

AN ACT

relating to the environmental regulation and remediation of certain dry cleaning facilities; providing penalties.

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

SECTION 1. Subtitle B, Title 5, Health and Safety Code, is amended by adding Chapter 374 to read as follows:

CHAPTER 374. DRY CLEANER ENVIRONMENTAL RESPONSE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 374.001. DEFINITIONS. In this chapter:

(1) "Carbon dioxide facility" means a dry cleaning facility that:

(A) is equipped for and uses the dry cleaning solvent carbon dioxide; and

(B) is owned by a person who has not used or allowed the use of the dry cleaning solvent perchloroethylene at any other dry cleaning facility in this state.

(2) "Chlorinated dry cleaning solvent" means any dry cleaning solvent that contains a compound that has a molecular structure containing the element chlorine.

(3) "Commission" means the Texas Commission on Environmental Quality.

(4) "Corrective action" means those activities described by Section 374.152 or 374.153.

(5) "Corrective action plan" means a plan approved by

1 the commission to perform corrective action at a dry cleaning
2 facility.

3 (6) "Dry cleaning drop station" means a retail
4 commercial establishment that acts as a collection point for the
5 drop-off and pick-up of garments or other fabrics that are sent to a
6 dry cleaning facility for processing.

7 (7) "Dry cleaning facility" means:

8 (A) a retail commercial establishment that
9 operates, or has operated, in whole or in part for the purpose of
10 cleaning garments or other fabrics using a process that involves
11 any use of dry cleaning solvents;

12 (B) all contiguous land used in connection with
13 the establishment; and

14 (C) all structures and other appurtenances and
15 improvements located on the contiguous land and used in connection
16 with the establishment.

17 (8) "Dry cleaning solvent" includes:

18 (A) perchloroethylene, also known as
19 tetrachloroethylene, petroleum-based solvents, hydrocarbons,
20 silicone-based solvents, and other nonaqueous solvents used in the
21 cleaning of garments or other fabrics at a dry cleaning facility;
22 and

23 (B) the chemicals and compounds into which the
24 solvents degrade.

25 (9) "Dry cleaning unit" means a machine or device that
26 uses dry cleaning solvents to clean garments and other fabrics and
27 any piping, ancillary equipment, and containment system associated

1 with the machine or device.

2 (10) "Executive director" means the executive
3 director of the commission.

4 (11) "Fund" means the dry cleaning facility release
5 fund.

6 (12) "Owner" means a person who owns or leases, or has
7 owned or leased, a dry cleaning facility and who is or has been
8 responsible for the operation of dry cleaning operations at the dry
9 cleaning facility.

10 (13) "Release" means a spill, emission, discharge,
11 escape, leak, or disposal of dry cleaning solvent from a dry
12 cleaning facility into the soil or water of the state.

13 Sec. 374.002. APPLICABILITY OF OTHER LAW. To the extent
14 that this chapter is inconsistent or in conflict with Chapter 361 or
15 other general law, this chapter prevails.

16 Sec. 374.003. APPLICABILITY TO GOVERNMENTAL BODIES. This
17 chapter does not apply to:

18 (1) a governmental entity, including a governmental
19 agency or prison; or

20 (2) a political subdivision of this state, including a
21 municipality or a conservation and reclamation district created
22 under Section 59, Article XVI, Texas Constitution, that owns or
23 operates a wholesale or retail water supply system, public solid
24 waste system, public storm water and drainage system, or public
25 solid waste disposal system.

26 Sec. 374.004. ADVISORY COMMITTEE. (a) The executive
27 director shall appoint an advisory committee composed of:

1 (1) three representatives of the dry cleaning industry
2 who shall provide professional and practical expertise to the
3 commission;

4 (2) one public representative of urban areas; and

5 (3) one public representative of rural areas.

6 (b) The advisory committee shall:

7 (1) review and comment on the methodology the
8 commission uses to rank contaminated sites under Section 374.154;

9 (2) review and comment on the report the commission
10 prepares each biennium under Section 374.056; and

11 (3) assist in the development of rules to implement
12 this chapter.

13 (c) A member of the committee serves at the will of the
14 executive director.

15 [Sections 374.005–374.050 reserved for expansion]

16 SUBCHAPTER B. RULES, STANDARDS, CRITERIA, AND REPORTS

17 Sec. 374.051. COMMISSION RULES AND STANDARDS. (a) The
18 commission shall adopt rules necessary to administer and enforce
19 this chapter. Rules adopted under this section must be reasonably
20 necessary:

21 (1) to preserve, protect, and maintain the water and
22 other natural resources of this state; and

23 (2) to provide for prompt corrective action of
24 releases from dry cleaning facilities.

25 (b) The commission shall adopt rules that establish:

26 (1) performance standards for dry cleaning
27 facilities;

1 (2) requirements for the removal of dry cleaning
2 solvents and wastes from dry cleaning facilities that are to be
3 closed by the owner to prevent future releases;

4 (3) criteria to be used in setting priorities for the
5 expenditure of money from the fund after consideration of:

6 (A) the benefit to be derived from corrective
7 action compared to the cost of implementing the corrective action;

8 (B) the degree to which human health and the
9 environment are affected by exposure to contamination;

10 (C) the present and reasonably foreseeable
11 future uses of affected surface water or groundwater;

12 (D) the effect that interim or immediate remedial
13 measures may have on future costs;

14 (E) the amount of money available for corrective
15 action in the fund; and

16 (F) any additional factors the commission
17 considers relevant; and

18 (4) criteria under which the commission may determine
19 the level at which corrective action is considered to be complete.

20 Sec. 374.052. FACILITY RETROFITTING. (a) The commission
21 by rule shall require dry cleaning facilities operating on or
22 before January 1, 2004, to implement the performance standards
23 adopted under Section 374.053 not later than January 1, 2006.

24 (b) The commission by rule may exempt businesses whose
25 annual gross receipts are \$200,000 or less from the requirements of
26 Subsection (a) on the basis of financial hardship.

27 (c) This section expires January 1, 2007.

1 Sec. 374.053. PERFORMANCE STANDARDS FOR NEW DRY CLEANING
2 FACILITIES. (a) The commission by rule shall adopt performance
3 standards for a new dry cleaning facility.

4 (b) Rules adopted under this section must allow for the use
5 of new technologies as they become available.

6 (c) Rules adopted under this section must require:

7 (1) proper storage and disposal of wastes generated at
8 the facility that contain any quantity of dry cleaning solvent;

9 (2) compliance with emissions standards for hazardous
10 air pollutants for perchloroethylene dry cleaning facilities
11 adopted by the United States Environmental Protection Agency on
12 September 22, 1993;

13 (3) dikes or other containment structures to be:

14 (A) installed around each dry cleaning unit that
15 uses chlorinated dry cleaning solvents and each storage area for
16 chlorinated dry cleaning solvents or waste; and

17 (B) capable of containing any leak, spill, or
18 release of dry cleaning solvent;

19 (4) all diked floor surfaces on which any chlorinated
20 dry cleaning solvent may leak, spill, or otherwise be released to be
21 made of epoxy, steel, or another material impervious to dry
22 cleaning solvents; and

23 (5) all chlorinated dry cleaning solvents to be
24 delivered to dry cleaning facilities by means of closed,
25 direct-coupled delivery systems, when those systems have become
26 generally available.

27 (d) Rules adopted under this section shall ensure that

1 wastewater from a dry cleaning unit or discharge of dry cleaning
2 solvent is not discharged to a sanitary sewer, to a septic tank, or
3 to water of this state.

4 Sec. 374.054. COMPLETION CRITERIA. (a) In determining
5 whether a corrective action is complete, the commission shall
6 consider the factors listed under Section 374.051(b)(3) and:

7 (1) individual site characteristics, including
8 natural remediation processes;

9 (2) state water quality standards;

10 (3) whether deviation from state water quality
11 standards or from established criteria is appropriate, based on the
12 degree to which the desired remediation level is achievable and may
13 be reasonably and cost-effectively implemented; and

14 (4) additional factors the commission considers
15 relevant.

16 (b) In considering a deviation under Subsection (a)(3), a
17 deviation from a state water quality standard may not result in the
18 application of a standard that is more stringent than the
19 applicable standard.

20 Sec. 374.055. CRITERIA FOR ADMINISTRATION OF CHAPTER. (a)
21 The commission shall administer this chapter in accordance with
22 this section.

23 (b) To the maximum extent possible, the commission shall
24 deal with contamination from dry cleaning facilities by using money
25 in the fund.

26 (c) The commission shall use money from the fund as sites
27 are discovered in the normal course of the commission's business.

1 (d) The commission shall consider interim or early
2 corrective action that may result in an overall reduction of risk to
3 human health and the environment and in the reduction of total costs
4 of corrective action at a site.

5 (e) The commission, in its discretion, may use innovative
6 technology to perform corrective action.

7 (f) To the maximum extent possible, money in the fund must
8 be used to address contamination resulting from releases.

9 Sec. 374.056. REPORT TO GOVERNOR AND LEGISLATURE. On or
10 before December 1 of each even-numbered year, the executive
11 director shall submit to the governor, lieutenant governor, speaker
12 of the house of representatives, and members of the appropriate
13 standing committees of the senate and the house of representatives
14 a report regarding:

15 (1) money deposited to the credit of the fund during
16 the two previous fiscal years and the sources of the receipts;

17 (2) disbursements from the fund during the two
18 previous fiscal years and the purposes of the disbursements;

19 (3) the extent of corrective action taken under this
20 chapter during the two previous fiscal years; and

21 (4) the ranking of sites on the date the report is
22 made.

23 [Sections 374.057-374.100 reserved for expansion]

24 SUBCHAPTER C. FINANCIAL PROVISIONS

25 Sec. 374.101. DRY CLEANING FACILITY RELEASE FUND. (a) The
26 dry cleaning facility release fund is an account in the general
27 revenue fund.

1 (b) The fund consists of money from:

2 (1) proceeds from the charges and fees imposed by this
3 chapter;

4 (2) interest attributable to investment of money in
5 the fund;

6 (3) money recovered by the state under this chapter,
7 including any money paid under an agreement with the commission or
8 as civil penalties; and

9 (4) money received by the commission in the form of
10 gifts, grants, reimbursements, or appropriations from any source
11 intended to be used for the purposes of this chapter.

12 (c) Money in the fund may be appropriated only to the
13 commission for the purposes of this chapter, including any
14 administrative duty imposed on the commission under this chapter.

15 (d) Before September 1, 2005, the commission may annually
16 spend for administrative and start-up expenses incurred in
17 fulfilling its duties under this chapter an amount of money from the
18 fund not to exceed 15 percent of the amount of money credited to the
19 fund in the same fiscal year as the expenditures. Beginning on
20 September 1, 2005, the commission may spend from the fund for those
21 expenses an amount not to exceed 10 percent of the amount of money
22 credited to the fund in the same fiscal year.

23 (e) Subject to the limitations of this chapter, the
24 commission shall use only money from the fund to pay for all
25 expenses incurred by the commission in fulfilling its duties under
26 this chapter.

27 (f) Section 403.095, Government Code, does not apply to

1 money deposited to the fund.

2 Sec. 374.102. REGISTRATION; FEE; POSTING. (a) Each owner
3 of an operating dry cleaning facility or dry cleaning drop station
4 shall register with the commission on a form provided by the
5 commission.

6 (b) Except for a carbon dioxide facility, the registration
7 must be accompanied by a fee of:

8 (1) \$250 for:

9 (A) a dry cleaning facility with gross annual
10 receipts of \$100,000 or less; or

11 (B) a dry cleaning facility designated as
12 nonparticipating under Section 374.104;

13 (2) \$1,000 for a dry cleaning drop station, except
14 that the fee for a drop station is \$250 if the drop station is not
15 owned by the owner of the dry cleaning facility; or

16 (3) \$2,500 for a dry cleaning facility with gross
17 annual receipts of more than \$100,000.

18 (c) Fees paid under this section shall be deposited to the
19 credit of the fund.

20 (d) The owner of a dry cleaning facility shall post the
21 owner's registration number, in a manner prescribed by the
22 commission, in the public area of each of the owner's operating dry
23 cleaning facilities.

24 (e) Registration under this section must be renewed
25 annually.

26 Sec. 374.103. FEE ON PURCHASE OF DRY CLEANING SOLVENT;
27 DISPOSITION OF PROCEEDS. (a) Except as provided by Subsection (b)

1 and Section 374.104(d), a fee of \$15 per gallon is imposed on the
2 purchase of the dry cleaning solvent perchloroethylene and \$5 per
3 gallon on the purchase of any other dry cleaning solvent by an owner
4 of a dry cleaning facility. The person who distributes the solvent
5 shall pay the fee to the commission.

6 (b) Subsection (a) does not apply to:

7 (1) an owner who has never used or allowed the use of
8 the dry cleaning solvent perchloroethylene at a dry cleaning
9 facility in this state; or

10 (2) the purchase of the dry cleaning solvent carbon
11 dioxide.

12 (c) A person who distributes dry cleaning solvent may not
13 sell the solvent for use in a dry cleaning facility unless the
14 person first obtains and records the registration number of the
15 owner of the facility.

16 (d) The commission shall adopt any procedures needed for the
17 collection, administration, and enforcement of the fee imposed by
18 this section and shall deposit all remitted fees to the credit of
19 the fund.

20 Sec. 374.104. OPTION NOT TO PARTICIPATE IN FUND BENEFITS.

21 (a) The owner of a dry cleaning facility may file with the
22 commission an option for the facility not to participate in fund
23 benefits.

24 (b) An option not to participate must be filed before
25 January 1, 2004.

26 (c) The commission shall designate a facility as
27 nonparticipating if the owner demonstrates, at the owner's expense

1 and in accordance with commission rules, that the owner has never
2 used or allowed the use of the dry cleaning solvent
3 perchloroethylene at any dry cleaning facility in this state. The
4 owner must also agree that perchloroethylene will not be used as a
5 dry cleaning solvent at the facility.

6 (d) A facility designated as nonparticipating is not
7 subject to the fees on dry cleaning solvents, other than
8 perchloroethylene, under Section 374.103.

9 (e) On payment of the registration fee, the commission shall
10 issue a specially marked registration document to the owner of a
11 nonparticipating facility. The owner shall post the registration
12 document in the public area of the facility.

13 (f) After a facility is designated as nonparticipating:

14 (1) the owner of the facility is not eligible for any
15 expenditures of money from the fund or other benefits of
16 participation under this chapter for that facility; and

17 (2) that facility may not later become a participating
18 facility.

19 Sec. 374.105. NEW DRY CLEANING FACILITY BOND; EXCEPTION.

20 (a) The owner of a dry cleaning facility for which the owner has
21 filed with the commission under Section 374.104 an option not to
22 participate and which begins operation on or after September 1,
23 2003, shall furnish to the commission a bond or other financial
24 assurance authorized by the commission in the amount of \$500,000 to
25 guarantee costs of any future corrective action that may be
26 required at the facility.

27 (b) The commission shall return the bond posted under this

1 section on the second anniversary of the date of closing of the dry
2 cleaning facility for use as a dry cleaning facility if the
3 commission has certified that corrective action is not required at
4 the facility.

5 (c) This section does not apply to a carbon dioxide facility
6 that begins operation on or after September 1, 2003.

7 [Sections 374.106-374.150 reserved for expansion]

8 SUBCHAPTER D. RESPONSE TO RELEASE; CORRECTIVE ACTION

9 Sec. 374.151. RESPONSE TO RELEASE. (a) A person may not
10 intentionally allow a release.

11 (b) A person who knows of a release over a 24-hour period of
12 more than one quart of a chlorinated dry cleaning solvent or of more
13 than one gallon of a non-chlorinated dry cleaning solvent shall:

14 (1) immediately contain and control the release; and

15 (2) notify the commission of the release before the
16 expiration of 48 hours after the person learns of the release.

17 Sec. 374.152. INVESTIGATION AND ASSESSMENT OF RELEASE;
18 EMERGENCY ACTION. (a) If a release or a potential release poses a
19 threat to human health or to the environment, the commission shall:

20 (1) investigate and assess the extent of the resulting
21 contamination; and

22 (2) take necessary or appropriate emergency action to
23 ensure that human health or safety is not threatened by the release
24 or the potential release.

25 (b) Emergency action under Subsection (a)(2) may include
26 the treatment, restoration, or replacement of drinking water
27 supplies.

1 Sec. 374.153. CORRECTIVE ACTION. (a) Subject to
2 Subchapter E, the commission shall take corrective action for a
3 release from a dry cleaning facility that results in contamination,
4 including contamination that may have moved off the dry cleaning
5 facility.

6 (b) Corrective action includes the cleanup of affected
7 soil, groundwater, or surface water using the most cost-effective
8 method that:

9 (1) is technologically feasible and reliable;

10 (2) provides adequate protection of human health and
11 the environment; and

12 (3) minimizes, to the extent practical, environmental
13 damage.

14 (c) The commission shall:

15 (1) operate and maintain corrective action;

16 (2) monitor releases from a dry cleaning facility,
17 including contamination that may have moved off the dry cleaning
18 facility;

19 (3) pay the reasonable costs incurred by the
20 commission in providing field and laboratory services; and

21 (4) pay the reasonable costs of restoring property, as
22 nearly as practicable, to the conditions that existed before the
23 activities associated with:

24 (A) the investigation of a release;

25 (B) a cleanup; or

26 (C) related corrective action.

27 (d) The commission shall ensure the removal and proper

1 disposal of wastes generated by a release.

2 (e) Except as provided by Subchapter E, the commission shall
3 pay the costs of corrective action conducted under this subchapter
4 by the commission or by other entities approved by the commission,
5 regardless of whether the corrective action is included in a
6 corrective action plan.

7 Sec. 374.154. RANKING OF CONTAMINATED DRY CLEANING SITES.

8 (a) For a contaminated dry cleaning site that does not require
9 emergency action under Section 374.152, the commission shall assign
10 a rank for the site relative to other sites previously ranked and
11 awaiting corrective action based on information contained in the
12 application for ranking.

13 (b) The following persons are eligible to apply for a site
14 to be ranked under Subsection (a):

15 (1) a person who is an owner of the dry cleaning
16 facility; and

17 (2) a person who is and has been an owner of the real
18 property on which the facility is located for not less than five
19 years as of the date the application for ranking is submitted.

20 (c) If the applicant for ranking:

21 (1) is not an owner of the real property, the
22 application must include proof that an owner of the real property
23 has been notified of the application; or

24 (2) is an owner of the real property and the facility
25 is leased, the application must include proof that a lessee has been
26 notified of the application.

27 (d) The application for ranking must contain information

1 and evidence required by commission rule to aid in ranking. The
2 information and evidence required may include:

- 3 (1) water or soil samples;
4 (2) analyses of the water or soil samples;
5 (3) hydrogeologic information from the contaminated
6 site;
7 (4) information concerning the site's proximity to a
8 private or public water supply; and
9 (5) other information or evidence the commission
10 considers necessary.

11 (e) The costs incurred by an applicant in collecting the
12 information and evidence under Subsection (d) shall be credited
13 against the deductible payable by the applicant under Section
14 374.203(d).

15 (f) The commission shall notify the applicant of the
16 relative ranking the commission assigns the applicant's site on or
17 before the 90th day after the date the application is received by
18 the commission.

19 Sec. 374.155. POWER TO MODIFY COMMISSION RANKINGS OR
20 POSTPONE CORRECTIVE ACTIONS. The commission may:

21 (1) modify the ranked status of a site as warranted
22 under the system of priorities established under Section
23 374.051(b)(3); or

24 (2) postpone temporarily the completion of a
25 corrective action for which money from the fund is being used, if
26 the postponement is necessary to make money available for
27 corrective action at a site with a higher ranking.

1 Sec. 374.156. ENTRY ONTO PROPERTY. (a) An authorized
2 officer, employee, or agent of the commission, or a person under
3 order of or contract with the commission, at reasonable times and on
4 written notice to the owner or occupant of any property or premises,
5 may enter onto the property or premises to take corrective action if
6 the executive director determines that the action is necessary to
7 protect the public health or environment.

8 (b) If consent to enter is not granted by the person in
9 control of a site that is the subject of a notice under this
10 section, the commission may issue an order directing compliance
11 with the notice. The order may be issued only after providing the
12 notice and opportunity for consultation that are reasonably
13 appropriate under the circumstances.

14 [Sections 374.157-374.200 reserved for expansion]

15 SUBCHAPTER E. LIABILITY AND RESPONSIBILITY

16 Sec. 374.201. PROPORTIONATE SHARE OF LIABILITY. (a) At a
17 site with more than one source of contamination, the commission
18 may:

19 (1) use money in the fund to pay only for the
20 proportionate share of the liability for corrective action costs
21 that is attributable to a release or releases from one or more dry
22 cleaning facilities; and

23 (2) determine the relative liability of the fund for
24 costs of corrective action, expressed as a percentage of the total
25 cost of corrective action at a site, whether known or unknown.

26 (b) The commission shall issue an order establishing the
27 percentage of liability. The order is binding and controls the

1 obligation of the fund unless amended by the commission. If an
2 appeal from the order is made, the percentage of liability
3 established by the order must control for costs incurred while the
4 appeal is pending.

5 Sec. 374.202. OWNER RESPONSIBILITY. (a) The commission
6 may hold an owner responsible for up to 100 percent of the costs of
7 corrective action attributable to the owner if the commission
8 finds, after notice and an opportunity for a hearing that:

9 (1) requiring the owner to bear the responsibility
10 will not prejudice another owner or person who is eligible, under
11 this chapter, to have corrective action costs paid by the fund; and

12 (2) the owner:

13 (A) caused a release by operating practices
14 contrary to those generally in use at the time of the release;

15 (B) is in arrears for money owed under this
16 chapter, after notice and an opportunity to correct the arrearage;

17 (C) obstructed the efforts of the commission to
18 carry out its obligations under this chapter other than by the
19 exercise of the owner's legal rights;

20 (D) caused or allowed the release because of a
21 material violation of the performance standards established by this
22 chapter or the rules adopted by the commission under this chapter;

23 or

24 (E) has more than once violated Section 374.151
25 or related commission rules.

26 (b) To the extent that an owner is responsible for
27 corrective action costs under this subsection, the owner is not

1 entitled to the exemption under Section 374.207.

2 Sec. 374.203. LIMITATION ON USE OF FUND FOR CORRECTIVE
3 ACTION. (a) In this section, "contaminated dry cleaning site"
4 means the areal extent of soil or groundwater contamination with
5 dry cleaning solvents.

6 (b) The commission may not use money from the fund for the
7 payment of costs in excess of \$5 million for corrective action at a
8 single contaminated dry cleaning site.

9 (c) The commission may not use money from the fund for
10 corrective action at a contaminated dry cleaning site unless:

11 (1) the owner applies for the ranking under Section
12 374.154 and is not otherwise ineligible for corrective action under
13 this chapter; or

14 (2) at the time corrective action is to begin, the real
15 property at the site has been under the same ownership for not less
16 than five years.

17 (d) The owner of a dry cleaning facility, or other person
18 who submits the application for ranking the facility under Section
19 374.154, shall pay as a deductible the first \$5,000 of corrective
20 action costs incurred because of a release from the dry cleaning
21 facility. The commission may take corrective action regardless of
22 whether the commission obtains the deductible.

23 Sec. 374.204. LIMITATION ON LIABILITY. The fund, the
24 commission, the executive director, this state, or agents or
25 employees of this state may not be held liable for loss of business,
26 damages, or taking of property associated with any corrective
27 action taken under this chapter.

1 Sec. 374.205. LIMITATION ON USE OF FUND FOR THIRD
2 PARTIES. Money from the fund may not be used to compensate third
3 parties for bodily injury or property damage caused by a release,
4 other than property damage included in a corrective action plan
5 approved by the commission.

6 Sec. 374.206. USE OF OTHER SOURCES OF MONEY. This chapter
7 does not create a liability or responsibility on the part of the
8 commission, the executive director, this state, or agents or
9 employees of this state to pay any corrective action costs from a
10 source other than the fund or to take corrective action if the
11 amount of money in the fund is insufficient.

12 Sec. 374.207. ELIGIBLE OWNER EXEMPT FROM CERTAIN CLAIMS.
13 If an owner or other person is eligible under this chapter to have
14 corrective action costs paid by the fund, an administrative or
15 judicial claim may not be made under state law against the owner or
16 other person by or on behalf of this state or by any other person,
17 except a political subdivision, to compel corrective action or seek
18 recovery of the costs of corrective action that result from the
19 release.

20 Sec. 374.208. UNAUTHORIZED PAYMENTS. (a) The commission
21 may pay costs from the fund under this chapter only if the costs
22 are:

23 (1) integral to corrective action for a release; or
24 (2) required for the administration or enforcement of
25 this chapter.

26 (b) The commission may not spend money from the fund:

27 (1) for corrective action at a site contaminated by

1 solvents normally used in dry cleaning operations, if the
2 contamination did not result from the operation of a dry cleaning
3 facility;

4 (2) for corrective action at a site, other than a dry
5 cleaning facility, that is contaminated by dry cleaning solvents
6 that were released while being transported to or from a dry cleaning
7 facility by a person other than the owner of the dry cleaning
8 facility or the owner's agents or employees; or

9 (3) for the payment of any costs:

10 (A) associated with a fine or penalty brought
11 against a dry cleaning facility owner under state or federal law; or

12 (B) related to corrective action at a dry
13 cleaning facility that:

14 (i) has been included by the United States
15 Environmental Protection Agency on the national priorities list; or

16 (ii) is a hazardous waste facility eligible
17 for listing on the state registry under Subchapter F, Chapter 361.

18 [Sections 374.209-374.250 reserved for expansion]

19 SUBCHAPTER F. REVIEW OF ORDERS AND DECISIONS; VIOLATIONS;

20 PENALTIES; EXPIRATION

21 Sec. 374.251. REVIEW OF ORDERS AND DECISIONS. (a) A person
22 affected by an order or decision of the commission under this
23 chapter may, on or before the 15th day after the date of service of
24 the order or decision, make a written request for a hearing.

25 (b) A person affected by the decision in an administrative
26 hearing under Subsection (a) is entitled to judicial review and may
27 appeal the decision on or before the 31st day after the date on

1 which the decision was rendered.

2 Sec. 374.252. VIOLATIONS; PENALTIES. A person is subject
3 to an administrative penalty under Section 7.0525, Water Code, if
4 the person:

5 (1) operates a dry cleaning facility in violation of
6 this chapter, rules adopted under this chapter, or orders of the
7 commission made under this chapter;

8 (2) prevents or hinders a properly identified
9 authorized officer, employee, or agent of the commission, or a
10 properly identified person under order of or contract with the
11 commission, from entering, inspecting, sampling, or responding to a
12 release as authorized by this chapter;

13 (3) knowingly makes any false material statement or
14 representation in any record, report, or other document filed,
15 maintained, or used for the purpose of compliance with this
16 chapter;

17 (4) knowingly destroys, alters, or conceals any record
18 that this chapter or rules adopted under this chapter require to be
19 maintained; or

20 (5) violates Section 374.151 or related commission
21 rules.

22 Sec. 374.253. EXPIRATION. (a) This chapter expires on
23 September 1, 2021.

24 (b) A corrective action, including any administrative
25 duties associated with the action, for which remediation of a
26 contaminated site has begun before September 1, 2021, shall be
27 completed in accordance with this chapter using money from the

1 fund, to the extent possible, but money may not be collected for or
2 added to the fund on or after that date.

3 (c) A corrective action that has not progressed beyond the
4 investigative or planning stage on September 1, 2021, may not be
5 paid for using money from the fund.

6 (d) Any unobligated money remaining in the fund after the
7 completion of all corrective actions under Subsection (b) shall be
8 transferred to the general revenue fund to the credit of the
9 commission or a successor agency. The fund is abolished on the date
10 of the transfer.

11 SECTION 2. Subchapter C, Chapter 7, Water Code, is amended
12 by adding Section 7.0525 to read as follows:

13 Sec. 7.0525. PENALTIES FOR VIOLATIONS RELATED TO CERTAIN
14 DRY CLEANING FACILITIES. (a) Except as provided by Subsection (b),
15 the amount of the penalty for a violation of Section 374.252, Health
16 and Safety Code, may not exceed \$5,000.

17 (b) The amount of the penalty for a violation of Section
18 374.252(a)(1), Health and Safety Code, may not exceed \$1,000.

19 (c) In assessing an administrative penalty under this
20 section, the commission shall consider, in addition to the factors
21 prescribed by Section 7.053, the following factors, if applicable:

22 (1) the extent to which the violation has or may have
23 an adverse effect on the environment; and

24 (2) the amount of the reasonable costs incurred by
25 this state in detection and investigation of the violation.

26 SECTION 3. (a) Not later than December 1, 2003, the Texas
27 Commission on Environmental Quality shall adopt any rules,

1 performance standards, or forms required for the implementation of
2 Chapter 374, Health and Safety Code, as added by this Act.

3 (b) Performance standards for new dry cleaning facilities
4 under Section 374.053, Health and Safety Code, as added by this Act,
5 apply only to a dry cleaning facility first brought into use on or
6 after April 1, 2004.

7 (c) The changes in law made by Sections 374.204 and 374.207,
8 Health and Safety Code, as added by this Act, apply only to a cause
9 of action that accrues on or after January 1, 2004, and before
10 September 1, 2021. A cause of action that accrued before January 1,
11 2004, or after September 1, 2021, is subject to the law governing
12 the action that was in effect when the action accrued, and that law
13 is continued in effect for that purpose.

14 (d) Chapter 374, Health and Safety Code, as added by this
15 Act, does not apply to any corrective actions taken by the Texas
16 Commission on Environmental Quality at a dry cleaning facility as
17 defined by Section 374.001, Health and Safety Code, as added by this
18 Act, before the effective date of this Act.

19 SECTION 4. (a) Except as provided by this section, this Act
20 takes effect September 1, 2003.

21 (b) Before January 1, 2005, the Texas Commission on
22 Environmental Quality shall limit disbursements from the dry
23 cleaning facility release fund to those disbursements allowed by
24 Section 374.101(d), Health and Safety Code, as added by this Act.

25 (c) Disbursements from the dry cleaning facility release
26 fund for a corrective action taken under Chapter 374, Health and
27 Safety Code, as added by this Act, may not begin before January 1,

1 2005.

2 (d) Sections 374.056, 374.204, 374.207, and 374.252, Health
3 and Safety Code, as added by this Act, take effect January 1, 2004.

H.B. No. 1366

President of the Senate

Speaker of the House

I certify that H.B. No. 1366 was passed by the House on May 8, 2003, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 1366 was passed by the Senate on May 22, 2003, by a viva-voce vote.

Secretary of the Senate

APPROVED: _____

Date

Governor