

By: Smith of Harris

H.B. No. 39

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

8 (1) "Applicable legal requirement" means an  
9 environmental law, regulation, permit, order, consent~~[7]~~ decree,  
10 or other requirement.

11 SECTION 2. The heading to Section 5.753, Water Code, is  
12 amended to read as follows:

13 Sec. 5.753. STANDARDS [~~STANDARD~~] FOR USING [~~EVALUATING~~]  
14 COMPLIANCE HISTORY.

15 SECTION 3. Sections 5.753(a), (b), and (d), Water Code, are  
16 amended to read as follows:

17 (a) Consistent with other law and the requirements  
18 necessary to maintain federal program authorization, the  
19 commission by rule shall develop standards [~~a uniform standard~~] for  
20 using [~~evaluating~~] compliance history.

21 (b) The components of compliance history must include:

22 (1) enforcement orders, court judgments, [~~consent~~  
23 ~~decrees,~~] and criminal convictions of this state [~~and the federal~~  
24 ~~government~~] relating to compliance with applicable legal

1 requirements under the jurisdiction of the commission [~~or the~~  
2 ~~United States Environmental Protection Agency~~];

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

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

10 (4) changes in ownership.

11 (d) For purposes of listing compliance history or using  
12 compliance history in any escalation of penalties, the commission  
13 may not include as a notice of violation deviations or violations  
14 provided by a person to the commission, such as deviations set forth  
15 in Discharge Monitoring Reports or Title V Deviation Reports,  
16 unless the commission issues a written notice of violation. For  
17 purposes of using compliance history in any escalation of  
18 penalties, the commission may not use notices of violation unless  
19 the commission takes subsequent action or the person is a repeat  
20 violator as determined pursuant to Section 5.754(c)(2). If the  
21 commission includes notices of violations in compliance history,  
22 the listing shall be preceded by the following statement  
23 prominently displayed: "A notice of violation represents a written  
24 allegation of a violation of a specific regulatory requirement from  
25 the commission to a regulated entity. A notice of violation is not  
26 a final enforcement action nor proof that a violation has actually  
27 occurred." [~~The set of components shall include notices of~~

1 ~~violations.]~~ A notice of violation administratively determined to  
2 be without merit may ~~[shall]~~ not be included in a compliance  
3 history. A notice of violation that is included in a compliance  
4 history shall be removed from the compliance history if the  
5 commission subsequently determines the notice of violation to be  
6 without merit.

7 SECTION 4. The heading to Section 5.754, Water Code, is  
8 amended to read as follows:

9 Sec. 5.754. ~~[CLASSIFICATION AND]~~ USE OF COMPLIANCE HISTORY.

10 SECTION 5. Sections 5.754(c), (e), (g), and (h), Water  
11 Code, are amended to read as follows:

12 (c) In using ~~[classifying]~~ a person's compliance history,  
13 the commission shall:

14 (1) determine whether a violation of an applicable  
15 legal requirement is of major, moderate, or minor significance;

16 (2) establish criteria for classifying a repeat  
17 violator, giving consideration to the size ~~[number]~~ and complexity  
18 of the site at which the violations occurred, and limiting  
19 consideration to violations of the same nature in the same  
20 environmental media ~~[facilities owned or operated by the person];~~  
21 and

22 (3) consider the significance of the violation and  
23 whether the person is a repeat violator.

24 (e) The commission by rule shall provide for the use of  
25 compliance history ~~[classifications]~~ in commission decisions  
26 regarding:

27 (1) the issuance, renewal, amendment, modification,

1 denial, suspension, or revocation of a permit;

2 (2) enforcement;

3 (3) the use of announced inspections; and

4 (4) participation in innovative programs.

5 (g) Rules adopted under Subsection (e) for the use of  
6 compliance history shall provide for additional oversight of, and  
7 review of applications regarding, facilities owned or operated by a  
8 person whose compliance performance is unsatisfactory according to  
9 commission standards [~~in the lowest classification developed under~~  
10 ~~this section~~].

11 (h) The commission by rule shall, at a minimum, prohibit a  
12 person whose compliance history is unsatisfactory according to  
13 commission standards [~~classified in the lowest classification~~  
14 ~~developed under this section~~] from[+]

15 [~~(1) receiving an announced inspection; and~~

16 [~~(2)~~] obtaining or renewing a flexible permit under  
17 the program administered by the commission under Chapter 382,  
18 Health and Safety Code, or participating in the regulatory  
19 flexibility program administered by the commission under Section  
20 5.758.

21 SECTION 6. Section 5.755(b), Water Code, is amended to read  
22 as follows:

23 (b) The strategically directed regulatory structure shall  
24 offer incentives based on:

25 (1) a person's compliance history [~~classification~~];

26 and

27 (2) any voluntary measures undertaken by the person to

1 improve environmental quality.

2 SECTION 7. Section 5.756, Water Code, is amended by adding  
3 Subsection (e) to read as follows:

4 (e) Any information or data about a site that is placed on  
5 the Internet under this subchapter is subject to a quality  
6 assurance and quality control procedure, including an opportunity,  
7 not to exceed 30 days, for the owner and operator of the site to  
8 review the information before it is placed on the Internet.

9 SECTION 8. Sections 5.758(a), (b), and (h), Water Code, are  
10 amended to read as follows:

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

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

19 (2) not inconsistent with federal law.

20 (b) The commission may not exempt an applicant under this  
21 section unless the applicant can present to the commission  
22 documented evidence that the alternative the applicant proposes is  
23 as protective of the environment and the public health as the method  
24 or standard prescribed by the statute or commission rule that would  
25 otherwise apply [of benefits to environmental quality that will  
26 result from the project the applicant proposes].

27 (h) In implementing the program of regulatory flexibility

1 authorized by this section, the commission shall:

2 (1) promote [~~market~~] the program to businesses in the  
3 state through all available appropriate media;

4 (2) endorse alternative methods that will clearly  
5 benefit the environment and impose the least onerous restrictions  
6 on business;

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

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

12 SECTION 9. Section 361.084(a), Health and Safety Code, is  
13 amended to read as follows:

14 (a) The commission by rule shall establish a procedure to  
15 prepare compliance summaries relating to the applicant's solid  
16 waste management activities in accordance with the method for using  
17 [~~evaluating~~] compliance history developed by the commission under  
18 Section 5.754, Water Code. A compliance summary shall include as  
19 evidence of compliance information regarding the applicant's  
20 implementation of an environmental management system at the  
21 facility for which the authorization is sought. In this  
22 subsection, "environmental management system" has the meaning  
23 assigned by Section 5.127, Water Code.

24 SECTION 10. Section 361.088(f), Health and Safety Code, is  
25 amended to read as follows:

26 (f) Notwithstanding Subsection (e), if the commission  
27 determines that an applicant's compliance history under the method

1 for using [~~evaluating~~] compliance history developed by the  
2 commission under Section 5.754, Water Code, raises an issue  
3 regarding the applicant's ability to comply with a material term of  
4 its permit, the commission shall provide an opportunity to request  
5 a contested case hearing.

6 SECTION 11. Sections 361.089(a), (e), and (f), Health and  
7 Safety Code, are amended to read as follows:

8 (a) The commission may, for good cause, deny or amend a  
9 permit it issues or has authority to issue for reasons pertaining to  
10 public health, air or water pollution, or land use, or for having a  
11 compliance history that is unsatisfactory according to commission  
12 standards [~~in the lowest classification~~] under Sections 5.753 and  
13 5.754, Water Code, and rules adopted and procedures developed under  
14 those sections.

15 (e) The commission may deny an original or renewal permit if  
16 it is found, after notice and hearing, that:

17 (1) the applicant or permit holder has a compliance  
18 history that is unsatisfactory according to commission standards  
19 [~~in the lowest classification~~] under Sections 5.753 and 5.754,  
20 Water Code, and rules adopted and procedures developed under those  
21 sections;

22 (2) the permit holder or applicant made a false or  
23 misleading statement in connection with an original or renewal  
24 application, either in the formal application or in any other  
25 written instrument relating to the application submitted to the  
26 commission, its officers, or its employees;

27 (3) the permit holder or applicant is indebted to the

1 state for fees, payment of penalties, or taxes imposed by this title  
2 or by a rule of the commission; or

3 (4) the permit holder or applicant is unable to ensure  
4 that the management of the hazardous waste management facility  
5 conforms or will conform to this title and the rules of the  
6 commission.

7 (f) Before denying a permit under this section, the  
8 commission must find:

9 (1) that the applicant or permit holder has a  
10 compliance history that is unsatisfactory according to commission  
11 standards [~~in the lowest classification~~] under Sections 5.753 and  
12 5.754, Water Code, and rules adopted and procedures developed under  
13 those sections; or

14 (2) that the permit holder or applicant is indebted to  
15 the state for fees, payment of penalties, or taxes imposed by this  
16 title or by a rule of the commission.

17 SECTION 12. Section 375.101(a), Health and Safety Code, as  
18 added by H.B. No. 2793, Acts of the 79th Legislature, Regular  
19 Session, 2005, as effective August 29, 2005, is amended to read as  
20 follows:

21 (a) A vehicle recycler or scrap metal recycling facility  
22 that removes convenience switches from eligible vehicles in  
23 accordance with educational materials received under this chapter  
24 shall be provided regulatory incentives by the commission under  
25 programs implemented pursuant to Section 5.755, Water Code,  
26 including on-site technical assistance [~~and compliance history~~  
27 ~~classification adjustments~~].

1 SECTION 13. Section 382.0518(c), Health and Safety Code, is  
2 amended to read as follows:

3 (c) In considering the issuance, amendment, or renewal of a  
4 permit, the commission may consider the applicant's compliance  
5 history in accordance with the method for using ~~[evaluating]~~  
6 compliance history developed by the commission under Section 5.754,  
7 Water Code. In considering an applicant's compliance history under  
8 this subsection, the commission shall consider as evidence of  
9 compliance information regarding the applicant's implementation of  
10 an environmental management system at the facility for which the  
11 permit, permit amendment, or permit renewal is sought. In this  
12 subsection, "environmental management system" has the meaning  
13 assigned by Section 5.127, Water Code.

14 SECTION 14. Section 382.056(o), Health and Safety Code, is  
15 amended to read as follows:

16 (o) Notwithstanding other provisions of this chapter, the  
17 commission may hold a hearing on a permit amendment, modification,  
18 or renewal if the commission determines that the application  
19 involves a facility for which the applicant's compliance history is  
20 unsatisfactory according to commission standards ~~[in the lowest~~  
21 ~~classification]~~ under Sections 5.753 and 5.754, Water Code, and  
22 rules adopted and procedures developed under those sections.

23 SECTION 15. Section 401.110(a), Health and Safety Code, is  
24 amended to read as follows:

25 (a) In making a determination whether to grant, deny, amend,  
26 renew, revoke, suspend, or restrict a license or registration, the  
27 commission may consider an applicant's or license holder's

1 technical competence, financial qualifications, and compliance  
2 history under the method for using [~~evaluation of~~] compliance  
3 history developed by the commission under Section 5.754, Water  
4 Code.

5 SECTION 16. Section 401.112(a), Health and Safety Code, is  
6 amended to read as follows:

7 (a) The department or commission, within its jurisdiction,  
8 in making a licensing decision on a specific license application to  
9 process or dispose of low-level radioactive waste from other  
10 persons, shall consider:

11 (1) site suitability, geological, hydrological, and  
12 meteorological factors, and natural [~~naturals~~] hazards;

13 (2) compatibility with present uses of land near the  
14 site;

15 (3) socioeconomic effects on surrounding communities  
16 of operation of the licensed activity and of associated  
17 transportation of low-level radioactive waste;

18 (4) the need for and alternatives to the proposed  
19 activity, including an alternative siting analysis prepared by the  
20 applicant;

21 (5) the applicant's qualifications, including  
22 financial and technical qualifications and compliance history  
23 under the method for using [~~evaluation of~~] compliance history  
24 developed by the commission under Section 5.754, Water Code, for an  
25 application to the commission or the requirements of Section  
26 401.110(b) for an application to the department;

27 (6) background monitoring plans for the proposed site;

1           (7) suitability of facilities associated with the  
2 proposed activities;

3           (8) chemical, radiological, and biological  
4 characteristics of the low-level radioactive waste and waste  
5 classification under Section 401.053;

6           (9) adequate insurance of the applicant to cover  
7 potential injury to any property or person, including potential  
8 injury from risks relating to transportation;

9           (10) training programs for the applicant's employees;

10          (11) a monitoring, record-keeping, and reporting  
11 program;

12          (12) spill detection and cleanup plans for the  
13 licensed site and related to associated transportation of low-level  
14 radioactive waste;

15          (13) decommissioning and postclosure care plans;

16          (14) security plans;

17          (15) worker monitoring and protection plans;

18          (16) emergency plans; and

19          (17) a monitoring program for applicants that includes  
20 prelicense and postlicense monitoring of background radioactive  
21 and chemical characteristics of the soils, groundwater, and  
22 vegetation.

23          SECTION 17. Section 26.028(d), Water Code, is amended to  
24 read as follows:

25          (d) Notwithstanding any other provision of this chapter,  
26 the commission, at a regular meeting without the necessity of  
27 holding a public hearing, may approve an application to renew or

1 amend a permit if:

2 (1) the applicant is not applying to:

3 (A) increase significantly the quantity of waste  
4 authorized to be discharged; or

5 (B) change materially the pattern or place of  
6 discharge;

7 (2) the activities to be authorized by the renewed or  
8 amended permit will maintain or improve the quality of waste  
9 authorized to be discharged;

10 (3) for NPDES permits, notice and the opportunity to  
11 request a public meeting shall be given in compliance with NPDES  
12 program requirements, and the commission shall consider and respond  
13 to all timely received and significant public comment; and

14 (4) the commission determines that an applicant's  
15 compliance history under the method for using [~~evaluating~~]  
16 compliance history developed by the commission under Section 5.754  
17 raises no issues regarding the applicant's ability to comply with a  
18 material term of its permit.

19 SECTION 18. Section 26.0281, Water Code, is amended to read  
20 as follows:

21 Sec. 26.0281. CONSIDERATION OF COMPLIANCE HISTORY. In  
22 considering the issuance, amendment, or renewal of a permit to  
23 discharge effluent composed [~~comprised~~] primarily of sewage or  
24 municipal waste, the commission shall consider the compliance  
25 history of the applicant and its operator under the method for using  
26 [~~evaluating~~] compliance history developed by the commission under  
27 Section 5.754. In considering an applicant's compliance history

1 under this subsection, the commission shall consider as evidence of  
2 compliance information regarding the applicant's implementation of  
3 an environmental management system at the facility for which the  
4 permit, permit amendment, or permit renewal is sought. In this  
5 section, "environmental management system" has the meaning  
6 assigned by Section 5.127.

7 SECTION 19. Section 26.040(h), Water Code, is amended to  
8 read as follows:

9 (h) Notwithstanding other provisions of this chapter, the  
10 commission, after hearing, shall deny or suspend a discharger's  
11 authority to discharge under a general permit if the commission  
12 determines that the discharger's compliance history is  
13 unsatisfactory according to commission standards [~~in the lowest~~  
14 ~~classification~~] under Sections 5.753 and 5.754 and rules adopted  
15 and procedures developed under those sections. A hearing under this  
16 subsection is not subject to Chapter 2001, Government Code.

17 SECTION 20. Section 27.051(d), Water Code, is amended to  
18 read as follows:

19 (d) The commission, in determining if the use or  
20 installation of an injection well is in the public interest under  
21 Subsection (a)(1), shall consider, but shall not be limited to the  
22 consideration of:

23 (1) compliance history of the applicant and related  
24 entities under the method for using [~~evaluating~~] compliance history  
25 developed by the commission under Section 5.754 and in accordance  
26 with the provisions of Subsection (e);

27 (2) whether there is a practical, economic, and

1 feasible alternative to an injection well reasonably available; and

2 (3) if the injection well will be used for the disposal  
3 of hazardous waste, whether the applicant will maintain sufficient  
4 public liability insurance for bodily injury and property damage to  
5 third parties that is caused by sudden and non-sudden accidents or  
6 will otherwise demonstrate financial responsibility in a manner  
7 adopted by the commission in lieu of public liability insurance. A  
8 liability insurance policy which satisfies the policy limits  
9 required by the hazardous waste management regulations of the  
10 commission for the applicant's proposed pre-injection facilities  
11 shall be deemed "sufficient" under this subdivision if the policy:

12 (A) covers the injection well; and

13 (B) is issued by a company that is authorized to  
14 do business and to write that kind of insurance in this state and is  
15 solvent and not currently under supervision or in conservatorship  
16 or receivership in this state or any other state.

17 SECTION 21. Section 32.101(c), Water Code, as added by H.B.  
18 No. 2651, Acts of the 79th Legislature, Regular Session, 2005, is  
19 amended to read as follows:

20 (c) The commission, in determining if the use or  
21 installation of a subsurface area drip dispersal system is in the  
22 public interest under Subsection (a)(1), shall consider:

23 (1) compliance history of the applicant and related  
24 entities under the method for using [~~evaluating~~] compliance history  
25 developed by the commission under Section 5.754 and in accordance  
26 with the provisions of Subsection (d) of this section;

27 (2) whether there is a practical, economic, and

1 feasible alternative to a subsurface area drip dispersal system  
2 reasonably available; and

3 (3) any other factor the commission considers  
4 relevant.

5 SECTION 22. Sections 5.754(a) and (b) and 5.757, Water  
6 Code, are repealed.

7 SECTION 23. This Act takes effect November 1, 2005.