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Performance-Based Regulations

The Texas EMS is one component of an overall effort to create incentives and provide options to traditional regulations.

The Texas Environmental Management System is part of a larger movement to offer alternatives to the traditional regulatory process. The growing emphasis on performance-based regulations stems from the agency's Sunset review in 2001. The Legislature directed the TCEQ to establish a regulatory framework that provides incentives for enhanced environmental performance and that ties incentives to compliance history and voluntary participation in innovative programs.

Elements of this new approach are contained in the TCEQ programs described below. Participation is voluntary.

Strategically Directed Regulatory Structure (SDRS)

The newest incentive program, the SDRS will provide an overall framework for the TCEQ's existing innovative programs and will allow for the creation of new initiatives. It also will create a way for regulated entities to gain access to incentives through an innovative approach based on compliance history and participation in voluntary programs.

Under SDRS programs, any business or organization wanting to tap into incentives must show that its practices are more protective of the environment and public health than are current standards. The incentives made available will be based on compliance history and on voluntary measures undertaken to improve environmental quality.

An interim rule to implement SDRS has been adopted by the TCEQ; a final rule will be in place by September 2005.

Regulatory Flexibility

Under this program, created in 1997, the TCEQ is authorized to issue a regulatory flexibility order to any applicant requesting an exemption from a state-based rule on the control or abatement of pollution. The alternative practice or technology must be more protective of the environment and consistent with federal laws.

Texas EMS

This program provides regulatory incentives to any business or organization with an environmental management system approved by the TCEQ. To be eligible, the facility must meet certain compliance criteria and demonstrate it has an EMS that ensures compliance with environmental laws and improves environmental performance. Incentives are available at two levels: Basic provides access to state-based incentives and recognition, and Leader opens the door to federal-based incentives and recognition. The Leader component is being merged with the Leader level of Clean Texas.

Clean Texas

The longest running of the innovative programs, Clean Texas was established in 1992 to implement directives from the Waste Reduction Policy Act. It recognizes creative approaches to resolving environmental problems and setting goals that exceed compliance levels. Regional partnerships are encouraged, and public participation is a key factor. The levels of membership are: Advocate, Partner, and Leader.

Compliance History

Elements of the compliance history rules are tied to TCEQ incentive programs in a variety of ways. Under compliance history classifications, entities are designated as "high," "average," or "poor," depending on their environmental performance the previous five years. Poor performers are not eligible for incentives under the EMS and Regulatory Flexibility programs. At the same time, incentives under both SDRS and EMS will be tied to the compliance history classifications. For example, some EMS incentives—such as fewer inspections—will be offered only to high performers—those with an above-average record of environmental compliance. Also, facilities with an agency-approved EMS will receive a 10 percent credit toward their compliance history scores.

All together, these TCEQ programs are designed to reward companies for reliable compliance and superior environmental performance. Incentives are available to businesses and organizations that demonstrate a commitment to protecting air, water, and land resources in Texas.

To participate, applicants must show that their proposed project or innovation is more protective of the environment and public health than the standards already embodied in state or federal regulations.

Incentive programs such as these, along with meaningful training, can be a driving force for environmental performance throughout the state.

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Last Modified Tue, 19 Jul 2011
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