

# **Attachment 2**

## **Summary of Public Input**

## **Overview of Trends in the Public Comment**

### **Compliance History Components/Definitions Subcommittee**

- General focus on enforcement activity such as how violations or investigations are considered
- General discussion on what entity (site vs. person) the compliance history should be evaluated.

### **Compliance History Classification Subcommittee**

- General dissatisfaction with the current classification system, including it being too complex and it not measuring true performance.
- General requests to re-evaluate the classification process vis-a-vis the Sunset report, statute, and legislative intent.
- Small businesses seem to be impacted negatively based on the current classification system.

### **Compliance History Use Subcommittee**

- General opinion that those with good compliance history should receive incentives such as tax breaks, public recognition, less administrative burden, reduced fees, and/or less record keeping
- General opinion that those with a poor compliance history should be deterred from noncompliance with increased penalties, more stringent permit requirements, and permit denial/non-renewal.
- Some interest in having no incentives for those with a good compliance history. The opinion being that staying out of enforcement should be the incentive.

### **Enforcement Initiation/Investigation Prioritization/NOV Policy Subcommittee**

- Investigation priorities should focus on improving the environment and protecting natural resources; TCEQ is too focused on paperwork violations.
- Investigation priorities should focus on facilities that do not have the required permits, that pose a potential for harm or a negative impact on the environment, instead of facilities that are trying to “do it right”.
- The quality of investigations is important, not the number carried out.
- The Enforcement Initiation Criteria (EIC) are too rigid and strict.
- Permit violations should automatically result in a penalty.
- Investigators and permit writers have different interpretations of permit requirements and different investigators interpret the rules and permits differently.
- Too much time is spent by investigators and facility representatives arguing rule interpretations and their application to particular facilities.
- The Enforcement Initiation Criteria (EIC) should be applied the same to both small businesses and large facilities.
- At the conclusion of an inspection, facility representatives should be informed of what problems or violations exist.
- Verbal notices of violation are senseless.
- Notices of violation are a very effective tool for improvement and change in the facility’s operations.
- Facilities should be given a longer time to achieve compliance after the inspection.

## Penalty Policy Subcommittee

- The penalty policy should be less subjective, less complicated, and understandable to a lay person – more simplified and more standardized.
- Set specific penalties for specific violations and do not negotiate a lower penalty with the respondent.
- Recapture the full economic benefit received as a result of the noncompliance, focusing on profits realized from pollution. TCEQ should ensure careful assessment of economic benefit by rule or other public participation method, and provide the resources to do so.
- Allow the opportunity to dispute that portion of the penalty attributed to economic benefit.
- TCEQ should only analyze economic benefit in significant cases.
- The external perspective on establishing a small business or local government enforcement policy seems polarized and strongly dependent on the source of the survey. Suggestions for different treatment seem to focus on penalties in proportion to the size of the business in terms of gross receipts.
- Develop a mechanism for small entities outside the contested case enforcement process in which the matter might be informally resolved, perhaps in the region. This separate track for small business would differentiate not only the penalty amount, but in the process itself.
- Assess fines high enough to have deterrent effect. Many comments suggest that penalties be much higher, with no opportunity for negotiation, therefore acting as a stronger deterrent.
- The penalty policy should ensure that the amount of the penalty is more commensurate with the degree of harm. Penalties should be more in line with environmental damage or actual threat to the public.
- There should be consistent penalties for the same violations. TCEQ should establish a predetermined list of penalty amounts proportional to the harm. The penalty policy should set mandatory minimum penalties for specific violations.
- Develop uniform penalties on a violation by violation basis that are charged uniformly in all instances involving that violation.
- TCEQ should institute a different process or penalty scale for violations that are administrative, such as failure to process paperwork or a required report, unless there is actual harm. Some survey respondents suggest that we calculate penalties for administrative violations with some anticipation of what harm might have occurred, while others suggest we should not pursue administrative violations unless there a pattern is established.
- The penalty policy should deal more harshly with repeat violators.
- Under the good faith effort part of the penalty policy, TCEQ should give credit for partial efforts to comply rather than restricting adjustments to those instances where the entity achieves complete compliance.
- The penalty policy should be more available to interested parties, perhaps set by rule.
- In using compliance history to calculate a penalty amount, several commentators raised a concern with double counting of some elements such as a notice of violation (NOV); there are also concerns with the use of self-reported violations and NOVs as a basis for upward adjustments of the penalty.

### **Ordering Provisions Subcommittee**

- Small businesses need longer times to comply with an order due to a lack of financial resources and knowledge of regulatory requirements. Similar comments were made about local governments due to required public approval processes.
- The agency should use administrative orders or compliance plans initially rather than formal enforcement with penalties, especially if violations were not harmful to the environment.
- Field inspectors should be more involved in overall enforcement decisions and requiring definitive, concrete proof of compliance with an order or follow-up by the agency to ensure the violations were corrected.
- Ordering provisions should solve the problem such that it does not occur again. In some cases, orders should include requirements for development of training and or referral to management training to help a company identify its weaknesses.
- TCEQ should provide definitive abatement plans and clearly define what needs to be done in plain language in order to come into compliance. It was also recommended that orders provide for compliance status reports.
- Regarding what should be in an order, several commentors suggested requiring more monitoring and testing and that contracts should be taken away or limited for repeat offenders.

### **Supplemental Environmental Project (SEP) Subcommittee**

- There needs to be a direct environmental benefit resulting from a Supplemental Environmental Project (SEP).
- The process for participating in a SEP should be simpler.
- There is a need for more information regarding the result or benefit of a SEP to the community. Information should include not just that the project was completed but how it benefitted the community.
- There needs to be more public outreach regarding the SEP program so that it is better understood.

### **Collections Subcommittee**

- Collect delinquent accounts promptly.
- Delinquent payments should be subject to collection agencies.
- Slow collections have weakened the enforcement process.
- Follow the recommendations in State Auditor's Office Report 04-016, Dec. 2003.
- The financial means of local governments should be considered in penalty assessment, as they may need to budget or seek public input on fee/tax increases.
- Small businesses should be given a payment plan and their financial means should be considered in penalty assessment.

### **Complaints Subcommittee**

- The agency must ensure that there is a way to accept and quickly respond to complaints (within 24 hours, if possible).
- Investigations of complaints must be thorough and complete, with a response being provided to the complainant.

- The agency must clearly publicize its complaint procedures and have complaint information on the agency's website.
- In order to be able to conduct complaint investigations sufficiently, the agency needs more staff and that staff needs to be sensitive and well-trained.
- The rules and guidance for citizen collected evidence should be made easier for the agency to accept. Contrastingly, some comments said citizen collected evidence should not be accepted by the agency.
- The agency is looking after the interests of industry more than the interests of citizens.
- The agency should better enforce against nuisance odors, specifically landfills.
- Take anonymous complaints. Contrastingly, some comments said do not allow anonymous complaints.
- There needs to communicate more with citizens and industry and the agency should contact industry immediately when a complaint is filed.
- Be objective and use science and common sense when conducting an investigation.

### **Enforcement Process/Agency Coordination Subcommittee**

- The enforcement process is too complex and there is a need for a much simpler process.
- There is a need for a more streamlined process, because the current process is slow and so complex that neither the respondent nor the public can understand it.
- The agency needs a fast track enforcement process or the ability to issue field citations.
- There are not enough investigators and enforcement staff to assure compliance with and enforcement of environmental regulations. The agency needs to find ways to retain experienced staff.
- Current staff is either inadequately trained and/or lack the industry specific experience to effectively fulfill their role as investigators and enforcement staff.
- There is not enough funding to provide for the level of staffing needed or the necessary training and equipment.
- Use penalties collected to fund the enforcement program better.
- Investigators and enforcement staff should be specialized in a particular media.
- The agency should implement career ladders which would allow for experienced investigators to become enforcement coordinators to utilize investigative experience.
- Reallocation will make staff more efficient.

### **Communications Subgroup of Enforcement Process Subcommittee**

- TCEQ should aggressively promote its enforcement efforts, progress, and accomplishments to the general public.
- Increase the use of newspaper, radio, and TV ads. The general public does not know enough about what the TCEQ does or what its accomplishments are.
- The agency should use the website to better publicize enforcement actions and results.
- The agency should work with schools, civic groups, and local elected officials to promote the message of a cleaner environment.
- A media campaign is needed to publicize agency contact information and how to file a complaint.
- Information related to complaints, investigations results, and enforcement cases should be posted on the agency website.
- The TCEQ should publicize that unpermitted facilities and companies will be targeted for enforcement.
- There should be more public education about the enforcement process.