



WATER ENVIRONMENT ASSOCIATION OF TEXAS

Preserving & Enhancing the Water Environment of Texas

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

Comments on Proposed Revisions to the Penalty Policy September 9, 2011

The Water Environment Association of Texas (WEAT) appreciates the opportunity to comment on TCEQ's proposed revisions to the Penalty Policy. WEAT is a non-profit technical and educational organization whose members include scientists, engineers, utility managers, operators, and regulators. Our members are responsible for the design, operation and maintenance of wastewater collection and treatment systems all across Texas.

We would like to provide the following comments on the proposed revisions to TCEQ's Penalty Policy:

1. Definition of water quality major. TCEQ's current penalty policy and the proposed revision define water quality majors as "Municipal facilities with a daily average flow of 1 million gallons per day or greater". We recognize that this definition is consistent with EPA's definition of a major facility for permitting purposes. However, given the increase in the penalty cap for wastewater facilities required by TCEQ's Sunset bill, we suggest that the definition of water quality major be modified for purposes of penalty calculation to classify facilities over **5 million gallons per day** as major facilities. We point out that a municipality with a daily average flow of 5 million gallons per day (MGD) is likely to be a city with a population of less than 25,000 and the assessment of a 100% penalty as indicated in the Environmental/Property and Human Health Matrix could be excessive. We believe there needs to be a buffer for the smaller "major" facilities.

The 5 MGD designation is consistent with EPA's threshold of 5 MGD for establishment of an industrial pretreatment program, and would address concerns regarding over-penalizing non-profit political subdivisions with limited resources to address ongoing operations. An alternative to revising the major designation could be to create a "medium" category for facilities between 1 and 5 MGD. This would require further adjustment to the Penalty Policy, which is why we favor changing just the size designation for major facilities for political subdivisions.

2. Economic benefit. WEAT whole-heartedly supports the proposed revision on p. 17 which would eliminate economic benefit enhancement for local governments.

3. Financial inability to pay. In the current economic climate, we anticipate that many municipalities will have difficulty funding corrective actions while also paying increased administrative penalties. The Legislature has now provided two avenues of relief (Sections 7.034 and 7.067 of the Texas Water Code) for publically owned utilities to be able to fund corrective actions with funds that might ordinarily be used to pay administrative penalties. However, in order to be able to take advantage of this relief, the utility must pass a fairly stringent test to demonstrate financial inability to pay. Our past experience has indicated that very few municipal entities meet the criteria under the model that the agency presently uses. Although not explicitly covered in this penalty policy, we encourage TCEQ to revisit its approach to evaluating financial inability to pay for publically owned utilities. WEAT would be happy to work with the agency to develop an approach that would allow more public utilities to take advantage of the mechanisms that the Legislature has provided to deter noncompliance without unduly burdening taxpayers with penalties.

Thank you for the opportunity to comment on this policy. 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