

By: Smith of Harris

H.B. No. 36

Substitute the following for H.B. No. 36:

By: West

C.S.H.B. No. 36

A BILL TO BE ENTITLED

AN ACT

1
2 relating to compliance histories for and incentives to reward
3 compliance performance by entities regulated by the Texas
4 Commission on Environmental Quality.

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

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

9 (a) Consistent with other law and the requirements
10 necessary to maintain federal program authorization, the
11 commission by rule may ~~[shall]~~ develop standards ~~[a uniform~~
12 ~~standard]~~ for evaluating site-specific compliance history that are
13 uniform for sites that are similar in size and complexity and at
14 which similar activities occur.

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

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

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

24 ~~[(3)]~~ to the extent readily available to the

1 commission, enforcement orders, court judgments, consent decrees,
2 and criminal convictions relating to violations of environmental
3 laws of other states and the federal government, including the
4 United States Environmental Protection Agency; and

5 (3) [~~4~~] changes in ownership.

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

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

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

15 (a) The commission by rule may [~~shall~~] establish a set of
16 standards for the classification of a person's compliance history
17 at a particular site.

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

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

24 (2) satisfactory [~~average~~] performers, or regulated
25 entities that generally comply with environmental regulations at a
26 particular site; and

27 (3) high performers, or regulated entities that have a

1 ~~[an above-average]~~ compliance record at a particular site that
2 demonstrates a high level of compliance with environmental
3 regulations at that site.

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

6 (1) consider the size, complexity, and type of
7 activity at the site;

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

10 (3) ~~[(2)]~~ establish criteria for classifying a repeat
11 violator, giving consideration to the size ~~[number]~~ and complexity
12 of the site at which the violations occurred and limiting
13 consideration to violations of a similar nature ~~[facilities owned~~
14 ~~or operated by the person]~~; and

15 (4) ~~[(3)]~~ consider the significance of the violation
16 and whether the person is a repeat violator at the site.

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

24 (g) Rules adopted under Subsection (e) for the use of
25 site-specific compliance history shall provide for additional
26 oversight of, and review of applications regarding, a site
27 ~~[facilities]~~ owned or operated by a person whose compliance

1 performance at that site is in the lowest classification developed
2 under this section.

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

6 (1) receiving an announced inspection at the site; and

7 (2) obtaining or renewing a flexible permit for the
8 site under the program administered by the commission under Chapter
9 382, Health and Safety Code, or participating at the site in the
10 regulatory flexibility program administered by the commission
11 under Section 5.758.

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

27 SECTION 3. Section 5.755(b), Water Code, is amended to read

1 as follows:

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

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

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

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

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

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

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

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

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

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

25 (e) Any material about a site that is placed on the Internet
26 under this subchapter is subject to a quality assurance and quality
27 control procedure, including an opportunity for the entity that

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

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

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

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

13 (2) not inconsistent with federal law.

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

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

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

27 (1) [~~market the program to businesses in the state~~

1 ~~through all available appropriate media,~~

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

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

8 (2) ~~[(4)]~~ work to achieve consistent and predictable
9 results for the regulated community and shorter waits for permit
10 issuance.

11 SECTION 6. Sections 5.753(d) and 5.757, Water Code, are
12 repealed.

13 SECTION 7. This Act takes effect immediately if it receives
14 a vote of two-thirds of all the members elected to each house, as
15 provided by Section 39, Article III, Texas Constitution. If this
16 Act does not receive the vote necessary for immediate effect, this
17 Act takes effect January 15, 2004.