

By: Gallegos

S.B. No. 93

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, 382.0162, 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 air contaminant emissions from the major source; and

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

(c) In providing for the daily fence-line monitoring of air contaminant 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, one of which is located predominantly upwind and the other located predominantly 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.