

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** December 23, 2025

Thru: Laurie Gharis, Chief Clerk
Kelly Keel, Executive Director

From: Kristi Mills-Jurach, Director
Office of Compliance and Enforcement

Docket No.: 2025-0520-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 60, Compliance History
Compliance History Rule Revisions
Rule Project No. 2024-043-060-CE

Background and reason(s) for the rulemaking:

Rulemaking is necessary to implement aspects of Senate Bill (SB) 1397 relating to the continuation and functions of the Texas Commission on Environmental Quality (commission or TCEQ), “Sunset Bill”, which amended Texas Water Code (TWC), §5.754. SB 1397 passed by the 88th Legislature, 2023, was authored by Senators Charles Schwertner, Nathan Johnson, Angela Paxton, Charles Perry, and Drew Springer, and sponsored by Representative Keith Bell. The bill took effect September 1, 2023.

Scope of the rulemaking:

The executive director proposes revising §60.1 and §60.2 of 30 Texas Administrative Code (TAC) Chapter 60.

A.) Summary of what the rulemaking will do:

This rulemaking adoption will revise 30 Texas Administrative Code (TAC) Chapter 60 relating to Compliance History. The rulemaking adoption implements the changes made to TWC, §5.754 which require the consideration of moderate and minor violations, in addition to the previously considered major violations, when determining repeat violator status. This rulemaking adoption also addresses legislative direction for TCEQ to review and update the compliance history rating formula to ensure it adequately allows for comparing the compliance performance of facilities of similar complexity and to regularly update an entity’s compliance history rating throughout the year.

B.) Scope required by federal regulations or state statutes:

There are no new federal regulations related to this rulemaking. SB 1397 amends TWC, §5.754.

C.) Additional staff recommendations that are not required by federal rule or state statute:

Staff may make additional administrative changes as necessary to ensure consistency throughout 30 TAC Chapter 60.

Statutory authority:

The rulemaking is adopted under TWC, §5.753, concerning Standards for Evaluating and Using Compliance History; and TWC, §5.754, concerning Classification and Use of Compliance History, both of which authorize rulemaking to establish compliance history standards. Additional authority exists under TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules,

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which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

Effect on the:

A.) Regulated community:

The adopted rules do not affect current regulatory requirements for businesses or individuals. Regulated entities classified as repeat violators are subject to a 25% administrative penalty enhancement, and changes to how repeat violators are determined could result in increased administrative penalties for some entities. Increasing the frequency that compliance history information is updated will allow regulated entities to review their ratings and file appeals on a more frequent basis.

B.) Public:

The public benefit anticipated from the changes to the adopted rules will be the availability of more current compliance history information as components are updated more than once per year. No fiscal implications are anticipated.

C.) Agency programs:

The agency will be required to modify its compliance history data systems and reporting tools to accommodate changes to the compliance history program resulting from this rulemaking. The agency website will need to be updated to reflect changes, and the Advanced Review of Compliance History website will require changes.

Stakeholder meetings:

Stakeholder meetings have been held with internal staff including the Executive Director, OCE, OLS, and members of the rule team have been consulted.

Public Involvement Plan:

A public involvement plan is required.

Alternative Language Requirements:

Yes. Spanish.

Public comment:

The commission held a public hearing on August 18, 2025. The comment period closed on August 25, 2025. A total of seven commenters provided both general and specific comments on the proposed rules. The following commented on the proposal: The Associated General Contractors of Texas (AGC); Better Brazoria—Clean Air & Clean Water (Better Brazoria); Harris County Attorney's Office (HCAO); Harris County Pollution Control Services (PCS); Texas Association of Manufacturers (TAM), Texas Chemistry Council (TCC), and Texas Oil and Gas Association (TXOGA) commented as a group; Texas Industry Project (TIP); and Public Citizen.

Significant changes from proposal:

Adopted §60.2(f)(3) changes the proposed repeat violation point thresholds, based on complexity points, to determine repeat violator classifications. The proposed rule established repeat violator thresholds based on two complexity categories: (1) Entities with 14 or less complexity points and 100 or more "repeat violation points" and (2) Entities with 15 or more complexity points with 150 or more "repeat violation points". A rule language update was made at adoption to increase the number of complexity categories from two to five with different repeat violator point thresholds for each group.

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The five different thresholds for the repeat violator determination based on complexity points are:

- (1) Entities with less than 15 complexity points and 150 or more “repeat violation points” will be classified as a repeat violator.
- (2) Entities with at least 15 complexity points but less than 30 complexity points and 250 or more “repeat violation points” will be classified as a repeat violator.
- (3) Entities with at least 30 complexity points but less than 45 complexity points and 350 or more “repeat violation points” will be classified as a repeat violator.
- (4) Entities with at least 45 complexity points but less than 60 complexity points and 450 or more “repeat violation points” will be classified as a repeat violator.
- (5) Entities with at least 60 complexity points and 550 or more “repeat violation points” will be classified as a repeat violator.

This modification recognizes the increased self-reporting requirements for more complex facilities due to their proportionally larger number of authorizations, such as through the Texas Pollution Discharge Elimination System for wastewater and reporting of deviations to comply with Title V air permit requirements. These programs require entities to self-report violations whereas other sites are only subject to violations documented and discovered through investigations. Less complex facilities do not have as many self-reporting requirements and therefore have less opportunity for the commission to identify violations. This modification was made in response to comments from TAM, TCC, TXOGA, and TIP.

Potential controversial concerns and legislative interest:

It is expected that there will be interest in the new compliance history classification groups and revised repeat violator criteria.

Will this rulemaking affect any current policies or require development of new policies?

This rulemaking will affect current policy and require the development of new policy. This rulemaking will change how repeat violator violations are included in compliance history. With the addition of a new mass class period, new policies on mitigating factors will need to be established. The repeat violator exemption process will need to be formalized with a delegation memo from the executive director.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

Rulemaking is required by SB 1397. If this rulemaking doesn’t go forward, TCEQ would not be compliant with the state statute.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: July 25, 2025

Anticipated *Texas Register* adoption publication date: January 30, 2026

Anticipated effective date: February 5, 2026

Six-month *Texas Register* filing deadline: January 25, 2026

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Attachments:

SB 1397

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