

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: January 6, 2012

Thru: Bridget Bohac, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Richard A. Hyde, P.E., Deputy Director
Office of Compliance and Enforcement

Docket No.: 2011-1251-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 60, Compliance History
HB 2694 (4.01 and Article 4): Compliance History
Rule Project No. 2011-032-060-CE

Background and reason(s) for the rulemaking:

Rulemaking is necessary to implement House Bill (HB) 2694, Article 4, §§4.01 - 4.05 and 4.07, 82nd Legislature, 2011, which amend Texas Water Code (TWC), §§5.751 - 5.756. HB 2694 was authored by Representative Wayne Smith and sponsored by Senator Joan Huffman. The bill took effect September 1, 2011.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed rulemaking implements HB 2694, Article 4, §§4.01 - 4.05 and 4.07, which amend TWC, §§5.751 - 5.754 and 5.756. This proposed rulemaking would revise Chapter 60. The purpose of this proposed rulemaking is to allow the commission to use new standards instead of the existing uniform standard for evaluating and using compliance history. In addition, the proposed rulemaking modifies the components and formula of compliance history in order to provide a more accurate measure of regulated entities' performance and make compliance history a more effective regulatory tool.

B.) Scope required by federal regulations or state statutes:

There are no new federal regulations related to this rulemaking. HB 2694, §4.01, amends TWC, §5.751; §4.03 amends TWC, §5.753; §4.04 amends TWC, §5.753; §4.05 amends TWC, §5.754 and §5.755; and §4.07 amends TWC, §5.756. TWC, §5.754 expressly requires adoption of rules.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

TWC, §§5.012, 5.103, 5.105, 5.122, 5.127, 5.751, 5.753, 5.754, 5.755, and 5.756
Texas Government Code, §2001.006

Re: Docket No. 2011-1251-RUL

Effect on the:

A.) Regulated community:

As required by HB 2694, the compliance history rule is now applicable to TWC, Chapter 32, Subsurface Area Drip Dispersal Systems and Texas Health and Safety Code, Chapter 375, Removal of Convenience Switches. These programs are now included in the proposed rulemaking.

No fiscal implications are anticipated for industry, businesses, or individuals as a result of the implementation or administration of the proposed rules. The proposed rules do not affect current regulatory requirements on businesses or individuals.

B.) Public:

The public benefit anticipated from the changes seen in the proposed rules will be a more transparent and effective means of reviewing and comparing regulated entity's compliance histories. No fiscal implications are anticipated.

C.) Agency programs:

The agency will be required to modify its Consolidated Compliance and Enforcement Data System (CCEDs), Central Registry, and compliance history application in order to accommodate changes to the compliance history formula resulting from this rulemaking. The agency website will need to be updated to reflect changes. A process will need to be developed to allow the agency to perform a quality assurance and control procedure of compliance history data, including allowing the owner or operator of a site 30 days to review any information or data before it is placed on the Internet.

Stakeholder meetings:

Staff held a stakeholder meeting open to the general public on September 22, 2011. During the meeting staff presented the changes that are required and discussed the desire to improve effectiveness of the rules. No concerns were expressed in proceeding with the rulemaking project.

Potential controversial concerns and legislative interest:

It is expected that there will be interest in the compliance history formula, classification, and grouping.

Will this rulemaking affect any current policies or require development of new policies?

This rulemaking would not affect current policy or require the development of new policy.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

TWC, §5.753 (regarding Compliance History) requires the commission, by rule, to establish a set of standards for the classification of a person's compliance history as a means of

Commissioners
Page 3
January 6, 2012

Re: Docket No. 2011-1251-RUL

evaluating compliance history. If the rulemaking does not go forward, the newly amended statute and rulemaking would be in conflict regarding evaluation and use of compliance history. Staff recommends proceeding with rulemaking.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: January 25, 2012

Anticipated *Texas Register* publication date: February 10, 2012

Public hearing date (if any): March 6, 2012

Public comment period: February 10, 2012 - March 12, 2012

Anticipated adoption date: June 27, 2012

Agency contacts:

David Van Soest, Rule Project Manager, 239-0468

Anna Treadwell, Staff Attorney, 239-0974

Michael Parrish, Texas Register Coordinator, 239-2548

cc: Chief Clerk, 2 copies
Executive Director's Office
Anne Idsal
Curtis Seaton
Ashley Morgan
Office of General Counsel
David Van Soest
Michael Parrish