

By: Hernandez

H.B. No. 440

A BILL TO BE ENTITLED

AN ACT

relating to 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 382.042 and 382.043 to read as follows:

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

(1) set in a manner that takes into consideration all acute and chronic health effects on a person resulting from exposure to an air contaminant;

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

(A) the 1-hour, 8-hour, or 24-hour exposure of a person to the air contaminant at the fence-line of an emission source; and

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

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

(b) Not later than January 1, 2008, the commission shall

1 assemble a panel of independent, nationally recognized experts in
2 the fields of toxicology and epidemiology to review the
3 commission's effects screening levels and to recommend standards to
4 the commission that comply with the requirements of Subsection (a).
5 The panel shall consider the effects screening levels, methods, and
6 programs of other states as part of the review. The panel shall
7 provide opportunities for public comment in conducting the review.
8 The panel shall make recommendations to the commission regarding
9 the commission's effects screening levels, methods, and programs
10 not later than July 1, 2009. Not later than October 1, 2009, the
11 commission shall adopt effects screening levels as required under
12 Subsection (a) that take into consideration the panel's
13 recommendations. The owner or operator of an emission source shall
14 comply with the effects screening levels set by the commission
15 under this section not later than January 1, 2011. This subsection
16 expires September 1, 2011.

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

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

1 to amount to a violation of this section.

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

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

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

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

18 (2) a measured level of multiple air contaminants that
19 in conjunction with one another increase the risk of cancer in a
20 person exposed to the air contaminants by greater than one chance in
21 one million when compared to a person not exposed to the
22 contaminants; or

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

1 the contaminant.

2 (d) If the commission brings an action for a violation of
3 this section, the burden is on the owner or operator of the facility
4 or source to demonstrate to the commission that:

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

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

9 (3) the owner or operator is not aware that the
10 facility or source has caused or contributed to a condition of air
11 pollution in violation of this section.

12 SECTION 3. (a) Not later than March 1, 2009, the Texas
13 Commission on Environmental Quality shall publish the first annual
14 report listing violations of effects screening levels as required
15 by Section 382.043, Health and Safety Code, as added by this Act.

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

23 (c) Section 382.085, Health and Safety Code, as amended by
24 this Act, applies only to a violation of Section 382.085, Health and
25 Safety Code, that occurs on or after the effective date of this Act.
26 A violation of Section 382.085, Health and Safety Code, that occurs
27 before the effective date of this Act is governed by the law in

1 effect when the violation occurred, and the current law is
2 continued in effect for that purpose.

3 SECTION 4. This Act takes effect September 1, 2007.