

Amend HB 2129 by adding the appropriately numbered sections as follows:

SECTION \_\_. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Sections 382.0161, 382.0162, 382.042, and 382.043 to read as follows:

Sec. 382.0161. MONITORING REQUIREMENTS FOR MAJOR SOURCES.

(a) In this section, "major source" has the meaning assigned by Title V of the federal Clean Air Act (42 U.S.C. Section 7661).

(b) In addition to other monitoring requirements under this chapter, the commission by rule shall require the owner or operator of a major source to:

(1) provide for daily fence-line monitoring of the emission of air contaminants from the major source; and

(2) make and maintain records on the measuring and monitoring of the emissions.

(c) In providing for the daily fence-line monitoring of emissions as required by this section, the owner or operator of the major source must:

(1) provide for at least two monitors with each of the monitors placed on opposite sides of the source;

(2) provide for a sufficient number of monitors so that the maximum distance measured along the fence-line between each monitor is one-eighth of a mile; and

(3) place the monitors in such a way that the monitors are evenly spaced.

(d) The owner or operator of a major source shall designate an independent consultant approved by the commission to certify to the commission that the major source is in compliance with this section. A member, employee, or agent of the commission may examine during regular business hours the monitoring equipment or any records or memoranda relating to the monitoring equipment required under this section.

(e) The commission by rule shall require the owner or operator of a major source to submit for the executive director's approval a list of the air contaminants that the owner or operator will monitor under this section. To be eligible for approval, the list must include:

(1) each hazardous air pollutant listed under 42 U.S.C. Section 7412 of the federal Clean Air Act that is applicable to the major source; and

(2) any other air contaminant that the executive director or a local municipal or county air pollution control agency requests that the owner or operator monitor.

(f) The commission may adopt rules allowing for the owner or operator of a major source to request an exemption from the fence-line monitoring requirements of this section. To be eligible for an exemption, the owner or operator must submit to the executive director for approval an alternative monitoring plan that demonstrates continuous or semi-continuous monitoring of each stack, vent, flare, cooling tower, or other device for which technologically feasible monitoring devices are available. The owner or operator shall review the plan at least once every five years to identify additional monitoring opportunities based on new technology and submit proposed changes to the executive director for approval.

Sec. 382.0162. COMMISSION PROGRAMS CONCERNING THE IMPACT OF AIR CONTAMINANTS ON PUBLIC HEALTH. (a) The commission, in conjunction with the Department of State Health Services, the Mickey Leland National Urban Air Toxics Research Center, universities located in this state, and other leading researchers, shall establish the programs described by this section. The purposes of the programs are to:

(1) prevent public health problems in this state;

(2) improve understanding of the effects of emissions of air contaminants from a variety of sources on public health in this state; and

(3) improve the legislature's ability to develop the best public policies for ensuring better public health in this state.

(b) The commission shall conduct personal exposure monitoring as part of the TexAQS II ozone field research program to improve the understanding of the relationship between emissions of ozone-forming air contaminants, particularly highly reactive volatile organic compounds, and public health effects, such as

asthma.

(c) The commission, in conjunction with leading state and national researchers and policymakers, annually shall host an air toxics workshop concerning the effects of emissions of air contaminants on individuals who experience outdoor, indoor, or personal exposure to the air contaminants, to advance this critical field of study in this state.

(d) The commission shall issue grants for research concerning the effects of emissions of air contaminants on public health, including research concerning the deployment or development of low-cost, effective personal exposure monitoring technology.

(e) The commission shall conduct an exposure study to map the levels of air contaminants in a community that is located near a concentration of industrial sources of air contaminants. The study must evaluate the effects of emissions of air contaminants on public health by monitoring over a one-year period the total outdoor, indoor, and personal exposure of individuals who are exposed to emissions of air contaminants in those communities. The commission shall integrate data collected during the course of the study with available ambient monitoring data and provide the legislature with a report concerning the integrated data not later than January 1, 2007. This subsection expires September 1, 2007.

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, 2006, the commission shall assemble a panel of independent, nationally recognized experts in the fields of toxicology, epidemiology, medicine, and public health to review the commission's effects screening levels and to recommend standards to the commission that comply with the requirements of Subsection (a). The panel shall consider the effects screening levels, methods, and programs of other states as part of the review. The panel must provide opportunities for public comment in conducting the review. The panel shall make recommendations to the commission regarding the commission's effects screening levels, methods, and programs not later than July 1, 2007. Not later than October 1, 2007, the commission shall adopt effects screening levels as required under Subsection (a) that take into consideration the panel's recommendations. The owner or operator of an emission source must comply with the effects screening levels set by the commission under this section not later than January 1, 2009. This subsection expires September 1, 2009.

(c) Until the commission adopts effects screening levels that comply with the requirements of Subsection (a), the effects screening levels adopted by the commission as of September 1, 2005, are interim standards for purposes of Sections 382.043 and 382.085. This subsection expires November 1, 2007.

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

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

SECTION \_\_. Section 382.085, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (c)-(e)

to read as follows:

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

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

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

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

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

(4) any other evidence that is of sufficient value and credibility to demonstrate an injurious or adverse effect to human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.

(d) In addition to any other remedy authorized by law, the commission by rule shall establish requirements for assessing a penalty or initiating an action for an injunction against a person who violates this section.

(e) If the commission brings an action for a violation of this section, the burden is on the owner or operator of the facility or source, through certification by a responsible official, to demonstrate to the commission that the facility or source:

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

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

(3) is not aware of any evidence that demonstrates that the facility or source has caused or contributed to a condition of air pollution in violation of this section.

SECTION \_\_. (a) Not later than September 1, 2006, the owner or operator of a major source must provide for the fence-line monitoring of air contaminants as required by Section 382.0161, Health and Safety Code, as added by this Act.

(b) Not later than January 1, 2006, the Texas Commission on Environmental Quality shall adopt requirements for assessing a penalty or initiating an action for an injunction against a person who violates Section 382.043, Health and Safety Code, as added by this Act, or Section 382.085, Health and Safety Code, as amended by this Act.

(c) Not later than March 1, 2006, the Texas Commission on Environmental Quality shall publish an annual report listing violations of effects screening levels as required by Section 382.043, Health and Safety Code, as added by this Act.

(d) Section 382.085, Health and Safety Code, as amended by this Act, applies only to a violation of Section 382.085, Health and Safety Code, that occurs on or after the effective date of this Act. A violation of Section 382.085, Health and Safety Code, that occurs before the effective date of this Act is governed by the law in effect when the violation occurred, and the former law is continued in effect for that purpose.

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

SECTION 4. This Act takes effect September 1, 2005.