

By: Smith of Harris

H.B. No. 1063

Substitute the following for H.B. No. 1063:

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C.S.H.B. No. 1063

A BILL TO BE ENTITLED

1

AN ACT

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 5.752(5), Water Code, is amended to read
7 as follows:

8 (5) "Strategically directed regulatory structure"
9 means a program that is designed to use innovative programs to
10 provide maximum environmental benefit, to result in economic
11 savings to regulated entities, and to reward compliance
12 performance.

13 SECTION 2. Sections 5.753(a), (b), and (e), Water Code, are
14 amended to read as follows:

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

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

23 (1) enforcement orders, court judgments, [~~consent~~
24 ~~decrees,~~] and criminal convictions of this state [~~and the federal~~

1 ~~government]~~ relating to compliance with applicable legal
2 requirements under the jurisdiction of the commission [~~or the~~
3 ~~United States Environmental Protection Agency]~~;

4 (2) notwithstanding any other provision of this code,
5 orders issued under Section 7.070;

6 (3) to the extent readily available to the commission,
7 enforcement orders, court judgments, consent decrees, and criminal
8 convictions relating to violations of environmental laws of other
9 states and the federal government, including the United States
10 Environmental Protection Agency; and

11 (4) changes in ownership.

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

16 SECTION 3. Sections 5.754(a), (b), (c), (d), (g), (h), and
17 (i), Water Code, are amended to read as follows:

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

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

24 (1) poor performers, or regulated entities that in the
25 commission's judgment perform below average at a particular site;

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

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

26 SECTION 4. Sections 5.755(a) and (b), Water Code, are
27 amended to read as follows:

1 (a) The commission by rule shall develop a strategically
2 directed regulatory structure to provide:

3 (1) incentives for enhanced environmental
4 performance; and

5 (2) economic benefits for regulated entities if the
6 resulting benefits to the environment are equal to the benefits
7 that would result from compliance with applicable legal
8 requirements under the commission's jurisdiction.

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

11 (1) a person's site-specific compliance history
12 classification; and

13 (2) any voluntary measures undertaken by the person to
14 improve environmental quality at the site.

15 SECTION 5. Section 5.756, Water Code, is amended by
16 amending Subsection (b) and adding Subsection (e) to read as
17 follows:

18 (b) The commission shall collect data on and make available
19 to the public [~~on the Internet~~]:

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

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

27 (3) whether a violation is of major, moderate, or

1 minor significance, as defined by commission rule;

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

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

5 (e) Any material about a site that is placed on the Internet
6 under this subchapter is subject to a quality assurance and quality
7 control procedure, including an opportunity for the entity that
8 holds the permit for the site to review the information before it is
9 placed on the Internet.

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

12 (a) The commission by order may exempt an applicant from a
13 requirement of a statute or commission rule regarding the control
14 or abatement of pollution if the applicant proposes to control or
15 abate pollution by an alternative method or by applying an
16 alternative standard that is:

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

20 (2) not inconsistent with federal law.

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

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

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

7 (1) [~~market the program to businesses in the state~~
8 ~~through all available appropriate media;~~

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

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

15 (2) [~~(4)~~] work to achieve consistent and predictable
16 results for the regulated community and shorter waits for permit
17 issuance.

18 SECTION 7. Sections 5.753(d) and 5.757, Water Code, are
19 repealed.

20 SECTION 8. This Act takes effect September 1, 2003.