

## **BILL ANALYSIS**

H.B. 3960  
By: Smith, Wayne  
Environmental Regulation  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

In 2001, legislation based on recommendations of the Sunset Advisory Commission changed the operations of the Texas Commission on Environmental Quality (TCEQ). Among those changes were requiring the commission to adopt an uniform standard for evaluating compliance history and specifying the components of compliance history, requiring the agency to consolidate all innovative regulatory programs in one office, changing the requirements for eligibility for use of innovative regulatory programs and the use of regulatory flexibility. The legislation in 2001 also established a new requirement for ranking all regulated entities based on compliance history.

The ranking system and standards for evaluation that were developed are only marginally useful or practical, and requires large numbers of man hours and processing time to compile. The result of this high cost time consuming evaluation results in the vast majority of entities being "Average By Default" they do not even fall into one of the three categories. Additionally, the size and complexity of a site is not taken into consideration which places a small rural petroleum station or local dry cleaner on the same scale as a large scale refinery or chemical manufacturer which produces countless products with high throughput multi-process systems.

H.B. 3960 would discontinue the Compliance History Program as it currently exists freeing the Commission from the labor and financial burdens of this program, it changes statutory language to reflect as close as possible the conditions in place just prior to the enactment of the Sunset Bill in 2001. This gets the commission back to the starting point and allows time to develop guidelines for a more thorough and useful program before the next legislative session.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Sections 361.084(a) and (c), Health and Safety Code, are amended to remove a reference to the method for evaluating compliance history developed by the commission under Section 5.754. Evidence for compliance summaries in a final determination of noncompliance with federal statutes or statutes of any state must be within the previous five years to be considered.

SECTION 2. Section 361.088(f), Health and Safety Code, is amended to require violations be within the previous 5 years in order to be considered for compliance purposes.

SECTION 3. Sections 361.089(a), (e), and (f), Health and Safety Code, are amended to allow denial of a permit or application for renewal because of a violation of the Solid Waste Disposal Act or other applicable laws or rules controlling the management of solid waste, but removes a reference to having a compliance history that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections.

The commission may deny an original or renewal permit if it is found, after notice and hearing, that the record of environmental violations in the preceding five years at the permitted site, and that the applicant has a record of environmental violations in the preceding five years at any site operated by the applicant. Before a permit is denied under this section, the commission must find that a violation or violations are significant and that the permit holder or applicant has not

made a substantial attempt to correct the violations. Removes a reference to compliance history that is in the lowest classification.

SECTION 4. Section 375.101(a), Health and Safety Code, is amended to remove references to programs implemented pursuant to Section 5.755, Water Code and reference to compliance history classification adjustments from the mercury switch removal program.

SECTION 5. Section 382.0518(c), Health and Safety Code, is amended to allow any adjudicated decision or compliance proceeding within the five years before the date on which the application was filed that addressed the applicant's past performance and compliance with the laws of this state, another state, or the United States governing air contaminants or with the terms of any permit or order issued by the commission. Removes a reference to the applicant's compliance history in accordance with the method for evaluating compliance history developed by the commission under Section 5.754, Water Code.

SECTION 6. Section 382.055(d), Health and Safety Code, is amended to consider whether the facility is or has been in substantial compliance with this chapter and the terms of the existing permit. Removes a reference to the method developed by the commission under Section 5.754, Water Code.

SECTION 7. Section 382.056(o), Health and Safety Code, is amended to remove a reference to compliance history that is in the lowest classification and instead allows the commission to hold a hearing on a preconstruction permit amendment if they determine that the applicant's compliance history for the facility demonstrates a consistent disregard for the regulatory process.

SECTION 8. Section 401.110(a), Health and Safety Code, is amended to add those aspects of an applicant's or license holder's background that bear materially on the ability to fulfill the obligations of licensure, and the applicant's or license holder's record in areas involving radiation, and removes a reference to compliance history under the method for evaluation of compliance history.

SECTION 9. Section 401.112(a), Health and Safety Code, is amended to require review of past operating practices but not compliance history of an applicant for a license to process or dispose of low level radioactive waste.

SECTION 10. Section 5.758, Water Code, is transferred to Subchapter D, Chapter 5, Water Code, redesignated as Section 5.123, Water Code, and amended to allow regulatory flexibility when the standard is at least as protective rather than more protective than currently required by the statute or commission rule, and removes the requirement that the commission may not exempt an applicant under this section unless the applicant can present to the commission documented evidence of benefits to environmental quality that will result from the project the applicant proposes. Allows a permit to satisfy a requirement to demonstrate need by showing need on a regional basis considering economic impacts. Removes the word clearly when describing environmental enhancement or benefit.

SECTION 11. Section 26.028(d), Water Code, is amended to remove a reference to the method for evaluating compliance history. Provides that among the criteria for the commission issuing a water quality control permit without a public hearing is that the commission determines that an applicant's compliance history for the preceding five years raises no issues regarding the applicants ability to comply with the terms of the permit.

SECTION 12. Section 26.0281, Water Code, is amended to require any adjudicated decision on or compliance proceeding addressing past performance and compliance with the laws of this state governing waste discharge, waste treatment, or waste disposal facilities and with the terms of any permit or order issued by the commission must be included when the commission considers the issuance, amendment, or renewal of a permit to discharge effluent comprised primarily of sewage or municipal waste. Removes reference to under the method for evaluating compliance history.

SECTION 13. Section 26.040(h), Water Code, is amended to read, notwithstanding other provisions of this chapter, the commission, after hearing, shall deny or suspend a discharger's

authority to discharge under a general permit if the commission determines that the discharger operates any facility for which the discharger's compliance history contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations. Removes a reference to the lowest classification under Sections 5.753 and 5.754.

SECTION 14. Section 27.051(d), Water Code, is amended to remove a reference to the method for evaluating compliance history developed by the commission under Section 5.754

SECTION 15. Section 32.101(c), Water Code, is amended to remove a reference to the method for evaluating compliance history developed by the commission under Section 5.754

SECTION 16. The following provisions are repealed: except as provided by Section 10 of this Act, Subchapter Q, Chapter 5, Water Code, Section 361.0215(c), Health and Safety Code; Section 361.088(g), Health and Safety Code, and Sections 27.051(e) and (h), Water Code, as amended by Section 16.08, Chapter 965, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 17. Transition language stating that the change in law only affects applications for a permit, permit amendment, or permit renewal that is filed with the Texas Commission on Environmental Quality on or after the effective date of this Act.

SECTION 18. Effective date: September 1, 2007.

#### **EFFECTIVE DATE**

September 1, 2007.