



## Comments on Proposed Rulemaking: General Enforcement January 6, 2012

The Water Environment Association of Texas (WEAT) and the Texas Association of Clean Water Agencies (TACWA) appreciate the opportunity to comment on TCEQ's proposed rulemaking for general enforcement. WEAT and TACWA members are responsible for the design, operation, and maintenance of publically owned wastewater collection and treatment systems all across Texas.

At the stakeholder meeting on December 6, 2011, agency staff at the request of TCEQ's Commissioners asked for additional input on the ten questions originally posed to stakeholders on August 2, 2011. WEAT has previously responded to those questions. However, the commissioners are particularly interested in additional responses to Question # 9: Should the ED include (in rule) when a deferral is offered to a respondent? The Commissioners are interested in hearing stakeholders' opinions about whether the procedure for penalty deferrals should be in rule or guidance.

Upon further discussion and consideration, **WEAT and TACWA believe that procedures for granting penalty deferrals are most appropriately included in guidance such as the Penalty Policy.** Having this guidance in policy will allow the Executive Director and Commissioners flexibility to deal with unusual cases and the ability to correct any unintended consequences that might occur as a new policy is developed and implemented.

WEAT's previous response is shown below:

"Yes, WEAT supports a rule with clear expectations for when a utility is eligible for deferral of an administrative penalty under 7.034 of the Texas Water Code. We ask that a reasonable approach to determining financial ability to pay be developed which would allow more utilities to qualify for deferral.

We also note that in the Sunset legislation there is a provision to allow public utilities the option to apply administrative penalties to Supplemental Environmental Projects (SEP). Where will

that procedure be outlined? How will the Commission determine whether deferral or an SEP is appropriate for a given respondent, or will it be up to the respondent to request a particular option?

WEAT suggests that deferral might be appropriate in cases where the Commission feels it necessary to “hold feet to the fire” in order to get violations corrected. In other words, the respondent is not off the hook for the penalty until the facility is in compliance. SEPS could be used in other cases to effectively defer the penalty.”

Thank you for the opportunity to comment. If you need any additional information, feel free to contact me at 512-924-2102 or [carol@weat.org](mailto:carol@weat.org).

Sincerely,

A handwritten signature in cursive script that reads "Carol Batterton".

Carol Batterton  
Executive Director  
Water Environment Association of Texas  
1825 Fortview Road Suite 102  
Austin, Texas 78704