

- SUBJECT:** Environmental regulation and remediation of dry cleaning facilities
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 8 ayes — Giddings, Elkins, Darby, Bohac, Castro, Martinez, Solomons, Zedler
- 0 nays
- 1 absent — Bailey
- WITNESSES:** For — (*Registered, but did not testify:* Phil Cates)
- Against — None
- On — Alan Batcheller, Texas Commission on Environmental Quality;
(*Registered, but did not testify:* Dorca Zaragoza-Stone, Texas Commission on Environmental Quality)
- BACKGROUND:** Most dry cleaning businesses in Texas store and use chemicals for use in the process of “dry” cleaning clothing. Many of these cleaners use the solvent perchloroethylene (perc), a chlorinated hydrocarbon originally developed as a metal degreaser for airplanes that has been adopted by the dry cleaning industry in the past 50 years. Many cleaners use alternatives to perc, including petroleum-based solvents, liquid carbon dioxide, and other new technologies.
- The Environmental Protection Agency (EPA) has warned that breathing perc, even for a short time, can lead to adverse affects on the human nervous system. Also, according to the EPA, longer periods of exposure to perc have been shown to cause liver and kidney damage. The EPA also has listed perc as a suspected cancer-causing chemical in humans as a result of findings from animal testing.
- When spilled, perc can spread through the soil and contaminate groundwater. The cost of an average cleanup of a perc spill is about \$300,000. If the groundwater is contaminated by perc, cleanup costs can reach \$5 million. The Texas Commission on Environmental Quality (TCEQ) oversees the cleanup of perc contamination sites in Texas.

Dry Cleaner Remediation Program. HB 1366 by Elkins, enacted by the 78th Legislature in 2003 — and amended through the enactment in 2005 of HB 2376 by Elkins — established the Dry Cleaner Remediation Program (DCRP) to assist the remediation of contamination from hazardous dry cleaning solvents. The DCRP requires all dry cleaning facilities in Texas to register with TCEQ.

The DCRP has a fund that can be used for cleaning up contamination caused by dry cleaning solvents. The fund is largely supported by fees paid by the dry cleaning industry. The DCRP fund includes money from:

- annual registration fees paid by owners of dry cleaning facilities and drop-off stations;
- fees collected by distributors of dry cleaning solvents on the sale of solvents to dry cleaning facilities;
- interest earned on the fund;
- costs recovered from cleaning up intentional solvent spills; and
- gifts, grants, reimbursements, or appropriations from any other source.

DCRP is a form of insurance. If perc contamination is detected at a DCRP covered facility, the state will contribute part, if not all, of the costs of clean up and provide limited liability against lawsuits. Dry cleaners that do not participate in DCRP may be eligible for lower registration fees, but are not able to participate in any program benefits.

SB 444 by Staples, enacted by the 79th Legislature in 2005, allowed dry cleaners who inadvertently missed the deadline on the option to not participate in DCRP to receive a credit against future registration fees if they met the requirements for opting out under the new deadline established by HB 2376.

DIGEST:

The major provisions of CSHB 3220 would:

- require dry cleaners that want to opt in to DCRP to register with TCEQ;
- grant TCEQ the ability to file liens against property owners who stop paying registration fees while an environmental corrective action was taking place;
- change the fees on purchases of various solvents;

- allow dry cleaners who attempted to opt out of DCRP under SB 444 to receive a refund rather than credits against future registration payments;
- provide for portability of nonparticipation status for certain drop site owners; and
- establish restrictions on the use of perc in locations where TCEQ had already completed an environmental correction action.

DCRP eligibility and fees for property owners. CSHB 3220 would add Health and Safety Code, sec. 374.1022 to require the registration of property owners or preceding property owners. The current property owner would be eligible to participate in DCRP, as would a former owner who made an agreement with the current owner that the current owner would be responsible for any costs associated with cleaning up dry cleaning contamination.

An owner or former owner who wished to participate would be required to register with TCEQ before December 31, 2007, and pay an annual registration fee of \$1,500. An eligible owner or former owner who registered after December 31, 2007, would be required to pay all past annual registration fees and a late fee of the \$100 for each month or partial month that had elapsed between December 2007 and the date of the registration.

Liens on real property. CSHB 3320 would amend sec. 374.1023, Health and Safety Code, to provide lien authority to TCEQ in addition to other remedies available under law. A lien would be imposed against real property that was subject to a corrective action if the person did not pay a registration fee under sec. 374.1022 that was due while the corrective action was ongoing. The amount of the lien would be the sum of the costs of the corrective action and the fees due but not paid during the period of the corrective action.

In preparing a lien or determining whether a lien was satisfied, the executive director of TCEQ would proceed in a manner that likely would result in the least overall cost to the state after any cost and fee recovery action and could take into account the landowner's ability to satisfy the lien, including determinations of whether the property subject to the lien was a homestead and certain other conditions.

If the lien was fixed or attempted to be fixed, the owner of the real property affected by the lien could file a bond to indemnify against the lien. An action to establish, enforce, or foreclose any lien or claim of lien covered by the bond would have to be brought not later than the 30th day after the date of the service of notice of the bond. In addition to other conditions, the bond would have to be in an amount double the amount of the lien and be conditioned so that the bond would be payable to TCEQ the amount of the lien claimed, plus costs, if the lien was established or affirmed. TCEQ would be entitled to recover reasonable attorney's fees if the commission recovered in a suit on the lien or the bond.

Fees for the purchase of solvents. CSHB 3220 would amend sec. 374.103(a), Health and Safety Code by changing the fee for the purchase of perc from \$15 to \$20 per gallon and would lower the fee for the purchase of any other dry cleaning solvent from \$5 to \$3 per gallon. The fees would be collected by solvent distributors and remitted to the comptroller.

SB 444 refunds. CSHB 3220 would amend Health and Safety Code, sec. 374.104(b-1) to allow an owner of a dry cleaning facility who filed an option not to participate in DCRP to be entitled to a refund instead of a credit against future registration payments. The refund amount would be the extent that the registration fees paid in 2004 or 2005 exceeded the amount due for a nonparticipating dry cleaning facility or drop station. TCEQ would provide the comptroller with a list of persons eligible for a refund under not later than November 30, 2007, and the comptroller would pay each refund not later than December 31, 2007.

Portability of non-participation status. CSHB 3220 would amend Health and Safety Code, sec. 374.104 to allow an owner of a dry cleaning facility or a drop station who timely filed an option not to participate in DCRP could retain the same non-participation status if the person move d the facility or drop station to a new location. The dry cleaning or drop station owner would need to provide TCEQ with the written consent of the property owner of the new location and continue to comply with all legal and regulatory requirements.

Exemption from certain claims. CSHB 3220 would amend sec. 374.207, Health and Safety Code, and would prevent an administrative or judicial claim from being made under state law against the owner or other person by the state or any person, except a political subdivision, to compel

corrective action or seek recovery of the costs of correction action that result from release of controlled chemicals if the facility owner or a registered current or former property owner was eligible to have the corrective costs paid by the DCRP fund.

Site restrictions after corrective action. CSHB 3220 would add Health and Safety Code, sec. 374.1535 to prevent the use of perc at dry cleaning sites where TCEQ had completed a corrective environmental action. If the owner of the dry cleaning site used perc at the site after TCEQ had completed a corrective environmental action, the site would not be eligible for future corrective action using money from the DCRP fund.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

NOTES:

According to the Legislative Budget Board, CSHB 3220 would raise \$851,000 in fiscal 2008-09 for the Dry Cleaning Facility Release Account through the DCRP registration fee. The revenue gain would increase incrementally and is expected to reach \$516,000 annually in fiscal 2012.