

TCEQ Interoffice Memorandum

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From: Enforcement Initiation Criteria (EIC) Review Committee

Date: August 20, 2020

Subject: Proposed EIC Revision No. 17

On August 11, 2020, you were briefed on the proposed changes to the EIC for Revision 17. As directed, commissioner briefings were held to offer an opportunity for input. Chairman Niermann, Commissioner Lindley, and Commissioner Janecka provided general support of the EIC.

No modifications were made to the draft document provided to you at the August briefing.

The EIC Review Committee will continue to assemble for biennial revisions to the EIC and provide the Commission an opportunity to review each revision prior to approval.

The signature and date below indicate your approval of the EIC Revision No. 17. The effective date of this revision will be September 1, 2020.



Toby Baker
Executive Director

August 25, 2020

Date

Attachments:

EIC Revision No. 17

**TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY**

**ENFORCEMENT INITIATION CRITERIA
(EIC)**

Revision No. 17

September 1, 2020

The EIC effective on the start date of an investigation applies

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ACRONYMS

AOC	Area of Concern	EE	Emissions Event
AFO	Animal Feeding Operation	EIC	Enforcement Initiation Criteria
ATC	Authorization To Construct	EPA	U.S. Environmental Protection Agency
AWFCO	Automatic Waste Feed Cut-Off System	EPP	Emergency Preparedness Plan
BACT	Best Available Control Technology	ERP	Enforcement Response Policy
BIF	Boiler/Industrial Furnace	ETT	Enforcement Targeting Tool
BOD	Biochemical Oxygen Demand	GUI	Groundwater Under The Influence of Surface Water
BMP	Best Management Practices	HAP	Hazardous Air Pollutant
CA	Compliance Agreement	HPV	High Priority Violator
CAA	Clean Air Act	HPVL	High Priority Violations List
CAFO	Concentrated Animal Feeding Operation	IOC	Inorganic Compound
CAP	Corrective Action Plan	IOM	Interoffice Memorandum
CCEDS	Consolidated Compliance & Enforcement Data System	IU	Industrial User or User
CCR	Consumer Confidence Report	LAER	Lowest Achievable Emission Rate
CEM	Continuous Emissions Monitoring	LDAR	Leak Detection and Repair
CFR	Code of Federal Regulations	LMU	Land Management Unit
CIU	Categorical Industrial User	MACT	Maximum Available Control Technology
DBP	Disinfection By-Products	MCL	Maximum Contaminant Level
DOPA	Dairy Outreach Program Area	MSW	Municipal Solid Waste
EAR	Enforcement Action Referral	NESHAP	National Emission Standards for Hazardous Air Pollutants
ED	Executive Director		

NMP	Nutrient Management Plan	SNC (RCRA)	Significant Noncomplier
NOE	Notice of Enforcement	SOC	Synthetic Organic Compound
NOI	Notice of Intent	SS	Solicit Schedule
NOV	Notice of Violation	SSO	Sanitary Sewer Overflow
NSPS	New Source Performance Standards	SST	Supplemental Significant Threshold
NSR	New Source Review	SV	Secondary Violator
NUP	Nutrient Utilization Plan	SWP3	Stormwater Pollution Prevention Plan
OEL	Open-Ended Line	TAC	Texas Administrative Code
OSSF	On-Site Sewage Facility	TD	TCEQ-Established Deadline
PBR	Permit by Rule	TPDES	Texas Pollutant Discharge Elimination System
POTW	Publicly Owned Treatment Works	TSS	Total Suspended Solids
PPP	Pollution Prevention Plan	TSSWCB	Texas State Soil and Water Conservation Board
PSD	Prevention of Significant Deterioration	TWC	Texas Water Code
PWS	Public Water Supply	USC	United States Code
QNCR	Quarterly Noncompliance Report	UST	Underground Storage Tank
RCRA	Resource Conservation And Recovery Act	VOC	Volatile Organic Compound
RCS	Retention Control Structure	VRAC	Violation Review Action Criteria
RP	Responsible Party	WET	Whole Effluent Toxicity
SIP	State Implementation Plan		
SIU	Significant Industrial User		
SNC (TPDES)	Significant Noncompliance		

DEFINITIONS

As Required: Pertaining to a requirement specified by statute, order, rule, permit, registration or other authorization

Clerical Violation: A violation of a provision of a statute, order, rule, permit, registration or other authorization that is procedural or administrative in nature, such as submittal of reports or maintaining records

Formal Enforcement Action: An action taken by TCEQ to obtain a legally binding obligation for an entity to achieve and/or maintain compliance; includes a Compliance Agreement (functions as a contract), Commission Order, referral to the Attorney General for civil litigation, criminal prosecution, or referral to EPA for a federally enforceable enforcement action. A Compliance Agreement resulting from a Texas Environmental, Health, and Safety Audit Privilege Act disclosure is not considered a formal enforcement action, but it is a formal agreement with the ED

Impaired Water Segment: State identified surface water body where required pollution controls are not sufficient to attain or maintain applicable water quality standards. For EIC purposes, the scope of this definition will only apply to segments within an adopted Total Maximum Daily Load project's watershed

Initiation of Formal Enforcement Action: Taking action to start the process for consideration of a Compliance Agreement (functions as a contract), Commission Order, referral to the Attorney General for civil litigation, criminal prosecution, or referral to EPA for a federally enforceable enforcement action

Monitoring: Any activity performed which observes or measures a discharge/release/emission to the environment or production requirements for a PWS system, or observes or measures one or more components of a facility which may cause such discharge/release/emission, or is necessary for maintaining PWS production requirements; includes quantifying or characterizing through measuring, sampling, testing or visual observation

Non-Clerical Violation: A violation of a provision of a statute, order, rule, permit, registration or other authorization which has the purpose and effect to limit, reduce, control, or prohibit a discharge/release/emission of one or more contaminants into the environment or to maintain production requirements for a PWS system, or which requires measurement or monitoring of a discharge/release/emission or production requirements for a PWS system

Noncompliant Discharge or Emission: Discharge or emission from an authorized location to an authorized receiving point which fails to meet required limits or standards; authorized means as allowed by statute, order, rule, permit, registration or other authorization

Nuisance Dumping: Unauthorized disposal or burning of nonhazardous municipal solid waste where the only economic gain is avoiding the cost of disposing at a landfill; does not include cash-for-trash operations

Records: Electronic or written documentation of required information

Unauthorized Discharge, Release, or Emission: Violation in which the responsible party does not have authorization by statute, order, rule, permit, registration or other authorization to make a discharge, release, or emission (regardless of quality or quantity) from a given location and/or to a particular receiving location

STATUTES WITH SPECIFIC DIRECTION FOR TCEQ ENFORCEMENT INITIATION

Compliance Agreements (CAs) for Regionalization

TEX. WATER CODE (TWC) § 7.0026: "If a water supply, sewer, wastewater treatment, or solid waste disposal service operated by or for a municipality or county is being integrated into a regional water supply, sewer, wastewater treatment, or solid waste disposal service, the commission may enter into a CA with the regional service under which the commission will not initiate an enforcement action against the regional service for existing or anticipated violations resulting from the operation by the regional service of the service being integrated. A CA under this section must include provisions necessary to bring the service being integrated into compliance."

For violations documented from a Title V Deviation Report review only

TWC § 7.00251: Refer only Category A violations, HPVs, and Repeat Category Bs and Cs for formal enforcement via EAR and NOE. Repeat violations that are self-reported on Title V deviation reports must have the same root cause to warrant formal enforcement. Non-repeat Category B and C violations which have been reported through a Title V deviation report shall not be included in an NOE and EAR but shall be addressed separately in an NOV (this does not apply to violations discovered by an investigator which have not been reported through a deviation report). Additionally, any non-repeat Category B and C violations corrected within the time frame specified in an NOV or for which a due date (via NOV or TCEQ Order) has not been specified shall not be included in an EAR or NOE.

Note: Implementation of TWC § 7.00251 does not interfere with TCEQ's authority to assess, sue or recover civil penalties for the violations of Title V applicable requirements

Occupational Safety and Health Administration (OSHA) related incidents

TWC § 7.256: "If a person can establish that an act or event that otherwise would be a violation of a statute within the commission's jurisdiction or a rule adopted or an order or permit issued by the commission under such a statute was caused solely by compliance with the general duty clause of the federal Occupational Safety and Health Act of 1970 (29 U.S.C. Section 654), the act or event is not a violation of that statute, rule, order, or permit." The RP is required to claim this enforcement discretion and the burden of proof is on that RP.

Poultry Facility Odor – Response to Complaints

TEX. HEALTH & SAFETY CODE § 382.068: "If after the [complaint] investigation the commission determines that a poultry facility is violating the terms of its air quality authorization or is creating a nuisance, the commission shall issue a notice of violation. The commission by rule or order shall require the owner or operator of a poultry facility for which the commission has issued three notices of violation under

this section during a 12-month period to enter into a comprehensive CA with the commission. The CA must include an odor control plan that the executive director determines is sufficient to control odors.” If a poultry facility violates a nuisance odor CA, an enforcement action referral should be initiated (category A1). Additionally, if a nuisance violation (excluding the third violation in 12 months) is documented along with a category A and/or repeat B violation, the nuisance violation shall be issued in an NOV, while the other violations will be referred in an EAR.

GENERAL INSTRUCTIONS

USE OF THE EIC

The procedures set forth in this document are intended only as staff guidance. The information is not intended, and cannot be relied on, to create any rights, substantive or procedural, on the part of any person or entity. The TCEQ reserves the right to modify these procedures at any time without public notice.

In order to promote consistency in handling air, water and waste violations, the criteria specified in this document will be used for initiating formal enforcement action.

FORMAT

Violations have been divided into three categories: A, B, and C

Category A violations require automatic initiation of formal enforcement action when documented during an investigation.

Category B violations require a Notice of Violation (NOV) at the first occurrence. Then, Category B violations require initiation of formal enforcement action if the violation is not corrected by an established NOV deadline or if the violation is documented at two consecutive investigations within the most recent 5-year period, unless an extension or EIC variance has been approved. (See pages 27 through 29 for more detailed information regarding repeat Bs).

Category C violations may require initiation of formal enforcement action if the same Category C violation is documented three (3) times within the most recent 5-year period, including the notification for the current violation. Decisions about whether formal enforcement action will be initiated for a third time Category C violation will be made by a member of management for the staff who is considering the enforcement action.

Area of Concern (AOC): See page 49 for comprehensive AOC information.

Specific exclusions: In addition to the categorization of the violations, it is important to note that some criteria have specific exclusions written into them that change the required enforcement action for the excluded violation(s).

Violations that fall into multiple categories: When a violation falls into more than one EIC category, the most stringent category applies.

The most specific [e.g., A12.a(5) instead of A6] EIC category for the violation(s) that trigger formal enforcement shall be noted in the investigation report.

VIOLATIONS TO BE INCLUDED IN AN ENFORCEMENT ACTION REFERRAL (EAR)

If multiple violations are documented during an investigation and one or more violations require initiation of formal enforcement, all violations are included in the EAR (see Title V Deviation Report exception on page 8). After a violation has been documented, the status of the required corrective action thereafter does not affect what violations are included in the EAR. If a violation warrants formal enforcement (NOE), but happens to be corrected before an NOE is issued, the formal enforcement action is required to address the past noncompliance period. Also, AOCs are not utilized when an NOE is being issued. When an NOE is being issued, violations that would otherwise be treated as AOCs are referred as resolved violations.

For NOV follow-up investigations: Once a violation is issued in an NOV and not corrected by the due date specified in the NOV, that violation is subject to formal enforcement (NOE) unless an extension or EIC variance has been approved. Any resulting formal enforcement action for an outstanding/continuing violation is based on noncompliance with an NOV due date, not to be designated as repeat B or C (see scenario #2 on page 29). Additionally, if multiple violations have been issued in an NOV, refer in an EAR only the violations documented as outstanding/continuing during an NOV follow-up investigation.

See page 8 for Title V Deviation Report Directions.

FORCE MAJEURE

An act of God, war, strike, riot or other catastrophe to be determined by the Litigation Division Director upon request. If a violation is attributable to force majeure, initiation of formal enforcement action is not required.

COORDINATION OF REGIONAL AND CENTRAL OFFICE ACTION

Violations documented by a central office program division and the region for the same regulated entity may be consolidated by the Enforcement Division if timing allows.

VARIANCE REQUESTS

A particular situation may warrant a variance from the procedures outlined in this document (e.g., a compliance time frame longer than 6 months for a Category B violation, automatic initiation of formal enforcement for a Category B (non-repeat) or C violation, exclusion from automatic initiation of formal enforcement for a Category A violation, etc.). Each request should include the investigation type and date; detailed descriptions of all the violations, including rule cites, violation dates, and category; current compliance due date; previous or active enforcement actions; and reasons to support a variance from the EIC. Ensure a copy of any approved/denied variance IOM is mailed to the applicable region office for the region's compliance file on the regulated entity. The variance process is as follows:

For Field Operations

Submit a request via emailed-IOM **FROM** the investigator **THRU** the investigator's manager **TO** the Regional Director (RD), who will provide final approval/denial. The RD informs the applicable Area Director (AD) of any approved EIC variance.

For Local Air Programs (LAP)

Submit a request (with all information described above) via IOM from LAP Management **THRU** the appropriate Regional Section Manager **TO** the appropriate RD, who will provide final approval or denial for all LAP EIC variance requests. The RD informs the applicable AD of any approved EIC variance.

All Other TCEQ Divisions

Submit a request via IOM **FROM** the investigator **THRU** investigator's supervisor **TO** the Division Director, who provides final approval/denial.

Department of Defense and State Memorandum of Agreement (DSMOA)

Compliance at facilities that are owned or operated by the Department of Defense should be achieved through the dispute resolution process as defined in Section IV of the DSMOA (facilities with executed Federal Facility Agreements under Section 120 of the Comprehensive Environmental Response, Compensation and Liability Act).

CATEGORY A VIOLATIONS

CATEGORY A: Category A violations require automatic initiation of formal enforcement action when discovered.

*** NOTE:** An asterisk (*) indicates the determination will be made exclusively or primarily by the central office program. An asterisk designation does not prohibit regional staff from documenting a violation; however, if noncompliance is being considered under these criteria, regional staff shall obtain concurrence from the associated central office program prior to citing the noncompliance in an NOV or NOE. Items without an asterisk are criteria primarily used by regional offices or criteria used by both regional and central office program staff.

VIOLATIONS (apply to all programs as applicable):

- A1. Failure to comply with any provision of a CA, Commission Order, or Court Order [Enforcement Division Section Manager discretion may be used to decide whether or not initiation of formal enforcement action is warranted.] When an investigator believes that noncompliance with provisions of a CA, Commission Order, or Court Order has occurred, a member of the investigator's management will contact the Enforcement Division Compliance Monitoring Section Manager to determine if a violation of the CA, Commission Order, or Court Order should be cited, and if initiation of formal enforcement is required (this applies to enforcement follow-up investigations conducted at the request of the Enforcement Division and investigations initiated by the regional offices).
- A2.a For a responsible party (RP) that has/had the same required authorization at another regulated entity, or for which documentation exists (including but not limited to, a voided/rejected permit application or a grandfather status letter) to demonstrate that the RP has knowledge that the authorization is required: Operating without proper authorization. [See B4 for an RP that has never had the same required authorization at another regulated entity. Exclusions: A2.b-d, A8 (attachment A), A12.a(7)-(14), A12.g(5), A12.h(7), A12.j(3), A12.k(1), A12.p(2), A12.q(1)&(3). See B8 for constructing without authorization when operations have not commenced.]
- A2.b Operating with an expired authorization when an authorization is required. [See category B5 for:
- A. Authorizations that require TCEQ technical review/approval **and** the RP:
- 1) is in compliance with the expired authorization requirements; and
 - 2) submitted the necessary authorization application/renewal at least 90 days before expiration, unless the program requires a different deadline.
- Or for:
- B. Authorizations that do not require TCEQ review / approval, such as General Permit Authorization (including Phase II MS4), and the RP:
- 1) Is in compliance with the expired authorization requirements; and

- 2) Submitted the necessary documents to obtain authorization prior to a TCEQ compliance investigation or notice of a scheduled TCEQ compliance investigation.

If "**A1 and A2 or B1 and B2**" are not true, the expired authorization violation is covered by A2.b.]

- A2.c Operating without the proper permit amendment or major modification for a substantive requirement when a permit amendment or major modification is required. [If not substantive requirement or major modification, use B3. See B8 for *constructing* without authorization when operations have not commenced]
- A2.d Operating, without a permit/authorization, a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing and is required to obtain a permit under TEX. HEALTH & SAFETY CODE § 382.0518. (This category applies to the air program only)
- A3.a Individual performing a regulated activity without a required occupational license or registration. [See A3.b and B6 for facility/operation applicability. See B7 for an individual with an inadequate level of license.]
- A3.b Regulated entity allowing an unlicensed/unregistered individual to perform duties that should only be performed by a licensed individual. (See A3.a and B7 for an individual's violation)
- A4. A violation for which corrective action will take longer than six (6) months to complete, except for the following violations:
- An unauthorized discharge from a wastewater collection system which is the result of infiltration/inflow and is not a Category A6 violation [B18.a(1)]
 - Inadequate or no waste control facilities for a TCEQ-regulated AFO operating by rule provided a Category A6 or Category A10 violation has not been noted [B18.b(8)]
 - Documented groundwater contamination, soil contamination, violation of the lower explosive limit for methane gas at a landfill, or methane gas migration at a closed landfill being addressed within the scope of the Voluntary Cleanup Program or through actions in compliance with a Commission rule, permit, or compliance plan directive from the ED, or any other enforceable instrument, provided a Category A6 or A10 violation has not been documented [B10 and B11]
 - For a responsible party that has never had the same required authorization for another regulated entity: Operating without authorization, provided a Category A6, A8, or A10 violation has not been noted [B4]. This exception applies to authorizations that involve TCEQ review and/or a comment period that typically requires more than six months to complete and only applies to applicants that are responsive to TCEQ requests for information regarding the pending authorization
 - Category C violations

- Failure to obtain an NSR amendment that involves TCEQ review and/or a comment period that typically requires more than six months to complete, provided it was not a substantive requirement [see A2.c]. If not substantive, use B3. This exception only applies if the RP already submitted the amendment application or submits the amendment application within 30 days from the NOV date AND the RP responds adequately, completely, and timely to TCEQ requests for information during the amendment application review process. Escalate violation to A4, if inadequate, incomplete or untimely responses occur during the Air Permits Division processing.
- A5. Disposing of, shipping, receiving, treating, or transporting any solid waste, recyclable material, or a regulated substance at or to an unauthorized facility or site, including unauthorized disposal in a landfill (Note: Includes filling over the permitted contours (vertical and horizontal) and disposal of waste in an area not designated or approved for waste disposal within the boundary of the landfill) [See B18.e(7) for nuisance dumping]
- A6. Unauthorized or noncompliant discharge, release, spill, (including spills responded to in compliance with 30 TAC Ch. 327) or emission which results in a documented effect on human health or safety or a documented serious impact to the environment. [Fish kills that satisfy the "Notice, Response and Cause Demonstrations for Potable Water Discharges" and the "Notice, Response, and Cause Demonstrations for SSOs Due to Grease Blockages" (described on page 50) are not included in this category. If appropriate, enforcement discretion should be applied if the demonstrations on page 50 are met]
- A7.a Upon becoming aware of the violation, failure to immediately abate and contain a reportable spill/discharge and provide notification required by 30 TAC Ch. 327
- A7.b Failure to immediately notify and cooperate fully with the local emergency authorities if a discharge or spill creates an imminent health threat
- A8. Violation for which TCEQ has agreed with EPA to take formal enforcement action upon discovery of the violation, including HPV and SNC violations, violations meeting criteria under EPA's ERP for the Public Water System Supervision Program, and violations meeting Category A criteria under the TPDES Pretreatment Program VRAC (see Attachments A-1 through A-6)
- A9.a Documented falsification of data, documents or reports
- A9.b Failure to allow employees or agents of TCEQ to conduct an unrestricted inspection of a TCEQ regulated entity in accordance with TWC §§12.017 and 26.014 and TEX. HEALTH & SAFETY CODE §§361.032 and 382.015. Denial of entry or impeding an investigation (e.g., not allowing an investigator to take photos), should be reviewed for formal enforcement on a case-by-case basis. Consult with the applicable Regional/Area Director for concurrence with enforcement determination.

- A9.c Failure to submit/maintain required data, documents, reports, or notifications or monitor, and the violation results in substantial interference with the TCEQ's ability to perform regulatory oversight and/or determine compliance status. This criterion applies when it is reasonable to assert that the absence of data/records/reports/notifications/monitoring prevents documentation of a Category A violation-. Ex: failure to maintain required production records to prove eligibility for a claimed PBR. Consult with the applicable Regional Director for concurrence that this criterion has been met. [See B1 and B3 if absence of data/records/reports/notifications/monitoring prevents documentation of a possible Category B violation.]
- A10. Violation(s) not otherwise listed in Category A in which exposure of contaminants to the air, water or land:
- a) Is adversely affecting or has adversely affected human health and safety or is causing or has caused a serious impact to the environment (such as a fish kill or a nuisance with a serious environmental and/or human health impact); or
 - b) Will adversely affect human health and safety or will cause a serious impact to the environment unless immediate actions are taken.
- A11. Complete failure to provide required financial assurance mechanism or possessing a financial assurance mechanism with gross deficiencies.
- A12. Program specific violations as listed below. These are violations which either meet the general definition in Category A10 or have been determined to be critical to program integrity. Any other program specific violations not on this list must meet the definition in Category A10 to be handled as a Category A violation.
- a. Water Quality Program (excluding Permitted CAFOs) (See Page 8 for CAs for Regionalization)
 - (1) Any unauthorized discharge by a sludge/septage transporter, excluding a minor leak
 - (2)* For a TPDES major or non-major facility with self-reported effluent violations, that:
 - (A) Meet EPA referral criteria (see Attachment A-4);
 - (B) Exceed 40% of permit limit for a specific pollutant that is impacting an impaired water segment at a given discharge point for any two or more months during the two consecutive quarter review period;
 - (C) Exceed 20% of permit limit for bacteria at a given discharge point for any two or more months during the two consecutive quarter review period; or
 - (D) Exceed any permit limit at a given discharge point for a specific pollutant that is impacting an impaired water segment or exceed any bacteria limit by any amount for any

four or more months during the two consecutive quarter review period

- (3) For a land application facility: Self-monitored effluent violations that meet EPA referral criteria (see Attachment A-4). For land application facilities with permits that only have single grab limits, the technical review criteria established under d(1)(A)(i) and d(1)(A)(ii) on Attachment A-4 apply. Additionally, any effluent violations that exceed 20% of a permit limit for bacteria for any two or more months during a two consecutive quarter review period also meets Category A12.a(3). Furthermore, any self-monitored effluent monthly average or non-monthly average effluent violation, as defined by EPA, that exceeds any non-bacteria permit limit or any permit limit for bacteria by any amount for any four or more months during the two consecutive quarter review period also meet Category A12.a(3).
- (4)* For any TPDES permit with WET limits: Two failures during the increased (monthly) testing period after the initial failure that triggered the increased (monthly) testing frequency requirement
- (5) Improper operation and maintenance of a wastewater treatment plant and/or collection system which results in serious stream degradation due to accumulation of solids in a receiving stream
- (6) Improper operation and maintenance of a wastewater treatment plant and/or collection system which results in the discharge of significant toxic or organic loading to a receiving stream
- (7) Failure to obtain approval of an Edwards Aquifer protection plan or contributing zone plan prior to initiating construction
- (8) Upon discovery of a sensitive feature (defined in 30 TAC Ch. 213) during construction, replacement or rehabilitation, failure to immediately suspend activities until receiving ED approval for the methods proposed to protect the sensitive features
- (9) Failure to maintain flow to a naturally-occurring, sensitive feature identified in a geologic assessment, ED review, or during excavation, blasting, or construction related activities conducted in the regulated zones of the Edwards Aquifer. (This criterion applies to construction related or post construction related activities and does not apply to authorized activities related to water rights.)
- (10) Failure to provide/implement/maintain BMPs and measures to prevent pollutants from entering sensitive features located within the Edwards Aquifer Recharge Zone
- (11) John Graves Scenic Riverway Only: Discharging without authorization

- (12) John Graves Scenic Riverway Only: Operating a quarry within 200 feet of water body in a water quality protection area
- (13) John Graves Scenic Riverway Only: Operating a quarry within 200 to 1,500 feet of a water body in a water quality protection area without obtaining authorization through an individual permit as required by 30 TAC Ch. 311, Subchapter H
- (14) John Graves Scenic Riverway Only: Expanding existing quarry operations within 1,500 feet of a water body within a water quality protection area without obtaining an individual permit as required by 30 TAC Ch. 311, Subchapter H

b. Permitted CAFOs

- (1) Failure to construct waste control facilities according to design specifications
- (2) Failure to contain a discharge as a result of a less than a 100-year rainfall event at a new source swine, veal, or poultry CAFO

Note: (3) through (6) below are for Bosque Segments 1226 and 1255 Only

- (3) Failure to provide an RCS necessary to prevent overflow resulting from a statistically-determined probability overflow resulting in a discharge frequency of no more than once in 25 years
- (4) Failure to de-water to accommodate the 25-year, 10-day rainfall event
- (5) Failure to apply manure, litter or wastewater according to an NMP or NUP such that it results in contaminated runoff from an LMU

Note: (6) through (9) below are for the DOPA Counties (Bosque, Comanche, Erath, Hamilton, Hopkins, Johnson, Rains, and Wood)

- (6) Failure to notify the ED and regional office of a discharge from an RCS or LMU
- (7) Application of manure, litter, or wastewater on an application field with a soil analysis of greater than 200 ppm phosphorus without a NUP
- (8) Operating above the authorized head count
- (9) Any unauthorized discharge

c. TSSWCB-regulated AFOs:

Inadequate or no waste control facilities for an AFO that is referred to TCEQ by the TSSWCB for enforcement action

- d. Public Water Supply (See Page 8 for CAs for Regionalization)
- (1) Failure to obtain approval for plans and specifications for a surface water treatment plant.
 - (2) Failure to obtain approval to use a well for a public water system that is discovered as meeting the definition of a public water system.
 - (3) Failure to provide treatment facilities necessary to meet the minimum surface water treatment requirements of 30 TAC §290.42 and §290.111.
 - (4) Failure to provide disinfection equipment to maintain the required minimum disinfection residual.
 - (5) Failure to institute special precautions (following the flowchart found in 30 TAC §290.47(e) in the event of a loss of distribution system pressure), protective measures, and/or issue boil water notices, as required by 30 TAC Ch. 290 or as required at the discretion of the ED.
 - (6) Second occurrence of an investigator-documented low pressure (less than 20 psi) within a period of 12 months when the cause was preventable by proper operation and maintenance.
 - (7) Second occurrence of an outage for the same cause when the cause was preventable by proper operation and maintenance.
 - (8)* Failure to provide surface water treatment for a GUI within 18 months from the initial date the ED notified the system that the groundwater source is under the direct influence of surface water
 - (9) Greater than 50% deficiency of minimum water system capacity requirements as defined in 30 TAC §290.45.
 - Exclusions to be handled as a B18c10:
 - Community purchased water systems which do not meet the production capacity requirements defined in 30 TAC §290.45(f)(4) and/or §290.45(f)(5). For the purposes of this category, a purchased water system is one that receives the majority of its water supply through purchased water (with or without a contract).
 - Exclusions to be handled as a C7:
 - Non-community systems which fail to meet a minimum water system capacity requirement
 - (10) Failure, by the PWS owner that de-activated the PWS under review, to provide immediate, written notification to the

Commission of system reactivation, as defined in 30 TAC §290.39(m)

- (11)* Refusal to participate in a third-party Comprehensive Performance Evaluation as required by 30 TAC §290.111
- (12)* Significant failure to comply with the requirements of a CAP that resulted from a required third-party Comprehensive Performance Evaluation per 30 TAC §290.111(i)(7)
- (13) Operating a public water supply without an individual performing process control duties (see A3.a and A3.b for an individual performing process control duties without a license)

e. Industrial and Hazardous Waste

- (1) Failure to have adequate (rule-required) secondary containment for hazardous waste tank systems
- (2) Failure to properly close a solid waste management unit
- (3) Failure to implement required procedures in a response plan during an emergency
- (4) Proven dilution of any restricted waste or the residual from treatment of any restricted waste as a substitute for treatment that is not excluded by the land disposal restriction requirements in 40 CFR Part 268
- (5) Failure to remove land disposal restricted wastes within the time frame specified in a permit or the land disposal restriction requirements in 40 CFR Part 268
- (6) Documented failure of the AWFCO for a permitted thermal destruction device (such as a BIF, or incinerator)
- (7) Failure to determine and certify required operating limits during a compliance test or trial burn
- (8) Failure to comply with BIF, incinerator, or permitted miscellaneous unit operating parameters set by permit, compliance test, or certification of compliance
- (9) For Subpart AA, BB and/or CC Facilities only: Failure to establish a LDAR program AND failure to control emissions from components used to manage hazardous waste exhibiting the characteristic of toxicity
- (10) For Subpart AA, BB and/or CC Facilities only: Failure to establish an inspection and monitoring program of air emission control equipment for hazardous waste management units (e.g. process vents, equipment leaks, tanks, surface impoundment, containers). [See A9.c for failure to maintain records

demonstrating compliance for the inspection and monitoring program]

- (11) For Subpart AA, BB and/or CC Facilities only: Failure to prevent OELs in hazardous waste service AND the number of OELs is greater than or equal to 15% of the total number of potential OELs in hazardous waste service within the unit under review. [If the number of OELs is less than 15%, see B18.d(6) or C11, for the category that applies]

f. Underground Injection Control

- (1) Documented disposal of an unauthorized waste into an injection well
- (2) Operation of an injection well which fails mechanical integrity test

g. Municipal Solid Waste (See Page 8 for CAs for Regionalization)

- (1) Failure to maintain a registered scrap tire storage site so that all areas can be reached by fire-fighting equipment and/or fire-fighting personnel
- (2) Failure to maintain adequate fire-fighting equipment on-site as required at a scrap tire storage site
- (3) Violation of any used oil prohibition specified in 40 CFR Part 279.12 and 30 TAC §324.4
- (4) Failure to treat medical waste by an approved method
- (5) Failure by an owner/operator of a facility involved in recycling, processing, storage and/or disposal of brush, clean wood, yard waste, vegetative material or mixed municipal solid waste containing combustible materials to submit a NOI to Recycle or obtain proper authorization via registration or permit, as required
- (6) Failure by an owner/operator of a facility that manages combustible materials to have a fire prevention and suppression plan AND failure to make that plan available to the local fire prevention authority having jurisdiction over the facility for review and coordination [See category B18.e(15) pertaining to facilities for which the local fire authority has inspected]
- (7) Unauthorized *storage* [see A5 for unauthorized disposal] of combustible landscape-related materials (brush, clean wood, yard waste, vegetative material or mixed municipal solid waste containing combustible materials). *This criterion addresses authorized and unauthorized facilities, but is primarily intended to address authorized facilities not meeting turnover requirements*

h. Petroleum Storage Tanks

- (1) Failure to investigate a suspected or confirmed release. [*See B18.f(4) in the case of a suspected release which results from the incorrect implementation of inventory control.*]
- (2) Failure to have an operating Stage I vapor recovery system
- (3) Failure to verify the proper operation of Stage I equipment by testing in accordance with 30 TAC §115.225
- (4) Failure to provide corrosion protection
- (5) Failure to provide release detection (exceeds 35 days between each monitoring). [*See B18.f(4) for incorrect implementation of a release detection method that does not substantially undermine the applicable release detection method*]
- (6) Failure to provide spill and overfill protection.
- (7) Failure to submit UST Registration and Self-Certification form (initial and/or renewal) in accordance with 30 TAC §334.8 [*Except for late certifications, submitted prior to an investigation, which should be handled as Category B18.f(5)*] *This criterion does not apply to the failure to submit an AST Registration in accordance with 30 TAC §334.127.*
- (8) Failure to possess a valid TCEQ Delivery Certificate prior to receiving fuel. *This criterion does not apply to delivery prohibitions for ASTs as detailed in 30 TAC §334.125.*
- (9) Failure of a "common carrier", as defined in 30 TAC §334.2, to observe that the owner or operator has a valid, current delivery certificate issued by the Agency covering the UST System, prior to depositing any regulated substance into that UST System (30 TAC §334.5(b)(1)(A)) *This criterion does not apply to the failure of a common carrier to observe a valid, current registration certificate issued in accordance with 30 TAC §334.127 prior to depositing any petroleum products into an AST.*

i. Air

- (1) A release of vinyl chloride of 100 lbs. or more per incident
- (2) Any violation of 30 TAC §114.20, Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles, on a post-1979 vehicle for which any of the following major tampering actions has been confirmed:
 - (A) Catalytic converter is missing;
 - (B) Air injection system components (except the belt) are missing, or the pump is inoperable;

- (C) Exhaust gas re-circulation valve is missing or made inoperable (excluding disconnected or missing vacuum lines); and/or
- (D) Evaporative control system is missing (this includes two or more missing vacuum/vapor lines but not lines which are disconnected)
- (3)* Any violation of vehicle emissions inspection requirements specified in 30 TAC §114.50(d)(2) which is referred to TCEQ by the Department of Public Safety for enforcement
- (4) Any violation of El Paso County oxygenated fuels requirements specified in 30 TAC §114.100
- (5) Any violation of El Paso County Reid Vapor Pressure requirements specified in 30 TAC §115.252
- (6) A significant deviation from a permit and/or permit application representations (when using this category, ensure the “significance” of the deviation is thoroughly explained in the investigation report). For guidance in determining significant deviations concerning emissions see Table 1.1 in Attachment A-3.
- (7) For major sources failure to submit a Title V deviation report within 60 days of the due date or a Title V compliance certification within 30 days of the due date. See the Title V reporting timeline in Attachment A-3. [Note: If a deviation report was submitted without information that was previously submitted in another report to the TCEQ and/or EPA, (e.g., an emission event or NSPS report), then that incomplete deviation report violation is a B3, and this same failure for a minor Title V source is also a B3.] *This criterion is intended to encompass substantially inadequate/inaccurate deviation report submittals.*
- (8) Complete failure to report an emissions event (as in an upset, or unscheduled maintenance, start-up, or shut-down activity that results in the unauthorized emissions of air contaminants from an emissions point), as required by 30 TAC Ch. 101. The underlying emissions event itself is also subject to formal enforcement. [This criterion does not apply where an owner or operator reports an emissions event, and the report was incomplete, inaccurate, or untimely unless, the owner or operator knowingly or intentionally falsified the information in the report] (TEX. HEALTH & SAFETY CODE §382.0216(i))
- (9) Emission limit/standard violation determined to be associated with an excessive emissions event under 30 TAC Ch. 101 Subchapter F, including emissions events that recur because an owner or operator fails to take corrective action as required and within the time specified in an approved CAP

- (10) Failure to obtain commission approval of a CAP no later than 120 days after the commission receives the first CAP submission
- (11)* Failure to submit a complete and accurate emissions inventory in accordance with 30 TAC §101.10 [Note: If emissions inventory is greater than 30 but less than or equal to 90 days late, B18.g(3) applies. If emissions inventory is less than or equal to 30 days late, C9 applies]
- (12) Failure of a LDAR program resulting in under-controlled annualized emissions exceeding a major source, PSD review, or non-attainment review threshold. This includes LDAR audits that result in a rejection of the company claimed leakage rate and LDAR program emissions reductions relied on by the regulated entity to net out of NSR or PSD review, notwithstanding that the annualized emissions may be less than the threshold values noted above
- (13) LDAR Program: Failure to prevent OELs in regular VOC Service AND the number of OELs is greater than or equal to 15% of the total number of potential OELs in regular VOC service within the unit under review [HAP service lines at this percentage should be treated as an HPV under General Criterion 5]
- (14) Failure to comply with a site emission cap under a Flexible New Source Review Permit based on records showing excess emissions (but unrelated to emissions events) and after taking into account any credits at that permitted regulated entity as authorized by applicable regulations
- (15) Failure to monitor greater than 10% of the total number of components subject to fugitive monitoring requirements in the Title V permit under review, and HPV General Criterion 5 will apply. [Failure to monitor greater than or equal to 5% but less than or equal to 10% of the total number of components, see B18.g(9), if less than 5%, C7 applies]

j. Water Rights

- (1) Reported or documented use or impoundment of state water in excess of authorized amounts during exceptional or extreme drought conditions, as indicated by the U.S. Drought Monitor or at any time for any Watermaster Program
- (2) Breaking, tampering with, or mutilating any seal or other device used to enforce orders of the Commission, ED, Court, or Watermaster
- (3) Impounding, diverting, or using state water without the required permit

- k. On-site Sewage Facilities (OSSF)
 - (1) Installer beginning construction of an OSSF before an ATC is issued
 - (2) Failure to obtain approval of planning materials for: 1) a residential subdivision or residential development utilizing OSSF systems prior to subdividing the property **and** any of the lots or tracts in the subdivision or development are not compliant with the appropriate residential lot requirement **or** the responsible party has previously been through a development plan review or documentation exists that they have been informed of the review requirement. [If the residential lots or tracts are compliant with the appropriate residential lot requirement or the subdivision or development is non-residential, see B18.i(4)]
 - (3) Performing any activity prohibited by 30 TAC §285.50(g)

- l. Pretreatment Programs - TPDES POTW as the Control Authority and all other POTWs
 - (1) Failure to enforce as required by the approved pretreatment program against a discharge to a POTW which results in interference with the treatment process or sludge quality or pass through of pollutants that causes a Category A6 or Category A10 violation
 - (2) Failure to enforce as required by the approved pretreatment program against an IU that does not meet a compliance schedule for categorical standards within 90 days of the required due date
 - (3) Any violation meeting Category A criteria as described in the VRAC

- m. Industrial Users or Users Discharging to TPDES POTWs without Approved Pretreatment Programs - TCEQ as the Control Authority
 - (1) Discharge to a POTW which results in interference with the treatment process or sludge quality or pass through of pollutants that causes a Category A6 or Category A10 violation
 - (2) Any violation meeting Category A criteria as described in the VRAC

- n. Beneficial Use of Non-Industrial Sewage Sludge or Domestic Septage
 - (1)* Application of sewage sludge or domestic septage which does not meet pathogen reduction requirements, to a permitted or registered beneficial land use site

- (2) Application of sewage sludge or domestic septage which does not meet vector attraction reduction requirements, to a registered beneficial land use site
- o. Sewage Sludge Surface Disposal Sites
 - (1) Disposal of sewage sludge which does not meet pathogen reduction requirements
 - (2) Disposal of sewage sludge which does not meet vector attraction reduction requirement
 - (3) Failure to maintain setback requirements required for metals concentrations
- p. Landscape Irrigation:*
 - (1) License, certification, or registration holder that authorizes or allows use of their license, seal or rubber stamp to anyone else to act as licensed, certified, or registered operator
 - (2) A licensed irrigator fails to obtain a required permit prior to installing a landscape irrigation system
- q. Dry Cleaners
 - (1) The sale, delivery, distribution, or purchase of perchloroethylene without a valid/proper certificate
 - (2) *Purchasing* dry cleaning solvent (as defined in TEX. HEALTH & SAFETY CODE §374.001(8)) from a distributor that does not possess a valid, current distributor registration issued by the TCEQ and the facility is operating with an expired/invalid/no registration or has a (current/past) registration at another site [see B18.r when another site has never been registered]
 - (3) The sale, delivery, or distribution of any dry cleaning solvent:
 - (A) To a dry cleaning facility or drop station that does not possess a valid, current registration certificate issued by the TCEQ; and/or
 - (B) Without a valid, current distributor registration issued by the TCEQ
 - (4) Failure to install a dike or other secondary containment around a dry cleaner unit, solvent/waste solvent storage area or wastewater storage unit
- r. Tier II
 - (1) Complete failure to submit an annual Tier II form as required, where such failure endangers the life and health of the public or responders.

CATEGORY B VIOLATIONS

CATEGORY B: For Category B violations, a responsible party (RP) will first be given an opportunity to come into compliance via NOV. The NOV will specify a compliance due date, solicit a compliance schedule, and/or acknowledge violations have been resolved.

* **NOTE:** An asterisk (*) indicates the compliance determination will be made exclusively or primarily by a central office program. An asterisk designation does not prohibit regional staff from documenting a violation; however, if noncompliance is being considered under these criteria, regional staff shall obtain concurrence from the associated central office program prior to citing the noncompliance in an NOV or NOE. Items without an asterisk are criteria primarily used by regional offices or criteria used by both regional and central office program staff.

COMPLIANCE TIME FRAME: The recommended time frames to correct a Category B violation after notification are shown in parentheses after the violation. Where a specific time frame is not designated, the following codes are used:

TD = TCEQ Deadline established on a case-by-case basis; and

SS = Solicit Schedule from entity

Time frames for corrective action which are listed for Category B violations should be measured from the date of the NOV, unless otherwise noted. The time frame specified in parenthesis is the recommended maximum time that should routinely be given to resolve the violation. A shorter time frame may be imposed on a case-by-case basis if there is a need for quicker action in order to maximize protection of human health and safety or the environment.

NOV DUE DATE EXTENSIONS: An extension of time may be granted by the applicable member of management, but the total time to achieve compliance (including any extra time given for an extension) may not exceed six months. This six-month time frame is in accordance with the requirements of Category A4. An exception to this timeframe is allowed if the violation is one of the exclusions specified in Category A4 or if the applicable manager determines that the situation warrants a compliance time frame longer than 6 months. Refer to the EIC Variance process on page 11 of this document for extensions beyond six months.

Category B violation scenarios that warrant formal enforcement:

1A) Repeat B for stationary regulated entities:

- A Category B violation was documented at the regulated entity during two consecutive investigations (not including the investigation to close an NOV) within the most recent 5-year period ("repeated"), unless otherwise noted (e.g., B18.a.9)
- When segmented or focused investigations (not multimedia) are conducted, only consider consecutively reviewed compliance requirements (cross-over in scope of review from one investigation to

another) when determining if a B violation has been repeated consecutively

- Also, when a statute or rule which does not identify specific requirements is cited for programs other than air (e.g., TWC §26.121(a) and 305.125(1)), ensure there is a connection between the two, consecutive category B violations, such as a same/similar root cause or location, before determining that the second occurrence is a repeat B. For air violations documented on a deviation report, see guidance below.
- Air Program:
 1. Root cause of monitoring violations and/or considerable improvements in monitoring programs should be considered when determining if a repeat B has occurred;
 2. Repeat violations that are self-reported on Title V deviation reports must have the same root cause to warrant formal enforcement. Dissimilar root causes and considerable improvements in monitoring (either one) are reasons to make a non-repeat B determination; and
 3. Category B violations resulting from deviations reported under the Title V program are considered repeat violations if the deviations are reported for consecutive reporting periods and the regulated entity provides information on how the violation was resolved after the first occurrence. The second violation may occur before or after the date of the first NOV. Violations which remain ongoing during a time period spanning consecutive reporting periods are not considered repeat violations.
- *Note. The intent of formally-enforcing repeated category B violations is to elevate a pattern of noncompliance, not solely based on the same rule citation.*

1B) **Repeat B for portable/temporary regulated entities:**

*Includes but is not limited to: MSW mobile medical waste treatment units, concrete batch plants, asphalt plants, rock & concrete crushers, landscape irrigators**, trench burners, sludge transporters, OSSF installers. Does not apply to stationary regulated entities that move units or pieces of equipment within a permanent location*

- A repeat B occurs when the same person (addressee) receives an NOV for the same category B violation during two investigations at different locations (stationary criteria still apply) and less than one year elapsed between the violation events
- **If the same landscape irrigator receives an NOV for the same violation within an 18-month period, the second, same B violation warrants formal enforcement

2) **For a continuing B violation:**

- A respondent did not correct a B violation within the established time frame given in an NOV or in an exit interview form when short compliance time frames are necessary, provided the compliance time frame has been successfully communicated to the regulated entity's RP(s) via exit interview form and in person or over the telephone
 - Specifically, when a short compliance time frame (example: 24 hours for a PWS chlorine residual violation), does not allow for an NOV to be mailed (before the necessary compliance time frame has expired), the responsible party is subject to formal enforcement after the time frame expires if the violation has not been corrected, even without an NOV, provided the compliance time frame has been successfully communicated to the regulated entity's RP(s) via exit interview form and in person or over the telephone
- 3) A Category B violation has escalated to a Category A violation; and/or
 - 4) A respondent fails to answer an NOV after reasonable effort was made to contact the respondent for compliance progress/information and no/inadequate response is received

Category B violation scenarios that DO NOT warrant formal enforcement:

- 1) When it has been determined that an entity is compliant with the Ordering Provision for a Category B violation, the subsequent discovery of that same category B violation will be considered the first occurrence in terms of accruing a consecutively-repeated violation (i.e. a repeat B); and
- 2) With the exception of Air Title V investigations (see 1A in the section above), the second consecutive occurrence for a violation may only be counted as a repeat if the second investigation occurs after the compliance due date given in an NOV or exit interview form (exit interview due dates are only used when a very short compliance timeframe, such as "immediately" or 24 hours, is necessary. Also see # 2 above)

VIOLATIONS (apply to all programs as applicable):

- B1. Complete failure to conduct required monitoring or testing, including self-inspections where applicable. **Before using this category, ensure Category A9.c does not apply** (begin correct procedures within 15 days; if not possible to do within 15 days, begin correct procedures at next required event)
- B2. Complete failure to conduct waste analyses and/or waste characterization of a waste stream, including but not limited to, hazardous waste determinations and screening procedures for halogens (refutable presumption) (60 days)
- B3. Complete failure to submit or maintain required data, documents, notifications, plans or reports, and the violation is not specified in Category A. **Before using this category, ensure Category A9.c does not apply** (begin correct procedures within 30 days; if not possible to do within 30

days, begin correct procedures at the next required event; if delinquent material can be produced, submit within 30 days)

- B4. For a RP that has never had the same required authorization at another regulated entity: Operating without proper authorization as required. [See exceptions listed under A2.a] (Submit individual permit application within 60 days. Submit application/form for all other authorizations within 30 days. Less/more time may be given when deemed appropriate. Comply with time frames for submittal of additional information, if required, to process the application; schedule longer than 6 months allowed by A4 exclusion but see 4th bullet under A4 exclusions for conditions)
- B5. Operating with an expired authorization but continuing to operate within the expired authorization requirements **and** any necessary permit application was submitted within 90 days (180 days for the wastewater program) before the authorization expired [See A2.b for not operating within expired authorization requirements and/or not submitting as described in B5. If the expired authorization requirements are violated after an NOV is issued for a B5 and before the required authorization is obtained, the violation elevates to an A2.b. At such time only allege operating with an expired authorization, because expired authorization requirements are not enforceable]
- B6. Regulated entity [see A3.a/B7 for an Individual] allowing an individual with an inadequate level of occupational license to perform a regulated activity (employ or use an individual with a proper occupational license/registration within 30 days)
- B7. Individual performing a regulated activity with an *inadequate* level of occupational license, including an operator-in-training conducting his/her duties without direct supervision by a licensed operator. This category does not apply to an operator-in-training found to be performing process control duties after the expiration of his/her one year operator-in-training period [see A3.a and A3.b for individual and regulated entity violations] (TD or SS)
- B8. Construction without authorization or notification [See A2.a for operating without authorization. Note: This criterion does not apply to Stormwater Construction General Permits (B4 or A2.a), OSSF construction (A12.k(1)) or Edwards Aquifer protection plans (A12.a(7))] (cease construction upon notification by TCEQ and refrain from further construction until such time as the required authorization is received and/or required notification is provided)
- B9. Documented groundwater contamination, soil contamination, violation of the lower explosive limit for methane gas at a landfill, or methane gas migration at a closed landfill where corrective action can be completed within 6 months or less provided a Category A6 or Category A10 violation has not been noted (TD or SS)
- B10. Complete failure OR failure to continue to perform the necessary corrective action to address violation of the lower explosive limit for methane gas at a landfill or methane gas migration at a closed landfill within the scope of the

Voluntary Cleanup Program or through actions in compliance with a Commission rule, permit, or compliance plan, directive from the ED, or any other enforceable instrument. (TD or SS; schedule longer than 6 months is allowed by the exclusion in Category A4)

- B11. Complete failure OR failure to continue to perform the necessary corrective action to address documented groundwater contamination and/or soil contamination within the scope of the Voluntary Cleanup Program or through actions in compliance with a Commission rule, permit, or compliance plan, directive from the ED, or any other enforceable instrument. (TD or SS; schedule longer than 6 months is allowed by exclusion in Category A4)
- B12. Region-documented violation of an emission or discharge quality or quantity limit noted during a record review or on-site investigation conducted by the region or based on sample data collected by the region, **excluding**:
 - a) A violation of a secondary drinking water standard [handle as Category C7];
 - b) A violation based on self-monitored or self-reported effluent data from a wastewater treatment facility (including land application facilities) [handle as Category B18.a(9)]; and/or
 - c) A violation of a pH, flow, minimum residual chlorine, or dissolved oxygen limit from a wastewater treatment facility (including land application facilities) based on region sample data [handle as Category C7 unless the discharge point is impacting an impaired water segment for a pollutant that is directly related to the violation, then handle as B12] (TD or SS)
- B13. Unauthorized discharge, release or emission where corrective action will take less than 6 months to complete and the violation is not a Category A6 or an unauthorized discharge from a wastewater collection system [see Category B18.a(2); for repeat Category B violations for SSOs caused by grease blockages, refer to "Notice, Response, and Cause Demonstrations for SSOs Due to Grease Blockages" (described on page 50) prior to initiating an enforcement action.] (TD or SS)
- B14. Failure to secure a facility, area or site when required (30 days)
- B15. Failure to construct or provide monitoring system(s) or install an emission control device as required (TD or SS)
- B16. Providing a financial assurance mechanism only partially fulfilling rule requirements or failure to provide an updated mechanism meeting rule requirements (30 days)
- B17. Violation not otherwise listed in Category B or Category A in which exposure of contaminants to the air, water or land is not known to have affected human health and safety or caused a serious impact to the environment but has the potential to cause such impacts if left unaddressed. This also includes complete failure to comply with provisions of an approved TCEQ authorization not otherwise listed as Category B or Category A. (TD or SS)
- B18. Program-specific violations listed below:

a. Water Quality (excluding TCEQ-regulated AFOs)

- (1) Unauthorized discharge from a wastewater collection system where corrective action will take longer than 6 months to complete and the violation is not a Category A6 violation (TD or SS; schedule longer than 6 months is allowed by the exclusion in Category A4)

Examples:

- Inflow/infiltration (I/I)
- Undersized plant and/or collection lines
- Prospective SSO Initiative participants who are actively completing a final SSO plan for approval

- (2) Unauthorized discharges from a wastewater collection system where corrective action will take less than 6 months to complete and the violation is not a Category A6 violation. [See repeat B directions "1A)" regarding violations of non-specific requirements] (TD or SS)

Examples:

- Manhole overflows at multiple locations or at the same location caused by grease blockages [For repeat Category B violations for SSOs caused by grease blockages, refer to "Notice, Response, and Cause Demonstrations for SSOs Due to Grease Blockages" (described on page 50) prior to initiating an enforcement action.]
- Lift station failures at multiple locations or at the same location caused by poor maintenance
- Lift station overflow caused by a power outage
- Line blockage caused by debris, rags in pump impellers, etc.
- Maintenance-related problems

- (3) Failure to dispose of sludge in accordance with the required method (30 days)
- (4) Failure to provide adequate runoff control measures for accumulated wastewater sludge (14 days)
- (5) Failure to comply with required wastewater irrigation application rate (TD or SS)
- (6) Failure to implement water protection measures required by an approved water pollution abatement plan for construction activity over the Edwards Aquifer (14 days)
- (7) Failure to implement maintenance and corrective action on a permanent stormwater structure (14 days)
- (8) Region-documented self-monitored violations noted during a record review or on-site investigation conducted by the region,

provided the violations do not meet SNC criteria (including land application facilities) or a Category A6 or Category A10 violation has not been noted. [This excludes violations of a pH, flow, minimum residual chlorine, or dissolved oxygen limit for a wastewater treatment facility; handled as Category C7.

Note: *Applies to land application facilities only.* For Category B violations under B18.a(9), three written notifications within a 5-year period for violations of the same parameter will be required before formal enforcement action may be initiated. Formal enforcement action is discretionary at the time of the third notification.

- (9) Failure to provide a backup pump or blower or lift station high level alarms where required by the design criteria for domestic wastewater systems.
- (10) Failure to operate and/or maintain a system/equipment where failure to do so would impact the environment and/or public health. (Examples: the structural integrity of the wastewater treatment units and access to the units; the mechanical parts of the treatment units in a manner that potentially impacts water quality (clarifier rake arm/sludge rake, traveling bridge on the clarifier, rotors/aerators to maintain appropriate D.O. for required treatment, diffusers/air headers to maintain appropriate D.O. for required treatment, etc.)
- (11) Sludge/solids accumulation in basins that reduce the capacity, preventing compliance with effluent limits or regulatory requirements like 30 TAC 309.3(g)(2)
- (12) Nonfunctional backup equipment (pumps, blowers, basins, screens/filters), high level alarms, generators

b. TCEQ-regulated Animal Feed Operations (AFOs) Note: (1) and (5) below are only for Bosque Segments 1226 and 1255.

- (1) Failure to operate the RCS according to the RCS management plan (21 days, weather permitting)
- (2) Failure to maintain a visible, permanent pond marker (14 days)
- (3) Failure to properly dispose of manure, litter, wastewater, sludge and/or pond solids and all other solid waste materials (30 days)
- (4) Failure to maintain applicable buffer zones (30 days)
- (5) Failure to uniformly-apply waste into soil within 48 hours when required (48 hours, weather permitting)
- (6) Failure to develop and/or implement an adequate PPP when required (60 days)

- (7) Failure to provide adequate runoff control measures for waste storage, silage, and/or compost piles (14 days)
- (8) Inadequate or no waste control facilities for a TCEQ-regulated AFO operating by rule where a Category A6 or Category A10 violation has not been noted (TD or SS; schedule may exceed 6 months as allowed by the exclusion in Category A4)
- (9) Failure to maintain or include a recharge feature certification in the PPP if required (90 days)
- (10) Failure to design and construct an RCS for the design rainfall event (60 days)
- (11) Failure to properly maintain storage for the design rainfall event (14 days)
- (12) Failure to properly dispose of dead animals (TD)
- (13) Failure to comply with a NUP or a NMP [if not A 12(b)(7)] (immediately upon the next application)
- (14) Failure to install backflow prevention devices (7 days)
- (15) Failure to design/maintain earthen pens to ensure good drainage, minimize ponding, and minimize the entrance of uncontaminated stormwater to the RCS (TD)
- (16) When animals are in pastures, failure to maintain crops, vegetation, forage growth, or post-harvest residues in animal confinement areas during the normal growing season over any portion of the lot or facility (TD)

c. Public Water Supply

- (1) Failure to obtain approval for plans and specifications for a groundwater or purchase water system and/or approval to use a well for existing groundwater water systems. (See A10 for wells whose chemical and/or bacteriological monitoring demonstrates a health hazard that could adversely affect human health and safety)
- (2) Failure to notify the executive director prior to making any significant change or addition to an existing system in accordance with 290.39(j)
- (3) Incomplete treatment at a water treatment plant due to malfunctioning or non-functioning equipment (60 days)
- (4) Water distribution system cross connections (30 days)
- (5) Well located closer than allowable distance to a cited hazard (e.g., drain field), unless the entity has not been able to resolve the violation after making reasonable efforts and there is no

apparent risk to public health and safety due to the lack of compliance (TD or SS)

- (6) Low pressure (less than 20 psi) or outage (30 days; a 15-day extension may be granted if satisfactory progress is being made)
- (7) Failure to maintain the required minimum disinfection residual when disinfection equipment is available (24 hours). (For failure to have disinfection facilities, see Category A.d(3).)
- (8) Failure to repair a known leak (14 days if leak is within the main distribution line; 30 days if leak is outside the main distribution line)
- (9) Failure to obtain a customer service agreement as required by 30 TAC §290.46(j) or a plumbing ordinance as required by 30 TAC §290.46(i) (120 days)
- (10) Failure by a public water system to meet a minimum water system capacity requirement as defined in 30 TAC §290.45 (TD or SS; schedule longer than 6 months is allowed by the exclusion in Category A4)

Exclusions to be handled as a C7:

- Community water systems which are less than 10% deficient of a minimum water system capacity requirement
- Community purchased water systems which do not meet the production capacity requirements defined in 30 TAC §290.45(f)(4) and/or 290.45(f)(5). For the purposes of this category, a purchased water system is one that receives the majority of its water supply through purchased water (with or without contract)
- Non-community systems which fail to meet a minimum water system capacity requirement

- (11) Failure to have the appropriate backflow prevention device where one is required (7 days)
- (12) Failure to obtain and operate in accordance with an approved Contact-Time Study that accurately details the current disinfection process of a treatment plant as required (TD or SS)
- (13)* Violations that meet EPA referral criteria under the EPA's revised Enforcement Response Policy for the Public Water System Supervision Program under the Safe Drinking Water Act and Implementation of EPA's Enforcement Targeting Tool (see Attachment A-1)
- (14)* Failure of an affected utility to submit an EPP for approval, obtain an approved EPP, and/or implement the approved EPP option(s) (30 days)

- d. Industrial and Hazardous Waste
- (1) Failure to meet accumulation time requirements (30 days)
 - (2) Failure to properly maintain a closed solid waste management unit (TD or SS)
 - (3) Storing waste for more than 10 days at a transfer facility (10 days from investigation date)
 - (4) For Subpart AA, BB and/or CC Facilities only: Failure to establish a LDAR program AND failure to control emissions from components used to manage hazardous waste [See A12.e.(9) for waste exhibiting toxicity characteristic] (TD or SS)
 - (5) For Subpart AA, BB and/or CC Facilities only: Inaccurate LDAR component count that results in failure to monitor components in hazardous waste service [See A12.e(10) for complete failure to monitor] (TD or SS)
 - (6) For Subpart AA, BB and/or CC Facilities only: Failure to prevent OELs in hazardous waste service AND the number of OELs is greater than or equal to 5% but less than 15% of the total number of potential OELs in hazardous waste service within the unit under review. [If the number of OELs is greater than or equal to 15%, see A12.e(11); if the number of OELs is less than 5%, see C11] (TD or SS)
 - (7) Failure to submit a monthly summary of on-site waste management activities subject to the assessment of fees under 30 TAC §335.325 on forms furnished or approved by the ED by the 25th day following the end of the month (or quarter) for which the report is due (14 days)
- e. Municipal Solid Waste
- (1) Accepting (not disposing) an unauthorized waste at a MSW-regulated landfill while following the site operating plan screening requirements [accepting and not following site operating screening requirements is an A5] (30 days)
 - (2) Placing waste outside of the permitted boundary at a MSW landfill (TD or SS)
 - (3) Failure to apply daily cover at a MSW landfill (24 hours)
 - (4) Failure to provide intermediate cover at a MSW landfill (7 days)
 - (5) Failure to provide final cover at a MSW landfill (30 days)
 - (6) Failure to provide adequate compaction at a MSW landfill (60 days)
 - (7) Unauthorized disposal or burning of nonhazardous municipal solid waste where the only economic gain is avoiding the cost of

properly disposing at a landfill (i.e., nuisance dumping) (TD or SS)

- (8) Failure to provide adequate secondary containment for the storage of used oil and/or used oil filters (TD or SS)
- (9) Failure to maintain design requirements for a Type VIII-R waste tire storage facility (30 days)
- (10) Failure to split, quarter or shred scrap tires at a Type VIII-R waste tire storage facility within 90 days from delivery (30 days)
- (11) Failure to comply with vehicle requirements relating to sanitation for transporters of medical waste (14 days)
- (12) Failure to maintain leachate at 12 inches or less (30 days)
- (13) Failure to demonstrate accumulated material is potentially recyclable and economically feasible-recycled, and/or failure to meet applicable time frames and percentages of recycling activities at recycling facilities (14 days)
- (14) Failure to maintain records that document reasonable efforts to maintain source-separation of materials, including notice to customers, training of staff, documentation of rejected loads, and documentation that incidental waste constitutes no more than 5% of average total scale weight at recycling facilities (7 days)
- (15) Failure by an owner/operator of a facility that manages combustible materials to have a fire prevention and suppression plan, but has passed inspection by the local fire prevention authority [If the facility does not have a plan and has not passed inspection by the local fire authority, use Category A12.g(6)] (30 days)

f. Petroleum Storage Tanks

- (1) Failure to perform the temporary or permanent removal of an UST unless the tank is empty, provided a Category A6 or Category A10 has not been documented. [See Category C6 for exclusion]
- (2) UST systems lacking the upgrade requirements in 30 TAC §334.47(b) and improperly removed from service prior to the implementation schedule specified in 30 TAC §334.44(b) (30 days)
- (3) Failure to comply with any general prohibition requirement for an UST specified in 30 TAC §§334.5 and 334.12 (30 days)
- (4) Failure to comply with any technical standard requirement for an UST specified in 30 TAC Chapter 334, Subchapter C; including incorrect implementation of the release detection

method such as: incomplete inventory control, minor errors in monthly reconciliation, and errors in automatic tank gauge test results. Does NOT include complete failure to provide: release detection, spill and overfill prevention or corrosion protection [See A12.h] (30 days)

- (5) Late submittal of UST Registration and Self-Certification form, initial and/or renewal, submitted prior to an investigation (TD or SS)
- (6) Complete failure of an owner/operator of a retail fueling facility in an Affected County (as defined in 30 TAC §114.319) to maintain for two years diesel fuel transfer documents containing the required information specified in 30 TAC §114.316(g). [If a proper certification statement is present on the transfer document but other required information is missing, use C3] (Submit a copy of a properly certified transfer document for next transfer load within 30 days or submit required information from the carrier)
- (7) Failure to have an operating Stage II vapor recovery system
- (8) Failure to verify the proper operation of Stage II equipment by testing in accordance with 30 TAC §115.245(2). The regulated entity may elect to properly and completely decommission the Stage II system in accordance with all applicable rules and regulations in order to come into compliance with this violation (30 days).
- (9) Failure to install, remove, or repair an UST system as per State and/or Industry Code. (30 days)
- (10) Failure to register an AST in accordance with 30 TAC §334.127
- (11) Failure of a "common carrier", as defined in 30 TAC §334.2, to observe that the owner or operator has a valid, current registration certificate, issued by the Agency in accordance with 30 TAC §334.127, prior to depositing any petroleum products into an AST.
- (12) Failure to perform a site check and any necessary corrective actions prior to discontinuing Financial Assurance coverage for UST systems registered as temporarily removed from service [If tanks are in use or have product, refer to Category A11]

g. Air

- (1) Non-clerical air violation not otherwise listed in Category A (TD or SS; substantive corrective measures must be initiated within 30 days)

- (2)* Failure of an analyzer manufacturer certified by the state of Texas to meet the performance standards stated in 30 TAC §114.51(e) (30 days)
- (3)* Failure to submit a complete and accurate emissions inventory in accordance with 30 TAC §101.10 [Note: If emissions inventory is greater than 90 days late, A12.i(11) applies. If emissions inventory is less than or equal to 30 days late, C9 applies] (30 days)
- (4) Complete failure of an owner/operator of a retail fueling facility in an Affected County (as defined in 30 TAC §114.319) to maintain for two years diesel fuel transfer documents containing the required information specified in 30 TAC §114.316(g). [If a proper certification statement is present on the transfer document but other required information is missing, use C3] (Submit a copy of a properly certified transfer document for the next transfer load within 30 days or submit required information from the carrier)
- (5) Complete failure of an owner/operator of a retail fueling facility in an Affected County (as defined in 30 TAC §114.309) to maintain for two years fuel transfer documents containing the required Reid Vapor Pressure information specified in 30 TAC §114.306(b). [If a proper certification statement is present on the transfer document but other required information is missing, use C3] (Within 30 days: Submit certification statement that confirms the necessary actions to achieve compliance with the next Reid Vapor Pressure season will be met OR submit a copy of a properly certified transfer document if the Reid Vapor Pressure season is still active OR obtain the required information from the carrier)
- (6) LDAR: Failure to prevent OELs in regular VOC service or HAP service AND the number of OELs is greater than or equal to 5 but less than 15% of the total number of potential OELs in regular VOC service or HAP service within the unit under review (TD or SS)
- (7) Failure of an LDAR program resulting in annualized under-controlled emissions less than a major source, PSD review, or non-attainment review threshold (90 days)
- (8) Inaccurate LDAR component count that results in under-reported emissions (60 days)
- (9) Failure to monitor greater than or equal to 5 but less than or equal to 10% of the total number of components subject to fugitive monitoring requirements in the Title V permit under review [if greater than 10 %, A12.i(15) applies, if less than 5%, C7 applies]

- (10) Exceedance of CEMS performance criteria as demonstrated by a Relative Accuracy Test Audit, which does not constitute an A9.c violation.
- (11)* Failure to submit a complete and accurate emissions/inspection fee basis form in accordance with 30 TAC §101.24 and/or 30 TAC §101.27.
- (12) Where HPV criteria do not apply and for a pollutant exceeded during a stack test: Violation of an allowable emissions limit detected during a stack test and failing to complete corrective action within 30 days of the entity receiving the stack test results from the testing company. If corrective action choice is to authorize the emission, then the amendment application must be submitted within 30 days from the NOV date and the responsible party must respond adequately, completely and timely to TCEQ requests for information regarding the application information. Refer for formal enforcement, if inadequate, incomplete or untimely responses occur during the Air Permits Division processing.

h. Water Rights

- (1) Refusing to allow, or interfering with the investigation of any land, natural water course, natural waterway, artificial waterway, impoundment, return flow point, or diversion facility by an agent or employee of the Commission or ED that would assist the Commission in the discharge of its duties (7 days from investigation date)
- (2) Failure to provide a measuring device as required (TD or SS)
- (3) Failure to provide an outlet as required (TD or SS)
- (4) Impounding, diverting, using water in excess of authorized amounts during severe drought conditions, as indicated by the U.S. Drought Monitor [See A.12.j(1) for any Watermaster Program] (TD or SS)
- (5) Failure to report, on an annual basis, the authorized use of state water (30 days)
- (6) Failure to submit or maintain the required Drought Contingency Plan, Water Conservation Plan, Implementation Report, and/or Annual Report in accordance with 30 TAC §288.30 (60 days)
- (7) Failure to implement the person's or entity's water conservation plan and drought contingency plan, as applicable in accordance with TWC §16.055(h) (30 days)

i. On-site Sewage Facilities

- (1) Failure to install an OSSF system which meets required standards provided a Category A6 or Category A10 has not been noted (30 days)
- (2) Failure to perform maintenance on an OSSF by a licensed maintenance provider as described by rule or contract (14 days)
- (3) Failure by an owner either to perform maintenance or to obtain a maintenance contract on an OSSF (14 days)
- (4) Failure to obtain approval of planning materials for: 1) a residential development utilizing OSSF systems prior to subdividing the property **and** all of the lots or tracts in the development are compliant with the appropriate residential lot requirement; **or** 2) a new non-residential development utilizing OSSF systems (if the residential lots or tracts are not compliant with the appropriate residential lot requirement or the responsibly party has previously submitted planning material for the review or documentation exists that the responsible part was aware of the requirement, see A12.k2)

j. Pretreatment Programs - TPDES POTW as the Control Authority and all other POTWs

- (1) Failure to enforce as required by the approved pretreatment program against an IU using dilution as a substitute for pretreatment (initiate required enforcement action within 30 days and monitor/enforce until the problem is resolved)
- (2) Failure to comply up to 90 days beyond the required due date with a pretreatment schedule milestone specified in the permit for the TPDES program (comply within 90 days of the required due date)
- (3) Complete failure by a TPDES POTW with an approved pretreatment program to evaluate each SIU at least once for the need of a plan or other action to control slug discharges to the POTW within one year of being designated as an SIU (TD)
- (4) Failure by a TPDES POTW with an approved pretreatment program to enforce as required against any CIU/SIU for:
 - (A) Failure to submit a baseline monitoring report or 90-day compliance report (up to 45 days late) (TD)
 - (B) Late submittal of other required pretreatment reports three or more times within a consecutive five-year period (up to 45 days late) (TD)
- (5) Failure of a POTW that does not have an approved pretreatment program to develop and enforce local limits for pollutants

contributed by industrial users that result in interference or pass through

- (6) Any violation meeting Category B criteria as described in the VRAC

k. Industrial Users or Users Discharging to TPDES POTWs without Approved Pretreatment Programs - TCEQ as the Control Authority

- (1) Discharge to a POTW which results in interference with the treatment process or sludge quality or pass through of pollutants that does not cause a Category A6 or Category A10 violation (TD or SS)
- (2) Any violation meeting Category B criteria as described in the VRAC

l. Beneficial Use of Non-Industrial Wastewater Sewage Sludge

- (1) Application of sewage sludge or domestic septage to saturated or frozen ground or during rainstorms (TD or SS)
- (2) Application of sewage sludge or domestic septage in excess of maximum annual application rate (TD or SS)
- (3) Failure to maintain setback requirements for land application of sewage sludge or domestic septage (TD or SS)
- (4) Failure to apply sewage sludge or domestic septage evenly to the surface of land (TD or SS)

m. Landscape Irrigation*

- (1) Failure to design, install, maintain, repair, and/or service an irrigation system in a manner that promotes water conservation (TD)
- (2) Failure to space irrigation heads according to the manufacturer's maximum recommended head-spacing (TD)
- (3) Heads do not meet the minimum head pressure required by the manufacturer (TD)
- (4) Failure to install irrigation piping so that it meets the minimum standards for depth of coverage (TD)
- (5) Failure to install water conservation devices according to the manufacturer's recommendation (TD)
- (6) A licensed irrigator designing a system that requires the use of any component part that exceeds the manufacturer's performance limitations for the part (TD)
- (7) False, misleading or deceptive practices relating to bidding, advertising or fees (TD)

- (8) Failure to provide and/or honor a warranty (TD)
 - (9) Failure to properly connect an irrigation system to a public or private potable water supply through a Commission-approved backflow prevention method that does not cause a Category A6 or Category A10 violation (7 days)
 - (10) Failure to comply with a requirement, ordinance, or regulation, other than obtaining a permit prior to installation, where any city, town, county, special purpose district, or other political subdivision or public water supply regulates irrigation work performed within such political subdivision's territory (TD)
- n. Stormwater Multi-Sector General Permit
- (1) Failure to conduct the annual comprehensive site compliance evaluation (TD or SS)
 - (2) Complete failure to conduct annual effluent limitation (heavy metals) sampling (begin correct procedures at next eligible rainfall event)
 - (3) Failure to properly develop/implement a SWP3 (TD or SS)
 - (4) Failure to comply with a no exposure exclusion (TD or SS)
 - (5) Failure to maintain BMPs in an effective operating condition (TD or SS)
- o. Small Construction Activities - Stormwater Construction General Permit
- (1) Failure to make the SWP3 readily available or available on-site (24 hours from investigation date)
 - (2) Failure to post the signed copy of the construction site notice at the construction site (24 hours from investigation date)
 - (3) Failure to submit a signed and certified construction site notice to the operator of any MS4 receiving the discharge 2 days prior to construction (24 hours from investigation date)
 - (4) Failure to meet temporary or final stabilization requirements.
- p. Large Construction Activities - Stormwater Construction General Permit
- (1) Failure to make the SWP3 readily available or available on-site (24 hours from investigation date)
 - (2) Failure to develop and implement the SWP3 prior to beginning construction (14 days from investigation date)
 - (3) Failure to post the construction site notice (24 hours from investigation date)

- (4) If sediment is escaping the site, failure to remove accumulations of sediment often enough to minimize further negative effects and prior to the next rain event (when feasible), provided a Category A6 or A10 has not resulted from the discharge (TD or SS)
 - (5) Where sedimentation basins are not feasible, failure to install minimum controls such as silt fences, vegetative buffer strips, or equivalent sediment controls for all down slope boundaries at the site (TD or SS)
 - (6) Failure to maintain BMPs in an effective operating condition (7 days from investigation date)
 - (7) Complete failure to conduct inspections of controls (Begin correct procedures according to the time frame specified in SWP3)
 - (8) Failure to meet temporary or final stabilization requirements.
- q. Municipal Separate Storm Sewer System (MS4)
- (1) Failure to submit an annual report
 - (2) Failure to implement a best management practice as required by an approved Stormwater Management Program
- r. Emergency Response
- (1) Failure to notify the agency as soon as possible, but no later than 24 hours after discovery of the spill or discharge [if also failed to contain and abate, see A7.a] (TD or SS)
 - (2) Failure to immediately contain and abate a discharge or a spill without a documented effect on human health and safety and/or a serious impact to the environment [if also failed to notify, see A7.a] (TD or SS)
 - (3) Failure to reasonably attempt notification to an owner or occupant of a property impacted by a discharge or spill as soon as possible but no later than two weeks after discovery of the discharge or spill (TD or SS)
 - (4) Failure to notify the Agency as soon as possible to provide information that would trigger a change in the response to a spill or discharge (TD or SS)
 - (5) Failure to provide a written description of the planned response action when requested (TD or SS)
 - (6) Failure to begin reasonable response action as required by 30 TAC §327.5(a)(1-5) (TD or SS)
 - (7) Failure to request an extension in accordance with 30 TAC §327.5(c)(2) for the necessary response action (TD or SS)

s. Dry Cleaners

- (1) Purchasing dry cleaning solvent (as defined in TEX. HEALTH & SAFETY CODE §374.001(8)) from a distributor that does not possess a valid, current distributor registration issued by the TCEQ operating without a registration and the purchasing party does not have a TCEQ dry cleaner-related registration when the regulated entity has not held a previous registration at this or another site [See A12.q(2) when another facility/drop station has been registered] (TD or SS)

t. Aggregate Production Operations (APOs)

- (1) Failure to register or renew as an APO in accordance with TEX. Water Code § 28A.051 and 30 TEX. Admin. Code § 342.25. (Submit Registration within 30 days)

CATEGORY C VIOLATIONS

CATEGORY C: A Category C violation is a noncompliance not otherwise designated as a higher priority violation in Category A or Category B.

* **NOTE:** An asterisk (*) indicates the compliance determination will be made exclusively or primarily by a central office program. An asterisk designation does not prohibit regional staff from documenting a violation; however, if noncompliance is being considered under these criteria, regional staff shall obtain concurrence from the associated central office program prior to citing the noncompliance in an NOV or NOE. Items without an asterisk are criteria primarily used by regional offices or criteria used by both regional and central office program staff.

COMPLIANCE TIME FRAME: The timeframe to come into compliance for a Category C violation will either be a case-by-case TCEQ-established deadline (TD) or a schedule will be solicited (SS) from the entity.

REPEAT OR CONTINUING CATEGORY C VIOLATIONS: Formal enforcement action may be initiated if the same repeated or continuing Category C violation is documented three (3) times within the most recent 5-year period, including the notification for the current violation (e.g., chronic repeated or continuing). Initiation of formal enforcement action may occur at the time of the third notification at the discretion of a member of management for the staff who is considering the enforcement action. [See page 8 for instructions on how to handle repeat Category Cs documented from a Title V Deviation Report.]

VIOLATIONS (apply to all programs as applicable):

- C1. Partial or inadequate implementation of monitoring/testing requirements, including self-inspections where applicable. [Before using this category, ensure the violation does not fall under Category A9.c (not applicable to emissions events)] (TD or SS)
- C2. Partial or inadequate implementation of waste analysis and/or waste characterization requirements, including but not limited to, hazardous waste determinations and screening procedures for halogens (refutable presumption) (TD or SS)
- C3. Partial or inadequate submittal or maintenance of required data, documents, notifications, plans or reports. [Before using this category, ensure the violation does not fall under Category A9.c] (TD or SS)

Examples:

- Not providing records in a timely manner when records are required to be readily available for review during an investigation
- Late submittal of required information
- Incorrect calculation of data
- Not having required signature(s) on records

- Failure to modify a declaration of intent in advance of a desired change as required
 - Failure to submit planning report (30 TAC §291.93(3))
 - Failure to submit complete reports documenting performance of corrective actions related to a confirmed release
 - An approved EPP that needs to be updated because of changes to points of contact or addition of new equipment under the approved option(s)
- C4. Inadequate operation and maintenance (TD or SS)
- Examples:
- Windblown waste at an MSW landfill or facility not picked up in a timely manner so as to become a nuisance
 - Water mains at a PWS facility not flushed adequately
 - Using slightly torn filter bags for the collection of baghouse dust
 - Clogged water sprays used for dust suppression
 - Stormwater Sediment not removed from sediment traps/sedimentation ponds before design capacity is reduced by 50%
- C5. Failure to establish sanitary control easements on drinking water wells, unless an exception has been approved by the program division (submit a compliance schedule within 30 days; the responsible party should be required to collect raw water samples until the easement is established or an exception is granted; if raw water samples indicate contamination, further enforcement action should be evaluated)
- C6. For an UST which meets the definition of an empty system as specified in 30 TAC §334.54(d): Failure to comply with the technical standard requirements for corrosion protection (TD or SS)
- C7. Violations not otherwise listed in Category A or Category B (TD or SS)
- C8. Impounding, diverting, using, or making a dedicated release of state water in excess of authorized amounts during moderate, abnormally dry, or normal drought conditions, as indicated by the U.S Drought Monitor (TD or SS)
- C9.* Violations related to emission inventory requirements:
- a) Incomplete/inaccurate emissions data or supporting data, necessary to characterize the origin, nature, and/or control of emissions related to the development of the air emissions inventory;
 - b) Improper data emissions speciation;
 - c) Failure to properly characterize air contaminant emission paths (e.g., FIN+CIN+EPN); or
 - d) Failure to submit a complete and accurate emissions inventory in accordance with 30 TAC §101.10 [if emissions inventory is greater than 90 days late, A12.i(11) applies; if emissions inventory is greater than 30 but less than or equal to 90 days late, B18.g(3) applies] (14 days)

- C10. LDAR: Failure to prevent OELs in regular VOC service or HAP service AND the number of OELs is less than 5% of the total number of potential OELs in regular VOC service or HAP service within the unit under review (TD or SS)
- C11. For Subpart AA, BB and/or CC Facilities only: Failure to prevent OELs in hazardous waste service AND the number of OELs is greater than 5% but less than 15% of the total number of potential OELs in hazardous waste service within the unit under review. [If the number of OELs is greater than or equal to 15%, see A12.e(11), and if the number of OELs is greater than or equal to 5% but less than 15%, see B18.d(6)].
- C.12. Failure to provide release detection (monitoring occurred greater than 30 days but less than 36 days) for a Petroleum Storage Tank. Should be cited as an Area of Concern if criteria are met.

AREA OF CONCERN

The following criteria shall be evaluated to determine if a violation should be issued as an Area of Concern (AOC):

1. The violation falls into Category C;
 2. The violation does not involve a potential harm/impact;
 3. The violation is corrected within 14 calendar days from when the responsible party is made aware OR the violation is corrected within 14 calendar days of receiving notification of an alleged violation (i.e. Exit Interview Form);
 4. The violation was not documented at the same regulated entity in the prior 12 months AND
 5. The violation was not documented during the same investigation in which an NOE is being issued and/or a Category A or Category B violation that meets the criteria for initiation of formal enforcement is being issued.
- A violation may be resolved as an AOC if it meets all five criteria above
 - If AOC Criterion Number 5 is not met, the violation will be resolved as a Category C violation and not an AOC
 - AOCs may be utilized in conjunction with a field citation
 - Each AOC shall be entered as a violation in CCEDS; however, the AOC designation in CCEDS prevents AOCs from counting toward compliance history
 - All violations that meet the AOC criteria shall be documented in an investigation report with as much information as necessary to prove any violation

AOCs issued in an NOV or a General Compliance Letter (not applicable to field citations):

- If a violation does NOT meet all five criteria, it will be included as a violation in an NOV
- If all documented violations meet the AOC criteria, then document this on the exit interview form and only send a General Compliance letter that includes each AOC in the summary of investigation findings
- The time frame allowed for a respondent to submit corrective action documentation (to prove #3 above has been satisfied) should routinely be no longer than 30 days from the investigation date but may be as few as 14 days from the investigation date. On a very limited basis, time frames longer than 30 days may be allowed
- Once a violation is resolved as an AOC in an NOV, it will not be included in any formal enforcement action, regardless if a non-AOC violation in the NOV escalates into an NOE
- All violations resolved as an AOC will be noted separately if a written NOV is necessary to address other violations that do not meet the AOC criteria

Response and Cause Demonstrations

Potable Water Discharges

A violation may not be addressed via NOV or NOE, or Order against a regulated entity for the discharge of potable water, if:

1. Reasonable steps were taken as soon as possible to stop and/or minimize the actual/possible environmental impact of the potable water discharge; and
2. The cause was based on one of the following:
 - a) The discharge was unavoidable due to proper maintenance (which must include adequate dechlorination when practicable) or servicing of the water system and/or due to the negligent actions of a third party (excluding contracted services that were performed per the responsible party's instruction); or
 - b) The discharge was caused by the subsidence of soil due to drought conditions or other natural causes outside the control of or anticipation by the responsible party.)

Sanitary Sewer Overflows (SSOs) Due to Grease Blockages

A violation may not be addressed via NOE or Order against a regulated entity for the discharge of wastewater from a collection system (SSO) that occurred as the result of a blockage due to grease, if:

1. The regulated entity had taken reasonable measures to prevent the SSO through the adoption and enforcement of a model standards for grease management;
2. The SSO was minimized; and
3. Proper and complete notice (as required by TWC §26.039, 30 TAC Ch. 319, and applicable permit reporting provisions) was provided