

Amend CSHB 1900 (House committee printing) as follows:

(1) Strike page 3, line 27, and page 4, line 1, and substitute the following:

SECTION 2. Section 382.0216, Health and Safety Code, is amended by amending Subsections (a), (b), (c), (f), and (i) and adding Subsection (b-1) to read as follows:

(2) On page 4, strike lines 5-18 and substitute the following:

(b) The commission shall establish criteria for determining when an emissions event or a series of emissions events are excessive. The criteria must include consideration of:

- ~~(1) [the frequency of the facility's emissions events,~~
~~[(2) the cause of the emissions event,~~
~~(3) the quantity and impact on human health or the environment of the emissions event; and~~
- ~~(2) [(4)] the duration of the emissions event [+
[(5) the percentage of a facility's total annual operating hours during which emissions events occur; and
[(6) the need for startup, shutdown, and maintenance activities].~~

(b-1) The commission may determine that an emissions event or a series of emissions events are not excessive based on a failure to meet criteria established by the commission under Subsection (b). If the commissioner determines that an emissions event or a series of emissions events are not excessive on that basis, the commission shall evaluate the emissions event or series of emissions events based on consideration of the following factors:

- (1) the frequency of the regulated entity's emissions events, taking into consideration the regulated entity's size and complexity;
- (2) the cause of the emissions event;
- (3) the quantity and the impact on human health or the environment of the emissions event;
- (4) the duration of the emissions event;
- (5) the percentage of a facility's total annual operating hours during which the emissions events occur;
- (6) the need for startup, shutdown, and maintenance

activities; and

(7) the impact of the emissions event on the state's compliance with the state implementation plan.

(3) On page 5, strike lines 9-14 and substitute the following:

(f) Consistent with the federal Clean Air Act, the commission by rule may establish an affirmative defense to a commission enforcement action if the emissions event is determined not to be excessive under this section. The commission may not authorize the use of the affirmative defense if the unauthorized emissions:

(1) caused or contributed to:

(A) a condition in which national ambient air quality standards are exceeded;

(B) the prevention of significant deterioration increments; or

(C) a condition of air pollution; or

(2) were a part of a frequent or recurring pattern indicative of inadequate design, operation, or maintenance [The commission by rule may establish an affirmative defense to a commission enforcement action if the emissions event meets criteria defined by commission rule. In establishing rules under this subsection, the commission at a minimum must require consideration of the factors listed in Subsections (b)(1)-(6)].