

By: Smith of Harris

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) and (b), 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 SECTION 4. The heading to Section 5.754, Water Code, is
12 amended to read as follows:

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

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

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

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

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

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

1 (e) The commission by rule shall provide for the use of
2 compliance history [~~classifications~~] in commission decisions
3 regarding:

4 (1) the issuance, renewal, amendment, modification,
5 denial, suspension, or revocation of a permit;

6 (2) enforcement; and

7 (3) [~~the use of announced inspections; and~~

8 [~~4~~] participation in innovative programs.

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

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

19 [~~1~~] ~~receiving an announced inspection; and~~

20 [~~2~~] obtaining or renewing a flexible permit under
21 the program administered by the commission under Chapter 382,
22 Health and Safety Code, or participating in the regulatory
23 flexibility program administered by the commission under Section
24 5.758.

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

27 (b) The strategically directed regulatory structure shall

1 offer incentives based on:

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

3 and

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

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

8 (e) Any information or data about a site that is placed on
9 the Internet under this subchapter is subject to a quality
10 assurance and quality control procedure, including an opportunity
11 for the owner and operator of the site to review the information
12 before it is placed on the Internet.

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

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

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

23 (2) not inconsistent with federal law.

24 (b) The commission may not exempt an applicant under this
25 section unless the applicant can present to the commission
26 [~~documented~~] evidence that the alternative the applicant proposes
27 is as protective of the environment and the public health as the

1 method or standard prescribed by the statute or commission rule
2 that would otherwise apply [~~of benefits to environmental quality~~
3 ~~that will result from the project the applicant proposes~~].

4 (d) The commission's order must provide a [~~specific~~]
5 description of the alternative method or standard and condition the
6 exemption on compliance with the method or standard as the order
7 prescribes.

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

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

12 (2) endorse alternative methods that will clearly
13 benefit the environment and impose the least onerous restrictions
14 on business;

15 (3) fix and enforce environmental standards, allowing
16 businesses flexibility in meeting the standards in a manner that
17 clearly enhances environmental outcomes; and

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

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

22 (a) The commission by rule shall establish a procedure to
23 prepare compliance summaries relating to the applicant's solid
24 waste management activities in accordance with the method for using
25 [~~evaluating~~] compliance history developed by the commission under
26 Section 5.754, Water Code. A compliance summary shall include as
27 evidence of compliance information regarding the applicant's

1 implementation of an environmental management system at the
2 facility for which the authorization is sought. In this
3 subsection, "environmental management system" has the meaning
4 assigned by Section 5.127, Water Code.

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

7 (f) Notwithstanding Subsection (e), if the commission
8 determines that an applicant's compliance history under the method
9 for using [~~evaluating~~] compliance history developed by the
10 commission under Section 5.754, Water Code, raises an issue
11 regarding the applicant's ability to comply with a material term of
12 its permit, the commission shall provide an opportunity to request
13 a contested case hearing.

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

16 (a) The commission may, for good cause, deny or amend a
17 permit it issues or has authority to issue for reasons pertaining to
18 public health, air or water pollution, or land use, or for having a
19 compliance history that is unsatisfactory according to commission
20 standards [~~in the lowest classification~~] under Sections 5.753 and
21 5.754, Water Code, and rules adopted and procedures developed under
22 those sections.

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

25 (1) the applicant or permit holder has a compliance
26 history that is unsatisfactory according to commission standards
27 [~~in the lowest classification~~] under Sections 5.753 and 5.754,

1 Water Code, and rules adopted and procedures developed under those
2 sections;

3 (2) the permit holder or applicant made a false or
4 misleading statement in connection with an original or renewal
5 application, either in the formal application or in any other
6 written instrument relating to the application submitted to the
7 commission, its officers, or its employees;

8 (3) the permit holder or applicant is indebted to the
9 state for fees, payment of penalties, or taxes imposed by this title
10 or by a rule of the commission; or

11 (4) the permit holder or applicant is unable to ensure
12 that the management of the hazardous waste management facility
13 conforms or will conform to this title and the rules of the
14 commission.

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

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

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

25 SECTION 12. Section 382.0518(c), Health and Safety Code, is
26 amended to read as follows:

27 (c) In considering the issuance, amendment, or renewal of a

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

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

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

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

22 (a) In making a determination whether to grant, deny, amend,
23 renew, revoke, suspend, or restrict a license or registration, the
24 commission may consider an applicant's or license holder's
25 technical competence, financial qualifications, and compliance
26 history under the method for using [~~evaluation of~~] compliance
27 history developed by the commission under Section 5.754, Water

1 Code.

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

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

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

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

12 (3) socioeconomic effects on surrounding communities
13 of operation of the licensed activity and of associated
14 transportation of low-level radioactive waste;

15 (4) the need for and alternatives to the proposed
16 activity, including an alternative siting analysis prepared by the
17 applicant;

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

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

25 (7) suitability of facilities associated with the
26 proposed activities;

27 (8) chemical, radiological, and biological

1 characteristics of the low-level radioactive waste and waste
2 classification under Section 401.053;

3 (9) adequate insurance of the applicant to cover
4 potential injury to any property or person, including potential
5 injury from risks relating to transportation;

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

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

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

12 (13) decommissioning and postclosure care plans;

13 (14) security plans;

14 (15) worker monitoring and protection plans;

15 (16) emergency plans; and

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

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

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

26 (1) the applicant is not applying to:

27 (A) increase significantly the quantity of waste

1 authorized to be discharged; or

2 (B) change materially the pattern or place of
3 discharge;

4 (2) the activities to be authorized by the renewed or
5 amended permit will maintain or improve the quality of waste
6 authorized to be discharged;

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

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

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

18 Sec. 26.0281. CONSIDERATION OF COMPLIANCE HISTORY. In
19 considering the issuance, amendment, or renewal of a permit to
20 discharge effluent comprised primarily of sewage or municipal
21 waste, the commission shall consider the compliance history of the
22 applicant and its operator under the method for using ~~[evaluating]~~
23 compliance history developed by the commission under Section 5.754.
24 In considering an applicant's compliance history under this
25 subsection, the commission shall consider as evidence of compliance
26 information regarding the applicant's implementation of an
27 environmental management system at the facility for which the

1 permit, permit amendment, or permit renewal is sought. In this
2 section, "environmental management system" has the meaning
3 assigned by Section 5.127.

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

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

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

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

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

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

26 (3) if the injection well will be used for the disposal
27 of hazardous waste, whether the applicant will maintain sufficient

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

9 (A) covers the injection well; and

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

14 SECTION 20. Sections 5.753(d), 5.754(a) and (b), and 5.757,
15 Water Code, are repealed.

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

COMMITTEE AMENDMENT NO. 1

Amend H.B. No. 86 as follows:

(1) Delete line 15 on page 1 and substitute "SECTION 3. Sections 5.753(a), (b) and (d), Water Code are";

(2) On page 2, after line 10, add "(d) For purposes of listing compliance history or using compliance history in any escalation of penalties, the commission may not include as a notice of violation deviations or violations provided by a person to the commission, such as deviations set forth in Discharge Monitoring Reports or Title V Deviation Reports, unless the commission issues a written notice of violation. For purposes of using compliance history in any escalation of penalties, the commission may not use notices of violation unless the commission takes subsequent action or the person is a repeat violator as determined pursuant to Subdivision (2), Sec. 5.754(c) of this code. If the commission includes notices of violations in compliance history, the listing shall be preceded by the following statement prominently displayed:

"A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action nor proof that a violation has actually occurred." ~~[The set of components shall include notices of violations.]~~

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

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1 without merit."; and

2 (3) On page 13, line 14, delete "5.753(d),".

3 Kuempel