



**Texas Commission on Environmental Quality Develops New Enforcement Tool
Field Citation Pilot Program**

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Beginning March 13, 2006, the Texas Commission on Environmental Quality (TCEQ) will implement a pilot field citation program statewide. Under this new pilot program, TCEQ investigators who document certain environmental violations will offer a field citation upon completion of the site investigation that may be used by regulated entities to acknowledge and quickly resolve the violation. The benefit of this program to respondents is a potential reduction in penalties. However, there is a very limited timeframe provided to respondents to avail themselves of this potential reduction. If the respondent pays the penalty associated with the field citation within 30 days and certifies completion of corrective action within 60 days, the traditional penalty is reduced by 30 percent.

For now, the pilot program is limited and covers only nine violations in the following agency programs:

- Petroleum storage tanks
- Stage I and II vapor recovery
- Storm water (multi-sector general permit)
- Occupational licensing

If the respondent chooses not to accept the violation, the field citation is referred to the TCEQ Enforcement Division and is handled under the standard administrative enforcement process. Also, if additional violations are documented during an inspection, the respondent may request that all the cited violations be combined into a single enforcement action. However, choosing this option will mean that the reduced penalty under the field citation program will not be available.

The agency has not established a specific duration for this new pilot program and whether it will be expanded beyond the programs currently covered remains to be seen. Although the TCEQ Commissioners approved the pilot program, it did not have the universal support of the Commissioners as it was approved by a 2-1 vote.

The implementation of this pilot field citation program is being handled by the Office of Compliance and Enforcement and is only one of the many changes that are the result of the TCEQ enforcement process review which began in 2004. Glenn Shankle, Executive Director of the TCEQ, as quoted in the TCEQ Natural Outlook Winter 2006 publication, stated that TCEQ's overall adoption of a new risk-based approach to enforcement "will allow us to concentrate our enforcement resources on violations that pose the greatest threat to the public and the environment. As a result, investigations will be streamlined and more focused, allowing for sampling and monitoring activities to increase." The TCEQ is also considering potential changes to the penalty policy and compliance history rules. If you have any questions about this pilot program, please contact Lydia González Gromatzky at lgromatzky@bdlaw.com, Maddie Kadas at mkadas@bdlaw.com, or Laura LaValle at llavalle@bdlaw.com.