

By: Rodriguez

H.B. No. 2577

A BILL TO BE ENTITLED

AN ACT

relating to air pollutant emissions from electric generating facilities; providing for an administrative penalty.

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

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

SUBCHAPTER I. EMISSIONS REDUCTIONS REQUIRED

FOR ELECTRIC GENERATING FACILITIES

Sec. 382.351. DEFINITIONS. In this subchapter:

(1) "Annual emissions period" means the period from May 1 of each year to April 30 of the following year.

(2) "Electric generating facility" means a facility located in this state that generates electric energy for compensation, including a facility owned or operated by a municipal corporation, electric cooperative, or river authority.

Sec. 382.352. AUTHORITY TO REDUCE AIR CONTAMINANT EMISSIONS. This subchapter does not limit the authority of the commission to require reductions of emissions of any air contaminant from any electric generating facility or class of electric generating facilities.

Sec. 382.353. EMISSIONS ALLOCATION REGIONS. (a) The commission by rule shall establish an East Texas Region, a West Texas Region, and an El Paso Region as emissions allocation regions for purposes of allocation and trading of air contaminant emissions

1 allowances under this subchapter.

2 (b) The East Texas Region contains all counties that are  
3 traversed by or located east of Interstate Highway 35 and includes  
4 Bosque, Coryell, Hood, Parker, Somervell, and Wise Counties.

5 (c) The West Texas Region includes all of the state not  
6 contained in the East Texas Region or the El Paso Region.

7 (d) The El Paso Region includes El Paso County.

8 Sec. 382.354. NITROGEN OXIDES EMISSIONS REDUCTIONS IN EAST  
9 TEXAS REGION. For each annual emissions period, the total annual  
10 emissions of nitrogen oxides from electric generating facilities in  
11 the East Texas Region may not exceed 97,500 tons.

12 Sec. 382.355. NITROGEN OXIDES EMISSIONS REDUCTIONS IN WEST  
13 TEXAS AND EL PASO REGIONS. (a) For each annual emissions period,  
14 the total annual emissions of nitrogen oxides from electric  
15 generating facilities in the West Texas Region or in the El Paso  
16 Region may not exceed 25 percent of the total emissions of nitrogen  
17 oxides in that region from electric generating facilities during  
18 1997, as reported to the commission.

19 (b) If the commission or the United States Environmental  
20 Protection Agency determines that the reductions in nitrogen oxides  
21 emissions in the El Paso Region required by Subsection (a) would  
22 result in increased ambient ozone levels in El Paso County,  
23 electric generating facilities in the El Paso Region are exempt  
24 from the application of Subsection (a).

25 Sec. 382.356. SULPHUR DIOXIDE EMISSIONS REDUCTIONS IN  
26 EMISSIONS ALLOCATION REGIONS. For each annual emissions period,  
27 the total annual emissions of sulphur dioxide from coal-fired

1 electric generating facilities in an emissions allocation region  
2 may not exceed 25 percent of the total emissions of sulphur dioxide  
3 from coal-fired electric generating facilities in that region  
4 during 1997, as reported to the commission.

5 Sec. 382.357. MERCURY EMISSIONS REDUCTIONS. (a) For each  
6 annual emissions period, the total annual emissions of mercury and  
7 mercury compounds from each electric generating facility may not  
8 exceed 10 percent of the facility's total emissions of mercury and  
9 mercury compounds during 2002, as reported to the commission.

10 (b) For an electric generating facility that was not in  
11 operation for all or any part of 2002 or that was not operating at  
12 full capacity for a period during that year, the commission may  
13 impose for the facility a maximum allowable level of emissions of  
14 mercury and mercury compounds that the commission computes from  
15 convincing evidence and that corresponds to 10 percent of an  
16 emissions level the commission estimates the facility would have  
17 emitted had the facility operated at full capacity throughout that  
18 year.

19 Sec. 382.358. ALLOCATION AND BUYING OR TRADING OF EMISSIONS  
20 ALLOWANCES. (a) The commission by rule shall:

21 (1) provide for the allocation of emissions allowances  
22 of nitrogen oxides and sulphur dioxide among electric generating  
23 facilities in each emissions allocation region; and

24 (2) establish a market system for electric generating  
25 facilities to buy or trade the emissions allowances with other  
26 electric generating facilities in the same region.

27 (b) The rules must allocate to each electric generating

1 facility for each annual emissions period a number of nitrogen  
2 oxides emissions allowances and a number of sulphur dioxide  
3 emissions allowances, with each allowance equal to a quantity of  
4 the applicable air contaminant for a 12-month period, measured by  
5 weight, that permit emissions of that quantity of the air  
6 contaminant from the facility in an annual emissions period.

7 (c) Emissions allowances for an air contaminant may be  
8 bought or traded only for the same air contaminant.

9 (d) Emissions allowances for sulphur dioxide may be  
10 allocated and bought or traded only among coal-fired electric  
11 generating facilities.

12 (e) The rules must allow an electric generating facility in  
13 the El Paso Region to meet emissions allowances by using credits  
14 from emissions reductions achieved in Ciudad Juarez, United Mexican  
15 States.

16 (f) A person possessing market power may not withhold  
17 emissions allowances from the market in a manner that is  
18 unreasonably discriminatory or tends to unreasonably restrict,  
19 impair, or reduce the level of competition.

20 Sec. 382.359. EMISSIONS OFFSETS FOR NEW ELECTRIC GENERATING  
21 FACILITIES. The commission may not issue a permit for the emission  
22 of nitrogen oxides or sulphur dioxide by a new electric generating  
23 facility unless the permit applicant:

24 (1) has acquired emissions allowances through the  
25 emissions allowance market system established under this  
26 subchapter; or

27 (2) demonstrates to the commission that emissions of

1 those contaminants from the facility will be offset by reductions  
2 in emissions of those contaminants from industrial facilities or  
3 mobile diesel engine sources located in the same emissions  
4 allocation region.

5 Sec. 382.360. ENFORCEMENT. (a) The commission shall  
6 penalize an electric generating facility that emits in an annual  
7 emissions period a quantity of mercury or mercury compounds greater  
8 than that allowed for that period by Section 382.357 and commission  
9 rules adopted under that section. The commission shall penalize  
10 the facility by:

11 (1) assessing an administrative penalty, in an amount  
12 determined by commission rules, for each unit weight of mercury or  
13 mercury compounds emissions by which the facility exceeded the  
14 emissions limitation; and

15 (2) issuing an order reducing the quantity of mercury  
16 and mercury compounds that the facility may emit in the next annual  
17 emissions period by a quantity of emissions equal to the excessive  
18 emissions in the annual emissions period in which the facility  
19 emitted the excessive quantity of mercury or mercury compounds.

20 (b) The commission shall penalize an electric generating  
21 facility that emits in an annual emissions period a quantity of  
22 nitrogen oxides or sulphur dioxide that exceeds the facility's  
23 allowances for that air contaminant by:

24 (1) assessing an administrative penalty, in an amount  
25 determined by commission rules, for each allocated unit of air  
26 contaminant emissions by which the facility exceeded its allocated  
27 emissions allowances for that air contaminant; and

1           (2) issuing an order reducing the facility's allocated  
2 emissions allowances for that air contaminant for the next annual  
3 emissions period by a quantity of emissions equal to the excessive  
4 emissions in the annual emissions period in which the facility  
5 emitted the excessive quantity of that air contaminant.

6           (c) In addition to the penalties required by Subsection (a),  
7 the commission may penalize an electric generating facility that  
8 emits in an annual emissions period a quantity of mercury or mercury  
9 compounds greater than that allowed by Section 382.357 and  
10 commission rules adopted under that section by:

11                   (1) ordering the facility to cease operations; or

12                   (2) taking other enforcement action provided by  
13 commission rules.

14           (d) In addition to the penalties required by Subsection (b),  
15 the commission may penalize an electric generating facility that  
16 emits in an annual emissions period a quantity of nitrogen oxides or  
17 sulphur dioxide that exceeds the facility's allocated emissions  
18 allowances for that air contaminant by:

19                   (1) ordering the facility to cease operations; or

20                   (2) taking other enforcement action provided by  
21 commission rules.

22           (e) The limitation provided by Section 7.052, Water Code, on  
23 the amount of an administrative penalty that may be assessed does  
24 not apply to a penalty assessed under this section.

25           SECTION 2. Section 39.264, Utilities Code, is amended by  
26 amending Subsections (d), (e), (f), (l), and (r) and adding  
27 Subsection (t) to read as follows:

1 (d) A municipal corporation, electric cooperative, or river  
2 authority may exclude any electric generating facilities of 25  
3 megawatts or less from the requirements prescribed by this section.  
4 Not later than January 1, 2000, a municipal corporation, electric  
5 cooperative, or river authority must inform the conservation  
6 commission of its intent to exclude those facilities. An electric  
7 generating facility excluded under this section is subject to  
8 Subchapter I, Chapter 382, Health and Safety Code.

9 (e) The owner or operator of an electric generating facility  
10 shall apply to the conservation commission for a permit for the  
11 emission of air contaminants on or before September 1, 2000. A  
12 permit issued by the conservation commission under this section  
13 shall require the facility to achieve emissions reductions or  
14 trading emissions allowances as provided by this section. The  
15 conservation commission shall amend the permit to require as a  
16 permit condition that the facility achieve emissions reductions or  
17 trading emissions allowances as required by Subchapter I, Chapter  
18 382, Health and Safety Code. If the facility uses coal as a fuel,  
19 the permit must also be conditioned on the facility's emissions  
20 meeting opacity limitations provided by conservation commission  
21 rules. Notwithstanding Section 382.0518(g), Health and Safety  
22 Code, a facility that does not obtain a permit as required by this  
23 subsection may not operate after May 1, 2003, unless the  
24 conservation commission finds good cause for an extension.

25 (f) The conservation commission shall develop rules for the  
26 permitting of electric generating facilities. The rules adopted  
27 under this subsection shall provide, by region, for the allocation

1 of emissions allowances of sulphur dioxides and nitrogen oxides  
2 among electric generating facilities and for facilities to trade  
3 emissions allowances for those contaminants until those rules are  
4 superseded by Subchapter I, Chapter 382, Health and Safety Code,  
5 and the rules adopted under that subchapter.

6 (l) A facility may not trade an unused allowance under this  
7 section or Subchapter I, Chapter 382, Health and Safety Code, for a  
8 contaminant for use as a credit for another contaminant.

9 (r) [~~An applicant for a permit under Subsection (e) shall~~  
10 ~~publish notice of intent to obtain the permit in accordance with~~  
11 ~~Section 382.056, Health and Safety Code. The conservation~~  
12 ~~commission shall provide an opportunity for a public hearing and~~  
13 ~~the submission of public comment and send notice of a decision on an~~  
14 ~~application for a permit under Subsection (e) in the same manner as~~  
15 ~~provided by Sections 382.0561 and 382.0562, Health and Safety~~  
16 ~~Code.] The conservation commission shall review and renew a permit  
17 issued under this section in accordance with Section 382.055,  
18 Health and Safety Code.~~

19 (t) This subsection and Subsections (c), (g), (h), (i), (j),  
20 (n), (o), (p), and (q) expire May 1, 2007.

21 SECTION 3. (a) The Texas Commission on Environmental  
22 Quality shall adopt rules to implement the changes in law made by  
23 this Act not later than March 1, 2006. The Texas Commission on  
24 Environmental Quality by rule shall provide for permits and permit  
25 amendments as necessary for electric generating facilities to meet  
26 the goals of and for the commission to enforce Subchapter I, Chapter  
27 382, Health and Safety Code, as added by this Act, and Section



1 39.264, Utilities Code, as amended by this Act.

2 (b) The first annual emissions period to which Subchapter I,  
3 Chapter 382, Health and Safety Code, as added by this Act, applies  
4 is the period from May 1, 2007, to April 30, 2008.

5 (c) The amendments to Section 39.264, Utilities Code, made  
6 by this Act do not apply to a violation of that section committed  
7 before the effective date of the amendments. For purposes of this  
8 subsection, a violation of that section is committed before the  
9 effective date of the amendments if any element of the violation  
10 occurs before that date. A violation committed before the  
11 effective date of the amendments is covered by Section 39.264,  
12 Utilities Code, as that section existed on the date on which the  
13 violation was committed, and the former law is continued in effect  
14 for that purpose.

15 SECTION 4. This Act takes effect immediately if it receives  
16 a vote of two-thirds of all the members elected to each house, as  
17 provided by Section 39, Article III, Texas Constitution. If this  
18 Act does not receive the vote necessary for immediate effect, this  
19 Act takes effect September 1, 2005.