

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 170
93RD GENERAL ASSEMBLY

Reported from the Committee on Ways and Means, March 14, 2005, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

0636S.04C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 260.900, 260.905, 260.925, 260.935, 260.940, 260.945, and 260.960, RSMo, and to enact in lieu thereof eight new sections relating to hazardous waste, with an emergency clause and an expiration date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 260.900, 260.905, 260.925, 260.935, 260.940, 260.945, and 260.960, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 260.900, 260.905, 260.925, 260.935, 260.940, 260.945, 260.960, and 260.965, to read as follows:

260.900. As used in sections 260.900 to 260.960, unless the context clearly indicates otherwise, the following terms mean:

- (1) "Abandoned dry-cleaning facility", any real property premises or individual leasehold space in which a dry-cleaning facility formerly operated;
- (2) "Active dry-cleaning facility", any real property premises or individual leasehold space in which a dry-cleaning facility currently operates;
- (3) "Chlorinated dry-cleaning solvent", any dry-cleaning solvent which contains a compound which has a molecular structure containing the element chlorine;
- (4) "Commission", the hazardous waste management commission created in section 260.365;
- (5) "Corrective action", those activities described in subsection 1 of section 260.925;
- (6) "Corrective action plan", a plan approved by the director to perform

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

corrective action at a dry-cleaning facility;

(7) "Department", the Missouri department of natural resources;

(8) "Director", the director of the Missouri department of natural resources;

(9) "Dry-cleaning facility", a commercial establishment that operates, or has operated in the past in whole or in part for the purpose of cleaning garments or other fabrics on site utilizing a process that involves any use of dry-cleaning solvents. Dry-cleaning facility includes all contiguous land, structures and other appurtenances and improvements on the land used in connection with a dry-cleaning facility but does not include prisons, governmental entities, hotels, motels or industrial laundries. Dry-cleaning facility does include coin-operated dry-cleaning facilities;

(10) "Dry-cleaning solvent", any and all nonaqueous solvents used or to be used in the cleaning of garments and other fabrics at a dry-cleaning facility and includes but is not limited to perchloroethylene, also known as tetrachloroethylene, [and petroleum-based solvents] **chlorinated dry-cleaning**, and the products into which such solvents degrade;

(11) "Dry-cleaning unit", a machine or device which utilizes dry-cleaning solvents to clean garments and other fabrics and includes any associated piping and ancillary equipment and any containment system;

(12) "Environmental response surcharge", either the active dry-cleaning facility registration surcharge or the dry-cleaning solvent surcharge;

(13) "Fund", the dry-cleaning environmental response trust fund created in section 260.920;

(14) "Immediate response to a release", containment and control of a known release in excess of a reportable quantity and notification to the department of any known release in excess of a reportable quantity;

(15) "Operator", any person who is or has been responsible for the operation of dry-cleaning operations at a dry-cleaning facility;

(16) "Owner", any person who owns the real property where a dry-cleaning facility is or has operated;

(17) "Person", an individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, association or limited liability company. Person does not include any governmental organization;

(18) "Release", any spill, leak, emission, discharge, escape, leak or disposal of dry-cleaning solvent from a dry-cleaning facility into the soils or waters of the

state;

(19) "Reportable quantity", a known release of a dry-cleaning solvent deemed reportable by applicable federal or state law or regulation.

260.905. 1. The commission shall promulgate and adopt such initial rules and regulations, effective no later than July 1, [2002] **2007**, as shall be necessary to carry out the purposes and provisions of sections 260.900 to 260.960. Prior to the promulgation of such rules, the commission shall meet with representatives of the dry-cleaning industry and other interested parties. The commission, thereafter, shall promulgate and adopt additional rules and regulations or change existing rules and regulations when necessary to carry out the purposes and provisions of sections 260.900 to 260.960.

2. Any rule or regulation adopted pursuant to sections 260.900 to 260.960 shall be reasonably necessary to protect human health, to preserve, protect and maintain the water and other natural resources of this state and to provide for prompt corrective action of releases from dry-cleaning facilities. Consistent with these purposes, the commission shall adopt rules and regulations, effective no later than July 1, [2002] **2007**:

(1) Establishing requirements that owners who close dry-cleaning facilities remove dry-cleaning solvents and wastes from such facilities in order to prevent any future releases;

(2) Establishing criteria to prioritize the expenditure of funds from the dry-cleaning environmental response trust fund. The criteria shall include consideration of:

(a) The benefit to be derived from corrective action compared to the cost of conducting such corrective action;

(b) The degree to which human health and the environment are actually affected by exposure to contamination;

(c) The present and future use of an affected aquifer or surface water;

(d) The effect that interim or immediate remedial measures will have on future costs; and

(e) Such additional factors as the commission considers relevant;

(3) Establishing criteria under which a determination may be made by the department of the level at which corrective action shall be deemed completed. Criteria for determining completion of corrective action shall be based on the factors set forth in subdivision (2) of this subsection and:

(a) Individual site characteristics including natural remediation processes;

(b) Applicable state water quality standards;

(c) Whether deviation from state water quality standards or from established criteria is appropriate, based on the degree to which the desired remediation level is achievable and may be reasonably and cost effectively implemented, subject to the limitation that where a state water quality standard is applicable, a deviation may not result in the application of standards more stringent than that standard; and

(d) Such additional factors as the commission considers relevant.

260.925. 1. On and after July 1, 2002, moneys in the fund shall be utilized to address contamination resulting from releases of dry-cleaning solvents as provided in sections 260.900 to 260.960. Whenever a release poses a threat to human health or the environment, the department, consistent with rules and regulations adopted by the commission pursuant to subdivisions (2) and (3) of subsection 2 of section 260.905, shall expend moneys available in the fund to provide for:

(1) Investigation and assessment of a release from a dry-cleaning facility, including costs of investigations and assessments of contamination which may have moved off of the dry-cleaning facility;

(2) Necessary or appropriate emergency action, including but not limited to treatment, restoration or replacement of drinking water supplies, to assure that the human health or safety is not threatened by a release or potential release;

(3) Remediation of releases from dry-cleaning facilities, including contamination which may have moved off of the dry-cleaning facility, which remediation shall consist of the preparation of a corrective action plan and the cleanup of affected soil, groundwater and surface waters, using an alternative that is cost-effective, technologically feasible and reliable, provides adequate protection of human health and environment and to the extent practicable minimizes environmental damage;

(4) Operation and maintenance of corrective action;

(5) Monitoring of releases from dry-cleaning facilities including contamination which may have moved off of the dry-cleaning facility;

(6) Payment of reasonable costs incurred by the director in providing field and laboratory services;

(7) Reasonable costs of restoring property as nearly as practicable to the condition that existed prior to activities associated with the investigation of a

release or cleanup or remediation activities;

(8) Removal and proper disposal of wastes generated by a release of a dry-cleaning solvent; and

(9) Payment of costs of corrective action conducted by the department or by entities other than the department but approved by the department, whether or not such corrective action is set out in a corrective action plan; except that, there shall be no reimbursement for corrective action costs incurred before August 28, 2000.

2. Nothing in subsection 1 of this section shall be construed to authorize the department to obligate moneys in the fund for payment of costs that are not integral to corrective action for a release of dry-cleaning solvents from a dry-cleaning facility. Moneys from the fund shall not be used:

(1) For corrective action at sites that are contaminated by solvents normally used in dry-cleaning operations where the contamination did not result from the operation of a dry-cleaning facility;

(2) For corrective action at sites, other than dry-cleaning facilities, that are contaminated by dry-cleaning solvents which were released while being transported to or from a dry-cleaning facility;

(3) To pay any fine or penalty brought against a dry-cleaning facility operator under state or federal law;

(4) To pay any costs related to corrective action at a dry-cleaning facility that has been included by the United States Environmental Protection Agency on the national priorities list;

(5) For corrective action at sites with active dry-cleaning facilities where the owner or operator is not in compliance with sections 260.900 to 260.960, rules and regulations adopted pursuant to sections 260.900 to 260.960, orders of the director pursuant to sections 260.900 to 260.960, or any other applicable federal or state environmental statutes, rules or regulations; or

(6) For corrective action at sites with abandoned dry-cleaning facilities that have been taken out of operation prior to July 1, [2004] **2009**, and not documented by or reported to the department by July 1, [2004] **2009**. Any person reporting such a site to the department shall include any available evidence that the site once contained a dry-cleaning facility.

3. Nothing in sections 260.900 to 260.960 shall be construed to restrict the department from temporarily postponing completion of corrective action for which moneys from the fund are being expended whenever such postponement is deemed

necessary in order to protect public health and the environment.

4. At any multisource site, the department shall utilize the moneys in the fund to pay for the proportionate share of the liability for corrective action costs which is attributable to a release from one or more dry-cleaning facilities and for that proportionate share of the liability only.

5. At any multisource site, the director is authorized to make a determination of the relative liability of the fund for costs of corrective action, expressed as a percentage of the total cost of corrective action at a site, whether known or unknown. The director shall issue an order establishing such percentage of liability. Such order shall be binding and shall control the obligation of the fund until or unless amended by the director. In the event of an appeal from such order, such percentage of liability shall be controlling for costs incurred during the pendency of the appeal.

6. Any authorized officer, employee or agent of the department, or any person under order or contract with the department, may enter onto any property or premises, at reasonable times and with reasonable advance notice to the operator, to take corrective action where the director determines that such action is necessary to protect the public health or environment. If consent is not granted by the operator regarding any request made by any officer, employee or agent of the department, or any person under order or contract with the department, under the provisions of this section, the director may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

7. Notwithstanding any other provision of sections 260.900 to 260.960, in the discretion of the director, an operator may be responsible for up to one hundred percent of the costs of corrective action attributable to such operator if the director finds, after notice and an opportunity for a hearing in accordance with chapter 536, RSMo, that:

(1) Requiring the operator to bear such responsibility will not prejudice another owner, operator or person who is eligible, pursuant to the provisions of sections 260.900 to 260.960, to have corrective action costs paid by the fund; and

(2) The operator:

(a) Caused a release in excess of a reportable quantity by willful or wanton actions and such release was caused by operating practices in violation of existing laws and regulations at the time of the release; or

(b) Is in arrears for moneys owed pursuant to sections 260.900 to 260.960, after notice and an opportunity to correct the arrearage; or

(c) Materially obstructs the efforts of the department to carry out its obligations pursuant to sections 260.900 to 260.960; except that, the exercise of legal rights shall not constitute a substantial obstruction; or

(d) Caused or allowed a release in excess of a reportable quantity because of a willful material violation of sections 260.900 to 260.960 or the rules and regulations adopted by the commission pursuant to sections 260.900 to 260.960.

8. For purposes of subsection 7 of this section, unless a transfer is made to take advantage of the provisions of subsection 7 of this section, purchasers of stock or other indicia of ownership and other successors in interest shall not be considered to be the same owner or operator as the seller or transferor of such stock or indicia of ownership even though there may be no change in the legal identity of the owner or operator. To the extent that an owner or operator is responsible for corrective action costs pursuant to subsection 7 of this section, such owner or operator shall not be entitled to the exemption provided in subsection 5 of section 260.930.

9. The fund shall not be liable for the payment of costs in excess of one million dollars at any one contaminated dry-cleaning site. Additionally, the fund shall not be liable for the payment of costs for any one site in excess of twenty-five percent of the total moneys in the fund during any fiscal year. For purposes of this subsection, "contaminated dry-cleaning site" means the areal extent of soil or ground water contaminated with dry-cleaning solvents.

10. The owner or operator of an active dry-cleaning facility shall be liable for the first twenty-five thousand dollars of corrective action costs incurred because of a release from an active dry-cleaning facility. The owner of an abandoned dry-cleaning facility shall be liable for the first twenty-five thousand dollars of corrective action costs incurred because of a release from an abandoned dry-cleaning facility. Nothing in this subsection shall be construed to prohibit the department from taking corrective action because the department cannot obtain the deductible.

260.935. 1. Every active dry-cleaning facility shall pay, in addition to any other environmental response surcharges, an annual dry-cleaning facility registration surcharge as follows:

(1) Five hundred dollars for facilities which use no more than one hundred forty gallons of chlorinated solvents [and no more than one thousand four

hundred gallons of petroleum, nonchlorinated solvents per year];

(2) One thousand dollars for facilities which use more than one hundred forty gallons of chlorinated solvents [or more than one thousand four hundred gallons of petroleum, nonchlorinated solvents per year] and less than three hundred sixty gallons of chlorinated solvents [and less than three thousand six hundred gallons of petroleum, nonchlorinated solvents] per year; and

(3) Fifteen hundred dollars for facilities which use at least three hundred sixty gallons of chlorinated solvents [or at least three thousand six hundred gallons of petroleum, nonchlorinated solvents] per year.

2. The active dry-cleaning facility registration surcharge imposed by this section shall be reported and paid to the department on an annual basis. The commission shall prescribe by administrative rule the procedure for the report and payment required by this section.

3. The department shall provide each person who pays a dry-cleaning facility registration surcharge pursuant to this section with a receipt. The receipt or the copy of the receipt shall be produced for inspection at the request of any authorized representative of the department.

4. All moneys collected or received by the department pursuant to this section shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the dry-cleaning environmental response trust fund created in section 260.920. Following each annual reporting date, the state treasurer shall certify the amount deposited in the fund to the department.

5. If any person does not pay the active dry-cleaning facility registration surcharge or any portion of the active dry-cleaning facility registration surcharge imposed by this section by the date prescribed for such payment, the department shall impose and such person shall pay, in addition to the active dry-cleaning facility registration surcharge owed by such person, a penalty of fifteen percent of the active dry-cleaning facility registration surcharge. Such penalty shall be deposited in the dry-cleaning environmental response trust fund.

6. If any person does not pay the active dry-cleaning facility registration surcharge or any portion of the active dry-cleaning facility registration surcharge imposed by this section by the date prescribed for such payment, the department shall also impose interest upon the unpaid amount at the rate of ten percent per annum from the date prescribed for the payment of such surcharge and penalties until payment is actually made. Such interest shall be deposited in the dry-cleaning environmental response trust fund.

260.940. 1. Every seller or provider of dry-cleaning solvent for use in this state shall pay, in addition to any other environmental response surcharges, a dry-cleaning solvent surcharge on the sale or provision of dry-cleaning solvent.

2. The amount of the dry-cleaning solvent surcharge imposed by this section on each gallon of dry-cleaning solvent shall be an amount equal to the product of the solvent factor for the dry-cleaning solvent and the rate of eight dollars per gallon.

3. The solvent factor for each dry-cleaning solvent is as follows:

(1) For perchloroethylene, the solvent factor is 1.00;

(2) For 1,1,1-trichloroethane, the solvent factor is 1.00; **and**

(3) For other chlorinated dry-cleaning solvents, the solvent factor is 1.00];

and

(4) For any nonchlorinated dry-cleaning solvent, the solvent factor is 0.05].

4. In the case of a fraction of a gallon, the dry-cleaning solvent surcharge imposed by this section shall be the same fraction of the fee imposed on a whole gallon.

5. The dry-cleaning solvent surcharge required in this section shall be paid to the department by the seller or provider of the dry-cleaning solvent, regardless of the location of such seller or provider.

6. The dry-cleaning solvent surcharge required in this section shall be paid by the seller or provider on a quarterly basis and shall be paid to the department for the previous quarter. The commission shall prescribe by administrative rule the procedure for the payment required by this section.

7. The department shall provide each person who pays a dry-cleaning solvent surcharge pursuant to this section with a receipt. The receipt or the copy of the receipt shall be produced for inspection at the request of any authorized representative of the department.

8. All moneys collected or received by the department pursuant to this section shall be transmitted to the department of revenue for deposit in the state treasury to the credit of the dry-cleaning environmental response trust fund created in section 260.920. Following each annual or quarterly reporting date, the state treasurer shall certify the amount deposited to the department.

9. If any seller or provider of dry-cleaning solvent fails or refuses to pay the dry-cleaning solvent surcharge imposed by this section, the department shall impose and such seller or provider shall pay, in addition to the dry-cleaning

solvent surcharge owed by the seller or provider, a penalty of fifteen percent of the dry-cleaning solvent surcharge. Such penalty shall be deposited in the dry-cleaning environmental response trust fund.

10. If any person does not pay the dry-cleaning solvent surcharge or any portion of the dry-cleaning solvent surcharge imposed by this section by the date prescribed for such payment, the department shall impose and such person shall pay interest upon the unpaid amount at the rate of ten percent per annum from the date prescribed for the payment of such surcharge and penalties until payment is actually made. Such interest shall be deposited in the dry-cleaning environmental response trust fund.

11. An operator of a dry-cleaning facility shall not purchase or obtain solvent from a seller or provider who does not pay the dry-cleaning solvent charge, as provided in this section. Any operator of a dry-cleaning facility who fails to obey the provisions of this section shall be required to pay the dry-cleaning solvent surcharge as provided in subsections 2, 3 and 4 of this section for any dry-cleaning solvent purchased or obtained from a seller or provider who fails to pay the proper dry-cleaning solvent surcharge as determined by the department. Any operator of a dry-cleaning facility who fails to follow the provisions of this subsection shall also be charged a penalty of fifteen percent of the dry-cleaning solvent surcharge owed. Any operator of a dry-cleaning facility who fails to obey the provisions of this subsection shall also be subject to the interest provisions of subsection 10 of this section. If a seller or provider of dry-cleaning solvent charges the operator of a dry-cleaning facility the dry-cleaning solvent surcharge provided for in this section when the solvent is purchased or obtained by the operator and the operator can prove that the operator made full payment of the surcharge to the seller or provider but the seller or provider fails to pay the surcharge to the department as required by this section, then the operator shall not be liable pursuant to this subsection for interest, penalties or the seller's or provider's unpaid surcharge. Such surcharges, penalties and interest shall be collected by the department, and all moneys collected pursuant to this subsection shall be deposited in the dry-cleaning environmental response trust fund.

260.945. 1. If the unobligated principal of the fund equals or exceeds five million dollars on April first of any year, the active dry-cleaning facility registration surcharge imposed by section 260.935 and the dry-cleaning solvent surcharge imposed by section 260.940 shall not be collected on or after the next

July first until such time as on April first of any year thereafter the unobligated principal balance of the fund equals two million dollars or less, then the active dry-cleaning facility registration surcharge imposed by section 260.935 and the dry-cleaning solvent surcharge imposed by section 260.940 shall again be collected on and after the next July first.

2. Not later than April fifth of each year, the state treasurer shall notify the department of the amount of the unobligated balance of the fund on April first of such year. Upon receipt of the notice, the department shall notify the public if the active dry-cleaning facility registration surcharge imposed by section 260.935 and the dry-cleaning solvent surcharge imposed by section 260.940 will terminate or be payable on the following July first.

3. Moneys in the fund shall not be expended pursuant to sections 260.900 to 260.960 prior to July 1, 2002.

260.960. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after [August 28, 2000,] **the effective date of this act** shall be invalid and void.

260.965. The provisions of sections 260.900 to 260.965 shall expire August 28, 2012.

Section B. Because immediate action is necessary to enable the promulgation of regulations to implement this act and to preserve the environment, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect upon its passage and approval.