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VIA ELECTRONIC SUBMISSION

<https://tceq.commentinput.com/>

Texas Commission on Environmental Quality

Gwen Rico, MC 205

Office of Legal Services

TCEQ

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Austin, TX 78711-3087

RE: Public Comments on the TCEQ Proposal to Revise 30 TAC Chapter 60 Relating to Compliance History (Rule Project Number 2024-043-060-CE)

On behalf of its 30,000 members and supporters in Texas, Public Citizen and its partners appreciate the opportunity to comment on the proposed rulemaking to update compliance history rules, as required by SB 1397 from the 88th legislative session. The agency should utilize compliance histories to determine industry fines and whether an existing, new or amended permit is appropriate for an unsatisfactory performer. Instead, they have largely been used by the agency to lessen industry fines and to expedite permitting. These proposed changes are a step in the right direction, but still fail to improve or address the agency's overall ineffective financial penalty system. Additionally, the fact that 90% of facilities are unclassified means that the vast majority of polluters enjoy a perception of fully compliant operation that, in many cases, is undeserved. Our concerns are summarized below:

Moderate and Minor Violations

Texas' compliance history system has, for years, overlooked a significant portion of violations that, while labeled "minor" or "moderate," can still cause serious harm to public health and the environment. During the 2024 fiscal year, TCEQ reported in its Annual Enforcement Report that the most common violation types are those of moderate severity, accounting for 70% of all violations. Minor violations were 16% of the total in 2024. Regardless of the perceived severity of individual violations, minor and moderate violations were 86% of all violations during FY 2024, and their cumulative effect remains harmful to communities already overburdened by pollution.

Major violations, which account for just 14% of the total violations in 2024, were the only category previously considered in Compliance Histories. Including minor and moderate violations in the repeat violator criteria closes a dangerous loophole that has allowed chronic polluters to avoid the repeat violator designation and any meaningful consequences.

Notice of Violation Component of the Compliance History

Written Notices of Violations (NOVs) are formal documentation by the agency that a violation



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or non-compliance has occurred. Non-compliance is what the compliance history is intended to reflect, whether it is resolved with or without enforcement action. Therefore, NOV's must be included as a component of the compliance history for the full five-year compliance period and not limited to one year, as proposed in the current rulemaking.

The Sunset Advisory Commission Recommendation 2.1 states, "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 same type. TCEQ should specifically consider major, moderate, and repeat occurrences of the same minor *violations* when calculating compliance history ratings." The recommendation is not that the TCEQ consider only enforcement actions, which is what this rulemaking seeks to primarily base Compliance History on.

During the 2024 fiscal year, TCEQ issued 15,235 NOV's, which provide valuable information about the compliance status of the regulated community. Comparatively, TCEQ issued just 1,083 administrative orders and 19 civil enforcements in 2024.

Notice of Violation Component of the Repeat Violator Classification

Similarly, NOV's should be included in the agency's repeat violator criteria and calculated into the site rating formula. Regulated entities that receive NOV's should be assigned points that correspond with the severity, frequency and complexity of each violation in the preceding five-year compliance period.

This frequency of repeat violations is not accurately reflected in a compliance history rating that does not consider NOV's. TCEQ reported in 2024 that 22% of all regulated entities had previous enforcement orders or judgments and 25% of orders and judgments had violations that were the same or similar to those included in prior orders or judgments over the past five fiscal years.

Unclassified Entities

The Sunset Commission quantified the percentage of "unclassified" regulated entities during FY 2021 as 89.2%. More recently, this percentage rose to 90% during FY 2024, which corresponds to 451,956 facilities. During the question and answer session of the August 18, 2025, public hearing, TCEQ staff responded that the agency has no intention of reducing the number of uninspected or unclassified entities because the Sunset Commission did not recommend, and the legislature did not mandate, that it do so.

Lack of a *mandate* to adopt procedures that meet the goals of TCEQ and of the Sunset Commission is not a prohibition on doing so. The Compliance History program cannot function as intended – to make appropriate regulatory decisions based on compliance status – unless the TCEQ proactively and directly addresses the volume of facilities listed as "unclassified".

TCEQ receives approximately 10,000 complaints each fiscal year, with 35% resulting in a Notice of Violation and 6% resulting in a Notice of Enforcement. TCEQ has described its



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staffing shortages and encourages the public to submit complaints to identify non-compliant facilities and operations. We encourage TCEQ to include complaints that produce NOV/NOEs going back five years in the compliance history, not just one year, to potentially reduce the number of unclassified facilities by as much as 4,100 per year.

A [March 2023 study](#) highlights the strong relationship between citizen complaints and enforcement. The study looked at citizen complaints to TCEQ from 2003 to 2019. The findings include the following:

- Investigations are two to four times more likely to uncover violations if they are based on a complaint.
- In the month after a complaint, a facility is 6% more likely to receive a notice of violation and 1% more likely to receive a notice of enforcement.
- A facility is 51% more likely to be the subject of an investigation in the month after a complaint.

The study concluded that, “citizen complaints are associated with a marked regulatory response.”

TCEQ issued 1,102 administrative orders and civil judgments during FY 2024. By including minor and moderate violations (16% and 70%, respectively) in the compliance history, TCEQ could reduce the number of unclassified facilities by as many as 948 entities per year.

TCEQ reported that it reviewed 76,463 Tier II Reports during FY 2024 and found 4% had deficiencies. By including the Tier II Deficiency Correction Reports in the compliance history, TCEQ could reduce the number of unclassified facilities by up to 3,000 entities per year.

Frequency of Compliance History Updates

Communities have a right to know – without delay – whether nearby facilities are following the laws. They can use this information to advocate for stronger enforcement and hold both polluters and the TCEQ accountable. The Sunset Implementation Table states, “Finally, TCEQ should regularly update an entity’s compliance history rating throughout the year as the agency receives additional information that could alter the rating.” We suggest that upon execution of a final Administrative Order, the Compliance History should be updated immediately, instead of biannually as proposed. We also recommend that NOV/NOEs be added to the Compliance History at regular intervals, such as quarterly, to ensure that the rating remains accurate.

TCEQ reported in its Biennial Report to the 89th Legislature that the average number of days from the initiation of an enforcement action to its completion was 528. However, there are also instances when an enforcement case from initial investigation to the issuance of a final order has taken four years. TCEQ also reported in its May 2025 Monthly Enforcement Report that it has a backlog of 1,400 administrative orders.

The TCEQ must address these administrative delays in the enforcement process so that facilities



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cannot apply for new and revised permits with potentially less stringent conditions that would be unjustified if the pending enforcement action(s) were final.

Compliance History Appeals

While the agency noted that this rulemaking considered the duration of the appeal window for regulated entities, it did not include any measures for transparency for the appeals process. The TCEQ's Compliance History website states that, "There is no hearing associated with this process, so your written appeal must stand on its own merit. Be sure to include each argument and item of evidence that you believe supports your position." The public should be granted access upon request to any documentation or reasoning submitted to or considered by the TCEQ when determining whether to grant a requested appeal of a Compliance History or Repeat Violator Designation.

Compliance History Formulas

Lastly, improving the compliance history formula to compare facilities of similar complexity will help ensure fairness while maintaining strong protections. Good actors will benefit from a more accurate reflection of their performance, while those with persistent violations will face the consequences.

But another improvement that should be considered in this rulemaking is the inclusion of enforcement actions by local governments and other regulatory entities as a component of the ranking. This was proposed, for example, in SB 277 and HB 3972 in the 89th legislative session.

Conclusion

A clean compliance record should be earned, not gifted. Unfortunately, the changes proposed here do not meet the stated intentions in TCEQ's own Sunset Implementation Table. It is disingenuous to claim that Management Action/Sunset Recommendation 2.1 is "in progress" when those recommendations are not in the current draft.

The Sunset Commission concluded that the TCEQ is a "reluctant regulator," lacking public trust.

While we do support the TCEQ's proposed improvement to include minor and moderate violations in the repeat violator criteria, we urge TCEQ to take all steps in its power, not just those it is mandated by law to do, to change this reality for the health and well-being of all Texans.

Texans deserve a regulatory system that works for them and not just for industry.

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