

1-1 By: Smith of Harris, et al. H.B. No. 86
1-2 (Senate Sponsor-Armbrister)
1-3 (In the Senate - Received from the House March 21, 2005;
1-4 March 30, 2005, read first time and referred to Committee on
1-5 Natural Resources; May 3, 2005, reported adversely, with favorable
1-6 Committee Substitute by the following vote: Yeas 8, Nays 1;
1-7 May 3, 2005, sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR H.B. No. 86 By: Lindsay

1-9 A BILL TO BE ENTITLED
1-10 AN ACT

1-11 relating to compliance histories for and incentives to reward
1-12 compliance performance by entities regulated by the Texas
1-13 Commission on Environmental Quality.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Section 5.752(1), Water Code, is amended to read
1-16 as follows:

1-17 (1) "Applicable legal requirement" means an
1-18 environmental law, regulation, permit, order, consent~~[7]~~ decree,
1-19 or other requirement.

1-20 SECTION 2. The heading to Section 5.753, Water Code, is
1-21 amended to read as follows:

1-22 Sec. 5.753. STANDARDS [~~STANDARD~~] FOR USING [~~EVALUATING~~]
1-23 COMPLIANCE HISTORY.

1-24 SECTION 3. Section 5.753, Water Code, is amended by
1-25 amending Subsections (a), (b), and (d) and adding Subsections (f)
1-26 and (g) to read as follows:

1-27 (a) Consistent with other law and the requirements
1-28 necessary to maintain federal program authorization, the
1-29 commission by rule shall develop standards [~~a uniform standard~~] for
1-30 using [~~evaluating~~] compliance history.

1-31 (b) The components of compliance history must include:

1-32 (1) enforcement orders, court judgments, [~~consent~~
1-33 ~~decrees,~~] and criminal convictions of this state [~~and the federal~~
1-34 ~~government~~] relating to compliance with applicable legal
1-35 requirements under the jurisdiction of the commission, including
1-36 requirements regarding emissions events under Sections 382.0215
1-37 and 382.0216, Health and Safety Code [~~or the United States~~
1-38 ~~Environmental Protection Agency~~];

1-39 (2) notwithstanding any other provision of this code,
1-40 orders issued under Section 7.070;

1-41 (3) to the extent readily available to the commission,
1-42 enforcement orders, court judgments, consent decrees, and criminal
1-43 convictions relating to violations of environmental rules [~~laws~~] of
1-44 the United States Environmental Protection Agency [~~other states~~];
1-45 and

1-46 (4) changes in ownership.

1-47 (d) For purposes of listing compliance history or using
1-48 compliance history in any escalation of penalties, the commission
1-49 may not include as a notice of violation deviations or violations
1-50 provided by a person to the commission, such as deviations set forth
1-51 in Discharge Monitoring Reports or Title V Deviation Reports,
1-52 unless the commission issues a written notice of violation. For
1-53 purposes of using compliance history in any escalation of
1-54 penalties, the commission may not use notices of violation unless
1-55 the commission takes subsequent action or the person is a repeat
1-56 violator as determined pursuant to Section 5.754(c)(2) of this
1-57 code. If the commission includes notices of violations in
1-58 compliance history, the listing shall be preceded by the following
1-59 statement prominently displayed: "A notice of violation represents
1-60 a written allegation of a violation of a specific regulatory
1-61 requirement from the commission to a regulated entity. A notice of
1-62 violation is not a final enforcement action nor proof that a
1-63 violation has actually occurred." [~~The set of components shall~~

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

2-7 (f) Compliance history available on the Internet website of
 2-8 the United States Environmental Protection Agency is considered to
 2-9 be readily available to the commission for the purposes of
 2-10 Subsection (b)(3).

2-11 (g) Except as otherwise specifically provided, this section
 2-12 does not prohibit the commission from using any components of
 2-13 compliance history the commission considers appropriate for
 2-14 permitting or enforcement purposes.

2-15 SECTION 4. The heading to Section 5.754, Water Code, is
 2-16 amended to read as follows:

2-17 Sec. 5.754. ~~[CLASSIFICATION AND]~~ USE OF COMPLIANCE HISTORY.

2-18 SECTION 5. Sections 5.754(c), (e), (g), and (h), Water
 2-19 Code, are amended to read as follows:

2-20 (c) In using ~~[classifying]~~ a person's compliance history,
 2-21 the commission shall:

2-22 (1) determine whether a violation of an applicable
 2-23 legal requirement is of major, moderate, or minor significance;

2-24 (2) establish criteria for classifying a repeat
 2-25 violator for the purposes of Subsection (f), giving consideration
 2-26 to the size ~~[number]~~ and complexity of the site at which the
 2-27 violations occurred, and limiting consideration to violations of
 2-28 the same nature in the same environmental media ~~[facilities owned~~
 2-29 ~~or operated by the person];~~ and

2-30 (3) consider the significance of the violation and
 2-31 whether the person is a repeat violator.

2-32 (e) The commission by rule shall provide for the use of
 2-33 compliance history ~~[classifications]~~ in commission decisions
 2-34 regarding:

2-35 (1) the issuance, renewal, amendment, modification,
 2-36 denial, suspension, or revocation of a permit;

2-37 (2) enforcement;

2-38 (3) the use of announced inspections; and

2-39 (4) participation in innovative programs.

2-40 (g) Rules adopted under Subsection (e) for the use of
 2-41 compliance history shall provide for additional oversight of, and
 2-42 review of applications regarding, facilities owned or operated by a
 2-43 person whose compliance performance is unsatisfactory according to
 2-44 commission standards ~~[in the lowest classification developed under~~
 2-45 ~~this section].~~

2-46 (h) The commission by rule shall, at a minimum, prohibit a
 2-47 person whose compliance history is unsatisfactory according to
 2-48 commission standards ~~[classified in the lowest classification~~
 2-49 ~~developed under this section]~~ from~~+~~

2-50 ~~[(1) receiving an announced inspection; and~~

2-51 ~~[(2)]~~ obtaining or renewing a flexible permit under
 2-52 the program administered by the commission under Chapter 382,
 2-53 Health and Safety Code, or participating in the regulatory
 2-54 flexibility program administered by the commission under Section
 2-55 5.758.

2-56 SECTION 6. Section 5.755(b), Water Code, is amended to read
 2-57 as follows:

2-58 (b) The strategically directed regulatory structure shall
 2-59 offer incentives based on:

2-60 (1) a person's compliance history ~~[classification]~~;
 2-61 and

2-62 (2) any voluntary measures undertaken by the person to
 2-63 improve environmental quality.

2-64 SECTION 7. Section 5.756, Water Code, is amended by adding
 2-65 Subsection (e) to read as follows:

2-66 (e) Any information or data about a site that is placed on
 2-67 the Internet under this subchapter is subject to a quality
 2-68 assurance and quality control procedure, including an opportunity,
 2-69 not to exceed 30 days, for the owner and operator of the site to

3-1 review the information before it is placed on the Internet.

3-2 SECTION 8. Sections 5.758(a), (b), and (h), Water Code, are
3-3 amended to read as follows:

3-4 (a) The commission by order may exempt an applicant from a
3-5 requirement of a statute or commission rule regarding the control
3-6 or abatement of pollution if the applicant proposes to control or
3-7 abate pollution by an alternative method or by applying an
3-8 alternative standard that is:

3-9 (1) as [more] protective of the environment and the
3-10 public health as [than] the method or standard prescribed by the
3-11 statute or commission rule that would otherwise apply; and

3-12 (2) not inconsistent with federal law.

3-13 (b) The commission may not exempt an applicant under this
3-14 section unless the applicant can present to the commission
3-15 documented evidence that the alternative the applicant proposes is
3-16 as protective of the environment and the public health as the method
3-17 or standard prescribed by the statute or commission rule that would
3-18 otherwise apply [of benefits to environmental quality that will
3-19 result from the project the applicant proposes].

3-20 (h) In implementing the program of regulatory flexibility
3-21 authorized by this section, the commission shall:

3-22 (1) promote [market] the program to businesses in the
3-23 state through all available appropriate media;

3-24 (2) endorse alternative methods that will clearly
3-25 benefit the environment and impose the least onerous restrictions
3-26 on business;

3-27 (3) fix and enforce environmental standards, allowing
3-28 businesses flexibility in meeting the standards in a manner that
3-29 clearly enhances environmental outcomes; and

3-30 (4) work to achieve consistent and predictable results
3-31 for the regulated community and shorter waits for permit issuance.

3-32 SECTION 9. Section 361.084(a), Health and Safety Code, is
3-33 amended to read as follows:

3-34 (a) The commission by rule shall establish a procedure to
3-35 prepare compliance summaries relating to the applicant's solid
3-36 waste management activities in accordance with the method for using
3-37 [evaluating] compliance history developed by the commission under
3-38 Section 5.754, Water Code. A compliance summary shall include as
3-39 evidence of compliance information regarding the applicant's
3-40 implementation of an environmental management system at the
3-41 facility for which the authorization is sought. In this
3-42 subsection, "environmental management system" has the meaning
3-43 assigned by Section 5.127, Water Code.

3-44 SECTION 10. Section 361.088(f), Health and Safety Code, is
3-45 amended to read as follows:

3-46 (f) Notwithstanding Subsection (e), if the commission
3-47 determines that an applicant's compliance history under the method
3-48 for using [evaluating] compliance history developed by the
3-49 commission under Section 5.754, Water Code, raises an issue
3-50 regarding the applicant's ability to comply with a material term of
3-51 its permit, the commission shall provide an opportunity to request
3-52 a contested case hearing.

3-53 SECTION 11. Sections 361.089(a), (e), and (f), Health and
3-54 Safety Code, are amended to read as follows:

3-55 (a) The commission may, for good cause, deny or amend a
3-56 permit it issues or has authority to issue for reasons pertaining to
3-57 public health, air or water pollution, or land use, or for having a
3-58 compliance history that is unsatisfactory according to commission
3-59 standards [in the lowest classification] under Sections 5.753 and
3-60 5.754, Water Code, and rules adopted and procedures developed under
3-61 those sections.

3-62 (e) The commission may deny an original or renewal permit if
3-63 it is found, after notice and hearing, that:

3-64 (1) the applicant or permit holder has a compliance
3-65 history that is unsatisfactory according to commission standards
3-66 [in the lowest classification] under Sections 5.753 and 5.754,
3-67 Water Code, and rules adopted and procedures developed under those
3-68 sections;

3-69 (2) the permit holder or applicant made a false or

4-1 misleading statement in connection with an original or renewal
 4-2 application, either in the formal application or in any other
 4-3 written instrument relating to the application submitted to the
 4-4 commission, its officers, or its employees;

4-5 (3) the permit holder or applicant is indebted to the
 4-6 state for fees, payment of penalties, or taxes imposed by this title
 4-7 or by a rule of the commission; or

4-8 (4) the permit holder or applicant is unable to ensure
 4-9 that the management of the hazardous waste management facility
 4-10 conforms or will conform to this title and the rules of the
 4-11 commission.

4-12 (f) Before denying a permit under this section, the
 4-13 commission must find:

4-14 (1) that the applicant or permit holder has a
 4-15 compliance history that is unsatisfactory according to commission
 4-16 standards [in the lowest classification] under Sections 5.753 and
 4-17 5.754, Water Code, and rules adopted and procedures developed under
 4-18 those sections; or

4-19 (2) that the permit holder or applicant is indebted to
 4-20 the state for fees, payment of penalties, or taxes imposed by this
 4-21 title or by a rule of the commission.

4-22 SECTION 12. Section 382.0215, Health and Safety Code, is
 4-23 amended by amending Subsections (a), (b), and (f) and adding
 4-24 Subsections (a-1) and (h) to read as follows:

4-25 (a) In this section:

4-26 (1) "Emissions[~~, "emissions~~] event" means an upset
 4-27 event, or unscheduled maintenance, startup, or shutdown activity,
 4-28 from a common cause that results in the unauthorized emissions of
 4-29 air contaminants from one or more [an] emissions points at a
 4-30 regulated entity [point].

4-31 (2) "Regulated entity" means all regulated units,
 4-32 facilities, equipment, structures, or sources at one street address
 4-33 or location that are owned or operated by the same person. The term
 4-34 includes any property under common ownership or control identified
 4-35 in a permit or used in conjunction with the regulated activity at
 4-36 the same street address or location.

4-37 (a-1) Maintenance, startup, and shutdown activities shall
 4-38 not be considered unscheduled only if the activity will not and does
 4-39 not result in the emission of at least a reportable quantity of
 4-40 unauthorized emissions of air contaminants and the activity is
 4-41 recorded as may be required by commission rule, or if the activity
 4-42 will result in the emission of at least a reportable quantity of
 4-43 unauthorized emissions and:

4-44 (1) the owner or operator of the regulated entity
 4-45 [~~facility~~] provides any prior notice or final report that the
 4-46 commission, by rule, may establish;

4-47 (2) the notice or final report includes the
 4-48 information required in Subsection (b)(3); and

4-49 (3) the actual emissions do not exceed the estimates
 4-50 submitted in the notice by more than a reportable quantity.

4-51 (b) The commission shall require the owner or operator of a
 4-52 regulated entity [facility] that experiences emissions events:

4-53 (1) to maintain a record of all emissions events at the
 4-54 regulated entity [facility] in the manner and for the periods
 4-55 prescribed by commission rule;

4-56 (2) to notify the commission in a single report for
 4-57 each emissions event, as soon as practicable but not later than 24
 4-58 hours after discovery of the emissions event, of an emissions event
 4-59 resulting in the emission of a reportable quantity of air
 4-60 contaminants as determined by commission rule; and

4-61 (3) to report to the commission in a single report for
 4-62 each emissions event, not later than two weeks after the occurrence
 4-63 of an emissions event that results in the emission of a reportable
 4-64 quantity of air contaminants as determined by commission rule, all
 4-65 information necessary to evaluate the emissions event, including:

4-66 (A) the name of the owner or operator of the
 4-67 reporting regulated entity [facility];

4-68 (B) the location of the reporting regulated
 4-69 entity [facility];

5-1 (C) the date and time the emissions began;
 5-2 (D) the duration of the emissions;
 5-3 (E) the nature and measured or estimated quantity
 5-4 of air contaminants emitted, including the method of calculation
 5-5 of, or other basis for determining, the quantity of air
 5-6 contaminants emitted;
 5-7 (F) the processes and equipment involved in the
 5-8 emissions event;
 5-9 (G) the cause of the emissions; and
 5-10 (H) any additional information necessary to
 5-11 evaluate the emissions event.

5-12 (f) An owner or operator of a regulated entity [~~facility~~]
 5-13 required by Section 382.014 to submit an annual emissions inventory
 5-14 report and which has experienced no emissions events during the
 5-15 relevant year must include as part of the inventory a statement that
 5-16 the regulated entity [~~facility~~] experienced no emissions events
 5-17 during the prior year. An owner or operator of a regulated entity
 5-18 [~~facility~~] required by Section 382.014 to submit an annual
 5-19 emissions inventory report must include the total annual emissions
 5-20 from all emissions events in categories as established by
 5-21 commission rule.

5-22 (h) The commission may allow operators of pipelines,
 5-23 gathering lines, and flowlines to treat all such facilities under
 5-24 common ownership or control in a particular county as a single
 5-25 regulated entity for the purpose of assessment and regulation of
 5-26 emissions events.

5-27 SECTION 13. Sections 382.0216(a), (b), (c), and (i), Health
 5-28 and Safety Code, are amended to read as follows:

5-29 (a) In this section, "emissions event" and "regulated
 5-30 entity" have [~~has~~] the meanings [~~meaning~~] assigned by Section
 5-31 382.0215.

5-32 (b) The commission shall establish criteria for determining
 5-33 when emissions events are excessive. The criteria must include
 5-34 consideration of:

5-35 (1) the frequency of the regulated entity's
 5-36 [~~facility's~~] emissions events, taking into consideration the
 5-37 regulated entity's size and complexity;

5-38 (2) the cause of the emissions event;
 5-39 (3) the quantity and impact on human health or the
 5-40 environment of the emissions event;

5-41 (4) the duration of the emissions event;
 5-42 (5) the percentage of a facility's total annual
 5-43 operating hours during which emissions events occur; and

5-44 (6) the need for startup, shutdown, and maintenance
 5-45 activities.

5-46 (c) The commission shall require the owner or operator of a
 5-47 regulated entity [~~a facility~~] to take action to reduce emissions
 5-48 from excessive emissions events. Consistent with commission rules,
 5-49 the owner or operator of a regulated entity [~~a facility~~] required to
 5-50 take action under this subsection must either file a corrective
 5-51 action plan or file a letter of intent to obtain authorization for
 5-52 emissions from the excessive emissions events, provided that the
 5-53 emissions are sufficiently frequent, quantifiable, and
 5-54 predictable. If the intended authorization is a permit, a permit
 5-55 application shall be filed within 120 days of the filing of the
 5-56 letter of intent. If the intended authorization is a permit by rule
 5-57 or standard exemption, the authorization must be obtained within
 5-58 120 days of the filing of the letter of intent. If the commission
 5-59 denies the requested authorization, within 45 days of receiving
 5-60 notice of the commission's denial, the owner or operator of a
 5-61 regulated entity [~~facility~~] shall file a corrective action plan to
 5-62 reduce emissions from the excessive emissions events.

5-63 (i) In the event the owner or operator of a regulated entity
 5-64 [~~facility~~] fails to report an emissions event as required by
 5-65 Section 382.0215(b), the commission shall initiate enforcement for
 5-66 such failure to report and for the underlying emissions event
 5-67 itself. This subsection does not apply where an owner or operator
 5-68 reports an emissions event and the report was incomplete,
 5-69 inaccurate, or untimely unless the owner or operator knowingly or

6-1 intentionally falsified the information in the report.

6-2 SECTION 14. Section 382.0518(c), Health and Safety Code, is
6-3 amended to read as follows:

6-4 (c) In considering the issuance, amendment, or renewal of a
6-5 permit, the commission may consider the applicant's compliance
6-6 history in accordance with the method for using [~~evaluating~~]
6-7 compliance history developed by the commission under Section 5.754,
6-8 Water Code. In considering an applicant's compliance history under
6-9 this subsection, the commission shall consider as evidence of
6-10 compliance information regarding the applicant's implementation of
6-11 an environmental management system at the facility for which the
6-12 permit, permit amendment, or permit renewal is sought. In this
6-13 subsection, "environmental management system" has the meaning
6-14 assigned by Section 5.127, Water Code.

6-15 SECTION 15. Section 382.056(o), Health and Safety Code, is
6-16 amended to read as follows:

6-17 (o) Notwithstanding other provisions of this chapter, the
6-18 commission may hold a hearing on a permit amendment, modification,
6-19 or renewal if the commission determines that the application
6-20 involves a facility for which the applicant's compliance history is
6-21 unsatisfactory according to commission standards [~~in the lowest~~
6-22 ~~classification~~] under Sections 5.753 and 5.754, Water Code, and
6-23 rules adopted and procedures developed under those sections.

6-24 SECTION 16. Section 401.110(a), Health and Safety Code, is
6-25 amended to read as follows:

6-26 (a) In making a determination whether to grant, deny, amend,
6-27 renew, revoke, suspend, or restrict a license or registration, the
6-28 commission may consider an applicant's or license holder's
6-29 technical competence, financial qualifications, and compliance
6-30 history under the method for using [~~evaluation of~~] compliance
6-31 history developed by the commission under Section 5.754, Water
6-32 Code.

6-33 SECTION 17. Section 401.112(a), Health and Safety Code, is
6-34 amended to read as follows:

6-35 (a) The department or commission, within its jurisdiction,
6-36 in making a licensing decision on a specific license application to
6-37 process or dispose of low-level radioactive waste from other
6-38 persons, shall consider:

6-39 (1) site suitability, geological, hydrological, and
6-40 meteorological factors, and natural [~~naturals~~] hazards;

6-41 (2) compatibility with present uses of land near the
6-42 site;

6-43 (3) socioeconomic effects on surrounding communities
6-44 of operation of the licensed activity and of associated
6-45 transportation of low-level radioactive waste;

6-46 (4) the need for and alternatives to the proposed
6-47 activity, including an alternative siting analysis prepared by the
6-48 applicant;

6-49 (5) the applicant's qualifications, including
6-50 financial and technical qualifications and compliance history
6-51 under the method for using [~~evaluation of~~] compliance history
6-52 developed by the commission under Section 5.754, Water Code, for an
6-53 application to the commission or the requirements of Section
6-54 401.110(b) for an application to the department;

6-55 (6) background monitoring plans for the proposed site;

6-56 (7) suitability of facilities associated with the
6-57 proposed activities;

6-58 (8) chemical, radiological, and biological
6-59 characteristics of the low-level radioactive waste and waste
6-60 classification under Section 401.053;

6-61 (9) adequate insurance of the applicant to cover
6-62 potential injury to any property or person, including potential
6-63 injury from risks relating to transportation;

6-64 (10) training programs for the applicant's employees;

6-65 (11) a monitoring, record-keeping, and reporting
6-66 program;

6-67 (12) spill detection and cleanup plans for the
6-68 licensed site and related to associated transportation of low-level
6-69 radioactive waste;

- 7-1 (13) decommissioning and postclosure care plans;
- 7-2 (14) security plans;
- 7-3 (15) worker monitoring and protection plans;
- 7-4 (16) emergency plans; and
- 7-5 (17) a monitoring program for applicants that includes
- 7-6 prelicense and postlicense monitoring of background radioactive
- 7-7 and chemical characteristics of the soils, groundwater, and
- 7-8 vegetation.

7-9 SECTION 18. Section 26.028(d), Water Code, is amended to
7-10 read as follows:

7-11 (d) Notwithstanding any other provision of this chapter,
7-12 the commission, at a regular meeting without the necessity of
7-13 holding a public hearing, may approve an application to renew or
7-14 amend a permit if:

- 7-15 (1) the applicant is not applying to:
 - 7-16 (A) increase significantly the quantity of waste
 - 7-17 authorized to be discharged; or
 - 7-18 (B) change materially the pattern or place of
 - 7-19 discharge;

- 7-20 (2) the activities to be authorized by the renewed or
- 7-21 amended permit will maintain or improve the quality of waste
- 7-22 authorized to be discharged;

- 7-23 (3) for NPDES permits, notice and the opportunity to
- 7-24 request a public meeting shall be given in compliance with NPDES
- 7-25 program requirements, and the commission shall consider and respond
- 7-26 to all timely received and significant public comment; and

- 7-27 (4) the commission determines that an applicant's
- 7-28 compliance history under the method for using ~~[evaluating]~~
- 7-29 compliance history developed by the commission under Section 5.754
- 7-30 raises no issues regarding the applicant's ability to comply with a
- 7-31 material term of its permit.

7-32 SECTION 19. Section 26.0281, Water Code, is amended to read
7-33 as follows:

7-34 Sec. 26.0281. CONSIDERATION OF COMPLIANCE HISTORY. In
7-35 considering the issuance, amendment, or renewal of a permit to
7-36 discharge effluent comprised primarily of sewage or municipal
7-37 waste, the commission shall consider the compliance history of the
7-38 applicant and its operator under the method for using ~~[evaluating]~~

7-39 compliance history developed by the commission under Section 5.754.
7-40 In considering an applicant's compliance history under this
7-41 subsection, the commission shall consider as evidence of compliance
7-42 information regarding the applicant's implementation of an
7-43 environmental management system at the facility for which the
7-44 permit, permit amendment, or permit renewal is sought. In this
7-45 section, "environmental management system" has the meaning
7-46 assigned by Section 5.127.

7-47 SECTION 20. Section 26.040(h), Water Code, is amended to
7-48 read as follows:

7-49 (h) Notwithstanding other provisions of this chapter, the
7-50 commission, after hearing, shall deny or suspend a discharger's
7-51 authority to discharge under a general permit if the commission
7-52 determines that the discharger's compliance history is
7-53 unsatisfactory according to commission standards ~~[in the lowest~~
7-54 ~~classification]~~ under Sections 5.753 and 5.754 and rules adopted
7-55 and procedures developed under those sections. A hearing under this
7-56 subsection is not subject to Chapter 2001, Government Code.

7-57 SECTION 21. Section 27.051(d), Water Code, is amended to
7-58 read as follows:

7-59 (d) The commission, in determining if the use or
7-60 installation of an injection well is in the public interest under
7-61 Subsection (a)(1), shall consider, but shall not be limited to the
7-62 consideration of:

- 7-63 (1) compliance history of the applicant and related
- 7-64 entities under the method for using ~~[evaluating]~~ compliance history
- 7-65 developed by the commission under Section 5.754 and in accordance
- 7-66 with the provisions of Subsection (e);

- 7-67 (2) whether there is a practical, economic, and
- 7-68 feasible alternative to an injection well reasonably available; and

- 7-69 (3) if the injection well will be used for the disposal

8-1 of hazardous waste, whether the applicant will maintain sufficient
8-2 public liability insurance for bodily injury and property damage to
8-3 third parties that is caused by sudden and non-sudden accidents or
8-4 will otherwise demonstrate financial responsibility in a manner
8-5 adopted by the commission in lieu of public liability insurance. A
8-6 liability insurance policy which satisfies the policy limits
8-7 required by the hazardous waste management regulations of the
8-8 commission for the applicant's proposed pre-injection facilities
8-9 shall be deemed "sufficient" under this subdivision if the policy:

- 8-10 (A) covers the injection well; and
- 8-11 (B) is issued by a company that is authorized to
- 8-12 do business and to write that kind of insurance in this state and is
- 8-13 solvent and not currently under supervision or in conservatorship
- 8-14 or receivership in this state or any other state.

8-15 SECTION 22. Sections 5.754(a) and (b) and 5.757, Water
8-16 Code, are repealed.

8-17 SECTION 23. Sections 382.0215 and 382.0216, Health and
8-18 Safety Code, as amended by this Act, apply only to an emissions
8-19 event that occurs on or after the effective date of this Act. An
8-20 emissions event that occurs before the effective date of this Act is
8-21 governed by the law in effect when the emissions event occurred, and
8-22 that law is continued in effect for that purpose.

8-23 SECTION 24. This Act takes effect immediately if it
8-24 receives a vote of two-thirds of all the members elected to each
8-25 house, as provided by Section 39, Article III, Texas Constitution.
8-26 If this Act does not receive the vote necessary for immediate
8-27 effect, this Act takes effect September 1, 2005.

8-28 * * * * *