

By: Fraser

S.B. No. 875

A BILL TO BE ENTITLED

AN ACT

relating to compliance with state and federal environmental permits
as a defense to certain actions for nuisance or trespass.

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

SECTION 1. Subchapter F, Chapter 7, Water Code, is amended
by adding Section 7.257 to read as follows:

Sec. 7.257. DEFENSE TO NUISANCE OR TRESPASS. (a) A person, as defined by Section 382.003, Health and Safety Code, who is subject to an administrative, civil, or criminal action brought under this chapter for nuisance or trespass arising from greenhouse gas emissions has an affirmative defense to that action if the person's actions that resulted in the alleged nuisance or trespass were authorized by a rule, permit, order, license, certificate, registration, approval, or other form of authorization issued by the commission or the federal government or an agency of the federal government and:

(1) the person was in substantial compliance with that rule, permit, order, license, certificate, registration, approval, or other authorization while the alleged nuisance or trespass was occurring; or

(2) the commission or the federal government or an agency of the federal government exercised enforcement discretion in connection with the actions that resulted in the alleged nuisance or trespass.

1 (b) This section does not apply to nuisance actions related
2 to a noxious odor.

3 SECTION 2. Section 7.257, Water Code, as added by this Act,
4 applies only to an administrative enforcement action, a civil
5 action, or a prosecution that is commenced on or after the effective
6 date of this Act. An administrative enforcement action, a civil
7 action, or a prosecution commenced before the effective date of
8 this Act is governed by the law in effect on the date the action or
9 prosecution commenced, and that law is continued in effect for that
10 purpose.

11 SECTION 3. This Act takes effect immediately if it receives
12 a vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect September 1, 2011.