

By: Jackson

S.B. No. 799

A BILL TO BE ENTITLED

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

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

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

(4) "Corrective action plan" means a plan approved by the commission to perform corrective action at a dry cleaning facility.

(5) "Dry cleaning facility" means:
(A) a commercial establishment 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;

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

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

6 (6) "Dry cleaning solvent" includes:

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

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

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

17 (8) "Executive director" means the executive director
18 of the commission.

19 (9) "Fund" means the dry cleaning facility release
20 fund.

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

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

1 (12) "Retailer" means a business that is registered
2 for purposes of the retail sales tax under Chapter 151, Tax Code,
3 and provides dry cleaning, or dry cleaning and laundry, services to
4 final consumers.

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

8 Sec. 374.003. APPLICABILITY TO GOVERNMENTAL BODIES. This
9 chapter does not apply to a governmental entity, including a
10 governmental agency or prison.

11 Sec. 374.004. ADVISORY COMMITTEE. (a) The executive
12 director shall appoint an advisory committee composed of
13 representatives of the dry cleaning industry for the purpose of
14 providing professional and practical expertise to the commission
15 and to:

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

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

20 (3) assist in the development of rules to implement
21 this chapter.

22 (b) A member of the committee serves at the will of the
23 executive director.

24 [Sections 374.005–374.050 reserved for expansion]

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

26 Sec. 374.051. COMMISSION RULES AND STANDARDS. (a) The
27 commission shall adopt rules necessary to administer and enforce

1 this chapter. Rules adopted under this section must be reasonably
2 necessary:

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

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

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

8 (1) performance standards for dry cleaning
9 facilities;

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

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

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

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

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

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

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

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

27 (4) criteria under which the commission may determine

1 the level at which corrective action is considered to be complete.

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

6 (b) This section expires January 1, 2007.

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

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

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

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

15 (2) compliance with emissions standards for hazardous
16 air pollutants for perchloroethylene dry cleaning facilities
17 adopted by the United States Environmental Protection Agency on
18 September 22, 1993;

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

20 (A) installed around each dry cleaning unit and
21 each storage area for dry cleaning solvent or waste; and

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

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

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

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

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

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

14 (2) state water quality standards;

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

19 (4) additional factors the commission considers
20 relevant.

21 (b) In considering a deviation under Subsection (a)(3), a
22 deviation from a state water quality standard may not result in the
23 application of a standard that is more stringent than the
24 applicable standard.

25 Sec. 374.055. CRITERIA FOR ADMINISTRATION OF CHAPTER. (a)
26 The commission shall administer this chapter in accordance with
27 this section.

1 (b) To the maximum extent possible, the commission shall:

2 (1) deal with contamination from dry cleaning
3 facilities by using money in the fund; and

4 (2) discourage other units of government, both federal
5 and local, including the United States Environmental Protection
6 Agency, from becoming involved in the contamination problems
7 resulting from releases.

8 (c) The commission shall make every reasonable effort to
9 prevent the listing of sites where dry cleaning solvents are
10 involved on the federal National Priorities List under the federal
11 Comprehensive Environmental Response, Compensation, and Liability
12 Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended.

13 (d) The commission may not seek out contaminated dry
14 cleaning facility sites because of the existence of the fund or this
15 chapter but shall use money from the fund as sites are discovered in
16 the normal course of the commission's business.

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

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

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

25 Sec. 374.056. REPORT TO GOVERNOR AND LEGISLATURE. On or
26 before December 1 of each even-numbered year, the executive
27 director shall submit to the governor, lieutenant governor, speaker

1 of the house of representatives, and members of the appropriate
2 standing committees of the senate and the house of representatives
3 a report regarding:

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

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

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

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

12 [Sections 374.057-374.100 reserved for expansion]

13 SUBCHAPTER C. FINANCIAL PROVISIONS

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

17 (b) The fund consists of money from:

18 (1) proceeds from the surcharges and fees imposed by
19 this chapter;

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

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

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

1 (c) Money in the fund may be appropriated only to the
2 commission for the purposes of this chapter.

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

6 (b) The registration must be accompanied by a fee of \$100
7 for each operating dry cleaning facility owned by the owner.

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

10 (d) The owner of a dry cleaning facility shall post the
11 owner's registration number, in a manner prescribed by the
12 commission, in the public area of each of the owner's operating dry
13 cleaning facilities.

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

16 Sec. 374.103. ENVIRONMENTAL SURCHARGE, GROSS RECEIPTS
17 SURCHARGE; DISPOSITION OF PROCEEDS. (a) Subject to Section
18 374.105, an environmental surcharge on gross business receipts is
19 imposed for the privilege of engaging in the business of laundering
20 and dry cleaning garments and other household fabrics in this
21 state. The surcharge shall be at a rate of 2.5 percent of the gross
22 receipts received from dry cleaning or laundering services. The
23 consumer shall pay the surcharge to the retailer, who shall collect
24 the full amount of the surcharge in the manner Chapter 151, Tax
25 Code, prescribes for the collection of a tax.

26 (b) Gross receipts otherwise subject to the surcharge
27 imposed by this section are exempt from the surcharge if they arise

1 from:

2 (1) services performed through a coin-operated
3 device, whether automatic or manually operated, available for use
4 by the general public;

5 (2) the laundering without use of dry cleaning
6 solvents of uniforms, linens, or other textiles for commercial
7 purposes, including any rental of uniforms, linens, or dust control
8 materials; or

9 (3) charges or services to an entity that qualifies
10 for an exemption from the retail sales tax on laundering and dry
11 cleaning services under Chapter 151, Tax Code.

12 (c) The surcharge shall be collected at the same time and in
13 the same manner and shall be administered and enforced in the same
14 manner as the retail sales tax imposed under Chapter 151, Tax Code.
15 The comptroller shall adopt any additional procedures needed for
16 the collection, administration, and enforcement of the surcharge
17 imposed by this section and shall deposit all remitted surcharges
18 to the credit of the fund. For the purpose of this section, the
19 proceeds of the surcharge include all money collected and received
20 by the comptroller under this section, including interest and
21 penalties on delinquent surcharges.

22 (d) Chapter 151, Tax Code, applies to the surcharge imposed
23 by this section to the extent that chapter is not inconsistent with
24 this chapter.

25 Sec. 374.104. FEE ON PURCHASE OF DRY CLEANING SOLVENT;
26 DISPOSITION OF PROCEEDS. (a) Subject to Section 374.105, a fee of
27 \$5 per gallon is imposed on the purchase of the dry cleaning solvent

1 perchloroethylene by an owner of a dry cleaning facility. The
2 person who distributes the solvent shall pay the fee to the
3 comptroller.

4 (b) In the case of a fraction of a gallon, the fee imposed is
5 the amount computed by multiplying that fraction by the amount of
6 the fee imposed on a whole gallon.

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

11 (d) The fee shall be collected at the same time and in the
12 same manner and shall be administered and enforced in the same
13 manner as the retail sales tax imposed under Chapter 151, Tax Code.
14 The comptroller shall adopt any additional procedures needed for
15 the collection, administration, and enforcement of the fee imposed
16 by this section and shall deposit all remitted fees to the credit of
17 the fund. For the purpose of this section, the proceeds of the fee
18 include all money collected and received by the comptroller under
19 this section, including interest and penalties on delinquent fees.

20 (e) Chapter 151, Tax Code, applies to the fees imposed by
21 this section to the extent that chapter is not inconsistent with
22 this chapter.

23 (f) The comptroller shall administer and enforce this
24 section and adopt any rules necessary to carry out the
25 comptroller's responsibilities under this section.

26 Sec. 374.105. IMPOSITION OF SURCHARGES AND FEES DEPENDENT
27 ON BALANCE OF FUND. (a) The surcharges and fees imposed by

1 Sections 374.103 and 374.104 may not be collected or required to be
2 paid on or after July 1 of a calendar year if the executive director
3 notifies the comptroller under Subsection (c) that the unobligated
4 principal balance of the fund exceeds \$20 million on April 1 of that
5 year.

6 (b) The surcharges and fees imposed by Sections 374.103 and
7 374.104 shall be reinstated effective July 1 of a calendar year if
8 the executive director notifies the comptroller under Subsection
9 (c) that the unobligated principal balance of the fund is less than
10 \$10 million on April 1 of that year.

11 (c) Not later than April 5 of each calendar year, the
12 executive director shall notify the comptroller of the unobligated
13 principal balance of the fund on April 1 of that year.

14 (d) The comptroller promptly shall notify persons from whom
15 a surcharge is to be collected under Section 374.103 and persons
16 from whom a fee is to be collected under Section 374.104 if the
17 imposition of the surcharges and fees are to be suspended or
18 reinstated on the following July 1.

19 [Sections 374.106-374.150 reserved for expansion]

20 SUBCHAPTER D. RESPONSE TO RELEASE; CORRECTIVE ACTION

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

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

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

27 (2) notify the commission of the release before the

1 expiration of 48 hours after the person learns of the release.

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

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

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

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

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

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

21 (1) is technologically feasible and reliable;

22 (2) provides adequate protection of human health and
23 the environment; and

24 (3) minimizes, to the extent practical, environmental
25 damage.

26 (c) The commission shall:

27 (1) operate and maintain corrective action;

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

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

6 (4) pay the reasonable costs of restoring property, as
7 nearly as practicable, to the conditions that existed before the
8 activities associated with:

9 (A) the investigation of a release;

10 (B) a cleanup; or

11 (C) related corrective action.

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

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

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

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

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

27 (1) a person who is and has been an owner of the dry

1 cleaning facility for not less than five years; and

2 (2) a person who is and has been an owner of the real
3 property on which the facility is located for not less than five
4 years.

5 (c) If the applicant for ranking:

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

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

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

15 (1) water or soil samples;

16 (2) analyses of the water or soil samples;

17 (3) hydrogeologic information from the contaminated
18 site;

19 (4) information concerning the site's proximity to a
20 private or public water supply; and

21 (5) other information or evidence the commission
22 considers necessary.

23 (e) The costs incurred by an applicant in collecting the
24 information and evidence under Subsection (d) shall be credited
25 against the deductible payable by the applicant under Section
26 374.203(f).

27 (f) The commission shall notify the applicant of the

1 relative ranking the commission assigns the applicant's site on or
2 before the 90th day after the date the application is received by
3 the commission.

4 (g) The commission shall keep a separate list for ranking
5 applicants for the reimbursement of money spent on corrective
6 actions taken before January 1, 2004.

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

9 (1) modify the ranked status of a site as warranted
10 under the system of priorities established under Section
11 374.051(b)(3); or

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

16 Sec. 374.156. ENTRY ONTO PROPERTY. (a) An authorized
17 officer, employee, or agent of the commission, or a person under
18 order of or contract with the commission, at reasonable times and on
19 written notice to the owner or occupant of any property or premises,
20 may enter onto the property or premises to take corrective action if
21 the executive director determines that the action is necessary to
22 protect the public health or environment.

23 (b) If consent to enter is not granted by the person in
24 control of a site that is the subject of a notice under this
25 section, the commission may issue an order directing compliance
26 with the notice. The order may be issued only after providing the
27 notice and opportunity for consultation that are reasonably

1 appropriate under the circumstances.

2 [Sections 374.157-374.200 reserved for expansion]

3 SUBCHAPTER E. LIABILITY AND RESPONSIBILITY

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

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

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

14 (b) The commission shall issue an order establishing the
15 percentage of liability. The order is binding and controls the
16 obligation of the fund unless amended by the commission. If an
17 appeal from the order is made, the percentage of liability
18 established by the order must control for costs incurred while the
19 appeal is pending.

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

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

27 (2) the owner:

1 (A) caused a release by intentional or wanton
2 actions and by operating practices contrary to those generally in
3 use at the time of the release;

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

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

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

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

15 (b) For purposes of Subsection (a), unless a transfer is
16 made solely to take advantage of this section, purchasers of stock
17 or other indicia of ownership and other successors in interest are
18 not considered to be the same owner or operator as the seller or
19 transferor of the stock or indicia of ownership even though there
20 may be no change in the legal identity of the owner or operator.

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

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

1 (b) The commission shall limit reimbursement from the fund
2 for corrective action costs incurred at a single contaminated dry
3 cleaning site on or after September 1, 2003, and before January 1,
4 2005, to an amount not to exceed \$20,000.

5 (c) The commission shall limit payment from the fund in a
6 fiscal year for corrective action costs incurred at a single
7 contaminated dry cleaning site on or after January 1, 2005, to an
8 amount not to exceed three percent of the total amount deposited to
9 the credit of the fund in the preceding fiscal year.

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

13 (e) The commission may not use money from the fund for
14 corrective action at a contaminated dry cleaning site unless at the
15 time corrective action is to begin the site has been under the same
16 ownership for not less than five years.

17 (f) 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
13 CLAIMS. If an owner or other person is eligible under this chapter
14 to have corrective action costs paid by the fund, an administrative
15 or judicial claim may not be made under state law against the owner
16 or other person by or on behalf of a state or local government or by
17 any other person to compel corrective action or seek recovery of the
18 costs of corrective action that result from the release.

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

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

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

26 (1) for corrective action at a site contaminated by
27 solvents normally used in dry cleaning operations, if the

1 contamination did not result from the operation of a dry cleaning
2 facility;

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

8 (3) for the payment of any costs:

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

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

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

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

17 [Sections 374.209-374.250 reserved for expansion]

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

19 PENALTIES

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

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

1 Sec. 374.252. VIOLATIONS; PENALTIES. (a) A person is
2 subject to an administrative penalty if the person:

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

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

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

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

18 (5) violates Section 374.151 or related commission
19 rules.

20 (b) On finding that a person is subject to an administrative
21 penalty, the commission may impose on the person an administrative
22 penalty in an amount not to exceed \$500 for each violation.

23 (c) In assessing an administrative penalty under this
24 section, the commission shall consider, if applicable, the
25 following factors:

26 (1) the extent to which the violation presents a
27 hazard to human health;

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

3 (3) the amount of the reasonable costs incurred by
4 this state in detection and investigation of the violation; and

5 (4) the economic savings realized by the person by not
6 complying with the provision for which a violation is charged.

7 SECTION 2. (a) Not later than December 1, 2003, the Texas
8 Commission on Environmental Quality shall adopt any rules,
9 performance standards, or forms required for the implementation of
10 Chapter 374, Health and Safety Code, as added by this Act.

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

15 (c) Not later than December 1, 2003, the comptroller shall
16 adopt any rules or forms required for the implementation of the
17 comptroller's duties under Chapter 374, Health and Safety Code, as
18 added by this Act.

19 (d) The changes in law made by Sections 374.204 and 374.207,
20 Health and Safety Code, as added by this Act, apply only to a cause
21 of action that accrues on or after January 1, 2004. A cause of
22 action that accrued before January 1, 2004, is subject to the law
23 governing the action that was in effect when the action accrued, and
24 that law is continued in effect for that purpose.

25 (e) Chapter 374, Health and Safety Code, as added by this
26 Act, does not apply to any corrective actions taken by the Texas
27 Commission on Environmental Quality at a dry cleaning facility as

1 defined by Section 374.001, Health and Safety Code, as added by this
2 Act, before the effective date of this Act.

3 SECTION 3. (a) Except as provided by this section, this Act
4 takes effect September 1, 2003.

5 (b) The Texas Commission on Environmental Quality may not
6 collect fees, surcharges, or penalties imposed by this Act or
7 deposit those fees, surcharges, or penalties to the dry cleaning
8 facility release fund established under Chapter 374, Health and
9 Safety Code, as added by this Act, before January 1, 2004.

10 (c) Disbursements from the dry cleaning facility release
11 fund for the purposes of Chapter 374, Health and Safety Code, as
12 added by this Act, may not begin before January 1, 2005.

13 (d) Sections 374.056 and 374.252, Health and Safety Code, as
14 added by this Act, take effect January 1, 2004.