

By: Zwiener

H.B. No. 1820

A BILL TO BE ENTITLED

AN ACT

1
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. Section 382.0216, Health and Safety Code, is
3 amended by adding Subsections (k), (l), and (m) to read as follows:

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

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

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

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

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

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

26 Sec. 382.0217. EXCESSIVE EMISSIONS EVENTS PENALTY. (a) In
27 this section, "emissions event" and "regulated entity" have the

1 meanings assigned by Section 382.0215.

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

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

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

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

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

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

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

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

1 the agency shall notify persons using the alert system.

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

14 (e) The toxic chemical emergency alert system must:

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

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

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

22 (B) the projected movement of the release.

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

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

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

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

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

8 (5) the projected movement of the release; and

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

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

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

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

22 (b) Except as provided by Subsection (b-3), the amount of
23 the penalty for operating a rock crusher or a concrete plant that
24 performs wet batching, dry batching, or central mixing, that is
25 required to obtain a permit under Section 382.0518, Health and
26 Safety Code, and that is operating without the required permit is
27 the greater of \$10,000 or the amount published under Section

1 7.0521. Each day that a continuing violation occurs is a separate
2 violation.

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

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

20 (b-4) Except as provided by Subsection (b-5), the [The]
21 amount of the penalty against a facility operator who violates
22 Chapter 505, Health and Safety Code, or a rule adopted or order
23 issued under that chapter, for each day a violation continues, may
24 not exceed \$500 a day or the amount per day published under Section
25 7.0521 [for each day a violation continues] with a total for each
26 violation not to exceed \$5,000 or the total amount published under
27 Section 7.0521 [for each violation]. Except as provided by

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

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

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

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

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

24 Sec. 7.0521. INCREASE OF AMOUNT OF PENALTY FOR CERTAIN
25 VIOLATIONS. Notwithstanding Section 7.052, Section 7.0525, or any
26 other provision of law, the commission may increase the amount of a
27 penalty assessed under this subchapter by an amount not to exceed 50

1 percent of the maximum authorized penalty if the alleged violator
2 has a history of previous violations.

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

6 (1) Section 7.052; and

7 (2) Section 7.103.

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

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

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

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

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

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

23 (b) The amount of the penalty for a violation of Section
24 374.252(a)(3), Health and Safety Code, may not exceed \$10,000 or
25 the amount published under Section 7.0521.

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

1 Sec. 7.102. MAXIMUM PENALTY. (a) A person who causes,
2 suffers, allows, or permits a violation of a statute, rule, order,
3 or permit relating to Chapter 37 of this code, Chapter 366, 371, or
4 372, Health and Safety Code, Subchapter G, Chapter 382, Health and
5 Safety Code, or Chapter 1903, Occupations Code, shall be assessed
6 for each day of each violation a civil penalty, as the court or jury
7 considers proper:

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

9 (2) in the amount per day published under Section
10 7.0522 [~~for each day of each violation as the court or jury~~
11 ~~considers proper~~].

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

18 (1) of not less than \$100 [~~\$50~~] nor greater than
19 \$50,000 [~~\$25,000~~]; or

20 (2) in the amount per day published under Section
21 7.0522 [~~for each day of each violation as the court or jury~~
22 ~~considers proper~~].

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

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

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

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

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

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

19 (1) of not less than \$200 [~~\$100~~] nor greater than
20 \$50,000 [~~\$25,000~~] for each subsequent day and for each subsequent
21 violation; or

22 (2) in the amount per day published under Section
23 7.0521.

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

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

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

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

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

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

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

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

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

1 Safety Code, as amended by this Act.

2 SECTION 19. Sections 7.052, 7.0525, 7.102, 7.1021, 7.103,
3 7.105, and 7.302, Water Code, as amended by this Act, and Sections
4 7.0521 and 7.0522, Water Code, as added by this Act, apply only to a
5 violation that occurs on or after the effective date of this Act.
6 For purposes of this section, a violation occurs before the
7 effective date of this Act if any element of the violation occurs
8 before that date.

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