

HEALTH AND SAFETY CODE CHAPTER 374. DRY CLEANER ENVIRONMENTAL RESPONSE

HEALTH AND SAFETY CODE

TITLE 5. SANITATION AND ENVIRONMENTAL QUALITY

SUBTITLE B. SOLID WASTE, TOXIC CHEMICALS, SEWAGE, LITTER, AND WATER

CHAPTER 374. DRY CLEANER ENVIRONMENTAL RESPONSE

SUBCHAPTER A. GENERAL PROVISIONS

Text of section effective until September 01, 2021

Sec. 374.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2005, 79th Leg., Ch. 1110, Sec. 19, eff. September 1, 2005.

(2) "Chlorinated dry cleaning solvent" means any dry cleaning solvent that contains a compound that has a molecular structure containing the element chlorine, including perchloroethylene, also known as tetrachloroethylene.

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

(6) "Dry cleaning drop station" means a retail commercial establishment described in category 812320 of the 2002 North American Industry Classification System as an establishment the primary business of which is to act as a collection point for the drop-off and pick-up of garments or other fabrics that are sent to a dry cleaning facility for processing.

(7) "Dry cleaning facility" means:

(A) a retail commercial establishment, described in category 812320 of the 2002 North American Industry Classification System, that operates, or has operated, in whole or in part for the purpose of cleaning garments or other fabrics using a process that involves any use of dry cleaning solvents;

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

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

(8) "Dry cleaning solvent" includes:

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

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

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

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

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

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

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

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110, Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1110, Sec. 19, eff. September 1, 2005.

Text of section effective until September 01, 2021

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

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Text of section effective until September 01, 2021

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

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

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

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Text of section effective until September 01, 2021

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

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

(2) one public representative of urban areas; and

(3) one public representative of rural areas.

(b) The advisory committee shall:

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

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

(3) assist in the ongoing development of rules to implement, administer, and enforce this chapter.

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

(d) A member of the advisory committee serves without compensation but is entitled to be reimbursed by the commission for actual and necessary travel expenses related to the performance of committee duties.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110, Sec. 2, eff. September 1, 2005.

SUBCHAPTER B. RULES, STANDARDS, CRITERIA, AND REPORTS

Text of section effective until September 01, 2021

Sec. 374.051. COMMISSION RULES AND STANDARDS. (a) The commission, with the assistance of the advisory committee, shall adopt rules necessary to administer and enforce this chapter. Rules adopted under this section must be reasonably necessary:

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

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

(b) The commission shall adopt rules that establish:

(1) performance standards for dry cleaning facilities;

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

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

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

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

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

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

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

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

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

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110, Sec. 3, eff. September 1, 2005.

Text of section effective until September 01, 2021

Sec. 374.052. FACILITY RETROFITTING.

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

(b) The commission by rule shall require businesses operating on or before January 1, 2004, whose annual gross receipts are \$150,000 or less to implement the performance standards adopted under Sections 374.053(c)(3), (4), and (5) not later than January 1, 2015.

(c) Repealed by Acts 2005, 79th Leg., Ch. 1110, Sec. 19, eff. September 1, 2005.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110, Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1110, Sec. 19, eff. September 1, 2005.

Text of section effective until September 01, 2021

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

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

(c) Rules adopted under this section must require:

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

(2) compliance with emissions standards for hazardous air pollutants for perchloroethylene dry cleaning facilities

adopted by the United States Environmental Protection Agency on September 22, 1993;

(3) dikes or other containment structures to be:

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

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

(4) secondary containment for all new or replaced dry cleaning units, regardless of the solvent used;

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

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

(d) Rules adopted under this section shall ensure that wastewater from a dry cleaning unit using chlorinated dry cleaning solvent or discharge of chlorinated dry cleaning solvent is not discharged to a sanitary sewer, to a septic tank, or to water of this state.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110, Sec. 5, eff. September 1, 2005.

Text of section effective until September 01, 2021

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

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

(2) state water quality standards; and

(3) additional factors the commission considers relevant.

(b) A deviation from a state water quality standard may not result in the application of a standard that is more stringent than the applicable standard.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110, Sec. 6, eff. September 1, 2005.

Text of section effective until September 01, 2021

Sec. 374.055. CRITERIA FOR ADMINISTRATION OF CHAPTER.

(a) The commission shall administer this chapter in accordance with this section.

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

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

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

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

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

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Text of section effective until September 01, 2021

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

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

(2) disbursements from the fund during the two

previous fiscal years and the purposes of the disbursements;

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

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

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Jan. 1, 2004.

#### SUBCHAPTER C. FINANCIAL PROVISIONS

Text of section effective until September 01, 2021

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

(b) The fund consists of money from:

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

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

(3) money recovered by the state under this chapter, including any money paid:

(A) under an agreement with the commission; or

(B) as penalties; and

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

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

(d) The commission may annually spend for administrative and start-up expenses incurred in fulfilling its duties under this chapter an amount of money from the fund not to exceed 15 percent of the amount of money credited to the fund in the same fiscal year as the expenditures.

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

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



money deposited to the fund.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110, Sec. 7, eff. September 1, 2005.

Sec. 374.102. DRY CLEANING FACILITY OR DROP STATION REGISTRATION; FEE; POSTING. (a) Each owner of an operating dry cleaning facility or dry cleaning drop station shall register with the commission on a form provided by the commission.

(b) An annual registration fee, the total amount of which may be divided into quarterly payments and billed on dates established by the commission, is assessed as follows:

(1) for a dry cleaning facility that:

(A) has gross annual receipts of more than \$150,000, a fee of \$2,500;

(B) has gross annual receipts of \$150,000 or less, a fee of \$250;

(C) is designated as nonparticipating under Section 374.104, a fee of \$250; or

(D) depends entirely on revenue collected from an associated dry cleaning drop station or drop stations, a fee in accordance with Paragraphs (A) and (B) determined by the combined gross annual receipts of the drop station or drop stations; or

(2) for a dry cleaning drop station that:

(A) has gross annual receipts of more than \$150,000, a fee of \$750;

(B) has gross annual receipts of \$150,000 or less, a fee of \$250; or

(C) is designated as nonparticipating under Section 374.104, a fee of \$125.

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

(d) The owner of a dry cleaning facility or drop station shall post the owner's registration number, in a manner prescribed by the commission, in the public area of each of the owner's operating dry cleaning facilities or drop stations.

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

(f) For each registration application, the commission shall request that the comptroller verify whether the owner submitting the registration application is in good standing with the state and whether the owner's selection on the registration application of the gross annual receipts classification for the dry cleaning facility or drop station agrees with information reported to the comptroller for the same tax or reporting year. Not later than the third business day after the comptroller receives the verification request, based in part on information supplied by the commission, the comptroller shall report to the commission the owner's standing and whether the owner's application information agrees with the comptroller's information.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110, Sec. 8, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1091, Sec. 1, eff. June 15, 2007.

Sec. 374.1022. REGISTRATION OF PROPERTY OWNER OR PRECEDING PROPERTY OWNER. (a) The following persons may participate in the fund benefits by registering as provided by this section:

(1) a person who owns real property on which a dry cleaning facility or drop station is or was located; or

(2) a preceding owner of real property on which a dry cleaning facility or drop station is or was located who entered into an agreement with the current owner associated with the sale of the real property to the current owner that requires the person to be responsible for any costs associated with cleaning up contamination covered under this chapter.

(b) For a person described by Subsection (a) to participate in fund benefits, the person must:

(1) register with the commission on or before December 31, 2007, using a form prescribed by the commission;

(2) include on the registration form information

identifying the person as a:

- (A) property owner; or
- (B) preceding property owner; and
- (3) pay the annual registration fee of \$1,500.

(c) A person described by Subsection (a) may participate in the fund benefits by registering after December 31, 2007, in the same manner as provided by Subsection (b). A person registering after that date must also pay:

- (1) all past annual registration fees; and
- (2) a late fee of \$100 for each month or partial month that has elapsed between December 2007 and the date of the registration.

(d) The annual registration fee may be divided into quarterly payments due over the year on dates established by the commission.

Added by Acts 2007, 80th Leg., R.S., Ch. 1091, Sec. 2, eff. June 15, 2007.

Sec. 374.1023. LIEN. (a) In addition to other remedies available under other law, a lien is imposed against the real property that is subject to a corrective action taken under this chapter if the person does not pay a registration fee under Section 374.1022 that is due while the corrective action is ongoing. The amount of the lien is the sum of:

- (1) the costs of the action; and
- (2) the fees due but not paid during the period of the corrective action.

(b) The lien imposed by this section arises and attaches to the real property subject to the corrective action at the time an affidavit is recorded and indexed in accordance with this section in the county in which the real property is located. For the purpose of determining rights of all affected parties, the lien does not relate back to a time before the date on which the affidavit is recorded, which date is the lien inception date. The lien continues until the liability for the corrective action costs and registration fees is satisfied or becomes unenforceable through operation of law. The executive director shall determine whether

to prepare an affidavit. In determining whether to prepare an affidavit or whether a lien is satisfied, the executive director:

(1) shall proceed in the manner that the executive director determines will most likely result in the least overall costs to the state after any cost and fee recovery action; and

(2) may take into account a landowner's financial ability to satisfy the lien, including consideration of whether the real property that is the subject of the lien:

(A) is a homestead and is being occupied as a home by the landowner; and

(B) has a fair market value of \$250,000 or less.

(c) An authorized representative of the commission must execute the affidavit. The affidavit must show:

(1) the names and addresses of the persons liable for the corrective action costs and registration fees;

(2) a description of the real property that is subject to or affected by the corrective action; and

(3) the amount of the corrective action costs and registration fees and the balance due.

(d) The county clerk shall record the affidavit in records kept for that purpose and shall index the affidavit under the names of the persons liable for the corrective action costs and registration fees.

(e) The commission shall record a relinquishment or satisfaction of the lien when the lien is paid or satisfied.

(f) The lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.

(g) The lien imposed by this section is not valid or enforceable if real property, an interest in real property, or a mortgage, lien, or other encumbrance on or against real property is acquired before the affidavit is recorded, unless the person acquiring the real property, an interest in the property, or the mortgage, lien, or other encumbrance on the property had or reasonably should have had actual notice or knowledge that the real property is subject to or affected by a corrective action or has knowledge that the state has incurred corrective action costs and

is owed registration fees.

(h) If a lien is fixed or attempted to be fixed as provided by this section, the owner of the real property affected by the lien may file a bond to indemnify against the lien. The bond must be filed with the county clerk of the county in which the real property subject to the lien is located. An action to establish, enforce, or foreclose any lien or claim of lien covered by the bond must be brought not later than the 30th day after the date of service of notice of the bond. The bond must:

(1) describe the real property on which the lien is claimed;

(2) refer to the lien claimed in a manner sufficient to identify it;

(3) be in an amount double the amount of the lien referred to;

(4) be payable to the commission;

(5) be executed by the party filing the bond as principal and a corporate surety authorized under the law of this state to execute the bond as surety; and

(6) be conditioned substantially that the principal and sureties will pay to the commission the amount of the lien claimed, plus costs, if the claim is proved to be a lien on the real property.

(i) After the bond is filed, the county clerk shall issue notice of the bond to the named obligee. A copy of the bond must be attached to the notice. The notice may be served on each obligee by having a copy delivered to the obligee by any person competent to make oath of the delivery. The original notice shall be returned to the office of the county clerk, and the person making service of copy shall make an oath on the back of the copies showing on whom and on what date the copies were served. The county clerk shall record the bond notice and return in records kept for that purpose. In acquiring an interest in real property, a purchaser or lender may rely on and is absolutely protected by the record of the bond, notice, and return.

(j) The commission may sue on the bond after the 30th day after the date on which the notice is served but may not sue on the

bond later than one year after the date on which the notice is served. The commission is entitled to recover reasonable attorney's fees if the commission recovers in a suit on the lien or on the bond.

Added by Acts 2007, 80th Leg., R.S., Ch. 1091, Sec. 2, eff. June 15, 2007.

Text of section effective until September 01, 2021

Sec. 374.103. FEE ON PURCHASE OF DRY CLEANING SOLVENT; DISPOSITION OF PROCEEDS. (a) Except as provided by Subsection (b) and Section 374.104(d), a fee of \$20 per gallon is imposed on the purchase of the dry cleaning solvent perchloroethylene and \$3 per gallon on the purchase of any other dry cleaning solvent by an owner of a dry cleaning facility. The person who distributes the solvent shall collect the fees and shall pay to the commission the amount due, in accordance with Subsection (a-1).

(a-1) A person who distributes dry cleaning solvent must register as a distributor with the commission. A registered distributor is entitled to withhold one percent of the amount of the fee imposed by Subsection (a) for the distributor's administrative expenses if the distributor pays the remaining amount to the commission not later than the date prescribed by the commission.

(b) Subsection (a) does not apply to a dry cleaning facility designated as nonparticipating under Section 374.104.

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

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

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110, Sec. 9, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1091, Sec. 3, eff. June 15,

2007.

Text of section effective until September 01, 2021

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

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

Text of subsection as amended by Acts 2005, 79th Leg., R.S., Ch.

800, Sec. 1

(b) An option not to participate must be filed on or before February 28, 2006. An owner may not file an option not to participate unless the owner was:

(1) the owner of the dry cleaning facility or drop station on January 1, 2004; and

(2) eligible to file the option on or before January 1, 2004, and inadvertently failed to file before that date.

Text of subsection as amended by Acts 2005, 79th Leg., R.S., Ch.

1110, Sec. 10

(b) An option not to participate must be filed on or before February 28, 2006. An owner may not file an option not to participate after September 1, 2005, unless the owner was:

(1) the owner of the dry cleaning facility or drop station on January 1, 2004; and

(2) eligible to file the option on or before January 1, 2004, and inadvertently failed to file before that date.

(b-1) An owner of a dry cleaning facility or drop station who files an option not to participate in accordance with Subsection (b) is entitled to a refund of registration fees paid under Section 374.102 to the extent that a registration fee paid under that section in 2004 or 2005 exceeded the amount due for a nonparticipating dry cleaning facility or drop station.

(c) The commission shall designate a dry cleaning facility or drop station as nonparticipating if the owner:

(1) demonstrates, at the owner's expense and in accordance with commission rules, that:

(A) the owner has never used or allowed the use of the dry cleaning solvent perchloroethylene at any dry cleaning facility or drop station in this state; and

(B) perchloroethylene has never been used at that location;

(2) agrees that perchloroethylene will not be used as a dry cleaning solvent at the facility or drop station; and

(3) obtains the written consent of the person who owns the real property on which the dry cleaning facility or drop station is located.

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

(e) On payment of the registration fee, the commission shall issue a specially marked registration document to the owner of a nonparticipating facility or drop station. The owner shall post the registration document in the public area of the facility or drop station.

(f) After a dry cleaning facility or drop station is designated as nonparticipating:

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

(2) that facility or drop station may not later become a participating facility.

(g) A person who is the owner of a dry cleaning drop station who timely files an option not to participate in fund benefits under this section may, as provided by this subsection, retain the status of the drop station as nonparticipating if the person moves the drop station to a new location. A person to whom this section applies must:

(1) provide to the commission the written consent of the property owner at the new location; and

(2) continue to comply with the other requirements of



this section.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 800, Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 1110, Sec. 10, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1091, Sec. 4, eff. June 15, 2007.

SUBCHAPTER D. RESPONSE TO RELEASE; CORRECTIVE ACTION

Text of section effective until September 01, 2021

Sec. 374.151. RESPONSE TO RELEASE. (a) A person may not knowingly allow a release.

(b) A person who knows of a release of more than one quart of a chlorinated dry cleaning solvent or of more than one gallon of a non-chlorinated dry cleaning solvent shall:

(1) immediately contain and control the release; and

(2) notify the commission of the release before the expiration of 24 hours after the person learns of the release.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110, Sec. 11, eff. September 1, 2005.

Text of section effective until September 01, 2021

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

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

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

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

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Text of section effective until September 01, 2021

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

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

- (1) is technologically feasible and reliable;
- (2) provides adequate protection of human health and the environment; and
- (3) minimizes, to the extent practical, environmental damage.

(c) The commission shall:

- (1) operate and maintain corrective action;
- (2) monitor releases from a dry cleaning facility, including contamination that may have moved off the dry cleaning facility;
- (3) pay the reasonable costs incurred by the commission in providing field and laboratory services; and
- (4) pay the reasonable costs of restoring property, as nearly as practicable, to the conditions that existed before the activities associated with:
  - (A) the investigation of a release;
  - (B) a cleanup; or
  - (C) related corrective action.

(d) The commission shall ensure the removal and proper disposal of wastes generated by a release.

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

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.1535. SITE RESTRICTIONS AFTER CORRECTIVE ACTION.

(a) If the commission has completed corrective action at a dry cleaning site, perchloroethylene may not be used at that site.

(b) If the owner of a dry cleaning site uses perchloroethylene at the site after the completion of corrective action at that site, the site is not eligible for future corrective action using money from the fund.

Added by Acts 2007, 80th Leg., R.S., Ch. 1091, Sec. 5, eff. June 15, 2007.

Text of section effective until September 01, 2021

Sec. 374.154. RANKING OF CONTAMINATED DRY CLEANING SITES.

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

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

(1) a person who is an owner of the dry cleaning facility or drop station; and

(2) a person who is registered with the commission under Section 374.1022.

(c) If the applicant for ranking:

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

(2) is an owner of the real property and the dry cleaning facility or drop station is leased, the application must include proof that a lessee has been notified of the application; or

(3) is a person described by Section 374.1022(a)(2), the application must include proof that the owner of the real property and any lessee have been notified of the application.

(d) The application for ranking must contain information and evidence required by commission rule to aid in ranking. The information and evidence required may include:

(1) water or soil samples;

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

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

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

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110, Sec. 12, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1091, Sec. 6, eff. June 15, 2007.

Text of section effective until September 01, 2021

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

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

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

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

#### SUBCHAPTER E. LIABILITY AND RESPONSIBILITY

Text of section effective until September 01, 2021

Sec. 374.202. OWNER RESPONSIBILITY. (a) The commission

may hold an owner responsible for up to 100 percent of the costs of corrective action attributable to the owner if the commission finds, after notice and an opportunity for a hearing that:

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

(2) the owner:

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

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

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

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

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

(b) To the extent that an owner is responsible for corrective action costs under this subsection, the owner is not entitled to the exemption under Section 374.207.

(c) The commission, or the attorney general at the request of the commission, may bring a civil action to recover any amounts owed to the commission under this section. The commission or attorney general, as applicable, may recover court costs, the costs of preparing for litigation, and reasonable attorney's fees incurred in an action brought under this section. An owner is jointly and severally liable with any other defendant for the entire amount of costs.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110, Sec. 13, eff. September 1, 2005.

Text of section effective until September 01, 2021

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

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

(c) Except for dry cleaning sites that require emergency action under Section 374.152, the commission may not use money from the fund for corrective action at a contaminated dry cleaning site unless an eligible person applies for the ranking under Section 374.154 and is not otherwise ineligible for corrective action under this chapter.

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

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110, Sec. 14, eff. September 1, 2005.

Text of section effective until September 01, 2021

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

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Jan. 1, 2004.

Text of section effective until September 01, 2021

Sec. 374.205. LIMITATION ON USE OF FUND FOR THIRD PARTIES. Money from the fund may not be used to compensate third parties for bodily injury or property damage caused by a release, other than

property damage included in a corrective action plan approved by the commission.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Text of section effective until September 01, 2021

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

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.207. ELIGIBLE OWNER OR REGISTERED PERSON EXEMPT FROM CERTAIN CLAIMS. If an owner or a person registered under Section 374.1022 is eligible under this chapter to have corrective action costs paid by the fund, an administrative or judicial claim may not be made under state law against the owner or other person by or on behalf of this state or by any other person, except a political subdivision, to compel corrective action or seek recovery of the costs of corrective action that result from the release.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1091, Sec. 7, eff. June 15, 2007.

Text of section effective until September 01, 2021

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

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

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

- (1) for corrective action at a site contaminated by solvents normally used in dry cleaning operations, if the contamination did not result from the operation of a dry cleaning

facility;

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

(3) for the payment of any costs:

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

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

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

(ii) is a hazardous waste facility eligible for listing on the state registry under Subchapter F, Chapter 361. Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER F. REVIEW OF ORDERS AND DECISIONS; VIOLATIONS;  
PENALTIES; EXPIRATION

Text of section effective until September 01, 2021

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

(b) A person affected by the final order in an administrative hearing under Subsection (a) is entitled to judicial review and may appeal the order on or before the 31st day after the date on which the order was rendered. If the state prevails in an appeal filed under this subsection, the state is entitled to recover reasonable expenses incurred in obtaining the judgment, including reasonable attorney's fees, costs involved in preparing for the litigation, and witness fees.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110, Sec. 15, eff. September 1,



2005.

Text of section effective until September 01, 2021

Sec. 374.252. VIOLATIONS; PENALTIES. (a) A person is subject to an administrative penalty under Section 7.0525, Water Code, if the person:

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

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

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

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

(5) violates Section 374.151 or related commission rules.

(b) If a registration fee is not paid on or before the 30th day after the date the fee is due, the commission may assess a penalty not to exceed \$50 per day for each day the fee is not paid.

(c) If a registration application for an operating dry cleaning facility or drop station is not filed with the commission on or before the 30th day after the date the application is due, the commission may assess a penalty not to exceed \$50 per day for each day the application is not filed.

(d) The commission may use normal commission procedures for the collection of penalties and interest on a penalty imposed under this section.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 1110, Sec. 16, eff. September 1,

2005.

Text of section effective until September 01, 2021

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

(b) A corrective action, including any administrative duties associated with the action, for which remediation of a contaminated site has begun before September 1, 2021, shall be completed in accordance with this chapter using money from the fund, to the extent possible, but money may not be collected for or added to the fund on or after that date.

(c) The commission may continue a corrective action that has not progressed beyond the investigative or planning stage after September 1, 2021, to the extent money from the fund is available.

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

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1110, Sec. 17, eff. September 1, 2005.