

By: Smith of Harris

H.B. No. 36

A BILL TO BE ENTITLED

AN ACT

relating to compliance histories for and incentives to reward compliance performance by entities regulated by the Texas Commission on Environmental Quality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

(a) Consistent with other law and the requirements necessary to maintain federal program authorization, the commission by rule shall develop standards ~~[a uniform standard]~~ for evaluating compliance history.

(b) The components of compliance history may ~~[must]~~ include:

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

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

~~[(3)]~~ to the extent readily available to the commission, enforcement orders, court judgments, consent decrees, and criminal convictions relating to violations of environmental

1 laws of other states and the federal government, including the
2 United States Environmental Protection Agency; and

3 (3) [~~(4)~~] changes in ownership.

4 (e) Except as required by other law or any requirement
5 necessary to maintain federal program authorization, the
6 commission by rule shall establish a period for site-specific
7 compliance history.

8 (f) Nothing in this section shall prevent the commission
9 from considering any relevant compliance information, including
10 notices of violation, in enforcement.

11 SECTION 2. Sections 5.754(a)-(d) and (g)-(i), Water Code,
12 are amended to read as follows:

13 (a) The commission by rule may [~~shall~~] establish a set of
14 standards for the classification of a person's compliance history
15 at a particular site. The commission shall develop standards for
16 classifying some categories of regulated entities. In determining
17 the types of regulated entities to classify, the commission shall
18 consider, as one of the factors in making that determination, those
19 regulated entities that are generally inspected at least annually.

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

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

26 (2) satisfactory [~~average~~] performers, or regulated
27 entities that generally comply with environmental regulations at a

1 particular site; and

2 (3) high performers, or regulated entities that have a
3 ~~[an above-average]~~ compliance record at a particular site that
4 demonstrates a high level of compliance with environmental
5 regulations at that site.

6 (c) In classifying a person's compliance history at a
7 particular site, the commission shall:

8 (1) consider the size, complexity, and type of
9 activity at the site;

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

12 (3) ~~[(2)]~~ establish criteria for classifying a repeat
13 violator, giving consideration to the size ~~[number]~~ and complexity
14 of the site at which the violations occurred and limiting
15 consideration to violations of a similar nature ~~[facilities owned~~
16 ~~or operated by the person]~~; and

17 (4) ~~[(3)]~~ consider the significance of the violation
18 and whether the person is a repeat violator at the site.

19 (d) The commission by rule shall establish methods of
20 assessing the site-specific compliance history of regulated
21 entities for which it does not have adequate compliance
22 information. The methods may include requiring a compliance
23 inspection at the site to determine an entity's eligibility for
24 participation in a program that requires a high level of
25 compliance.

26 (g) Rules adopted under Subsection (e) for the use of
27 site-specific compliance history shall provide for additional

oversight of, and review of applications regarding, a site ~~[facilities]~~ owned or operated by a person whose compliance performance at that site is in the lowest classification developed under this section.

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

- (1) receiving an announced inspection at the site; and
- (2) obtaining or renewing a flexible permit for the site under the program administered by the commission under Chapter 382, Health and Safety Code, or participating at the site in the regulatory flexibility program administered by the commission under Section 5.758.

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

violations.

SECTION 3. Section 5.755(b), Water Code, is amended to read as follows:

(b) The strategically directed regulatory structure shall offer incentives based on:

(1) a person's compliance performance [~~history classification~~]; and

(2) any voluntary measures undertaken by the person to improve environmental quality.

SECTION 4. Section 5.756, Water Code, is amended by amending Subsection (b) and adding Subsection (e) to read as follows:

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

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

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

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

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

(5) the region in which the facility is located.

(e) Any material about a site that is placed on the Internet

1 under this subchapter is subject to a quality assurance and quality
2 control procedure, including an opportunity for the entity that
3 holds the permit for the site to review the information before it is
4 placed on the Internet.

5 SECTION 5. Sections 5.758(a), (b), (d), and (h), Water
6 Code, are amended to read as follows:

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

12 (1) as ~~[more]~~ protective of the environment and the
13 public health as ~~[than]~~ the method or standard prescribed by the
14 statute or commission rule that would otherwise apply; and

15 (2) not inconsistent with federal law.

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

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

27 (h) In implementing the program of regulatory flexibility

1 authorized by this section, the commission shall:

2 (1) ~~market the program to businesses in the state~~
3 ~~through all available appropriate media;~~

4 ~~[(2)]~~ endorse alternative methods that will clearly
5 benefit the environment and impose the least onerous restrictions
6 on business, including economic benefit;

7 ~~[(3) fix and enforce environmental standards,~~
8 ~~allowing businesses flexibility in meeting the standards in a~~
9 ~~manner that clearly enhances environmental outcomes;]~~ and

10 (2) ~~[(4)]~~ work to achieve consistent and predictable
11 results for the regulated community and shorter waits for permit
12 issuance.

13 SECTION 6. Sections 5.753(d) and 5.757, Water Code, are
14 repealed.

15 SECTION 7. Not later than December 31, 2004, the Texas
16 Commission on Environmental Quality by rule shall adopt standards
17 for classification of regulated entities required by Section
18 5.754(a), Water Code, as amended by this Act.

19 SECTION 8. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect January 15, 2004.