

**Chairman Kathleen White
Commissioner Ralph Marquez
Commissioner Larry Soward**

**MARKED AGENDA
Friday, March 10, 2006
Texas Commission on Environmental Quality
9:30 a.m.
Room 201S, Building E
12100 Park 35 Circle**

1. Discussion of the Monthly Enforcement Report.

Item presented by Anne Dobbs, Program Specialist with the Enforcement Division, and John Racanelli with the Revenue Section of the Financial Administration Division.

The commissioners requested additional information in the Monthly Enforcement Report that showed how many of the orders issued were from the backlogged enforcement orders.

No action taken.

2. Consideration of Enforcement Review Implementation status, including the implementation of the Penalty Policy and Compliance History Rules.

Item presented by John Steib, Deputy Director of the Office of Compliance and Enforcement, Mary Risner, Acting Division Director of the Litigation Division of the Office of Legal Services, and John Sadlier, Division Director of the Enforcement Division of the Office of Compliance and Enforcement.

The commissioners directed staff to continue using a formula rather than a criteria based approach to the compliance history calculation; to consider ways to factor complexity into the compliance history formula; to consider self-reported violations as a component of compliance history only when they are included in an issued order or judgment; to consider ways to add positive factors (such as early compliance with a rule, C2 certification, and Environmental Excellence Awards) to the compliance history formula; to consider changing the "Average by Default" classification to "Unclassified" and adding a "Superior" classification; to consider redefining repeat violator as having more than one of the "same" major violation; to consider using only the customer classification rather than the individual compliance history components when calculating a penalty; and to consider allowing a regulated entity to request an opportunity to review their rating, classification, and compliance history components prior to posting on the agency website.

The Penalty Policy items were not addressed at this session.

No action taken.

3. Consideration of Implementation policies regarding the Texas Emissions Reduction Plan program.

Item presented by David Schanbacher, Chief Engineer, Lynne Haase, Manager of the Implementation Grants Section of the Office of the Chief Engineer, and Steve Dayton, Team Leader of the Grants Development Team.

The Commissioners agreed with the proposed criteria for a new Request for Applications (RFA) for Emissions Reduction Incentive Grants and authorized staff to proceed with the RFA. The Commissioners also tentatively agreed with the proposed criteria for a new Rebate Grants Program, pending any questions or comments they may individually have upon review of the complete Notice of Rebate Grants document being routed for review.

The Commissioners reviewed the proposed grants time line, and commented that statute envisioned the rebate grants program as an ongoing program, rather than having a short-term application submission deadline. Staff proposed that the initial implementation of the rebate grants program be conducted as short-term pilot project, after which the criteria and forms and processes could be re-evaluated before a longer-term program is implemented. The Commissioners generally accepted this approach.

Finally, the Commissioners answered staff's questions regarding the preparation of a new funding allocation table for TERP. The Commissioners agreed that the funding allocation table should still be based on meeting the existing 1-hr State Implementation Plan (SIP) NOx emission reduction commitments for 2007. In addition, the Commissioners agreed that funding should be allocated only to those areas with a SIP commitment to be achieved through TERP funding. The allocation of funding beyond 2007 would be based on an assessment of the emission reduction needs in the nonattainment areas.

- 4. PUBLIC COMMENT SESSION: The Commission will receive comments from the public on any matters within the jurisdiction of the TCEQ, with the exception of pending permitting matters or other contested cases which are subject to the ex parte prohibition found in Texas Government Code §2001.061. In the interest of time, speakers will be limited to three minutes each, with the total time for public comment limited to one hour.**

Registrant: Tod Wickersham

- 5. Discussion of state and federal legislative issues potentially affecting the TCEQ. The commission may consider legislative proposals and federal rulemakings, as well as other state actions and state's participation in federal legislative and regulatory activities.**

This item was not discussed.

- 6. Closed Session:**

- a. Docket No. 2006-0001-EXE. The Commission will meet in closed session to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Commission's Executive Director, as permitted by Section 551.074 of the Texas Open Meetings Act, Chapter 551 of the Government Code. The Commission may also meet in open session to take action on this matter as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.**

The Commissioners did not meet in executive session.

- b. Docket No. 2006-0002-EXE. The Commission will conduct a closed meeting to receive legal advice and will discuss pending or contemplated litigation, settlement offers, and/or the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of specific Commission employees, as permitted by Sections 551.071 and 551.074, the Open Meetings Act, codified as Chapter 551 of the Government Code. The Commission may also meet in open session to take action on a legal or personnel matters considered in the closed**

meeting as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.

The Commissioners did not meet in executive session.

- c. **Docket No. 2006-0003-EXE. The Commission will conduct a closed session to discuss their duties, roles, and responsibilities as Commissioners of the TCEQ pursuant to Section 551.074 of the Open Meetings Act, Codified as Chapter 551 of the Government Code. The Commission may also meet in open session to take action on this matter as required by Section 551.102 of the Texas Open Meetings Act, Chapter 551 of the Government Code.**

The Commissioners did not meet in executive session.

PERSONS WITH DISABILITIES WHO PLAN TO ATTEND THE TCEQ COMMISSIONERS' WORK SESSION AND WHO MAY NEED AUXILIARY AIDS OR SERVICES SUCH AS INTERPRETERS FOR PERSONS WHO ARE DEAF OR HEARING IMPAIRED, READERS, LARGE PRINT, OR BRAILLE ARE REQUESTED TO CONTACT THE OFFICE OF THE CHIEF CLERK AT (512) 239-3300 AT LEAST TWO (2) WORK DAYS PRIOR TO THE AGENDA, SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE. PERSONS WHO DESIRE THE ASSISTANCE OF AN INTERPRETER IN CONJUNCTION WITH THEIR ORAL PRESENTATION AT THIS TCEQ AGENDA ARE REQUESTED TO CONTACT THE OFFICE OF THE CHIEF CLERK AT (512) 239-3300 AT LEAST FIVE (5) WORK DAYS PRIOR TO THE AGENDA SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE. REGISTRATION FOR AGENDA STARTS AT 9:00 A.M. UNTIL 9:30 A.M. PLEASE REGISTER BETWEEN THESE TIMES. LATE REGISTRATION COULD RESULT IN YOUR MISSING THE OPPORTUNITY TO COMMENT ON YOUR ITEM.