

1-1 By: Armbrister S.B. No. 455  
1-2 (In the Senate - Filed February 12, 2003; February 17, 2003,  
1-3 read first time and referred to Committee on Natural Resources;  
1-4 April 22, 2003, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 8, Nays 2; April 22, 2003,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 455 By: Armbrister

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to compliance histories for and incentives to reward  
1-11 compliance performance by entities regulated by the Texas  
1-12 Commission on Environmental Quality.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subdivision (5), Section 5.752, Water Code, is  
1-15 amended to read as follows:

1-16 (5) "Strategically directed regulatory structure"  
1-17 means a program that is designed to use innovative programs to  
1-18 provide maximum environmental benefit, to result in economic  
1-19 savings to regulated entities, and to reward compliance  
1-20 performance.

1-21 SECTION 2. Subsections (a), (b), and (e), Section 5.753,  
1-22 Water Code, are amended to read as follows:

1-23 (a) Consistent with other law and the requirements  
1-24 necessary to maintain federal program authorization, the  
1-25 commission by rule may [~~shall~~] develop standards [~~a uniform~~  
1-26 ~~standard~~] for evaluating site-specific compliance history that are  
1-27 uniform for sites that are similar in size and complexity and at  
1-28 which similar activities occur.

1-29 (b) The components of compliance history may [~~must~~]  
1-30 include:

1-31 (1) enforcement orders, court judgments, [~~consent~~  
1-32 ~~decrees,~~] and criminal convictions of this state [~~and the federal~~  
1-33 ~~government~~] relating to compliance with applicable legal  
1-34 requirements under the jurisdiction of the commission [~~or the~~  
1-35 ~~United States Environmental Protection Agency~~];

1-36 (2) [~~notwithstanding any other provision of this code,~~  
1-37 ~~orders issued under Section 7.070,~~

1-38 [~~(3)~~] to the extent readily available to the  
1-39 commission, enforcement orders, court judgments, consent decrees,  
1-40 and criminal convictions relating to violations of environmental  
1-41 laws of other states and the federal government, including the  
1-42 United States Environmental Protection Agency; and

1-43 (3) [~~(4)~~] changes in ownership.

1-44 (e) Except as required by other law or any requirement  
1-45 necessary to maintain federal program authorization, the  
1-46 commission by rule shall establish a period for site-specific  
1-47 compliance history.

1-48 SECTION 3. Subsections (a) through (d), (g), (h), and (i),  
1-49 Section 5.754, Water Code, are amended to read as follows:

1-50 (a) The commission by rule may [~~shall~~] establish a set of  
1-51 standards for the classification of a person's compliance history  
1-52 at a particular site.

1-53 (b) Rules adopted under this section must, at a minimum,  
1-54 provide for three classifications of site-specific compliance  
1-55 history in a manner adequate to distinguish among:

1-56 (1) poor performers, or regulated entities that in the  
1-57 commission's judgment perform below average at a particular site;

1-58 (2) satisfactory [~~average~~] performers, or regulated  
1-59 entities that generally comply with environmental regulations at a  
1-60 particular site; and

1-61 (3) high performers, or regulated entities that have a  
1-62 [~~an above-average~~] compliance record at a particular site that  
1-63 demonstrates a high level of compliance with environmental

2-1 regulations at that site.

2-2 (c) In classifying a person's compliance history at a  
2-3 particular site, the commission shall:

2-4 (1) consider the size, complexity, and type of  
2-5 activity at the site;

2-6 (2) determine whether a violation of an applicable  
2-7 legal requirement is of major, moderate, or minor significance;

2-8 (3) [~~2~~] establish criteria for classifying a repeat  
2-9 violator, giving consideration to the size [number] and complexity  
2-10 of the site at which the violations occurred and limiting  
2-11 consideration to violations of a similar nature [facilities owned  
2-12 or operated by the person]; and

2-13 (4) [~~3~~] consider the significance of the violation  
2-14 and whether the person is a repeat violator at the site.

2-15 (d) The commission by rule shall establish methods of  
2-16 assessing the site-specific compliance history of regulated  
2-17 entities for which it does not have adequate compliance  
2-18 information. The methods may include requiring a compliance  
2-19 inspection at the site to determine an entity's eligibility for  
2-20 participation in a program that requires a high level of  
2-21 compliance.

2-22 (g) Rules adopted under Subsection (e) for the use of  
2-23 site-specific compliance history shall provide for additional  
2-24 oversight of, and review of applications regarding, a site  
2-25 [~~facilities~~] owned or operated by a person whose compliance  
2-26 performance at that site is in the lowest classification developed  
2-27 under this section.

2-28 (h) The commission by rule shall, at a minimum, prohibit a  
2-29 person whose compliance history at a particular site is classified  
2-30 in the lowest classification developed under this section from:

2-31 (1) receiving an announced inspection at the site; and

2-32 (2) obtaining or renewing a flexible permit for the  
2-33 site under the program administered by the commission under Chapter  
2-34 382, Health and Safety Code, or participating at the site in the  
2-35 regulatory flexibility program administered by the commission  
2-36 under Section 5.758.

2-37 (i) The commission shall consider the compliance history of  
2-38 and other relevant compliance information relating to a regulated  
2-39 entity when determining whether to grant the regulated entity's  
2-40 application for a permit or permit amendment for any activity under  
2-41 the commission's jurisdiction to which this subchapter applies.  
2-42 Notwithstanding any provision of this code or the Health and Safety  
2-43 Code relating to the granting of permits or permit amendments by the  
2-44 commission, the commission, after an opportunity for a hearing,  
2-45 shall deny a regulated entity's application for a permit or permit  
2-46 amendment if the regulated entity's compliance history is  
2-47 unacceptable based on violations constituting a recurring pattern  
2-48 of conduct that demonstrates a consistent disregard for the  
2-49 regulatory process, including a failure to make a timely and  
2-50 substantial attempt to correct the violations.

2-51 SECTION 4. Section 5.756, Water Code, is amended by  
2-52 amending Subsection (b) and adding Subsection (e) to read as  
2-53 follows:

2-54 (b) The commission shall collect data on and make available  
2-55 to the public [~~on the Internet~~]:

2-56 (1) the number and percentage of all violations  
2-57 committed at a particular site by persons who previously have  
2-58 committed the same or similar violations at that site;

2-59 (2) the number and percentage of enforcement orders  
2-60 issued by the commission that are issued for a particular site to  
2-61 entities that have been the subject of a previous enforcement order  
2-62 for that site;

2-63 (3) whether a violation is of major, moderate, or  
2-64 minor significance, as defined by commission rule;

2-65 (4) whether a violation relates to an applicable legal  
2-66 requirement pertaining to air, water, or waste; and

2-67 (5) the region in which the facility is located.

2-68 (e) Any material about a site that is placed on the Internet  
2-69 under this subchapter is subject to a quality assurance and quality

3-1 control procedure, including an opportunity for the entity that  
3-2 holds the permit for the site to review the information before it is  
3-3 placed on the Internet.

3-4 SECTION 5. Subsections (a), (b), (d), and (h), Section  
3-5 5.758, Water Code, are amended to read as follows:

3-6 (a) The commission by order may exempt an applicant from a  
3-7 requirement of a statute or commission rule regarding the control  
3-8 or abatement of pollution if the applicant proposes to control or  
3-9 abate pollution by an alternative method or by applying an  
3-10 alternative standard that is:

3-11 (1) as [more] protective of the environment and the  
3-12 public health as [than] the method or standard prescribed by the  
3-13 statute or commission rule that would otherwise apply; and

3-14 (2) not inconsistent with federal law.

3-15 (b) The commission may not exempt an applicant under this  
3-16 section unless the applicant can demonstrate [present] to the  
3-17 commission [documented evidence of benefits to environmental  
3-18 quality] that the applicant's proposed project will result in  
3-19 protection of environmental quality that is equal to or greater  
3-20 than the protection afforded by existing standards [from the  
3-21 project the applicant proposes].

3-22 (d) The commission's order must provide a [~~specific~~]  
3-23 description of the alternative method or standard and condition the  
3-24 exemption on compliance with the method or standard as the order  
3-25 prescribes.

3-26 (h) In implementing the program of regulatory flexibility  
3-27 authorized by this section, the commission shall:

3-28 (1) [~~market the program to businesses in the state~~  
3-29 ~~through all available appropriate media;~~

3-30 [~~(2)~~] endorse alternative methods that will clearly  
3-31 benefit the environment and impose the least onerous restrictions  
3-32 on business, including economic benefit;

3-33 [~~(3) fix and enforce environmental standards,~~  
3-34 ~~allowing businesses flexibility in meeting the standards in a~~  
3-35 ~~manner that clearly enhances environmental outcomes;~~] and

3-36 (2) [~~(4)~~] work to achieve consistent and predictable  
3-37 results for the regulated community and shorter waits for permit  
3-38 issuance.

3-39 SECTION 6. Subsection (d), Section 5.753, and Section  
3-40 5.757, Water Code, are repealed.

3-41 SECTION 7. This Act takes effect September 1, 2003.

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