

By: Farrar

H.B. No. 547

A BILL TO BE ENTITLED

1 AN ACT

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

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

5 SECTION 1. Subchapter B, Chapter 382, Health and Safety
6 Code, is amended by adding Sections 382.0161, 382.0162, 382.042,
7 and 382.043 to read as follows:

8 Sec. 382.0161. MONITORING REQUIREMENTS FOR MAJOR SOURCES.

9 (a) In this section, "major source" has the meaning assigned by
10 Title V of the federal Clean Air Act (42 U.S.C. Section 7661).

11 (b) In addition to other monitoring requirements under this
12 chapter, the commission by rule shall require the owner or operator
13 of a major source to:

14 (1) provide for daily fence-line monitoring of air
15 contaminant emissions from the major source; and

16 (2) make and maintain records on the measurement and
17 monitoring of the emissions.

18 (c) In providing for the daily fence-line monitoring of air
19 contaminant emissions as required by this section, the owner or
20 operator of the major source must:

21 (1) provide for at least two monitors with each of the
22 monitors placed on opposite sides of the source, one of which is
23 located predominantly upwind and the other located predominantly
24 downwind;

1 (2) provide for a sufficient number of monitors so
2 that the maximum distance measured along the fence line between
3 each monitor is one-eighth of a mile; and

4 (3) place the monitors in such a way that the monitors
5 are evenly spaced and are located where air contaminants have the
6 highest concentration levels at the fence line of the emission
7 source.

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

15 (e) The commission by rule shall require the owner or
16 operator of a major source to submit for the executive director's
17 approval a list of the air contaminant emissions that the owner or
18 operator will monitor under this section. To be eligible for
19 approval, the list must include:

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

23 (2) any other air contaminant the emission of which
24 the executive director or a local municipal or county air pollution
25 control agency requests that the owner or operator monitor.

26 (f) The commission may adopt rules allowing the owner or
27 operator of a major source to request an exemption from the

1 fence-line monitoring requirements of this section. To be eligible
2 for an exemption, the owner or operator must submit to the executive
3 director for approval an alternative monitoring plan that
4 demonstrates continuous or semi-continuous monitoring of each
5 stack, vent, flare, cooling tower, or other device for which
6 technologically feasible monitoring devices are available. The
7 owner or operator shall review the plan at least once every five
8 years to identify additional monitoring opportunities based on new
9 technology and submit proposed changes to the executive director
10 for approval.

11 Sec. 382.0162. COMMISSION PROGRAMS CONCERNING IMPACT OF AIR
12 CONTAMINANTS ON PUBLIC HEALTH. (a) The commission, in conjunction
13 with the Department of State Health Services, the Mickey Leland
14 National Urban Air Toxics Research Center, universities located in
15 this state, and other leading researchers, shall establish the
16 programs described by this section. The purposes of the programs
17 are to:

18 (1) prevent public health problems in this state;
19 (2) improve understanding of the effects of air
20 contaminant emissions from a variety of sources on public health in
21 this state; and

22 (3) improve the legislature's ability to develop the
23 best public policies for ensuring better public health in this
24 state.

25 (b) The commission shall conduct personal exposure
26 monitoring as part of the Texas air quality field study (TexAQS II)
27 ozone field research program to improve the understanding of the

1 relationship between emissions of ozone-forming air contaminants,
2 particularly highly reactive volatile organic compounds, and
3 public health effects, such as changes in the incidence of asthma.

4 (c) The commission, in conjunction with leading state and
5 national researchers and policymakers, annually shall host a
6 workshop concerning the effects of air contaminant emissions on
7 individuals who experience outdoor or indoor exposure to air
8 contaminants, to advance in this state this critical field of
9 study.

10 (d) The commission shall issue grants for research
11 concerning the effects of air contaminant emissions on public
12 health, including research concerning the deployment or
13 development of low-cost, effective personal exposure monitoring
14 technology.

15 (e) The commission shall conduct an exposure study to map
16 the levels of air contaminants in a community that is located near a
17 concentration of industrial sources of air contaminant emissions.
18 The study must evaluate the effects of air contaminant emissions on
19 public health by monitoring over a one-year period the total
20 outdoor and indoor exposure of individuals who are exposed to air
21 contaminant emissions in those communities. The commission shall
22 integrate data collected during the course of the study with
23 available ambient monitoring data and provide the legislature with
24 a report concerning the integrated data not later than January 1,
25 2009. This subsection expires September 1, 2009.

26 Sec. 382.042. EFFECTS SCREENING LEVELS. (a) The
27 commission by rule shall adopt effects screening levels for air

1 contaminants. Each effects screening level must:

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

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

6 (A) the one-hour, eight-hour, or 24-hour
7 exposure of a person to the highest concentration of the air
8 contaminant from an emission source; and

9 (B) the lifetime exposure of a person to the
10 highest concentration of the air contaminant from an emission
11 source; and

12 (3) be set at a level that does not increase the risk
13 of cancer in a person exposed to the air contaminant by greater than
14 one chance in 100,000 or another level set by the commission to
15 protect human health and welfare and the environment when compared
16 to a person not exposed to the contaminant.

17 (b) Not later than January 1, 2008, the commission shall
18 assemble a panel of independent, nationally recognized experts in
19 the fields of toxicology, epidemiology, medicine, and public health
20 to review the commission's effects screening levels and to
21 recommend standards to the commission that comply with the
22 requirements of Subsection (a). The panel shall consider the
23 effects screening levels, methods, and programs of other states as
24 part of the review. The panel shall provide opportunities for
25 public comment in conducting the review. The panel shall make
26 recommendations to the commission regarding the commission's
27 effects screening levels, methods, and programs not later than July

1 1, 2009. Not later than October 1, 2009, the commission shall adopt
2 effects screening levels as required under Subsection (a) that take
3 into consideration the panel's recommendations. The owner or
4 operator of an emission source shall comply with the effects
5 screening levels set by the commission under this section not later
6 than January 1, 2011. This subsection expires September 1, 2011.

7 (c) Until the commission adopts effects screening levels
8 that comply with the requirements of Subsection (a), the effects
9 screening levels adopted by the commission as of September 1, 2007,
10 are interim standards for purposes of Sections 382.043 and 382.085.
11 This subsection expires November 1, 2009.

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

19 (b) The commission annually shall publish a report that
20 lists each violation of this section. The report must include any
21 instance in which the commission suspected a violation but later
22 determined that the evidence was not sufficient or credible enough
23 to prove a violation of this section.

24 SECTION 2. Section 382.085, Health and Safety Code, is
25 amended by amending Subsection (a) and adding Subsections (c)-(e)
26 to read as follows:

27 (a) A [~~Except as authorized by a commission rule or order,~~

1 a] person may not cause, suffer, allow, or permit the emission of
2 any air contaminant or the performance of any activity that causes
3 or contributes to, or that will cause or contribute to, either in
4 isolation or in conjunction with air contaminants from other
5 sources, a condition of air pollution.

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

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

13 (2) a measured level of multiple air contaminants that
14 in conjunction with one another increase the risk of cancer in a
15 person exposed to the air contaminants by greater than one chance in
16 100,000 or another measured level of multiple air contaminants
17 established by the commission to protect human health and welfare
18 and the environment;

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

25 (4) any other evidence that is of sufficient value and
26 credibility to demonstrate an adverse effect to human health or
27 welfare, animal life, vegetation, or property, or an interference

1 with the normal use and enjoyment of animal life, vegetation, or
2 property.

3 (d) In addition to any other remedy authorized by law, the
4 commission by rule shall establish requirements for assessing a
5 penalty or initiating an action for an injunction against a person
6 who violates this section.

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

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

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

16 (3) the owner or operator is not aware of any evidence
17 that demonstrates that the facility or source has caused or
18 contributed to a condition of air pollution in violation of this
19 section.

20 SECTION 3. (a) Not later than September 1, 2008, the owner
21 or operator of a major source must provide for the fence-line
22 monitoring of air contaminant emissions as required by Section
23 382.0161, Health and Safety Code, as added by this Act.

24 (b) Not later than January 1, 2008, the Texas Commission on
25 Environmental Quality shall adopt requirements for assessing a
26 penalty or initiating an action for an injunction against a person
27 who violates:

1 (1) Section 382.043, Health and Safety Code, as added
2 by this Act; or

3 (2) Section 382.085, Health and Safety Code, as
4 amended by this Act.

5 (c) Not later than March 1, 2008, the Texas Commission on
6 Environmental Quality shall publish an annual report listing
7 violations of effects screening levels as required by Section
8 382.043, Health and Safety Code, as added by this Act.

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

16 (e) 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 former law is continued in effect for
22 that purpose.

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