

SUBCHAPTER D: PRIORITIZATION AND RANKING
§§337.30 - 337.32
Effective June 26, 2008

§337.30. Prioritization of Sites.

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

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

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

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

(1) the dry cleaning site ranking system;

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

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

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

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

(6) necessity of emergency action; and

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

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

Adopted January 11, 2006

Effective February 1, 2006

§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.

Adopted June 4, 2008

Effective June 26, 2008

§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.

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