

The Texas Commission on Environmental Quality (commission or TCEQ) adopts the amendments to §§337.3, 337.11, 337.13 - 337.15, 337.20, 337.22, 337.30, 337.31, 337.61, and 337.62 *without changes* to the proposed text as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6571). The adopted amendments will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of the adopted rules is to implement House Bill (HB) 2376 and Senate Bill (SB) 444, 79th Legislature, 2005. Both of these bills revise statutes relating to the dry cleaner environmental response program created by the 78th Legislature, 2003, and codified in Texas Health and Safety Code (THSC), Chapter 374. HB 2376 amends THSC, §§374.001, 374.004, 374.051 - 374.054, 374.101 - 374.104, 374.151, 374.154, 374.202, 374.203, and 374.251 - 374.253 and Texas Water Code (TWC), §7.0525, and repeals THSC, §§374.001(1), 374.052(c), 374.105, 374.156, and 374.201. HB 2376 includes provisions regarding secondary containment requirements for chlorinated dry cleaning solvent; amended annual registration fees and assessment calculations; the involvement of the Texas comptroller of public accounts to verify certain registration information; an extended deadline for the designation of nonparticipating dry cleaning facilities and drop stations; and solvent distributors retaining 1% of the fees collected if the distributor pays the fees on time to the commission.

SB 444 amends THSC, §374.104. SB 444 extends the deadline for the designation of nonparticipating dry cleaning facilities and drop stations and allows registration fee credits for the owners of certain dry cleaning facilities that do not participate in the Dry Cleaning Facility Release Fund. The bill also specifies that for changes mandated by this bill, the commission shall adopt rules by February 28, 2006.

SECTION BY SECTION DISCUSSION

The commission adopts amendments to Chapter 337, Dry Cleaner Environmental Response, to establish the procedures to administer and enforce HB 2376 and SB 444.

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

The commission adopts an amendment to §337.3, Definitions, which adds the language “a dry cleaning unit” to the definition of dry cleaning machine. The additional phrase is necessary to further clarify the meaning of the term, reduce confusion, and to match the usage in THSC, Chapter 374. The language “as that subsection existed from September 1, 2003, until August 31, 2005” has been added to the definition of participating non-perchloroethylene user registration certificate. This certificate was issued under THSC, §374.103(b)(1), which was deleted from the statute by HB 2376.

The commission adopts an amendment to §337.11, Dry Cleaner Registration Certificates, which includes 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. This section clarifies that a registration must be administratively complete before a certificate will be issued and further defines an administratively complete registration. It further clarifies that upon determination that a submitted registration is administratively complete, the executive director will issue a registration certificate as long as there is no reason to deny the registration certificate under §337.11(f). The redundant opening phrase, “Issuance of a registration

certificate.” has been stricken from §337.11(c). “Chapter 37 of this title (relating to Financial Assurance)” has been removed from §337.11(c) in accordance with HB 2376, §19, repealing THSC, §374.105. Commission review was added to enable the owner to appeal the executive director’s determination to revoke or deny a certificate. The appeal must be in writing and filed with the commission’s Office of the Chief Clerk no later than 23 days after the date the agency mails the determination to revoke or deny a certificate. This section was added due to changes to THSC, §374.251, required by HB 2376.

The commission adopts an amendment to §337.13, Distributor Registration Certificate, which includes 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 that is not registered with the agency. A commission review was added to enable the distributor to appeal the executive director’s determination to revoke or deny a certificate. The appeal must be in writing and filed with the commission’s Office of the Chief Clerk no later than 23 days after the date the agency mails the determination to revoke or deny a certificate. This section was added due to changes to THSC, §374.251, required by HB 2376.

The commission adopts an amendment to §337.14, Registration Fees, which includes 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. Because the registration fee structure changes effective September 1, 2005, separate identification for registration fees payable for operations

conducted prior to September 1, 2005, and fees to be assessed after September 1, 2005, has been added to the rule. Subsequent paragraphs have been renumbered accordingly.

The commission adopts an amendment to §337.15, Solvent Fees, which includes 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. A dry cleaning drop station is a retail commercial establishment, the primary business of which is to act as a collection point for the drop-off and pickup of garments or other fabrics that are sent to a dry cleaning facility for processing. Exemptions from solvent fees have been extended to include drop stations for which the owner has submitted the appropriate affidavit to the executive director and received a non-perchloroethylene user registration certificate. Exemptions from solvent fees have been clarified to specify an owner to whom the executive director has issued a participating non-perchloroethylene user registration certificate. A provision under THSC, §374.103(a)(1) allows the distributor of solvents to withhold 1% of the amount of the fee imposed by §337.15(a) for the distributor's administrative expenses if the distributor pays the remaining amount to the commission no later than the date prescribed by the commission. The distributor must submit a report specifying the total amount of fees collected by the distributor for the period, the amount due to the distributor under the provisions, if any, and the total amount to be remitted to the commission. The actual due dates for reports and fees have been itemized: the report and payment for the period of September 1 - November 30 must be received by the agency by December 20; the report and payment for the period of December 1 - February 28/29 must be received by the agency by March 20; the report and payment for the period of March 1 - May 31 must be received by the agency by June 20; and the report and payment for the

period of June 1 - August 31 must be received by the agency by September 20. This rule also specifies that the fees collected by the distributor are held in a trust for the agency and are not the property of the distributor and are not to be used by the distributor until the date that the distributor remits the amount due to the commission. Distributors that fail to pay their quarterly solvent fees when due forfeit any right or claim to withhold a portion of collected fees for administrative expenses. Subsequent paragraphs have been renumbered accordingly.

The commission adopts an amendment to §337.20, Performance Standards, which includes the performance standards that apply to dry cleaning facilities, including the dates by which owners must be in compliance. Section 337.20(a) has been amended to clarify that performance standards apply to all dry cleaning facilities, including those that have a nonparticipating non-perchloroethylene user certificate. In addition, the words “and dry cleaning drop stations” have been removed from §337.20(a) because performance standards apply only to dry cleaning facilities, not drop stations. Section 337.20(b), compliance deadlines, has been added to specify that required compliance extends to owners of all operating dry cleaning facilities unless otherwise specifically stated. It further states that owners of all new dry cleaning facilities shall construct and operate facilities in compliance with this section. Subsequent paragraphs have been renumbered accordingly. Section 337.20(e)(2) has been inserted to include the procedures and requirements for compliance deadlines and specifies the exemption. The exemption includes dry cleaning facilities in operation on or before January 1, 2004, that have gross annual receipts of \$150,000 or less. These facilities have until January 1, 2015, to comply. Further stated, if before January 1, 2015, a dry cleaning facility begins to have gross annual receipts greater than \$150,000, the dry cleaning facility must meet the requirements of compliance deadlines by August 1 of the year following the time the facility exceeded \$150,000 in annual gross

receipts. Subsequent paragraphs have been renumbered accordingly. These amendments are necessary to comply with THSC, Chapter 374.

The commission adopts an amendment to §337.22, Variances and Alternative Procedures, which includes 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. The term “the owner of a dry cleaning facility” has been stricken and replaced with “a person” in §337.22(a) and the term “owner” has been stricken and replaced with “person requesting the variance” in §337.22(b) to allow flexibility in the approval of emerging technologies. Section 337.22(c) has been changed to clarify that any request to the executive director for approval of a variance must be in writing, signed and dated by the person requesting the variance, and accompanied by specified documentation. The substance of the subsection has not been impacted, but reorganized for clarity of reading.

The commission adopts an amendment to §337.30, Prioritization of Sites, which includes 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 the rule. The term “facility” has been replaced with “site” for consistency and clarity in §337.30(a)(1) and (b)(1).

The commission adopts an amendment to §337.31, Ranking of Sites, which includes 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). The term “facility” has been replaced with “site” in §337.31(a) and subsection (a)(1) and the term “facilities” has been replaced with “sites” in §337.31(a)(2) for consistency and clarity.

The commission adopts the new title of Subchapter G, Non-Perchloroethylene Users, Facilities, and Drop Stations, in accordance with HB 2376 by adding drop stations.

The commission adopts an amendment to §337.61, Participating Non-Perchloroethylene User Registration Certificate, which states that to obtain this certificate the owner must meet requirements of THSC, §374.104 and swear in an affidavit approved by the executive director. After September 1, 2005, a participating non-perchloroethylene registration certificate will not be available unless the owner has already obtained this certificate. For clarity, the subsection stating requirements of the affidavit is proposed to be reformatted, removing §337.61(b) altogether. Section 337.61(1) specifies that the owner swears that perchloroethylene has never been used or that the owner allowed the use of perchloroethylene at any dry cleaning facility or drop station in the state. Section 337.61(2) specifies that perchloroethylene must never have been used at the location to which the nonparticipating non-perchloroethylene user registration certificate would apply. Section 337.61(3) specifies that the owner will not now or ever use perchloroethylene at the location to which the nonparticipating non-perchloroethylene user registration certificate would apply. Section 337.61(4) specifies that the owner was the owner of the dry cleaning facility or dry cleaning drop station on January 1, 2004, and was eligible to file the option not to participate on or before January 1, 2004, and inadvertently failed to file

before that date. The commission also adopts the new title of §337.61, Nonparticipating Non-Perchloroethylene User Registration Certificate. These amendments are necessary to comply with THSC, Chapter 374.

The commission adopts an amendment to §337.62, Nonparticipating Non-Perchloroethylene Facilities, which includes requirements that apply to such a facility, including disclosure requirements for any sale of the facility. This section is amended to include the requirements set forth in THSC, §374.104 by adding “or drop station” after “facility” throughout the section and removing “the owner of the” from §337.62(a)(1) so that the section now states, “the dry cleaning facility or drop station is not eligible for any expenditures of money from the Dry Cleaning Facility Release Fund.” The commission adopts the new title of §337.62, Nonparticipating Non-Perchloroethylene Facilities and Drop Stations.

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 Texas Government Code, §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 2376 and SB 444, which amend THSC, Chapter 374. THSC, Chapter 374 addresses the environmental regulation and remediation program for dry cleaning facilities

and dry cleaning drop stations. Under the program, certain dry cleaners and drop stations 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 2376 and SB 444 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; and 5) provisions relating to non-perchloroethylene users and facilities.

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), 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 2376 and SB 444 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 adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

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 amendments are required to comply with HB 2376 and SB 444 relating to the environmental regulation and remediation of dry cleaning facilities. The adopted rules amend annual registration fees assessment calculations; establish new compliance deadlines for performance standards for dry cleaning facilities; reference the necessity of comptroller verification that the owner is in good standing with the state and is reporting gross receipts accurately; clarify the designation of a nonparticipating status and establish new deadlines and fee credits for nonparticipating sites; expand on revocation or denial of a certificate; and clarify and establish procedures to administer and enforce the program.

PUBLIC COMMENT

A public hearing on the proposed rules was held in Austin, Texas, on November 8, 2005. The public comment period ended at 5:00 p.m. on November 14, 2005. No comments were received at the public hearing or during the 30-day comment period.

SUBCHAPTER A: GENERAL PROVISIONS

§337.3

STATUTORY AUTHORITY

The amendment is adopted under the authority granted to the commission by the 79th Legislature and THSC, Chapter 374. The amendment is also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of the 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; THSC, §361.024, which authorizes the commission to adopt rules consistent with the Solid Waste Disposal Act and establish minimum standards for the management and control of solid waste; HB 2376, 79th Legislature; and SB 444, 79th Legislature.

The adopted amendment implements THSC, Chapter 374.

§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; a dry cleaning unit.

(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) as that subsection existed from September 1, 2003, until August 31, 2005.

(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.

SUBCHAPTER B: REGISTRATION, CERTIFICATES, AND FEES

§§337.11, 337.13 - 337.15

STATUTORY AUTHORITY

The amendments are adopted under the authority granted to the commission by the 79th Legislature and THSC, Chapter 374. The amendments are also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of the 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; THSC, §361.024, which authorizes the commission to adopt rules consistent with the Solid Waste Disposal Act and establish minimum standards for the management and control of solid waste; HB 2376, 79th Legislature; and SB 444, 79th Legislature.

The adopted amendments implement THSC, Chapter 374.

§337.11. Dry Cleaner Registration Certificates.

(a) Before the executive director evaluates a registration to determine if a registration certificate should be issued, each registration must be administratively complete. A registration is not administratively complete if:

(1) the registration form has not been completed and submitted to the agency in accordance with this chapter;

(2) the registration form does not contain all requested information with clear, legible, and true responses;

(3) all fees, penalties, and interest owed to the agency have not been paid; or

(4) the comptroller reports to the executive director that the owner is not in good standing with the state or that the owner's application information does not agree with the comptroller's information. However, if the comptroller does not respond to the agency's request for verification within three business days in accordance with Texas Health and Safety Code, §374.102(f), the executive director shall not be prohibited from determining that the registration is administratively complete.

(b) Upon the executive director's determination that a submitted registration is administratively complete, a registration certificate will be issued for the dry cleaning facility or dry cleaning drop station, as applicable, as long as the executive director has no reason to deny the registration certificate under subsection (f) of this section. 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).

(c) 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, 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 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.

(4) The owner may appeal for commission review of the executive director's determination to revoke or deny a certificate. An appeal must be in writing and filed by United States mail, facsimile, or hand delivery with the commission's Office of the Chief Clerk no later than 23 days after the date the agency mails notice of the executive director's determination to revoke or deny a certificate. An original and 11 copies of the appeal must be filed. If the appeal is filed by facsimile, the owner must file with the Office of the Chief Clerk an original and 11 copies by mail or hand

delivery within three days. If an appeal meeting the requirements of this subsection is not filed within the time period specified, the executive director's determination is final.

(A) In addition to filing the appeal with the Office of the Chief Clerk, the owner shall mail or deliver a copy of the appeal to:

(i) the executive director; and

(ii) the Office of the Public Interest Counsel.

(B) An appeal filed under this section must:

(i) provide a copy of the owner's registration information;

(ii) specify the executive director determination for which commission review is being sought;

(iii) request commission consideration of the executive director determination; and

(iv) explain the basis for the appeal.

(C) A proceeding based upon an appeal filed under this section is not a contested case for purposes of Texas Government Code, Chapter 2001.

§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.

(4) The distributor may appeal for commission review of the executive director's determination to revoke or deny a certificate. An appeal must be in writing and filed by United States mail, facsimile, or hand delivery with the commission's Office of the Chief Clerk no later than 23 days after the date the agency mails notice of the executive director's determination to revoke or deny a certificate. An original and 11 copies of the appeal must be filed. If the appeal is filed by facsimile, the distributor must file with the Office of the Chief Clerk an original and 11 copies by mail or hand

delivery within three days. If an appeal meeting the requirements of this subsection is not filed within the time period specified, the executive director's determination is final.

(A) In addition to filing the appeal with the Office of the Chief Clerk, the owner shall mail or deliver a copy of the appeal to:

(i) the executive director; and

(ii) the Office of the Public Interest Counsel.

(B) An appeal filed under this section must:

(i) provide a copy of the distributor's registration information;

(ii) specify the executive director determination for which commission review is being sought;

(iii) request commission consideration of the executive director determination; and

(iv) explain the basis for the appeal.

(C) A proceeding based upon an appeal filed under this section is not a contested case for purposes of Texas Government Code, Chapter 2001.

§337.14. Registration Fees.

(a) Except for registration fees payable for operations conducted before September 1, 2005, 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) Registration fees payable for operation of a facility or drop station before September 1, 2005, will be assessed and payable at the rates in effect before September 1, 2005.

(c) 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."

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

(e) 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 or drop station as designated in accordance with Texas Health and Safety Code, §374.104, for which the owner has submitted the appropriate affidavit to the executive director and received a nonparticipating non-perchloroethylene user registration certificate; and

(2) an owner to whom the executive director has issued 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 less any amount the distributor is entitled to withhold under the provisions of Texas Health and Safety Code, §374.103(a)(1). 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 report also must set forth the total amount of fees collected by the distributor for the period, the amount withheld by the distributor under the provisions of Texas Health and Safety Code, §374.103(a)(1), if any, and the total amount to be remitted to the commission. The following are the due dates and associated reporting periods.

(A) The report and payment for the period of September 1 - November 30 must be received by the agency by December 20.

(B) The report and payment for the period of December 1 - February 28/29 must be received by the agency by March 20.

(C) The report and payment for the period of March 1 - May 31 must be received by the agency by June 20.

(D) The report and payment for the period of June 1 - August 31 must be received by the agency by September 20.

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

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

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

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

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

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

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

(5) Solvent fees collected by the distributor are held in trust for the agency, are not the property of the distributor, and are not to be used by the distributor for any other purpose. Any amount due to the distributor under the provisions of Texas Health and Safety Code, §374.103(a)(1), does not become property of the distributor until the date on which the distributor remits the remaining amount to the commission.

(6) At any time, the executive director may request in writing that the distributor remit the amount of fees required to be collected up to a date certain as determined by the executive director. The distributor shall remit such amount to the agency within ten days of receiving the executive director's request.

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

(8) Late payment and returned checks.

(A) Distributors that fail to pay quarterly solvent fees when due shall forfeit any right or claim to withhold a portion of fees collected for administrative expenses as provided in Texas Health and Safety Code, §374.103(a)(1), and 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 amendments are adopted under the authority granted to the commission by the 79th Legislature and THSC, Chapter 374. The amendments are also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of the 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; THSC, §361.024, which authorizes the commission to adopt rules consistent with the Solid Waste Disposal Act and establish minimum standards for the management and control of solid waste; HB 2376, 79th Legislature; and SB 444, 79th Legislature.

The adopted amendments implement THSC, Chapter 374.

§337.20. Performance Standards.

(a) Applicability. Unless otherwise specifically stated, these performance standards apply to all dry cleaning facilities, including those that have a nonparticipating non-perchloroethylene user certificate.

(b) Compliance deadlines.

(1) Unless otherwise specifically stated in this section, owners of all operating dry cleaning facilities must comply with this section by the deadlines set forth in Texas Health and Safety Code, §374.052(a) and House Bill 1366 (Chapter 540, §3(b)), 78th Legislature, May 24, 2003.

(2) Owners of all new dry cleaning facilities shall construct and operate the facilities in compliance with this section.

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

(d) 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.

(e) Dikes and other secondary containment structures.

(1) Applicability. 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.

(2) Compliance deadlines. The compliance deadlines set forth in subsection (b) of this section apply to all dry cleaning facilities with the exception of dry cleaning facilities in operation on or before January 1, 2004, that have gross annual receipts of \$150,000 or less (as indicated on the most current registration form filed with the agency). These dry cleaning facilities have until January 1, 2015, to comply with this subsection. However, if before January 1, 2015, a qualifying dry cleaning facility begins to have gross annual receipts greater than \$150,000, the dry cleaning facility must meet the requirements of this subsection by August 1 of the year following the time the facility exceeded \$150,000 in annual gross receipts.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(f) 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.

§337.22. Variances and Alternative Procedures.

(a) Prior to proceeding in any manner that differs from the requirements of this subchapter, a person 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 person requesting the variance 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 person requesting the variance, and accompanied by the following additional documentation:

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

(2) 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;

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

(4) 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;

(5) 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;
and

(6) if the person requesting the variance is the owner or a representative of the owner of a dry cleaning facility, the request must also include:

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

(B) complete project identification, including:

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

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

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

(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, §337.31

STATUTORY AUTHORITY

The amendments are adopted under the authority granted to the commission by the 79th Legislature and THSC, Chapter 374. The amendments are also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of the 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; THSC, §361.024, which authorizes the commission to adopt rules consistent with the Solid Waste Disposal Act and establish minimum standards for the management and control of solid waste; HB 2376, 79th Legislature; and SB 444, 79th Legislature.

The adopted amendments 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 site 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 site 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 site ranking system.

(1) The dry cleaning site 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 sites 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.

SUBCHAPTER G: NON-PERCHLOROETHYLENE USERS, FACILITIES, AND DROP

STATIONS

§337.61, §337.62

STATUTORY AUTHORITY

The amendments are adopted under the authority granted to the commission by the 79th Legislature and THSC, Chapter 374. The amendments are also adopted under TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of the 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; THSC, §361.024, which authorizes the commission to adopt rules consistent with the Solid Waste Disposal Act and establish minimum standards for the management and control of solid waste; HB 2376, 79th Legislature; and SB 444, 79th Legislature.

The adopted amendments implement THSC, Chapter 374.

§337.61. Nonparticipating Non-Perchloroethylene User Registration Certificate.

To obtain a nonparticipating non-perchloroethylene user registration certificate, an owner of a dry cleaning facility or dry cleaning drop station must meet the requirements of Texas Health and Safety Code, §374.104 and swear in an affidavit approved by the executive director that:

(1) the owner has never used or allowed the use of the dry cleaning solvent perchloroethylene at any dry cleaning facility or drop station in the state;

(2) the dry cleaning solvent perchloroethylene has never been used at the location to which the nonparticipating non-perchloroethylene user registration certificate would apply;

(3) the owner will not now or ever use or allow the use of perchloroethylene at the location to which the nonparticipating non-perchloroethylene user registration certificate would apply;
and

(4) the owner was the owner of the dry cleaning facility or dry cleaning drop station on January 1, 2004, and was eligible to file the option not to participate on or before January 1, 2004, and inadvertently failed to file before that date.

§337.62. Nonparticipating Non-Perchloroethylene Facilities and Drop Stations.

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

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

(2) that dry cleaning facility or drop station may not later become a participating facility or drop station, regardless of whether the owner of the facility, the owner of the drop station, or the owner of the real property is applying for 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, drop station, or of the real property on which the facility or drop station is located, the owner of the facility, the owner of the drop station, or the owner of the real property, as applicable, shall disclose the following to potential buyers prior to any sale:

(1) the nonparticipating status of the dry cleaning facility or drop station;

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

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