

Answers to Your Questions about the Dry Cleaner Remediation Program

(Revised October 1, 2007)

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A. Eligibility

A1. Who is eligible for corrective action using the fund?

- Current owners of the dry cleaning facility or drop station,
- Former owners of the dry cleaning facility or drop station,
- Current real property owners on which a dry cleaning facility is or was located.
- Preceding real property owners on which a dry cleaner facility or drop station was located and who have entered into an agreement with the current owner that requires the former property owner to be responsible for any costs associated with the cleanup of contamination associated with the dry cleaner facility or drop station.

A2. I converted a dry cleaning facility into a drop station, am I eligible to apply for corrective action using the fund?

If not otherwise ineligible and you are the **same** person (or other legal entity that meets the definition of person) who owned the facility, then the drop station would be eligible.

A3. I have not spent \$5,000 on corrective action, may I still apply?

Yes, but you must pay the difference between what you have spent on corrective action and the \$5,000 deductible when you submit your application. Eligible expenses are listed in Attachment A of the DCRP Application for Ranking.

A4. I am a landowner applying to the DCRP, but the dry cleaner facility owner will not sign the access agreement, what do I do?

As an applicant, you must include your signed access agreement (Attachment C) with your application. In addition, you must make a reasonable effort to obtain an access agreement from the other party (property owner or facility owner) prior to submitting an application. If you are unable to obtain the access agreement signed by the other party, you must provide evidence that you made a

reasonable effort and that you have notified the other party of your intention to file a DCRP application.

Failure to obtain a signed access agreement from the other party at the time the application is submitted can have several consequences:

(1) It will result in a lower Prioritization Score, and

(2) Corrective Action may be delayed until all access agreements are provided - since the TCEQ and State contractors must have access to the property in order to conduct corrective action.

The TCEQ has legal access authority if necessary, but voluntary access is best for all parties. The commission may hold an owner responsible for up to 100 percent of the costs of corrective action attributable to the owner if the commission finds, after notice and an opportunity for a hearing that the owner obstructed the efforts of the commission to carry out its obligations under this chapter other than by the exercise of the owner's legal rights.

A5. The facility owner and real property owner have submitted an application for the same site, which one will be ranked?

Applicants are encouraged to coordinate with each other and only submit one application. If two or more applications for the same site are submitted, the information may be combined and only one ranking score will be issued. Please note that each applicant must meet the \$5,000 deductible if separate applications are submitted.

A6. Am I eligible to apply for corrective action if the facility has a Nonparticipating Non-Perchloroethylene Dry Cleaning Facility certificate?

A facility owner or real property owner of dry cleaning facility that was "opted out" of the program (i.e. has a Nonparticipating Non-Perchloroethylene Dry Cleaning Facility certificate) is not eligible to apply for corrective action. The "opt out" provision applies to the dry cleaning facility, therefore once a dry cleaning facility is "opted out," the facility is always "opted out."

"Opted out" facility owners or landowners may conduct RP/Applicant-Lead assessment and remediation work under the Corrective Action Program at the TCEQ or may be eligible for the Voluntary Cleanup Program. An overview of these Remediation Division programs can be found at <http://www.tceq.state.tx.us/remediation/programs.html>

A7. I own a drop station that at some time before I bought it was a dry cleaning facility, am I eligible to apply for corrective action using the fund?

Yes, so long as you are registered as a drop station and the former dry cleaning facility did not "opt out" of the program.

A8. I own an active dry cleaning facility or drop station and I have not paid all

of my registration fees, will that affect my Application for Ranking?

Yes, if you are not current with all of your dry cleaning fees owed to the TCEQ for all of your facilities and drop stations, you are not eligible for corrective action using the fund until those fees are paid in full. The requirement includes fees, fines, penalties, and interest owed for dry cleaning facilities and drop stations.

A9. I am the property owner and I am applying to the fund, can I sell the property to someone and they retain eligibility?

As a property owner applying for the fund, you must be registered and otherwise eligible when you apply. All subsequent property owners, as well as facility owners, must also meet all relevant registration and eligibility requirements.

If the property is sold, and the change in ownership involves an applicant, then the new owner must provide revised access agreements (Attachment C of the DCRP Application), proof of ownership, property owner registration certificate and revised applicant information (Application Sections 1, 2, 3 and 4 as applicable). A new \$5000 deductible / application fee is not required.

It is the responsibility of the Applicant to notify the TCEQ should there be a change in property or facility ownership. A revised Attachment C – Consent for Access to Property must be completed by the new owner and submitted to the TCEQ. If the new owner does not provide a revised Attachment C – Consent for Access to Property within 90-days of change in ownership, the TCEQ will suspend corrective action at the site. If the new owner does not provide a revised Attachment C – Consent for Access to Property within 180-days of change in ownership, the TCEQ will remove the site from the DCRP Prioritization List. For any sites removed from the DCRP in this manner, the applicant will have to reapply in order to re-enter the program. (revised 10/1/2007)

A10 Am I required to include groundwater analytical data with my Application for Ranking?

Acceptance into the DCRP requires analytical data showing evidence of a dry cleaner solvent release. This data must be from groundwater sample(s) unless the DCRP has previously approved a “Groundwater Exemption” based on pre-application data provided to the TCEQ by the potential applicant.

If no groundwater sample could be collected at your site, then a soil analysis may be substituted for the groundwater analysis, so long as prior written approval from the DCRP has been obtained. The Application for Ranking must include a copy of the TCEQ’s written concurrence that no groundwater sample is required. Please note that the TCEQ will not provide written approval without technical justification as to why groundwater data could not be obtained at the site.

Requests for a groundwater exemption must document why a groundwater sample could not have been reasonably collected at the site using typical assessment practices and equipment and in a manner that was not prohibitively expensive. The justification should be based on a technical reason and not

solely a financial reason.

Sites located in areas where the first groundwater zone is known to be very deep (e.g. an El Paso site where the groundwater depth is >150 ft deep), may potentially receive a “Groundwater Exemption” since the groundwater investigation would be prohibitively expensive and justify the granting of the exemption.

Sites overlying near surface bedrock will likely represent the majority of “Groundwater Exemption” cases, since many large urban areas (where DC sites are most likely to be) are located where bed rock is shallow (e.g. Austin Chalk outcrops in the Dallas - Fort Worth area.). A site may be eligible for an exemption if the site investigation has proceeded through shallow soil and to the top of unweathered bedrock and no groundwater was observed. However, to support the argument, the applicant should consider data from nearby environmental sites: Example: Did the LPST site located across the street install wells and collect groundwater data? If so, then the DCRP applicant should have as well.

NOTE: Reporting groundwater data will increase the Ranking Score of a DCRP Application, therefore it is to the potential applicant’s benefit to collect groundwater data. “No groundwater data sites” which are accepted into the DCRP will typically receive a lower “Ranking Score” than that of sites with groundwater data – since no ranking score “points” will be given for a groundwater impact. This potentially could be the difference between a DCRP site being “prioritized for corrective action” and the site not being selected for corrective action.

B. Ranking and Priority

B1. What is the difference between ranking and prioritization?

Site Ranking, which is described in 30TAC337.31(a) of the Dry Cleaner Environmental Response Rule, is intended to be a measure of a sites potential impact to human health or the environment. A site ranking score is calculated by the TCEQ and based on the data provided in the DCRP application and any subsequent environmental data collected by the TCEQ.

Site Prioritization, described in 30TAC337.30, is based in part on the Site Ranking, but also takes into account non-risk factors which promote effective use of the DCRP Fund. Section 303TAC337.30(b) of the DCER rule describes the seven factors which can be used to determine Site Priority. All ranked sites are prioritized at a frequency of every 6-months or less.

Corrective Action (See Section D of this FAQ) cannot begin until the site has been both Ranked and Prioritized. (revised 10/1/07)

B2. I received a letter with a ranking score from the TCEQ. What does that mean?

Your application was reviewed by the TCEQ and was determined to be administratively and technically complete and was processed. Based on the information you provided in your application, the TCEQ assigned a ranking score, which reflects the sites relative risk to human health and the environment. The estimated range for the ranking scores is from 0 to 1,500. The ranking will be used in combination with other factors to prioritize sites for corrective action.

B3. I received a letter with a ranking score. Does that mean my site is scheduled for some form of corrective action?

Not necessarily. The ranking score will be used in conjunction with other factors to establish a prioritization schedule for the use of the funds. Other factors may include, but are not limited to: the effect interim remedial measures may have on future costs, amount of funds available, proximity to other sites, site conditions (e.g., vacant building, planned construction activities), and the need to address an immediate threat to health and human safety.

B4. When will I find out if my site is scheduled for corrective action?

The prioritization of sites for corrective action will be done at least twice a year. Once your site has been prioritized for corrective action, you will be notified by the TCEQ when corrective action is scheduled.

B5. My site was given a low ranking and priority score. I am concerned that the TCEQ will not conduct corrective action at my site anytime soon. Is there anything I can do to raise my score?

Yes, You may also collect additional information at your own expense and update your application. This may result in a different ranking and prioritization score. However, in accordance with 30TAC337.31(a)(7), no more than one updated application can be submitted per year.

The costs for any additional corrective action work conducted by the applicant are not reimbursable.

Also, see Section C of this FAQ for other possible options.

B6. Is there a fee for updating an Application for Ranking?

No, there is no fee for updating an application at this time. However, in accordance with 30TAC337.31(a)(7), no more than one updated application can be submitted per year.

B7. I understand that the DCRP may postpone or suspend corrective action at my site in order to make funds available for higher priority sites. If this happens and the DCRP stops work at my site, then what options do I have?

Applicants for sites where Corrective Action has been postponed or suspended have several options.....:

- The applicant could leave the DCRP and enter the Voluntary Cleanup Program (VCP) – so long as the site is in the pre- assessment / assessment phase and they are eligible to enter the VCP,
- The applicant could leave the DCRP and continue corrective action in the Environmental Cleanup Section - Remediation Division of the TCEQ,
- The applicant could remain in the DCRP and hire their own contractor to perform correction action,
- The applicant could remain in the DCRP and hire their own contractor to collect additional assessment data and resubmit an Application for Ranking in order to increase the ranking and priority status,
- The applicant could remain in the DCRP until such time when the DCRP chooses to resume corrective action at the site.

C. Coordination between Voluntary Cleanup Program and the Dry Cleaner Remediation Program

C1. My site is currently in the Voluntary Cleanup Program (VCP). May I apply for the Dry Cleaner Remediation Program (DCRP)?

Yes, VCP applicants may apply to the DCRP and get a ranking score. However, a site cannot remain in both programs simultaneously, and once you have your ranking score, you will have 45 days to decide which program path is best for your site. You must indicate your intention using a “Program Participation Election Form, which will be provided with your ranking score notice letter.

If you decide to participate in the DCRP, you must withdraw from the VCP. However, you may decide to return to VCP at any time prior to the initiation of remediation at your site.

If you decide to remain in VCP, your DCRP application will be closed and you must maintain your VCP agreement and schedule. You will retain your eligibility for the DCRP. So later, if you decide that you want to withdraw from VCP and rely on the DCRP to complete investigation or corrective actions at your site, you can do so by withdrawing from the VCP.

C2. What type of letter will the DCRP be issuing upon completion of corrective action?

The DCRP will issue a “*No Further Action Letter*” when the TCEQ has determined that the site has met an appropriate Texas Risk Reduction Program closure standard.

C3. Why won't I get the same Certificate of Completion as in VCP?

The VCP and DCRP are separate and distinct programs. The VCP and the

certificate of completion were created to provide private parties with the incentive to remediate property by removing liability of future owners. The DCRP uses state funds to pay for corrective action with state-procured environmental consultants.

C4. If my site has been ranked and prioritized in the DCRP, can I later decide to leave the DCRP and enter the VCP?

Potentially yes, but you must notify the TCEQ of your decision to withdraw from the DCRP, the site must be in the pre-assessment or assessment phase and you must be eligible to enter the VCP. If remediation has been performed at the site, with exception of emergency actions, you may be ineligible to enter the VCP pursuant to Section 30TAC333.6 of the VCP rules.

C5. What if I want a VCP certificate of completion and I am in the DCRP?

The only way to obtain a VCP certificate of completion is through the VCP.

C6. I received a letter with a ranking score from the TCEQ. I was told that I must withdraw from the VCP before my site can be “Prioritized for Corrective Action in the DCRP.” This puts me in a difficult situation - since I can’t make an informed choice about which program to participate in if I don’t yet know where my site would be on the priority list. Is there some way I can get an idea of where I my site might be placed on the Prioritization list?

Based on the ranking score assigned to your site in the TCEQ letter and the list of Prioritized DCRP sites available on the TCEQ website, you should be able to determine approximately where on the list your site would be placed should you decide to withdraw from the VCP.

Note: The list of Prioritized DCRP sites (which includes both ranking and priority score) is posted on the TCEQ website:

www.tceq.state.tx.us/assets/public/remediation/dry_cleaners/priorlist_current.pdf

D. Corrective Action

D1. What is corrective action?

As defined in the Dry Cleaner Environmental Response Statute, “Corrective Action” consists of everything from site assessment, remedial actions (e.g., soil excavation/removal, installation and operation of groundwater pump and treat systems), to the use of engineering and institutional controls (e.g., impervious cover, deed recordation).

D2. How clean will my site be when you are done?

The TCEQ will take the necessary steps to reduce the risk to human health and safety. The Dry Cleaner Environmental Response Rules require that corrective

action be conducted in accordance with the Texas Risk Reduction Program Rules (30TAC350). Thus, the TCEQ determines the most appropriate TRRP Remedy Standard for a particular DCRP site.

However, the Dry Cleaner Environmental Response Rules also allow the TCEQ to postpone or suspend corrective action at a low priority site in order to make money available for higher priority sites. Therefore, corrective action will not necessarily proceed to a full closure under Texas Risk Reduction Program Rules at all sites. The TCEQ will make the best use of the funds available and this may require addressing any immediate threats before proceeding to another lower priority site. At this time, the TCEQ is not committed to taking a site to closure in every case. (Revised 10/4/2006)

D3. I discovered a release at my facility. What do I do?

You are required to report any spills or releases to the TCEQ. You may call the TCEQ Environmental Release Hotline at 1-800-832-8224, or during business hours, you may call your regional office. After reporting the spill, the person has the option to clean up the area to pre-release conditions within 30 days of the spill or release. If the spill is older than 30 days, the person has the option of submitting an application to enter the Dry Cleaner Remediation Program, or the person can perform corrective action at the site under the supervision of the Voluntary Cleanup Program, or the Corrective Action Program of the TCEQ.

Additional information on release reporting can be found on the following TCEQ web page: <http://www.tceq.state.tx.us/remediation/mysite.html>

D4 I don't agree with the Remedy Selection chosen for my site by the TCEQ DCRP. What Options do I have? Can I reject the chosen remedy?

The Dry Cleaner Law* requires that the DCRP make best use of available funds, and therefore, as discussed in answer to previous question D2, the TCEQ determines the most appropriate TRRP Remedy Standard for each particular DCRP site. The TCEQ will make a cost-benefit analysis of the available remedies and will choose the most cost effective remedy over the life of the program. The applicant will be notified when the DCRP selects a remedy for your site. If you object to the proposed remedy, you may withdraw from the DCRP and pursue a response action outside of the DCRP at your own expense. However, once the DCRP initiates a response action, you no longer have the option of withdrawing and the DCRP will proceed with the chosen remedy

**Section § 374.153(b) of the Texas Health and Safety Code requires that the commission conduct corrective action includes the cleanup of affected soil, groundwater, or surface water using the most cost-effective methods that are technologically feasible and reliable; (2) provides adequate protection of human health and the environment; and (3) minimizes, to the extent practical, environmental damage.*

(Created October 4, 2006)

E. Delinquent Registration Fees

E1. I own an active dry cleaning facility / drop station and I have not paid all of my registration fees. Will this affect my Application for Ranking?

Yes, if you are not current with all dry cleaning fees owed to the TCEQ for all of your facilities and / or drop stations, you are not eligible for corrective action using the fund until those fees are paid in full. The requirement includes fees, fines, penalties, and interest owed for dry cleaning facilities and drop stations.

E2. I am an eligible landowner applying to the DCRP, but the active dry cleaner facility for which I am applying is currently delinquent on registration fees. Will my Application for Ranking still be accepted by the TCEQ?

Any application submitted by a person/entity who is delinquent on a fee and/or penalty will not be declared administratively complete until the fees/penalties are paid and/or current. If the outstanding fees are not paid within 30 days, the application will be returned to the applicant unprocessed.

E3. Although my site is currently delinquent with the TCEQ, the DCRP has determined that all appropriate closure standards have been met. When will I receive the "No Further Action Letter" documenting completion of corrective action activities?

Final action will be withheld by the agency on a site if it is discovered that the owner/entity who submitted the application is delinquent on fees and/or penalties until such time as the fees/penalties are paid and/or current.

E4. I am currently delinquent with the TCEQ, owing \$100 for a penalty. Will my DCRP site / DCRP Application for Ranking still be worked?

Currently, Yes. If the total monies owed are less than \$200.

However, when the TCEQ develops an automated system which will quickly and efficiently review for delinquent fees/penalties, then only applicants who owe less than \$25 may have their application processed.

F. Property Owner and Preceding Property Owner Registration

F1. I'm a Property Owner where a former DC facility was located and I want to apply to the DCRP. Do I have to complete a registration form and pay a registration fee prior to submitting a DCRP Application for Ranking?

The registration requirement for Property Owner and Preceding Property Owner (PO/PPO) became effective June 15, 2007 and the deadline for registration is December 31, 2007. The Dry Cleaner Property Owner/Preceding Property Owner Registration form is now available from the TCEQ Registration Team (512/239-2160). Therefore, PO/PPO applicants should complete the registration form before submitting a DCRP Application for Ranking.

Applications received prior to Dec 31, 2007 without the required PO/PPO registration will be reviewed and ranked but not prioritized.

Applications received after Dec 31, 2007 without the required PO/PPO registration will be not be reviewed and will be returned to applicant.

F2: I'm the owner of a property where a registered dry cleaner facility is located. The dc facility owner has applied and been accepted into the DCRP. With the new law in effect, do I as the PO now also have to register with the state?

A1: No, if the registered facility owner is the DCRP applicant, then the PO does not have to register. Only property owners who are applicants to the DCRP must register.

F3: I'm the owner of a property where a registered dry cleaner facility is located. A release from the DC facility has been discovered during a site investigation and I would like to participate in the DCRP. The DC facility owner does not want to apply to the DCRP. With the new law in effect, as the Property Owner, do I have to register with the state in order to apply to the DCRP?

Yes, any property owner who wishes to participate in the DCRP must be registered with the state -even if the facility is already registered with the state. All DCRP applications submitted by unregistered landowners will be rejected.

F4 I'm the owner of a property and DCRP applicant of a site which is currently participating in the DCRP. Do I now have to register? What if I don't register?

All Property Owners and Previous Property Owner applicants to the DCRP must register. Failure to register will result in penalty fees in addition registration fees. Furthermore, the State may chose stop to work on site and may file a lien again property for costs of corrective action.

F5: For current DCRP sites with multiple applicants (i.e. multiple parties signed as applicants on the original form or subsequent submittals) do all applicants now have to be registered?

All DCRP applicants must now be registered with the state. Only one applicant per application is required. Therefore, all "co-applicants" must either register with the state or withdraw as a co applicant.

F6: I'm a Property Owner applicant participating in the DCRP. If I sell property, can the site remain in the DCRP and who becomes the applicant?

There are several ways for a site to remain eligible in this situation. The new PO could register as a PO and apply to be the new DCRP applicant or the PO could change his registration status from PO to PPO and revise the DCRP application.

F7: If the PO and PPO are both DCRP applicants (i.e. co-applicants), for an active DCRP site. If we don't want to both register, how can the site remain in the DCRP?

A revised DCRP application is submitted indicated which party will remain as applicant – and that party must be registered.

F8 What is the timetable for all this? When do I have to register as a PO?

DATES TO REMEMBER

June 15, 2007 Date law requiring PO and PPO registration went into effect.

September 1, 2007 start of fiscal year

December 31, 2007 Due date for PO and PPO registration. Penalties apply after this date.