

TEXAS ISSUES PHASE II OF COMPLIANCE HISTORY RULES

by

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On August 7, 2002, the Texas Commission on Environmental Quality (“TCEQ” or “Commission”)¹ issued its final “Phase II” compliance history rule, the second step in the TCEQ’s implementation of a 2001 mandate from the Texas Legislature. Tex. Water Code § 5.754.² These rules set forth a complex series of formulas the Commission will use to classify compliance history of sites and persons into one of three categories, high, average or poor. The compliance history classification will be used in decisions on permitting, enforcement, investigations, and participation in innovative programs. Those sites that are designated as “poor” performers can face important new regulatory hurdles, from more stringent permitting requirements, increased penalties during enforcement, prohibition from participation in flexible permitting regimes, and in the worst case, revocation of existing permits and denial of new or renewal permits. Moreover, as this article attempts to demonstrate through use of a hypothetical, it may not take much to be designated as a “poor” performer. Despite intentions to create a rule that classifies most facilities as “average” performers, TCEQ officials recently noted that they were not entirely sure what the ultimate curve would look like. This is a rule with important implications for corporations that have facilities in Texas or plan to expand their business to Texas in the near future.

Attached is a copy of the TCEQ’s draft final rule and response to comments; the rules were adopted with some very minor changes.³ The final rule will be available next week.

¹ TCEQ is the new name for the Texas Natural Resource Conservation Commission (“TNRCC”), effective September 1, 2002.

² Phase I of the rules, adopted earlier this year at 30 Tex. Admin. Code § 60.1, set forth the components for determining compliance history, establish a five-year compliance history review period, and set forth exceptions to the compliance history rules for several minor permit actions.

³ The most significant relates to an amendment that would allow an appeals process for “repeat violators.”

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Applicability and Deadlines.

Under the new rules, the Executive Director (“ED”) will evaluate the compliance history of each “site” and “person” beginning September 1, 2002 and thereafter annually. 30 Tex. Admin. Code § 60.2. A “site” includes all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person and includes any property identified in the permit or used in connected with the regulated activity. Id. A site for a portable regulated unit or facility is any location where the unit or facility is or has operated. Id.

The Commission plans to begin evaluating compliance history for sites and persons on an as-needed basis (i.e., as necessary for any decision-making) beginning September 1, 2002 and plans to have all compliance histories (for approximately 220,000 sites) conducted by September 1, 2003. Compliance histories will be posted on the Commission’s website.

Classifications.

Each site and person will be classified into one of three categories: high (fewer than 0.10 points), average (.10 points to 45 points) and poor (more than 45 points). Id. § 60.2(b).⁴

The Commission expects that the large majority of facilities will be classified in the “average” category and does not expect a large category of “poor” performers.⁵ Nevertheless, in light of the high point ranges that are assigned to violations, the limited point spread for average facilities, and the few opportunities there are to deduct points, it seems that there may well be a large number of poor-but-almost-average performers. Although the rules set forth a few limited “mitigating factors” that the Commission may consider to promote poor performers into the average category, these factors are discretionary only (i.e., have no numeric value under the classification formula).⁶

⁴ Sites with inadequate information will be designated “average performer by default” and assigned 3.01 points. Approximately one-third of the companies are expected to be in the default category.

⁵ The Commission prepared compliance histories for about 3000 facilities in preparation of the rule. These histories suggest that most companies will fall into the “average” category. The accuracy and the completeness of these initial compliance histories has not been verified, however.

⁶ These mitigating factors include: (1) any voluntary on-site compliance assessments conducted by the executive director under a special assistance program; (2) participation in a voluntary pollution reduction program; (3) description of early compliance with or offer of a

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Formula for Calculating the Classifications.

A site's compliance history is the sum of a site's numerically calculated "violations history" minus "good actor factors" divided by the number of investigations conducted by the TCEQ during the compliance period plus 1, and, for facilities with a certified EMS program, multiplied by 0.9. Id. § 60.2(e)(1)(A)-(M).⁷ A person's compliance history is the average of the compliance history classifications for all sites owned or operated by that person. Id. § 60.2(f). In other words:

Site Compliance History	=	$\frac{[(\text{sum of "violations history"}) - (\text{sum of "good actor" factors})]}{[\text{number of TCEQ investigations} + 1]}$ $\times [0.9 \text{ for facilities with certified EMS programs}]$
Person Compliance History	=	$\frac{\text{sum of site compliance histories}}{\text{number of sites}}$

The terms in these formula are in turn defined through a series of additional formulas and definitions. "Violations history" is the sum of all major, moderate and minor violations multiplied by their respective numeric "gravity factors" plus certain flat numeric additions for "chronic excessive emission events" and "repeat violators." Id. § 60.2(e)(1). A table setting forth the gravity factors for the various violations is provided in the Annex. A separate formula is established for determining "repeat violators," as described below. "Chronic excessive emission events" will be determined according to TCEQ's revised emissions reporting rules, which have not been adopted at this time. In other words:

product that meets future state or federal environmental requirements; (4) implementation of a non-certified environmental management system ("EMS"); (5) whether the site is a poor performer purchased by a person with otherwise high or average performing sites; (6) voluntarily reporting a violation that is not otherwise required to be reported and that is not reported under the Audit Privilege Act. 30 Tex. Admin. Code § 60.2(e)(3).

⁷ Note: the terms "violations history," "gravity factors," and "good actor factors" are our short-hand terminology for these portions of the formula. They are not used in the rule. The terms "repeat violator" and "chronic excessive emission events" are used in the rule.

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“Violations History”	=	[number of major, moderate, and minor violations x assigned gravity factors] + [number of major, moderate and minor violations in NOVs x assigned gravity factors] + [number of counts in criminal convictions x assigned gravity factors] + [(number of chronic excessive emissions events) x (assigned factor of 100)] + [a gravity factor of 500 for repeat violators]
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The “good actor factors” include the sum of the number of notices of intended audits reported to the agency plus the number of violations reported under the Audit Privilege Act and for which immunity was granted multiplied by their assigned gravity factors. Id. § 60.2(e)(1)(K). In contrast to the high gravity factors assigned to violations, the gravity factors for reporting violations is very low (5 for major violations, 3 for moderate violations and 1 for minor violations). In other words:

“Good Actor” Factors	=	[(number of intended audits noticed x 1) + [number of major, moderate and minor violations reported under the Audit Privilege Act x assigned gravity factors]]
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Violations Defined.

Violations that are included in the compliance history calculation are all major, minor and moderate violations that are contained in adjudicated and non-adjudicated final court judgments, default judgments, consent decrees (with and without denial of liability), adjudicated final enforcement orders, default orders, emergency orders, agreed final enforcement orders (with and without denial of liability) and notices of violation. The calculation includes evaluation of all violations over the last five years, with the exception of NOVs, which may be counted if issued after September 1, 1999, unless determined to be without merit. Id. § 60.1(c)(7). The rules set forth lists of what is considered a major, moderate or minor violation; those are provided in the Annex.

Note, however, that a site or person’s compliance history will include out-of-state violations. Id. § 60.1(c)(3). The TCEQ has indicated that calculation of the classification ranking will be based only on compliance history (state and federal) for sites in Texas. How out-of-state violations will be evaluated remains unclear and the rules do not address this issue.

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Investigations.

The primary factor in the denominator of the compliance history formula -- and the way in which compliance history can be significantly reduced -- is through the number of investigations conducted by the ED. An “investigation” is defined as a review or evaluation of information by the ED or ED’s staff regarding the compliance status of a site, excluding those investigations initiated by citizen complaints. Id. § 60.2(e)(L). An investigation may take the form of a site assessment, file or record review, compliance investigation or other review of evaluation of information. Id. An investigation does not include investigations conducted by EPA. How the term “investigations” will be interpreted by TCEQ in practice will be important to monitor.

Repeat Violator Formula.

In addition to the compliance history formula, the rules also establish a formula for determining whether a facility is a repeat violator. The formula is based on the number of violations and the site’s assigned “criteria” points, which are largely based on the difficulty of compliance at that site. A site is a repeat violator when:

- (1) the site has had a major violation documented on at least two occasions and has total criteria points ranging from 0-8;
- (2) the site has had a major violation documented on at least three occasions and has total criteria points ranging from 9-24;
- (3) the site has had a major violation documented on at least four occasions and has total criteria points greater than 24.

Criteria points are calculated by adding up (1) permit complexity points; (2) the number of sites; (3) size of the sites; and (4) whether the site is located in a nonattainment area. In other words:

Criteria Points	=	[Permit complexity points] + [Number of Sites] + [Size of Facility] + [Non-attainment area points]
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The rules assign specific points for each of these categories, which are set forth in the Annex. Once a site is a repeat violator, based on the formula, that site may likely be a poor performer as well.

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Use of Compliance History.

Phase I of the compliance history rules require TCEQ to utilize compliance history when making decisions regarding (1) the issuance, renewal, amendment, modification, denial, suspension or revocation of a permit; (2) enforcement; (3) use of announced investigations; and (4) participation in innovative programs. Id. § 60.1(a)(1). The Phase II rules further clarify how compliance history will be used regarding poor performers and repeat violators.

Permitting Decisions. There are significant permitting implications for poor performers and repeat violators. In general, TCEQ may require additional permit conditions or provisions to address an applicant's compliance history. Id. § 60.3(a)(2). If a site is classified as a poor performer, the Commission must (1) deny or suspend a person's authority under a general wastewater discharge permit and (2) deny an air quality flexible permit. Further, the Commission has discretion to deny or amend a solid waste management facility permit or an air permit (after a hearing). Id. § 60.3(a)(3)(B). The Commission must also provide an opportunity for a contested case hearing if the Commission determines that the compliance history of a poor performer or repeat violator raises an issue regarding the person's ability to comply with the material terms of a hazardous waste management facility permit. Id. § 60.3(a)(3)(D). Finally, the Commission must deny an application for a permit or permit amendment when the person has an "unacceptable compliance history based on violations constituting a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process." Id. § 60.3(a)(3)(E).

The Commission may also revoke a permit of a repeat violator for cause or for any of the following violations: (1) a major criminal conviction; (2) a major unauthorized release, emission or discharge of pollutants; (3) repeatedly operating without required authorization; or (4) documented falsification (presumably of records).

Investigations. If a site is classified as a poor performer, the Commission may provide technical assistance to that person, increase the number of investigations performed at the site and may only perform unannounced investigations. Id. § 60.3(b).

Enforcement. The Commission may address compliance history and repeat violator issues in both penalty assessments and technical requirements during enforcement. Id. § 60.3(c). Poor performers are subject to additional oversight necessary to improve environmental compliance and additional administrative penalties shall be assessed for repeat violators. Id.

Innovative Programs. For sites classified as poor performers, the Commission may (1) recommend technical assistance and (2) provide assistance or oversight in development of an environmental management system (EMS) and require specific environmental reporting. Id. § 60.3(e). The Commission shall prohibit a poor performer from participating in the Commission's regulatory flexibility programs at that site and may not grant any regulatory

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incentives through the site's EMS program until its compliance history classification has improved to at least an average performer. Id.

Notice and Appeal.

Notice of person and site classifications will be posted on the Commission's website within 30 days after the completion of the classification. Id. § 60.2(g). Importantly, the rules do not require the Commission to notify a person or facility that the classification has been posted and it does not appear that they plan to provide such official notice. The website posting date is important, however, because it triggers the appeals process.

Appeals of compliance history classification must be filed with the ED no later than 45 days after notice of the classification is posted on the commission's website. Id. § 60.3(e). Appeals may only be brought by persons who are "poor" performers and "average" performers with 30 points or more. Id. The appeal must demonstrate that if specific relief sought is granted, a change in site or person classification will result. Id. The ED may affirm or modify the classification. Id. For the purposes of judicial review, the ED's decision constitutes final and appealable commission action (i.e., an appeal from the ED's decision need not be made to the Commission and may be filed directly in District Court).

Hypothetical.

To demonstrate the ease "poor performer" status can be obtained, here is a hypothetical example.

Facility ABC Chemicals, Inc. plans to build a new processing facility in Texas at a greenfield site near Houston, Texas. ABC Chemicals believes that its permit application will be ready to submit in October 2002. ABC Chemicals operates one other site in Texas which it bought in 1997. At the time it bought the existing facility, the facility had several compliance issues under the Benzene Waste Operations NESHAP (BWON). Despite its best efforts, ABC Chemicals could not get all BWON compliance issues straightened out and in December 1998, after protracted negotiations, it entered into an agreed enforcement order with TCEQ. In the enforcement order, ABC Chemicals admitted liability to the following:

- failure to monitor emissions of BWON equipment (one tank);
- failure to submit one certified quarterly report;
- failure to perform waste stream characterization requirements on four streams;
- failure to maintain BWON monitoring data for one month.

ABC Chemicals paid a small fine, conducted a Supplemental Environmental Project ("SEP") and revamped its BWON compliance procedures.

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In 2001, ABC Chemicals conducted an audit under the Audit Privilege Act and notified TCEQ of its failure to ship hazardous waste off-site within the 90-day period (ABC Chemicals is not a TSD facility) and was granted immunity. Since 1998, TCEQ has conducted two investigations of ABC chemicals and two inspections have been conducted by EPA Region VI. In 2002, after the most recent TCEQ inspection, ABC Chemicals received an NOV for failure to properly maintain its water seals on two individual drain systems. The NOV has not yet been resolved. ABC Chemicals has an EMS program, but that program is not certified.

Calculation of the Violations History

Assuming for the moment that TCEQ will agree how each of these violations will be categorized – and which undoubtedly leaves considerable room for discretion and controversy – we calculate the violations history of ABC Chemicals as follows:

2 moderate violations in an enforcement order with liability admitted (monitor tank/certified report)	x 60	=	120 points
2 minor violations in an enforcement order with liability admitted (waste characterization/maintain monitoring data)	x 20	=	40 points
2 moderate violations in an NOV (water seal issues)	x 3	=	<u>6 points</u>
Sum of Violations History =			166 points ⁸

Because ABC Chemicals has had no major violations, ABC Chemicals is not a repeat violator. ABC has not had any chronic excessive emissions events.

Calculation of “Good Actor Factors”

ABC Chemicals notified the TCEQ of one moderate violation in 2000 under the Audit Privilege Act (failure to remove hazardous waste within 90 days) and therefore can deduct 3 points from its violations history (3 points per each moderate violation).

⁸ See the Gravity Factor Table in the Annex for the assigned gravity factors. Arguably, these “violations” could fall into one or more of the types of violations (major, moderate or minor). Further, it is conceivable that some of the violations could be counted more than once (e.g., failure to characterize waste in four streams could be counted as four violations). It is unclear how uniformity in the decision making process will be ensured.

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Totaling Compliance History

Using the formula,

$$\text{Site Compliance History} = \frac{[(\text{sum of "violations history"}) - (\text{sum of "good actor" factors})]}{[\text{number of TCEQ investigations} + 1]}$$

$$\times [.9 \text{ for facilities with certified EMS programs}]$$

$$\text{Or} \quad \frac{[166] - [3]}{[2+1]} = 54.3$$

ABC Chemicals will have a site classification of 54.3 and will be designated a poor performer under the new criteria. This is the case even though ABC Chemicals has never had a major violation and has had only 2 moderate violations and 2 minor violations in the past five years. ABC chemicals cannot reduce its site classification with its EMS program because it is not certified. Even if the EMS program were certified, ABC Chemicals site classification would only be reduced to 48.9, which would still place it in the poor performer category.

Importantly, had ABC Chemicals not admitted liability in the 1998 enforcement order, its compliance history would have been reduced to 41 and ABC Chemicals would be in the average category. In addition, ABC Chemicals also would have had an average score (32.5) had the EPA investigations counted in the denominator – for now, only TCEQ investigations count.

ABC Chemicals has a few strategies for elevating its compliance history to average. First, as a poor performer, ABC Chemicals may appeal to the ED using the “mitigating factors.” ABC could argue that the most significant of its compliance history issues were due to the prior owner/operator issues since it appears that ABC Chemicals bought a facility that had prior compliance issues. However, the rules only provide for the ED to consider reclassifying a poor performer to an average performer when the person has other sites that are average or good. Because ABC Chemicals has no other sites in Texas, it is not clear that the ED would reclassify ABC Chemicals in this case. Alternatively, ABC Chemicals can also try and persuade the ED that its non-certified EMS (another mitigating factor) should be another reason to promote ABC Chemicals into the average category. It is unclear, however, how frequently and under what circumstances the ED will use its discretion in applying the mitigating factors.

Finally, ABC Chemicals may also wait until January 2004 to submit its permit application. Because the enforcement order was entered into in December 1998, the violations in the enforcement order will be dropped for purposes of determining the five-year compliance history beginning in 2004. Such an extended delay, however, is likely to have important business consequences for ABC Chemicals.

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Conclusions.

While numeric compliance history classifications may, at first blush, seem to be an effective way for providing an objective method for distinguishing between good actors and bad actors, the Phase II compliance history rules may create more confusion and controversy than they resolves. We make the following observations:

- The retroactive application of the rule by way of using a five-year compliance history period remains problematic and creates an unlevel playing field with immediate and important consequences. Facilities that may have settled enforcement actions quickly simply to resolve them – even when they did not believe that there was a legitimate underlying basis for enforcement – will now be penalized for that strategy. There is no longer an opportunity to challenge the validity of enforcement orders to which a facility might not have agreed to had the consequences for their compliance history been what they are today. Although the Texas Attorney General recently issued an opinion agreeing with TCEQ’s interpretation of the statute, this issue may provide a basis for challenging the rule.
- There are far too few opportunities for an entity to significantly improve its compliance history numbers. Currently, the main mechanism for reducing compliance history is through the number of TCEQ investigations (which increases the denominator), which is outside the control of an entity. Facilities in regions where investigation activities have been scant may find themselves with high compliance history scores even though they have few environmental violations overall. Alternatively, smaller, “below-the radar” facilities that have had no investigations and “no violations,” may have compliance history scores that are deceptively high. Further, to offset the focus on TCEQ’s investigations, the numeric contributions assigned to EMS programs and voluntary reporting should be far higher. Other actions, such as early compliance, use of innovative environmental technologies, receipt of recognized environmental awards, etc. should also count concretely in calculating compliance classifications.
- The formula belies the complexity of environmental compliance. Fewer points should be assigned to violations in relation to the performance classifications as a whole and it should take more violations overall for a facility to be classified as a poor performer. Apart from determining whether a facility is a repeat violator, the challenges, complexity and difficulty with complying with volumes of environmental regulations is unaccounted for in the rule. Complexity factors should be included as a factor in the rule as in the original proposed rule or in other ways.

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- There is far too much ambiguity in how compliance history will ultimately be calculated because of the way in which violations will be categorized as major, moderate or minor. Going forward, entities undergoing enforcement may want to have any violations clearly designated as major, moderate or minor (and will also want to deny liability in all orders). Even so, for the purposes of calculating compliance history retroactively, translating the actual regulatory violations stated in enforcement orders, NOVs, judgments etc. will be more art than science, and may obviate almost entirely the “objectiveness” of the compliance history scores.
- Along these same lines, the term “investigation” needs clarification and expansion. Specifically, EPA investigations should count in the denominator, especially because EPA violations count in the numerator. In addition, there are remaining questions about what constitutes an investigation. For example, a multimedia investigation should be counted as several investigations, and the Commission should clarify what types of information “reviews” will count as investigations.
- There is too little differentiation among the average and the poor performers. Under the current rule, a facility with 1 point is in the same category as a facility with 45 points. The curve should be more graduated, with recognition for “high-average” performers “average” and “low-average” performers. Even if these distinctions ultimately have little meaning in a regulatory context, it seems likely that the compliance history classifications will be used by at least some environmental groups as “report cards” and may well have public relations implications. Along these same lines, there should be true incentives for belonging to higher compliance categories. For now, the focus on the rule is largely penalization of bad actors without much in the way of providing incentives for good actors. TCEQ should keep in mind that despite its enforcement role, it is largely regulating industries, not criminals, and that a “three strikes you’re out” type rule should be counterbalanced with rewards as well.

To its credit, TCEQ appears to recognize that its rules may raise at least some of these issues, based on comments by the commissioners and other officials during the proposal and adoption of the rules. TCEQ indicates that it is committed to making these rules “work” and therefore, will likely make changes to the rules going forward. In the meantime, industry will have to work with what appears to be an imperfect and problematic rule that may have very significant business consequences.

ANNEX

**Compliance History Rules Phase II
Key Terms and Formula**

Compliance Classification	High = 0.10 points Average = .10 to 45 points Poor = more than 45 points
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Site Compliance History	$\frac{[(\text{sum of "violations history"}) - (\text{sum of "good actor" factors})]}{[\text{number of TCEQ investigations} + 1]}$ $\times [0.9 \text{ for facilities with certified EMS programs}]$
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Person Compliance History	$\frac{\text{sum of site compliance histories}}{\text{number of sites}}$
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"Violations History"	$[\text{number of major, moderate, and minor violations} \times \text{assigned gravity factors}] +$ $[\text{number of major, moderate and minor violations in NOV's} \times \text{assigned gravity factors}] +$ $[\text{number of counts in criminal convictions} \times \text{assigned gravity factors}] +$ $[(\text{number of chronic excessive emissions events}) \times (\text{assigned factor of 100})] +$ $[\text{a gravity factor of 500 for repeat violators}]$
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"Good Actor" Factors	$[(\text{number of intended audits noticed} \times 1) +$ $[\text{number of major, moderate and minor violations reported under the Audit Privilege Act} \times \text{assigned gravity factors}]]$
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Major Violations	<ul style="list-style-type: none">• a violation of a commission enforcement order, court order or consent decree;• operating without required authorization or using a facility that does not possess required authorization;• an unauthorized release, emission or discharge of pollutants that cause, or occurred at levels or volumes sufficient to cause, adverse effects on human health, safety or the environment;
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- falsification of data, documents, or reports; and
 - any violation included in a criminal conviction, which required the prosecutor to prove a culpable mental state or a level of intent to secure the conviction.
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- Moderate Violations**
- a complete or substantial failure to monitor, analyze, or test a release, emission or discharge, as required by a commission rule or permit;
 - complete or substantial failure to submit or maintain records, as required by a commission rule or permit;
 - not having an operator whose level of license, certification, or other authorization is adequate to meet applicable rule requirements;
 - any unauthorized release, emission or discharge of pollutants that is not classified as a major violation;
 - any violation included in a criminal conviction, for a strict liability offense, in which the statute plainly dispenses with any intent element needed to be proved to secure the conviction; and
 - maintaining or operating regulated units, facilities, equipment, structures or sources in a manner that could cause an unauthorized or noncompliance release, emission, or discharge of pollutants.
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- Minor Violations**
- performing most, but not all, of a monitoring or testing requirement, including required unit or facility inspections;
 - performing most, but not all, of an analysis or waste characterization requirement;
 - performing most, but not all, of a requirement addressing the submittal or maintenance of required data, documents, notifications, plans or reports; and
 - maintaining or operating regulated units, facilities, equipment structures, or sources in a manner not otherwise classified as moderate.
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- Repeat Violator**
- 2 major violations and total criteria points ranging from 0-8;
 - 3 major violations and total criteria points ranging from 9-24
 - 4 major violations and total criteria points greater than 24

Criteria Points = [Permit complexity points] + [Number of Sites] + [Size of Facility] + [Non-attainment area points]

GRAVITY FACTORS TABLE
(for purposes of calculating “violations history”)

Violations	Contained In	Points
Major	adjudicated final court judgments and default judgments	160
Major	non-adjudicated final court judgments or consent decrees without a denial of liability	140
Major	non-adjudicated final court judgments of consent decrees containing a denial of liability, adjudicated final enforcement orders, and default orders	120
Major	final prohibitory emergency orders	120
Major	agreed final enforcement orders without a denial of liability	100
Major	agreed final enforcement orders containing a denial of liability	80
Major	notice of violation	5
Moderate	adjudicated final court judgments and default judgments	115
Moderate	non-adjudicated final court judgments or consent decrees without a denial of liability	95
Moderate	non-adjudicated final court judgments or consent decrees containing a denial of liability	75
Moderate	agreed final enforcement orders without a denial of liability	60
Moderate	agreed final enforcement orders containing a denial of liability	45
Moderate	notice of violation	3
Minor	adjudicated final court judgments and default judgments	45
Minor	non-adjudicated final court judgments or consent decrees	35
Minor	non-adjudicated final court judgments or consent decrees containing a denial of liability, adjudicated final enforcement orders and default orders	25
Minor	agreed final enforcement orders without a denial of liability	20
Minor	agreed final enforcement orders containing denial of liability	15
Minor	notice of violation	1
Criminal Counts	Texas Water Code §§ 7.145-7.152, 7.153, 7.162(a)(1)-(5), 7.163(a)(1)-(3), 7.164, 7.168-7.170, 7.172, 7.182, 7.183 and all felony convictions under the Texas Penal Code, Texas Water Code and Texas Health and Safety Code, and the United States Code	500
Criminal Counts	Texas Water Code §§ 7.147-7.151, 7.154, 7.157, 7.159, 7.160, 7.162(a)(6)-(8), 7.162(a)(4), 7.165-7.167, 7.171, 7.177-7.181 and all misdemeanor convictions under the Texas Penal Code, Texas Water Code, Texas Health and Safety Code or the United States Code	250
	Chronic Excessive Emission Events	100
	Repeat Violator	500

CRITERIA POINTS
(for purposes of calculating repeat violator only)

<u>Permit Complexity</u>	4 points	Radioactive Waste Disposal; Hazardous/Industrial Non-Hazardous Storage Processing or Disposal; Municipal Solid Waste Type I Prevention of Significant Deterioration Phase I – Municipal Separate Storm Sewer Systems TPDES or NPDES Industrial or Municipal Major
	3 points	UIC Class I/III Municipal Solid Waste Type I AE; Municipal Solid Waste Type IV, V or VI Municipal Solid Waste Tire Registration TPDES or NPDES Industrial or Municipal Minor
	2 points	New Source Review (individual or permit by rule) All other site-specific water quality permits (not listed above) and water quality general permits
<u>Number of Sites</u>	1 point	person owns or operates one site only
	2 points	person owns or operates two sites only
	3 points	person owns or operates three sites only
	4 points	person owns or operates four sites only
	5 points	person owns or operates five sites only
	6 points	person owns or operates six to ten sites
	7 points	person owns or operates 11 to 100 sites
	8 points	person owns or operates more than 100 sites
<u>Size of Site</u>	4 points	600 + Facility Identification Numbers (FINs)
	3 points	110 to 599 FINs
	2 points	44 to 109 FINs
	1 point	43 or less FINs
	4 points	10 + water quality external outfalls
	3 points	5 to 9 water quality external outfalls
	2 points	2 to 4 water quality external outfalls
	1 point	1 water quality external outfalls
	4 points	50 + active hazardous waste management units (AHWMU)
	3 points	20 to 49 AHWMUs
	2 points	10 to 19 AHWMUs
	1 point	9 or less AHWMUs
<u>Nonattainment Area Points</u>	1 point	each site located in a non-attainment area