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INTRODUCED

April 14, 2009

**H. 3203**

Introduced by Reps. Brady, Harrison, J.E. Smith, Battle and Simrill

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**A** **BILL**

TO AMEND ARTICLE 4, CHAPTER 56, TITLE 44 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DRYCLEANING FACILITY RESTORATION TRUST FUND, SO AS, AMONG OTHER THINGS, TO FURTHER SPECIFY THAT WHOLESALE DRYCLEANING FACILITIES ARE SUBJECT TO THE PROVISIONS OF THIS ARTICLE AND ARE ELIGIBLE TO SEEK RESTORATION ASSISTANCE UNDER THIS ARTICLE; TO AUTHORIZE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO USE FUNDS, OTHER THAN FUNDS FROM THE DRYCLEANING FACILITY RESTORATION TRUST FUND, IF AN EMERGENCY EXISTS AND FUNDS ARE NOT AVAILABLE FROM THE TRUST FUND AND TO FURTHER PROVIDE THAT THESE FUNDS MUST BE REPAID FROM THE TRUST FUND; TO PROVIDE EXEMPTIONS FROM THE ENVIRONMENTAL SURCHARGE IMPOSED ON THE GROSS PROCEEDS OF SALES OF RETAIL DRYCLEANING FACILITIES, INCLUDING AN EXEMPTION FOR WHOLESALE SALES OF DRYCLEANING SERVICES; TO FURTHER PROVIDE FOR ELIGIBILITY REQUIREMENTS AND DETERMINATIONS AND PROCEDURES FOR REQUESTING AND ISSUING RESTORATION ASSISTANCE, INCLUDING OBTAINING SECONDARY ASSESSMENTS AND THE AMOUNT OF DEDUCTIBLES; TO PROVIDE INITIAL AND ANNUAL REGISTRATION FEES FOR DRYCLEANING FACILITIES ESTABLISHED AFTER OCTOBER 1, 1995 AND TO AUTHORIZE THE PROPERTY OWNER TO REGISTER A FACILITY IF THE OWNER OR OPERATOR OF THE FACILITY DOES NOT; TO PROVIDE FOR THE ISSUANCE OF CERTIFICATES OF REGISTRATION, TO REQUIRE PRESENTATION OF SUCH CERTIFICATES IN ORDER TO PURCHASE DRYCLEANING SOLVENTS, TO PROHIBIT A SUPPLY FACILITY, OR OTHER DRYCLEANING FACILITY, FROM SELLING DRYCLEANING SOLVENT TO A DRYCLEANING FACILITY IF THE FACILITY DOES NOT POSSESS A CERTIFICATE, AND TO PROVIDE CIVIL PENALTIES; TO SPECIFY REQUIREMENTS FOR A DRYCLEANING FACILITY EXEMPTION CERTIFICATE; AND TO REVISE THE MEMBERSHIP OF THE DRYCLEANING ADVISORY COUNCIL.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 4, Chapter 56, Title 44 of the 1976 Code is amended to read:

“Article 4

Drycleaning Facility Restoration Trust Fund

Section 44‑56‑410. As used in this article:

(1) ‘Department’ means the Department of Health and Environmental Control.

(2) ‘Discharge’ means leakage, seepage, or other release.

(3) ‘Drycleaning facility’ means a professional ~~retail~~ commercial establishment located in this State ~~that operates or has at some time in the past operated in whole or in part~~ for the purpose of cleaning clothing and other fabrics ~~from members of the public~~ utilizing a process which involves the use of drycleaning solvents. In the case of a retail establishment, the establishment is one that operates or has at some time in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics from members of the public, other drycleaning facilities, and dry drop‑off facilities. In the case of a wholesale establishment, the establishment is one that operates or has at some time in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics for other drycleaning facilities or dry drop‑off facilities. ‘Drycleaning facility’ includes laundry facilities that are using or have used drycleaning solvents as part of their cleaning process, but does not include textile mills or uniform rental and linen supply facilities.

(4) ‘Drycleaning solvents’ means nonaqueous solvents used in the cleaning of clothing and other fabrics and includes halogenated drycleaning fluids and nonhalogenated cleaners, and their breakdown products. ‘Drycleaning solvents’ includes only solvents originating from use at a drycleaning facility or by a wholesale supply facility.

(5) ‘Dry drop‑off facility’ means a commercial retail store that receives from customers clothing and other fabrics for drycleaning at an off‑site drycleaning facility and does not clean the clothing or fabrics at the store utilizing drycleaning solvents.

(6) ‘Employee’ means a natural person employed and paid by the owner of a drycleaning facility for thirty‑five or more hours a week for forty‑five or more weeks a year and on whose behalf the owner contributes payments to the South Carolina Employment Security Commission or Department of Revenue as required by law. Excluded from the meaning of the term ‘employee’ are owners of drycleaning facilities and family members of owners, regardless of the level of consanguinity, if the family members are not employed and not compensated pursuant to the definition of the term ‘employee’ contained in this item. Part‑time employees who are employed and paid for fewer than thirty‑five hours a week for fewer than forty‑five weeks a year must not be deemed to be employees unless their hours and weeks of employment, when combined with the hours and weeks of employment of another or other part‑time employee or employees, total thirty‑five or more hours a week for forty‑five or more weeks a year.

(7) ‘Person’ ~~means any~~ includes an individual, partnership, corporation, association, trust, estate, receiver, company, limited liability company, or any other entity or group ~~that is vested with ownership, dominion, or legal or rightful title to the real property or which has a ground lease interest in the real property on which a drycleaning or wholesale supply facility is or has ever been located~~.

(8) ‘Wholesale supply facility’ means a commercial establishment that supplies drycleaning solvents to drycleaning facilities.

(9) ‘Insolvent’ means the approved expenses of the Department of Health and Environmental Control and the Department of Revenue as well as the estimated cleanup costs are projected to exceed the fund balance and projected revenues for a five‑year period commencing on January fifteenth of each year.

(10) ‘Halogenated drycleaning fluid’ means any nonaqueous solvent formulated, in whole or in part, with ten percent or more by volume any of the halogenated compounds chlorine, bromine, fluorine, or iodine. Halogenated drycleaning fluids include perchloroethylene (also known as tetrachloroethylene), trichlorethylene, and any breakdown components of them.

(11) ‘Nonhalogenated cleaner’ means any nonaqueous solvent used in a drycleaning facility that contains less than ten percent by volume of any halogenated compound. Nonhalogenated cleaners include petroleum based drycleaning solvents and any breakdown components of them.

(12) ‘Nonaqueous solvent’ means any cleaning formulation designed to minimize swelling of fabric fibers and containing less than fifty‑one of water by volume.

(13) ‘Former drycleaning facility’ means a drycleaning facility or wholesale supply facility that ceases to be operated as a drycleaning facility or wholesale supply facility before July 1, 1995.

(14) Property owner’ means a person who is vested with ownership, dominion, or legal or rightful title to the real property or who has a ground lease interest in the real property on which a drycleaning or wholesale supply facility is or has ever been located.

Section 44‑56‑420. (A) There is created in the state treasury a separate and distinct account called the ‘Drycleaning Facility Restoration Trust Fund’, revenue for which must be collected and enforced by the Department of Revenue, and the fund must be administered by the Department of Health and Environmental Control and expended for the purposes of this article. However, the department may contract for the administration of the fund or any part of the administration of the fund. Judgments, recoveries, reimbursements, loans, and other fees and charges related to the implementation of this section, the tax revenues levied, collected, and credited pursuant to Section 44‑56‑480, and the registration fees collected pursuant to Section 44‑56‑470 must be credited to the fund. Charges against the fund must be made in accordance with the provisions of this section. The State accepts no financial responsibility as a result of the creation of the fund. The creation of the fund creates no burden upon the State to provide monies for the fund by any mechanisms other than as provided in this section. ~~At no time shall monies from the general fund be obligated to supplement the fund.~~ The State may recover to the fund any funds expended from the fund which were not utilized in accordance with this article.

(B) ~~Whenever~~ If incidents of contamination by drycleaning solvents related to the operation of drycleaning facilities or wholesale supply facilities pose a threat to the environment or the public health, safety, or welfare, the department shall obligate monies available in the fund pursuant to this section to provide for:

(1) the prompt investigation and assessment of the contaminated sites; however, the owner or operator of a drycleaning facility or wholesale supply facility or a ~~person~~ property owner must pay for the cost of the investigation and assessment up to the amount of the owner’s, operator’s, or ~~person’s~~ property owner’s deductible, and the department only shall provide monies that exceed the owner’s, operator’s, or ~~person’s~~ property owner’s deductible; however, in order to receive these monies the owner, operator, or ~~person~~ property owner must comply with this article and the regulations promulgated ~~under~~ pursuant to this article;

(2) the expeditious treatment, restoration, or replacement of potable water supplies;

(3) the rehabilitation of contaminated drycleaning facility sites, which consist of rehabilitation of affected soil, groundwater, and surface waters, using the most cost‑effective alternative that is reliable and feasible technologically and that provides adequate protection of the public health, safety, and welfare and minimizes environmental damage in accordance with the site selection and rehabilitation criteria established by the department, except that nothing in this article may be construed to authorize the department to obligate funds for payment of costs which may be associated with, but are not integral to, site rehabilitation;

(4) the maintenance and monitoring of contaminated sites;

(5) the inspection and supervision of activities described in this section;

(6) the expenses of administering the fund by the department including the employment of department staff to carry out the department’s duties described in this article; however, the department may exclude five percent of the average annual collections of the fund or the amount required to fund four employees and the administrative costs associated with these employees, whichever is greater;

(7) the payment of reasonable costs of restoring property so as to assure public health and safety, as determined by the department.

(C) The fund may not be used to:

(1) restore sites which are contaminated by solvents normally used in drycleaning operations if the activities at a site are not related to the operation of a drycleaning facility or wholesale supply facility;

(2) restore sites that are contaminated by drycleaning solvents being transported to or from a drycleaning facility or wholesale supply facility or that are contaminated as a result of the delivery of drycleaning solvents to a drycleaning facility or wholesale supply facility on or after July 1, 1995, if the contamination resulted from gross negligence;

(3) fund any costs related to the restoration of a site that is proposed for listing or is listed on the State Priority List or on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, or any site that is required to obtain a permit pursuant to the Resource Conservation and Recovery Act, as amended;

(4) pay any costs associated with a fine, penalty, or action brought against the owner or operator of a drycleaning facility or wholesale supply facility or a ~~person~~ property owner under local, state, or federal law;

(5) pay any costs incurred before July 1, 1995, for the remediation of a contaminated site;

(6) pay any costs to landscape or otherwise artificially improve a contaminated site;

(7) pay any contamination assessment or costs restoration before the actual date of the first payment of registration fees for the site pursuant to Section 44‑56‑470(B);

(8) pay any costs related to contamination assessment where no contamination from drycleaning solvents is discovered;

(9) pay any costs for work not approved by the department in accordance with this article or regulations promulgated pursuant to this article;

(10) restore sites that are uniform rental and linen supply facilities unless the site was operated on or after July 1, 1995, as a ~~professional retail~~ drycleaning facility for garments or fabrics belonging to the public and has participated in the fund;

(11) restore sites that are no longer operated as drycleaning facilities or coin‑operated drycleaning facilities where the owner, operator, or ~~person~~ property owner has not paid a registration fee for the site pursuant to Section 44‑56‑470(B) and has not been involved in the drycleaning industry after October 1, 1995.

(D) The department shall promulgate regulations that provide for an initial contamination assessment to determine whether a drycleaning facility or wholesale supply facility is contaminated by drycleaning solvents. Payment for the initial assessment is as provided for in subsection (B), and site rehabilitation portions of the program must be administered through direct payments to contractors actually accomplishing the site rehabilitation and not through reimbursement to drycleaning or wholesale supply facility owners, operators, or ~~persons~~ property owners. All services related to site rehabilitation must be preapproved by the department before performance in order to receive payment for services rendered.

(E) If the committed money in the fund exceeds the current ~~fund~~ balance and the department declares a site is an emergency~~, the owner or operator of the drycleaning facility, wholesale facility, or person is liable for~~ or the amount committed to a site has reached the maximum allowable expenditure for any one site in a given year and the department declares the site is an emergency, the department may use other funds to pay the cost of that cleanup. However, once the fund has ~~funds~~ an available uncommitted balance, the ~~owner, operator, or person who~~ department’s other sources of money that paid for the approved emergency cleanup ~~must~~ may be reimbursed for the costs incurred ~~to clean up the site~~ through annual payments which may not exceed five percent of the total fund’s average annual balance ~~if the cleanup complies with the provisions of this article or regulations promulgated under this article~~. The fund may not obligate itself for more than it is estimated to generate through surcharges, annual fees, and registration fees.

Section 44‑56‑430. (A)(1) An environmental surcharge, equal to one percent of the gross proceeds of sales of a retail drycleaning facility ~~must be levied as an environmental surcharge on~~ or a dry drop‑off facility is imposed upon every owner or operator of a retail drycleaning facility or a dry drop‑off facility ~~participating in the drycleaning facility restoration trust fund except for the facilities possessing a valid statement of nonparticipation pursuant to Section 44‑56‑480(A)~~.

Exempt from the environmental surcharge imposed in this subsection are:

(a) drycleaning facilities in existence before July 1, 1995, that possess a Drycleaning Facility Exemption Certificate issued by the Department of Revenue on or after July 1, 2009;

(b) dry drop‑off facilities where the clothing or other fabrics are only cleaned by a drycleaning facility:

(i) owned or operated by the same person who owns or operates the dry drop‑off facility;

(ii) issued a Drycleaning Facility Exemption Certificate by the Department of Revenue on or after July 1, 2009; and

(iii) where the owner or operator, or related entity, does not own or operate any other drycleaning facilities that are participating in the fund through payment of any surcharges or fees imposed pursuant to this article; and

(c) wholesale sales of drycleaning services provided to another drycleaning facility or a dry drop‑off facility.

(2) At any time the uncommitted balance of the Drycleaning Facility Restoration Trust Fund Account exceeds five million dollars, the one percent of the gross proceeds of sales of drycleaning surcharge is suspended until that time the uncommitted balance of the trust fund account becomes less than one million dollars. The Department of Health and Environmental Control is responsible for notifying the Department of Revenue when these amounts have been reached. The suspension of the environmental surcharge occurs at the end of the month in which the Department of Revenue is so notified by the Department of Health and Environmental Control. The lifting of the suspension occurs on the first day of the month following the month in which the Department of Revenue is so notified by the Department of Health and Environmental Control.

(B)(1) The ~~initial~~ surcharge imposed by this section is due and payable on the twentieth day of ~~the third month succeeding the month in which the charge is imposed. Subsequent charges are due and payable on or before the twentieth day of~~ each month for the preceding month. The Department of Revenue may authorize the quarterly, semiannual, or annual payment of this surcharge. The surcharge must be reported on forms and in the manner determined by the Department of Revenue.

(2) The Department of Revenue must administer, collect, and enforce the surcharge in the manner that the sales and use taxes are administered, collected, and enforced under Chapter 36 of Title 12, except that no timely payment discount or exemptions or exclusions are allowed. The provisions of Title 12 apply to the collection and enforcement of the surcharge by the Department of Revenue.

(3) The Department of Revenue shall retain funds for the costs incurred to administer, collect, and enforce the fund which may include a part‑time employee with the related expenses for audit purposes. The funds withheld ~~shall~~ must not exceed the actual costs to administer, collect, and enforce the fund. The proceeds of the surcharge, after deducting the costs incurred by the Department of Revenue in administering, auditing, collecting, distributing, and enforcing the surcharge, must be remitted to the State Treasurer and credited to the fund and must be used as provided in Section 44‑56‑420. For the purposes of this section, the proceeds of the surcharge include all funds collected and received by the Department of Revenue, including interest and penalties on delinquent surcharges.

(C) The Department of Health and Environmental Control is required to report each January fifteenth the current financial position of the Drycleaning Facility Restoration Trust Fund to the General Assembly. In addition, Department of Health and Environmental Control must include projected information that would enable the General Assembly to determine the solvency of the fund. At a minimum this must include a five‑year budget projection. This report must also review and comment on the adequacy of the current program in resolving contamination problems at both operating and closed drycleaning facilities in this State.

Section 44‑56‑440. (A) The Board of the Department of Health and Environmental Control shall establish a moratorium on administrative and judicial actions by the department concerning drycleaning facilities and wholesale supply facilities resulting from the discharge of drycleaning solvents to soil or waters of the State. This moratorium applies only to those facilities deemed eligible as defined in this section. The board may review and determine the appropriateness of the moratorium at least annually. This review ~~shall~~ must include, but is not limited to, consideration of these factors:

(1) the solvency of the fund as described in Section 44‑56‑420;

(2) prioritization of the sites;

(3) public health concerns related to the sites;

(4) eligibility of the sites;

(5) corrective action plans submitted to the department.

After review, the board may suspend all or a portion of the moratorium if necessary.

(B) A drycleaning facility or wholesale supply facility that is being operated as a drycleaning facility or wholesale supply facility at the time a request for determination of eligibility is filed and at which there is contamination from drycleaning solvents is eligible under this section regardless of when the contamination was discovered if the drycleaning facility or wholesale supply facility:

(1) has been registered with and has paid all annual fees, surcharges, and solvent fees as required by the Department of Revenue;

(2) is determined by the department to be in compliance with department regulations regulating drycleaning facilities or wholesale supply facilities;

(3) has third‑party liability insurance when and if the insurance becomes available at a reasonable cost, as determined by the Department of Insurance, and if the insurance covers liability for contamination that occurred both before and after the effective date of the policy;

(4) has provided documented evidence of contamination by drycleaning solvents or where the department, after conducting a secondary assessment, has documented evidence of contamination by drycleaning solvents;

(5) has not been operated in a grossly negligent manner at any time after November 18, 1980.

(C) ~~A drycleaning facility or wholesale supply facility that ceases to be operated as a drycleaning facility or wholesale supply facility before July 1, 1995, and before the time~~ If a request for determination of eligibility is filed for a former drycleaning facility at which there is contamination from drycleaning solvents, the former drycleaning facility is eligible under this section regardless of when the contamination was discovered ~~provided~~; however, the owner or operator of the drycleaning facility or wholesale supply facility ~~or person provides~~ shall provide documented evidence of the contamination by drycleaning solvents and the owner~~,~~ or operator~~, or person~~ has an operating drycleaning facility in the fund and has paid all annual fees, surcharges, and solvent fees on every drycleaning facility registered in the fund and in existence under their control since July 1, 1995, as required by the Department of Revenue. For any former drycleaning facility seeking eligibility under this section after November 24, 2006, the deductible is twenty‑five thousand dollars, if the following are met:

(1) the former facility is determined to be eligible; and

(2) the owner or operator, who was in the fund on October 1, 1995, applies for money from the fund within six months of discovering evidence of contamination.

(D) A drycleaning facility that has been contaminated as a result of the discharge of drycleaning solvents by a supplier of solvents during the delivery of drycleaning solvents to a drycleaning facility first must utilize the insurance of the supplier to the full extent of the coverage for site rehabilitation before any funds may be expended from the fund for the rehabilitation of that portion of the site which was contaminated by the discharge during delivery.

(E) If the facility started operation before ~~six months after the effective date of this act~~ November 24, 2004, and an eligible drycleaning or wholesale owner or operator or person applies for monies from the fund on or before:

(1) ~~eighteen months after the effective date of this act~~ November 24, 2005, the deductible is one thousand dollars;

(2) ~~thirty months after the effective date of this act~~ November 24, 2006, the deductible is twenty‑five thousand dollars.

An eligible drycleaning facility that has applied for monies from the fund ~~prior to the effective date of this paragraph~~ before May 24, 2004, shall have a deductible of one thousand dollars regardless of any deductible previously assigned to the facility based on its application date or type of site. Any approved assessment or remedial costs in excess of one thousand dollars previously incurred by the owner, operator, or ~~person shall~~ property owner must be refunded, without interest, to such party by the department.

A facility first starting its operations on or after ~~six months after the effective date of this act~~ November 24, 2004, shall have a deductible of twenty‑five thousand dollars if it is determined to be eligible and if the owner, operator, or ~~person~~ property owner applies for money from the fund within six months of obtaining evidence of contamination.

(F)(1) An owner or operator of a drycleaning facility or wholesale supply facility or ~~person~~ property owner seeking eligibility under this subsection shall submit an application for determination of eligibility to the department on forms provided by the department. The department shall review the application and request any additional information within ninety days. The department shall notify the applicant within one hundred eighty days as to whether the facility is eligible.

(2) If the facility is not eligible because contamination has not been found and the department has determined that the facility is a high priority, the department shall notify the owner, operator, or property owner that a secondary assessment must be conducted. If the owner, operator, or property owner can demonstrate, based on criteria developed by the department, that they are unable to afford to hire a contractor to conduct this secondary assessment, the department shall upon payment of one thousand dollars within thirty days, conduct the secondary assessment.

(a) If the payment of one thousand dollars is received within thirty days, the department shall conduct a secondary assessment. If evidence of contamination:

(i) is found, the payment of one thousand dollars in excess of the facility deductible must be refunded, without interest;

(ii) is not found, the facility can become eligible if at any time in the future the facility is found to have documented evidence of contamination by drycleaning solvents, and the owner, operator, or property owner provides that documentation to the department within six months of discovery.

(b) If the owner, operator, or property owner does not pay one thousand dollars to the department within thirty days or does not agree within thirty days to conduct a secondary assessment, the facility is permanently barred from receiving funding from the Drycleaning Restoration Trust Fund and the moratorium provided for in Section 44‑56‑440(A) does not apply to this facility.

(G) Eligibility under this ~~subsection~~ section applies to the site of the drycleaning facilities or wholesale supply facilities. A determination of eligibility or ineligibility is not affected by the subsequent conveyance of the ownership of the drycleaning facilities or wholesale supply facilities.

(H) This section does not apply to a site where the department has been denied site access to implement this section or to drycleaning facilities owned or operated by a local government or by the state or federal government.

(I) A site owned by an owner or operator of a drycleaning facility or a ~~person~~ property owner at any time subsequent to October 1, 1995, who misrepresents the number of employees upon which the registration fee provided for in Section 44‑56‑460 is based is not eligible for funds under this section.

Section 44‑56‑450. (A) In order to identify drycleaning facilities and wholesale suppliers which have experienced contamination resulting from the discharge of drycleaning solvents and to assure the most expedient rehabilitation of these sites, the owners and operators of drycleaning facilities and wholesale suppliers and ~~persons~~ property owners are encouraged to detect and report contamination from drycleaning solvents related to the operation of drycleaning facilities or wholesale supply facilities. Forms must be distributed to owners and operators of drycleaning and wholesale supply facilities and to ~~persons~~ property owners. The Department of Revenue shall use reasonable efforts to identify and notify owners, operators, and ~~persons~~ property owners of drycleaning and wholesale supply facilities ~~within six months after the effective date of this act~~ before November 24, 2004, of the registration requirements by certified mail, return receipt requested. The Department of Revenue shall provide to the Department of Health and Environmental Control a copy of each applicant’s registration materials within thirty working days of the receipt of the materials.

(B) A report of drycleaning solvent contamination at a drycleaning facility made to the department by a person in accordance with this article or regulations promulgated ~~under~~ pursuant to this article may not be used directly as evidence of liability for the discharge in a civil or criminal trial arising out of the discharge.

Section 44‑56‑460. (A) The fund must be used to rehabilitate sites that pose a significant threat to the public health, safety, or welfare. The department shall promulgate regulations to establish priorities for state‑conducted rehabilitation at contaminated drycleaning facilities or wholesale supply facilities sites based upon factors that include, but are not limited to:

(1) the degree to which human health, safety, or welfare may be affected by exposure to the contamination;

(2) the size of the population or area affected by the contamination;

(3) the present and future uses of the affected aquifer or surface waters, with particular consideration as to the probability that the contamination is substantially affecting or will migrate to and substantially affect a known public or private source of potable water; and

(4) the effect of the contamination on the environment.

(B) Nothing in this subsection may be construed to restrict the department from modifying the priority status of a drycleaning facility or wholesale supply facility rehabilitation site where conditions warrant. Criteria for determining completion of site rehabilitation program tasks and site rehabilitation programs must be based upon the factors set forth in subsection (A)(1) and these factors:

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

(2) applicable state water quality standards;

(3) whether deviation from state water quality standards or from established criteria is appropriate, based upon the degree to which the desired rehabilitation level is achievable and can be reasonably and cost‑effectively implemented within available technologies or control strategies, except that, where a state water quality standard is applicable, the deviation may not result in the application of standards more stringent than the standard;

(4) it is recognized that restoration of groundwater resources contaminated with certain drycleaning solvents, such as perchloroethylene, may not be achievable using currently available technology. In situations where available technology is not anticipated to meet water quality standards, the department, at its discretion, is encouraged to use innovative technology including, but not limited to, technology which has been field tested through the federal innovative technology program and which has engineering and cost data available;

(5) nothing in this section may be construed to restrict the department from temporarily postponing completion of a site rehabilitation program for which drycleaning restoration funds are being expended whenever the postponement is considered necessary in order to make funds available for rehabilitation of a drycleaning facility or wholesale supply facility site with a higher priority status;

(6) the department shall provide the rehabilitation of eligible drycleaning facilities and wholesale supply facilities consistent with this subsection. Nothing in this article subjects the department to liability for any action that may be required of the owner, operator, or person by a private party or a local, state, or federal governmental entity.

(C) The department may not expend more than two hundred fifty thousand dollars from the fund annually to pay for the costs at any one eligible site for the activities described in Section 44‑56‑420(B).

(D) The department shall promulgate regulations necessary for the implementation of this section.

(E) The department shall create a mechanism in which consultants’ credentials, work objectives and plans, proposed costs ranging from assessment, cleanup, and monitoring are outlined and submitted in writing for the department’s approval. The department shall establish a list of those vendors who are qualified to perform work to be financed by the fund. Vendors must be recertified every two years.

Section 44‑56‑470. (A)(1) For each drycleaning facility ~~owned and~~ in operation, the owner or operator of the drycleaning facility ~~or person~~ shall register with and pay initial registration fees to the Department of Revenue by October 1, 1995, and pay annual or quarterly renewal registration fees as established by the Department of Revenue. The fee must be accompanied by a notarized certification from the owner or operator of the drycleaning facility, on a form provided by the Department of Revenue, certifying the number of employees employed by the owner, or operator of the drycleaning facility and his dry drop‑off facilities, for the twelve‑month period preceding payment of the fee.

(2) For each drycleaning facility in operation that was established after October 1, 1995, the owner or operator of the drycleaning facility shall register with and pay initial registration fees to the Department of Revenue, and pay annual or quarterly renewal registration fees as established by the Department of Revenue. The fee must be accompanied by a notarized certification from the owner or operator of the drycleaning facility, on a form provided by the Department of Revenue, certifying the number of employees employed by the owner or operator of the drycleaning facility and his dry drop off facilities for the twelve‑month period preceding payment of the fee.

(3) If the owner or operator of the drycleaning facility does not register a facility under the provisions of this section, the property owner of the facility may register the facility. Upon registration by the property owner, the owner or operator of the drycleaning facility must be notified by the Department of Revenue of the registration and the owner or operator of the drycleaning facility must comply with all applicable provisions of this article, including the payment of subsequent renewal fees imposed under subsection (B).

(4) To register a facility, the property owner must obtain a notarized certification from the owner or operator of the drycleaning facility, on a form provided by the Department of Revenue, certifying the number of employees employed by the owner or operator of the drycleaning facility and his dry drop off facilities for the twelve‑month period preceding payment of the fee and must remit the fee imposed pursuant to subsection (B). If the property owner is unable to obtain information as to the number of employees at the facilities, the property owner must remit the fee imposed pursuant subsection (B)(3) in order to register the facility.

(B) An initial and annual registration fee for each drycleaning facility with:

(1) up to four employees is seven hundred fifty dollars;

(2) five to ten employees is one thousand five hundred dollars;

(3) eleven or more employees is two thousand two hundred fifty dollars.

Exempt from the fee imposed pursuant to this section are drycleaning facilities in existence before July 1, 1995 that possess a Drycleaning Facility Exemption Certificate issued by the Department of Revenue on or after July 1, 2009.

(C) The provisions of Title 12 apply to the collection and enforcement of the fees by the Department of Revenue.

(D) The Department of Revenue must retain funds for the costs incurred to collect and enforce the fund which may include a part‑time employee with the related expenses for audit purposes. The funds withheld ~~shall~~ must not exceed the actual costs to administer, collect, and enforce the fund. The proceeds of the registration fee, after deducting the costs incurred by the Department of Revenue in auditing, collecting, distributing, and enforcing the registration fee, must be remitted to the State Treasurer and credited to the fund and must be used as provided in Section 44‑56‑420. For the purposes of this section, the proceeds of the registration fee include all funds collected and received by the Department of Revenue, including interest and penalties on delinquent fees.

(E) Revenue derived from the registration fees must be submitted to the State Treasurer and credited to the Drycleaning Facility Restoration Trust Fund.

(F) Before ~~a year after the effective date of this act~~ May 24, 2005, an owner or operator of a drycleaning facility in operation before ~~six months after the effective date of this act~~ November 24, 2004, shall install dikes or other containment structures around each machine or item of equipment in which drycleaning solvents are used and around an area in which solvents or waste containing solvents are stored. The containment must meet the following criteria:

(1) the dikes or containment structures must be capable of containing one‑third of the capacity of the total tank capacity of each machine;

(2) dikes or containment structures around areas used for storage of solvents or waste containing solvents must be capable of containing one hundred percent of the volume of the largest container stored or retained in the containment structure;

(3) all diked containment areas must be sealed or otherwise made impervious to the drycleaning solvents in use at the facility, including floor surfaces, floor drains, floor joints, and inner dike walls;

(4) to the extent practicable, an owner or operator of a drycleaning facility or ~~person~~ property owner shall seal or otherwise render impervious those portions of all floor surfaces upon which any drycleaning solvents may leak, spill, or otherwise be released;

(5) containment devices must provide for the temporary containment of accidental spills or leaks until appropriate response actions are taken by the owner/operator to abate the source of the spill and remove the product from all areas on which the product has accumulated; and

(6) materials used in constructing the containment structure or sealing the floors must be capable of withstanding permeation by drycleaning solvents in use at the facility for not less than seventy‑two hours.

(G) For drycleaning facilities that commence operating on or after ~~six months after the effective date of this act~~ November 24, 2004, the owners or operators of these facilities or ~~persons~~ property owners, before the commencement of operations, shall install beneath each machine or item of equipment in which drycleaning solvents are used a rigid and impermeable containment vessel capable of containing one hundred percent of the volume of the largest single tank in the machine or piece of equipment or one‑third of the total tank capacity of each machine, whichever is greater. Dikes or containment structures must be installed before delivery of any drycleaning solvents to the facility. All dikes or containment structures shall meet all criteria of Section 44‑56‑470(F).

(H) A ~~person~~ property owner or the owner or operator of a drycleaning facility or wholesale supply facility at which there is a spill of more than the federally mandated reportable quantity of drycleaning solvent outside of a containment structure, after July 1, 1995, shall report the spill to the department immediately upon the discovery of the spill and comply with existing emergency response regulations.

(I) Failure to comply with the requirements of this section constitutes gross negligence with regard to determining site eligibility.

(J) Effective January 1, 2010, all halogenated solvent must be delivered by a closed‑loop delivery system.

Section 44‑56‑475. (A) Each drycleaning facility registered in accordance with Section 44‑56‑470 must be issued an annual drycleaner’s certificate of registration by the Department of Revenue. The certificate of registration authorized pursuant to this section is valid beginning the first day of October following the registration and ending on the last day of the following September. In the case of a new drycleaning facility registered in accordance with Section 44‑56‑470, the certificate of registration authorized pursuant to this section is valid beginning on the day it is issued and ending on the last day of the following September.

(B) A drycleaning facility’s certificate of registration or drycleaning facility exemption certificate must at all times be conspicuously displayed at the drycleaning facility.

(C) In order to purchase or receive drycleaning solvent from a wholesale supply facility or another drycleaning facility, a drycleaning facility must provide the wholesale supply facility or other drycleaning facility a copy of its current certificate of registration or drycleaning facility exemption certificate, whichever is applicable.

(D)(1) A wholesale supply facility is prohibited from selling or transferring drycleaning solvent to any drycleaning facility not in possession of a current certificate of registration or a drycleaning facility exemption certificate issued by the Department of Revenue on or after July 1, 2009. A wholesale supply facility selling or providing drycleaning solvent in violation of the provisions of this subsection is subject to a civil penalty of up to ten thousand dollars for each violation. Each sale or transfer constitutes a separate violation.

(2) A drycleaning facility is prohibited from selling or transferring drycleaning solvent to any other drycleaning facility not in possession of a current certificate of registration or a drycleaning facility exemption certificate issued by the Department of Revenue on or after July 1, 2009. This prohibition applies even if the same person owns or operates both drycleaning facilities. A drycleaning facility selling or providing solvent to another drycleaning facility in violation of the provisions of this subsection is subject to a civil penalty of up to ten thousand dollars for each violation. Each sale or transfer constitutes a separate violation.

(3) A drycleaning facility not in possession of a current certificate of registration or a drycleaning facility exemption certificate issued by the Department of Revenue on or after July 1, 2009, is prohibited from purchasing or receiving drycleaning solvent. A drycleaning facility purchasing or receiving drycleaning solvent in violation of the provisions of this subsection is subject to a civil penalty of up to ten thousand dollars for each violation. Each purchase or receipt constitutes a separate violation.

(E) The Department of Revenue, in addition to all other penalties authorized by this law and in addition to the provisions of Section 12‑54‑90, may revoke one or more certificates of registration of any owner or operator of a drycleaning facility for failure to remit any taxes, surcharges, or fees due by the owner or operator under this article or Title 12 or when the owner or operator fails, neglects, violates, or refuses to comply with the provisions of this section.

Section 44‑56‑480. (A) Beginning July 1, 1995, an environmental surcharge is assessed on the privilege of producing in, importing into, or causing to be imported into the State drycleaning solvent. A surcharge of ten dollars per gallon on halogenated drycleaning fluid and two dollars per gallon on nonhalogenated cleaner is levied on each gallon to be used for drycleaning purposes when ~~first~~ imported into or produced in the State. Nonhalogenated cleaners purchased, produced, or transported in a nonliquid physical state must be assessed a surcharge of twenty cents per pound. ~~A drycleaning facility that has made an election not to be under the provisions of this article pursuant to Section 44‑56‑485(A) or (B) may request a statement of nonparticipation from the Department of Revenue so as to demonstrate its status under this article and its exemption from the surcharge provided for in this subsection.~~ Exempt from the surcharge imposed under this section are sales or distributions to, or purchases or receipts by, drycleaning facilities in existence prior to July 1, 1995, that possess a Drycleaning Facility Exemption Certificate issued by the Department of Revenue on or after July 1, 2009.

(B) A person producing in, importing into, or causing to be imported into this State drycleaning solvent for sale, use, or otherwise must register with the Department of Revenue and become licensed for the purposes of remitting the surcharge pursuant to this section. The person must register as a producer or importer of drycleaning solvent. Persons operating at more than one location only are required to have a single registration. The fee for registration is thirty dollars. Failure to register before importing or producing drycleaning solvent into this State is a misdemeanor and, upon conviction, the person must be fined up to twenty‑five thousand dollars or imprisoned up to thirty days.

(C) The surcharge imposed by this section is due and payable on or before the twentieth day of the month succeeding the month of production, importation, or removal from a storage facility. The surcharge must be reported on forms and in the manner determined by the Department of Revenue.

(D) All drycleaning solvent to be used for drycleaning purposes which are imported, produced, or sold in this State are presumed to be subject to the surcharge imposed by this section. ~~An owner, operator, or person,~~ An owner or operator of a drycleaning facility participating in the fund who has purchased drycleaning solvent for ~~sale,~~ use, consumption, resale, or distribution in this State must document that the surcharge imposed by this section has been paid or must pay the surcharge directly to the Department of Revenue in accordance with subsection (C). The solvent dealer may pass the costs of the surcharge to ~~owners,~~ any owner or ~~operators~~ operator~~, or persons~~ of a drycleaning ~~facilities~~ facility who has purchased drycleaning solvent for use, consumption, resale, or distribution in this State except the surcharge imposed by this section must not be charged to a facility ~~possessing a statement of nonparticipation pursuant to Section 44‑56‑480(A)~~ in existence before July 1, 1995, that possesses a Drycleaning Facility Exemption Certificate issued by the Department of Revenue on or after July 1, 2009.

(E) The surcharge imposed by this section must be remitted to the Department of Revenue. The payment must be accompanied by the forms as the Department of Revenue prescribes. The proceeds of the surcharge, after deducting the administrative costs incurred by the Department of Revenue in administering, auditing, collecting, distributing, and enforcing the surcharge, must be remitted by the Department of Revenue to the State Treasurer to be credited to the Drycleaning Facility Restoration Trust Fund and must be used as provided in Section 44‑56‑420. For the purposes of this section, the proceeds of the surcharge include all funds collected and received by the Department of Revenue, including interest and penalties on delinquent surcharges.

(F) The Department of Revenue shall administer, collect, and enforce the surcharge authorized ~~under~~ pursuant to this section in the manner that sales and use taxes are administered, collected, and enforced under Chapter 36 of Title 12, except no timely payment discount or exemptions or exclusions are allowed. Provisions of Title 12 regarding the Department of Revenue’s authority to audit and make assessments, the keeping of books and records, and interest and penalties on delinquent taxes apply.

(G) The Department of Revenue must retain funds for the costs incurred to administer, collect, and enforce the program. The proceeds of the surcharge, after deducting the costs incurred by the Department of Revenue in administering, auditing, collecting, distributing, and enforcing the surcharge, must be remitted to the State Treasurer and credited to the fund and must be used as provided in Section 44‑56‑420. For the purposes of this section, the proceeds of the surcharge include interest and penalties collected by the Department of Revenue.

(H) The Department of Revenue may establish audit procedures and assess delinquent surcharges.

(I) Drycleaning solvent used for drycleaning exported from the ~~first~~ storage facility at which it is held in this State by the producer or importer is exempt from the surcharge authorized pursuant to this section. Anyone exporting drycleaning solvent on which the surcharge has been paid may apply for a refund or credit. A person who sells drycleaning solvent that is exempt from the collection of the surcharge pursuant to subsection (D) may apply for a credit or refund. The Department of Revenue may require information as it considers necessary in order to approve the refund or credit.

(J) The Department of Revenue may authorize:

(1) a quarterly return and payment when the surcharge remitted by the licensee for the preceding quarter did not exceed one hundred dollars;

(2) a semiannual return and payment when the surcharge remitted by the licensee for the preceding six months did not exceed two hundred dollars;

(3) an annual return and payment when the surcharge remitted by the licensee for the preceding twelve months did not exceed four hundred dollars.

Section 44‑56‑485. (A) Notwithstanding any other provision of this article, this article does not apply to a drycleaning facility that ~~was in existence on July 1, 1995, that drycleans with nonhalogenated cleaners only, nor to dry drop‑off facilities whose clothing and other fabrics are cleaned only by such a drycleaning facility.~~ possesses a Drycleaning Facility Exemption certificate issued by the Department of Revenue on or after July 1, 2009. A Drycleaning Facility Exemption Certificate only may be issued by the Department of Revenue if the drycleaning facility meets all of the following requirements:

(1) the drycleaning facility was in existence on July 1, 1995;

(2)(a) the drycleaning facility drycleaned with nonhalogenated cleaners only on or before July 1, 1995; or

(b) the drycleaning facility drycleaned with halogenated fluids and nonhalogenated cleaners and elected to remove the facility from the requirements of this article by election made to the Department of Revenue before October 1, 1995;

(3) the drycleaning facility has never participated in the fund through payment of any surcharges or fees imposed pursuant to this article that are administered and collected by the Department of Revenue;

(4) the drycleaning facility requested a Drycleaning Facility Exemption Certificate from the Department of Revenue by December 31, 2009; and,

(5) the department has verified that the drycleaning facility has met the requirements contained in items (1) through (4) for the issuance of the Drycleaning Facility Exemption Certificate to the drycleaning facility.

However, with respect to item (4), if the ownership or operation of a drycleaning facility that possesses a Drycleaning Facility Exemption Certificate is transferred to another person after December 31, 2009, the new owner or operator shall request and must be provided an updated Drycleaning Facility Exemption Certificate from the Department of Revenue; otherwise the certificate remains current.

The Drycleaning Facility Exemption Certificate authorized pursuant to this section only applies to the physical location at which the drycleaning took place and is not transferable to any other physical location.

Notwithstanding any other provision of this article, this article also does not apply to dry drop‑off facilities where the clothing or other fabrics are only cleaned by a drycleaning facility:

(i) owned or operated by the same person that owns or operates the dry drop‑off facility; and

(ii) issued a Drycleaning Facility Exemption Certificate by the Department of Revenue on or after July 1, 2009; and

(iii) where the owner or operator, or related entity, does not own or operate any other drycleaning facilities participating in the fund through payment of any surcharges or fees imposed pursuant to this article.

However, an owner or operator of a drycleaning facility or ~~person~~ property owner may elect to place the drycleaning facility under the provisions of this article by paying the required annual fee for the drycleaning facility before October 1, 1995. If an owner or operator of a drycleaning facility or ~~person~~ property owner does not elect to place a drycleaning facility under this article before October 1, 1995, the current or a future owner or operator of the site or ~~person~~ property owner is prohibited from receiving any funds or assistance ~~under~~ pursuant to this article. Failure to pay the required annual fee by October 1, 1995, constitutes electing not to place a drycleaning facility under this article. Additionally, an owner, operator, or ~~person~~ property owner who does not elect to place a drycleaning facility that was in existence on July 1, 1995, under this article is prohibited from receiving any funds or assistance ~~under~~ pursuant to this article for any site the owner, operator, or ~~person currently or previously~~ property owner elected not to place under this article and any site operated or abandoned before July 1, 1995. If the owner, operator, or property owner placed a drycleaning facility that was in existence on July 1, 1995 under this article, and met all other requirements including registration of that site, the facility is eligible pursuant to this article.

(B) A drycleaning facility in existence on July 1, 1995, that uses halogenated fluids and nonhalogenated cleaners may elect to remove the facility from the requirements of this article if the election is made before October 1, 1995. Failure to pay the required annual fee by October 1, 1995, constitutes electing to remove a facility from the requirements of this article. An owner, operator, or ~~person~~ property owner of a facility using halogenated and nonhalogenated cleaners may not elect to remove a facility from the requirements of this article for one solvent and not the other.

(C) Notwithstanding subsections (A) and (B) of this section, if a person or an owner or operator of a drycleaning facility in existence on July 1, 1995, has made an election not to place a facility under the provisions of this article as allowed in subsection (A) or (B) ~~above~~, then the person, owner, or operator may affirmatively and irrevocably elect to place the drycleaning facility under the provisions of this article. This election must be made by registering with the Department of Revenue on or before July 1, 2005, and paying the fees and taxes provided ~~under~~ pursuant to this article. An electing drycleaning facility is liable for payment of all taxes and fees from the later of July 1, 1995, or the date the drycleaning facility began operating, but is not liable for any penalties or interest. An electing drycleaning facility may pay the back taxes and fees that the facility is required to pay under this subsection by making monthly installments toward full payment of all back taxes and fees. The monthly installments must commence no later than July 1, 2004, and all back taxes and fees must be fully paid on or before July 1, 2006.

(D) Notwithstanding any other provision of this article, any person or owner or operator of a drycleaning facility that has not registered with the Department of Revenue and complied with the provisions of this article may voluntarily register with the Department of Revenue on or before July 1, 2005, without incurring any penalties or interest. Payment of all taxes and fees due pursuant to this article is required to be made from the later of July 1, 1995, or the date the drycleaning facility began operating. A person or owner or operator of a drycleaning facility that does not voluntarily register under this ~~provision~~ subsection is subject to interest, penalties, and payment of all taxes and fees from the later of July 1, 1995, or the date the drycleaning facility began operating. No fees ~~will~~ may be prorated or refunded for a business in operation for less than twelve months.

(E) Notwithstanding any other provisions in this article, the department may direct the Department of Revenue to allow a person or owner or operator of a drycleaning facility, who elected not to place the facility under this article pursuant to subsection (A) or (B) of this section to register, provided the department finds that the person or owner or operator of the drycleaning facility requesting to register did not have notice of this article for more than ninety days prior to requesting registration. The person or owner or operator of a drycleaning facility registering pursuant to this subsection is liable for payment of all taxes or fees, including interest, from the later of July 1, 1995, or the date the drycleaning facility began operating; however, the registering person, owner, or operator is not liable for penalties. No fees ~~will~~ may be prorated or refunded for a business in operation for less than twelve months.

Section 44‑56‑490. (A) ~~Whenever~~ If the department finds that a person is in violation of a provision of this article or a regulation promulgated ~~under~~ pursuant to this article, the department may issue an order requiring the ~~owner, operator, or~~ person to comply with the provision or regulation or the department may bring civil action for injunctive relief in an appropriate court of competent jurisdiction.

(B) ~~An owner, operator, or~~ A person who violates a provision of this article, a regulation promulgated ~~under~~ pursuant to this article, or an order of the department issued ~~under~~ pursuant to subsection (A) is subject to a civil penalty not to exceed ten thousand dollars for each day of violation.

(C) ~~An owner, operator, or~~ A person who wilfully violates a provision of this article, a regulation promulgated ~~under~~ pursuant to this article, or an order of the department issued ~~under~~ pursuant to subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty‑five thousand dollars ~~per~~ for each day of violation or imprisoned for not more than one year, or both.

Section 44‑56‑495. (A) There is created the Drycleaning Advisory Council to advise the Department of Health and Environmental Control on matters relating to regulations and standards which affect drycleaning and related industries.

(B) The council is composed of the following members:

(1) ~~five~~ seven representatives of the drycleaning industry who are participating in this article;

(2) one representative of the wholesale industry;

(3) one representative of the r~~eal estate industry~~ drycleaners who have a Drycleaning Exemption Certificate issued by the Department of Revenue;

(4) ~~one environmental engineer;~~

~~(5)~~ ~~one representative of the banking industry;~~

~~(6)~~ ~~two representatives~~ one representative from the Department of Health and Environmental Control, ~~one of whom~~ who must be an administrator ~~and one of whom must represent water quality control;~~

~~(7)~~ ~~a representative of the Department of Revenue;~~

~~(8)~~ ~~a representative of the Department of Insurance;~~

~~(9)~~ ~~a representative of the State Budget and Control Board;~~

~~(10)~~ ~~a representative of the Department of Natural Resources, Division of Water Resources~~.

(C) Members enumerated in ~~subsection~~ subsections (B)(1) through ~~(5)~~ (B)(5) ~~may~~ must be appointed by the ~~Governor with the advice and consent of the Senate~~ director of the department or the director’s designee and shall serve terms of two years and until their successors are appointed ~~and qualify. The members enumerated in subsection (B)(6) through (10) must be appointed by the respective directors or commissioner of the appropriate agency, and all serve ex officio for terms of two years and until their successors are appointed and qualify~~. The chairman of the council must be elected by the members of the council at the first meeting of each new term.

(D) An employee of the Department of Revenue shall attend meetings of the council to provide the council informal assistance as to matters involving the surcharges and fees that are imposed pursuant to this article and which are administered and collected by the Department of Revenue.

(E) The Department of Revenue may disclose to the department information on a return filed with the Department of Revenue pursuant to the provisions of Section 44‑56‑430. The Department of Revenue and the department may not disclose to the members enumerated in subsections (B)(1) through (B)(3) or to the public specific information on a return filed with the Department of Revenue pursuant to the provisions of Section 44‑56‑430; however, the Department of Revenue and the department may provide these members available statistical information concerning the surcharge imposed pursuant Section 44‑56‑430.”

SECTION 2. This act takes effect upon approval by the Governor; however, the amendments to the impositions of the surcharges and fees imposed pursuant to Sections 44‑56‑430(A), 44‑56‑470(A), 44‑56‑480(A), and 44‑56‑480(D) of the 1976 Code, as amended in Section 1 of this act, take effect March 1, 2010.

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