

By: Armbrister

S.B. No. 455

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. Sections 5.752(2) and (5), Water Code, are
7 amended to read as follows:

8 (2) "Innovative program" means:

9 (A) a program developed by the commission under
10 this subchapter, Chapter 26 or 27 of this code, or Chapter 361, 382,
11 or 401, Health and Safety Code, that provides incentives to a person
12 in return for:

13 (i) benefits to the environment that exceed
14 benefits that would result from compliance with applicable legal
15 requirements under the commission's jurisdiction; or

16 (ii) benefits to the environment that are
17 equal to benefits that would result from compliance with applicable
18 legal requirements under the commission's jurisdiction and that
19 also result in economic benefit to regulated entities;

20 (B) the flexible permit program administered by
21 the commission under Chapter 382, Health and Safety Code; or

22 (C) the regulatory flexibility program
23 administered by the commission under Section 5.758.

24 (5) "Strategically directed regulatory structure"

1 means a program that is designed to use innovative programs to
2 provide maximum environmental benefit, to result in economic
3 savings to regulated entities, and to reward compliance
4 performance.

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

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

13 (b) The components of compliance history may [~~must~~]
14 include:

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

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

22 (3) to the extent readily available to the commission,
23 enforcement orders, court judgments, and criminal convictions
24 relating to violations of environmental laws of other states and
25 the federal government, including the United States Environmental
26 Protection Agency; and

27 (4) changes in ownership.

1 (e) Except as required by other law or any requirement
2 necessary to maintain federal program authorization, the
3 commission by rule shall establish a three-year period for
4 site-specific compliance history.

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

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

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

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

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

18 (3) high performers, or regulated entities that have a
19 [~~an above-average~~] compliance record at a particular site that
20 demonstrates a high level of compliance with environmental
21 regulations at that site.

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

24 (1) give consideration to the size and complexity of
25 the site [~~determine whether a violation of an applicable legal~~
26 ~~requirement is of major, moderate, or minor significance~~];

27 (2) establish criteria for classifying a repeat

1 violator, giving consideration to the size [~~number~~] and complexity
2 of the site at which the violations occurred and limiting
3 consideration to violations of a similar nature [~~facilities owned~~
4 ~~or operated by the person~~]; and

5 (3) consider the significance of the violation and
6 whether the person is a repeat violator at the site.

7 (d) The commission by rule shall establish methods of
8 assessing the site-specific compliance history of regulated
9 entities for which it does not have adequate compliance
10 information. The methods may include requiring a compliance
11 inspection at the site to determine an entity's eligibility for
12 participation in a program that requires a high level of
13 compliance.

14 (g) Rules adopted under Subsection (e) for the use of
15 site-specific compliance history shall provide for additional
16 oversight of, and review of applications regarding, a site
17 [~~facilities~~] owned or operated by a person whose compliance
18 performance at that site is in the lowest classification developed
19 under this section.

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

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

24 (2) obtaining or renewing a flexible permit for the
25 site under the program administered by the commission under Chapter
26 382, Health and Safety Code, or participating at the site in the
27 regulatory flexibility program administered by the commission

1 under Section 5.758.

2 (i) The commission may [~~shall~~] consider the compliance
3 history of a regulated entity at any of its sites when determining
4 whether to grant the regulated entity's application for a permit or
5 permit amendment for any new activity under the commission's
6 jurisdiction to which this subchapter applies. Notwithstanding any
7 provision of this code or the Health and Safety Code relating to the
8 granting of permits or permit amendments by the commission, the
9 commission, after an opportunity for a hearing, shall deny a
10 regulated entity's application for a permit or permit amendment if
11 the regulated entity's compliance history is unacceptable based on
12 violations constituting a recurring pattern of conduct that
13 demonstrates a consistent disregard for the regulatory process,
14 including a failure to make a timely and substantial attempt to
15 correct the violations.

16 SECTION 4. Section 5.755, Water Code, is amended by
17 amending Subsections (a) and (b) and adding Subsection (d) to read
18 as follows:

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

21 (1) incentives for enhanced environmental
22 performance; and

23 (2) economic benefits for regulated entities if the
24 resulting benefits to the environment are equal to the benefits
25 that would result from compliance with applicable legal
26 requirements under the commission's jurisdiction.

27 (b) The strategically directed regulatory structure shall

1 offer incentives based on:

2 (1) a person's site-specific compliance history
3 classification; and

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

6 (d) If the commission uses a formula to determine
7 classifications for purposes of this subchapter, the denominator
8 shall include inspections and reports submitted to the commission
9 that allege potential violations at the site.

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

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

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

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

22 (3) [~~whether a violation is of major, moderate, or~~
23 ~~minor significance, as defined by commission rule,~~

24 [~~4~~] whether a violation relates to an applicable
25 legal requirement pertaining to air, water, or waste; and

26 (4) [~~5~~] the region in which the site [~~facility~~] is
27 located.

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

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

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

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

16 (2) not inconsistent with federal law.

17 (b) The commission may not exempt an applicant under this
18 section unless the applicant can present to the commission
19 documented evidence of benefits to environmental quality or of
20 economic benefit with equivalent protection of environmental
21 quality that will result from the project the applicant proposes.

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

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

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

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

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

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

12 SECTION 7. Sections 5.753(d) and 5.757, Water Code, are
13 repealed.

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