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Backup documents filed with the OCC and distributed to the Commissioners will be added to this document daily until 5:00 p.m. Wednesday before the given work session date. Updates to backup documents will be noted by a purple indicator. Documents filed less than two days before the work session date will not be added to this document. Please note that some documents such as those of irregular size (i.e. oversized maps) cannot be viewed here and that color documents will be posted here in black and white.

Chairman H.S. Buddy Garcia MARKED AGENDA
Commissioner Larry Soward

Friday, September 7, 2007

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

9:30 A.M.
12100 Park 35 Circle
Room 201S, Building E

Item 1. Discussion of the Monthly Enforcement Report.

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

The commissioners requested that a dialogue be opened between the Executive Director and the Office of the Attorney General to explore the possibility of raising the current \$2500 threshold used to refer enforcement cases to the Attorney General for collection.

No action taken.

Item 2. Discussion and consideration of Enforcement Review Implementation status, including the status of the Penalty Policy and Compliance History.

Item presented by John Sadlier, Deputy Director, Office of Compliance and Enforcement (OCE), and Stephanie Bergeron-Perdue, Deputy Director, Office of Legal Services (OLS). The Commissioners discussed and provided direction regarding outstanding issues required to complete implementation of the Enforcement Process Review. The Commissioners concurred that the proposed changes to the current Compliance History rule concerning the site rating formula, repeat violators, nomenclature of classification, change of ownership, review of data and appeal of classification should be included in a draft rule package to be prepared by the Executive Direc-

tor. Additionally, the Commissioners discussed and provided guidance on eight administrative penalty policy/rule questions.

Question 1. Should the Commission convert the Penalty Policy into a rule? The Commissioners agreed on Option 1: Take some items in the policy and convert them to rule. Leave other items as policy and supplement the policy and rule with guidance documentation.

Question 2. What should the Commission consider when calculating the penalty adjustment for Economic Benefit? The Commissioners directed staff to come up with a hybrid of Options 2 and 3. This would result in evaluating avoided costs separately and recovering the full avoided cost. Delayed costs would be addressed similar to the current policy but changing the threshold from \$15,000 to \$7,500 and adding the economic benefit amount to the base penalty rather than adjusting the base penalty by a percentage. The Commissioners further recommended that there should be flexibility included that would allow for consideration of small political subdivisions and nonprofit organizations provided that corrective action is completed.

Question 3. Should the Commission provide additional decreases to the base penalty based upon whether or not a regulated entity is a small business or small local government? The Commissioners agreed on Option 1: Retain the current policy and continue to designate major/minor sources.

Question 4. What should the Commission consider when calculating the penalty adjustment related to culpability? The Commissioners agreed on Option 2: Culpability should be determined on a case-by-case basis regardless of status of authorization, but not as a specific category.

Question 5. What should the Commission consider in using standard penalties for violations that the current penalty policy classifies as “potential” or “programmatic”? The Commissioners agreed to continue with the direction previously provided at the March 29, 2006 Commissioners’ Agenda.

Question 6. Are there better means of determining the number of events for a given violation than the methodology expressed in the Commission’s current penalty policy? The Commissioners agreed on Option 1: Devise a clearer method for determining the number of penalty events that takes the duration of the violation into account, as well as the level of impact to human health and the environment.

Question 7. Should the Commission change how the compliance history component is used in calculating administrative penalties? The Commissioners chose a modified Option 1 directing staff to escalate the penalty using only previously issued orders but that there would be no ceiling on the percentage that the penalty would be increased, up to the statutory maximum. The Commissioners directed the Executive Director to recommend if 1660 or Findings Orders should be handled differently, to make the recommendation for the percent each order would increase the penalty, and to provide test cases for the proposed recommendation.

Question 8. Under what circumstances when a respondent fails to answer and a Default Order is issued, should the fuel delivery certificate be revoked? The Commissioners agreed on both Scenarios 1 and 2: Revoke the delivery certificate when corrective action is required and when no corrective action is required, only the payment of a penalty and/or payment of fees. Commissioner Soward raised the issue of revoking dry cleaner authorizations when a Default Order is issued against a dry cleaner. The Commissioners asked staff to consider revoking dry cleaner authorizations when there is a default, and if a rule change is required to do so, then pursue a rule change.

The Commissioners also discussed recently enacted HB 147 which allows the Commissioners to defer administrative penalties against particular entities. The Commissioners directed staff to address, in individual follow-up briefings, the issue of whether the Commission may rely on existing authority to defer administrative penalties against entities not listed in HB 147.

Registrants: Karla Meyer representing the San Antonio Manufacturer's Association (SAMA)
Cyrus Reed representing the Lone Star Chapter of the Sierra Club

Item 3. Discussion and consideration of agency rules and policy regarding public notice requirements for water right applications subject to Texas Water Code Section 11.122(b).

Item presented by Robin Smith, Attorney, Environmental Law Division, and Todd Chenoweth, Director, Water Supply Division. The Commissioners agreed the Executive Director would recommend an advisory group to assist in developing a policy that will address which water rights applications should receive notice consistent with the City of Marshall ruling. The Commission also agreed that if any of the 16 currently pending water rights applications wanted to move forward with their application, full notice would be issued.

Registrants: Layla Mansuri representing the Caddo Lake Institute
Myron Hess representing the National Wildlife Federation
Colette Barron representing the Texas Parks and Wildlife Department

Item 4. 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 states' participation in federal legislative and regulatory activities.

Item presented by Leonard Olson, Director of the Intergovernmental Relations Division.

No action taken.

Item 5. 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.

Registrants: There were no registrants for this item.

Item 6. Closed Session.

a. Docket No. 2007-0001-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 Sec-

tion 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 closed session.

b. Docket No. 2007-0002-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 closed session.

c. Docket No. 2007-0003-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 closed 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.

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