

# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

**To:** Commissioners' Work Session      **Date:** September 28, 2011

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

**From:**  Bryan Sinclair, Director, Enforcement Division

**Subject:** Implementation of HB 2694 – Adoption of General Enforcement Policies

**Issue** Consideration of rulemaking regarding revision to 30 Texas Administrative Code Ch. 70

### **Background and Current Practice**

HB 2694 of the 82<sup>nd</sup> Legislature requires the Commission to adopt a general enforcement policy that describes the commission's approach to enforcement. Some of the Commission's general enforcement policies currently exist in 30 Texas Administrative Code Ch. 70.

A stakeholder meeting was held August 2, 2011 to receive input from the public and to respond to questions. The meeting was available to watch remotely through webcast on the Texas Admin site and is archived for future viewing. Questions and comments were taken during the meeting and an email was set up to take comments from remote participants. There were approximately 35 persons in attendance representing industry, trade associations, small business, local government, consulting firms, law firms and environmental advocacy groups.

Fourteen comment letters were received during the public comment period from members of the public, trade associations, and environmental advocacy groups. The majority of the comments were in response to the questions TCEQ staff posed to the Commission at the July 5, 2011 work session. These comments will be taken into consideration as the draft rule is prepared. Those who provided comments supported the concept of putting a general enforcement philosophy into rule but there were differences of opinion on how much detail should be included beyond this general philosophy. There was no unanimous support for including the tools of enforcement such as Corrective Action Orders, Findings Orders, Referral to the Attorney General, Economic Benefit, Culpability, Compliance History, Good Faith Efforts to Comply, and Other Factors with the exception of deferrals. There were many comments regarding revisions to the penalty policy specifically, which are outside the scope of the General Enforcement Policies rule.

With the Commission's approval, the Executive Director (E.D.) will return to a future work session later this calendar year to present a plan for proceeding with the rule project. In addition, the E.D. plans to present a rule proposal for the Commission's approval at the March 28, 2012 agenda.