



**TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY**

Protocol for Delinquent Fees and Penalties

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Introduction

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

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

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

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

Three broad categories of issues were identified:

- Compliance history
- Enforcement process
- Penalties and corrective action

These issues were further subdivided into a number of key issues, which were assigned to subcommittees for research, analysis and recommendation. The subcommittee recommendations were collected and reviewed by the chairs of the three major issues, who in some cases recommended changes. The report of the chairs was then evaluated by the full steering committee, and any changes that were deemed necessary were made. Each key issue was presented to the Commissioners at several work sessions beginning November 1, 2004 and concluding at the January 14, 2005 work session. The Commissioners reviewed the steering committee's recommendations and either approved (with or without modification), denied, or tabled for future discussion.

The purpose of this document is to address Collections/Financial Inability to Pay Issue No. 1A (page 173) in the Enforcement Process Review Final Draft Report (dated January 2005): Should an entity be allowed to acquire, amend, or renew a permit while in default of a penalty? The steering committee recommended that the TCEQ not issue, amend, or renew permits, registrations, certifications, or licenses to an entity or person who owes delinquent penalties or fees (with exceptions). This recommendation was presented to the Commissioners at the December 17, 2004 work session and subsequently approved during the January 14, 2005 work session.

Objective

The Enforcement Process Review Steering Committee has charged that each issue, as identified from the Enforcement Process Review, be implemented as directed by the Commission. As a result of this charge, a team consisting of representatives from throughout the TCEQ was developed to address the processing of permits, registrations, certifications and licenses for applicants who are delinquent on fees and/or penalties. The team's purpose was to develop a protocol addressing this issue consistent with Commission direction.

Issue

Should an entity be allowed to acquire, amend, revise, alter or renew a permit, registration, certification or license while in default or delinquent on a penalty or fee?

Protocol Statement

Any application submitted by a person/entity who is delinquent on a fee and/or penalty will not be declared administratively complete until the fees/penalties are paid and/or current. Similarly, final action will be withheld by the TCEQ on an application if it is discovered after the application is considered administratively complete that the owner/entity who submitted the application is delinquent on fees and/or penalties until such time as the fees/penalties are paid and/or current.

Exceptions

The following exceptions shall be made to this protocol:

1. **If monies owed are being paid on a payment plan and installment payments are current:** If an installment plan is noted, staff shall contact the TCEQ's Revenue Section at 239-0300 and ask for a collection coordinator to obtain payment status.
2. **If the applicant is, or has been, a debtor in a bankruptcy proceeding:** Collection of the delinquency(ies) may be impacted by federal bankruptcy law (11 U.S.C. §362(a)(6)). If bankruptcy is noted, staff shall contact the TCEQ's Bankruptcy Program at 239-5201 for a determination on the agency's ability to seek collection of the delinquency(ies) in question.
3. **If the total monies owed are less than \$200:** When the TCEQ develops an automated system which will quickly and efficiently review for delinquent fees/penalties, then only applicants who owe less than \$25 may have their application processed.

At the discretion of Division Directors or above, the following additional exceptions may be applied:

4. An applicant may be granted more than 30 days to pay monies owed if the applicant can show good cause. Good cause may include a governmental entity that must hold a council meeting to vote/authorize additional expenditures.
5. An applicant may be exempt from this protocol if the approval of the pending application is crucial to address an immediate economic or environmental concern or health hazard or if required by Commission order. An example includes a small local government that is financially unable to produce fees before the permit is reviewed, but must provide drinking water or waste water services to the community.

Implementation

As soon as practical, all program areas of the TCEQ shall implement this protocol. As part of implementation, all programs shall follow the following guidelines:

1. Application forms shall be revised to include a notice that the form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol.
2. Instructions and guidance documents, including those published on the TCEQ web site, shall be revised to clearly explain that processing of applications and requests for actions on permits, registrations, certifications, and licenses will be withheld as set out in the Delinquent Fee and Penalty Protocol if the applicant is delinquent on fees or penalties.
3. Determination of any fees and/or penalties owed shall occur at the beginning of the administrative review phase, and, if more than 180 days have passed since the check for delinquencies during the administrative review, just prior to issuance. When the TCEQ develops an automated system which will quickly and efficiently review for delinquent fees/penalties, then applications will be reviewed again just prior to issuance. In all cases, a review of delinquent fees and/or penalties shall occur just prior to a project being presented at agenda.
4. An application may not be declared administratively complete if delinquent fees and/or penalties are \$200 or more. When the TCEQ develops an automated system which will quickly and efficiently review for delinquent fees/penalties, an application may not be declared administratively complete if delinquent fees and/or penalties are \$25 or more.
5. Staff is only expected to check for delinquent fees/penalties on a regular basis for applications and authorizations as listed in Attachment 1 of this document. Once TCEQ completes the development of an automated system that will quickly and efficiently review for delinquent fees/penalties, Air Permits by Rule, Standard Permits, General Permits, and Occupational Licenses will also be reviewed.
6. If delinquent fees and/or penalties are owed, the applicant shall be given 30 days or less to make payment in accordance with specific program rules and regulations. The TCEQ shall have form letters to be used by staff for this purpose (see Attachment 2). If the applicant pays the delinquent fees within the time limit, staff will continue processing the application. If payment is not received in the established timeframe, the application will not be processed and will not be declared administratively complete (if in administrative review) or void/denied (if in technical review). This paragraph does not apply if the applicant meets one of the exceptions outlined in this protocol.
7. If the applicant does not pay their fee or penalty within the time limit outlined in the letter (Step 5), staff is to notify their Team Leader. The Team Leader will call the applicant explaining that the application is about to be returned/voided/denied (as appropriate for the program area). If the delinquencies are not immediately addressed by the applicant, a

recommendation by the Team Leader shall be provided to the Section Manager. The Section Manager will discuss the case with the Division Director who will then make the final decision whether to return the application or provide additional time. This step should not exceed a total of seven working days, but the final timeline decision is to be determined by the Division Director.

8. If a permit application is to be returned, it is to be returned via certified mail.
9. The TCEQ shall take appropriate measures to ensure that staff has access to reports to effectively comply with this protocol. The TCEQ shall also take reasonable steps to ensure the accuracy of the reports.

Attachment 1

Authorizations to be reviewed for delinquent fees/penalties

Air Permits Division
<u>New Source Review (New, Amendments, Renewals)</u> Construction Permits Nonattainment (NA) Permits Prevention of Significant Deterioration (PSD) Permits §112(g) Hazardous Air Pollutants (HAPs) Permits Voluntary Emission Reduction Permits (VERP) Electric Generating Facility (EGF) Permits Acid Rain Permits Existing Facilities Permits Multiple Plant Permits (MPP) Pipeline Facilities (PF) Permits Flexible Permits * Permits by Rule * Standard Permits
<u>Title V Permits (New, Amendments, Renewals)</u> General Operating Permits (Oil and Gas Facilities, Bulk Fuel Terminals, Landfills) Site Operating Permits
Water Quality Division
<u>Individual Permits (New, Amendments, Renewals)</u> Texas Pollutant Discharge Elimination System (TPDES) Permits State-only Permits (including TLAP, CAFO, and Class B Sludge Beneficial Land Use) * General Permits
<u>Registrations (New, Amendments, Renewals)</u> State-only Domestic Septage Beneficial Land Use State-only Water Treatment Plant Sludge Beneficial Land Use State-only Water Treatment Plant Sludge Disposal Permits by Rule
Waste Permits Division
<u>Individual Permits and Licenses (New, Amendments, Modifications, Renewals)</u>

Industrial Solid Waste Permits for treatment, storage and disposal
Resource Conservation and Recovery Act Permits for hazardous waste treatment, storage and disposal
Underground Injection Control (UIC) Permits for disposal in Class I wells
UIC Permits for in-situ mining
UIC Permits for sulfur mining by the Frasch process
Radioactive Material Disposal License
Municipal Solid Waste (MSW) treatment, storage and disposal permits. (e.g., landfills, incinerators, large transfer stations, processing facilities, liquid waste processing facilities.)
Permitted Compost Facilities (MSW) under 30 TAC Chapter 332 (Permit required for operations that compost mixed municipal solid waste.)

Registrations (New and Modifications)

Type V Municipal Solid Waste (MSW) facilities that are registered (includes small transfer stations, some liquid waste processing facilities)
Registered Compost Facilities (MSW) under 30 TAC Chapter 332
Type IX MSW Gas Recovery Systems (for beneficial recovery of methane for energy)
UIC Pre-Injection Unit Registrations
Note: Registrations may be returned immediately to the applicant for delinquent fees or penalties.

Remediation

Voluntary Cleanup Program Certificates (before releasing certificate)
Innocent Owner Program Certificates
Petroleum Storage Tank Reimbursement Request (before releasing final reimbursement)
Dry Cleaner Program Remediation Request
Closure Letters

Water Supply Division

Individual Permits (New, Amendments)

Water Right Permits for new appropriations
Water Right Permits for bed & banks
Water Right Permits for interbasin transfers (IBTs)
Water and Sewer Certificates of Convenience and Necessity
Water District Applications

Permitting & Remediation Support Division

Water

Sludge Transporters

Waste

Medical Waste Transporters and On-Site Treaters

Permit by Rule - Special Collection Routes/Stationary Compactors under 30 TAC Chapter 330 Subchapter A

Used Oil Handlers, Filter Handlers & Collection Centers (30 TAC Chapter 324 Subchapter A, 30 TAC Chapter 328 Subchapter D)

Motor Fuel Underground Petroleum Storage Tank certifications (30 TAC Chapter 334)

Dry Cleaners (30 TAC Chapter 337)

Other

TCEQ Orders

* Occupational Licenses

* Will be included once an efficient electronic system has been developed by TCEQ Information Resources Division.

Protocol Statement Acknowledgment

The Protocol for Delinquent Fees and Penalties was approved by TCEQ Executive Management on February 17, 2006.