

Harris County Pollution Control Services

Dr. Latrice Babin, Executive Director

Established in 1953



August 25, 2025

Gwen Ricco
Texas Commission on Environmental Quality
Office of Legal Services, MC 205
P.O. Box 13087
Austin, Texas 78711-3087

Re: Comments for Rule Project Number 2024-043-060-CE

Dear Ms. Ricco,

Harris County Pollution Control Services (PCS) respectfully submits the following comments for proposed revisions to 30 Texas Administrative Code (TAC) Chapter 60 Sections 60.1 and 60.2 based on the 2022-2023 Sunset Advisory Commission's recommendations for the Texas Commission on Environmental Quality (TCEQ).

PCS inspects facilities in Harris County for compliance with environmental laws and regulations, reviews permit applications and submits comments to the TCEQ on permitting actions. PCS also works closely with TCEQ's Houston Region 12 office, which refers a substantial number of environmental complaints, approximately 1511 from June 15, 2017, to July 1, 2025, from Harris County citizens to PCS for investigation. Of those referrals, 379 violation notices were issued after PCS' investigation.

Below is a list of comments and concerns identified by PCS.

1. ***Texas Water Code Chapter Section 5.1773. Complaint Assessment specifically states “(a) The commission annually shall conduct a comprehensive analysis of the complaints it receives, including analysis by the following categories: (1) air; (2) water; (3) waste; (4) priority classification; (5) region; (6) commission response; (7) enforcement action taken; and (8) trends by complaint type. (b) In addition to the analysis required by Subsection (a), the commission shall assess the impact of changes made in the commission's complaint policy.”***

PCS Comment

As noted above, PCS inspects facilities and follows up on complaints referred from TCEQ's Region 12 office. When non-compliance is documented, PCS proceeds with the issuance of a violation



Notice, and when necessary refers cases to the Harris County Attorney's Office (CAO) or District Attorney's Office (DAO) for enforcement action.

Per the Texas Water Code 5.1773, the TCEQ is required to conduct an annual comprehensive analysis of the complaints it receives, including an analysis of the commission's response.

However, PCS' findings from TCEQ referred complaints are not included in TCEQ's complaint analysis; although some of those complaint investigations result in the issuance of a violation notice for non-compliance.

In addition, PCS initiates and conducts inspections, not necessarily complaint-driven, but for compliance with TCEQ regulations, which often result in the issuance of a violation notice or equivalent. PCS believes these documented non-compliances should be included and considered in the calculation of the compliance history rating.

The Texas Water Code 5.1773, directs TCEQ to perform an annual comprehensive analysis of the complaints it receives, including the commission's referral to local government and the enforcement action taken by the local government.

PCS Recommendation

PCS recommends that the TCEQ amend the rule to require the violation notices issued by local government to be included in the compliance history rating.

2. ***During the public meeting for Air Quality Registration No. 116476 held on October 14, 2024, the TCEQ permit writers were not aware of any non-compliance issues at the facility based on the TCEQ's compliance history.***

The Executive Director's Response to Public Comment stated, "Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with terms of any permit or other environmental regulation by contacting TCEQ Houston Regional Office at 713-767-3500 or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186."

During the public meeting, it was noted that the TCEQ had not investigated the site and that complaints received by the local TCEQ office were referred to the local government for investigation.



Per the Sunset Advisory Commission Staff Report with Final Results 2022-2023, Recommendation 2.1 – “Direct TCEQ to review and update the agency’s compliance history rating formula to ensure it accurately reflects a regulated entity’s record of violations, including considerations of site complexity and cumulative violations or multiple violations of the type. TCEQ should specifically consider major, moderate, and repeat occurrences of the same minor violations when calculating compliance history rating.”

PCS Comment

The public is encouraged to report non-compliance to the TCEQ regional office. However, the TCEQ occasionally refers a portion of these complaints to PCS for investigation. Violations noted as a result of these referred complaint investigations are not included in the TCEQ annual complaint analysis or compliance history rating, contrary to the recommendations of the Sunset Advisory Commission, as it doesn’t take into consideration complaints received by the TCEQ that are referred to and investigated by local government.

PCS Recommendation

PCS recommends that the TCEQ amend the rule to require the violation notices issued by local government to be considered in the compliance history rating.

3. ***Per the Sunset Advisory Commission Final Results of Sunset Reviews 2022-23 under Enforcement and Compliance, “Require TCEQ to consider all violations when classifying an entity as a repeat violator.”***

Texas Water Code Chapter 5. Texas Commission on Environmental Quality Subchapter Q. Performance-Based Regulation Section 5.754, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c) In classifying a person’s compliance history, the commission shall:

(1) determine whether a violation of an applicable legal requirement is of major, moderate, or minor significance;

(2) establish criteria for classifying a repeat violator, including:



(A) setting the number of major, moderate, and minor violations needed to be classified as a repeat violator; and

(B) giving consideration to the size and complexity of the site at which the violations occurred, and limiting consideration to violations of the same nature the same environmental media that occurred in the preceding five years; and

(3) consider:

(A) the significance of the violation and whether the person is a repeat violator;

(B) the size and complexity of the site, including whether the site is subject to Title V of the federal Clean Air Act (42 U.S.C. Section 7661 et seq.); and

(C) the potential for a violation at the site that is attributable to the nature and complexity of the site.

(c-1) The executive director may review, suspend, or reclassify a person's compliance history in accordance with commission rules if the executive director determines that exigent circumstances exist.

Texas Water Code Chapter 26.171. Inspection of Public Water notes "A local government may inspect the public water in its area and determine whether or not: (1) the quality of the water meets the state water quality standards adopted by the commission; (2) persons discharging effluent into the public water located in the areas of which the local government has jurisdiction have obtained permits for discharge of the effluent; and (3) persons who have permits are making discharges in compliance with the requirements of the permits.

Section 26.173. Power to Enter Property. (a) A local government has the same power as the commission has under Section 26.014 of this code to enter public and private property within its territorial jurisdiction to make inspections and investigations of conditions relating to water quality. The local government in exercising this power is subject to the same provisions and restrictions as the commission. (b) When requested by the executive director, the result of any inspection or investigation made by the local government shall be transmitted to the commission for its consideration.



PCS Comment

The Sunset Advisory Committee requires TCEQ to consider all violations when classifying an entity as a repeat violator.

A review of S.B. No. 1397 does not prohibit the consideration of violation notices issued by local government.

Per Texas Water Code 26.173, local government has the same power as the commission to make inspections and investigations, and to determine if persons are in compliance with applicable requirements. Violation notices are issued by the local government based on findings from the inspections or investigations. Despite being given the same power as the commission to determine compliance, violation notices are not considered in the calculations of the compliance history rating.

PCS Recommendation

PCS recommends that the TCEQ amend the rule to require violations issued by local government to be included and factored into the compliance history rating.

4. ***Per 30 TAC 60.1(a)(1) Specifically, the agency will utilize compliance history when making decisions regarding: (A) the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit...***

During the technical review of an application, renewal, amendment, modification, denial, suspension, or revocation of a permit; the TCEQ staff checks the compliance history. Additionally, during compliance review, the staff does consider cases in which the TCEQ is a necessary and indispensable party. For Harris County to pursue litigation against a site that has violations, TCEQ is required to be a necessary and indispensable party to the case.

PCS Comment

Per 30 TAC 60.1(a)(1), by considering the violation notices by local government during compliance review, TCEQ permit writers can make better determinations regarding permit issuance, renewal, amendment, modification, denial, suspension, or revocation.



For Harris County to refer a site for formal enforcement, the TCEQ, as a necessary and indispensable party, must be notified in advance to provide the TCEQ with an opportunity to take the case or allow the local authority to proceed.

PCS Recommendation

PCS recommends that the TCEQ amend the rule to require violations issued by local government to be included and factored into the compliance history rating.

5. ***Per 30 TAC 60.1(a) Applicability. The provisions of this chapter are applicable to all persons subject to the requirements of Texas Water Code, Chapters 26, 27, and 32 and Texas Health and Safety Code, Chapters 361, 375, 382, and 401.***

Per 30 TAC 60.2(d) Major, moderate, and minor violations. In classifying a site's compliance history, the executive director shall determine whether a documented violation of an applicable legal requirement is of major, moderate, or minor significance.

PCS Comment

As mentioned in Comment 3, per Texas Water Code 26.173(a), local government has the same power as the commission to make inspections and investigations, and to determine if persons are in compliance with applicable requirements.

Per 30 TAC 60.1(a), the provisions for compliance history apply to all persons subject to Texas Water Code 26, which includes local government.

Per 30 TAC 60.2(d), the executive director shall determine whether a documented violation of an applicable legal requirement is of major, moderate, or minor significance. Per Texas Water Code 26.173(b), when requested by the executive director, the results of any inspection or investigation made by the local government shall be transmitted to the commission for its consideration. This would include violation notices that are the result of encountering non-compliance during the inspection or investigation. The executive director should consider violation notices from local government for compliance history.



PCS Recommendation

PCS recommends that the TCEQ accept the recommendation of the Sunset Advisory Commission to consider all violation notices, including those from local government, which, per the regulations (30 TAC 60.1(a) and 60.2(b), Texas Water Code 26.173(a) and 26.173(b)), can be considered for the compliance history.

6. ***Per the Sunset Advisory Commission Texas Commission on Environmental Quality Staff Report Issue 2, “TCEQ’s compliance history formula does not include all relevant data, resulting in inaccurate compliance history ratings that do not reflect the actual compliance.” “Entities without compliance history data – like those that TCEQ has not inspected in the last five-year period – are rated as unclassified.” This category resulted in 398,013 entities for fiscal year 2021. “By not factoring all instances of noncompliance into compliance history ratings, TCEQ misses an opportunity to further incentivize full compliance. Compliance history ratings are meant to be a complete evaluation of a facility’s compliance with regulations, not simply a reflection of formal enforcement history. Additional data could better inform existing compliance ratings and potentially lead to compliance histories for some of the nearly 400,000 unclassified entities for which TCEQ currently has no compliance information. Any data showing noncompliance would not only better inform TCEQ’s operations by enabling the agency to detect a regulated entity’s pattern of behavior but also increase transparency for the public and other regulated entities.”***

Sunset Staff Recommendations, “Require TCEQ’s compliance history rating formula to consider all evidence of noncompliance while decreasing the current emphasis on site complexity and direct the agency to regularly update compliance history ratings.”

PCS Comment

As noted in the Sunset report, the compliance history formula does not include all the relevant data. Approximately 400,000 entities are rated as unclassified, as they have not been inspected by the TCEQ. However, this number is specific to the TCEQ’s data and not inclusive of local governments’ data and therefore may be inaccurate in situations where a complaint was referred that ended up receiving notice of a violation after being investigated by the local government.

PCS Recommendation

PCS recommends that the TCEQ amend the rule to require violations issued by local government to be included and factored into the compliance history rating.

Harris County

Pollution Control Services

Dr. Latrice Babin, Executive Director

Established in 1953



Thank you for the opportunity to provide these concerns regarding the proposed rulemaking action referenced above. Should you have any additional questions or concerns, please contact Elita Castleberry at (713) 274-6236 or by email at elita.castleberry@pcs.hctx.net.

Sincerely,

A handwritten signature in black ink, appearing to be 'L. Babin', written in a cursive style.

Dr. Latrice Babin
Executive Director

EBC/lw

cc: Mikayla Panariello - Harris County Judge's Office
Sarah Utley - Harris County Attorney's Office
Nicole Bealle - TCEQ Region 12
Charles Schwertner - Sunset Advisory Commission Chairman
Justin Holland - Sunset Advisory Commission Vice Chair