

By: Smith

H.B. No. 1714

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the discontinuance of the Texas Commission on  
3 Environmental Quality's compliance history program.

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

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

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

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

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

24 (2) admitted into evidence subject to applicable rules

1 of evidence.

2 (d) The commission shall consider all evidence admitted,  
3 including the record of compliance [~~history~~], in determining  
4 whether to issue, amend, extend, or renew a permit.

5 SECTION 2. 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 record of compliance for the  
9 preceding five years [~~history under the method for evaluating~~  
10 ~~compliance history developed by the commission under Section 5.754,~~  
11 ~~Water Code,~~] raises an issue regarding the applicant's ability to  
12 comply with a material term of its permit, the commission shall  
13 provide an opportunity to request a contested case hearing.

14 SECTION 3. 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 a  
19 violation of this chapter or other applicable laws or rules  
20 controlling the management of solid waste [~~having a compliance~~  
21 ~~history that is classified as unsatisfactory according to~~  
22 ~~commission standards under Sections 5.753 and 5.754, Water Code,~~  
23 ~~and rules adopted and procedures developed under those sections].~~

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

26 (1) the applicant or permit holder has a record of  
27 environmental violations in the preceding five years at the

1 permitted site;

2 (2) the applicant has a record of environmental  
3 violations in the preceding five years at any site owned, operated,  
4 or controlled by the applicant [~~compliance history that is~~  
5 ~~classified as unsatisfactory according to commission standards~~  
6 ~~under Sections 5.753 and 5.754, Water Code, and rules adopted and~~  
7 ~~procedures developed under those sections];~~

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

13 (4) [~~(3)~~] the permit holder or applicant is indebted  
14 to the state for fees, payment of penalties, or taxes imposed by  
15 this title or by a rule of the commission; or

16 (5) [~~(4)~~] the permit holder or applicant is unable to  
17 ensure that the management of the hazardous waste management  
18 facility conforms or will conform to this title and the rules of the  
19 commission.

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

22 (1) that a violation or violations are significant and  
23 that the permit holder or applicant has not made a substantial  
24 attempt to correct the violations [~~the applicant or permit holder~~  
25 ~~has a compliance history that is classified as unsatisfactory~~  
26 ~~according to commission standards under Sections 5.753 and 5.754,~~  
27 ~~Water Code, and rules adopted and procedures developed under those~~

1 ~~sections~~]; or

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

5 SECTION 4. Section 375.101(a), Health and Safety Code, is  
6 amended to read as follows:

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

14 SECTION 5. Section 382.0216(j), Health and Safety Code, is  
15 amended to read as follows:

16 (j) The commission shall account for and consider chronic  
17 excessive emissions events and emissions events for which the  
18 commission has initiated enforcement in the manner set forth by the  
19 commission in its review of an entity's record of compliance  
20 [~~history~~].

21 SECTION 6. Section 382.0518(c), Health and Safety Code, is  
22 amended to read as follows:

23 (c) In considering the issuance, amendment, or renewal of a  
24 permit, the commission may consider any adjudicated decision or  
25 compliance proceeding within the five years before the date on  
26 which the application was filed that addressed the applicant's past  
27 performance and compliance with the laws of this state, another

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

12 SECTION 7. Section 382.055(d), Health and Safety Code, is  
13 amended to read as follows:

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

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

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

24 SECTION 8. Section 382.056(o), Health and Safety Code, is  
25 amended to read as follows:

26 (o) Notwithstanding other provisions of this chapter, the  
27 commission may hold a hearing on a permit amendment, modification,

1 or renewal if the commission determines that the application  
2 involves a facility for which the applicant's record of compliance  
3 contains unresolved violations constituting a recurring pattern of  
4 egregious conduct that demonstrates a consistent disregard for the  
5 regulatory process, including the failure to make a timely and  
6 substantial attempt to correct the violations [~~history is~~  
7 ~~classified as unsatisfactory according to commission standards~~  
8 ~~under Sections 5.753 and 5.754, Water Code, and rules adopted and~~  
9 ~~procedures developed under those sections~~].

10 SECTION 9. Section 382.401(b), Health and Safety Code, is  
11 amended to read as follows:

12 (b) The commission by rule shall establish a program that  
13 allows the owner or operator of a facility regulated under this  
14 chapter to use voluntarily as a supplemental detection method any  
15 leak detection technology that has been incorporated and adopted by  
16 the United States Environmental Protection Agency into a program  
17 for detecting leaks or emissions of air contaminants. The program  
18 must provide regulatory incentives to encourage voluntary use of  
19 the alternative leak detection technology at a regulated facility  
20 that is capable of detecting leaks or emissions that may not be  
21 detected by methods or technology approvable under the commission's  
22 regulatory program for leak detection and repair in effect on the  
23 date the commission adopts the program. The incentives may  
24 include:

- 25 (1) on-site technical assistance; and  
26 (2) to the extent consistent with federal  
27 requirements:

1 (A) inclusion of the facility's use of  
2 alternative leak detection technology in the owner or operator's  
3 record of compliance [~~history~~] and compliance summaries;

4 (B) consideration of the implementation of  
5 alternative leak detection technology in scheduling and conducting  
6 compliance inspections; and

7 (C) credits or offsets to the facility's  
8 emissions reduction requirements based on the emissions reductions  
9 achieved by voluntary use of alternative leak detection technology.

10 SECTION 10. Section 401.110, Health and Safety Code, is  
11 amended to read as follows:

12 Sec. 401.110. DETERMINATION ON LICENSE. (a) In making a  
13 determination whether to grant, deny, amend, renew, revoke,  
14 suspend, or restrict a license or registration, the commission may  
15 consider those aspects of an applicant's or license holder's  
16 background that bear materially on the ability to fulfill the  
17 obligations of licensure, including technical competence,  
18 financial qualifications, and the applicant's or license holder's  
19 record in areas involving radiation [~~compliance history under the~~  
20 ~~method for using compliance history developed by the commission~~  
21 ~~under Section 5.754, Water Code~~].

22 (b) In making a determination whether to grant, deny, amend,  
23 renew, revoke, suspend, or restrict a license or registration, the  
24 department may consider the technical competence, financial  
25 qualifications, and record of compliance [~~history~~] of an applicant,  
26 license holder, or registration holder. After an opportunity for a  
27 hearing, the department shall deny an application for a license or

1 registration, license or registration amendment, or license or  
2 registration renewal if the applicant's record of compliance  
3 [~~history~~] reveals a recurring pattern of conduct that demonstrates  
4 a consistent disregard for the regulatory process through  
5 significant violations of this chapter or the department's rules  
6 adopted under this chapter.

7 SECTION 11. Section 401.112(a), Health and Safety Code, is  
8 amended to read as follows:

9 (a) The commission, in making a licensing decision on a  
10 specific license application to process or dispose of low-level  
11 radioactive waste from other persons, shall consider:

12 (1) site suitability, geological, hydrological, and  
13 meteorological factors, and natural hazards;

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

16 (3) socioeconomic effects on surrounding communities  
17 of operation of the licensed activity and of associated  
18 transportation of low-level radioactive waste;

19 (4) the need for and alternatives to the proposed  
20 activity, including an alternative siting analysis prepared by the  
21 applicant;

22 (5) the applicant's qualifications, including:

23 (A) financial and technical qualifications and  
24 past operating practices [~~compliance history under the method for~~  
25 ~~using compliance history developed by the commission under Section~~  
26 ~~5.754, Water Code, for an application to the commission~~]; and

27 (B) the demonstration of financial



1 qualifications under Section 401.108;

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

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

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

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

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

12 (11) a monitoring, record-keeping, and reporting  
13 program;

14 (12) spill detection and cleanup plans for the  
15 licensed site and related to associated transportation of low-level  
16 radioactive waste;

17 (13) decommissioning and postclosure care plans;

18 (14) security plans;

19 (15) worker monitoring and protection plans;

20 (16) emergency plans; and

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

25 SECTION 12. Section 401.243, Health and Safety Code, is  
26 amended to read as follows:

27 Sec. 401.243. RECORD OF COMPLIANCE [~~HISTORY~~]. After an

1 opportunity for a hearing, the commission shall deny an application  
2 for a license under this subchapter or an amendment or renewal for a  
3 license under this subchapter if the applicant's record of  
4 compliance [~~history~~] reveals a recurring pattern of conduct that  
5 demonstrates a consistent disregard for the regulatory process  
6 through a history of violations of this chapter or the commission's  
7 rules under this chapter.

8 SECTION 13. Section 5.127(b), Water Code, is amended to  
9 read as follows:

10 (b) The commission by rule shall adopt a comprehensive  
11 program that provides regulatory incentives to encourage the use of  
12 environmental management systems by regulated entities, state  
13 agencies, local governments, and other entities as determined by  
14 the commission. The incentives may include:

- 15 (1) on-site technical assistance;  
16 (2) accelerated access to information about programs;

17 and

- 18 (3) to the extent consistent with federal  
19 requirements:

20 (A) inclusion of information regarding an  
21 entity's use of an environmental management system in the entity's  
22 record of compliance [~~history~~] and compliance summaries; and

23 (B) consideration of the entity's implementation  
24 of an environmental management system in scheduling and conducting  
25 compliance inspections.

26 SECTION 14. Section 5.1733, Water Code, is amended to read  
27 as follows:

1           Sec. 5.1733. ELECTRONIC POSTING OF INFORMATION. The  
2 commission shall post public information on its website. Such  
3 information shall include but not be limited to the minutes of  
4 advisory committee meetings, pending permit and enforcement  
5 actions, records of compliance [~~histories~~], and emissions  
6 inventories by county and facility name.

7           SECTION 15. Section 5.758, Water Code, is transferred to  
8 Subchapter D, Chapter 5, Water Code, redesignated as Section 5.123,  
9 Water Code, and amended to read as follows:

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

16           (1) at least as protective of the environment and the  
17 public health as the method or standard prescribed by the statute or  
18 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 evidence~~  
22 ~~that the alternative the applicant proposes is as protective of the~~  
23 ~~environment and the public health as the method or standard~~  
24 ~~prescribed by the statute or commission rule that would otherwise~~  
25 ~~apply.~~

26          [~~(c)~~] The commission by rule shall specify the procedure for  
27 obtaining an exemption under this section. The rules must provide

1 for public notice and for public participation in a proceeding  
2 involving an application for an exemption under this section.

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

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

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

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

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

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

18 (1) promote the program to businesses in the state  
19 through all available appropriate media;

20 (2) endorse alternative methods that will [~~clearly~~]  
21 benefit the environment and impose the least onerous restrictions  
22 on business;

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

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

1 SECTION 16. Section 7.070, Water Code, is amended to read as  
2 follows:

3 Sec. 7.070. FINDINGS OF FACT NOT REQUIRED; RESERVATIONS.  
4 Notwithstanding any other provision to the contrary, the commission  
5 is not required to make findings of fact or conclusions of law other  
6 than an uncontested finding that the commission has jurisdiction in  
7 an agreed order compromising or settling an alleged violation of a  
8 statute within the commission's jurisdiction or of a rule adopted  
9 or an order or a permit issued under such a statute. An agreed  
10 administrative order may include a reservation that:

11 (1) the order is not an admission of a violation of a  
12 statute within the commission's jurisdiction or of a rule adopted  
13 or an order or a permit issued under such a statute;

14 (2) the occurrence of a violation is in dispute; or

15 (3) the order is not intended to become a part of a  
16 party's or a facility's record of compliance [~~history~~].

17 SECTION 17. Sections 26.028(d) and (e), Water Code, are  
18 amended to read as follows:

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

23 (1) the applicant is not applying to:

24 (A) increase significantly the quantity of waste  
25 authorized to be discharged; or

26 (B) change materially the pattern or place of  
27 discharge;

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

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

8           (4) the commission determines that an applicant's  
9 record of compliance for the preceding five years [~~history under~~  
10 ~~the method for using compliance history developed by the commission~~  
11 ~~under Section 5.754~~] raises no issues regarding the applicant's  
12 ability to comply with a material term of its permit.

13           (e) In considering an applicant's record of compliance  
14 [~~history~~] under Subsection (d)(4), the commission shall consider as  
15 evidence of compliance information regarding the applicant's  
16 implementation of an environmental management system at the  
17 facility for which the permit, permit amendment, or permit renewal  
18 is sought. In this subsection, "environmental management system"  
19 has the meaning assigned by Section 5.127.

20           SECTION 18. Section 26.0281, Water Code, is amended to read  
21 as follows:

22           Sec. 26.0281. CONSIDERATION OF PAST PERFORMANCE AND  
23 COMPLIANCE [~~HISTORY~~]. In considering the issuance, amendment, or  
24 renewal of a permit to discharge effluent comprised primarily of  
25 sewage or municipal waste, the commission shall consider any  
26 adjudicated decision or [~~the~~] compliance proceeding addressing  
27 past performance and compliance [~~history~~] of the applicant and its

1 operator with the laws of this state governing waste discharge,  
2 waste treatment, or waste disposal facilities and with the terms of  
3 any permit or order issued by the commission [~~under the method for~~  
4 ~~using compliance history developed by the commission under Section~~  
5 ~~5.754~~]. In considering an applicant's record of compliance  
6 [~~history~~] under this subsection, the commission shall consider as  
7 evidence of compliance information regarding the applicant's  
8 implementation of an environmental management system at the  
9 facility for which the permit, permit amendment, or permit renewal  
10 is sought. In this section, "environmental management system" has  
11 the meaning assigned by Section 5.127.

12 SECTION 19. Section 26.040(h), Water Code, is amended to  
13 read as follows:

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

27 SECTION 20. Section 27.025(g), Water Code, is amended to

1 read as follows:

2 (g) Notwithstanding the other provisions of this chapter,  
3 the commission, after hearing, shall deny or suspend authorization  
4 for the use of an injection well under a general permit if the  
5 commission determines that the owner operates any facility for  
6 which the owner's record of compliance contains violations  
7 constituting a recurring pattern of egregious conduct that  
8 demonstrates a consistent disregard for the regulatory process,  
9 including a failure to make a timely and substantial attempt to  
10 correct the violations [~~history is classified as unsatisfactory~~  
11 ~~according to commission standards under Sections 5.753 and 5.754~~  
12 ~~and rules adopted and procedures developed under those sections~~].  
13 A hearing under this subsection is not subject to the requirements  
14 relating to a contested case hearing under Chapter 2001, Government  
15 Code.

16 SECTION 21. Section 27.051(d), Water Code, is amended to  
17 read as follows:

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

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

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



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

11                   (A) covers the injection well; and

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

16           SECTION 22. Section 27.051(e), Water Code, as amended by  
17 Chapters 347 (S.B. 324), 965 (H.B. 2912), and 1161 (H.B. 2997), Acts  
18 of the 77th Legislature, Regular Session, 2001, is reenacted and  
19 amended to read as follows:

20           (e) The [~~Consistent with Sections 5.753 and 5.754 and rules~~  
21 ~~adopted and procedures developed under those sections, the~~]  
22 commission shall establish a procedure for the preparation of  
23 comprehensive summaries of the applicant's record of compliance  
24 [~~history~~], including the record of compliance [~~history~~] of any  
25 corporation or business entity managed, owned, or otherwise closely  
26 related to the applicant. A compliance summary must include as  
27 evidence of compliance information regarding the applicant's

1 implementation of an environmental management system at the  
2 facility for which an authorization is sought. The summaries shall  
3 be made available to the applicant and any interested person after  
4 the commission has completed its technical review of the permit  
5 application and prior to the promulgation of the public notice  
6 relating to the issuance of the permit. Evidence of compliance or  
7 noncompliance by an applicant for an injection well permit with  
8 environmental statutes and the rules adopted or orders or permits  
9 issued by the commission may be offered by any party at a hearing on  
10 the applicant's application and admitted into evidence subject to  
11 applicable rules of evidence. [~~In accordance with this subsection  
12 and Sections 5.753 and 5.754 and rules adopted and procedures  
13 developed under those sections, evidence of the compliance history  
14 of an applicant for an injection well may be offered at a hearing on  
15 the application and may be admitted into evidence, subject to the  
16 rules of evidence.~~] Evidence of an applicant's record of [~~the~~  
17 compliance [~~history of an applicant~~] for an injection well permit  
18 may be offered by the executive director at a hearing on the  
19 application and admitted into evidence subject to the rules of  
20 evidence. All evidence admitted, including the record of  
21 compliance [~~history~~], shall be considered by the commission in  
22 determining whether to issue, amend, extend, or renew a permit. If  
23 the commission concludes that the applicant's record of compliance  
24 [~~history~~] is unacceptable, the commission shall deny the permit. In  
25 this subsection, "environmental management system" has the meaning  
26 assigned by Section 5.127.

27 SECTION 23. Sections 32.101(c) and (d), Water Code, are

1 amended to read as follows:

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

5 (1) the record of compliance [~~history~~] of the  
6 applicant and related entities [~~under the method for using~~  
7 ~~compliance history developed by the commission under Section 5.754~~  
8 ~~and~~] in accordance with the provisions of Subsection (d) [~~of this~~  
9 ~~section~~];

10 (2) whether there is a practical, economic, and  
11 feasible alternative to a subsurface area drip dispersal system  
12 reasonably available; and

13 (3) any other factor the commission considers  
14 relevant.

15 (d) The commission shall establish a procedure for the  
16 preparation of comprehensive summaries of the applicant's record of  
17 compliance [~~history~~], including the record of compliance [~~history~~]  
18 of any corporation or other business entity managed, owned, or  
19 otherwise closely related to the applicant. The summaries shall be  
20 made available to the applicant and any interested person after the  
21 commission has completed its technical review of the permit  
22 application and prior to giving public notice relating to the  
23 issuance of the permit. Evidence of compliance or noncompliance by  
24 an applicant for a subsurface area drip dispersal system permit  
25 with environmental statutes and the rules adopted or orders or  
26 permits issued by the commission may be offered by any party at a  
27 hearing on the applicant's application and admitted into evidence

1 subject to applicable rules of evidence. Evidence of the record of  
2 compliance [~~history~~] of an applicant for a subsurface area drip  
3 dispersal system permit may be offered by the executive director at  
4 a hearing on the application and admitted into evidence subject to  
5 the rules of evidence. The commission shall consider all evidence  
6 admitted, including the record of compliance [~~history~~], in  
7 determining whether to issue, amend, extend, or renew a permit. If  
8 the commission concludes that the applicant's record of compliance  
9 [~~history~~] is unacceptable, the commission shall deny the permit.

10 SECTION 24. The following provisions are repealed:

11 (1) the heading to Subchapter Q, Chapter 5, Water  
12 Code;

13 (2) Sections 5.751, 5.752, 5.753, 5.754, 5.755, 5.756,  
14 and 5.757, Water Code;

15 (3) Section 361.0215(c), Health and Safety Code;

16 (4) Section 361.088(g), Health and Safety Code; and

17 (5) Section 27.051(h), Water Code.

18 SECTION 25. The change in law made by this Act applies only  
19 to an application for a permit, permit amendment, or permit renewal  
20 that is filed with the Texas Commission on Environmental Quality on  
21 or after the effective date of this Act. An application for a  
22 permit, permit amendment, or permit renewal that is filed with the  
23 commission before the effective date of this Act is governed by the  
24 law in effect on the date the application is filed, and that law is  
25 continued in effect for that purpose.

26 SECTION 26. This Act takes effect September 1, 2013.