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# Complaint Investigation Manual

TCEQ  
Office of Compliance and Enforcement  
Field Operations

**Table of Contents**

- 1. General Complaint Information.....3
  - 1.1. Definition of a Complaint .....3
  - 1.2. Confidentiality.....3
- 2. Initial Notification of a Complaint .....4
  - 2.1. Notification of a Complaint.....4
  - 2.2. CCEDS Incident Data Entry .....6
  - 2.3. Documentation of Communication ..... 11
  - 2.4. Record Retention of Complaint Information ..... 11
  - 2.5. Complaint Referrals ..... 11
  - 2.6. Complaints Not Routinely Investigated..... 14
- 3. Preparation and the Pre-Investigation Process..... 14
  - 3.1. Contacting Complainants ..... 14
- 4. Site Investigation ..... 15
  - 4.1. Complaint Site Investigation..... 15
  - 4.2. Authority, Access, and Right of Entry..... 16
  - 4.3. Citizen Collected Evidence (Texas Water Code (TWC) §7.0025 and 30 Texas Administrative Code (TAC) §70.4)..... 16
- 5. Post Investigation..... 17
  - 5.1. Updating CCEDS..... 17
  - 5.2. Complaint Investigation Report ..... 17
  - 5.3. Multi-media Complaints..... 17
  - 5.4. Notification of Complaint Findings ..... 17
  - 5.5. Quarterly Updates (TWC §5.177(b))..... 18
  - 5.6. Procedure for Continuing Unconfirmed Complaints ..... 18
  - 5.7. Closure ..... 20

## 1. General Complaint Information

### 1.1. Definition of a Complaint

A complaint is a type of incident which is a communication, either oral or written, to the Texas Commission on Environmental Quality (TCEQ), reporting a situation or event which the complainant alleges is a possible environmental, health, and/or regulatory concern and the complainant is requesting action to be taken by TCEQ. The subject of the complaint may or may not be under TCEQ's jurisdiction. The complainant may or may not be anonymous.

### 1.2. Confidentiality

#### 1.2.1. Complainant Information

As policy, the Agency holds all complainant information confidential. To the extent possible, TCEQ will hold as confidential the complainant identity, and all information that could lead to the identification of a complainant. Access to complainants' names and addresses will be generally limited to Agency personnel. Complainant contact information will be documented in the Contact Maintenance tab of the Incident in Consolidated Compliance and Enforcement Data System (CCEDS) and on the Incident Data Entry Form but will not be released unless directed by the Office of the Attorney General (OAG) in response to an open records request. When conducting investigations resulting from a complaint, the investigator and regional management will take reasonable measures to protect the identity of the complainant.

Some circumstances may occur in which revealing the complainant's identity is necessary. If the role of the complainant changes (e.g. from complainant to a party to a hearing), the Agency cannot guarantee confidentiality. Additionally, if a complaint results in a formal legal proceeding, the court or administrative law judge may require the complainant's identity to be disclosed. Additionally, in order to substantiate the violations, the complainant's testimony at the legal proceeding may be necessary. The complainant may be required to testify when Citizen Collected Evidence (CCE) is used in a formal enforcement proceeding and should be informed of this possibility at the time the evidence is accepted.

Issues regarding confidentiality should be made clear to the complainant when obtaining their information. Only if the complainant wants to be anonymous and no record is kept of their identity, can the Agency guarantee complete confidentiality. If programmatic issues exist regarding confidentiality and the investigation of a complaint, provide this information to the caller at the time of initial contact. For example, the *Odor Complaint Investigation Procedures* document states, "With regards to anonymous complaints, the investigator would not be able to confirm a nuisance condition but could still investigate the source of the odor." Complainants should be given information on the Web Access to Complaints Information (WACI) page on the TCEQ website. The

complainant should also be provided a copy of the incident number, if available, and given instruction on how to navigate that page to obtain information regarding the investigation of the complaint.

### **1.2.2. Tier II Community Right-to-Know Chemical Reporting Information**

Before proceeding with a Tier II complaint, regions should refer to Section 2.4 regarding Complaint Referrals. As policy, the Agency holds all Tier II information under the Emergency Planning Community Right-to-Know Act as confidential. To the extent possible, TCEQ will hold as confidential the Tier II identity, and all information that could lead to the identification and/or location of a Tier II facility. Access to a Tier II facility's name, location, and all other identifiers will be generally limited to Agency personnel. Tier II facility information and identifiers may be documented in the Incident Page, Program Association, Customer Role Maintenance, and Incident Source Name tabs of the Incident and within all tabs of the Investigation List in CCEDS and on the Incident Data Entry Form but will not be released unless directed by the OAG in response to an open records request. When completing investigations resulting from a Tier II complaint, the investigator and regional management will take reasonable measures to protect all identifying information of the Tier II facility, particularly in the narrative of the investigation report.

## **2. Initial Notification of a Complaint**

### **2.1. Notification of a Complaint**

The collection of the initial information is key in conducting an effective and efficient investigation. A complaint can be received by the Agency in a variety of formats, such as walk-in, telephone, petition, letter, fax, or e-mail. Documentation of the information is the same for all these contact methods.

#### **2.1.1. Incident Data Entry Form**

Each region should utilize an incident data entry form when taking information from the complainant during the initial notification. The format and appearance of the form may vary from the example; however, the form used must include all complaint information for CCEDS data entry. An example of an incident data entry form is located in Appendix A, along with the minimum fields each form should have. Use the information in the following sections to properly fill out the incident data entry form.

#### **2.1.2. Asking the right questions**

Where is the alleged activity occurring? Try to get the precise location of both the site where the effect was experienced and the alleged source. It is important to get a valid street address including city, county, and ZIP code, or landmarks to locate rural locations (referring to mapping tools during the call may help the complainant describe the exact location).

When does it occur (late at night, only on weekends)? How long has this activity gone on? If the activity happened years ago, what recent occurrence prompted the call (e.g., former employee, illness)? Does this complaint fall into the category of complaints not routinely investigated by TCEQ (See Appendix B)?

What is the nature of the problem? Which media does it involve? What is the impact or effect? Does the occurrence constitute an imminent threat to the environment or public safety? Get specific details about what the complainant believes is the problem, including details about the materials, potential hazards, etc. Has the complainant contacted another agency regarding this incident (e.g., Environmental Protection Agency (EPA), local government, Department of State Health Services (DSHS), Railroad Commission of Texas (RRC))? Did the complainant communicate with the media about the situation?

What company or other entity does the complainant think is responsible for the activity and why? What evidence or basis does the complainant have for believing this party is responsible? Get specific details, including contact names, addresses and phone numbers if available, and the type of activity that may be the source of the problem.

Always repeat all information to ensure accuracy. Try to be clear in the questions to the complainant and in what is written down.

### **2.1.3. Providing Basic Information to the Complainant and to the Subject(s) of the Complaint**

The investigator must provide to the complainant and the subject(s) of the complaint information about the agency's complaint policies and procedures (Tex. Water Code § 5.177(a)). This can be accomplished through providing the link or directing the complainant and subject(s) of the complaint to the TCEQ webpage, "[How TCEQ Handles Environmental Complaints](https://www.tceq.texas.gov/compliance/complaints/handle_complaint.html)"

[https://www.tceq.texas.gov/compliance/complaints/handle\\_complaint.html](https://www.tceq.texas.gov/compliance/complaints/handle_complaint.html)

Note that the TCEQ Publication GI-278: "Do You Want to Make an Environmental Complaint? Do you Have Information or Evidence" may also be provided but does not satisfy the requirement to provide policies and procedures.

The investigator must provide this information before the completion of the complaint investigation and should attempt to provide this information during initial contact with the complainant and each subject of the complaint.

Programs have protocols for the handling of specific types of complaints (e.g., nuisance odor, water rights, etc.). See program specific investigator

guidance and manuals for additional information. Specific information regarding these types of investigations should be provided as necessary for these programs.

#### **2.1.4. Tier II Community Right-to-Know Chemical Reporting:**

If a region receives a complaint alleging concerns specific to the Tier II program, the region should send an email to Tier2Help@tceq.texas.gov. This email should include as much information as possible, such as the information included on Attachment A.

The Critical Infrastructure Division (CID) Tier II Program will evaluate the complaint and determine the appropriate response. If an investigation is required, the division that conducts the investigation will create an incident in CCEDS. For general guidance, see examples below.

CID will evaluate all Tier II complaints and take appropriate actions as follows:

- If a complaint can be handled in-house, then the complaint will be investigated by CID.
- If an on-site investigation is needed for a complaint, and the facility is currently regulated by another TCEQ program (other than by the Tier II Program), then the complaint will be referred to the appropriate region for investigation.
- If an on-site investigation is needed for a complaint, and the facility is not known to be currently regulated by another TCEQ program (other than by the Tier II Program), then the complaint will be investigated by CID.
- If an on-site investigation is needed for a complaint related to an Ammonium Nitrate Storage Facility, then the complaint will be investigated by CID.

The region always reserves the right to initiate/expedite a complaint investigation for reasons of public health and safety, or if it is determined to be in the best interests of the agency. See Tier II Guidance on FODWeb for more information.

#### **2.2. CCEDS Incident Data Entry**

The program or division that is investigating the complaint (i.e. complaint coordinator, administrative assistant, management, or an investigator) will enter the initial complaint information into CCEDS as soon as possible, but no later than five working days after the region receives the complaint. The “Received Date” located on the CCEDS incident tab is the initial date received by TCEQ from a complainant or a referring agency. Information entered into the Incident window in CCEDS is available to the public through the WACI web page. In order to improve data entry and to ensure complainant confidentiality, the guidelines listed below have been created for complaint incident data entry.

Sometimes TCEQ receives correspondence via email that is automatically generated and may resemble a complaint /allegation. In the comments, a STEERS incident report is referenced. These are often generated from a listserv. For correspondence received through [CMPLAINT@tceq.texas.gov](mailto:CMPLAINT@tceq.texas.gov), Program Support Section will send a standardized response and archive the correspondence. The original external emails will no longer be forwarded to the Regions for a response. If a Region receives this type of correspondence directly, it is recommended that they not enter the incident in CCEDS or respond. The region should forward the correspondence to [CMPLAINT@tceq.texas.gov](mailto:CMPLAINT@tceq.texas.gov).

### 2.2.1. Description Field

Prior to CCEDS entry, a supervisor or delegate must review the information to be entered into this incident field of CCEDS. Do not reveal the regulated entity, location of the regulated entity, complainant or suspected source of the information. If the complainant alleges Tier II Community Right-to-Know Chemical Reporting issues or is related to the Tier II program, the description cannot reveal this.

### 2.2.2. Comments Field

**Scenario 1:** If an investigation will occur, enter the following statement:

**More information will be available upon approval of the investigation report.**

**Scenario 2:** If an incident will be referred to another entity (See Section 2.4), enter the following statement:

**This complaint has been referred to the Texas Department of State Health Services (example agency). Contact information for the agency is XXX-XXX-XXXX.**

For complaints referred to the RRC, use the appropriate RRC District phone number and RRC-provided complaint form.

**Scenario 3:** If not investigated, enter the applicable statement from below:

**This complaint is already being addressed by another on-going investigation and can be referenced in Investigation No. xxx.**

*OR*

**This complaint does not meet the necessary criteria for conducting a complaint investigation.**

*OR*

**This complaint does not meet necessary criteria for conducting a complaint investigation and the concerns outlined in this complaint will be addressed in an emissions event review.**

*OR*

**After consulting with the complainant, the allegations are no longer occurring. The complainant withdrew the complaint.**

*OR*

**This anonymous complaint did not include enough information to conduct an investigation.**

### 2.2.3. Actions Taken Field

**Scenario 1:** If an investigation will occur, enter the following statement:

**This complaint has been assigned and will be further investigated by an Environmental Investigator.**

**Scenario 2:** If the complaint has been referred and the complainant is not anonymous:

**The complainant has been contacted regarding the referral of this complaint.**

**Scenario 3:** If the complainant wishes to remain anonymous and the complaint has been referred to the RRC, follow the steps outlined in The TCEQ to RRC Complaint Referral Instructions located on FODWeb under Programs / All Investigations / Guidance, the following language is recommended:

**On (insert date here), this matter was referred to the Railroad Commission of Texas.**

**Scenario 4:** In all other cases, leave blank.

### 2.2.4. Complaint Prioritization

Complaints received by the agency are prioritized in CCEDS according to the individual characteristics of the event and its potential impact on human health, safety, and the environment. Complaints should always be addressed as soon as possible, within the assigned priority deadlines. Complaint response priority should be assigned in CCEDS using the criteria located in Appendix C.

### 2.2.5. Effect of Complaint

CCEDS has a drop-down field labeled “Effect.” This field is to report the primary effect of the problem that is being reported by the complainant. The choices on the drop-down list are as follows:

- Environmental: Use when the complainant alleges an environmental impact.
- Financial: Use when the complainant alleges a financial impact.
- General: Use when the complainant does not allege a specific impact.
- Health: Use when the complainant alleges a health impact.



- **Property:** Use when the complainant alleges property damage.
- **Chronic:** Do not use for a complaint incident.
- **Oil and Gas:** Use when complainant alleges impacts from oil and gas activities.

#### 2.2.6. Nature of Complaint

CCEDS has a drop-down field labeled “Nature” on the incident window. Choose the nature code that best fits the situation. The following are the choices on the drop-down list:

- Confined Animal Feeding Operations
- Construction
- Dust
- Smoke
- Edwards Aquifer
- Industrial
- Local programs/ Authorized Agent
- Medical Waste
- Municipal Non-industrial
- Odor
- OSSF -Field Operations Only
- Other
- Outdoor Burning
- Pipeline
- PST
- Sludge Application/BLU
- Stage II
- Stormwater
- Tires
- Used Oil
- Wastewater
- Water Supply Quality
- Water Supply Service
- Landscape Irrigators (Compliance Support Division Only)
- Occupational Licensing (Compliance Support Division Only)
- OSSF (Compliance Support Division Only)

- Low Pressure
- Water Outage
- Microbiological
- Disinfection Residual
- Turbidity
- Natural Disaster
- Tier II

### 2.2.7. Sites with Multiple Complainants

A single site can have multiple complaints filed with the Agency. When the Agency receives more than one call on the same site, issue or condition, within hours, days or weeks of each other from a single or several complainants, the region may choose to handle the complaints by:

Creating separate incidents to document each complainant, all of which can be associated to a single investigation in CCEDS.

*OR*

Creating a single incident which documents each complainant, including phone number and address, using the CCEDS Contact Maintenance window, and each communication, using the CCEDS Incident Contact Communication Log Maintenance window. The “number of persons complaining” information must be updated to accurately reflect any additions.

When the Agency receives many individual calls regarding the same condition (>15), the Regional Director should contact the Area Director regarding the number of complaints. At this point, management must establish a specific plan designed to investigate the complaints effectively. These situations should not be a routine occurrence; field/regional management has the option of specialized handling to adapt to unique situations as they arise.

One investigation may be conducted to address the multiple complaints received. If extensive response is required, a new investigation may be required at the direction of regional management. Other types of workplan events may be associated to the CCEDS investigation as appropriate. New complaints received for the same ongoing issue after a complaint has been investigated, but before the report has been finalized in CCEDS, can be associated to the investigation. If the complaint is received after the investigation is approved in CCEDS, a new investigation should be conducted. The region has discretion not to conduct a subsequent investigation if a violation relating to the specific allegation has been documented and/or is otherwise in the process of being addressed.

Please note that there are CCEDS data entry limitations when multiple complainants or multiple staff are associated to an incident. Please refer

to [Tools, Ideas, and Practices \(TIPs\)](#) page for CCEDS limitations, which can be located on the Program Support Section Sharenet page.

#### **2.2.8. Supervisor's Rights and Responsibilities - CCEDS Incident Data Changes**

To preclude the compromising of data, anyone with a supervisor role in CCEDS is allowed to make changes in the complaint's incident status.

There may be instances where an incident in the "Referred" or "Closed" status requires data changes prior to association with an investigation.. In these instances, anyone with a supervisor role in CCEDS can change the incident status to either Open, Closed, or Referred status, for quality assurance purposes. For an incident associated to an approved investigation, changes must be made via a CCEDs Data Correction Form, available through Sharenet. Information Resources Division (IRD) will verify the requestor is associated with the investigation. Change request forms and completed requests are logged in a database that is shared with OCE.

#### **2.3. Documentation of Communication**

All communication related to the complaint incident should be documented in the Communication Maintenance Window on the investigation side in CCEDS. This includes documenting all phone calls, emails, and mail with the complainant and each subject of the complaint.

#### **2.4. Record Retention of Complaint Information**

The incident data entry form is considered confidential information and is not part of the public information file. According to the Regional Records Retention Schedule, complaint reports (not facility specific), confidential complaint records, and complaint databases, must be held on a retention period of Fiscal Year + 5. The Region should not file complaint information including the incident data entry form, notice to complainant or any other confidential information in the public files, but should retain the records, whether electronically or in the confidential section of the region's file room, according to the retention schedule. All complaint investigation reports related to Tier II Community Right-to-Know Chemical Reporting must be handled as confidential.

#### **2.5. Complaint Referrals**

A citizen may contact TCEQ to get assistance with an issue that is not within the agency's jurisdiction. During the conversation(s) with the complainant, staff can assist the citizen by providing contact information, such as a phone number or complaint form, for another agency with jurisdiction over the issue. The phone call is logged as technical assistance. See Appendix B for complaint referrals. Examples of this include issues with drinking water rates under the jurisdiction of the Public Utilities Commission (PUC), issues with asbestos at demolition sites under the jurisdiction of DSHS, water in gasoline under the jurisdiction of the Texas Department of Agriculture (TDA), etc. If a complaint is received that

falls under the jurisdiction of the RRC, but the complainant is not concerned with preserving their anonymity, staff may suggest the complainant contact the RRC directly. The contact phone number for the appropriate RRC district office should be provided. For complaints that fall under the jurisdiction of the RRC, TCEQ to RRC complaint referral instructions and form is located in Appendix B or on FODWeb under Programs / All Investigations / Guidance must be used.

If a complaint is received through email, mail, referred from another agency, or the complainant understands that the allegation falls under another agency's jurisdiction and requests that TCEQ make a formal referral, then the complaint is entered into CCEDS as an incident. In this case, a CCEDS investigation is not created. When documenting a referred complaint in CCEDS, enter the incident in accordance with Section 2.2. Under Customer Role Maintenance in the CCEDS Incident, the agency to which the complaint is referred should be selected and the role should be changed to "Referred To." The priority selected should be "Refer or Do Not Respond." In the Incident Detail window, the status of the complaint should be changed from "Open" to "Referred." A region may choose to formally refer a complaint to the appropriate jurisdiction by utilizing the *Referral Letter to Complainant* and the *Referral Letter to Referee*, which are located on FODWeb.

If, during an investigation, it is determined that all or a portion of the complaint is not within TCEQ's jurisdiction, then the complaint will be referred via the incident side of CCEDS. The referral will also be noted in the narrative of the investigation report.

There are instances in which local, regional, or federal governments have the authority and resources to conduct investigations of citizen complaints. These include city and local governments; Local Air Programs (LAP); Authorized Agents for On-Site Sewage Facilities (OSSF); local government solid waste projects for which Councils of Government (COG) administer pass-through grants; and occupational health and safety complaints for which the United States Department of Labor Occupational Safety and Health Administration (OSHA) provides regulatory authority. There are also instances in which divisions other than regional offices will respond. For example, complaints regarding Tier II Community Right-to-Know Chemical Reporting will be referred to the CID. CID will evaluate whether or not an on-site investigation is required and may ask the region to conduct an investigation. The region should make this referral in a timely manner and inform the complainant (see section 2.1.4).

#### **2.5.1. Local Air Program:**

In some regions, a local governmental authority has been delegated responsibility for responding to complaints within its jurisdiction. In those areas that have such local programs to investigate complaints, complaints should be referred to the controlling entity. Local programs will investigate and document complaints according to the guidance provided in this document. When referring the complaint to a contracted LAP, relay the information to the LAP and the LAP will enter it into CCEDS.

### 2.5.2. Authorized Agent:

OSSF Authorized Agent authority is issued by an Agreed Order with the Agency. The Authorized Agents are responsible for responding to complaints within their areas of jurisdiction. The investigations conducted and actions taken by Authorized Agents are not tracked in CCEDS. For further information, refer to the OSSF Investigator Manual.

### 2.5.3. Local Government Solid Waste Program and COGs:

The 74<sup>th</sup> Legislative session (1996) produced House Bill 3072 that directed TCEQ to allocate a portion of its solid waste fee appropriation for grants to local governments. In addition, the bill required the Agency to allocate the solid waste grant funds among the 24 COGs. The COGs administer pass-through grants for regional and local solid waste projects (i.e., illegal dumping, used oil, etc.). Each regional office maintains a list of local government contacts for complaint referrals.

### 2.5.4. Municipal Separate Storm Sewer Systems (MS4):

Permitted Phase I and traditional Phase II MS4's may adopt ordinances or other regulatory mechanisms that provide the permittee with the authority to implement enforcement actions within the boundaries of their MS4. The investigations conducted and actions taken by permitted MS4s are not tracked in CCEDS.

### 2.5.5. Regulated Asbestos Containing Materials:

DSHS handles complaints concerning the removal and handling of regulated asbestos containing materials (RACM). Demolition of any commercial or public building requires notification and an asbestos survey. The DSHS Asbestos Program strives to prevent unnecessary exposure of the public to asbestos in the workplace and buildings and to assure proper disposal of asbestos. While TCEQ does require proper disposal of RACM and documentation of its disposal in a Type I municipal solid waste (MSW) landfill, the majority of RACM requirements fall under DSHS jurisdiction. Complaints concerning the removal and handling of RACM can be sent to the DSHS Asbestos Program at (512) 834-6747. More information on the DSHS Asbestos Program can be found on their website.

Per TCEQ's MSW regulations (30 TAC §330.171), RACM is a special waste and its disposal is allowed in a Type I MSW landfill. The receiving facility (Type I MSW landfill) is required to dedicate a specific area or areas of the landfill to receive RACM and shall provide written notification of this to TCEQ. The receiving facility is required to maintain documentation of the locations of placement of RACM within its Type I landfill, for the life of its facility. More information can be found on TCEQ's Special Waste Disposal page.

### 2.5.6. Occupational Safety and Health

Complaints can be received that are worker / occupational related in nature and may not involve any environmental impact(s). Employees and their representatives also have the right to file a complaint and request an OSHA inspection of their workplace if they believe there is a serious hazard or their employer is not following OSHA standards. When a complaint falls under the jurisdiction of OSHA, the complainant should be referred to the OSHA website for complaint filing options. If there is an emergency or the hazard is immediately life-threatening, the complainant should contact the OSHA Regional or Area Office or 1-800-321-OSHA. The OSHA Region 6 area offices in Texas can be located on their website.

### 2.6. Complaints Not Routinely Investigated

There are categories of complaints that TCEQ does not routinely investigate. See Appendix B.

## 3. Preparation and the Pre-Investigation Process

To conduct an effective and efficient investigation, it is vital the investigator prepares themselves prior to conducting field work. To prepare for a complaint investigation, refer to the Pre-Investigation section of the *Field Operations Standard Operating Procedures (FOSOP) Investigation Guidance* document.

Complaint investigations do not require prior notice-of-investigation. Complaint investigations are unscheduled and on-demand. However, notification should be made by the investigator to the complainant, if not anonymous, prior to the investigation, to inform the complainant that the complaint has been assigned for investigation (see the 'Contacting Complainants' section). The investigator should not contact alleged sources, unless necessary for access. One example of this would be Texas Department of Criminal Justice (TDCJ) facilities, where prior notification would be necessary to obtain access and maximize TCEQ investigator safety. Investigators should contact the current TDCJ Deputy of Prison and Jail Operations (see Appendix B). At minimum, notice need only be given the day that TCEQ staff are intending to visit the facility.

Care should be taken not to provide or provide minimal advance notice where contact for access is necessary. The goal of a complaint investigation is to replicate the complainant's experience. The most effective way to do this is to observe the alleged source during their normal routine operations without prior notice, if possible. Refer to the Scheduling section of the *FOSOP Investigation Guidance* document.

For complaints involving nuisance odors, refer to the *Odor Complaint Investigation Procedures* document.

### 3.1. Contacting Complainants

For incidents that are prioritized as Emergency Response, Immediate Response, or Expedited Response in accordance with the classifications listed in Appendix C, the assigned staff members must investigate the complaint either immediately or within one working day of being assigned. Investigators should

contact the complainant if more information is needed to investigate the allegation; however, the initial contact from the complainant is sufficient to initiate the complaint investigation for these high-priority complaints.

For incidents that are not prioritized as above, the assigned staff member will contact the complainant within one business day of the complaint being assigned. Staff will notify the complainant that their complaint has been received and assigned for investigation. During the notification, the complainant will be informed of the approximate date on which the complaint will be investigated, the investigation process, and the process for finalizing the complaint (see section 2.1.3).

## 4. Site Investigation

### 4.1. Complaint Site Investigation

The investigation should be conducted as outlined in the *FOSOP Investigation Guidance* document. Refer to Field Operations program specific investigator guidance for media specific guidance. Refer to the Odor Complaint Investigation Procedures document for complaints involving nuisance odors.

Entrance and exit interviews will be conducted as outlined in the FOSOP Investigation Guidance document.

There are instances when a complaint received alleges issues against multiple facilities. A CCEDS investigation report shall be generated for each of these facilities where violations are documented. In the case where the complaint is not confirmed, one investigation report may be generated. A CCEDS complaint incident can only be associated to one investigation. See the CCEDS Complaint Manual.

Prior to conducting an investigation at any site, the staff shall be familiar with all applicable agency investigation and safety protocols including but not limited to:

- FOSOP Investigation Guidance;
- Odor Complaint Investigation Procedures;
- TCEQ Safety Manual;
- TCEQ OPP Chapter 6, Safety Section 6.08; and
- Hydrogen Sulfide Investigation Guidance at Oil and Natural Gas Sites.

For complaints alleging concerns from flaring at oil and natural gas production sites, it is recommended to make available and share GI-457, "Flaring at Oil and Natural Gas Production Sites", with the citizen to supplement investigation activities.

There may be instances during an investigation in which the Optical Gas Imaging Camera (OGIC) is utilized. A fact sheet has been developed that describes the use of the OGIC and provides contacts in the Agency for obtaining more detailed information. The fact sheet and its protocol document are available to anyone interested in TCEQ activities associated with the OGIC

and will be provided upon request. Additional information regarding OGIC protocol and the information sheet can be located on the OGIC FODWeb page.

Investigations at isolated locations, unauthorized disposal sites, or investigations in confrontational situations pose particular investigator safety concerns. When investigating these situations, having additional field staff, law enforcement, or personnel from other agencies accompany the investigator may be prudent and appropriate. The investigator should only continue the investigation as long as they feel confident with site conditions and have no health and/or safety concerns.

There may be instances when the location referenced in the complaint cannot be located and the complainant cannot be contacted to verify the complaint location. In these instances, the investigator will document the steps taken to locate the site in the investigation report and the incident will be closed.

Refer to the FOSOP Investigation Guidance for obtaining access to investigate a site when the investigator is unable to make contact with the regulated entity.

#### 4.2. Authority, Access, and Right of Entry

The *FOSOP Investigation Guidance* includes information on an investigator's authority and right-of-entry. Also included is information on what to do if the owner or operator denies the investigator entry into a site.

#### 4.3. Citizen Collected Evidence (Texas Water Code (TWC) §7.0025 and 30 Texas Administrative Code (TAC) §70.4)

The term "citizen collected evidence" is not defined in statute or rule but is used to describe information provided by a private individual to show a possible violation. Complainants may provide evidence during an investigation, such as Odor Logs, photographs (physical or digital), or video. This citizen collected evidence may be used in the investigation in accordance with 30 TAC §70.4, Enforcement Action Using Information Provided by Private Individual. Additional information is available on the TCEQ webpage on "Gathering and Preserving Information and Evidence Showing a Violation":

[https://www.tceq.texas.gov/compliance/complaints/protocols/evi\\_proto.html](https://www.tceq.texas.gov/compliance/complaints/protocols/evi_proto.html)

Evidence that includes photo and video information should be submitted in accordance with RG-544, Citizen Collected Evidence Photo and Video Documentation Procedure. Use of the "TCEQ Photo Plate Example" in the guidance is recommended but is not required.

Receipt of citizen collected evidence should be documented using the "Citizens Collected Evidence - Acknowledgement Letter" template, available on FODWEB.

If citizen collected evidence is submitted but not used, the complainant should be informed, and physical evidence should be returned. Digital information that is not used should be permanently deleted from the investigation file.



## 5. Post Investigation

### 5.1. Updating CCEDS

After the investigation has been conducted, the incident should be updated, if necessary, according to Section 2.2 and then be associated to the investigation (which automatically closes the incident).

### 5.2. Complaint Investigation Report

The content of the complaint investigation report should include how and when the complaint was investigated, who investigated the complaint, the results/findings of the investigation, and how the complaint was addressed. Investigation findings shall be documented as outlined in the *FOSOP Investigation Guidance* document. Programs have protocols for the handling of specific types of complaints (e.g., nuisance odor, water rights, etc.). See program specific investigator guidance and manuals for additional information.

There should be no reference to the complainant (name, location, etc.) in the body of the report, nor any description that would identify the complainant. Peer review must ensure that any such information is redacted from the report before supervisor approval in CCEDS. The complaint investigation report is to be approved in CCEDS within 60 days following the conclusion of the investigation. Extenuating circumstances that cause the report to be approved after 60 days should be documented in the report as appropriate.

### 5.3. Multi-media Complaints

Complaints may involve multiple program areas. Complaint information should be provided to the appropriate section for coordination and possible multi-media investigation.

There is no “multimedia” status or incident type in CCEDS, however, multiple programs must be chosen within the incident and investigation(s) when applicable.

### 5.4. Notification of Complaint Findings

#### 5.4.1. Notice to Complainants

The region must notify each complainant in writing of the results of the complaint investigation when the investigation is approved. This may be accomplished by sending a letter via hardcopy or email and a copy of the or link to approved CCEDS investigation report. The standard letter to the complainant is located on FODWeb on ShareNet.

For complaints investigated under Tier II Community Right-to-Know Chemical Reporting provisions, a separate Tier II investigation letter (located on FODWeb or ShareNet) should be sent to the complainant. This letter should summarize the results of the investigation and a copy of the confidential investigation report should not be provided.

If for any reason the region cannot provide a notice to the complainant, such as the complaint is anonymous or contact information was not provided, the regional investigator should document the reason(s) in the investigation report.

#### **5.4.2. Notice to Respondents**

The region must notify the subject of the complaint (the respondent) in writing of the results of the complaint investigation when the investigation is approved. This may be accomplished by sending an appropriate notice letter indicating the investigation findings, which may include a General Compliance, Notice of Violation or Notice of Enforcement letter.

The region shall maintain copies of all notice letters according to the Regional and Agency Records Retention Policies and Schedules (located on ShareNet). The region shall handle the notices to complainants as confidential documents due to the complainant information contained on the correspondence.

#### **5.5. Quarterly Updates (TWC §5.177(b))**

It is a statutory requirement that for every complaint received, the Agency must make quarterly notifications of investigation status to the complainant(s), and the subject(s) of the complaint, until final disposition of the complaint. Final disposition includes verification of compliance or issuance of violation(s) and documentation in the CCEDs incident window. There are extenuating circumstances when an investigation may exceed the 60-day investigation deadline.

If the complainant and the subject(s) of the complaint have not been provided with notification of investigation findings within 90 days of filing the complaint, the regional office will be responsible for these notifications. If the complaint is referred to enforcement (by issuance of a Notice of Enforcement (NOE)) or litigation, this requirement will become the responsibility of the appropriate division.

Quarterly updates should be documented in the CCEDS Investigation Communication Maintenance Window.

#### **5.6. Procedure for Continuing Unconfirmed Complaints**

TCEQ has established a procedure to handle continuing unconfirmed complaints, in which the region has taken all feasible actions and a complainant continues to call the Agency to complain. In this situation, the Regional Director, or designated representative, will prepare a memo recommending discontinuance of complaint investigations. The memo will be submitted to the Area Director for review and/or approval.

### 5.6.1. Regional Recommendation Memo

The goal of the memo is to provide sufficient documentation to support the regional request. The regional recommendation memo should explain the complaints that have been reported and the region's response. Supporting information may include:

- Name(s) and address(es) of complainant(s)
- Name and address of the complaint source
- Description of the nature of the complaints
- Number of complaints and complaint investigations
- Date, time and nature of each complaint
- Date, time and summary of complaint investigation results
- Discussion of any enforcement activity related to these complaints
- Discussion of any additional or unusual actions by the region (samples, monitoring, after-hours investigations, etc.)
- Discussion of any actions by the company in response to these complaints
- Discussion of any additional or unusual circumstances regarding the complainant(s) or the complaint source that contributes to the conclusion that additional investigations are unwarranted

### 5.6.2. Central Office Review

The Area Director will review the facts of the case and the reasons for the recommendation to cease complaint investigations. If the Area Director determines the region has taken all appropriate actions, and that there is no benefit to continued investigations, the region will cease response to these complaints. The Area Director may solicit input from other parties such as Office of Legal Services, Enforcement Division, and any other source they deem necessary.

### 5.6.3. Notification to Complainant

If the review process results in the decision to discontinue response, the Regional Director will notify the complainant(s) by letter that the Agency has done all it can do, and that it will no longer respond to that individual's complaints against that entity. Typically, this letter will include a commitment by the regional office to conduct routine compliance investigations, as necessary, to ensure compliance with Agency rules and regulations.

If a specific regulated entity is identified, the approved Regional Recommendation Memo should be added to the facility's file. If a regulated entity is not identified, then the memo should be filed in the generic county file. Correspondence to the complainant should also be maintained according to record retention policies. If the complainant

continues to file complaints, the region must create an incident in CCEDS and enter the following statement in the Comments field: This complaint does not meet the necessary criteria for conducting a complaint investigation. If conditions change, the regional office may re-assess this decision. Evaluating further investigation of the site will be determined by the Area Director and Regional Director.

### 5.7. Closure

A complaint incident is automatically placed in a "closed" status in CCEDS when it is associated to a CCEDS investigation. This does not signify the closure of a complaint. The closure of a complaint occurs when the investigation report is approved in CCEDS. Investigation reports are typically approved and considered closed when no further regional action is necessary, when the responsible party is implementing a plan of corrective action, the case has been referred to the Enforcement Division for formal enforcement, or the case has been referred to the Remediation Division for remediation and closure.

Complaint investigations will follow the investigation and completion deadlines as outlined in the *FOSOP Investigation Guidance*. Please refer to the specific program investigator manuals for specific deadlines.

## Appendix A - Incident Data Entry Form

### Minimum Fields Required

The Incident Data Entry form in this appendix is an example of a form that can be used by the regions for complaint intake. The use of a form is required but the regions have flexibility to change the form or format. The following fields have been determined to be minimum requirements on an incident data entry form utilized by the regions:

1. **Received Date** - As mentioned in Section 2.2, this is the date the complaint is received by TCEQ.
2. **Complaint Contact Information**
3. **Complaint Allegation or Description** - The information entered on the Incident Data Entry Form is the true allegation made by the complainant, which includes regulated entity names, locations, etc. The Description Field in CCEDS will not have the same information. See Section 2.2.1.
4. **Priority** - Use the information located Appendix C to determine correct priority.
5. **Start and End Time**
6. **Effect** - See Section 2.2.5
7. **Nature** - See Section 2.2.6
8. **Duration**
9. **Frequency**
10. **Media and/or Program**
11. **Regulated Entity Information** - Location for input of name/address
12. **Incident Location or Directions**

TCEQ REGION INCIDENT DATA ENTRY FORM									
Region:	Incident Tracking #:	Received Date:	Enter a date	Assigned To:	Taken By:				
<b>CONTACT (complainant confidential information)</b>									
Contact Name:			Organization Name:		Notification:				
			<input type="checkbox"/> UNKNOWN <input type="checkbox"/> ANONYMOUS		Initial				
Type of Address:	Address:		City:		State:	Zip Code:			
Choose an item.									
Type of Phone:	Phone#:		Email Address:						
Choose an item.									
Communication Date:		Communication Time: (e.g., 1800 hours)		Communication Method:					
Enter a date				Choose an item.					
<b>PROGRAM/JURISDICTION</b>									
<b>Air Programs</b>		<b>Water Programs</b>			<b>Waste Programs</b>				
Choose an item.		Choose an item.			Choose an item.				
<b>INCIDENT DETAIL</b>									
RN#:		Regulated Entity Name:			Significant Incident?				
		<input type="checkbox"/> GENERIC ZIP CODE			NO				
Address:		City:		Zip Code:					
Start Date:	End Date:	<b>PRIORITY:</b>		Nature:		Receiving Water Body	River Segment		
Enter a date	Enter a date	Choose an item.		Choose an item.					
Start Time: (e.g., 1800 hours)	End Time:	Effect: (✓ one or more)							
		<input type="checkbox"/> Environmental		<input type="checkbox"/> Financial		<input type="checkbox"/> General			
Frequency:	Duration:	<input type="checkbox"/> Health		<input type="checkbox"/> Property		<input type="checkbox"/> Chronic			
Choose an item.	Choose an item.	<input type="checkbox"/> Oil and Gas		<input type="checkbox"/> Aggregate Production					
<b>CUSTOMER (respondent)</b>									
CN#:		Customer Name:			Role:				
		<input type="checkbox"/> GENERIC PRINCIPAL			Choose an item.				
Type of Address:	Address:		City:		State	Zip Code:			
Choose an item.									
Type of Phone:	Phone #:		Email Address:		Other:				
Choose an item.									
<b>DESCRIPTION/ACTION/COMMENT ***Viewable by Public on Web Accessible Complaint Information***</b>									
<b>Description:</b>									
<b>Action Taken:</b>		This complaint has been assigned and will be further investigated by an Environmental Investigator. (or leave blank – if the complaint is being referred)							
<b>Comments:</b>		<b>CHOOSE ONE:</b> More information will be available upon approval of the investigation report. This complaint has been referred to the _____. An ongoing investigation is already addressing the complaint and can be referenced in Inv. # _____. This complaint does not meet the necessary criteria for conducting a complaint investigation.							
<b>Incident Location:</b> (Geographic location description, (e.g., ½ mile from the oak tree on Pleasant Lane))						<b>County:</b>			
<b>Complaint Allegation:</b>									

## Appendix B

### Complaints that are Referred or are Not Routinely Investigated

#### General

1. Continuing unconfirmed complaints which have met criteria to discontinue complaint investigations. Refer to Section 5.6.
2. Complaints that do not fall under TCEQ statutory jurisdiction.
3. Complaints against facilities that have not begun regulated activities.
4. Complaints of stressed vegetation or sick animals without a report from a qualified expert (such as the county extension agent, a veterinarian, etc.) indicating a cause/effect relationship.
5. Complaints where the complainant has not first sought relief from the entity with primary jurisdiction (e.g., LAP, Authorized Agents, Local Government). In these instances, regional management will determine if these complaints will be investigated by the region or referred to another jurisdiction.
6. Complaints regarding Tier II Community Right-to-Know Chemical Reporting will be referred to the CID. CID will evaluate whether or not an on-site investigation is required and may ask the region to conduct an investigation.
7. Complaints regarding Oil and Gas that fall under the jurisdiction of the RRC.

#### Air.

1. Complaints about odor from mobile sources. Refer to the *Odor Complaint Investigations Procedures* located on ShareNet.
2. Complaints of nuisance dust emissions from a public road that is not currently under construction (unless covered by 30 TAC §111.141).
3. Complaints of emissions which impacted the complainant while traveling on a public road, and for which health impacts were not alleged.
4. Anonymous nuisance complaints where an identifiable aggrieved party is necessary to substantiate confirmation of the alleged situation (Refer to the *Odor Complaint Investigations Procedures* located on ShareNet).
5. Complaints regarding indoor air quality.

#### Water

1. Complaints involving private wells when there is no allegation of contamination from a specific off-site source.
2. Complaints that meet TWC §11.086 criteria regarding overflow caused by the diversion of water.
3. Complaints regarding issues with drinking water rates fall under the jurisdiction of the PUC.

## Waste

1. Complaints of octane value, water content and other contaminants, distillation, vapor pressure, and ethanol content in gasoline; in diesel the flash point, water content and other contaminants, cetane index, and viscosity are referred to the Texas Department of Licensing and Regulation.
2. Complaints concerning the removal and handling of regulated asbestos containing RACM fall under the jurisdiction of the DSHS.

## Complaint Referrals to the Railroad Commission of Texas

In accordance with the 30 TAC §7.117 Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality, TCEQ to the Railroad Commission of Texas (RRC) will ensure effective coordination of actions and cooperative sharing of information. The referral process detailed below will allow for consistent documentation and routing of complaints determined to be under RRC jurisdiction.

Before proceeding with the guidance below, to determine if the RRC has primary regulatory jurisdiction over a complaint, please review the following information:

[https://www.tceq.texas.gov/assets/public/assistance/sblga/oil-gas/statewide\\_oilgas\\_prog\\_info.pdf](https://www.tceq.texas.gov/assets/public/assistance/sblga/oil-gas/statewide_oilgas_prog_info.pdf)

<http://www.rrc.texas.gov/about-us/resource-center/faqs/railroad-commission-authority-and-jurisdiction-faq/>

## CCEDS

After the complaint has been entered in CCEDS following protocol for complaints in the CCEDS manual and once confirmed that the complaint meets the necessary criteria to be referred to the RRC:

- In the Incident Detail tab, status should be changed from “Open” to “Referred”
- In the Incident Detail tab, priority should be changed to “Refer or Do Not Respond”
- In the Action Taken tab, the following language is recommended:
  - “On (insert date here), this matter was referred to the Railroad Commission of Texas”.
- In the Customer tab, the CN#/Name should be changed to CN601065006 (CN for the RRC)

If the complainant is not concerned with preserving their anonymity, staff may offer the complainant the option of contacting the RRC directly, by providing a contact phone number to the appropriate RRC district office. If the complainant prefers that TCEQ make the referral, the following process will be used.



## Appendix C - Complaint Prioritization

Complaints received by the Agency are prioritized in CCEDS according to the individual characteristics of the event, and its potential impact on human health, safety, and the environment. Complaints should always be addressed as soon as possible, within the assigned priority deadlines. Incident response priority should be assigned in CCEDS using the following criteria. Virtually all complaints should be investigated in 30 days or less.

Based on Regional management discretion, assigned priority for all complaint responses, except emergency response, could be postponed due to weather or weekend/holiday consideration. Note that a complaint prioritization is based on the information given during the initial contact. The complaint priority can be changed based on clarifying information being received.

- **Emergency Response:** Complaints received which constitute an imminent threat to public health, safety, or the environment require an immediate emergency response. These events will be classified as emergency response incidents rather than complaint response incidents. Agency Emergency Response is conducted seven days a week, 24 hours a day, with Regional staff on-call to respond.
- **Immediate Response:** Complaints received which do not require dispatch of Emergency Response personnel but are reporting human health effects require immediate response. These complaints should be investigated as soon as possible, within 24 hours of receipt by the Region.
- **Expedited Response – Poultry Odor:** In accordance with Section 382.068 of the Texas Health and Safety Code and Sections 26.302, 23.304 & 26.305 of the Texas Water Code, complaints received concerning odor(s) associated with a poultry facility or the land application of poultry litter by the poultry facility require a response within 18 hours of receipt by the Region if one of the following conditions exists:
  - It is a second complaint against a poultry facility concerning odor associated with:
    - (A) The facility, or
    - (B) The application of poultry litter to land by the same poultry facility; or
  - A complaint concerning odor(s) from a poultry facility at which the agency has substantiated odor nuisance conditions in the previous 12 months.

All poultry odor complaint investigations should be captured in CCEDS using:

**AFOPOULCMPL** – Poultry Odor Complaint or

**AFOPOULFI** – Poultry Odor Follow-Up Investigation.

Poultry odor complaint violation record reviews should be captured using:

**AFOPOULFRR** – Poultry Odor NOV File Record Review.

- **Expedited Response – Oil and Gas Odor:** Complaints received concerning odor(s) associated with oil and natural gas activities statewide require an expedited response if the agency has substantiated odor nuisance conditions in the previous

12 months at the alleged source of the complaint. These complaints will be investigated within one (1) working day.

- **Response within five working days:** Complaints received which are not considered an imminent threat to human health, safety or the environment, but are considered high profile incidents require a response. These complaints should be investigated as soon as possible but no later than five (5) working days from receipt by the Region.
- **Response within fourteen calendar days:** Complaints received which are not considered an imminent threat to human health, safety or the environment, but have some potential for negative impact on public health and safety require a response. These complaints should be investigated as soon as possible but no later than fourteen (14) calendar days from receipt by the Region.
- **Response within thirty calendar days:** Complaints received which are not considered an imminent threat to human health, safety or the environment, but have some potential for negative impact on the environment require a response. These complaints should be investigated as soon as possible but no later than thirty (30) calendar days from receipt by the Region.
- **Response on other time frame:** If a complaint incident cannot be investigated within 30 days of receipt by the Region due to a source or complainant being unavailable, this category can be used to put the complaint “on hold” until an investigation can be conducted. The file should reflect the expected time frame for investigation. An example would be if the facility which is the subject of the complaint is shut down for over thirty days from the complaint received date. This category cannot be used without approval from Regional management.
- **Refer or Do Not Respond:** Complaints received that will be referred or which the agency will not investigate will not require a response. This includes complaints which are referred to another entity, and the incident status should be changed to “Referred.” For complaints which TCEQ does not routinely investigate and continuing unconfirmed complaints for which a decision has been made to discontinue response, or respond in some other specified manner, the incident status should be changed to “Closed.”