditations	0	5
Subtotals	168	80
Grand Total	248	

A primary accreditation is an accreditation issued by an agency that directly ensures that a laboratory conforms to accreditation standards. For example, an agency issuing primary accreditation inspects laboratories before issuing an accreditation, and periodically thereafter. A secondary accreditation is an accreditation issued by an agency on the basis of another agency's primary accreditation, e.g., reciprocal recognition. The TCEQ is an agency with primary accreditation.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The TCEQ's Environmental Testing Laboratory Accreditation Program is in the Office of Compliance and Enforcement in the Field Operations Support Division. It is administered and operates according to requirements and timeframes contained in the *2003 National Environmental Laboratory Accreditation Conference (NELAC) Standard* and the agency's laboratory accreditation procedures <www.tceq.state.tx.us/goto/lab>.

These procedures address, among other things, receipt and processing of applications for accreditation, planning and conducting inspections, confidential business information,

complaints, and sanctions (denial, suspension, and revocation). The procedures also address internal controls, such as inspector training and qualifications, standards of conduct, annual audits, annual management reviews, and recordkeeping.

Refer to the flowchart *Laboratory Accreditation* following Question O.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

The TCEQ's laboratory accreditation program is funded from fees, federal grants, and other state sources.

Account	Name	Amount
0151	Clean Air Account	$83,953
0153	Water Resource Management Account	$24,480
0468	Occupational Licensing Account	$20,351
0549	Waste Management Account	$1,375
5065	Environmental Trust Lab Accreditation	$304,726
5094	Operating Permit Fees	$1,223
0655	Petroleum Storage Tank Remediation	$128
0777	Interagency Contracts	$153,217
0555	Federal Funds	$103,338

Strategies:
A.2.3—Waste Management and Permitting
A.1.1—Air Quality Assessment and Planning
B.1.1—Safe Drinking Water
C.1.1—Field Inspections and Complaints
C.1.2—Enforcement and Compliance Support
A.2.4—Occupational Licensing

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

Twelve agencies located in 11 other states issue the same type of accreditations as the TCEQ's Environmental Testing Laboratory Accreditation Program. The TCEQ's Public Drinking Water (PDW) Program performs laboratory approvals as well. The PDW Program approves (not accredits) laboratories that analyze parameters associated with process control. Unlike the laboratory approvals, accreditations apply to analyses related to agency decisions on items such as permit compliance.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The standards for accreditation include requirements that preclude duplication or conflict among accrediting states. For example, non-federal laboratories must apply for primary accreditation in their home state unless that state has no accreditation program or does not offer the types of accreditations the laboratories need.

In addition, accreditations issued by one state must be accepted by other accrediting states. Other accrediting states must issue secondary (or reciprocal) accreditations to laboratories holding primary accreditations from another state. The other states may not impose any inspection, testing, or quality control requirements on laboratories applying for secondary accreditation and must issue secondary accreditations within 30 days.

The TCEQ has made operational arrangements that prevent duplication and conflict between the accreditation program and the PDW Program's laboratory approvals. Parameters differ between accreditation and approval.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The TCEQ's Environmental Testing Laboratory Accreditation Program accredits all laboratories operated by units of local government or federal agencies that analyze environmental samples for compliance with the Safe Drinking Water Act and report to the TCEQ.

The program accredits laboratories operated by units of local government, regional governments, or federal agencies, that are required under TCEQ rules (30 TAC Section 25.6) to be accredited or, though not required to be accredited, voluntarily choose to be.

The program is reviewed by EPA Region 6 every three years to assess conformance to requirements associated with enforcement (primacy) delegation under the Safe Drinking Water Act.

The Environmental Testing Laboratory Accreditation Program is also reviewed by a team representing other accrediting states on a triennial basis to assess, among other things, conformance to national accreditation standards and determine whether to continue recognition of accreditations issued by the TCEQ.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

The program spent $126,165 on four contracts for inspections, temporary clerical staff, and a record-keeping system.

Accountability and performance are ensured by open procurement, fiscal monitoring, contract specifications, and monitoring of deliverables. The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

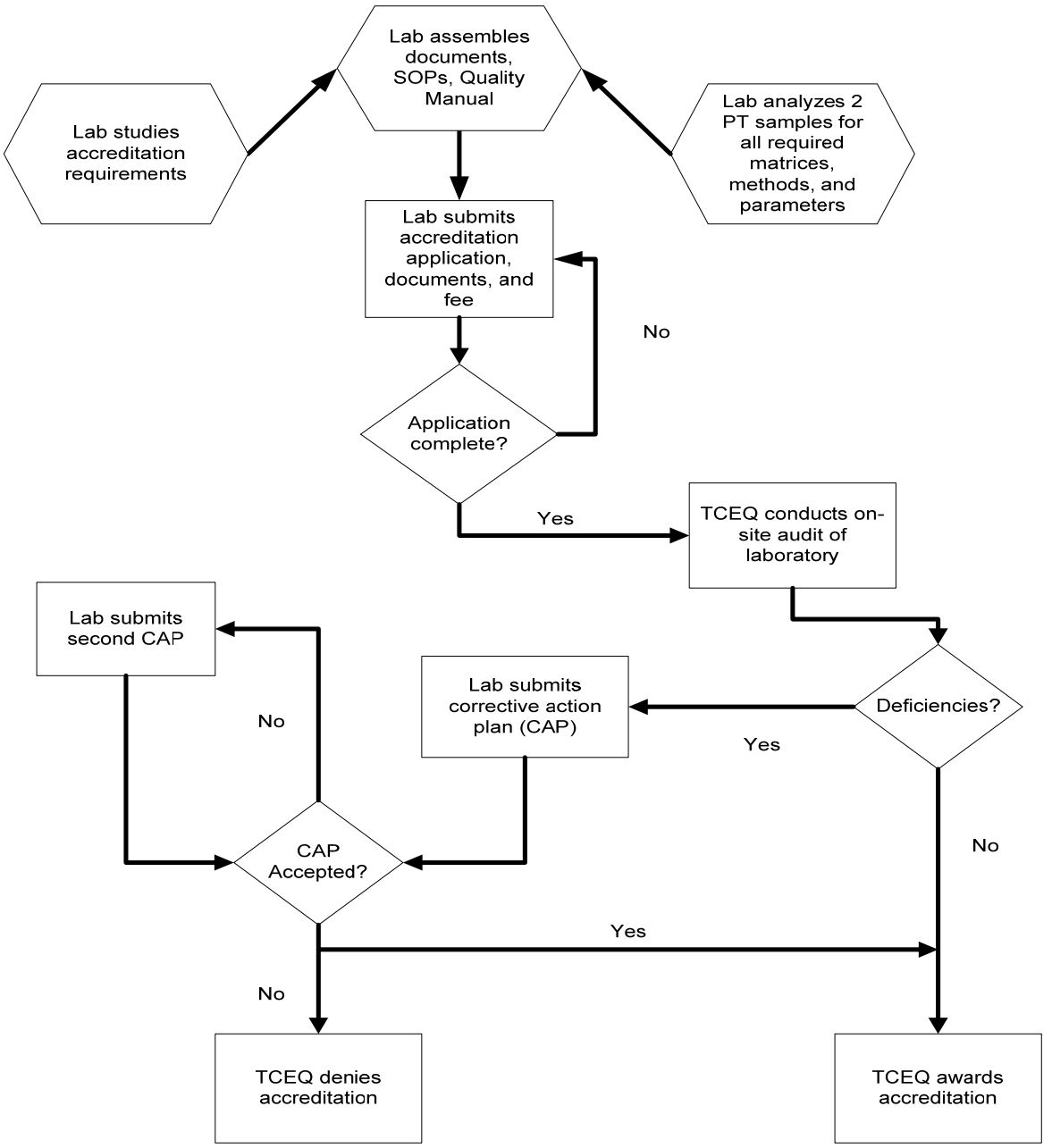
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Texas Commission on Environmental Quality Environmental Testing Laboratory Accreditation Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	Fiscal 2007	**Fiscal 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	76	248
Total number of entities inspected	17	35
Total number of complaints received from the public	0	0
Total number of complaints initiated by agency	17	35
Number of complaints pending from prior years	0	0
Number of complaints found to be non-jurisdictional	0	0
Number of jurisdictional complaints found to be without merit	0	0
Number of complaints resolved	0	0
Average number of days for complaint resolution	0	0
Complaints resulting in disciplinary action:	0	0
administrative penalty	Not applicable	Not applicable
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	0	0
revocation	0	0
other	0	0

LABORATORY ACCREDITATION



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Field Operations
Location/Division	3rd Floor / Building C / Office of Compliance and Enforcement
Contact Name	Ramiro Garcia
Actual Expenditures, FY 2008	$49,264,776
Number of FTEs as of August 31, 2008	771.5

B. What is the objective of this program or function? Describe the major activities performed under this program.

The TCEQ's Field Operations Program consists of 16 regional offices and two satellite offices located throughout the state and the Field Operations Support Division (FOSD) located in the TCEQ's central office. The regional offices are divided into three areas: Border and South Central Texas; Coastal and East Texas; and North Central and West Texas. The areas are managed by three area directors who ensure that the regions are functioning pursuant to established policies and procedures.

The major activities performed by the TCEQ regional offices include:

- conducting investigations at regulated entities across the state to determine compliance with applicable air, water, and waste rules and regulations;
- investigating environmental complaints based on information from Texas residents, organizations, or other concerned parties;
- addressing violations documented during investigations through written notices of violation (NOVs) or development of formal enforcement referrals;
- monitoring the quality of ambient air, surface water (rivers, lakes, and bays), and public drinking water;
- overseeing and ensuring compliance with water rights regulations and allocating the limited water resources in certain designated areas of the state when drought conditions exist;
- administering the Rio Grande, South Texas, and Concho watermaster programs;
- approving pollution abatement plans to ensure protection of underground water supplies (aquifers) in certain areas of the state; and

- responding to emergencies including natural disasters statewide as needed.

The FOSD supports the regional offices through the following functions:

- Development, coordination and implementation of statewide region support including annual investigation work plans, investigator training events, special initiatives, the field citation program; responding to complaints, data and Web-page maintenance, and public information requests.

- Coordination with, and reporting to, the EPA and the Legislative Budget Board.

- Provide multi-media program guidance and technical assistance to agency staff, the regulated community and the public. Programs include: Public Water Supply; Air Quality; Water Quality; Petroleum Storage Tanks; Concentrated Animal Feeding Operations; Industrial and Hazardous Waste; Municipal Solid Waste; Pretreatment; Sludge; Stage II; Edwards Aquifer; Watermaster; Water Rights; Storm Water; Landscape Irrigation; On-Site Sewage Facilities (OSSFs); and Quality Assurance.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

During FY 08, Field Operations staff conducted 62,454 on-site investigations. Based on these investigations, 9,289 NOVs were issued. All the NOVs alleged violations of TCEQ air, water and waste regulations.

#	LBB Number	Type	FY 08 Key Performance Measure	Percent of Annual Target
1	03-01-01.03	output	Number of inspections and investigations of water sites and facilities	102.41
2	03-01-01.05	output	Number of inspections and investigations of waste sites	115.67
3	03-01-01.01	output	Number of inspections and investigations of air sites	86.77
4	03-01-01.02	output	Number of inspections and investigations of water rights sites	107.19
5	03-01-01.04	output	Number of inspections and investigations of livestock and poultry operation sites	89.71
6	03-01.02	outcome	Percent of inspected or investigated water sites and facilities in compliance	102.37
7	03-01.03	outcome	Percent of inspected or investigated waste sites in compliance	96.60
8	03-01.01	outcome	Percent of inspected or investigated air sites in compliance	96.63
9	03-01.04	outcome	Percent of identified non-compliant sites and facilities for which appropriate action is taken	97.53

Variance Explanations:

#3 - This performance measure was below projections due to an increased number of (on-demand) emissions event investigations which demanded the reallocation of resources from other air investigation commitments.

#5 - This performance measure was below projections due to staff turnover.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

2006

- A reorganization of the Field Operations Division (FOD) took place identifying four areas of the state: North Central Texas; Coastal Texas; Border Texas; and West Texas. Four area directors took the place of one FOD director due to the challenge of one director overseeing 16 TCEQ regions and the central office Field Operations staff.

2008

- The areas were consolidated into three: North Central and West Texas; Coastal and East Texas; and Border and South Central Texas.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Each year, the program is responsible for investigating a significant portion of the TCEQ's regulated community. In FY 08, more than 340,000 regulated entities were identified in the TCEQ's central data system, including public and private facilities and individuals, all of which affect, or have the potential to affect, the environment. The program is a multimedia program and interacts at some level with almost every entity actively participating in a TCEQ regulatory process. Question O provides a breakdown of the investigations by program.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The primary function of the program is to conduct investigations to ensure that regulated entities comply with applicable environmental rules and regulations through NOVs and formal enforcement referrals (refer to flowchart *Investigation Process Flow* following Question O).

Work Plan Development

In preparation for each fiscal year, Field Operations regional and central-office personnel develop a work plan to determine the number and types of investigations to be conducted statewide. This plan is primarily a risk-based ranking of all regulated entities in Texas. Field Operations' risk-based investigation strategy (RBIS) is a tool to assist in selecting specific regulated entities to investigate. RBIS allows resources to be focused on entities that pose the greatest risk to the environment and human health. Plan development also considers Legislative Budget Board requirements, EPA obligations, available resources, historical issues, and other factors as necessary.

Conducting Investigations

Field Operations investigators conduct scheduled investigations (planned activities based on RBIS) and on-demand investigations (unplanned activities such as complaints, emissions events, and emergency-response actions). These investigations are further divided into three categories:

- *Compliance Investigation*—compliance evaluation using established investigation protocol.
- *Agent Evaluation*—evaluation of the performance of a regulated entity that administers a program over which TCEQ has jurisdiction.
- *Site Assessment*—characterization of site conditions related to an authorization approval or established standard, or to aid in the establishment of a standard.

A Field Operations investigation generally requires pre-investigation activities, including reviewing the background file, determining of applicable requirements, gathering relevant checklists and publications, and contacting the regulated entity to schedule the investigation, if necessary. Advance notification is not given for certain investigations, such as complaints and enforcement follow-up investigations. The actual investigation includes an entrance interview, review of site records, investigator observations, sampling (if appropriate), and an exit interview. Post-investigation activities include assessment of the information gathered, compliance determinations, assessment of the need for additional site visits or information, an enforcement determination, and documentation of the investigation in writing and in the agency data system.

Ensuring Compliance through NOVs and Formal Enforcement Referrals

If noncompliances (also called *violations*) are documented during an investigation, the Field Operations investigator and supervisor are responsible for initiating enforcement action based on the TCEQ's enforcement-initiation criteria (EIC), approved by the executive director to ensure consistent handling of air, water and waste violations documented by TCEQ investigators. Noncompliances are addressed with an NOV (informal enforcement) or with a notice of enforcement or NOE (formal enforcement), depending on the significance and pattern of noncompliance. An NOE is the beginning of the TCEQ's formal enforcement process, which results in an order issued and penalty approved by the TCEQ commissioners.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0001	General Revenue	$948,981
0088	Low Level Radioactive Waste	$154
0146	Used Oil Recycling Account	$270,636
0151	Clean Air Account	$4,992,302
0153	Water Resource Management Account	$12,181,510
0158	Watermaster Administration	$1,155,966
0468	Occupational Licensing Account	$325,958
0549	Waste Management Account	$8,346,849
0550	Hazardous and Solid Waste Remediation Fee	$1,819,244
0555	Federal Funds	$6,482,468
0655	Petroleum Storage Tank Remediation	$894,260
0777	Interagency Contracts	$2,037,998
5065	Environmental Trust Lab Accreditation	$40,896
5094	Operating Permit Fees	$9,767,554

Strategies:
A.1.1—Air Quality Assessment and Planning
A.1.2—Water Assessment and Planning
A.1.3—Waste Assessment and Planning
A.2.1—Air Quality Permitting
A.2.2—Water Resource Permitting
A.2.3—Waste Management and Permitting
A.2.4—Occupational Licensing
A.3.1—Radioactive Materials Management
B.1.1—Safe Drinking Water
C.1.1—Field Inspections and Complaints
C.1.2—Enforcement and Compliance Support
D.1.1—Storage Tank Administration and Cleanup

H. Identify any programs, internal or external to your agency, that provides identical or similar services or functions. Describe the similarities and differences.

Spill response is handled by the General Land Office (GLO), the Texas Railroad Commission (RRC), the Parks and Wildlife Department (TPWD), and the TCEQ. Each agency has jurisdiction over spills according to the source of the spill, the material spilled, the quantity spilled, and the location of the spill. For example, the GLO has jurisdiction over coastal oil spills greater than 240 barrels; the RRC, over all spills from activities associated with the exploration, development, or production of oil, gas, and geothermal resources,

including coastal spills of 240 barrels or less of crude oil. The TPWD interacts with the TCEQ when spills occur that destroy wildlife and/or habitat. The TCEQ has jurisdiction over all other solid waste spills, which encompass hazardous, nonhazardous, industrial and municipal solid wastes.

OSSF Program: Certain local governmental authorities (e.g., counties, cities, river authorities, health districts, and water districts) are authorized by the TCEQ to regulate and manage OSSF programs within their jurisdiction, performing the same functions as the TCEQ except for licensing and imposing administrative penalties.

Surface water quality monitoring: Many programs both internal and external to the TCEQ involve monitoring the quality of surface water in Texas to evaluate physical, chemical, and biological characteristics of aquatic systems. At the TCEQ, surface water quality monitoring (SWQM) data are collected into a single system and used to establish the Texas Surface Water Quality Standards and other policies that ensure good water quality and promote the restoration and appropriate uses of surface water in Texas. The SWQM data are also used by local governments and state agencies. Within the TCEQ, regional (Field Operations Division) and central office (Water Quality Planning Division) staff routinely collect SWQM data. The Clean Rivers Program in the Water Quality Planning Division also coordinates and contracts with external programs such as river authorities, municipal water authorities and councils of governments to collect SWQM data which is provided to the TCEQ's SWQM data system.

Federal: The EPA is authorized to conduct investigations at the same facilities that the TCEQ regulates.

Local governments have statutory authority to conduct investigations regarding environmental requirements.

Texas Railroad Commission: The TCEQ has jurisdiction over hazardous and nonhazardous industrial and municipal solid wastes, except for wastes resulting from activities associated with the exploration, development, or production of oil or gas or geothermal resources (including transportation of crude oil or natural gas by pipeline). Those wastes are under the jurisdiction of the RRC. The TCEQ and the RRC share jurisdiction under the Clean Air Act for oil and gas exploration and production facilities, except for oil refineries, which are only under TCEQ jurisdiction. The RRC retains authority over storm water activities involving unrefined oil and gas, while the TCEQ has authority over refined products and can require storm water permits. The TCEQ also regulates the disposal of septage generated at oil and gas sites.

Texas Department of Agriculture: The TDA conducts investigations for calibration and accuracy of gasoline dispensers at the same gasoline service stations where the TCEQ regulates the control of volatile organic compounds and underground petroleum storage tanks.

Texas State Soil and Water Conservation Board: The TSSWCB conducts evaluations of animal feeding operations, which are not point source dischargers and are below the threshold number of animals that would require a TCEQ permit. The TCEQ conducts compliance investigations of permitted concentrated animal feeding operations and complaint investigations of animal feeding operations that are not already under the authority of the TSSWCB.

Texas Pollutant Discharge Elimination System (TPDES) discharge-monitoring reports: The Compliance Monitoring Team within the TCEQ's Enforcement Division conducts records reviews of effluent discharge monitoring data. Field Operations staff review this same self-reported data as part of an on-site investigation less frequently.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Spill response: Memorandums of Understanding (MOUs) between the GLO, RRC, TPWD and TCEQ, as well as the State of Texas Oil and Hazardous Substances Spill Contingency Plan, specify each agency's jurisdiction and role.

OSSF Program: At the request of a local governmental authority, the TCEQ may delegate administration and enforcement of OSSF rules. Such a delegation prohibits the TCEQ from taking independent action on specific cases in the jurisdiction of that authority, and provide for an annual audit or review of the local program to ensure that it is managed in accordance with statutes and rules. For any area where such delegation has not occurred, the TCEQ enforces the OSSF rules.

Surface water quality monitoring: The TCEQ's SWQM Program coordinates all SWQM activities in the state during the annual planning and development of a coordinated monitoring schedule when organizations such as river and municipal water authorities supply data to the TCEQ's SWQM Program, meet to discuss the monitoring needs in the state, and negotiate sampling schedules that ensure appropriate coverage. Such a schedule has been in place for at least the past 10 years, and its development has been modified to ensure the objectives of the SWQM Program and agency are met. The TCEQ's Clean Rivers Program works with external participants through contracts, planning and oversight, and quality assurance to include the data from external sampling into the TCEQ's coordinated monitoring schedule and data systems.

Federal: The TCEQ and EPA have specific Memorandums of Agreement and Understanding which define how the agencies will coordinate activities so that duplication of effort is minimized. The TCEQ also participates in a performance partnership grant with EPA which identifies the number of facilities that the TCEQ will inspect. The TCEQ and EPA hold regular joint discussions and meetings to provide updates on investigation issues and enforcement case status.

Local governments: The TCEQ coordinates informally and formally (by contract) with local governments and other authorities that perform investigations to prevent duplication of effort.

Texas Railroad Commission: Texas Health and Safety Code Chapter 361, Subchapter A, defines the jurisdictional boundaries for waste regulation. The TCEQ and RRC have two Memorandums of Understanding (for water and waste) that outline the duties of each agency.

Texas Department of Agriculture: For facilities with petroleum storage tanks, the TCEQ and TDA have negotiated an MOU that defines how each agency will assist the other in verifying proper certifications of compliance and calibration.

Texas State Soil and Water Conservation Board: An MOU outlines the authority of both agencies over agricultural and silvicultural point and non-point source pollution programs. The TSSWCB conducts evaluations of animal feeding operations which are not point source dischargers and are below the threshold number of animals that would require a TCEQ permit.

TPDES discharge monitoring reports: Screening of self-reported effluent data for formal enforcement is conducted exclusively by the TPDES Compliance Monitoring Team for all TPDES facilities. This function is specified in the TCEQ's EIC. Furthermore, an interagency agreement (dated May 13, 2003), states that TCEQ Field Operations investigators are not expected to apply the EPA enforcement referral criteria or the TCEQ impaired segment referral criteria to self-reported effluent data that they review as part of an investigation of a TPDES facility.

There are additional MOAs and/or MOUs in place to ensure that the Field Operations program avoids duplication with other state agencies. These additional listings of MOUs and/or MOAs are discussed in Section II in response to Question E.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The program works with local, regional, or federal units of government as outlined in Question H and Question I listed above.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

The program had 37 contract expenditures for a total of $3,710,943 in FY 08. In protecting the public health, the TCEQ engages outside contractors for assistance with abatement and disposal of hazardous materials such as lead paint, medical waste and asbestos. Outside contractors are also hired to test potable and non-potable water and indoor and outdoor air quality. Contractors are usually preselected to perform rapid response remediation in a catastrophic event.

Monitoring and evaluation to ensure accountability for contract services—integral to every activity for which state and federal funds are used—are conducted by the assigned contract manager. No contract is signed unless it includes baseline data from which progress can be measured. In addition, every contract specifies regular benchmarks for evaluating progress, and suggested corrective actions to keep the program on track. All evaluations, as well as the terms of the contract, are subject to open record requests. Fiscal monitoring includes careful review of expenses and supporting documents to ensure that all are substantiated, reported properly, and in compliance with established agency guidelines.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

Texas Water Code (TWC), Section 11.031 requires that each person who has a water use permit or has impounded, diverted, or otherwise used state water must file an annual written report to the TCEQ or pay a specified penalty. The TCEQ would be assisted by revising this statute to require permit holders to not only submit annual reports but also maintain monthly reports. More frequent and current records would allow the TCEQ to make timely compliance determinations and more-readily address unauthorized/excess water usage if necessary. In addition, the current statutory penalties for failure to submit a report may not be sufficient to encourage compliance with the requirement. The TCEQ believes that explicit administrative penalty authority would ensure efficient and timely resolution of reporting violations.

The TWC, Section 11.1272 allows the commission to require wholesale and retail public water suppliers and irrigation districts to develop drought contingency plans (DCPs) during periods of water shortages and drought. However, the statute is silent as to agency authority to mandate DCP implementation. The DCP requires ever more stringent water conservation measures as drought conditions worsen. Without statutory authority allowing the TCEQ to mandate DCP implementation, conservation efforts are often too late to prevent service interruptions resulting from diminished supplies.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, investigations or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

For all eleven programs described below, the following descriptions apply:

- "Total number of complaints initiated by agency" is what the TCEQ considers scheduled investigations.

- "Number of complaints resolved" are the average number of days for complaint resolution, and "complaints resulting in disciplinary action" include the TCEQ's scheduled investigations and complaint investigations.

Texas Commission on Environmental Quality Field Operations—Agriculture Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	2,115	2,175
Total number of entities inspected	923	857
Total number of complaints received from the public	108	80
Total number of complaints initiated by agency	844	788
Number of complaints pending from prior years	3	2
Number of complaints found to be non-jurisdictional	8	3
Number of jurisdictional complaints found to be without merit	91	71
Number of complaints resolved	794	692
Average number of days for complaint resolution	345	377
Complaints resulting in disciplinary action:	220	268
administrative penalty	$63,100	$168,180
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other: Agreed Order Notice of Violation Compliance Agreements	9 211 0	41 227 0

Texas Commission on Environmental Quality Field Operations—Air Quality Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	77,428	79,655
Total number of entities inspected	11,419	11,727
Total number of complaints received from the public	2,637	2,481
Total number of complaints initiated by agency	9,412	9,753
Number of complaints pending from prior years	65	78
Number of complaints found to be non-jurisdictional	135	81
Number of jurisdictional complaints found to be without merit	2,311	2,258
Number of complaints resolved	10,453	10,599
Average number of days for complaint resolution	440	293
Complaints resulting in disciplinary action:	1,578	1,790
administrative penalty	$5,240,329	$8,818,323
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other: Agreed Order Notice of Violation Compliance Agreements	260 1,316 2	381 1,408 1

Texas Commission on Environmental Quality Field Operations—Dry Cleaners Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	4,959	5,103
Total number of entities inspected	182	119
Total number of complaints received from the public	Included in IHW	Included in IHW
Total number of complaints initiated by agency	182	119
Number of complaints pending from prior years	0	0
Number of complaints found to be non-jurisdictional	0	0
Number of jurisdictional complaints found to be without merit	0	0
Number of complaints resolved	77	46
Average number of days for complaint resolution	39	328
Complaints resulting in disciplinary action:	260	80
administrative penalty	$278,567	$80,090
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other: Agreed Order Notice of Violation Compliance Agreements	 223 37 0	 60 20 0

Texas Commission on Environmental Quality Field Operations—Industrial Hazardous Waste Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	55,030	55,476
Total number of entities inspected	1,781	2,134
Total number of complaints received from the public	324	372
Total number of complaints initiated by agency	1,578	1,915
Number of complaints pending from prior years	9	14
Number of complaints found to be non-jurisdictional	65	73
Number of jurisdictional complaints found to be without merit	235	257
Number of complaints resolved	1,457	1,808
Average number of days for complaint resolution	436	392
Complaints resulting in disciplinary action:	471	533
administrative penalty	$473,429	$469,239
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other:		
Agreed Order	22	21
Notice of Violation	448	511
Compliance Agreements	1	1

Texas Commission on Environmental Quality Field Operations—Municipal Solid Waste Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	5,153	5,531
Total number of entities inspected	1,277	1,393
Total number of complaints received from the public	1,102	1,334
Total number of complaints initiated by agency	640	570
Number of complaints pending from prior years	37	39
Number of complaints found to be non-jurisdictional	304	293
Number of jurisdictional complaints found to be without merit	707	937
Number of complaints resolved	992	1,290
Average number of days for complaint resolution	481	334
Complaints resulting in disciplinary action:	418	573
administrative penalty	$323,596	$492,659
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other: Agreed Order Notice of Violation Compliance Agreements	 44 374 0	 69 502 2

Texas Commission on Environmental Quality Field Operations—On-Site Sewage Facilities Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	7,235	8,225
Total number of entities inspected	2,549	2,485
Total number of complaints received from the public	389	283
Total number of complaints initiated by agency	2,293	2,322
Number of complaints pending from prior years	13	3
Number of complaints found to be non-jurisdictional	85	85
Number of jurisdictional complaints found to be without merit	281	168
Number of complaints resolved	2,377	2,235
Average number of days for complaint resolution	221	291
Complaints resulting in disciplinary action:	226	174
administrative penalty	$1,338	$9,856
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other:		
Agreed Order	2	4
Notice of Violation	224	170
Compliance Agreements	0	0

Texas Commission on Environmental Quality Field Operations—Petroleum Storage Tank Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	71,452	72,142
Total number of entities inspected	5,809	5,077
Total number of complaints received from the public	206	219
Total number of complaints initiated by agency	5,651	4,874
Number of complaints pending from prior years	17	9
Number of complaints found to be non-jurisdictional	10	8
Number of jurisdictional complaints found to be without merit	189	206
Number of complaints resolved	4,652	3,620
Average number of days for complaint resolution	422	699
Complaints resulting in disciplinary action:	2,946	1,845
administrative penalty	$1,529,408	$1,728,690
Reprimand	Not applicable	Not applicable
Probation	Not applicable	Not applicable
Suspension	Not applicable	Not applicable
Revocation	Not applicable	Not applicable
Other:		
Agreed Order	276	246
Notice of Violation	2,670	1,599
Compliance Agreements	0	0

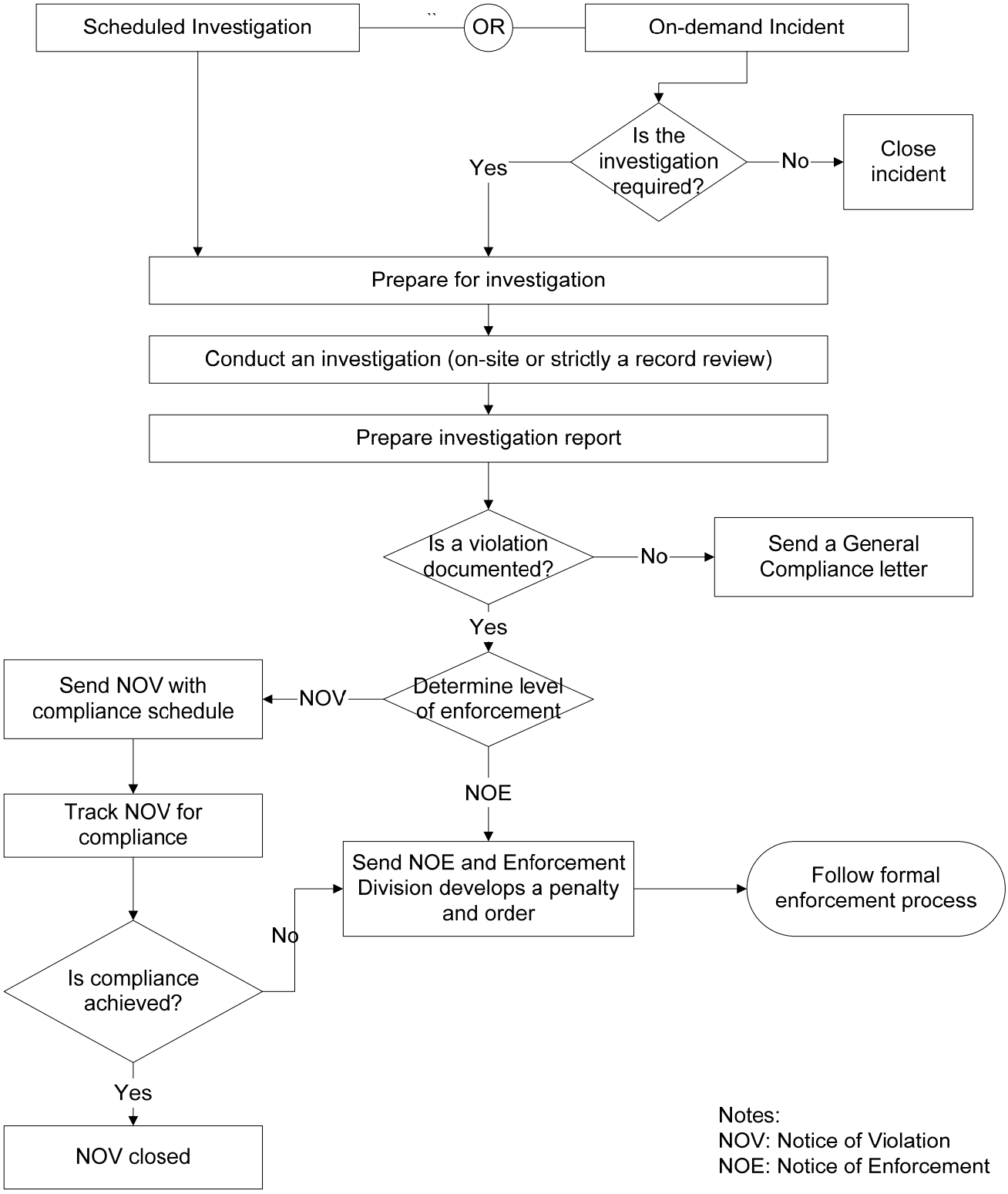
Texas Commission on Environmental Quality Field Operations—Public Water Supply Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	10,950	11,124
Total number of entities inspected	6,967	6,784
Total number of complaints received from the public	603	682
Total number of complaints initiated by agency	6,566	6,372
Number of complaints pending from prior years	19	21
Number of complaints found to be non-jurisdictional	84	132
Number of jurisdictional complaints found to be without merit	420	460
Number of complaints resolved	5,976	5,633
Average number of days for complaint resolution	423	343
Complaints resulting in disciplinary action:	2,453	2,558
administrative penalty	$402,769	$438,967
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other:		
Agreed Order	150	186
Notice of Violation	2,263	2,256
Compliance Agreements	40	116

Texas Commission on Environmental Quality Field Operations—Water Quality (domestic and industrial waste water treatment plants, storm water, and sludge) Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	72,946	88,078
Total number of entities inspected	41,371	40,730
Total number of complaints received from the public	2,012	1,815
Total number of complaints initiated by agency	40,370	39,881
Number of complaints pending from prior years	51	62
Number of complaints found to be non-jurisdictional	333	334
Number of jurisdictional complaints found to be without merit	1,471	1,303
Number of complaints resolved	39,871	39,093
Average number of days for complaint resolution	400	274
Complaints resulting in disciplinary action	2,394	2,693
administrative penalty	$2,015,455	$3,308,896
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other:		
Agreed Order	210	405
Notice of Violation	2,163	2,238
Compliance Agreements	21	50

Texas Commission on Environmental Quality Field Operations—Edwards Aquifer Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	6,416	6,789
Total number of entities inspected	914	929
Total number of complaints received from the public	Included in WQ	Included in WQ
Total number of complaints initiated by agency	878	891
Number of complaints pending from prior years	0	0
Number of complaints found to be non-jurisdictional	0	0
Number of jurisdictional complaints found to be without merit	0	0
Number of complaints resolved	893	856
Average number of days for complaint resolution	450	356
Complaints resulting in disciplinary action:	67	111
administrative penalty	$270,700	$250,935
Reprimand	Not applicable	Not applicable
Probation	Not applicable	Not applicable
Suspension	Not applicable	Not applicable
Revocation	Not applicable	Not applicable
Other: Agreed Order Notice of Violation Compliance Agreements	 14 53 0	 26 85 0

Texas Commission on Environmental Quality Field Operations—Water Rights Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2007 and 2008		
	FY 2007	**FY 2008**
Total number of regulated persons	Not applicable	Not applicable
Total number of regulated entities	12,799	13,034
Total number of entities inspected	34,735	36,633
Total number of complaints received from the public	187	257
Total number of complaints initiated by agency	34,593	36,558
Number of complaints pending from prior years	2	3
Number of complaints found to be non-jurisdictional	3	1
Number of jurisdictional complaints found to be without merit	52	56
Number of complaints resolved	171	241
Average number of days for complaint resolution	535	249
Complaints resulting in disciplinary action:	13	13
administrative penalty	$8,050	$8,603
reprimand	Not applicable	Not applicable
probation	Not applicable	Not applicable
suspension	Not applicable	Not applicable
revocation	Not applicable	Not applicable
Other:		
Agreed Order	2	7
Notice of Violation	11	6
Compliance Agreements	0	0

INVESTIGATION PROCESS FLOW



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Homeland Security
Location/Division	3rd Floor / Building C / Office of Compliance and Enforcement
Contact Name	Kelly Cook
Actual Expenditures, FY 2008	$2,910,940
Number of FTEs as of August 31, 2008	11

B. What is the objective of this program or function? Describe the major activities performed under this program.

The TCEQ's Homeland Security Program assists in the planning, development, coordination, and implementation of initiatives to promote the governor's homeland security strategy, and to detect, deter, respond to, and recover from disasters, both natural and human-caused. These initiatives include notifying and coordinating with many of those responsible for the state's critical infrastructure entities, including producers and purchasers of public drinking water, high-risk dams, refineries, petrochemical facilities, and wastewater treatment facilities.

As a member of the Texas Homeland Security Council, the TCEQ assists in planning, coordination, and communication for homeland security preparedness. The TCEQ's homeland security coordinator is on call 24 hours a day to facilitate requests for assistance from the Governor's Office of Homeland Security (GOHS) and the Texas Division of Emergency Management (TDEM), and to notify TCEQ executive management of significant statewide incidents.

The Homeland Security Program coordinates with all TCEQ program areas and the GOHS and TDEM on issues and activities related to all hazards, including homeland security and emergency management. The program's focus is not the day-to-day operation of the programs and the entities the TCEQ regulates, but rather aspects of detecting and preventing threats, responding to disasters or incidents that affect the public and the regulated community, and recovering from their effects.

TCEQ's homeland security responsibilities are described in Texas' Homeland Security Strategic Plan, with its emergency management responsibilities described in more detail in Part III, the State of Texas Emergency Management Plan and its annexes. The plan was developed to fulfill requirements in Government Code, Sections 418 and 420.

TCEQ's Homeland Security Program oversees the TCEQ Strike Team and the BioWatch Program. The TCEQ Strike Team is a key component of the agency's ability to respond rapidly to emergencies, assess the extent of public exposure to hazardous materials, and maintain an interoperable communication platform. The BioWatch Program is a federal initiative that facilitates early detection of selected bioterrorism agents to enable the earliest possible response to an attack. TCEQ is a partner and federal-grant recipient in this project, responsible for developing and operating air monitoring networks in populated areas in Texas.

The TCEQ supports the Texas Department of State Health Services (DSHS) under the Radiological Emergency Management Annex of the State Emergency Management Plan. TCEQ personnel assist the DSHS with field monitoring, site closure, personnel safety, and equipment calibration. In addition, the Homeland Security Program includes field activities related to radioactive materials where health physicists perform investigations and inspections of construction, operation, security, and closure at regulated facilities.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Through the program's efforts, the TCEQ strives to attain and improve its readiness for all emergencies. Notable demonstrations include:

Response to Hurricane Dolly

Hurricane Dolly made landfall on the Cameron-Willacy County line on July 23, 2008, and caused extensive flooding and damage to public water systems. The TCEQ responded to alleviate the threat to human health and the environment related to flooding and wind damage. The TCEQ Homeland Security Program coordinated the following actions in connection with this event:

- restored services for public water supplies and wastewater-treatment plants;
- pumped to remove floodwater;
- oversaw debris management and supplying guidance for burning vegetative materials;
- assessed the state of landfills;
- made daily status and activity reports to and provided TCEQ staffing for the State Operations Center and daily internal-coordination conference calls;
- secured all TCEQ capital assets and regional offices in the hurricane strike zone and provided operational and logistical support for the response effort;
- activated TCEQ emergency-response contractors; and

- inspected state and federal Superfund sites in the impact zone.

Pollution Removal, Matagorda Island, Aransas National Wildlife Refuge
In February 2008, the TCEQ's Strike Team worked with the U.S. Coast Guard to identify and remove 393 drums and containers with hazardous materials that threatened the public and wildlife in the Aransas National Wildlife Refuge.

TCEQ Strike Team's Portable Radio Interoperability System
In FY 08, the TCEQ Strike Team received and made operational its Field Portable Radio Interoperability System, which enables communications between response organizations using different radios and different frequencies during an emergency response.

Intelligence Gathering
The program has made notable improvements in assisting the Texas government's intelligence gathering about all hazards. These improvements include: integrating TCEQ investigator observations when reporting significant incidents (such as a spill causing a highway shutdown, or a refinery explosion); reporting suspicious activities to the Texas Intelligence Center and TDEM; and representing the TCEQ to law-enforcement intelligence-gathering associations

BioWatch Program
The TCEQ has achieved an excellent rate of data return with the operation of its air monitoring network. Air samples are collected every day, with minimal interruptions, reaching a completion rate greater than 98 percent statewide. The BioWatch air sampling network is focused solely on the detection of pathogenic organisms, while the Monitoring Operations air sampling network is focused on general air quality.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The TCEQ's Homeland Security Program was established as part of a statewide, response to the attacks of September 11, 2001. Since then, significant expansion of emergency and disaster-management preparation, response, and recovery has occurred at the state and national levels, which included the TCEQ increasing its staffing for homeland security activities. The number of program personnel grew to include one full-time homeland security coordinator in 2003, with several more technical employees added in 2004.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Agency programs: The program affects all other agency programs; all have roles and responsibilities in preparing for and responding to widespread disasters. Also, a representative from each TCEQ office and other critical TCEQ personnel are required to

undergo National Incident Management System training to ensure that TCEQ employees expected to respond to a disaster understand the specific processes to follow.

Public and regulated facilities: The TCEQ Homeland Security Program reestablishes continuity of operations after a disaster, ensuring restoration of services at critical infrastructure facilities that the agency regulates. BioWatch monitoring is designed to protect approximately 70 percent of the state's urban residents by identifying possible biological attacks.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Most of the agency's homeland security efforts are not within its day-to-day regulatory responsibilities; rather, they address state goals, strategies, and objectives to prepare, prevent, minimize the effects of, and respond to and recover from disasters and emergencies, whether natural or human-caused. TCEQ homeland security efforts focus on coordinating related efforts across agency programs. (Refer to flowchart *TCEQ Homeland Security Process* following Question O.)

Program duties include coordinating homeland security issues across all program areas of the agency, as well as coordinating with state-level homeland security officials. The homeland security coordinator is the primary contact for issues communicated to the agency by the GOHS and the TDEM and other state members of the Emergency Management Council.

The program oversees the Strike Team and the BioWatch Program, with personnel and financial management located in other agency programs.

TCEQ Homeland Security Coalition

This coalition is made up of TCEQ management and personnel from each TCEQ Office, in addition to other agency employees with knowledge of issues relating to critical infrastructure. The coalition, led by the homeland security coordinator, meets regularly to address homeland security issues confronting the TCEQ, such as information security, staff identification, preparation, planning for disasters, and border security.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0151	Clean Air Account	$193,572
0153	Water Resource Management Account	$39,792
0550	Hazardous and Solid Waste Remediation Fee	$513,559

0555	Federal Funds	$2,098,090
0146	Used Oil Recycling Account	$37,861
0549	Waste Management Account	$28,066

Strategies:
A.1.1—Air Quality Assessment and Planning
A.1.2—Water Assessment and Planning
A.1.3—Waste Assessment and Planning
A.2.1—Air Quality Permitting
C.1.1—Field Inspections and Complaints
C.1.2—Enforcement and Compliance Support

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

None

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Intergovernmental committees on which TCEQ Homeland Security participates include the State of Texas Emergency Management Council and the State of Texas Homeland Security Council.

Texas' emergency-management plan defines the primary and support functions of all state agencies that are members of the Emergency Management Council.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The program coordinates with state, local, regional, and federal units of government for emergency and disaster preparedness, response, and recovery. Coordination with law-enforcement organizations is primarily for information and intelligence gathering and sharing.

State
Governor's Office of Homeland Security, Division of Emergency Management
State of Texas Emergency Management Council
Local, Regional
Federal Bureau of Investigation — Local Homeland Security Programs
Law-enforcement organizations
Federal

EPA
Department of Defense
Federal Emergency Management Agency (FEMA)
Department of Homeland Security (also for BioWatch grant)
Army Corps of Engineers
International Boundary and Water Commission

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

Contract expenditures for the Homeland Security Program's BioWatch Program in FY 08 were $1,906,913. BioWatch-related contracts included one private contract ($192,497) and six local-government contracts ($1,714,416). The BioWatch Program is funded by a grant from the U.S. Department of Homeland Security and fulfills its grant obligations by contracting for operations of the monitoring sites.

To assure accountability, the Monitoring Operations internal auditor and the TCEQ Chief Auditor's Office also audit the BioWatch contracts annually. The BioWatch Program ensures contracts with homeland security sensitive information are protected by coordinating information maintained across agency programs. Guidance for these activities is found in the agency's *Procedures for Homeland Security Procurements and Contracts, Funding, Encumbrance, and Posting*.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

Significant activities led by the TCEQ Homeland Security Program occurred in FY 09:

Hurricane Ike Response

- Conducted response operations seven days a week for more than six weeks.

- Participated in Texas Task Force Ike and deployment of the TCEQ's Strike Team Mobile Command Post.

- Formed a unified command in three operational areas, with other state and federal partners, to assess and collect hazardous materials.

- Monitored and assisted to restore services at approximately 1,400 public water supplies and over 700 wastewater treatment plants in 10 counties, and tracked over 1,200 “boil water” notices.

- Oversaw appropriate disposal, authorized the burning of vegetative materials, established a debris-management hotline, and authorized and monitored 170 storm-debris management sites.

- Assessed 28 landfills in the hurricane impact zone.

- Developed and implemented a comprehensive plan to address potentially contaminated soils.

- Controlled and removed hazardous materials.

- Conducted air quality monitoring downwind of debris burning sites and hazardous materials containers.

- Coordinated regulatory flexibility and guidance to affected regulated entities.

- Secured TCEQ capital assets and regional offices in the strike zone, prepared a response and relief staff, and activated TCEQ emergency-response contractors.

- Supervised TCEQ personnel at the State Operations Center, which was activated 24 hours for 22 days and gave daily center reports and conference calls for internal coordination.

- Inspected 41 state and federal Superfund sites in the Ike impact zone.

Presidio Flood
The Rio Grande flooding at Presidio and downstream caused a levee failure near Presidio that threatened a school and other parts of the city including more than 500 houses. The TCEQ worked with the State Operations Center and city and county officials to minimize the effects of the flooding by controlling additional releases from dams along the waterway.

H1N1 Influenza Pandemic
Preparations made by the program for an influenza pandemic enabled the agency to react efficiently to the pandemic that began in spring 2009. The TCEQ activated its influenza pandemic plan and its Pandemic Response Team to address employee concerns and ensure continuity of operations. Respirators and antiviral medications had been stockpiled in preparation for a pandemic.

Re-Entry Task Force

TCEQ has fully implemented the TDEM's new four-pronged Hurricane Re-Entry Task Force concept, as well as giving strategic support to the task force.

Joint Terrorism Task Force

The TCEQ Homeland Security Program has been asked to join the Federal Bureau of Investigation's (FBI) Austin Joint Terrorism Task Force (JTTF). The JTTF is responsible for all domestic and international terrorism issues as well as preventing and investigating acts of terrorism and prosecuting terrorists. The program will represent the TCEQ, review terrorism-related environmental documents, and receive and disseminate intelligence about critical infrastructure facilities under the TCEQ's regulatory authority.

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

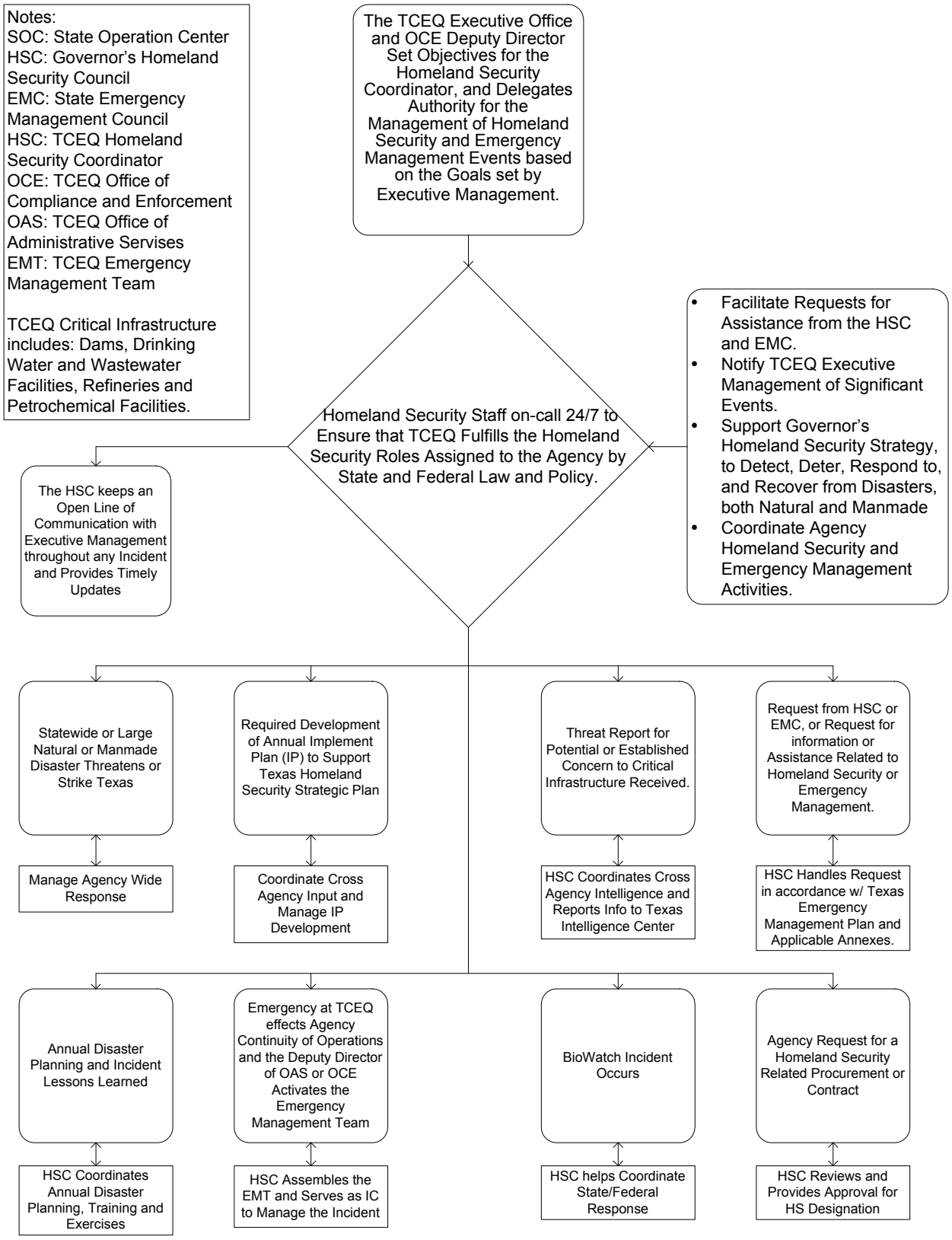
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

TCEQ HOMELAND SECURITY PROCESS



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Mobile Monitoring
Location/Division	3rd Floor / Building A / Monitoring Operations Division / Office of Compliance and Enforcement
Contact Name	David Bower
Actual Expenditures, FY 2008	$1,483,200
Number of FTEs as of August 31, 2008	17

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Mobile Monitoring Program conducts short-term ambient air monitoring downwind of emission sources. Various sampling techniques are combined with imagery and mapping to pinpoint emission sources such as storage tanks, flares, product loading and unloading, and processing units. Mobile-monitoring deliverables include validated data, technical reports, infrared imagery, and investigative and scientific documentation. These deliverables are used in a variety of applications, including the Air Pollutant Watch List, stakeholder meetings, enforcement actions, emissions-inventory considerations, investigator training, permitting, scientific studies, and determinations related to public health.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

During FY 08, the program conducted 12 studies that resulted in sampling at approximately 235 sites. These studies supported permitting, enforcement, and air quality planning activities by characterizing the ambient air quality in the vicinity of over 200 regulated entities.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

The program was established in the mid-1980s. Although its original intent focused on permitting and enforcement actions, the customer base has expanded significantly to include applications related to public education, technical assistance, and pollution prevention.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Mobile Monitoring is within the Monitoring Operations Division of the Office of Compliance and Enforcement. It is not a regulatory program, however; it does supply data to support various agency functions including investigative actions (30 %), health-effects reviews including the Air Pollutant Watch List (30 %), enforcement actions (10 %), permitting activities (5 %), emissions-inventory functions (5 %), relating to technical stakeholders (5 %), investigator training (5 %), Small Business and Environmental Assistance Program oil and gas seminars (5 %), and technical services and presentations (5 %).

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The program's management team seeks input on priorities each fiscal year from a variety of internal and external customers who request mobile-monitoring studies to address specific issues. Scheduling decisions take into account logistical, managerial, and scientific considerations including required wind direction, facility operating schedules, agency priorities, pending permitting actions, citizen complaints, and public interest.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0151	Clean Air Account	$630,373
5094	Operating Permit Fees	$852,827

Strategy—A.1.1—Air Quality Assessment and Planning

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

No other programs in Texas offer identical services or functions. The City of Houston has recently developed a limited mobile-monitoring program that samples for volatile organic compounds within the city limits. However, Houston's program differs from the TCEQ's in that it is limited in scope and does not have National Environmental Laboratory accreditation, without which its data cannot be used as the basis for commission decisions.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The program undertakes studies in response to internal and external customer requests. As part of study planning, program personnel assess whether efforts to conduct a study will duplicate or conflict with the TCEQ's investigative efforts. Additionally, planning for a mobile monitoring operation study includes program personnel coordinating with other TCEQ employees familiar with the relevant data sets and geographic areas. For example, the TCEQ regional-office staff, Air Quality Division, and Toxicology staff are consulted when a mobile-monitoring study is being planned.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

All TCEQ mobile-monitoring activities are coordinated through its appropriate regional office, which also coordinates as needed with relevant local governments.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

None

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Remediation / Petroleum Storage Tank and Dry Cleaner
Location/Division	2nd Floor / Building D / Remediation Division / Office of Compliance and Enforcement
Contact Name	Brent Wade
Actual Expenditures, FY 2008	$46,810,780
Number of FTEs as of August 31, 2008	61.5

B. What is the objective of this program or function? Describe the major activities performed under this program.

Petroleum Storage Tank Program

The Petroleum Storage Tank (PST) Program oversees the assessment and cleanup of leaking petroleum storage tanks (LPSTs). The objective of the program is to ensure proper cleanup of releases by evaluating and tracking all reported releases of petroleum and other hazardous substances from underground and above-ground storage tanks.

The PST Program uses a risk-based approach in managing cleanup at LPST sites. This approach determines the timing, type, and degree of remediation at contaminated sites. Many LPST cleanups are addressed by responsible parties. For sites that meet eligibility requirements, the PST Remediation (PSTR) Fund is used to reimburse owners or operators for the cost associated with cleanups. The PSTR Fund is also used for sites where the responsible party is unwilling, unable, or unknown. For these sites the TCEQ's PST Program directs and pays a state contractor to conduct the corrective action. The program also develops PST technical standards for preventive equipment for tank systems to allow for early detection or prevention of releases.

Dry Cleaner Program

The Dry Cleaner Program oversees the assessment and cleanup of releases of solvents from dry-cleaner facilities using a risk-based approach. The TCEQ's Dry Cleaner Remediation Fund is used to pay for the cleanup of contaminated sites and to administer the Dry Cleaner Registration Program.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Petroleum Storage Tank Program

The program began tracking PST releases in 1987, the year the Legislature established comprehensive regulation of underground storage tanks. As of August 31, 2008, 22,401 out of 25,370 known contaminated PST sites have been cleaned up. Additional performance measures are as follows:

#	LBB Number	Type	FY 08 Performance Measure	Percent of Annual Target
1	04-01.01	Outcome	Percent of leaking petroleum storage tank sites cleaned up (key)	100.34
2	04-01-01.03	Output	Number of petroleum storage tank fund applications processed (key)	76.37
3	04-01-01.01	Efficiency	Average time (days) to review and respond to remedial action plans	83.33
4	04-01-01.02	Efficiency	Average time (days) to review and respond to risk-based site assessments	79.67
5	04-01-01.03	Efficiency	Average time (days) to process PST–remediation-fund reimbursement claims	40.88

Variance Explanations:

#2—The number of sites undergoing remediation has decreased; therefore, the number of applications received and processed decreased.

#3—The program was consistently reviewing and responding *before* the required 30 days.

#4—The PST program has implemented procedures to ensure the 30-day time frame is consistently met.

#5—The program is required to process claims within 90 days, but consistently did so in an average of 36.8 days in FY 08.

Dry Cleaner Program

The Dry Cleaner Remediation Program was created in 2003. As of August 31, 2008, the program had initiated assessment and cleanup on 139 sites. Eight sites were cleaned up in FY 08.

#	LBB Number	Type	FY 08 Performance Measure	Percent of Annual Target
1	04-01-02.07	Output	Number of Dry Cleaner Remediation Program Application Received (Key)	103.33
2	04-01-02.01	Efficiency	Average Time (Days) to Process Dry Cleaner Remediation Program Applications	50

Variance explanation for #2: The program has implemented procedures to ensure the average time to process an application is less than the required 90 days.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Petroleum Storage Tank Program

1984

- Congress amended the Resource Conservation and Recovery Act (RCRA) authorizing a national program regulating underground storage tanks.

1986

- The Texas Water Commission was designated to receive and process underground storage tank registrations.

1987

- The 70th Legislature adopted SB 779 which authorized the Texas Water Commission to develop and administer a comprehensive program regulating underground storage tanks.

1989

- The 71st Legislature adopted HB 1588 which authorized limited regulation of above-ground storage tanks; established the Petroleum Storage Tank Remediation Fund providing financial assistance to owners and operators of LPSTs; imposed a bulk delivery fee to finance the program; and established a registration program for contractors performing corrective actions.

1995

- The Environmental Protection Agency (EPA) approved Texas' regulatory program, allowing it to operate in lieu of the federal program.

1998

- Eligibility ended for owners and operators to report a release and receive reimbursement for cleanup.

2007

- The 80th Legislature adopted HB 3554 which extended reimbursement for eligible LPST sites through August 2012.

Dry Cleaner Program

2003

- The Dry Cleaner Program was created by HB 1366 and codified in Texas Health and Safety Code, Chapter 374. This law established new environmental standards for dry cleaners and a remediation fund to assist with the assessment and remediation of contamination caused by releases of dry-cleaning solvents.

2005

- HB 2376 authorized removal of the five-year ownership requirement for landowner eligibility for the remediation program, revised the fee structures, extended the deadline for opting out of the Dry Cleaner Facility Release Fund and limited the applicability of some performance standards. SB 444 extended the deadline for opting out of the Dry Cleaner Facility Release Fund to February 28, 2006, and allowed some dry cleaners that opted-out to receive credit for previously paid fees.

2007

- HB 3220 (1) created registration requirements for current and former property owners to claim benefits from the Dry Cleaner Remediation Fund, (2) allowed liens against applicable properties for past-due registration fees and clean-up costs that occurred while fees are in arrears, and (3) prohibited the use of perchloroethylene at sites where the TCEQ has funded cleanup.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Petroleum Storage Tank Program

The PST Program affects owners and operators of regulated storage tanks, as well as current and former property owners where a release has occurred. Cleanup expenses for sites being addressed by the owner-operator as the responsible party are eligible for reimbursement if they were reported to the TCEQ before December 22, 1998, and meet additional requirements as listed in 30 TAC Chapter 334, Subchapter H. Sites that cannot be addressed by the owner-operator may be eligible for cleanup by the state. The criteria for a site to be managed by the state appear in 30 TAC Section 334.84.

Dry Cleaner Program

The Dry Cleaner Program affects dry-cleaner facility and drop station owners, current and former owners of a property where a release has occurred, and solvent distributors.

To be eligible for the program, an applicant must be registered with the TCEQ and be one of the following: (1) the owner of the dry cleaner facility or drop station; (2) an owner of property where the facility or drop station is (or was) located; or (3) a former property owner with an agreement with the current owner establishing responsibility for cleanup costs.

Applicants must submit an application for ranking which documents a release of dry cleaner solvent into the environment from a currently registered or former retail dry cleaner facility. The applicant must pay the first $5,000 of corrective action costs and sign an affidavit stating that perchloroethylene shall not be used at the site in the future.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Petroleum Storage Tank Program

Responsible parties may request reimbursement for cleanup expenses at eligible sites. If approved, the expenses are paid from the Petroleum Storage Tank Remediation (PSTR) fund, for which the responsible party submits a reimbursement application to the TCEQ. Applications are reviewed and processed by the PSTR program within 90 days from the day they are deemed administratively complete. The flowchart *Leaking Petroleum Storage Tank Remediation Process* following Question O depicts how a PST release is processed from reporting to closure.

Dry Cleaner Program

Refer to the flowchart *Dry Cleaner Remediation Work Flow Process* following Question O.

Except for sites that require emergency action, the program cannot commence assessment and cleanup at a site until the site application has been ranked and prioritized. Site ranking is based on potential harm to human health or the environment from the site. Site prioritization includes ranking, but also takes into account non-risk factors such as the cost of assessment and cleanup.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0549	Waste Management Account	$3,521,564
0655	Petroleum Storage Tank Remediation	$36,691,334
5093	Dry Cleaning Facility Release	$5,110,470
0555	Federal Funds	$1,487,412

Strategies:
D.1.1—Storage Tank Administration and Cleanup
D.1.2—Hazardous Materials Cleanup

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

Petroleum Storage Tank Program

The EPA's Office of Underground Storage Tanks has delegated to the State of Texas, through a Memorandum of Agreement, the responsibility for implementing the RCRA Subtitle I Underground Storage Tank Program. The EPA serves as an information resource and supports the state with grants from the Leaking Underground Storage Tank Trust

Fund. Other programs within the TCEQ perform PST-related registration functions, primarily within the Office of Permitting and Registration.

Dry Cleaner Program

The remediation of dry cleaner facilities may be addressed in the Voluntary Cleanup Program or the Corrective Action Program within the Remediation Division. However, only the Dry Cleaner Remediation Program funds assessment and site cleanup. All programs use the same cleanup standards: 30 TAC Chapter 350. Only in the Dry Cleaner Remediation Program are sites prohibited from continuing the use of perchloroethylene as a dry cleaning solvent.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Petroleum Storage Tank Program

Releases of hazardous substance from PSTs are under the jurisdiction of the LPST Program and the RCRA Corrective Action Program. An interoffice memorandum ("Site Characterization and Coordination of Assessment and Remediation Standards …," dated December 21, 2001) outlines which program has primary responsibility in directing corrective action at the sites. A Memorandum of Understanding between the Texas Railroad Commission and the TCEQ (16 TAC Part 1, Chapter 3, Section 3.30) defines jurisdiction between the two state agencies.

Dry Cleaner Program

To ensure that a site is not simultaneously in the Voluntary Cleanup Program and the Dry Cleaner Remediation Program (DCRP), an applicant is required to withdraw from the VCP Agreement before the site can be accepted in the DCRP. In addition, a site will not be accepted in the DCRP if it is being managed in the TCEQ's Corrective Action Program. Once corrective action costs have been incurred at a site under the DCRP, an applicant may not withdraw the site from the DCRP before the completion of correction action unless approved by the executive director.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Petroleum Storage Tank Program

The EPA serves as an information resource and supports the state with grants from the Leaking Underground Storage Tank Trust Fund. The federal grant money is used to support agency PST-related activities such as field investigations, emergency responses, remediation, and cleanup at sites where releases have occurred and the responsible party is unknown, unwilling, or unable to respond. Semiannual and annual program update reports are submitted to the EPA, and meetings are held annually to discuss activities conducted and plan for the upcoming year.

Dry Cleaner Program: None

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

Petroleum Storage Tank Program

The PST Program spent $12,323,728 in FY 08. Expenditures were distributed between 27 PST state lead contracts and one PST privatization contract. PST state lead contracts were used to conduct risk-based site assessments and cleanups of contaminated sites. The PST privatization contract was used for regulatory oversight (assistance with reviews of cleanup reports and reimbursement claims).

The program experienced no contracting problems in FY 08.

Dry Cleaner Program

The Dry Cleaner Remediation Program spent $3,172,160 in FY 08. Expenditures were distributed between three state lead contracts. Funds were used to conduct risk-based site assessments and cleanups of contaminated sites.

For the PST and Dry Cleaner Programs, contractor performance must adhere to the quality-assurance project plan, as well as all technical requirements in contracts, guidance, and rules. Both programs conduct regular field oversight and audits. The PST Program performs internal and external management-system reviews, as required under a federal grant and the TCEQ quality-management plan.

To ensure accountability for funding (PST and Dry Cleaner Programs), work orders are created and subsequent invoices are tracked in the TCEQ Remediation Division's Contract Administration and Tracking System, designed to prohibit invoices, work orders, or contracts from exceeding budget allocations. Additionally, all invoices must undergo technical and administrative review to ensure allowable costs and compliance with contractual guidelines. To ensure contractor accountability, five percent of each invoice amount is retained until each work order is completed and approved. All costs are reconciled with the Uniform Statewide Accounting System. Currently, the TCEQ's Remediation Division is enhancing its fiscal monitoring program to further ensure contractor accountability and accuracy.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

Petroleum Storage Tank Program

Reinstate Common Carrier Liability in the Texas Water Code. The Federal Energy Act of 2005 required all states with EPA-approved, delegated underground storage tank programs to make common carriers liable for deliveries to uncertified tanks. To fully comply with this requirement, the TCEQ would need statutory authority to reinstitute common-carrier liability that was rescinded during the 79th legislative session in 2005.

Clarify verbiage in TWC Chapter 26 to allow the TCEQ state lead program the use of Petroleum Storage Tank Remediation (PSTR) Funds for removals of underground storage tank systems from sites where the owner and operator are unwilling or unable to proceed, or cannot be found. Currently, TWC Section 26.351 states that this type of corrective action may be funded by PSTR "in response to a release or a threatened release." However, it is not clear what situations would constitute "threatened releases." Numerous TCEQ enforcement cases have been initiated in the last several years against property owners for failure to remove tanks from the ground; many of the respondents may be willing but are financially unable to do so.

Clarify verbiage in TWC Section 26.3513 (Liability and Costs: Multiple Owners and Operators), which addresses how to apportion liability among multiple *current* owners or operators. It is not clear if there should also be some liability between *current* and *former* owners or operators. As a result, the PST Program has a significant, recurring issue with PST responsible-party remediation. Current owners and operators are referred for formal enforcement when a cleanup remains outstanding. The issue for the PST Program and the TCEQ's enforcement program is that many times the *current* owner or operator can demonstrate the contamination occurred or began under a prior owner.

Dry Cleaner Program: None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

Petroleum Storage Tank Program

Improvements for the PST Program include: (1) a higher quality of underground storage tank systems, (2) higher technical standards to prevent leaks, and (3) a requirement that owners or operators carry insurance. However, new LPST sites are reported each year from the current universe of underground storage tanks in Texas that tops 60,000.

If a PST release is reported today, the cleanup must be paid for by the owner/operator, an insurance company, or by the TCEQ's state lead program (which is funded by the PSTR Fund). The PST Program can address this ongoing need if funding from the PSTR account continues to be sufficient. Though the fee that supports the PSTR Fund is scheduled for

sunset on August 31, 2011, the obligations associated with the PST regulatory program and state lead program continue.

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

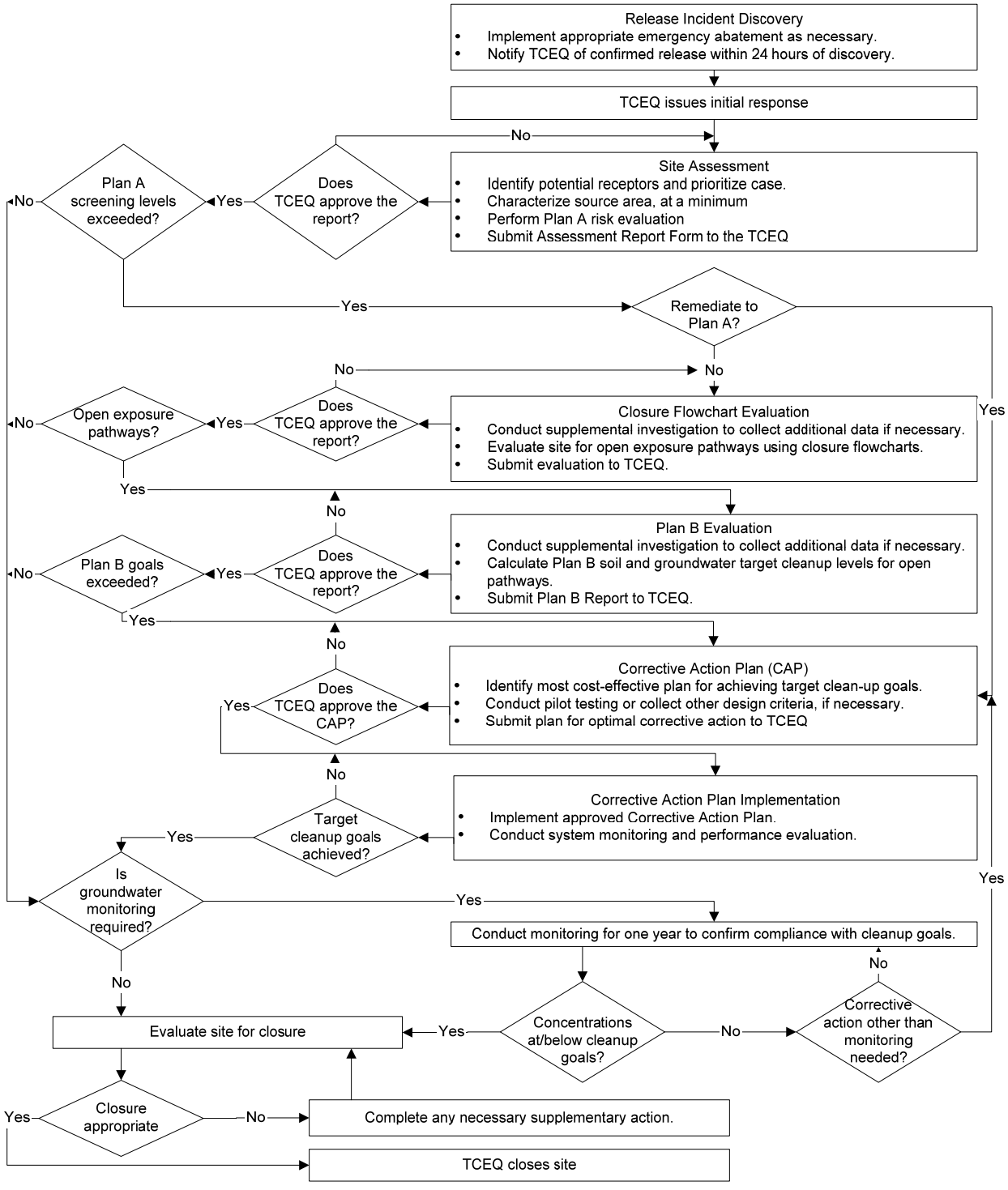
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

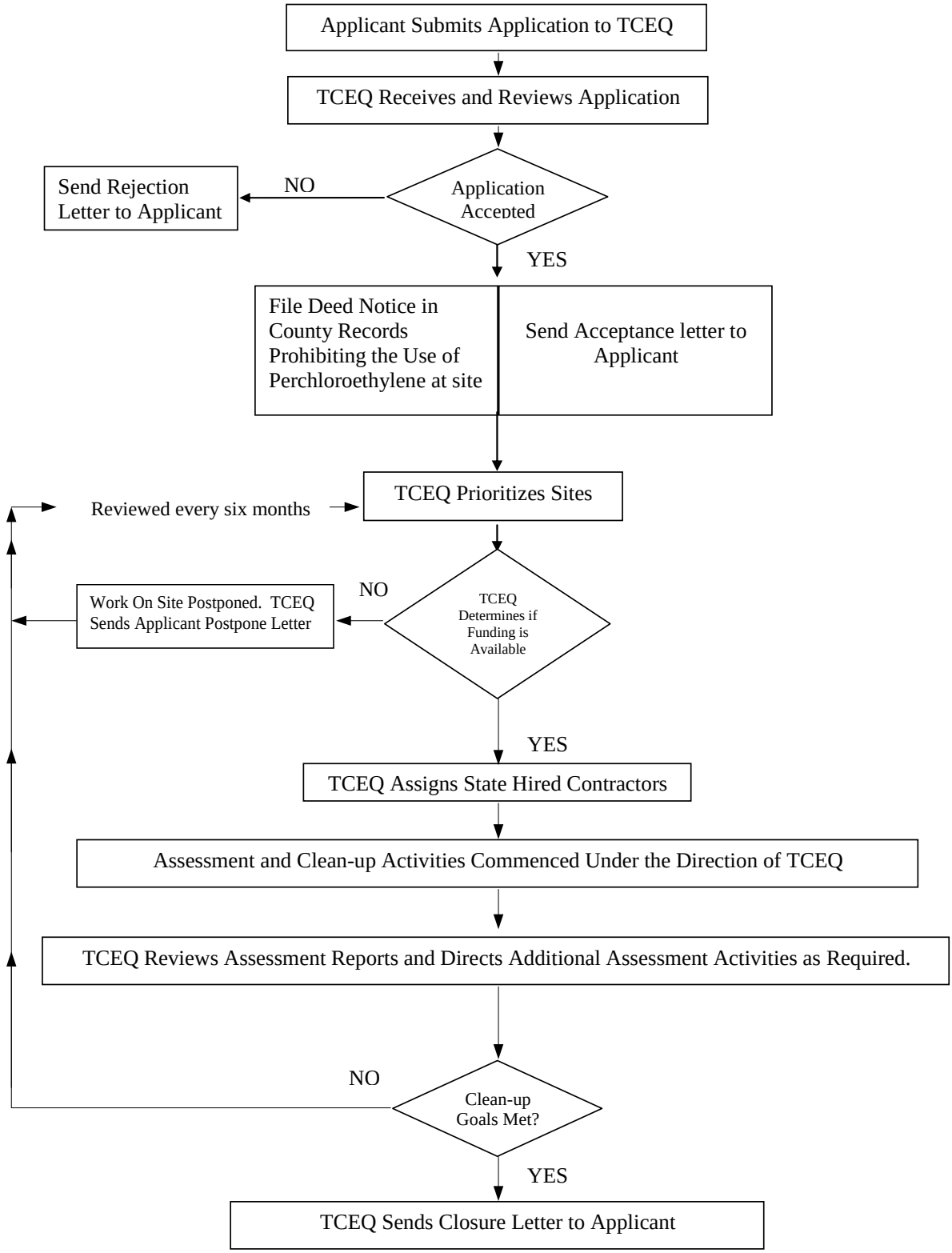
Not Applicable

Leaking Petroleum Storage Tank (LPST) Remediation Process



Revised July 2009

Dry Cleaner Remediation Work Flow Process



August 2009

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Remediation / Superfund
Location/Division	2nd Floor / Building D / Remediation Division / Office of Compliance and Enforcement
Contact Name	Brent Wade
Actual Expenditures, FY 2008	$18,036,815
Number of FTEs as of August 31, 2008	74.5

B. What is the objective of this program or function? Describe the major activities performed under this program.

The primary objective of the state Superfund Program is to address sites with a release or threatened release of hazardous substances associated with imminent or substantial endangerment to public health, public safety and/or the environment. Its major functions are to investigate and evaluate threatened or actual releases of hazardous substances, identify responsible parties, and remediate federal and state Superfund sites.

Superfund sites are identified and referred by the TCEQ's Superfund Site Discovery and Assessment Program (SSDAP). The SSDAP identifies and ranks sites contaminated with hazardous substances for remediation by the state and federal Superfund Programs. Sites contaminated with hazardous substances without a responsible party willing to address the problem through a permit, corrective action, voluntary cleanup or enforcement are identified through referral from internal and external groups, including the TCEQ Enforcement Division, the TCEQ regions, the TCEQ Water Supply Division, complainants, and the Environmental Protection Agency (EPA). On behalf of the EPA, the SSDAP also oversees the Preliminary Assessment / Site Inspection (PA/SI) Program, which focuses on evaluating sites for the federal Superfund Program.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

The effectiveness and efficiency of the Superfund Program is reported to the Legislative Budget Board. In FY 08, the program reported the following key performance measures:

<u>Pollution Cleanup (Goal 04-01)</u>

- Outcome Measure 02: Superfund sites that have completed cleanup compared to the total number of State and Federal sites since program inception—111.53 percent of annual target attained.

Hazardous Materials Cleanup (Goal 04-01-02)

- Output Measure 04: Number of Superfund sites in Texas undergoing Evaluation and Cleanup—71.64 percent of annual target attained. This output measure was not met because fewer sites than projected met program criteria, resulting in fewer sites undergoing evaluation and cleanup.

- Output Measure 05: Number of Superfund Cleanups Completed—100 percent of annual target attained.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Most of the program's history is included in the general agency history section of this Self Evaluation Report; the following is in addition:

1982

- The Texas Department of Water Resources (a TCEQ predecessor agency) is designated as the state's lead agency for the federal Superfund Program.

1985

- The Solid Waste Disposal Act is amended to create the state Superfund Program.

1986

- Congress amends the Comprehensive Environmental Response, Compensation, and Liability Act with the Superfund Amendment and Reauthorization Act to expand the program to federal facilities.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Superfund Program affects property owners and present and former owners or operators of facilities, as well as generators and transporters of waste that have caused a release of hazardous substance.

To determine eligibility for the state or federal Superfund Program, a site is ranked by hazard. For a site to be eligible for the Federal Superfund Program, its score must be greater than 28.5 on a scale of 100. If the EPA elects not to address a contaminated site, it is then referred to the state Superfund Program for consideration. A score greater than 5.0 indicates that a site may be eligible for the state program.

In FY 08, 76 site assessments were completed in the SSDAP, 39 of which were completed on PA/SI Federal Program sites.

As of August 31, 2008, the TCEQ's Superfund Program was addressing cleanup at 48 State Superfund sites and 49 Federal Superfund sites in Texas.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Refer to the flowchart *Superfund Process* following Question O.

The majority of program staff managing Superfund site activities are located in the central office. The Superfund Program also has three project managers located in the TCEQ Houston, Dallas–Fort Worth and Tyler regional offices.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0549	Waste Management Account	$1,171,650
0550	Hazardous and Solid Waste Remediation Fee	$14,146,397
5000	Solid Waste Disposal Fee	$1,493,870
0555	Federal Funds	$1,224,898

Strategy—D.1.2—Hazardous Materials Cleanup

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

The SSDAP (state) and PA/SI Program (federal) both discover and evaluate potential federal Superfund sites. The TCEQ conducts the site assessments for the EPA's PA/SI Program to determine if the Federal Superfund Program will take the lead on the site cleanup based on hazard (see Question E, above). The EPA also has similar authorities over Texas Superfund cleanup activities.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The TCEQ'S SSDAP and the EPA's PA/SI Program perform similar functions but within differing processes and time lines. Once a site is scored, a determination for referral to the state or federal Superfund Program occurs. However, the evaluation steps are not repeated since the TCEQ's Superfund Program staff conducts work in both programs.

In January 1989, the TCEQ signed a Memorandum of Agreement with the EPA that identifies the respective roles and responsibilities of both agencies regarding cleanup of hazardous-waste sites in Texas and ensures their efforts are not duplicated.

There is no duplication of activities for sites in the state Superfund Program, because they are managed solely by the State of Texas. The TCEQ and the EPA negotiate, based on available resources, which sites in the federal Superfund Program will be managed by the state and by the EPA.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The TCEQ's Superfund Program coordinates and works with many local, regional, state, and federal units of government during the course of identifying, ranking, investigating, evaluating, and remediating sites throughout Texas:

Local Government	**Regional Units of Government**
city councils	councils of government
county judges and commissioners' courts	water conservation districts
county extension services	subsidence districts
municipal utility districts	

State Units of Government:	**Federal Units of Government:**
state elected officials	federal elected officials
Office of the Attorney General	EPA
Department of State Health Services	Army Corps of Engineers
General Land Office	Department of Justice
Parks and Wildlife Department	Occupational Safety and Health Administration
Department of Transportation	Department of Defense
comptroller	Department of Energy
secretary of state	Nuclear Regulatory Commission
	Department of Homeland Security

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**

- **a short description of any current contracting problems.**

The amount spent in contracts for the Superfund Program was $11,990,762. These funds were spent through 16 different contracts, including:

- random laboratory analysis of soil samples
- identifying potentially responsible parties for hazardous contamination
- conducting feasibility studies
- developing remedial designs
- investigation oversight
- water-filtration services
- removals
- oversight of remedial actions
- an intergovernmental agreement with the City of Midland for construction of a water line.

The program has a Quality Assurance Project Plan in place to ensure accountability of contractor performance. Additionally, the program conducts field oversight and audits, internal and external management-system reviews, and background reviews of key personnel; conducts regular meetings with contractors; and performs project-manager review for each invoice and approves deliverables.

To ensure accountability for funding, work orders are created and subsequent invoices tracked in the TCEQ Remediation Division's Contract Administration and Tracking System, designed to prohibit invoices, work orders, or contracts from exceeding budget allocations. Additionally, all invoices must undergo a technical and administrative review to ensure allowable costs and compliance with contract guidelines. To ensure contractor accountability, five percent of each invoice amount is retained until each work order is completed and approved. All costs are reconciled to the Uniform Statewide Accounting System. Currently, the TCEQ's Remediation Division is enhancing its fiscal monitoring program to further ensure contractor accountability and accuracy.

A shortage of qualified and experienced vendors to bid on Superfund Program solicitations is a current contracting issue.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

Some of the remedies that EPA selects have lower capital costs to enact, but higher long-term operation and maintenance (O&M) costs. This is a concern for the TCEQ's Superfund Program when a responsible party has not agreed to fund or perform the remedy, because the TCEQ is then responsible for 100 percent of the O&M costs. Current funding may not be sufficient to support all future O&M activities.

Statutory language explicitly providing that the TCEQ may require recipients of state supplied and maintained filtration systems to use the water for household purposes only is suggested. This option would be beneficial to minimize risk to human health due to a breakthrough of the system and maintain the primary goal of preventing exposure to contamination from a property owner's sole source of drinking water.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

The Superfund Program also includes the Texas' Natural Resource Trustee Program, a joint effort of agencies designated by the governor under the federal Superfund law. The program acts on behalf of the public to seek compensatory restoration for injuries to natural resources from release of oil and hazardous substances. The three state trustees are the TCEQ, the Texas Parks and Wildlife Department, and the Texas General Land Office. The federal trustees are the Department of the Interior and the National Oceanic and Atmospheric Administration.

In FY 09, the Superfund Program established a fourth team in the TCEQ Houston-regional office. Staffing of this team will be complete in early FY 10 and will include five members.

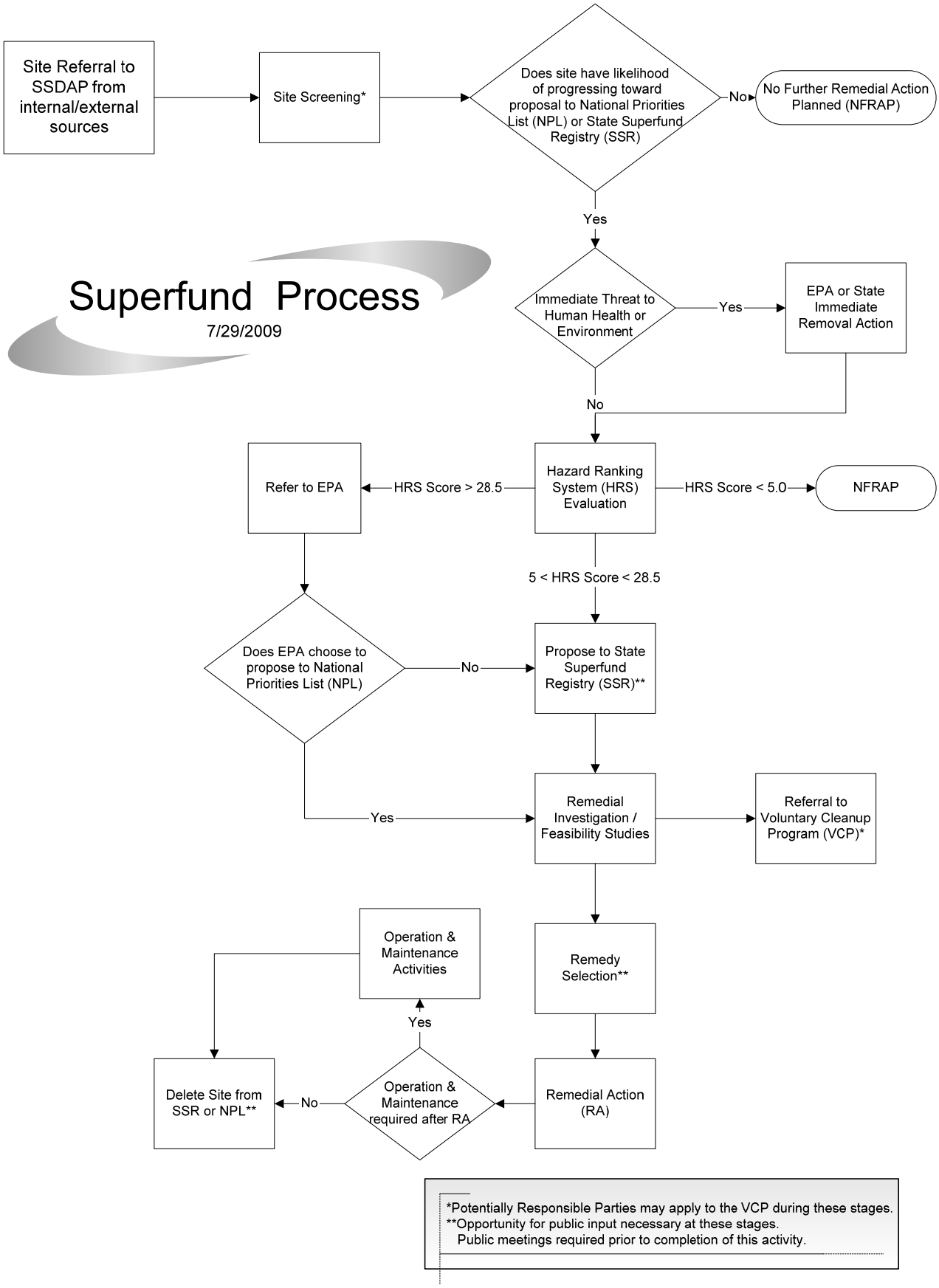
N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable


Site Referral to SSDAP from internal/external sources
Site Screening*
Does site have likelihood of progressing toward proposal to National Priorities List (NPL) or State Superfund Registry (SSR)
No
No Further Remedial Action Planned (NFRAP)
Yes
Superfund Process
7/29/2009
Immediate Threat to Human Health or Environment
Yes
EPA or State Immediate Removal Action
No
Refer to EPA
HRS Score > 28.5
Hazard Ranking System (HRS) Evaluation
HRS Score < 5.0
NFRAP
5 < HRS Score < 28.5
Does EPA choose to propose to National Priorities List (NPL)
No
Propose to State Superfund Registry (SSR)**
Yes
Remedial Investigation / Feasibility Studies
Referral to Voluntary Cleanup Program (VCP)*
Operation & Maintenance Activities
Remedy Selection**
Yes
Delete Site from SSR or NPL**
No
Operation & Maintenance required after RA
Remedial Action (RA)
*Potentially Responsible Parties may apply to the VCP during these stages.
**Opportunity for public input necessary at these stages.
Public meetings required prior to completion of this activity.

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Remediation / Voluntary Cleanup Program and Corrective Action
Location/Division	2nd Floor / Building D / Remediation Division / Office of Compliance and Enforcement
Contact Name	Brent Wade
Actual Expenditures, FY 08	$3,191,717
Number of FTEs as of August 31, 2008	59.5

B. What is the objective of this program or function? Describe the major activities performed under this program.

Voluntary Cleanup Program (VCP)

The objective of the VCP is to encourage cleanup and redevelopment of properties with contamination with incentives to property owners, lenders, operators, and prospective purchasers. The program oversees cleanups by participants who apply, complete cleanup activities, and certify property cleanup is complete, whereupon the VCP issues a certificate of completion. The program also provides a release of liability for all future owners, lessees, operators, and lenders regarding the cleanup of past contamination at the site. Additionally, the VCP manages three other programs: the Innocent Owner/Operator Program, Brownfields Site Assessment, and the Municipal Setting Designation Program.

Innocent Owner/Operator Program (IOP)

The IOP provides a process where an owner or operator of a property can apply for designation as an innocent owner or if the affected property became contaminated as a result of the migration of contaminants from releases not located on the property. The program reviews applications and environmental reports documenting that the source of the contamination is or was off-site. The program issues a certificate to the current owner-applicant that protects the owner from liability to the state for further investigation, monitoring, or remediation of the affected property

Brownfields Site Assessment (BSA)

The TCEQ manages a grant from the EPA to help governments and nonprofit organizations redeveloping brownfield properties in Texas with assessments, limited cleanups, and technical review. Brownfields are properties where expansion, redevelopment, or reuse may be hampered by the real or perceived presence of contamination.

Municipal Setting Designation (MSD) Program

The MSD Program, created in Texas Health and Safety Code Chapter 365, authorizes municipalities to restrict the potable use of groundwater within their jurisdiction. The TCEQ

receives, processes, and denies or certifies MSD applications. Once a municipality is designated, it can limit the investigation and remediation requirements for contaminated groundwater that is not, and will not be, used for potable water. The result is an expedited cleanup of the site which in turn gives municipalities a tool for promoting economic redevelopment. The MSD Program is dependent upon the support of the local municipalities and retail water utilities, as the TCEQ cannot issue an MSD certificate without their support.

Corrective Action (CA)

The purpose of the Corrective Action Program is to oversee the cleanup of sites with soil and groundwater contamination by requiring mitigation and/or removal of the contamination to levels protective of human health and the environment. The program oversees remediation at many sites under the TCEQ's jurisdiction, including:

- facilities with industrial and hazardous waste permits which have released hazardous contaminants to environmental media from units regulated under the Resource Conservation and Recovery Act (RCRA);
- facilities with contamination caused by releases from solid waste management units, or closing such units, whether RCRA or not;
- facilities with municipal and water quality permits with units that have released hazardous contaminants to environmental media;
- RCRA and non-RCRA facilities which conduct corrective action through state-issued enforcement orders and agreed final judgments;
- facilities which self-implement the cleanup regulations of 30 TAC Chapter 335 and Chapter 350; and
- federal facilities which may include any of the above-referenced sites.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

Voluntary Cleanup Program

In FY 08, it is estimated that 1,850 jobs were created in Texas due to increased VCP activities. Additionally, based on voluntary responses to the Texas VCP/Brownfields Survey, property values in Texas were reported to have increased by $211,460,000.

Documentation supporting the effectiveness and efficiency of the program is reported to the Legislative Budget Board (LBB). The VCP has two *key* performance measures that were reported in FY 08.

- LBB Outcome Performance Measure 04-01.03—Percentage of voluntary and brownfield cleanup properties made available for commercial/industrial redevelopment, community, or other economic reuse: 103.38 percent of annual target attained.

- LBB Output Performance Measure 04-01-02.03—Number of Voluntary and Brownfield Cleanups Completed (Certificates of Completion issued): 136.25 percent of annual target attained.

Innocent Owner/Operator Program

During FY 08, 59 IOP applications were received and reviewed within the required average time of 45 days.

Brownfields Site Assessment

The BSA Program had seven applications in FY 08. One applicant was issued a "no further action" letter; six others had phase I environmental site assessments completed.

Municipal Setting Designation

The MSD Program received 33 applications; all were reviewed within the statutorily mandated 90 days.

Corrective Action

The CA Program documents its effectiveness and efficiency to the LBB and the EPA. The program reported the following *key* statistics and performance measures to the LBB for FY 08.

- LBB Explanatory Performance Measure 04-01-02.04—Number of approved industrial solid and municipal hazardous-waste cleanups: 128.80 percent of annual target attained.

- LBB Output Performance Measure 04-01-02.06—Number of corrective action documents approved for industrial solid and municipal hazardous-waste sites: 154.73 percent of annual target attained.

Facility-wide environmental indicator measurements are required by EPA to track performance of the CA Program under the Government Performance and Results Act of 1993. The measurements are evaluated site-wide at facilities that have been specifically targeted by the EPA. The CA Program met or exceeded established commitments for all such measurements in FY 08.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Voluntary Cleanup Program

1995

- Texas Legislature establishes the VCP by amending Texas Health and Safety Code (THSC) Chapter 361 to create Subchapter S.
- The TNRCC enters into a Memorandum of Agreement with the EPA.

Innocent Owner/Operator Program

1997

- The legislature establishes the IOP by amending THSC Chapter 361 to create Subchapter V.

Brownfields Site Assessment

1997

- The EPA entered into a cooperative agreement with the TCEQ to help develop its National Brownfields Pilot Program, allowing the TCEQ to help local governments and nonprofit organizations with assessment and redevelopment.

2002

- Congress passes the Small Business Liability Relief Act and Brownfields Revitalization Act, granting federal brownfields funds to states.

Municipal Setting Designation

2003

- The legislature establishes the MSD Program by amending THSC Chapter 361 to create Subchapter W.

2007

- The legislature amends THSC Chapter 361 to remove the municipal "20,000 population" restriction, making all municipalities eligible.

The services and functions of the VCP and Corrective Action Program have not changed significantly from their original intent.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Voluntary Cleanup Program

Most VCP applicants are property owners, lenders, prospective purchasers, developers, or tenants; however, anyone with an interest in cleaning up the property may volunteer to conduct the cleanup. An application and fee are required. Applicants must be willing to enter into an agreement with the TCEQ to perform the cleanup. In FY 08, the VCP received 138 applications and accepted 116—70 from property owners and 35 from prospective purchasers. The remaining applicants had other interests in the property (as tenants, operators, agents, etc.).

Innocent Owner/Operator Program

The IOP is open to owners or operators of property affected by contamination solely from off-site sources. As required by the IOP statute, parties must submit an application with a fee and submit a site-investigation report that describes the contamination. Of the 59 applicants in FY 08, five were operators; five, future purchasers; and 49, current owners.

Brownfields Site Assessment

The Small Business Liability Relief Act and Brownfields Revitalization Act specify what persons and properties are eligible for brownfields assistance. Participation is restricted to local governments and nonprofit organizations that lack the resources to move sites through the VCP.

In FY 08, seven brownfields site-assessment applications were received, all from municipalities.

Municipal Setting Designations

MSD Program applicants include property owners, municipalities, developers, and anyone else interested in the redevelopment of property. The property must be located within the corporate limits or extraterritorial jurisdiction of a municipality and a public drinking water supply system must be available to the property and all other properties within one-half mile. In addition, the local municipality must support the MSD and restrict the potable use of the groundwater through an ordinance or restrictive covenant. All owners of wells within five miles of the MSD property that supply water to the public must also support the MSD.

In FY 08, 33 MSD applications were received by the TCEQ, one from a municipality, the remainder from private property owners and developers.

Corrective Action

The Corrective Action Program serves owners and operators of industrial and non-hazardous waste sites, including federal facilities with contaminated sites. Application/notification to the agency is required. As of August 31, 2008, there were 1,158 affected sites in the program.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Please see the flowcharts *VCP, IOP, BSA, MSD, and CA Work Flow Process* following Question O.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0549	Waste Management Account	$745,220
0550	Hazardous and Solid Waste Remediation Fee	$724,162
0555	Federal Funds	$1,722,335

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

Voluntary Cleanup Program

The TCEQ has other programs within the Remediation Division that oversee site remediation conducted by responsible party source sites. These other programs perform similar work; however, the VCP differs from these programs by virtue of its voluntary nature and the liability release conferred on all non-responsible parties following successful completion of site remediation.

The Texas Railroad Commission implemented a voluntary cleanup program, structured similarly to the TCEQ's VCP, in June 2002 for properties contaminated by activities under its jurisdiction.

Innocent Owner/Operator Program

The IOP differs from all other remediation programs in that it does not require a cleanup by the applicant; however, other remediation programs may oversee the remediation of sites that are causing contamination to migrate onto the innocent owner's property.

Brownfields Site Assessment

The TCEQ BSA Program is similar to other external programs assisting local governments and nonprofit organizations working with the TCEQ. Similar external brownfields programs exist at the EPA, which provides grants, assessment, and cleanup planning for local governments, nonprofits, and states. Local governments may also make assessments on brownfields through grants received from the EPA. However, because of its integral ties with the Voluntary Cleanup Program and the Remediation Division, the TCEQ brownfields program is able to efficiently, and with some authority, facilitate and offer guidance regarding technical and regulatory components of cleanups that the other programs may not be able to provide.

Corrective Action

The TCEQ regional offices, VCP, and the TCEQ's Industrial and Hazardous Waste (IHW) Permits Program similarly oversee certain remediation projects. TCEQ regional offices function as the first responders upon discovery of contamination and refer sites requiring long-term cleanup to the CA Program. Responsible parties who are not subject to permit or enforcement directives for cleanup have the option to clean up the site through the VCP. The TCEQ's IHW Permits Program is responsible for closure of permitted site cases, whereas the Corrective Action Program is responsible for closure of non-permitted site cases.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Voluntary Cleanup Program

The roles and responsibilities of the TCEQ and EPA under the Texas VCP are defined in the May 1996 Memorandum of Agreement. Jurisdictional issues with the Texas Railroad Commission are clarified in a Memorandum of Understanding (16 TAC Section 3.30). Additionally, disclosure of prior regulatory involvement is required from applicants to the program. Contact with the applicable TCEQ regional office is also a part of VCP application review.

Brownfields Site Assessment

The EPA, local governments, and the TCEQ work closely on all brownfields projects to prevent duplication and ensure complementary results. Also, TCEQ brownfields program cleanup authority, standards, and the ability to issue certificates of completion and no further action letters are specific to the TCEQ.

Corrective Action

Oversight of certain remediation activities by the TCEQ's regional offices, the TCEQ Petroleum Storage Tank Program, and the TCEQ IHW Permits Program are coordinated through interoffice memorandums between the programs dated November 14, 2000, December 21, 2001, and August 29, 2002.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Voluntary Cleanup Program and Innocent Owner/Operator Program

Both the VCP and IOP may work with local, regional, or federal government authorities on particular cases. Free review and oversight of investigation and remedial activities are available for local governmental authorities that apply, paid for through a federal brownfields grant.

Brownfields Site Assessment

The BSA Program assists local municipalities, counties, and councils of governments with technical issues and with site assessments on brownfield properties. The EPA relies upon the TCEQ to ensure local municipalities and councils of governments are eligible for petroleum brownfield grants. All applicants for EPA brownfields grants must include in their grant application a letter from the state environmental agency acknowledging that the applicant has informed the agency of its intent to apply.

Municipal Setting Designation
The MSD Program often gives local municipalities guidance on the program and attends meetings on site-specific issues as requested by the local government.

Corrective Action
At military installations undergoing base realignment and closure, the program partners with the redevelopment authorities, the Department of Defense and the EPA, to achieve effective cleanups and maximize productive reuse. The CA program also works with the EPA to identify key environmental-indicator (EI) cleanup milestones at sites subject to Government Performance and Results Act tracking requirements. Target commitments for each measurement are established by EPA in the RCRA grant and are evaluated, tracked, and reported to EPA mid-year and at year end.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

Brownfields Site Assessment
In FY 08, the BSA Program spent $89,472, entirely on its two contracts for remedial investigations, removal actions, and environmental audits on sites with certificates of completion.

Corrective Action
In FY 08 Corrective Action spent $169,358 for two interagency contracts, the Texas Engineering Experiment Station (TEES)—a division of Texas A&M University—and the Department of Energy Pantex Plant, respectively. The contracts are for technical support and review and evaluation of corrective-action documents and data, and for recommendations pertaining to soil and groundwater remediation projects.

The TEES contracts were not renewed in FY 09. Instead, a competitively bid contract was secured for the FY 10–11 biennium for technical oversight of military cleanup projects.

To ensure accountability for funding (Brownfield and Corrective Action), work orders are created and subsequent invoices are tracked in the TCEQ Remediation Division's Contract Administration and Tracking System (CATS). The CATS is designed to prohibit invoices, work orders, or contracts from exceeding budget allocations. Additionally, all invoices must undergo a technical and administrative review to ensure allowable costs and compliance with contractual guidelines. To ensure contractor accountability, five percent of each invoice amount is retained until each work order is completed and approved. All costs are reconciled under the Uniform Statewide Accounting System. Currently, the TCEQ's Remediation Division is enhancing its fiscal-monitoring program to further ensure contractor accountability and accuracy.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

The following statutory changes could be made to assist the Municipal Setting Designation Program in performing its functions:

- *THSC Chapter 361, Subchapter W, Municipal Setting Designations.* The TCEQ has encountered arguments that a previously certified MSD should benefit a person addressing groundwater contamination sourced on property not under an MSD that has migrated onto a property that has an MSD. The applicable statute does not explicitly provide this relief to parties located outside of the MSD.

- THSC Section 361, Subchapter W requires no minimum size for a MSD. Adding language to the statute that would explicitly require that all known areas of groundwater contamination be included within the boundary of the proposed MSD should reduce the likelihood that contaminated groundwater underlying property located outside of the MSD remains unrestricted from use by current and future property owners.

- THSC Chapter 361, Subchapter W is silent on what effect, if any, an MSD has on non-aqueous phase liquids in contact with groundwater.

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

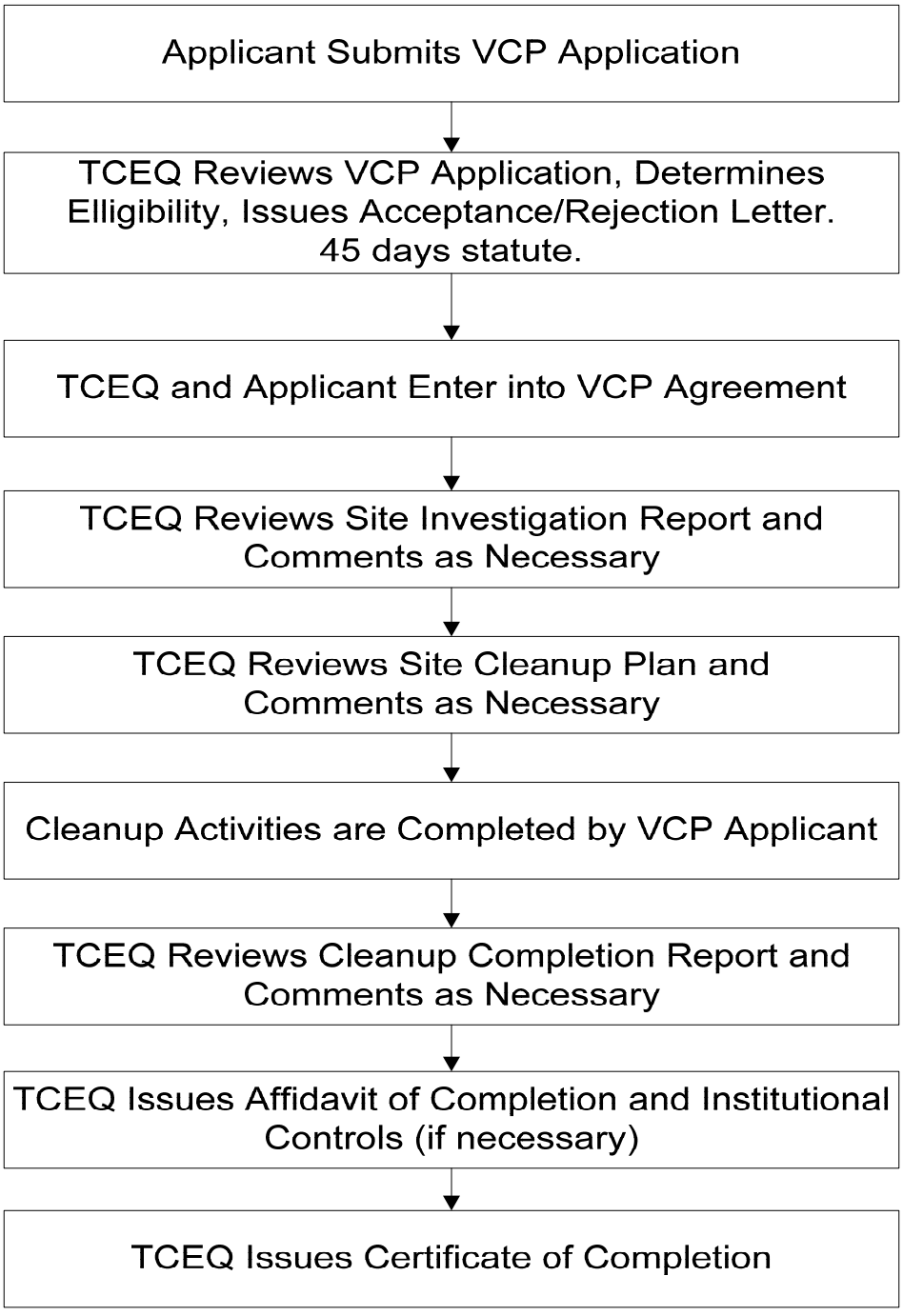
N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:
- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

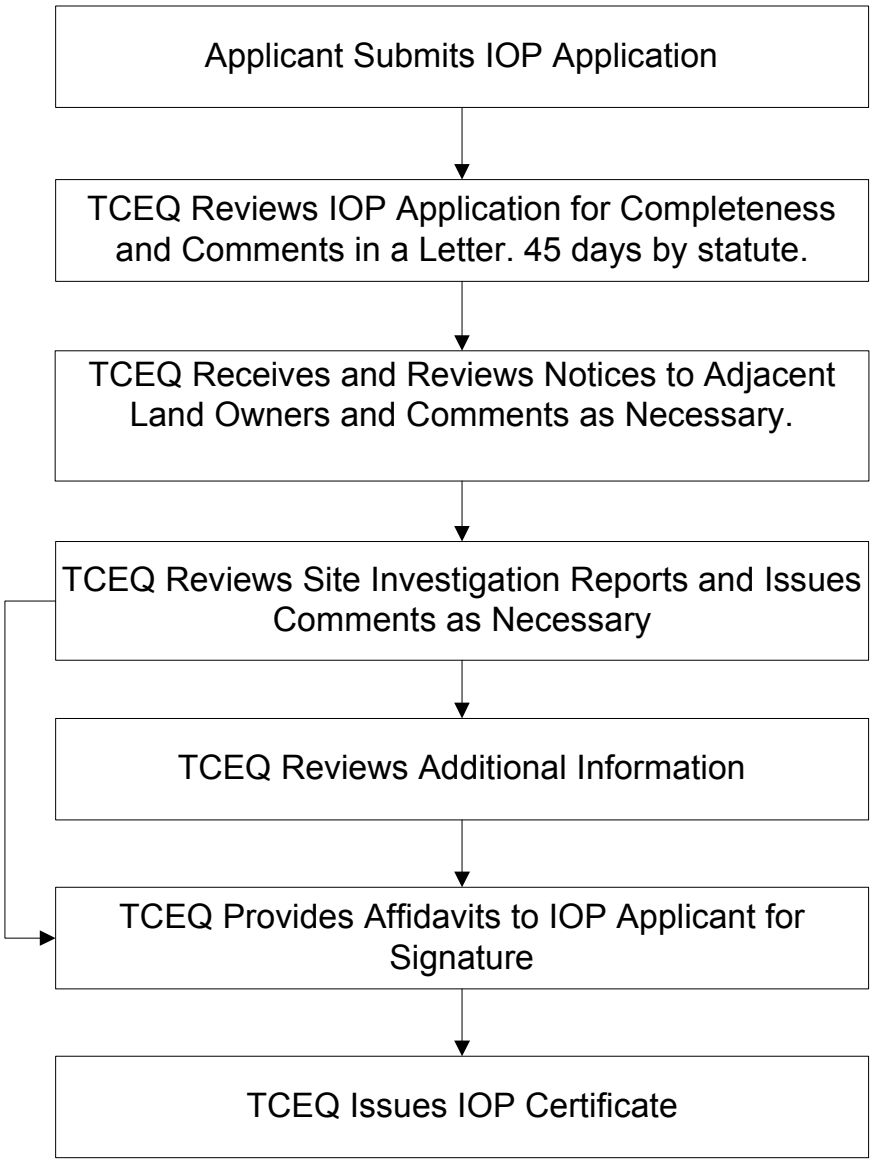
O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

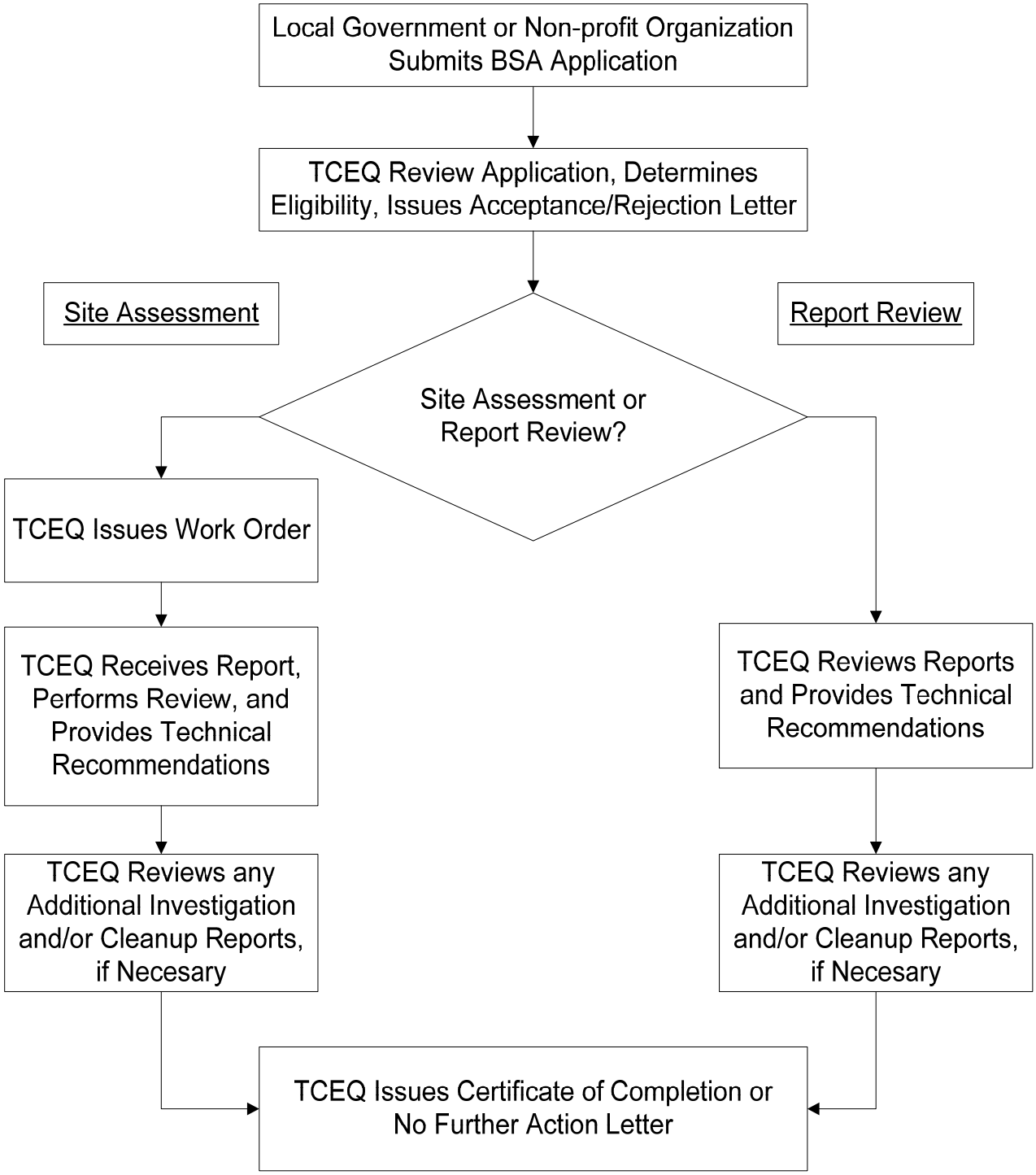
Voluntary Cleanup Program (VCP)
Work Flow Process



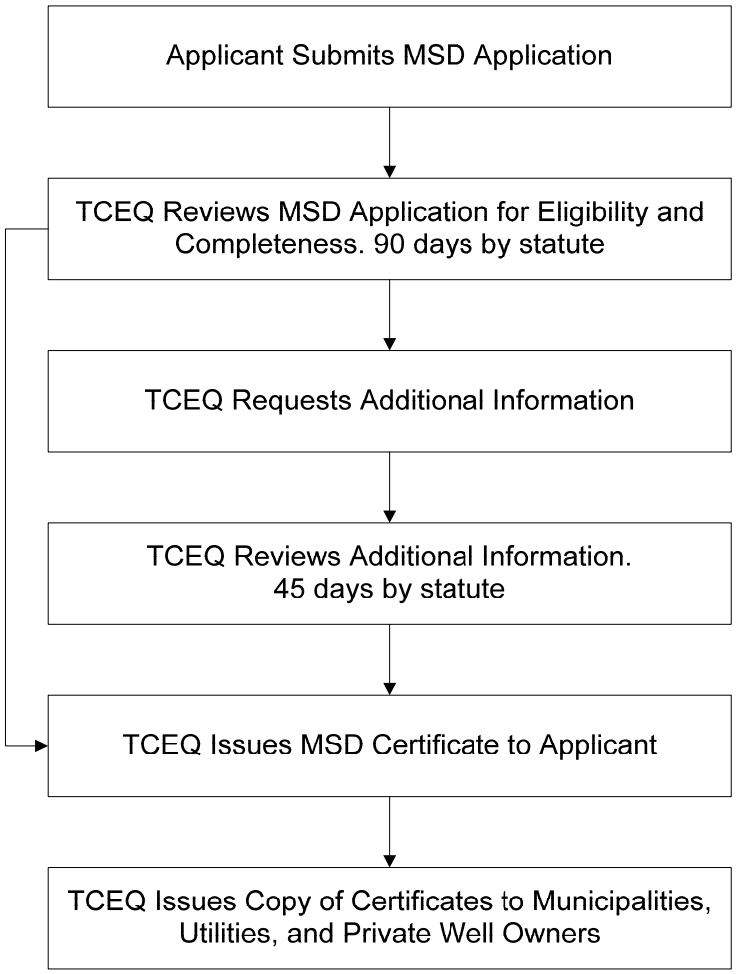
Innocent Owner/Operator (IOP)
Work Flow Process



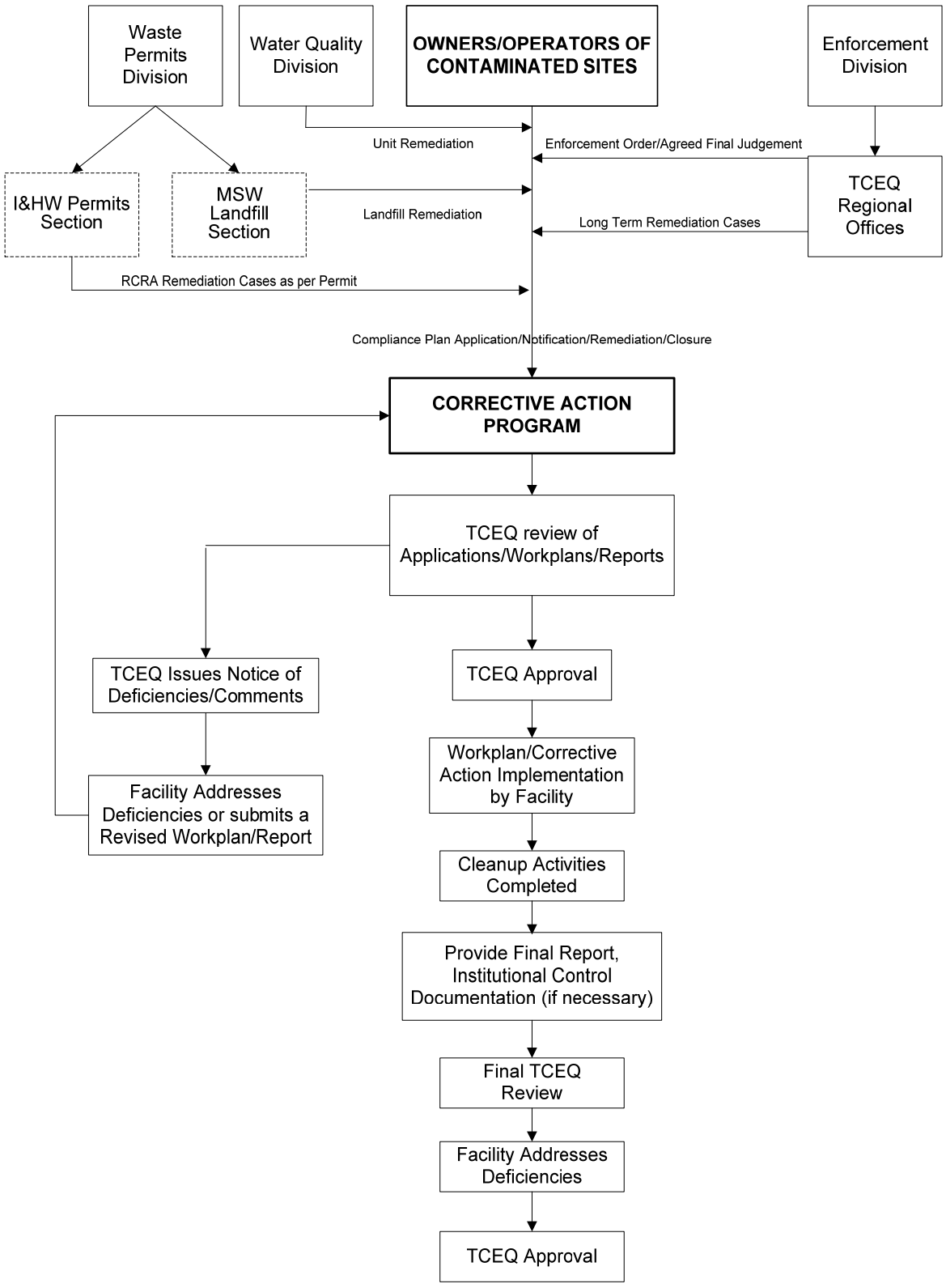
Brownfields Site Assessment (BSA)
Work Flow Process



Municipal Setting Designation (MSD)
Work Flow Process



Corrective Action Process



VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Stationary Monitoring Operations
Location/Division	3rd Floor / Building A / Monitoring Operations Division / Office of Compliance and Enforcement
Contact Name	David Bower
Actual Expenditures, FY 2008	$9,250,599
Number of FTEs as of August 31, 2008	68

B. What is the objective of this program or function? Describe the major activities performed under this program.

The TCEQ's Stationary Monitoring Operations Program conducts ambient air sampling, and collects and manages data, ensuring its accuracy and timeliness.

The program involves continuous sampling of Texas' air, managing and analyzing vast amounts of data, and then ultimately reporting the air quality data to the public and the EPA. The program relies on an expansive network of state- and partner-owned air quality monitors and laboratories used to analyze air samples. Depending on the time of year and other factors, between 180 and 220 monitoring sites are active.

A major program activity is supplying data of known and acceptable quality for TCEQ and external-party use in a timely, concise, and easy-to-interpret manner. The TCEQ Chief Engineer's Office uses stationary-monitoring data to support air quality attainment designations and several aspects of the State Implementation Plan (SIP), including verification of models and of other data used for selecting measures designed to reduce emissions. Also, the TCEQ's investigation strategy involves using stationary monitoring data to prioritize some candidates for investigation. Another major activity involves examining and interpreting the causes, nature, and behavior of air pollution in Texas.

The program allows the public and local governments ready access to network data, which allows for consideration of air quality conditions as daily activities are planned. For example, the forecasts of possible high concentrations of ground-level ozone and particulate matter in Texas' urban areas, based on program data, help the public to adjust their driving and outdoor activities.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

The Stationary Monitoring Program is effective at sampling, analyzing, and reporting on the air quality in Texas due to the broad coverage of its network, which meets all statutory requirements for monitoring. A total of 80 percent of Texans live in a county with a stationary air quality monitor.

The program's efficiency is based on the use of partnerships to achieve public access to data not only from state-owned monitoring sites, but also from monitors belonging to local governments, councils of governments (COGs), and private partners. Many COG monitors in near-nonattainment areas receive special funding from the Texas Legislature. The privately owned monitors are often established through self-monitoring initiatives, voluntary agreements, court orders, or Supplemental Environmental Projects (SEPs). While data from these partners can become part of the agency's data set, those data are generally not used in determining attainment with air quality standards as they do not meet EPA requirements. However, they do offer a broader picture of air quality in Texas.

The program's efficiency is measured for the Legislative Budget Board in terms of the proportion of data collected by the TCEQ's continuous and non-continuous air-monitoring networks that are deemed valid. The program consistently meets the projected goal of 90 percent–valid data return. In FY 08, the data return was 94 percent; or 104 percent of projections.

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

Since 1973, the stationary-monitoring network has increased the number of monitoring sites, the number and complexity of sampling instruments, and the number of data points collected—now more than 200 million each year. This growth is the result of technological innovations allowing more frequent sampling, new federal requirements, and expanded partnerships with public and private organizations.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

Generally, stationary monitoring is not a regulatory program. Monitoring, however, is involved in voluntary emission-reduction agreements, permit conditions designed to verify emissions, and enforcement of agreed orders. For example, some enforcement respondents have chosen to direct their administrative penalties toward a SEP that involved fence-line or ambient air quality monitoring. These projects involve interaction and collaboration with the Stationary Monitoring Operations Program.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

The program is managed to ensure that all regulatory requirements for monitoring are met. It also ensures coordination of monitoring priorities with network partners. Programmatic decisions take into account logistical, managerial, and scientific considerations including air quality planning needs, agency priorities, citizen input, and the public interest.

Generally, decisions regarding the type and location of samplers are made based on EPA requirements. As an example, additional lead monitors are required in 2010 to support the revised National Ambient Air Quality Standard (NAAQS). The associated regional offices and Chief Engineer's Office are also involved in the selection of monitoring sites to ensure consideration of operator logistical needs and the SIP for air quality.

In most cases, TCEQ regional personnel serve as the day-to-day operators for the sampling instrumentation, ensuring their proper functioning and the validity of data collected.

Most of the monitoring data are transmitted by telecommunications equipment to a centralized system. Within hours, the raw data are displayed on a TCEQ Web page. All stationary-monitoring data are validated and their quality assured before submission to the EPA or use as the basis for the TCEQ decisions.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0151	Clean Air Account	$5,170,654
5094	Operating Permit Fees	$335,849
0555	Federal Funds	$3,744,096

Strategy—A.1.1—Air Quality Assessment and Planning

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

While many organizations conduct meteorological and air chemistry monitoring, no program other than the TCEQ stationary monitoring network manages air quality data from such a broad geographic area for display to the public shortly after samples are collected. Generally, the TCEQ partners with other organizations that are monitoring air quality so the data can be displayed via the TCEQ Web page. Most other organizations in Texas that collect air quality data opt to share those data with TCEQ. In some cases, such as university studies, data collection is quite focused in nature or scope and not appropriate for display on TCEQ Web pages.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

To avoid duplication of effort, TCEQ routinely collaborates with network partners, described in Question J (below), using a combination of grants, contracts, and voluntary participation commitments. Generally, grant requirements ask grantees to document coordination of roles and responsibilities with EPA, actual contract language documents expectations from local governments, and voluntary agreements are used to coordinate requirements with universities, private institutions, and other organizations.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

Federal	Relationship with Program
Environmental Protection Agency	Partially funds TCEQ's stationary-monitoring network
National Park Service	Supply data to support the network (especially data essential to forecasting air quality events)
National Oceanic and Atmospheric Administration	
National Weather Service	
National Aeronautics and Space Administration	
Geological Survey	

State Government	Relationship with Program
Texas Department of Transportation	In-kind contributions such as access to property to locate stationary monitors
Texas Parks and Wildlife Department	

Local Government	Relationship with TCEQ
City of Houston	Operate monitors in the TCEQ network
Harris County Public Health & Environmental Services	
City of Fort Worth	
City of El Paso	
City of San Antonio	
City of Corpus Christi	
City of Victoria	
Ciudad Juarez	
Capitol Area Council of Government (CAPCOG)	
Alamo Area Council of Government (AACOG)	
North East Texas Air Care (NETAC)	
South East Texas Regional Planning Commission (SETRPC)	

Universities and Research Institutions	Relationship with Program

University of Texas (Austin, Galveston, El Paso, San Antonio)	Share data from monitoring sites they operate
Texas A&M University (College Station, Kingsville)	
University of Houston (Main and Clear Lake)	
Baylor University	
Lamar University	
Rice University	
Texas Tech University	
Houston Advanced Research Center	

Industry	Relationship with Program
Houston Regional Monitoring	Share monitoring data with the TCEQ
Brazoria County—Chocolate Bayou Industry Group	
Brazoria County—Sweeny Industry Group	
Texas City Industry Group	
Freeport Industry Group	

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

In FY 08, the Stationary Monitoring Operations Program spent $3,023,736 through 38 contracts on monitoring operations (32 contracts), sample analysis (3 contracts), laboratory-waste disposal (1 contract), support for data management (1 contract), and laboratory assistance (1 work order under an umbrella contract).

Each contract is monitored by a contract manager to ensure that expenditures do not exceed the contract amount and that the work is performed in accordance with contract requirements before payments are approved. Separate division personnel audit contractor performance to verify costs and troubleshoot potential problems that would impede the contractor's ability to deliver valid data.

The primary contracting problems encountered by the stationary monitoring program relate to staff turnover at local-government partners, which can result in lower rates of valid data return.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

The Stationary Monitoring Program network includes:

- Monitors that take 5-minute average measurements of ozone, nitrogen oxides, carbon monoxide, and other compounds, in addition to several meteorological parameters.

- Automated gas chromatographs that separate and identify 48 to 65 volatile organic compounds hourly.

- Canister samples that are collected every sixth day for analysis of more than 100 air toxics and ozone precursors.

- Polycyclic aromatic hydrocarbon samples that are collected every sixth day for analysis of 16 compounds.

- Carbonyl samples that are collected every sixth day for analysis of 18 ozone precursor compounds.

- Automated continuous and non-continuous monitors for $PM_{2.5}$ and PM_{10} such as soot, smoke, and dust.

A comprehensive list of stationary air quality monitoring sites that feed data to TCEQ Web pages is at <www.tceq.state.tx.us/cgi-bin/compliance/monops/site_info.pl>. The table on that page has multiple options for viewer customization (sorting by city, county, responsible party, etc.). Additional information, including photos, maps, and descriptions of what is monitored at the site, is available by clicking on the Continuous Ambient Monitoring Station (*CAMS)* number for each site.

Another informative page is at <www.tceq.state.tx.us/cgi-bin/compliance_/_monops_/texas_aqi.pl>. The map shows the Air Quality Index calculated for various areas of the state.

Recent revisions to the NAAQS for ozone, lead and nitrogen dioxide will require deployment of additional monitors. Areas that may have new monitoring sites in the next few years include the McAllen-Edinburg-Mission area, Lubbock, Amarillo, the College Station–Bryan area, Abilene, Wichita Falls, Texarkana, Odessa, Midland, the Sherman–Denison area, and San Angelo.

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not Applicable

VII. GUIDE TO AGENCY PROGRAMS - CONTINUED

A. Provide the following information at the beginning of each program description.

Name of Program or Function	Texas Pollutant Discharge Elimination System Compliance Monitoring
Location/Division	1st Floor / Building C / Enforcement Division / Office of Compliance and Enforcement
Contact Name	Bryan Sinclair
Actual Expenditures, FY 2008	$694,459
Number of FTEs as of August 31, 2008	18

B. What is the objective of this program or function? Describe the major activities performed under this program.

The Texas Pollutant Discharge Elimination System (TPDES) Compliance Monitoring Program reviews and responds to self-reported data recorded on a discharge monitoring report (DMR). All TPDES-permitted wastewater treatment facilities discharging to surface waters are required to submit DMRs. These reports summarize wastewater analytical results from samples collected at those facilities. The outcome of a DMR compliance review is to determine compliance with the applicable permit limits and initiate the appropriate level of enforcement action when necessary. The level of enforcement is based on Environmental Protection Agency (EPA) criteria and TCEQ referral initiation criteria, all designed to protect human health and water quality in Texas.

The program focuses primarily on domestic and industrial wastewater and sewage sludge. Other areas that the program supports include: pretreatment, biomonitoring (whole effluent toxicity testing), and concentrated animal feed operations. All TPDES facilities are designated as *major* or *minor*, depending on the design flow. For oversight and review purposes, major facilities are required to be monitored as specified in 40 CFR Section 123.45.

Major activities performed by the program include the following:

- monitoring self-reported TPDES permit data (DMR data);
- reviewing records to determine compliance status;
- issuing notices of violation for such noncompliances as missing data or missing reports;
- issuing notices of enforcement and initiating enforcement referrals for TPDES permit noncompliances that trigger formal enforcement;

- supplying standard DMR forms to permit holders;

- transcribing DMR data into the federal database tracking system (Permit Compliance System); and

- supporting the electronic DMR reporting system.

C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.

The program has an established 45-day time frame from the assignment date to complete enforcement action referrals (EARs). In FY 08, the program completed required EARs in an average of 35 days.

With electronic reporting of DMRs, which began in February 2006, the program became more efficient, streamlining data reporting for the regulated community and the program, improving overall data quality and timeliness in reviewing reported data, and reducing program expense for postage on DMR forms and data-transcription costs. In FY 07, the paper DMRs submitted totaled 58,447 (74 percent); e-DMRs, 20,222 (26 percent). In FY 08, paper DMRs totaled 37,838 (56 percent); e-DMRs, 29,710 (44 percent).

D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.

2006

- The STEERS (e-DMR) system became available for TPDES facilities to electronically report DMR data.

2009

- The program began giving technical and administrative support to the modernized e-DMR reporting system called *NetDMR* (released for public use on June 23, 2009). The Texas NetDMR application was developed under an EPA grant by a consortium of 12 states coordinated by the Environmental Council of States and led by Texas.

- The program assumed responsibility for monitoring the TCEQ NetDMR help line, helping potential NetDMR users subscribe, and approving NetDMR subscriber participation agreements.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

In FY 08, the TPDES Compliance Monitoring Program included 3,970 regulated facilities: 521 major facilities and 3,449 minor facilities.

Major facility: Any National Pollutant Discharge Elimination System (NPDES) facility or activity classified as such by the EPA regional administrator in conjunction with the TCEQ executive director. Major municipal dischargers include all facilities with design flows of greater than one million gallons per day and/or facilities with EPA or state approved industrial pretreatment programs. Major industrial facilities are determined based on specific rating criteria developed by the EPA and the state.

Minor facility: Any non-major facility.

F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.

Refer to the flowchart *Compliance Monitoring* following Question O.

G. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Account	Name	Amount
0001	General Revenue	$702
0151	Clean Air Account	$2,732
0153	Water Resource Management Account	$617,435
0549	Waste Management Account	$69,480
0555	Federal Funds	$3,073
0655	Petroleum Storage Tank Remediation	$1,037

Strategies:
A.1.2—Water Assessment and Planning
C.1.2—Enforcement and Compliance Support
D.1.1—Storage Tank Administration and Cleanup

H. Identify any programs, internal or external to your agency, that provide identical or similar services or functions. Describe the similarities and differences.

No other specific program exclusively conducts compliance monitoring for TPDES facility effluent limits. However, TCEQ's Field Operations Program reviews self-reported DMR data as part of an on-site investigation. The TPDES Program reviews DMR data monthly for minor facilities and at least quarterly for major facilities—whereas the Field Operations Program conducts a DMR data review for a one-year period to supplement a comprehensive compliance investigation conducted at a major facility once every two years

and, at a minor facility, once every five years.

The Texas Railroad Commission (RRC) retains jurisdiction and authority over NPDES facilities for oil and gas, and over geothermal exploration and development activities. The EPA maintains authority over any offshore oil and gas exploration facilities with a NPDES permit.

I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

The program's compliance monitoring coordinators screen self-reported (TPDES and NPDES facility) DMR data for compliance and enforcement determinations. These functions are specified in the TCEQ's enforcement-initiation criteria (EIC) to ensure that the Field Operations Program does not duplicate an enforcement referral for effluent violations. Specifically, the EIC state that the TPDES Program is exclusively or primarily responsible for determining when self-reported effluent violations meet EPA enforcement-referral criteria. A more detailed interagency agreement implemented in May 2003 states that TCEQ Field Operations investigators are not expected to apply the EPA enforcement referral criteria or the TCEQ impaired segment referral criteria to self-reported effluent data that they review as part of an investigation of a TPDES or NPDES facility.

In May 1998, a Memorandum of Agreement established policies, responsibilities and procedures for program commitments between the TCEQ and EPA Region 6 for assumption of the NPDES program by the TCEQ.

Also in May 1998, a Memorandum of Understanding clarified jurisdictional boundaries of the TCEQ and the RRC.

J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.

The program routinely communicates with local, state, and federal governmental authorities that operate wastewater treatment facilities subject to TPDES requirements. The program also communicates and coordinates with EPA Region 6 as needed. The EPA plans to fully delegate all remaining TPDES permits (50) to the TPDES Compliance Monitoring Program by the end of 2009.

K. If contracted expenditures are made through this program please provide:

- **the amount of those expenditures in fiscal year 2008;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

In FY 08, the program had one contract for expenditures in the amount of $12,953. The contract was to support TPDES DMR data entry services. The program conducted edit/audit checks on data entered by the contracted staff and manually validated the number of DMRs transcribed on a monthly basis.

The program experienced no contracting problems in FY 08.

L. What statutory changes could be made to assist this program in performing its functions? Explain.

None

M. Provide any additional information needed to gain a preliminary understanding of the program or function.

None

N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- **why the regulation is needed;**
- **the scope of, and procedures for, inspections or audits of regulated entities;**
- **follow-up activities conducted when non-compliance is identified;**
- **sanctions available to the agency to ensure compliance; and**
- **procedures for handling consumer/public complaints against regulated entities.**

Not Applicable

O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.

Not applicable, please see Field Operations Question O for complaint-related data related to this program.

Compliance Monitoring