

- SUBJECT:** Discontinuing the TCEQ’s compliance history program.
- COMMITTEE:** Environmental Regulation — committee substitute recommended
- VOTE:** 8 ayes — Harless, Isaac, Kacal, Lewis, Reynolds, E. Thompson, C. Turner, Villalba
- 0 nays
- 1 absent — Márquez
- WITNESSES:** For — Mark Vickery, Texas Association of Manufacturers; Daniel Womack, Texas Chemical Council; (*Registered, but did not testify:* Marty Allday, Enbridge Energy; Carol Batterton, Water Environment Association of TX and Texas Association of Clean Water Agencies; Amy Beard, SouthWest Water Co.; Richard A. (Tony) Bennett, Texas Association of Manufacturers; Sabrina Brown, Dow Chemical; Thure Cannon, Texas Pipeline Association; Teddy Carter, Texas Independent Producers and Royalty Owners Association; Elizabeth Castro, LyondellBasell; Leonardo Coelho, Travis County; Heather Cooke, Texas Section of American Water Works Association; Sara Cronin, TPC Group; Mark Gipson, Devon Energy; Kinnan Golemon, Shell Oil Co.; Jim Grace, CenterPoint Energy Inc.; Warren Mayberry, DuPont; Mike Meroney, Huntsman Corp. & Sherwin Alumina Co.; Stephen Minick, Texas Association of Business; Julie Moore, Occidental Petroleum; Patrick Nugent, Texas Pipeline Association; Bill Oswald, Koch Companies; William W. Phelps, Alon USA Inc.; William W. Phelps, Total Petrochemicals Inc.; Mari Ruckel, Texas Oil and Gas Association; William Stevens, Texas Alliance of Energy Producers; Julie Williams, Chevron USA Inc.)
- Against — Kaiba White, Public Citizen
- On — Ramiro Garcia, Texas Commission on Environmental Quality; Cyrus Reed, Sierra Club, Lone Star Chapter
- BACKGROUND:** Water Code, sec. 5.754 requires the TCEQ to adopt by rule standards for evaluating regulated entities’ “compliance history.” The section provides that the TCEQ shall by rule use an applicant’s history of complying with

anti-pollution laws, regulations and rules in decisions regarding:

- the issuance and renewal of permits;
- enforcement;
- the use of announced inspections; and
- participation in innovative programs.

State law also requires TCEQ to create three classifications to rank entities' compliance history:

- unsatisfactory performers, or regulated entities that in the commission's judgment perform below minimal acceptable performance standards established by the commission;
- satisfactory performers, or regulated entities that generally comply with environmental regulations; and
- high performers, or regulated entities that have an above-satisfactory compliance record.

DIGEST:

CSHB 1714 would discontinue the Texas Commission on Environmental Quality's compliance history program.

It would remove references to Water Code, sec. 5.754 in multiple sections of the Health and Safety Code and in the Water Code. CSHB 1714 would insert the phrase "in the preceding five years" or similar language, generally replacing the removed references to Water Code, sec. 5.754.

CSHB 1714 would make the above referenced changes to various statutes, including:

- the Solid Waste Disposal Act;
- statutes governing vehicle and scrap metal recycling facilities handling convenience switches;
- the state's Clean Air Act;
- statutes governing radioactive materials and sources of radiation;
- statutes governing environmental management systems;
- statutes governing electronic posting of information on the TCEQ website;
- statutes governing regulatory flexibility;
- statutes governing environmental enforcement
- statutes governing water quality control;

- statutes governing the use of injection wells; and
- statutes governing subsurface area drip dispersal systems.

The bill would amend Water Code, sec. 5.758 to provide that an applicant for a permit could satisfy TCEQ's rule to demonstrate a need for a project "by showing need on a regional basis considering economic impacts."

The bill would repeal:

- the heading (Performance-based Regulation) to Subchapter Q, Chapter 5, Water Code; and the TCEQ compliance history chapter in Texas Water Code, secs. 5.751, 5.752, 5.753, 5.754, 5.755, 5.756, and 5.757;
- Health and Safety Code, sec. 361.0215(c) and sec. 361.08(g); and
- Water Code, sec. 27.051(h).

The bill would apply only to a permitting action that was filed with the TCEQ on or after the effective date of the bill.

The bill would take effect on September 1, 2013.

**SUPPORTERS
SAY:**

CSHB 1714 would end TCEQ's well-intentioned, but underperforming compliance history program. TCEQ has attempted to implement the program for 12 years, spending about \$1 million for a meaningless result. Under the current program most companies end up being rated "satisfactory," and the program reveals nothing about the true compliance history of a facility.

It is time to stop trying to fix a system built around TCEQ's use of indecipherable formulas and seemingly useless data to categorize entities' history of complying with its regulations. We should pitch this system that few understand for a common-sense approach, one that would allow TCEQ to focus on the past five years when making permitting and enforcement decisions regarding a regulated facility. Relying more on the human element than complicated formulas would result in stronger enforcement against bad actors, while continuing to encourage companies to comply with state anti-pollution laws.

Despite claims from opponents that the bill would limit the public's ability to monitor an entity's long-term record of complying with pollution laws, public information about enforcement actions, fines and other compliance

matters for longer periods still would be available to those who directly request this information from the TCEQ.

OPPONENTS
SAY:

The current regulatory system, which the 82nd Legislature refined in 2011, has not been given a fair chance. TCEQ needs more time to refine the compliance history regulatory system and suggest legislative enhancements that would fix any problems. The system should not be discarded.

Even under the current system, 4 percent of permit holders are considered “unsatisfactory.” That is about the rate of criminality in society and a rate that should not be discounted. These poor-performing companies need increased regulatory scrutiny. The current compliance system was responsible for identifying them.

The regulatory compliance system provides the public with published results that allow external parties to see if a company has benefited from good compliance or politics during the permitting process.

OTHER
OPPONENTS
SAY:

The bill’s amendment to Water Code, sec. 5.758 that would provide that a “permit may satisfy a requirement to demonstrate need by showing need on a regional basis considering economic impacts” is ill-defined, and its intent needs clarification.

The deletion of Texas Water Code, sec. 5.756 would result in the removal of important information on inspections and violations from the TCEQ’s website. This would make it more difficult for the public to evaluate a company’s record of complying with environmental laws.