

By: Moreno of Harris

H.B. No. 2792

A BILL TO BE ENTITLED

AN ACT

relating to monitoring and controlling emissions of air contaminants under the Texas Clean Air Act; providing a penalty.

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

SECTION 1. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Sections 382.0161, 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

1 each monitor is one-eighth of a mile; and

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

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

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

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

19 (2) any other air contaminant that either the  
20 executive director or municipal or county air pollution control  
21 agency requests that the owner or operator monitor.

22 (f) The commission may adopt rules allowing for the owner or  
23 operator of a major source to request an exemption from the  
24 fence-line monitoring requirements of this section. To be eligible  
25 for an exemption, the owner or operator must submit to the executive  
26 director for approval an alternative monitoring plan that  
27 demonstrates continuous or semi-continuous monitoring of each

1 stack, vent, flare, cooling tower, or other device for which  
2 technologically feasible monitoring devices are available. The  
3 owner or operator shall review the plan at least once every five  
4 years to identify additional monitoring opportunities based on new  
5 technology and submit proposed changes to the executive director  
6 for approval.

7 Sec. 382.042. EFFECTS SCREENING LEVELS. (a) The  
8 commission by rule shall adopt effects screening levels for air  
9 contaminants. Each effects screening level must:

10 (1) be set in a manner that takes into consideration  
11 all acute and chronic health effects on a person due to exposure to  
12 an air contaminant;

13 (2) be based in part on the health effects of:

14 (A) the one-hour, eight-hour, or 24-hour  
15 exposure of a person to the air contaminant at the fence-line of an  
16 emission source; and

17 (B) the lifetime exposure of a person to the air  
18 contaminant at the fence-line of an emission source; and

19 (3) be set at a level that does not increase the risk  
20 of cancer in a person exposed to the air contaminant by greater than  
21 one chance in one million.

22 (b) Not later than January 1, 2006, the commission shall  
23 assemble a panel of independent, nationally recognized experts in  
24 the fields of toxicology, epidemiology, medicine, and public health  
25 to review the commission's effects screening levels and to  
26 recommend standards to the commission that comply with the  
27 requirements of Subsection (a). The panel shall consider the

1 effects screening levels, methods, and programs of other states as  
2 part of the review. The panel must provide opportunities for public  
3 comment in conducting the review. The panel shall make  
4 recommendations to the commission regarding the commission's  
5 effects screening levels, methods, and programs not later than July  
6 1, 2007. Not later than October 1, 2007, the commission shall adopt  
7 effects screening levels as required under Subsection (a) that take  
8 into consideration the panel's recommendations. The owner or  
9 operator of an emission source must comply with the effects  
10 screening levels set by the commission under this section not later  
11 than January 1, 2009. This subsection expires September 1, 2009.

12 (c) Upon the effective date of this Act, the Texas Effects  
13 Screening Levels currently used by the Texas Commission on  
14 Environmental Quality for permit review purposes are adopted as  
15 interim standards for use as required by Section 382.085.

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

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

1 SECTION 2. Section 382.085, Health and Safety Code, is  
2 amended by amending Subsection (a) and adding Subsections (c) and  
3 (d) to read as follows:

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

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

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

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

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

27 (4) any other evidence that is of sufficient value and

1 credibility to demonstrate an injurious or adverse affect to human  
2 health or welfare, animal life, vegetation, or property, or as to  
3 interfere with the normal use and enjoyment of animal life,  
4 vegetation, or property.

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

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

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

13 (3) is aware of no evidence that demonstrates that the  
14 facility or source has caused or contributed to air pollution in  
15 violation of this section.

16 SECTION 3. (a) Not later than January 1, 2006 the Texas  
17 Commission on Environmental Quality shall adopt requirements for  
18 the assessment of penalties or the imposition of injunctions  
19 against a person who exceeds the interim standards as required by  
20 Section 382.042(c), as added by this Act.

21 (b) Not later than March 1, 2006, the Texas Commission on  
22 Environmental Quality shall publish an annual report listing  
23 violations of effects screening levels as required by Section  
24 382.043, Health and Safety Code, as added by this Act.

25 (c) Not later than September 1, 2006, the owner or operator  
26 of a major source must provide for the fence-line monitoring of air  
27 contaminants as required by Section 382.0161, Health and Safety

1 Code, as added by this Act.

2 (d) Not later than October 1, 2007, the Texas Commission on  
3 Environmental Quality shall adopt new health effects screening  
4 levels as established by Section 382.042, Health and Safety Code,  
5 as added by this Act.

6 (e) Section 382.085, Health and Safety Code, as amended by  
7 this Act, applies only to a violation of Section 382.085, Health and  
8 Safety Code, that occurs on or after the effective date of this Act.  
9 A violation of Section 382.085, Health and Safety Code, that occurs  
10 before the effective date of this Act is governed by the law in  
11 effect when the violation occurred, and the current law is  
12 continued in effect for that purpose.

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

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