

1-1 By: Jackson, West, Carona S.B. No. 799  
1-2 (In the Senate - Filed March 3, 2003; March 10, 2003, read  
1-3 first time and referred to Committee on Natural Resources;  
1-4 May 5, 2003, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 8, Nays 0; May 5, 2003, sent  
1-6 to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 799 By: Jackson

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the environmental regulation and remediation of certain  
1-11 dry cleaning facilities; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle B, Title 5, Health and Safety Code, is  
1-14 amended by adding Chapter 374 to read as follows:

1-15 CHAPTER 374. DRY CLEANER ENVIRONMENTAL RESPONSE

1-16 SUBCHAPTER A. GENERAL PROVISIONS

1-17 Sec. 374.001. DEFINITIONS. In this chapter:

1-18 (1) "Chlorinated dry cleaning solvent" means any dry  
1-19 cleaning solvent that contains a compound that has a molecular  
1-20 structure containing the element chlorine.

1-21 (2) "Commission" means the Texas Commission on  
1-22 Environmental Quality.

1-23 (3) "Corrective action" means those activities  
1-24 described by Section 374.152 or 374.153.

1-25 (4) "Corrective action plan" means a plan approved by  
1-26 the commission to perform corrective action at a dry cleaning  
1-27 facility.

1-28 (5) "Dry cleaning facility" means:

1-29 (A) a retail commercial establishment that  
1-30 operates, or has operated, in whole or in part for the purpose of  
1-31 cleaning garments or other fabrics using a process that involves  
1-32 any use of dry cleaning solvents;

1-33 (B) all contiguous land used in connection with  
1-34 the establishment; and

1-35 (C) all structures and other appurtenances and  
1-36 improvements located on the contiguous land and used in connection  
1-37 with the establishment.

1-38 (6) "Dry cleaning solvent" includes:

1-39 (A) perchloroethylene, also known as  
1-40 tetrachloroethylene, petroleum-based solvents, and other  
1-41 nonaqueous solvents used in the cleaning of garments or other  
1-42 fabrics at a dry cleaning facility; and

1-43 (B) the chemicals and compounds into which the  
1-44 solvents degrade.

1-45 (7) "Dry cleaning unit" means a machine or device that  
1-46 uses dry cleaning solvents to clean garments and other fabrics and  
1-47 any piping, ancillary equipment, and containment system associated  
1-48 with the machine or device.

1-49 (8) "Executive director" means the executive director  
1-50 of the commission.

1-51 (9) "Fund" means the dry cleaning facility release  
1-52 fund.

1-53 (10) "Owner" means a person who owns or leases, or has  
1-54 owned or leased, a dry cleaning facility and who is or has been  
1-55 responsible for the operation of dry cleaning operations at the dry  
1-56 cleaning facility.

1-57 (11) "Release" means a spill, emission, discharge,  
1-58 escape, leak, or disposal of dry cleaning solvent from a dry  
1-59 cleaning facility into the soil or water of the state.

1-60 Sec. 374.002. APPLICABILITY OF OTHER LAW. To the extent  
1-61 that this chapter is inconsistent or in conflict with Chapter 361 or  
1-62 other general law, this chapter prevails.

1-63 Sec. 374.003. APPLICABILITY TO GOVERNMENTAL BODIES. This

2-1 chapter does not apply to:

2-2 (1) a governmental entity, including a governmental  
2-3 agency or prison; or

2-4 (2) a political subdivision of this state, including a  
2-5 municipality or a conservation and reclamation district created  
2-6 under Section 59, Article XVI, Texas Constitution, that owns or  
2-7 operates a wholesale or retail water supply system, public solid  
2-8 waste system, public storm water and drainage system, or public  
2-9 solid waste disposal system.

2-10 Sec. 374.004. ADVISORY COMMITTEE. (a) The executive  
2-11 director shall appoint an advisory committee composed of:

2-12 (1) three representatives of the dry cleaning industry  
2-13 who shall provide professional and practical expertise to the  
2-14 commission;

2-15 (2) one public representative of urban areas; and

2-16 (3) one public representative of rural areas.

2-17 (b) The advisory committee shall:

2-18 (1) review and comment on the methodology the  
2-19 commission uses to rank contaminated sites under Section 374.154;

2-20 (2) review and comment on the report the commission  
2-21 prepares each biennium under Section 374.056; and

2-22 (3) assist in the development of rules to implement  
2-23 this chapter.

2-24 (c) A member of the committee serves at the will of the  
2-25 executive director.

2-26 [Sections 374.005-374.050 reserved for expansion]

2-27 SUBCHAPTER B. RULES, STANDARDS, CRITERIA, AND REPORTS

2-28 Sec. 374.051. COMMISSION RULES AND STANDARDS. (a) The  
2-29 commission shall adopt rules necessary to administer and enforce  
2-30 this chapter. Rules adopted under this section must be reasonably  
2-31 necessary:

2-32 (1) to preserve, protect, and maintain the water and  
2-33 other natural resources of this state; and

2-34 (2) to provide for prompt corrective action of  
2-35 releases from dry cleaning facilities.

2-36 (b) The commission shall adopt rules that establish:

2-37 (1) performance standards for dry cleaning  
2-38 facilities;

2-39 (2) requirements for the removal of dry cleaning  
2-40 solvents and wastes from dry cleaning facilities that are to be  
2-41 closed by the owner to prevent future releases;

2-42 (3) criteria to be used in setting priorities for the  
2-43 expenditure of money from the fund after consideration of:

2-44 (A) the benefit to be derived from corrective  
2-45 action compared to the cost of implementing the corrective action;

2-46 (B) the degree to which human health and the  
2-47 environment are affected by exposure to contamination;

2-48 (C) the present and reasonably foreseeable  
2-49 future uses of affected surface water or groundwater;

2-50 (D) the effect that interim or immediate remedial  
2-51 measures may have on future costs;

2-52 (E) the amount of money available for corrective  
2-53 action in the fund; and

2-54 (F) any additional factors the commission  
2-55 considers relevant; and

2-56 (4) criteria under which the commission may determine  
2-57 the level at which corrective action is considered to be complete.

2-58 Sec. 374.052. FACILITY RETROFITTING. (a) The commission  
2-59 by rule shall require dry cleaning facilities operating on or  
2-60 before January 1, 2004, to implement the performance standards  
2-61 adopted under Section 374.053 not later than January 1, 2006.

2-62 (b) The commission by rule may exempt businesses whose  
2-63 annual gross receipts are \$200,000 or less from the requirements of  
2-64 Subsection (a) on the basis of financial hardship.

2-65 (c) This section expires January 1, 2007.

2-66 Sec. 374.053. PERFORMANCE STANDARDS FOR NEW DRY CLEANING  
2-67 FACILITIES. (a) The commission by rule shall adopt performance  
2-68 standards for a new dry cleaning facility.

2-69 (b) Rules adopted under this section must allow for the use

3-1 of new technologies as they become available.

3-2 (c) Rules adopted under this section must require:

3-3 (1) proper storage and disposal of wastes generated at  
3-4 the facility that contain any quantity of dry cleaning solvent;

3-5 (2) compliance with emissions standards for hazardous  
3-6 air pollutants for perchloroethylene dry cleaning facilities  
3-7 adopted by the United States Environmental Protection Agency on  
3-8 September 22, 1993;

3-9 (3) dikes or other containment structures to be:

3-10 (A) installed around each dry cleaning unit and  
3-11 each storage area for dry cleaning solvent or waste; and

3-12 (B) capable of containing any leak, spill, or  
3-13 release of dry cleaning solvent;

3-14 (4) all diked floor surfaces on which any dry cleaning  
3-15 solvent may leak, spill, or otherwise be released to be made of  
3-16 epoxy, steel, or another material impervious to dry cleaning  
3-17 solvents; and

3-18 (5) all chlorinated dry cleaning solvents to be  
3-19 delivered to dry cleaning facilities by means of closed,  
3-20 direct-coupled delivery systems, when those systems have become  
3-21 generally available.

3-22 (d) Rules adopted under this section shall ensure that  
3-23 wastewater from a dry cleaning unit or discharge of dry cleaning  
3-24 solvent is not discharged to a sanitary sewer, to a septic tank, or  
3-25 to water of this state.

3-26 Sec. 374.054. COMPLETION CRITERIA. (a) In determining  
3-27 whether a corrective action is complete, the commission shall  
3-28 consider the factors listed under Section 374.051(b)(3) and:

3-29 (1) individual site characteristics, including  
3-30 natural remediation processes;

3-31 (2) state water quality standards;

3-32 (3) whether deviation from state water quality  
3-33 standards or from established criteria is appropriate, based on the  
3-34 degree to which the desired remediation level is achievable and may  
3-35 be reasonably and cost-effectively implemented; and

3-36 (4) additional factors the commission considers  
3-37 relevant.

3-38 (b) In considering a deviation under Subsection (a)(3), a  
3-39 deviation from a state water quality standard may not result in the  
3-40 application of a standard that is more stringent than the  
3-41 applicable standard.

3-42 Sec. 374.055. CRITERIA FOR ADMINISTRATION OF CHAPTER.  
3-43 (a) The commission shall administer this chapter in accordance  
3-44 with this section.

3-45 (b) To the maximum extent possible, the commission shall  
3-46 deal with contamination from dry cleaning facilities by using money  
3-47 in the fund.

3-48 (c) The commission shall use money from the fund as sites  
3-49 are discovered in the normal course of the commission's business.

3-50 (d) The commission shall consider interim or early  
3-51 corrective action that may result in an overall reduction of risk to  
3-52 human health and the environment and in the reduction of total costs  
3-53 of corrective action at a site.

3-54 (e) The commission, in its discretion, may use innovative  
3-55 technology to perform corrective action.

3-56 (f) To the maximum extent possible, money in the fund must  
3-57 be used to address contamination resulting from releases.

3-58 Sec. 374.056. REPORT TO GOVERNOR AND LEGISLATURE. On or  
3-59 before December 1 of each even-numbered year, the executive  
3-60 director shall submit to the governor, lieutenant governor, speaker  
3-61 of the house of representatives, and members of the appropriate  
3-62 standing committees of the senate and the house of representatives  
3-63 a report regarding:

3-64 (1) money deposited to the credit of the fund during  
3-65 the two previous fiscal years and the sources of the receipts;

3-66 (2) disbursements from the fund during the two  
3-67 previous fiscal years and the purposes of the disbursements;

3-68 (3) the extent of corrective action taken under this  
3-69 chapter during the two previous fiscal years; and

4-1 (4) the ranking of sites on the date the report is  
 4-2 made.

4-3 [Sections 374.057-374.100 reserved for expansion]

4-4 SUBCHAPTER C. FINANCIAL PROVISIONS

4-5 Sec. 374.101. DRY CLEANING FACILITY RELEASE FUND. (a) The  
 4-6 dry cleaning facility release fund is an account in the general  
 4-7 revenue fund.

4-8 (b) The fund consists of money from:

4-9 (1) proceeds from the charges and fees imposed by this  
 4-10 chapter;

4-11 (2) interest attributable to investment of money in  
 4-12 the fund;

4-13 (3) money recovered by the state under this chapter,  
 4-14 including any money paid under an agreement with the commission or  
 4-15 as civil penalties; and

4-16 (4) money received by the commission in the form of  
 4-17 gifts, grants, reimbursements, or appropriations from any source  
 4-18 intended to be used for the purposes of this chapter.

4-19 (c) Money in the fund may be appropriated only to the  
 4-20 commission for the purposes of this chapter, including any  
 4-21 administrative duty imposed on the commission under this chapter.

4-22 (d) Before September 1, 2005, the commission may annually  
 4-23 spend for administrative and start-up expenses incurred in  
 4-24 fulfilling its duties under this chapter an amount of money from the  
 4-25 fund not to exceed 15 percent of the amount of money credited to the  
 4-26 fund in the same fiscal year as the expenditures. Beginning on  
 4-27 September 1, 2005, the commission may spend from the fund for those  
 4-28 expenses an amount not to exceed 10 percent of the amount of money  
 4-29 credited to the fund in the same fiscal year.

4-30 (e) Subject to the limitations of this chapter, the  
 4-31 commission shall use only money from the fund to pay for all  
 4-32 expenses incurred by the commission in fulfilling its duties under  
 4-33 this chapter.

4-34 (f) Section 403.095, Government Code, does not apply to  
 4-35 money deposited to the fund.

4-36 Sec. 374.102. REGISTRATION; FEE; POSTING. (a) Each owner  
 4-37 of an operating dry cleaning facility shall register with the  
 4-38 commission on a form provided by the commission.

4-39 (b) The registration must be accompanied by a fee of \$250  
 4-40 for each operating dry cleaning facility owned by the owner.

4-41 (c) Fees paid under this section shall be deposited to the  
 4-42 credit of the fund.

4-43 (d) The owner of a dry cleaning facility shall post the  
 4-44 owner's registration number, in a manner prescribed by the  
 4-45 commission, in the public area of each of the owner's operating dry  
 4-46 cleaning facilities.

4-47 (e) Registration under this section must be renewed  
 4-48 annually.

4-49 Sec. 374.103. ENVIRONMENTAL REMEDIATION CHARGE;  
 4-50 DISPOSITION OF PROCEEDS. (a) Subject to Section 374.105, an  
 4-51 environmental remediation charge on all business receipts is  
 4-52 imposed for the privilege of engaging in the business of laundering  
 4-53 and dry cleaning garments and other household fabrics in this  
 4-54 state. The charge shall be at a rate of 1.5 percent of all receipts  
 4-55 received for dry cleaning or laundering services.

4-56 (b) Receipts otherwise subject to the charge imposed by this  
 4-57 section are exempt from the charge if they arise from:

4-58 (1) services performed through a coin-operated  
 4-59 device, whether automatic or manually operated, available for use  
 4-60 by the public;

4-61 (2) the laundering without use of dry cleaning  
 4-62 solvents of uniforms, linens, or other textiles for commercial  
 4-63 purposes, including any rental of uniforms, linens, or dust control  
 4-64 materials; or

4-65 (3) charges or services to an entity that qualifies  
 4-66 for an exemption from the retail sales tax on laundering and dry  
 4-67 cleaning services under Chapter 151, Tax Code.

4-68 (c) The comptroller, after consultation with the  
 4-69 commission, shall adopt any procedures needed for the monthly

5-1 collection, administration, and enforcement of the charge imposed  
 5-2 by this section and, except as provided by Subsection (d), shall  
 5-3 deposit all remitted charges to the credit of the fund.

5-4 (d) The comptroller may retain five percent of the charges  
 5-5 collected under this section for the purpose of covering costs  
 5-6 incurred by the comptroller in collecting the charges,  
 5-7 administering the fund, and fulfilling any other duties imposed on  
 5-8 the comptroller under this chapter.

5-9 (e) If the comptroller's costs under Subsection (d) for a  
 5-10 fiscal year, or the amount appropriated to the comptroller to cover  
 5-11 those costs for that fiscal year, total an amount that is less than  
 5-12 the amount retained during the year to cover those costs, the  
 5-13 comptroller shall deposit the unexpended balance to the credit of  
 5-14 the fund on or before August 31 of that year.

5-15 Sec. 374.104. FEE ON PURCHASE OF DRY CLEANING SOLVENT;  
 5-16 DISPOSITION OF PROCEEDS. (a) Subject to Section 374.105, a fee of  
 5-17 \$5 per gallon is imposed on the purchase of dry cleaning solvent by  
 5-18 an owner of a dry cleaning facility. The person who distributes the  
 5-19 solvent shall pay the fee to the comptroller.

5-20 (b) Subsection (a) does not apply to an owner who has never  
 5-21 used the dry cleaning solvent perchloroethylene in a dry cleaning  
 5-22 unit.

5-23 (c) A person who distributes dry cleaning solvent may not  
 5-24 sell the solvent for use in a dry cleaning facility unless the  
 5-25 person first obtains and records the registration number of the  
 5-26 owner of the facility.

5-27 (d) The comptroller, after consultation with the  
 5-28 commission, shall adopt any procedures needed for the collection,  
 5-29 administration, and enforcement of the fee imposed by this section  
 5-30 and shall deposit all remitted fees to the credit of the fund.

5-31 (e) The comptroller shall administer and enforce this  
 5-32 section and adopt any rules necessary to carry out the  
 5-33 comptroller's responsibilities under this section.

5-34 Sec. 374.105. IMPOSITION OF CHARGE DEPENDENT ON BALANCE OF  
 5-35 FUND. (a) The environmental remediation charge imposed by Section  
 5-36 374.103 may not be collected or required to be paid on or after July  
 5-37 1 of a calendar year if the executive director notifies the  
 5-38 comptroller under Subsection (c) that the unobligated principal  
 5-39 balance of the fund exceeds \$20 million on April 1 of that year.

5-40 (b) The charge imposed by Section 374.103 shall be  
 5-41 reinstated effective July 1 of a calendar year if the executive  
 5-42 director notifies the comptroller under Subsection (c) that the  
 5-43 unobligated principal balance of the fund is less than \$10 million  
 5-44 on April 1 of that year.

5-45 (c) Not later than April 5 of each calendar year, the  
 5-46 executive director shall notify the comptroller of the unobligated  
 5-47 principal balance of the fund on April 1 of that year.

5-48 (d) The comptroller promptly shall notify persons from whom  
 5-49 a charge is to be collected under Section 374.103 if the imposition  
 5-50 of the charge is to be suspended or reinstated on the following July  
 5-51 1.

5-52 [Sections 374.106-374.150 reserved for expansion]  
 5-53 SUBCHAPTER D. RESPONSE TO RELEASE; CORRECTIVE ACTION

5-54 Sec. 374.151. RESPONSE TO RELEASE. (a) A person may not  
 5-55 intentionally allow a release.

5-56 (b) A person who knows of a release over a 24-hour period of  
 5-57 more than one quart of a chlorinated dry cleaning solvent or of more  
 5-58 than one gallon of a nonchlorinated dry cleaning solvent shall:

5-59 (1) immediately contain and control the release; and  
 5-60 (2) notify the commission of the release before the  
 5-61 expiration of 48 hours after the person learns of the release.

5-62 Sec. 374.152. INVESTIGATION AND ASSESSMENT OF RELEASE;  
 5-63 EMERGENCY ACTION. (a) If a release or a potential release poses a  
 5-64 threat to human health or to the environment, the commission shall:

5-65 (1) investigate and assess the extent of the resulting  
 5-66 contamination; and

5-67 (2) take necessary or appropriate emergency action to  
 5-68 ensure that human health or safety is not threatened by the release  
 5-69 or the potential release.

6-1 (b) Emergency action under Subsection (a)(2) may include  
 6-2 the treatment, restoration, or replacement of drinking water  
 6-3 supplies.

6-4 Sec. 374.153. CORRECTIVE ACTION. (a) Subject to  
 6-5 Subchapter E, the commission shall take corrective action for a  
 6-6 release from a dry cleaning facility that results in contamination,  
 6-7 including contamination that may have moved off the dry cleaning  
 6-8 facility.

6-9 (b) Corrective action includes the cleanup of affected  
 6-10 soil, groundwater, or surface water using the most cost-effective  
 6-11 method that:

6-12 (1) is technologically feasible and reliable;  
 6-13 (2) provides adequate protection of human health and  
 6-14 the environment; and

6-15 (3) minimizes, to the extent practical, environmental  
 6-16 damage.

6-17 (c) The commission shall:

6-18 (1) operate and maintain corrective action;  
 6-19 (2) monitor releases from a dry cleaning facility,  
 6-20 including contamination that may have moved off the dry cleaning  
 6-21 facility;

6-22 (3) pay the reasonable costs incurred by the  
 6-23 commission in providing field and laboratory services; and

6-24 (4) pay the reasonable costs of restoring property, as  
 6-25 nearly as practicable, to the conditions that existed before the  
 6-26 activities associated with:

6-27 (A) the investigation of a release;

6-28 (B) a cleanup; or

6-29 (C) related corrective action.

6-30 (d) The commission shall ensure the removal and proper  
 6-31 disposal of wastes generated by a release.

6-32 (e) Except as provided by Subchapter E, the commission shall  
 6-33 pay the costs of corrective action conducted under this subchapter  
 6-34 by the commission or by other entities approved by the commission,  
 6-35 regardless of whether the corrective action is included in a  
 6-36 corrective action plan.

6-37 Sec. 374.154. RANKING OF CONTAMINATED DRY CLEANING SITES.

6-38 (a) For a contaminated dry cleaning site that does not require  
 6-39 emergency action under Section 374.152, the commission shall assign  
 6-40 a rank for the site relative to other sites previously ranked and  
 6-41 awaiting corrective action based on information contained in the  
 6-42 application for ranking.

6-43 (b) The following persons are eligible to apply for a site  
 6-44 to be ranked under Subsection (a):

6-45 (1) a person who is an owner of the dry cleaning  
 6-46 facility; and

6-47 (2) a person who is and has been an owner of the real  
 6-48 property on which the facility is located for not less than five  
 6-49 years as of the date the application for ranking is submitted.

6-50 (c) If the applicant for ranking:

6-51 (1) is not an owner of the real property, the  
 6-52 application must include proof that an owner of the real property  
 6-53 has been notified of the application; or

6-54 (2) is an owner of the real property and the facility  
 6-55 is leased, the application must include proof that a lessee has been  
 6-56 notified of the application.

6-57 (d) The application for ranking must contain information  
 6-58 and evidence required by commission rule to aid in ranking. The  
 6-59 information and evidence required may include:

6-60 (1) water or soil samples;

6-61 (2) analyses of the water or soil samples;

6-62 (3) hydrogeologic information from the contaminated  
 6-63 site;

6-64 (4) information concerning the site's proximity to a  
 6-65 private or public water supply; and

6-66 (5) other information or evidence the commission  
 6-67 considers necessary.

6-68 (e) The costs incurred by an applicant in collecting the  
 6-69 information and evidence under Subsection (d) shall be credited

7-1 against the deductible payable by the applicant under Section  
 7-2 374.203(d).

7-3 (f) The commission shall notify the applicant of the  
 7-4 relative ranking the commission assigns the applicant's site on or  
 7-5 before the 90th day after the date the application is received by  
 7-6 the commission.

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

7-9 (1) modify the ranked status of a site as warranted  
 7-10 under the system of priorities established under Section  
 7-11 374.051(b)(3); or

7-12 (2) postpone temporarily the completion of a  
 7-13 corrective action for which money from the fund is being used, if  
 7-14 the postponement is necessary to make money available for  
 7-15 corrective action at a site with a higher ranking.

7-16 Sec. 374.156. ENTRY ONTO PROPERTY. (a) An authorized  
 7-17 officer, employee, or agent of the commission, or a person under  
 7-18 order of or contract with the commission, at reasonable times and on  
 7-19 written notice to the owner or occupant of any property or premises,  
 7-20 may enter onto the property or premises to take corrective action if  
 7-21 the executive director determines that the action is necessary to  
 7-22 protect the public health or environment.

7-23 (b) If consent to enter is not granted by the person in  
 7-24 control of a site that is the subject of a notice under this  
 7-25 section, the commission may issue an order directing compliance  
 7-26 with the notice. The order may be issued only after providing the  
 7-27 notice and opportunity for consultation that are reasonably  
 7-28 appropriate under the circumstances.

7-29 [Sections 374.157-374.200 reserved for expansion]

7-30 SUBCHAPTER E. LIABILITY AND RESPONSIBILITY

7-31 Sec. 374.201. PROPORTIONATE SHARE OF LIABILITY. (a) At a  
 7-32 site with more than one source of contamination, the commission  
 7-33 may:

7-34 (1) use money in the fund to pay only for the  
 7-35 proportionate share of the liability for corrective action costs  
 7-36 that is attributable to a release or releases from one or more dry  
 7-37 cleaning facilities; and

7-38 (2) determine the relative liability of the fund for  
 7-39 costs of corrective action, expressed as a percentage of the total  
 7-40 cost of corrective action at a site, whether known or unknown.

7-41 (b) The commission shall issue an order establishing the  
 7-42 percentage of liability. The order is binding and controls the  
 7-43 obligation of the fund unless amended by the commission. If an  
 7-44 appeal from the order is made, the percentage of liability  
 7-45 established by the order must control for costs incurred while the  
 7-46 appeal is pending.

7-47 Sec. 374.202. OWNER RESPONSIBILITY. (a) The commission  
 7-48 may hold an owner responsible for up to 100 percent of the costs of  
 7-49 corrective action attributable to the owner if the commission  
 7-50 finds, after notice and an opportunity for a hearing, that:

7-51 (1) requiring the owner to bear the responsibility  
 7-52 will not prejudice another owner or person who is eligible, under  
 7-53 this chapter, to have corrective action costs paid by the fund; and

7-54 (2) the owner:

7-55 (A) caused a release by operating practices  
 7-56 contrary to those generally in use at the time of the release;

7-57 (B) is in arrears for money owed under this  
 7-58 chapter, after notice and an opportunity to correct the arrearage;

7-59 (C) obstructed the efforts of the commission to  
 7-60 carry out its obligations under this chapter other than by the  
 7-61 exercise of the owner's legal rights;

7-62 (D) caused or allowed the release because of a  
 7-63 material violation of the performance standards established by this  
 7-64 chapter or the rules adopted by the commission under this chapter;

7-65 or

7-66 (E) has more than once violated Section 374.151  
 7-67 or related commission rules.

7-68 (b) To the extent that an owner is responsible for  
 7-69 corrective action costs under this subsection, the owner is not

8-1 entitled to the exemption under Section 374.207.

8-2 Sec. 374.203. LIMITATION ON USE OF FUND FOR CORRECTIVE  
 8-3 ACTION. (a) In this section, "contaminated dry cleaning site"  
 8-4 means the areal extent of soil or groundwater contamination with  
 8-5 dry cleaning solvents.

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

8-9 (c) The commission may not use money from the fund for  
 8-10 corrective action at a contaminated dry cleaning site unless:

8-11 (1) the owner applies for the ranking under Section  
 8-12 374.154 and is not otherwise ineligible for corrective action under  
 8-13 this chapter; or

8-14 (2) at the time corrective action is to begin, the real  
 8-15 property at the site has been under the same ownership for not less  
 8-16 than five years.

8-17 (d) The owner of a dry cleaning facility, or other person  
 8-18 who submits the application for ranking the facility under Section  
 8-19 374.154, shall pay as a deductible the first \$5,000 of corrective  
 8-20 action costs incurred because of a release from the dry cleaning  
 8-21 facility. The commission may take corrective action regardless of  
 8-22 whether the commission obtains the deductible.

8-23 Sec. 374.204. LIMITATION ON LIABILITY. The fund, the  
 8-24 commission, the executive director, this state, or agents or  
 8-25 employees of this state may not be held liable for loss of business,  
 8-26 damages, or taking of property associated with any corrective  
 8-27 action taken under this chapter.

8-28 Sec. 374.205. LIMITATION ON USE OF FUND FOR THIRD PARTIES.  
 8-29 Money from the fund may not be used to compensate third parties for  
 8-30 bodily injury or property damage caused by a release, other than  
 8-31 property damage included in a corrective action plan approved by  
 8-32 the commission.

8-33 Sec. 374.206. USE OF OTHER SOURCES OF MONEY. This chapter  
 8-34 does not create a liability or responsibility on the part of the  
 8-35 commission, the executive director, this state, or agents or  
 8-36 employees of this state to pay any corrective action costs from a  
 8-37 source other than the fund or to take corrective action if the  
 8-38 amount of money in the fund is insufficient.

8-39 Sec. 374.207. ELIGIBLE OWNER EXEMPT FROM CERTAIN CLAIMS.  
 8-40 If an owner or other person is eligible under this chapter to have  
 8-41 corrective action costs paid by the fund, an administrative or  
 8-42 judicial claim may not be made under state law against the owner or  
 8-43 other person by or on behalf of this state or by any other person,  
 8-44 except a political subdivision, to compel corrective action or seek  
 8-45 recovery of the costs of corrective action that result from the  
 8-46 release.

8-47 Sec. 374.208. UNAUTHORIZED PAYMENTS. (a) The commission  
 8-48 may pay costs from the fund under this chapter only if the costs  
 8-49 are:

8-50 (1) integral to corrective action for a release; or  
 8-51 (2) required for the administration or enforcement of  
 8-52 this chapter.

8-53 (b) The commission may not spend money from the fund:  
 8-54 (1) for corrective action at a site contaminated by  
 8-55 solvents normally used in dry cleaning operations, if the  
 8-56 contamination did not result from the operation of a dry cleaning  
 8-57 facility;

8-58 (2) for corrective action at a site, other than a dry  
 8-59 cleaning facility, that is contaminated by dry cleaning solvents  
 8-60 that were released while being transported to or from a dry cleaning  
 8-61 facility by a person other than the owner of the dry cleaning  
 8-62 facility or the owner's agents or employees; or

8-63 (3) for the payment of any costs:  
 8-64 (A) associated with a fine or penalty brought  
 8-65 against a dry cleaning facility owner under state or federal law; or  
 8-66 (B) related to corrective action at a dry  
 8-67 cleaning facility that:

8-68 (i) has been included by the United States  
 8-69 Environmental Protection Agency on the national priorities list; or



9-1 (ii) is a hazardous waste facility eligible  
9-2 for listing on the state registry under Subchapter F, Chapter 361.

9-3 [Sections 374.209-374.250 reserved for expansion]

9-4 SUBCHAPTER F. REVIEW OF ORDERS AND DECISIONS; VIOLATIONS;  
9-5 PENALTIES; EXPIRATION

9-6 Sec. 374.251. REVIEW OF ORDERS AND DECISIONS. (a) A  
9-7 person affected by an order or decision of the commission under this  
9-8 chapter may, on or before the 15th day after the date of service of  
9-9 the order or decision, make a written request for a hearing.

9-10 (b) A person affected by the decision in an administrative  
9-11 hearing under Subsection (a) is entitled to judicial review and may  
9-12 appeal the decision on or before the 31st day after the date on  
9-13 which the decision was rendered.

9-14 Sec. 374.252. VIOLATIONS; PENALTIES. A person is subject  
9-15 to an administrative penalty under Section 7.0525, Water Code, if  
9-16 the person:

9-17 (1) operates a dry cleaning facility in violation of  
9-18 this chapter, rules adopted under this chapter, or orders of the  
9-19 commission made under this chapter;

9-20 (2) prevents or hinders a properly identified  
9-21 authorized officer, employee, or agent of the commission, or a  
9-22 properly identified person under order of or contract with the  
9-23 commission, from entering, inspecting, sampling, or responding to a  
9-24 release as authorized by this chapter;

9-25 (3) knowingly makes any false material statement or  
9-26 representation in any record, report, or other document filed,  
9-27 maintained, or used for the purpose of compliance with this  
9-28 chapter;

9-29 (4) knowingly destroys, alters, or conceals any record  
9-30 that this chapter or rules adopted under this chapter require to be  
9-31 maintained; or

9-32 (5) violates Section 374.151 or related commission  
9-33 rules.

9-34 Sec. 374.253. EXPIRATION. (a) This chapter expires on  
9-35 September 1, 2021.

9-36 (b) A corrective action, including any administrative  
9-37 duties associated with the action, for which remediation of a  
9-38 contaminated site has begun before September 1, 2021, shall be  
9-39 completed in accordance with this chapter using money from the  
9-40 fund, to the extent possible, but money may not be collected for or  
9-41 added to the fund on or after that date.

9-42 (c) A corrective action that has not progressed beyond the  
9-43 investigative or planning stage on September 1, 2021, may not be  
9-44 paid for using money from the fund.

9-45 (d) Any unobligated money remaining in the fund after the  
9-46 completion of all corrective actions under Subsection (b) shall be  
9-47 transferred to the general revenue fund to the credit of the  
9-48 commission or a successor agency. The fund is abolished on the date  
9-49 of the transfer.

9-50 SECTION 2. Subchapter C, Chapter 7, Water Code, is amended  
9-51 by adding Section 7.0525 to read as follows:

9-52 Sec. 7.0525. PENALTIES FOR VIOLATIONS RELATED TO CERTAIN  
9-53 DRY CLEANING FACILITIES. (a) Except as provided by Subsection  
9-54 (b), the amount of the penalty for a violation of Section 374.252,  
9-55 Health and Safety Code, may not exceed \$5,000.

9-56 (b) The amount of the penalty for a violation of Section  
9-57 374.252(1), Health and Safety Code, may not exceed \$1,000.

9-58 (c) In assessing an administrative penalty under this  
9-59 section, the commission shall consider, in addition to the factors  
9-60 prescribed by Section 7.053, the following factors, if applicable:

9-61 (1) the extent to which the violation has or may have  
9-62 an adverse effect on the environment; and

9-63 (2) the amount of the reasonable costs incurred by  
9-64 this state in detection and investigation of the violation.

9-65 SECTION 3. (a) Not later than December 1, 2003, the Texas  
9-66 Commission on Environmental Quality shall adopt any rules,  
9-67 performance standards, or forms required for the implementation of  
9-68 Chapter 374, Health and Safety Code, as added by this Act.

9-69 (b) Performance standards for new dry cleaning facilities

10-1 under Section 374.053, Health and Safety Code, as added by this Act,  
10-2 apply only to a dry cleaning facility first brought into use on or  
10-3 after April 1, 2004.

10-4 (c) Not later than December 1, 2003, the comptroller of  
10-5 public accounts shall adopt any rules or forms required for the  
10-6 implementation of the comptroller's duties under Chapter 374,  
10-7 Health and Safety Code, as added by this Act.

10-8 (d) The changes in law made by Sections 374.204 and 374.207,  
10-9 Health and Safety Code, as added by this Act, apply only to a cause  
10-10 of action that accrues on or after January 1, 2004, and before  
10-11 September 1, 2021. A cause of action that accrued before January 1,  
10-12 2004, or after September 1, 2021, is subject to the law governing  
10-13 the action that was in effect when the action accrued, and that law  
10-14 is continued in effect for that purpose.

10-15 (e) Chapter 374, Health and Safety Code, as added by this  
10-16 Act, does not apply to any corrective actions taken by the Texas  
10-17 Commission on Environmental Quality at a dry cleaning facility as  
10-18 defined by Section 374.001, Health and Safety Code, as added by this  
10-19 Act, before the effective date of this Act.

10-20 SECTION 4. (a) Except as provided by this section, this  
10-21 Act takes effect September 1, 2003.

10-22 (b) Before January 1, 2005, the Texas Commission on  
10-23 Environmental Quality shall limit disbursements from the dry  
10-24 cleaning facility release fund to those disbursements allowed by  
10-25 Subsection (d), Section 374.101, Health and Safety Code, as added  
10-26 by this Act.

10-27 (c) Disbursements from the dry cleaning facility release  
10-28 fund for a corrective action taken under Chapter 374, Health and  
10-29 Safety Code, as added by this Act, may not begin before January 1,  
10-30 2005.

10-31 (d) Sections 374.056, 374.204, 374.207, and 374.252, Health  
10-32 and Safety Code, as added by this Act, take effect January 1, 2004.

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