

By: Herrero

H.B. No. 3439

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the enforcement of laws governing emissions and upsets
3 that are administered by the Texas Commission on Environmental
4 Quality, including the imposition and assessment of fees and
5 penalties.

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

7 SECTION 1. Chapter 382, Health & Safety Code, is amended by
8 adding Section 382.0621 to read as follows:

9 Sec. 382.0621. IMPOSITION, INCREASE OR REDUCTION IN FEES.

10 (a) Notwithstanding any other provision of law, the commission may
11 impose or increase or reduce fees imposed under this chapter as
12 provided by this section.

13 (b) If a facility is among the best ten percent of all
14 facilities with upset emissions, the commission may reduce the
15 facility's emission fees that would otherwise be imposed by this
16 chapter in an amount not greater than 50 percent.

17 (c) If a facility is among the worst twenty percent of all
18 facilities with upset emissions, the commission shall increase the
19 facility's emission fees that would otherwise be imposed by this
20 chapter in an amount not less than twenty percent and not greater
21 than 50 percent.

22 (d) The commission shall assess a minimum fee of \$500 for
23 each reportable upset and the money shall be appropriated to the
24 commission for distribution in the form of grants for

1 community-based air pollution reduction projects that reflect
2 community priorities.

3 SECTION 2. Section 5.753, Water Code, is amended to read as
4 follows:

5 Sec. 5.753. STANDARD FOR EVALUATING COMPLIANCE
6 HISTORY. (a) Consistent with other law and the requirements
7 necessary to maintain federal program authorization, the
8 commission by rule shall develop a uniform standard for evaluating
9 compliance history.

10 (b) The components of compliance history must include:

11 (1) enforcement orders, court judgments, consent
12 decrees, and criminal convictions of this state and the federal
13 government relating to compliance with applicable legal
14 requirements under the jurisdiction of the commission or the United
15 States Environmental Protection Agency;

16 (2) notwithstanding any other provision of this code,
17 orders issued under Section 7.070;

18 (3) to the extent readily available to the commission,
19 enforcement orders, court judgments, and criminal convictions
20 relating to violations of environmental laws of other states; ~~and~~

21 (4) changes in ownership; and

22 (5) performance with regard to laws governing
23 emissions, including upset incidence.

24 (c) The set of components must also include any information
25 required by other law or any requirement necessary to maintain
26 federal program authorization.

27 (d) The set of components shall include notices of

1 violations. A notice of violation administratively determined to
2 be without merit shall not be included in a compliance history. A
3 notice of violation that is included in a compliance history shall
4 be removed from the compliance history if the commission
5 subsequently determines the notice of violation to be without
6 merit.

7 (e) Except as required by other law or any requirement
8 necessary to maintain federal program authorization, the
9 commission by rule shall establish a period for compliance history.

10 SECTION 3. Notwithstanding any other provision of law, the
11 Texas Commission on Environmental Quality shall require, where
12 practicable, the owner or operator of every facility that has the
13 potential to experience a reportable upset, as defined by
14 commission rule, to install and operate no later than January 1,
15 2006 a continuous measurement and monitoring system to document the
16 occurrence of upset events and accurately establish the amount of
17 each pollutant released during an upset event. At a minimum, this
18 system shall measure flow parameters for each gas or other material
19 to be released directly to the atmosphere or indirectly through a
20 flare or other device. This information shall be attached to a
21 certification by a responsible official, as provided by the Code of
22 Federal Regulations, that, based on information and belief formed
23 after reasonable inquiry, the statements and information in the
24 information provided is true, accurate, and complete. The
25 information and certification shall be submitted to the commission
26 every six months beginning September 1, 2008, and kept at the
27 facility for a period of no less than five years.

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