



AGC of TEXAS

Highway, Heavy, Utilities & Industrial Branch
JENNIFER WOODARD, Chief Executive Officer



August 25, 2025

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

RE: Rule Project Number 2024-043-060-CE

Dear Ms. Ricco:

The Associated General Contractors of Texas (AGC of Texas) Highway, Heavy, Utilities, and Industrial Branch is an organization comprised of nearly 700 member companies from across Texas, and one of more than 32,000 networking firms comprising the Associated General Contractors of America. AGC of Texas' members build and maintain state, city, and county roads and bridges, as well as civil projects such as airports, bridges, dams, and municipal utilities.

AGC of Texas' members are regulated by the Texas Commission on Environmental Quality (TCEQ) across all environmental media. Their operations can include concrete batch plants, hot-mix asphalt plants, aggregate production operations, and rock and concrete crushers. Common authorizations are air quality standard permits, air permits-by-rule, the multi-sector stormwater general permit, above- and below-ground petroleum storage tank registrations, and Edwards Aquifer Program authorizations. Thank you for the opportunity to comment on the above proposed rules.

General Comments

Evaluating Impacts of Proposed Amendments. AGC of Texas understands that in the course of developing the rule amendments, TCEQ ran simulations to understand potential real-world effects from the changes. We appreciate and support TCEQ proactively taking steps to evaluate the potential impacts of these amendments and identify potential unintended consequences.

Future Revisions to the TCEQ Penalty Policy. "Repeat Violator" status currently results in a 25 percent penalty enhancement. TCEQ correctly acknowledges that adding "minor" and "moderate" violations will potentially result in more "repeat violators." AGC of Texas adds that this change could capture industry-types and small businesses that have never had this designation. While beyond the scope of the rulemaking, AGC of Texas encourages TCEQ to review its penalty policy in light of these rule changes, such as considering adding a tiered approach for penalty enhancements, with lower penalty increase percentages for regulated entities that are "repeat violators" on the basis of "minor" or "moderate" violations.

Proposed §60.1(b)—Five-Year Compliance Period

The commission proposes to change the compliance history period to the five-year period before the initial enforcement screening date. Currently, the compliance period dates from the mailing of the

enforcement settlement offer or petition. TCEQ states that it will more closely reflect the performance of the site at the time the violations are documented and provide greater certainty to the agency and regulated community.

AGC of Texas recognizes that a compliance history rating number can be a "moving target" during the course of long settlement negotiations on an enforcement order. However, this change could mean that a regulated entity could lose the benefit of a "positive component" the entity implements within the timeframe between the enforcement screening date and the settlement offer. Further, this change does not appear to explicitly implement any recommendations made by the Sunset Advisory Commission or statutory amendments enacted by Senate Bill 1397. AGC of Texas respectfully requests that TCEQ re-evaluate this proposed amendment and consider restoring the current rule language.

Proposed §60.2(a)—Frequency of Compliance History Evaluation

AGC of Texas supports the proposed schedule of evaluating compliance history on March 1st and September 1st of each year.

Proposed §60.2(f)—Repeat Violator Classification

The proposed amendments remove the requirement that separate violations be documented on "separate occasions." Under current rules, multiple violations of the same type may be consolidated into a single enforcement action, and the commission has considered "separate occasion" to mean individual orders or enforcement actions. The proposal could result in an increase in the number of "repeat violators."

It is not clear that Senate Bill 1397 mandated the removal of the "separate occasion" language. Texas Water Code, §5.754(c)(2)(A), as added by the Act, requires TCEQ to set the number of major, moderate, and minor violations needed to be classified as a "repeat violator." Senate Bill 1397, however, did not change TCEQ's mandate to "establish criteria" for the "repeat violator" classification, i.e., that language was not changed by the Legislature. Under this authority, TCEQ maintains the authority to retain the "separate occasion" language. We respectfully recommend restoring the current language.

AGC of Texas supports TCEQ's proposed overall approach for calculating "repeat violation points." It is appropriate to include only final enforcement orders, court judgements, and criminal convictions; and it is appropriate to give proper weight to minor, moderate, and major violations.

AGC of Texas also supports the proposed exclusion of Notices of Violation (NOVs) from the classification of "repeat violator." Texas Water Code, §5.753 (Standards for Evaluating and Using Compliance History) already recognizes that NOVs are not final actions. Further, they are an important tool for achieving compliance quickly, and conserving agency resources through early resolution at the Regional Office level.

Thank you again for the opportunity to comment on the proposed rules. Please do not hesitate to contact me at (512) 478-4691 if you have any questions or require further information.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Woodard". The signature is fluid and cursive, with the first name "Jennifer" being more prominent than the last name "Woodard".

Jennifer Woodard
Chief Executive Officer