



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

Testimony to House Committee on Environmental Regulation
HB 2694
April 6, 2011

Good afternoon, Mr. Chairman and Members:

My name is Carol Batterton and I am the Executive Director of the Water Environment Association of Texas (WEAT). We are a non-profit technical and educational organization whose members include scientists, engineers, utility managers, operators, and regulators. Collectively, our members are responsible for the design, operation and maintenance of wastewater collection and treatment systems all across Texas. We are a state member association of the Water Environment Federation.

We are here to today in support of HB 2694. However, we would like to offer several comments and suggestions for this bill. All of our comments deal with Article 4 of the bill.

We very much support the idea of substituting the compliance history language from Chairman Smith's bill HB 2431 into HB 2694. We believe the language in HB 2431 is more comprehensive and addresses some the real issues that regulated facilities have had with the current compliance history process.

We have concerns about Article 4 Section 4.04 of HB 2694. WEAT has concerns about increasing the penalty cap for violations at sewage treatment plants from a maximum of \$10,000 up to \$25,000, particularly when the cap for drinking water plant violations is only \$5,000. WEAT understands the logic for this provision, but disagrees that an increase in penalty cap is necessary for publicly owned sewage treatment plants in the water quality category.

As noted in the Sunset staff report, the limited resources of local governments are best used in correcting the problems rather than paying fines. We believe that it is appropriate to leave the cap for water quality violations for political subdivisions at \$10,000, and likely more appropriate to lower it to \$5,000. We note that the same local government will only be subject to a \$5,000 penalty cap for violations associated with their drinking water system, but could see a fivefold increase in penalties for violations at the sewage treatment plant. Alternatively, TCEQ could be directed to develop a separate penalty scale for local governments in rule that would have a ceiling of less than \$25,000 for sewage treatment plants.

WEAT has concerns about Article 4 Section 4.05. We are very much in favor of a process which would allow local government to direct dollars that might go for penalties to correcting the problem which caused the violation rather than putting the funds into general revenue. However, we have concerns about using the SEP process to do this. We believe that the SEP process was designed to allow respondents to direct penalty dollars to projects that are above and beyond compliance.

We would point out that Section 7.034 of the Texas Water Code (added by HB 147 in the 80th Session) currently allows TCEQ to defer payment of all or part of an administrative penalty for public utilities on the condition that the utility complies with all provisions of a corrective action in a commission order to address the violation. See below:

Sec. 7.034. DEFERRAL OF PENALTY FOR CERTAIN UTILITY FACILITIES. (a)

In this section:

(1) "District" means any district or authority created under either Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, regardless of how created. The term "district" shall not include any navigation district or port authority created under general or special law or any conservation and reclamation district governed by Chapter 36 unless a special law creating the district or amending the law creating the district states that Chapter 49 applies to the district.

(2) "Municipally owned utility" and "water supply or sewer service corporation" have the meanings assigned by Section 13.002.

(b) The commission may allow a municipally owned utility, a water supply or sewer service corporation, or a district to defer the payment of all or part of an administrative penalty imposed under Subchapter C for a violation on the condition that the entity complies with all provisions for corrective action in a commission order to address the violation.

(c) In determining whether deferral of a penalty under this section is appropriate, the commission shall consider the factors to be considered under Section 7.053 and the following factors:

(1) the financial position of the entity and its ability to reasonably pay the costs of corrective action under the terms of a commission order;

(2) risks to public health and the environment of any delay in addressing the corrective actions as a result of limited financial resources;

(3) alternatives reasonably available to the entity for paying both the costs of corrective action and the penalty; and

(4) potential effects of the payment of the penalty on other essential public health and safety services for which the entity is responsible.

(d) At the discretion of the commission, any penalty deferred under this section becomes due and payable on a commission determination that the entity is not in compliance with a provision for corrective action in a commission order to address the violation.

Added by Acts 2007, 80th Leg., R.S., Ch. [1005](#), Sec. 1, eff. September 1, 2007.

It is our understanding that TCEQ has rarely implemented this portion of current statute due to difficulty with the requirement for the commission to assess the financial ability of the utility to pay. Assessing the entity's financial ability to pay is also included in HB 2694 and would likely cause the same difficulty for TCEQ.

WEAT's suggestion is that rather than creating a new avenue for TCEQ and public utilities to handle penalty assessments, that the current statute be modified so that TCEQ is able to implement it fully. We would be happy to work with your office and TCEQ to provide language to address this issue.

Thanks so much for your time. Please let me know if I can provide you with any additional information.

Thank you,

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

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