

TCEQ Interoffice Memorandum

To: Commissioners

Thru: *CP* Craig Pritzlaff, Director, Office of Compliance and Enforcement
PL Phillip Ledbetter, Director, Office of Legal Services

From: Amy Settemeyer, Deputy Director, Enforcement Division
Gitanjali Yadav, Deputy Director, Litigation Division

Date: April 11, 2025

Subject: TCEQ Docket No. 2025-0497-RES requesting to increase delegation authority to the Executive Director or his or her designee to approve and sign agreed administrative enforcement orders and field citations.

Pursuant to Texas Water Code § 7.002, the Executive Director requests the Commission expand the Executive Director's delegated authority to issue field citations and administrative enforcement orders by increasing the penalty amount from \$7,500 to \$12,500 or less.

Background

Texas Water Code § 7.002 in part provides: "The commission may delegate to the executive director the authority to issue an administrative order, including an administrative order that assesses penalties or orders corrective measures, to ensure compliance with the provisions of this code and the Health and Safety Code within the commission's jurisdiction...."

The Commission delegated such authority in August 2011 through a Resolution (2011--1506-RES) for field citations and for agreed administrative enforcement orders that meet the following criteria:

- a. The agreed administrative enforcement order is not a findings order;
- b. The administrative penalty assessed is \$7,500 or less;
- c. The agreed administrative enforcement order or field citation meets all statutory and administrative criteria;
- d. No new issues affecting Commission policy or involving unprecedented interpretations of existing policy are presented in the agreed administrative enforcement order or field citation;
- e. No objection is raised by the Office of Public Interest Counsel; and
- f. No adverse public comment was received after the order or citation was published in the Texas Register.

The latest update was on October 26, 2016, when the Commission issued a superseding Resolution (2016-1593-RES), which updated a provision relating to the effective date for any enforcement order or field citation issued by the Executive Director.

Since delegation was initially granted, the delegation threshold has remained the same even though certain changes have been made to increase the overall penalties assessed

TCEQ Interoffice Memorandum

through enforcement actions. This has resulted in a steady decrease in the percentage of Executive Director Agenda Orders from 61.3% of the total orders issued in FY2017 to 51.1% in FY2024. For example, Senate Bill 530, passed by the 86th Legislature, 2019 Regular Session, amended Texas Health & Safety Code §§ 341.048 and 341.049 to increase the maximum administrative penalty the Commission may assess for each drinking water violation from \$1,000 to \$5,000. The bill became effective on September 1, 2019. Additionally, the January 28, 2021, Penalty Policy increased the percentages in the Environmental, Property, and Human-Health Matrix and the Programmatic Penalty Matrix.

Current Request

The Executive Director will continue to apply the criteria outlined above when considering whether an enforcement action with a penalty lower than the increased threshold should be considered by the Commission rather than by the Executive Director. Staff respectfully recommends that the Commissioners adopt the resolution, which increases the penalty threshold for agreed administrative orders and field citations issued by the Executive Director or his or her designee to \$12,500 or less.

The resolution would supersede Resolution No. 2016-1593-RES issued by the Commission on October 26, 2016.

Attachment

Draft Resolution

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



A RESOLUTION

Reauthorizing the Executive Director to issue certain administrative enforcement orders and field citations and reauthorizing the Executive Director's sub-delegation of authority to administrative enforcement orders and field citations,
TCEQ Docket No. **2025-0497-RES**

WHEREAS, the Executive Director is authorized by Section 7.002 of the Texas Water Code to issue an administrative enforcement order, including an administrative order that assesses penalties or orders corrective measures, upon delegation by the Commission;

WHEREAS, there are a substantial number of administrative enforcement orders and field citations requiring Commission action;

WHEREAS, the Commission strives to improve efficiency and effectiveness in its service to the public in fulfilling its mission to protect human health and the environment;

WHEREAS, businesses, individuals, municipalities, and organizations who are parties to administrative enforcement orders would be well served by the timely issuance of those orders;

WHEREAS, the Commission has equally strong desires to increase the timeliness and effectiveness of the enforcement process while providing the public with a reasonable opportunity to address the Commission;

WHEREAS, the Commission desires to enhance its time management of agenda meetings;

WHEREAS, many of the administrative enforcement orders and field citations which are presented to the Commission for approval are considered to be "agreed" because the parties have reached settlement of the enforcement matter;

WHEREAS, the term "Administrative Enforcement Order" means any Commission order enforcing or directing compliance with any provisions; whether of statutes, regulations, permits or licenses, or orders; which the Commission is entitled by law to enforce or with which the Commission is entitled by law to compel compliance;

WHEREAS, the term "Agreed Order" is defined as an administrative enforcement order where the parties have reached settlement of the enforcement matter, which the Office of Public Interest Counsel has had an opportunity for review, and which has been noticed to the general public in accordance with the provisions of the Texas Administrative Procedure Act, the Texas Register Act, and applicable substantive law;

WHEREAS, the Executive Director is authorized to delegate to his or her staff any authority or duty assigned to him or her unless the statute, rule, or order assigning the authority or duty specifies otherwise pursuant to Section 5.222 of the Texas Water Code;

WHEREAS, 30 Texas Administrative Code § 3.2 defines Executive Director as the Executive Director of the Commission, or any authorized individual designated to act for the Executive Director;

WHEREAS, to streamline the processing of administrative enforcement orders and field citations the Executive Director may elect to delegate his or her authority to review, issue, approve, and act on such administrative enforcement orders or field citations to the Director with responsibility for the particular program involved with certain exceptions;

WHEREAS, notwithstanding this delegation of authority, the Executive Director in his or her discretion may forward any agreed administrative enforcement order or field citation to the Commission for approval as appropriate, including those orders or citations which require the interpretation or establishment of Commission policy; and

WHEREAS, the Commission does not intend by the issuance of this resolution to repeal or change any duty or authority delegated to the Executive Director by Commission rule.

NOW, THEREFORE, BE IT RESOLVED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that the Commission hereby adopts the following procedures for expediting approval of agreed administrative enforcement orders and field citations:

1. The Executive Director or his or her designee may approve and sign field citations and agreed administrative enforcement orders that meet the following criteria:
 - a. The agreed administrative enforcement order is not a findings order;
 - b. The administrative penalty assessed is \$12,500 or less;
 - c. The agreed administrative enforcement order or field citation meets all statutory and administrative criteria;
 - d. No new issues affecting Commission policy or involving unprecedented interpretations of existing policy are presented in the agreed administrative enforcement order or field citation;

- e. No objection is raised by the Office of Public Interest Counsel; and
 - f. No adverse public comment was received after the agreed administrative order or field citation was published in the Texas Register.
2. Notice of the date after which the Executive Director or his or her designee will act to approve the agreed administrative enforcement order or field citation must be published in the Texas Register and provide a minimum of 30 days for public comment.
 3. For agreed administrative enforcement orders or field citations issued by the Executive Director or his or her designee, parties shall be given notice of the approved order or field citation, either personally or by first class mail, in accordance with Texas Government Code § 2001.142. In addition, the chief clerk shall file notice of the Executive Director's agreed administrative enforcement order or field citation in the Texas Register not later than ten days after the date on which the agreed administrative enforcement order or field citation is approved.
 4. The agreed administrative enforcement order or field citation will become effective on the date it is signed by the Executive Director or his or her designee.
 5. The Executive Director will provide regular reports to each Commissioner, the Office of General Counsel, and the Office of Public Interest Counsel describing the administrative enforcement orders and field citations that have been approved, as well as any changes that may occur to his or her sub-delegation of authority.

IT IS FURTHER RESOLVED that the Commission hereby directs the Executive Director to implement and administer this procedure for approving administrative enforcement orders and field citations as soon as practicable.

THIS RESOLUTION, upon becoming effective, supersedes and replaces Resolution No. 2016-1593-RES issued by the Commission on October 26, 2016.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Brooke Paup, Chairwoman

Date Signed