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Subject: Nov. 28 Advisory Committee follow-up
Date: Thursday, November 29, 2012 12:36:06 PM
Attachments: [Background.pdf](#)
[Rulemaking Plan.pdf](#)
[DEQ Overview.pdf](#)
[Enforcement philosophy.pdf](#)
[Penalties & Matrices.pdf](#)

Thank you very much for the engaging discussion yesterday and your willingness to share your ideas and perspectives. Below is a summary of what we took away from the meeting:

- Most believe some upward movement of penalties is appropriate in response to the legislative change, though there was vigorous debate about what problem we are trying to address and whether larger penalties would necessarily create better compliance.
- Some cautioned that a "reasonable" measured approach would be preferred to an "overnight" big jump in penalty size. Better to make changes that leave room for additional increases in the future, some suggested.
- Some believed that the upper range of penalties should be close to the \$25,000 cap so that, considering inflation, penalties remain as potent as they were when the original \$10,000 cap was set. We discussed how much the current penalties should defer to the 1973 legislature; and most appeared to believe we should focus on current circumstances.
- There was a recognition that removing the \$10,000 cap (raising it to \$25,000) already raises some penalties because it allows full use of the aggravating factors in more cases.
- There was a general concern about raising penalties for smaller entities because of their current economic challenges and lack of knowledge and because of doubts that higher penalties for small entities would stimulate better compliance. There was a general feeling that the Department should do as much technical assistance with small entities as possible, though the group recognized that this suggestion is outside the scope of Division 12.
- Most believed the effects of the penalty factors should be expanded to allow greater mitigation or aggravation of the base penalty for "good actors" or "bad actors."
- There was some interest in expanding DEQ's discretion for determining penalty amounts. Two specific suggestions were that DEQ have authority to: (1) bump a penalty into the next highest matrix for egregious cases along with creating a new higher matrix into which the current \$8,000 matrix could be bumped, and (2) deviate from the predetermined "selected" magnitudes.
- There was a general belief that more penalties is better than fewer penalties. Some expressed concern that a more-complex more-discretionary higher-penalty system might create resource burdens for DEQ which, in turn, might result in fewer penalties.

We don't assume that everyone agrees with all of the above. If you have additional comments on the materials from the meeting, please submit them in the next couple weeks. Feel free to agree or disagree with the above, to add anything we missed, and to provide alternative suggestions or additional comments.

Attached are the orientation presentations we offered yesterday. You also asked that we provide the penalty data graphs that we'd glanced at just before lunch. Those are the final slides of the attached presentation entitled "Enforcement Philosophy." You also asked for copies of the penalty exhibits, which show the calculation processes, for the past two months. We are getting those together and will send them along as soon as possible. Depending on the breadth of what was issued during that period, we might supplement with additional exhibits so you can see how some other calculations have worked.

Thank you again for your time. We will be proceeding with the spill advisory committee and internal reviews and will get you proposed changes as soon as they are ready, with time for review before our next meeting in March. If you have suggestions on any other parts of Division 12 we would like to get them as soon as possible so that we might consider them as part of our discussions with our programs.

Thank you.

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