

The Texas Commission on Environmental Quality (commission or TCEQ) proposes amendments to §§337.3, 337.11, 337.13 - 337.15, 337.20, 337.22, 337.30, 337.31, 337.61, and 337.62.

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

The purpose of the proposed 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, 374.251 - 374.253 and repeals §§374.052(c), 374.101(1), 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 proposes amendments to Chapter 337, Dry Cleaner Environmental Response, to establish the procedures to administer and enforce HB 2376 and SB 444.

The commission proposes 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 HB 2376, §5(c)(3) and (4). 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 proposes 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 may issue a registration certificate as long as there is no reason to deny the registration for other reasons. 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 the same subsection 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 proposes 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 proposes 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 proposes 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 not the property of the distributor and 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 proposes an amendment to §337.20, Performance Standards, which includes 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(a), applicability is clarified for those facilities that have a nonparticipating non-perchloroethylene user certificate and removes the verbiage, “and dry cleaning drop stations” as standards are applicable only to equipment. Proposed §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.

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

The commission proposes 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 or valid unless the owner has already obtained this certificate. For clarity, the paragraph 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 proposes to change the name of the title to Nonparticipating Non-Perchloroethylene User Registration Certificate.

The commission proposes 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 clarifies the requirements set forth in THSC, §374.104 by adding “or drop station” after “facility” throughout the section and removes “the owner of the” in §337.62(a)(1) to “the dry cleaning facility or drop station is not eligible for any expenditures of money from the Dry Cleaning Facility Release Fund.” The commission proposes to change the name of the title to Nonparticipating Non-Perchloroethylene Facilities and Drop Stations.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Derek Chapin, Analyst, Chief Financial Officer Division, determined that, for the first five-year period the proposed rules are in effect, significant fiscal implications are anticipated for the commission. No fiscal implications are anticipated for other units of state or local government. In addition, fiscal implications are anticipated for owners and operators of dry cleaning facilities, dry cleaning drop stations, distributors of dry cleaning solvent, and consumers who purchase the services of dry cleaning facilities.

The proposed amendments implement HB 2376 and SB 444. The bills amend the dry cleaning regulation and remediation program established by HB 1366, 78th Legislature (codified as THSC, Chapter 374).

HB 2376 amends and clarifies performance standards, modifies fee rates and registration and collection procedures, establishes a new deadline and process for filing a nonparticipation option, creates new penalties, and revises the allowable administrative percentage and use of funds.

SB 444 amends THSC, §374.104. SB 444 establishes a new deadline to file a nonparticipation option and provides for registration fee credits for owners who file a nonparticipation option before February 28, 2006, to the extent that a registration fee paid in 2004 or 2005 exceeded the amount due for a nonparticipating dry cleaning facility.

The amendments are proposed in order to regulate and remediate certain dry cleaning facilities; amend registration procedures; revise fee assessments and collections; and amend performance standards.

The proposed amendments apply to all dry cleaning facilities (except for certain types or categories of businesses such as hotels, motels, formal wear and costume rental businesses, and others), dry cleaning drop stations, and distributors of dry cleaning solvent. Currently, there are an estimated 2,154 dry cleaning facilities, 1,668 dry cleaning drop stations, and 23 distributors of dry cleaning solvents doing business in the state.

HB 2376 amends registration fee rates. The bill increases the gross receipts threshold between the low (\$250) and high (\$2,500) registration fees from \$100,000 to \$150,000, so that, for example, the registration fee for a participating facility with gross annual receipts of \$125,000 decreases from \$2,500 to \$250 under the legislation. Registration fees for drop stations are no longer based on ownership status but instead on gross receipts, with drop stations earning gross annual receipts of more than \$150,000 assessed \$750 annually, and drop stations with less revenue assessed \$250 annually. Eligible drop stations also can register as nonparticipating at a rate of \$125 annually. Both HB 2376 and SB 444 extend the deadline to file a nonparticipation option to February 28, 2006, with SB 444 adding that credits be provided to nonparticipating facility owners to the extent that a registration fee due in 2004 or

2005 exceeded the amount due for a nonparticipating dry cleaning facility. The estimated effect of these statutory changes on the commission is to reduce registration fee revenue by an average of \$1,166,000 in each year of the five-year period covered by the fiscal note.

HB 2376 also amends solvent fee rates by permitting distributors to withhold 1% of solvent fees collected if the remaining amount is remitted not later than the date prescribed by the commission. This statutory change, combined with a projected increase in nonparticipating facilities exempt from solvent fees, is estimated to reduce solvent fees remitted to the commission by an average of \$77,000 in each year of the five-year period covered by the fiscal note.

To implement the provisions of HB 2376 and SB 444, the commission will undertake a rulemaking, revise its registration and billing database, and develop a process for verifying registration information with the comptroller. The commission does not anticipate any change to revenue collections as a direct result of the rulemaking.

#### PUBLIC BENEFITS AND COSTS

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

No new or additional costs are anticipated for businesses or individuals as a result of the implementation of the proposed amendments. Costs for some businesses may decline due to the

statutory change in registration fee rates; such businesses may or may not pass on any realized savings from reduced registration fees to their customers. Businesses may also benefit from reduced registration fees and fee credits due to the statutory extension of the deadline to file a nonparticipation option. Businesses with gross annual receipts of \$150,000 or less may benefit from the statutory change allowing such businesses until 2015 to implement performance standards; previously, businesses with \$200,000 or less in gross annual receipts were required to comply with the performance standards by 2007.

Solvent distributors will benefit from the statutory provision allowing withholding of 1% of solvent fee collections to offset administrative costs. The estimated savings to distributors ranges from \$1.00 to \$12,000 annually for the largest distributor.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. Approximately 60% of the facilities that registered previously with the commission reported gross receipts of less than \$200,000. Moreover, 80% of drop stations are estimated to generate less than \$150,000 in gross annual receipts. It is therefore estimated that most of the dry cleaning facilities and drop stations in the state are small or micro-businesses. There are an estimated 23 distributors of dry cleaning solvents in the state, but it is not known how many of them are small or micro-businesses.

Small businesses may realize benefits from the statutory changes made by HB 2376 and SB 444.

Participating facilities with gross annual receipts greater than \$100,000 but equal to or less than

\$150,000 will benefit from a reduction in annual registration fees from \$2,500 to \$250. Previously participating facilities with more than \$150,000 in gross annual receipts that file a nonparticipation option by the new deadline will also reduce their registration fees from \$2,500 to \$250.

Drop stations that are owned by a facility and that have gross annual receipts of more than \$150,000 will benefit from a reduction in annual registration fees from \$1,000 to \$750. Drop stations that are owned by a facility and that have gross annual receipts of \$150,000 or less will benefit from a reduction in annual registration fees from \$1,000 to \$250. An unknown number of drop stations may see their registration fees increase from \$250 to \$750 if they are not owned by a facility and if they generate more than \$150,000 in gross annual receipts. An unknown number of drop stations may file a nonparticipation option, resulting in a registration fee savings of \$125 or \$875 from 2004 - 2005 fee levels.

The estimated savings to distributors from the statutory changes ranges from \$1.00 to \$12,000 annually for the largest distributor.

The following is an analysis of the cost per employee for small or micro-businesses affected by the proposed amendments. Small and micro-businesses are defined as having fewer than 100 or 20 employees, respectively. Some owners of dry cleaning facilities could realize savings of \$2,250, or \$22.50 per employee for a small business and \$112.50 per employee for a micro-business. Drop station owners may realize changes ranging from a savings of \$750 to additional costs of \$500. The potential savings equate to \$7.50 per employee for a small business and \$37.50 for a micro-business; the potential costs equate to \$5.00 per employee for a small business and \$25 per employee for a micro-

business. For those distributors that are small or micro-businesses, the maximum estimated annual savings from the statutory changes equates to \$120 per employee for a small business and \$600 per employee for a micro-business.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

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

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

Furthermore, even if the proposed rules did meet the definition of a major environmental rule, Texas Government Code, §2001.0225 only applies to a major environmental rule if the result of the rule is to:

- 1) exceed a standard set by federal law, unless the rule is specifically required by state law;
- 2) exceed an express requirement of state law, unless the rule is specifically required by federal law;
- 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of

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

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

#### TAKINGS IMPACT ASSESSMENT

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

The proposed rules implement HB 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 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 proposed rules contain performance standards and waste handling requirements to alleviate the possibility of future contamination from dry cleaning facilities. Such contamination is a real and substantial threat to public health and safety. The proposed rules significantly advance a health and safety purpose by providing the framework within which the agency processes registrations, collects the funds for corrective action, and uses those funds to address health and safety concerns at sites around the state. Furthermore, the proposed rules significantly advance a health and safety purpose by specifying performance standards and waste handling requirements to alleviate future health and safety issues resulting from dry cleaning facilities. The proposed rules are narrowly tailored to apply to only certain dry cleaning facilities, dry cleaning drop stations, and distributors, and do not impose a greater burden than is necessary to achieve the health and safety purpose as previously stated.

Nevertheless, the commission further evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to implement HB 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 proposed rules would be neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the proposed rules do not affect a

landowner's rights in private real property because this rulemaking does not burden (constitutionally), restrict, or limit the owner's rights to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the proposed rules. The proposed rules implement HB 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 proposed rules and the benefits to society are the proposed rules' specific procedures and requirements for a program that addresses dry cleaning contamination and seeks to prevent future contamination.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal 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 proposed 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.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on November 8, 2005, at 10:00 a.m. at the Texas Commission on Environmental Quality in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer question before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Holly Vierk, Office of Legal Services, at (512) 239-0177. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Holly Vierk, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-043-337-PR. Comments must be received by 5:00 p.m., November 14, 2005. Copies of the proposed rules can be obtained from the commission's Web site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information or questions concerning this proposal, please contact Don Kennedy, Registration, Review and Reporting Division, at (512) 239-2154.

## **SUBCHAPTER A: GENERAL PROVISIONS**

### **§337.3**

#### **STATUTORY AUTHORITY**

The amendment is proposed under the authority granted to the commission by the 79th Legislature and THSC, Chapter 374. The amendment is also proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under 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 proposed 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) - (2) (No change.)

(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) - (11) (No change.)

(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) - (15) (No change.)

**SUBCHAPTER B: REGISTRATION, CERTIFICATES, AND FEES**

**§§337.11, 337.13 - 337.15**

**STATUTORY AUTHORITY**

The amendments are proposed under the authority granted to the commission by the 79th Legislature and THSC, Chapter 374. The amendments are also proposed 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 proposed 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: [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).]

(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). [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) - (e) (No change.)

(f) Revocation or denial of a certificate.

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

(A) (No change.)

(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) - (3) (No change.)

(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) - (d) (No change.)

(e) Revocation or denial of certificate.

(1) - (3) (No change.)

(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 [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) [(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.”

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

(e) [(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) (No change.)

(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 [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 to whom the executive director has issued [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 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 [due date] for the [reporting] period of September 1 - November 30 must be received by the agency by [is] December 20.

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

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

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

(2) - (4) (No change.)

(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) [(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.

(7) [(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."

(8) [(7)] 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 proposed under the authority granted to the commission by the 79th Legislature and THSC, Chapter 374. The amendments are also proposed 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 proposed 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 [and dry cleaning drop stations].

(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) [(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).

(d) [(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.

(e) [(d)] Dikes and other secondary containment structures.

(1) Applicability. This [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) 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) [(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.

(4) [(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.

(5) [(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.

(6) [(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.

(f) [(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.

**§337.22. Variances and Alternative Procedures.**

(a) Prior to proceeding in any manner that differs from the requirements of this subchapter, a person [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 person requesting the variance [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 person requesting the variance [dry cleaning facility owner], 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.

[(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) - (f) (No change.)

#### **SUBCHAPTER D: PRIORITIZATION AND RANKING**

##### **§337.30, §337.31**

#### **STATUTORY AUTHORITY**

The amendments are proposed under the authority granted to the commission by the 79th Legislature and THSC, Chapter 374. The amendments are also proposed 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 proposed 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 [facility] ranking system.

(2) (No change.)

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

(1) the dry cleaning site [facility] ranking system;

(2) - (7) (No change.)

(c) (No change.)

**§337.31. Ranking of Sites.**

(a) Dry cleaning site [facility] ranking system.

(1) The dry cleaning site [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 sites [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) - (8) (No change.)

(b) (No change.)

**SUBCHAPTER G: NON-PERCHLOROETHYLENE USERS, [AND]  
FACILITIES, AND DROP STATIONS**

**§337.61, §337.62**

**STATUTORY AUTHORITY**

The amendments are proposed under the authority granted to the commission by the 79th Legislature and THSC, Chapter 374. The amendments are also proposed 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 proposed amendments implement THSC, Chapter 374.

**§337.61. Nonparticipating [Participating] Non-Perchloroethylene User Registration Certificate.**

[(a)] To obtain a nonparticipating [participating] 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.

[ (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 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 [owner of 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 [the facility's] participation in Dry Cleaning Facility Release Fund benefits; and

(3) (No change.)

(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 [owner], 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.