

## **BILL ANALYSIS**

S.B. 455  
By: Armbrister  
Environmental Regulation  
Committee Report (Amended)

### **BACKGROUND AND PURPOSE**

The Texas Commission on Environmental Quality (TCEQ) has consolidated all innovative regulatory programs into one office, changing the requirements for innovative regulatory programs and the use of regulatory flexibility, and establishing a new ranking system based on compliance history pursuant to the recommendations of the Sunset Advisory Committee. S.B. 455 allows the use of these innovative programs upon showing of an equal environmental benefit with economic savings to the regulated entity. This bill also eliminates the requirement for a single uniform standard for all entities regulated by TCEQ and authorizes TCEQ to adopt standards that are uniform for sites that are similar in size and complexity and at which similar activities occur. Finally, this bill provides guidance for TCEQ concerning placing information on the internet.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill modifies rulemaking authority to the Texas Commission on Environmental Quality in SECTION 1(a)(Section 5.753 , Water Code) of this bill.

### **ANALYSIS**

#### **SECTION 1.**

Amends Sec. 5.753(a), (b), and (e), Water Code, as follows:

(a) Makes the development of compliance history "standards" permissive and would provide that the standards be uniform for sites that are similar in size and complexity and at which similar activities occur.

(b) Provides that inclusion of elements in compliance history is up to TCEQ and only require federal information to the extent it is readily available. Moves reference to "consent decrees" from Subdivision (1) to Subdivision (3).

(e) Clarifies that when the commission sets the time period for compliance history, it is for "site-specific" compliance history.

(f) Provides that nothing within the section shall prevent the commissioners from considering any relevant compliance information in enforcement.

#### **SECTION 2.**

Amends Sec. 5.754, Water Code, as follows:

(a) Allows instead of requires the TCEQ to develop classification standards for specific sites.

(b) Reflects that the mid-range classification is "satisfactory" instead of "average" and specifies that these classifications apply to site-specific compliance history.

(c) Requires the TCEQ to consider the size, complexity, and type of activity when classifying a site's compliance history and to give consideration to size when determining a repeat violator, limiting consideration to violations of a similar nature at a particular site.

(d) Clarifies that methods for determining compliance history ranking when inadequate compliance information is available is by site.

(g) Clarifies that additional oversight applies to the sites in the lowest classification.

(h) Clarifies that prohibitions in this section only apply to sites in the lowest classification.

(i) Requires TCEQ to consider other relevant compliance information, as well as the compliance history, in permitting actions.

### SECTION 3.

Amends Section 5.756, Water Code, by amending Subsection (b) and adding Subsection (e), as follows:

(b) Requires TCEQ to collect certain data and make it available to the public, including the internet. Makes conforming changes.

(e) Provides that 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 holds the permit for the site to review the information before it is placed on the Internet.

### SECTION 4.

Amends Sections 5.758(a), (b), (d), and (h), Water Code, as follows:

(a) Authorizes TCEQ by order to exempt an applicant from a requirement of a statute or commission rule regarding the control or abatement of pollution if the applicant proposes to control or abate pollution by an alternative method or by applying an alternative standard that is as, rather than more, protective of the environment and the public health as the method or standard prescribed by the statute or TCEQ rule that would otherwise apply.

(b) Prohibits TCEQ from exempting an applicant under this section unless the applicant can demonstrate to TCEQ that the applicant's proposed project will result in protection of environmental quality that is equal to or greater than the protection afforded by existing standards.

(d) Deletes existing modifier "specific" related to a description of the alternative method or standard.

(h) Requires TCEQ, in implementing the program of regulatory flexibility authorized by this section, to endorse alternative methods that will clearly benefit the environment and impose the least onerous restrictions on business, including economic benefit. Deletes existing text related to marketing the program and fixing and enforcing environmental standards.

### SECTION 5.

Repeals Sec. 5.753(d), Water Code, to eliminate requirement that compliance history include notices of violations.

Repeals Sec. 5.757, Water Code, to eliminate the requirement that TCEQ provide a single point of contact to coordinate innovative programs, allowing TCEQ flexibility in the administration of these programs.

### SECTION 6.

Provides an effective date of September 1, 2003.

### **EFFECTIVE DATE**

September 1, 2003

### **EXPLANATION OF AMENDMENTS**

Amendment 1 authorizes the Texas Commission on Environmental Quality (TCEQ) to offer high performers a small benefit for their excellent compliance history. It allows TCEQ to give high performers preference in processing permit applications, permit amendments, and permit renewals. The amendment grants that these high performers be given a priority in having their permit reviewed. The Texas Commission on Environmental Quality would continue to receive a full and complete review. This authority is permissive, not mandatory, and would be implemented by TCEQ ruling.