

By: Howard of Travis

H.B. No. 721

A BILL TO BE ENTITLED

AN ACT

relating to permitting procedures of the Texas Commission on Environmental Quality for control of air pollution.

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

SECTION 1. Section 382.003, Health and Safety Code, is amended by amending Subdivisions (3-a) and (11-a) and adding Subdivisions (3-b), (4-a), (8-a), and (11-b) to read as follows:

(3-a) "Best available control technology" means an emissions limitation as defined by 40 C.F.R. Section 52.21(b)(12), as of September 1, 2009.

(3-b) "Coal" has the meaning assigned by Section 134.004, Natural Resources Code.

(4-a) "Criteria air pollutant" means one of the following air contaminants for which the United States Environmental Protection Agency sets national ambient air quality standards: ozone, carbon monoxide, particulate matter, sulfur dioxide, lead, and nitrogen dioxide.

(8-a) "Lowest achievable emission rate" means an emissions limitation as defined by 40 C.F.R. Section 51.165(a)(1)(xiii), as of July 1, 2008.

(11-a) "Significant source" means a source, including an electric generating facility, with the potential to emit a pollutant at a rate that equals or exceeds the rate provided for the pollutant by 40 C.F.R. Section 51.166(b)(23), as of September 1,

1 2009.

2 (11-b) "Solid waste" has the meaning assigned by
3 Section 361.003.

4 SECTION 2. Section 382.051, Health and Safety Code, is
5 amended by adding Subsection (e) to read as follows:

6 (e) The commission shall track and publicly post on its
7 Internet site a list of the emissions limitations for criteria air
8 pollutants, mercury, and sulfuric acid mists that have been
9 represented as being the best available control technology or
10 lowest achievable emission rate in the 10 permit applications most
11 recently determined by the commission to be administratively
12 complete or among permits issued nationwide. The list must be
13 organized by industry category and by type of fuel. The list shall
14 include for each entry a description of the processes and
15 technologies used to attain best available control technology or
16 lowest achievable emission rate limitations. The commission shall
17 update the list at least semiannually.

18 SECTION 3. Subchapter C, Chapter 382, Health and Safety
19 Code, is amended by adding Sections 382.05102 and 382.05141 to read
20 as follows:

21 Sec. 382.05102. CONSIDERATION OF MOST RECENTLY PROVEN
22 TECHNOLOGIES. In a commission proceeding to issue or amend a permit
23 under this chapter, the commission shall consider the emissions
24 limitations listed in accordance with Section 382.051(e) in
25 determining whether the permit complies with the federal best
26 available control technology or lowest achievable emission rate
27 requirements. The commission may require as a condition of the

1 permit a specific process to achieve best available control
2 technology or lowest achievable emission rate requirements.

3 Sec. 382.05141. OZONE ANALYSIS. (a) Before granting a
4 permit or permit amendment under this subchapter for a significant
5 source, the commission shall conduct or obtain and consider an
6 impacts analysis, using photochemical grid modeling consistent
7 with the United States Environmental Protection Agency's modeling
8 protocol, of the facility's or proposed facility's effects on
9 concentrations of ground-level ozone in areas downwind from the
10 location of the facility or proposed facility under typical high
11 ground-level ozone conditions for the downwind area.

12 (b) The photochemical grid modeling impacts analysis must
13 include an area at least 250 kilometers from the significant source
14 being considered for the permit or permit amendment.

15 (c) The commission shall:

16 (1) make the results of the impacts analysis available
17 for public comment; and

18 (2) consider and reply to the public comments received
19 before the commission grants a permit or permit amendment.

20 SECTION 4. Section 382.0518, Health and Safety Code, is
21 amended by adding Subsection (b-1) to read as follows:

22 (b-1) In making its finding under Subsection (b)(2) as to
23 whether emissions from a facility or proposed facility that is a
24 significant source will contravene the intent of this chapter, the
25 commission shall analyze and consider the effects on the health and
26 physical property of this state's residents from the facility's
27 expected air contaminant emissions and the cumulative effects of

1 the facility's expected emissions considered together with those of
2 other existing facilities in this state, facilities that have been
3 issued a permit by the commission but that are not yet operational,
4 and proposed facilities for which the commission has determined
5 that the permit application is administratively complete. The
6 cumulative effects analysis must include, at a minimum, the impacts
7 analysis conducted or obtained under Section 382.05141.

8 SECTION 5. Subchapter C, Chapter 382, Health and Safety
9 Code, is amended by adding Section 382.051801 to read as follows:

10 Sec. 382.051801. ADDITIONAL PERMIT REQUIREMENT FOR CERTAIN
11 NEW SIGNIFICANT SOURCES. (a) In this section, "attainment area"
12 and "nonattainment area" respectively, mean areas so designated
13 under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section
14 7407).

15 (b) To obtain a permit under this subchapter, a new or
16 modified significant source located in an attainment area must meet
17 the emissions limitations and other requirements of a nonattainment
18 area, if the source will cause or contribute to air pollution levels
19 in excess of any national ambient air quality standard in any air
20 quality control region in this state as identified by the United
21 States Environmental Protection Agency.

22 SECTION 6. Section 382.055(d), Health and Safety Code, is
23 amended to read as follows:

24 (d) In determining whether and under which conditions a
25 preconstruction permit should be renewed, the commission shall
26 analyze and consider, at a minimum:

27 (1) the performance of the owner or operator of the

1 facility according to the method developed by the commission under
2 Section 5.754, Water Code; [~~and~~]

3 (2) the condition and effectiveness of existing
4 emission control equipment and practices; and

5 (3) if the facility is a significant source, the
6 effects on the health and physical property of this state's
7 residents from the facility's expected air contaminant emissions
8 and the cumulative effects of the facility's expected emissions
9 considered together with those of other existing facilities in this
10 state, facilities that have been issued a permit by the commission
11 but that are not yet operational, and proposed facilities for which
12 the commission has determined that the permit application is
13 administratively complete.

14 SECTION 7. The changes in law made by this Act to Chapter
15 382, Health and Safety Code, apply only to an application for the
16 issuance, amendment, or renewal of a permit under that chapter that
17 is pending before, or filed with, the Texas Commission on
18 Environmental Quality on or after January 1, 2009.

19 SECTION 8. This Act takes effect September 1, 2009.