

El Paso Penalty Rule Stakeholder's Meeting
Rio Grande Council of Governments, 1100 North Stanton
December 5, 2005
1:00 pm thru 5:00 pm
Meeting Summary

I. Welcome and Introductions

Jody Henneke, TCEQ Office of Public Assistance, opened the meeting by introducing TCEQ staff Anne Dobbs, Special Assistant to the Director of the Enforcement Division; John Gillen, Office of Public Assistance; and Pamela Aguirre, Compliance Assistance Coordinator, Small Business and Local Government Assistance, TCEQ Region 6 - El Paso.

The following introductory remarks were made by Ms. Henneke: The Commission has been doing a comprehensive review of the agency's enforcement process for the last 1½ to 2 years. The purpose of this meeting is for the TCEQ to take comments on one of the components of that review, the penalty policy. Before starting a formal rule-making process, the Commission directed staff to conduct six stakeholder meetings. This rule making will address how penalties will be calculated but will not address when an enforcement action should be initiated or what constitutes a violation. Comments may also be submitted in writing through December 19, 2005. Following the meetings, Anne Dobbs will post meeting summaries and a list of attendees on the web site.

II. Scope of the Proposed Rule

Anne Dobbs explained that the staff have been directed to take the current penalty policy, make it better, and adopt it as a rule.

There are many elements that the law requires the Commission to consider when calculating a penalty (i.e., economic benefit, compliance history, good faith efforts to comply, nature and extent of the violation, etc). This rule making will specify how these factors will be considered in the penalty calculation. The Commissioners have instructed staff to try to gain a full understanding of what the issues and concerns are related to the penalty policy, before beginning drafting a rule. There have been no decisions made about what will be included in the rule, by either the Executive Director's staff or the Commissioners.

The backup material has five general categories and an "other" category with questions to get the stakeholders thinking about the issues raised during the enforcement process review. We are seeking comments on the backup material including the issues outlined, the current penalty policy, and the possibility of standardized penalties.

At the conclusion of these six stakeholder meetings, we will brief the Executive Director and Commissioners on the comments received during the stakeholder meetings. They will then direct us on how and when to proceed or they may decide not to proceed with a rule. If it is determined that a rule will be developed we will draft a proposed rule and, with Commission approval, we will then publish that rule in the Texas Register for a 30-day comment period. At this point, we don't

know exactly what the Commission will move forward into a proposal or what will happen after it is proposed. There may be a hearing or there may be additional stakeholder meetings - that is undetermined at this point.

III. Procedural Ground Rules

Stakeholders were asked to step up to the microphone and provide comments on the current penalty policy and/or any of the background materials provided. Attendees were reminded that their comments would be summarized, posted on the Agency's website, and shared with the Executive Director and Commissioners.

IV. Opportunity for Comments on the Major Elements of the Proposed Rule or Related Issues

There were no comments from attendees.

V. Closing Remarks

Jody Henneke reminded attendees that the web site would be maintained up-to-date with summaries and names of attendees for each of the six meetings. Attendees were told that the TCEQ staff would be here to take comments until 5:00 pm and were reminded that we would take written comments until December 19, 2005. They were also told that they were welcome to come talk to staff "off the record" but if they wanted to provide comments on the penalty policy and upcoming rule, then we would ask them to speak "for the record" and would turn the microphone and recorder back on.