

1-1 By: Armbrister S.B. No. 55
1-2 (In the Senate - Filed July 14, 2003; July 15, 2003, read
1-3 first time and referred to Committee on Natural Resources;
1-4 July 17, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; July 17, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 55 By: Armbrister

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to compliance histories for and incentives to reward
1-11 compliance performance by entities regulated by the Texas
1-12 Commission on Environmental Quality.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 5.753, Water Code, is amended by
1-15 amending Subsections (a), (b), and (e) and adding Subsection (f) to
1-16 read as follows:

1-17 (a) Consistent with other law and the requirements
1-18 necessary to maintain federal program authorization, the
1-19 commission by rule may ~~[shall]~~ develop standards ~~[a uniform~~
1-20 ~~standard]~~ for evaluating site-specific compliance history that are
1-21 uniform for sites that are similar in size and complexity and at
1-22 which similar activities occur.

1-23 (b) The components of compliance history may ~~[must]~~
1-24 include:

1-25 (1) enforcement orders, court judgments, ~~[consent~~
1-26 ~~decrees,~~ and criminal convictions of this state ~~[and the federal~~
1-27 ~~government]~~ relating to compliance with applicable legal
1-28 requirements under the jurisdiction of the commission ~~[or the~~
1-29 ~~United States Environmental Protection Agency];~~

1-30 (2) ~~[notwithstanding any other provision of this code,~~
1-31 ~~orders issued under Section 7.070,~~

1-32 ~~[(3)]~~ to the extent readily available to the
1-33 commission, enforcement orders, court judgments, consent decrees,
1-34 and criminal convictions relating to violations of environmental
1-35 laws of other states and the federal government, including the
1-36 United States Environmental Protection Agency; and

1-37 (3) ~~[(4)]~~ changes in ownership.

1-38 (e) Except as required by other law or any requirement
1-39 necessary to maintain federal program authorization, the
1-40 commission by rule shall establish a period for site-specific
1-41 compliance history.

1-42 (f) Nothing in this section shall prevent the commission
1-43 from considering any relevant compliance information, including
1-44 notices of violation, in enforcement.

1-45 SECTION 2. Subsections (a) through (d), (g), (h), and (i),
1-46 Section 5.754, Water Code, are amended to read as follows:

1-47 (a) The commission by rule may ~~[shall]~~ establish a set of
1-48 standards for the classification of a person's compliance history
1-49 at a particular site.

1-50 (b) Rules adopted under this section must, at a minimum,
1-51 provide for three classifications of site-specific compliance
1-52 history in a manner adequate to distinguish among:

1-53 (1) poor performers, or regulated entities that in the
1-54 commission's judgment perform in an unsatisfactory manner at a
1-55 particular site ~~[below average];~~

1-56 (2) satisfactory ~~[average]~~ performers, or regulated
1-57 entities that generally comply with environmental regulations at a
1-58 particular site; and

1-59 (3) high performers, or regulated entities that have a
1-60 ~~[an above-average]~~ compliance record at a particular site that
1-61 demonstrates a high level of compliance with environmental
1-62 regulations at that site.

1-63 (c) In classifying a person's compliance history at a

2-1 particular site, the commission shall:

2-2 (1) consider the size, complexity, and type of
2-3 activity at the site;

2-4 (2) determine whether a violation of an applicable
2-5 legal requirement is of major, moderate, or minor significance;

2-6 (3) ~~[(2)]~~ establish criteria for classifying a repeat
2-7 violation, giving consideration to the size [number] and complexity
2-8 of the site at which the violations occurred and limiting
2-9 consideration to violations of a similar nature [facilities owned
2-10 or operated by the person]; and

2-11 (4) ~~[(3)]~~ consider the significance of the violation
2-12 and whether the person is a repeat violator at the site.

2-13 (d) The commission by rule shall establish methods of
2-14 assessing the site-specific compliance history of regulated
2-15 entities for which it does not have adequate compliance
2-16 information. The methods may include requiring a compliance
2-17 inspection at the site to determine an entity's eligibility for
2-18 participation in a program that requires a high level of
2-19 compliance.

2-20 (g) Rules adopted under Subsection (e) for the use of
2-21 site-specific compliance history shall provide for additional
2-22 oversight of, and review of applications regarding, a site
2-23 [facilities] owned or operated by a person whose compliance
2-24 performance at that site is in the lowest classification developed
2-25 under this section.

2-26 (h) The commission by rule shall, at a minimum, prohibit a
2-27 person whose compliance history at a particular site is classified
2-28 in the lowest classification developed under this section from:

2-29 (1) receiving an announced inspection at the site; and

2-30 (2) obtaining or renewing a flexible permit for the
2-31 site under the program administered by the commission under Chapter
2-32 382, Health and Safety Code, or participating at the site in the
2-33 regulatory flexibility program administered by the commission
2-34 under Section 5.758.

2-35 (i) The commission shall consider the compliance history of
2-36 and other relevant compliance information, including notices of
2-37 violation, relating to a regulated entity when determining whether
2-38 to grant the regulated entity's application for a permit or permit
2-39 amendment for any activity under the commission's jurisdiction to
2-40 which this subchapter applies. Notwithstanding any provision of
2-41 this code or the Health and Safety Code relating to the granting of
2-42 permits or permit amendments by the commission, the commission,
2-43 after an opportunity for a hearing, shall deny a regulated entity's
2-44 application for a permit or permit amendment if the regulated
2-45 entity's compliance history is unacceptable based on violations
2-46 constituting a recurring pattern of conduct that demonstrates a
2-47 consistent disregard for the regulatory process, including a
2-48 failure to make a timely and substantial attempt to correct the
2-49 violations.

2-50 SECTION 3. Section 5.756, Water Code, is amended by
2-51 amending Subsection (b) and adding Subsection (e) to read as
2-52 follows:

2-53 (b) The commission shall collect data on and make available
2-54 to the public on the Internet:

2-55 (1) the number and percentage of all violations
2-56 committed at a particular site by persons who previously have
2-57 committed the same or similar violations at that site;

2-58 (2) the number and percentage of enforcement orders
2-59 issued by the commission that are issued for a particular site to
2-60 entities that have been the subject of a previous enforcement order
2-61 for that site;

2-62 (3) whether a violation is of major, moderate, or
2-63 minor significance, as defined by commission rule;

2-64 (4) whether a violation relates to an applicable legal
2-65 requirement pertaining to air, water, or waste; and

2-66 (5) the region in which the facility is located.

2-67 (e) Any material about a site that is placed on the Internet
2-68 under this subchapter is subject to a quality assurance and quality
2-69 control procedure, including an opportunity for the entity that

3-1 holds the permit for the site to review the information before it is
3-2 placed on the Internet.

3-3 SECTION 4. Subsections (a), (b), (d), and (h), Section
3-4 5.758, Water Code, are amended to read as follows:

3-5 (a) The commission by order may exempt an applicant from a
3-6 requirement of a statute or commission rule regarding the control
3-7 or abatement of pollution if the applicant proposes to control or
3-8 abate pollution by an alternative method or by applying an
3-9 alternative standard that is:

3-10 (1) as ~~more~~ protective of the environment and the
3-11 public health as ~~than~~ the method or standard prescribed by the
3-12 statute or commission rule that would otherwise apply; and

3-13 (2) not inconsistent with federal law.

3-14 (b) The commission may not exempt an applicant under this
3-15 section unless the applicant can demonstrate ~~present~~ to the
3-16 commission ~~[documented evidence of benefits to environmental~~
3-17 ~~quality]~~ that the applicant's proposed project will result in
3-18 protection of environmental quality that is equal to or greater
3-19 than the protection afforded by existing standards ~~[from the~~
3-20 ~~project the applicant proposes].~~

3-21 (d) The commission's order must provide a ~~[specific]~~
3-22 description of the alternative method or standard and condition the
3-23 exemption on compliance with the method or standard as the order
3-24 prescribes.

3-25 (h) In implementing the program of regulatory flexibility
3-26 authorized by this section, the commission shall:

3-27 (1) ~~[market the program to businesses in the state~~
3-28 ~~through all available appropriate media;~~

3-29 ~~[(2)]~~ endorse alternative methods that will clearly
3-30 benefit the environment and impose the least onerous restrictions
3-31 on business, including economic benefit;

3-32 ~~[(3) fix and enforce environmental standards,~~
3-33 ~~allowing businesses flexibility in meeting the standards in a~~
3-34 ~~manner that clearly enhances environmental outcomes;]~~ and

3-35 (2) ~~[(4)]~~ work to achieve consistent and predictable
3-36 results for the regulated community and shorter waits for permit
3-37 issuance.

3-38 SECTION 5. Subsection (d), Section 5.753, and Section
3-39 5.757, Water Code, are repealed.

3-40 SECTION 6. This Act takes effect immediately if it receives
3-41 a vote of two-thirds of all the members elected to each house, as
3-42 provided by Section 39, Article III, Texas Constitution. If this
3-43 Act does not receive the vote necessary for immediate effect, this
3-44 Act takes effect November 1, 2003.

3-45 * * * * *