

By: Smith of Harris

H.B. No. 3960

A BILL TO BE ENTITLED

AN ACT

relating to the discontinuance of the Texas Commission on Environmental Quality's compliance history program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 361.084(a) and (c), Health and Safety Code, are amended to read as follows:

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

(c) Evidence of compliance or noncompliance by an applicant for a solid waste management facility permit with agency rules, permits, other orders, or evidence of a final determination of noncompliance with federal statutes or statutes of any state in the previous five years concerning solid waste management may be:

(1) offered by a party at a hearing concerning the application; and

(2) admitted into evidence subject to applicable rules

of evidence.

SECTION 2. Section 361.088(f), Health and Safety Code, is amended to read as follows:

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

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

(a) The commission may, for good cause, deny or amend a permit it issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land use, or for a violation of this chapter or other applicable laws or rules controlling the management of solid waste ~~[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]~~.

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

(1) the applicant or permit holder has a record of environmental violations in the preceding five years at the permitted site;

(2) the applicant has a record of environmental violations in the preceding five years at any site owned, operated,

1 or controlled by the applicant ~~[compliance history that is in the~~
2 ~~lowest classification under Sections 5.753 and 5.754, Water Code,~~
3 ~~and rules adopted and procedures developed under those sections];~~

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

9 (4) ~~[(3)]~~ the permit holder or applicant is indebted
10 to the state for fees, payment of penalties, or taxes imposed by
11 this title or by a rule of the commission; or

12 (5) ~~[(4)]~~ the permit holder or applicant is unable to
13 ensure that the management of the hazardous waste management
14 facility conforms or will conform to this title and the rules of the
15 commission.

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

18 (1) that a violation or violations are significant and
19 that the permit holder or applicant has not made a substantial
20 attempt to correct the violations ~~[the applicant or permit holder~~
21 ~~has a compliance history that is in the lowest classification under~~
22 ~~Sections 5.753 and 5.754, Water Code, and rules adopted and~~
23 ~~procedures developed under those sections]; or~~

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

27 SECTION 4. Section 375.101(a), Health and Safety Code, is

1 amended to read as follows:

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

9 SECTION 5. Section 382.0518(c), Health and Safety Code, is
10 amended to read as follows:

11 (c) In considering the issuance, amendment, or renewal of a
12 permit, the commission may consider any adjudicated decision or
13 compliance proceeding within the five years before the date on
14 which the application was filed that addressed the applicant's past
15 performance and compliance with the laws of this state, another
16 state, or the United States governing air contaminants or with the
17 terms of any permit or order issued by the commission [~~the~~
18 ~~applicant's compliance history in accordance with the method for~~
19 ~~evaluating compliance history developed by the commission under~~
20 ~~Section 5.754, Water Code~~]. In considering an applicant's
21 compliance history under this subsection, the commission shall
22 consider as evidence of compliance information regarding the
23 applicant's implementation of an environmental management system
24 at the facility for which the permit, permit amendment, or permit
25 renewal is sought. In this subsection, "environmental management
26 system" has the meaning assigned by Section 5.127, Water Code.

27 SECTION 6. Section 382.055(d), Health and Safety Code, is

amended to read as follows:

(d) In determining whether and under which conditions a preconstruction permit should be renewed, the commission shall consider, at a minimum:

(1) whether the ~~[performance of the owner or operator of the]~~ facility is or has been in substantial compliance with this chapter and the terms of the existing permit ~~[according to the method developed by the commission under Section 5.754, Water Code]~~; and

(2) the condition and effectiveness of existing emission control equipment and practices.

SECTION 7. Section 382.056(o), Health and Safety Code, is amended to read as follows:

(o) Notwithstanding other provisions of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the commission determines that the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations ~~[is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections]~~.

SECTION 8. Section 401.110(a), Health and Safety Code, is amended to read as follows:

(a) In making a determination whether to grant, deny, amend,

1 renew, revoke, suspend, or restrict a license or registration, the
2 commission may consider those aspects of an applicant's or license
3 holder's background that bear materially on the ability to fulfill
4 the obligations of licensure, including technical competence,
5 financial qualifications, and the applicant's or license holder's
6 record in areas involving radiation [~~compliance history under the~~
7 ~~method for evaluation of compliance history developed by the~~
8 ~~commission under Section 5.754, Water Code~~].

9 SECTION 9. Section 401.112(a), Health and Safety Code, is
10 amended to read as follows:

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

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

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

19 (3) socioeconomic effects on surrounding communities
20 of operation of the licensed activity and of associated
21 transportation of low-level radioactive waste;

22 (4) the need for and alternatives to the proposed
23 activity, including an alternative siting analysis prepared by the
24 applicant;

25 (5) the applicant's qualifications, including
26 financial and technical qualifications and past operating
27 practices [~~compliance history under the method for evaluation of~~

1 ~~compliance history developed by the commission under Section 5.754,~~
2 ~~Water Code,~~] for an application to the commission or the
3 requirements of Section 401.110(b) for an application to the
4 department;

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

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

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

11 (9) adequate insurance of the applicant to cover
12 potential injury to any property or person, including potential
13 injury from risks relating to transportation;

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

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

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

20 (13) decommissioning and postclosure care plans;

21 (14) security plans;

22 (15) worker monitoring and protection plans;

23 (16) emergency plans; and

24 (17) a monitoring program for applicants that includes
25 prelicense and postlicense monitoring of background radioactive
26 and chemical characteristics of the soils, groundwater, and
27 vegetation.

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 read as follows:

Sec. 5.123 [~~5.758~~]. REGULATORY FLEXIBILITY. (a) The commission by order may exempt an applicant from a requirement of a statute or commission rule regarding the control or abatement of pollution if the applicant proposes to control or abate pollution by an alternative method or by applying an alternative standard that is:

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

(2) not inconsistent with federal law.

(b) [~~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.~~]

[~~(c)~~] The commission by rule shall specify the procedure for obtaining an exemption under this section. The rules must provide for public notice and for public participation in a proceeding involving an application for an exemption under this section.

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

(d) [~~(e)~~] The commission by rule may establish a reasonable fee for applying for an exemption under this section.

1 (e) [~~(f)~~] A violation of an order issued under this section
2 is punishable as if it were a violation of the statute or rule from
3 which the order grants an exemption.

4 (f) A permit may satisfy a requirement to demonstrate need
5 by showing need on a regional basis considering economic impacts.

6 (g) This section does not authorize exemptions to statutes
7 or regulations for storing, handling, processing, or disposing of
8 low-level radioactive materials.

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

11 (1) market the program to businesses in the state
12 through all available appropriate media;

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

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

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

21 SECTION 11. Section 26.028(d), Water Code, is amended to
22 read as follows:

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

27 (1) the applicant is not applying to:

1 (A) increase significantly the quantity of waste
2 authorized to be discharged; or

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

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

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

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

17 SECTION 12. Section 26.0281, Water Code, is amended to read
18 as follows:

19 Sec. 26.0281. CONSIDERATION OF PAST PERFORMANCE AND
20 COMPLIANCE [~~HISTORY~~]. In considering the issuance, amendment, or
21 renewal of a permit to discharge effluent comprised primarily of
22 sewage or municipal waste, the commission shall consider any
23 adjudicated decision on or [~~the~~] compliance proceeding addressing
24 past performance and compliance [~~history~~] of the applicant and its
25 operator with the laws of this state governing waste discharge,
26 waste treatment, or waste disposal facilities and with the terms of
27 any permit or order issued by the commission [~~under the method for~~

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

9 SECTION 13. Section 26.040(h), Water Code, is amended to
10 read as follows:

11 (h) Notwithstanding other provisions of this chapter, the
12 commission, after hearing, shall deny or suspend a discharger's
13 authority to discharge under a general permit if the commission
14 determines that the discharger operates any facility for which the
15 discharger's compliance history contains violations constituting a
16 recurring pattern of egregious conduct that demonstrates a
17 consistent disregard for the regulatory process, including a
18 failure to make a timely and substantial attempt to correct the
19 violations [~~is in the lowest classification under Sections 5.753~~
20 ~~and 5.754 and rules adopted and procedures developed under those~~
21 ~~sections~~]. A hearing under this subsection is not subject to
22 Chapter 2001, Government Code.

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

25 (d) The commission, in determining if the use or
26 installation of an injection well is in the public interest under
27 Subsection (a)(1), shall consider, but shall not be limited to the

1 consideration of:

2 (1) compliance history of the applicant and related
3 entities ~~[under the method for evaluating compliance history~~
4 ~~developed by the commission under Section 5.754 and]~~ in accordance
5 with the provisions of Subsection (e);

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

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

18 (A) covers the injection well; and

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

23 SECTION 15. Section 27.051(e), Water Code, as amended by
24 Chapters 347, 965, and 1161, Acts of the 77th Legislature, Regular
25 Session, 2001, is reenacted and amended to read as follows:

26 (e) The ~~[Consistent with Sections 5.753 and 5.754 and rules~~
27 ~~adopted and procedures developed under those sections, The]~~

1 commission shall establish a procedure for the preparation of
 2 comprehensive summaries of the applicant's compliance history,
 3 including the compliance history of any corporation or business
 4 entity managed, owned, or otherwise closely related to the
 5 applicant. A compliance summary must include as evidence of
 6 compliance information regarding the applicant's implementation of
 7 an environmental management system at the facility for which an
 8 authorization is sought. The summaries shall be made available to
 9 the applicant and any interested person after the commission has
 10 completed its technical review of the permit application and prior
 11 to the promulgation of the public notice relating to the issuance of
 12 the permit. Evidence of compliance or noncompliance by an
 13 applicant for an injection well permit with environmental statutes
 14 and the rules adopted or orders or permits issued by the commission
 15 may be offered by any party at a hearing on the applicant's
 16 application and admitted into evidence subject to applicable rules
 17 of evidence. ~~[In accordance with this subsection and Sections~~
 18 ~~5.753 and 5.754 and rules adopted and procedures developed under~~
 19 ~~those sections, evidence of the compliance history of an applicant~~
 20 ~~for an injection well may be offered at a hearing on the application~~
 21 ~~and may be admitted into evidence, subject to the rules of~~
 22 ~~evidence.]~~ Evidence of the compliance history of an applicant for
 23 an injection well permit may be offered by the executive director at
 24 a hearing on the application and admitted into evidence subject to
 25 the rules of evidence. All evidence admitted, including compliance
 26 history, shall be considered by the commission in determining
 27 whether to issue, amend, extend or renew a permit. If the

1 commission concludes that the applicant's compliance history is
2 unacceptable, the commission shall deny the permit. In this
3 subsection, "environmental management system" has the meaning
4 assigned by Section 5.127.

5 SECTION 16. Section 32.101(c), Water Code, is amended to
6 read as follows:

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

10 (1) compliance history of the applicant and related
11 entities ~~[under the method for evaluating compliance history~~
12 ~~developed by the commission under Section 5.754 and]~~ in accordance
13 with the provisions of Subsection (d) ~~[of this section];~~

14 (2) whether there is a practical, economic, and
15 feasible alternative to a subsurface area drip dispersal system
16 reasonably available; and

17 (3) any other factor the commission considers
18 relevant.

19 SECTION 17. The following provisions are repealed:

20 (1) except as provided by Section 10 of this Act,
21 Subchapter Q, Chapter 5, Water Code;

22 (2) Section 361.0215(c), Health and Safety Code;

23 (3) Section 361.088(g), Health and Safety Code; and

24 (4) Section 27.051(h), Water Code, as amended by
25 Section 16.08, Chapter 965, Acts of the 77th Legislature, Regular
26 Session, 2001.

27 SECTION 18. The change in law made by this Act applies only

1 to an application for a permit, permit amendment, or permit renewal
2 that is filed with the Texas Commission on Environmental Quality on
3 or after the effective date of this Act. An application for a
4 permit, permit amendment, or permit renewal that is filed with the
5 commission under that chapter before the effective date of this Act
6 is governed by the law in effect on the date the application is
7 filed, and that law is continued in effect for that purpose.

8 SECTION 19. This Act takes effect September 1, 2007.