Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commission Agenda **Date:** November 2, 2011

Thru: Richard A. Hyde, P.E., Deputy Director, Office of Compliance and Enforcement

From: Richard C. Chism, Interim Director, Field Operations Support Division

Subject: Field Citation Updates

Issue Addition of violation types and updating the applicable penalties contained in the Field Citation Program

Background and Current Practice

At the April 27, 2007 Commissioner's Work Session, the current list of eligible field citation violations and penalty amounts were adopted. In response to the recently approved Penalty Policy revision at the September 28, 2011 Work Session we are now coming before the Commission to adjust the penalty amounts associated with the Field Citation Program to reflect changes in the statutory maximum penalties and to enhance the violations that are currently contained in the program. Therefore, the Executive Director (E.D.) is seeking direction on, or approval of, violations and corresponding penalty amounts to be contained in the Field Citation Program. The E.D. would also like to make non-substantive changes as needed.

Question 1 - Should the penalty amounts included in a Field Citation be updated to reflect the changes in the increased statutory maximum penalties where applicable?

Option 1: Do not adjust Field Citations to reflect the current increased statutory maximum penalties.

Option 2: Adjust the Field Citations to reflect the current increased statutory maximum penalties.

Recommendation: Proposed revisions are found in Attachment 1.

Question 2 – Should the E.D. add additional violations to the Field Citation Program?

Option 1: Do not add any additional violations to the current Field Citation Program.

Option 2: Add any/all of the additional suggested violations with assessed penalties listed in the chart below to the Field Citation program.

Recommended Additions to Field Citation Violations

Program / Violation Description	Citation/Proposed Penalty
Petroleum Storage Tank	
Failure to verify proper operation of the Stage II equipment in accordance with required test procedures at least once every 12 months	115.245(2) Major - $5,250 Minor - $2,625
Failure to monitor USTs for releases at least once a month (not to exceed 35 days between each monitoring)	334.50(b)(1)(A) Major - $5,250 Minor - $2,625
Piping in a UST system shall be monitored in a manner which will detect a release from any portion of the piping system	334.50(b)(2) Major - $5,250 Minor - $2,625
Municipal Solid Waste	
A person may not cause, suffer, allow, or permit the dumping or disposal of MSW without the written authorization of the commission. * Less than 20 cubic yards	330.15(c) $875
Air	
No person may cause, suffer, allow, or permit any outdoor burning within the State of Texas, except as provided by this subchapter or by orders or permits of the commission	111.201 $875
Landscape Irrigation	
All forms of advertisement of irrigation installation, maintenance, alteration, and repair must include the irrigator's license number in the form of LI_____. This includes vehicles, written and electronic advertisements, business cards, and estimates.	344.70(a) 344.70(b) $175
Failure to comply with local regulations for permitting or inspections as required by the city, town, county, special purpose district, public water supply, or political subdivision of the state.	344.24(a) 335.35(d)(2) 335.35(d)(3) $175

Question 3 – Should the E.D. add an additional violation category to the existing Water Right Field Citation violation to include language specific to times of curtailment or suspension?

Option 1: Do not change the water rights violation.

Option 2: Add an additional violation category to the existing Water Right Field Citation violation to include language specific to times of curtailment or suspension. Suggested revisions below.

Water Rights	
Impounding, diverting, or using state water without a required permit	TEX. WATER CODE §11.081 TEX. WATER CODE §11.121
Any unauthorized diversions or use of state water (permitted or not permitted) where water diversion curtailments/suspensions have been ordered by the Executive Director (including Watermaster).	TEX. WATER CODE §11.053

Recommendation: Modify the Water Rights Field Citation language by approving Option 2.

Question 4 – Should the E.D. modify the Major/Minor designation for water right violations?

Option 1: Do not change the Major/Minor designation categories.

Option 2: Address the maximum amount of water displaced allowable under a Field Citation by changing Major/Minor designation categories. Suggested revisions below.

Water Rights	
Impounding, diverting, or using state water without a required permit	TEX. WATER CODE §11.081 TEX. WATER CODE §11.121
Current designations	**Minor: 0 - 0.5 acre/feet** **Major: >0.5 - 1 acre/feet** *--More than 1 acre/feet=not eligible for Field Citation.*
Proposed designations	**Minor: 0 - 0.5 acre/feet.** **Major: >0.5 - 10 acre/feet.** *--More than 10 acre/feet=not eligible for Field Citation.*

Recommendation: Change the maximum amount of water displaced under a Field Citation by approving Option 2.

Question 5 – Should the E.D. increase the penalty amounts for Water Rights violations during times of suspension or curtailment?

Option 1: Do not change the penalty amounts for Water Rights violations during times of agency curtailment or suspension.

Option 2: Set increased penalty amounts for the additional Water Rights violations during times of agency curtailment or suspension. Suggested revisions below.

Water Rights	
Impounding, diverting, or using state water without a required permit	TEX. WATER CODE §11.081 TEX. WATER CODE §11.121
Any unauthorized diversions or use of state water (permitted or not permitted) where water diversion curtailments/suspensions have been ordered by the Executive Director (including Watermaster)	TEX. WATER CODE §11.053
Current penalty amounts without option for enhancement	Minor - $350 Major - $875
Enhanced penalties due to curtailment or suspension	Minor – 0 to 0.5 acre/feet **(penalty**: $420) Major – >0.5 to 10 acre/feet **(penalty**: $1050)

Recommendation: Provide a penalty enhancement for the stated violation during times of agency curtailment or suspension by approving Option 2.

ATTACHMENT 1

Current Field Citation Violations with New Proposed Penalty Amounts
November 2, 2011

Program / Violation Description	Citation	Current Field Citation Penalty Major	***Proposed Field Citation Penalty Major***	Current Field Citation Penalty Minor	***Proposed Field Citation Penalty Minor***
Petroleum Storage Tank					
Failure to provide release detection	334.50(a)(1)(A)	$3,500	***$5,250***	*$1,750*	***$2,625***
Failure to provide corrosion protection	334.49(a)(1)	$3,500	***$5,250***	*$1,750*	***$2,625***
Failure to implement inventory control methods	334.50(d)(1)(B)	$3,500	***$5,250***	*$1,750*	***$2,625***
Failure to provide spill containment and overfill prevention	334.51(b)(2)	$3,500	***$5,250***	*$1,750*	***$2,625***
Failure to possess a valid TCEQ Delivery Certificate prior to receiving fuel	334.8(c)(5)(A)(i)			$875	***$875***
Failure to have Stage I vapor recovery equipment	115.221	$1,750	***$2,625***	$875	***$875***
Failure to have Stage II vapor recovery equipment	115.241	$1,750	***$2,625***	$875	***$875***
Failure to submit initial/renewal UST Registration and Self-certification form	334.8(c)			$875	***$875***
Failure to maintain Financial Assurance	37.815(a) and (b)	$1,750 per tank	***$2,625 per tank***	$700 per tank	***$875 per tank***
Failure to obtain a required occupational license (PST)	30.5(a)			$210	***$175***

On-site Sewage Facility					
Failure, by an installer, to ensure that an authorization to construct has been issued prior to beginning construction of an On-site Sewage Facility (OSSF)	285.61(4)			$175	***$175***
Dry Cleaners					
Purchasing the dry cleaning solvent perchloroethylene with a non-perchloroethylene registration	337.4(f)			*$875*	***$525***
Distributing or selling dry cleaning solvent perchloroethylene without proper registration	337.12(a)(1)			*$875*	***$525***
Failure to obtain a valid, current Dry Cleaning Facility Registration	337.10(a)(1) or 337.11(e)			$100 <30 days overdue #days x $4	***$100 <40 days overdue #days x $2.50***
Water Rights					
Impounding, diverting, or using state water without a required permit	TWC §11.081 TWC §11.121	$875	***$875***	*$350*	***$350***
Stormwater					
Failure to obtain a Construction General Permit (stormwater)	281.25(a)(4)			*$700*	***$875***
Failure to obtain a Multi-Sector General Permit (stormwater)	281.25(a)(4)			*$700*	***$875***
Occupational License					
Failure to obtain a required occupational license	30.5(a)			$210	***$175***