

By: Gallegos

S.B. No. 1855

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of toxic hotspots under the Texas Clean Air Act.

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

SECTION 1. Chapter 382, Health and Safety Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. TOXIC HOTSPOTS PILOT PROGRAM

Sec. 382.351. DEFINITIONS. In this subchapter:

(1) "Ambient air toxic standard" means the maximum allowable average ambient concentration of a priority toxic air contaminant as established under Section 382.354.

(2) "Priority toxic air contaminant" means an air contaminant listed under Section 382.353.

(3) "Toxic hotspot" means a geographic area in which modeled or monitored ambient air concentrations of one or more priority toxic air contaminants exceed ambient air toxic standards.

Sec. 382.352. DESIGNATION OF TOXIC HOTSPOTS. (a) The commission shall implement a pilot program under which the commission shall designate certain geographic areas in this state as toxic hotspots.

(b) The commission shall designate an area as a toxic hotspot or conduct modeling or monitoring of that area to determine whether the area should be designated as a toxic hotspot if:

(1) the United States Environmental Protection

1 Agency's 1999 National-Scale Air Toxic Assessment indicates air  
2 quality in the area likely exceeds an ambient air toxic standard;

3 (2) the commission's point source emissions inventory  
4 data indicates air quality in the area likely exceeds an ambient air  
5 toxic standard; or

6 (3) the commission otherwise determines on the basis  
7 of air monitoring or modeling data that air quality in the area  
8 likely exceeds an ambient air toxic standard.

9 (c) In establishing the geographic boundaries of a toxic  
10 hotspot, the commission shall consider:

11 (1) the locations where people are exposed to ambient  
12 concentrations likely exceeding ambient air toxic standards;

13 (2) the locations of dense populations and of  
14 vulnerable populations, such as children and the elderly;

15 (3) the locations of emission sources of the relevant  
16 priority toxic air contaminant; and

17 (4) the meteorology, geography, and topography of the  
18 area.

19 (d) In setting the geographic boundaries for toxic  
20 hotspots, the commission shall make the hotspots no larger than  
21 necessary to encompass the geographic areas where the public is  
22 exposed to one or more priority toxic air contaminants at levels  
23 exceeding an ambient air toxic standard.

24 Sec. 382.353. PRIORITY TOXIC AIR CONTAMINANTS. (a) By  
25 December 31, 2007, the commission shall designate toxic hotspots  
26 for the following priority toxic air contaminants:

27 (1) benzene;

- 1           (2) 1,3-butadiene;
- 2           (3) diesel particulate matter;
- 3           (4) ethylene dichloride; and
- 4           (5) nickel.

5           Sec. 382.354. AMBIENT AIR TOXIC STANDARDS. (a) Except as  
6 provided by Subsection (b), the commission shall establish the  
7 following ambient air toxic standards for the priority toxic air  
8 contaminants:

9           (1) for benzene, an annual average concentration of  
10 not greater than .78 part per billion;

11           (2) for 1,3-butadiene, an annual average  
12 concentration of not greater than .3 parts per billion;

13           (3) for diesel particulate matter, with a diameter of  
14 2.5 microns and smaller, an annual average concentration of not  
15 greater than 0.29 micrograms per cubic meter;

16           (4) for ethylene dichloride, an annual average  
17 concentration of not greater than 0.1 parts per billion; and

18           (5) for nickel, an annual average concentration of not  
19 greater than 0.06 micrograms per cubic meter.

20           (b) Notwithstanding Subsection (a), the commission may:

21           (1) determine that the most current scientific  
22 evidence indicates that an ambient air toxic standard established  
23 by the commission under Subsection (a) is unsuitable; and

24           (2) establish a different interim ambient air quality  
25 standard for that contaminant in a manner that:

26           (A) ensures there are not appreciable risks of  
27 non-cancer, deleterious health effects; and

1           (B) for a carcinogenic priority toxic air  
2 contaminant, ensures that the allowed average concentration level  
3 of the contaminant does not result in a lifetime excess cancer risk  
4 greater than one in 100,000 for a person exposed to the contaminant.

5           Sec. 382.357. ACHIEVEMENT OF AMBIENT AIR TOXIC STANDARDS.

6           (a) The commission shall take cooperative actions necessary to  
7 ensure that the ambient air concentrations of priority toxic air  
8 contaminants in toxic hotspots are below the ambient air toxic  
9 standards. If cooperative actions do not produce the desired  
10 results provided by the schedules in this subchapter, the  
11 commission shall take any additional actions necessary which may  
12 include requiring:

13           (1) the owner or operator of an existing source to  
14 reduce emissions of the priority air contaminant;

15           (2) the owner or operator of a facility applying for  
16 commission approval to emit a priority air contaminant from a new  
17 source at the facility to offset the proposed emission by reducing  
18 the emission of the same contaminant from an existing source at the  
19 facility by more than the amount to be emitted by the new source;  
20 and

21           (3) the owner or operator of a facility to establish  
22 specific controls and best management practices to reduce the  
23 emission of a priority air contaminant.

24           (b) In requiring reductions from specific facilities, the  
25 commission shall consider and give credit for reductions in  
26 emissions of priority toxic air contaminants made by a facility  
27 after the effective date of this legislation pursuant to an

1 agreement with a local government as long as the reductions are  
2 quantifiable, enforceable and in excess of any reductions otherwise  
3 required by state or federal law.

4 Sec. 382.358. SCHEDULE FOR ACHIEVING AMBIENT AIR TOXIC  
5 STANDARDS. The commission shall categorize each toxic hotspot to  
6 which this subsection applies as high priority, medium priority, or  
7 low priority. The commission shall designate at least one-third of  
8 the toxic hotspots as high priority, and at least one-half of the  
9 remaining toxic hotspots as medium priority. The commission shall  
10 ensure that the ambient air toxic standards for the toxic hotspots  
11 are achieved according to the following schedule:

12 (1) for a high priority toxic hotspot, not later than  
13 September 1, 2010;

14 (2) for a medium priority toxic hotspot, not later  
15 than September 1, 2012; and

16 (3) for a low priority toxic hotspot, not later than  
17 September 1, 2014.

18 Sec. 382.360. PUBLIC ACCESS AND COMMENT. (a) The  
19 commission shall maintain on the commission's Internet website:

20 (1) a list of priority toxic air contaminants and  
21 their associated ambient air toxic standards;

22 (2) a list of each toxic hotspot in this state; and

23 (3) a list of the deadlines established by the  
24 commission under Section 382.358 for the attainment of ambient air  
25 toxic standards in each toxic hotspot.

26 (b) The commission shall establish procedures for members  
27 of the public to receive notice of and an opportunity to comment on

1 an action taken by the commission concerning:

2 (1) the designation of toxic hotspots for each  
3 priority toxic air contaminant;

4 (2) the removal of an area's designation as a toxic  
5 hotspot; or

6 (3) the establishment of or a change to a high, medium,  
7 or low priority designation of a toxic hotspot.

8 (c) The commission must provide a public comment period of  
9 at least 30 days before the commission establishes or amends an  
10 ambient air toxic standard pursuant to 382.354(b). When the  
11 commission publishes notice of a proposed amendment to a standard,  
12 justification for the amendment must be included.

13 (d) The commission's internet website must describe the  
14 procedures that a member of the public may follow to receive notice,  
15 provide comments, petition for designation of an area as a toxic  
16 hotspot, or otherwise participate in the pilot toxic hotspots  
17 program under this subchapter.

18 Sec. 382.361. REPORTS TO THE LEGISLATURE. (a) The  
19 commission shall include in its annual enforcement reports each  
20 year through 2014 information regarding its progress under the  
21 pilot toxic hotspots program. Such information shall include the  
22 hotspots designated for each priority toxic air contaminant, the  
23 steps taken to attain the ambient air toxic standards in each  
24 hotspot, and the progress made in attaining such standards.

25 (b) By December 2009, the commission shall report to the  
26 Legislature regarding the following:

27 (1) the areas of the state that would fail to meet

1 ambient air toxic standards which were set to ensure a lifetime  
2 excess cancer risk no greater than one in one million a for each of  
3 the priority toxic air contaminants;

4 (2) the areas of the state for which that failure would  
5 be due to emissions from sources outside the commission's  
6 jurisdiction; and

7 (3) an estimate of the time the commission would need  
8 to ensure that no areas in the state have ambient concentrations of  
9 priority toxic air contaminants which create a lifetime excess  
10 cancer risk greater than on in one million.

11 SUBCHAPTER J. EXPANDED TOXIC HOTSPOT PROGRAM.

12 Sec. 382.362. RULEMAKING. By December 2011, the commission  
13 shall adopt rules expanding the toxic hotspot pilot program.

14 Sec. 382.363. PRIORITY TOXIC AIR CONTAMINANTS. The rules  
15 shall include procedures and a public process for listing priority  
16 toxic air contaminants in addition to those listed in Section  
17 382.353. These additional priority toxic air contaminants shall  
18 include: chromium VI, ethylene dibromide, accrylonitrile,  
19 acrolein, chlorine, and hexamethylene diisocyanate.

20 Sec. 382.364. AMBIENT AIR TOXIC STANDARDS. (a) The rules  
21 shall include procedures and a public process for setting ambient  
22 air toxic standards for priority toxic air contaminants at levels  
23 that do not result in appreciable risks of deleterious health  
24 effects.

25 (b) For each priority toxic air contaminant that is a  
26 carcinogen, the commission shall establish:

27 (1) an ambient air toxic standard, applicable until

1 December 31, 2015, that ensures the allowed average concentration  
2 of the contaminant does not result in a lifetime excess cancer risk  
3 greater than one in 100,000 for a person exposed; and

4 (2) a ambient air toxic standard, applicable on and  
5 after January 1, 2016, except as specified in Section 382.364(c),  
6 that ensures the allowed average concentration of the contaminant  
7 does not result in a lifetime excess cancer risk greater than one in  
8 1,000,000 for a person exposed.

9 (c) After December 31, 2015, the commission may continue to  
10 utilize an ambient air toxic standard as specified in Section  
11 382.364(b)(1) as long as the commission demonstrates that emissions  
12 of the relevant priority toxic air contaminant from sources outside  
13 the commission's jurisdiction prevent attainment of a standard as  
14 specified in Section 382.364(b)(2).

15 Sec. 382.365. TOXIC HOTSPOTS. The rules shall include  
16 procedures and a public process for designating as toxic hotspots  
17 areas that exceed one or more of the ambient air toxic standards.

18 Sec. 382.366. ACHIEVEMENT OF AMBIENT AIR TOXIC STANDARDS.

19 (a) The rules shall include procedures and a public process for  
20 developing plans, source-specific requirements, and deadlines for  
21 bringing all toxic hotspots into compliance with applicable ambient  
22 air toxic standards.

23 (b) Such plans may include tightening emission limits in  
24 existing permits for priority toxic air contaminants, requiring  
25 offsets for new emissions of priority toxic air contaminants at  
26 amounts greater than the amount to be emitted by the new source, and  
27 requiring specific controls or best management practices to reduce



1 emissions of priority toxic air contaminants.

2 SECTION 2. This Act takes effect September 1, 2007.