

By: Elkins

H.B. No. 2376

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the environmental regulation and remediation of dry
3 cleaning facilities; imposing a penalty.

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

5 SECTION 1. Section 374.001, Health and Safety Code, is
6 amended by amending Subdivisions (2), (6), and (7) to read as
7 follows:

8 (2) "Chlorinated dry cleaning solvent" means any dry
9 cleaning solvent that contains a compound that has a molecular
10 structure containing the element chlorine, including
11 perchloroethylene, also known as tetrachloroethylene.

12 (6) "Dry cleaning drop station" means a retail
13 commercial establishment described in category 812320 of the 2002
14 North American Industry Classification System as an establishment
15 the primary business of which is to act [~~that acts~~] as a collection
16 point for the drop-off and pick-up of garments or other fabrics that
17 are sent to a dry cleaning facility for processing.

18 (7) "Dry cleaning facility" means:

19 (A) a retail commercial establishment, described
20 in category 812320 of the 2002 North American Industry
21 Classification System, that operates, or has operated, in whole or
22 in part for the purpose of cleaning garments or other fabrics using
23 a process that involves any use of dry cleaning solvents;

24 (B) all contiguous land used in connection with

1 the establishment; and

2 (C) all structures and other appurtenances and
3 improvements located on the contiguous land and used in connection
4 with the establishment.

5 SECTION 2. Section 374.004, Health and Safety Code, is
6 amended by amending Subsection (b) and adding Subsection (d) to
7 read as follows:

8 (b) The advisory committee shall:

9 (1) review and comment on the methodology the
10 commission uses to rank contaminated sites under Section 374.154;

11 (2) review and comment on the report the commission
12 prepares each biennium under Section 374.056; and

13 (3) assist in the ongoing development of rules to
14 implement, administer, and enforce this chapter.

15 (d) A member of the advisory committee serves without
16 compensation but is entitled to be reimbursed by the commission for
17 actual and necessary travel expenses related to the performance of
18 committee duties.

19 SECTION 3. Section 374.051, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 374.051. COMMISSION RULES AND STANDARDS. (a) The
22 commission, with the assistance of the advisory committee, shall
23 adopt rules necessary to administer and enforce this chapter.
24 Rules adopted under this section must be reasonably necessary:

25 (1) to preserve, protect, and maintain the water and
26 other natural resources of this state; and

27 (2) to provide for prompt and appropriate corrective

1 action of releases from dry cleaning facilities.

2 (b) The commission shall adopt rules that establish:

3 (1) performance standards for dry cleaning
4 facilities;

5 (2) requirements for the removal of chlorinated dry
6 cleaning solvents and wastes from dry cleaning facilities that are
7 to be closed by the owner to prevent future releases;

8 (3) criteria to be used in setting priorities for the
9 expenditure of money from the fund after consideration of:

10 (A) the benefit to be derived from corrective
11 action compared to the cost of implementing the corrective action;

12 (B) the degree to which human health and the
13 environment are affected by exposure to contamination;

14 (C) the present and reasonably foreseeable
15 future uses of affected surface water or groundwater;

16 (D) the effect that interim or immediate remedial
17 measures may have on future costs;

18 (E) the amount of money available for corrective
19 action in the fund; and

20 (F) any additional factors the commission
21 considers relevant; and

22 (4) criteria under which the commission may determine
23 the level at which corrective action is considered to be complete.

24 SECTION 4. Section 374.052(b), Health and Safety Code, is
25 amended to read as follows:

26 (b) The commission by rule shall require businesses
27 operating on or before January 1, 2004, whose annual gross receipts

1 are \$150,000 or less to implement the performance standards adopted
2 under Sections 374.053(c)(3), (4), and (5) not later than January
3 1, 2015 [~~may exempt businesses whose annual gross receipts are~~
4 ~~\$200,000 or less from the requirements of Subsection (a) on the~~
5 ~~basis of financial hardship~~].

6 SECTION 5. Sections 374.053(c) and (d), Health and Safety
7 Code, are amended to read as follows:

8 (c) Rules adopted under this section must require:

9 (1) proper storage and disposal of wastes generated at
10 the facility that contain any quantity of chlorinated dry cleaning
11 solvent;

12 (2) compliance with emissions standards for hazardous
13 air pollutants for perchloroethylene dry cleaning facilities
14 adopted by the United States Environmental Protection Agency on
15 September 22, 1993;

16 (3) dikes or other containment structures to be:

17 (A) installed around each dry cleaning unit that
18 uses chlorinated dry cleaning solvents and each storage area for
19 chlorinated dry cleaning solvents or waste; and

20 (B) capable of containing any leak, spill, or
21 release of chlorinated dry cleaning solvent;

22 (4) secondary containment for all new or replaced dry
23 cleaning units, regardless of the solvent used;

24 (5) [~~(4)~~] all diked floor surfaces on which any
25 chlorinated dry cleaning solvent may leak, spill, or otherwise be
26 released to be made of epoxy, steel, or another material impervious
27 to chlorinated dry cleaning solvents; and

1 (6) [~~(5)~~] all chlorinated dry cleaning solvents to be
2 delivered to dry cleaning facilities by means of closed,
3 direct-coupled delivery systems, when those systems have become
4 generally available.

5 (d) Rules adopted under this section shall ensure that
6 wastewater from a dry cleaning unit using chlorinated dry cleaning
7 solvent or discharge of chlorinated dry cleaning solvent is not
8 discharged to a sanitary sewer, to a septic tank, or to water of
9 this state.

10 SECTION 6. Section 374.054, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 374.054. COMPLETION CRITERIA. (a) In determining
13 whether a corrective action is complete, the commission shall
14 consider the factors listed under Section 374.051(b)(3) and:

15 (1) individual site characteristics, including
16 natural remediation processes;

17 (2) state water quality standards; and

18 (3) [~~whether deviation from state water quality~~
19 ~~standards or from established criteria is appropriate, based on the~~
20 ~~degree to which the desired remediation level is achievable and may~~
21 ~~be reasonably and cost-effectively implemented, and~~

22 [~~(4)~~] additional factors the commission considers
23 relevant.

24 (b) A [~~In considering a deviation under Subsection (a)(3),~~
25 ~~a]~~ deviation from a state water quality standard may not result in
26 the application of a standard that is more stringent than the
27 applicable standard.

1 SECTION 7. Sections 374.101(b) and (d), Health and Safety
2 Code, are amended to read as follows:

3 (b) The fund consists of money from:

4 (1) proceeds from the charges and fees imposed by this
5 chapter;

6 (2) interest attributable to investment of money in
7 the fund;

8 (3) money recovered by the state under this chapter,
9 including any money paid:

10 (A) under an agreement with the commission; or

11 (B) as [~~civil~~] penalties; and

12 (4) money received by the commission in the form of
13 gifts, grants, reimbursements, or appropriations from any source
14 intended to be used for the purposes of this chapter.

15 (d) The [~~Before September 1, 2005, the~~] commission may
16 annually spend for administrative and start-up expenses incurred in
17 fulfilling its duties under this chapter an amount of money from the
18 fund not to exceed 15 percent of the amount of money credited to the
19 fund in the same fiscal year as the expenditures. [~~Beginning on~~
20 ~~September 1, 2005, the commission may spend from the fund for those~~
21 ~~expenses an amount not to exceed 10 percent of the amount of money~~
22 ~~credited to the fund in the same fiscal year.~~]

23 SECTION 8. Section 374.102, Health and Safety Code, is
24 amended by amending Subsections (b) and (d) and by adding
25 Subsection (f) to read as follows:

26 (b) An annual registration fee, the total amount of which
27 may be divided into quarterly payments and billed on dates

1 established by the commission, is assessed as follows [~~Except for a~~
2 ~~carbon dioxide facility, the registration must be accompanied by a~~
3 ~~fee of~~]:

4 (1) [~~\$250~~] for a dry cleaning facility that:

5 (A) has gross annual receipts of more than
6 \$150,000, a fee of \$2,500;

7 (B) has gross annual receipts of \$150,000 or
8 less, a fee of \$250;

9 (C) is designated as nonparticipating under
10 Section 374.104, a fee of \$250; or

11 (D) depends entirely on revenue collected from an
12 associated dry cleaning drop station or drop stations, a fee in
13 accordance with Paragraphs (A) and (B) determined by the combined
14 gross annual receipts of the drop station or drop stations; or

15 (2) for a dry cleaning drop station that:

16 (A) has gross annual receipts of more than
17 \$150,000, a fee of \$750;

18 (B) has gross annual receipts of \$150,000 or
19 less, a fee of \$250; or

20 (C) is designated as nonparticipating under
21 Section 374.104, a fee of \$125 [~~a dry cleaning facility with gross~~
22 ~~annual receipts of \$100,000 or less; or~~

23 [~~(B) a dry cleaning facility designated as~~
24 ~~nonparticipating under Section 374.104,~~

25 [~~(2) \$1,000 for a dry cleaning drop station, except~~
26 ~~that the fee for a drop station is \$250 if the drop station is not~~
27 ~~owned by the owner of the dry cleaning facility; or~~

1 ~~[(3) \$2,500 for a dry cleaning facility with gross~~
2 ~~annual receipts of more than \$100,000].~~

3 (d) The owner of a dry cleaning facility or drop station
4 shall post the owner's registration number, in a manner prescribed
5 by the commission, in the public area of each of the owner's
6 operating dry cleaning facilities or drop stations.

7 (f) For each registration application, the commission shall
8 request that the comptroller verify whether the owner submitting
9 the registration application is in good standing with the state and
10 whether the owner's selection on the registration application of
11 the gross annual receipts classification for the dry cleaning
12 facility or drop station agrees with information reported to the
13 comptroller for the same tax or reporting year. Not later than the
14 third business day after the comptroller receives the verification
15 request, based in part on information supplied by the commission,
16 the comptroller shall report to the commission the owner's standing
17 and whether the owner's application information agrees with the
18 comptroller's information.

19 SECTION 9. Section 374.103, Health and Safety Code, is
20 amended by amending Subsections (a) and (b) and adding Subsection
21 (a-1) to read as follows:

22 (a) Except as provided by Subsection (b) and Section
23 374.104(d), a fee of \$15 per gallon is imposed on the purchase of
24 the dry cleaning solvent perchloroethylene and \$5 per gallon on the
25 purchase of any other dry cleaning solvent by an owner of a dry
26 cleaning facility. The person who distributes the solvent shall
27 collect the fees and shall pay to the commission the amount due, in

1 accordance with Subsection (a-1).

2 (a-1) A person who distributes dry cleaning solvent must
3 register as a distributor with the commission. A registered
4 distributor is entitled to withhold one percent of the amount of the
5 fee imposed by Subsection (a) for the distributor's administrative
6 expenses if the distributor pays [~~The person who distributes the~~
7 ~~solvent shall pay~~] the remaining amount [~~fee~~] to the commission not
8 later than the date prescribed by the commission.

9 (b) Subsection (a) does not apply to a dry cleaning facility
10 designated as nonparticipating under Section 374.104 [~~+~~

11 [~~(1) an owner who has never used or allowed the use of~~
12 ~~the dry cleaning solvent perchloroethylene at a dry cleaning~~
13 ~~facility in this state; or~~

14 [~~(2) the purchase of the dry cleaning solvent carbon~~
15 ~~dioxide].~~

16 SECTION 10. Sections 374.104(a)-(c), (e), and (f), Health
17 and Safety Code, are amended to read as follows:

18 (a) The owner of a dry cleaning facility or drop station may
19 file with the commission an option for the facility or drop station
20 not to participate in fund benefits.

21 (b) An option not to participate must be filed on or before
22 February 28, 2006 [~~January 1, 2004~~]. An owner may not file an
23 option not to participate after September 1, 2005, unless the owner
24 was:

25 (1) the owner of the dry cleaning facility or drop
26 station on January 1, 2004; and

27 (2) eligible to file the option on or before January 1,

1 2004, and inadvertently failed to file before that date.

2 (c) The commission shall designate a dry cleaning facility
3 or drop station as nonparticipating if the owner:

4 (1) demonstrates, at the owner's expense and in
5 accordance with commission rules, that:

6 (A) the owner has never used or allowed the use of
7 the dry cleaning solvent perchloroethylene at any dry cleaning
8 facility or drop station in this state; and

9 (B) perchloroethylene has never been used at that
10 location;

11 (2) agrees [~~— The owner must also agree~~] that
12 perchloroethylene will not be used as a dry cleaning solvent at the
13 facility or drop station; and

14 (3) obtains the written consent of the person who owns
15 the real property on which the dry cleaning facility or drop station
16 is located.

17 (e) On payment of the registration fee, the commission shall
18 issue a specially marked registration document to the owner of a
19 nonparticipating facility or drop station. The owner shall post
20 the registration document in the public area of the facility or drop
21 station.

22 (f) After a dry cleaning facility or drop station is
23 designated as nonparticipating:

24 (1) the [~~owner of the~~] facility or drop station is not
25 eligible for any expenditures of money from the fund or other
26 benefits of participation under this chapter for that facility or
27 drop station; and

1 (2) that facility or drop station may not later become
2 a participating facility.

3 SECTION 11. Section 374.151, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 374.151. RESPONSE TO RELEASE. (a) A person may not
6 knowingly [~~intentionally~~] allow a release.

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

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

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

14 SECTION 12. Sections 374.154(b) and (c), Health and Safety
15 Code, are amended to read as follows:

16 (b) The following persons are eligible to apply for a site
17 to be ranked under Subsection (a):

18 (1) a person who is an owner of the dry cleaning
19 facility or drop station; and

20 (2) a person who is [~~and has been~~] an owner of the real
21 property on which the dry cleaning facility or drop station is or
22 was located; or

23 (3) a person who was the preceding owner of the real
24 property on which the dry cleaning facility or drop station is or
25 was located if the person entered into an agreement with the current
26 owner associated with the sale of the real property to the current
27 owner that requires the person to be responsible for any costs

1 associated with the clean up of contamination covered under this
2 chapter [~~for not less than five years as of the date the application~~
3 ~~for ranking is submitted~~].

4 (c) If the applicant for ranking:

5 (1) is not an owner of the real property, the
6 application must include proof that an owner of the real property
7 has been notified of the application; [~~or~~]

8 (2) is an owner of the real property and the dry
9 cleaning facility or drop station is leased, the application must
10 include proof that a lessee has been notified of the application; or

11 (3) is a person described by Subsection (b)(3), the
12 application must include proof that the owner of the real property
13 and any lessee have been notified of the application.

14 SECTION 13. Section 374.202, Health and Safety Code, is
15 amended by adding Subsection (c) to read as follows:

16 (c) The commission, or the attorney general at the request
17 of the commission, may bring a civil action to recover any amounts
18 owed to the commission under this section. The commission or
19 attorney general, as applicable, may recover court costs, the costs
20 of preparing for litigation, and reasonable attorney's fees
21 incurred in an action brought under this section. An owner is
22 jointly and severally liable with any other defendant for the
23 entire amount of costs.

24 SECTION 14. Sections 374.203(c) and (d), Health and Safety
25 Code, are amended to read as follows:

26 (c) Except for dry cleaning sites that require emergency
27 action under Section 374.152, the [~~The~~] commission may not use

1 money from the fund for corrective action at a contaminated dry
2 cleaning site unless an eligible person [+

3 [~~(1) the owner~~] applies for the ranking under Section
4 374.154 and is not otherwise ineligible for corrective action under
5 this chapter [~~, or~~

6 [~~(2) at the time corrective action is to begin, the~~
7 ~~real property at the site has been under the same ownership for not~~
8 ~~less than five years~~].

9 (d) The owner of a dry cleaning facility or drop station, or
10 other person who submits the application for ranking the facility
11 under Section 374.154, shall pay as a nonrefundable deductible the
12 first \$5,000 of corrective action costs incurred because of a
13 release from the dry cleaning facility or drop station. The
14 commission may take corrective action regardless of whether the
15 commission obtains the deductible.

16 SECTION 15. Section 374.251, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 374.251. REVIEW OF ORDERS [~~AND DECISIONS~~]. (a) A
19 person affected by an order [~~or decision~~] of the commission under
20 this chapter may, on or before the 15th day after the date of
21 service of the order [~~or decision~~], make a written request for a
22 hearing.

23 (b) A person affected by the final order [~~decision~~] in an
24 administrative hearing under Subsection (a) is entitled to judicial
25 review and may appeal the order [~~decision~~] on or before the 31st day
26 after the date on which the order [~~decision~~] was rendered. If the
27 state prevails in an appeal filed under this subsection, the state

1 is entitled to recover reasonable expenses incurred in obtaining
2 the judgment, including reasonable attorney's fees, costs involved
3 in preparing for the litigation, and witness fees.

4 SECTION 16. Section 374.252, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 374.252. VIOLATIONS; PENALTIES. (a) A person is
7 subject to an administrative penalty under Section 7.0525, Water
8 Code, if the person:

9 (1) operates a dry cleaning facility or drop station
10 in violation of this chapter, rules adopted under this chapter, or
11 orders of the commission made under this chapter;

12 (2) prevents or hinders a properly identified
13 authorized officer, employee, or agent of the commission, or a
14 properly identified person under order of or contract with the
15 commission, from entering, inspecting, sampling, or responding to a
16 release as authorized by this chapter;

17 (3) knowingly makes any false material statement or
18 representation in any record, report, or other document filed,
19 maintained, or used for the purpose of compliance with this
20 chapter;

21 (4) knowingly destroys, alters, or conceals any record
22 that this chapter or rules adopted under this chapter require to be
23 maintained; or

24 (5) violates Section 374.151 or related commission
25 rules.

26 (b) If a registration fee is not paid on or before the 30th
27 day after the date the fee is due, the commission may assess a

1 penalty not to exceed \$50 per day for each day the fee is not paid.

2 (c) If a registration application for an operating dry
3 cleaning facility or drop station is not filed with the commission
4 on or before the 30th day after the date the application is due, the
5 commission may assess a penalty not to exceed \$50 per day for each
6 day the application is not filed.

7 (d) The commission may use normal commission procedures for
8 the collection of penalties and interest on a penalty imposed under
9 this section.

10 SECTION 17. Section 374.253(c), Health and Safety Code, is
11 amended to read as follows:

12 (c) The commission may continue a [A] corrective action that
13 has not progressed beyond the investigative or planning stage after
14 [on] September 1, 2021, to the extent money from the fund is
15 available [may not be paid for using money from the fund].

16 SECTION 18. Section 7.0525(b), Water Code, is amended to
17 read as follows:

18 (b) The amount of the penalty for a violation of Section
19 374.252(a)(3) [374.252(a)(1)], Health and Safety Code, may not
20 exceed \$10,000 [~~\$1,000~~].

21 SECTION 19. Sections 374.001(1), 374.052(c), 374.105,
22 374.156, and 374.201, Health and Safety Code, are repealed.

23 SECTION 20. (a) The changes in law affecting registration
24 fees for a dry cleaning facility as that term is defined by Section
25 374.001, Health and Safety Code, as amended by this Act, under
26 Sections 374.102 and 374.252, Health and Safety Code, as amended by
27 this Act, apply only to a registration fee payable on or after

1 September 1, 2005. A registration fee payable before September 1,
2 2005, is governed by the law as it existed on the date the fee became
3 due and that law is continued in effect for that purpose.

4 (b) The changes in law affecting registration fees for a dry
5 cleaning drop station as that term is defined by Section 374.001,
6 Health and Safety Code, as amended by this Act, apply only to a
7 registration fee that becomes payable on or after September 1,
8 2005.

9 (c) Notwithstanding Section 374.102, Health and Safety
10 Code, as added by Chapter 540, Acts of the 78th Legislature, Regular
11 Session, 2003, a registration fee that was payable before September
12 1, 2005, for a dry cleaning drop station as that term is defined by
13 Section 374.001, Health and Safety Code, as amended by this Act, is
14 payable not later than October 1, 2005, in the amount of \$125 for
15 each dry cleaning drop station that is owned by the owner of a dry
16 cleaning facility that was registered and designated as
17 nonparticipating under Section 374.104, Health and Safety Code,
18 before the effective date of this Act.

19 (d) The change in law affecting fees collected under Section
20 374.103, Health and Safety Code, as amended by this Act, applies
21 only to a fee associated with the distribution of a dry cleaning
22 solvent on or after September 1, 2005. A fee collected under Section
23 374.103, Health and Safety Code, before September 1, 2005, is
24 governed by that section as it existed on the date the distribution
25 of the solvent occurred, and that law is continued in effect for
26 that purpose.

27 (e) The changes in law regarding allowing a release and

1 notifying the Texas Commission on Environmental Quality of a
2 release under Section 374.151, Health and Safety Code, as amended
3 by this Act, apply only to a release that occurs on or after the
4 effective date of this Act. A release that occurs before the
5 effective date of this Act is governed by the law as it existed on
6 the date of the release or the date a person learns of the release,
7 as applicable, and that law is continued in effect for that purpose.

8 (f) On or before February 28, 2006, the owner of a dry
9 cleaning facility that filed an option not to participate under
10 Section 374.104, Health and Safety Code, before the effective date
11 of this Act, must comply with Subsection (c)(3) of that section, as
12 added by this Act, to maintain nonparticipating status.

13 SECTION 21. This Act takes effect September 1, 2005.