

BILL ANALYSIS

Senate Research Center

S.B. 1724
By: Gallegos
Natural Resources
4/13/2005
As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, the rules of the Texas Commission on Environmental Quality regarding allowable levels of air toxins, or effects screening levels, are merely guidelines. While many areas of Texas are experiencing problems with air pollution, it is often difficult to determine the exact the sources of the air toxins. In addition to this problem, when the source is discovered, it is often difficult to obtain a finding of a violation and assess fines and penalties because of the manner of enforcement of current laws and rules.

As proposed, S.B. 1724 changes current effects screening levels that set maximum levels of exposure to air contaminant from guidelines to enforceable standards. The bill also strengthens standards for what constitutes a violation of the Health and Safety Code by specifically defining air pollution.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1 (Sections 382.0161, 382.042, and 382.043, Health and Safety Code) and SECTION 2 (Section 382.085, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 382, Health and Safety Code, by adding Sections 382.0161, 382.042, and 382.043, as follows:

Sec. 382.0161. MONITORING REQUIREMENTS FOR MAJOR SOURCES. (a) Defines "major source."

(b) Requires the Texas Commission on Environmental Quality (commission) in addition to the other monitoring requirements under this chapter, to require by rule that the owner or operator of a major source [of a hazardous air pollutant] take certain actions regarding the maintenance and monitoring of emissions.

(c) Requires the owner or operator of a major source to take certain actions relating to the operation of monitors in providing for the daily fence-line monitoring of emissions as required by this section.

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

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

(f) Authorizes the commission to 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. Requires the owner or operator, to be eligible for an exemption, to 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. Requires the owner or operator to 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. 382.042. EFFECTS SCREENING LEVELS. (a) Requires the commission by rule to adopt effects screening levels for air contaminants. Requires each effects screening level to meet certain criteria.

(b) Requires the commission, not later than January 1, 2006, to 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). Requires the panel to consider the effects screening levels, methods, and programs of other states as part of the review. Requires the panel to provide for opportunities for public comment in conducting the review. Requires the panel to consider the effects screening levels, methods, and programs not later than July 1, 2007. Requires the commission, not later than October 1, 2007, to adopt effects screening levels as required under Subsection (a) that take into consideration the panel's recommendations. Requires the owner or operator of an emission source to comply with the effects screening levels set by the commission under this section not later than January 1, 2009. Provides that this subsection expires September 1, 2009.

(c) Provides that, upon the effective date of this Act, the Texas Effects Screening Levels currently used by the commission for permit review purposes are adopted as interim standards for use as required Section 382.085.

Sec. 382.043. SANCTIONS; REPORT. (a) Prohibits a person from causing, suffering, allowing, or permitting 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. Requires the commission by rule to establish requirements for the assessment of a penalty or the imposition of an injunction against a person who violates this section.

(b) Requires the commission to annually publish a report that lists each violation of this section. Requires the report to 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 2. Amends Section 382.085, Health and Safety Code, by amending Subsection (a) and adding Subsections (c) and (d), as follows:

(a) Prohibits a person from causing, suffering, allowing, or permitting 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. Deletes existing text providing an exception as authorized by a commission rule or order.

(c) Provides that, for purposes of this section, a condition of air pollution is considered to exist if credible evidence demonstrates an unacceptable risk or health effects due to air pollution as determined by certain standards.

(d) Provides that 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 meets certain criteria.

SECTION 3. (a) Requires the commission, not later than January 1, 2006 to adopt requirements for the assessment of penalties or the imposition of injunctions against a person who exceeds the interim standards as required by Section 382.042(c), [Health and Safety Code], as added by this Act.

(b) Requires the commission, not later than March 1, 2006, to 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.

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

(d) Requires the commission, not later than October 1, 2007, to adopt new health effects screening levels as established by Section 382.042, Health and Safety Code, as added by this Act.

(e) Makes application of Section 382.085, Health and Safety Code, as added by this Act, prospective.

(f) Makes application of Section 382.043, Health and Safety Code, as added by this Act, prospective.

SECTION 4. Effective date: September 1, 2005.