By:  Zwiener H.B. No. 1820

A BILL TO BE ENTITLED

AN ACT

relating to the regulation, monitoring, and enforcement of matters under the jurisdiction of the Texas Commission on Environmental Quality; authorizing the assessment or increase of civil and administrative penalties.

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

SECTION 1.  Sections 374.252(b) and (c), Health and Safety Code, are amended to read as follows:

(b)  If a registration fee is not paid on or before the 30th day after the date the fee is due, the commission may assess for each day the fee is not paid a penalty not to exceed $50 per day or the amount published under Section 7.0522, Water Code [~~for each day the fee is not paid~~].

(c)  If a registration application for an operating dry cleaning facility or drop station is not filed with the commission on or before the 30th day after the date the application is due, the commission may assess for each day the application is not filed a penalty not to exceed $50 per day or the amount published under Section 7.0522, Water Code [~~for each day the application is not filed~~].

SECTION 2.  Section 382.0215(b), Health and Safety Code, is amended to read as follows:

(b)  The commission shall require the owner or operator of a regulated entity that experiences emissions events:

(1)  to maintain a record of all emissions events at the regulated entity in the manner and for the periods prescribed by commission rule;

(2)  to notify the commission in a single report for each emissions event, as soon as practicable but not later than 24 hours after discovery of the emissions event, of an emissions event resulting in the emission of a reportable quantity of air contaminants as determined by commission rule; and

(3)  to report to the commission in a single report for each emissions event, not later than two weeks after the occurrence of an emissions event that results in the emission of a reportable quantity of air contaminants as determined by commission rule, all information necessary to evaluate the emissions event, including:

(A)  the name of the owner or operator of the reporting regulated entity;

(B)  the location of the reporting regulated entity expressed in terms of longitude and latitude;

(C)  the date and time the emissions began;

(D)  the duration of the emissions;

(E)  the nature and measured or estimated quantity of air contaminants emitted, including the method of calculation of, or other basis for determining, the quantity of air contaminants emitted;

(F)  the processes and equipment involved in the emissions event;

(G)  the cause of the emissions; and

(H)  any additional information necessary to evaluate the emissions event.

SECTION 3.  Section 382.0216, Health and Safety Code, is amended by adding Subsections (k), (l), and (m) to read as follows:

(k)  The commission by rule shall provide for the imposition of permit conditions that establish a:

(1)  maximum number of emissions events that may occur in a year before the commission will temporarily revoke the facility's permit or take another enforcement action; and

(2)  maximum volume of emissions events, expressed in terms of a percentage of permitted emissions, that may occur in a year before the commission will temporarily revoke the facility's permit or take another enforcement action.

(l)  The commission shall enforce rules concerning emissions events by means of civil or administrative penalties or by injunctive relief as provided by Chapter 7, Water Code. The commission may not exempt excess emissions from penalties or injunctive relief.

(m)  The commission shall develop and implement policies to limit the cumulative effects of emissions from maintenance, startups, and shutdowns of facilities. The fact that a facility does not exceed a threshold established under this subsection may not be considered as evidence of good faith or a lack of effect on environmental or public health.

SECTION 4.  Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Section 382.0217 to read as follows:

Sec. 382.0217.  EXCESSIVE EMISSIONS EVENTS PENALTY. (a) In this section, "emissions event" and "regulated entity" have the meanings assigned by Section 382.0215.

(b)  In addition to any other penalty assessed by the commission for an emissions event, the owner or operator of a regulated entity that reports an emissions event shall pay to the commission a mandatory penalty of not less than $1 per pound of each pollutant released that:

(1)  exceeds an authorized emission limit for the pollutant; or

(2)  is not authorized by any permit, permit by rule, or regulation.

(c)  In assessing penalties for an excessive emissions event, the commission may assess penalties based on individual pollutants that exceeded the owner's or operator's permit.

SECTION 5.  The heading to Section 505.017, Health and Safety Code, is amended to read as follows:

Sec. 505.017.  NOTICE ISSUED UNDER EMERGENCIES; TOXIC CHEMICAL EMERGENCY ALERT SYSTEM.

SECTION 6.  Section 505.017, Health and Safety Code, is amended by adding Subsections (c), (d), (e), (f), and (g) to read as follows:

(c)  If the responsible state agency determines that a release will substantially endanger human health or the environment, the agency shall, not later than 30 minutes after making the determination, notify persons in the area in which the facility is located of the release using the alert system established under Subsection (d). When the agency determines a release is no longer a threat to human health or the environment, the agency shall notify persons using the alert system.

(d)  The state emergency response commission shall develop and maintain a toxic chemical emergency alert system to notify persons in the area in which the facility is located of a release that will substantially endanger human health or the environment. The commission may partner with other state agencies in developing the alert system and shall allow persons to register for a preferred method of, and preferred language for, receiving a message under the alert system. In developing the alert system, the commission may use as a model the alert systems established by Subchapter L, Chapter 411, Government Code, and Section 51.854, Water Code. The alert system must allow a person the option of not receiving the alerts on the person's notification to the commission.

(e)  The toxic chemical emergency alert system must:

(1)  provide notification through reverse 9-1-1 calls, text messages, e-mails, social media, and other instant messaging systems; and

(2)  allow the state agency providing the notification to modify the notification based on:

(A)  the distance of the release to the person receiving the notification; and

(B)  the projected movement of the release.

(f)  An alert issued by the toxic chemical emergency alert system must include:

(1)  each area affected by the release, including a geographic display of the severity of the threat posed by the release;

(2)  a link to an Internet website or other message system that maintains current information on each affected area;

(3)  a link to an Internet website or other message system that describes a symptom of any illness caused by the release that may require emergency medical treatment;

(4)  the chemicals involved in and toxicity of the release;

(5)  the projected movement of the release; and

(6)  instructions for protection from exposure to the release or for reducing exposure to the release.

(g)  The state emergency response commission shall review and modify the toxic chemical emergency alert system, as appropriate, every four years.

SECTION 7.  Section 7.052, Water Code, is amended by amending Subsections (a), (b), (b-1), (b-2), (b-4), (c), and (d) and adding Subsection (b-5) to read as follows:

(a)  The amount of the penalty for each [~~a~~] violation of Chapter 37 of this code, Chapter 366, 371, or 372, Health and Safety Code, or Chapter 1903, Occupations Code, may not exceed the greater of $5,000 a day or the amount per day published under Section 7.0521 [~~for each violation~~].

(b)  Except as provided by Subsection (b-3), the amount of the penalty for operating a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing, that is required to obtain a permit under Section 382.0518, Health and Safety Code, and that is operating without the required permit is the greater of $10,000 or the amount published under Section 7.0521. Each day that a continuing violation occurs is a separate violation.

(b-1)  The amount of the penalty assessed against a manufacturer that does not label its computer equipment or covered television equipment or adopt and implement a recovery plan as required by Section 361.955, 361.975, or 361.978, Health and Safety Code, as applicable, may not exceed the greater of $10,000 for the second violation, [~~or~~] $25,000 for each subsequent violation, or the amount published under Section 7.0521. A penalty under this subsection is in addition to any other penalty that may be assessed for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code.

(b-2)  Except as provided by Subsection (b-1), the amount of the penalty for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code, may not exceed $1,000 for the second violation, [~~or~~] $2,000 for each subsequent violation, or the amount published under Section 7.0521. A penalty under this subsection is in addition to any other penalty that may be assessed for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code.

(b-4)  Except as provided by Subsection (b-5), the [~~The~~] amount of the penalty against a facility operator who violates Chapter 505, Health and Safety Code, or a rule adopted or order issued under that chapter, for each day a violation continues, may not exceed $500 a day or the amount per day published under Section 7.0521 [~~for each day a violation continues~~] with a total for each violation not to exceed $5,000 or the total amount published under Section 7.0521 [~~for each violation~~]. Except as provided by Subsection (b-5), the [~~The~~] amount of a penalty against a facility operator who violates Chapter 506 or 507, Health and Safety Code, or a rule adopted or order issued under those chapters, for each day a violation continues, may not exceed $50 a day or the amount per day published under Section 7.0521 [~~for each day a violation continues~~] with a total for each violation not to exceed $1,000 or the total amount published under Section 7.0521 [~~for each violation~~].

(b-5)  The amount of a penalty assessed under Subsection (b- 4) must be tripled if a first responder is injured as a result of exposure to hazardous material while responding to an incident at the facility that is the subject of the penalty.

(c)  The amount of the penalty for each [~~all~~] other violation [~~violations~~] within the jurisdiction of the commission to enforce may not exceed $50,000 [~~$25,000~~] a day or the amount per day published under Section 7.0521 [~~for each violation~~].

(d)  Except as provided by Subsection (b), each day that a continuing violation occurs shall [~~may~~] be considered a separate violation. The commission may authorize an installment payment schedule for an administrative penalty assessed under this subchapter, except for an administrative penalty assessed under Section 7.057.

SECTION 8.  Subchapter C, Chapter 7, Water Code, is amended by adding Sections 7.0521 and 7.0522 to read as follows:

Sec. 7.0521.  INCREASE OF AMOUNT OF PENALTY FOR CERTAIN VIOLATIONS. Notwithstanding Section 7.052, Section 7.0525, or any other provision of law, the commission may increase the amount of a penalty assessed under this subchapter by an amount not to exceed 50 percent of the maximum authorized penalty if the alleged violator has a history of previous violations.

Sec. 7.0522.  INFLATION ADJUSTMENT OF AMOUNT OF CERTAIN PENALTIES. (a) The commission annually shall compute and publish a dollar amount to reflect inflation for the penalty amounts in:

(1)   Section 7.052; and

(2)  Section 7.103.

(b)  In making the computation under Subsection (a), the commission shall consider the Consumer Price Index for All Urban Consumers, or its successor in function, published by the United States Bureau of Labor Statistics.

(c)  The commission shall use 2021 as the base year and adjust the dollar amounts, effective on September 1 of each year.

(d)  The commission shall make available to the public information regarding adjustments made under this section.

(e)  The commission may adopt rules as necessary to administer this section.

SECTION 9.  Sections 7.0525(a) and (b), Water Code, are amended to read as follows:

(a)  Except as provided by Subsection (b), the amount of the penalty for a violation of Section 374.252, Health and Safety Code, may not exceed $5,000 or the amount published under Section 7.0521.

(b)  The amount of the penalty for a violation of Section 374.252(a)(3), Health and Safety Code, may not exceed $10,000 or the amount published under Section 7.0521.

SECTION 10.  Section 7.102, Water Code, is amended to read as follows:

Sec. 7.102.  MAXIMUM PENALTY. (a) A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to Chapter 37 of this code, Chapter 366, 371, or 372, Health and Safety Code, Subchapter G, Chapter 382, Health and Safety Code, or Chapter 1903, Occupations Code, shall be assessed for each day of each violation a civil penalty, as the court or jury considers proper:

(1)  of not less than $50 nor greater than $5,000; or

(2)  in the amount per day published under Section 7.0522 [~~for each day of each violation as the court or jury considers proper~~].

(b)  A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to any other matter within the commission's jurisdiction to enforce, other than violations of Chapter 11, 12, 13, 16, or 36 of this code, or Chapter 341, Health and Safety Code, shall be assessed for each day of each violation a civil penalty, as the court or jury considers proper:

(1)  of not less than $100 [~~$50~~] nor greater than $50,000 [~~$25,000~~]; or

(2)  in the amount per day published under Section 7.0522 [~~for each day of each violation as the court or jury considers proper~~].

(c)  Each day of a continuing violation is a separate violation.

SECTION 11.  Section 7.1021, Water Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a)  Except as provided by Subsection (a-1), a [~~A~~] person who knowingly discloses false information or negligently fails to disclose a hazard as required by Chapter 505 or 506, Health and Safety Code, is subject to a civil penalty of not more than $5,000 for each violation.

(a-1)  The amount of a penalty assessed under Subsection (a) must be tripled if a first responder is injured as a result of exposure to hazardous material while responding to an incident at the facility that is the subject of the penalty.

SECTION 12.  Section 7.103, Water Code, is amended to read as follows:

Sec. 7.103.  CONTINUING VIOLATIONS. (a) If it is shown on a trial of a defendant that the defendant has previously been assessed a civil penalty for a violation of a statute within the commission's jurisdiction or a rule adopted or an order or a permit issued under such a statute within the year before the date on which the violation being tried occurred, the defendant shall be assessed a civil penalty:

(1)  of not less than $200 [~~$100~~] nor greater than $50,000 [~~$25,000~~] for each subsequent day and for each subsequent violation; or

(2)  in the amount per day published under Section 7.0521.

(b)  Each day of a continuing violation is a separate violation.

SECTION 13.  Section 7.105, Water Code, is amended by adding Subsection (d) to read as follows:

(d)  A penalty recovered under this section is additional to any penalty assessed by the commission.

SECTION 14.  Section 7.302, Water Code, is amended by adding Subsection (c) to read as follows:

(c)  After notice and hearing, the commission shall revoke, suspend, or revoke and reissue a permit or exemption if a violation of a term or condition of the permit causes a catastrophic event that results in the death or serious injury of an individual.

SECTION 15.  Sections 382.0216(f) and (h), Health and Safety Code, are repealed.

SECTION 16.  Sections 374.252 and 382.0216, Health and Safety Code, as amended by this Act, apply only to an enforcement action initiated by the Texas Commission on Environmental Quality on or after the effective date of this Act. An enforcement action initiated before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 17.  Section 382.0217, Health and Safety Code, as added by this Act, applies only to an emissions event that occurs on or after the effective date of this Act. An emissions event that occurs before that date is governed by the law in effect on the date the emissions event occurred, and the former law is continued in effect for that purpose.

SECTION 18.  Not later than January 1, 2023, the state emergency response commission, as defined in Section 505.004, Health and Safety Code, shall establish the toxic chemical emergency alert system as required by Section 505.017, Health and Safety Code, as amended by this Act.

SECTION 19.  Sections 7.052, 7.0525, 7.102, 7.1021, 7.103, 7.105, and 7.302, Water Code, as amended by this Act, and Sections 7.0521 and 7.0522, Water Code, as added by this Act, apply only to a violation that occurs on or after the effective date of this Act. For purposes of this section, a violation occurs before the effective date of this Act if any element of the violation occurs before that date.

SECTION 20.  This Act takes effect September 1, 2021.