

By: Bonnen

H.B. No. 1900

A BILL TO BE ENTITLED

AN ACT

relating to the assessment and regulation of emissions events.

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

SECTION 1. Section 382.0215, Health and Safety Code, is amended by amending Subsections (a), (b), and (f) and adding Subsections (a-1) and (h) to read as follows:

(a) In this section:

(1) "Emissions [~~,"emissions~~] event" means an upset event, or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in the unauthorized emissions of air contaminants from one or more [~~an~~] emissions points at a regulated entity [~~point~~].

(2) "Regulated entity" means all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location.

(a-1) Maintenance, startup, and shutdown activities shall not be considered unscheduled only if the activity will not and does not result in the emission of at least a reportable quantity of unauthorized emissions of air contaminants and the activity is recorded as may be required by commission rule, or if the activity will result in the emission of at least a reportable quantity of

1 unauthorized emissions and:

2 (1) the owner or operator of the regulated entity
3 [~~facility~~] provides any prior notice or final report that the
4 commission, by rule, may establish;

5 (2) the notice or final report includes the
6 information required in Subsection (b)(3); and

7 (3) the actual emissions do not exceed the estimates
8 submitted in the notice by more than a reportable quantity.

9 (b) The commission shall require the owner or operator of a
10 regulated entity [~~facility~~] that experiences emissions events:

11 (1) to maintain a record of all emissions events at the
12 regulated entity [~~facility~~] in the manner and for the periods
13 prescribed by commission rule;

14 (2) to notify the commission in a single report for
15 each emissions event, as soon as practicable but not later than 24
16 hours after discovery of the emissions event, of an emissions event
17 resulting in the emission of a reportable quantity of air
18 contaminants as determined by commission rule; and

19 (3) to report to the commission in a single report for
20 each emissions event, not later than two weeks after the occurrence
21 of an emissions event that results in the emission of a reportable
22 quantity of air contaminants as determined by commission rule, all
23 information necessary to evaluate the emissions event, including:

24 (A) the name of the owner or operator of the
25 reporting regulated entity [~~facility~~];

26 (B) the location of the reporting regulated
27 entity [~~facility~~];

- 1 (C) the date and time the emissions began;
2 (D) the duration of the emissions;
3 (E) the nature and measured or estimated quantity
4 of air contaminants emitted, including the method of calculation
5 of, or other basis for determining, the quantity of air
6 contaminants emitted;
7 (F) the processes and equipment involved in the
8 emissions event;
9 (G) the cause of the emissions; and
10 (H) any additional information necessary to
11 evaluate the emissions event.

12 (f) An owner or operator of a regulated entity [~~facility~~]
13 required by Section 382.014 to submit an annual emissions inventory
14 report and which has experienced no emissions events during the
15 relevant year must include as part of the inventory a statement that
16 the regulated entity [~~facility~~] experienced no emissions events
17 during the prior year. An owner or operator of a regulated entity
18 [~~facility~~] required by Section 382.014 to submit an annual
19 emissions inventory report must include the total annual emissions
20 from all emissions events in categories as established by
21 commission rule.

22 (h) The commission may allow operators of pipelines,
23 gathering lines, and flowlines to treat all such facilities under
24 common ownership or control in a particular county as a single
25 regulated entity for the purpose of assessment and regulation of
26 emissions events.

27 SECTION 2. Section 382.0216, Health and Safety Code, is

1 amended by amending Subsections (a), (b), (c), (f), and (i) and
2 adding Subsection (b-1) to read as follows:

3 (a) In this section, "emissions event" and "regulated
4 entity" have [~~has~~] the meanings [~~meaning~~] assigned by Section
5 382.0215.

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

- 9 (1) [~~the frequency of the facility's emissions events;~~
10 [~~(2) the cause of the emissions event;~~
11 [~~(3)~~] the quantity and impact on human health or the
12 environment of the emissions event; and
13 (2) [~~(4)~~] the duration of the emissions event[~~+~~
14 [~~(5) the percentage of a facility's total annual~~
15 ~~operating hours during which emissions events occur; and~~
16 [~~(6) the need for startup, shutdown, and maintenance~~
17 ~~activities~~].

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

- 25 (1) the frequency of the regulated entity's emissions
26 events, taking into consideration the regulated entity's size and
27 complexity;

1 (2) the cause of the emissions event;

2 (3) the quantity and the impact on human health or the
3 environment of the emissions event;

4 (4) the duration of the emissions event;

5 (5) the percentage of a facility's total annual
6 operating hours during which the emissions events occur;

7 (6) the need for startup, shutdown, and maintenance
8 activities; and

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

11 (c) The commission shall require the owner or operator of a
12 regulated entity [a facility] to take action to reduce emissions
13 from excessive emissions events. Consistent with commission rules,
14 the owner or operator of a regulated entity [a facility] required to
15 take action under this subsection must either file a corrective
16 action plan or file a letter of intent to obtain authorization for
17 emissions from the excessive emissions events, provided that the
18 emissions are sufficiently frequent, quantifiable, and
19 predictable. If the intended authorization is a permit, a permit
20 application shall be filed within 120 days of the filing of the
21 letter of intent. If the intended authorization is a permit by rule
22 or standard exemption, the authorization must be obtained within
23 120 days of the filing of the letter of intent. If the commission
24 denies the requested authorization, within 45 days of receiving
25 notice of the commission's denial, the owner or operator of a
26 regulated entity [facility] shall file a corrective action plan to
27 reduce emissions from the excessive emissions events.

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

7 (1) caused or contributed to:

8 (A) an exceedance of the national ambient air
9 quality standards;

10 (B) prevention of significant deterioration
11 increments; or

12 (C) a condition of air pollution; or

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

20 (i) In the event the owner or operator of a regulated entity
21 [facility] fails to report an emissions event as required by
22 Section 382.0215(b), the commission shall initiate enforcement for
23 such failure to report and for the underlying emissions event
24 itself. This subsection does not apply where an owner or operator
25 reports an emissions event and the report was incomplete,
26 inaccurate, or untimely unless the owner or operator knowingly or
27 intentionally falsified the information in the report.

1 SECTION 3. Sections 382.0215 and 382.0216, Health and
2 Safety Code, as amended by this Act, apply only to an emissions
3 event that occurs on or after the effective date of this Act. An
4 emissions event that occurs before the effective date of this Act is
5 governed by the law in effect when the emissions event occurred, and
6 that law is continued in effect for that purpose.

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