



OFFICE OF THE STATE AUDITOR

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206 EAST NINTH STREET, SUITE 1900
AUSTIN, TEXAS 78701

LAWRENCE F. ALWIN, CPA
State Auditor

August 31, 1998

Re: A Review of the Enforcement Function at
the Texas Natural Resource Conservation
Commission

Members of the Legislative Audit Committee:

The Texas Natural Resource Conservation Commission (Commission) has made significant progress toward streamlining and standardizing its process for enforcing environmental laws and regulations. Despite the strengths of the process, we identified needs for improvement.

The most important need is for a system that ties together such information as inspections, violations, enforcement actions, and administrative penalties. Now, this information is scattered in over 20 separate official databases and a number of unofficial systems. Program managers report that they cannot answer simple compliance-related questions without a major effort. The Commission has recognized that it needs such a system.

A well-designed enforcement process seeks to protect public health and the quality of the environment. At the same time, it ensures consistency and fairness to the regulated community. To help the Commission meet these goals, we offer recommendations for:

- Managing compliance and enforcement data
- Streamlining approaches to inspections
- Recording, reporting, and collecting settlements

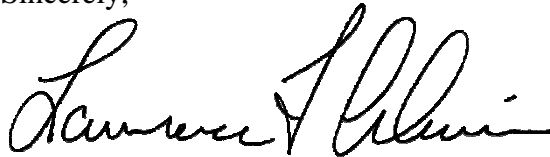
The State Auditor's Office jointly worked with the Commission to audit and report on the Commission's enforcement process. The Commission's Internal Audit Department managed the project. We have enclosed our summary of the report and the audit report that resulted from this partnership. The report fairly represents our audit results. We appreciate the cooperation and courtesy extended to us by Commission staff throughout the audit.

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Copies of the report are available from both the Commission's Internal Audit Department and the State Auditor's Office.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence F. Alwin". The signature is fluid and cursive, with the first name being the most prominent.

Lawrence F. Alwin, CPA
State Auditor

cbg

Attachment: Detailed Issues and Recommendations

Enclosure: *Compliance and Enforcement Review*, TNRCC Report #MA 98-15

cc: Texas Natural Resource Conservation Commission
Mr. Barry R. McBee, Chair
Mr. John M. Baker, Ph.D., Commissioner
Mr. R.B. "Ralph" Marquez, Commissioner
Mr. Jeffrey A. Saitas, Executive Director
Mr. Glenn Shankle, Deputy Executive Director
Ms. Caroline Maclay Beyer, CPA, Internal Auditor
Ms. Annick M. Barton, CPA, CISA, Project Manager

Overall Conclusion

The Texas Natural Resource Conservation Commission (Commission) has made significant progress toward completing a new streamlined, centralized enforcement process. For example, it has established policies and procedures for setting case priorities, monitoring time lines and backlogs, and calculating penalties. Despite the strengths of the process we identified needs for improvement. The most important of these is how the Commission manages compliance and enforcement information. The Commission has recognized its current limitations and has requested funding to develop an integrated automated system. The system would tie together information needed to report on such items as inspections, violations, enforcement orders, and administrative penalties. If not resolved, these limitations may continue to affect the efficiency and accountability of the enforcement process.

Strengths

Since creating a centralized enforcement process approximately three years ago, the Commission has:

- Adopted policies and procedures to promote efficiency and fairness - The Commission has adopted and published its enforcement policies. In addition, it has developed extensive standard operating procedures to guide enforcement staff through the process.
- Developed various tools, such as spreadsheets and shell documents, to implement new procedures - These reflect a commitment to ongoing process improvement.

A well-designed compliance/enforcement process seeks to protect environmental quality and public health while ensuring consistency and fairness to the regulated community. The Commission issued 666 administrative orders and assessed approximately \$6.96 million in penalties in fiscal year 1997.

Areas for Improvement

Many of the building blocks are in place for the Commission to continue to improve. The following recommendations are intended to assist the Commission in refining its current and future operations.

- Our primary recommendation is for the Commission to develop a comprehensive compliance and enforcement information system. Key

related questions without a major effort. Information needed to manage the process is scattered in over 20 separate official databases and a number of

unauthorized persons from entering or changing data. A quality assurance team has identified a number of problems with the current (interim)

Commission needs timely, complete, and accurate data to ensure the integrity of each enforcement decision.

- Ensure a consistent approach to inspections. Historical violation information, which could help focus expedited inspections on common problems, is not consistently available to inspectors. At this time, the commission is unable to: (1) analyze historical violations on a statewide basis, (2) identify common non-compliance patterns, and (3) consistently communicate these “red flags.” Such information would help the Commission determine what types of entities routinely have what types of violations and to adjust its individual inspections accordingly.
- Ensure timely completion of technical requirements. While improvements have been made in monitoring the implementation of Commission "technical requirements," the on-time completion of individual requirements remains low. In the last two years, 63 percent of submittal-type requirements (which require the entity to submit evidence of compliance) have been past due. Two-thirds of these past-due requirements (associated with approximately 100 enforcement orders) were incomplete as of March 1998.
- Clarify and document the interaction among penalty settlement strategies. Commission management currently lacks accessible information to determine whether key penalty policies are being met. For example, the Commission may defer (reduce) a monetary penalty to encourage quick settlement; it may allow the entity to undertake a Supplemental Environmental Project in offset to a monetary penalty; and it may defer a penalty amount if the entity can demonstrate inability to pay. Though separate policies govern each of these, the Commission cannot readily report on them individually or their interaction on a given enforcement case. Particularly where Commission decisions result in a reduction to general revenue, the Commission should readily be able to report on its enforcement decisions.
- Improve collection and reporting of administrative penalties. A recent Commission study identified \$4.29 million in uncollected penalties. At present, penalties are not tracked in the Commission's accounts receivable system. Thus, receivables and revenues have been misstated in the Commission's financial reports. Collection of administrative penalties historically has not been timely or effective.
- Consider risks associated with delegating additional responsibilities to regional field offices. The Commission has begun transferring more enforcement responsibilities to regional field offices under the Region-Initiated Order (RIO) program. While this approach has merit, it will create new workload and staffing issues. For example, it might affect the number of inspections and enforcement actions the field offices can manage. The Commission should ensure that current processes are running smoothly, and consider the appropriate risks before proceeding with full RIO implementation.

Objective, Scope, and Methodology

The objective of the audit was to determine whether the Commission's compliance and enforcement function is efficient, effective, and makes economical use of resources. We worked with the Commission's Internal Audit Department in conducting this audit. The audit was performed in accordance with government auditing standards. Before the audit, the Commission contracted for a comprehensive Business Process Review. We modified our audit scope slightly as a result. For example, we did not address the scheduling of inspections or the relationship between enforcement and permitting. The enclosed report fairly represents our audit results. Commission management generally concurs with the recommendations; detailed responses can be found in the report. Copies of the report are available from both the Commission's Internal Audit Department and from the State Auditor's Office.