

By: Hernandez

H.B. No. 170

A BILL TO BE ENTITLED

AN ACT

relating to controlling emissions of air contaminants under the Texas Clean Air Act; providing a penalty.

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

SECTION 1. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Sections 382.042 and 382.043 to read as follows:

Sec. 382.042. EFFECTS SCREENING LEVELS. (a) The commission by rule shall adopt effects screening levels for air contaminants. Each effects screening level must:

(1) be set in a manner that takes into consideration all acute and chronic health effects on a person due to exposure to an air contaminant;

(2) be based in part on the health effects of:

(A) the one-hour, eight-hour, or 24-hour exposure of a person to the air contaminant at the fence-line of an emission source; and

(B) the lifetime exposure of a person to the air contaminant at the fence-line of an emission source; and

(3) be set at a level that does not increase the risk of cancer in a person exposed to the air contaminant by greater than one chance in one million.

(b) Not later than January 1, 2007, the commission shall assemble a panel of independent, nationally recognized experts in

1 the fields of toxicology and epidemiology to review the  
2 commission's effects screening levels and to recommend standards to  
3 the commission that comply with the requirements of Subsection (a).  
4 The panel shall consider the effects screening levels, methods, and  
5 programs of other states as part of the review. The panel must  
6 provide opportunities for public comment in conducting the review.  
7 The panel shall make recommendations to the commission regarding  
8 the commission's effects screening levels, methods, and programs  
9 not later than July 1, 2008. Not later than October 1, 2008, the  
10 commission shall adopt effects screening levels as required under  
11 Subsection (a) that take into consideration the panel's  
12 recommendations. The owner or operator of an emission source must  
13 comply with the effects screening levels set by the commission  
14 under this section not later than January 1, 2010. This subsection  
15 expires September 1, 2010.

16 Sec. 382.043. SANCTIONS; REPORT. (a) A person may not  
17 cause, suffer, allow, or permit the emission of any air contaminant  
18 or the performance of any activity that causes an effects screening  
19 level set by the commission to be exceeded. The commission by rule  
20 shall establish requirements for the assessment of a penalty or the  
21 imposition of an injunction against a person who violates this  
22 section.

23 (b) The commission shall annually publish a report that  
24 lists each violation of this section. The report must include any  
25 instance in which the commission suspected a violation but later  
26 determined that the evidence was not sufficient or credible enough  
27 to amount to a violation of this section.

1 SECTION 2. Section 382.085, Health and Safety Code, is  
2 amended by amending Subsection (a) and adding Subsections (c) and  
3 (d) to read as follows:

4 (a) A [~~Except as authorized by a commission rule or order,~~  
5 ~~a]~~ person may not cause, suffer, allow, or permit the emission of  
6 any air contaminant or the performance of any activity that causes  
7 or contributes to, or that will cause or contribute to, either in  
8 isolation or in conjunction with air contaminants from other  
9 sources, air pollution.

10 (c) For purposes of this section, a condition of air  
11 pollution is considered to exist if credible evidence demonstrates  
12 an unacceptable risk of health effects due to air pollution as  
13 determined by:

14 (1) a measured level of an air contaminant in excess of  
15 an effects screening level for the air contaminant for a relevant  
16 period as provided by commission rule;

17 (2) a measured level of multiple air contaminants that  
18 in conjunction with one another increase the risk of cancer in a  
19 person exposed to the air contaminants by greater than one chance in  
20 one million; or

21 (3) a measured level of multiple air contaminants that  
22 are associated with the same chronic health condition and that in  
23 conjunction with one another are likely to result in a greater risk  
24 to an exposed person's health than would one of the contaminants in  
25 isolation if measured at the relevant effects screening level for  
26 the contaminant.

27 (d) If the commission brings an action for a violation of

1 this section, the burden is on the owner or operator of the facility  
2 or source to demonstrate to the commission that the facility or  
3 source:

4 (1) is in compliance with all technological  
5 requirements applicable to the facility or source;

6 (2) is in compliance with all monitoring requirements  
7 applicable to the facility or source; and

8 (3) is not aware of having caused or contributed to air  
9 pollution in violation of this section.

10 SECTION 3. (a) Not later than March 1, 2008, the Texas  
11 Commission on Environmental Quality shall publish an annual report  
12 listing violations of effects screening levels as required by  
13 Section 382.043, Health and Safety Code, as added by this Act.

14 (b) Section 382.085, Health and Safety Code, as amended by  
15 this Act, applies only to a violation of Section 382.085, Health and  
16 Safety Code, that occurs on or after the effective date of this Act.  
17 A violation of Section 382.085, Health and Safety Code, that occurs  
18 before the effective date of this Act is governed by the law in  
19 effect when the violation occurred, and the current law is  
20 continued in effect for that purpose.

21 (c) Section 382.043, Health and Safety Code, as added by  
22 this Act, applies to any violation of an effects screening level set  
23 by the commission that occurs on or after the effective date of this  
24 Act. A violation of an effects screening level that occurs before  
25 the effective date of this Act is governed by the law in effect when  
26 the violation occurs, and the current law is continued in effect for  
27 that purpose.

1 SECTION 4. This Act takes effect September 1, 2006.