

By: Farrar

H.B. No. 4082

A BILL TO BE ENTITLED

AN ACT

relating to reducing mercury emissions from electric generating facilities; providing for an administrative penalty.

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

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

SUBCHAPTER J. MERCURY EMISSIONS REDUCTIONS REQUIRED

FOR ELECTRIC GENERATING FACILITIES

Sec. 382.451. DEFINITIONS. In this subchapter:

(1) "Annual emissions period" means the period from May 1 of each year to April 30 of the following year.

(2) "Electric generating facility" means a facility located in this state that generates electric energy for compensation, including a facility owned or operated by a municipal corporation, electric cooperative, or river authority.

Sec. 382.452. AUTHORITY TO REDUCE AIR CONTAMINANT EMISSIONS. This subchapter does not limit the authority of the commission to require reductions of emissions of any air contaminant from any electric generating facility or class of electric generating facilities.

Sec. 382.453. MERCURY EMISSIONS REDUCTIONS. (a) For each annual emissions period, the total annual emissions of mercury and mercury compounds from each electric generating facility may not exceed 10 percent of the facility's total emissions of mercury and

1 mercury compounds during 2002, as reported to the commission.

2 (b) For an electric generating facility that was not in  
3 operation for all or any part of 2002 or that was not operating at  
4 full capacity for a period during that year, the commission may  
5 impose for the facility a maximum allowable level of emissions of  
6 mercury and mercury compounds that the commission computes from  
7 convincing evidence and that corresponds to 10 percent of an  
8 emissions level the commission estimates the facility would have  
9 emitted had the facility operated at full capacity throughout that  
10 year.

11 Sec. 382.454. ENFORCEMENT. (a) The commission shall  
12 penalize an electric generating facility that emits in an annual  
13 emissions period a quantity of mercury or mercury compounds greater  
14 than that allowed for that period by Section 382.453 and commission  
15 rules adopted under that section. The commission shall penalize  
16 the facility by:

17 (1) assessing an administrative penalty, in an amount  
18 determined by commission rules, for each unit weight of emissions  
19 of mercury or mercury compounds by which the facility exceeded the  
20 emissions limitation; and

21 (2) issuing an order reducing the quantity of mercury  
22 and mercury compounds that the facility may emit in the next annual  
23 emissions period by a quantity of emissions equal to the excessive  
24 emissions in the annual emissions period in which the facility  
25 emitted the excessive quantity of mercury or mercury compounds.

26 (b) In addition to the penalties required by Subsection (a),  
27 the commission may penalize an electric generating facility that

1 emits in an annual emissions period a quantity of mercury or mercury  
2 compounds greater than that allowed by Section 382.453 and  
3 commission rules adopted under that section by:

- 4           (1) ordering the facility to cease operations; or  
5           (2) taking other enforcement action provided by  
6 commission rules.

7           SECTION 2. Sections 39.264(d), (e), and (r), Utilities  
8 Code, are amended to read as follows:

9           (d) A municipal corporation, electric cooperative, or river  
10 authority may exclude any electric generating facilities of 25  
11 megawatts or less from the requirements prescribed by this section.  
12 Not later than January 1, 2000, a municipal corporation, electric  
13 cooperative, or river authority must inform the conservation  
14 commission of its intent to exclude those facilities. An electric  
15 generating facility excluded under this section is subject to  
16 Subchapter J, Chapter 382, Health and Safety Code.

17           (e) The owner or operator of an electric generating facility  
18 shall apply to the conservation commission for a permit for the  
19 emission of air contaminants on or before September 1, 2000. A  
20 permit issued by the conservation commission under this section  
21 shall require the facility to achieve emissions reductions or  
22 trading emissions allowances as provided by this section. The  
23 conservation commission shall amend the permit to require as a  
24 permit condition that the facility achieve emissions reductions as  
25 required by Subchapter J, Chapter 382, Health and Safety Code. If  
26 the facility uses coal as a fuel, the permit must also be  
27 conditioned on the facility's emissions meeting opacity

1 limitations provided by conservation commission rules.  
2 Notwithstanding Section 382.0518(g), Health and Safety Code, a  
3 facility that does not obtain a permit as required by this  
4 subsection may not operate after May 1, 2003, unless the  
5 conservation commission finds good cause for an extension.

6 (r) ~~[An applicant for a permit under Subsection (e) shall~~  
7 ~~publish notice of intent to obtain the permit in accordance with~~  
8 ~~Section 382.056, Health and Safety Code. The conservation~~  
9 ~~commission shall provide an opportunity for a public hearing and~~  
10 ~~the submission of public comment and send notice of a decision on an~~  
11 ~~application for a permit under Subsection (e) in the same manner as~~  
12 ~~provided by Sections 382.0561 and 382.0562, Health and Safety~~  
13 ~~Code.]~~ The conservation commission shall review and renew a permit  
14 issued under this section in accordance with Section 382.055,  
15 Health and Safety Code.

16 SECTION 3. (a) The Texas Commission on Environmental  
17 Quality shall adopt rules to implement the changes in law made by  
18 this Act not later than March 1, 2010. The Texas Commission on  
19 Environmental Quality by rule shall provide for permits and permit  
20 amendments as necessary for electric generating facilities to meet  
21 the goals of and for the commission to enforce Subchapter J, Chapter  
22 382, Health and Safety Code, as added by this Act, and Section  
23 39.264, Utilities Code, as amended by this Act.

24 (b) The first annual emissions period to which Subchapter J,  
25 Chapter 382, Health and Safety Code, as added by this Act, applies  
26 is the period from May 1, 2011, to April 30, 2012.

27 (c) The amendments to Section 39.264, Utilities Code, made

1 by this Act do not apply to a violation of that section committed  
2 before the effective date of the amendments. For purposes of this  
3 subsection, a violation of that section is committed before the  
4 effective date of the amendments if any element of the violation  
5 occurs before that date. A violation committed before the  
6 effective date of the amendments is covered by Section 39.264,  
7 Utilities Code, as that section existed on the date on which the  
8 violation was committed, and the former law is continued in effect  
9 for that purpose.

10 SECTION 4. This Act takes effect immediately if it receives  
11 a vote of two-thirds of all the members elected to each house, as  
12 provided by Section 39, Article III, Texas Constitution. If this  
13 Act does not receive the vote necessary for immediate effect, this  
14 Act takes effect September 1, 2009.