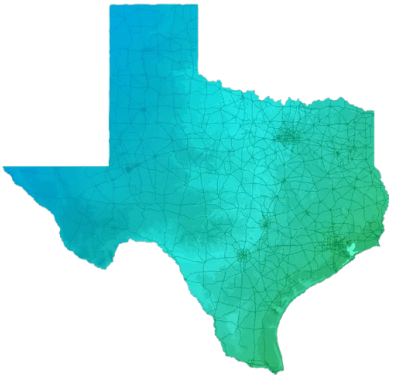

Changes to TCEQ Rules Affect Compliance History and Penalty Calculations

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Today, the Texas Commission on Environmental Quality ("TCEQ") adopted significant changes to existing rules that will affect how compliance history is calculated, updated, and applied. [1] The agency uses compliance history when: (i) making permitting decisions, (ii) making enforcement and penalty decisions, (iii) deciding whether to use announced investigations, and (iv) considering an entity's ability to participate in innovative programming. [2] Companies with Texas operations should be aware of these rule changes, which will become final 20 days following publication in the *Texas Register*. Below is an overview of several key changes.

Changes Impacting an Entity's Repeat Violator Status

One line item in TCEQ's penalty calculation worksheet is a multiplier for "repeat violators." Previously, this multiplier was reserved for entities with prior *major* violations of the same nature and same environmental media that occurred during the five-year compliance period. The new rule now includes *minor* and *moderate* violations.

The new points-based system for determining repeat violator status issues "repeat violation points" for each violation of the same nature and same environmental media documented in any final enforcement orders, court judgments, or criminal convictions that occurred *at least three times* during the five-year compliance history period. Further, each unauthorized discharge will be counted separately, thereby reducing the potential benefit of merging separate violations into a single enforcement action.

The agency received public comment from environmental groups on this change. Commenters noted that while the agency is considering minor and moderate violations, as required by the Sunset Bill, the requirement for a facility to have three enforcement orders to be considered a repeat violator undercuts the agency's directive to take into account repeat violations. During the January 14, 2026 hearing, the Commissioners expressed in response that the rule changes required "threading the needle" and they were proud of all of the hard work put in by agency staff.

More Predictable Compliance Period

The TCEQ has adopted a more practical way to calculate the relevant five-year compliance period it uses in calculating penalties during enforcement. A facility's compliance period looks back across a five-year period. This hasn't changed. However, while the prior rule considered the five years prior to the date the agency mailed an enforcement settlement offer or petition to the entity (which could be years after the initial investigation), the revised rule will change the relevant compliance period to

five years prior to the date of an initial enforcement screening. This change has several effects.

First, the date of the initial enforcement screening more accurately reflects a facility's compliance at that point in time. The back and forth that may occur with the agency before a settlement offer is mailed can span months or years. Changing this trigger date better supports the agency's goal of having a facility come into compliance as a result of its enforcement efforts and facilities will not face a protracted compliance period due to factors beyond its control.

Additionally, regulated entities who respond to enforcement by implementing changes at the facility to come into compliance will be able to move toward a cleaner compliance history on a shorter timeframe. Already facing a five year look back, entities need to maintain compliance for years before accomplishing a clean record. The more predictable and earlier trigger date will allow the entities that have implemented lasting changes to develop a cleaner record, sooner.

With these rule changes, the TCEQ will also increase its frequency of reviewing compliance histories, with review to take place twice a year, rather than annually. This can give regulated entities a six-month advantage to accomplishing a clean compliance history.

Closing Thoughts and Evaluating Impacts to Your Facility

Companies with operations in Texas should review the final rule, once published; alert their compliance and environmental personnel of this rule change; access their compliance history through the agency's new Advance Review of Compliance History ("ARCH") database; and plan for potential financial impacts the changes may have on penalty calculations.

While the above summary touches on several key changes, the amendments include additional changes that impact regulated entities. We welcome the opportunity to discuss these changes in more detail, should this notice raise any questions.

[1] *See* 30 Tex. Admin. Code §§ 60.1, 60.2.
[2] 30 Tex. Admin. Code § 60.1(a)(1)(A)-(D).