

The Texas Commission on Environmental Quality (commission or TCEQ) adopts 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, 337.61 - 337.63, 337.70 - 337.72, and 337.80. Sections 337.3, 337.10, 337.15, 337.20, 337.21, 337.31, 337.41, 337.63, and 337.72 are adopted *with changes* to the proposed text as published in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10444). Sections 337.1, 337.2, 337.4, 337.11 - 337.14, 337.22, 337.30, 337.32, 337.40, 337.50, 337.51, 337.61, 337.62, 337.70, 337.71, and 337.80 are adopted *without changes* to the proposed text and will not be republished. The commission also withdraws the proposal of §337.60 in this issue of the *Texas Register*.

The commission also withdraws the proposed new sections to 30 TAC Chapter 37, Financial Assurance, in this issue of the *Texas Register*.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of the adopted 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.

## SECTION BY SECTION DISCUSSION

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

Throughout this rulemaking package, minor administrative changes are made from proposal to be consistent with *Texas Register* requirements and other agency rules, for clarity, and for better readability.

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.

New §337.2, Applicability, describes who the chapter applies to, which includes all dry cleaning facilities, dry cleaning drop stations, and distributors. New §337.2 also lists the entities that the chapter does not apply to based on the commission's interpretation of the terms "dry cleaning drop station" and "dry cleaning facility" set forth in THSC, §374.001. This section provides clarification as to which entities come within the scope of the rules to help eliminate confusion and achieve better compliance.

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; nonparticipating non-perchloroethylene (perc) user registration certificate; operating dry cleaning drop station; operating dry cleaning facility; participating non-perc user registration certificate; permanently removed from service; secondary containment; and temporarily removed from service.

The definition of “Permanently removed from service” is changed from proposal to delete the word “proper.” The word was extraneous to the definition because the standards for removal from service are set forth elsewhere in the rules. The definition of “Secondary containment” is changed from proposal to delete the phrase “before the release can be detected” from the end of the sentence. The additional phrase was unnecessary to the meaning of the term and had the possibility of causing confusion.

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 perc to a dry cleaning facility with a nonparticipating non-perc user registration certificate or a participating non-perc 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 perc for a dry cleaning facility with a nonparticipating non-perc user registration certificate or a participating non-perc user registration certificate; and a distributor is prohibited from selling, delivering, or otherwise distributing any dry cleaning solvent to a dry cleaning drop station. These prohibitions and requirements are established to

provide the process and specifics by which certain provisions of the statute are fulfilled, such as registration in THSC, §374.102; new facility compliance with performance standards in THSC, §374.053; solvent fee collection and disposition in THSC, §374.103; and limitations concerning non-perc facilities in THSC, §374.104.

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 in accordance with THSC, §374.102. This section provides the requirements for the registration procedures including when to register, how to register, when to update information, and who may complete and submit registration forms. These requirements provide clarity and consistency for the agency's registration process to assist in achieving an efficient and effective program. Section 337.10(b)(2) is adopted with a change in the proposed text. The word "space" was made plural to correctly correspond to other parts of the same sentence.

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. THSC, Chapter 374 requires a dry cleaning facility owner to post the owner's registration number in the public area of the dry cleaning facility and requires a distributor to obtain and record the registration number prior to selling solvent to a facility. Since the registration number is a primary component of the certificate, the requirements of this section assist in implementing these portions of the statute. Additionally, this

section provides clarity and consistency for the agency's dry cleaner registration process to assist in achieving an efficient and effective program.

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. Since distributors collect the solvent fees per THSC, §374.103, it is important that the agency have verifiable information on each of the various distributors throughout the state. These requirements assist the commission in tracking the fees collected and making sure that they are ultimately paid to the agency for the Dry Cleaning Facility Release Fund.

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 and makes it easier for a dry cleaner to determine if a distributor is registered with the agency. This is important because, under these rules, dry cleaners are prohibited from purchasing solvent from a distributor who is not registered with the agency.

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 will have to be registered and the fee paid

before a current registration certificate is issued. This section also requires owners to pay penalties and interest on late payments. These procedures and requirements provide clarity and consistency for the fee payment process and assist in achieving an efficient and effective program.

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 the entities exempt from paying the solvent fees, reporting requirements for distributors, specifications on payment of collected fees to the agency, and provisions governing late payments. Although this section does cover payment of fees by dry cleaning facilities, it primarily addresses distributors' collection and payment of those fees. Since the fees collected by distributors can add up to large sums of money for the Dry Cleaning Facility Release Fund, requirements such as these are necessary to track collections and encourage timely payment to the agency. Proposed §337.15(c)(5) has been deleted and the subsequent paragraphs have been renumbered. This paragraph has been deleted based on possible conflicts with pending legislation. The deleted language will be reassessed after the conclusion of the 79th Legislative Session.

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(b), compliance with 30 TAC Chapter 335, Subchapter C, is required for storage, treatment, and disposal of hazardous dry cleaning wastes. Proposed subsections (b) and (d) have been deleted and all other subsections have been relettered accordingly. These subsections have been deleted based on possible conflicts with pending legislation. The deleted language will be reassessed after the conclusion of the 79th Legislative Session. Section 337.20(c) 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, it is expected that 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(d), 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 still pose an environmental concern. 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(d)(5)(A) is adopted with changes to the proposed text to clarify the specific actions that should be taken with damaged secondary containment if there is a release or imminent threat of release. The specificity of the new language should improve both compliance and enforcement in the situation described. Section 337.20(e) sets forth requirements governing the delivery of solvents to the dry cleaning facility in accordance with THSC, §374.053(c). These performance standards set forth reasonable requirements to be used in handling dry cleaning solvents to reduce the chance of releases into the environment.

New §337.21, Removal of Dry Cleaning Solvents and Wastes, sets forth the requirements 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. These requirements are necessary to encourage prudent waste-handling practices and to reduce the chance of releasing dry cleaning solvents and wastes into the environment. Section 337.21(c)(1) is adopted with changes to the proposed text to clarify that the performance standards do not have to be met if the dry cleaning machine is empty.

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 subchapter, as well as recordkeeping requirements related to a variance that is granted. Having the option of requesting a variance to the performance standards provides flexibility in applicable situations while still addressing environmental concerns.

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. Under THSC, §374.051(b)(3), criteria for prioritization is required to be in rule.

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. The commission is required to rank contaminated sites under THSC, §374.154(a), and this section sets forth a system to accomplish that requirement. Section 337.31(a)(7) is adopted with a change to the proposed text. The phrase "one per state fiscal year per site" was changed to "one per site per state fiscal year" for better readability.

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. This section combines requirements from THSC, Chapter 374, as well as other reasonable provisions for a fair and effective corrective action program. For example, a site can be denied or removed from ranking if the applicant fails to provide access or does not pay dry cleaner registration fees that are owed to the state. In such cases, it is logical for the commission to be able to move to the next ranked site where the applicant is being cooperative and complying with the law.

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. THSC, §374.203(d) requires that an applicant pay a \$5,000 deductible. THSC, §374.154(e) allows costs in collecting certain information for the application to be credited against the deductible. Therefore, this section and §337.41 are necessary to establish the process and criteria for such credit.

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.

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. This section implements THSC, §§374.051(b)(4), 374.053(b), 374.054, and 374.155.

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. The primary purpose of this section is to clarify that a person cannot claim that he or she is exempt from certain claims under THSC, §374.207, if the person has not even submitted an application for the site to be addressed under the Dry Cleaner Environmental Response Program.

Proposed new §337.60, Nonparticipating Dry Cleaning Facility Financial Assurance, is withdrawn.

This section has been deleted based on possible conflicts with pending legislation. The deleted language will be reassessed after the conclusion of the 79th Legislative Session.

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 perc at any dry cleaning facility in the state; and 2) perc must never have been used at the facility in question. This section follows THSC, §374.103(b)(1), and provides the procedures by which a person demonstrates exemption from dry cleaning solvent fees based upon the criteria contained in the law .

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. This section clarifies the requirements set forth in THSC, §374.104.

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 perc at any facility in the state. By doing such a reorganization or transfer, the owner will avoid solvent fees for a facility but the facility may still qualify for fund benefits if it has a participating non-perc user registration certificate. In response to a comment during the 30-day comment period, §337.63(3) has been changed to read, “the result of a reorganization of a business entity that used *or uses* perchloroethylene.”

New §337.70, General Provisions, sets forth the requirements for the maintenance of records, records retention, and penalties for records violations. This section and §337.71 and §337.72 are necessary to

provide a system for checking that persons are complying with certain performance standards and with the fee payment requirements.

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.

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.

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. This section is necessary to allow the commission to examine whether persons are complying with THSC, Chapter 374 and related commission rules.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted 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 adopted rules is to protect the environment or reduce risks to human health from environmental exposure, the adopted rules will 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 adopted 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 adopted 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 adopted rules are required by state law, are not adopted solely under the general powers of the agency, and do not exceed an express requirement of state law, federal law, or a delegation agreement or contract between the state and an agency or representative of the federal government.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted 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 adopted 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 adopted 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 clean up eligible contaminated dry cleaning sites. Additionally, the legislation and adopted 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 adopted 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 adopted 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 adopted 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 adopted rules and performed an assessment of whether these 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-perc users and facilities; 7) requirements for recordkeeping; and 8) provisions concerning audits and investigations.

Promulgation and enforcement of the adopted rules is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted 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 adopted rules. The adopted 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 adopted rules and the benefits to society are the adopted 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 rulemaking and found that the rulemaking is 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 rules under 31 TAC §505.22 and found that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the 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 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 rules 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.

#### PUBLIC COMMENT

A public hearing on the proposed rules was held in Austin, Texas, on December 6, 2004, and oral and written comments were received. The public comment period ended at 5:00 p.m. on December 13, 2004. Comments were submitted during the comment period by BK's Cleaners & Laundry (BK's); Carl's Cleaners, Inc.; Jack Godfrey on behalf of Comet Cleaners (Comet Cleaners); Comet Cleaners of Laredo (CCL); Comet 1 Hr. Cleaners and Laundry (Nelson Properties); Chet Whatley on behalf of Concerned Dry Cleaners of Texas and Durrin's, Incorporated (CDT/Durrin); Deluxe Enterprises, Inc. (DEI); Halogenated Solvents Industry Alliance, Inc. (HSIA); Rick Sims on behalf of Sims City Cleaners, Inc. and Southwest Drycleaners Association (SCCI); Signature Laundry & Cleaners (Signature); and T.D. Expert Cleaners. The comments are addressed in the RESPONSE TO COMMENT section of this preamble.

The commenters did not indicate whether they were for or against the adoption of the rules; however, many of commenters expressed their opinions on HB 1366, 78th Legislature, 2003, which amended the THSC by adding a new Chapter 374. HB 1366 requires rules to be adopted by the commission to administer and enforce the Dry Cleaner Environmental Response Program. The commission appreciates the comments received on HB 1366. However, these comments go beyond the scope of this rulemaking because the comments pertain to the statute and not the proposed rules.

#### RESPONSE TO COMMENTS

Nelson Properties commented that the dry cleaner legislation could have been implemented fairly and gradually to assist all dry cleaners, but it was not.

**Many of the timelines for implementing the law were set out in statute. Within this framework, the commission has tried to be flexible in implementing the law to assist dry cleaners with compliance. For example, the agency has initially allowed quarterly rather than annual payment of registration fees. No changes have been made in response to this comment.**

Nelson Properties commented that the law should be fair to all and not discriminating due to financial status.

**The treatment of businesses and facilities based on financial status is established in the statute and consequently is not addressed by the commission in this rulemaking. No changes have been made in response to this comment.**

DEI commented that the dry cleaner law establishes an annual fee on all dry cleaning plants that use chemicals, and has also increased the price of perc by triple its original amount. This is imposed even on those who take responsibility for their chemical waste. CCL commented that it should not have to pay the \$5.00 per gallon environmental fee on approved dry cleaning solvents. BK's commented that it costs \$8,000 in registration fees and \$10,000 in solvent fees for BK's stores.

**The rates and applicability of registration and solvent fees are established in statute and consequently are not addressed by the commission in this rulemaking. No changes have been made in response to these comments.**

DEI commented that before HB 1366 was created, it was paying from \$300 - \$400 a month for an agent to pick up any chemical waste that may have been developed during the dry cleaning process. Since the law has been created, DEI commented that it has to pay an extra \$2,500 annually for performing a service it has been implementing for the past seven years, plus pay three times as much for perc.

**The facility registration fees set forth in HB 1366 are intended to generate revenue to support the regulation and remediation activities of the Dry Cleaner Environmental Response Program. The fees are not related to, or in exchange for, the removal of chemical wastes by a private or governmental service. No changes have been made in response to this comment.**

DEI commented that drop/pick-up stations have also been penalized by HB 1366. DEI further stated that although these stores do not use chemicals, they have been made to pay an annual fee along with larger plants. SCCI commented that the existing fee structure needs some adjustment, particularly with

respect to dry cleaning drop stations that have never been operational. BK's questioned why there is a charge for pick-up stores.

**The rates and applicability of registration fees are established in statute and consequently are not addressed by the commission in this rulemaking. No changes have been made in response to these comments.**

SCCI commented that the original legislative intent for the \$1,000 fee for opted-out drop station facilities should be followed. The \$1,000 fee should be eliminated in any new legislation and replaced with a more reasonable amount. Comet Cleaners commented that the registration fee for nonparticipating facilities should be reduced.

**The rates and applicability of registration fees are established in statute and consequently are not addressed in this rulemaking. No changes have been made in response to these comments.**

SCCI commented that the commission should continue to administratively postpone the due dates for additional installments of the fee for opted-out drop station facilities. SCCI further commented that the current administrative suspension date of the collection of fees until June 2005, needs to be extended to September 2005, to coincide with the effective date of any new legislation.

**The executive director will extend the deferral of certain registration payments owed for drop stations owned by nonparticipating facilities to September 2005, to accommodate any statutory changes that may be made in the future regarding fee amounts. If there is not a change to the law**

**that affects these past due amounts, the deferred drop station registration amounts will appear on the FY 2006 registration invoice. No changes have been made in response to this comment.**

SCCI commented that the option for dry cleaners to pay all fees on a quarterly payment schedule basis should be made permanent for all future years. SCCI further commented that the dry cleaners have appreciated the quarterly payment schedule and would like it to continue.

**THSC, §374.102 states that the registration must be accompanied by the registration fee. Since the registration is annual, the fee is also expected to be paid on an annual basis. However, to alleviate the sudden effect of this law on the dry cleaning community, the commission allowed registration fees for the first year to be paid in quarterly installments. Now that the dry cleaning community has had more time to incorporate the fees into their business planning, the fees will be required with the annual registration. However, the commission will accommodate any statutory changes that may be made in the future regarding the fee payment schedule. No changes have been made in response to this comment.**

Comet Cleaners commented that the law imposes the highest fee on purchases of petroleum solvent of any state and that no consideration or concession is made to cleaners who switched from perc to petroleum solvents when they became readily available. Mr. Godfrey further commented that the fee on petroleum solvent should be reduced.

**The rates and applicability of solvent fees are established in statute and consequently are not addressed by the commission in this rulemaking. No changes have been made in response to this comment.**

DEI commented that dry cleaners have been isolated and punished for their use of chemicals when there are many other contributing factors to the contamination of water. DEI stated that laundromats, automobile repair shops, gas stations, and countless others use chemicals harmful to the environment, yet they have not been affected or fined.

**The commission disagrees with this comment. The Texas Water Code prohibits any person or industry from discharging waste into the waters of the state in violation of Texas Water Code, Chapter 26, or a commission rule, permit, or order. Other industries are also regulated. For example, gas stations with underground storage tanks have been required to register and pay fees for their tanks since 1987. Additionally, the law is intended to assist the retail dry cleaning industry in the remediation of releases of dry cleaning solvents. No changes have been made in response to this comment.**

DEI commented that the increased awareness for environmental safety and preservation is commended and understood, but that there are more reasonable and fair ways to help move towards a better system of chemical usage. DEI stated that instead of creating one general rule for a specified business, there could be more thorough checks on who does and does not take care of any contamination created, which would allow for a more accurate and rational enforcement of a law to help the environment.

**The commission agrees with the comment that increased awareness for environmental safety and preservation is a desirable goal. The agency already has in place a number of programs that strive to provide a framework to enable all citizens to adhere to the state's rules and statutes for protecting the environment. These rules, which are specific to the retail dry cleaning industry, were developed in direct response to a mandate from the 78th Legislature through the passage of HB 1366. In developing the proposed rules, the agency has worked with industry and public representatives to create rules that accurately reflect the requirements of the statute and provide reasonable protection for the environment. No changes have been made in response to this comment.**

T.D. Expert Cleaners commented that it is only a drop and pick-up station and no chemical, gas, or any kinds of toxic chemicals have ever been used at its business and that it has never done anything to damage the environment.

**HB 1366 specifically includes drop stations within the scope of the law. Therefore, these rules also address drop stations in the agency's efforts to meet the rulemaking requirements of the law. No changes have been made in response to this comment.**

SCCI commented that the five-year ownership of property requirement for landlords should be eliminated.

**The property ownership requirement is established in statute and, consequently, is not addressed in this rulemaking. No changes have been made in response to this comment.**

SCCI commented that wastewater of non-perc dry cleaning facilities should not be regulated in any way since it is not hazardous waste and does not present an environmental concern.

**HB 1366 specifically requires that rules adopted under THSC, §374.053, ensure that wastewater from a dry cleaning unit or discharge of dry cleaning solvent is not discharged to a sanitary sewer, to a septic tank, or to waters of the state. Consequently, these rules contain such requirements. No changes have been made in response to this comment.**

SCCI commented that the definitions in the law should be changed to apply only to retail dry cleaners, i.e., North American Industry Classification System, Industrial Care Code, 812320.

**This comment is beyond the scope of this rulemaking, as changes to the statute can only be made by the Texas Legislature. No changes have been made in response to this comment.**

HSIA commented that the language of THSC, §374.154(c), indicates that costs incurred in collecting the information and evidence necessary for filing an application for ranking “shall be credited against the deductible payable by the applicant,” but does not require that the applicant have already incurred costs equal to the deductible in order to be ranked. Although it is possible that the dry cleaner may have spent \$5,000 or more to collect the necessary information, it is inappropriate to require it.

**The commission has estimated that the cost of collecting the required information and evidence to support an application for ranking will almost always meet or exceed the \$5,000 deductible.**

**THSC, §374.203(d) requires that the applicant “shall pay as a deductible the first \$5,000 of**

**corrective action costs incurred because of a release from the dry cleaning facility.” In order to ensure that THSC, §374.203(d) is satisfied, the commission is requiring that the deductible be paid before the state expends monies from the fund. In order to do this, the rule requires that these costs be paid prior to an applicant applying for ranking. The intent is not, as the commenter states, “to identify those persons who have spent some specific amount of money on a site,” but rather to ensure that the applicant has met the deductible as required under THSC, §374.203(d), prior to the state expending funds on the site. No changes have been made in response to this comment.**

HSIA commented that to require applicants to make up the difference between what they have spent and the \$5,000 deductible is inconsistent with the goals of THSC, Chapter 374, and may penalize smaller cleaners with limited access to cash. The only criteria for ranking should be whether the applicant has supplied the necessary information, not whether they can afford the price of ranking. HSIA stated that it believed eliminating the requirement that applicants already have spent the \$5,000 deductible prior to ranking will not have a significant impact on the amount of money available in the fund.

**The commission does not agree with this comment. Requiring applicants to make up the deductible amount if they have not expended sufficient funds to meet the \$5,000 deductible is consistent with the goals of THSC, Chapter 374, because THSC, §374.203(d) specifically states that the applicant “shall pay as a deductible the first \$5,000 of corrective action costs incurred because of a release from the dry cleaning facility.” Eliminating the requirement for the \$5,000 deductible prior to ranking as suggested by the commenter is addressed in a prior comment. No changes have been made in response to this comment.**

HSIA commented that it understands the commission's motive for excluding voluntary cleanups from the Dry Cleaning Facility Release Fund eligibility and stated that it believes there may be circumstances where such an exclusion could impair cleanup and be inconsistent with the goals established by the legislature. HSIA also stated that persons who voluntarily take corrective action for sites that have received rankings under THSC, §374.154, should be eligible for reimbursement for some portion of their costs, provided the amount and timing of the reimbursement is commensurate with the commission's prioritization for the site. HSIA stated that a property owner may wish to initiate a voluntary corrective action in order to expedite sale of a commercial property in advance of the commission's timetable and that exclusion of any eligibility for reimbursement may serve as a significant disincentive for the owner to accelerate corrective action that he/she may otherwise undertake.

**The commission applauds persons who undertake voluntary actions and hopes that these types of activities continue at sites throughout the state. However, the Voluntary Cleanup Program was created as a self-funding program with significant incentives available to those who receive a certificate. The Dry Cleaner Environmental Response Program was created for the commission to use limited funds from the Dry Cleaning Facility Release Fund to address contamination from dry cleaning facilities. As such, the commission sees these two programs as separate and distinct. In terms of reimbursement for other voluntary actions, the commission does not believe such reimbursement is consistent with the ranking of sites and prioritization of funds set forth in THSC, Chapter 374. No changes have been made in response to this comment.**

Signature commented that it had sold its first dry cleaner in 1996, voluntarily cleaned the site up, and received a certificate of completion. Signature also commented that it purchased a new dry cleaner in 2004 and has never used perc at the new location, only petroleum solvent. Signature commented that it is not fair to voluntarily clean up and pay well over \$100,000 to get a certificate of completion, and then have to pay an enormous fee for a permit and also “top dollar” tax on petroleum solvent. CCL commented that it should never have had to pay the tax on the locations that never used perc or future locations it might open. The new locations were never chemically connected to the store that first used perc and each location should stand on its own merits. CCL also stated that there is no logical reason why it or any other owner in a similar position should be penalized by the tax on solvent.

**The statute mandates specific registration and solvent fees as well as who is required to pay those fees. Therefore, this comment is beyond the scope of this rulemaking. No changes have been made in response to these comments.**

Signature commented that it is “obvious who got HB 1366 rushed through and their reason for doing so. They should have to pay for their cleanup just like we did when we sold our first cleaners.” CCL commented that test results showed it operated a safe store, but that it still will be penalized. CCL commented, “This will become more prevalent once a site has been tested, proven clean or cleaned up and deemed non-contaminated. Why put extra-cost burden on a business owner?”

**The statute mandates specific registration and solvent fees as well as who is required to pay those fees. Therefore, this comment is beyond the scope of this rulemaking. No changes have been made in response to these comments.**

BK's commented that the dry cleaning rules are only for the cleaners and landlords who do not run a good operation.

**As stated in THSC, §374.051(b)(2), one of the goals of the rules to be adopted under the statute is to prevent future releases. To meet this goal, the commission has included performance standards in the rules for all facilities using dry cleaning solvents to prevent or minimize future releases at as many locations as possible. The hope is that all dry cleaning facilities will run a good operation. No changes have been made in response to this comment.**

BK's commented, "If my business would need to use the dry cleaner program, I could forget it. We would only get on the List."

**If a release is discovered at a facility, the owner can submit an application to the program and the site will receive a ranking score. The ranking score will be used in conjunction with other factors to establish a prioritization schedule for the use of the funds. Other factors may include the amount of funds available, proximity to other sites, site conditions (i.e., vacant buildings and planned construction activities), and immediate threat to health and human safety. The commission will then begin corrective action on properties using this "list" of ranked and prioritized sites. No changes have been made in response to this comment.**

BK's commented that its customers are tired of the raising prices due to HB 1366.

**The commission acknowledges that businesses typically pass along regulatory and other costs to their customers when setting prices. Although the commission is sympathetic to these business pressures, such decisions are purely the authority and responsibility of businesses. Additionally, the rates and applicability of registration and solvent fees are established in statute and consequently, are not addressed by the commission in this rulemaking. No changes have been made in response to this comment.**

CDT/Durrin commented that the requirement for petroleum solvent dry cleaning machines to have secondary containment is not warranted because it is not specifically required in HB 1366.

CDT/Durrin also stated the belief that petroleum solvents are not a known environmental threat today.

SCCI stated that it agreed with the proposed rules that require secondary containment for new petroleum machines.

**HB 1366 gave the commission broad authority to adopt rules to implement the law and requires the commission to adopt rules establishing performance standards. The commission has included the requirement for secondary containment on all facilities using chlorinated solvents and replaced or newly installed machines using petroleum solvents in the rules to prevent or minimize future releases at as many locations as possible. The decision to require secondary containment for petroleum machines installed after September 1, 2005, is in keeping with the advice from the Dry Cleaning Advisory Committee as well as members of the audience in attendance at the public meeting where the issue was discussed with the Dry Cleaning Advisory Committee. Although the commission recognizes that petroleum-based solvents contain constituents that are less detrimental to human health and the environment and that may degrade more quickly than perc and its**

**breakdown products, organic compounds are present in petroleum-based solvents that are considered to have potential health effects based upon the generally accepted body of toxicological research. There are existing state cleanup standards for some of the compounds known to be present in petroleum-based solvents. No changes have been made in response to this comment.**

CDT/Durrin commented that in proposed §337.61, the language in the affidavit exceeds the definition in the law and is the same as it was a year and a half ago when CDT/Durrin managed to fight it down and get it turned around to some degree and that it needs to say what the bill says. CDT/Durrin also commented that the definition for perc should be from the law and should say, “The owner must swear in an affidavit approved by the Executive Director the owner has never allowed the use of perchloroethylene for cleaning fabrics or other garments and perchloroethylene, for cleaning garments and other fabrics, must have never been used in the facility in question.”

**The commission disagrees that the language regarding the affidavit in §337.61 exceeds the law. The language is almost identical to the corresponding provision in THSC, §374.103(b)(1), which states that the fee provisions for dry cleaning solvent do not apply to “. . . an owner who has never used or allowed the use of the dry cleaning solvent perchloroethylene at a dry cleaning facility in this state.” Additionally, the language is identical to the language in THSC, §374.104(c), which states that a facility shall be designated as a nonparticipating facility if the owner demonstrates that “. . . the owner has never used or allowed the use of the dry cleaning solvent perchloroethylene at any dry cleaning facility in the state.” The language presently included in §337.61 is different from the language in the first affidavits that were sent out by the executive director in late 2003. That language read as follows: “The owner has never used and**

**has never allowed the use of the dry cleaning solvent perchloroethylene, in any amount or for any purpose, at any dry cleaning facility in the state.” The language was objected to by several dry cleaners and the executive director agreed to accept affidavits that deleted that specific language since it was not included in the exact language of THSC, §374.104(c). In terms of incorporating language from the definitions in THSC, §374.001, the commission prefers the language to more closely follow THSC, §374.103(b)(1) and §374.104(c), since these sections specifically address the issue of non-perc dry cleaners. This will also make future affidavits more consistent with affidavits that have already been completed. Additionally, THSC, §374.001 does not contain a specific definition for perc. It does include perc in the definition for dry cleaning solvent and uses the language quoted by CDT/Durrin concerning the cleaning of garments or other fabrics. However, where other terms in this section are followed by the word “means” as in “Dry cleaning facility means . . .” the term “Dry cleaning solvent” is followed by the word “includes” so is not a limited definition. For this additional reason, the commission prefers that future affidavit language more closely follow THSC, §374.103(b)(1) and §374.104(c). No changes have been made in response to this comment.**

CDT/Durrin commented that the section addressing owner affiliation was directed towards CDT/Durrin. CDT/Durrin also questioned who the owner is of a corporation and commented that there is not an owner, there are stockholders. CDT/Durrin further questioned whether the commission has the authority to go around corporate law in this manner and stated that there are safeguards with a corporation in regard to the individual and the stockholders and that there is no owner. CDT/Durrin stated that the commission is going to make it where you cannot even form a corporation and if you do, you have to abide by the commission rules. CDT/Durrin referenced §337.63 of the proposed rules and

commented that the rule language states “used perchloroethylene” rather than “uses perchloroethylene.” CDT/Durrin further commented that the bill did not address these types of issues and the agency is taking a stronger stance on corporations, family-owned businesses, limited liability corporations (LLCs), or limited liability partnerships (LLPs).

**Section 337.63 was included in the rules to address the many questions the commission received regarding the definition of “owner” in the context of both participating and nonparticipating non-perc dry cleaning facilities. Although §337.63 only applies to participating non-perc facilities, the specific issue that was raised in regard to both types of facilities was whether the owner of a dry cleaning facility that once used perc could reincorporate and then say that the reincorporated entity as the new owner of that same facility had never used perc at any dry cleaning facility in the state. Consistent with the intent of HB 1366, §337.63 does not allow an owner to avoid paying solvent fees through this type of reincorporation or similar activity. This is especially important with participating non-perc facilities because a facility may be eligible for money from the Dry Cleaning Facility Release Fund to address perc contamination even though the facility is exempt from paying dry cleaning solvent fees. The commission does not believe that this rule subverts corporate law. For example, an entity may still reincorporate under corporate law. However, that entity, like many other entities, may not be eligible for the exemption from solvent fees. As to the comment on the tense of the word “used” in §337.63(3), the language has been changed to read, “. . . a business entity that used *or uses* perchloroethylene.”**

CDT/Durrin commented on the number of drop stations discussed in the preamble and questioned where the numbers were obtained and if the agency believed it was a correct number.

**The number of drop stations the commenter referred to was obtained from the TCEQ's dry cleaner registration database. The commission does feel that the number is an accurate reflection of the dry cleaning drop stations and facilities that have registered. However, the commission agrees that not all facilities or drop stations may have registered. No changes have been made in response to this comment.**

Carl's Cleaners, Inc. seconded the comments of CDT/Durrin that had been made up until this point in the hearing that was held on December 6, 2004.

**The commission responded to each of CDT/Durrin's comments after the specific comment.**

SCCI commented that the rules don't say what time limit dry cleaners have to report changes or if they just report changes when they renew their registrations. Also, SCCI asked if a specific form is required.

**Section 337.10(b)(3) of the proposed rules states that any change or additional information must be submitted 30 days from the date of the occurrence of the change or addition. Section 337.10(b)(2) specifies that any change of information must be submitted on the appropriate agency form and §337.10(c) discusses the specific required form. The current TCEQ Dry Cleaner Registration form should be used for annual registration and for any updates or amendments of registration information. No changes have been made in response to this comment.**

Comet Cleaners commented that the bill was originally supposed to be site-specific, meaning that a perc plant would have to go into the fund, but that any plant that had never used perc would not have to participate in the fund.

**To not participate in the benefits of the Dry Cleaning Facility Release Fund or to be exempt from the dry cleaning solvent fees, HB 1366 requires that an owner have never used, or allowed the use of, perc at any dry cleaning facility in the state. Thus, HB 1366 is not site-specific as that term is described by Comet Cleaners. Since requiring otherwise in rule would be in direct and express conflict with the original legislation, no changes have been made in response to this comment.**

Comet Cleaners commented that new owners entering the business who do not use perc must either post a \$500,000 bond or participate in the fund.

**The requirement established in statute to post a \$500,000 bond applies only to an owner who begins operation in the four-month period beginning on September 1, 2003, and ending on December 31, 2003, and who also files an option not to participate with the commission. All owners beginning operation after December 31, 2003, must participate in the fund and no bond requirement applies to owners beginning operation after that date. These requirements are established in statute and consequently these rules address the issue consistent with those requirements. No changes have been made in response to this comment.**

Comet Cleaners commented that “we’re not ever going to raise enough money to clean up sites at \$250,000 to \$500,000 a site.”

**The funding sources and mechanisms for the Dry Cleaner Environmental Response Program are established in statute and consequently are not addressed by the commission in this rulemaking.**

**No changes have been made in response to this comment.**

Comet Cleaners commented that there needs to be something that gives the landlords, the shopping center owners, and the finance people some kind of comfort regarding liability since very few sites are getting cleaned up.

**THSC, §374.207 does provide some liability protection to persons eligible to have corrective action costs paid by the Dry Cleaning Facility Release Fund. No changes have been made in response to this comment.**

Comment Cleaners commented that perc was driving the bill, and that the rules should not apply to petroleum solvents because they do not contain benzene and are not toxic.

**The commission agrees that benzene may not be the driving factor in cleanup of petroleum-based solvents. However, other organic compounds are present in petroleum-based solvents for which there are existing state cleanup standards. Therefore, cleanup of petroleum-based solvent releases may be needed in order to protect human health and the environment under existing rules. No changes have been made in response to this comment.**

Comet Cleaners commented that since there is a limited supply of drinking water, there may be more need for dry cleaning in the future since the process does not use water. As a result, it is important to keep dry cleaning affordable for consumers.

**The commission agrees that water should be protected and understands Comet Cleaner's goal to keep dry cleaning affordable for consumers. The mission of the commission is to: "protect our state's human and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste." No changes have been made in response to this comment.**

CDT/Durrin, commented that the rules need to address solvents coming in from out of state since there is no law to keep a dry cleaner from going across the border, buying solvents, and bringing them back to Texas. The commenter further stated that with perc at \$15 a barrel, it makes it worth a long drive to pick up 400 or 500 gallons of it.

**The commission addresses this issue in §337.4(d) by preventing a person from purchasing dry cleaning solvent from a distributor that does not have a valid current distributor registration certificate. Thus, if a person purchased solvents from a distributor in New Mexico that is not registered with the agency, then that person would be in violation of the rules and the agency could pursue enforcement. No changes have been made in response to this comment.**

## **SUBCHAPTER A: GENERAL PROVISIONS**

### **§§337.1 - 337.4**

#### **STATUTORY AUTHORITY**

The new sections are adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also adopted 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 adopted 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 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.

(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 adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also adopted 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 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 adopted 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 spaces 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) 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.

(6) 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."

(7) 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 adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also adopted 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 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 adopted 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) 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).

(c) 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.

(d) 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) 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 of dry cleaning solvents, the owner shall ensure that any release is immediately contained and controlled and that the dry cleaning machine is temporarily removed from service until the damage is repaired within the seven-day time limit.

(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.

(e) 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 until empty.

(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 adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also adopted 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 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 adopted 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 site per state fiscal year.

(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 adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also adopted 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 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 adopted 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 payments 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 adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also adopted 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 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 adopted 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**

**§§337.61- 337.63**

**STATUTORY AUTHORITY**

The new sections are adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also adopted 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 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 adopted new sections implement THSC, Chapter 374.

**§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 or uses perchloroethylene.

## **SUBCHAPTER H: RECORDKEEPING**

### **§§337.70 - 337.72**

#### **STATUTORY AUTHORITY**

The new sections are adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new sections are also adopted 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 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 adopted 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(b) of this title (relating to Performance Standards); and

(3) secondary containment log required under §337.20(d)(5)(B) of this title.

## SUBCHAPTER I: AUDITS AND INVESTIGATIONS

### §337.80

#### STATUTORY AUTHORITY

The new section is adopted under the authority granted to the commission by the Texas Legislature in THSC, Chapter 374. The new section is also adopted 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 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 adopted 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.