

The Texas Commission on Environmental Quality (commission or agency) adopts the amendments to §§337.3, 337.4, 337.11, 337.13, 337.14, 337.31, 337.32, and 337.51. The commission also adopts new §§337.16 - 337.18, 337.52, 337.53, and 337.64.

Sections 337.3, 337.4, 337.14, 337.16, 337.18, 337.31, 337.32, 337.51, 337.53, and 337.64 are adopted *without changes* to the proposed text as published in the February 15, 2008 issue of the *Texas Register* (33 TexReg 1260) and will not be republished. Sections 337.11, 337.13, 337.17, and 337.52 are adopted *with changes* to the proposed text and will 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) 3220, 80th Legislature, 2007, and to provide for more efficient administration and enforcement of Texas Health and Safety Code (THSC), Chapter 374. HB 3220 revises statutes relating to the dry cleaner environmental response program created by the 78th Legislature, 2003, and codified in THSC, Chapter 374. HB 3220 amends THSC, §§374.102 - 374.104, 374.154, and 374.207. HB 3220 also adds the following new sections to THSC, Chapter 374: §§374.1022 - 374.1023, and 374.1535. HB 3220 establishes new requirements for registration of dry cleaner property owners and preceding property owners who wish to obtain eligibility for Dry Cleaning Facility Release Fund (Fund) benefits. Additionally, the bill allows an owner of a non-participating drop station to move the business to another location and retain the drop station's non-participating status. The bill also prohibits the use of perchloroethylene at sites where the commission has completed corrective action. In addition to rule changes adopted for the purpose of implementing these provisions of HB 3220, certain rule changes are being adopted for the purpose of more efficient administration and enforcement of THSC, Chapter 374. These include: a provision prohibiting a person, in addition to a distributor, from

purchasing or otherwise obtaining dry cleaning solvent for an unregistered dry cleaning facility or for a dry cleaning drop station; provisions expanding the basis of and procedures for revocation or denial of a dry cleaner or distributor registration certificate; a provision clarifying that annual registration fee billing dates are established by the executive director; a provision requiring that once corrective action under the Fund has begun at a site, the site must remain in the Dry Cleaner Remediation Program (Program) until corrective action is completed at the site; a provision prohibiting the use of perchloroethylene at a site once corrective action under the Fund has begun at that site, and providing for a written notice of the prohibition to be placed in county deed records; and additional definitions, a section title change, and other changes to phrasing made for the purpose of clarity and for the purpose of consistency within the rule, as well as between the rule and THSC, Chapter 374.

#### SECTION BY SECTION DISCUSSION

The commission adopts amendments to Chapter 337, Dry Cleaner Environmental Response, to establish the procedures to administer and enforce HB 3220, and to provide for more efficient administration and enforcement of THSC, Chapter 374.

The commission adopts an amendment to §337.3, Definitions, to add definitions for Property Owner and Preceding Property Owner. The additional definitions are necessary to clarify that the meaning of these terms is consistent with the meaning set out in THSC, §374.1022. Renumbering of two additional definitions will be necessary in order to accommodate this change.

The commission adopts an amendment to §337.4, General Prohibitions and Requirements, to clarify, in §337.4(b), that a dry cleaning facility must have a registration certificate issued pursuant to §337.11 in

order for a distributor to distribute dry cleaning solvent to the facility. The purpose of this change is to distinguish a registration certificate issued pursuant to §337.11, which qualifies a facility to receive dry cleaning solvent, from a registration certificate issued pursuant to the newly adopted §337.17, which does not qualify a facility to receive dry cleaning solvent. In addition, §337.4(h) is adopted to prohibit a person, in addition to a distributor, from purchasing or otherwise obtaining dry cleaning solvent for a dry cleaning facility unless the facility has a registration certificate issued pursuant to §337.11. Finally, §337.4(i) is adopted to prohibit a person, in addition to a distributor, from purchasing or otherwise obtaining dry cleaning solvent for a dry cleaning drop station. Subsections (h) and (i) are amended to allow for enforcement in the event that persons, in addition to distributors, obtain solvent for drop stations or unregistered dry cleaning facilities.

The commission adopts an amendment to §337.11, Dry Cleaner Registration Certificates, to expand the basis of and procedures for revocation or denial of a dry cleaner registration certificate. With this amendment, the basis for revocation or denial of a dry cleaner registration certificate becomes more consistent with the basis for revocation or denial that is set out in other agency rules, such as the rules applicable to the Petroleum Storage Tank program. In addition, the expanded basis of and procedures for revocation or denial of a dry cleaner registration certificate will allow needed flexibility for revocation or denial of a certificate based on circumstances other than the very limited ones contemplated by the existing rule. For example, the adopted amendment would allow the commission to revoke a dry cleaner registration certificate in the event that a facility owner fails to respond to the executive director upon initiation of an enforcement action, by neglecting to pay penalties assessed and/or to take measures necessary to correct the violation that resulted in the enforcement action. Finally, the amendment to

§337.11(f)(1)(C) is adopted with change from proposal by replacing "constitutes" with "to be." This change is made in order to improve readability.

The commission adopts an amendment to §337.13, Distributor Registration Certificate, to expand the basis of and procedures for revocation or denial of a distributor registration certificate. With this amendment, the basis for revocation or denial of a distributor registration certificate becomes more consistent with the basis for revocation or denial that is set out in other agency rules, such as the rules applicable to the Petroleum Storage Tank program. In addition, the expanded basis of and procedures for revocation or denial of a distributor registration certificate will allow needed flexibility for revocation or denial of a certificate based on circumstances other than the very limited ones contemplated by the existing rule. For example, the adopted amendment would allow the commission to revoke a distributor registration certificate in the event that a distributor fails to respond to the executive director upon initiation of an enforcement action, by neglecting to pay penalties assessed, and/or to take measures necessary to correct the violation that resulted in the enforcement action. Also, in §337.13(e)(4)(A) the word "owner" is replaced with the word "distributor" in order to clarify that this section, which pertains to distributor registration certificates, sets out the appeal process applicable to distributors rather than to owners. Additionally, the amendment to §337.13(e)(1)(C) is adopted with change from proposal by replacing "constitutes" with "to be" in order to improve readability. Finally, §337.13(e)(2) is adopted with change from proposal to include the word "this" to clarify which subsection is applicable.

The commission adopts an amendment to §337.14, Registration Fees, to add, "for Dry Cleaning Facilities and Drop Stations" to the section title. This is to differentiate this section from §337.18, the new property

owner and preceding property owner registration fee section. In addition, §337.14(c) is also amended to clarify that the annual registration fee may be divided into quarterly payments and billed on dates established by the executive director. This change is adopted to clearly state the authority of the executive director to establish annual registration fee billing dates. Finally, §337.14(c) is amended to delete the phrase, "of registration fees" to improve readability.

New §337.16, Registration by Property Owner or Preceding Property Owner, sets forth the registration requirements for property owners and preceding property owners. All owners and preceding owners of real property on which a dry cleaning facility or drop station is or was located, who wish to obtain eligibility for Fund benefits, must be registered with the commission in accordance with THSC, §374.1022. This section sets out the required registration procedures, including when to register, how to register, when to update information, and who may complete and submit registration forms.

New §337.17, Property Owner or Preceding Property Owner Registration Certificate, sets forth the procedures related to registration certificates for property owners or preceding property owners, including obtaining and displaying a certificate, as well as the process for revocation or denial of a certificate. A property owner or preceding property owner must have a valid registration certificate issued pursuant to this section in order to apply for corrective action under the Fund. In addition, the amendment to §337.17(d)(1)(C) is adopted with change from proposal by replacing "constitutes" with "to be." This change is made in order to improve readability.

New §337.18, Registration Fees for Property Owners and Preceding Property Owners, sets forth the procedures and requirements for property owners and preceding property owners to pay the registration

fees required by THSC, §374.1022. The annual registration fee may be divided into quarterly payments and billed on dates established by the executive director. However, past annual registration and late fees must be paid in full at the time of registration and may not be divided into quarterly payments. The adopted rule also requires payment of penalties and interest in accordance with 30 TAC Chapter 12, Payment of Fees, for payments that are not made by the due date. Registration certificates will not be issued until all registration and any late fees due pursuant to THSC, §374.1022, in addition to any penalties and interest assessed, are paid in full. The adopted rule requires that a property owner or preceding property owner who has registered a site pursuant to §337.16 must continue to pay annual registration fees in accordance with THSC, §374.1022 for the duration of corrective action at the site under the Fund.

The commission adopts an amendment to §337.31, Ranking of Sites, by deleting the phrase, "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" from §337.31(a)(2). This change is adopted for the sake of consistency within the rule, as well as between the rule and THSC, Chapter 374.

The commission adopts an amendment to §337.32, Denial and Removal of Sites from Ranking, by deleting the phrase, "for any dry cleaning facility or dry cleaning drop station" and adding the phrase, "pursuant to this chapter" in §337.32(a)(3). These changes are adopted for the purpose of consistency within the rule, as well as between the rule and THSC, Chapter 374.

The commission adopts an amendment to §337.51, Eligibility for Corrective Action, by deleting the phrase, "for any dry cleaning facilities or dry cleaning drop station that the person owns" from

§337.51(3). This change is adopted for the purpose of clarity and for consistency within the rule, as well as between the rule and THSC, Chapter 374.

New §337.52, Site Restrictions Upon Commencement of Corrective Action, is adopted with changes from the proposed text. Section 337.52 prohibits the use of perchloroethylene at sites where corrective action has begun under the Fund. Section 337.52 also provides that a written notice of the prohibition will be filed in county deed records following the commencement of corrective action under the Fund. The commission considers corrective action to have commenced once a site has been prioritized pursuant to 30 TAC §337.30 and Program costs have been incurred at the site. The purpose of this adopted rule is to implement THSC, §374.1535, and to reduce the possibility of further contamination from the dry cleaning solvent perchloroethylene at a site that is being addressed under the Fund. As originally proposed, this rule provided that, following the completion of corrective action under Chapter 337, a notice would be filed in the real property records of the county or counties in which the site was located, notifying future property owners that, pursuant to THSC, §374.1535, perchloroethylene may not be used at that site. The change from the proposed version is made after consideration of public comment in favor of the change and in recognition of the importance of preventing further contamination from the dry cleaning solvent perchloroethylene to sites that are being addressed under the Fund. Due to its toxicity, mobility, and tendency to sink in the subsurface and thereby enter groundwater, perchloroethylene poses a significant environmental concern and often results in higher assessment and response costs compared to other solvents. Additional releases of perchloroethylene, while corrective action is ongoing, unnecessarily prolongs the corrective action process and limits the funds available to address contamination at other dry cleaning sites. Therefore, preventing further perchloroethylene contamination to sites being addressed

under the Fund promotes the efficiency of corrective action efforts at such sites and helps to ensure responsible management of the Fund.

New §337.53, Withdrawal of Site from the Dry Cleaner Remediation Program, sets forth the requirement that once corrective action costs have been incurred at a site by the Program, an applicant may not withdraw the site from the Program prior to completion of corrective action at the site. Exceptions to this requirement may be allowed upon approval of the executive director in the event that corrective action has been suspended, postponed, or terminated at a site in accordance with §337.30 or §337.50. This rule is adopted for the purpose of ensuring that, when Fund money has been expended at a site, that site remains in the Program until corrective action is complete. By ensuring that Fund money is expended for complete, rather than partial, corrective action measures, this rule maximizes the effectiveness of corrective action under the Fund and promotes the responsible management of the Fund.

New §337.64, Retaining Nonparticipating Status for a Drop Station Moved to a New Location, sets forth the procedures and requirements for drop station owners who move a drop station to a new location to be able to retain the drop station's nonparticipating status. The adopted rule requires that the owner submit the same type of documentation for the new location that was required for the original nonparticipating drop station, including property owner consent and an affidavit attesting that perchloroethylene has never been used at the new location and that the owner will not ever use or allow the use of perchloroethylene at the new location. The rule also states that a registration certificate issued for a nonparticipating drop station is valid for only one location. Once the drop station moves to a new location, the original site will no longer be considered nonparticipating.

#### 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 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.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received.

#### 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 3220, which amends THSC, Chapter 374. The adopted rules also include certain amendments to Chapter 337, which are adopted for the purpose of more effective administration and enforcement of 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 commission to investigate and clean up eligible contaminated dry cleaning sites. Contamination from dry cleaning facilities is a real and substantial threat to public health and safety, and the legislation and adopted rules respond to this threat in three ways. First, the legislation and adopted rules respond to the threat of contamination by requiring that property owners and preceding property owners who wish to apply for a site to be addressed under the Fund must pay an annual registration fee prior to applying and must continue to pay an annual fee for the duration of corrective action under the Fund. This requirement is expected to increase the amount of money in the Fund, thereby maximizing the number of contaminated dry cleaning sites within the state that can be addressed under the Fund. Second, the adopted rules respond to the threat of contamination by prohibiting the use of perchloroethylene at sites once corrective action has begun under the Fund and by providing that, following the commencement of corrective action under the Fund, a notice will be filed in the real property records of the county or counties in which the site is located to notify future property owners that perchloroethylene may not be used at that site. This prohibition alleviates the possibility of further contamination from the dry cleaning solvent perchloroethylene at a site that is being addressed or that has been addressed under the Fund. Third, the rules respond to the threat of contamination by prohibiting a person, in addition to a distributor, from purchasing or otherwise obtaining dry cleaning solvent for an unregistered dry cleaning facility or for a dry cleaning drop station. The legislation and rules do not allow such facilities to obtain dry cleaning solvent, and providing for enforcement against any person who circumvents the rules in this way will help to advance the legislation's purpose of preserving, protecting, and maintaining the water and other natural resources of this state.

The adopted rules significantly advance a health and safety purpose by providing the framework within which the commission processes property owner and preceding property owner registrations, and collects the funds for corrective action, so that those funds can be utilized to address health and safety concerns at sites around the state. Furthermore, as previously discussed, the adopted rules significantly advance a health and safety purpose by prohibiting the use of perchloroethylene at sites while they are being addressed under the Fund, implementing the statutory prohibition against the use of perchloroethylene at sites that have been addressed under the Fund, and by providing for written notice of the prohibition. In addition, the adopted rules significantly advance a health and safety purpose by providing an additional enforcement mechanism in the event that a person obtains dry cleaning solvent for drop stations or unregistered dry cleaning facilities. Finally, the adopted rules significantly advance a health and safety purpose by requiring that, once corrective action costs have been incurred at a site by the Program, an applicant may not withdraw the site from the Program prior to completion of corrective action at the site. Exceptions to this requirement may be allowed upon approval of the executive director in the event that corrective action has been suspended, postponed, or terminated at a site in accordance with §337.30 or §337.50. This rule ensures that, when Fund money has been expended at a site, that site remains in the Program until corrective action is complete. By ensuring that Fund money is expended for complete, rather than partial, corrective action measures, this rule maximizes the effectiveness of corrective action under the Fund and promotes the responsible management of the Fund.

The adopted rules are narrowly tailored to implement HB 3220 and provide for more efficient administration and enforcement of THSC, Chapter 374, 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 adopted rules constitute a takings under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to implement HB 3220 and to provide for more efficient administration and enforcement of THSC, Chapter 374 by setting forth: 1) procedures governing registration and certificates for, and collection of fees from, property owners and preceding property owners who wish to obtain eligibility for Fund benefits; 2) procedures allowing an owner of a non-participating drop station to move the business to another location and retain the drop station's non-participating status; 3) the provision that, once corrective action under the Fund has begun at a site, perchloroethylene may not be used at that site, and providing for written notice of the prohibition; 4) a provision prohibiting a person, in addition to a distributor, from purchasing or otherwise obtaining dry cleaning solvent for an unregistered dry cleaning facility or for a dry cleaning drop station; 5) amended procedures for revocation or denial of a dry cleaner or distributor registration certificate; 6) clarified procedure for administration of dry cleaning facility and drop station registration fee billing and payment; 7) a prohibition against withdrawal of a site from the Program once the Program has incurred corrective action costs at the site; and 8) two additional definitions, one section title change, and other similar changes to phrasing made for the purpose of clarity and for the purpose of consistency within the rule, as well as between the rule and THSC, Chapter 374.

Promulgation and enforcement of the adopted rules would be neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted rules do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's rights to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the adopted rules. For example, although §337.52 of the adopted

rules prohibits the use of perchloroethylene at a site once corrective action under the Fund has begun at that site, this prohibition only arises when Fund money is spent to remediate property contaminated by dry cleaning solvent. Rather than representing a burden to property, such remediation enhances the value of an otherwise contaminated property. Furthermore, HB 3220 imposes the prohibition against the use of perchloroethylene at a site subject to commission corrective action under the Fund. This statutory prohibition exists independently of the adopted rule. Section 337.52 simply implements the prohibition earlier in time, at the beginning of corrective action, in order to prevent a recurrence of contamination while corrective action under the Fund is ongoing.

The adopted rules implement HB 3220 and provide for more efficient administration and enforcement of THSC, Chapter 374. As explained above, these adopted rules do not constitute a taking of private real property 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 Coastal Management Program, and will, therefore, require that goals and policies of the Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is

procedural in nature as it pertains to the CMP, and will have no substantive effect on commission actions subject to the CMP, and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

#### PUBLIC COMMENT

A public hearing on the proposed rules was held in Austin, Texas, on March 11, 2008. The public comment period ended at 5:00 p.m. on March 17, 2008. No comments were received at the public hearing. One written comment was received from Representative Gary Elkins during the 30-day comment period. Addressing the commission's solicitation of comments regarding a rule that would prohibit the use of perchloroethylene at the beginning of corrective action under the Fund, Representative Elkins's comment expressed support for a rule prohibiting the use of perchloroethylene at a point in time earlier than expressly required by statute.

#### RESPONSE TO COMMENTS

Representative Gary Elkins commented, with regard to §337.52, that he has received many comments stating that prohibiting perchloroethylene only after corrective action is complete "is not the best policy and does not adequately support the best use of limited remediation funds." Representative Elkins expressed support for the prohibition on the use of perchloroethylene earlier in time than expressly required by HB 3220.

**The commission agrees with Representative Elkins's comment supporting the prohibition on**

perchloroethylene earlier in time than expressly required by HB 3220. After soliciting comments on such a change and receiving no comments in opposition, the commission has changed the rule language to prohibit the use of perchloroethylene at a site once corrective action has begun under the Fund, and to provide for a written notice of this prohibition to be placed in the county deed records following commencement of corrective action under the Fund. This change is consistent with THSC, §374.051, which states that rules adopted by the commission under that section "must be reasonably necessary to preserve, protect, and maintain the water and other natural resources of this state;" and must be reasonably necessary "to provide for prompt and appropriate corrective action of releases from dry cleaning facilities." The dry cleaning solvent perchloroethylene, due to its toxicity, mobility, and tendency to sink in the subsurface and thereby enter groundwater, poses a significant environmental concern and often results in higher assessment and response costs compared to other solvents. The continued use of perchloroethylene at sites while they are being addressed under the Fund presents the risk of further perchloroethylene contamination to such sites. This risk runs counter to the goal of preserving, protecting, and maintaining the water and natural resources of this state. Further, additional releases of perchloroethylene while corrective action is ongoing unnecessarily prolongs the corrective action process and limits the funds available to address contamination at other dry cleaning sites. Given the above considerations, the commission adopts §337.52, prohibiting the use of perchloroethylene at sites once corrective action has begun under the Fund, and providing for a written notice of this prohibition to be placed in county deed records following the commencement of corrective action under the Fund.

**SUBCHAPTER A: GENERAL PROVISIONS**  
**§337.3 and §337.4**

**STATUTORY AUTHORITY**

The amended sections are adopted under the authority granted to the commission by the 80th Legislature in Texas Health and Safety Code (THSC), Chapter 374. The amended sections are also adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC; TWC, §26.011, which provides the commission the powers necessary or convenient to carry out its responsibilities; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its responsibilities under the Solid Waste Disposal Act (SWDA); THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards of operation for the management and control of solid waste; and HB 3220, 80th Legislature, 2007.

The adopted amended sections implement 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) **Preceding Property Owner**--a preceding owner of real property as described in Texas Health and Safety Code, §374.1022(a)(2).

(15) **Property Owner**--an owner of real property as described in Texas Health and Safety Code, §374.1022(a)(1).

(16) **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.

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

#### **§337.4. General Prohibitions and Requirements.**

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

(b) A distributor is prohibited from selling, delivering, or otherwise distributing any dry cleaning solvent to a dry cleaning facility unless the dry cleaning facility has a valid, current registration certificate issued by the executive director pursuant to §337.11 of this title (relating to Dry Cleaner Registration Certificates). Prior to sale, delivery, or other distribution of the dry cleaning solvent, the distributor must

obtain and record the registration number and registration expiration date of the dry cleaning facility's registration certificate.

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

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

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

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

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

(h) A person is prohibited from purchasing or otherwise obtaining any dry cleaning solvent for a dry cleaning facility unless the dry cleaning facility has a valid, current registration certificate issued by the executive director pursuant to §337.11 of this title.

(i) A person is prohibited from purchasing or otherwise obtaining any dry cleaning solvent for a dry cleaning drop station.

**SUBCHAPTER B: REGISTRATION, CERTIFICATES, AND FEES**  
**§§337.11, 337.13, 337.14, 337.16 - 337.18**

**STATUTORY AUTHORITY**

The amended and new sections are adopted under the authority granted to the commission by the Texas Legislature in Texas Health and Safety Code (THSC), Chapter 374. The amended and new sections are also adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC; TWC, §26.011, which provides the commission the powers necessary or convenient to carry out its responsibilities; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its responsibilities under the Solid Waste Disposal Act (SWDA); THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards of operation for the management and control of solid waste; and HB 3220, 80th Legislature, 2007.

The adopted amended and new sections 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 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 by the executive director.

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

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

(B) if 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; or

(C) for any reason the executive director determines to be good cause for denial or revocation.

(2) Prior to revocation or denial of a certificate pursuant to this subsection, 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 pursuant to this subsection. 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. The 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 the 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 subsection 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 subsection is not a contested case for purposes of Texas Government Code, Chapter 2001.

(g) In addition to subsection (f) of this section, the executive director may seek to revoke a certificate by filing a petition in accordance with the procedures set forth in Chapter 70 of this title (relating to Enforcement) if the executive director determines that any of the reasons in subsection (f)(1) of this section exist.

(h) Revocation of a certificate under subsection (f) or (g) of this section is cumulative of any other remedies available to the agency by law.

**§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 by the executive director.

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

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

(B) if 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; or

(C) for any reason the executive director determines to be good cause for denial or revocation.

(2) Prior to the revocation or denial of a certificate in accordance with this subsection, 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 pursuant to this subsection. 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. The 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 the 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 distributor 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 subsection 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 subsection is not a contested case for purposes of Texas Government Code, Chapter 2001.

(f) In addition to subsection (e) of this section, the executive director may seek to revoke a certificate by filing a petition in accordance with the procedures set forth in Chapter 70 of this title (relating to Enforcement) if the executive director determines that any of the reasons in subsection (e)(1) of this section exist.

(g) Revocation of a certificate under subsection (e) or (f) of this section is cumulative of any other remedies available to the agency by law.

**§337.14. Registration Fees for Dry Cleaning Facilities and Drop Stations.**

(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) The annual registration fee may be divided into quarterly payments and billed on dates established by the executive director. Payment in full 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).

**§337.16. Registration by Property Owner or Preceding Property Owner.**

(a) Registration.

(1) To be eligible to participate in Dry Cleaning Facility Release Fund benefits, a property owner or preceding property owner must register with the agency in accordance with this section.

(2) Prior to applying for corrective action at a site under the Dry Cleaning Facility Release Fund, a property owner or preceding property owner must register the site in accordance with subsection (c) of this section and hold a registration certificate in accordance with §337.17 of this title (relating to Property Owner or Preceding Property Owner Registration Certificate).

(3) Registration under this section is due by December 31, 2007. In order to register a site after December 31, 2007, a property owner or preceding property owner must first pay all past annual registration fees and any late fees due pursuant to Texas Health and Safety Code, §374.1022(c).

(4) A property owner or preceding property owner who registers a site under this section is responsible for compliance with the registration requirements of this section. A property owner or preceding property owner may designate a legally authorized representative to complete and submit the required registration information. However, the property owner or preceding property owner remains responsible for compliance with the provisions of this section by such representative.

(5) All sites registered under this section are subject to the fee and payment requirements of §337.18 of this title (relating to Registration Fees for Property Owners and Preceding Property Owners).

(b) Changes or additional information.

(1) Once a site is registered under this section, the property owner or preceding property owner shall provide written notice to the executive director of any changes or additional information concerning the site. Types of changes or additional information subject to this requirement include the following:

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

(B) change in site information (e.g. address or telephone number); and

(C) change in location of records for the site.

(2) Notice of any change or additional information must be submitted on the appropriate agency form that has been completed in accordance with this section. The agency's registration numbers for the site must be included in the appropriate spaces on the form.

(3) Notice of any change or additional information must be submitted to the agency

within 30 days from the date of the occurrence of the change or addition.

(c) Required form for providing site registration information.

(1) A property owner or preceding property owner submitting registration information to the executive director shall provide the required information on the current agency registration form.

(2) The property owner or preceding property owner is responsible for ensuring that the registration form is fully complete and accurate. The form must be dated and signed by the property owner or preceding property owner or a legally authorized representative, and must be submitted to the executive director prior to applying for corrective action under the Dry Cleaning Facility Release Fund.

(3) The property owner or preceding property owner shall complete and submit a separate registration form for each site.

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

(5) When any of the required registration information submitted to the executive director is determined to be incomplete or inaccurate (including illegible or unclear information), the executive director may require the property owner or preceding property owner to submit additional information. A

property owner or preceding property owner shall submit any required additional information within 30 days of receipt of such request.

**§337.17. Property Owner or Preceding Property Owner Registration Certificate.**

(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; or

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

(b) Upon the executive director's determination that a submitted registration is administratively complete, a registration certificate will be issued to the property owner or preceding property owner, as applicable, for the site covered by the registration form, as long as the executive director has no reason to deny the registration certificate under this section. This certificate is necessary for a property owner or preceding property owner to apply for corrective action under the Dry Cleaning Facility Release Fund.

(c) A property owner or preceding property owner shall immediately display, upon request by agency staff, a valid agency registration certificate for a property.

(d) Revocation or denial of certificate by the executive director.

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

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

(B) if the property owner or preceding property owner is in violation of any of the requirements of this chapter or Texas Health and Safety Code, Chapter 374, including late remittance and non-remittance of fees; or

(C) for any reason the executive director determines to be good cause for denial or revocation.

(2) Prior to the revocation or denial of a certificate pursuant to this subsection, the executive director shall provide notice to the property owner or preceding property owner 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 property owner or preceding property owner five days after mailing when:

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

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

(3) The property owner or preceding property 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 property owner or preceding property owner.

(4) The property owner or preceding property owner may appeal for commission review of the executive director's determination to revoke or deny a certificate pursuant to this subsection. 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. The original and 11 copies of the appeal must be filed. If the appeal is filed by facsimile, the property owner or preceding property owner must file with the Office of the Chief Clerk the 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 property owner or preceding property 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) The appeal filed under this subsection must:

(i) include a copy of the property owner or preceding property 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 subsection is not a contested case for purposes of Texas Government Code, Chapter 2001.

(e) In addition to subsection (d) of this section, the executive director may seek to revoke a certificate by filing a petition in accordance with the procedures set forth in Chapter 70 of this title

(relating to Enforcement) if the executive director determines that any of the reasons in subsection (d)(1) of this section exist.

(f) Revocation of a certificate under subsection (d) or (e) of this section is cumulative of any other remedies available to the agency by law.

**§337.18. Registration Fees for Property Owners and Preceding Property Owners.**

(a) A property owner or preceding property owner who registers a site pursuant to §337.16 of this title (relating to Registration by Property Owner or Preceding Property Owner) shall pay the annual registration fee and any applicable past annual registration fees and late fees set forth in Texas Health and Safety Code (THSC), §374.1022 for each registered site.

(b) The annual registration fee may be divided into quarterly payments and billed on dates established by the executive director. A property owner or preceding property owner who registers a site pursuant to §337.16 of this title on or after the first day of a billing quarter is responsible for the registration fee due for the entire billing quarter.

(c) Past annual registration fees and late fees must be paid in full at the time of registration and may not be divided into quarterly payments.

(d) Payment in full 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."

(e) The registration certificate will not be issued until all registration fees and any late fees due pursuant to THSC, §374.1022, in addition to any penalties and interest assessed, are paid in full.

(f) Property owners or preceding property owners who 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).

(g) A property owner or preceding property owner who has registered a site pursuant to §337.16 of this title must continue to pay annual registration fees in accordance with THSC, §374.1022 for the duration of corrective action at the site under the Dry Cleaning Facility Release Fund.

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

### **§337.31 and §337.32**

#### **STATUTORY AUTHORITY**

The amended sections are adopted under the authority granted to the commission by the Texas Legislature in Texas Health and Safety Code (THSC), Chapter 374. The amended sections are also adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC; TWC, §26.011, which provides the commission the powers necessary or convenient to carry out its responsibilities; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its responsibilities under the Solid Waste Disposal Act (SWDA); THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards of operation for the management and control of solid waste; and House Bill 3220, 80th Legislature, 2007.

The adopted amended sections implement THSC, Chapter 374.

#### **§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).

(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 commission. In addition to any other notice required, an applicant shall give the executive director notice of such corrective action within 30 days after the action is completed.

**§337.32. Denial and Removal of Sites from Ranking.**

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

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

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

(3) the applicant has failed to pay fees, penalties, and interest that the applicant is required to pay pursuant to this chapter;

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

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

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

**SUBCHAPTER F: CORRECTIVE ACTION**  
**§§337.51 - 337.53**

**STATUTORY AUTHORITY**

The amended and new sections are adopted under the authority granted to the commission by the Texas Legislature in Texas Health and Safety Code (THSC), Chapter 374. The amended and new sections are also adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC; TWC, §26.011, which provides the commission the powers necessary or convenient to carry out its responsibilities; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its responsibilities under the Solid Waste Disposal Act (SWDA); THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards of operation for the management and control of solid waste; and House Bill 3220, 80th Legislature, 2007.

The adopted amended and new sections implement THSC, Chapter 374.

**§337.51. Eligibility for Corrective Action.**

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

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

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

(3) the owner or other person is not currently in violation of this chapter; and

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

**§337.52. Site Restrictions Upon Commencement of Corrective Action.**

(a) Once corrective action under this chapter has begun at a site, perchloroethylene may not be used at that site.

(b) Following the commencement of corrective action under this chapter, a written notice will be filed in the real property records of the county or counties in which the site is located to notify future property owners that perchloroethylene may not be used at that site.

**§337.53. Withdrawal of Site from the Dry Cleaner Remediation Program.**

(a) Once corrective action costs have been incurred at a site by the Dry Cleaner Remediation Program (the commission program that administers the Dry Cleaning Facility Release Fund), an applicant

may not withdraw the site from the Dry Cleaner Remediation Program prior to completion of corrective action at the site.

(b) Notwithstanding subsection (a) of this section, in the event that corrective action has been suspended, postponed, or terminated at a site pursuant to §337.30 of this title (relating to Prioritization of Sites) or §337.50 of this title (relating to Corrective Action), an applicant may request to withdraw the site from the Dry Cleaner Remediation Program. An applicant may withdraw a site pursuant to this subsection only upon the express approval of the executive director.

**SUBCHAPTER G: NON-PERCHLOROETHYLENE USERS, FACILITIES, AND DROP STATIONS**  
**§337.64**

STATUTORY AUTHORITY

This new section is adopted under the authority granted to the commission by the Texas Legislature in Texas Health and Safety Code (THSC), Chapter 374. This new section is also adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC; TWC, §26.011, which provides the commission the powers necessary or convenient to carry out its responsibilities; THSC, §361.017, which provides the commission the powers necessary or convenient to carry out its responsibilities under the Solid Waste Disposal Act (SWDA); THSC, §361.024, which authorizes the commission to adopt rules consistent with the SWDA and establish minimum standards of operation for the management and control of solid waste; and House Bill 3220, 80th Legislature, 2007.

The adopted new section implements THSC, Chapter 374.

**§337.64. Retaining Nonparticipating Status for a Drop Station Moved to a New Location.**

(a) To retain the nonparticipating status of a drop station when that drop station is moved to a new location, the owner of the drop station must:

(1) Hold a current nonparticipating non-perchloroethylene user registration certificate for the drop station pursuant to §337.61 of this title (relating to Nonparticipating Non-Perchloroethylene User Registration Certificate);

(2) Submit updated registration information for the drop station pursuant to §337.10 of this title (relating to Registration for Dry Cleaning Facilities and Drop Stations);

(3) Continue to meet all requirements of Texas Health and Safety Code, §374.104 and of this subchapter; and

(4) Swear in an affidavit approved by the executive director that:

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

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

(b) All provisions of this subchapter apply to any new drop station location that retains its nonparticipating status pursuant to this section.

(c) A nonparticipating non-perchloroethylene user registration certificate issued pursuant to §337.61 of this title may only apply to one drop station location at a time.