

The Texas Commission on Environmental Quality (commission or agency) proposes new §§337.1 - 337.4, 337.10 - 337.15, 337.20 - 337.22, 337.30 - 337.32, 337.40, 337.41, 337.50, 337.51, 337.60 - 337.63, 337.70 - 337.72, and 337.80.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed rules is to implement House Bill (HB) 1366, 78th Legislature, 2003. HB 1366 amends the Texas Health and Safety Code (THSC) by adding a new Chapter 374. HB 1366 requires rules to be adopted that are necessary to administer and enforce the new chapter, including rules that establish: 1) performance standards for dry cleaning facilities; 2) requirements for the removal of dry cleaning solvents and waste from dry cleaning facilities; 3) criteria to be used in setting priorities for the expenditure of money from the dry cleaning fund; and 4) criteria under which the agency may determine the level at which corrective action is considered complete.

Corresponding changes to 30 TAC Chapter 37, Financial Assurance, are also proposed in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

The commission proposes a new Chapter 337, Dry Cleaner Environmental Response, to establish the procedures to administer and enforce HB 1366.

Proposed new §337.1, Purposes, provides the purposes of the chapter including regulating and remediating certain dry cleaning facilities as prescribed by THSC, Chapter 374; establishing minimum

standards and procedures to reasonably protect and maintain the quality of the state's groundwater and surface water resources from contamination that could result from any release from a dry cleaning facility; providing for the use of risk-based corrective action; and providing for the protection of human health and safety and the environment of the state.

Proposed new §337.2, Applicability, describes who the chapter applies to, which includes all dry cleaning facilities, dry cleaning drop stations, and distributors. Proposed §337.2 also lists the entities that the chapter does not apply to.

Proposed new §337.3, Definitions, defines the following new terms: application for ranking; distributor; dry cleaning machine; dry cleaning waste; dry cleaning wastewater; empty; gross annual receipts; in service; non-participating non-perchloroethylene user registration certificate; operating dry cleaning drop station; operating dry cleaning facility; participating non-perchloroethylene user registration certificate; permanently removed from service; secondary containment; and temporarily removed from service.

Proposed new §337.4, General Prohibitions and Requirements, sets forth the following prohibitions and requirements: new dry cleaning facilities must meet the performance standards; a distributor is prohibited from selling, delivering, or otherwise distributing any dry cleaning solvent to a dry cleaning facility unless the dry cleaning facility has a valid, current registration certificate; the distributor must obtain and record the registration number from the dry cleaning facility's current registration certificate; a distributor cannot sell, deliver, or otherwise distribute the dry cleaning solvent

perchloroethylene to a dry cleaning facility with a nonparticipating non-perchloroethylene user registration certificate or a participating non-perchloroethylene user registration certificate; a person is prohibited from purchasing dry cleaning solvent from a distributor that does not have a valid, current distributor registration certificate issued by the executive director; a person is prohibited from purchasing the dry cleaning solvent perchloroethylene for a dry cleaning facility with a nonparticipating non-perchloroethylene user registration certificate or a participating non-perchloroethylene user registration certificate; and a distributor is prohibited from selling, delivering, or otherwise distributing any dry cleaning solvent to a dry cleaning drop station.

Proposed new §337.10, Registration for Dry Cleaning Facilities and Drop Stations, sets forth the registration requirements of dry cleaning facilities and dry cleaning drop stations. All operating dry cleaning facilities and dry cleaning drop stations must be registered with the agency.

Proposed new §337.11, Dry Cleaner Registration Certificates, sets forth the procedures related to registration certificates for dry cleaning facilities and dry cleaning drop stations, including obtaining, renewing, and displaying a certificate, as well as the process for revocation or denial of a certificate. Dry cleaner registration certificates are necessary to receive delivery of dry cleaning solvents.

Proposed new §337.12, Registration for Distributors, sets forth the requirements for the registration of distributors. Distributors in operation on or after September 1, 2003, must register with the agency.

Proposed new §337.13, Distributor Registration Certificate, sets forth the procedures related to registration certificates for distributors, including obtaining and displaying a certificate, as well as the process for revocation or denial of a certificate. The certificate is necessary for the delivery of dry cleaning solvents.

Proposed new §337.14, Registration Fees, sets forth the procedures and requirements for owners of operating dry cleaning facilities and dry cleaning drop stations to pay the registration fees required by THSC, §374.102. The owner of the facility or drop station on or after September 1 of each state fiscal year (FY) is responsible for the registration fees owed for the state FY beginning on September 1. However, if a person acquires a dry cleaning facility or dry cleaning drop station that does not have a current registration certificate, the facility or drop station would have to be registered and the fee paid before a current registration certificate would be issued. This proposed section also requires owners to pay penalties and interest on late payments.

Proposed new §337.15, Solvent Fees, sets forth the procedures and requirements for payment and collection of the dry cleaning solvent fees required by THSC, §374.103. This section includes reporting requirements for distributors, specifications on payment of collected fees to the agency, and provisions governing late payments.

Proposed new §337.20, Performance Standards, sets forth the performance standards that apply to dry cleaning facilities and dry cleaning drop stations, including the dates by which owners must be in compliance. In §337.20(c), compliance with 30 TAC Chapter 335, Subchapter C, is required for

storage, treatment, and disposal of hazardous dry cleaning wastes. In §337.20(d), dry cleaning process water is prohibited from discharge to sanitary sewers and septic systems and from discharge to the waters of the state. If this process water is not misted or evaporated in an appropriate device plumbed directly to, or immediately adjacent to, the dry cleaning machine, the owner of a dry cleaning facility must be able to account for the disposal of this process water in accordance with applicable hazardous or nonhazardous waste rules. In cases where this dry cleaning process water (often called “separator water”) is disposed of by other methods, the owner of a dry cleaning facility must create a log indicating the amount of water collected, who disposed of it, and the date and means of disposal.

Section 337.20(e) requires compliance with the emission standards for hazardous air pollutants, as specified by HB 1366, and also specifies existing air permitting requirements for dry cleaners. All dry cleaners must have a new source review authorization. To satisfy this requirement, a person may claim the permit by rule (30 TAC §106.411). This permit by rule may be used to authorize dry cleaning equipment, including misters and evaporators, if the requirements of 30 TAC §106.4 are met.

Generally, most dry cleaners will be able to claim the permit by rule. However, if emissions exceed those specified in §106.4, a new source review permit under 30 TAC Chapter 116 must be obtained. In §337.20(f), secondary containment is required for all dry cleaning facilities using chlorinated dry cleaning solvents and all other dry cleaning facilities when replacing or installing a dry cleaning machine on or after September 1, 2005. The secondary containment is required for both dry cleaning machines and storage areas. Secondary containment for facilities that do not utilize chlorinated solvents is required because other solvents may pose a greater danger to the environment than is presently understood, the dry cleaning machines made today usually include secondary containment, and such

containment is already required by many local government fire codes. Section 337.20(g) sets forth requirements governing the delivery of solvents to the dry cleaning facility.

Proposed new §337.21, Removal of Dry Cleaning Solvents and Wastes, sets forth the requirement for the removal of solvents and waste from dry cleaning facilities as well as the removal of solvents and wastes from dry cleaning machines that are temporarily or permanently removed from service.

Proposed new §337.22, Variances and Alternative Procedures, sets forth the procedures for obtaining a variance from the requirements of the dry cleaning rules in this chapter, as well as recordkeeping requirements related to a variance that is granted.

Proposed new §337.30, Prioritization of Sites, sets forth the provisions relating to the prioritization of dry cleaning sites that require corrective action. A site will only be eligible for prioritization if it has been ranked with the dry cleaning facility ranking system.

Proposed new §337.31, Ranking of Sites, sets forth the procedures for the ranking of dry cleaning facilities. The ranking system is a methodology designed to determine a numerical score for a facility based on various factors that may impact human health or the environment. This section includes the information required to be contained in the application for ranking package as well as who may apply for a site to be ranked under THSC, §374.154(b). If multiple parties are involved with a site, the commission encourages the parties to work together to submit a single application to the agency. It should be noted that under THSC, §374.154(b), only owners of current and former facilities and real

property may apply for a site to be ranked. Therefore, for the owner of a drop station to apply for such a site to be ranked, the owner would have to be the real property owner (and meet additional criteria in THSC, §374.154(b)) or would have to have owned the facility at the site.

Proposed new §337.32, Denial and Removal of Sites from Ranking, sets forth the criteria for the executive director to deny or remove a site from ranking.

Proposed new §337.40, General Requirements, sets forth the general requirements for meeting the deductible such as the eligible costs incurred by an applicant must be reasonable and appropriate.

Proposed new §337.41, Evidence of Eligible Costs, describes what evidence is required to be submitted with the application for ranking package to show that the deductible has been met; states that the executive director may require the applicant to provide additional information or return the application if the information is not sufficient to review the application; and gives examples of the types of costs that will not be considered eligible costs applicable to the deductible.

Proposed new §337.50, Corrective Action, states that corrective action will be conducted under 30 TAC Chapter 350 or other guidance established by the executive director; corrective action at a site may be postponed or suspended indefinitely in order to make money available for corrective action at a site with a higher priority; and postponement or suspension of corrective action does not mean that the cleanup standards under Chapter 350 have been met.

Proposed new §337.51, Eligibility for Corrective Action, describes the prerequisites for an owner or other person to be eligible to have corrective actions costs paid by the Dry Cleaning Facility Release Fund. The exemption from certain claims in THSC, §374.207 is conditioned on the owner or other person being eligible to have corrective action costs paid by the fund.

Proposed new §337.60, Nonparticipating Dry Cleaning Facility Financial Assurance, states that the owner of a dry cleaning facility that has submitted to the executive director the affidavit of nonparticipation for a facility that begins operation on or after September 1, 2003 and before January 1, 2004, shall provide financial assurance for corrective action in the amount of \$500,000 per nonparticipating facility. The affidavit and financial assurance must be submitted to the executive director before January 1, 2004. This proposed section does not apply to a carbon dioxide facility.

Proposed new §337.61, Participating Non-Perchloroethylene User Registration Certificate, states that to obtain this certificate: 1) the owner must swear in an affidavit approved by the executive director that the owner has never used or allowed the use of perchloroethylene at any dry cleaning facility in the state; and 2) perchloroethylene must never have been used at the facility in question.

Proposed new §337.62, Nonparticipating Non-Perchloroethylene Facilities, sets forth requirements that apply to such a facility, including disclosure requirements for any sale of the facility.

Proposed new §337.63, Owner Affiliation, states that for the purposes of this subchapter,

the term “owner” includes various entities or persons affiliated with the owner. The purpose of this section is to avoid the situation where, for example, owners may reorganize into a new company or transfer a facility to a relative to qualify as an owner that has never used perchloroethylene at any facility in the state. By doing such a reorganization or transfer, the owner would avoid solvent fees for a facility but the facility may still qualify for fund benefits if it has a participating non-perchloroethylene user registration certificate.

Proposed new §337.70, General Provisions, sets forth the requirements for the maintenance of records, records retention, and penalties for records violations.

Proposed new §337.71, Distributors, states that distributors shall maintain books, financial records, documents, and other evidence for sales of dry cleaning solvents and the fees collected and paid to the agency as required by this chapter. The records must include copies of all invoices for dry cleaning solvent sales and purchases showing the facility registration numbers, name, type, and quantity of the dry cleaning solvent purchased and sold, the name and address of the seller and purchaser, and the date of the sale or purchase.

Proposed new §337.72, Dry Cleaning Facilities, describes what records dry cleaning facilities must retain such as invoices of dry cleaning solvent purchases showing the name, type, and quantity of the dry cleaning solvent purchased, the name and address of the seller, and the date of the purchase; waste disposal records; and secondary containment logs.

Proposed new §337.80, Audits and Investigations, states that the executive director may conduct audits or investigations concerning payments, fees, or information submitted to the agency and persons shall cooperate with such audits and investigations.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed new rules are in effect, significant fiscal implications are anticipated for the commission. In addition, fiscal implications are anticipated for owners and operators of dry cleaning facilities, dry cleaning drop stations, distributors of dry cleaning solvent, and consumers who purchase the services of dry cleaning facilities.

The proposed new rules implement HB 1366, codified as Texas Health and Safety Code, Chapter 374. The bill established a dry cleaning regulation and remediation program at the commission. The new program does not apply to governmental entities or political subdivisions. The bill requires the commission to adopt rules to administer and enforce the new program including the development of performance standards for dry cleaning facilities and criteria for setting priorities for the expenditure of funds from the newly established Dry Cleaning Facility Release Fund in the General Revenue Fund. In addition, the commission is required to develop corrective action completion criteria for the remediation of contaminated sites.

The new rules are proposed in order to regulate and remediate certain dry cleaning facilities as prescribed by THSC, Chapter 374; establish minimum standards and procedures to reasonably protect

and maintain the quality of the state's groundwater and surface water resources from contamination that could result from any release from a dry cleaning facility; provide for the use of risk-based corrective action; and provide for the protection of human health and safety and the environment of the state.

The proposed new rules apply to all dry cleaning facilities (except for certain types or categories of businesses such as hotels, motels, formal wear and costume rental businesses, and others), dry cleaning drop stations, and distributors of dry cleaning solvent. Currently, there are an estimated 2,165 dry cleaning facilities, 1,648 dry cleaning drop stations, and 21 distributors of dry cleaning solvents doing business in the state.

Under the legislation, each owner of an operating dry cleaning facility is required to register annually with the commission and to pay the required fees. No registration fee would be required for carbon dioxide facilities. A registration fee of \$250 per year is required for facilities with \$100,000 or less in gross annual receipts, for nonparticipating facilities, or for dry cleaning drop stations (locations where no cleaning occurs on site) that are not owned by a dry cleaning facility. The registration fee is \$1,000 per year for drop stations that are owned by a dry cleaning facility, and \$2,500 per year for participating dry cleaning plants that have gross annual receipts in excess of \$100,000. A fee of \$15 per gallon is imposed on the purchase of the dry cleaning solvent perchloroethylene and a fee of \$5.00 per gallon is imposed on the purchase of other dry cleaning solvents. Owners that submit affidavits to the commission stating that they have never used perchloroethylene would be exempt from both of the per-gallon fees. Owners that opt not to participate in the remediation benefits provided by the Dry Cleaning Facility Release Fund would be exempt from the per-gallon fee on other dry cleaning solvents

but not from the per-gallon fee on perchloroethylene. However, facility owners that have opted out of the Dry Cleaning Facility Release Fund cannot use perchloroethylene at the opted-out facility. Fee revenue is deposited into the Dry Cleaning Facility Release Fund. The fund is statutorily dedicated for use by the commission to administer the program and to remediate contaminated sites.

It is estimated that the commission will receive between \$5.5 million and \$6.1 million in fee revenue in FY 2004 and between \$7.9 million and \$10.1 million in fee revenue each year thereafter for the rest of the five-year period covered by the fiscal note. For FYs 2004 and 2005, the commission is limited by statute to spend 15% of the money credited to the fund in the same FY for administrative and start-up expenses. The commission is limited to 10% of the amount of money credited to the fund in the same FY for the same expenses after FY 2005.

To implement the program, the commission will be responsible for the following new activities and responsibilities: 1) registering dry cleaning facilities, dry cleaning drop stations, and dry cleaning solvent distributors; 2) billing registered dry cleaning facilities and dry cleaning drop stations; 3) processing registration and solvent fees; 4) processing applications for the ranking and prioritization of sites for corrective action; 5) the acquisition of contracts for corrective action; 6) oversight of corrective action contractors; 7) contract management including processing work orders, invoices, and payments to contractors; 8) facility inspection and enforcement activity; 9) financial audits of dry cleaners and distributors; and 10) processing and issuing special registration certificates for participating and nonparticipating non-perchloroethylene dry cleaning facilities.

The legislature appropriated the commission approximately \$6 million in FY 2004 and \$8.5 million in FY 2005 to implement and operate the program. The legislature did not appropriate additional full-time employees for the program.

At this time, the commission's administrative costs are approximately \$330,000 for this FY and are expected to increase to as much as \$700,000 each year. After administrative expenses, the remaining funds in the account will be used for corrective action activities at contaminated dry cleaning sites. Based upon information received from other states, remediation costs are estimated to average \$500,000 per site, but could be much higher. The commission is prohibited by statute from spending more than \$5 million at any one contaminated site for corrective action.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and the protection of the state's groundwater and surface water from potential and actual contamination from certain dry cleaning facilities.

Costs are anticipated to businesses and individuals as a result of the implementation of the proposed new rules.

There are an estimated 2,165 dry cleaning facilities, 1,648 dry cleaning drop stations, and 21 distributors of dry cleaning solvents doing business in the state at this time. Each owner of an operating

dry cleaning facility is required by statute to register annually with the commission and to pay the required fees. No registration fee would be required for carbon dioxide facilities.

In addition to the registration fees, owners of dry cleaning facilities or dry cleaning drop stations will also be required to pay fees for the purchase of dry cleaning solvents, unless they are exempt.

Distributors of dry cleaning solvents will be required to register with the commission, collect the solvent fees, and remit the solvent fees to the commission on a quarterly basis. Solvent distributors will likely incur additional recordkeeping costs, though these costs are not anticipated to be significant.

The proposed rules would establish performance standards for dry cleaning facilities and dry cleaning drop stations. Owners of dry cleaning facilities using chlorinated solvents in operation before January 1, 2004 with gross annual receipts that exceed \$200,000 (as indicated on the most current registration form filed with the commission) would be required to comply with the secondary containment and direct-coupled delivery requirements no later than January 1, 2006. Facilities with \$200,000 or less in gross annual receipts would have until January 1, 2007. Additional performance standards required upon the effective date of the rule include: requirements for the proper storage and disposal of wastes; compliance with federal air emission standards; and the prevention of dry cleaning solvent discharges to a sanitary sewer, septic tank, or waters of the state. Facilities that do not use chlorinated solvents and replace or install a petroleum-based dry cleaning machine on or after September 1, 2005 would also be required to install dikes or other secondary containment structures around the unit and around each storage area for dry cleaning solvent, dry cleaning waste, or dry cleaning wastewater.

Costs are anticipated for dry cleaning facilities that must retrofit their equipment to meet the standards.

Most, if not all, new dry cleaning machines come with containment pans (secondary containment) as an integral part of the machine. Consequently, the cost of the containment pan on a new machine is rolled into the overall cost of the machine. Costs to retrofit an older machine with a secondary containment pan will vary with the size of the machine, but for the most common machine size, the containment pan costs approximately \$2,500, with roughly an equal cost for installation, for a total of \$5,000. It is not known how many facilities will have to retrofit their machines.

Distributors of dry cleaning solvents are also affected by performance standards that require all chlorinated solvents to be delivered to dry cleaning facilities by direct-coupled delivery systems. The costs for this equipment are expected to be minimal, as distributors either sell (parts may cost between \$20 and \$30) or give the equipment to their customers who lack it.

For those contaminated dry cleaning sites that do not pose an immediate threat to human health or the environment, the commission will rank the site for corrective action based upon information contained in an application submitted by the dry cleaning facility owner. Dry cleaning facility owners or others that submit applications for ranking the facility are required to pay a \$5,000 deductible, which would go towards any corrective action costs. However, as part of the application for ranking as proposed in the rules, owners or operators must submit a soil or groundwater analysis, certain hydrogeologic information, and a field survey and a records survey of nearby water wells and surface water, along with other information. Costs to obtain this information or other information required for the

application would count towards the required \$5,000 deductible. Those sites that are determined by the commission to pose an immediate threat to human health or the environment would receive emergency action. Corrective action costs are estimated to average \$500,000 per site, but could cost much more.

Contaminated dry cleaning sites would be eligible for corrective action managed by the commission and paid for out of the Dry Cleaning Facility Release Fund, unless the facility opts not to participate in the fund benefits. Owners of nonparticipating dry cleaning facilities must file with the commission and demonstrate, at their expense, that they have never used or allowed the use of perchloroethylene at any dry cleaning facility in the state. An option not to participate must have been filed with the commission before January 1, 2004. Approximately 381 nonparticipating non-perchloroethylene user affidavits have been filed with the commission at this time.

The statute requires certain dry cleaning facilities to provide financial assurance for corrective action. Under the proposed rules, owners of dry cleaning facilities that have filed the affidavit of non-participation (exercising the option to not participate in the benefits of the Dry Cleaning Facility Release Fund) and that began operation on or after September 1, 2003, must furnish to the commission a bond or other financial assurance authorized by the commission in the amount of \$500,000. An option not to participate in fund benefits must have been filed with the commission before January 1, 2004, leaving a window of four months for any facilities to be affected by the financial assurance requirements.

Owners of nonparticipating dry cleaning facilities will have to pay for financial assurance for corrective action. However, these facilities will also be exempt from the per-gallon fee on dry cleaning solvents except perchloroethylene. These facilities would also lose the financial benefit of participating in the Dry Cleaning Facility Release Fund, which would cover corrective action costs at the site.

Currently, there are potentially two dry cleaning facilities that would be affected by the proposed financial assurance requirements. In order to meet the financial assurance requirements, the owner may use a fully funded trust, a surety bond guaranteeing payment, an irrevocable letter of credit, or insurance. A surety bond or annual insurance premiums are estimated to cost approximately \$10,000 each year for \$500,000 worth of coverage, but may be higher or lower depending upon the coverage requirements of the carrier.

It is assumed that owners and operators of dry cleaning facilities and solvent distributors will pass any increase in their operating expenses on to consumers. It is, therefore, estimated that consumers will likely pay more for dry cleaning, but how much more will depend upon the specific circumstances at the facility, i.e., the type of facility, how much in solvent fees are paid, and how much the facility spends to comply with the proposed performance standards. Given an average invoice amount of \$10 to \$25, and assuming that the dry cleaner passes the entire cost on to the customer, it is estimated that consumers may see an increase in their bills of 2% to 2.5% or an additional \$.20 to \$.63 added to the average bill.

For those contaminated dry cleaning sites, increases in costs for the registration and solvent fees would be offset by the significant savings to the owner/operator in potential remediation costs. Remediation costs are estimated to average \$500,000 per site, but could cost several million dollars or more.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for dry cleaning facilities, dry cleaning drop stations, and solvent distributors that are small or micro-businesses. Of the 2,111 dry cleaning facilities currently registered with the commission, over 60% report gross receipts of less than \$200,000. It is, therefore, estimated that most of the dry cleaning facilities in the state are small or micro-businesses. There are an estimated 21 distributors of dry cleaning solvents in the state, but it is not known how many of them are small or micro-businesses. The distributors will have additional recordkeeping costs under the proposed rules, though these are not considered significant.

Under the proposed new rules, owners of dry cleaning facilities with gross annual receipts of \$200,000 or less will have an extra year (January 1, 2007 instead of January 1, 2006) to meet requirements of the proposed secondary containment and direct-coupled delivery performance standards established in the legislation. These costs will be in addition to the registration and solvent fees established in the legislation. The legislation also requires owners of dry cleaning facilities to pay a \$5,000 deductible if they choose to apply for a ranking for corrective action. However, there will be cost benefits to those owners of dry cleaning facilities that participate in the program and have contaminated sites in that if they apply for a ranking, they will be eligible to have their remediation costs paid out of the Dry

Cleaning Facility Release Fund. Remediation costs could be substantial, ranging in the millions of dollars.

Under the legislation, a dry cleaning facility that is a small or micro-business may see cost increases of \$2,500 per year in registration fees and \$2,250 each year in solvent fees (it is estimated that a facility on average would use 150 gallons per year of perchloroethylene ($\$15 \text{ per } 150 \text{ gallons} = \$2,250$). Some small or micro-businesses also may incur a one-time cost of \$5,000 to retrofit an existing dry cleaning machine to meet the secondary containment requirements. These costs would total an estimated \$10,000 for one year and approximately \$5,000 each year thereafter.

The following is an analysis of the cost per employee for small or micro-businesses affected by the proposed rules. Small and micro-business are defined as having fewer than 100 or 20 employees respectively. Owners of dry cleaning facilities with 100 or fewer employees could incur additional costs of between \$5,000 and \$10,000 to comply with the existing legislation and the proposed rules or between \$50 and \$100 per employee. A micro-business with 20 or less employees would incur estimated additional costs of between \$250 and \$500 per employee. The projected costs for affected dry cleaning facilities is the same for small businesses as for larger businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute.

Although the intent of the proposed rules is to protect the environment or reduce risks to human health from environmental exposure, the proposed rules would not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Furthermore, even if the proposed rules did meet the definition of a major environmental rule, Texas Government Code, §2001.0225 only applies to a major environmental rule if the result of the rule is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. These proposed rules do not meet any of the four applicability requirements and thus are not subject to the regulatory analysis provisions of §2001.0225 even if they did meet the definition of a major environmental law. Specifically, the proposed rules are required by state law, are not proposed solely under the general powers of the agency, and do not exceed a requirement of state law, federal law, or a delegation agreement or contract between the state and an agency or representative of the federal government.

The commission invites public comment on this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rules and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13).

The proposed rules implement HB 1366, which created an environmental regulation and remediation program for dry cleaning facilities. Under the legislation, certain dry cleaners pay registration and solvent fees into a fund that is then used by the agency to investigate and cleanup eligible contaminated dry cleaning sites. Additionally, the legislation and proposed rules contain performance standards and waste handling requirements to alleviate the possibility of future contamination from dry cleaning facilities. Such contamination is a real and substantial threat to public health and safety. The proposed rules significantly advance a health and safety purpose by providing the framework within which the agency will collect the funds for corrective action and use those funds to address health and safety concerns at sites around the state. Furthermore, the proposed rules significantly advance a health and safety purpose by specifying performance standards and waste handling requirements to alleviate future health and safety issues resulting from dry cleaning facilities. The proposed rules are narrowly tailored

to apply to only certain dry cleaning facilities, dry cleaning drop stations, and distributors and do not impose a greater burden than is necessary to achieve the health and safety purpose as previously stated.

Nevertheless, the commission further evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to implement HB 1366 by setting forth: 1) procedures governing registration, certificates, and the collection of fees; 2) performance standards; 3) requirements for the removal of dry cleaning solvents and waste; 4) procedures relating to the prioritization and ranking of sites; 5) criteria for corrective action; 6) provisions relating to non-perchloroethylene users and facilities; 7) requirements for recordkeeping; and 8) provisions concerning audits and investigations.

Promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the proposed rules do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's rights to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the proposed rules. The proposed rules implement HB 1366 by providing the framework within which the agency will regulate and remediate dry cleaning facilities and dry cleaning drop stations. There are no burdens imposed on private real property from these proposed rules and the benefits to society are the proposed rules' specific procedures and requirements for a program that addresses dry cleaning contamination and seeks to prevent future contamination.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6).

The commission prepared a consistency determination for the proposed rules under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to the proposed rulemaking is governing emissions of air pollutants to protect and enhance air quality in the coastal area so as to protect coastal natural resource areas and promote the public health, safety, and welfare. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies. The proposed rules would establish performance standards for dry cleaning facilities; requirements for the removal of dry cleaning solvents and waste from dry cleaning facilities; criteria to be used in setting priorities for the expenditure of money from the Dry Cleaning Facility Release Fund; and criteria under which the executive director may determine the level at which corrective action is considered complete.

The commission seeks public comment on the consistency of the proposed rules with the CMP.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on December 6, 2004, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., December 13, 2004, and should reference Rule Project Number 2003-047-337-WS. Copies of the proposed rules can be obtained from the commission's Web site at <http://www.tnrcc.state.tx.us/oprd/rules/propadop.html>. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER A: GENERAL PROVISIONS

§§337.1 - 337.4

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the Solid Waste Disposal Act (SWDA); THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The proposed new sections implement THSC, Chapter 374.

§337.1. Purposes.

The purposes of this chapter are to:

(1) regulate and remediate certain dry cleaning facilities as prescribed by Texas Health and Safety Code, Chapter 374;

(2) establish minimum standards and procedures to reasonably protect and maintain the quality of the state's groundwater and surface water resources from contamination that could result from any release from a dry cleaning facility;

(3) provide for the use of risk-based corrective action; and

(4) provide for the protection of human health and safety and the environment of the state.

§337.2. Applicability.

(a) This chapter applies to all dry cleaning facilities, dry cleaning drop stations, and distributors.

(b) This chapter and Texas Health and Safety Code, Chapter 374 do not apply to the following types or categories of businesses:

(1) hotels, motels, and similar establishments that meet the definition of a “hotel” in Texas Tax Code, §156.001, unless the business is also a dry cleaning facility or a dry cleaning drop station that accepts garments or other fabrics from retail customers;

(2) formal wear and costume rental businesses, including tuxedo and bridal wear rental, as included in the North American Industry Classification System (NAICS) title “Formal Wear and Costume Rental,” code 532220, unless the business is also a dry cleaning facility or a dry cleaning drop station that accepts garments or other fabrics from retail customers;

(3) linen supply establishments and industrial launderers, including uniform supply, as included in the NAICS titles “Linen Supply,” code 812331, and “Industrial Launderers,” code 812332, unless the business is also a dry cleaning facility or a dry cleaning drop station that accepts garments or other fabrics from retail customers;

(4) businesses that clean uniforms provided by the business for the sole use of the employees of the business using equipment located on the premises of the business, unless the business is also a dry cleaning facility or dry cleaning drop station that accepts garments or other fabrics from retail customers;

(5) mobile dry cleaning drop stations, meaning any vehicle that is used, in whole or in part, to operate or provide a route service or pickup and delivery service between a retail customer and a dry cleaning facility or dry cleaning drop station;

(6) transporting agents or services that haul garments between dry cleaning facilities and dry cleaning drop stations and that do not operate, in whole or in part, to provide a route service or

pickup and delivery service between a retail customer and a dry cleaning facility or dry cleaning drop station; and

(7) governmental bodies as set forth in Texas Health and Safety Code, §374.003.

(c) For the purposes of this chapter, the terms “dry cleaning facility” and “dry cleaning drop station” do not include the types or categories of businesses set forth in subsection (b) of this section.

§337.3. Definitions.

Definitions set forth in Texas Health and Safety Code, Chapter 374 and §3.2 of this title (relating to Definitions) that are not specifically included in this section also apply. The following words and terms, when used in this chapter, have the following meanings.

(1) **Application for ranking** - The form approved by the executive director for an applicant to provide information pertaining to a dry cleaning facility and which is used, in part, for the prioritization of sites for corrective action.

(2) **Distributor** - A person that:

(A) maintains or uses, permanently or temporarily, directly or indirectly, or through an agent, by whatever name called, an office, place of distribution, sales or sample room,

warehouse or storage place, or other place of business that is used, in whole or part, for selling, distributing, or delivering dry cleaning solvent;

(B) has any representative, agent, salesperson, canvasser, or solicitor who operates in Texas under the authority of the distributor to sell, deliver, or take orders for dry cleaning solvent;

(C) uses independent contractors in direct sales, distribution, or delivery of dry cleaning solvent in Texas;

(D) allows a franchisee or licensee to operate under its trade name if the franchisee or licensee is required to collect Texas fees on dry cleaning solvent;

(E) conducts business in Texas through employees, agents, or independent contractors for the purpose of selling, distributing, or delivering dry cleaning solvent; or

(F) otherwise distributes dry cleaning solvent to dry cleaning facilities or dry cleaning drop stations doing business in Texas.

(3) **Dry cleaning machine** - The equipment used for the purpose of cleaning garments or other fabrics using a process that involves any use of dry cleaning solvents.

(4) **Dry cleaning waste** - The waste, including dry cleaning wastewater, that is generated at a dry cleaning facility and that contains dry cleaning solvents.

(5) **Dry cleaning wastewater** - The separator water and all other water that is generated during the dry cleaning process and that contains dry cleaning solvents.

(6) **Empty** - The status of a dry cleaning machine in which all solvents have been removed as completely as possible by the use of commonly employed and accepted industry procedures.

(7) **Gross annual receipts** - The sum of all payments or compensation, including payments or compensation from laundry and other revenue generating activities, received by a dry cleaning facility or drop station, less any returns, discounts, or allowances. The calculation of gross annual receipts must not be reduced for cost of goods sold, general and administrative expenses, depreciation and amortization, or other operating expenses. Gross annual receipts do not include any taxes imposed on the services provided by any municipality, state, or other governmental unit and collected by the dry cleaning facility or drop station for such governmental unit.

(8) **In service** - The status of a dry cleaning machine that it is being used for cleaning garments or other fabrics with a process that involves any use of dry cleaning solvents.

(9) Nonparticipating non-perchloroethylene user registration certificate - A

registration certificate issued by the executive director to a facility designated as a nonparticipating facility in accordance with Texas Health and Safety Code, §374.104.

(10) Operating dry cleaning drop station - A dry cleaning drop station that has

accepted clothes for dry cleaning anytime during the state fiscal year.

(11) Operating dry cleaning facility - A dry cleaning facility in which there is at least

one operating dry cleaning machine in service anytime during the state fiscal year.

(12) Participating non-perchloroethylene user registration certificate - A

registration certificate issued by the executive director to an owner designated as a nonuser of perchloroethylene in accordance with Texas Health and Safety Code, §374.103(b)(1).

(13) Permanently removed from service - The status of a dry cleaning machine when

its use is terminated by proper removal from the dry cleaning facility in accordance with this chapter.

(14) Secondary containment - A containment method by which a continuous barrier is

installed around and under the primary storage vessel (e.g., tank or piping) in a manner designed to prevent a release from migrating beyond the secondary barrier before the release can be detected.

(15) Temporarily removed from service - The status of a dry cleaning machine that is not being used for cleaning garments or other fabrics for a time period not to exceed one year and that has not been permanently removed from service.

§337.4. General Prohibitions and Requirements.

(a) New dry cleaning facilities must meet the performance standards in §337.20 of this title (relating to Performance Standards).

(b) A distributor is prohibited from selling, delivering, or otherwise distributing any dry cleaning solvent to a dry cleaning facility unless the dry cleaning facility has a valid, current registration certificate issued by the executive director. Prior to sale, delivery, or other distribution of the dry cleaning solvent, the distributor must obtain and record the registration number and registration expiration date of the dry cleaning facility's registration certificate.

(c) A distributor shall not sell, deliver, or otherwise distribute the dry cleaning solvent perchloroethylene to a dry cleaning facility with a nonparticipating non-perchloroethylene user registration certificate or a participating non-perchloroethylene user registration certificate.

(d) A person is prohibited from purchasing dry cleaning solvent from a distributor that does not have a valid, current distributor registration certificate issued by the executive director.

(e) A distributor is prohibited from selling or otherwise distributing dry cleaning solvent to a dry cleaning facility unless the distributor has a valid, current distributor registration certificate issued by the executive director.

(f) A person is prohibited from purchasing the dry cleaning solvent perchloroethylene for a dry cleaning facility with a nonparticipating non-perchloroethylene user registration certificate or a participating non-perchloroethylene user registration certificate.

(g) A distributor is prohibited from selling, delivering, or otherwise distributing any dry cleaning solvent to a dry cleaning drop station.

SUBCHAPTER B: REGISTRATION, CERTIFICATES, AND FEES

§§337.10 - 337.15

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also proposed under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the Solid Waste Disposal Act (SWDA); THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The proposed new sections implement THSC, Chapter 374.

§337.10. Registration for Dry Cleaning Facilities and Drop Stations.

(a) Registration.

(1) All operating dry cleaning facilities and dry cleaning drop stations must be registered with the agency in accordance with this section.

(2) Any person that owns a new dry cleaning facility or dry cleaning drop station that is placed into service after September 1, 2003, shall register the dry cleaning facility or dry cleaning drop station with the agency in accordance with subsection (c) of this section and receive a registration certificate before operations begin.

(3) The owner of a dry cleaning facility or dry cleaning drop station is responsible for compliance with the registration requirements of this section. An owner may designate a legally authorized representative to complete and submit the required registration information. However, the owner remains responsible for compliance with the provisions of this section by such representative.

(4) All dry cleaning facilities and dry cleaning drop stations are subject to the fee and payment requirements of §337.14 and §337.15 of this title (relating to Registration Fees; and Solvent Fees, respectively). The failure by an owner to properly or timely register any dry cleaning facility or dry cleaning drop station does not exempt the owner from such fee and payment requirements.

(b) Changes or additional information.

(1) The owner of a dry cleaning facility or dry cleaning drop station shall provide written notice to the executive director of any changes or additional information concerning such facilities. Types of changes or additional information subject to this requirement include the following:

(A) change in owner or change in owner information (e.g., legally authorized representative, mailing address, or telephone number);

(B) change in dry cleaning facility or dry cleaning drop station information (e.g., establishment name, legally authorized representative, establishment address, or telephone number);

(C) change in the operational status of any dry cleaning unit (e.g., in service, temporarily out of service, removed from service);

(D) change in the type of cleaning solvents used;

(E) installation of additional dry cleaning units or ancillary equipment at an existing facility;

(F) addition of, or a change in the type of, secondary containment (for dry cleaning units or storage areas) and/or ancillary equipment;

(G) addition of, or a change in the type of, closed direct-coupled delivery system for the dry cleaning unit; and

(H) change in the location of records for the dry cleaning facility or dry cleaning drop station.

(2) Notice of any change or additional information must be submitted on the appropriate agency form that has been completed in accordance with this section. The agency's registration numbers for the dry cleaning facility/drop station must be included in the appropriate space on the form.

(3) Notice of any change or additional information must be submitted to the executive director within 30 days from the date of the occurrence of the change or addition.

(c) Required form for providing dry cleaning facility or dry cleaning drop station registration information.

(1) Dry cleaning facility owners and dry cleaning drop station owners shall provide the required information on the current agency registration form.

(2) The dry cleaning facility owner or dry cleaning drop station owner is responsible for ensuring that the registration form is fully complete and accurate. The form must be dated and signed by the owner or a legally authorized representative of the owner, and must be submitted to the agency in accordance with the time frames established in this chapter.

(3) Dry cleaning facility or dry cleaning drop station owners shall complete and submit a separate registration form for each facility or drop station.

(4) If additional information, drawings, or other documents are submitted with new or revised registration data, specific facility identification information (including the facility registration number) must be conspicuously indicated on each document, and all such documents must be attached to and submitted with the form.

(5) When any of the required dry cleaning facility or dry cleaning drop station registration information submitted to the executive director is determined to be incomplete or inaccurate (including illegible or unclear information), the executive director may require the owner to submit additional information. An owner shall submit any such required additional information within 30 days of receipt of such request.

§337.11. Dry Cleaner Registration Certificates.

(a) Completion of the registration form. Upon the executive director's determination that a submitted registration form has been completed in accordance with this chapter and that all fees, penalties, and interest owed to the agency have been paid, a registration certificate will be issued for the dry cleaning facility or dry cleaning drop station, as applicable. This certificate is necessary to receive the delivery of dry cleaning solvents under §337.4(b) of this title (relating to General Prohibitions and Requirements).

(b) Incomplete or inaccurate registration form or nonpayment. The executive director will not issue a registration certificate if the registration form is determined by the executive director to be incomplete or inaccurate (including forms with illegible or unclear information) or if any fees, penalties, or interest is owed to the agency. In order for a registration form to be complete and accurate, the registration form must contain all requested information with clear, legible, and true responses.

(c) Issuance of a registration certificate. The agency's issuance of a registration certificate for a dry cleaning facility or dry cleaning drop station does not constitute agency certification or affirmation of the compliance status of the location in question with this chapter, Chapter 37 of this title (relating to Financial Assurance), the Texas Water Code, or the Texas Health and Safety Code; and this issuance does not preclude the agency from investigating these locations and pursuing enforcement actions when apparent violations are discovered.

(d) Certificate availability.

(1) The owner of a dry cleaning facility or dry cleaning drop station shall make available to a person delivering dry cleaning solvent a valid, current agency registration certificate for that establishment before the delivery of dry cleaning solvent can be made or accepted.

(2) The owner of the dry cleaning facility or drop station shall immediately display, upon request by agency staff, a valid, current agency registration certificate for that establishment.

(3) The dry cleaning facility or dry cleaning drop station owner shall ensure that a valid, current agency registration certificate is displayed at a facility or drop station. The original registration certificate must be posted in a public area where the document is clearly visible.

(4) In the event of the sale of a dry cleaning facility or a dry cleaning drop station, the previous owner's valid, current certificate may be used to purchase dry cleaning solvent for 30 days after the effective date of sale.

(e) Annual registration certificate renewal.

(1) The initial registration certificate issued for a dry cleaning facility or dry cleaning drop station will be valid until the expiration date indicated on that certificate. It is the responsibility of the owner to ensure that an application for renewal of that certificate is properly and timely submitted to the agency.

(2) A registration certificate is renewed by timely and proper submission of a new registration form to the agency. The agency will not issue a new registration certificate for registration forms that are determined by the executive director to be incomplete or inaccurate.

(3) A new registration form must be completed by the owner of a dry cleaning facility or dry cleaning drop station and submitted to the agency by August 1st of each year.

(f) Revocation or denial of a certificate.

(1) The executive director may revoke or deny issuance of a certificate if:

(A) the certificate was acquired by fraud, misrepresentation, or knowing failure to disclose material information; or

(B) the owner of a dry cleaning facility or dry cleaning drop station is in violation of any of the requirements of this chapter, Chapter 37 of this title, or Texas Health and Safety Code, Chapter 374.

(2) Prior to revocation or denial of a certificate, the executive director shall provide notice to the owner of the dry cleaning facility or dry cleaning drop station of the facts alleged to warrant revocation or denial. The notice must be in writing and sent via certified mail, return receipt requested. If the certified mail is returned to the executive director as unclaimed, notice is presumed to be received by the owner five days after mailing when:

(A) the notice was sent to the address indicated on the owner's most current registration; and

(B) the notice was sent simultaneously via first class mail, postage paid.

(3) The owner shall have 30 days after receipt of notice to demonstrate to the executive director whether or not compliance has been maintained with all requirements of law for the retention of the certificate. The executive director shall make a determination whether to revoke or deny the certificate and shall provide such determination in writing to the owner.

§337.12. Registration for Distributors.

(a) Registration.

(1) Any distributor as defined in §337.3 of this title (relating to Definitions) in operation on or after September 1, 2003, shall register with the agency in accordance with this section.

(2) The distributor is responsible for compliance with the registration requirements of this section. A distributor may designate a legally authorized representative to complete and submit the required registration information. However, the distributor remains responsible for compliance with the provisions of this section by such representative.

(b) Changes or additional information.

(1) The distributor shall provide written notice to the executive director of any changes or additional information to the registration information. Types of changes or additional information

subject to this requirement include change in owner, change in owner information (e.g., mailing address, contact person, and telephone number), or change in the location of records.

(2) Notice of any change or additional information must be submitted on the appropriate agency form, which has been completed in accordance with this section. The distributor's registration number must be included in the appropriate space on the form.

(3) Notice of any change or additional information must be submitted to the agency within 30 days from the date of the occurrence of the change or addition.

(c) Required form for providing distributor registration information.

(1) A distributor submitting registration information to the executive director shall provide the required information on the current agency dry cleaning solvent distributor report form.

(2) The distributor is responsible for ensuring that the dry cleaning solvent distributor report form is fully complete and accurate. The form must be dated and signed by the owner or a legally authorized representative of the owner, and must be submitted to the executive director prior to commencing operations or as set forth in subsection (a)(1) of this section.

(3) Distributors that maintain or use more than one place of business shall complete and submit a separate form for each place of business.

(4) When any of the required distributor registration information submitted to the executive director is determined to be incomplete or inaccurate (including illegible or unclear information), the executive director may require the distributor to submit additional information. A distributor shall submit any such required additional information within 30 days of receipt of such request.

§337.13. Distributor Registration Certificate.

(a) Completion of the dry cleaning solvent distributor report form. Upon the executive director's determination that a submitted dry cleaning solvent distributor report form has been completed in accordance with this chapter and that all fees, penalties, and interest owed to the agency have been paid, a distributor registration certificate will be issued for the place of business covered by that registration. This certificate is necessary for the delivery of dry cleaning solvent under §337.4 of this title (relating to General Prohibitions and Requirements).

(b) Incomplete or inaccurate dry cleaning solvent distributor report form or nonpayment. The executive director will not issue a distributor registration certificate for dry cleaning solvent distributor report forms determined by the executive director to be incomplete or inaccurate (including illegible or unclear information) or if any fees, penalties, or interest are owed to the agency. In order for a form to be complete, the form must contain all requested information with clear, legible, and true responses.

(c) Issuance of a registration certificate. The executive director's issuance of a registration certificate for a distributor does not constitute agency certification or affirmation of the compliance status of a location with this chapter, the Texas Water Code, or the Texas Health and Safety Code; or preclude the agency from investigating a location and pursuing enforcement action when apparent violations are discovered.

(d) Registration certificate availability.

(1) Prior to delivery of any dry cleaning solvent, a distributor shall make available to a person purchasing dry cleaning solvent a valid, current agency distributor registration certificate, or a legible copy of the certificate.

(2) A distributor shall immediately display, upon request by agency staff, a valid, current agency registration certificate for a place of business.

(3) A distributor shall display the original agency registration certificate at the place of business. The original registration certificate must be posted in a public area where the certificate is clearly visible.

(e) Revocation or denial of certificate.

(1) The executive director may revoke or deny issuance of a certificate if:

(A) the certificate was acquired by fraud, misrepresentation, or knowing failure to disclose material information; or

(B) the distributor is in violation of any of the requirements of this chapter or Texas Health and Safety Code, Chapter 374, including late remittance of solvent fees and non-remittance of solvent fees.

(2) Prior to the revocation or denial of a certificate, the executive director shall provide notice to the distributor of the facts alleged to warrant revocation or denial. The notice must be in writing and sent via certified mail, return receipt requested. If the certified mail is returned to the executive director as unclaimed, notice is presumed to be received by the distributor five days after mailing when:

(A) the notice was sent to the address indicated on the distributor's most current registration; and

(B) the notice was sent simultaneously via first class mail, postage paid.

(3) The distributor shall have 30 days after receipt of notice to demonstrate to the executive director whether or not compliance has been maintained with all requirements of law for the retention of the certificate. The executive director shall make a determination whether to revoke or deny the certificate and shall provide such determination in writing to the distributor.

§337.14. Registration Fees.

(a) Each owner of an operating dry cleaning facility or dry cleaning drop station shall pay the registration fees set forth in Texas Health and Safety Code, §374.102. The owner of the dry cleaning facility or dry cleaning drop station on or after September 1 of each state fiscal year is responsible for the registration fees owed for the state fiscal year beginning on September 1. However, if a person acquires a dry cleaning facility or dry cleaning drop station that does not have a current registration certificate, the facility or drop station would have to be registered and the fee paid before a current registration certificate would be issued.

(b) Payment in full of registration fees is due within 30 days of the agency invoice date. The fees must be paid by check, certified check, money order, or electronic funds transfer made payable to the "Texas Commission on Environmental Quality."

(c) The registration certificate will not be issued until registration fees, penalties, and interest assessed are paid in full.

(d) Owners that fail to pay registration fees when due shall pay penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

§337.15. Solvent Fees.

(a) Except as provided in subsection (b) of this section, an owner of a dry cleaning facility shall pay to the distributor the fees for the purchase of dry cleaning solvents, including reclaimed or recycled solvents, as set forth in Texas Health and Safety Code, §374.103.

(b) The following are exempt from the fees required in subsection (a) of this section:

(1) a nonparticipating facility as designated in accordance with Texas Health and Safety Code, §374.104, whereby the owner has submitted the appropriate affidavit to the executive director and received a nonparticipating non-perchloroethylene user registration certificate; and

(2) an owner that has been designated as a nonuser of perchloroethylene in accordance with Texas Health and Safety Code, §374.103(b)(1), has submitted the appropriate affidavit with the executive director, and has received a participating non-perchloroethylene user registration certificate.

(c) The person that distributes the dry cleaning solvent shall collect the fee when the dry cleaning solvent is sold and remit the fee to the agency as required by this section. Solvent is considered sold when it is paid for in full or when delivered or otherwise distributed to the dry cleaning facility, whichever occurs first. A distributor is required to remit solvent fees due to the agency for any solvent that is considered sold, regardless of whether or when the distributor collected the fee from the dry cleaning facility to which the solvent was delivered or otherwise distributed.

(1) On or before the due dates, the distributor shall submit a report to the executive director, on a form approved by the executive director, and remit the amount of fees required to be collected for the associated reporting period. The report must set forth each sale of dry cleaning solvent with the associated facility registration numbers, name, address, solvent types and amounts, and dates of delivery. The following are the due dates and associated reporting periods.

(A) The due date for the reporting period of September 1 - November 30 is December 20.

(B) The due date for the reporting period of December 1 - February 28/29 is March 20.

(C) The due date for the reporting period of March 1 - May 31 is June 20.

(D) The due date for the reporting period of June 1 - August 31 is September 20.

(2) Upon receipt of payment for the solvent or delivery or other distribution to the dry cleaning facility, whichever occurs first, the distributor shall obtain and record the registration number and registration expiration date of the facility to which the solvent is sold, delivered, or otherwise distributed.

(3) The distributor shall retain the invoice or a copy of the invoice or other appropriate record of the sale of the solvent for five years from the date of sale.

(4) For the amount of the fee due, the distributor shall:

(A) separately state the amount on the invoice, bill, or contract to the customer and identify it as the Texas solvent fee;

(B) in the case of a fraction of a gallon, compute the fee by multiplying the fraction by the amount of the fee imposed on a whole gallon;

(C) not include the fee in, or add the fee to, the solvent price for the purpose of calculating the amount of sales tax due, if any; and

(D) not explicitly or implicitly absorb, assume, or refund the fee.

(5) Solvent fees collected by the distributor are held in trust for the agency, are not property of the distributor, and are not to be used by the distributor for any other purpose.

(6) At any time, the executive director may request in writing that the distributor remit the amount of fees required to be collected up to a date certain as determined by the executive director.

The distributor shall remit such amount to the agency within ten days of receiving the executive director's request.

(7) The distributor must pay the fees by check, certified check, money order, or electronic funds transfer made payable to the "Texas Commission on Environmental Quality."

(8) Late payment and returned checks.

(A) Distributors that fail to pay quarterly solvent fees when due shall pay penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

(B) In addition to penalties, interest, and other amounts that may apply, if the distributor does not remit any of the required amount by the due date or a distributor's check is returned for insufficient funds, the executive director may require the distributor to remit collected fees on a different basis and time frame than set forth in this subsection.

SUBCHAPTER C: PERFORMANCE STANDARDS AND WASTE REMOVAL

§§337.20 - 337.22

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also proposed under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the Solid Waste Disposal Act (SWDA); THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The proposed new sections implement THSC, Chapter 374.

§337.20. Performance Standards.

(a) Applicability. Unless otherwise specifically stated, these performance standards apply to all dry cleaning facilities and dry cleaning drop stations.

(b) Compliance deadlines.

(1) Owners of operating dry cleaning facilities with gross annual receipts that exceed \$200,000 (as indicated on the most current registration form filed with the agency) shall comply with this section no later than January 1, 2006.

(2) Owners of operating dry cleaning facilities with gross annual receipts that are \$200,000 or less (as indicated on the most current registration form filed with the agency) shall comply with this section no later than January 1, 2006, with the exception of subsections (f) and (g) of this section, which shall be complied with no later than January 1, 2007.

(3) Owners of each new dry cleaning facility shall construct and operate the facilities in compliance with this section.

(c) Storage, treatment, and disposal of dry cleaning wastes. Any person at a dry cleaning facility that generates hazardous wastes shall comply with the provisions specified under Chapter 335, Subchapter C of this title (relating to Standards Applicable to Generators of Hazardous Waste).

(d) Prohibition of the discharge of dry cleaning solvents and waste. No person shall discharge dry cleaning solvents, dry cleaning waste, or dry cleaning wastewater either directly or indirectly, into any sanitary sewer, storm sewer, or septic tank, or to the soil or water of the state, nor shall any person discharge dry cleaning waste into any underground tank.

(1) Dry cleaning wastewater may be misted or evaporated in an appropriate device plumbed directly to, or immediately adjacent to, the dry cleaning unit in accordance with the provisions specified under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste.)

(2) If dry cleaning wastewater is not disposed of as stated in paragraph (1) of this subsection, the owner of a dry cleaning facility shall ensure that a record is created at the time of disposal describing the disposal of the dry cleaning wastewater. At a minimum, the record must indicate the:

(A) amount of water disposed;

(B) person that disposed of the water;

(C) date of disposal; and

(D) disposal method.

(e) Air emission standards.

(1) The owner of a dry cleaning facility shall comply with Chapter 106 of this title (relating to Permits by Rule) or Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(2) The owner of a dry cleaning facility using perchloroethylene and any person using perchloroethylene at a dry cleaning facility shall comply with emission standards for hazardous air pollutants as specified in 40 Code of Federal Regulations Part 63, Subpart M, in effect September 22, 1993.

(3) Each owner of a dry cleaning facility that is a major source as defined in Chapter 122 of this title (relating to Federal Operating Permits Program) shall obtain an operating permit.

(f) Dikes and other secondary containment structures.

(1) Applicability. Unless otherwise specifically stated, this subsection applies to:

(A) all dry cleaning facilities using chlorinated dry cleaning solvents; and

(B) all other dry cleaning facilities that replace or install a dry cleaning machine on or after September 1, 2005, with the exception of any dry cleaning facility that primarily uses carbon dioxide.

(2) Installation.

(A) Each owner of a dry cleaning facility shall install a dike or other secondary containment structure around each dry cleaning unit and around each storage area for dry cleaning solvents, dry cleaning waste, or dry cleaning wastewater.

(B) Each secondary containment structure must be maintained in good condition and capable of containing any leak, spill, or release of dry cleaning solvents in accordance with this subsection.

(C) Floor drains must not be located within any secondary containment structure required by this subsection.

(3) Construction materials.

(A) The materials used to construct each secondary containment structure must be impervious to, and compatible with, the dry cleaning solvents, dry cleaning wastes, and dry cleaning wastewater used or stored within the secondary containment structure.

(B) For any dry cleaning unit using chlorinated dry cleaning solvents and any storage area for chlorinated dry cleaning solvents, chlorinated dry cleaning wastes, or chlorinated dry cleaning wastewater, materials other than epoxy or steel may be used for the construction of the

secondary containment structure only upon approval by the executive director. Approval for the use of a material other than epoxy or steel will be granted upon satisfactory demonstration to the executive director that the material is as compatible with, and impervious to, dry cleaning solvent as epoxy or steel.

(C) All sealant and all caulk used on each secondary containment structure must be impervious to and compatible with the dry cleaning solvent, dry cleaning waste, or dry cleaning wastewater used or stored within the secondary containment structure.

(4) Storage capacity.

(A) Dry cleaning machine. Each secondary containment structure installed after September 1, 2005, must be capable of completely containing a minimum of 110% of the volume of liquids that can be held within the largest tank on a machine. The secondary containment area must be kept free of all materials or objects that would diminish its capacity to contain a leak, spill, or release.

(B) Storage area. Each secondary containment structure installed after September 1, 2005, must be capable of completely containing a minimum of 110% of the volume of liquids that can be held within the largest container in a storage area. The secondary containment area must be kept free of all materials or objects that would diminish its capacity to contain a leak, spill, or release.

(5) Inspections. The owner of each dry cleaning facility shall visually inspect each installed secondary containment structure weekly to ensure that the structure is not damaged.

(A) If there is no release or imminent threat of release of dry cleaning solvents, the owner of each dry cleaning facility shall ensure that any damage is repaired within seven days after the discovery. The owner may request an extension of this time limit from the executive director. If there is a release or imminent threat of release, the owner shall ensure that any damage is quickly repaired and any release is immediately contained and controlled.

(B) The owner of each dry cleaning facility shall keep a log of these inspections which include, as a minimum, the following information. This information must be provided to the executive director upon request:

(i) the date and time of each inspection;

(ii) the name of the person conducting the inspection;

(iii) a brief notation of findings; and

(iv) the date and nature of each repair or other action taken.

(C) For dry cleaning facilities using chlorinated solvents, inspection logs required under this section may be added to the leak inspection and repair records required by 40 Code of Federal Regulations Part 63, Subpart M, for dry cleaning equipment containing chlorinated solvent.

(D) Each inspection and repair log must be kept at the dry cleaning facility for not less than five years after the log has been completed.

(g) Delivery of solvents.

(1) Chlorinated dry cleaning solvents. All chlorinated dry cleaning solvents must be delivered to dry cleaning units and solvent storage containers by means of either of the following:

(A) a closed, direct-coupled delivery system; or

(B) an alternative method submitted to, and approved by, the executive director that provides protection of human health and safety and the environment that is equivalent to or greater than the protection provided by direct-coupled delivery systems.

(2) Non-chlorinated dry cleaning solvents, except for carbon dioxide solvents. All non-chlorinated dry cleaning solvents, except for carbon dioxide, must be delivered to dry cleaning units and solvent storage containers in a manner that will minimize releases to the environment.

§337.21. Removal of Dry Cleaning Solvents and Wastes.

(a) Disposal of dry cleaning wastes. Each owner of a dry cleaning facility shall ensure that all dry cleaning wastes are disposed of in accordance with §337.20 of this title (relating to Performance Standards).

(b) Dry cleaning facility that ceases operation. Each owner of a dry cleaning facility that ceases operation as a dry cleaning facility for 180 continuous days shall ensure that dry cleaning solvent (including dry cleaning solvent remaining in any dry cleaning machine), dry cleaning wastewater, and waste materials containing dry cleaning solvent, are removed from the dry cleaning facility within 30 days after the end of the 180-day period. An owner of a dry cleaning facility shall ensure that the dry cleaning solvent and solvent-containing residue from a dry cleaning machine is removed prior to the dry cleaning machine being disposed of, recycled, or reused.

(c) Dry cleaning machines temporarily removed from service.

(1) Dry cleaning machines that are temporarily removed from service for more than 180 days must be empty within 30 days after the end of the 180-day period and must meet all applicable performance standards.

(2) Each owner of a dry cleaning facility shall ensure that weekly inspections are continued on any dry cleaning machine that is temporarily removed from service and is not empty.

(3) Prior to a dry cleaning machine being put back in service, the owner of a dry cleaning facility must ensure that the machine meets all applicable performance standards.

(d) Dry cleaning machines permanently removed from service. Dry cleaning machines that are permanently removed from service must be empty prior to removal from the interior of the facility.

§337.22. Variances and Alternative Procedures.

(a) Prior to proceeding in any manner that differs from the requirements of this subchapter, the owner of a dry cleaning facility shall secure written approval from the executive director in the form of a variance in accordance with this section.

(b) The executive director may review and approve requests for variances that meet the requirements in this section. The executive director will approve such requests only if the owner can demonstrate to the executive director that the proposed alternative procedure and/or equipment is no less protective of human health and safety and the environment than the requirement(s) for which the variance is sought.

(c) Any request to the executive director for approval of a variance must be made in writing, signed and dated by the dry cleaning facility owner, and accompanied by the following additional documentation:

(1) written concurrence by the location owner, if different from the dry cleaning facility owner;

(2) complete project identification, including:

(A) location name, address, and location identification number (if known);

(B) location owner's name, address, and telephone number;

(C) name, address, and telephone number of dry cleaning facility owner's/operator's authorized representative; and

(D) proposed date for implementation of the alternative procedure and/or equipment;

(3) sufficient documentation to describe or illustrate the alternative procedure and/or equipment, such as:

(A) plans, drawings, and detail sheets (drawn to scale);

(B) design and construction specifications; and

(C) equipment manufacturers' specifications, operating instructions, and warranty information;

(4) documentation and supporting data that demonstrate, to the satisfaction of the executive director, the reliability and appropriateness of the proposed procedure and/or equipment;

(5) complete explanation of the reasons why the proposed procedure and/or equipment are considered preferable to the requirement for which the variance is sought or why that requirement is considered impracticable for the specified facility; and

(6) documentation that demonstrates, to the satisfaction of the executive director, that use of the proposed alternative procedure and/or equipment will be no less protective of human health and safety and the environment than adhering to the requirement(s) for which the variance is sought.

(d) If a variance is granted by the executive director, the dry cleaning facility owner shall maintain complete copies of the variance and supporting documentation (including the request for approval).

(e) When a variance is sought, the owner shall adhere to the requirement in question until such time as the owner receives a written variance that allows an alternative procedure and/or equipment for that requirement.

(f) Once an owner has received a written variance from the executive director under this section, the owner shall adhere to the terms of that variance as written, or to the terms of the requirement for which the variance was sought.

SUBCHAPTER D: PRIORITIZATION AND RANKING

§§337.30 - 337.32

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also proposed under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the Solid Waste Disposal Act (SWDA); THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The proposed new sections implement THSC, Chapter 374.

§337.30. Prioritization of Sites.

(a) The executive director will prioritize sites for corrective action as follows.

(1) A site will only be eligible for prioritization if it has been ranked with the dry cleaning facility ranking system.

(2) Sites will be prioritized at least semiannually beginning on January 1 and July 1.

Administratively and technically complete applications must be received on or before March 1 of each year to ensure consideration for prioritization starting July 1. Applications must be received on or before September 1 of each year to ensure consideration for prioritization starting January 1. The prioritization will be based on the ranking effective January 1 or July 1 and other considerations outlined in subsection (b) of this section.

(b) The relative priority for corrective action at a site will be based on the following factors:

(1) the dry cleaning facility ranking system;

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

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

(4) the amount of money available in the Dry Cleaning Facility Release Fund for corrective action;

(5) cost savings to the Dry Cleaning Facility Release Fund realized when corrective action is undertaken during redevelopment or other activity near the site;

(6) necessity of emergency action; and

(7) any other factor the executive director considers relevant to the prioritization of sites.

(c) The executive director may re-prioritize sites during the semiannual prioritization in subsection (a)(2) of this section. This re-prioritization may result in a site being assigned a new priority below the level eligible for available funding, which may result in the termination or suspension of corrective action at the site.

§337.31. Ranking of Sites.

(a) Dry cleaning facility ranking system.

(1) The dry cleaning facility ranking system is a methodology designed to determine a numerical score for a facility based on the executive director's judgment regarding various factors that may impact human health or the environment.

(2) The executive director will rank dry cleaning facilities based on information provided in an application for ranking package. An application for ranking will be accepted from persons eligible to apply for a site to be ranked under Texas Health and Safety Code, §374.154(b),

including former owners of dry cleaning facilities and owners of real property on which a dry cleaning facility was formerly located that meet the eligibility criteria.

(3) An application for ranking package must contain:

(A) a completed application for ranking;

(B) proof that an owner of the real property has been notified of the application if the applicant is not an owner of the real property;

(C) proof that a lessee has been notified of the application if the applicant is an owner of the real property and the facility is leased;

(D) evidence that the deductible has been met in accordance with Subchapter E of this chapter (relating to Deductible);

(E) laboratory analyses of at least one groundwater sample (soil analyses may be substituted with written approval of the executive director);

(F) geologic well log(s) from a monitoring or supply well or hydrogeologic information from the contaminated site where the groundwater or soil sample was taken;

(G) field survey to locate potential receptors, including water wells and surface waters to at least 500 feet beyond the boundary of the property;

(H) a records survey to identify all water wells and surface water bodies within 1/2 mile of the boundary of the property;

(I) a full operational history of the facility including types of solvent currently and previously used; and

(J) any other information or evidence the executive director considers necessary.

(4) Application for ranking packages that are not administratively and technically complete as determined by the executive director will not be ranked. The executive director will notify the applicant in writing of such a determination.

(5) Factors the executive director may consider in ranking sites include:

(A) types of solvent currently in use;

(B) types of solvent used in the past;

(C) operational history of the facility;

(D) risk to drinking water supplies;

(E) surface water:

(i) demonstrated impact to surface water;

(ii) distance to surface water; and

(iii) probability of contamination;

(F) groundwater:

(i) aquifer impacted;

(ii) depth to groundwater;

(iii) distance to nearest known groundwater wells;

(iv) areal extent of groundwater contaminated;

(v) subsurface geology as it affects contamination migration;

(vi) concentrations of dry cleaning solvent in the groundwater;

(vii) probability of contamination; and

(viii) institutional controls prohibiting the use of groundwater for
potable purposes;

(G) alternative water source availability;

(H) soil:

(i) soil type;

(ii) depth to groundwater;

(iii) depth of contamination;

(iv) concentrations of dry cleaning solvent in the soil;

(v) quantity of soil contaminated;

(vi) potential for exposure to the contaminated soils; and

(vii) soil on the outcrop of a major or minor aquifer, or the Edwards
Aquifer recharge or transition zone;

(I) current and future land use; and

(J) air contamination:

(i) potential for exposure to vapors; and

(ii) potential for vapors to migrate into buildings or other receptors.

(6) For all applications that are technically and administratively complete, the
executive director will rank the site and notify an applicant of the relative ranking assigned to the
applicant's site on or before the 90th day after the date the application is received by the executive
director.

(7) If a site has already been ranked by the executive director, an applicant may submit
an updated application for ranking to reflect changes in site conditions as a result of corrective action or
other circumstances. Such updates will be limited to one per state fiscal year per site.

(8) The executive director may re-rank sites where corrective action has occurred using monies from the Dry Cleaning Facility Release Fund to reflect changes in site conditions as a result of corrective action or other circumstances.

(b) Even if a site has been ranked, a person may take corrective action at the person's own expense at any time in accordance with commission rules. The resulting expenses will not be reimbursed by the agency. In addition to any other notice required, an applicant shall give the executive director notice of such corrective action within 30 days after the action is completed.

§337.32. Denial and Removal of Sites from Ranking.

(a) The executive director may deny or remove from ranking a site if:

(1) the owner of the dry cleaning facility or dry cleaning drop station is held responsible for the costs of corrective action under Texas Health and Safety Code, §374.202;

(2) the applicant denies access or unreasonably hinders or delays corrective action at the site;

(3) the applicant has failed to pay fees, penalties, and interest for any dry cleaning facility or dry cleaning drop station that the applicant is required to pay;

(4) the applicant has failed to register any dry cleaning facility or dry cleaning drop station that the applicant was required to register; or

(5) the applicant does not pay the deductible or provide satisfactory proof of expenditures to apply against the deductible in accordance with Subchapter E of this chapter (relating to Deductible) within the required time frames.

(b) An applicant who has been denied or removed from ranking may address the cause for denial or removal from ranking, provide additional information, and reapply for ranking.

SUBCHAPTER E: DEDUCTIBLE

§337.40, §337.41

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also proposed under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the Solid Waste Disposal Act (SWDA); THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The proposed new sections implement THSC, Chapter 374.

§337.40. General Requirements.

(a) Eligible costs incurred by an applicant in performance of technical and scientific investigations, assessments, or corrective action associated with the site and related to the release of a dry cleaning solvent may be credited against the deductible required under Texas Health and Safety Code, §374.203.

(b) Eligible costs for credit against the deductible are only those costs submitted with the application for ranking package that are reasonable and appropriate costs for reasonable and appropriate actions as determined by the executive director.

(c) If the deductible is not met by eligible costs, the applicant shall submit a non-refundable payment of the difference at the time the application for ranking is submitted.

(d) In the case of multiple applications for the same dry cleaning facility, each applicant must individually meet the deductible requirements in this subchapter.

§337.41. Evidence of Eligible Costs.

(a) Evidence of eligible costs must be submitted with the application for ranking package and must contain:

(1) legible copies of invoices, providing a description of:

(A) any work performed;

(B) who performed the work;

(C) where the work was performed;

(D) the dates that the work was performed;

(E) the unit cost; and

(F) the total amount paid; and

(2) proof that the amounts shown on the invoices for which the credit toward the deductible is requested have been paid in full by the applicant. The submission must include either:

(A) business receipts or invoices from the person that performed the work, indicating compensation received;

(B) canceled checks;

(C) the certification of a certified public accountant that the expenses for which credit against the deductible is requested have been paid in full; or

(D) a notarized affidavit signed by the person that performed the corrective action, affirming that the amounts which the applicant represents as being paid to the person that performed the corrective action were paid in full.

(b) The executive director may require the applicant to provide additional information or return the application if the information is not sufficient to review the application. If the executive director requests additional information, the applicant shall provide such information within 30 days of receiving the request.

(c) The following types of costs are those that will not be considered eligible costs applicable to the deductible under this subchapter:

(1) replacement, repair, and maintenance of affected equipment;

(2) upgrading existing equipment;

(3) removal, transport, and disposal of equipment;

(4) loss of income or profits, including, without limitation, the loss of business income arising out of the review, processing, or payment of an application for ranking under this subchapter;

(5) decreased property values;

(6) bodily injury or property damage;

(7) attorney's fees;

(8) any administrative costs associated with the preparation, filing, and processing of an application for ranking under this subchapter;

(9) making improvements to the facility beyond those that are required for corrective action;

(10) compiling and storing records relating to costs of corrective action;

(11) corrective action taken in response to the release of a substance that is not a dry cleaning solvent;

(12) any activities, including those required by this chapter, that are not conducted in compliance with applicable state and federal environmental laws or laws relating to the transport and disposal of waste;

(13) interest on monies; and

(14) abatement or corrective action taken in response to a release of:

(A) a regulated substance that is not dry cleaning solvent; or

(B) a release of a dry cleaning solvent that has commingled with a regulated substance that is not a dry cleaning solvent unless the release of the dry cleaning solvent can be separately remediated.

SUBCHAPTER F: CORRECTIVE ACTION

§337.50, §337.51

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also proposed under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the Solid Waste Disposal Act (SWDA); THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The proposed new sections implement THSC, Chapter 374.

§337.50. Corrective Action.

(a) Corrective action will be conducted under Chapter 350 of this title (relating to Texas Risk Reduction Program) or other guidance established by the executive director.

(b) Corrective action at a site may be postponed or suspended indefinitely in order to make money available for corrective action at a site with a higher priority.

(c) Postponement or suspension of corrective action under subsection (b) of this section does not mean that the cleanup standards under Chapter 350 of this title have been met.

(d) Corrective action will allow for the use of new technologies as they become available.

§337.51. Eligibility for Corrective Action.

An owner or other person is eligible to have corrective action costs paid by the Dry Cleaning Facility Release Fund if:

(1) the owner or other person is eligible to apply for a site to be ranked under §337.31(a)(2) of this title (relating to Ranking of Sites);

(2) an application for ranking package under §337.31(a)(3) of this title has been properly submitted to, and accepted by, the executive director as administratively and technically complete;

(3) the owner or other person is not currently in violation of this chapter for any dry cleaning facilities or dry cleaning drop station that the person owns; and

(4) the owner or other person is not otherwise ineligible for corrective action under this chapter or Texas Health and Safety Code, Chapter 374.

SUBCHAPTER G: NON-PERCHLOROETHYLENE USERS AND FACILITIES

§§337.60 - 337.63

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also proposed under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the Solid Waste Disposal Act (SWDA); THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The proposed new sections implement THSC, Chapter 374.

§337.60. Nonparticipating Dry Cleaning Facility Financial Assurance.

(a) Except as provided in subsection (c) of this section, the owner of a dry cleaning facility that has submitted to the executive director the affidavit of nonparticipation for a facility that begins operation on or after September 1, 2003 and before January 1, 2004, shall provide financial assurance for corrective action in the amount of \$500,000 per nonparticipating facility. The affidavit and financial assurance must be submitted to the agency before January 1, 2004.

(b) Financial assurance must be provided in accordance with Chapter 37, Subchapter W of this title (relating to Financial Assurance for Dry Cleaning Facilities).

(c) This section does not apply to a carbon dioxide facility.

§337.61. Participating Non-Perchloroethylene User Registration Certificate.

(a) To obtain a participating non-perchloroethylene user registration certificate, an owner of a dry cleaning facility must swear in an affidavit approved by the executive director that the owner has never used or allowed the use of the dry cleaning solvent perchloroethylene at any dry cleaning facility in the state.

(b) A facility is only eligible for a non-perchloroethylene user registration certificate, if perchloroethylene has not been, is not, and will not be used at the facility that is being registered for the certificate.

§337.62. Nonparticipating Non-Perchloroethylene Facilities.

(a) In accordance with Texas Health and Safety Code, §374.104, after a dry cleaning facility is designated as nonparticipating:

(1) the owner of the dry cleaning facility is not eligible for any expenditures of money from the Dry Cleaning Facility Release Fund or other benefits of participation for that facility;

(2) that dry cleaning facility may not later become a participating facility, regardless of whether the owner of the facility or the owner of the real property is applying for the facility's participation in Dry Cleaning Facility Release Fund benefits; and

(3) perchloroethylene must never be used at that facility.

(b) In any sales transaction of the nonparticipating non-perchloroethylene facility or of the real property on which the facility is located, the owner of the facility or the real property owner, as applicable, shall disclose the following to potential buyers prior to any sale:

(1) the nonparticipating status of the dry cleaning facility;

(2) the fact that the dry cleaning facility may not later become a participating facility;

and

(3) the prohibition on the use of perchloroethylene at the dry cleaning facility.

§337.63. Owner Affiliation.

For the purposes of this subchapter, the term “owner” includes any entity or person affiliated with the owner through:

(1) any relationship within the third degree of consanguinity or second degree of affinity as described in Texas Government Code, Chapter 573, Subchapter B;

(2) any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created solely by the instruments by which title to the facility is conveyed or financed, by a contract for the sale of goods or services, or by a contract for employment); or

(3) the result of a reorganization of a business entity that used perchloroethylene.

SUBCHAPTER H: RECORDKEEPING

§§337.70 - 337.72

STATUTORY AUTHORITY

The new sections are proposed under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also proposed under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the Solid Waste Disposal Act (SWDA); THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The proposed new sections implement THSC, Chapter 374.

§337.70. General Provisions.

(a) Maintenance of records. All records required to be maintained by this chapter must be available for examination and copying by the executive director at all reasonable times. Upon request, all records required by this chapter must be assembled at a single location within the State of Texas.

(b) Records retention. A person that is required to keep records under this chapter shall keep those records for a minimum of five years from the date on which the record is made.

(c) Penalties for records violations. A person that violates this subchapter shall be subject to any action authorized by law to secure compliance, including the assessment of administrative penalties or civil penalties as prescribed by law, and the suspension or revocation of registration.

§337.71. Distributors.

Distributors shall maintain books, financial records, documents, and other evidence for sales of dry cleaning solvents and the fees collected and paid to the agency as required by this chapter. The records must include copies of all invoices for dry cleaning solvent sales and purchases showing the facility registration numbers, name, type, and quantity of the dry cleaning solvent purchased and sold, the name and address of the seller and purchaser, and the date of the sale or purchase.

§337.72. Dry Cleaning Facilities.

The owner of a dry cleaning facility shall retain the following records:

(1) invoices of dry cleaning solvent purchases showing the name, type, and quantity of the dry cleaning solvent purchased, the name and address of the seller, and the date of the purchase;

(2) waste disposal records as required by §337.20(c) and (d)(2) of this title (relating to Performance Standards); and

(3) secondary containment log required under §337.20(f)(4)(B) of this title.

SUBCHAPTER I: AUDITS AND INVESTIGATIONS

§337.80

STATUTORY AUTHORITY

The new section is proposed under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new section is also proposed under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its powers under the Solid Waste Disposal Act (SWDA); THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards for the management and control of solid waste; and HB 1366, 78th Legislature, 2003.

The proposed new section implements THSC, Chapter 374.

§337.80. Audits and Investigations.

(a) To achieve the purposes, proper administration, and enforcement of this chapter, the executive director may conduct audits or investigations of payments and fees authorized by Texas Health and Safety Code, Chapter 374, and concerning the veracity of information submitted to the agency in accordance with the *Government Auditing Standards* (2003 Revision). Such audits may

include investigations of records from dry cleaning facilities, dry cleaning drop stations, distributors of dry cleaning solvents, and applicants for site ranking.

(b) Each person subject to or involved with an audit or investigation under subsection (a) of this section shall cooperate fully with the audit or investigation by the executive director.