

**Houston Penalty Rule Stakeholder's Meeting**  
**Houston-Galveston Area Council, 3555 Timmons**  
**November 10, 2005**  
**3:00 pm thru 7:00 pm**  
**Meeting Summary -**

**Includes Both Verbal and Written Comments Provided During the Meeting**

**I. Welcome and Introductions**

Jody Henneke, TCEQ Office of Public Assistance, opened the meeting by introducing TCEQ staff: John Sadlier, Director of the Enforcement Division; Anne Dobbs, Special Assistant to the Director of the Enforcement Division; John Gillen, Office of Public Assistance; Don Thompson, Regional Director, Region 12 - Houston; Catherine Albrecht and Rebecca Johnson, Enforcement Coordinators, Region 12 - Houston; Faye Liu, Office of Public Assistance, Region 12 - Houston; and Cynthia Williams, Small Business & Local Government Assistance Coordinator, Region 12 - Houston.

The following introductory remarks were made by Jody Henneke: The Commission has been doing a comprehensive, or holistic, 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, and capturing that policy into rule form. We are here at the direction of the Commissioners. 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**

John Sadlier explained that the Commissioners directed that the Executive Director obtain stakeholder input regarding the current penalty policy. This Commission is contemplating several revisions to its current policy and may adopt the revised policy as a rule. Items that will be reviewed in this process include, but are not limited to, the definition of small business and small local governments, in what manner the Commission will address economic benefit, compliance history, good faith efforts to comply, and other factors as justice may require. This rule making will specify how these factors will be considered in the penalty calculation. This rule making will not address what types of violations will be referred for an enforcement action. Staff does not contemplate that the Administrative Penalty Rule will directly address supplemental environmental projects or field citations, however, the rule will likely reference these projects.

At the conclusion of these six stakeholder meetings, we assume that the Commission will request that staff draft a proposed rule. At this point in time, we are uncertain as to how the Commission will move forward with the proposal.

**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 told that their comments would be summarized, posted on the Agency's website, and shared with the Commissioners. No final decisions have been made on any aspects of the rule making at this time.

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

**The following comments were received from stakeholders:**

##### **Economic Benefit**

In almost all instances, the economic benefit would equal only the cost of compliance.

##### **Small Business/Small Local Governments**

Income levels should not be associated with the definition of a small business. The definition should be 100 or fewer employees only. Gross income has little relation to profits, especially in industries such as automobile recyclers where cost-of-goods are so high. Another example would be an Automobile Auction Pool, where the gross sales of the cars are multi millions, but the sales price is then turned over to the vehicle seller (insurance companies), and the small buyers fee and sellers fee are the only funds that go to pay the few employees and operating expenses.

##### **Good Faith Efforts to Comply**

The rule should provide for good faith reductions when some or all violations are corrected. This will encourage faster compliance.

##### **Culpability**

When an entity does a self inspection and voluntarily reports, a reduction in penalty should be provided to encourage respondents to report. Also, there should be a reduction for permitted entities, which would be a further incentive to obtain a permit.

##### **Standard Penalties**

Standard penalties should be established to make the enforcement penalty process more transparent.

##### **Other Issues**

The TCEQ should develop a strawman rule and go back out for comment from the public before publishing as a draft rule.

#### **V. Closing Remarks**

Attendees were told that the TCEQ staff would be here to take comments until 7:00 pm. 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.