

By: Elkins

H.B. No. 3220

A BILL TO BE ENTITLED

1 AN ACT

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

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

5 SECTION 1. The heading to Section 374.102, Health and
6 Safety Code, is amended to read as follows:

7 Sec. 374.102. DRY CLEANING FACILITY OR DROP STATION
8 REGISTRATION; FEE; POSTING.

9 SECTION 2. Subchapter C, Chapter 374, Health and Safety
10 Code, is amended by adding Sections 374.1022 and 374.1023 to read as
11 follows:

12 Sec. 374.1022. REGISTRATION OF PROPERTY OWNER OR PRECEDING
13 PROPERTY OWNER. (a) The following persons may participate in the
14 fund benefits by registering as provided by this section:

15 (1) a person who owns real property on which a dry
16 cleaning facility or drop station is or was located; or

17 (2) a preceding owner of real property on which a dry
18 cleaning facility or drop station is or was located who entered into
19 an agreement with the current owner associated with the sale of the
20 real property to the current owner that requires the person to be
21 responsible for any costs associated with cleaning up contamination
22 covered under this chapter.

23 (b) For a person described by Subsection (a) to participate
24 in fund benefits, the person must:

1 (1) register with the commission on or before December
2 31, 2007, using a form prescribed by the commission;

3 (2) include on the registration form information
4 identifying the person as a:

5 (A) property owner; or

6 (B) preceding property owner; and

7 (3) pay the annual registration fee of \$1,500.

8 (c) A person described by Subsection (a) may participate in
9 the fund benefits by registering after December 31, 2007, in the
10 same manner as provided by Subsection (b). A person registering
11 after that date must also pay:

12 (1) all past annual registration fees; and

13 (2) a late fee of \$100 for each month or partial month
14 that has elapsed between December 2007 and the date of the
15 registration.

16 (d) The annual registration fee may be divided into
17 quarterly payments due over the year on dates established by the
18 commission.

19 Sec. 374.1023. LIEN. (a) In addition to other remedies
20 available under other law, a lien is imposed against the real
21 property that is subject to a corrective action taken under this
22 chapter if the person does not pay a registration fee under Section
23 374.1022 that is due while the corrective action is ongoing. The
24 amount of the lien is the sum of:

25 (1) the costs of the action; and

26 (2) the fees due but not paid during the period of the
27 corrective action.

1 (b) The lien imposed by this section arises and attaches to
2 the real property subject to the corrective action at the time an
3 affidavit is recorded and indexed in accordance with this section
4 in the county in which the real property is located. For the
5 purpose of determining rights of all affected parties, the lien
6 does not relate back to a time before the date on which the
7 affidavit is recorded, which date is the lien inception date. The
8 lien continues until the liability for the corrective action costs
9 and registration fees is satisfied or becomes unenforceable through
10 operation of law. The executive director shall determine whether
11 to prepare an affidavit. In determining whether to prepare an
12 affidavit or whether a lien is satisfied, the executive director:

13 (1) shall proceed in the manner that the executive
14 director determines will most likely result in the least overall
15 costs to the state after any cost and fee recovery action; and

16 (2) may take into account a landowner's financial
17 ability to satisfy the lien, including consideration of whether the
18 real property that is the subject of the lien:

19 (A) is a homestead and is being occupied as a home
20 by the landowner; and

21 (B) has a fair market value of \$250,000 or less.

22 (c) An authorized representative of the commission must
23 execute the affidavit. The affidavit must show:

24 (1) the names and addresses of the persons liable for
25 the corrective action costs and registration fees;

26 (2) a description of the real property that is subject
27 to or affected by the corrective action; and

1 (3) the amount of the corrective action costs and
2 registration fees and the balance due.

3 (d) The county clerk shall record the affidavit in records
4 kept for that purpose and shall index the affidavit under the names
5 of the persons liable for the corrective action costs and
6 registration fees.

7 (e) The commission shall record a relinquishment or
8 satisfaction of the lien when the lien is paid or satisfied.

9 (f) The lien may be foreclosed only on judgment of a court of
10 competent jurisdiction foreclosing the lien and ordering the sale
11 of the property subject to the lien.

12 (g) The lien imposed by this section is not valid or
13 enforceable if real property, an interest in real property, or a
14 mortgage, lien, or other encumbrance on or against real property is
15 acquired before the affidavit is recorded, unless the person
16 acquiring the real property, an interest in the property, or the
17 mortgage, lien, or other encumbrance on the property had or
18 reasonably should have had actual notice or knowledge that the real
19 property is subject to or affected by a corrective action or has
20 knowledge that the state has incurred corrective action costs and
21 is owed registration fees.

22 (h) If a lien is fixed or attempted to be fixed as provided
23 by this section, the owner of the real property affected by the lien
24 may file a bond to indemnify against the lien. The bond must be
25 filed with the county clerk of the county in which the real property
26 subject to the lien is located. An action to establish, enforce, or
27 foreclose any lien or claim of lien covered by the bond must be

1 brought not later than the 30th day after the date of service of
2 notice of the bond. The bond must:

3 (1) describe the real property on which the lien is
4 claimed;

5 (2) refer to the lien claimed in a manner sufficient to
6 identify it;

7 (3) be in an amount double the amount of the lien
8 referred to;

9 (4) be payable to the commission;

10 (5) be executed by the party filing the bond as
11 principal and a corporate surety authorized under the law of this
12 state to execute the bond as surety; and

13 (6) be conditioned substantially that the principal
14 and sureties will pay to the commission the amount of the lien
15 claimed, plus costs, if the claim is proved to be a lien on the real
16 property.

17 (i) After the bond is filed, the county clerk shall issue
18 notice of the bond to the named obligee. A copy of the bond must be
19 attached to the notice. The notice may be served on each obligee by
20 having a copy delivered to the obligee by any person competent to
21 make oath of the delivery. The original notice shall be returned to
22 the office of the county clerk, and the person making service of
23 copy shall make an oath on the back of the copies showing on whom and
24 on what date the copies were served. The county clerk shall record
25 the bond notice and return in records kept for that purpose. In
26 acquiring an interest in real property, a purchaser or lender may
27 rely on and is absolutely protected by the record of the bond,

1 notice, and return.

2 (j) The commission may sue on the bond after the 30th day
3 after the date on which the notice is served but may not sue on the
4 bond later than one year after the date on which the notice is
5 served. The commission is entitled to recover reasonable
6 attorney's fees if the commission recovers in a suit on the lien or
7 on the bond.

8 SECTION 3. Section 374.103(a), Health and Safety Code, is
9 amended to read as follows:

10 (a) Except as provided by Subsection (b) and Section
11 374.104(d), a fee of \$20 [~~\$15~~] per gallon is imposed on the purchase
12 of the dry cleaning solvent perchloroethylene and \$3 [~~\$5~~] per
13 gallon on the purchase of any other dry cleaning solvent by an owner
14 of a dry cleaning facility. The person who distributes the solvent
15 shall collect the fees and shall pay to the commission the amount
16 due, in accordance with Subsection (a-1).

17 SECTION 4. Section 374.104, Health and Safety Code, is
18 amended by amending Subsection (b-1) and adding Subsection (g) to
19 read as follows:

20 (b-1) An owner of a dry cleaning facility or drop station who
21 files an option not to participate in accordance with Subsection
22 (b) is entitled to a refund of [~~credit against future~~] registration
23 fees paid under Section 374.102[~~, Health and Safety Code,~~] to the
24 extent that a registration fee paid under that section in 2004 or
25 2005 exceeded the amount due for a nonparticipating dry cleaning
26 facility or drop station.

27 (g) A person who is the owner of a dry cleaning drop station

1 who timely files an option not to participate in fund benefits under
2 this section may, as provided by this subsection, retain the status
3 of the drop station as nonparticipating if the person moves the drop
4 station to a new location. A person to whom this section applies
5 must:

6 (1) provide to the commission the written consent of
7 the property owner at the new location; and

8 (2) continue to comply with the other requirements of
9 this section.

10 SECTION 5. Subchapter D, Chapter 374, Health and Safety
11 Code, is amended by adding Section 374.1535 to read as follows:

12 Sec. 374.1535. SITE RESTRICTIONS AFTER CORRECTIVE ACTION.

13 (a) If the commission has completed corrective action at a dry
14 cleaning site, perchloroethylene may not be used at that site.

15 (b) If the owner of a dry cleaning site uses
16 perchloroethylene at the site after the completion of corrective
17 action at that site, the site is not eligible for future corrective
18 action using money from the fund.

19 SECTION 6. Sections 374.154(b) and (c), Health and Safety
20 Code, are amended to read as follows:

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

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

25 (2) a person who is registered with the commission
26 under Section 374.1022 [~~an owner of the real property on which the~~
27 ~~dry cleaning facility or drop station is or was located, or~~

1 ~~[(3) a person who was the preceding owner of the real~~
2 ~~property on which the dry cleaning facility or drop station is or~~
3 ~~was located if the person entered into an agreement with the current~~
4 ~~owner associated with the sale of the real property to the current~~
5 ~~owner that requires the person to be responsible for any costs~~
6 ~~associated with the clean up of contamination covered under this~~
7 ~~chapter].~~

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 been notified of the application;

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

15 (3) is a person described by Section 374.1022(a)(2)
16 ~~[Subsection (b)(3)]~~, the application must include proof that the
17 owner of the real property and any lessee have been notified of the
18 application.

19 SECTION 7. Section 374.207, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 374.207. ELIGIBLE OWNER OR REGISTERED PERSON EXEMPT
22 FROM CERTAIN CLAIMS. If an owner or a ~~other~~ person registered
23 under Section 374.1022 is eligible under this chapter to have
24 corrective action costs paid by the fund, an administrative or
25 judicial claim may not be made under state law against the owner or
26 other person by or on behalf of this state or by any other person,
27 except a political subdivision, to compel corrective action or seek

1 recovery of the costs of corrective action that result from the
2 release.

3 SECTION 8. The Texas Commission on Environmental Quality
4 shall provide the comptroller with a list of persons eligible for a
5 refund under Section 374.104(b-1), Health and Safety Code, as
6 amended by this Act not later than November 30, 2007, and the
7 comptroller shall pay each refund not later than December 31, 2007.
8 The amount of a refund paid to a person under this section is the
9 current credit balance for that person at the time the list is
10 completed.

11 SECTION 9. 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, 2007.