

BILL ANALYSIS

Senate Research Center

H.B. 3960
By: Smith, Wayne (Jackson)
Natural Resources
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2001, legislation based on recommendations of the Sunset Advisory Commission changed the operations of the Texas Commission on Environmental Quality (TCEQ) [Texas Natural Resource Conservation Commission]. Among those changes was a requirement that TCEQ 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. In addition, another requirement was established to require the ranking of all regulated entities based on compliance history.

However, the ranking system and standards developed to conduct the evaluation are marginally useful or practical, and require large numbers of hours to process and compile. These evaluations are highly costly and have resulted in the vast majority of entities being "Average By Default" which means they have failed to meet the standards of at least one of the three established 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 that produces countless products with high throughput multi-process systems.

H.B. 3960 discontinues the Compliance History Program as it currently exists, freeing TCEQ from the labor and financial burdens of the program. The bill changes statutory language to reflect as close as possible the conditions in place prior to the enactment of the Sunset Bill in 2001. The bill returns TCEQ to its initial starting point and allows it time to develop guidelines for a more thorough and useful program before the next legislative session.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Natural Resource Conservation Commission is modified in SECTION 1 (Section 361.084, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

[While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

SECTION 1. Amends Section 361.084(a) and (c), Health and Safety Code, as follows:

- (a) Deletes existing text as it relates to preparing compliance summaries in accordance with the method for evaluating compliance history developed by the Texas Natural Resource Conservation Commission (TNRCC) under Section 5.754 (Classification and Use of Compliance History), Water Code.
- (c) Authorizes 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 to be offered by a party at a hearing concerning the application and admitted into evidence subject to applicable rules of evidence.

SECTION 2. Amends Section 361.088(f), Health and Safety Code, as follows:

(f) Deletes existing text related to the method for evaluating compliance history developed by TNRCC under Section 5.754, Water Code. Requires that a determination by TNRCC under this subsection include an applicant's compliance history for the preceding five years.

SECTION 3. Amends Sections 361.089(a), (e), and (f), Health and Safety Code, as follows:

(a) Provides that a violation of this chapter or other applicable laws or rules controlling the management of solid waste is included in the list of reasons for which TNRCC has the authority to deny or amend a permit it issues or has the authority to issue. Deletes existing text as it relates to having a compliance history that is in the lowest classification under Sections 5.753 (Standard for Evaluating Compliance History) and 5.754, Water Code, and rules adopted and procedures developed under those sections.

(e) Authorizes TNRCC to deny an original or renewal permit if it found, after notice and hearing, that the applicant or permit holder has a record of environmental violations in the preceding five years at the permitted site or the applicant has a record of environmental violations in the preceding five years at any site owned, operated, or controlled by the applicant. Deletes existing text as it relates 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. Makes conforming changes.

(f) Requires TNRCC to find, before denying a permit under this section, that a violation or violations are significant and that the permit holder or applicant has not made a substantial attempt to correct the violations, rather than the applicant or permit holder has a compliance history that is the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections.

SECTION 4. Amends Section 375.101(a), Health and Safety Code, as follows:

(a) Deletes existing text relating to programs implemented pursuant to Section 5.755 (Strategically Directed Regulatory Structure), Water Code. Deletes existing text relating to compliance history classification adjustments.

SECTION 5. Amends Section 382.0518(c), Health and Safety Code, as follows:

(c) Authorizes TNRCC, in considering the issuance, amendment, or renewal of a permit, to consider 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 TNRCC. Deletes existing text relating to the applicant's compliance history in accordance with the method for evaluating compliance history developed by TNRCC under Section 5.754, Water Code.

SECTION 6. Amends Section 382.055(d), Health and Safety Code, as follows:

(d) Includes in the minimum considerations by TNRCC, in determining whether and under which conditions a preconstruction permit should be renewed, whether the facility is or has been in substantial compliance with this chapter and the terms of the existing permit. Deletes existing text regarding consideration of the performance of the owner or operator of the facility according to the method developed by TNRCC under Section 5.754, Water Code.

SECTION 7. Amends Section 382.056(o), Health and Safety Code, as follows:

(o) Authorizes TNRCC to hold a hearing on a permit amendment, modification, or renewal, notwithstanding other provisions of this chapter, if it 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. Deletes existing text as it relates 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.

SECTION 8. Amends Section 401.110(a), Health and Safety Code, as follows:

(a) Authorizes TNRCC, in making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license or registration, to consider those aspects of an applicant's or license holder's background that bear materially on the ability to fulfill the obligations of licensure, including technical competence, financial qualifications, and the applicant's or license holder's record in areas involving radiation. Deletes existing text relating to the applicant's compliance history in accordance with the method for evaluating compliance history developed by TNRCC under Section 5.754, Water Code.

SECTION 9. Amends Section 401.112(a), Health and Safety Code, as follows:

(a) Requires that the applicant's past operating practices, rather than compliance history under the method of evaluation of compliance history developed by TNRCC under Section 5.754, Water Code, be considered by the department or TNRCC, in making a licensing decision on a specific license application to process or dispose of low-level radioactive waste from other persons. Makes a nonsubstantive change.

SECTION 10. Redesignates Section 5.758, Water Code, as Section 5.123, Water Code, and amends it as follows:

Sec. 5.123. REGULATORY FLEXIBILITY. (a) Authorizes TNRCC by order to exempt an applicant from a requirement of a statute or TNRCC 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 at least as protective of the environment and the public health as the method or standard prescribe by the statute or TNRCC rule that would otherwise apply, and not consistent with federal law.

(b) Deletes existing text prohibiting TNRCC from exempting an applicant under this section unless the applicant can present to TNRCC documented evidence of benefits to environmental quality that will result from the project the applicant proposes. Redesignated from existing Subsection (c).

(c) Redesignated from existing Subsection (d).

(d) Redesignated from existing Subsection (e).

(e) Redesignated from existing Subsection (f).

(f) Authorizes a permit to satisfy a requirement to demonstrate need by showing need on a regional basis considering economic impacts.

(g) Makes no changes to this subsection.

(h) Makes a nonsubstantive change.

SECTION 11. Amends Section 26.028(d), Water Code, to make a conforming change.

SECTION 12. Amends Section 26.0281, Water Code, as follows:

Sec. 26.0281. New heading: CONSIDERATION OF PAST PERFORMANCE AND COMPLIANCE. Requires TNRCC, in considering the issuance, amendment, or renewal of a permit to discharge effluent comprised primarily of sewage or municipal waste, to

consider any adjudicated decision on or compliance proceeding addressing past performance and compliance, rather than history, of the applicant and its operator 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 TNRCC, rather than under the method for evaluating compliance history developed by TNRCC under Section 5.754.

SECTION 13. Amends Section 26.040(h), Water Code, as follows:

(h) Requires TNRCC, after hearing, notwithstanding other provisions of this chapter, to deny or suspend a discharger's authority to discharge under a general permit if TNRCC 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 the failure to make a timely and substantial attempt to correct the violations. Deletes existing text as it relates 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.

SECTION 14. Amends Section 27.051(d), Water Code, to make a conforming change.

SECTION 15. Reenacts Section 27.051(e), Water Code, as amended by Chapters 347, 965, and 1161, Acts of the 77th Legislature, Regular Session, 2001, as follows:

(e) Makes conforming changes.

SECTION 16. Amends Section 32.101(c), Water Code, to make conforming changes.

SECTION 17. Repealer: except as provided by Section 10 of this Act, Subchapter Q, (Performance-Based Regulation) Chapter 5, Water Code; Section 361.0215(c) (requiring the pollution prevention advisory committee to report quarterly to TNRCC on its activities, including suggestions or proposals for future activities and other matters the committee considers important), Health and Safety Code; Section 361.088(g) (requiring TNRCC to review a permit issued every five years to assess the permit holder's compliance history), Health and Safety Code; and Section 27.051(h) (requiring TNRCC, in determining whether the use or installation of an injection well is in the public interest, to consider certain information), Water Code, as amended by Section 16.08, Chapter 965, Acts of the 77th Legislature Regular Session, 2001.

SECTION 18. Makes application of this Act prospective.

SECTION 19. Effective date: September 1, 2007.