

By: Madden

H.B. No. 36

A BILL TO BE ENTITLED

AN ACT

relating to the environmental regulation and remediation of certain dry cleaning facilities.

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

SECTION 1. Section 374.004(a), Health and Safety Code, as added by H.B. No. 1366, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(a) The executive director shall appoint an advisory committee composed of:

(1) three representatives of the dry cleaning industry who shall provide professional and practical expertise to the commission;

(2) two representatives who:

(A) are owners, developers, or managers of shopping centers or are real property owners; and

(B) have had experience with the environmental issues associated with dry cleaning facilities;

(3) one public representative of urban areas; and

(4) [~~3~~] one public representative of rural areas.

SECTION 2. Section 374.102(b), Health and Safety Code, as added by H.B. No. 1366, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(b) Except for a carbon dioxide facility, the commission, on receipt of a registration, shall bill the owner for a registration

1 ~~[must be accompanied by a]~~ fee of:

2 (1) \$250 for:

3 (A) a dry cleaning facility with gross annual
4 receipts of \$100,000 or less; or

5 (B) a dry cleaning facility designated as
6 nonparticipating under Section 374.104;

7 (2) \$1,000 for a dry cleaning drop station, except
8 that the fee for a drop station is \$250 if the drop station is not
9 owned by the owner of the dry cleaning facility; or

10 (3) \$2,500 for a dry cleaning facility with gross
11 annual receipts of more than \$100,000.

12 SECTION 3. Section 374.103(c), Health and Safety Code, as
13 added by H.B. No. 1366, Acts of the 78th Legislature, Regular
14 Session, 2003, is amended to read as follows:

15 (c) A person who distributes dry cleaning solvent may not
16 sell the solvent for use in a dry cleaning facility after January 1,
17 2004, unless the person first obtains and records the registration
18 number of the owner of the facility.

19 SECTION 4. Section 374.104, Health and Safety Code, as
20 added by H.B. No. 1366, Acts of the 78th Legislature, Regular
21 Session, 2003, is amended by adding Subsection (a-1) to read as
22 follows:

23 (a-1) If the owner of the facility is not an owner of the
24 real property on which the facility is located, the option not to
25 participate must include proof that an owner of the real property
26 has:

27 (1) been notified of the option not to participate;

1 and

2 (2) agreed with the decision to file the option.

3 SECTION 5. Section 374.151(b), Health and Safety Code, as
4 added by H.B. No. 1366, Acts of the 78th Legislature, Regular
5 Session, 2003, is amended to read as follows:

6 (b) An owner [~~A person~~] who knows of a release over a 24-hour
7 period of more than one quart of a chlorinated dry cleaning solvent
8 or of more than one gallon of a non-chlorinated dry cleaning solvent
9 shall:

10 (1) immediately contain and control the release; and

11 (2) notify the commission of the release before the
12 expiration of 24 [~~48~~] hours after the owner [~~person~~] learns of the
13 release.

14 SECTION 6. Section 374.152(a), Health and Safety Code, as
15 added by H.B. No. 1366, Acts of the 78th Legislature, Regular
16 Session, 2003, is amended to read as follows:

17 (a) If a release or a potential release poses a threat to
18 human health or safety or to the environment, the commission shall:

19 (1) investigate and assess the extent of the resulting
20 contamination; and

21 (2) take necessary or appropriate emergency action to
22 ensure that human health or safety or the environment is not
23 threatened by the release or the potential release.

24 SECTION 7. Sections 374.154(b) and (c), Health and Safety
25 Code, as added by H.B. No. 1366, Acts of the 78th Legislature,
26 Regular Session, 2003, are amended to read as follows:

27 (b) The following persons are eligible to apply for a site

1 to be ranked under Subsection (a):

2 (1) a person who is an owner of the dry cleaning
3 facility; and

4 (2) a person who is [~~and has been~~] an owner of the real
5 property on which the facility is located or on which a dry cleaning
6 facility previously existed [~~for not less than five years as of the~~
7 ~~date the application for ranking is submitted~~].

8 (c) If the applicant for ranking:

9 (1) is not an owner of the real property, the
10 application must include proof that an owner of the real property
11 has:

12 (A) been notified of the application; and

13 (B) agreed with the decision to apply for the
14 ranking and the remediation of the site under this chapter; or

15 (2) is an owner of the real property and the facility
16 is leased, the application must include proof that a lessee has been
17 notified of the application.

18 SECTION 8. Section 374.203(c), Health and Safety Code, as
19 added by H.B. No. 1366, Acts of the 78th Legislature, Regular
20 Session, 2003, is amended to read as follows:

21 (c) The commission may not use money from the fund for
22 corrective action at a contaminated dry cleaning site unless[+]

23 [~~(1)~~] the owner or the property owner of the site
24 applies for the ranking under Section 374.154 and is not otherwise
25 ineligible for corrective action under this chapter[+ or

26 [~~(2) at the time corrective action is to begin, the~~
27 ~~real property at the site has been under the same ownership for not~~

1 ~~less than five years~~].

2 SECTION 9. Section 374.207, Health and Safety Code, as
3 added by H.B. No. 1366, Acts of the 78th Legislature, Regular
4 Session, 2003, is amended to read as follows:

5 Sec. 374.207. ELIGIBLE OWNER EXEMPT FROM CERTAIN CLAIMS;
6 EXCEPTION. (a) Except as provided by Subsection (b), if [~~if~~] an
7 owner or other person is eligible under this chapter to have
8 corrective action costs paid by the fund, an administrative or
9 judicial claim may not be made under state law against the owner or
10 other person by or on behalf of this state or by any other person,
11 except a political subdivision, to compel corrective action or seek
12 recovery of the costs of corrective action that result from the
13 release.

14 (b) The owner of the real property on which a dry cleaning
15 facility is located may seek relief from the owner of the facility
16 under state law or common law for any losses, damages, or cleanup
17 costs incurred by the real property owner as a result of the
18 following circumstances:

19 (1) a release occurs at the dry cleaning facility;

20 (2) the commission is unable to timely take corrective
21 action; and

22 (3) the owner of the real property takes action to
23 prevent contamination from the release from moving off-site or to
24 otherwise respond to or remediate a release that could harm the
25 property, human health or safety, other tenants of the property, or
26 the environment.

27 SECTION 10. Sections 3(a) and (b), H.B. No. 1366, Acts of

1 the 78th Legislature, Regular Session, 2003, are amended to read as
2 follows:

3 (a) Not later than June [~~December~~] 1, 2004 [~~2003~~], the Texas
4 Commission on Environmental Quality shall adopt any rules,
5 performance standards, or forms required for the implementation of
6 Chapter 374, Health and Safety Code, as added by this Act.

7 (b) Performance standards for new dry cleaning facilities
8 under Section 374.053, Health and Safety Code, as added by this Act,
9 apply only to a dry cleaning facility first brought into use [~~on or~~]
10 after January [~~April~~] 1, 2004.

11 SECTION 11. This Act takes effect immediately if it
12 receives a vote of two-thirds of all the members elected to each
13 house, as provided by Section 39, Article III, Texas Constitution.
14 If this Act does not receive the vote necessary for immediate
15 effect, this Act takes effect December 1, 2003.