

By: Zwiener

H.B. No. 1820

Substitute the following for H.B. No. 1820:

By: Goodwin

C.S.H.B. No. 1820

A BILL TO BE ENTITLED

1

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

18 (C) the date and time the emissions began;

19 (D) the duration of the emissions;

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

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

26 (G) the cause of the emissions; and

27 (H) any additional information necessary to

1 evaluate the emissions event.

2 SECTION 3. Subchapter B, Chapter 382, Health and Safety
3 Code, is amended by adding Section 382.0217 to read as follows:

4 Sec. 382.0217. STUDY ON EXCESSIVE EMISSIONS EVENTS PENALTY.

5 (a) In this section, "emissions event" and "regulated entity" have
6 the meanings assigned by Section 382.0215.

7 (b) The commission shall conduct a study on the efficacy of
8 imposing on the owner or operator of a regulated entity that reports
9 an emissions event a penalty of not less than \$1 per pound of each
10 pollutant classified under Subsection (c) released that:

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

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

15 (c) The commission shall assess which pollutants to include
16 in penalties described under Subsection (b) based on risks posed
17 to:

18 (1) human health;

19 (2) public safety; and

20 (3) environmental health.

21 (d) The commission shall examine the potential effects of
22 the penalty described under Subsection (b), including:

23 (1) the potential to improve compliance amongst
24 operators; and

25 (2) anticipated costs to facilities as a result of
26 penalties described under Subsection (b).

27 (e) Not later than March 1, 2022, the commission shall

1 prepare and submit to the governor, the lieutenant governor, and
2 the legislature a report on the findings of the study.

3 (f) This section expires September 1, 2027.

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

7 (a) The amount of the penalty for each [~~a~~] violation of
8 Chapter 37 of this code, Chapter 366, 371, or 372, Health and Safety
9 Code, or Chapter 1903, Occupations Code, may not exceed the greater
10 of \$5,000 a day or the amount per day published under Section 7.0522
11 [~~for each violation~~].

12 (b) Except as provided by Subsection (b-3), the amount of
13 the penalty for operating a rock crusher or a concrete plant that
14 performs wet batching, dry batching, or central mixing, that is
15 required to obtain a permit under Section 382.0518, Health and
16 Safety Code, and that is operating without the required permit is
17 the greater of \$10,000 or the amount published under Section
18 7.0522. Each day that a continuing violation occurs is a separate
19 violation.

20 (b-1) The amount of the penalty assessed against a
21 manufacturer that does not label its computer equipment or covered
22 television equipment or adopt and implement a recovery plan as
23 required by Section 361.955, 361.975, or 361.978, Health and Safety
24 Code, as applicable, may not exceed the greater of \$10,000 for the
25 second violation, [~~or~~] \$25,000 for each subsequent violation, or
26 the amount published under Section 7.0522. A penalty under this
27 subsection is in addition to any other penalty that may be assessed

1 for a violation of Subchapter Y or Z, Chapter 361, Health and Safety
2 Code.

3 (b-2) Except as provided by Subsection (b-1), the amount of
4 the penalty for a violation of Subchapter Y or Z, Chapter 361,
5 Health and Safety Code, may not exceed \$1,000 for the second
6 violation, ~~or~~ \$2,000 for each subsequent violation, or the amount
7 published under Section 7.0522. A penalty under this subsection is
8 in addition to any other penalty that may be assessed for a
9 violation of Subchapter Y or Z, Chapter 361, Health and Safety Code.

10 (b-4) Except as provided by Subsection (b-5), the ~~[The]~~
11 amount of the penalty against a facility operator who violates
12 Chapter 505, Health and Safety Code, or a rule adopted or order
13 issued under that chapter, for each day a violation continues, may
14 not exceed \$500 a day or the amount per day published under Section
15 7.0522 ~~[for each day a violation continues]~~ with a total for each
16 violation not to exceed \$5,000 or the total amount published under
17 Section 7.0522 ~~[for each violation]~~. Except as provided by
18 Subsection (b-5), the ~~[The]~~ amount of a penalty against a facility
19 operator who violates Chapter 506 or 507, Health and Safety Code, or
20 a rule adopted or order issued under those chapters, for each day a
21 violation continues, may not exceed \$50 a day or the amount per day
22 published under Section 7.0522 ~~[for each day a violation continues]~~
23 with a total for each violation not to exceed \$1,000 or the total
24 amount published under Section 7.0522 ~~[for each violation]~~.

25 (b-5) The amount of a penalty assessed under Subsection
26 (b-4) must be tripled if a first responder who is not employed at
27 the facility that is the subject of the penalty, or who does not

1 participate in a shared service agreement with another facility, is
2 injured as a result of exposure to hazardous material while
3 responding to an incident at the facility.

4 (c) The amount of the penalty for each [~~all~~] other violation
5 [~~violations~~] within the jurisdiction of the commission to enforce
6 may not exceed \$25,000 a day or the amount per day published under
7 Section 7.0522 [~~for each violation~~].

8 SECTION 5. Effective September 1, 2023, Section 7.052(c),
9 Water Code, is amended to read as follows:

10 (c) The amount of the penalty for each [~~all~~] other violation
11 [~~violations~~] within the jurisdiction of the commission to enforce
12 may not exceed \$50,000 [~~\$25,000~~] a day or the amount published under
13 Section 7.0522 [~~for each violation~~].

14 SECTION 6. Subchapter C, Chapter 7, Water Code, is amended
15 by adding Sections 7.0521 and 7.0522 to read as follows:

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

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

25 (1) Section 7.052; and

26 (2) Section 7.103.

27 (b) In making the computation under Subsection (a), the

1 commission shall consider the Consumer Price Index for All Urban
2 Consumers, or its successor in function, published by the United
3 States Bureau of Labor Statistics.

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

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

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

10 SECTION 7. Sections 7.0525(a) and (b), Water Code, are
11 amended to read as follows:

12 (a) Except as provided by Subsection (b), the amount of the
13 penalty for a violation of Section 374.252, Health and Safety Code,
14 may not exceed \$5,000 or the amount published under Section 7.0522.

15 (b) The amount of the penalty for a violation of Section
16 374.252(a)(3), Health and Safety Code, may not exceed \$10,000 or
17 the amount published under Section 7.0522.

18 SECTION 8. Section 7.102, Water Code, is amended to read as
19 follows:

20 Sec. 7.102. MAXIMUM PENALTY. (a) A person who causes,
21 suffers, allows, or permits a violation of a statute, rule, order,
22 or permit relating to Chapter 37 of this code, Chapter 366, 371, or
23 372, Health and Safety Code, Subchapter G, Chapter 382, Health and
24 Safety Code, or Chapter 1903, Occupations Code, shall be assessed
25 for each day of each violation a civil penalty, as the court or jury
26 considers proper:

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

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

4 (b) A person who causes, suffers, allows, or permits a
5 violation of a statute, rule, order, or permit relating to any other
6 matter within the commission's jurisdiction to enforce, other than
7 violations of Chapter 11, 12, 13, 16, or 36 of this code, or Chapter
8 341, Health and Safety Code, shall be assessed for each day of each
9 violation a civil penalty, as the court or jury considers proper:

10 (1) of not less than \$100 [~~\$50~~] nor greater than
11 \$50,000; or

12 (2) in the amount per day published under Section
13 7.0522 [~~\$25,000 for each day of each violation as the court or jury~~
14 ~~considers proper~~].

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

17 SECTION 9. Section 7.1021, Water Code, is amended by
18 amending Subsection (a) and adding Subsection (a-1) to read as
19 follows:

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

25 (a-1) The amount of a penalty assessed under Subsection (a)
26 must be tripled if a first responder who is not employed at the
27 facility that is the subject of the penalty, or who does not

1 participate in a shared service agreement with another facility, is
2 injured as a result of exposure to hazardous material while
3 responding to an incident at the facility.

4 SECTION 10. Section 7.103, Water Code, is amended to read as
5 follows:

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

13 (1) of not less than \$200 [~~\$100~~] nor greater than
14 \$50,000 [~~\$25,000~~] for each subsequent day and for each subsequent
15 violation; or

16 (2) in the amount per day published under Section
17 7.0522.

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

20 SECTION 11. Section 374.252, Health and Safety Code, as
21 amended by this Act, applies only to an enforcement action
22 initiated by the Texas Commission on Environmental Quality on or
23 after the effective date of this Act. An enforcement action
24 initiated before the effective date of this Act is governed by the
25 law in effect immediately before the effective date of this Act, and
26 the former law is continued in effect for that purpose.

27 SECTION 12. Sections 7.052, 7.0525, 7.102, 7.1021, and

1 7.103, Water Code, as amended by this Act, and Sections 7.0521 and
2 7.0522, Water Code, as added by this Act, apply only to a violation
3 that occurs on or after the effective date of this Act. For
4 purposes of this section, a violation occurs before the effective
5 date of this Act if any element of the violation occurs before that
6 date.

7 SECTION 13. Except as provided by Section 5 of this Act,
8 this Act takes effect September 1, 2021.