

Detail of Written Comments Received from Stakeholders – Outside of the Stakeholder Meetings

Economic Benefit

What should the Commission consider when calculating the penalty adjustment for Economic Benefit? For example:

Should the rule require that all of the realized economic benefit gained through the violation(s) be recovered through the administrative penalty?

Yes, otherwise there is not an "adequate punishment" for the crime and they would get a "benefit" from the violation.

All realized economic benefit gained through the violations should be recovered through the administrative penalty.

The \$15,000 threshold for economic benefit enhancement should be eliminated and the TCEQ should recover economic benefit up to the statutory caps rather than adjusting the base penalty.

The full economic benefit should be recovered regardless of whether the violations involve actual harm or are egregious, whether or not the respondent is a "major", and/or whether or not the penalty is mitigated due to an inability to pay determination.

First time violations should not have an economic benefit penalty for small business, because the cost of compliance for most small business is itself a substantial economic impact alone.

When calculating the penalty adjustment for economic benefit, it should include all benefits earned by the non-compliance. Only when companies learn that there is no benefit for violations, will they work to stop them.

TCEQ should only attempt to recover economic benefit where a company avoided the installation of required controls and it is clear that there was an economic benefit to that noncompliance. In such cases—which TIP predicts are rare—it is appropriate to recover that economic benefit through an administrative penalty.

A penalty should be adjusted based on the economic benefit of noncompliance only when it is clear that a company has avoided installing required controls and, as a result of the failure to install those controls, realized a cost savings. A decision to disregard clear regulatory or statutory requirements to save money should trigger a penalty adjustment for economic benefit of noncompliance. A decision that is based on a good-faith interpretation of a complex regulatory requirement should not be considered disregard and should not serve as a basis for penalty adjustment based on a perceived economic benefit.

Except in rare cases, there is no appreciable economic benefit realized from noncompliance with environmental regulations. The calculations used to demonstrate economic benefit frequently fail to take into account all of the variables that must be considered when balancing the economics of noncompliance. These calculations also frequently employ a “perfect hindsight” analysis of what should have been done to avoid the noncompliance. This is an unrealistic approach to the question of economic benefit.

Efforts to assess economic benefits for a municipal entity should be avoided as a waste of taxpayer dollars. Penalties assessed against a municipal entity are passed on directly to the citizens. Ultimately, the citizen taxpayers pay the cost of any required corrective actions, the penalties for the actual violation, any penalty enhancement due to “economic benefits”, and the costs of government on both sides of the enforcement action [example cited TCEQ staff spending time to calculate the “benefit” while staff, lawyers, and consultants of the local government spend time challenging the economic benefit enhancement].

Consideration of economic benefit should be limited to the actual cost avoided by the non-compliance – penalties that seek to otherwise disgorge perceived financial gain are too speculative.

The Commission should not seek to impose more stringent penalties for economic benefit unless there is environmental harm, a knowing violation, or significant competitive advantage relative to other participants in the same market or a competitive advantage such as early market entry in the case of permitting.

Economic benefit should be considered in the penalty process if it demonstrated that the benefit was gained through a practice of avoiding compliance-related issues that would provide an economic benefit to a company. The evidence supporting the economic benefit could be complex and difficult to quantify.

The TCEQ substantially underestimates the economic benefit of noncompliance. For example, in situations where it is clear that insufficient management direction or oversight resulted in a major program failure (e.g., leak detection and repair (LDAR) monitoring), there should be some value ascribed to the avoided costs of managing effective environmental programs. Another example of undercounting is the method by which LDAR monitoring is valued. We are told that the cost of a high quality LDAR contractor, or well-managed plant monitoring, is about 25 cents per component higher than low quality work. When a plant is discovered to have failed to conduct complete LDAR monitoring, the economic benefit reflects only the cost of monitoring the unmonitored components. Such a failure also calls into question the quality of the rest of the LDAR program. Since careful attention to detail is critical to reducing fugitive emissions, the economic benefit calculation should also reflect the incremental cost of high quality monitoring across the entire plant. In general, the methods by which economic benefit are calculated deserve thorough scrutiny and we encourage the TCEQ to initiate a suitable review process.

Yes, any economic benefits gained through a violation should be considered and if it is determined that the violation was willful and/or intentional the benefits should be recovered through the administrative penalty.

• Where a significant economic benefit is evident, should the rule allow the Commission to require the violator to undertake corrective actions that surpass the minimum action required for compliance?

Yes, this would be a greater deterrent for not committing the violation again.

The rule should require the violator to undertake corrective actions that are greater than the minimum action required for compliance.

No, beyond-the-minimum corrective actions should not be required of a violator because it would foster an atmosphere of using enforcement in place of rulemaking.

It may be difficult for TCEQ to find the statutory authority to place a higher corrective action standard on one party versus another.

The rule should not allow the Commission to require a violator to undertake corrective actions that surpass the minimum action required for compliance. To do so establishes a higher standard for compliance, a rulemaking function, through the guise of enforcement. The Commission should not be allowed to demand corrective action beyond what is required for compliance.

If the economic benefits are recovered through the administrative penalty I do not think that the violator should be required to make corrective actions that surpass the minimum action required for compliance – the violator has already paid the penalty and should not be punished twice for the same offense.

• Are there better means of determining economic benefit than the methodology expressed in the Commission’s current penalty policy (see Attachment No. 1)? If so, what are they?

Use the current method and then calculate how much the person and or company gained by doing what they did and add to that the cost of cleanup.

EPA’s BEN model should be used to calculate economic benefit because it has long been used by EPA and other States and has stood up to challenge in court.

Calculating the economic benefit of noncompliance is problematic. There is no single equitable method to calculate economic benefit, and the unintended consequences of doing so would likely be disastrous.

TCEQ’s policy with regard to penalty adjustments for the economic benefit of noncompliance is based on a flawed premise: that there is always an economic benefit

to noncompliance. It is illogical and unreasonable to assume that there is an economic benefit to every noncompliance with an environmental requirement. Recognizing this fact, the U.S. EPA's penalty policy does not automatically assume an economic benefit to any noncompliance. Nor does the Texas Water Code require TCEQ to consider economic benefit in every case. TCEQ should change the premise that an economic benefit always exists and limit applicability of the economic benefit penalty adjustment to circumstances where a true economic benefit was realized.

TCEQ's current methodology often finds economic benefit when there is none, because it requires TCEQ staff to calculate an economic benefit for every noncompliance. TCEQ staff will assume that the company has realized an economic benefit based upon the costs of returning to compliance — that is, the estimated cost of repairs represents an economic benefit because the company *could have* incurred that cost before the violation. This does not reflect the reality of operating complicated industrial sites. Not everything operates as designed and malfunctions will occur despite proper design and operational practices. The occurrence of a violation or failure of equipment does not mean that a company could have, or should have, predicted the malfunction and spent money before the violation occurred to correct the problem. Malfunctions can take place despite an aggressive preventive maintenance program. Application of economic benefit under current practices can actually be construed as a disincentive to fixing a problem related to a noncompliance, because if a company spends money or assigns personnel to fix a problem, TCEQ staff will treat those costs as an economic benefit of noncompliance when assessing any penalty. If a company can demonstrate that it had established and was implementing a reasonable preventative maintenance program, then there should not be any allegation that the company gained some economic benefit because a malfunction occurred and it cost money to make a repair.

The current penalty policy establishes a 50 percent penalty adjustment based on an economic benefit equal to or greater than \$15,000. TCEQ should not establish additional requirements for "significant" economic benefit without changing how it assesses economic benefit and clearly defining what would be considered "significant" economic benefit. As discussed above, TCEQ staff currently treats as economic benefit a number of costs or expenses that are not economic benefits of noncompliance; as a result, TIP believes that penalty adjustments or other requirements based on a "significant" economic benefit are unreliable.

Any economic benefit approach adopted by the TCEQ should be narrowly focused to address the rare instances where a company or municipality intentionally or negligently fails to meet their environmental obligations and the actions result in direct and substantial cost savings. Since this is so rare, it seems an inappropriate use of time and effort to develop a formula for use on limited occasions. It will be very difficult to develop a formula that is fair on all occasions.

Small Business/Small Local Governments

What should the Commission consider when calculating the penalty for a Small Business or a Small Local Government? For example:

- **Should the rule provide a unique definition of “small business” and “small local government” for the purposes of calculating a penalty? If so, what?**

A definition could be made of what is a small business (example: less than five employees) and what is a small government (example: city of less than 5000 or county of less than 15000).

The definition of small business for the purpose of the penalty policy should be namely, a business which employs 100 or fewer people without regard for income. We do not believe that the amount of revenue a small business makes should be a factor in defining a small business because of the difficulty of establishing an appropriate financial “magic number” for small business, which are far-ranging in economic structure and income. If the decision is made to include an income factor, it needs to be very simple to calculate, e.g., using gross sales instead of net sales. We would suggest using a figure of no less than 15 million in gross sales.

Small businesses and local governments are like everyone else - they should not get any special treatment.

This should be defined strictly on the number of employees and this level should be 100 employees or fewer. There should be **no income associated with the definition** due to the complexity of determining an appropriate financial assessment for small businesses across the spectrum. We feel that the employee count is a very effective benchmark since attempting to establish size on revenue is fraught with problems.

If the Commission feels it is absolutely necessary to include an income definition, the financial component of the definition should be very simple to calculate, such as using gross sales (as opposed to net). The definition should be set at no less than 15 million gross sales. This figure has been based on data that the Houston SBAC received from several members on gross company revenues versus number of employees. [Comments almost identical to this one were received from other advisory committees or panels]

The employee component of 100 employees or less is adequate for defining small business. No income related component is necessary.

Small businesses and local governments should be exempt from formal enforcement for first time violations. An alternative would be automatic referral to the Small Business and Local Government Assistance Program for help in resolving violations.

If malice and/or economic benefit can be proven, then penalty and enforcement action shall be the same.

Presently the policy allows for a downward adjustment of the penalty for minor sources. Small businesses already eligible for discounts based on the size of their operations should not be eligible for these discounts as well.

Local governments, especially counties, should be uniquely defined. Counties are different from small business, cities, and other local governments. Counties are administrative arms of the state, partners in accomplishing the people's business, and we hope these rules will strengthen that partnership. Defining a small county can be problematic, but a population of 25,000 and below may be considered a small county.

The Texas Municipal League urges TCEQ to consider the effects any changes to the policy would have on our member cities' ability to meet permit requirements. For example, if TCEQ adopts an expansive definition of "small local government", more cities would qualify for assistance such as downward adjustments of penalties and for deferral of penalties. In other words, a broad definition would allow more cities to focus resources on meeting permit requirements. Currently, 756 of our member cities have a population less than 5,000. We have 886 member cities with a population of less than 10,000. A definition of 25,000 would include an additional 100 cities, resulting in a group of 985 cities.

When calculating penalties, the Commission should consider the unique problems of the small cities (i.e., lack of funds for improvements, difficulty retaining qualified personnel). A small local government might be defined as one with a population of less than ___ or one serving less than ___ customers. Most small governmental entities do not compensate their officers (they volunteer their time to the community), and most have limited knowledge concerning the operations of the water/wastewater systems.

Small businesses might be treated somewhat differently as a for-profit operation. But taking into account the type of violation and the effects on the environment – it may be better to have service from a small privately owned system with a few problems than have unmonitored individual septic systems and untested private wells.

• Should the rule provide for a standard downward adjustment of the penalty for small business and small local government?

I do not believe that a business should have to pay fully for the actions of a single employee unless it is the owner of the business that is being accused. Same for small government, the city or county should not be penalized fully for the actions of one person. Perhaps it could be calculated as to how much that person knew/did to perpetuate the crime and how much other persons in the agency knew.

The rule should not provide automatically for a standard downward adjustment of the penalty for small business and local government.

An across-the-board discount to small businesses and small local governments is unwarranted. TCEQ should, however, have the flexibility in reducing penalties when

small governments or small businesses are making a substantial investment in their operations to address compliance issues and the full penalty would impact their ability to make those investments.

The rule should provide for a standard downward adjustment of the penalty for small business and small local governments because such entities are handicapped in two ways in trying to achieve environmental compliance in the first place. First, small businesses are not as well “plugged in” to the system for becoming educated on environmental rules and regulations. Where many larger businesses belong to both a trade association and a general business association, most small businesses belong to neither, and so lose out on learning about environmental compliance requirements, except by word of mouth. Secondly, small businesses rarely have a staff position, or even part of a staff position, dedicated to environmental compliance and, in general, lack the resources for this kind of position. While ignorance of the law is no excuse, it does seem appropriate to allow some kind of downward penalty adjustment for a small business which was unaware that they were violating the law. A final reason for a downward adjustment is that a small business has less of an ability to pay than a larger business. Often lacking cash reserves, many small businesses operate from “hand to mouth,” and may be unable to pay the full penalty without economic hardship which would endanger jobs.

The rules should provide for a reduction of penalties for small business identical to the sliding reduction scale that OSHA utilizes to set penalties for small business. The SBAC recommends a minimum of a 50% reduction in penalty for a small business.

The proportionality of a fine issued by the TCEQ should distinguish between a small business and a big business. For example, a \$5000 fine levied against a small business owner has much greater impact in its revenues compared to a \$50,000 fine levied against a billion dollar corporation.

A standard downward adjustment of penalties for local governments may be considered as an option.

Yes the rule should provide for a downward adjustment of penalties taking into consideration the finances of the city. But also the commission should consider the type of violation (was it willful? could it have been weather related?) and most importantly the effects on the environment.

- **Should the rule provide for deferral of penalties in lieu of a standard downward adjustment (deferred contingent upon compliance with the administrative order)?**

This deferral could be fair if it was proven the actor was doing this alone without knowledge of other persons.

It would be entirely appropriate for the rule to allow the staff to provide for a deferral of penalties in lieu of a standard downward adjustment (deferred contingent upon compliance with the administrative order).

The rules should allow entities under enforcement and facing a penalty to defer 100% of the penalty with the agreement that an investment will be made in the entity's operations to achieve compliance.

We support the concept of the rule providing for a deferral of penalties in lieu of a standard downward adjustment, provided the contingencies in the deferment are realistic and recognize the limitations of county manpower, administrative complexities, and financial resources in meeting order requirements.

Yes the rule should provide for a deferral of penalties taking into consideration the finances of the city. But also the commission should consider the type of violation (was it willful? could it have been weather related?) and most importantly the effects on the environment.

• Should the rule allow for longer compliance deadlines for small business and small local government?

Deadlines should remain flexible for a case-by-case analysis of the situation. As long as adequate progress is being made then allowances should be made also.

It would be entirely appropriate for the rule to allow longer compliance deadlines for small business and small local government, as each case is considered individually. In addition, since most small business compliance infractions are generally of small risk, it would not be putting the environment in jeopardy to delay compliance.

The rules should allow for longer compliance deadlines for small businesses on a case-by-case basis

It should be clear that all entities regardless of size are required to meet corrective action requirements in a manner that is fair and equitable. For example, a small business or municipality with effluent discharge violations should not be allowed to delay implementation of a corrective action plan when such delay could result in additional costs or harm to another, e.g., downstream regulated entity.

Longer compliance deadlines for local governments should be included in the adopted rules.

The rules should allow for longer compliance deadlines for small businesses and local governments because most of these operations are dependent on grants and loans for any improvements or expansion – the application process is quite lengthy and sometimes there is a waiting period before funds are released.

Good Faith Efforts to Comply

What should the Commission consider when calculating the penalty adjustment related to Good Faith Efforts to Comply? For example:

- **Should the rule provide for good faith reductions when some, but not all, violations are corrected?**

This should be considered when calculating the penalties.

The rule should not provide for good faith reductions when some, but, not all, violations are corrected.

- Yes, the rule should allow credit for partial corrective actions. Under the current policy, no partial credit is given for good faith effort to comply unless all of the violations are completely resolved. Sometimes it takes longer to comply with one of the corrective actions rather than another, especially when the enforcement action addresses an enforcement issue that is historical in nature-- sometimes considerably longer. It would be appropriate to give good faith reductions in calculating the penalty adjustment when some, but not all, violations are corrected. Good faith is good faith, no matter when it occurs. The agency should give credit for good faith in the expectation that others will see the value of quickly completing corrective actions. If no credit is given for partial completion of corrective actions, there is no incentive for the offender or any potential offender to quickly complete corrective actions.

Good faith penalty reductions should be limited to cases where all violations have been corrected and the violators were not culpable.

Since smaller companies have limited economic and human resources, the rule should provide for good faith reductions when some, but not all, violations are corrected. This will encourage early compliance from respondents.

TCEQ Should Allow Penalty Adjustment for Good Faith Efforts to Comply for Discrete (Past) Violations. Current TCEQ policy provides that good faith will not be considered in cases involving discrete (or past) violations, such as emissions events. Thus, even if a company has gone above and beyond to resolve the root cause that resulted in an emissions event or other past noncompliance, and incurred significant expense in doing so, current TCEQ policy is that "good faith" cannot be considered as a potential adjustment to the penalty. The Commission should use the Administrative Penalty Rule to change this illogical position and allow for good-faith penalty adjustments for discrete violations. Such a policy will encourage the type of diligent after-the fact evaluation to prevent future violations and eliminate a policy that fails to recognize what truly are good-faith efforts to attain and maintain compliance.

The rule should allow for penalty reductions based on good-faith efforts to comply when some, but not all, violations qualify for good-faith compliance efforts. The fact that an enforcement action involves one event for which an adjustment for good faith effort to comply cannot be made (e.g., a discrete violation, under the current policy) should not eliminate the potential for penalty reduction based on good-faith efforts to comply. A more equitable policy would consider good faith efforts to comply for every alleged violation, independently. The Penalty Policy should allow TCEQ to consider good faith for each alleged violation, and determine for each violation whether the company has taken action that merits adjustment based on a good-faith effort to comply. Credit for good-faith efforts should not be disallowed merely because a corrective action has not yet been completed for some or all of the violations included in an NOE.

Yes. Good faith efforts are practical demonstrations of an entity's response to the discovery of a noncompliance. Prompt response at correcting the noncompliance should be positively recognized. Some violations take longer to correct than others, and an entity should receive positive recognition for all prompt response actions, even if some violations take longer to correct.

Any adopted penalty matrix should give considerable reduction in penalty, if the violation is corrected as soon as possible after detection by the agency.

The rule should provide for good faith reductions when some, but not all, violations are corrected. It may not be possible to correct all violations during the penalty assessment period. For example, if one of the violations is failure to have a permit, obtaining the permit may take an extended period of time. A better alternative may be to allow for deferred penalties for those violations that cannot be remedied within the penalty assessment period. With a deferred penalty, if a party cannot resolve all violations within the penalty assessment period, there is incentive for a party to resolve as many violations or as much of a violation as possible upon discovery and complete correction according to a reasonable timeframe. Further, the agency should acknowledge that good faith may be demonstrated by the type of solution the party seeks to employ. A complex solution may require more time and achieve a better environmental result. This evidences good faith even though compliance may occur later in time.

The rule should absolutely provide for good faith reductions when some, but not all, violations are corrected. Self-reporting should be encouraged as a means of corrective action and should be promoted by the TCEQ.

Yes the commission should consider the good-faith efforts to correct all or part of the problems after the NOV. Even if respondents are deemed culpable a good faith reduction should be considered – again considering that officers of small local governments are dependent on the employees to operate the system within the permit parameters. Many times those employees operate with limited experience and training and even less money.

Should the rule prohibit the application of a good faith reduction for respondents that are deemed culpable?

Yes.

The rule should prohibit good faith reductions for respondents that are culpable.

If the object of enforcement is environmental compliance, and a credit for good faith efforts encourages faster remediation and compliance, then it would appear to be a contradiction for the agency not to allow a good faith credit even when a respondent is deemed culpable by TCEQ

The rule should prohibit the application of a good faith reduction for respondents that are deemed culpable. Culpability shall be as defined below.

TCEQ should not prohibit the application of a good faith reduction for respondents that are deemed culpable in the absence of clear rules on determining culpability. To date, few companies are deemed culpable. However, the language in the Penalty Policy is vague as to how TCEQ staff will make such a determination — “staff will consider whether the respondent could have reasonably anticipated and avoided the violation(s).” In the absence of a clear methodology for determining culpability, TCEQ should not establish a bright-line rule prohibiting the application of a good-faith reduction. Rather, TCEQ should look at the circumstances surrounding the particular alleged violation and determine if the good faith reduction is appropriate.

All positive responses of an entity should be recognized. The penalty calculation should take into account the totality of circumstances surrounding the enforcement action. Prompt response actions should be encouraged and rewarded. The objective of TCEQ should be compliance, and policies that reward compliance should be encouraged.

The rule should prohibit the application of a good faith reduction for respondents that are deemed culpable based on a conscious or knowing disregard for the rules.

There is some value in encouraging companies to identify and correct problems promptly. Nevertheless, we believe that violators should not be rewarded with penalty discounts simply for making “Good Faith Efforts to Comply,” which is, of course, the obligation of every facility permitted to release air pollution. In particular, such penalty reductions should not be offered in situations where (1) the violation went undetected for a lengthy period of time (e.g., several leak inspection periods or reporting periods), (2) the violator is deemed culpable, or (3) the violator does not admit responsibility for the situation in a timely manner. We agree that such penalty reductions should be applied on a violation-by-violation basis, rather than requiring all these criteria to be met for all violations. Our opinion regarding penalty adjustments for “Culpability” follows the same principles.

- **Should the rule prohibit a good faith reduction in Default Orders?**

Perhaps, with adequate investigation and consultation with the original sentencing court.

The rule should prohibit good faith reductions in Default Orders.

The rule should prohibit a good faith reduction in Default Orders.

The rule should prohibit a good faith reduction in Default Orders absent a procedural issue with the Default Order, e.g., a problem with notice.

What should the Commission consider when calculating the penalty adjustment related to Culpability? For example:

- **Should the rule provide for a penalty reduction in cases where the violation(s) were documented during a self-inspection and voluntarily self-reported?**

Yes. This would encourage honesty and encourage better “self regulation” and reward honesty in reporting.

As an incentive to reporting, the rule should provide for a penalty reduction in cases where the violation or violations were documented during a self-inspection and voluntarily self-reported.

A violation is a violation, regardless of being self-reported or discovered during an inspection.

The rule should provide for a penalty reduction in cases where the violations were documented during a self-inspection and voluntarily self-reported. This would provide an incentive to respondents.

Self reported violations should not carry the same weight as violations discovered during inspections or complaint investigations.

The rule should provide for a penalty reduction in cases where violations are identified during a self-inspection and voluntarily self-reported. It is important to encourage self-reporting. As discussed below, while implementation of the Title V operating permits program will result in few air quality-related violations being voluntarily self-reported at major sources, the TCEQ should implement similar measures to encourage accurate and complete selfreporting under Title V.

TCEQ should implement a form of penalty mitigation for items that are selfreported under Title V. In particular, penalty mitigation is warranted when a violation is reported that TCEQ would not have identified through the normal course of inspection, to encourage the submittal of accurate and complete Title V deviation reports. Otherwise, companies that are diligent in satisfying their Title V deviation reporting obligations will

be subject to greater scrutiny and greater risk of penalty than companies that fail to report all deviations.

Yes, this is consistent with both the state and federal audit policies that encourage self-inspection and self-reporting. This approach should encourage positive compliance behavior and therefore should be recognized and rewarded. TCEQ should consider completely waiving penalties in appropriate circumstances for self-reported violations.

Voluntarily disclosed violations, even outside of the Texas Environmental, Health, and Safety Audit Privilege Act, should receive significant reduction in penalty.

The rule should provide for a penalty reduction or elimination in cases in which a violation was documented during a self-inspection and voluntarily self-reported. Self-reporting should be done promptly and the Commission should provide a reasonable deadline so that the regulated community will have a firm date by which to self-report. Providing an incentive to self-report and clarify on a deadline for self-reporting will encourage self-reporting. This approach could be modeled on EPA's policy regarding self-disclosure.

The rule should absolutely provide for a penalty reduction or elimination in cases where the violation(s) were documented during a self-inspection and voluntarily self-reported. This would encourage the violator to come forward rather than to try and hide the violation. The ultimate intent is to achieve compliance at all PST facilities.

Yes the rule should provide for a penalty reduction in cases where the violations were documented during a self-inspection and voluntarily self-reported. Honesty should be rewarded and encouraged.

• Should the rule provide that an entity is culpable if it is permitted, registered, or is previously issued a notice of violation, notice of enforcement, or Commission Order?

Yes. Notice of violation is just that, notice that there is wrongdoing and allowing the violation to exist or continue after knowing it is wrong shows culpability.

The rule should provide an entity culpable if it has a permit, is registered, or has previously been issued a notice of violation, notice of enforcement, or Commission Order.

A blanket designation of culpability merely if an entity is permitted or registered should not be supported. The agency may assume a violation has occurred because an entity is permitted and therefore "should have been aware" of the violation, but the violation is based on a grey area of the rules or a new interpretation of policy of which the company is not or has not become aware. Further, violations are often caused by not understanding regulatory requirements or equipment malfunction. In addition, the

mere holding of a permit or registration does not necessarily convey understanding of all the nuances of TCEQ environmental regulations.

An entity should be considered culpable if it has been previously issued a notice of violation, notice of enforcement, or Commission Order for the identical or very similar violation. An exception would be if the company is permitted or registered; otherwise there will be a disincentive to permit or register.

The Administrative Penalty Rule should not provide that an entity is culpable if it is permitted, registered, or is previously issued a notice of violation, notice of enforcement, or Commission Order. This approach would fail to consider site complexity, and would find larger sites culpable far more often than smaller sites. The fact that an entity is permitted or registered should not impact culpability. Moreover, the fact that an entity has been previously issued a notice of violation or been involved in an enforcement action will often have no relation to a subsequent violation — particularly at large, complex sites that may have thousands or tens of thousands of compliance points. Such a policy could consider sites “culpable” on completely unrelated events, and is not warranted.

If prior events are taken into account for penalty adjustment purposes, the evaluation should be limited to the “regulated entity” as the term is used by the TCEQ’s Central Registry, or “site” as the term is used in the Title V operating permits program. Events at another site or regulated entity that is owned or operated by the same company (the “customer” as the term is used by the TCEQ’s Central Registry) should not be taken into consideration when evaluating culpability.

No. Violations can occur due to many different causes. A policy that concludes that an entity is culpable simply because a violation occurred illogically assumes a certain mental state on the part of the operator. For example, it would be irrational to conclude that all permitted operators are culpable for violations resulting from all equipment malfunctions.

The rule should provide that an entity is culpable only in certain instances after previous issuance of a notice of violation, notice of enforcement, or Commission Order. If an issue is specifically and clearly identified in the previous NOV, NOE, or Order and the entity wholly fails to address the issue, then a finding of culpability and an appropriate calculation in the penalty is proper.

The rule should not provide that an entity is culpable based only upon the entity being permitted or registered. Having a permit or being registered alone does not indicate culpability. It may be circumstantial evidence that an entity is aware of the requirements that it is subject to, but it is not an indication that the entity is blameworthy, which is what “culpable” means. For example, if there is a good faith dispute over the applicability or interpretation of a permit requirement or rule, the permitted or registered party should not be deemed culpable simply because it is permitted or registered.

The dictionary defines culpability as “deserving blame”. The type and cause of the offense should be considered to determine culpability – there are always some things that cannot be controlled (weather, equipment failure, etc.). Having a permit, or receiving an NOE/NOV, does not necessarily mean neglect or intentional mismanagement.

What should the Commission consider in using standard penalties for violations that the current penalty policy classifies as “potential” or “programmatic”? For example:

- **Can the 12 proposed violation categories for standard penalties (see Attachment No. 2) be consolidated into fewer categories, while continuing to capture all programmatic and potential violations? If so, how?**

Without any experience with standard penalties it is not possible to determine whether they should be expanded or consolidated.

Potential or programmatic penalties are just that - penalties and treated as such. Do not make some penalties more or less important.

The 12 proposed violation categories should be trimmed significantly. The list should be trimmed to violations that can be completely demonstrated by the visual inspection of an inspector during a single site visit. Any further investigation required to determine the presence or extent of a violation suggests that the violation is not sharply defined enough for a standard penalty.

- **Can the proposed violation categories for standard penalties be ranked by order of importance? If so, what is the appropriate ranking**

Without any experience with standard penalties, ranking the list would tend to complicate the process at a time when the Commissioners are striving for a simpler, more transparent penalty process. It is also not clear to what “order of importance” refers. Does order of importance equate to amount of risk or something else?

TIP believes that such a ranking process would be problematic. In addition, an up-front ranking of the penalty categories may further limit the flexibility and discretion that is necessary for an equitable enforcement process.

The list should be significantly trimmed before any ranking can occur. Further, the simpler the system the more likely would be the benefits from such a system.

- **Additional Comments on Standard Penalties**

Pg1, Attachment 2 – Reporting, Compliance, Certifications, and Notifications, Air – Failure to submit Title V certification or emissions event notice, deviation reports, emissions inventories, and deviations on Title V certifications should be significant and

should lead to full penalties, not standard penalties. The percent for Major and Minor Entities is too small to have a deterrent effect.

Pg2, Attachment 2 – Records, Air – All the record failures are significant and should result in full penalties. The percent penalty for Major and Minor Entities is too small to have a deterrent effect.

Pg4, Attachment 2 – Quality Control/Analysis, Air - All the quality control failures are significant and should result in full penalties. The percent penalty for Major and Minor Entities is too small to have a deterrent effect.

Pg5, Attachment 2 – Operations and Maintenance, Air - All operations and maintenance failures are significant and should result in full penalties. The percent penalty for Major and Minor Entities is too small to have a deterrent effect.

Pg6, Attachment 2 – Security/Emergency Preparedness, Air - All security failures are significant and should result in full penalties. The percent penalty for Major and Minor Entities is too small to have a deterrent effect.

Pg7, Attachment 2 – Construction, Capacity, and Design Requirements, Air - All construction failures are significant and should result in full penalties. The percent penalty for Major and Minor Entities is too small to have a deterrent effect.

Pg7, Attachment 2 – Financial Assurance and Penalty Payments, Air - All financial assurance failures are significant and should result in full penalties. The percent penalty for Major and Minor Entities is too small to have a deterrent effect.

Standardized minimum penalties are a good idea, provided that those penalties are set at levels high enough to deter violations and that they function as a floor, and not a ceiling. The standardized penalty table included in the backup appears to be a step in the wrong direction...they may significantly lower penalties.

A standardized penalty should include a factor against a unit of time (one-time event).

There are some things that standard penalties should be use for and some that they should not. Standard penalties should be used for clear-cut, simpler violations, particularly when their use would result in an expedited settlement saving all parties time and money. Standard penalties should not be used as a strict formula, preventing the use of flexibility when considering all the circumstances of a violation.

We feel that standard penalties should be established and this will help to make the enforcement penalty process more transparent. We would suggest establishing a list/matrix, which would clearly outline the violation and the associated penalty. Thus, a respondent would not have to reference several other lists and calculate the percentages.

TIP supports the concept of applying standard penalties in the enforcement process, but believes that a number of safeguards must be established to ensure that the use of standard penalties does not lead to an inflexible enforcement process that produces inequitable results.

Entities Must Not be Subject to Further Enforcement for a Violation Addressed through Standard Penalty If a violation is classified as a standard penalty violation and the company is issued a standard penalty, the TCEQ's issuance of the standard penalty should represent full resolution of enforcement based on that violation. TCEQ must ensure that no additional enforcement takes place for an event that has previously been addressed through a standard penalty. If a company faces additional enforcement based on an issue that was subject to a standard penalty, the company would be subject to what amounts to double-jeopardy and the streamlining and simplification benefits associated with the use of standard penalties will be jeopardized.

TCEQ Should Establish a De Minimis Category for which Penalties Will Not Apply TCEQ should use the categorization of violations to include a de minimis concept in the rules, identifying categories of minor violations for which no enforcement action should be taken. Prior agency penalty policies, as well as the U.S. EPA's penalty policy, establish reasonable compliance limits. For example, "failure to record CEMS data, temperatures, feed rates, coating and solvent usage" (in the Records/Air category) should have an associated compliance percentage. No monitor will function 100 percent of the time and no employee is infallible. If data is collected at least 98 percent of the time, TCEQ should exercise enforcement discretion and not assign any penalty. Creation of a de minimis category is warranted.

TCEQ Should Not Aggregate Standard Penalties to Assess Massive Penalties The standard penalty tables do not identify whether multiple alleged violations will be assessed as a single penalty or whether each omission (e.g., each day a monitoring log is not completed) will be assessed as a separate violation. TCEQ should not assess a separate standard penalty for related, ongoing violations in such a manner that a minor event or omission would become subject to a large penalty. As discussed in Section F below, the use of violation counts to generate astronomical penalties for environmentally insignificant violations is a problem under the current Penalty Policy. That problem should not be extended through the use of standard penalties.

The Rule Should Provide for Appeal of a Standard Penalty

TCEQ should ensure that an appeal process is available, even for violations that fall within a standard penalty violation category. Codification of the Penalty Policy as rule and the TCEQ's attempt to simplify the enforcement process should not sacrifice fairness or a company's due process rights.

Standard penalties should be reserved for sharply defined violations. Records that do not exist, equipment that is not present, deadlines that are not met, etc. are possible opportunities for standard penalties. For example, in TCEQ's Attachment No. 2, falsification of data would not be an appropriate category of violations for standard penalties since these types of events are fact sensitive.

The use of standard penalties should not be the preferred method of assessing penalties, as too many factors might enter into the reasons for a violation and standard penalties do not appreciate these differing facts.

Potential or programmatic violations should be classified as causing minor harm rather than major harm unless an actual release can be demonstrated to have occurred. Any standard penalty should be “spelled out” precisely and applied equally for any given offense.

The suggested standard penalty, “Failure to construct the facility in accordance with representations made in the permit application,” can be a very serious violation. We recommend evaluating this more along the lines of the current penalty policy. We recommend extending the practice of detailing standard penalty calculation guidelines to encompass calculation of the number of events, where practicable. For example, “open-ended lines” are often, but not always, cited as potential minor violations, one event per open line. Yet on occasion all the open lines are cited as one event per violation, even if several open lines are noted during the same violation. When an open-ended line is found, but no leak is detected, it is the type of violation that is suitable for being a standard penalty (\$1,000 per instance, no evidence that the line is leaking). As the TCEQ encounters repeated instances of a common violation, it could post a description of current practice for calculating the penalty associated with this type of violation to the website. This informal notice, as opposed to an official policy statement, would keep the public and the regulated community abreast of how it is interpreting the penalty policy.

Other Issues

The rule should include violations that are called “areas of concern” for penalty calculation purposes.

The rule should require penalties for all violations, even those the TCEQ does not consider serious or unresolved.

The rule should not have two separate penalty matrices. This is too complex and time consuming.

The rule should not be based upon the size of the site. If a violation has occurred it should not matter what the size of the site is.

Deterrence should be an express goal of the enforcement program.

TCEQ’s penalties are too low.

TCEQ should develop media-specific penalty policies. A tailored approach, based on the specific media and the nature and significance of the event, is more appropriate than a “one size fits all” approach to determining the number of events. TCEQ should consider the types of events it typically sees in each medium and develop more-tailored approaches for air, water and waste violations and penalty assessment.

Supplemental Environmental Projects should be encouraged by the proposed rules.

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 (see Attachment No. 1)? If so, what are they?

The violation count used for penalty calculations under the current Penalty Policy is not applied consistently, and can be used to calculate an astronomical penalty for an event or series of events with little or no environmental impact. The current policy can also result in the assessment of a higher penalty for an intermittent event that a company is working to resolve than for a longer, on-going problem, based on violation count. The Administrative Penalty Rule should address the inconsistent application of violation counts and the often illogical results generated by the use of such inconsistent violation counts. TCEQ should take a more common-sense approach in determining the number of events associated with noncompliance. The use of a violation count should not penalize a company for attempting to repair a recurring noncompliance. Additionally, violation count should not be subject to manipulation and the “manufacturing” of an astronomical proposed penalty based on multiple environmentally insignificant violations that result from the same root cause. Application of the current policy has been used to generate nonsensical results, such as multi-million dollar penalty calculations for fugitive emissions monitoring or leak detection and repair (“LDAR”) violations that had little or no impact on the environment, based on counting each component that was not monitored as a separate violation.

TCEQ must recognize that the total number of Title V deviations summed on report forms does not equate to an indication of the site’s compliance record. Sites with more diligent and comprehensive investigation systems may report more deviations than sites with superficial or less-comprehensive self-assessment programs. TCEQ guidance provides little in the way of clarity or meaningful instructions on counting deviations — for example, it makes no sense to count a deviation that is attributable to the same root cause and may occur for several hours as an alleged repeat violation of an hourly permit limit. It also makes no sense to penalize those companies that implement the most comprehensive compliance reporting systems. The number of deviations included in a deviation report, in and of itself, should not be viewed as a measure of a Title V permit holder’s compliance efforts. As TCEQ has previously stated, not all deviations are automatically violations.

As an incentive, self-reported violations could always be assessed a single event.

One key area where the current administrative penalty policy needs clarification is in the calculation of the number of events for continuous major programmatic violations. Because programmatic violations are classified as major if more than 70% of any rule or permit requirement is not met, we found that the level of severity of violations classified into this category varied widely depending on the significance of the rule. In addition to addressing this through standard penalties, the TCEQ should consider additional policy guidance explaining how to establish the number of events for continuous programmatic violations. More generally, we recommend that the administrative penalty policy be revised to explicitly state that a violation should be considered continuous only when there is no possible way to count it as a series of discrete events. For example, a company that is out of compliance for recordkeeping over several years could be cited for each occasion that it was required to certify compliance with rules, rather than citing a single event.

Comments on Current Penalty Policy

Pg 6: Categories of Harm, Major Harm – how would TCEQ know if “Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health, etc.”? This burden of proof is too great and will rarely be met and therefore serious air pollution violations will not have maximum penalties.

Pg 6 & 8: Categories of Harm, Moderate Harm – define “significant” under Actual and Potential Release.

Pg 6: Categories of Harm, Minor Harm – define “insignificant” under Actual and Potential Release.

Pg 7: the first footnote reads, “For example, VOC emissions are known to contribute to ozone formation, but cause no observable immediate impacts.” This is untrue. Some VOCs are toxic (Benzene and 1,3-Butadiene, for instance) and cause such impacts.

Pg 8: the table labeled, (2) The Released Pollutant, “usable the resource” and “significant amount” are not defined.

Pg 9: The “degree of noncompliance” for “Minor” is much too low and needs to be greater.

Pg 12: Compliance History Enhancement for the Site Under Enforcement - the last 6 in the table should not be allowed. Companies should not be rewarded for violations and there is no assurance any of the 6 listed items relate to finding and or resolving the violation.

Pg 14: Why are only capital expenditures, one-time non-depreciable expenditures, periodic costs, and interest gained evaluated in calculation of economic benefit? What about costs to the environment and people’s health and welfare?

The environmental/human health/ property matrix should be changed such that violators with actual releases will face higher penalties than under the current policy.

Enforcement penalties need to be tied to environmental impact. The real focus should be on eliminating and preventing actual pollution and contamination of the environment.

TIP supports TCEQ's attempts to streamline and clarify the enforcement process. TIP is concerned, however, that codification of the Penalty Policy in the Administrative Penalty Rule could eliminate the flexibility and agency discretion that is necessary for fair and equitable treatment of the regulated community in the enforcement context. Agency flexibility and discretion must be maintained, and codification may not be the best way to preserve this important element of the penalty assessment process. TIP also believes that TCEQ should use the Administrative Penalty Rule to change the flawed premise upon which a penalty adjustment in the current policy is based: that there is always an economic benefit to noncompliance. The application of this assumption leads to inconsistent and often-illogical results under the current policy. TCEQ should also expand the circumstances in which the good-faith effort to comply can be used as a penalty adjustment, and provide penalty reductions for violations that are voluntarily reported. The Administrative Penalty Rule should also address double-counting in the current penalty calculation by eliminating the compliance history component enhancements as recommended by staff. Finally, TCEQ should use the Administrative Penalty Rule to establish principles for counting the number of violations that lead to consistent results and avoid the unreasonably high penalty amounts that can be calculated under the current policy through manipulation of the violation count.

The current Penalty Policy contains two potential adjustments to a penalty amount: an adjustment based on "Compliance History" and an adjustment based on "Compliance History Classification." The Enforcement Process Review resulted in a staff recommendation that TCEQ simplify the penalty policy by eliminating the Compliance History Worksheet from the penalty calculation and replacing that Worksheet with a potential adjustment based on the respondent's overall compliance history classification. Using compliance history for two adjustments to a penalty amount constitutes double-counting compliance history when evaluating whether to make a penalty adjustment. The Commission agreed with the Steering Committee's recommendation, and it should direct TCEQ staff to eliminate the compliance history component enhancements.

Good faith efforts to comply should be better defined and should result in penalty mitigation.

The Commission should move away from any definition of culpability that is based on a party's reasonable anticipation. The Commission should not use a standard for culpability that is essentially a negligence standard. Any definition of culpability should require demonstration of a knowing disregard for the law.

The Commission evaluates appropriate penalties based upon the throughput of the facility. Using EPA's designation of major/minor facilities/sources, the TCEQ has established a throughput of 50,000 gallons per month in determining a major source (>50,000 gallons) from a minor source (<50,000 gallons). Today, a typical metropolitan PST facility far exceeds the 50,000 gallon designation. As a result, most sites fall into the major source category. The threshold should be increased by either doubling or tripling the throughput designation.

The TCEQ does not follow their current policy and is too lenient in penalty calculations. The vast majority of the TCEQ's leniency can be attributed to three causes: leniency towards inadequate leak detection and repair programs, undercounting the number of events so that the penalty does not truly reflect the duration of violations, and dropped cases. ***These problems can generally be addressed by following current TCEQ policy*** regarding the calculation of penalties.

The current economic benefit calculation substantially underestimates the economic benefit of noncompliance.

It appears that the 20% deferral has come to represent an automatic discount rather than a true incentive. [Example cites several instances where the standard 20% deferral was granted to companies that did not meet the initial TCEQ deadline to settle a case, or did not meet other criteria such as prior enforcement history.]

Another issue that the penalty policy does not presently handle well is the scale of a violation. Presently, the policy does not distinguish between situations where a plant fails to properly monitor two pumps for leaks and where a plant fails to properly monitor an entire unit. The policy also fails to define the scale of a violation involving multiple units. Should a violation covering several units at the same plant be counted as separate violations for each distinct operating unit or simply one violation for the entire plant? We recommend that each operating unit be cited as a violation because this approach more accurately reflects the scale of the offense.

General Comments

Please make sure that our laws are enforced. Unless legislated penalties are enforced for pollution violations, there will not be the appropriate disincentives to shape appropriate business decisions and behaviors. Businesses need to operate in socially responsible ways, but will avoid doing so when allowed. This provides an unfair advantage to them over responsible businesses who should be 'rewarded' for their voluntary responsible behaviors.

Congratulations to the Texas Commission on Environmental Quality for its efforts to strengthen penalties against polluters. Keep up the good work!

500 Email Comments received stating the following (as of 11/29/2005):

"I support TCEQ's efforts to strengthen penalties against polluters.

These changes will make sure polluters aren't allowed to keep illegally gained profits, deterring crime and leveling the playing field for law-abiding businesses."

Additional comments received along with the above 500 general statements:

- Corporations doing business in Texas have shown over and over and over again that they will not voluntarily take significant measures to reduce or eliminate pollution, even if it SAVES THEM MONEY!!! Texas is probably the joke among major polluters - Heh...Heh...if you can't get it done here, take it to Texas. They won't do anything!

Since industry will not act voluntarily, strong enforcement is necessary. Hit them in the only place that matters to them - the pocket book.

- I am further concerned that so little is done to monitor pollution. So much goes undetected and unreported that merely strengthening penalties, while a good thing in itself, is not enough. It must be followed up with consistent monitoring.
- I applaud the efforts of the Texas Commission on Environmental Quality to impose financially meaningful penalties on polluters. Keep up the good work.
- Too long they have not been held accountable and therefore THUMB their noses at the restraints.
- So many people are suffering from various illnesses, especially respiratory problems in children, that we must act for the greater good and look beyond the profits of the lobbyists and do the right thing.
- Texas is a beautiful gift our children will inherit. Let's make sure we do what needs to be done for their heritage.
- Polluters will not stop unless the penalties are strong enough to have a deterrent effect.
- I am a native Texan, born in Orange in 1945. I have watched with sorrow what has happened to my beloved Texas' environment. I support TCEQ's efforts to strengthen penalties against polluters.
- These changes will make sure polluters aren't allowed to keep illegally gained profits, deterring crime and leveling the playing field for law-abiding businesses.

- TCEQ's job is to make polluters pay. I'm appalled that you haven't been doing it before. Please do it now.
- I am deeply concerned about pollution in our environment. My sixth grandchild arrives in a week, and I want them to have a cleaner world.
- The proposed changes would reduce the likelihood of any company polluting because it is cheaper to do so.
- Put a stop to polluting our environment.
- Pollution in Texas is a BIG problem, so I support TCEQ's efforts to strengthen penalties against polluters. I am sick and tired of them trashing our beautiful state!
- I support TCEQ's efforts to strengthen penalties against polluters who break the law and hurt our health and environment. For too long, many Texas polluters have violated our environmental laws and gotten away with it.
- Thank you for taking a stand to safeguard our health and environment.
- I want to make sure polluters who break the law and harm our health and environment are dealt with fairly, but firmly. This is one area of public policy that cannot be negotiated away.
- In a climate where health care is already a problem, pollution in North Texas contributes immeasurably to health problems of all kinds.
- I think we should have done this much much earlier.
- Texans have been subsidizing polluters too long by sacrificing out clean air and water for their profits.
- When industries are allowed to pollute without penalty or with only minimal penalty, their profits are at the price of our health and enjoyment of the environment. Their profits, then, are not entirely rightfully earned but are partly taken from what actually belongs to others with whom they share the planet.
- Please help to discourage the behavior of irresponsible companies who find it cheaper to pollute than to pay the consequences. Make the fines fit the crimes! Average citizens are counting on you.
- As someone who lives in the most polluted city in the country, Houston, I am tired of watching the companies that are mostly responsible for the contamination of our air, soil, and water, get by with a small slap on the wrist when they are

caught. A slap that is so small as to be generally considered a minor cost of doing business akin to paying the telephone or utility bill.

- Experience has shown that without strict enforcement and strong penalties against mega-polluters in place, there are no incentives to ensure the health of air, water, soil, plant and animal life in Texas or anywhere else.
- I support TCEQ's efforts to strengthen penalties AND THEN ACCESS THEM against polluters.
- It's a pleasure to have government officials doing the job they are supposed to do. Thank you very much.
- For much too long, industries in Texas have had their way against efforts to curb their pollution of our environment. Corporate power is in control in Texas, and neither the ballot nor the voice of the people matters.
- I truly feel the best way to stop polluters is to make it economically very painful to break the law. If penalties don't impact their business, if companies don't reliably get penalized, there's no incentive to play by the rules. Our health and our environment depend on people like you standing up and making sure penalties are stiff and penalties are enforced.
- Aggressive fines and penalties for breaking environmental laws or exceeding standards and limitations would make it cost effective for offenders to bring their operations into compliance.
- Fair is fair and enough is enough! Protect the citizens of Texas and get tough on crime!!!
- Companies and individuals need to have the incentive to do the right thing instead of getting a slap on the wrist for harming our property, our health, and our environment. And if companies make a profit off of their pollution, those profits should be taken away. Period. Please be tough on polluters who break the law and irreparably harm our environment, threatening our collective future and who break the law.
- I am the mother of three children and I would hope that those that are in power will help to improve the quality of our environment for their health and future.
- We need to do whatever it takes to make our environment as safe and clean as possible.
- I am sick and tired of businesses that are allowed to pollute public air, waterways and the earth. Businesses and stockholders should not be allowed to profit at

the expense of their pollution. Existing laws and associated penalties should be enforced to the fullest. The TCEQ is negligent when it refuses to enforce existing anti-pollution laws. Do your job! And your job is not to support polluters, it is to protect the public against polluters.

- These changes will make sure crime does not pay when it comes to pollution. My mother, who never smoked, died too young of lung cancer after living most of her life in one of the most polluted cities in America, Houston. I am convinced there is a connection, just as with high levels of air pollution and rising rates of childhood asthma. Polluters should pay so much it hurts, and hurt so much they clean up their act.
- What is being done to guarantee protection on our endangered wetlands, species and wildlife?
- As a person who has battled lung problems for most of my 75 years, I'm concerned that my children and grandchildren live in an environment that will be healthier than we now have. Our beautiful Texas deserves to be preserved and cared for by all Texans.
- Do not give in to the whining of corporations about having to be good citizens and how much it will cost. Our water and air (in particular) are getting filthier by the day. It is time to stop these corporate criminals! Allowing them to have say over these rules would be an example of fascism. Corporations have already had their way for far too long in Texas, and we have the air and water to prove it. Do the right thing--increase the fines polluters pay and pass their form of dirty business back to them. We are tired of paying the price in terms of health for their lawlessness.
- Then maybe we won't be known as the most polluted state in the nation!!!!!!
- The ozone levels in Arlington have increased 3 fold this year according to the Ft Worth Star Telegram.
- In addition, working with law enforcement to stop and cite smoking vehicles will help that problem, the community is urging you to become more diligent about these types of polluters!!
- Businesses must be responsible as all citizens are responsible for keeping our air and water clean.
- Texas is very polluted, and it is an outrage that we allow people (but usually corporations) to get away with violating our already weak anti-pollution laws. As a citizen, I resent being forced to pay with my health for their profits.

- Thank you for what you are doing to protect the environment. I really do appreciate you and all you do.
- It is already too easy for many corporations to avoid complying with environmental regulations. Without the threat of severe penalties for violations, polluters have no incentive to comply with pollution prevention laws, leaving our citizens at risk of contaminated property, water, and air in their neighborhoods.
- IT'S TIME TO ENFORCE THE LAWS AND "REALLY" FINE THESE COMPANIES REAL FINES NOT .50 CENTS ON THE MILLION.THIS GOOD OLE BOY REGIME HAS TO GO.
- Bravo! I am behind the TCEQ in its efforts to strengthen penalties against polluters. Polluters shouldn't get to keep illegally gained profits. They need to hear a strong message that law-abiding businesses are the only kind we need.
- It is only through the enforcement of our laws and strict application of penalties that polluters will adjust their misdeeds. Let us all be held accountable under the laws by which we have composed for the good of ourselves and our posterity. Please continue to do what you can to protect our environment by applying and increasing fines for violators.
- EACH ONE OF US IS RESPONSIBLE FOR HELPING OUR EARTH...THANKS FOR STEPPING UP AND TAKING THIS STEP FOR US ALL!!!!
- Without significant penalties, many corporations factor the cost in as a part of doing business. The penalties need to be strong enough to actually deter their crimes.
- The time is long overdue for Texas to get serious about controlling the enterprises that profit from polluting our state! Enough talk - it's time TO ACT...
- For too long polluters have found it less costly to pay a fine than to correct problems with their process.
- Right now there is an economic INCENTIVE TO POLLUTE in Texas.
- Our quality of life is dependent on a healthy environment. In the long run Texas will only attract business and investment if we are a state that is desirable to live in. In addition, the increased medical costs from pollution will have to be borne by all of us. The penalties for polluters should reflect this extra cost and well as the loss of future business growth.
- I personally think it is immoral for these polluters to be allowed to excrete their noxious product on taxpayers who are subsidizing them!

- I would like to see tough action against polluters who break the law and hurt our health and environment.
- These changes are long overdue and will help ensure polluters are not allowed to keep illegally gained profits, deterring crime and leveling the playing field for law-abiding businesses. Its time for Texas to demand environmental responsibility of those doing business in our state and properly penalize those that place profit over public health. Future generations of Texans deserve no less.
- Big money speaks. Let's be sure that this time the "big money" represents the stiff fines levied on polluters and the "speaks" represents the cleanup.
- Most Texans love their state and respect the land. We must keep the land, water, and air safe for future generations.
- I have had experience with a polluter that is registered to do so. Ignorance and disregard for others quality of life as well as the environment almost made him loose his license. BUT, since TCEQ cannot monitor him, he gets by with MURDER.
- Please step up to the plate and support the people and the land in Texas by making it harder for polluters to trash our great state.
- I lived in South Dallas for 20 years, raising my family there, and My Son Sean has health problems that may have been aggravated by the Midlothian cement plants as he got sicker as he went to school in Desoto (prevailing winds). I have written letters, read about the sleazy politics down there (Joe Barton), and am frankly disgusted that corporate profit is put WAY ahead of our children's health. Shame On YOU!!! Texas has the worst air and record in country, HELP US!
- Numerous amount of toxic & noxious gas that already exist and we continually breathe everyday... as evidenced by all types of cancers (that were unheard of 2 or so decades ago..) plus the increase in asthma & other pulmonary illnesses, & possibly infertility issues & congenital anomalies. We have to look forward and take care of our future generation now. Thank you for your support for this important initiative.
- I was born in Texas and have lived almost my entire life in this great state. As Texas, most of us like to think of ourselves as descendants of trail blazers, hard working, and optimistic. I hope we all are honest and fair and truly care about the legacy of this state in more ways than humorous myths and the old, we are the biggest, the toughest, or the best braggers... My vote and my support is only and always for legislation, laws, and the people who are tough on crime. The most heinous of crimes are those being perpetrated against the environment. POLLUTERS ARE CRIMINALS AND MUST BE STOPPED AND MADE TO PAY BY USING THEIR PROFITS TO CLEAN UP OUR STATE (and the planet). We

can't continue to give "breaks" to big business, big oil, or any other company or lobby by overlooking the payoffs and "good ol' boys" club favoritism... It's part of what's eating the away at the soul of this entire country - greed, corruption and "taking the easy way out."

- IT is time that Texas realized its responsibilities to our children and society in general. We can't waste time any longer. Please take this important step to improve our environment. It may not save us, but at least we can say we tried.
- If penalties do not approach the level of illegally-generated profits, common business sense will dictate that violating environmental law is a reasonable course of action. The repair of environmental damage--when it is possible--is invariably costlier than prevention.
- As a long-time public health nurse and public health advocate (including 9 years on the Tx Board of Health), I am appalled at the lack of concern about the health status (and thus productivity in school and workplace) of Texans. It is high time that pollution prevention be taken seriously in our state.
- Polluting should not be profitable in Texas!
- I am adding my own words to this letter. There are times I can't take a walk in my neighborhood because of the smell. Some company is dumping and polluting the air. I then call the poison control for Harris County. Make these penalties stronger so on any given night I can walk my neighborhood and not worry about the poison in the air.
- I strongly support the development of rules governing administrative penalties that will assure the levying of tough penalties for violations of pollution control requirements and that will send a clear signal to regulated businesses, individuals, and government bodies that violations will not be tolerated. The State of Texas needs an environmental enforcement program that has a strong, deterrent effect against future violations. The only way to achieve that is if a polluter knows, as a result of the track record of the regulatory agency, that he or she will be fined heavily for any violation incurred. That will contribute to a climate where regulated enterprises take effective steps to avoid violations, for the benefit of public health and environmental protection.

I especially urge you to include in the rules provisions that will assure that no polluter achieves any economic value as a result of violations of pollution control laws and permit requirements. All fines should be structured so as to recover all of the economic value that a violator may have obtained as a result of the violation(s) – no exceptions. If administrative penalties become simply the cost of doing business for a polluter, then there is little or no deterrent value to those fines, and our state's environment and our quality of life will suffer accordingly.

- I urge agency staff to draft proposed new rules that will result in tougher penalties for violations of pollution control laws, including the recovery to the State of Texas of any economic benefit a polluter has gained by violating the law.
- Please draft new rules that will result in tougher penalties for violations of pollution control laws, including the recovery to the State of Texas of any economic benefit a polluter has gained by violating the law.
- Please consider defining a violator as an individual and/or a corporate entity. The persons in charge of an organization shall also be made responsible on a personal basis for the wrongs of the companies under their direction and not merely have the company (shareholders) pay for the results of his/her violation(s) of the law.
- Please draft a new set of rules which will actually be tough on the violations of pollution control laws, especially measures which will bring money to our fair state which could be used for all sorts of protection and clean up measures, and would make those responsible for the pollution actually pay to clean it up. Thank you for your time.
- I just read today (12/2) in the Austin American Statesman, (A2) that EPA is requiring companies to report chemical spills only every other year. Any weakening of this type of regulation or the penalties for violations imposed for such spills is irresponsible to the citizens of the United States. I ask that here in Texas TCEQ draft new rules that will result in tougher penalties for violations of pollution control laws, including the recovery to the State of Texas of any economic benefit a polluter has gained by violating the law. Please do this for all the citizens of Texas.
- Please improve the health and welfare of Texans by tightening the pollution control rules as well as punishment for violations. Violators should have to reimburse the state for any monetary advantage they have accrued through pollution. This is not simply a short term situation, but so many of the pollutants have interminable long term effects on humans and the environment. Please remember this is the only planet we have...let us do our best to preserve it in its natural state.
- I am writing in support of higher penalties for individuals or businesses which violate state laws resulting in damage to the environment and human health. The current penalty structure has been criticized as too weak to motivate polluters to stop polluting. In addition, I would suggest that any economic advantage in profits accrued by the polluter during the period of violation be assessed and these profits be required to be given to the State of Texas so that the state has adequate funding to deal with the consequences of the pollution. I urge you to make substantial improvements in protection of the environment,

human health and economic well-being in Texas, perhaps modeling your policies after states with strong environmental protection programs.

- Please do not weaken further Texas pollution laws. All Texans have to live under enough air, water, and other environmental pollution as it is. With thousands moving to Texas each year, Texas should be leading - not trailing - the rest of the country in enacting and enforcing the toughest possible environmental standards.

I'm a native Texan (unlike the man who started the downhill slide), but no longer call that state "home". One very strong reason is that the power-hungry Republicans - who owe everything to big industry and don't care a whit about the average Texan - have practically ruined the state. With a Republican governor, a Republican state legislature, and a Republican congressional delegation (created by illegal redistricting), I see little relief until Texas voters wake up.

Weakening Texas pollution laws as opposed to strengthening them, is just another nail in the coffin for Texans, and another windfall for the international corporations that control the state.

- Bottom line- we need penalties that make it highly undesirable for companies to break the law and continue to operate. Penalties should not be a cost of doing business, but rather a strong incentive to do it right the first time.
- Stop the existing, combative, & excessive legal approach by TCEQ to all Texas businesses, small or large. It is counterproductive, time consuming and expensive for the State of Texas.
- TCEQ engineers must become goodwill ambassadors to urge all businesses into compliance in the least practical time with the best solutions and use the courts only as a last resort.
- Any civil penalties must be considered on an individual basis with penalties judged on the severity of the non compliance.