

By: Smith of Harris, et al.

H.B. No. 86

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) of this  
21 code. If the commission includes notices of violations in  
22 compliance history, the listing shall be preceded by the following  
23 statement prominently displayed: "A notice of violation represents  
24 a written allegation of a violation of a specific regulatory  
25 requirement from the commission to a regulated entity. A notice of  
26 violation is not a final enforcement action nor proof that a  
27 violation has actually occurred." [~~The set of components shall~~

1 ~~include notices of violations.]~~ A notice of violation  
2 administratively determined to be without merit may ~~[shall]~~ not be  
3 included in a compliance history. A notice of violation that is  
4 included in a compliance history shall be removed from the  
5 compliance history if the commission subsequently determines the  
6 notice of violation to be 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 382.0518(c), Health and Safety Code, is  
18 amended to read as follows:

19 (c) In considering the issuance, amendment, or renewal of a  
20 permit, the commission may consider the applicant's compliance  
21 history in accordance with the method for using [~~evaluating~~]  
22 compliance history developed by the commission under Section 5.754,  
23 Water Code. In considering an applicant's compliance history under  
24 this subsection, the commission shall consider as evidence of  
25 compliance information regarding the applicant's implementation of  
26 an environmental management system at the facility for which the  
27 permit, permit amendment, or permit renewal is sought. In this



1 subsection, "environmental management system" has the meaning  
2 assigned by Section 5.127, Water Code.

3 SECTION 13. Section 382.056(o), Health and Safety Code, is  
4 amended to read as follows:

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

12 SECTION 14. Section 401.110(a), Health and Safety Code, is  
13 amended to read as follows:

14 (a) In making a determination whether to grant, deny, amend,  
15 renew, revoke, suspend, or restrict a license or registration, the  
16 commission may consider an applicant's or license holder's  
17 technical competence, financial qualifications, and compliance  
18 history under the method for using [~~evaluation of~~] compliance  
19 history developed by the commission under Section 5.754, Water  
20 Code.

21 SECTION 15. Section 401.112(a), Health and Safety Code, is  
22 amended to read as follows:

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

27 (1) site suitability, geological, hydrological, and

1 meteorological factors, and natural [~~naturals~~] hazards;

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

4 (3) socioeconomic effects on surrounding communities  
5 of operation of the licensed activity and of associated  
6 transportation of low-level radioactive waste;

7 (4) the need for and alternatives to the proposed  
8 activity, including an alternative siting analysis prepared by the  
9 applicant;

10 (5) the applicant's qualifications, including  
11 financial and technical qualifications and compliance history  
12 under the method for using [~~evaluation of~~] compliance history  
13 developed by the commission under Section 5.754, Water Code, for an  
14 application to the commission or the requirements of Section  
15 401.110(b) for an application to the department;

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

17 (7) suitability of facilities associated with the  
18 proposed activities;

19 (8) chemical, radiological, and biological  
20 characteristics of the low-level radioactive waste and waste  
21 classification under Section 401.053;

22 (9) adequate insurance of the applicant to cover  
23 potential injury to any property or person, including potential  
24 injury from risks relating to transportation;

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

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

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

4           (13) decommissioning and postclosure care plans;

5           (14) security plans;

6           (15) worker monitoring and protection plans;

7           (16) emergency plans; and

8           (17) a monitoring program for applicants that includes  
9 prelicense and postlicense monitoring of background radioactive  
10 and chemical characteristics of the soils, groundwater, and  
11 vegetation.

12           SECTION 16. Section 26.028(d), Water Code, is amended to  
13 read as follows:

14           (d) Notwithstanding any other provision of this chapter,  
15 the commission, at a regular meeting without the necessity of  
16 holding a public hearing, may approve an application to renew or  
17 amend a permit if:

18           (1) the applicant is not applying to:

19                   (A) increase significantly the quantity of waste  
20 authorized to be discharged; or

21                   (B) change materially the pattern or place of  
22 discharge;

23           (2) the activities to be authorized by the renewed or  
24 amended permit will maintain or improve the quality of waste  
25 authorized to be discharged;

26           (3) for NPDES permits, notice and the opportunity to  
27 request a public meeting shall be given in compliance with NPDES

1 program requirements, and the commission shall consider and respond  
2 to all timely received and significant public comment; and

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

8 SECTION 17. Section 26.0281, Water Code, is amended to read  
9 as follows:

10 Sec. 26.0281. CONSIDERATION OF COMPLIANCE HISTORY. In  
11 considering the issuance, amendment, or renewal of a permit to  
12 discharge effluent comprised primarily of sewage or municipal  
13 waste, the commission shall consider the compliance history of the  
14 applicant and its operator under the method for using [~~evaluating~~]  
15 compliance history developed by the commission under Section 5.754.  
16 In considering an applicant's compliance history under this  
17 subsection, the commission shall consider as evidence of compliance  
18 information regarding the applicant's implementation of an  
19 environmental management system at the facility for which the  
20 permit, permit amendment, or permit renewal is sought. In this  
21 section, "environmental management system" has the meaning  
22 assigned by Section 5.127.

23 SECTION 18. Section 26.040(h), Water Code, is amended to  
24 read as follows:

25 (h) Notwithstanding other provisions of this chapter, the  
26 commission, after hearing, shall deny or suspend a discharger's  
27 authority to discharge under a general permit if the commission

1 determines that the discharger's compliance history is  
2 unsatisfactory according to commission standards [~~in the lowest~~  
3 ~~classification~~] under Sections 5.753 and 5.754 and rules adopted  
4 and procedures developed under those sections. A hearing under this  
5 subsection is not subject to Chapter 2001, Government Code.

6 SECTION 19. Section 27.051(d), Water Code, is amended to  
7 read as follows:

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

12 (1) compliance history of the applicant and related  
13 entities under the method for using [~~evaluating~~] compliance history  
14 developed by the commission under Section 5.754 and in accordance  
15 with the provisions of Subsection (e);

16 (2) whether there is a practical, economic, and  
17 feasible alternative to an injection well reasonably available; and

18 (3) if the injection well will be used for the disposal  
19 of hazardous waste, whether the applicant will maintain sufficient  
20 public liability insurance for bodily injury and property damage to  
21 third parties that is caused by sudden and non-sudden accidents or  
22 will otherwise demonstrate financial responsibility in a manner  
23 adopted by the commission in lieu of public liability insurance. A  
24 liability insurance policy which satisfies the policy limits  
25 required by the hazardous waste management regulations of the  
26 commission for the applicant's proposed pre-injection facilities  
27 shall be deemed "sufficient" under this subdivision if the policy:

1                   (A) covers the injection well; and

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

6           SECTION 20. Sections 5.754(a) and (b) and 5.757, Water  
7 Code, are repealed.

8           SECTION 21. This Act takes effect September 1, 2005.