

By: Noriega

H.B. No. 3117

A BILL TO BE ENTITLED

AN ACT

relating to the use of effects screening levels in controlling emissions of air contaminants under the Texas Clean Air Act.

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 Section 382.042 to read as follows:

Sec. 382.042. EFFECTS SCREENING LEVELS. (a) The commission by rule shall adopt effects screening levels for air contaminants that evaluate the potential for adverse health effects to occur as a result of exposure to concentrations of the air contaminants. In establishing the effects screening levels, the commission must consider all acute and chronic health effects on a person resulting from exposure to the air contaminants under consideration. The effects screening levels:

(1) must be based in part on the health effects of:

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

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

(2) must be set at a level that does not increase the risk of cancer in a person exposed to each air contaminant by more than one chance in one million when compared to a person not exposed to the contaminant; and

1 (3) may not be based on standards established under
2 the federal Occupational Safety and Health Act of 1970 (29 U.S.C.
3 Section 651 et seq.) or any aspect of an employer-employee
4 relationship as to health and safety hazards.

5 (b) The commission shall establish an open, scientifically
6 valid, peer-reviewed process for adopting effects screening
7 levels. The process established by the commission must provide
8 opportunities for public comment.

9 (c) The commission shall document in an electronic database
10 the process by which effects screening levels are adopted under
11 this section and make the documentation available to the public in
12 an electronic format. The documentation must:

13 (1) include the name and credentials of the primary
14 toxicologist supervising the research and other work associated
15 with deriving the effects screening levels;

16 (2) include the sources of relevant data used in
17 deriving each effects screening level, including a list of the
18 relevant parameters used in the toxicological studies;

19 (3) identify the derivation method used in adopting
20 the effects screening levels;

21 (4) describe details of the derivation method,
22 including the initial value relied on in adopting the effects
23 screening levels, such as the threshold limit value (TLV) or no
24 observed adverse effects level (NOAEL), and specify the adjustment
25 factors used in both size and focus;

26 (5) identify the protective basis used, such as an
27 odor basis or health basis, in deriving each effects screening

1 level;

2 (6) identify the toxicological focus of each effects
3 screening level, such as carcinogenic, mutagenic, tertogenic, or
4 chronic or acute focus;

5 (7) include the names and relevant actions of the
6 individuals who performed internal review related to the adoption
7 of the effects screening levels;

8 (8) include the record of any change, the date of
9 change, and the reason for a change in an effects screening level
10 value;

11 (9) include an explanation of the relevant details and
12 results in the validation process in adopting the effects screening
13 levels; and

14 (10) include any other information the commission
15 considers necessary.

16 (d) The commission shall update the effects screening
17 levels as new scientific evidence becomes available.

18 (e) Not later than January 1, 2009, the commission shall
19 adopt effects screening levels as required under this section. The
20 owner or operator of an emission source shall comply with the
21 effects screening levels set by the commission under this section
22 not later than January 1, 2011. This subsection expires September
23 1, 2011.

24 (f) Until the commission adopts effects screening levels
25 that comply with the requirements of this section, the effects
26 screening levels adopted by the commission as of September 1, 2007,
27 are interim standards for purposes of Section 382.085. This

1 subsection expires on the date the executive director certifies
2 that the effects screening levels adopted by the commission comply
3 with the requirements of this section.

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

7 (a) A [~~Except as authorized by a commission rule or order,~~
8 ~~a]~~ person may not cause, suffer, allow, or permit the emission of
9 any air contaminant or the performance of any activity that causes
10 or contributes to, or that will cause or contribute to, a measured
11 level of an air contaminant in excess of an effects screening level
12 for the air contaminant for a relevant period as provided by
13 commission rule [~~air pollution~~].

14 (c) The commission by rule shall establish requirements for
15 assessing a penalty against a person who violates this section. A
16 penalty collected by the commission under this section may be
17 appropriated only to the commission for use in performing the
18 powers and duties of the commission. Penalties the commission
19 collects under this section are exempt from the application of
20 Section 403.095, Government Code.

21 (d) If the commission brings an action for a violation of
22 this section, the owner or operator of the facility or source shall
23 provide the commission with immediate access to the facility or
24 source and shall allow the commission to conduct on-site
25 monitoring. The commission may conduct on-site monitoring at any
26 facility at any time.

27 (e) The commission annually shall publish a report that

1 lists each violation under Subsection (a). The report must include
2 any instance in which the commission suspected a violation but
3 later determined that evidence was not sufficient or credible
4 enough to prove a violation of Subsection (a).

5 (f) The commission shall adopt rules necessary to
6 administer this section.

7 SECTION 3. (a) Section 382.085, Health and Safety Code, as
8 amended by this Act, applies only to a violation of Section 382.085,
9 Health and Safety Code, that occurs on or after the effective date
10 of this Act. A violation of that section that occurs before the
11 effective date of this Act is governed by the law in effect when the
12 violation occurred, and the former law is continued in effect for
13 that purpose.

14 (b) Not later than July 1, 2009, the Texas Commission on
15 Environmental Quality shall publish the first annual report listing
16 violations of effects screening levels as required by Section
17 382.085(e), Health and Safety Code, as added by this Act.

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