

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 may ~~[shall]~~ develop standards ~~[a uniform standard]~~ for evaluating site-specific compliance history that are uniform for sites that are similar in size and complexity and at which similar activities occur.

(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

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

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 under this subchapter is subject to a quality assurance and quality 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. (a) This Act takes effect immediately if it  
14 receives a vote of two-thirds of all the members elected to each  
15 house, as provided by Section 39, Article III, Texas Constitution.  
16 If this Act does not receive the vote necessary for immediate  
17 effect, this Act takes effect January 15, 2004.

18         (b) The changes in law made by this Act to Sections  
19 5.753-5.756, Water Code, and Section 5.758, Water Code, apply only  
20 to:

21           (1) an application for a permit or a permit amendment  
22 filed with the Texas Commission on Environmental Quality on or  
23 after the date that final rules reflecting those changes in law are  
24 published in the Texas Register; and

25           (2) an enforcement action initiated by the commission  
26 on or after that date.