86R10657 MP-D

By:  Zwiener H.B. No. 3035

A BILL TO BE ENTITLED

AN ACT

relating to the relationship between the amount of an administrative penalty imposed by the Texas Commission on Environmental Quality and the economic benefit of the violation to the alleged violator.

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

SECTION 1.  Section 7.053, Water Code, is amended to read as follows:

Sec. 7.053.  FACTORS TO BE CONSIDERED IN DETERMINATION OF PENALTY AMOUNT. (a) In determining the amount of an administrative penalty, the commission shall consider:

(1)  the nature, circumstances, extent, duration, and gravity of the prohibited act, with special emphasis on the impairment of existing water rights or the hazard or potential hazard created to the health or safety of the public;

(2)  the impact of the violation on:

(A)  air quality in the region;

(B)  a receiving stream or underground water reservoir;

(C)  instream uses, water quality, aquatic and wildlife habitat, or beneficial freshwater inflows to bays and estuaries; or

(D)  affected persons;

(3)  with respect to the alleged violator:

(A)  the history and extent of previous violations;

(B)  the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C)  the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;

(D)  the economic benefit gained through the violation; and

(E)  the amount necessary to deter future violations; and

(4)  any other matters that justice may require.

(b)  Except as otherwise provided by Subsections (c) and (d) and notwithstanding Subsection (a), in determining the amount of an administrative penalty, the commission shall, to the extent practicable, ensure that the amount of the penalty is at least equal to the value of any economic benefit gained by the alleged violator through the violation.

(c)  In determining the economic benefit of noncompliance, the commission shall provide the alleged violator, on the violator's request, an opportunity to:

(1)  review the information on which the economic benefit calculation is based; and

(2)  demonstrate that the calculation does not reflect the actual circumstances.

(d)  A determination under Subsection (b) may not result in the imposition of an administrative penalty in an amount that exceeds a limitation on the amount of the penalty provided by statute, including the maximum amount provided by Section 7.052.

(e)  The commission shall allow a governmental entity or nonprofit organization to defer payment on any portion of the penalty attributable to the consideration of economic benefit on the condition that the entity or organization complies with the schedule and terms of the enforcement order associated with the violation for which the penalty is imposed.

SECTION 2.  Sections 7.053(b), (c), (d), and (e), Water Code, as added by this Act, apply only to a violation that occurs on or after the effective date of this Act. For purposes of this section, a violation occurs before the effective date of this Act if any element of the violation occurs before that date.

SECTION 3.  This Act takes effect September 1, 2019.