



WEAT ▪ 1825 Fortview Road Suite 102 ▪ Austin, Texas 78704 ▪ www.weat.org

Comments on General Enforcement Policy August 30, 2011

The Water Environment Association of Texas appreciates the opportunity to comment on TCEQ's proposed rulemaking regarding a general enforcement policy. We would like to provide the following comments on the questions posed in the memo of July 5, 2011, at the Commissioners' Work Session.

Question 1 – Should Chapter 70 be revised to include a general philosophy on why the commission assesses administrative penalties?

WEAT has no objection to the inclusion of a general philosophy statement similar to the example in the memo to Commissioners' Work Session dated July 5, 2011. We do suggest one modification to the language as shown below:

The purpose of an administrative penalty is to deter noncompliance with the commission's rules and to address any significant economic benefit resulting from the noncompliance.

Full recovery of economic benefit of noncompliance may not be a realistic goal in all circumstances, and particularly in the case of a public utility, it may be difficult to calculate accurately, if at all.

Question 2 – Should Ch.70 include criteria which will describe when a corrective action order (i.e., no penalty order) is warranted and should a corrective action order be included in compliance history?

WEAT strongly supports the use of corrective action orders and notes that this enforcement tool (compliance agreement) has been used effectively by TCEQ in the sanitary sewer overflow initiative for wastewater utilities. Since corrective action orders may be entered into voluntarily, the orders should not be a component of compliance history.

Question 5 – Should Ch. 70 include a description of how economic benefit is considered in assessing penalties?

WEAT supports the inclusion of a general statement regarding economic benefit. As we pointed out above, economic benefit may be a different consideration for a public utility than it is for a private entity. We support the proposed language included in Section (d) allowing the Executive Director to consider whether the respondent is a governmental entity when adjusting the penalty for economic benefit.

Question 8 – Should the E.D. include how compliance history is used to assess a penalty?

Yes.

Question 9 – Should the E.D. include when a deferral is offered to a respondent?

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.

Question 10 – Should Ch.70 include information on how Other Factors is considered in assessing penalties?

Yes. We support the proposed language included in proposed Section (6) allowing the Executive Director to consider whether the respondent is a governmental entity when adjusting the penalty for Other Factors as Justice May Require.

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.

Sincerely,

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

Carol Batterton
Executive Director