

**As Introduced**

**127th General Assembly  
Regular Session  
2007-2008**

**H. B. No. 77**

**Representative Hagan, R.**

**Cosponsors: Representatives Brady, Koziura, Skindell, Yates, Yuko, Foley**

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**A B I L L**

To amend section 3704.05 and to enact sections 1  
3704.30 to 3704.36 of the Revised Code to require 2  
electric generating facilities to comply with 3  
certain requirements regarding mercury emissions. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 3704.05 be amended and sections 5  
3704.30, 3704.31, 3704.32, 3704.33, 3704.34, 3704.35, and 3704.36 6  
of the Revised Code be enacted to read as follows: 7

**Sec. 3704.05.** (A) No person shall cause, permit, or allow 8  
emission of an air contaminant in violation of any rule adopted by 9  
the director of environmental protection under division (E) of 10  
section 3704.03 of the Revised Code unless the person is the 11  
holder of a variance that is issued under division (H) of that 12  
section and consistent with the federal Clean Air Act permitting 13  
the emission of the contaminant in excess of that permitted by the 14  
rule or the person is the holder of an operating permit that 15  
includes a compliance schedule issued pursuant to rules adopted 16  
under division (G) of section 3704.03 of the Revised Code. 17

(B) No person who is the holder of a variance issued under 18  
division (H) of section 3704.03 of the Revised Code shall cause, 19

permit, or allow emission of an air contaminant or contaminants 20  
listed therein in violation of the conditions of the variance or 21  
fail to obey an order of the director issued under authority of 22  
that division. 23

(C) No person who is the holder of a permit issued under 24  
division (F) or (G) of section 3704.03 of the Revised Code shall 25  
violate any of its terms or conditions. 26

(D) No person shall fail to install and maintain monitoring 27  
devices or to submit reports or other information as may be 28  
required under division (I) of section 3704.03 of the Revised 29  
Code. 30

(E) No person to whom a permit or variance has been issued 31  
shall refuse entry to an authorized representative of the director 32  
or the environmental protection agency as provided in division (M) 33  
of section 3704.03 of the Revised Code or hinder or thwart the 34  
person in making an investigation. 35

(F) No person shall fail to submit plans and specifications 36  
as required by section 3704.03 of the Revised Code. 37

(G) No person shall violate any order, rule, or determination 38  
of the director issued, adopted, or made under this chapter. 39

(H) No person shall do any of the following: 40

(1) Falsify any plans, specifications, data, reports, 41  
records, or other information required to be kept or submitted to 42  
the director by this chapter or rules adopted under it; 43

(2) Make any false material statement, representation, or 44  
certification in any form, notice, or report required by the Title 45  
V permit program; 46

(3) Render inaccurate any monitoring device required by a 47  
Title V permit. 48

Violation of division (H)(1), (2), or (3) of this section is 49

not also falsification under section 2921.13 of the Revised Code. 50

(I) No person shall knowingly falsify an inspection 51  
certificate submitted to another under section 3704.14 or Chapter 52  
4503. of Revised Code. Violation of this division is not also 53  
falsification under section 2921.13 of the Revised Code. 54

(J) No person shall do either of the following: 55

(1) With regard to the Title V permit program, fail to pay 56  
any administrative penalty assessed in accordance with rules 57  
adopted under division (S) of section 3704.03 of the Revised Code 58  
or any fee assessed under section 3745.11 of the Revised Code; 59

(2) ~~Violate~~ Fail to comply with section 3704.31 of the 60  
Revised Code or an agreement entered into under division (A) or 61  
(B) of section 3704.35 of the Revised Code or violate any 62  
applicable requirement of a Title V permit or any permit 63  
condition, except for an emergency as defined in 40 C.F.R. 70.6 64  
(g), or filing requirement of the Title V permit program, any duty 65  
to allow or carry out inspection, entry, or monitoring activities, 66  
or any rule adopted or order issued by the director pursuant to 67  
the Title V permit program. 68

(K) On and after the three hundred sixty-sixth day following 69  
the administrator's final approval of the Title V permit program, 70  
or on and after the three hundred sixty-sixth day following the 71  
commencement of operation of a new major source required to comply 72  
with section 112(g) or part C or D of Title I of the federal Clean 73  
Air Act, whichever is later, no person shall operate any such 74  
source that is required to obtain a Title V permit under section 75  
3704.036 of the Revised Code or rules adopted under it unless such 76  
a permit has been issued authorizing operation of the source or 77  
unless a complete and timely application for the issuance, 78  
renewal, or modification of a Title V permit for the source has 79  
been submitted to the director under that section. 80

<u>Sec. 3704.30. As used in sections 3704.30 to 3704.36 of the</u>	81
<u>Revised Code:</u>	82
<u>(A) "Affected unit" means any air contaminant source that</u>	83
<u>generates electricity in the state and combusts coal in an amount</u>	84
<u>greater than ten per cent of its total heat input on a rolling</u>	85
<u>twelve-month basis.</u>	86
<u>(B) "Alternative emissions limit" means a mercury emissions</u>	87
<u>limit established by the director of environmental protection for</u>	88
<u>an affected unit.</u>	89
<u>(C) "Btu" means British thermal unit of heat input.</u>	90
<u>(D) "Calendar quarter" means the period of January 1 through</u>	91
<u>March 31, April 1 through June 30, July 1 through September 30, or</u>	92
<u>October 1 through December 31.</u>	93
<u>(E) "Fluidized bed combustion unit" means a combustion unit</u>	94
<u>in which fuel is introduced into a layer of solid particles kept</u>	95
<u>in turbulent motion by air that is forced into the layer from</u>	96
<u>below, resulting in a thorough mixing and intimate contact of the</u>	97
<u>fuel and other reactants.</u>	98
<u>(F) "Inlet conditions" means either of the following:</u>	99
<u>(1) The concentration of mercury in the flue gas exiting the</u>	100
<u>combustion source prior to application of any air pollution</u>	101
<u>control device;</u>	102
<u>(2) In the case of a fluidized bed combustion unit, the</u>	103
<u>concentration of mercury input to the combustion source based on</u>	104
<u>representative fuel sampling and analysis as determined by the</u>	105
<u>director.</u>	106
<u>(G) "Mercury" means mercury and mercury compounds in either a</u>	107
<u>gaseous or particulate form.</u>	108
<u>(H) "TBtu" means trillion British thermal units of heat</u>	109

input. 110

Sec. 3704.31. In addition to and notwithstanding any other 111  
requirements established in this chapter and rules adopted under 112  
it and unless an alternative emissions limit has been established 113  
under section 3704.32 of the Revised Code, on and after December 114  
15, 2009, the owner or operator of an affected unit or units shall 115  
achieve and maintain one of the following, whichever is more 116  
readily achievable by the affected unit or units as determined by 117  
the owner or operator: 118

(A) A mercury emissions rate equal to or less than six-tenths 119  
of one pound of mercury per TBtu; 120

(B) A mercury emissions rate equal to a ninety per cent 121  
reduction of mercury from the measured inlet conditions for the 122  
affected unit. 123

The director of environmental protection may allow the owner 124  
or operator of two or more affected units that are located at the 125  
same facility to average the emissions of those affected units for 126  
purposes of complying with the mercury emissions rate requirements 127  
established in this section. 128

Sec. 3704.32. (A) If the owner or operator of an affected 129  
unit properly installs and operates control technology that is 130  
designed to achieve the mercury emissions rate requirements 131  
established in section 3704.31 of the Revised Code and the 132  
technology fails to achieve the required emissions rate, the owner 133  
or operator shall notify the director of environmental protection 134  
of that failure not later than February 1, 2011. Not later than 135  
April 1, 2012, and based on the results of stack tests performed 136  
in accordance with section 3704.33 of the Revised Code between 137  
February 1, 2011, and April 1, 2012, the director shall establish 138  
an alternative emissions limit for the affected unit based on the 139

optimized performance of that properly installed and operated 140  
control technology. 141

(B) The owner or operator of an affected unit to which 142  
division (A) of this section applies shall be deemed to have 143  
complied with section 3704.31 of the Revised Code if, during the 144  
period beginning December 15, 2009, and ending on the date of the 145  
establishment of an alternative emissions limit for the affected 146  
unit, the owner or operator operates and maintains the affected 147  
unit in a manner consistent with good air pollution control 148  
practices for the minimization of mercury emissions. The director 149  
shall provide guidelines for what constitutes good air pollution 150  
control practices for the purposes of this division. 151

In determining if the owner or operator of an affected unit 152  
is operating and maintaining the affected unit in a manner 153  
consistent with good air pollution control practices for the 154  
minimization of mercury emissions, the director may review the 155  
emissions monitoring results of the affected unit and the 156  
operating and maintenance procedures of the owner or operator. 157  
Further, the director may inspect the affected unit for that 158  
purpose. 159

(C) Upon the establishment of an alternative emissions limit 160  
for an affected unit under division (A) of this section, the 161  
director shall incorporate the alternative emissions limit into 162  
the Title V permit for the affected unit. Thereafter, upon 163  
receiving an application for renewal of the Title V permit, the 164  
director shall conduct a review of the affected unit's alternative 165  
emissions limit and may impose a more stringent alternative 166  
emissions limit based on any new data regarding the demonstrated 167  
control capabilities of the type of control technology installed 168  
and operated at the affected unit. 169

**Sec. 3704.33.** (A) Except as provided in division (B) of this 170

section, the owner or operator of an affected unit shall perform 171  
stack tests to demonstrate compliance with the mercury emissions 172  
rate requirements established in section 3704.31 of the Revised 173  
Code or with an alternative emissions limit established under 174  
section 3704.32 of the Revised Code. Stack tests used to 175  
demonstrate compliance shall be conducted each calendar quarter in 176  
accordance with the United States environmental protection 177  
agency's method 29 for the determination of metal emissions from 178  
stationary sources, as set forth in 40 C.F.R. 60, Appendix A, as 179  
amended, or any other alternative method approved by the United 180  
States environmental protection agency or the director of 181  
environmental protection. Data from stack tests submitted for the 182  
purpose of demonstrating compliance shall be based on the average 183  
of stack tests conducted during the two most recent calendar 184  
quarters for an affected unit and while combusting coal or coal 185  
blends that are representative of the coal or coal blends 186  
combusted at the affected unit during the calendar quarters 187  
represented by the stack tests. 188

(B) If the director determines that continuous emission 189  
monitors for mercury in flue gases are commercially available and 190  
can perform in accordance with standards established by the 191  
national institute of technology standards, or with other 192  
methodology approved by the United States environmental protection 193  
agency, the owner or operator of an affected unit shall properly 194  
install and operate the continuous emission monitors and shall not 195  
be required to conduct stack testing. When demonstrating 196  
compliance with the mercury emissions rate requirements 197  
established in section 3704.31 of the Revised Code or with an 198  
alternative emissions limit established under section 3704.32 of 199  
the Revised Code, as applicable, the owner or operator of an 200  
affected unit shall use an average of the continuous emission 201  
monitor data recorded at the affected unit during the most recent 202  
calendar quarter. 203

(C) The owner or operator of an affected unit, for each 204  
calendar quarter, shall report to the director the results of any 205  
stack test or the average of the continuous emission monitor data, 206  
as applicable. The reports shall be submitted on forms that shall 207  
be prescribed by the director. 208

**Sec. 3704.34.** (A) Not later than July 1, 2014, the director 209  
of environmental protection shall conduct a review of the mercury 210  
emission limits that are applicable to all affected units in the 211  
state. The results of the review shall be made available to the 212  
public upon request. 213

(B) On or after December 15, 2014, the director may adopt 214  
rules in accordance with Chapter 119. of the Revised Code imposing 215  
mercury emission limits that are more stringent than the emissions 216  
rate requirements established in section 3704.31 of the Revised 217  
Code or the alternative emissions limits established under section 218  
3704.32 of the Revised Code. 219

**Sec. 3704.35.** (A) Notwithstanding the mercury emissions rate 220  
requirements established in section 3704.31 of the Revised Code, 221  
the director of environmental protection may issue an order 222  
extending the deadline for complying with those requirements to 223  
December 15, 2014, with respect to an affected unit if the owner 224  
or operator of the affected unit enters into an agreement with the 225  
director to install and operate air pollution control systems to 226  
control all of the following: 227

(1) The emissions of nitrogen oxides to less than one-tenth 228  
of one pound per one million Btus for dry bottom boilers and 229  
thirteen one-hundredths of one pound per one million Btus for wet 230  
bottom boilers; 231

(2) The emissions of sulfur dioxide to less than fifteen 232  
one-hundredths of one pound per one million Btus; 233



(3) The emissions of sulfur dioxide to less than three 234  
one-hundredths of one pound per one million Btus. 235

(B) Notwithstanding the mercury emissions rate reductions 236  
established in section 3704.31 of the Revised Code, the director 237  
may issue an order exempting an affected unit from those 238  
requirements if the owner or operator of the affected unit enters 239  
into an agreement with the director by December 15, 2009, to close 240  
the facility by December 15, 2014. 241

**Sec. 3704.36.** The director of environmental protection may 242  
adopt rules in accordance with Chapter 119. of the Revised Code 243  
establishing procedures and requirements that are necessary for 244  
the administration of sections 3704.30 to 3704.35 of the Revised 245  
Code. 246

**Section 2.** That existing section 3704.05 of the Revised Code 247  
is hereby repealed. 248