

By: Armbrister

S.B. No. 455

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 5.753, 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. Subsections (a) through (d), (g), (h), and (i),
14 Section 5.754, Water Code, 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 below average at a particular site;

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

26 (3) high performers, or regulated entities that have a
27 [~~an above-average~~] compliance record at a particular site that

1 demonstrates a high level of compliance with environmental
2 regulations at that site.

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

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

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

9 (3) [~~(2)~~] establish criteria for classifying a repeat
10 violator, giving consideration to the size [~~number~~] and complexity
11 of the site at which the violations occurred and limiting
12 consideration to violations of a similar nature [~~facilities owned~~
13 ~~or operated by the person~~]; and

14 (4) [~~(3)~~] consider the significance of the violation
15 and whether the person is a repeat violator at the site.

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

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

1 under this section.

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

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

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

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

26 SECTION 3. Section 5.756, Water Code, is amended by
27 amending Subsection (b) and adding Subsection (e) to read as

1 follows:

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

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

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

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

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

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

16 (e) Any material about a site that is placed on the Internet
17 under this subchapter is subject to a quality assurance and quality
18 control procedure, including an opportunity for the entity that
19 holds the permit for the site to review the information before it is
20 placed on the Internet.

21 SECTION 4. Subsections (a), (b), (d), and (h), Section
22 5.758, Water Code, are amended to read as follows:

23 (a) The commission by order may exempt an applicant from a
24 requirement of a statute or commission rule regarding the control
25 or abatement of pollution if the applicant proposes to control or
26 abate pollution by an alternative method or by applying an
27 alternative standard that is:

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

4 (2) not inconsistent with federal law.

5 (b) The commission may not exempt an applicant under this
6 section unless the applicant can demonstrate [~~present~~] to the
7 commission [~~documented evidence of benefits to environmental~~
8 ~~quality~~] that the applicant's proposed project will result in
9 protection of environmental quality that is equal to or greater
10 than the protection afforded by existing standards [~~from the~~
11 ~~project the applicant proposes~~].

12 (d) The commission's order must provide a [~~specific~~]
13 description of the alternative method or standard and condition the
14 exemption on compliance with the method or standard as the order
15 prescribes.

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

18 (1) [~~market the program to businesses in the state~~
19 ~~through all available appropriate media,~~

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

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

26 (2) [~~(4)~~] work to achieve consistent and predictable
27 results for the regulated community and shorter waits for permit

1 issuance.

2 SECTION 5. Subsection (d), Section 5.753, and Section
3 5.757, Water Code, are repealed.

4 SECTION 6. This Act takes effect September 1, 2003.

COMMITTEE AMENDMENT NO. 1

Amend S.B. No. 455 (Senate engrossment) as follows:

(1) In the introductory language to SECTION 1 of the bill (page 1, line 7), strike "and adding Subsection (f)".

(2) In SECTION 1 of the bill, in amended Section 5.753, Water Code, following amended Subsection (e), strike added Subsection (f) (page 2, lines 10-12).

(3) In SECTION 2 of the bill, strike the introductory language (page 2, lines 13 and 14) and substitute "Section 5.754, Water Code, is amended by amending Subsections (a) through (d), (g), (h), and (i) and adding Subsection (j) to read as follows:".

(4) In SECTION 2 of the bill, in amended Section 5.754(i), Water Code (page 4, lines 12 and 13), strike "including notices of violation".

(5) In SECTION 2 of the bill, in amended Section 5.754, Water Code, following amended Subsection (i) (page 4, between lines 25 and 26), add new Subsection (j) to read as follows:

(j) The commission by rule may provide that an application for a permit, permit renewal, or permit amendment for a site at which a high level of compliance with environmental regulations is demonstrated shall, once the application is administratively complete, be placed in technical review ahead of other administratively complete applications in the same program area for which technical review has not begun and which have not demonstrated the same high level of compliance with environmental regulations.