

By: Elkins

H.B. No. 2376

Substitute the following for H.B. No. 2376:

By: Bailey

C.S.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 Section 374.053 not later than January 1, 2015 [~~may exempt~~
3 ~~businesses whose annual gross receipts are \$200,000 or less from~~
4 ~~the requirements of Subsection (a) on the basis of financial~~
5 ~~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) Unless arrangements have been made with the commission
27 to pay registration fees in quarterly installments [~~Except for a~~

1 ~~carbon dioxide facility~~], the registration must be accompanied by
2 an annual [a] fee as follows [of]:

3 (1) [~~\$250~~] for a dry cleaning facility that:

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

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

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

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

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

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

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

19 (C) is designated as nonparticipating under
20 Section 374.104, a fee of \$250 [~~a dry cleaning facility with gross~~
21 ~~annual receipts of \$100,000 or less; or~~

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

24 [~~(2) \$1,000 for a dry cleaning drop station, except~~
25 ~~that the fee for a drop station is \$250 if the drop station is not~~
26 ~~owned by the owner of the dry cleaning facility; or~~

27 [~~(3) \$2,500 for a dry cleaning facility with gross~~

1 ~~annual receipts of more than \$100,000].~~

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

6 (f) Before the commission issues a registration under this
7 section, the commission shall verify with the comptroller that the
8 owner of a dry cleaning facility or drop station:

9 (1) is in good standing with the state; and

10 (2) has accurately reported the gross annual receipts
11 of the dry cleaning facility or drop station on the registration
12 application.

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

16 (a) Except as provided by Subsection (b) and Section
17 374.104(d), a fee of \$15 per gallon is imposed on the purchase of
18 the dry cleaning solvent perchloroethylene and \$5 per gallon on the
19 purchase of any other dry cleaning solvent by an owner of a dry
20 cleaning facility.

21 (a-1) A person who distributes dry cleaning solvent must
22 register as a distributor with the commission. A registered
23 distributor [The person who distributes the solvent] is entitled to
24 withhold two percent of the amount of the fee imposed by Subsection
25 (a) for the distributor's administrative expenses and shall pay the
26 remaining amount [fee] to the commission.

27 (b) Subsection (a) does not apply to a dry cleaning facility

1 designated as nonparticipating under Section 374.104 [~~+~~

2 [~~(1) an owner who has never used or allowed the use of~~
3 ~~the dry cleaning solvent perchloroethylene at a dry cleaning~~
4 ~~facility in this state, or~~

5 [~~(2) the purchase of the dry cleaning solvent carbon~~
6 ~~dioxide~~].

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

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

12 (b) An option not to participate must be filed before
13 December 31, 2005 [~~January 1, 2004~~]. An owner may not file an option
14 not to participate after September 1, 2005, unless the owner was:

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

17 (2) eligible to file the option on or before January 1,
18 2004, and inadvertently failed to file before that date.

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

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

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

26 (B) perchloroethylene has never been used at that
27 location;

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

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

7 (e) On payment of the registration fee, the commission shall
8 issue a specially marked registration document to the owner of a
9 nonparticipating facility or drop station. The owner shall post
10 the registration document in the public area of the facility or drop
11 station.

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

14 (1) the ~~[owner of the]~~ facility or drop station is not
15 eligible for any expenditures of money from the fund or other
16 benefits of participation under this chapter for that facility or
17 drop station; and

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

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

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

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

- 1 (1) immediately contain and control the release; and
2 (2) notify the commission of the release before the
3 expiration of 24 [~~48~~] hours after the person learns of the release.

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

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

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

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

13 (3) a person who was the preceding owner of the real
14 property on which the dry cleaning facility or drop station is or
15 was located if the person entered into an agreement with the current
16 owner associated with the sale of the real property to the current
17 owner that requires the person to be responsible for any costs
18 associated with the clean up of contamination covered under this
19 chapter [~~for not less than five years as of the date the application~~
20 ~~for ranking is submitted~~].

21 (c) If the applicant for ranking:

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

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

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

4 SECTION 13. Sections 374.203(c) and (d), Health and Safety
5 Code, are amended to read as follows:

6 (c) Except for dry cleaning sites that require emergency
7 action under Section 374.152, the [~~The~~] commission may not use
8 money from the fund for corrective action at a contaminated dry
9 cleaning site unless an eligible person [+]

10 [~~(1) the owner~~] applies for the ranking under Section
11 374.154 and is not otherwise ineligible for corrective action under
12 this chapter[~~, or~~

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

16 (d) The owner of a dry cleaning facility or drop station, or
17 other person who submits the application for ranking the facility
18 under Section 374.154, shall pay as a non-refundable deductible the
19 first \$5,000 of corrective action costs incurred because of a
20 release from the dry cleaning facility or drop station. The
21 commission may take corrective action regardless of whether the
22 commission obtains the deductible.

23 SECTION 14. Section 374.251, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 374.251. REVIEW OF ORDERS [~~AND DECISIONS~~]. (a) A
26 person affected by an order [~~or decision~~] of the commission under
27 this chapter may, on or before the 15th day after the date of

1 service of the order [~~or decision~~], make a written request for a
2 hearing.

3 (b) A person affected by the final order [~~decision~~] in an
4 administrative hearing under Subsection (a) is entitled to judicial
5 review and may appeal the order [~~decision~~] on or before the 31st day
6 after the date on which the order [~~decision~~] was rendered. If the
7 state prevails in an appeal filed under this subsection, the state
8 is entitled to recover reasonable expenses incurred in obtaining
9 the judgment, including reasonable attorney's fees, costs involved
10 in preparing for the litigation, and witness fees.

11 SECTION 15. Section 374.252, Health and Safety Code, is
12 amended to read as follows:

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

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

19 (2) prevents or hinders a properly identified
20 authorized officer, employee, or agent of the commission, or a
21 properly identified person under order of or contract with the
22 commission, from entering, inspecting, sampling, or responding to a
23 release as authorized by this chapter;

24 (3) knowingly makes any false material statement or
25 representation in any record, report, or other document filed,
26 maintained, or used for the purpose of compliance with this
27 chapter;

1 (4) knowingly destroys, alters, or conceals any record
2 that this chapter or rules adopted under this chapter require to be
3 maintained; or

4 (5) violates Section 374.151 or related commission
5 rules.

6 (b) If a registration fee is not paid on or before the 30th
7 day after the date the fee is due, the commission may assess a
8 penalty not to exceed \$50 per day for each day the fee is not paid.

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

12 SECTION 16. Section 374.253(c), Health and Safety Code, is
13 amended to read as follows:

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

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

20 (b) The amount of the penalty for a violation of Section
21 374.252(a)(3) [374.252(a)(1)], Health and Safety Code, may not
22 exceed \$10,000 [\$1,000].

23 SECTION 18. Sections 374.001(1), 374.052(c), 374.105(c),
24 374.156, and 374.201, Health and Safety Code, are repealed.

25 SECTION 19. (a) The changes in law affecting registration
26 fees for a dry cleaning facility as that term is defined by Section
27 374.001, Health and Safety Code, as amended by this Act, under

1 Sections 374.102 and 374.252, Health and Safety Code, as amended by
2 this Act, apply only to a registration fee payable on or after
3 September 1, 2005. A registration fee payable before September 1,
4 2005, is governed by the law as it existed on the date the fee became
5 due and that law is continued in effect for that purpose.

6 (b) The changes in law affecting registration fees for a dry
7 cleaning drop station as that term is defined by Section 374.001,
8 Health and Safety Code, as amended by this Act, apply only to a
9 registration fee that becomes payable on or after September 1,
10 2005.

11 (c) Notwithstanding Section 374.102, Health and Safety
12 Code, as added by Chapter 540, Acts of the 78th Legislature, Regular
13 Session, 2003, a registration fee for a dry cleaning drop station as
14 that term is defined by Section 374.001, Health and Safety Code, as
15 amended by this Act, that was payable before September 1, 2005, is
16 payable not later than October 1, 2005, as follows:

17 (1) for a drop station with gross receipts of more than
18 \$100,000 for the year preceding the registration period, a fee of
19 \$1,000;

20 (2) for a drop station with gross receipts of \$100,000
21 or less for the year preceding the registration period, a fee of
22 \$250; and

23 (3) for a drop station that would have been eligible to
24 be designated as nonparticipating under Section 374.104, Health and
25 Safety Code, as amended by this Act, if Section 374.104, Health and
26 Safety Code, as amended by this Act, had been in effect for the
27 registration period, a fee of \$250.

1 (d) The change in law affecting fees collected under Section
2 374.103, Health and Safety Code, as amended by this Act, applies
3 only to a fee associated with the distribution of a dry cleaning
4 solvent on or after September 1, 2005. A fee collected under Section
5 374.103, Health and Safety Code, before September 1, 2005, is
6 governed by that section as it existed on the date the distribution
7 of the solvent occurred, and that law is continued in effect for
8 that purpose.

9 (e) The changes in law regarding allowing a release and
10 notifying the Texas Commission on Environmental Quality of a
11 release under Section 374.151, Health and Safety Code, as amended
12 by this Act, apply only to a release that occurs on or after the
13 effective date of this Act. A release that occurs before the
14 effective date of this Act is governed by the law as it existed on
15 the date of the release or the date a person learns of the release,
16 as applicable, and that law is continued in effect for that purpose.

17 SECTION 20. This Act takes effect September 1, 2005.