

The Commission on Environmental Quality's Enforcement and Permitting Functions for Selected Programs

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Overall Conclusion

For the air, water quality, and public water supply programs we evaluated, the Commission on Environmental Quality's (Commission) enforcement function does not consistently:

- Issue enforcement orders or settle enforcement cases within its required timeframes. For the cases we tested, late enforcement orders included \$299,489 in penalties and yielded economic benefits of \$720,253 to the violators.
- Classify supplemental environmental projects (SEPs) according to established criteria or monitor SEPs administered by third parties. The misclassification of the 2002 and 2003 SEPs we tested resulted in a loss of \$319,590 to the State.
- Calculate penalties accurately or fully collect delinquent penalties. As of May 2003, the Commission had outstanding delinquent penalties of \$571,322.

If unaddressed, these inconsistencies could limit the Commission's ability to collect penalties on a timely basis, hold environmental violators accountable, and deter future instances of noncompliance.

The Commission's permitting function for these programs generally operates in accordance with state statute and agency policy, although we noted some areas for improvement in the availability of information used for permitting. In addition, while the Commission complies with federal law regarding notification about pending air permits, the Commission's current process can reduce the effective public comment period to less than the federally required 30 days.

Finally, we noted that the Commission's recent changes to its penalty policies may reduce their effectiveness as a deterrent to polluters. We also found that current statutes related to air emissions caps and policies for discounted fees could be modified to increase agency revenue by approximately \$25 million per year.

Commission on Environmental Quality

The Commission on Environmental Quality permits and regulates environmental activities in Texas. The Commission had approximately 3,000 employees, 16 regional offices, and a \$365.4 million annual appropriated budget for fiscal year 2003. Most of this budget is funded by program fees. The Commission issues and enforces 101 types of permits. In fiscal year 2002, the Commission collected \$276 million in fee revenue, assessed \$5.6 million in penalties, and arranged for violators to offset \$2.2 million in penalties through supplemental environmental projects.

Sources: General Appropriations Act, 2002 Annual Financial Report, and 2002 Annual Enforcement Report



Key Points

The lack of timely enforcement orders and settlement of enforcement cases could allow violations to continue and slows penalty collections.

The Commission does not consistently issue enforcement orders to alleged violators within required timeframes. Forty-five percent of the cases from 2001 to 2003 that we tested had enforcement orders that were not mailed out on time, exceeding the deadline by an average of 76 days. The assessed penalties for these cases totaled \$299,489, and the alleged violations yielded economic benefits to the violators estimated at \$720,253. In addition, the Commission does not always settle enforcement cases within its established timeframe. The Commission's philosophy is to promote voluntary compliance. The Commission reports that it works with entities to correct violations prior to finalizing the enforcement order and collecting the penalty. However, in accordance with the Commission's philosophy statement, a strong enforcement function is important in protecting the State's human and natural resources. Therefore, these delays in the enforcement process could result in violators' continuing to pollute and cause the State to lose the use of penalty funds.

The Commission does not have an effective process for collecting delinquent penalties.

The Commission's Financial Administration Division lacks an adequate process to collect delinquent administrative penalties. As of May 2003, the outstanding delinquent administrative penalties for air, public drinking water, water quality, and multimedia totaled \$571,322.

Misclassifications and inadequate monitoring of supplemental environmental projects reduces environmental benefits owed to the State.

The misclassification of supplemental environmental projects (SEPs) that were started in fiscal year 2002 or 2003 resulted in a loss of \$319,590 in environmental benefits. Additionally, while the Commission has an adequate process to monitor the SEPs directly administered by violators or by the Commission, the lack of adequate monitoring for third-party SEPs increases the risk that the associated funds could be used inappropriately, resulting in an overall loss of environmental benefits to the State. SEPs are an option available to violators to offset all or part of a penalty. Based on Commission records, the Commission assessed \$67,896,295 in penalties from September 1995 through August 2003. Of this, \$15,325,964 (22.6 percent) was offset by SEPs.

The Commission complies with notification requirements for air permits but could better promote public participation for some citizens.

The Commission complies with federal requirements regarding public comment for pending air permit applications. However, the Commission's policy establishing the beginning of the 30-day public comment period for prospective air permits could reduce the amount of time that some members of the public who miss the newspaper notice have to comment.

Poor file management limits the availability of information for public participation and permitting processes.

The Commission is not properly maintaining the files in its central records. Many of the files we requested for testing purposes could not be located. There is a risk that these files may not be readily available for permitting and enforcement processes or for public review.

Data used to monitor compliance with some water quality permits is not accurate.

The Commission does not monitor or review data that a contractor enters and that the Commission uploads to the Environmental Protection Agency's (EPA) Permit Compliance System. We tested four months of 2003 data entry and found that 20 percent of the records contained errors or were not entered into the database. Ninety-seven percent of these errors were attributable to the contractor. The Commission provides this data to the EPA and also uses it to identify entities that have exceeded their discharge limits.

Other Issues for Consideration

Recent changes to penalty calculation policies may not deter violations.

Recent changes to penalty policies may reduce their effectiveness as a deterrent to polluters. Violators often have economic benefits that exceed their penalties, which could reduce their incentive to comply. For 80 fiscal year 2001, 2002, and 2003 cases we tested, the total economic benefit gained by violators during the period of noncompliance was \$8,647,005. However, these entities were fined only \$1,683,635, which is approximately 19 percent of the economic benefit gained from being out of compliance.

Eliminating the air emissions fee cap could result in increased revenue and decreased emissions.

Current statute (Health and Safety Code, Section 382.0621[d]) precludes the Commission from imposing a fee for certain air emissions over 4,000 tons. As a result, a facility that reports emissions of 4,000 tons of air pollutants pays the same fee as a facility that reports emissions of 85,990 tons, thus not providing an incentive for facilities to limit their emissions once they exceed 4,000 tons. Based on fiscal year 2002 data, we calculated that if the cap were eliminated, the Commission's potential revenue could increase by approximately \$25 million per year.

Summary of Management's Response

The Commission generally agrees with our recommendations and has agreed to implement them. However, it does not agree with our conclusions in two areas, supplemental environmental projects and public comment for pending air permit applications.

Summary of Information Technology Review

During our fieldwork, the two information systems we reviewed did not require users to change passwords from their initial passwords, which are assigned by the Central Registry system administrator. The Central Registry contains general data about regulated entities. The Consolidated Compliance and Enforcement Data System (CCEDS) contains data about enforcement actions. Without periodic password changes, there is a greater risk that a password could be compromised and that an unauthorized individual could gain access. Also, the Commission lacks a business continuity plan, which leaves it unprepared for a disaster.

Summary of Objectives, Scope, and Methodology

The primary objectives of this audit were to determine whether the permitting and enforcement functions for selected Commission programs ensure that the Commission (1) issues and enforces permits in accordance with state statutes and Commission policies and (2) collects and accounts for fees appropriately.

Our scope generally included data and processes completed in fiscal year 2002, but in some cases we reviewed data from September 1, 2001, to May 31, 2003, as indicated.

Our methodology consisted of gathering information by interviewing management and staff from the Commission's headquarters and regional offices, observing Commission operations, mapping permitting and enforcement processes, reviewing policies and procedures, testing controls and related documentation, and reviewing data from information technology systems.